

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, March 17<sup>th</sup>, 2010*. The meeting was called to order, and began with the Pledge of Allegiance.

David S. Douglas, Chairman presided and other members of the Board were in attendance as follows:

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

Also Present

Ken Hoch, Code Office Manager  
John Klarl, Deputy Town attorney

**ADOPTION OF MEETING MINUTES for Feb. 17, 2010 and corrections to page 6 of Dec. 2009 minutes and pages 24-25 of the Jan. 20 minutes as requested by Board member Charles P. Heady, Jr.**

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

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**PUBLIC HEARINGS ADJOURNED TO APRIL 2010 DUE TO THE MORATORIUM**

- A. **CASE No. 51-08**                      **John Nolan dba Cortlandt Organics** for an Interpretation if leaf composting and wood waste processing facility is a permitted use in the M-1 district on the property located at **33 Victoria Avenue, Montrose.**
  
- B. **CASE No. 06-09**                      **Department of Technical Services** for an Interpretation as to what constitutes demolition/distribution of concrete aggregate as it was used in Zoning Board of Appeals **Case No. 33-08** Decision and Order.
  
- C. **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.**
  
- D. **CASE No. 08-09**                      **Jorge B. Hernandez, RA for M & S Iron Works** for an Interpretation if a structural steel & iron erector is a Special Trade Contractor on the



Mr. John Klarl stated Mr. Chairman, on this application we've had a Decision and Order which we've held in abeyance for some time. We actually had a discussion with the applicant about the Decision and Order back at the January meeting and then we came to our February meeting and we only had three voting members that night. It's been adjourned to tonight but the Board has it its hand the proposed Decision and Order on Congregation Yeshiva Ohr Hameir for adoption tonight. I assume that pursuant to our discussion at the work session on Monday night that someone will make a motion to adopt that proposed Decision and Order.

Mr. John Mattis stated I make a motion to adopt the Decision and Order for the **case 23-07** Congregation Yeshiva Ohr Hameir, seconded with all in favor saying "aye."

Ms. Adrian Hunte stated I'm abstaining.

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### **ADJOURNED PUBLIC HEARINGS**

- A. CASE No. 27-09**                      **Brie Gallagher** for an Interpretation/challenge of Steep Slope Permit No. 20090271 on the property owner by Kyler Cragolin on the property located at **222 Mt. Airy Road West, Croton on Hudson.**

Mr. John Klarl responded on this application Mr. Chairman we've closed our public hearing and we did so at the January meeting. We closed and reserved at the February meeting, once again, we only had three members at the work session the night before the February meeting so we discussed having a full Board discussion at our March work session two nights ago, which it did. The Board has certain thoughts about how to handle a Decision & Order to this application. I contacted the applicant's attorney yesterday and spoke to him today, Mr. Dan Adams, and we agreed to mutually extend the time for Decision by this Board to our April 21 meeting. Having closed in January we could have given Decision and Order in February or March under the New York State Town Law a clock but now that we're discussing it really in earnest tonight and going to have a Decision and Order for the April meeting we did the mutual extension that's required under the New York State Town Law. I have an e-mail that I sent to Mr. Adams that I just want to read and it says: "this will serve to confirm our telephone conversation this morning that the applicant and the Town of Cortlandt Zoning Board of Appeals have mutually agreed to extend the time for Decision by the Zoning Board of Appeals to the meeting on April 21." We're on for April 21 for a decision.

Mr. David Douglas asked do we need a motion for that?

Mr. John Klarl stated no, I assume that someone is going to make a motion to agree that the extension be done and to also indicate that I should prepare a Decision and Order that incorporates the comments of the Board at our work session two nights ago and I'll be happy to do that and I thought I'd get it to everyone about a week before the next work session so we can have adequate discussion and comments before we meet again at the April work session.

Mr. John Mattis stated I make a motion that we close and reserve on this case until next month, that's **case 27-09** Brie Gallagher.

Mr. John Klarl stated he's further reserving until the April meeting.

Mr. John Mattis reiterated further reserving until April, seconded with all in favor saying "aye."

Mr. John Klarl stated and I'll prepare that Decision and Order Mr. Chairman for the Board to discuss.

