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, January 17, 2007. The meeting was called to order at 7:00 p.m., and began with the Pledge of Allegiance.

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

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

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

ADOPTION OF MINUTES: 12/20/06.

Mr. Mattis stated since we just received these minutes the other night, can someone make a motion to adjourn the adoption to the next meeting.

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

ADJOURNED PUBLIC HEARINGS

CASE NO. 41-06 LOUIS RINALDI for an Interpretation if limited to specialized masonry and paving contractor is a Special Trade Contractor at the property located at 445 Yorktown Rd., Croton-on-Hudson.

Mr. Mattis stated I will turn that over to our attorney. It is a Decision & Order, and I'll let him summarize it.

Mr. Klarl stated if you recall we've had this application on for several meetings. We closed the public hearing, and we had it on our agenda for a Reserve Decision in December. At the December meeting I handed the 3 ½ page Decision & Order to the Board last night, and this Board decided to deliberate further, and discuss it at Monday's Work Session. So in front of you is the 3 ½ page Decision & Order. The first two pages describe the history of the property, and the application before this Board including the prior application that we've had, and the pending Article 78 proceeding. At the bottom of page 2 of the Decision & Order in going through the history, it indicates that there is an Article 78 proceeding, which has been commenced by the applicant, which is pending in Westchester County Supreme Court, and the applicant has also

made a companion site development plan application before the Planning Board, and the Planning Board awaits the Decision & Order of this Board. Having gone through the history of the application before this Board the Decision & Order indicates the applicant now makes this application to the ZBA for an Interpretation as to whether a specialized masonry and paving contractor as limited to such is a Special Trade Contractor under the Town Zoning Ordinance. The Decision & Order indicates the Board took much testimony, evidence, and submissions from the applicant, his family members, and neighboring property owners who did an extensive amount of research on the property, and history of the property. Many business records, invoices, statements, etc..received to indicate the essence the applicant's actual trade use. The Decision & Order further indicates that after a review of the voluminous business records, invoices, statements, submissions, and testimony of the applicant, the applicant's representatives, and neighboring property owners, the Board concludes as follows. We have three points. The first point is that the applicant has proved sufficiently to this Board that under the Town's Table of Permitted Uses, Special Trade Contractors, and under the Standard Industrial Classification, what we call the SIC manual, that the applicant is indeed a specialized masonry and paving contractor with paving being the line chair of his contracting business, and masonry being the ancillary share of his contracting business. This is a Specialty Trade Contractor use. Number two, we indicate the Planning Board will now proceed with the applicant's site development plan application, and the Planning Board's thorough site review for this application. Number three, the ZBA desires to underscore the following elements of the Planning Board review and any site development plan approval rendered by the Planning Board to the applicant, and this property must contain the following conditions. At the Work Session last night we talked about writing to the Planning Board, and asking them if we should, but this Board in our deliberations decided to kind of mandate that the Planning Board include the following three, or four items. A.) All materials, trucks, vehicles, utilized in the Special Trade Contractor use described in this Decision & Order shall be placed in enclosed building structures approved by the Planning Board, and nothing shall be kept or stored outside. That was very important to the neighbors. B.) All work performed by the applicant in pursuit of his Special Trade Contractor use loading, and unloading of trucks, equipment, materials etc... shall be performed in the enclosed building structures approved by the Planning Board. C.) The Planning Board should direct Code Enforcement to monitor the site at least once per month for the first year after any site development plan approval is given by the Planning Board. D.) The applicant's hours of operation shall be weekdays 7:30 a.m. to 6:00 p.m., weekends 8:00 a.m. to 6:00 p.m. These hours were discussed with the applicant, and the applicant representatives. Therefore, the Board concludes in its' Decision & Order that as result of all the foregoing the Board interprets that the applicant pursue his business as a specialized masonry and paving contractor as limited to such is a Special Trade Contractor under the Town Zoning Ordinance, and we further indicate this is a Type II Sequa. So that's the essence of the last page and half of the Decision & Order. The first two pages being a summary of what has proceeded before this Board for this property, and before this applicant.

Mr. Mattis stated before we vote on this I'll ask if any of the Board members have any comments?
Mr. Douglas replied yes, I've got some comments. I feel obligated to decent from the Decision &

Order that has been proposed. If you'd just indulge me for a minute, I want to just make sure I put on the record that I explain the reasons for my opposition. My position has nothing to do with any credibility issues or the tangled history of this matter, but rather extends from the actual language of the Town Zoning Ordinance. The applicant is seeking an Interpretation that his business as a paving contractor falls within the definition of a "Special Trade Contractor." The Town Zoning Ordinance does not provide a specific definition for Special Trade Contractors, but rather defines the concept by weight of examples set forth in the Table of Permitted Uses that is part of the Town's code. Specifically the Table of Permitted Uses defines Special Trade Contractors as "including plumbing, heating, air conditioning, electrical, carpentry, sheet metal etc.." In other words the ordinance is talking about the proverbial man with a van kind of trade. Paving is neither listed as one of the trades included, nor in my does it fall within the intended man with a van type category nor does masonry work in which the applicant apparently also engages to a certain extent. As for the word etc. used in the table as part of the description I don't think it falls in there either. There are specific categories such as where it says plumbing, heating, air conditioning, electrical, carpentry, sheet metal, etc. Section 307.4 of the Town Zoning Code provides words and terms that are not defined as part of the code's definitional section where they have the meanings given to them by Webster's unabridged dictionary. The fundamental definition of etc. in Webster's is "of like kind". In my view, as previously stated, paving or masonry work is not of like kind with a man in a van type trades that are listed. Moreover, given this clear dictionary definition we further resort to the Standard Industrial Classifications Manual, the SIC is unnecessary and unwarranted, and for these reasons I would hold that the applicant is not a Special Trade Contractor under the meaning of the Town's code.

