

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 15, 2006. 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 were in attendance as follows:

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

Also present: John J. Klarl, Deputy Town Attorney
James Flandreau

ADOPTION OF MINUTES: 12/21/2005.

Mr. Mattis stated we just received the December minutes at the work session on Monday, and they are quite lengthy so we have not had a chance to thoroughly review them.

Mr. Chin made a motion to adjourn the adoption of the minutes to the February meeting, seconded by Mr. Reber with all voting "aye."

Mr. Chin stated I just want to make a little statement about a letter that we received to the Zoning Board members on January 14, 2006 regarding a case that was last month. It was Adam McCauley, and I don't remember the case number. There was a concerned resident for Right Way in Life that wrote a letter indicating that Mr. Chin, myself, has a son taking karate lessons from Mr. McCauley. I would like to state that I do not have a son. So anybody who writes a letter, they should get their facts straight before they submit a letter to this Board, or to anybody else. I just want to say that to whoever the concerned resident was. Since they put my name on this letter, they should have put their name on the letter. That is all I have to say.

Mr. Mattis stated I would just like to add that the inference of the letter was that you were giving him special treatment, and you weren't even here to vote on the case.

ADJOURNED PUBLIC HEARINGS

CASE NO. 50-05 CHARLES W. REYNOLDS for a Special Permit for a Home Occupation in a principal residence on property located at 26 Teatown Rd., Croton.

Mr. Charles Reynolds appeared before the Board. He stated I'm here because I had a secretary, and I need your consent in order to keep her.

Mr. Mattis stated right, this is a Special Permit.

Mr. Chin stated I remember that we had adjourned this case for a few months, because you had to go away, and so forth.

Mr. Reynolds stated actually one month. The meeting before that the newspaper advertisement, or something had been incorrect, and you need to readvertise, and adjourn it to next month, and the next month I could not make it.

Mr. Chin stated okay. Basically you were originally going to make a separate structure, and you're not going to do that, you're going to put the secretary inside the house now, and I would not have a problem with that.

Mr. Mattis stated I think we've discussed this in the past. The house is quite substantial with a number of bedrooms, and one of those being converted into an office would be fine.

Mr. Klarl stated once again, this is an application for a Special Permit for a home occupation in the principal residence.

Mr. Mattis stated that is correct, and it is only for one employee, a secretary. Are there any other comments from the Board?

Mr. Seirmarco stated I have no problem with this. The business is sort of a just a business, business, and it wouldn't require additional parking or anything just for the secretary. So I have no problem with this.

Mr. Mattis asked if there was anyone in the audience that wanted so speak?

Mr. Chin made a motion in Case No. 50-05 to close the public hearing seconded by Mr. Heady with all voting "aye."

Mr. Chin made a motion in Case No. 50-05 to grant the Special Permit for a Home Occupation for one employee in the residence. This is an unlisted action, and declare a Negative Declaration, seconded by Mr. Heady with all voting "aye."

Mr. Flandreau stated there is a Decision & Order for the approval of your permit, and you can come in next Wednesday to pick that up.

Mr. Chin stated anybody who's granted a variance, or Special Permit will have to wait until next Wednesday so that we can everything prepared for you.

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CASE NO. 62-05 AAK REALTY LLC BY BRIAN AITHCHESON, AGENT for an Area Variance for a proposed free standing sign and an Interpretation if the sign frame is part of the sign size on property located at 2085 East Main St., Cortlandt Manor.

Mr. Douglas stated I think we told the applicant that he did not have to show up in person, if he had his client's approval.

Mr. Seirmarco stated yes, I think that last time we were just trying to make sure that he had made contact with his client to make sure they were in full agreement with the reduction that he had agreed upon. We just wanted to make sure that the client was in agreement. I assume that he had sent us a letter stating they had no problem with the most recent drawings.

Mr. Douglas stated I believe we got a letter dated January 23, 2006 stating the approval from his clients for the sign reduction.

Mr. Mattis stated okay, any further discussion? He then asked if there was anyone in the audience who wanted to speak?

Mr. Seirmarco made a motion in Case No. 62-05 to close the public hearing seconded by Mr. Heady with all voting "aye."

Mr. Seirmarco made a motion in Case No. 62-05 to accept the most recent drawing dated January 18, 2006 , and the size that are indicated on that for the sign at AAK Realty, it would be 39.7 square feet. He is allowed 24 square feet, and for the free standing sign that is also indicated on the drawing. This is a Type II Sequa with no further compliance required, seconded by Mr. Chin with all voting "aye."

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CASE NO. 65-05 GREG T. BLEAKLEY for a Special Permit for an Accessory Apartment on property located at 4 Crugers Ave., Croton.

Mr. Greg Bleakley appeared before the Board. He stated I would like to apologize for not making last month's meeting. Also, on the notes that I sent to the Board members about the bedroom on the right side. It is actually the family room. The recent set of plans that were sent had a mistake also. The one that said it was an office, but I believe it was a living room, or dining room. That room was turned into an office with a 4 foot opening. I have the CO for it from the Town.

Mr. Reber stated we had concerns with the consistency of the drawings. The letter you sent us was an answer to the question we had raised back in December, there was confusion about the areas, because your situation was pushing the limits in the sense that it is a very small house, and a relatively large accessory apartment by the standards, guidelines that the Town goes by. You

have tried to answer that. I have compared your notes to the drawings, and they seem to be representative with what the architect has submitted. I think the issue here is something that came up at the Work Session in terms of the intent of the regulations, and the fact that we cannot meet the ratio for the ordinance. There is three general guidelines that we have to follow. One is the size of the accessory apartment. They don't want it too small, they don't want it too big. They don't want single room occupancies. So they set a minimum of 400, yet they don't want it to be a family, or a large family living there. So the guidelines say not to exceed 600. This one looks to be just under 600, and also they didn't want to see duplexes, two family houses, or what have you, and using this as an excuse to get around the Zoning that says a lot of our areas in the Town are single family housing. So the regulations say that the ratio of the two should be that the accessory is not more than 25 percent. Well, Mr. Bleakley, your house is a single story cottage, which barely meets the minimum size requirement. However, if it had a second floor it wouldn't even be an issue. If you had a second floor, there would be plenty of area, and you would meet all the criteria. So I think the intent is essentially met in terms of what we look for in an accessory apartment. During the site visit, there was plenty of parking, and what have you. So my personal opinion is having seen the apartment, and there is no way we can juggle the numbers, you can't because the apartment is in the basement. There is no simple way to say well to move one room into the main living quarters, and then read the magic number, and to me it seems kind of silly to be playing those kind of number games. So my personal feeling is that it meets the intent of the regulations, so I would be in favor of it, recognizing that like with any Special Permit, we would condition it on the fact that it meets all of the Code requirements whether it be the number of bedrooms, smoke detectors, entrances, exits, which by the way is another reason why we can't arbitrarily close off part of downstairs, and make it smaller, because from a safety point of view, you want to have separate entrances, and exits, and the way that's laid out you really need the rooms that are down there to make it through there. So my thought would be that it is an acceptable situation. It is unique, because it is a very small single story house, but I think it meets the basic requirements, and I would be in favor of issuing a Special Permit conditional on the fact that it does meet all of Code Enforcement requirements.

Mr. Chin stated I'd like to say one thing. Based on Mr. Yate's drawing indicating 682 square feet as the total for downstairs, actually a small part of it is not really liveable space. So a lot of that should be taken out. From what my calculations are right now I come up with about 550 square feet as compared to 682. So that would make a difference percentage wise. It is a lot closer.

Mr. Mattis stated well my calculations come out to about 596 square feet.

Mr. Chin stated well I think during our Work Session we talked about we should get a Board of Health approval on anything that he wants to do prior to us issuing anything.

Mr. Reber stated well I thought there as Mr. Bleakley said that he has had Code Enforcement come to the house, and inspected for requirements, and I think we should leave it up to Code Enforcement to work that out, if they have to work something out with the Health Department, leave it up to them.

Mr. Mattis stated we could make it subject to approval of Code Enforcement, and they can coordinate with the Health Department.

Mr. Seirmarco stated just to make a comment, I think everybody on this Board is always concerned with setting a dangerous precedent related to accessory apartments. So we don't have people coming in saying we gave it to Mr. Smith, or Mr. Jones. I think when we exceed the requirements such as exceeding the 25 percent, and going to 37 percent, there has to be a very unique set of circumstances that we can point to later on to say that's not a precedent set, that was just a unique situation. The unique situation here, as Mr. Reber has pointed out, it is a small house, and it's a fixed cottage house. It is what it is, and it certainly would not be a problem if you had a larger second floor. So I think the uniqueness of this is the fact that it is a very small house that could very easily drive the percentage from 25 to 37, or plus.

Mr. Douglas stated well I am very concerned with the precedent, and I don't think is a really unique situation. I think there's a large number of homes, and other residents that are in a similar situation, and I'd be troubled by us granting anything over 25 percent.

Mr. Mattis stated I agree with that. I will respectfully disagree with some of my colleagues. We have turned down a number of applications that were 30 percent, 31 percent, 32 percent, where the square footage of the accessory apartment was even smaller, because the house was smaller. So to say that there being penalized, because it's a small house, the Code is the Code, the guidelines are the guidelines, 600 square feet, 25 percent. We've gone to 28 to 29, maybe 30. I don't recall ever going over 30. This is 36.6. We have turned down any number of cases like this that have had less than 36, and any talk of a second story, there is no second story. I don't even know why it's coming into the conversation, and it's still troubling that Mr. Bleakley refers to two bedrooms, apparently until he build the basement, he only had one bedroom in his house. So we'll leave that up to Code Enforcement. I don't want to make an issue of that. Code Enforcement can look at that, but I can't support something that varies so much from the guidelines. This is almost a 50 percent variance over what the guideline says, and I can't support that.

Mr. Reber stated I understand where you're coming from, and I typically defend the criteria that we have to work by, but by the same token on existing situations, we tend to look at things a little differently, and I think when it comes to accessory apartments they're more guidelines than they are Zoning restrictions. So I think it gives us a little more flexibility to look at the situation in terms of whether it makes sense or not. The fact that the Town has written that into the Code is the sole purpose of permitting accessory apartments, realizing that they have a benefit, and a need in the Town.

Mr. Becker stated I have a question, and I know this is mainly for the Health Department but I am curious. Your septic field, how many bedrooms is it approved for?

Mr. Bleakley replied two bedrooms.

Mr. Becker stated well considering that there is at least one upstairs, and the plan that you submitted shows two bedrooms downstairs?

Mr. Reber stated the plans show one, and one.

Mr. Bleakley stated it was always approved for a two bedroom. The upstairs was recently changed within the last year. There is a small bedroom, and an office to clarify downstairs, which is also existing. It has been there since 1992.

Mr. Becker stated there are two large rooms downstairs. When I walked through there were two rooms downstairs.

Mr. Reber stated one is open, you can't put furniture in there (referring to the plans).

