

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, July 18, 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: 5/16/07**

Mr. Heady made a motion to adopt the minutes for 5/16/07, Mr. Reber stated I had a few typographical corrections to be made to those minutes and second the motion based on those corrections with all voting “aye.”

Mr. Mattis stated before we begin the meeting tonight I want everyone to turn their cell phones off. It went off a couple of times last week, and it’s very discourteous. Ours are all turned off, and I expect the same out there. If the cell phone goes off, I am going to ask you to leave. It is really disturbing.

**ADJOURNED PUBLIC HEARINGS**

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

Mr. Mattis stated this is a Reserve Decision & Order. I will turn it over to our attorney for his summarization.

Mr. Klarl stated on the agenda last month we closed the public hearing and reserved decision, and tonight we have that Reserve Decision sitting in front of you from the Board. It indicates that the camp which we call Camp Discovery is operated by Rosenthal JCC under a lease from the Westchester Jewish Community Services. The property is in the R-80 district. It consists of

approximately 19.74 acres. It opened in 1929, and it went through several Special Permits over the years. There was a Special Permit in 1994, and there was some litigation where in 1998 several property owners brought an action in Westchester County Supreme Court, and challenged the legal status of the camp. That matter was litigated. It was assigned to Justice Samuel Fredman, and in his long decision he concluded that the camp was lawful as a nonconforming use which pre-dated the 1951 code. So he didn't even see the need for Special Permits along the way. So we're working from the premise that this camp is a lawful, nonconforming use. We then asked the applicant to do an application to describe what improvements they wanted to make to Camp Discovery, and as we went through the public hearing process they mentioned some various improvements so we asked the applicant to give us a final list of the improvements that they wish to seek. We've listed those improvements on page 1, and page 2 of the draft Decision & Order. Item number 1 is they want to relocate a play shed. Item 2, they want to add a ground level platform to the arts and crafts building. Item 3, they want to reconstruct a fence, and sign at the entry of the camp. Item 4, they want to designate a play field in the camp's active area. Item 5, they want to create a basketball court, and they reduced that from 50' x 80' to 40' x 70'. Item 6, they want to use portions of the area between the pumphouse, and the abandoned buildings for an archery area, and for an adventure course, which would consist of obstacles, and things of that nature. So based upon those six items this Board took a look at Section 307-77 of our code, which concerns nonconforming use of land, and it says, "That no such nonconforming use shall be enlarged or increased nor shall any nonconforming use be extended to occupy a greater of land than that occupied by such use at the time of the adoption of this chapter." The Board finds that in this Decision & Order tonight that the camp is a unique use in the Town having been found lawful as a nonconforming use by Westchester County Supreme Court, and by the Appellate Division Second Department. In addition, the Board finds that the phrase in Section 307-77 that "nor shall any nonconforming use be extended to occupy any greater area of land than that occupied by such use at the time of the adoption of this chapter.." allows the camp to operate within a certain envelope of the camp property, what we call "active area". So looking at the 6 imposed improvements, the Board finds that as to the play field, the basketball court, and the archery area, and adventure course that those three improvements would be satisfactory under the Zoning Ordinance, because the three improvements are not prohibited as enlargement under Section 307-77, because they're all within the envelope of the camp property. As for the other three improvements, which was the relocation of the play shed, the adding of a ground level platform, and the reconstruction of the fence, this Board also finds that those three improvements would not constitute a prohibited enlargement under our Town Zoning Ordinance. The Code Enforcement Department has previously determined that the play shed would be removed for safety reasons. We've distinguished as Item 2, the ground level platform is different than building a deck, and as for Item 3, which is the reconstruction of the fence, once again, we ruled that is not a prohibited enlargement. We also then discussed the various cases that were discussed by the counsel for the applicant, and based upon all those cases they distinguish an intensification of a nonconforming use from enlarging a nonconforming use, and we cite some of those cases. So for all the reasons that were cited in the Decision & Order we interpret those 6 items on the list of improvements by the applicant to this lawful, nonconforming camp that those improvements do not constitute a prohibited expansion of a nonconforming use. In addition, this Board was

swayed in looking at the proposed improvements that the improvements will not involve the increase in the number of campers nor are any additional buildings being constructed or added to. So we also made that part of our decision, and since this is a Type II action under Sequa there is no further compliance required. That is the essence of the Decision & Order.

Mr. Douglas made a motion in Case No. 09-07 to adopt the Decision & Order seconded by Mr. Seirmarco with all voting “aye.”

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

Mr. William Zutt, Esq. and Mr. Patrick Scelza appeared before the Board.

Mr. Zutt stated we left last month, and I think I gave you a letter in a case that involved the Town of Cortlandt which involved two parcels that were L shaped, and in that case the court declared that the lots did not adjoin as is the case with Mr. and Mrs. Scelza. We believe we have a fairly relevant precedent, and I would like to make a follow up point. I knew there was more to the case than just simply that. If you look at the legislative history here in town, there has been at least code adoptions since 1975 dealing with this, and other sections, and yet the terminology with respect to adjoining lots has not changed from that which was brought forth in 1975. So if the Town Board had intended to in effect overrule what the court had done, they would have changed the terminology in the code. We are respectfully requesting ruling in favor of Mr. and Mrs. Scelza. I would request no merger of the lots, or granting the requested variances.

Mr. Douglas stated the Board has been looking at the cases you submitted to us, and the context of them, and I think we want to look at it a little more closely, and we propose to close, and reserve our decision.

Mr. Mattis stated we just saw this Monday night.

Mr. Zutt stated oh, I see.

Mr. Douglas stated we only discussed it at our Work Session.

Mr. Mattis stated I think we're basically agreeing with you, but we just want to look at it a little more closely. So we would like to close, and reserve for next month. Is there anyone in the audience that would like to speak regarding this case?

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

Mr. Douglas made a motion in Case No. 06-07 to Reserve Decision seconded by Mr. Chin with all voting “aye.”

Mr. Mattis stated so we'll have a Reserve Decision for next month.

CASE NO. 17-07 FRANCESCA P. DEMAS for an Area Variance for a side yard set back for a proposed addition on the property located at 45 Fowler Ave., Cortlandt Manor.

Mr. Flandreau stated I received a letter from the applicant asking to withdraw the case.

Mr. Mattis stated so Case No. 17-07 is withdrawn by the applicant.

CASE NO. 23-07 CONGREGATION YESHIVA OHR HAMIER for an Interpretation /reversal of Code Enforcement Officer's determination that the dormitory housing its students is a pre-existing, nonconforming use and that a Special Use Permit is or may be required for the Yeshiva's operation or expansion and if required an Area Variance for required yard set back and an Area Variance to allow access to the premises for a non state or county highway on the property located at 141 Furnace Woods Rd., Cortlandt Manor.

Mr. Daniel Richmond, Esq. appeared before the Board. He stated I am from the law firm of Zarin & Steinmetz, and I am here representing the Yeshiva. As the Board is aware it is the Yeshiva's position that it is permitted as of right on its' property. The Town Code specifically permits places of worship, and religious instruction in this zone at the property. From our perspective efforts to find that the Yeshiva is a place or worship, and religious instruction are strained. There is an action of land use law zoning restrictions are strictly construed if any ambiguity is resolved in favor of the property owner. As such, if the Board has any doubts as to whether the Yeshiva is a place of worship, or religious instruction respectfully such doubts should yield the Yeshiva just as they were for any other private property owner. Moreover, as we have previously noted our view of the Town's records pursuant of the Freedom of Information Law show that the Town has consistently treated the Yeshiva as a permitted use, as of right. That being said, we are aware the Board has found that the Yeshiva requires a Special Permit as university, college, or seminary pursuant to Zoning Code Section 307-50. Since the Yeshiva's goal is to rebuild its' existing facilities rather than prolong the process with the Town for the time being is willing to go along with the Board's designation of it as a Special Permit, and have the matter referred to the Planning Board and seeing the Planning Board would have reasonable conditions to a Special Permit to the Yeshiva. Accordingly, without prejudice to its' position, without waiving its' rights under State and Federal Law, the Yeshiva respectfully explains why if the Board should categorize the Yeshiva as a Special Use, it should grant it certain variances from the standard with respect to the front yard set back in requiring that access be only a State or County highway. In issuing, respectfully, the Board ultimately lacks legal authority under NY Law to deny the Yeshiva a variance from Zoning Code, Section 307-50d8, which requires that access be via State or County highways. Such denial would be tagamout to prohibit the Yeshiva without any proof that its' operation adversely effect the public, health, safety or general welfare. The Town cannot rationally assert that public safety mandates the Yeshiva would be on a State or County or road when on the very same road two major schools,

which generate far greater traffic impacts operate without question. In particular the Blue Mountain Middle School, which according to the NY State Department of Education had an enrollment in 2004, and 2005 as 694 students is located on the same road seven tenths of a mile away, and the Furnace Woods Elementary School which has an enrollment of 422 students, and is located a mile and a half also on the same road. No students reside at either of those two public schools. As such, in essence of 1,000 students commute to those schools daily. In contrast, the Yeshiva which has approximately 1/4 of that number of students who all reside on the grounds, there is expediently less traffic hence less need to be on a major traffic corridor. Unless the Town would argue that the Blue Mountain Middle School, and Furnace Woods School should be relocated to State and County roads thus believing their present locations threaten the public safety, the Town has no rational basis under State law to discontinue the Yeshiva's use of its' property. For similar reasons Federal law also compels the issuance of this variance. Under Federal religious land use and institutionalized persons act the Town cannot impose a substantial burden on the Yeshiva in the absence of a compelling governmental interest. Again, the Town would be hard pressed under a certain compelling governmental interest requiring that the Yeshiva be relocated to a State or County road when two schools, a restaurant, and a shooting range are all located on the same road. Furthermore, RLUIPA requires government to implant land use regulations equally among religious and non religious institutions. Again, it would be hard to imagine a more flavorant example of mistreatment. For the Town allow secular schools with far greater traffic impact to continue to operate on Furnace Woods, the discontinuing of the Yeshiva use of the property on the same road. Even beyond these legal constraints the balancing analysis generally applicable to variances also indicates that the Board should grant them. Generally in considering an Area Variance the Board is bound to benefit the applicant if the variance is granted as weighed against the detriment to the health, safety, and welfare of the neighborhood or community. In considering this balancing the Board must guided by two more considerations. First, educational institutions and places of worship are by law deemed apparently beneficial in the land use context, and presumptably serves public welfare and morals. Second, the law is clear that the municipal land use cannot be based on subjective considerations such as generalized community opposition. Generalized community opposition is particularly present where as here there is a large part of misinformation about the projects, and gross mischaracterizations of the applicant's intentions. While I recognize the site planning issues and the applicable conditions that would be attached to a Special Permit, we are not before your Board but will be addressed by the Planning Board. I think it is important at this time to restate the basics and facts. The goal of the Yeshiva is not to have a massive expansion but is in fact, simply to modernize, replace, and rebuild its' existing facilities. The heart of the project that we are talking about is to replace an existing 27,000 square foot building which was used for many years for dormitory purposes with an approximately 26,000 square feet of modern dorm space. As we had previously explained, the Town was long aware that the existing 27,000 square foot building was being used for dorm space, would be demolished and allow the Yeshiva to temporarily relocate dorm space to another building specifically to allow them to recreate modern housing. As such, the Town's records verify that the 26,000 square feet of new dorm space would simply be a continuation of a long standing permitted use of the property. The only other part of the Yeshiva's project is a creation of classroom space, which again is to replace existing facilities that are no longer adequate for the student's needs. Contrary to rumors planted