Mr. Mattis stated thank you. Are there any other comments from Board members?

Mr. Becker replied yes, I just want to make a little briefer comment. I don't disagree with what Mr. Douglas stated. Aside from the fact that I think there is a little ambiguity in the code, and in the way the items are described. Because of this, the ambiguity, we must decide in favor of the applicant. Additionally, this Board has decided in a previous case in favor of the applicant, and I believe that precedence is important. So for those two reasons I will vote in favor of this resolution, but it's very important to point out that this is in response also to the public who has come out on several occasions, and submitted a lot of paperwork. They were concerned about the noise level, and the destruction of the neighborhood, and what I want to stress to the community is that we are all sensitive to this, and we want to make it better. That is why in the Decision & Order that read by our attorney this evening, we put the words in there that all activities must be performed inside, because we want this to have a better outcome than the current situation that is existing now. We want the noise level down. We want this in a sense to disappear. We want it to be hidden, and that the community will see this benefit. So I believe in a sense almost in compromise I believe that there is reason to approve this, but at the same time we have an opportunity to improve the neighborhood, and respond to the community, and that's why we are going to be very closely monitoring the activities of the applicant.

Mr. Seirmarco stated I agree with Mr. Douglas, and I concur with Mr. Becker's conclusions also. There is nothing we can do at this point in regard to past performance. I am looking to the

future. The future we defined very distinctly with the definition of a specialty contractor. What the applicant has to do right now is to live up to the specifications that were laid out very clearly, and distinctly in the motion. He had demonstrated in the past that he wasn't a good corporate citizen, or whatever, and that is true, but he must be now. We have defined an extremely tight, and extremely specific rules. So for the future he has to adhere to this, or he will lose the Specialty Contractor recommendation. So I agree with Mr. Douglas, and I agree with Mr. Becker, but I am looking to the future, and I think with this D&O he will have to adhere to all the recommendations that we heard from the neighbors, and all the recommendations that are specifically spelled out in this D&O.

Mr. Mattis stated thank you. Are there any others?

Mr. Chin stated I would like to say I agree with Mr. Douglas' points, and Mr. Becker. I have to vote with Mr. Becker on it only because the SIC, and so forth. I would like to say that I do live in the neighborhood, and I will monitor it myself, and if there is anything beyond our scope I will inform Code Enforcement on this not only for the first year, but for any time after that. I happen to live right around the corner from here. I hope he abides by our decision.

Mr. Reber stated I would just to add that I think we've satisfied both situations. You've heard that we used the SIC code that says this is a proper classification yet when we look at our own code one might say that it goes beyond it. So what we've done by putting these restrictions on is to try to bring that specialty trade as the SIC defines in terms of its' true operation to sort of resemble what the base example were with the vans, and the type of business they were doing, which means you have trucks that park in a building, you load them in the building, you leave the site you come back. You don't disturb the neighborhood. I think that was the key. So we think in essence we have achieved an appropriate compromise that allows him to do business, and yet essentially meet what we think is the intent of the code, and will satisfy the neighbors.

Mr. Heady stated we've been hashing this case for over three months, and back and forth at work sessions, and I agree with Mr. Douglas, and Mr. Becker. I think we have done a good job trying to straighten out the situation. He just has to live up to what we are asking.

Mr. Mattis stated I agree with the majority. There is not much that I can add that hasn't been said other than that this is a narrow decision, and it puts restrictions that accomplishes what we wanted to accomplish, and that is to protect the neighbors, and make it resemble as much as possible, as Mr. Douglas had said, a man with a van.

Mr. Seirmarco made a motion in Case No. 41-06 to approve the Decision & Order as drafted. 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.		Yes

The motion was carried by 6-1 vote.

Mr. Zutt stated I spoke with Mr. Rinaldi today, and wanted me to apologize for his absence this evening. Number two, I want to thank you all for the many courteousness that you have extended to me. The submissions have been lengthy all the way around, and you have given us an outcome that we can work with. I look forward to receiving a copy of the Decision & Order. Thank you again for your time.

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CASE NO. 59-06 LOUIS & BETH SOLOMON for a tennis court to be installed in the front yard which is not permitted and total floor area of accessory structures to the area of the principal structure at the property located at 2509 Maple Ave., Cortlandt Manor.

Mr. Mattis stated that is another Decision & Order, and I'll ask our attorney to comment on that.