Mr. Becker stated I would very much like to know what we require before a CO of any sort is accepted that the Board of Health reviews this.

Mr. Mattis stated we can put that as a condition that Code Enforcement reviews this in conjunction with the Board of Health. He then asked if there were any other comments? He asked if there was anyone in the audience that wanted to speak?

Mr. Reber made a motion in Case No. 65-05 to close the public hearing, seconded by Mr. Chin with all voting "aye."

Mr. Reber made a motion in Case No. 65-05 to grant a Special Permit for an Accessory Apartment conditional upon the residence, and the apartment meeting all of the Code Enforcement requirements for the building. This is an unlisted action declaring a Negative Declaration under Sequa, seconded by Mr. Chin. The Board was polled as follows:

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

The Special Permit was granted by a 5-3 vote.

CASE NO. 67-05 MICHAEL JONES-BEY for a proposed two lot subdivision that would required lot width variances for two proposed lots and front yard variance for existing dwelling on proposed lot 1 on property located at 210 Red Mill Rd., Cortlandt Manor.

The case will put on for second call.

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CASE NO. 01-06 DONNA ACOSTA for Area Variances for a side yard setback for a principal structure on property located at 13 Rick Lane, Cortlandt Manor.

Mr. James Flandreau stated she withdrew her application.

Mr. Mattis stated okay so that was withdrawn by the applicant.

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CASE NO. 05-06 MID VALLEY OIL CORP. for an Area Variance for a proposed freestanding sign on property located at 98 Road Hook Rd., Cortlandt Manor.

Mr. Edward Cuccurullo appeared before the Board. He stated I am the president of Mid Valley Oil Corp. I want to hand out some illustrations.

Mr. Becker stated this is for a variance for signage for the Mobil Station on the Annsville Circle.

Mr. Mattis asked can you briefly describe what you're here for?

Mr. Cuccurullo replied unfortunately I was not able to make the last meeting, but quite honestly I was under the impression that the application that we submitted to the Planning Board was approved, and they told us to go to the Zoning Board. There were obviously no objections from the Planning Board to go ahead, and submit the plans that you see for the sign.

Mr. Klarl stated just for the record sir, we have a memo from Mr. Verschoor, Deputy Planning Director, dated January 17, 2006, and he writes to the ZBA, "Please be advised that at the Planning Board meeting on December 6, 2005, the Planning Board reviewed the above referenced request for a new freestanding sign at the Annsville Circle Mobil Station. The Planning Board approved the architectural design of the sign, and takes no position as to the granting, or denial of the required Area Variances, and leaves the granting, or denial any Variances to the sole judgement of the ZBA." So at the December meeting, the Planning Board approved in concept the architectural design of the sign, but of course any kind of variances are completely left to the judgement, and discretion of this Board.

Mr. Cuccurullo replied okay.

Mr. Mattis stated I apologize for any misconception there, and we had discussion that we'll make sure that in the future that any cases like this that the Planning Board makes it very clear that they pretty much conceptually approve it, and then the size comes to us. So I apologize if you were under the wrong impression.

Mr. Cuccurullo stated well just to understand the position of the Planning Board, are they

supposed to tell the applicant that there's a Variance issue at hand?

Mr. Klarl replied they did. In fact, it was specifically mentioned in the course of their deliberations that they were looking at the sign itself, the site plan itself, but the Variances were up to this Board. So that was discussed during the Planning Board process.

Mr. Cuccurollo replied okay.

Mr. Heady asked on this new paper you gave out to us, it's 48 square feet right?

Mr. Cuccurollo replied that is correct.

Mr. Heady stated it is really double of what you're really allowed. Now before you had a 42 square feet sign, which was taken down during the construction. So by taking that down you have to come back into Code with it. In fact, you went double to what the Code refers to. The Code is 24 square feet, and you want 48. I can't see why you can't shrink it down. I told the fellow that was here the last time that you ought to go to the architect to see if you could shrink that down to the 24 square feet that you're really allowed. You've got only two more gas prices here, you've got the regular, and you've got the diesel. What about the high test, and you have the medium for the gas prices?

Mr. Cuccurollo replied we're trying to allow the public to realize what type of offering we have. Most people quite frankly look at the unleaded price, and in our case we have a separate loading island for several of the commercial vehicles. So most of those people look at the diesel price. As far as posting the mid-grade, and the premium, we decided to take that out of our signage in order to fit these other offerings that we feel are very important from a business standpoint. The fact of the matter is there is a Dunkin Donuts, a grade A tenant there that has several other businesses throughout this area, and he is very concerned about his presentation being brought out to the public in the way of signage. Also, the food mart people we have in there are also tenants of ours at several other sites, and they also would like, and they should have the ability to promote their product, which is simply just a food mart sign, and ATM, that sort of thing.

Mr. Douglas stated that's a situation that most business owners have. Everybody wants to be able to better promote their business, and I don't see why yours is any different than anybody else's, or anybody on Rte. 6, or throughout the Town. My view of the Town is there are certain guidelines as for signs, and I don't see why we should allow yours to be larger, because of business reasons. Everybody has business reasons.

Mr. Cuccurollo stated well the consideration of the fact that we were permitted originally with 70 square foot of signage. We have a Building Permit for that. I was telling some of the fellows including Ed Vergano that in the demolition event, the sign was damaged, and also that sign really should never have been part of our plan, because the signage only had a Mobil sign, which I brought along with me, and it just had the three, four panel sign for pricing under it.

Mr. Klarl stated the only sign to be considered by this Board, and the Planning Board are those

that are on your new site plan. Old signs don't count unless you are showing them on the site plan that the Planning Board looked at.

Mr. Cuccurolo stated well they did originally.

Mr. Klarl stated oh, they did.

Mr. Cuccurolo stated yes, sir.

Mr. Klarl stated I am talking about the site plan the Planning Board has been looking at with the new station. You said that sign was lost during the demolition process.

Mr. Cuccurolo stated this sign was permitted.

Mr. Klarl asked are you talking about under the former station?

Mr. Cuccurolo replied that sign was permitted on the new plan. He approached the Board, and went over the plans with some of the Board members.

Mr. Mattis stated the old sign is about 43 square feet, as I understand. I have given this a lot of thought, and in this instance I don't think that 48 square feet is excessive for a number of reasons. The first is that during rush hour that is a very bad intersection, and for people to strain to see that. When you're going down Rte. 6, and you're just looking left, or right, when you're trying to merge into traffic, as you are here, it can create a very, very dangerous situation. He had it approved for 43 square feet. Basically, we're giving him 5 square feet more. The third item is on Case No. 62-05, we approved signage of just under 40 square feet. However, when you include the structure along with it, that was 66 square feet. This is only 48.

Mr. Reber stated plus there is a second sign at that site.

Mr. Douglas stated right, but I think in Case No. 62-05, I think I made it a point of saying how it was very different, because it essentially had two listing sections to it, and that was the only reason why I personally voted in favor of it, because I was very concerned of exactly this. As I said last time, I didn't want that at all to be a precedent. I find this disturbing that we give these variances, and the signs are ever growing, and we have a precedent where we approved one for 30, and one for 35, now one for 48. I just don't see a distinction between this location, and Rte. 6, and I don't see why we should grant this.

Mr. Mattis asked have you gone through there often at rush hour? There's a tremendous distinction. It is very difficult to get through that traffic circle, and if you're looking at a smaller sign I think it can create a safety hazard.

Mr. Reber stated I have a comment also. I think where you can make distinctions is multi-tenants. We have had some people that have recently come to us that have single business, and

they want a very big sign, and we've rejected that, but generally when you have multi-businesses like the one we just approved on Rte. 6, the purpose is that he has to list that he had five, or six businesses. In essence, what this applicant is saying is he has basically three tenants. He has Dunkin Donuts. He has people who run the food mart, and he had the Mobil pump station. So I can see some significance in identifying that, and of course we all recognize that the gas prices are important, and we would want those up there to be seen. So to that extent I can understand granting some leeway here.

Mr. Douglas stated well if he wants to get the gas prices on the sign, he has the option of reducing the other signage.

Mr. Mattis stated I go back to Case 62-05. We approved two signs. We approved a 42 square foot sign, but we also approved a Mavis sign, because we're talking about multiple tenants. This is multiple tenants also.

Mr. Douglas stated multiple tenants in one location. The other are essentially two separate locations that happened to be attached, and there was a discussion about how essentially it is two different locations.

Mr. Cuccurullo stated just for your own edification. The 43.6 that we equate this, the old sign that was permitted. There was also a 13 foot Legend sign permitted that I chose not to put up. So obviously I had on my original Building Permit, I was able to put a canopy Legend sign, and I did not put it up for the purpose of trying to more, or less give something back to the Town to get our 48 square foot signage, which is allowable through the Variance process. My point is that if I go back, and put up my canopy Legend sign, I'm permitted to that. So obviously this would look a lot better.

Mr. Douglas stated I am not accusing you of doing anything wrong at all. I am just saying that there are certain guidelines in the Town that I feel should be followed. I am not criticizing your approach to anything in any way.

Mr. Seirmarco stated I just wanted to say, there is more than one issue here. I think I agree with the Chairman, when we say that Annsville Circle is a very dangerous situation. The way it's designed the people coming from southbound entering the circle, and possibly wanting to get gas, and somebody going north, and wanting to make a loop, and get gas, it's a very difficult situation. So I think to address that issue is we had suggested he'd raise the height of the sign, you have done that, and make it slightly larger for safety reasons, I have no problem with that. I look at their old sign, and when you look at the Mobil letters, and it fills up the upper sign, and on your layout here I would say two thirds of your Mobil is white open space. So you might want to consider cutting some of that down, and the same thing for Dunkin Donuts, without changing the size of the Dunkin Donut name, two thirds of that particular sign is white. So there might be some creativity there. My third issue is ATM is that so important. Most people that have an ATM in their business, have a little, tiny sign within the window going in. Do you really think people stop at your establishment just to use the ATM machine? I don't think so.

So I think some creativity here. Some reduction, some, speaking for me is probably in order here. I think there is some hardship for having a slightly larger sign, and that's from a safety standpoint. I think that's a good idea, but I think you can get a little bit creative here, and remove some things, and change some things around to make it smaller. 24 is certainly too small, but I think we can cut it down a little bit.

Mr. Becker stated I agree, and I share a lot of the comments that were made, and I think that's going to have to direct us toward some sort of compromise. I think this is a very unique site, not just the acreage, that I don't think is so relevant, but it is actually one of the few true highway areas in this area. It has no residential impact at all, and there are safety issues. So I have no true problem with the sign except that it's on the ground, which I think goes against the idea of making a bigger sign to make it safe. I think people are going to be straining, and especially if there are trucks there, they could block the view. I think if it was raised up it would be much more visible.

Mr. Mattis stated you are allowed a 16 foot height. Could you raise that up?