in the community, the Yeshiva has no desire to massively increase its' student body. At its' highest enrollment, which was in 1999 to 2000 the Yeshiva had a student population of 250. The Yeshiva has no intention of ever expanding beyond that number, and would be willing to have a cap of 250 students as a condition of the Special Permit. As such, ultimately all that is at issue is the Yeshiva's desire to update, modernize, and rebuild its' existing facilities. Ultimately there is going to be no change to what is already going on at the property. Taking all of this into account, and walking through the factors applicable to variances again, the balance should be in favor of granting the variances. Neither variance would create an undesirable change in the character of the neighborhood or the detriment to the nearby properties. As the Board is aware the Yeshiva has been part of the neighborhood for a quarter of a century. As we have shown in our recent submission, home values in the area have gone up consistently with market trends in the area during the Yeshiva's tenancy of the property. For example, as we have shown a house sold in 1983 on Furnace Woods Road for \$142,000 sold for \$640,000 in 2003. Another house that sold for \$62,000 in 1987 sold for \$452,000 in 2003. Any argument that the Yeshiva will have an adverse impact in the area of property values lacks an empirical foundation. Moreover, allowing the Yeshiva to improve and rehabilitate will only enable to increase its' positive influence in the community. With respect to the set back variance, as the Board knows the subject building is a pre-existing, nonconforming building for which only a minor bump out is requested. The Yeshiva intends to present to the Planning Board a landscaping plan that will show that the Yeshiva will be screened from neighboring properties. Accordingly, since the building is pre-existing it cannot be argued that it will attract negativity. Then for the next criteria, the benefit the Yeshiva seeks cannot be achieved by any other means, again, there is no way around the road variance, and the bump out is set in the logical place there is, ie.. an addition to the Rabbi's residence. Third, the subject variance is unsubstantial, again, the Yeshiva creates minimal traffic impact particularly when compared to proximate secular schools, and the addition is to an existing, nonconforming building. For the same reasons it will add little adverse impact to the physical environmental conditions in the neighborhood. Finally, and perhaps most significantly the alleged difficulty was not self created. As the Board is aware, the Yeshiva predates the Town's adoption of Section 307-50, and ultimately should be deemed grandfathered from these requests. Once again, rightfully the Board should overturn the April 5<sup>th</sup> memorandum, and instead rule that the dormitory housing is permitted as of right. To the extent, however, that the Board will find that the Yeshiva requires a Special Permit pursuant to said Zoning Section 307-50, it should grant the variances requested herein. As always, the Yeshiva intends to work willingly with the Town, and with its' neighbors to conduct itself as it has done quite peacefully for the past quarter of a century. Thank you. Are there any questions?

Mr. Becker stated I would like the public to speak first. I would like to hear what they have to say, and then I will comment.

Mr. Mattis stated okay, before we turn this over for public comment, apparently there were some flyers distributed at the train station, and that is probably why we have so many people here, and I'm glad you came out because that is part of the democratic process, and that is what makes this a wonderful country, and makes this Board work. However, there is a mistake here that says the Zoning Board of Appeals is convening with a plan to grant a Special Permit, we do not grant

Special Permits. What we're discussing tonight is whether or not the Yeshiva requires a Special Permit from the Planning Board, and we will also discuss the variances that were requested. So our narrow focus tonight is whether or not the Yeshiva needs a Special Permit, and a few variances, any of the other items are all Planning Board issues. So now I will open it up to the public.

Mr. David Simbari appeared before the Board. He stated I live at 7 Flanders Lane. Before I start I've got 90 more signatures for the petition for the public record that brings it up to about 410 signatures. I will give it to the clerk.

Mr. Klarl asked is it the same petition that has been circulated?

Mr. Simbari replied exactly the same John. Before I start I would like to know how many people are here because of this matter being discussed, would you stand up please. A large number of people stood up in the audience. He stated unlike my last diatribe I will try to limit this to zoning otherwise Chairman Mattis will kick me off the dias and condemn me to the Planning Board. Once again I want to thank you for the opportunity to discuss my opposition to the proposed expansion for the use of the property owner by the Congregation Yeshiva Ohr Hammeir. It is important to note that I strongly uphold the right of religious freedom for all individuals regardless of race, color, or creed. I think that is important. It was in the flyer, and we all believe that. A seminary as defined by the American Heritage Dictionary is a school, especially a theological school for the training of priests, ministers, or rabbis. At the Zoning Board meeting of May 16<sup>th</sup> you were told directly by a representative of the applicant that there is no degree conferred. There is no certification conferred. There is no rabbinical college here. There are no college credits given. That is right in the public record. I quote that from Mr. Tim Miller, a planning expert retained by the applicant. Shortly thereafter, Mr. Steinmetz, who is Mr. Richmond's partner, counsel for the applicant, comments that could have come from my own notes. Yet the application, and this is the confusing part for all the neighbors by the way, the applicant receives PELL grant funding that is only eligible for students attending colleges. So on one hand we get one set of data, on the other hand another set of data contradicts it.

Additionally, we have attempted on numerous occasions to validate an active student count as of today, because that is what we are talking about not 1999. Currently we've been given four different set of numbers for the public records. We're not unreasonable. So we find ourselves here dealing with an unusual set of circumstances. In a recent New York Times article dated July 15<sup>th</sup>, Mr. Richmond, attorney for the applicant, said he was confident that you would grant the Yeshiva's variances it needs to go ahead with its' plans. Mr. Richmond further stated that if the Town rejected the Yeshiva's proposal the school would sue, no doubt. We as citizens, and a municipality is clearly staring down the barrel of the RLUIPA shotgun. I have personally witnessed this entire frustrating process as the Town and its' associated boards have bent over backwards to accommodate the applicant and you should all be commended. It is hard to imagine from a taxpayer's perspective being as frustrated as we are. The applicant is a habitual code violator, and factually as we all know is functioning as a squatter without the proper permits at its' current location. No doubt, because Mr. Steinmetz, and Mr. Richmond are holding the RLUIPA gun one that seems to take precedent over every law, and administrative

procedure that the general population must adhere to when appearing before this August body.

A cell phone rang.

Mr. Mattis stated excuse me, leave the room please, and turn it off, I've said that before. If it goes off again you are going to be removed. I mentioned that before. It's very disconcerting. We're listening to a very serious discussion, and we don't need to be disturbed.

Mr. Simbari continued the fact that almost 400 voter's signatures have been attained granting any consideration to the applicant seems to have fallen on deaf ears, as Mr. Richmond confidentially says that you will comply with the applicant's every wish. It was interesting because in considering the issuance of Special Permits in the Town Code Section 307-42 this body if it recommends to the Planning Board that they grant a Special Permit there are nine factors, five of which I believe, are relevant at this stage of the process. 1.) The use shall be of such location, size, intensity of operation and character that in general it will be in harmony with the appropriate orderly development of the district in which it is situated. I submit that building a large institutional dormitory where 250 students, associated staff, and "visiting families", and these are all taken from the public record clearly does not fit harmoniously in a neighborhood of single family homes. 2.) The location, and size of use must not be hazardous or inconvenient to the predominant residential neighborhood. Given the density of this project, yes it is 30 acres, but only 5 of which are usable. If you were to put single family houses there, you would maybe have 20 or 30 people okay, but given to the density relative to the planned use and numerous complaints from the neighbors this to would seem an issue. 3.) The number, location, nature and height of the buildings, walls, and fences and the nature and extent of the landscaping will not impair the value or development of adjacent lands. In discussion with several realtors, the effect on the value of the adjacent properties has already been felt dramatically.

Mr. Seirmarco stated can you speak a little slower, this is being recorded. I personally am having trouble following you.

Mr. Flandreau stated you need to speak into the microphone a little closer.

Mr. Simabari continued 4.) Parking areas shall be of adequate size for the use, properly located and suitably screened from adjoining residential areas with exits and entrances designed to prevent a hazard and a nuisance. Under Section of the Town Code 307-29, the off street parking required for a facility of this nature would approximate 135 spaces. Will this be another variance that you are going to have to decide? 5.) The use as proposed will not require any additional public facilities or services, such as sewers etc... at public expense. Well the proposal, as submitted, calls for additional facilities, and will the applicant be required to pay a sewer tax like everyone else in the Red Oaks Sewer District does? I am fully supportive of the Yeshiva's right to exist, but I am diametrically opposed to any expansion. It is clear that a Special Permit with conditions will be required, and I applaud the effort, and work of this Board on this matter. I know this is a very, very tough decision. Finally, in closing, I was very disturbed to read Rabbi Kanarek's quote in the New York Times article where he stated when asked if he spoke to the

neighbors, I quote, "What effect would it have?" I represent a concerned group of citizens, and we have a committee that is willing at any time to sit down with the honorable Rabbi, Mr. Steinmetz, and Mr. Richmond to discuss our concerns in a reasonable fashion. However, I must tell you, and tell them that any expansion cannot be part of the equation. Thank you.

Applause.

Mr. Seth Deneberg appeared before the Board. He stated I am also a resident of this community.

Mr. Mattis asked what is your address please?

Mr. Deneberg replied I live at 9 John Alexandar Drive. Just a little fact about myself so there can be no insinuation. I am proprietor of the Hebrew Academy of Nassau County, Rabbi Fendel's Yeshiva. I spent 12 years at that Yeshiva, came within a couple of years of obtaining my own Rabbinical status. I have studied under Rabbi Schubert, and Rabbi Hersh for that purpose. I came here today, because I am now an attorney, and I have taken the opportunity to look up some information, and I want to discuss a little bit about the law as it applies to this situation. As we are all well aware, when reviewing the request of a school, or church requesting an expansion in a residential area must always consider the overall impact on the public's welfare. Although the special treatment afforded schools and churches stand from their presumed beneficial effect on the community, there are many instances where an educational, or religious use may actually be trapped from the public's health, safety, welfare, or morals. In those instances the institution may be properly denied. There is simply no conclusive presumption that any religious or educational use emphatically outweigh the ill effects. The presumption of law that it always works in favor of schools and churches was based upon the old doctrine of the community church in a residential area. As we are all aware, and I don't think I have to repeat this to the Zoning Board, as church functions, and institutional, and educational function have expanded with modern means of travel they have less of an effect upon our benefit for the local community. Local community residents now travel to their institutions. The question becomes what benefit does this institution provide to this local community to outweigh any type of harm they have upon the community health and safety. This Yeshiva has been operating here since approximately 1985, and has been doing so without having its' own variances, or its' own permits in its' own right.

Mr. Mattis stated that is not correct. There have been a number of Special Permits issued along the way.

Mr. Deneberg stated I would point out that the use of property that existed before the enactment of the Zoning is a legal nonconforming use and the right the maintain a nonconforming use does not include the right to expand, or enlarge that use. In Rudolph Steiner fellowship, there the court held that the additions, and the rebuilding of certain facilities was not permissible because the prior use that was being made was in contrast to the permissible variance, and Special Permit that was granted. In that case they had been granted a Special Permit to allow them to make

certain uses of the property. They proceeded to expand the primary use beyond that for which they were granted a permit, and then when the use got so large they came to the community Zoning Board to ask that the Special Permit could allow them to extend beyond. In that case the court denied it. The Case of Unification Church vs. Rosenfield it was found that the Unification Church's misrepresentation had acted in the past in violation of local zoning laws while the application was pending, or in prior conduct justifies the denial of the Special Permit to that organization. The question becomes, I would point out to this Board, whether or not the prior activities by the Yeshiva comply with the Special Permits that have been given to them? Did they act in a matter as a good neighbor should in compliance with those permits, or have they in effect ignored the permits which they had, acted beyond any variance which they may claim, or acted in a matter which shows a diliterous effect on the community? Has this Yeshiva in effect thumbed its' nose upon this community, and only now when it needs our okay because of the massive size of the work that it wishes to do, do they bring to your attention the fact that they have exceeded the number of students for which were ever represented to us to have there, that they are engaged in activities that have gone beyond that for which they are permitted? I don't know if anybody has taken the opportunity to survey the property, conduct a test to see whether or not they have complied with current codes as they exist.