Mr. Klarl stated this Decision & Order deals with a tennis court that essentially presented two questions to the Board. Whether or not this Board would allow a variance to have a tennis court in the front yard of the residence on Maple Ave., Cortlandt Manor where it is an R-40 single family residential district, and the Board answers that affirmatively. In the opinion that we've allowed many accessory structures in front yards such as swimming pools, sheds, garages, and even tennis courts, when they couldn't be seen from the street, or there was no alternative for the location. Here this property consists of 6.8 acres, and the tennis court will not be seen from the street. It will be over 700 feet from Maple Ave. down the hollow. The second aspect of the Decision & Order is really this Board riding on the coattails of a prior Decision & Order of the Board, and that was the Jacobs Decision & Order from 2002 concerning the 50 percent rule, and that rule says that the total floor area of all accessory structures should not exceed 50 percent of the principal structure. In the Jacob's case we had a very similar case. The Jacobs had 9 acres, and a tennis court that could not be seen from the street, and that tennis court was approximately 7021 square feet, which skewed the calculations percentage in regard to the 50 percent rule. Here the Solomon tennis court is 7200 square feet, and once again it skews the percentages. So we indicate in our Decision & Order that if you apply the existing floor area of the accessory structures to the principal structure it's a 44 percentage, but once you factor in the tennis court of 7200 square feet the accessory structure floor area becomes 10,975 feet or 120 percent. So it goes from 44 percent to 129 percent, but because it is a tennis court, and not something that you live in the Board once again like the Jacobs case, and given that both properties were in excess of 6 acres, and could not be seen from the street, this Board is granting a variance for the total floor area to go from the 50 percent standard of the Code to 130 percent. So that is a summary of the Decision & Order that is in front of you.

Mr. Mattis asked are there any comments from the Board? I would just like to add something, with a 7200 square foot tennis court you would need a 14,000 plus square foot house. I doubt there is any house that big in the Town of Cortlandt.

Mr. Klarl stated we also talked about this case, and the Jacobs case that maybe at some point there should be a modification of the our Code so that a tennis court couldn't be factored in to the 50 percent rule. Maybe at some point down the road there should be a revision of the code so we are not looking at this type of calculation.

Mr. Mattis asked are there any other comments?

Mr. Becker made a motion in Case No. 41-06 to approve the Decision & Order as written. This is a Type II Sequa with no further compliance required seconded by Mr. Seirmarco with all voting "aye."

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CASE NO. 61-06 SCHIMMECK REALTY CO. for an Area Variance for the size of a freestanding sign at the property located at 2127 Crompond Rd., Cortlandt Manor.

Mr. Flandreau stated I received a letter asking to withdrawal this case.

Mr. Mattis stated that case is withdrawn by the applicant.

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CASE NO. 62-06 DINA C. MCDOWELL for a Special Use Permit for an Accessory Apartment on the property located at 16 Conklin Ave., Cortlandt Manor.

Mr. Robert Petrocelli, architect and Ms. Dina McDowell appeared before the Board.

Mr. Petrocelli stated I am representing Dina. She is trying to get an approval for an accessory apartment. The Assistant Building Inspector called me today, and said that the Zoning Board will not grant this because we would have to wait three years. I revised the plans, which makes it more adaptable for an addition to this house. My client is willing to wait the three years, if it is not approved for a Special Use Permit now.

Mr. Chin stated we just got these drawings the other day in the mail. You are showing that the new accessory structure is still in the new addition.

Mr. Petrocelli stated yeah, it is the only way this can be done.

Mr. Chin stated again how our code reads is that you can build an addition, but you will not get a

Special Use Permit for three years.

Mr. Petrocelli stated we understand, yes, we have to come back in three years after the CO is issued, right.

Mr. Chin stated if your client is willing to wait after she builds this, then she can.

Mr. Mattis stated if you want to build the addition you can't put a kitchen in it, and it can't be closed off. It will have to be open to the rest of the house.

Mr. Petrocelli stated we are not putting a kitchen in it. She is putting a wet bar.

Mr. Mattis stated that's fine. If it meets all the set backs, and doesn't need a variance...

Mr. Petrocelli stated it meets all the set backs. There is no zoning Area Variances required. She has a lot. She is in a district that is 20,000 square feet. She has 29,000 square feet. She has plenty of area. There was at one time on the right side of the property a proposed road out on to Conklin Ave., which when Jim told me they received approval for that condo project that they converted that to open space. So that she now has two legal side yard set backs. She needs 10 feet minimum. We have 15 feet on each side. So in terms of all the coverages, we're in compliance.

Mr. Mattis stated okay, what you can do then is since you're not able to even actually get the accessory apartment for three years, you can withdraw this case, and just proceed to the Building Department.

Mr. Petrocelli stated or you can vote it down, and we can still proceed.

Mr. Mattis stated yes, we can. That will be your choice, if you want us to vote on it we can vote on it, or you can withdraw. It accomplishes the same thing.

Mr. Petrocelli asked Ms. McDowell how do you want to handle it? I got a call at 1:00 p.m. that they cannot give you this permit right now. You can go, and get a Building Permit immediately after I finish the drawings, and then wait three years to be able to come back to the Board to get an approval for an accessory apartment.