Mr. Cuccurollo stated no, sir, you can't raise it.

Mr. Mattis asked you can't raise it?

Mr. Cuccurollo replied there is a problem with the power lines.

Mr. Becker stated but you had a previous sign that was up higher.

Mr. Cuccurollo stated it was in a different spot on the property.

Mr. Reber asked this never came up, when they reviewed it at the Planning Board?

Mr. Cuccurollo replied no, sir.

Mr. Reber stated I concur with Dr. Becker. I just think this would be very strange to put a sign basically at ground level in a busy intersection where it would be SUV's, and everything that people are driving these days. You would have to strain to even see this sign as you're coming around the traffic circle.

Mr. Cuccurollo stated well actually they've done, not us, but the company has done many studies on signs that are at eye level. It's much safer. As far as a person lifting their eyes up to look at a sign, at eye level you might be able to see with your preiferial vision. You may be able to see some action that may be left, or right. Also, for a site like this, a gateway property that we have been through Architectural Review Board. I've gone to them three times with three different types of buildings that we wanted to build, and we settled on this stone building, because it is the first commercial property, gateway property into your community. So we really worked closely with them.

Mr. Reber stated we agree. We're not saying the old pole signs that you used to see, but even the DOT I know has a requirement that Stop signs, and even the Town signs that were put up welcoming you to the Town have to be a certain elevation so that they're not blocked by the traffic, and that is what we're saying here. If you just elevate it slightly, so there is a chance that it can be seen.

Mr. Mattis asked can you elevate slightly without interfering with the wires?

Mr. Cuccurolo replied yes, but it would aesthetically not look right. This type of sign, if you go through any of the New England towns, and we have a stone wall there as you can see. The idea is to place it really on top of the stone wall to make it look like it blends right in.

Mr. Reber stated I guess if you're comfortable with it, and it's actually gone before the Architectural Review, and Planning Boards, I guess we're not necessarily in a position to change it now. Our concern is the size.

Mr. Cuccurolo stated to answer your question it can be raised, but I'm a little bit concerned about the look of that. Basically, you would have a post coming out of a rock wall, and I'm not sure you as the Town, and people that live in this Town would really care for that type of look. I think the correct look is a monument look. It's very common on sites like this.

Mr. Reber stated I think some of my colleagues would say that if we're really concerned about the overall look, and appearance, we would say don't put the sign up at all.

Mr. Cuccurolo stated well again, for customers, and everyone here is a potential customer for gasoline for instance, right not they would have to pull into the location to find out what the price of gasoline is, that's dangerous.

Mr. Reber stated I agree.

Mr. Klarl stated they mentioned about the Planning Board looking at the sign. The Planning Board approved the architectural design. There were comments during the Planning Board process that they wanted a certain elevation, but they left it to this Board to look at the total sign area, and look at the elevation. They liked the design itself.

Mr. Reber stated yes, but we don't have any real jurisdiction over the elevation as long as it's within Code.

Mr. Klarl stated well I did hear the Planning Board voice concerns about height.

Mr. Becker stated I also agree with Jim that I am concerned about driving around that traffic circle, the first thing you want to see is the Mobil sign knowing you can get gas, and focusing on the price, and I think it's important to advertise for the other tenants as well, but I'm wondering

if you're coming around at the current speeds that are there, if your mind is going to pick up on it without focusing on that sign with all of that on there, Dunkin Donuts, Food Mart, the gas prices, ATM. I think it's almost too busy, it's distracting, and I agree I think it can be creatively changed. I think if it was raised up, and some of the white was taken out, and I think if it was rearranged. I am not sure if it's that necessary to put the ATM there as opposed to on the building. I think that this sign could be reworked, and be architecturally more appealing, if more information rather than overloading information, and reduced, and I think we may be able to come up with a nice compromise between the ground monument model, and the old sign 20 feet up. I think there might be a way to make the same stone footprint, but to just raise it up on two steel piers a few feet, just to get it above car level. By the way, that is the same discussion that we had with the previous applicant. We had concerns about people parking along Rte. 6 that a van may block the sign, and we discussed the height as we were trying to reduce the overall signage size.

Mr. Mattis stated I would like to make a comment on the Food Mart, and ATM. He could put regular, mid-grade, super, and diesel, and put those as four. Later on, if he wants to change it, he doesn't come back to us, he goes to Architectural Review. So it's really not our jurisdiction for that part of it in my opinion. Whether we like it, or not, it went to Architectural Review. It went through Planning, I don't think it's for us to tell him what's on the sign. We're looking at the size of the sign, and again this is the only sign there, he could put another sign out, he chooses not to. This is a tough intersection, and I don't think that in this case a variance of this nature is inappropriate at all.

Mr. Chin asked is there any way of the sign being reduced in height wise. Before you had a 44 foot variance, if you knock that sign down like the white between the Mobil about 6 inches, and move the Mobil, and the Dunkin Donuts portion, you would be gaining about 4 square feet. That is coming down to about 44 square feet, which is what it was before. Would that be a problem for you?

Mr. Cuccurullo replied well frankly, yes, because I already actually own the sign. All of these signs are custom made based on these sizes. Most signs are 6' x 10'. Again, for this type of offering I don't believe this is an unrealistic request by us.

Mr. Heady stated you should have waited until you came here to order your sign.

Mr. Chin stated it's 100 percent is what it is. It's 100 percent from what is allowed, we are permitted up to 100 percent, but sometimes we don't like to give exactly 100 percent.

Mr. Cuccurullo stated I understand, but again, based on the type of property it is, and based on the offerings, and based on the type of entrance into your community, I thought it would be a very decent request by us to get the 2 feet for a 100 percent variance.

Mr. Heady stated I thought you were going to put the same kind of sign that you have there now on the pole, the way it is now. That is what I thought maybe you were going to come in for, something like that. It would be high, probably higher than what you have plans for now.

Mr. Cuccurullo stated well we could do that, if you would approve the 48 square foot on a pole sign, but again I don't think that's the type of look that any of us want on that particular piece of property.

Mr. Heady stated well 48 square feet is still double the amount, and this is why we have the Code, because some person may want a sign a little bit bigger than yours, and the next thing you know it's out of hand. That's why we try to keep them uniform in the Town.

Mr. Mattis stated we also look at the uniqueness of the situation, and I think this is a unique situation with the traffic circle, and the traffic problems. If we cut out some of this white space, what do we accomplish. The sign is basically the same size, the letters are the same size, and I'll go back to what we approved before. We approved something else that had a foot on each side. It had room on the top. None of that was signage, and we approved that. I don't know what we accomplish by saying just cut out the white area.

Mr. Cuccurullo stated just so you know, there is 370 feet of driveway frontage on this property. This particular sign that I'm asking for is 8' x 6'. So if you can think in terms of the size, even my driveway is 30 feet wide. I have five of them. So this sign is 8 feet at the longest part.

Mr. Mattis stated this sign is going to be dwarfed by the size of the building also.

Mr. Cuccurullo stated by the size of my property also. There are absolutely no problems with obstruction of views, because it's on my property, that's why I brought that colored illustration for you to show that it's inside the actual rock wall. There wouldn't be any problem, cars leaving, coming in, there wouldn't be any obstructions at all. I walked the site with Ed Vergano several months ago, and he thought it was a great idea, and he's got some architectural background, and we've done this before throughout New England. We have stations where the towns do not let high rise signs go up.

Mr. Becker asked can you comment on the size of the stone foundation that sits above the grade?
Mr. Cuccurullo stated that's roughly waist high I would say, maybe 36 inches.

Mr. Reber stated on this plan here, it indicates that the total height of what apparently is the foundation plus a wall is 48 plus, so it's 4 feet, and I would assume that the base is 3 feet, or 2 1/2 feet. So that would say that the stone wall part is less than 2 feet.

Mr. Becker stated that makes a big difference to me.

Mr. Mattis stated it's 4 feet, it's shows right here.

Mr. Seirmarco stated no, because that includes the footing. So I think 36 inches of that 4 feet, or 3 feet is the height. I think the stone work is probably between 1, or 2 feet.

Mr. Chin stated it is closer to 2 feet.

Mr. Seirmarco stated I don't think it's waist high. I don't think it's that high.

Mr. Cuccurullo stated it is. That particular drawings you're looking at is a generic drawing from the sign company. If you look at my submitted plans. If you look at my actual plans, the wall is about 36 inches. I don't have the exact numbers.

Mr. Becker stated well that is important to me, because if you had it down where this drawing is, then the ATM sign is only a foot off the ground, if it's the way this shows.

Mr. Chin stated that wall right now shows about 30 inches above the ground.

Mr. Cuccurullo stated well if you want me to, I will go through the plans, and get the exact height, if you want?

Mr. Chin stated okay. From what you're showing here on this colored picture, it looks like it's about 30 inches.

Mr. Cuccurullo opened up the plans, and went through it with the Board.

Mr. Reber stated based upon the photos that the applicant submitted, on the upper photograph you see a speed sign, which is in accordance with DOT regulations where it says 40 mph, notice it's significantly above the height of the wall. In other words on the sign where you have the ATM, and the pricing will probably be too low.

Mr. Chin stated that stone wall is 24 inches.

Mr. Mattis stated if this were 24 square feet, he could put it on the ground if he wants. He could put it 10 feet high. We would have no say on the height. So I think we're making more of an issue than we should.

Mr. Reber stated these photos are just saying it's a recommendation. We recognize that we don't have the power in terms of the elevation.

Mr. Becker stated it would influence how I feel. He's convincing me on the size, but to justify that I also want it to be visible to make it easier to read, and I don't want that to be inhibited by the fact that it's too low. So I would be more comfortable, if we stipulated that in light of the variance that was given for the sign size that we stipulated that it should be a minimum height of 3 or 4 feet above grade.

Mr. Mattis asked Mr. Flandreau, would you go along with that?

Mr. Flandreau replied that would be fine.

Mr. Cuccurolo stated I'm okay with that, if you say you want the sign higher. I just had a little problem with the look of two poles coming out of a rock wall.

Mr. Chin asked can't you build the rock wall up a bit there?

Mr. Mattis asked rather than two poles, make it rock?

Mr. Cuccurolo replied yes, we would certainly try that, aesthetically we would want to cover the poles. We would want to make it look like it was part of the structure. We're not trying to do things that the Town doesn't want us to do. We try to work within the guidelines. I have been to several meetings originally on the project where we went back, and forth on the design of the property. As you can see, there is a lot of stone involved in the property, and this is part of the stone wall, and that's why I felt a monument sign really at this point would be more proper for this type of property, rather than the pole sign. I will accept the pole sign at 48 square feet, but I don't think that any of us would like it versus what we're proposing to do.

Mr. Becker stated my only concern again, and I don't want to delay the Board, was that if we're arguing to make the sign 100 percent, and the size you are requesting, because of visibility issues that I didn't want a car in the circle blocking the sign making it harder to see. So that is why I would prefer that whatever construction style sign you have if the base could be somewhere between 3 or 4 feet high so that everything is clearly visible.