**B. CASE No. 42-09**                      **Nick Danisher** for an Area Variance from the requirement for the front yard setbacks for a proposed single family dwelling on the property located at **22 Pierce Street, Cortlandt Manor.**

Mr. David Douglas stated I believe that we got a letter seeking an adjournment of this case until the May meeting. The applicant has been having some discussions with DOTS pursuant to our prior hearings and we have a March 5<sup>th</sup>, 2010 letter discussing the fact that they've been having conversations with DOTS and DOTS has requested certain additional information be provided to them and in order to have adequate time to provide that request of information the applicant has requested an adjournment to May 19<sup>th</sup>, which is the date of our May meeting. Does somebody have a motion to adjourn this tonight?

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

**C. CASE No. 01-10**                      **Zuhair Quvaides** for an Interpretation that allows dwelling units over the existing commercial use on the property located at **2064 E. Main Street, Cortlandt Manor.**

Mr. John Lentini stated when I was here last I had asked if I could offer some more of a evidence in a way I'm trying to avoid to enter into a debate but I'm trying to explain what the Town's looking for and not looking on Route 6 at Zuhair's station. Zuhair is here tonight with me. I went through the Code and all around Town without identifying any place in particular. I've prepared a list that I'd like to explain. Could I pass these out?

Mr. David Douglas responded sure.

Mr. John Lentini stated I sought to generalize Route 6 which has three main zones, or actually two main zones: HC and CD, with the Town Center making up the vast majority of CD, and I sought to see what the difference is in these zones that may shed light on this or not and discovered that the major difference between CD and HC has to do with auto dealerships where HC is more permissive and CD isn't. If you take CC, CD, and HC the major differences are specifically involved with adult uses, a laundry, and manufacturing and the differences go both ways. The accessory use difference which is at the heart of our problem where the Code suggests accessory uses are permitted or not. All CC, HC, and CD for accessory building is permitted, outdoor displays, sales, etc. which I wish to get into a little bit better but they're not permitted. One lighted and one dark vending machine permitted and a private garage permitted. What I had originally contended was that we might be a vending machine or we might not even be outdoors but I would yield to the Code Enforcement's description of a vending machine and suggest that we're not – the gas pumps are some sort of a vending device but for the purpose of the Code it wouldn't be a vending machine. But, reading the accessory non-residential uses where "accessory buildings, accessory uses accepted as specified below. The outdoor display storage of goods or equipment except as authorized by other Town regulation. Live plant materials, automobiles, boats and above ground pools for retail sale are exempt from these regulations." The other uses in the Code probably refer to retail uses that include: agricultural, institutional is also where we would have an amusement park outside or a drive-in theater and auto service stations apparently there's a component that's outside which perhaps is the gas pump. It says: "storage of goods or equipment in trailers, boxed trailers or similar vehicles registered or unregistered is not permitted." Well, now our ice machine is a storage box. The box itself isn't prohibited, it's the ice that's prohibited and the propane is in a container. We can't see propane anyway really, but the containers that hold the propane are in another container. The gas pumps again are in a container or is a device that transmits the gas. I understand the difficulty that the Board has with making a decision, however I don't know if decisions were made before for instance, in the Town Center, I believe we have outside dining. I'm not even sure if that's what we don't want to see as part of outside sales that we do have things happening that are being sold outside. So, then I went a little bit further to be a little lighthearted about it. I started thinking about ATM machines that are outside. You can see them outside and there's service from outside, but it's a sales from outside but that may not meet the standards of accessory uses. Then you have, along the same lines as selling fast food outside. Even a trash can is a vehicle outside that wouldn't be a vending machine but serves a purpose and they're all over the place. I enjoy seeing them when you have some trash to throw away but they also would be taking up a very small amount of room and that's what we are, trying to take a very small amount of room with the certain sales of the seasonal items. The propane is a larger amount of bulk cubic feet but in my estimation the propane tanks don't take up too much more than the cubic area of about a car and a half and they are in a place that can't be used for anything else. Same thing with the other sales, they take up partly 8 square feet where an average vehicle is about 200 to 300 cubic feet is what a vehicle is so we're talking about maybe 80 cubic feet of this. In any event, I would hope that the Town Board, and I'm not sure if you can give them a recommendation but if you could I'd appreciate it. Indicate perhaps the size of any of these things: the vending machines, it might be a certain size or else somebody now listening to me will come up with a vending machine larger than the building, there's no limit on

the size. I imagine, one time incidentally, there was three vending machines allowed and then they went down to two and one had to be dark. I'm not sure, I don't want to guess what they were looking at and taking competition aside I believe you just don't want to see a lot of vending machines. You want to see a balance of everything. Again, I'm not sure what the nature of the complaint is because what Zuhair has out there is hardly visible and unless you were looking for it you probably wouldn't even see it especially driving from the street. I understand that this Board wants to refer it to the Town Board and I don't have anything else to add than what I've given you.