Mr. Mattis stated those are not issues of the Zoning Board. Let's try to keep on track on here.

Mr. Deneberg stated in the case of the Islamic Society of Westchester and Rockland vs. Foley the court found that it is an affirmative duty on part of the local Zoning Board to suggest measures to accommodate the planned religious use while mitigating the detrimental effects on the health, safety, and welfare of the surrounding community. In a similar case of Cornell vs. Magnardi it was found that they had to examine the effect of the use on the surrounding area. It is the controlling consideration must be the overall impact of the use on the public welfare. I would submit to this panel that we need to examine exactly what would be the effect on the public's health of the use for which they seek to make. Whether or not in fact the use they're making now is permissible, and whether or not the expansion to accommodate 250 students is desirable, and would be permissible to the public health, safety, and welfare, or would be dangerous to surrounding areas. I point out that if anybody has seen that road, driven that road observed what happens when the students from the Yeshiva walk in that area it presents an immediate safety hazard both to the people in the area, the driver's in the area, and frankly to their students also. The size of this road, the lack of any type of sidewalks, the narrowness of it, the lack that their own facilities within their Yeshiva to accommodate the recreational purposes makes this a unique situation different from the two public schools that exist further down the road where they have adequate field, and space for the students. There the students do not wander onto the public roadway, here the students to wander onto the public roadway. There the students don't reside, and place additional service other than the required additional community service here the students would be residing there. They're placing additional services and needs upon us. I would ask that this be carefully examined in light of the cases that we not flinch for fear, and threats of law suits. There is adequate case law now running in favor of the community to place reasonable constraints upon a religious or educational institution's desire to use an area especially where that institution has showed utter, and complete contempt over the like of its'

operation for the community which it is located in. Where that institution does not have the presumption because it is not providing a benefit to the community which it exists within. This Yeshiva does not benefit this community. It never has done so in the past. It has never reached out, or opened up any lines of communication with members of the community. It has never participated in anything with this community. It has been a community unto itself existing within the Town of Cortlandt. I would ask that we carefully examine their application, and find that they do need a special variance to do what they want. Thank you.

Applause.

Mr. Mark Hargrove appeared before the Board. He stated I live at 300 Watch Hill Rd. I just want to mention one term that the gentleman mentioned that I think is very important. It was “good neighbor”, he mentioned that term.

Mr. Mattis stated those are appropriate comments for the Planning Board. We’re here to see whether or not they need a Special Permit. We’re not judging anything except whether the code requires that they have a Special Permit. That would be very appropriate for the Planning Board.

Mr. Reber stated we don’t argue the issues. The point is that is not our jurisdiction. We have to do an interpretation of the regulations. So whether they have 5 students or 5 million students, it doesn’t effect our decision. We decide whether the way the code is written do they, or do they not need a Special Permit. If we say they need a permit, then it goes to the Planning Board, and then all of your issues become valid issue to discuss with the Planning Board in terms of how do they operate under that permit, and that is when you have to make those arguments.

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

Mr. David Simbari appeared before the Board again. He stated we want to distribute these to the Zoning Board and have them entered into the public record before you consider variances I think that it’s very important that you understand how some of the land is used at the Yeshiva where it adjoins to the Blue Mtn. Reservation. He handed picture to the Board.

Ms. Debbie Campanaro appeared before the Board. She stated I live on Veronica Ct., and my property adjoins the Yeshiva property, and also the reservation. I am very concerned about environmental issues, and the dumping.

Mr. Mattis stated okay, once again, that is very appropriate for the Planning Board, but it is not a factor in whether or not they need a Special Permit.

Ms. Campanaro asked what about the safety, and welfare of the water?

Mr. Mattis replied a Special Permit is do they need one, or don’t one. The health, safety, and welfare is the Planning Board.

Mr. Simbari stated I would suggest, and you can tell me if I am wrong, but a variance is issued

on some merit like okay you have been a good citizen, or a special condition. All we are asking is you take a look at those pictures so you understand before you do it. I think that is reasonable. Thank you.

Mr. David Wald appeared before the Board. He stated thank you for your endurance of this application. I am speaking on behalf of the Yeshiva's application. The Yeshiva would very much like to reach out to the community. We've made that known. With respect to the quote in the newspaper, it was taken out of context. We are willing to speak with anyone who has a reasonable, and legitimate concern will be heard, and will be taken seriously. Some examples of that would be pedestrian traffic, a major issue. The Yeshiva has heard it, and are trying to deal with it. They've incorporated a walking trail onto the site plan. They have requested the Town to consider the appropriate signage that is typically placed near a school. They have restricted the boys from walking at night, and they have reinforced within the Yeshiva guidelines for walking. The Yeshiva is not a prison. So we will be walking the streets appropriately, and with safety in mind. I think I'm really disturbed tonight, and what disturbs me is that when all is said and done, and at some point in time all these hearings will be concluded, there is going to have to be some reconciliation. It's not like everyone here goes back to Briarcliff, or Katonah, or Mamaroneck, we are all on the same home turf here. I contend that the Yeshiva is a good neighbor. They're perfect, no. Okay, this gentleman here who spoke is saying we should question the moral side. I am flabbergasted. I am taken back. I am outraged by the mean spirited statements that were made. I have no problem, and let me just continue if I may. We have no problem with the petition. The content of that petition should be condemned. It should not be applauded.

A gentleman interrupted.

Mr. Mattis stated if you want to have a conversation back there, take it outside please. One person speaks at a time here.

Mr. Wald continued it is essentially a call for a witch hunt. I happen to know several signatures on that petition who have finished their basements without permits, who have had extensive electrical work done without permits, or had bathrooms installed without permits. I am not pursuing a witch hunt, but I don't want the Yeshiva to be bullied and treated that way. The legitimate concerns that I feel that have been raised by the community are pedestrian traffic. The fact that it has been an eyesore, and the issue of the sewer. With respect to the eyesore, during the past year the Yeshiva has spent tens of thousands of dollars, and made tremendous improvements, and I can tell you sincerely that there is a commitment on part of the Yeshiva to maintain the property so that it will no longer be an eyesore. We hear a lot about code violations, it's a losing battle for us. The buildings are functionally obsolete, that is why we are here. We're here to fix things. We want the safety for our boys. The Yeshiva didn't have six, or seven million dollars ten years ago. Now they have a tremendous amount of support throughout the country actually. People who are willing to help them develop the campus so that it is safe, so that the boys can be housed in a code compliant building. When people come here and say the Yeshiva ignores the rules, nothing can be further from the truth, that has never been the goal

of the Yeshiva. They came here in 1985, and it has been involved. There is no code restriction, there is no limitation that has been set in terms of the population of the Yeshiva by the Town. In fact, it was assumed in 1985 when the Yeshiva came here that it would evolve because they wouldn't have bought property which had one 30,000 square foot building that was used as hotel rooms that could accommodate alone 200 people. It just wouldn't have made sense. When I see the word massive expansion on this brochure, it is upsetting. It is upsetting because it is a distortion. It is not a massive expansion. For many, many years, 10 or 12 years, they have had approximately 250 boys. That does fit in naturally with the 37 acres, you can say 5 of it is usable, nonetheless there is a great deal of buffer there. So it does fit in naturally. Again, what concerns me is we have a community that I think by its' leaders, and I think some of them including David Simbari, Mr. Tumbarello, that have a false expectation for the community. That it can revert back to 5 acres of use, ignoring the history of 22 years, ignoring the fact that nonconforming use is prolific throughout the Town of Cortlandt. It's not going back to one family use. I believe at the last Zoning Board meeting a gentleman turned to my left, and said to the Yeshiva I don't know what you guys do, but whatever it is go find a farm 200 miles north of here, and do it up there. I can say tonight we're not going 200 miles away. We're not going 50 miles. We're not going an inch, not 1 inch!. We have a legal right to be here. Our objective is not to use RLUIPA as the sledge hammer people have claimed, but when you look at the respect where there is almost a mob, a mean spirited approach to this, what are we supposed to do.

A gentleman from the back of the room shouted.

Mr. Mattis stated I am going to remove you.

The gentleman stated I'll remove myself, but you've got to stop this. Anytime they make statements they are insulting, and disrespectful.

Mr. Mattis stated he has a right to speak just as you do. You are out of order.

The gentleman left the room.

Mr. Wald stated I would like to continue please. Any reasonable people, and there are here. The other day I had the opportunity to meet with two people in the community who had been strong opponents of the Yeshiva, but nonetheless I sensed from them when they were speaking that they were reasonable, and that there could be a connection, or some kind of a repore developed. We got together yesterday at the Yeshiva, and I don't want to speak for them, but I heard what they had to say. Their concern focused mostly on the Red Oaks Sewer District, which is one of the possible connections.

Mr. Mattis stated which again is not our jurisdiction.

Mr. Wald stated I know, but I mentioned it because only a large part of it was that we were able to make a connection there. I thank you once again for your opportunity to talk tonight.

Applause.

Mr. Douglas stated I just want to say something. Obviously people have strong feelings about this application. Obviously people have strong emotions about this application, if possible, I am speaking for myself, the issue that we have in front of us our two issues that are pretty narrow, and I think it would help the Board if we could try and focus on those issues. One is the issue of whether or not a Special Permit is required, and that is based on certain terms of the code, and how this applies here. The other has to do with the two variances that are required. There are specific factors that we look at in terms of variance, and let me just tell you what those factors are. I personally would find it helpful if you could focus on those factors when speaking. That would be helpful to me as a voting member of the Board, and maybe we can focus it a little more rather than people speaking about emotional issues that really aren't necessarily relevant to what we are doing with our limited jurisdiction over this. The first issue is whether there will be any undesirable change to the character of the neighborhood from those specific variances that are requested. Second is whether the benefit that the applicant is seeking to achieve can be achieved by some other method that is feasible. The third is whether the requested specific variances are not substantial. The fourth is whether those specific variances will have an adverse effect, or impact on the physical, or environmental conditions in the neighborhood. Again, we are just focusing on the specific variances. That doesn't mean the Yeshiva as a whole, or its' presence there. The fifth factor is whether or not the difficulty, the need for the variance is something that is or is not self created. I would personally find it helpful if people could focus on that, and if you could try to some extent focus on what is front of this Board rather than broader emotional issues.