Mr. Klarl stated if we vote on it, and deny it, you then have to wait an additional 30 days so there would time to appeal. So we probably wouldn't take in your Building Permit application until then.

Mr. Petrocelli stated well I have other projects that are in front of this to finish up. So it is going to be about 30 days before I can finish the plans anyway.

Mr. Klarl stated I just wanted you to know that you would have to wait that period of time.

Mr. Petrocelli stated right, I understand it. I do a lot of this.

Mr. Chin stated if you withdraw it, then you can just go to the Building Department and file for your permit.

Mr. Petrocelli asked Ms. McDowell do you want to withdraw? You can do it either way. It is up to you. You're the property owner. If you have it voted down, you have to wait 30 days before you can go to the Building Department. If you withdraw the application, then as soon as I can finish these drawings you can file for the permit, that should probably in about two weeks.

Ms. McDowell stated I do not want to wait long.

Mr. Petrocelli stated we shouldn't even be here. It is just wasting time for the Board, and it's wasting money, and my time.

Mr. Becker stated why don't you withdraw it. It makes the most sense.

Mr. Mattis stated theoretically you can go to the Building Department tomorrow, if you withdraw it.

Mr. Chin stated you are better off withdrawing.

Mr. Petrocelli stated alright, thank you.

Mr. Klarl asked sir for the record, you are withdrawing the application?

Mr. Petrocelli replied yes, we are withdrawing, that is what I said.

Mr. Mattis stated okay so that case is withdrawn.

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CASE NO. 63-06 JANINE CHENARD for a Special Use Permit for an Accessory Apartment on the property located at 10 Birch Lane, Cortlandt Manor.

Mr. Flandreau stated I talked to the homeowner, and advised her of the situation tonight, and she asked to withdraw her application.

Mr. Mattis stated so Case No. 63-06 is withdrawn by the applicant.

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CASE NO. 65-06 JAMES & JEAN GRAHAM for an Area Variance for a side yard set back for a proposed accessory shed at the property located at 52 Ruth Rd., Cortlandt Manor.

Mr. Flandreau stated the homeowner sent me a letter asking to withdraw the application.

Mr. Mattis stated okay that case is withdrawn by the applicant.

CASE NO. 66-06 JAMES M. FLANDREAU , Deputy Director of Code Enforcement an Interpretation if a lot line which separates a lot from the Bear Mountain Parkway is a front lot line.

Mr. William Zutt, Esq. appeared before the Board. I was here last month in regard to this case. This is Phil Hersh's property, one side which is adjacent to Bear Mtn. Parkway, and the other side is Rte. 6, and the issue came up when I spoke with Mr. Flandreau, and he in turn made the application for an Interpretation as to whether the Bear Mtn. Parkway constitutes a street, and if it does then the front yard set back provisions of the code will apply, and if doesn't then the side yard provisions of the code would apply. The materials I submitted last month included the definition of street under NYS Town Law 280a, which is specifically incorporated into your code by reference, and that definition contemplates, and requires access, physical, and legal access to whatever street it is supposed to be. You need to get to it with emergency vehicles, and of course since the Bear Mtn. Parkway doesn't afford that access to the property, or to any others that it abuts, and it shouldn't be treated as a front yard. As a matter of fact Jim did some research on this, and he found at least two instances where that interpretation was applied.

Mr. Seirmarco stated we discussed this at length, and if you look at the definition from the other court case in reference to the Taconic Stated Parkway, and I believe in that case the applicant wanted the frontage to be included, to use the frontage from the Taconic State Parkway.

Mr. Zutt stated he was trying to do just the reverse actually. He was trying to demonstrate that he complied because he had frontage on the Bear Mtn. Parkway.

Mr. Seirmarco stated in this case it is whether or not that piece of property is a front yard, because of the Bear Mtn. Parkway, and I believe it is, and I believe that there are some other pieces of property along that do have things in their front yard. I think that's a different issue, they should probably receive a letter from the Town saying they should rectify that. Again, looking forward I think that this Board would look favorably on a variance in the front yard. I think if you want to do something in that front yard I think this Board would look favorably on granting a variance, and I think that is the way to proceed with this.

Mr. Zutt stated well I don't know if the other Board members share your opinion. I try to be honest in my presentations, and consistent with that approach I don't quite understand the rationale for that Mr. Seirmarco based upon the materials that I have submitted. It seems that the test of whether or not something constitutes a street for front yard purposes is whether you can legally access your property from that street. That seems to be what makes it legal, and the test

that the state law requires as well under 280a1, and then to go even beyond that the Novak case pretty clearly said that if you abut a state highway that is in an access complying. Since 280a's definition is incorporated into the code it seems to me pretty clearly that definition that the Bear Mtn. frontage is not a front yard for any of the lots that abut it at least in the Town of Cortlandt. So to suggest that a variance be applied for is an alternative, but it is only an alternative if you define in the code as you are suggesting, which is contrary in my view to the clear language in the ordinance, and the statute, and also to at least two prior precedents that were cited by Mr. Flandreau. One never wants to seek a variance unless it is absolutely required, and there is a burden of proof associated with that, and one can never be certain that the burden of proof will be satisfied.