Ms. Adrian Hunte stated thank you for your presentation. You are then conceding that the outdoor storage is not allowed and that the tanks and the other items are considered outside as are the gas tanks.

Mr. John Lentini responded I'm not conceding anything. I still believe that all under the canopy is inside.

Ms. Adrian Hunte asked would you say that the gas pumps are inside?

Mr. John Lentini responded the gas pumps are under the canopy.

Ms. Adrian Hunte asked is that inside?

Mr. John Lentini responded that would be under the canopy and one definition is...

Ms. Adrian Hunte asked is that inside?

Mr. John Lentini responded that's inside yes but now the propane goes from inside to outside because half the propane is under the canopy and then it wraps around the back of the building, it's outside for the purpose of the definition.

Ms. Adrian Hunte stated I tend to disagree with you concerning the outside versus the inside.

Mr. John Lentini stated I understand that completely.

Ms. Adrian Hunte stated I think we do have here the definition concerning vending machines that according to Webster's that those machines are not vending machines. You don't pay outside at the machine you have to go inside. They're not ATM machines and they're not air machines where you put the coin in or the vacuum which might be by permit.

Mr. John Lentini stated by site plan approval.

Ms. Adrian Hunte stated by site plan approval. I think that after our discussion that we believe that this should be -- get some more recommendations and return this to the Planning Board for approval, possible site plan approval or amendment.

Mr. John Lentini responded I'm ready to file with the Planning Board. If the Planning Board will suggest that I have to come back here though, because that's what normally happens. I seem to always to this. I come here first, but it often works the other way that the Planning Board will send me here.

Mr. John Mattis stated it would become a coordinated review and we would hold off our decision until we see what the Planning Board does and then we'd simultaneously give our decisions.

Mr. John Lentini stated all agreement.

Mr. David Douglas asked anybody else have any comments?

Mr. Wai Man Chin stated I have to agree.

Mr. James Seirmarco stated I agree with Ms. Hunte.

Mr. David Douglas stated I think we had talked about closed and reserved.

Ms. Adrian Hunte asked anybody in the audience?

Mr. Wai Man Chin stated we want to close and reserve.

Mr. John Mattis stated we would close and reserve, we have 62 days but then if it goes to the Planning Board we would get mutual consent so that we would leave this open until the Planning Board finishes their review.

Mr. John Klarl stated almost like we did the Yeshiva tonight. We had two applications Planning Board, Zoning Board and the Zoning Board adopted a Decision and Order once the Planning Board process was completed. We were planning to do a coordinated review and the Planning Board process they can identify other issues. Typically it's Variances here, it's issues on the interpretation.

Mr. John Lentini stated it makes sense.

Mr. David Douglas stated before we close and reserve is anybody in the public that wants to be heard.

Ms. Adrian Hunte stated on Zoning Board of Appeals **case number 01-10** for Zuhair Quvaides for the property located at 2072 East Main Street I make a motion that we close and reserve on this matter, seconded with all in favor saying "aye."

Mr. John Klarl asked on this application are we going to close and reserve with the idea we're

going to have some kind of D&O to take a look at or you want to send them to the Planning Board saying that we are formulating this? Do you want to look at a Decision and Order for the next...

Mr. David Douglas responded I think we should do a Decision and Order but we'd hold off and then we'd inform the Planning Board of which way we were thinking.

Mr. John Klarl stated which is kind of what you did in the Yeshiva matter. But we would limit our Decision and Order to two issues: the outdoor storage and vending machines.

Mr. Wai Man Chin stated as long as they apply to the Planning Board.

Mr. David Douglas stated right, if they don't then we have 62 days.

