

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, June 19th, 2013*. The meeting was called to order, and began with the Pledge of Allegiance.

David S. Douglas, Chairman (absent) other members of the Board were in attendance as follows:

Wai Man Chin, Vice Chairman
Charles P. Heady, Jr.
James Seirmarco
John Mattis
Adrian C. Hunte
Raymond Reber

Also Present

Ken Hoch, Clerk of the Zoning Board
John Klarl, Deputy Town attorney

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ADOPTION OF MEETING MINUTES FOR MAY 15, 2013

So moved, seconded with all in favor saying "aye."

Mr. Wai Man Chin stated adopted.

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CLOSED AND RESERVED:

- A. CASE No. 2012-28 Department of Technical Services, Code Enforcement**
for an Interpretation of whether the pre-existing, non-conforming use of a building or land is reduced by a portion of the building or land being unoccupied for more than a year.

Mr. John Klarl stated thank you very much Mr. Chairman. We have in front of us a closed and reserved case. Essentially, we've been looking at a Decision and Order since I think the April meeting. At the risk of boring the Board and those at home, I'm not going to go through the entire two-and-a-half page Decision and Order, rather I'm going to summarize the initial portion of it and the conclusion and ask that someone make a motion to adopt it. The initial portion of the Decision and Order says: "This is an administrative application by the Department of Technical Services, Code Enforcement for an Interpretation as to whether the pre-existing, non-conforming use of a building or land is reduced by a portion of the building or land being

unoccupied more than one year.” Since this is a generic application, not site-specific, the questioned issue was referred to the Town Law Department for guidance as to handling this issue. The Town Attorney provided this Board with two memos dated September 14, 2012 and February 4th, 2013. The Deputy Town Attorney added a third memo dated February 15th, 2013 supplementing the Town Attorney’s two previous memos. Then, we go into a discussion of a leading case in this area called matter of Toys “R” Us versus Silva where the Decision was written by then Chief Judge Judith Kaye and it talks about that generally you need an abandonment and an attempt to abandon but she also indicates in her Decision that in New York “however, the inclusion of a lapsed period in the Zoning provision removes the requirement of intent to abandon. Discontinuance of a non-conforming activity for the specified period constitutes an abandonment regardless of intent.” We go through some other sections of that case and then we quote from New York Zoning and Practice which are leading treaties in the area and it says “the Zoning Ordinance does not provide a determination of a non-conforming use upon the mere discontinuance of the use for a specific period. Proof of intent to abandon is needed to provide the abandon in use.” Then New York Juror 2nd under non-conforming uses there’s a section that discusses this and it says “the number of Ordinances contain specific provisions terminating a non-conforming use which has been discontinued or abandoned for a certain period of time. In the absence of such an Ordinance provision, a non-conforming use is lost when there’s an actual discontinuance of the use coupled in the intent to abandon the use.” Stated another way “abandonment of a non-conforming use requires both an intent to relinquish and some overt act or third act indicating that the owner neither claims nor retains an interest in the subject matter of the abandonment.” Then, in our Decision and Order we recite Town of Cortlandt Zoning Ordinance section **307-79** and the preamble language is the important language of that statute, it says “if any non-conforming use of a building ceases for any reason for a continuous period of not less than one year” that’s abandonment statute and then we indicate in our conclusion: “Therefore, in light of the Town Attorney’s three memos, the case law on this issue, the lapsed period contained in the Town of Cortlandt Zoning Ordinance **307-79**, which I just quoted from, this Board hereby interprets that the pre-existing, non-conforming use of a building or land is reduced by a portion of a building or land being unoccupied for a continuous period and not less than one year,” i.e. if any non-conforming use of a building ceases for any reason for a continuous period of not less than one year” which is the language of **307-79**. I also indicate that the base of our Decision and Order, that this is a type II application under SEQRA because it consists of the interpretation of an existing code and rule. I would ask Mr. Chairman that someone make a motion to adopt the full Decision and Order that’s sitting in front of everyone tonight.

Mr. Wai Man Chin asked do I have a motion?

Ms. Adrian Hunte stated I make the motion on Zoning Board of Appeals **case #2012-28** for an administrative Interpretation whether the pre-existing, non-conforming use of a building or land is reduced by a portion of the building or land being continuously unoccupied for a period not less than one year, this is a type II SEQRA, no further compliance action and we adopt the D&O.

Seconded with all in favor saying "aye."

Mr. Wai Man Chin stated we adopt the draft D&O for **2012-28**.

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ADJOURNED PUBLIC HEARINGS:

A. CASE No. 18-09 Post Road Holding Corp. for an Area Variance for the dwelling count for a proposed mixed use building on the properties located at **0, 2083 and 2085 Albany Post Road, Montrose.**

Mr. John Klarl stated on this application, as you're aware, we have an application before the Planning Board, a companion application and it was recently on the Planning Board agenda and the Planning Board did two things: #1) they had a site visit on June 2nd and #2) they scheduled a public hearing for July 2nd. We've kind of finished up with our portion of the application but we're waiting for the Planning Board to complete their application. I would suggest, Mr. Chairman, that we adjourn this to August since the Planning Board will have it on their July public hearing and probably have a Resolution in August. The discussion at the Monday work session was adjourn to August.

Mr. Wai Man Chin asked do I have a motion to adjourn to August?

Mr. James Seirmarco stated I'll make a motion on **case #18-01** to adjourn this to the August 2013 meeting.

Seconded with all in favor saying "aye."

Mr. Wai Man Chin stated adjourned.