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

Ms. Mariana Nefshky appeared before the Board. She stated I live at 12 Lincoln Rd. I have been a resident of the Town of Cortlandt for over 25 years. So when the lawyer for the applicant said that the Yeshiva has operating for 20 years I was surprised. I am a little bit puzzled as to what they are seeking in dormitories, and are they mandatory, because New York City has plenty of religious schools without the boarding component. The case which has been brought here, and everybody has argued, I know they have a right to have a religious school, and there are other schools in the area. Of course, we don't have any problems because there is another church, and another school. We don't have a problem with the classrooms. We don't have a problem with that component. What we have a problem with is the high density residential component. Each time you read the newspapers, and I just looked at the floor plans, which I saw very briefly, I would of thought that it is just residential with a classroom. I did not know it was so big. I know it is a religious school, which their main mission is teaching religion. So when the newspaper said that the residential component was there I wondered why there has to be sleeping quarters, and only 5 acres are usable because of the wetlands rule. Therefore, requiring 250 students plus the residential plus the family visitors. I can't see how they can do this in a single family residential zone. We are now seeing that this applicant is operating in a nonconforming, and there is no limitation. How can that be? How can a high density residential component be a permitted use? I have found nothing in the Zoning Code, and I don't

understand. I read the Town Code, and I see only that there is a non-permitted use here. Therefore, we are talking about how this component is operating. So when we ask you whether to have a Special Permit, or not. We're asking you has this particular place had a Special Permit to operate before with this large number of students sleeping there. I don't think you can expand a nonconforming use. Every time I hear the number of students, I hear another number. Is it going to be 50, 200, or 250? We don't know what it was. I don't have a copy of the number of the students. I don't know if anybody did their homework regarding that. Let me just say that we are not prejudice, and it is not a religious factor here. I am a Jew, and my parents lived during the second World War. So it's not religious. This is simply how they can operate a boarding component in a single family residential area. That is all there is to it. This is what we are complaining about. In fact, I had no idea they had this kind of high occupancy. The only reason we found out is because of the fact they are in violation, and they are asking for the expansion. Had I known this in 1985 when they first moved there, I would have been at the Town Board meeting a long time ago, and I'm sure a lot of the neighbors would have been too. We had no idea. This was not publicized. We understand that the code is here to address the main issues of the Interpretation, but we ask you to have due process when it comes to these things, when it comes to allowing a high density residential in this zone. That is why we are here. We are not here because we are emotional. We understand there is a component, and it is very sensitive to some people's emotional being, and we are offering whether we do it or not. I don't see why there has to be so many students. They have 3 students per room in these two little buildings, and five classrooms. I object to that personally, and I think my neighbors do too. Thank you.

Applause.

Mr. Reber stated I have to repeat myself. The applicant is here, once again, before this Board to see if a Special Permit is needed, and this Board is leaning toward the argument that a Special Permit is needed. The issue of a dormitory is one of the issues that would say yes a Special Permit is required. We are leaning in that direction. The point is not whether it is 5 rooms, or 500 rooms, because we don't decide that. What we're saying is they can't, if we say they need a Special Permit, we're saying they cannot have as of right to do what they want on the property. They have to go before the Planning Board, and they have to present their case to the Planning Board. It is there that the Planning Board will decide, and they may agree with you, and say you know what 250 is too many you have to cut back to 150, or they may decide that 250 is fine, but that is the Planning Board. It has absolutely nothing to do with us. I don't know how many times I have to repeat it. You're talking to the wrong audience. The issue is according to the code, the status that they have, and the question is with the dormitories does that put them into the university classification, because of these dormitories, and therefore, yes they do need a Special Permit, and you have heard that this Board is leaning in that direction. The applicant understands that, and that is why the applicant is saying to go in that direction you have to address two variances. As Mr. Douglas said, the issue with the variance is that variance itself. If you don't like the fact that they have done something on a property elsewhere, it is not a major issue when we decide variances. Variances are very legal issues as the criteria was set. There's two variances being considered. One is an existing building in which they want to add on to it.

We have consistently in the past said that if the addition is less intrusive to the set backs than the existing building we almost always grant it. That is the situation here. This is less intrusive. It is further from the road than the existing building. For us to deny them would be counterproductive to all of the other variances we have given to other buildings that asked to have additions. So the question is you have to tell us specifically for this variance that there is something unique about this addition that is going to detrimentally effect the neighborhood, that we shouldn't grant it by those five criteria that Mr. Douglas has stated. The other variance is the road, and the highway issue. Now again, if we say they need a Special Permit. The Special Permit under the university part of the code says it should be on a state road. So the question is is there a situation here that says this does not fit the normal category of a university, therefore, we would be appropriately granting that variance, because they in their situation do not create the problems that was of a concern when it said it should be on a Sate road. Those are the issues that we have to address. That is what you should be telling us about. All of this other stuff we cannot factor in. We're not allowed to factor in. The Planning Board can, we cannot. We're not allowed to. If we make a decision because of something else they did on the site because they had violations, or because they're sloppy, and they don't clean up the yard, and that is the reason we denied, the courts would throw it out, and say that is not appropriate, you can't use those criteria. So it's not that we're saying that you're wrong. We're just saying save the arguments for the Planning Board. We can't take them into consideration. We have to be very narrow at what we're allowed to look at.

Mr. Mattis stated thank you. Is there anyone else who would like to speak?

Mr. Joel Benedict appeared before the Board. He stated I just would like some clarification. As far as we know, there has been one Special Permit issued on this property is that correct?

Mr. Flandreau replied no the last one was issued in 1988, and there was probably about 4 or 5 issued before that.

Mr. Benedict stated alright. So all of these Certificates of Occupancies are not Special Permits?

Mr. Flandreau replied no Certificate of Occupancies are not Special Permits.

Mr. Benedict stated Special Permits would require hearings, and all that, and Certificates of Occupancies don't.

Mr. Flandreau stated no they have gotten a number of Building Permits over the years for other things.

Mr. Benedict stated I thought we were here tonight .....

Mr. Klarl stated let me just interject for one minute. Mr. Flandreau can maybe explain a little bit about the Certificates of Occupancy issued, and the history of the Special Permits.

Mr. Flandreau stated in certain aspects of Code Enforcement for some reason didn't happen to

do Special Permits on every application. I can't say why, because that was before my time, but the property itself had a Special Permit before it. So when the code changed in 1994 that Special Permit then the property became existing, nonconforming 1994 not in 1985 when the Yeshiva took it over. So in 1994 it became pre-existing, nonconforming, and they needed to be granted some Special Permits on top of that for all the work that is being done now. Like I said before for some reason back from 1994 the Special Permits were not asked for by Code Enforcement. I can't say why. In my time I feel they would be required, and I don't know why they were not asked for.

Mr. Benedict stated so as we go along the certificates amended this Special Permit?

Mr. Klarl stated if you look at the history when certain Building Permits were issued, and CO's issued also the Special Permit was amended, but that wasn't highly consistent for the history of the property. Some of the time they would get a Building Permit and a CO, and they would amend the Special Permit. Other times there would be a Building Permit, and CO and not have an amended Special Permit.

Mr. Flandreau stated from researching the records I can't say what triggered Code Enforcement sending them for a Special Permit, and what did not. It didn't make sense to me when I was reviewing the paperwork.

Mr. Benedict asked at this point in time how many buildings are being occupied do we know that?

Mr. Flandreau replied I am not 100 percent sure. I know 1 pool building that is being occupied, and we have the numbers for what the square footage is compared to the number of students that they're allowed to have, and I think from the past approval for the pool building there's two or three additional students in the building of what is allowed by the code, and I think that took effect in 2003. So if you go by the approval of the plans I think it is 85 students that is allowed in that building.

Mr. Mattis stated we're getting off track here. This is relevant for the Planning Board.

Mr. Benedict stated I apologize. I thought we were here for a variance for the state road issue. Mr. Mattis stated yes that is correct.

Mr. Benedict stated it just seems that we really haven't addressed that at all. Do we know why we're going to have speculate as to why that is in the code?

Mr. Mattis replied it is in the code because generally colleges, and universities generate a lot of traffic. Just like the schools down the road generate traffic.

Mr. Reber stated universities and seminaries are attended by a lot of adults, adult generally drive. That was the concern that distinguished it from a regular public school. We have buses coming

and going, but you don't have the students individually driving, and so when it got to seminaries, and universities, which are adult attended schools, you would have a lot of cars, and a lot of traffic coming and going. The Town was concerned, and said therefore, those types of situations should be on state roads.

Mr. Benedict asked did the Town consider other possible reasons besides vehicular traffic?

Mr. Mattis replied we don't know. We don't read their minds.

Mr. Benedict stated so we don't know, and this is all up in the air. Maybe it could have been for the taxation on the services for water, sewer...

Mr. Reber stated I don't think that is an issue that is relevant. I think they felt generally there was a safety issue that applied to all university type facilities. So you have to be able to distinguish that that creates a safety issue that's different from other types of schools, and churches and so forth.

Mr. Benedict stated so mainly it is because of vehicular traffic.

Mr. Mattis stated basically it's a traffic issue. It's not a density issue.

Mr. Benedict stated nothing to do with density.

Mr. Reber stated no, it's a traffic issue.

Mr. Benedict stated emergency services getting into the place.

Mr. Reber stated no, traffic is a primary reason.

Mr. Mattis stated the entrance of emergency vehicles is all part of the site plan.

Mr. Benedict stated I have one last comment, and it has nothing to do with zoning. So if you want to cut me off please do. Mr. Wald what you did before.....

Mr. Mattis stated no, you don't address him, you address your comments to the Board.

Mr. Benedict stated alright what Mr. Wald said is only fanning the flames. Out of this group of people I consider myself one of the most reasonable, level headed, and to feel my blood pressure rise when I'm accused of something of that nature. This is not a religious issue. This is a density issue. You can't fan the flames as I have seen it in the press, and make it as if we don't the type of things that are going here. That is not the case. We are willing to reach out, and we want to get together, but this type of stuff is not going to happen. Thank you.

Applause.

Mr. John Galvin appeared before the Board. He stated I live at 27 Lakeview Ave. West in Cortlandt Manor. I am an attorney at law, and as the able counsel for both the applicant and Seth, my view as you can see, we don't allow our blood pressure to rise. Certain advocates get very compassionate over time, perhaps too much so. At the last meeting, last month, I believe it is Mr. Wald who graciously invited interested citizenry to get together. He has seemed to take a great deal of interest in the Yeshiva. I am sorry I am going to get a little perhaps to impassioned, but I still feel his graciousness, and his interest in the past can be used, I believe, as an instrument to try to find out now what are disagreeing on, but what where we can agree, and one of the first speakers here talked about a committee that would like to sit down, and Mr. Wald has also expressed the same cognitive. So I am simply suggesting that I would like to help to coordinate a meeting between some of the committee of the interested citizens and the Yeshiva, perhaps coordinated by Mr. Wald where we can find out where we agree, and what our principle concerns are. The counsel for the Yeshiva began by saying tonight talking about the Special Permit, and we would agree to a cap of a certain number of students. I know that is a very large concern with a lot of citizens. It's that type of movement that we seem to be talking over each other, passed each other not hearing each other, and perhaps we agree more than we disagree, but we'll never know, and if we can find out where we agree, and disagree, we're going to make life a lot easier for the boards, the Zoning Board, and the Planning Board who are trying to weigh the concerns of the community with those of the private property. Thank you very much.

Applause.

Mr. Wald appeared before the Board. He stated I appreciate very much the last remarks by Mr. Galvin. I apologize if I crossed over the line. Please understand we come in, and the first thing we're told is that we're squatters. That does raise our blood pressure. I really appreciate Mr. Galvin's comments. We have met with Mr. Barra, Mrs. Gothels, and I would be very happy, I would call Mr. Galvin tomorrow to set up a meeting. I am concerned with meeting with people if their only objective is to say, and do anything to see that the Yeshiva is gone. I want our discussions to be productive, and I want to see if there are ways that we can connect with people here who will be respectful of the Yeshiva. Thanks again.