### **NEW PUBLIC HEARINGS**

**A. CASE No. 06-10                      Nida Associates** for Area Variances for subdivision of four existing tax lots into four real property lots at **5 and 14 Dove Court, 2003 and 2005 Albany Post Road, Croton-On-Hudson.**

Mr. David Douglas asked anybody here from Nida Associates? Okay, let's hold that off until the end. We have nobody appearing. What we should do is have Mr. Hoch send a letter to the applicant telling them that they need to show up next time and if they don't we will deem the matter to be abandoned.

Mr. John Mattis stated I make that motion that we adjourn and send the letter, seconded with all in favor saying "aye."

Mr. James Seirmarco asked Ken have you had any communication with them today or yesterday?

Mr. Ken Hoch responded no they didn't contact me.

**B. CASE No. 07-10                      Charles and Diana Jones** for an Area Variance from the required for the front yard setback for a proposed covered porch and open stair on the property located at **95 Valley View Road, Cortlandt Manor.**

Mrs. Diana Jones stated after giving serious consideration to all the recommendations and sage advice you offered us at the last meeting, we decided to submit a new proposal for our covered porch and hope that perhaps that this one will meet your satisfaction.



Mr. David Douglas stated can you tell us what the new proposal is.

Mrs. Diana Jones stated the original one was for a 6 foot covered porch. This would be a 5 foot covered porch which would afford us a 25 foot setback rather than 24 and change that the 6 foot would allow and also was noted that our neighbor has a 20 foot setback so that would give us 5 extra feet which already exists on the street.

Mr. James Seirmarco stated as you know I was in favor of the last application and I still think that this is apropos. Again, I visited the area, that whole subdivision was a 280 subdivision. It's unique, most houses are the same, the majority of these houses have a porch. There are two houses on the left side as you go down the street that have – one has a Variance and one was permitted by right. I assume that they got that under the 280 cluster portion. They're all the same house. If you come down the hill and go to the right there are similar houses down there. The majority of them have a porch. I think that is the uniqueness here that the majority of the houses in the neighborhood, which are similar, have porches. If this was a different street and you were the person coming before me and you were the only house on that block that was looking for a Variance I would vote against that. I think this is a very unique situation. I think it was a 280 subdivision. There's a uniqueness to this and I don't have a problem with this one or the previous one.

Ms. Adrian Hunte stated I agree with Mr. Seirmarco and as you know I was in favor of the first application and I am also in favor of this application. We are given our marching orders and we are to consider certain things, one whether an undesirable change will be produced in the character of the neighborhood, I would say absolutely not to this neighborhood is very similar in terms of the houses, the structure, the size. There are houses there that have porches albeit some may not have needed Variances. If you add a porch to this house it will have absolutely no detriment to this neighborhood or the health, safety and welfare of the other individuals in this particular development. I think that you don't have any reasonable alternative. You are asking now for an even smaller porch. The Variance is not substantial. You're talking about a 5 foot porch we're not talking about a 50 foot deck and I don't think that there'll be any adverse impact on any physical or environmental conditions in the neighborhood. In terms of any self-created difficulty: well this is something that you purchased in that condition so I don't know that there's any real difficulty there. It may be somewhat self-created. Also, there's been some concern expressed that by granting this that we'd be setting a precedent. I do not see a precedent as one of the reasons we are supposed to for reasons that we should deny an application. Each application is to be looked at on its own individual merits. With that said I would vote to approve this.

Mr. Wai Man Chin stated I also was in favor of the last application and I agree with Ms. Hunte on everything she said basically. I want to add one thing is that it was a cluster subdivision back about approximately 20 years ago where some of the properties were made a little bit smaller from the front yard setbacks. Is it a self-created hardship? I say yes and no. Maybe part of the Town at that time when they gave the cluster subdivision but I don't see it's your fault either.

So, I'm saying that a 5 foot Variance is not a substantial Variance. I don't see a detriment to the neighborhood at all. I can't see you putting it anywhere else.

Mr. John Mattis stated I respectfully disagree with the other three opinions. We granted one Variance in this subdivision. That was number 111. That was on the cul-de-sac and if you look it looks like it curves around, it's not apparent, it doesn't seem to stick out further than the others. Mr. Jones referred to number 103 which is I believe two doors down from you?