B. CASE No. 2013-11 John Lentini, architect, on behalf of Elease Hunter for an Area Variance for the rear and front yard setbacks on property located at **2 Logwynn Lane, Cortlandt Manor.**

Mr. John Lentini stated good evening Mr. Chairman, ladies and gentlemen of the Board. My client couldn't make it here tonight. She asked me to apologize. She's attending graduation ceremonies. They're going on all over the place. Based on the feedback from the Board, they had agreed to reduce this house its original condition that is shown on a survey that I believe matches the Town records. There are still Code issues that we're going to have to address with the Town but we're in the process of removing everything. The sheds have already come down and been carted away and we are disconnecting the extension. It did have electric and we needed a licensed electrician to come in and disconnect the extension. It turns out the extension was rather flimsy and would have had a lot of Code problems anyway to maintain it, even if you were to have approved it but my client understands the reasons why our going ahead to reduce the house. We are then therefore asking for a Variance for the existing setback for the house that

was built that way. I did a study of the GIS maps in the area and I found that there are several more houses that have found themselves in the same situation as a result of the very irregular Waterbury Manor. Whenever you have a triangular lot, and at the time probably they had to have septic, now they don't but at the time the houses were put in favor of the septic, not setbacks. I don't know how this application would affect these others if they'd ever been before your Board but just thought I'd advise to that. In any event, we are still seeking a Variance for the front yard where an existing open porch was closed and the **11.28** feet for the rear yard of the existing house.

Mr. John Klarl asked so you want a front yard and a rear yard Variance?

Mr. John Lentini responded yes.

Mr. Charles Heady stated it's nice that the applicant agreed to take that down. It makes it a lot easier for everybody.

Mr. John Lentini responded I'm pleased.

Mr. Charles Heady stated like you said, it's better off, electrical and stuff where it's hooked up.

Mr. John Lentini stated I agree too.

Mr. Charles Heady stated but on the front where you need a Variance, we've given Variances like that before to close in for the weather on the front door. There's no problem with that at all. On the other Variance, you should have had that before because the way they built the house years ago, too close to the line. I have no other problems with this. It's a very good job you've done. Anybody else?

Mr. Wai Man Chin asked any other Board members.

Mr. Raymond Reber responded I concur.

Ms. Adrian Hunte stated I concur.

Mr. James Seirmarco stated I concur.

Mr. Wai Man Chin stated so do I.

Mr. Charles Heady stated I make a motion to close the public hearing on 2013-11.

Seconded with all in favor saying "aye."

Mr. Charles Heady stated I make a motion on **case 2013-11** to grant a Variance required for an area Variance for a front yard setback from a required **30** feet down to **23.45** feet and an area Variance for the rear yard setback from an allowed **28** feet down to **11.28** feet, this is a SEQRA type II, no further compliance required.

Seconded with all in favor saying "aye."

Mr. John Lentini stated thank you very much.

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RE-OPENED PUBLIC HEARING:

- A. CASE No. 2013-12 Michael Piccirillo, architect, on behalf of Lordae Realty for 2121 Crompond Road LLC** for an Area Variance for the size of business wall signs and an interpretation that the building identification lettering is not a sign to be included in the sign area calculation on property located at **2141 Crompond Road, Cortlandt Manor.**

Mr. John Klarl stated first you have to make a motion to re-open it.

Mr. Wai Man Chin asked do I have a motion to re-open this case?

So moved, seconded with all in favor saying "aye."

Mr. Michael Piccirillo stated the last time we were here we were trying to find a way to keep the signage within the granted **100%** Variance so this is an attempt to do that. We were able to do it by reducing the road sign and thus giving more square footage allowable to the building signs. We're still within the square footage maximum with the **100%** Variance and so we're looking for approval for this.

Mr. Wai Man Chin stated it's **99.99%** probably. I have no problem with what the applicant is asking for based on what he indicated on the drawings.

Ms. Adrian Hunte stated I agree.

Mr. James Seirmarco stated normally I would be concerned but the building is in such a position where it is; the size and the linear feet of the building I think all these signs are required so...

Mr. Michael Piccirillo stated and it is set back quite a bit off the road.

Mr. Wai Man Chin asked anybody in the audience. I'm going to make a motion on **case 2013-12** to close the public hearing.

Seconded with all in favor saying "aye."

Mr. Wai Man Chin stated I make a motion on **case 2013-12** to grant a Variance, an Area Variance for the size of business wall signs 54 square feet to the proposed **27.9** square feet which is about 100%, this is a type II under SEQRA, no further compliance is required.

Seconded.

Mr. John Mattis stated before we vote I think we should reference the date of the drawing: June 25th – no, that was the original. Latest revision June 14th.

Mr. Michael Piccirillo stated and it's **64** feet, not **54**.

Mr. John Mattis stated yes, **64**.

Mr. Ken Hoch stated John, there's no Interpretation.

Mr. John Klarl stated for the record the applicant had indicated on the record last time he was withdrawing the Interpretation for this application and you reiterate that right?

Mr. Michael Piccirillo responded yes, absolutely. There's no need for it.

Seconded with all in favor saying "aye."

Mr. Michael Piccirillo stated thank you very much.

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NEW PUBLIC HEARING:

A. CASE No. 2013-14 Carmine and Carol Centouri for an Area Variance for the front yard setback for an existing wood deck on property at **5 Whittier Ave., Cortlandt Manor.**

Mr. Charles Heady stated it's been adjourned until next month.

Mr. John Klarl stated there's a written request.

Mr. Ken Hoch stated I received an e-mail today from the applicant requesting an adjournment due to an illness.

Mr. Wai Man Chin asked do we have a motion to adjourn until July.

So moved, seconded with all in favor saying "aye."

Mr. Wai Man Chin stated that's adjourned until July.

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ADJOURNMENT

Mr. Wai Man Chin asked I make a motion to adjourn the meeting.

So moved, seconded with all in favor saying "aye."

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**NEXT MEETING DATE:
WEDNESDAY JULY 17, 2013**