Applause.

Mr. Al Piscopo appeared before the Board. He stated I live at 6 Peter Beet Dr., Cortlandt Manor. I just want to address the one issue that has been stuck in my head. The variance for the permit for the Yeshiva to operate that it is not on a state road that it's on this back road. The thing that comes to my mind is the fact that all these universities, schools, they all issue some sort of a degree, and we have been told that they don't issue any kinds of degrees. So why are they applying for this variance, and why should it be approved?

Mr. Mattis stated that is what we are looking at, where do they fit in.

Mr. Piscopo stated well if they don't meet this criteria why should they be granted the variance. Thank you, that's it.

Applause.

Ms. Marianna Nefshky appeared before the Board again. She stated I just heard that the Yeshiva operates with a nonconforming use, and I am not sure what that is. My question to you if there is a nonconforming use, the Yeshiva, why are they permitted to expand?

Mr. Mattis replied we are determining where it fits in the code. It could be a non-permitted use. It could be a permitted use in the R-40, or it could be a permitted use because of a Special Permit, that's what we're looking at right now.

Ms. Nefshky stated but the gentleman just made the statement....

Mr. Flandreau stated I'll answer your question. In 1984 the use of the hotel there was taken out of the code to become a nonconforming use. Well in that same code in 1994, it said that any Special Permits that were issued prior to the code are still allowed to operate. That is what they are here for. That was my Interpretation with the memo that the Planning Board asked me to look into.

Ms. Nefshky stated also understand that the hotel use is very different that the boarding component. A Special Permit is usually granted for very specific things, and once the land is sold over for a different use, because the school is a different use than a hotel, then that particular permit granted for the hotel is no longer applicable.

Mr. Seirmarco stated I think you've got it correct.

Ms. Nefshky stated I understand that you are here to look at only the two issue....

Mr. Mattis stated in 1994 it became a non-permitted use, but the code said anything that was in existence was deemed to be given a Special Permit at that time. They are operating under a Special Permit.

Ms. Nefshky stated for the hotel.

Mr. Mattis stated no for the use that they had at that time not for a hotel. I don't know why this hotel business keeps coming up.

Mr. Flandreau stated I think I can clarify that. What I was asked to do by the Planning Board was for an interpretation of the property, and what it is the existing use which was prior to zoning was a dude ranch there, and they were given a use in the R-40, if they conform to prior zoning, have more than 5 acres, have more than 300 linear feet on the road you could have a hotel use there. So that is what the dude ranch had. That property never changed use between the dude ranch, and the Yeshiva. Now what I was asked was how does the dormitory fall into the school, and what I came up with when I was looking at that was that while the hotel was always there, and in the SIC code a hotel and dormitory are in the same lines, under the same use

category in the SIC code. So that got rolled over from a hotel into a dormitory and that's how that came that the Yeshiva had the permitted use at that point for the school, and a separate for the dormitory. In 1994 the permitted use for the dormitory was taken out, that section of the hotel was taken out of the code, and was in a sense made existing, nonconforming, but if you had a Special Permit for that use of a hotel, any Special Permit prior to that would allow them to continue that Special Permit. That is what my interpretation was. The Yeshiva says that when I went into the dormitory part from the hotel it isn't necessary, and that is why it came to ask for an Interpretation for that.

Ms. Nefshky stated well I am also confused because between 1984 and 1994 basically the Yeshiva operated illegally. It wasn't a permitted use.

Mr. Mattis stated yes it was a permitted use under the old code. You don't have the old code. It changed in 1994, and that is when they were deemed to have a Special Permit.

Mr. Flandreau stated if anybody has any questions, you can contact me in Code Enforcement, and I would be more than happy to sit down, and go through the details, and show them all the notes that I've come up with, and how I came up with this Interpretation, and that is what led us to come to the Zoning Board.

Ms. Nefshky asked but is an expansion permitted in a nonconforming use?

Mr. Flandreau replied I am not so sure, but it is a nonconforming use with a Special Permit.

Ms. Nefshky I don't know if it is special or not, but how can you permit an expansion without going through proper channels you know.

Mr. Mattis stated I can't answer for what the Town gave out in the past, but right now we're here to look at where they are, and whether or not they need a Special Permit.

Ms. Nefshky replied okay, thank you.

Mr. Mattis asked Mr. Becker did you want to comment yet?

Mr. Becker replied when the public is done I'll speak.

Mr. Mattis stated okay.

Mr. Benedict appeared before the Board again. He asked enrollment is on the table?

Mr. Mattis replied at the Planning Board yes, not here.

Mr. Benedict asked has either this Board, or the Planning Board gotten a hard copy of records from the Board of Ed?

Mr. Mattis replied I have a table here that shows enrollment.

Mr. Benedict stated I have a table, but I just wanted to know if there were hard copies of the file.

Mr. Mattis stated we don't have that, because it's really not relevant to our decision, but I am sure the Planning Board will have that.

Mr. Benedict asked Mr. Flandreau do you know if the Planning Board has those?

Mr. Flandreau replied I'm not sure, you would need to contact the Planning Department. We're two separate departments.

Mr. Benedict stated and I do want to thank you, because I have seen all the work that you have done, and also the Board.

Mr. Rex Knight appeared before the Board. He stated I live at 8 Veronica Ct. One of the things that I have that doesn't have too much to do with the variance, but it is just the fact where Watch Hill joins Furnace Woods Road, there is a very dangerous section that is very narrow, and there is an issue with a terrible curve. My son once heard a horn honking, and a car had flipped over backwards there. People go too fast, let alone a bus, there is a heck of a lot of construction trucks as well, but it's very tight, and narrow, and one of my main concerns would be about that section. If there was any kind of improvement to be looked at, it is something that maybe they should look into. The way it is now it is tough to get by there.

Mr. Mattis stated that is a good issue to bring up at the Planning Board.

Mr. Knight stated okay. One of the other questions that I have is in terms of the taxation...

Mr. Mattis stated taxation is not an issue for us nor is it an issue for the Town at all. That is not an issue.

Mr. Knight stated okay, thank you.

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

Mr. Daniel Richmond, Esq. appeared before the Board. He stated I know this is our third meeting here, and I am not going to reiterate each, and everything. I think we have been through many issues that were addressed previously this evening. First of all I do want to say thank you to Mr. Galvin, and other interested members of the community who are willing to reach out to the Yeshiva, and I think the Yeshiva is interested in meeting with reasonable members of the community to talk about the future of the Yeshiva at this site. I think the quote that someone referenced in the paper was a reaction the Rabbi had to a petition that was perceived by the Yeshiva that the people don't want the Yeshiva at this site. Respectfully, I think it is virtually

impossible for the Yeshiva to talk with people that don't want the Yeshiva at this site, but the rest of the members of the community with open arms the Yeshiva would be willing to meet, and sit down. Briefly, I won't go into Mr. Flandreau's interpretation of the code. We respectfully disagree with everything he said, and that is why we are here, we're appealing it. It is our position that we're a permitted use, and I would just point out with respect to the nonconforming issue. A nonconforming use means you are not permitted where a respectfully permitted use is permitted.

Mr. Klarl stated yes by Special Permit.

Mr. Richmond stated by Special Permit, but it is a permitted use. Again, I won't get into that issue again. The Yeshiva again, is permitted has been as in our view been as of right from the get go, and is permitted as a right now, but we are willing to contemplate the Special Permit so we can go forward. We do share some legitimate concerns like people walking in the streets, and we are already taking proactive measures here to discourage the students from doing that, and to make sure that doesn't happen at night. We're only here for a narrow issue. I don't think I have heard any comments directly challenging either of the variances. If anyone on the Board can correct me, I think there was only one person who questioned what the need for it was, and I think I would agree with some of the Board members who pointed out that whatever the need for it was it seem applicable to the schools down the road, and I don't see how you could again, deny the Yeshiva a variance to be on a county, state road, when you already have schools there except there are emergency services that need to be for the schools, and the same would be for secular schools. In terms of I think one of the most recent speakers talked about signs, and again, that is something I think the Yeshiva thinks is a great idea. They would like to have signs in the area so that people slow down when approaching especially if there is a student body. Again, I don't want to go through all the other issues. I think just one quick point on the number of legal cases mentioned earlier. One case he cited dealing with the body of land use law, and religious advocater only for small churches, the case he cited was about Cornell University, which is a big university, and the fact is the Court of Appeals said that is the reason the courts need to step in is because they provide a broad reign to the overall community though not necessarily benefitting the immediate community, but again, I think the Yeshiva can, and ultimately will benefit the adjoining community because of the landscaping plan we have proposed before the Planning Board. I would ask that the Zoning Board close the public hearing at this time, and if the variances are granted that you would refer this back to the Planning Board so that we can proceed with this application. As I said at the beginning ultimately the interest of the Yeshiva is to get going, and start moving to rebuilding, modernizing its' site.

Mr. Mattis asked before we close are there any other comments?

Mr. Arnold Gray appeared before the Board. He stated I live at 17 Red Oak Lane, and I hear a lot of variance terms, and I am not a lawyer so I don't know a lot of stuff, but what I did here was Mr. Reber said that a university or a school needs to be on a state highway, because of people driving. Then someone else said well it's a school so it doesn't matter whether it is 8, or 8,000, or 800 it can do what they want. I have seen some of these students from the Yeshiva,

and some of them are of legal driving age, and if you have 8,000 students there, or .....

Mr. Mattis stated nobody is talking about 800 students there. The operate number right now is 250, and I believe that none of the resident students have automobiles there.

Mr. Richmond stated they are not permitted to own cars.

Mr. Gray stated well even if they're not permitted it doesn't mean that they can take away their right to drive.

Mr. Mattis stated well a Special Permit could do that. They could restrict that their vehicles cannot be there. That is what Special Permits are all about.

Mr. Gray right. So I am saying if you have 250 drivers coming in, and out of there, it's going to be a problem.

Mr. Mattis stated listen to what I said, they are not allowed to have automobiles. You won't have 250 drivers coming in and out.

Mr. Gray stated you cannot take away a person's state right.

Mr. Mattis stated if they get a Special Permit granted you can restrict the use of vehicles, and say no student will drive there, and they will not have a vehicle on the campus. That can be done by the Planning Board.

Mr. Gray stated history shows that even though there has been restrictions on what can and cannot be done at this property, they have done it anyway.

Mr. Mattis stated the Code Enforcement office will enforce that, and I'm going to stop this, because this is not an issue with the number of kids driving, and you know it's not going to happen. That is a Planning Board issue.

Mr. Benedict appeared before the Board again. He asked if the variance is granted for colleges having to be on a state, or county road, does this open the doors up to others?

Mr. Mattis replied it is only on this particular Yeshiva. It is not for anyone else.

Mr. Benedict stated so no one else can come in here, and say there's precedent.

Mr. Reber stated none of this will change the code. The code stays as it is.

Mr. Mattis stated each variance has to be brought by each applicant okay. So it does not grant it cart blanche for anyone who else that wants to do that.

Mr. Benedict stated okay, thank you.

Mr. Jack Mayclim appeared before the Board. He stated I live at 43 Lakeview Ave. West. In regard to the issue that they do not drive, I was hit head on by a student on the dangerous curve referred to before. It was a rented car not an owned car, and after the accident the State Police were on sight, the student was not 25, and shouldn't of had a rented car. The state trooper failed to pick that up, however, .....

Mr. Mattis stated that is an issue with the rental car company.