Mr. Seirmarco stated I think that the case that you cited that person was looking for frontage to be included on that road, to be included into his frontage calculation. That is not the same thing as front yard.

Mr. Zutt stated I didn't at all intend to suggest that the Novak case presented identical facts. The only principal that Novak established is that a limited access parkway will not be accepted as a form of access compliant to 280a of the Town Law. That case holding is consistent with the language of 280a subdivision 5 which states " the word access shall apply on which such structure is proposed to be created directly abuts on such street, or highway, and has sufficient frontage thereon to allow ingress, and egress for fire trucks, ambulances, police cars, and other emergency vehicles, and a frontage of 15 feet shall presumptably be sufficient for that purpose." We don't have a way to legally provide an access to Bear Mtn. Parkway, because it's a limited access highway. Therefore, we can't provide emergency vehicle access to the site from the Bear Mtn. Parkway, and if we can't do that that property line doesn't meet the requirements of 280a of the Town Law, and if it doesn't meet the requirements of 280a of the Town Law it's not a street as defined in the code, and if it's not a street as defined in your code then the property between that and the building isn't a front yard. It can't be, by definition. I merely cited the Novak case, and perhaps I would have been better off not citing it, because it seems to have caused more confusion that it was worth. So erase that tape, if it will make it any easier.

Mr. Reber stated the problem I have is even if you are very specific about the definition of a street, under our definition in the code, Section 307-4 it says lot double frontage, "a lot with two lot lines abutting streets, or highways, which lot lines are generally opposite each other", and that's as far as it goes. The Bear Mtn. Parkway can be considered a highway. On top of that we have to look at our own case history, and we always interpreted that if a property fronts on a roadway, and we have many other intersections, for aesthetic reasons, and for a lot of other reasons, we declare that each of those roadways regardless of whether or not they can have access, a side street, it could be on a cliff, and there's no way you can get in, and out of that property, it's irrelevant to us. We've never considered that. Why would we do that? If you look at a house that's facing say a main road, and then there's a side street that goes down the side yard, and we consider that a side yard set back. So we're on a front yard with the required, as an example a 40 foot set back, side yard 10 feet. So we got this house to then move over so it is only 10 feet off the street, but immediately after that we have now have houses behind it that are

typically front yards. So now all of a sudden they're now 40 feet back, the Town would look weird and awkward if we allowed that, and that's why we've always interpreted that way. Even that first house on the corner lot has to be set back 40 feet both ways to be aligned with the rest of the houses on the street so that we have that open space, and that set back. So I think that is what we've always interpreted, and to me I don't see where this deviates from that, and I think we as a Town have a right to go beyond generic definitions just like we talked earlier about SIC codes. I think that again, we have a capability in our Zoning, if the Town so desires, to put additional restrictions, and constraints in the way it interprets. I think that is what this Board has consistently been doing for years.

Mr. Zutt stated I certainly can understand the logic of requiring, and in Putnam Valley we do it. I shouldn't say we do it. I just simply advise a couple of their boards. I believe there is a provision in their code up there that says where you have a corner lot both street frontages are considered to be front yards. However, accepting the logic, Mr. Reber, of your explanation, but in a case of a limited access parkway you have a different situation, because by definition the property line in question is adjacent to limited access highway who's right of way is inaccessible. It is a limited access parkway, which in many cases can be hundreds of yards distant. So while I fully understand the need for front yard set backs in a conventional subdivision setting where you have theoretically two streets, that is not the case here, and I suggest you that circumstance is what underlies the decision here, and why we may talk about a street, or highway. They don't just simply talk about a vehicular passageway, but they talk about one as defined in 280a of the State Law, and if you go to the State Law, and you take that definition it would exclude parkways. It would exclude highways, the NYS Thruway, Hutchinson Parkway, Bear Mtn. Parkway, Taconic State Parkway, and so forth. I think that is where the difference lies, and that's why I think fully recognizing the planning principal that you are demonstrating, and which I agree with. I don't think it applies under this limited circumstance, and I don't think you would have an abundance of these situations occurring all over town. You have a very limited stretch of parkway running through the Town, and only those properties that are abutted would be influenced by this. Evidently there are at least two prior cases. That is the way the code is being construed.

Mr. Reber stated there is a difference to as to whether you have an above ground pool, or some auxiliary structure as opposed to a permanent building, in this case a commercial building, and there are a number of properties on the opposite of that parkway, residential properties that all of a sudden could be building, if we interpreted that as being a backyard since they back up against that property that would give them tremendous treatment for building, and I don't really think that was the desire of the Town, and I realize it is more restrictive than the State code that was written. Again, I don't think we're obligated to have to concede to that, if that is not our desire.

Mr. Zutt stated well what you said may be a good reason to recommend some modification of the Town Law with the number of properties that you describe, but at least in two instances, the two that Mr. Flandreau located that is in his report, you have a copy of his report. One of them was actually an addition to a house. It wasn't a shed, or a pool.