Mr. Mattis stated something else to consider, you look at linear footage on a storefront to grant a sign, the longer it is the larger the sign. He's got a fairly large building there. The problem is any signs that are on there you don't really see, because you've got the canopy, and the pumps, and that argues for a slightly larger sign on the front of the property also, because you can't really see the signs on the building until you're up under the canopy. He then asked if there were any other comments from the Board? He asked if there was anybody in the audience that would like to speak?

Mr. Heady asked you are asking for the 48 square feet, because you have the sign made already right? Otherwise, you would have been able to come here, and maybe cut the sign down. I think it's wrong. I think you should have waited until you found out what size sign you could put up there. So I definitely would not vote for this.

Mr. Mattis stated my decision is based on what I'm looking at, not the fact that he has the sign already. The fact that he has the sign is irrelevant to my decision.

Mr. Cuccurolo stated from a business standpoint I thought it was okay because it had gone through the two other boards, and it takes about 10 weeks to process the order for that sign, and I have two tenants that were very uptight about the fact that they're presentation wasn't being presented to the public. So that is why I went ahead, and ordered it.

Mr. Reber stated I would like to go on record likewise to say that the fact that the sign is made is not impacting on my decision. I think it's the right thing to do based on the fact that we got the agreement that the sign will be elevated with the top reaching 10 feet. It makes sense from a safety point of view.

Mr. Chin made a motion in Case No. 05-06 to close the public hearing, seconded by Mr. Becker with all voting "aye."

Mr. Chin made a motion in Case No. 05-06 to grant the Area Variance for a freestanding sign from 24 feet to 28 square feet as indicated on the drawing, and the top of the sign has to be a minimum of 10 foot high from the ground. This is a Type II Sequa with no further compliance required, seconded by Mr. Reber.

The Board was polled as follows:

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

The motion was carried with a 5-2 vote.

* * *

NEW PUBLIC HEARINGS

CASE NO. 06-06 THOMAS M. QUARTUCCIO for an Area Variance for side and rear yard setbacks for an accessory structure on property located at 144 Highland Ave., Verplanck.

Mr. Thomas Quartuccio, Sr., and Mr. Thomas Quartuccio, Jr. appeared before the Board.

Mr. Quartuccio, Jr. stated we're here for a variance to put in a 6,000 gallon storage tank in a contractor's yard in Verplanck. The storage tank is for seal coating, a latex based paint for sealing driveway, and parking lots.

Mr. Seirmarco asked is that a business you're in presently?

Mr. Quartuccio, Jr. replied yes, I am a paving contractor, and also do seal coating.

Mr. Seirmarco stated 6,000 gallons, how long would that last you?

Mr. Quartuccio, Jr. replied depending on the size of the jobs. We do larger jobs too, roughly

about three months.

Mr. Mattis asked how are you getting it to that location?

Mr. Quartuccio Jr. replied I will be going to pick it up at the plant.

Mr. Seirmarco asked where is the plant?

Mr. Quartuccio Jr. replied it is up in Mahopac.

Mr. Mattis asked how often do you have to do that?

Mr. Quartuccio Jr. replied probably about every two days.

Mr. Seirmarco asked would you be supplying that to anybody else but yourself?

Mr. Quartuccio, Jr. replied no, just myself. It is actually a portable container, if you get a larger project, you deliver it to the job, and fill it on site.

Mr. Seirmarco asked this is portable?

Mr. Quartuccio, Jr. replied yes, it's portable. You can move it with a roll off truck that move dumpsters, you can drop it off to the site, and bring it back.

Mr. Mattis asked how large is this dimension wise?

Mr. Quartuccio, Jr. replied it's about 23 feet long, 9' 6" high.

Mr. Mattis asked so it is about that deep also?

Mr. Quartuccio, Sr. replied it's about 8 feet.

Mr. Mattis stated so it's 23' x 8' x 9' 5" roughly.

Mr. Quartuccio, Jr. replied it's actually smaller than a 10 wheel dump truck. I think an oil truck is about 3,000 gallons or so.

Mr. Seirmarco stated this is almost twice the size of that. I went to look at the property, and you're right next door to a house. It is a little excessive to be honest with you. It is a pre-existing, nonconforming lot. So it's an Area Variance is what is required, because it's too small. Now you have other things on the property there too. When I visited, I saw a large 10 wheel truck, and a lot of other pieces of equipment. Are you going to move any of that? Do you have room for this tank?

Mr. Quartuccio Jr. replied yeah, we're actually going to put it in the corner of the lot.

Mr. Seirmarco asked is this going to require a berm around it in case it leaks?

Mr. Quartuccio Jr. replied it actually has a container around it, yes.

Mr. Mattis stated there are two concerns here. One is the size of the tank, 23' x 8' is a very, very large tank. The second concern is the location. You're putting it in the back of the property where just on the other side of the fence is a house. This is not a voluble material, I don't think. You could put it in the front of the property. You have a fence there. I think that would be more appropriate for it.

Mr. Quartuccio, Jr. stated I am flexible with the location.

Mr. Mattis asked do they make these like half that size? You're talking about going to get this material twice a week roughly to pick up this stuff. You said this would last you how long?

Mr. Quartuccio Jr. replied about three months.

Mr. Mattis stated if they had one that was 3,000 gallons. You still would only have to go once a month, or a month, and a half, or something, which still could really help you out on your business, 23' x 8' is very large. That is a pretty tight piece of property already with all the equipment, and everything out there.

Mr. Quartuccio, Jr. stated well if I wanted to put a dump truck there that size, I could have it, and I wouldn't need a variance for it.

Mr. Mattis stated this isn't a dump truck.

Mr. Becker asked how far from the nearest residence distance wise is this?

Mr. Quartuccio, Jr. replied well I'm on a corner lot, so it's quite a distance.

Mr. Mattis asked what about the house behind you?

Mr. Quartuccio, Sr. replied about 40, or 50 feet.

Mr. Mattis asked from the back of your property? There is a house that abuts that isn't there?

Mr. Quartuccio, Sr. stated it has a driveway so the house is probably about 15, or 16 feet away.

Mr. Becker stated well to me that is a real concern. As a member of this Board, I think safety has to be the paramount issue here, public safety is the purposed of the Zoning Board.

Mr. Quartuccio, Sr. stated well we have to go to the Planning Board after this. So I think we can

let them work out public safety. I don't think that's an issue here. This is a Zoning issue.

Mr. Mattis stated well one of our considerations is the impact on the neighborhood versus the benefit to the applicant, and safety becomes an issue as part of that.

Mr. Quartuccio Sr. stated it is a water based material.

Mr. Becker stated excuse I did not finish my statement. My statement is that the whole purpose, one of the reasons for Zoning is public interest, and safety. So this is an issue for this Board. Number two, is I as a resident of this community, and I don't think there is a person in this room that would disagree, would not want to be living within 20 feet of a latex storage tank. I have an issue with that. So before you go to the Planning Board both parties have to have a clear understanding of the issues. I think everyone is going to have an issue putting this size tank so close to a residence. You have to think of the worse case scenario no matter how rare, remote, or unlikely. You have to be prepared for that. Someone has to make a decision, is it safe, and reasonable to have a 6,000 gallon tank. I am not saying it can't be done on your property. The fact that this design here has a 4 feet concrete wall around it indicates that a leak is a possibility, and other issues can occur. So I just think that at this early stage before the Planning Board you should hear how this Board feels, and at least speaking for one member, I have a problem with it.

Mr. Seirmarco stated I have one other question. It's a technical question. You said it comes on sort of like a roll-off, the whole tank itself, can you put this roll-off inside the berm to protect it from leaking?

Mr. Quartuccio, Jr. replied I think originally we were going to put a concrete berm, but then it changed afterward.

Mr. Quartuccio, Sr. stated I don't think you have the right drawings. He asked Mr. Flandreau, do they have the right drawings Jim?

Mr. Flandreau stated I gave them the only ones that I received.

Mr. Chin stated these show the tank inside a concrete moat.

Mr. Quartuccio, Sr. stated those drawings have been changed. We have a steel moat.

Mr. Klarl asked steel?

Mr. Quartuccio, Sr. replied like what the dumpsters come in.

Mr. Mattis stated well maybe we ought to adjourn this then, until we get the proper documents. We're looking at different documents than what you're proposing.

Mr. Klarl stated I just want to make a comment about the safety issue. Mr. Quartuccio here is

P.E., and Mr. Quartuccio is probably familiar with Jim Irish, who was a long time engineer for the Town of Cortlandt. Mr. Irish was often fond of saying that a P.E.'s first responsibility is to public safety. So Mr. Quartuccio I am sure will be mindful of public safety.

Mr. Reber stated regardless of the container, however it is resolved. I agree with Dr. Becker in that I don't care if this is contained in titanium, putting it in that back corner is definitely the wrong place, because latex driveway coating has an odor to it, and even if it's contained, if there is any leakage, or whatever, it can be offensive, and I don't agree with having it closest to the residence that is there. I would say maybe to move it to another location on the property. That is a very serious concern of mine.

Mr. Seirmarco stated I asked the questions before about the berm, so that we had an understanding of mitigating possible leaks. The size seems excessive. I think that is why we asked you how often you go to Mahopac, and you said two, or three times a week, and this would help you to have to only go about three months. So I thought that maybe we could settle for somewhere in between. I understand exactly what you're trying to do, eliminate the number of trips to pick up your materials, and I have no problem with that. I would like to see where there could be better placement, and how it's going to be moved, what kind of spill protection you have, and will you protect ground from leakage? A whole series of safety issues. You just can give us a drawing that says here's the tank, and here's the berm around it, tell me where to put it, and we're done. I think it's a little more than here.

Mr. Reber stated if you look at this property, there's a residence just to the north on Highland Ave., the house that we already referenced on 7th St. I would say to move it as far as possible from those two houses, which says you put it in the corner, which you now have identified as lumber storage up front, to me it would be the logical place, that way you would be a maximum distance from residents.

Mr. Quartuccio, Jr. stated I am open to suggestions. I would have no problem with that.

Mr. Chin stated we didn't get the latest drawings, so I think we should review those drawings, and adjourn the case for a month.

Mr. Klarl stated in addition, you talked about making a site plan application, have you made that application to the Planning Board yet?

Mr. Quartuccio, Jr. replied no, sir.

Mr. Klarl stated so you are going to obviously make a site plan application, and Sequa requires us to do coordinated review between the Planning Board, and Zoning Board, so this is going to have to be adjourned to that coordinated review.

Mr. Mattis stated I think what makes sense now is obviously we can't get those drawings tonight to review them now. I think we have opened the dialogue. We're not going to vote on this until

there is a Planning Board review. We have to do a coordinated review, but we've given you some thoughts about what we think. Are there any other comments from the Board?