Mrs. Diana Jones responded yes.

Mr. John Mattis stated where it's 25.5 feet to the porch. That was done by the Planning Board. We never granted a Variance for that. That was done as part of the cluster authority in the R20 division. I don't know why they did it. In their wisdom they did it for that one and for reasons, for whatever they are they didn't do it for your property. Directly to the left of you and directly to the right of you are virtually identical setbacks. They do not have porches. This is not about a porch. This is about a front Variance. We look at each case uniquely but this case is not unique. The left side and the right side would be identical and that would set a precedent. The precedent would be that we gave a porch and we gave a Variance and then when they come in it would be the exact same application. The Town created the 30 foot setback for a reason. We generally grant Variances from that when you have properties some are in, some are out and everything but when you have them all in a straight line and one jumps out in front of the other one, and I'm ignoring 103 because we did not give a Variance for that and we're not bound by that, but the probability is that you're going to have two more, the ones on each side of you that are going to come back for the same thing and we've basically told the Town Board then that we don't care about your Code, we don't care about your 30 foot setback, that we're going to decrease it. Your husband argued against, and you argued against the fact that there's a precedent the first time you were here, but when you asked us to reopen the case your husband said something and I'm going to read from that and this is in the minutes. "103 Valley View Road has 20 foot setback. At the time I was told that this Variance were passed it would create a precedent. Well, the precedent's already been set." So, he's arguing that a precedent's been set and that's exactly what I'm arguing about. The precedent would be set. It wasn't set on 103 because we did not grant that. That was done as part of the cluster approval. And, as I said, I have no idea why but there's a reason why they did that one and they didn't do yours. And, for that reason I'd have to vote against this. The difference between 5 feet and 6 feet, this is basically the same case all over again, in my opinion.

Mr. David Douglas stated I've got certain concerns, I'm not sure how I can come out but the two fundamental concerns are similar to what Mr. Mattis has said: 1) I'm having trouble making a distinction between your house situation and the neighboring houses. The Town Board has set rules regarding setbacks. The 30 foot setback is the minimum setback there is in this Town. This is not an R10 zone but in connection with the cluster subdivision, that's what was applied here and we would be, basically, reducing what the Town has declared in its wisdom to be the minimum setback. That gives me some pause. 2) Precedent: now precedent is extremely important. I know Ms. Hunte said precedent doesn't matter but it's extremely important.

Ms. Adrian Hunte stated I didn't say it doesn't matter. Excuse me.

Mr. David Douglas stated I wanted to be clear that in my view, I think in many people's view the precedent is important and we have to be very careful that each decision we do is rational and reasonable and if we make a decision regarding a property then when the next person comes along we're basically have to do it in a uniform way. I'm always very concerned with giving or not giving a particular applicant a Variance because the next person comes in and they say "you gave it to this person." That gives me pause. Driving down the road on your street the houses do appear to be – the visual impact is of them being lined up and I think if you look at the footage they basically are lined up. If we give you this Variance, my concern is that there's no rational reason not to give additional Variances, similar Variances to everybody on this street and arguably to other people in other neighborhoods. When I drove down your street it brought to mind another – we had another application I think it was School Street, a couple of months ago where somebody asked for a Variance in the front and as I drove down your street, again I did it again today on the way to the meeting just to see what my reaction was this time, and again School Street popped into my head. That's what's giving me pause. That's my hesitation at this point.

Mr. John Mattis stated I'd like to make one other comment. There's been mention about hardship. There's no hardship not having a porch. Many, many, many houses in this Town do not have porches. It's not of right that you have a porch. We've had cases where people have wanted pools. It's not of right that you have a pool. If that property supports it fine. There's a reason why those properties were moved up front and that reason is because you wouldn't have a back yard. The builder built the ones where he didn't need Variances and he ignored the porches, or didn't put the porches so he could move the house further to the front to the setback so he could give you a back yard because you have much less back yard than your neighbors. That's primarily the reason why you don't have a porch. There's no hardship involved in this. There are many places, as I said, in the Town where people don't have porches for various reasons. It's not a hardship. It's not a right to have a porch if you need a Variance.