Mr. Reber stated I think that was a minor encroachment, and I think the Board already indicated that if the applicant came to us, and said look here's our plan, and instead of 40 or 50 foot, or whatever it ends up being for a front yard, we want to encroach 10 feet, this board might be very willing to consider it for the same basis that some of these other properties have been considered, but if we just waive that definition then all of a sudden we shift the whole line over for everybody, and I think that is what this is for, and I think it would be inconsistent with previous decisions. So we're not saying that we wouldn't be willing to make some concession as some other cases have been, but it has to be consistent with the way we look at, and the way we want to see properties developed.

Mr. Zutt stated I almost wish we were the applicant, but we're not, because if we were we might have requested the alternative, a variance, and we would have a determination on that. Let me just come back to your point, the cases I am referring to actually did not entail variances. The deck that was constructed was 24 feet from the property line whereas R-20 requires 30 feet, and also an addition constructed 24 feet from the property line, and the other required front yard, and that was within 30 feet, no variances required in either case. So I believe that under those two circumstances it may be very clear that the interpretation, one of which has been previously adopted by the Town, and certainly if the determination of the Board is going to be to reject this Interpretation, then we have alternatives. One is to just do nothing, and build it that way, or to come in and ask for a variance, or to seek a ruling from some other source. I don't know who that might be. I guess the answer to the concern is one that lies with the Town Board. I guess that is really, really the answer. I guess there is a limited, and discreet number of properties in the Town who's backyards, or side yards may abut a limited access road, and the only one I can think of would be the Bear Mtn. Parkway.

Mr. Reber stated there is also Rte. 9.

Mr. Zutt stated Rte. 9, yes that would be the other one, and in those particular cases identify to the Town Board that they might alter the statute so as to provide that even with limited access road. An adjacent property with limited access road frontage that the frontage would also be deemed the front yard. So you could craft a statutory amendment that would achieve that.

Mr. Reber stated the Town Board can change the rules whenever they see fit. We can't change the rules.

Mr. Zutt stated which is why I don't think you should interpret it the way you are suggesting.

Mr. Reber stated also the cases you present 24 versus 30, you said did not require a variance, which means this board did not have a chance to rule on it. So we can't say why that happened, or who was responsible, but you yourself admit we weren't. So therefore, it doesn't pre-judge us in any way.

Mr. Zutt stated yes, I was just reporting what Jim had in his memo.

Mr. Chin stated I would like to say something. In this Town we have a lot of what is known as paper roads, which we consider as a front yard, and those roads will probably never be open. I think that we should basically do as Mr. Reber is saying, that we should stick with our guns on this thing. If you want to come in for a variance, I think we would give it to you, but to actually interpret it the other way I don't feel that is right.

Mr. Mattis stated I've read the Town Code a number of times as it applies to streets, and I guess highways, although it doesn't define highways, and then Section 280a talks about street, and highways, and they need access, and access is the key of this issue, but then when you read 280a, number 5, article 16, "For the purposes of this section the word access shall mean that the plot on which such structure is proposed to be erected directly abuts on such street, or highway", which it does, "and has sufficient frontage thereon to allow ingress and egress of fire trucks, ambulances, police cars, and other emergency vehicles, then a frontage of 15 feet shall be presumptably sufficient for that purpose." Now the question is the ingress, and egress of the fire trucks, ambulances, etc., and that's the crux. It is a limited access, but in an emergency there is hardly any curbing there, I'm sure if there is a fire there, they're going to come from Rte. 6, they're going to come from the exit there, they're going to come from the Bear Mtn. Parkway. They're going to come from everywhere, and I am wrestling with does that really mean that there's access, or does it mean that there's not access, but they'd use it anyway. That is the whole crux of this, and that is what I'm wrestling with right now, and I'm not sure that in my own mind I have the answer. I've read this, I've read this, and I've read this, and I keep coming back to the same thing. I think I am probably inclined to say that yes it is access, because they can physically get there, if they have to.

Mr. Zutt stated as I listened to your discussion, and I think back over the years, and Mr. Heady, and maybe Mr. Chin would remember, I don't think anybody else has been on the Board long enough at this point, but I seem to recall the question of roads some years back in a case where this property owner was seeking to build on a lot, and they had frontage on a paper street, as Mr. Chin described, and while they had a legal right to traverse the paper street it wasn't passive. Whether because it was difficult terrain, or in the middle of a river, or whatever, I don't know exactly, and there was an insistence by the owner that they didn't require relief from this section of the law, which you all entertain once in awhile, because they had legal access on this paper street, and the position it was on, but you really can't get there, and when it was issued at the time it was yes, but you really can't get there. So while you may have a legal right to do it, it is a practical matter. I believe that has been the historic construction by the Board. So I think that series of decisions, and I couldn't cite when, or how many, or whatever is supportive of the position that I'm advocating here. It is sort of the obverse of what you're describing, Mr. Chairman, which is maybe you can drive from the Bear Mtn. Parkway over a curb, down a ravine, up a gully, and across a hedge, and get there with a fire truck, but that is not what we had in mind.

Mr. Klarl stated access means true access. You can legally get in there, not to dodge a couple of trees to do it.

Mr. Zutt stated yes, I think that is pretty much the rule.