Mr. Chin replied based on the comments by some of the Board members, and everything else, if you have any kind of revised drawings for next month, get them to us early, and then we can look at them, and maybe with a different location based on comments from the Board, we will look at it differently. I think we should just adjourn it until next month until we get the proper drawings.

Mr. Mattis asked if there are any comments from the audience?

Mr. Seirmarco stated I would also suggest that you get some information from your neighbors, maybe a letter or something.

Mr. Seirmarco made a motion in Case No. 06-06 to adjourn the case to the March meeting, seconded by Mr. Heady with all voting "aye."

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CASE NO. 07-06 KAREN & CHRISTOPHER NIEMINSKI for an Area Variance for the front and side yard set backs for a principal structure on property located at 195 Broadway, Verplanck.

Karen Nieminski appeared the Board. She stated I am here to ask for a 1.5 foot variance over to the side for a garage that would give us access to put stairs to connect the garage to the house, and the front variance is already an existing structure, so it would just be bringing out to what is already there.

Mr. Mattis asked and there is no garage there currently?

Ms. Nieminski replied no, there is not.

Mr. Mattis asked this is a one car garage?

Ms. Nieminski replied yes.

Mr. Reber stated I went out to the site. The set back from the street, the house existing now is 14 foot, 7 inches from the property line, which in itself is quite a distance from the road, and it lines up with the other houses in that strip there, and what they're proposing is not to go beyond where the front entrance is now. So they're not encroaching any closer. As far as putting the garage on, they are putting it on the side that has the most room, the other side is even smaller, there is under 20 feet available. So to try to put a garage there would be much closer to the property line. So looking overall at the lot, looking at the neighboring houses, and the way things are situated, I cannot see a problem with the request here in terms of having to grant a 1 and 1/2 foot variance

on the side yard.

Mr. Mattis stated and looking at the other houses, generally we look at what is the visibility, there is a room with a fireplace, and then there is a dining room that has a window there, but that is back further anyway. It is not like family room where people would be all the time, and there is only that one window there. So that is a minimal impact. Are there any other comments from the Board? Is there anyone in the audience that would like to speak?

Mr. Reber made a motion in Case No. 07-06 to close the public hearing seconded by Mr. Chin with all voting “aye.”

Mr. Reber made a motion in Case No. 07-06 to grant a front yard variance from 30 feet to 14.9 feet, for a variance of 15.1 feet, and a side yard variance from 10 feet to 8.5 feet, for a 1.5 foot variance. This is a Type II Sequa with no further compliance required, seconded by Mr. Chin with all voting “aye.”

Mr. Mattis stated again it will take until next Wednesday to have the Decision & Order filed, and then you can get your building permit at that time.

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CASE NO. 08-06 ROBERT & CINDY SHAPIRO for an Interpretation for the front yard lot line and front yard variance, if required on property located at 84 Furnace Dock Rd.

Mr. Klarl recused himself from the case.

Mr. Rinaldi Garcia appeared before the Board. He stated I am here on behalf of the applicants. He stated we are actually here for an Interpretation to see if we do need a variance. The property is on a private road. So, if we do need a variance, then we are requesting that also.

Mr. Douglas stated the Interpretation is that you need a variance. I believe that the Interpretation is that it is a front yard even though it is a paper road, and that you would need a variance, if we were to grant it.

Mr. Mattis stated our Interpretation in the past has been private roads, paper roads, and real roads, as I’ll call it are all considered. The Town Code says that if you’re on a corner lot you have two front yards. The definition is what’s a road, and we include all of those.

Mr. Garcia replied okay.

Mr. Douglas asked can you just walk us through, and tell us you are seeking?

Mr. Garcia replied yes, on the Lane side what we’re doing there is there is an existing greenhouse that’s built above deck. The deck that is shown on there goes all the way to the back of the house. We’re looking to take the greenhouse down, and build a screened in porch. The greenhouse is actually kind of smaller, and narrow. You can’t even put furniture in there. So

that would be the one side. The stairs that are shown on that drawings are existing, those are the stairs that come off the existing deck that are going to remain. We're not adding those.

Mr. Douglas asked the deck is staying?

Mr. Garcia replied the deck is staying, yes. On the front portion of the private road, what we're looking to do is there is an existing screened porch there, we want to take that down, build a family room, and a small vestibule with a small bathroom on the front of the house, and we've designed the addition so that it gives the house a little more curve appeal on the right side of the garage section there. The existing set back is a little over 50 feet, we're going to be about 46.65, so the variance we would be requesting is about 3.5 feet.

Mr. Douglas asked are there any residents across the driveway?

Mr. Garcia replied not directly across. There is a driveway a little bit further up, and I the house sits way back. It is a considerable distance.

Mr. Douglas stated I wasn't able to get up there to see it, because we had the snow.

Mr. Garcia stated basically it will have very little impact on any of the neighbors, especially the one across the street, it is pretty far back.

Mr. Douglas asked regarding the Lane Lane, the paper road, I know there is a proposal for developments, is that around where this is, or is that further down?

Mr. Garcia replied I think it's further down.

Mr. Mattis stated yes, I believe so.

Mr. Douglas stated I just want to make sure there is no plan to turn it into a real road at some point.

Mr. Garcia stated I hope not, or Mr. and Mrs. Shapiro aren't going to be happy.

Mr. Douglas stated I don't have a problem with the proposal. It seems reasonable. It does not seem substantial. It doesn't seem to have any substantial impact on any neighbors, or the area. I would be in favor of this.

Mr. Mattis asked Mr. Douglas at the Work Session, we weren't sure at that time of the variances required, what are the variances that you have on your sheet there?

Mr. Douglas replied there would be three variances, all involving front yard variances. One is on the Lane Lane front yard which would be a variance of 50 feet down to 48 feet.

Mr. Garcia stated can I just say something on that, when I spoke to Jim on that, I didn't have an exact distance from the surveyor on that, I was wondering if we could get that to be like 47, so I make sure that I am covered?

Mr. Mattis stated yes, and then that would be subject to a surveyor going out, and doing that spot, that is not a problem.

Mr. Douglas stated so then it would be a 3 foot variance. The one on the driveway side would be from 50 feet down to 46.7 feet, so that would be a 3.3 foot variance, and then in regards to the deck it would require from 44 feet down to 39 feet.

Mr. Flandreau asked are you saying the deck is an existing deck?

Mr. Garcia replied yes, the deck is existing.

Mr. Mattis stated so you only need the two variances. He then asked if there were any other comments from the Board? He asked if there was anyone in the audience who wanted to speak?

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

Mr. Douglas made a motion in Case No. 08-06 to grant a front yard variance from 50 down to 47 feet on the Lane Lane side, and front yard variance from 50 feet down to 46.7 feet on the driveway side. This is a Type II Sequa with no further compliance required, and that would be subject to the applicant getting confirmation from the surveyor, seconded by Mr. Reber with all voting "aye."

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CASE NO. 09-06 NICHOLAS DECARLO for an Area Variance for an Area Variance for the side yard set back for the principal structure on property located at 8 Adair Rd., Cortlandt Manor.

Mr. Nicholas DeCarlo appeared before the Board. He stated I am here to get a variance for the side of my house. I live at 8 Adair Rd.

Mr. Heady stated I was out there on Saturday morning with Mr. DeCarlo, and the situation is one he didn't know that he had. He bought the house, and he needed a variance on the side, and apparently wasn't picked up by the bank when he got his loan.

Mr. Mattis asked you are going straight up, and adding a second story correct?

Mr. DeCarlo replied yes.

Mr. Mattis stated so despite the fact that you need a variance, you're not moving the building any closer to the property line with what you are doing. I went out there, and looked at it also. He is just simply adding a second story. Are there any comments from any other Board members?

Mr. Reber replied I did not get a chance to see this particular lot. My only question is on the side where the variance is being granted, sometimes we're concerned if they go up to a second story whether it creates a problem in terms of overshadowing a nearby home, is there a house or structure close by on that property line?

Mr. Heady replied not too close, no. It is about 10 foot away or so.

Mr. DeCarlo stated actually my neighbor's house is about 20 feet.

Mr. Mattis asked if there was anyone in the audience who wanted to speak?

Mr. Heady made a motion in Case No. 09-06 to close the public hearing, seconded by Mr. Chin with all voting "aye."

Mr. Heady made a motion in Case No. 09-06 to grant the side yard variance for a proposed 7 feet, 1.2 inches, for a variance of 2.84 feet, and for a variance for the chimney from 10 feet down to 5.12 feet. This is a Type II Sequa with no further compliance required, seconded by Mr. Chin with all voting "aye."

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CASE NO. 10-06 ERZSEBEL PAPP for an Area Variance for the front yard set back on School St. and Sherwood Rd. and front yard set back for an open stairs on School St. on property located at 21 Sherwood Rd., Cortlandt Manor.

Ms. Erzsbel Papp appeared before the Board. She stated I am here to request variances for both front yard set backs on my property. There is a situation going on now where the Town is taking a portion of my property for the road.

Mr. Becker asked when did you purchase this property?

Ms. Papp replied last summer.

Mr. Becker stated so you just had it a few months. I think what you were eluding to is that there is a taking by the Town to put a road, which will take some square footage off your property, so therefore there is some hardship as to the lot dimensions.

Ms. Papp replied yes. I do not meet the required set backs.

Mr. Becker stated I just want to get that on the record, because one of the things we look at is if this is a self created issue, and it is actually quite the opposite. I think that is an important point to make. I was out to look at the property, it actually has two frontages, and it's a fairly steep in the back of the property. From your plans, it looks like you will need a few truck fills, or plus, is that part of the plan.

Ms. Papp replied yes.

Mr. Becker stated the overall dimensions of the house is 50' x 26'.

Mr. Klarl stated there are a couple of issues here. I am looking at the Badey & Watson survey that is dated November 1, 2005, it shows a pavement direction marking on the upper left portion of the survey of 18.7 feet. It doesn't mention the taking. So it appears right now just from looking at the survey that the edge of pavement that encroaches on her property, the solid line being the survey line. So I had received a phone call from Ms. Papp's attorney today indicating that they want to do a sit down with the Department of Technical Services about the issue of the pavement, and your attorney said to me that you would be presenting your application tonight requesting an adjournment so you can have a sit down meeting with the Department of Technical Services, which he was going to call, and schedule. So I am not necessarily certain that there is a taking as much as there may be a pavement that has encroached upon the property. If you look at the solid line, the solid line represents the property line, so the taking would show the taking line right at the edge of the pavement. So if you want to proceed at all with this application you have to have a meeting with the Department of Technical Services, which your attorney was trying to set up today. Did you speak with your attorney today?

Ms. Papp replied I spoke with my lawyer, yes.

Mr. Klarl asked did he tell you he was going to set up a day time meeting?

Ms. Papp replied yes, he said that this was going to be adjourned.

Mr. Klarl stated so before we really consider this, I think the Department of Technical Services has some issues concerning the pavement out there, and I think they want to talk to you about it before you come to this Board.