Mr. Mayclim stated well it was, and it took me over two years to collect, because the driver would never make a statement to the insurance company. So therefore, it was only my statement, but to say they don't drive is not true.

Mr. Mattis stated we didn't say they don't drive. We are saying they will have no vehicles on the campus.

Mr. Mayclim stated well he came off the campus with the vehicle, where did he get the vehicle from? He rented it. He may not have owned it, but he rented it, and he had it on that campus, and he came off that campus.

Mr. Mattis stated okay, okay, I hear what you're saying, and that is something that you should bring up with the Planning Board, and make sure they put that stipulation in.

Mr. Mayclim asked well what does the Zoning Board do?

The audience applauded.

Mr. Mattis stated this has been going on for over an hour, and forty minutes, and we've said exactly what we're here for three, or four times. So maybe we have to turn the volume up a little bit.

Mr. Mayclim stated maybe you do, because there seems to be a lot of confusion going on here.

Mr. Mattis asked is there anyone else? Are there comments from the Board?

Mr. Becker stated yes, Mr. Chairman, this case was assigned to me, and I want to make some general comments, and some specific ones. First, I learned that I had this case before I got it, because I started getting e-mails, and letters from the public, and in fact I called our chairman, and said hey I guess I have the Yeshiva case even before I got the packet. So I knew this a hot button issue. During the last few months of meetings here, I must say this is actually a wonderful process. This is America at its' best. You've heard both sides, you've heard them agreeing, you've heard everyone disagreeing, and I think this is a remarkable town. I think this is an extremely helpful, and healthy process. I think the issues are out in the open. I don't think anyone is in the dark as to what's going on. Everything has been very transparent. So I commend the public, and the applicant, and this board for everything that has transpired so far.

Some specific comments, and specifically addressing your last comment that was made about what does the Zoning Board do. Remember this is an application that is currently before the Planning Board. How this process goes on, whether this project gets built, how big, what's allowed, what's not allowed, when, and where, all the decisions as to how this proceeds will be made through the Planning Board. The Planning Board took a pause, they said we have a question, does this application go through as of right, because it exists, or do we need to have a Special Permit? So there was a question of law as to how to proceed, and that specific, limited question was referred to us. Does it need a permit, or not? I think you've heard, at least from me, from day one I could not understand how this would not require a Special Permit, and in speaking to members of the community I think that is what everyone here wanted to hear that, and I happen to agree with that from day one. That being said, that does not mean that this is going to be built, or how big it's going to be built. It just gives the Planning Board a direction, and if they want to proceed with this it will have to craft a Special Permit, and put in whatever restrictions they deem are appropriate. We don't issue that permit. We just tell them whether we think it's required or not. So that is the decision before this board. I think that what I've heard tonight, and what I've been hearing lately is that there is a tremendous room for compromise here between the public, and the Yeshiva. If sane lines due prevail, and if there is a meeting of the minds, this project can go forth so that both parties profit from this. If anyone of the mind that this is simply going to go away, and that there won't be a Yeshiva in this town, I think will be disappointed, and I think will be dismayed by that attitude. Anyone who thinks that this is going to become a huge university is also going to be disappointed, because I think you've heard from every member here, and in the community as well as on this board that there has to be a limitation. So no matter how large, or how small again, is the purview of the Planning Board. We don't step on their toes, and they don't step on ours. The lines are very finely drawn, and by law we're going to respect those lines. I think that if the community meets with the applicant a happy number that can be reasonably hammered out, and with compromise with both parties they will probably be unhappy to some extent, but a reasonable, acceptable can be achieved, and all the other issues become that of structure, and where it is situated, and how it's sited, and I think all those can be hammered out very easily, and quickly through the planning process with public support. So at that, I have made my comments.

Mr. Mattis asked if there anyone else?

Mr. Chin stated I agree with Dr. Becker on his comments. I am strictly for a Special Permit on this project, and I think we should hand it over to the Planning Board at this point.

Mr. Seirmarco stated I see frustration in it's highest, frustration from the applicant's end who thinks they don't need a Special Permit, and frustration from the neighbors who came out this evening who say that there should be a lot more discussion at the Planning Board level, and a lot more consideration in regard to the numbers of students, and other issues. So just bear with the process, and I agree with Dr. Becker that this is a great country, and we will see the process go to its' end, and the Zoning Board is a very narrow board, and I did agree from the beginning that a Special Permit is required in this.

Mr. Reber stated I would like to go even farther in regard to how the applicant states it is unclear, and ambiguous. They don't believe that a Special Permit is required, and they stated that when it is ambiguous you have to yield to the benefit of the applicant. I don't think that it is ambiguous at all in the code. It is very clear. I think the distinction is very clear by the code, and definitely places it in a Special Permit category. So I am supporting a Special Permit, and I am not doing that to guess at it. I think the code is very clear, and definitely defines it that this a Special Permit case.

Mr. Douglas stated I agree that the code is rather clear, and a Special Permit is required, and as for the variances I haven't heard anything tonight, and I cannot think of any reason why these variances should not be granted under the legally binding facts of variances.

Mr. Heady stated I agree with Dr. Becker also. I agree that the public and the applicant ought to get together, and try to compromise. I think it would be a good idea for the community to do that, and it would help out the process tremendously.

Mr. Mattis stated okay. I agree with all the previous comments also. The need for a Special Permit, and in the Zoning Code on page 307-85 it says universities, colleges, and seminaries, and I don't think there is any ambiguity there, and that requires in an R-40 area a Special Permit, and as for the variances again, I don't there were any comments that would give us reason not to grant those. I do want to thank all of you for coming out for these several months. This is democracy. This is what makes it work, and it also allows us to more effectively carry out our responsibilities. So I thank you for your interest, and for coming out.

Applause.

Mr. Becker made a motion in Case No. 23-07 to close the public hearing seconded by Mr. Seirmarco with all voting "aye."

Mr. Becker made a motion in Case No. 23-07 to Reserve Decision seconded by Mr. Reber with all voting "aye."

Mr. Richmond asked are you going to indicate to the Planning Board that we can proceed there?

Mr. Mattis replied yes, we'll have a directive sent to the Planning Board that indicating that we are leaning toward the Special Permit, and the approval of the two variances.

Mr. Klarl stated so we closed the public hearing tonight, and Reserve Decision, so that means at the next meeting on August 15<sup>th</sup>, that this board will look at a draft Decision & Order like they did at the first application tonight, and see whether or not the board will be adopting that Decision & Order. So at the next meeting they will decide whether or not to adopt the Decision & Order, and they can even put it off for another month, because this board under NY State law has 62 days to close the public hearing, and render a decision. We anticipate that there will be a draft Decision & Order for the board's consideration at the August meeting, and it will be there

that the board can decide whether or not to adopt it.

Mr. Joel Benedict appeared before the Board. He asked when is the Planning Board meeting?

Mr. Klarl replied August 7<sup>th</sup>.

There was a ten minute recess.

## **NEW PUBLIC HEARINGS**

CASE NO. 27-07 ERNEST KNIPPENBERG for an Area Variance for the side and rear yards for proposed building addition and an Area Variance for Landscaping Buffer on the property located at 6 Dogwood Rd., Cortlandt Manor.

Mr. Ernest Knippenberg and Mr. Joel Greenberg appeared before the Board.

Mr. Greenberg stated I am the architect for Mr. Knippenberg, and his business as Hudson Valley Bus Company. We have been before the Planning Board for several months now to review a site plan for this particular building, which is an addition to the existing building. This business has been there for many years, which I am sure many of you know. However, if you look very carefully at the configuration of the property you can see that obviously that no matter what we do some variances will be required, fortunately they are all Area Variances. The variance that is required for the building is because the building addition, and the existing building are right at the intersection of the L, where the two parcels meet. We have now merged these two parcels, and we now have a single lot, and a single deed, which was one of the requests of the Planning Board. That has been taken care of. The other variances that are being requested are some slope variances with regard to landscaping. As I am sure many of you are well aware if you look behind the area where they are parking buses now over here (referring to the drawings) the mountain gets pretty steep, and at the request of the Planning Board originally we did have the added bus parking further away from Dogwood Rd., but we were cutting into that mountain tremendously, and the board felt that environmentally that the mountain, as much of the mountain as possible should remain, and therefore we moved it forward. However, as you can see here the landscaping that we do have is quite extensive, and the only place that is open is 6.3 feet in one spot, which is abutting a piece of property that is owned by the County of Westchester. There are no residences, obviously, in this particular area. All the property including the mountain behind us is owned by the County of Westchester. Across the street there is an animal hospital on the corner, and couple of commercial buildings, air conditioning business, and I believe an excavator owns the building in the middle. Obviously, I do believe that these variances will not adversely effect the neighborhood. As far as self creation, they are created because of the configuration, and the shape of the property. So if there are any questions, I would be happy to answer them.

Mr. Becker stated I was out there on Saturday around noon time, I guess there was no one there, but I walked the property, and with the information provided I have a good idea as to what you

are trying to do. I have some questions though. It is a pretty large structure, and I suppose the advantages of this would be to eliminate the need for outdoor bus storage?

Mr. Greenberg replied this area here that abuts Dogwood Rd. is where the buses are parked. Right now, as you may have seen on Saturday, there is no formalized area for the cars. So the buses and cars are sort of mingled. On this proposal the buses will be on the east side, and the office, and maintenance area will be on the west side at the intersection of Highland Avenue, and Dogwood Road. Also, the addition that we're proposing will be for additional maintenance space to accommodate more buses.

Mr. Mattis asked what you are showing there will be facing Old Albany Post Rd.?

Mr. Greenberg replied yes, correct, Highland Avenue/Old Albany Post Rd.

Mr. Becker stated that is what I was trying to get at it. My concern is that there is an attempt now to fix up that Old Albany Post Road/Rte. 9 corridor there with that new hotel plan. So it is very important to me, because we are trying to attract business to that part of town. So that visitors to that new hotel will not be looking out on a bus yard, but rather a structure, and so that in my mind this would be an improvement.

Mr. Greenberg stated that was exactly our thought to get the buses on the Dogwood Road side where there is basically an air conditioning business, and other businesses, and then the car parking, and the new building would be facing Albany Post Rd., and I assume the hotel will be going just beyond the restaurant.

Mr. Mattis asked are there any other comments?

Mr. Chin replied I basically agree with Dr. Becker. Based on the site plan, everything else I think this would really make an improvement. I would not have a problem with the variance that is required.

Mr. Reber stated I too would agree that the layout is an improvement. However, there is one issue here that bothers me, and that is minimal landscape coverage. The code requires 25 percent, and this plan is less calling for about 17.9 percent. So basically what that is saying is that most of the property will be covered by building, or pavement. The concern I have is the fact that it is below a mountain. I talked to the property owners across the street, and there is whole issue of drainage there, and water run off, and we know that most of the problems that exist are in theory because of paving, paving, paving, and then you end up flooding with heavy rains. Personally I could not approve of this variance without addressing the drainage, a statement from DOTS saying they have evaluated this, and that there is proper provisions to withhold the drainage, and the water off so that flooding, and difficulty to the neighboring properties will not exist from all of this paving, or the alternative is to have less pavement. That is my opinion. I need some more information on that.