Mr. Klarl stated so to try to bring it to some kind of resolution, would you like to consider Mr. Flandreau maybe withdrawing his application tonight, and your applicant seeking a variance, which you've gotten some solid indications on tonight?

Mr. Zutt stated I tell you what I would ask, allow me if you would, and that is an excellent suggestion, and I would request that Mr. Flandreau for that reason withdraw his application, but allow us to submit a similar application seeking alternate relief by way of a variance.

Mr. Klarl stated so for the February meeting then Mr. Hersh will bring a variance application.

Mr. Zutt stated yes, we'll file an application, which will in effect repeat the request with an Interpretation coupled with a variance request.

Mr. Douglas asked wouldn't that complicate things for the Board. I am not trying to avoid work, but if you just see what I am saying. Logically, we have to deal with Interpretation first, before we go to the variance. If you just apply for the variance, well you haven't got the Board polled, but you have gotten some indications.

Mr. Zutt stated I understand that, but it is the old belt, and suspenders thing I guess. I would just like it to be clarified.

Mr. Douglas stated if you do it that way, you will get more of an indication, and maybe you'll consider withdrawing the Interpretation part of it.

Mr. Zutt stated yes, we may reach at some point in dialogue.

Mr. Klarl stated why don't we let him bring a separate companion application, and if you're favorable to that application this one will dissolve.

Mr. Mattis stated we can adjourn this application, and leave it open, and you can bring a separate variance application for Mr. Hersh.

Mr. Douglas stated then we will have both in front of us.

Mr. Zutt stated okay, that makes sense.

Mr. Mattis asked is there anyone in the audience who would like to speak?

Mr. Seirmarco made a motion in Case No. 66-06 to adjourn the case to the February meeting, seconded by Mr. Douglas with all voting "aye."

* * *

CASE NO. 67-06 JAMES M. FLANDREAU, DEPUTY DIRECTOR OF CODE ENFORCEMENT for an Interpretation what proposed construction will be considered an expansion of the existing nonconforming use for the camps outlined in Section 307-54 of the Town of Cortlandt Zoning Code.

Mr. Mattis stated this is another Interpretation, and I'll turn that over to our attorney.

Mr. Klarl stated since this is the third Decision & Order of the night. I am going to make this a shorter one. This is once again an application by the Deputy Director of Code Enforcement who sought to bring up this issue. It is an application as to an Interpretation as to what proposed construction will be considered an expansion of the existing nonconforming use for the four camps recited in Section 307-54 of the Town Zoning Ordinance. If you read section 307-54 it is entitled "Conversion of existing buildings and camps to year round dwelling use", and that section states that part of the code only applies to the following camps: a.) Reynolds Hill, b.) Lexington Colony, c.) George's Cottages, and d.) Skyview, and what happened here is the Deputy Director has had certain inquiries concerning what kind of construction would be an expansion of a nonconforming use so that he is requesting guidance from this board as to what would be permitted, and what would not be permitted in terms of construction. So after much deliberation, and especially at our discussion at the Work Session, this board hereby interprets that any construction or work other than normal repairs or replacement of existing doors, windows, flutes, siding, roofing, decks, and etc. only of like size, and location. Like size means the same size window in the same location not putting other holes in the walls is to be considered an expansion of a nonconforming use. So any work other than repairs will be considered an expansion. Once again, Mr. Flandreau would like this decision because he actually faces these applications on a regular basis. This is a Type II application under Sequa as it consists of the interpretation of an existing code, or rule, and therefore no further compliance is required.

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

Mr. Becker made a motion in Case No. 67-06 to adopt the Decision & Order, seconded by Mr. Chin with all voting "aye."

NEW PUBLIC HEARINGS

CASE NO. 01-07 MICHAEL SALHAB for an Area Variance for the sizes of signs on the property located at 2098 East Main St., Cortlandt Manor.

Mr. Michael Salhab appeared before the Board. He stated I am here because recently we changed our image at the gas station located at 2098 East Main St. from Texaco to a company called Valero from the state on New York. That is the new image in the area. The gas station I own, and the imaging is done through the oil company itself. They are in charge of all images. I am here to answer the work that has recently been done to our station regarding the signs.

Mr. Klarl asked do you own the property, or do you own the business?

Mr. Salhab replied I own both.

Mr. Heady I stopped there yesterday, and I guess I spoke with your partner. On the signs you have there, you have one big sign between the two pumps, and it is both sides. Also, you have a sign on the top of the building there, and on the side you have another sign, but facing the canopy on the left side you have another sign there right?

Mr. Salhab replied correct.

Mr. Heady stated so you have four up on top. You also have a freestanding sign.

Mr. Salhab stated that is correct.

Mr. Heady stated we were talking at the Work Session, and we'd like to see you reduce, because you are way over on the amount that you are allowed. So the signs that were there, were they there when you bought the property?

Mr. Salhab replied when I bought the property the signs were there, yes.

Mr. Heady stated so it wasn't really your fault. They were already there. So when we were talking at the Work Session we thought maybe you would take that center sign out between the pumps, because when you drive up is when you see it. Now the one on top you see quite a ways away with no problem. So if you're willing bring the square footage down, we'd like to see you take that one sign off.