Ms. Papp replied yes, about two months ago I started talking with the Engineering Department, and yes they were suggesting that probably there needs to be some kind of agreement between the Town, and myself, or an easement.

Mr. Klarl stated there is a little bit of an issue here, so given that we should adjourn this until that meeting takes place.

Mr. Mattis asked if there was anyone in the audience that wants to speak?

Mr. John Lim appeared before the Board. He stated I live at 52 Sherwood Rd. I just saw the sign. I never came to a meeting like this, and I am just curious of what goes on, and how things are processed. I am concerned about this. I have been living up there since 1994, and there's a lot of kids on that block, and when you come down that turn off of Oregon Rd., and I didn't realize that School St. has such a sharp turn. When I saw the sign, I kept concentrating on the visibility coming down there making that turn, and bending to the left, coming out of Sherwood Rd. making the turn to the right. I am not against this lady building, or not building. I just wish you'd take a very close look at it, especially when the kids are waiting for the school bus. The school bus doesn't come down there. The kids have to walk up there, and they wait at the top, and then they have to walk down, and there's a lot of traffic as far as children, and I'm concerned about that. My baby's 22, so she's not a baby anymore, but there is a lot of kids around there, and the visibility is very poor coming down that street, even though there is a sign that sits on the right hand side coming down there, it says 20 mph, nobody goes 20 mph, especially with the snow. So hopefully some people on this Board will take a look, drive down there maybe in the day time, especially at night time, see when the kids get off the school bus, and see the traffic over there. I hate to change something that this Board does, and all of a sudden a year later there is an accident, and one of these kids are hurt, and we have to live with that.

Mr. Mattis stated your point is a good one, and it's well taken, and I think it is probably premature now, but we generally do have site inspections where we go out, and look, and we usually have the property staked of where the corners of the house would be, and we generally go out on a Saturday to look at that. I think it's probably premature to do that now until they complete the meetings with the other Town departments before they come back to us, but that is something we will definitely do. It is a very good point.

Mr. Lim stated I appreciate that, and I have nothing against her with her property, good luck, it's a nice neighborhood, but I am concerned with the safety. Thank you.

Mr. Ray Battista appeared before the Board. He stated I live right across the street from the proposed site. I have live there for about 30 years now. I am at 26 Sherwood Rd. I have had some problems in the past with water run off, mostly coming down the street. I used to have a septic system that failed. The Town has come out, and put a little curb up there, and stuff like that, but it never seems to help, and now I am hooked up to a sewer system, which took quite a bit of doing. What happens now is if we get torrential, or heavy rains, I do have some flooding in my front yard, the water comes down, mostly down the road, and right into my driveway.

Mr. Klarl asked is your elevation lower than this lot?

Mr. Battista replied yes, and right across the street.

Mr. Mattis stated this is something that we don't consider, but the Engineering Department is part of all the plans, and everything else, that is who has to take a look at that. Quite honestly I am not sure if there is anyone on the Board that would know what to look at, but the Engineering Department does, and that's part of the course of what they do in approving a building permit,

whether it requires a variance or not. So that would certainly be a major consideration that they look at.

Mr. Reber stated whatever concerns you have, you should address to the Department of Technical Services.

Mr. Mattis stated let them know that you are concerned with possible run off, and they'll make that a point to look at that as part of the application. He then asked if there was anyone else in the audience who wanted to speak?

Mr. Becker made a motion in Case No. 10-06 to adjourn the case to the March meeting, seconded by Mr. Heady with all voting "aye."

* * *

CASE NO. 11-06 JAMES ORSER for an Interpretation for if a specialized lawn care business is considered a special trade contractors as on property located at Crompond Rd., Rte. 202, Cortlandt Manor.

Mr. Joel Greenberg, architect, and Mr. and Mrs. Orser appeared before the Board.

Mr. Greenberg stated as you can see from the report that I gave you, and the proposed site plan that I submitted, Mr. and Mrs. Orser wish to get an Interpretation of the Zoning Ordinance. Basically, the property is located in the CC zone, which permits what are called special trade contractors, and it listed several such as plumbing, heating, air conditioning, electrician, carpentry, sheet metal, and then the word etc. If you read down the rest of the report that I gave, I believe that Mr. and Mrs. Orser's business comes under what is called etc. It is basically a specialized lawn care business, they do not do landscaping, lawn maintenance, tree work, leaf work, they do not require a supply yard for materials. Their materials are picked up at a place in Peekskill. The public does not have to come to this location, because they go to the particular homeowners, and the purpose of this proposal is to provide space to park their trucks. So the workers will come in the morning, park their cars in the parking lot, and take the trucks out, come back in the evening, take their cars home, and leave the trucks in the garage. I do believe that if you read this carefully, hopefully you will agree that it does come under a permit for a special trade.

Mr. Mattis stated we have read this carefully. One of the things that we have looked at is others that we've approved in the past, and this is called specialized lawn care, and generally the other people that do different types of lawn care, we have approved those in the past. So approving this would be consistent.

Mr. Seirmarco stated I have just one question. Basically, as far as the business goes, there is nothing more than storage for your trucks, and a place for the employees to park, so it's more of a storage for your trucks, it could be any business. So it's not really a lawn business, it's just a parking lot so to speak for trucks for your business, which is fine.

Mr. Chin stated you do have your equipment there in the building right?

Mr. Greenberg replied, no basically the supplies that they use for lawn care are picked up in Peekskill.

Mr. Chin stated I am talking about the material, equipment.

Mr. Greenberg stated the equipment if part of the truck, it is on the trucks.

Mr. Reber stated that was the only concern that I had was the supplies for specialized lawn care. I just wanted to be sure that there would be no chemicals stored on the site other than what might be on the trucks themselves.

Mr. Greenberg stated that would self contained on the trucks. The materials are picked up daily at a place in Peekskill.

Mr. Heady stated doing lawn care you must have some type of chemicals. Am I right, or wrong?

Mr. Greenberg replied well whatever is required is pick up daily from a place in Peekskill, so it's not stored in the building. There is nothing stored there, no materials, liquid, solid, whatever stored in the building.

Mr. Heady asked so every morning they have to pick it up?

Mr. Greenberg replied every morning they take the trucks out, they go to Peekskill to pick up the materials, and go to the job site.

Mr. Seirmarco asked where do they go Lesco?

Mr. Greenberg replied yes, Lesco.

Mr. Becker stated as far as the proposed garage itself, you do not require any additional variances for that?

Mr. Greenberg replied no, they meet all of the set back requirements.

Mr. Seirmarco asked you wouldn't have to clean, rinse, or anything like that on site. Would you have to add water or anything to any of the fertilizers that are liquid?

Mr. Orser replied we add water to it.

Mr. Seirmarco stated and then you would put the chemical in at Lesco's.

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

Mr. Reber replied I guess the direction that Mr. Seirmarco was heading in was about a question which is to the extent that you'd have to flush any of the equipment, wash it down, what have you, are there any provisions being made in terms of a containment area that you might do that with your trucks so that it doesn't run into the ground?

Mr. Greenberg replied everything would be self contained in the building, there will be nothing penetrating outside the building.

Mr. Mattis asked if there was anyone in the audience that wanted to speak?

Mr. Becker asked the property is vacant land?

Mr. Greenberg replied correct.

Mr. Becker made a motion in Case No. 11-06 to close the public hearing, seconded by Mr. Seirmarco with all voting "aye."

Mr. Becker made a motion in Case No. 11-06 to grant the special trade contractor permit to the applicant with a condition that there will be no chemicals stored on site, seconded by Mr. Chin with all voting "aye."

* * *

CASE NO. 12-06 BRIAN KHAN for an Area Variance of lot width for the three proposed lot subdivision for on property located at 3239 Lexington Ave., Mohegan Lake.

Mr. Joel Greenberg, architect, and Mr. Brian Khan appeared before the Board.

Mr. Greenberg stated as I have been here doing this several times, and with the configuration of the lots we have, the following was actually what we have submitted. Basically, on lot number 1, we have a 49 foot variance, or a variance of about 32 percent, lot 2 would require a 21 foot variance, or 14 percent, and lot 3 would require a 26 foot variance, or a variance of 17 percent. After we submitted the application, and thinking about it that, as I am sure you are aware of this, it is the job of the Zoning Board of Appeals, if it so considers granting any variance, to grant the absolute minimum variance. So in your packet that I handed out tonight I have a sketch in which puts some very, very slight considerations of this lot line, we can reduce the variances tremendously. So that basically lot number 1 the variance would go from a 32 percent variance down to 24 percent, and that's the existing house. Lot number 2 would go from a 14 percent variance down to a 10 percent variance, and lot number 3 would go actually from a 17 percent variance down to 3.3 percent. So again, in discussing it with Jim, and figuring out how the interpretation of the computation of lot width by changing that lot line, and moving it to this one

over here (referring to the drawings) reduces the variances tremendously, and I think hopefully will allow you to give us some consideration for our proposal. Again, let me just go through very quickly the criteria for an Area Variance. One of course is that the construction of the house does not create any undesirable change in the character of the neighborhood, or be a detriment to any nearby properties. In fact, as you can see from the sketch here the houses will not even be visible from Lexington Ave., which is the nearest Town road. Again, due to the configuration of the property that is what is creating the requirement for the lot width variances, and with this proposal that I've given you tonight we reduce them down to the absolute minimum. Number three, again the variances of the new proposal are not substantial anymore. They will also not have any impact on the physical, or environmental conditions of the neighborhood, and finally the self creation, although that is not necessarily a criteria for denying a variance, I believe basically this property, which has been in this configuration for many, many years, and that is the property we have to work with. We did not create this property to create the need for variances.

Mr. Douglas asked what is on either side of the lots?

Mr. Greenberg replied I can answer that, and actually show you that. (Referring to the drawings) There is a bungalow colony to one side, which I believe is to the north of us on this side over here, and on the south side there are a couple of houses. I think there is one house on this entire piece of property over here, and there are a couple of houses with a common driveway that comes down to here.

Mr. Douglas asked what is in the back?

Mr. Khan replied it is a storage facility.

Mr. Greenberg stated there is no residential behind us at all. So again, to repeat, these two houses will be completely secluded from any visibility. Also, as you can see I did show you on the plan that the site is very heavily wooded, and we're only taking down the necessary trees for the house, the driveway, and the septic, and a good percent probably 85 to 90 percent of the trees will remain.

Mr. Douglas asked are these to create two new flag lots?

Mr. Greenberg replied no, actually the only flag lot would be, if you want to talk about flag lots, is the existing lot, which has the house on it. The two new lots, well based on this plan will be rectangular, there will be no flag lots at all. It is a common driveway that has two lots, that is correct.

Mr. Mattis stated you mean a common driveway for the three lots.

Mr. Greenberg stated yes for the three lots, I'm sorry, yes.

Mr. Chin asked how do you delineate the driveway?