Mrs. Diana Jones responded yes, but it wasn't an option offered to us as it was offered to our neighbors because the houses when they contracted them were in the process of building so it was an option afforded to them that the builder took care of. When we saw the house it was already finished and that option was not available to us at the time.

Mr. John Mattis stated what you're saying would make an argument for any builder who builds on spec and doesn't put a porch that everybody would come in here and say "we didn't have the option so give us a porch." We're not talking about options when you buy. We're talking about Variances. We're not talking about porches that don't have Variances. We're talking about Variances per se. It's not so much the porch. It's the fact that you're having part of the structure come out into the setback regardless of whether it's a porch, whether the house was forward, whatever it is.

Mr. Wai Man Chin stated I'd like to say something else on the precedence issue. Maybe in this cul-de-sac because of the way it was subdivided by the Town and everything else and how it was given, are we setting a precedent in this particular cul-de-sac? Maybe. Does it mean we're setting a precedent somewhere else? I don't think so because then that we have to look at as an individual area and look at it differently. I'd also like to say that when you're saying hardship – when I said hardship was a self-created hardship, basically, it's not self-created by the owner, or the contractor. Maybe it was self-created by the Town at that time when they subdivided this and made some of the lots a little bit less than what was required. I don't know what the argument was at that point or at that time or why some of the lots are further back than some of the other ones. Again, this is the Zoning Board of Appeals and we're here to be able to grant Variances. If we follow the Code all the way throughout than we might as well not have a Board.

Mr. David Douglas stated Mr. Chin, we're all aware that that's what the purpose of this Board is but it's to grant Variances when they're warranted.

Mr. Wai Man Chin continued I think we've indicated a lot of warrants on this. Some people don't agree.

Mr. James Seirmarco stated I think we stated our positions the last time and this time and I'm not going to repeat.

Mr. Wai Man Chin stated we still have two members still out.

Mr. David Douglas stated Mrs. Jones I'm not trying to cut you off, feel free to continue speaking if you want.

Mrs. Diana Jones stated I understand what you're saying, however what I can't seem to wrap my hands around is I don't see that what we're asking is something that would be harmful to the community, harmful to my cul-de-sac, to my neighbors. I have neighbors on either side of me and I have no idea if they're even remotely considering putting a porch in and I don't see where a decision for us is really affecting them for what they're going to think or what they're going to do. They may or they may not. I don't know. They may not have the means or the desire. I just don't see that this is a harmful addition to the neighborhood. I don't see that it's destroying the community in any way. If anything I think it's adding value to the property. It's definitely going to add value to my tax assessment. I just don't see what is so terrible about it.

Mr. David Douglas stated I don't think that anybody is saying that if you were to build this porch that it would be an utter disaster and create harm in the sense of harm with a capital 'H' and all capital letters and all the rest. The issue is really the Town has a public policy as to setbacks in different zones.

Mrs. Diana Jones stated the Town has a public policy about many things that are given Variances and some are less and more harmful than others.

Mr. David Douglas stated exactly. The presumption is that one should follow and must follow what the Town Board has set to be the rules regarding the setbacks. Then, in certain instances we can give Variances and that's what we're considering. So, when people are speaking about harm, I don't think anybody is saying this will be an utter disaster and will destroy the neighborhood. I don't really think that is the issue. The issue is whether we think that under the standards that govern Variances that a Variance should be granted or shouldn't be granted and that's what we're all wrestling with. The last time you know the vote was 4 to 3. Obviously, there are cases that are clear-cut and many of the decisions on this Board are 7 to 0 one way or the other and, in fact, the vast majority are, and then there's some that are gray and for better or for worse, it seems that yours is in the gray area and that's what we're trying to decide.

Mrs. Diana Jones stated people are dealing more with the spirit.

Mr. John Klarl stated Mrs. Jones, I just want to point out a mathematical fact while the Chairman indicated about votes. We have 5 members here tonight, myself and Mr. Hoch are service staff and advisors to the Board, we're not Board members so there's 5 members here. We're missing two members and obviously it's easy for you or any applicant to get 4 out of 7. It's easier to get 4 out of 7 than it is to get 4 out of 5. So, given that we only have a compliment of 5 members tonight, if you want to adjourn this so that we have a larger number of members, hopefully 7 at the next meeting, you can do so. Right now tonight your job would be to get 4 out of 5 votes which isn't as easy as 4 to 7.