Mr. Salhab asked the one between the two pumps?

Mr. Heady replied yes, right.

Mr. Salhab stated now when you say take it down, you mean the entire sign, or do we paint over it?

Mr. Mattis stated you can leave the theme of the colors there, but without the name on it. That way you won't have to tear it down.

Mr. Salhab stated okay, I see.

Mr. Mattis stated I am looking at the picture we have from Texaco, and it's apparent that the signage has been increased, and from what you can see there, but it looks like it was there before, but it didn't say anything on it before. So basically you are just bringing it back to what it was, but only with the Valero colors instead of the Texaco colors. Would that be okay with you?

Mr. Salhab replied it is okay with me. I actually think it looks good.

Mr. Mattis stated yes, I like the color schemes, and everything. I drove by there yesterday to particularly note when you see the signs, and what really indicates it, and you would have to be along side of it before you could really read that anyway. Anybody that sees it is going to see the upper canopy, or the freestanding sign. You don't even see this from the road until you're right on top of it. That is a busy road where people are going at a pretty good rate of speed so they probably won't even read that. So I don't think it would be any hardship to you at all to just cover that up.

Mr. Salhab stated that would be fine.

Mr. Mattis asked now Mr. Flandreau can you tell us what the square footage would be if that were removed?

Mr. Flandreau replied if they remove that it would be 66.37 square feet. That is the freestanding sign, the canopy, and the three circular signs.

Mr. Mattis stated okay. So the variance required is 25 square feet, and now it's about 16. So it is much more in compliance, and it's similar to the location of the signs that Texaco had. Does anyone else have comments? He then asked is there anyone in the audience who would like to speak?

Mr. Heady made a motion in Case No. 01-07 to close the public hearing seconded by Mr. Chin with all voting "aye."

Mr. Heady made a motion in Case No. 01-07 to grant an Area Variance for signs from the allowed 50 square feet up to 66.37 square feet. This is a Type II Sequa with no further compliance required, seconded by Mr. Chin with all voting "aye."

CASE NO. 02-07 HEATHER AND DAVID FRASER for an Area Variance for a lot area on the property located at 2 Greenlawn Rd., Cortlandt Manor, NY.

Mr. John Sullivan, Esq. appeared before the Board. He stated I represent Heather and David Fraser in this application.

Mr. Becker asked can you please describe for us what you'd like to do?

Mr. Sullivan replied yes, this application arises out of a prior application to the Planning Board for lot line adjustment that was approved approximately a month ago. It involves two adjacent parcels on the south side of Greenlawn Rd. Both zoned R-20, both currently having a single family residence on the parcel. The parcel that is the subject of this application is a pre-existing, substandard lot. It is approximately 10,000 square feet currently. The other parcel is an

irregular shaped lot that is a little more than double the R-20 zoning. It is a little over 40,000 square feet. The parcel that is not subject to this application that being lot #1 is very unusually shaped in that the subject parcel is in essence a rectangle right through the middle of it. The Planning Board approved our lot line adjustment as a condition though required that we obtain a variance from this board in that the Fraser lot, the subject lot, currently substandard, will go from approximately 10,266 square feet to 11,434 square feet. So it will continue to be a substandard lot as a result of this application. It will come closer to conforming, but it will continue to be substandard. The other lot from where the property will be come will result in a 2.91 percent reduction. No new lots are being created. Either way whether this variance were granted, or not the Fraser lot would continue to substandard.

Mr. Klarl asked so you are going from two lots to two lots?

Mr. Sullivan replied correct.

Mr. Mattis stated you're just bringing one closer to conformity.

Mr. Sullivan stated correct.

Mr. Becker stated I walked the property last Saturday with the homeowner, David Fraser. What he is doing is actually legalizing what he has done for a long time. He has been using his neighbor's lot, and he now wants to purchase it to make it legal. Visually this piece of property looks like it is already part of his property. So from a visual standpoint it is a grassy area hidden from the road. It makes his lot more conforming or less nonconforming, and even though it is in an R-20 zone, it should be 20,000 square feet. So it is bringing it closer to the 20,000. It has no negative impact on the community. It is actually positive. I think it is a very reasonable proposal.

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

Mr. Becker made a motion in Case No. 02-07 to close the public hearing seconded by Mr. Reber with all voting "aye."

Mr. Becker made a motion in Case No. 02-07 to grant the Area Variance for the size of the lot from 20,000 square feet down to 11,434 square feet on the subject property. This is a Type II Sequa with no further compliance required seconded by Mr. Heady with all voting "aye."

Mr. Klarl asked Mr. Sullivan do you know when your Planning Board approval was granted?

Mr. Sullivan replied yes. I have a copy of the resolution here. It was dated December 7, 2006.

Mr. Mattis stated for information only our last item on the agenda this evening is an adjourned public hearing for a telecommunications tower, and that was adjourned to February, and that is

Case No. 48-05. So we'll be hearing that case again next month.

Mr. Reber made a motion to adjourn the meeting seconded by Mr. Chin with all voting "aye."

The meeting was adjourned at 8:20 p.m.

Respectfully submitted,

Christine B. Cothren