Mr. Greenberg replied there is a section of the Zoning Ordinance which does permit common driveways to several homes, and it is a quick process in which you sit down with Ed Vergano, in this particular case, from the Town Engineer's office, and he sets up specifications for the roadway coming in off Lexington Ave., the width, the specs, any footage that is required, and also access for emergency vehicles, ambulance, police, fire, and he would set those specifications, and then of course you would have to go back to the Planning Board to get subdivision rule, but whatever specifications he would require we would obviously adhere to.

Mr. Mattis stated well this is then another joint application.

Mr. Greenberg stated yes, it is. We were before the Planning Board back in December, and they referred us to this Board.

Mr. Chin stated I didn't get a chance to go out there. I was going to go out there on Sunday, but we had that big snowstorm, and I don't think right now would be a good time, but I would like to do a site visit on it to take a look at. Maybe you could do some kind of a staking of the two houses that kind of shows where the lot lines are. It doesn't have to be spectacular, just something just to see.

Mr. Mattis stated I would rather wait until later in the year, because this is going to be before the Planning Board anyway. I think a site visit is a good idea.

Mr. Chin stated I don't know if next month is going to be good or not. I think maybe we should wait until April on this.

Mr. Greenberg stated well depending on the weather, can we at least try to schedule it for March, and if we have bad weather we'll postpone it? In order for us to go before the Health Dept., we have to know that we have the lots available.

Mr. Mattis replied I don't think a site visit changes any of that.

Mr. Seirmarco stated yes, but his question is if we were inclined to only make it two lots that would certainly make an impact to the whole plan.

Mr. Greenberg stated that is correct, and obviously also because several past summers have been fairly dry, the Health Dept. suspends all testing. So we have to try to get it done before the end of June.

Mr. Mattis stated we can make it for April, because with March you never know, you might have snow, muddy weather, or something like that. April should be soon enough.

Mr. Greenberg stated we will supply boots.

Mr. Reber stated I have a couple of questions. When was the existing house built?

Mr. Greenberg stated about 7 years ago.

Mr. Reber stated because the sheet of paper I have shows a building permit issued 4/27/200, and a CO issued April 2001, which would indicate this is a relatively new house, and I'm very concerned, because I see this trend in the Town where there's a significant piece of property that's not on the road, they come in for a flag lot, which the Town really doesn't want. They got approval for the flag lot, they want a house, and now 6 years later they're coming back, and saying now we want to re-subdivide that flag lot further, and keep whacking away at it, and I guess my question is in looking at the plans there seems to be a number of driveway cuts coming off of this existing, and to me thinking about what the Town wants, and doesn't want, we're just compounding a problem here by having all these multiple homes on a "driveway", is it possible that working with DOTS that you actually convert that to an acceptable Town standard road with a cul de sac, and still meet the area requirements for the individual lots?

Mr. Greenberg replied the first question, the creation of the house that's on there now, which I thought was around 1999, but I guess it was 2000, that does not require any approvals. That was an existing lot, which we were entitled to have a building permit to put a house on. We did not have to go for any approvals for that, because you had said that was subdivided. What we're doing now is requesting that, as far as, to answer your question, this is a 50 foot right of way, which is one of the requirements for a road like that, and as far as creating a road with a cul de sac, the answer to your question is, these lots are way oversized, and even if you took this out, you'd still have more than 40,000 square feet.

Mr. Reber stated yes, okay, so in other words, maybe you can work with the Town, and where you show lot 2, you could put a cul de sac there, and still meet the area requirement. Something like that, I could actually understand the width variances, and now you've got emergency access, and you've got a reasonable road. I just don't like the idea of compounding these flag lots.

Mr. Chin stated I understand what you are saying Mr. Reber, but I think that is more of a Planning Board issue than the Zoning Board.

Mr. Reber stated well that's true, but if I'm going to give variances to get around the Town requirements, I could say no variances, and I wouldn't approve it, because I think you're trying to circumvent the intent of what the Town wants in this Town.

Mr. Chin stated I am not saying we can't give our views to the Planning Board so they have some kind of leeway of what we're trying to say.

Mr. Mattis stated I find the whole concept very disturbing. Generally, the Town does not want long driveways shared like that anymore. You've got a house that is only 6 years old. We're not talking about something that was built 30, or 40 years ago. Somebody comes in, buys a piece of property, puts a house where they want it, they don't need a variance, and now they want to

squeeze two more lots out of it. We have a 36 foot variance, that means we have 124 feet, we require 150, that's substantial. The other two are not so substantial. I am very concerned about granting a variance on all three of them. In my opinion, this lends itself to a two lot subdivision nor a three lot.

Mr. Becker stated I would agree with that.

Mr. Heady stated I agree also.

Mr. Becker stated I think you are getting the flavor of this Board. The other thing is you have a very interesting twist on how you said this was not self created. The original lot was not self created, but the three lots rather than two is self created. There is another way of doing it. There is no special hardship with this. The other thing is the whole spirit of this Board is to judge every single other applicant since I've been on it, is the fact that we don't want to make lots substandard, and even if it's a small variance, we'd be taking a single lot, which meets the requirements, and creating three sub-standard lots. So I think that, that in itself goes against what we are doing here. I think what Mr. Mattis just said about if you only had two lots, you probably wouldn't need any variances, and you could go right through to Planning.

Mr. Seirmarco stated just to follow up on Mr. Reber's comments. I think to make that road to Town standards, they would have to make the drainage, they would have a number of things that would have to be done. I am not so sure the applicant would be able to meet the requirements, especially to put three houses there.

Mr. Mattis stated I just think it is asking for too much to create three sub-standard lots. We generally get two, where one may be sub-standard a little bit, and the other makes it on the width. We've made up three, where two make it. You are asking for three of them to be sub-standard, that flies in the face of what we're here for. In my opinion, because it was built in 2000, it's self created.

Mr. Greenberg stated but it's not a criteria for turning down a variance.

Mr. Mattis stated no, but it is one of the many things that we look at.

Mr. Greenberg asked can I adjourn the case, and let us take into consideration all of the things that have been said tonight, and if we decide it might work, or maybe it won't, and think about some of the other suggestions that were brought up?

Mr. Mattis stated yes that would be a good idea. I would never vote for three sub-standard lots. I would even have a hard time voting for two sub-standard lots. I am only one person on the Board.

Mr. Seirmarco stated I think your comments are well taken. I think we should not start staking the site visit two months now, and then say we only want two lots. I think it's fair to the

applicant to be up front with him. I think we are being up front with him right now. So that he can do the application to the Planning Board with something that's going to sail through the Zoning Board also.

Mr. Klarl asked Mr. Greenberg have you received a review memo from the Planning Department?

Mr. Greenberg replied yes.

Mr. Klarl asked when is the next time you're back on the Planning Board agenda?

Mr. Greenberg replied we didn't set up a time, since we didn't know if this was going to be adjourned, how many lots we had etc. Can I make a suggestion? Can you adjourn this to the March meeting? We'll hold off on the site inspection, and then we'll see what we can come up with, and if there is something that you feel is reasonable, whether it is two lots, or three lots, whatever it is, and then we can set up a site inspection.

Mr. Mattis replied sure. He then asked if there was anyone in the audience who wanted to speak?

Mr. Chin made a motion in Case No. 12-06 to adjourn the case to the March meeting, seconded by Mr. Reber with all voting "aye."

Mr. Mattis recalled Case No. 67-05. I'll make one last call at the end, but if they're not here, I'm going to have Mr. Flandreau send them a letter, and we're going to deem that case abandoned, if they don't contact us.

Mr. Reber asked if they could take a five minute break?

Mr. Mattis replied yes, we will take a five minute break before we resume with the rest of the meeting.

ADJOURNED PUBLIC HEARINGS

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

Mr. Chris Fisher, Esq. appeared before the Board. He stated I am on behalf of NewCingular Wireless Services, Inc. I want to really only speak on one matter tonight, and that is the follow up to the Thalle property, and the discussion we had at last month's meeting. As promised, I convened the brightest minds I could at Cingular, got them in a room, had some frank discussions about what I have been hearing from you, hearing from the neighborhood, talked about their RF requirements, and the bottom line is while there are some concerns that they had

about that site, as I had suspected, when I was before you last month. It's not something that we can just cavalierly say no to. It is something that is viable for us from a radio frequency engineer's standpoint. So my next step, which I've already asked my client to undertake is to enter into negotiations with the property owner, and try to get a lease, try to get a better understanding as to where exactly on this large property we could put it to minimize tree cuts, utility runs, roads. I've got to worry about DEP jurisdiction, and avoiding that all together. So there's some work that has to be done, and I am going to need an adjournment this evening in order to do that, but one thing that my client asked me for, and I represented to them that based on my feeling, based on all of our discussions, that was in fact a good faith exercise, even though the Thalle property is zoned residential versus this site that we proposed, which is zoned commercial, that you were asking us to investigate this for a good reason. So the only thing that my client is asking for is some sense from the Board, and I indicated that I thought that you as a Board were unanimously at least asking us to undertake this. So that was the only thing they asked for, and we will go back, and continue to try to make this a true alternate.

Mr. Seirmarco stated Mr. Fisher we've spent a lot of time so far on both sides reviewing this case, it has been about 5 months, and ever since the first site inspection, it raised concerns from this Board, and from the community about that site being of adequate size, the fall zone, and the issue of the septic placement, and the placement of the electronic components, and whatever, and the general size of the piece of property we think is a concern of ours as far as the size is concerned. So we had to review all those things, and we had some suggestions from the people in the area, and we have kept in abeyance about the suggestion of hiring a consultant, not that we're against hiring a consultant, but we want to make sure that if, and when that consultant is hired, it's hired for a specific piece of property that we're seriously considering. If we just look at the two pieces of property, just physically one piece of property is certainly larger. So that mitigates one of the problems we've had with the other piece of property. It would require less, for lack of a better word, variances for the antenna, for the fall zone, for whatever. It is a piece of property that has to be investigated, as you just mentioned. The neighbors for that piece of property would certainly have to be notified, and it is in a residential area. So it has its' own set of criteria that needs to be investigated, but just fundamentally I think this Board would agree that it is a bigger piece of property. It may be on the face, more advantageous, and it needs to be investigated. So we would certainly go forward in investigating that. We would hold off hiring a consultant until such need arises. I think that is as positive as we can be without going, and saying things that we have no right to say at this point. We have to review that.

Mr. Douglas stated I want to concur with Mr. Seirmarco. I don't think we're in a position at this point to say that this site is, or might be more, or less advantageous. I just think that it appears to be what we've heard, and we obviously heard that it's location is better, and we as a Board want that alternative site looked into, but I don't think we can comment in any way as to whether it's better, or worse, or what the pros, and cons are as to that particular site.