Mr. David Douglas stated what I was going to do next was after you were finished speaking see if anyone else wants to speak, but at the end I was going to ask if you wanted to consider adjourning it to present this – unfortunately the other two members couldn't be here for health reasons.

Mrs. Diana Jones stated unfortunately for us the two other members voted against us the last time so I really don't see that they're going to have a revelation and a change of heart.

Mr. David Douglas stated you never know. Actually, I'd recommend that you do because in order for you to prevail this time, you're right, you have to convince one person and two of us are here that voted against you last time and two of us aren't. You've got to convince one person. I don't know whether you have convinced me or you haven't convinced me. I suspect you have not convinced Mr. Mattis.

Mrs. Diana Jones stated nor do I think I ever will.

Mr. David Douglas stated okay that's the point but the point is – so that leaves, maybe me and then Mr. Heady and Mr. Reber. You've got a better shot. You only have to convince one of us.

Mrs. Diana Jones stated if I can't convince you now what is going to – if I can't convince you tonight why would I be able to convince you in a month from now.

Mr. David Douglas stated this is math. Maybe you convince me, maybe you can't. But, if it gets adjourned then you've got a shot with Mr. Reber, even if you can or can't convince you've got a shot with Mr. Reber and you've got a shot with Mr. Heady. I'm not trying to force you to do it, it just seems that...

Mr. John Klarl stated mathematically 4 to 7 is easier than 4 to 5.

Mr. David Douglas stated I'd recommend that you do that but I can't force you to do it.

Mrs. Diana Jones stated I took your advice last time and I've resubmitted so I will take your advice this time. I have to say though, I don't feel very confident from my past experiences with Mr. Reber and Mr. Mattis and I don't feel that it's going to do me any good.

Mr. David Douglas stated there's also Mr. Heady and there's also me. You can probably tell, maybe you can't tell, I'm sort of on the fence.

Mrs. Diana Jones stated my only thing is if you're on the fence and the two members who are not here tonight were vehemently against us the last time. We might be better off having you vote tonight when there's less opposition.

Mr. David Douglas stated I'm not swayed by what Mr. Reber says or doesn't say or Mr. Heady says or doesn't say but that's not an insult to them but I vote the way I think is right.

Mr. Wai Man Chin stated we all have our opinions.

Mrs. Diana Jones stated I've become very aware of that.

Mr. Wai Man Chin stated it's just that there's two Board members that are still not accounted for tonight and it would be nice for them to hear everything again and you never know. I'm just saying that but it's up to you.

Mrs. Diana Jones stated I've put so much money, time and effort into this.

Mr. Wai Man Chin stated I understand.

Mrs. Diana Jones stated and it's been so discouraging and so disheartening that of course I'm not going to stop at this point. It would be counterproductive for me but I do need to say that it's been a very disheartening experience only because it's a Zoning Board, we allow Variances but we can't give you one because. I don't understand why we keep coming back.

Mr. Wai Man Chin stated it depends on the situation.

Mr. John Klarl stated different members think differently and apply the factors. If you were going from being a lay person of the Town to a member of the Board tomorrow, you would have different opinions on different matters with different Board members but tonight you have 5 members here, at the next meeting you have 7 members. I just want to let you know how the math works out.

Mrs. Diana Jones stated fine, it's in your hands not mine. You know what I want.

Mr. David Douglas stated that decision is up to you whether you want to adjourn it or not or to keep it open, that's your decision.

Mrs. Diana Jones stated I would like a successful, positive conclusion to this and if that's what you're telling me I have to do.

Mr. David Douglas stated I'm not saying that you will necessarily get the results you want. I'm saying that you've got a better chance. You've got two people who aren't here that might be swayed by something they hear. They can't hear it right now.

Mrs. Diana Jones stated I refer to your expert opinion and I'll be back.

Mr. David Douglas stated I don't know that it's expert, it's just math. It's just math.

Mr. John Klarl stated you're in better stead trying to get 4 out of 7 than 4 to 5.

Mr. Wai Man Chin asked would you like to adjourn it to next month?

Mr. David Douglas asked first of all, does anybody else want to be heard?

Mrs. Diana Jones responded I don't see what purpose it would serve. They're my neighbor directly next door to me.