Mr. Greenberg stated yes as you know, as I mentioned before this is before the Planning Board, we've already had our public hearing, and we have had many meetings, and discussions with the Department of Technical Services, and especially Ed Vergano, the Town Engineer. In fact, I just spoke with him today regarding matters, and this particular issue. So to answer that question the bottom proposal that is being approved on the site plan that is in front of the Planning Board will be addressing that issue. In fact, we show on the drawing how we are going to address that issue. As you know, as you add more paving you will have more run off, and obviously we don't want to adversely effect our neighbors across the street, because most of it is because of the slope and the way the topography is now it will go across Dogwood Rd. down towards the animal hospital etc. So what we've done is (referring to the drawings) we have now a series of catch basins and a series of very large storage pipes which will then store any excessive storm water that goes down to a dropping that is at the corner of Dogwood Rd. and Highland Ave., and from there it is piked so it will eventually go down to the brook. What we've done is, and as far as the drainage study is to not increase run off any more than it is at the present time, and basically these enlarged pipes that we're will be in-between the catch basin will store the water so that the water basically will be reverted, and will drip off at a slow pace, and these are designed so that the run off that will lead to the corner of the road will not take anymore water than it is taking now. In fact, what is going to happen now because we are creating curving, and paving along those roads, right now there is run off from the area where the buses are parked along Dogwood Rd., and the water does flow across Dogwood Rd. onto their properties. By putting this curving in, and adding catch basins, and the large pipes, in fact, we're going to probably be losing some, because nothing will be coming across Dogwood Rd. now so that the properties across the street will be protected, and obviously this is something that is a Planning Board issue that they are very concerned about, and we have addressed it. Like I said, I spoke to Mr. Vergano today, because obviously we are coming up to the Planning Board meeting in a couple of weeks, and I just wanted to make sure that he was on board with what we were doing. So he is certainly aware of it, and is certainly reviewing it as is the Planning Board as well. So this is an issue that is of much concern to the Planning Board, and the engineer.

Mr. Reber stated I would like to ask for a statement in writing for the record from Mr. Vergano to that effect.

Mr. Mattis stated we can do that subject to approval. Are there any other comments? When I was first on this board, the first decision I ever voted on was to expand that very garage. You are actually making it look better, and now you are taking it the next step, and making it look even better. So it will fit in well with the character of all the new development there. There is a very tough piece of property to do anything with, and I think you've done a very good job. Is there anyone in the audience that would like to speak?

Mr. Becker made a motion in Case No. 27-07 to close the public hearing seconded by Mr. Chin with all voting "aye."

Mr. Becker made a motion in Case No. 27-07 to grant a side yard variance from 25 feet down to

6 feet for the proposed addition, and a rear yard variance from 25 feet down to 14.3 feet for the proposed addition, and an Area Variance for the landscape coverage from the required 25 percent down to 17.9 percent, and an Area Variance for the landscaping buffer from 25 feet down to 6.3. I would like to add that this is contingent that the storm water issues can be resolved in satisfaction to both DOTS and the Planning Board. 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. 28-07 GREG WILLINGER for an Area Variance for the front yard set back for construction to the dwelling and side yard set back for proposed accessory structure on the property located at 317 Watch Hill Rd., Cortlandt Manor.

Mr. Greg Willinger and Mr. Christopher Borchek appeared before the Board.

Mr. Borchek stated I am the architect for the applicant. I will just briefly describe what we are trying to do here. It is an existing house located at the intersection of Watch Hill Rd., and Furnace Dock Rd. It is an existing, nonconforming structure. They want to put a small addition 16 wide, 20 feet off the existing house, one story tall in the back, side yard. The other pieces that we are looking to do would be rebuilding the back of the house. It is an original colonial structure in the front of the house. It looks like at some point in time it was added on to. The ceilings back there are very, very low. I can't even stand up in some of the spots. So we are going to be going off the existing second floor, building up, and increasing the height of the first floor, and then there would be a new second floor built on top of that. There will be a little bit of dormer work upstairs between two existing dormers on both sides of the house to try to create a little bit more space up there, and then there is an existing front porch right now, and we are looking to put an open roof structure over the front porch. The last piece we are looking for are a portable structure over the existing parking spot. Again, it will be an open structure. The idea is just to keep the rain, and snow off of the cars. That is probably the closest to the neighbors. We do have a letter from the neighbor next door who is the most directly effected. Basically, it just says he has no issues with it. There is a heavy landscape buffer between the existing parking area, and the neighbor's property. He handed the letter to Mr. Mattis.

Mr. Mattis stated this letter is from John Fulmouth at 406 Furnace Dock Rd. He is directly to the side of the carport. He read, “ I live next door to 317 Watch Hill Rd. My neighbor, Greg Willinger told me about their intended renovations specifically the carport closest to my property. Purgala is a minimal structure that will merely cover their cars without effecting my property, or my views. I have no objections to such renovations being made. I hope this helps you in your decision. Sincerely, John Fulmouth.”

Mr. Chin stated I drove by and looked at this. I like what you are doing, and I really have no problem with anything that you are doing. I just want to ask you one question on the pergola. Why does there have to be a 4 foot variance over there? Can you move it over?

Mr. Borchek replied we are building over an existing parking area. So it is about 2 feet from where the actual paving is to the property right now. So the idea is to just put it over the existing area without paving.

Mr. Chin stated so it could actually move over if you had to.

Mr. Borchek stated yes sir, if it had to.

Mr. Chin stated that is the only objection that I have with this. It is only a little paving there.

Mr. Borchek stated well we can probably move it over. I am sure this is going to be some demolition of the paving anyway. We are only talking maybe 4 feet.

Mr. Chin stated if you move it over, then you would not need that variance. I think I would have no problem with it at all.

Mr. Mattis stated one of the things we are charged with it to either eliminate or reduce variances whenever possible, and I understand you have paving there, but there is no compelling reason why you have to keep it right there, and not move over 2 feet. Again, this sets a precedent for the rest of the town, and for other cases.

Mr. Willinger stated I would be willing to move that over. I would not have a problem with it.

Mr. Borchek stated my question would be one of procedure. Is that something I would update in the drawings for Jim?

Mr. Mattis stated yes, but for right now we can just have you say that you are withdrawing it.

Mr. Borchek stated okay, fair enough.

Mr. Reber stated I have a question just for the record. Do you know approximately when this house was built?

Mrs. Willinger replied around 1790.

Mr. Reber stated I kind of thought so, because it is right on the road. You are not doing anything to encroach closer to the road. So I have no problem with this. I just want that in the record.

Mr. Chin stated that is the only objection that I had. So I have no problem with it either.

Mr. Becker stated I just have a question for some clarity. When the new dormer in the front is built, that won't effect the four large cedar trees that are there?

Mr. Willinger replied no sir, we want to keep those preserved as much as possible.

Mr. Becker stated yes, because I think those cedar trees are very special, and provide very great screening.

Mr. Willinger stated we would never want to take those down.

Mr. Borchek stated we have been very careful about trying not to do any work on the facade of the house.

Mr. Becker stated any way you can protect those trees during the construction process that would be great.

Mr. Mattis asked is there anyone in the audience?

Mr. Douglas stated I just want to say thank you to you daughters for being so patient. I am very impressed.

Mr. Chin made a motion in Case No. 28-07 to close the public hearing seconded by Mr. Heady with all voting "aye."

Mr. Chin made a motion in Case No. 28-07 to grant the front yard variance from 50 feet down to 12 feet for the proposed construction, and a side yard variance is withdrawn, This is a Type II Sequa with no further compliance required seconded by Mr. Heady with all voting "aye."

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CASE NO. 29-07 CROMPOND RD. LLC for an Area Variance for the size and height of a proposed freestanding sign on the property located at 2293 Crompond Rd., Cortlandt Manor.

Mr. appeared before the Board. He stated I approached this board back in March for a height variance and a square footage variance on the sign for Old Westchester Chrysler Dodge Jeep on behalf of Chrysler Corporation. At the time there were three issues. One was code interpretation variance, which the board denied, and asked me to resubmit for a smaller size sign than originally proposed. It was an 8' 3" x 6' 1 3/4" sign, we've resubmitted an application to the board for a 6' 3" pole sign by 5' 1" sign as the Town Code requires that the pole covering is included in the square footage calculation of the sign area. This should bring this square footage well within the board's reach, if we're granted an Area Variance. We still request that the height be kept at 20 foot. There was discussion about clearance issues with trucks, and access to the property. That will still give up about a 14 foot clearance height as this sign does flag into the property, and is pretty tight on the property.

Mr. Klarl asked the applicant did you receive in the mail a site plan resolution from the Planning Board?

Mr. Votis replied I would have to check my file.

Mr. Klarl asked were you representing the applicant before the Planning Board?

Mr. Votis replied I was here the last time.

Mr. Klarl stated they wouldn't have sent you a resolution if you were not there.

Mr. Votis stated I was actually there too.

Mr. Klarl stated it would have been sent to whoever the company designated the mailings go to.

The owner, who did not identify herself, stated I may have received it, but my brother was there last time.

Mr. Klarl asked who was the person that would have been receiving the mail from the Planning Board?

Mr. Votis replied I am the installing contractor, but the application would have been addressed under the property owner.

Mr. Klarl stated I think someone else was there representing them for the site plan.

Mr. Votis stated as far as I know the site plan was approved without question.

Mr. Reber stated well I guess our point is the plan I see is two different ones N01, and NS for the sign on the property. Now if you are looking at the property the sign is going all the way to the right entrance correct?

Mr. Votis replied originally the sign was on the other end of the property, but we did relocate it.

Mr. Reber stated as far as this plan it shows that from Gregg's area to the building it is a 60 foot paved area, which is a lot wider than most of the roads in the town. So to me if your concern is to put the sign there then you can go back to the Planning Board, and change the curb cut the way it was designed there. We can only give a variance based on five reasons, because there is no alternative, etc. This is arbitrary because you want to have trucks turn in there, you have plenty of room there, if you redesign that entrance. So I don't see any specifications as to why we should give a variance.

Mr. Votis stated where the sign is going is where the building is closest to the road.

Mr. Reber stated right that is still a 60 feet set back from the grass the way I'm looking at it.

Mr. Votis looked at the drawing with Mr. Reber. He stated the argument we are making is that the tractor trailer will come around here, and then come around the front, and there is a good

chance he can clip that sign.

Mr. Reber stated I have worked at sites that were designed for trucks, and warehouses, and we've worked in a lot tighter spaces than that I'm sorry.

Mr. Votis stated I am not arguing that point. I'd rather avoid a potential problem than have to deal with one after the fact.

Mr. Reber stated but we grant variances because there is no alternative, and I don't see any issue here that says you have no alternative.

Mr. Votis stated if you also look at the 60 foot, that sign is approximately another 10 feet in from that 60 foot mark so you actually have 50 feet.

Mr. Mattis stated you would have to get the curb cut that's all.

Mr. Votis stated then it is going to be flagging in on the curb cut.

Mr. Mattis stated there is no compelling reason here why we should grant this variance. You are going to have redesign this, and cut the curb so you can achieve what you want without a variance.

Mr. Heady stated you have that grass part there back on the property just put the sign there. There are parking spaces there for used cars there. It could be put there and the 16 feet wouldn't both anything there.

Mr. Votis stated one of the reasons why I am presenting this to the board is because the board did lead towards favoritism for possibly granting a height variance providing I submitted a smaller sign, and remove my variance for the interpretation to the code, and just go with a smaller sign. The board actually did elude to that.

Mr. Mattis stated I was pretty adamant that I would not grant anything that high.

Mr. Votis stated I believe your exact words were the board would entertain about 18 feet or something along those lines.

Mr. Mattis stated well maybe it was someone else who said that. I know I didn't.