Mr. Fisher stated my own concern has been all along that because of the way that the Town Board structured the priority list that pursuing a residential site based on all the factors you said, and I agree we need more information just a basic understanding that at the end of the day, if it

proves out for whatever reason, and I am going to use the word better, than what we proposed, that there is a willingness to do what's necessary to make the appropriate findings, and prove that, and then discuss it further.

Mr. Reber stated I personally don't have any hang ups about the residential factor. You're right, it's last on the list, but I think the residents have made it clear that they would be considerate. Like everyone has stated, it's a large piece of property. So I would not at the end say no. I have no problem with putting on a residential property, as long as it meets all the other criteria.

Mr. Douglas stated I think the one thing to consider, of course, is that fact that there are other residents, and if you were to propose that site, there may be other residents close to that site that may want to express themselves.

Mr. Fisher stated I am sure that is a distinct possibility. I know that I can't do more, and I have already communicated to my client the sense of our discussions.

Mr. Mattis stated the fact that they have a pecking order, so to speak, doesn't preclude us from looking at a residential, if it makes more sense. It just says we have to go down the order. If we say, and again, we're not quite there yet, we need more information on the Thalle property, but it appears it could be a viable alternative, and if that's the case, we're not precluded from looking at a residential.

Mr. Fisher stated no, and I think I said this at the last meeting, you take a very objective approach, and many boards don't. So when my client hears beyond this context, I have a commercially zoned site, and they want me to go to a residentially zoned site, red flags go up in their mind wondering why.

Mr. Seirmarco stated I think I speak for everybody, we just want the best site.

Mr. Mattis stated I do have a question for you. We were given from the homeowner's association at the end of the last meeting, three potential sites, which were Con Ed towers. Now you had looked at two towers that were Con Ed in the past, were they these towers?

Mr. Fisher replied I don't have that document, but they're on presumably the same Con Ed line that we were talking about. So they're either the same ones, or in very close proximity.

Mr. Douglas stated one request that I would make, is if you're looking at the Thalle property that you speak with the owner sooner rather than later. I don't want us all wasting our time, if the owner is not even interested.

Mr. Fisher stated I don't want this to drag on any longer than it already has either. I will be getting in touch with them immediately, and I will update you on that next month.

Mr. Mattis asked if there was anyone from the audience who wanted to speak?

Jeff Weiss appeared before the Board. He stated just to make a note briefly those other sites, and Bill will speak as to whether or not those are the same sites that were proposed previously, but I would say at this point our organization has no objection to the Thalle site. We would not be back here again for the fact that it is a residential site. Thank you.

Mr. Art Rodak appeared before the Board. He stated I live at 40 Colabaugh Pond Rd. There was some reference about the adjoining properties to the Thalle property that they are looking into. Their nearest neighbor is me. Based on the propaganda they are talking about, I would have absolutely no objections. It is far superior to what they are looking at now in safety, looks, and effects on anybody's property next door.

Mr. William Doughty appeared before the Board. He stated I would first of all just like to say that the Thalle site is obviously the most desirable, and I would have no objection to that, and I don't think there would be much public objection to it. On the same token, on the interest of efficiency, if the applicant could at least have his RF people do a preliminary study on paper at least of the Con Ed sites, which you had referred to, and as far as you question as to whether or not they have been considered before, Mr. Fisher indicated in an earlier meeting that the Con Ed tower, which they had looked into is along the same line of course, but on the other side of Croton Gorge, and as you may, or may not know, there is a hill next to Croton Dam, which would have made that impractical for the desired coverage area. The three towers that encroach on S. Mt. Airy Rd. have no such obstruction, and probably if there's any question about the certainty of Thalle going along with this, maybe a simultaneous paper RF study would be in the interest of efficiency.

Mr. Mattis stated I am going to look again, and I believe we have the information. I think it was two Con Ed right of ways, and I believe that one, or two of those are the ones that you are mentioning now. I am going to look to make sure.

Mr. Doughty stated actually there were three very close, as you go south on S. Mt. Airy Rd. The towers to the right, there is a carrier on already. I don't know if there is room for a second, and the other two towers, of those three are to the left as you go south on S. Mt. Airy Rd., and each of them topographically have an advantage.

Mr. Reber stated I concur. It is worth taking a look at them, but I did go back, and look at the records, and the two towers that they had evaluated, one was on the other side of the gorge, as you indicated, and was on the Rte. 129 side that may not be identical to the three. The three that you were proposing may be the next three up the line, but I would say at least a preliminary look at a couple of those towers just to make sure that they're not some unique location in terms of site lines.

Mr. Doughty stated actually the documents that you have that were submitted the last time, if you look at the Google earth picture, the tower closest to 129 is down a more significant drop off, which is indicated on there. So that probably would not be appropriate for that.

Mr. Mattis asked if there were any other comments? He then stated I think we are in a position where you are going to back, and see what you can do with the Thalle property, and report back to us.

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

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CASE NO. 69-05 OMNIPOINT COMMUNICATIONS, INC. for a Special Use Permit for a wireless telecommunications facility on property located at 3105 E. Main St., Cortlandt Manor.

Mr. Daniel Braff, Esq. appeared before the Board. He stated I represent Omnipoint Communications. We are property a 140 foot monifold at the Cortlandt Town Center. We were here before you last month, and you indicated that you were waiting for comments from the Department of Technical Services. I have recently received some comments. The first comment was about landscaping. The engineer has currently proposed slat fencing. It is behind the Cortlandt Town Center. So we don't think that additional landscaping is necessary, but we'd like some guidance from this Board as to what type of landscaping you would like to see.

Mr. Seirmarco stated we don't usually get asked about landscaping, but I think you comments are well taken. It is behind the Town Center. I think you should probably take that issue back up with DOTS.

Mr. Braff stated the engineer is currently working with DOTS.

Mr. Chin stated I don't understand item #10 regarding the landscaping. Are you trying to hide the pole? I don't really understand that.

Mr. Braff replied the landscaping would be around the base of the pole. He then stated the second comment is with regards to a more detailed description of the Topo study. Our engineer will work Department of Technical Services to see exactly what they want as far as a more detailed description. The inspection procedures, I have already had a full discussion with Omnipoint that they will provide us with a more detailed description of the inspection procedures, and we will then provide that to you. We are still requesting a waiver of the topographic, and general flow logic study.

Mr. Reber stated I have a question on that one, and maybe our attorney can help us. Obviously, we wouldn't want them to start building until they have everything in order to get the building permit, so is that something that is coordinated with, I mean he says he is not going to do it until he gets the building permit, but how do you issue a building permit, if you do not know what he is building?

Mr. Klarl stated he wants a temporary waive on the topographic....

Mr. Mattis stated only until the building permit application.

Mr. Braff stated yes, application, not approval.

Mr. Reber stated okay, then that makes more sense to me.

Mr. Klarl stated it is up to this Board as to whether or not you want to see some information at this point in time, but DOTS is just pointing at that they would like to defer them until that point, but if you had serious questions about that you certainly could request that.

Mr. Reber stated we would proceed for the approved Special Permit for the cell tower, then they would have to do this work for DOTS.

Mr. Klarl stated well this Board, if you read the Ordinance says we do the Special Permit, and the site plan at the same time. So if you feel that is an important part of the discussion for the site plan, then we would request it now, if you don't think it's as important, then you can defer it.

Mr. Seirmarco asked am I right that geomorphologic is what the soil is made out of?

Mr. Reber stated yes, I assume it is the soil.

Mr. Seirmarco stated so I assume that for the footings, or whatever, these are engineering topics that they would be doing test borings to tell what's down there, and what they would need to build a cell tower.

Mr. Mattis stated I think we could put that condition, and it satisfies Engineering.

Mr. Chin stated that is strictly Engineering.

Mr. Seirmarco stated right, I agree.

Mr. Mattis stated and Engineering is not going to let them issue the building permit until they are satisfied with that.

Mr. Chin stated the applicant themselves will have to have a structural engineer show a drawing indicating how deep the footings, and everything has to be, and how it is supported, and so forth.

Mr. Reber stated I understand all of that, it is just that when somebody wants a waiver from a requirement, I want to understand why they can't meet the requirement, and why a waiver, because if you give a waiver, then everybody would want a waiver. That is what I was just trying to understand.

Mr. Mattis asked is this implying they would rather get more direction from us before they go through the Engineering Dept.

Mr. Braff replied exactly.

Mr. Mattis stated so they are not asking us to do away with it, but they are not putting the cart in front of the house. If we turn this down, and make it a different location they don't want to have to go through all of that again. I understand what they want.

Mr. Braff stated as far as the structural part, I know that the Dept. of Technical Services requested a break point in the tower. As you may recall from the Code, the break point is required to keep the pole fall zone in the property lines, which this is. So we don't think it's necessary, but I know that we highlighted that the nearest structure is 100 feet away from the pole, and Omnipoint has agreed to propose a mandated break point in the facility. The requirement under 277-76U is notification to adjacent municipalities on the Westchester County Planning Board, and that was done, and I have copies to submit to you now.

Mr. Klarl stated what you should do is submit that to DOTS through Code Enforcement, and it indicates that they want you to contact them to review the above issues. Have you scheduled a sit down discussion with DOTS on this?

Mr. Braff replied yes, I have been to the Engineering Department a couple of times on this.

Mr. Garret Ducane, engineer from Taconic appeared before the Board. He stated I spoke with Arthur on the phone.

Mr. Klarl stated often times when DOTS puts on the base of the memo to call up, and the applicant will call up, and they schedule a sit down meeting, and just kind of go through the whole thing, and I don't know if that's coming up, or if you've already done it?

Mr. Braff replied we have spoken a couple of times.

Mr. Klarl stated we should ask Mr. D'Angelo if he can bring us up to date since this February 7th memo to see what he's discarded, and what is still outstanding.

Mr. Mattis stated yes I think these issues can be worked out between you, and the Engineering Department.

Mr. Braff stated yes, I think they are relatively minor.

Mr. Reber stated I have a question on notification, and an application from Nextel, which just ended being cell units on top of a building, there was no tower involved, and there was a bit of confusion on notification, and we had some neighbors come in, and question us. I notice there's

nobody here, so I'm wondering do we know that all of the appropriate neighbors have been properly notified?

Mr. Flandreau replied yes, the neighbors have been properly notified. I think there was a mix up on the address when we first advertised the address for the location of this.

Mr. Reber stated so we can go on record to say that all of the appropriate neighbors in the area have been notified.

Mr. Flandreau stated they have been notified, yes.

Mr. Mattis asked if there were any other comments from the Board. He then asked if there was anyone in the audience who wanted to speak?

Mr. Chin made a motion in Case No. 69-05 to adjourn the case to the March meeting so the applicant can get in touch with DOTS, and go over their points, seconded by Mr. Heady with all voting "aye."

Mr. Mattis recalled Case No. 67-05 for a third call. They are obviously not here. I am going to ask for an adjournment on that with a letter to them, and we will deem that abandoned, if we do not hear from them by next month, seconded by Mr. Heady with all voting "aye."

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