Mr. Douglas stated personally I would be in favor of granting the size variance but not the height variance.

Mr. Becker stated any other businesses in this town had to deal with the same guidelines.

Mr. Seirmarco stated you will just have to work at the height of the sign being 16 feet.

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

Mr. Votis stated I have one final question for the board. Should a hazard happen because of the restrictive of this height who assumes the liability?

Mr. Mattis replied that is a legal question, and I can't answer that.

Mr. Klarl asked and when did you plan for this to happen?

Mr. Mattis stated I don't know of any sign in the town that is over 16 feet.

Mr. Votis stated we are not trying to put a high rise up here.

Mr. Reber stated it is a site plan issue, and if you think the site plan is not appropriate you can go back to the Planning Board.

Mr. Mattis stated if they feel it is a problem, you can come back to use, and we'll reopen the case.

Mr. Heady stated where your location is there on Rte. 202 either going east or west the site distance is very good to see any signs there.

Mr. Votis stated I'll be honest putting a smaller sign higher in the air is more conducive. If you want a bigger sign, obviously the higher you go the smaller it looks.

Mr. Mattis stated yes, you are arguing against your point now.

Mr. Votis stated I am arguing against myself, but I am arguing in the reason in what I do is common sense in avoiding a safety hazard. That is the only reason why I am here again before the board.

Mr. Mattis stated again, if you have some issues with the Planning Board, you can bring this up, and we can always reopen the case.

Mr. Chin asked it is still in front of the Planning Board correct?

Mr. Votis replied I don't think it is. I think once we get an approval here we can go ahead with construction.

Mr. Reber stated usually the Planning Board doesn't close the case until we are finished.

Mr. Klarl stated they may occasionally close subject to any variances necessary. I don't want to speak, because I am really not sure it was concluded.

Mr. Flandreau stated a lot of times with the signs they'll give their approval contingent on the

sign variances from this board.

Mr. Mattis stated the short answer is we don't know.

Mr. Becker asked sir how do want us to proceed given what you've heard hear?

Mr. Votis replied well obviously we want to get some resolution to this as soon as possible, and if I can't convince the board to my argument we will just have to concede to whatever the board will agree to.

Mr. Mattis asked are there any other comments?

Mr. Douglas made a motion in Case No. 29-07 to close the public hearing seconded by Mr. Becker with all voting "aye."

Mr. Douglas made a motion in CaseNo. 29-07 to grant a sign variance for the size of the proposed freestanding sign from the allowed 24 square feet up to 39.1 square feet, but we deny the requested height variance for the proposed freestanding sign. 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. 30-07 MICHAELS STORES INC. for an Area Variance for a proposed wall sign on the property located at 3131 E. Main St., Mohegan Lake.

Mr. Scott Pecumber appeared before the Board. He stated I am representing Michael's in this application. Thank you for persevering, I know it's a late night, I'll be brief. First I want to say what an incredible facility you have here. I have been to quite a number of these, and this has to be the top facility that I have seen even to the deflibilator in the hallway, which might have come into play earlier. Basically what we're looking for here for is a wall sign for Michael's new store. It's my understanding that the vacated tenants, the prior tenants had a variance for 136 square foot sign. We'd like to ask the Board to consider a sign slightly than that size of 128 square feet. I do want to say briefly that the sign we are asking for is a tremendous reduction from the prototypical Michael's sign, which is generally about 364 square feet. In our proposal here I think we are being very consistent in what's presently out there in the center, and as I said it is less than what was there prior. I don't think that we're changing the nature of that particular area. We're not directly facing any residential in that area. We are not changing the character of the property.

Mr. Mattis stated basically you're putting up a sign with 4 foot high letters like they had, but just a little bit narrower.

Mr. Pecumber stated right, exactly. I mean I have photographs of the old sign so you can see them.

Mr. Seirmarco stated just make sure if it is approved that you have the sign measured before you put it. We don't want to find out after the sign is up.

Mr. Flandreau stated that is right on the Building Permit now.

Mr. Mattis stated we had some signs that were put up that were much bigger than what we approved.

Mr. Pecumber asked you mean you didn't approve 136 square feet?

Mr. Mattis replied no, not there. It was another store in the Town Center. That is why we require not that they be measured before they are put up.

Mr. Heady asked is the sign already made yet?

Mr. Pecumber replied no, not yet.

Mr. Heady stated the sign that was there before was bigger than this one. So I really have no problem with this. It should work out alright.

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

Mr. Heady made a motion in Case No. 30-07 to close the public hearing seconded by Mr. Chin with all voting "aye".

Mr. Heady made a motion in Case No. 30-07 to grant an Area Variance for the proposed wall sign from the allowed 80 square feet to a 128 square foot sign, and a heigh variance from the allowed 3 feet to 4 feet high. 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. 31-07 BEST RENT PROPERTIES LLC for an Interpretation that the Town Attorney's determination that the property at the southwest corner of Westbrook Drive and Oregon Road cannot be developed as a retail shopping center.

Mr. Flandreau stated we received a letter from the applicant asking for an adjournment for this month.

There were several people in the audience.

Mr. Mattis stated I apologize I didn't realize all you people were out there for this case. I thought you were here for the Yeshiva case. We will open the public hearing, if anybody wants to make a comment.

Mr. Jerry Underwood appeared before the Board. He stated I live at 2 Priscilla Ct. Other than sitting here, and waiting I just hope that the board, you gentleman, will take a very, very close look at what Best Rent is proposing, and especially the laws that Tom Wood dug up. He did an excellent job finding that there were laws that were in effect that should not have granted commercial zoning there.

Mr. Klarl stated he found notes on old filed maps from the 60's. He thinks that those notes have some effect on this application.

Mr. Underwood stated yes, we understood that. Linda Puglisi was nice enough to meet with many of the people that here now, and she told us everything that Tom Wood did, and all the hard work that took place. I didn't want the rest of my neighbors, and large contingency from the new development, which is across the street to go unnoticed. I don't think we will get 50 percent of what we wanted to accomplish tonight with the applicant not being here.

Mr. Klarl stated I am sure that if the applicant shows up at the August meeting more will be accomplished. The applicant has received a memo from Mr. Wood after his research looking at the notes on the maps from the 1960's, there has been some legal discussion back, and forth, and based upon on that I think the applicant wanted to take a time out to discuss the whole project. Apparently there is a contract involved here with a seller, and a purchaser, and based upon what they have heard from the research the seller, and purchaser may want to rethink their deal. So I think they took a time out so that they can have a discussion about what has transpired.

Mr. Underwood stated that is pretty positive from what they are intending to put there, four 50,000 square foot buildings. I am not sure if any of my neighbors, and friends want to say anything. Thank you.

Ms. Maria Langiolotta appeared before the Board. She stated I am a new resident of Cortlandt Manor. I live in the new development, Hollowbrook Mews. The presence that you see here is smaller than the presence that was at the Planning Board meeting. We are in total opposition of this. I do want to mention just two things. First of all, the notification for this meeting came very late into Hollowbrook Mews, and I don't know why that it is. Also, it did not come in the mail it came on the side of our door boxes.

Mr. Flandreau stated I can explain that. We had to notify the adjoining neighbors, and the system still has Toll Brothers as the property owners for the Hollowbrook.

Ms. Langiolotta stated trust me we've paid Toll Brothers.

Mr. Flandreau stated I believe you. So when I found this out, when I came back from vacation after the mailings were done, I decided to put these letters onto all the mailboxes, because it is a federal offense to put something in the mailbox.

Ms. Langiolotta stated well they blew off all over the grass area.

Mr. Flandreau stated I talked to one of the Toll Brothers people there, and they said that they would make sure that they would be placed properly.

Ms. Langiolotta stated that was your first mistake. Anyway, we met with Madame Supervisor, and I thought I heard, or misheard that there could be some negotiations as far as this is concerned, because of that letter that was dug up. So that is our concern at this point, that there is an application on hand, and that there will be some negotiations that will go on, and this development will be able to proceed. I just wanted to put that on the record. Thank you.

Mr. Mattis asked would anyone like to speak.

Ms. Theresa Underwood appeared before the Board. She stated I live at 2 Priscilla Ct. My understanding is that originally this was zoned for residential on this lot, and sometime in the early 60's, I guess the Town or somebody changed it over to commercial. Now this particular issue can go back and forth for many, many more years to come. I want to know what precludes the next person, if they decide to renig on this deal that the next potential buyer will want to do the same.

Mr. Mattis stated unless this is withdrawn, and the potential buyer feels it is not worth it, but if we issue a decision that will be the standing decision on that property.

Ms. Underwood asked for good?

Mr. Mattis replied yes.

Ms. Underwood asked do you anticipate doing that anytime soon?

Mr. Mattis replied we haven't heard that argument yet.

Mr. Chin stated it could be a month, two months, it could be longer.

Mr. Klarl stated there are two boards involved here the Zoning Board, and the Planning Board.

Ms. Underwood asked have you ever come across this in the Town of Cortlandt?

Mr. Klarl replied there have been a lot of variations on applications in the Town of Cortlandt.

Mr. Mattis stated they have changed zoning from time to time. This happens to be complicated.

Mr. Klarl stated it has a lot to do with the filed map found for this property, and it has led to a lot of research, and a lot of discussion.

Mr. Mattis stated to give you some guidance on how long, this is third meeting we had on the Yeshiva, and it is the same law firm, and it is probably going to be complicated.

Ms. Underwood stated okay, thank you.

Mr. Robert Rozza appeared before the Board. He stated I live at 10 Priscilla Ct., and I just have a couple of questions. How many times can an applicant make this request? We want to make sure this is not a war of attrition where they just keep on going.

Mr. Seirmarco replied this is the first time. They would have to supply us with a good reason. If there is no reason, we would not grant it.

Mr. Rozza asked if they give a reason then what?

Mr. Becker stated I sympathize with the fact that you sat through this whole evening, and we won't let that happen again. We've opened the public hearing tonight so what we'll do is adjourn that public hearing, but we can move you to the top of the agenda next month.

Mr. Mattis stated generally we don't have that many people here. We had a lot of people for the Yeshiva, and unfortunately you got lost in the mix here, because if I see a crowd here, and we have something adjourned I generally announce that, and I apologize for that.

Mr. Rozza stated one last thing, if they do get another adjournment, is it possible we can be notified via e-mail.

Mr. Klarl stated what you can do is give the Code Enforcement office a call on the Monday before the meeting, and they can tell you the status. We should of had an announcement on the onset, and we generally do that.

Mr. Becker stated I also have a question about one of the comments that was made. Since there was a question of the announcement that went out to the public, can we reannounce this?

Mr. Flandreau replied yes, we can send something out.

Mr. Mattis stated so this will be on the August agenda, which will be on Wednesday, August 15, 2007. Are there any other comments?

Ms. Lori Appel appeared before the Board. She stated I live in Hollowbrook Mews, quick question. When you explained some of things that you use to decide on whether to grant a variance or not.....?

Mr. Mattis stated those are for variances, this is a legal issue.

Mr. Reber made a motion in Case No. 31-07 to adjourn the case to the August meeting seconded by Mr. Chin with all voting "aye."

**ADJOURNED PUBLIC HEARINGS FOR TELECOMMUNICATIONS TOWER TO  
DECEMBER.**

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

Mr. Chin made a motion to adjourn the meeting, seconded by Mr. Heady with all voting “aye.” The meeting was adjourned at 9:55 p.m.

Respectfully submitted,

Christine B. Cothren