Mr. David Douglas asked which house number?

Mr. Morris Sims presented himself to the Board and stated I'm at 91 Valley View. We have absolutely no objection to the porch. If you look at the entire neighborhood and not just one house on the left and one on the right there are numerous porches across the whole neighborhood. It's part of what makes our neighborhood wonderful. Part of what makes our neighborhood beautiful. The porches in the front where people can enjoy life and enjoy the evenings that are hopefully coming up to pretty soon where we get some nice temperatures where we can enjoy ourselves and enjoy our neighbors. We certainly have no objection.

Mr. John Klarl asked house number again?

Mr. Morris Sims responded 91. We would very much be in favor of the Jones' porch. We have no objection whatsoever and frankly in talking with our other neighbors in the neighborhood I don't know of anyone in the neighborhood who has any objection whatsoever because it is normal in that neighborhood to see a porch. In fact, they're beautiful, they're very nice. Personally, we have no desire to have a porch. We're not going that direction but we have no objection whatsoever to our neighbors having a porch.

Mr. David Douglas stated let me just say. It's not the porch that's the issue, it's the setback. It's the distance from the front. That's the issue it's not that there's any issue with porches. Nobody here has a prejudice against porches.

Mr. Morris Sims stated while I understand that the Planning Board made the exception in other cases, it is there. It does exist in that fashion. It seems like it should be allowed to be existing in this fashion for the Jones' as well.

Mr. John Klarl asked so you're okay with the Variance that the porch would entail?

Mr. Morris Sims responded absolutely. Definitely very much in favor of it. We would appreciate it. Thank you for your time.

Mr. David Douglas asked anybody else?

Mr. James Seirmarco stated Mr. Chairman I make a motion that we close and reserve...

Mr. John Mattis stated open for the other members.

Mr. John Klarl stated she wants to adjourn for a full compliment of the Board.

Mr. James Seirmarco stated I make a motion that we adjourn to the April meeting, seconded with all in favor saying "aye."

Mr. David Douglas stated **case 07-10** will be adjourned to the April meeting.

Mr. John Klarl stated April 21.

**C. CASE No. 08-10**                      **Thomas Hagen and Melissa Klay** for an Area Variances for minimum lot area, lot width, front yard setbacks on property located at **208 Colabaugh Pond Road, Croton-on-Hudson, NY.**

**D. CASE No. 09-10**                      **Thomas Morrow** for an Area Variance for minimum lot area on property located at **212 Colabaugh Pond Road, Croton-on-Hudson, NY.**



Mr. David Douglas stated I think we'd like to hear this at the same time as **09-10** because it's a lot line adjustment with adjoining properties. **08-10** is Thomas Hagen and Melissa Klay and **09-10** is Thomas Morrow. **08-10** involves 208 Colabaugh Pond Road, and **09-10** involves 212 Colabaugh Pond Road.

Mrs. Patricia Morrow presented herself to the Board and stated I'm sorry my husband could not join us this evening. He's not feeling very well along with Ray Reber and Mr. Charles Heady. We are actually here this evening to request from the Morrow side for an area Variance from a minimum lot area on our property at 212 Colabaugh Pond Road. As you know we are located in a 2 acre zone. My husband purchased the property in 1971 for 1.24 acres and we have put an application in front of the Planning Board for a lot line adjustment between our property and adjacent property of Mr. Tom Hagen. In one way we will be a little bit less compliant by taking a little sliver of our west side of our property away to allow Mr. Hagen to be a little bit more compliant on the other end. The topography I don't know if you have had an opportunity to drive by but the topography of the property is such that if you are located in our house or in our front yard or in our back yard, to the west you really have a series of woods and boulders and a real elevation and the piece of property we are considering adjusting is actually a flattened out area that is adjacent and contiguous to Mr. Hagen's property. In a way it's basically his side lawn although it belongs to us and it seems that it makes very logical sense to make this lot line adjustment. There is a natural boundary that would also visually just make this adjustment very simple. There is a stone wall which we would retain on that side of the property and then that 5,000 square feet would now be part of Mr. Hagen's property. We are requesting for a Variance from the Zoning Board to be able to be compliant and be able to get back to the Planning Board to get this lot line adjustment accomplished.

Mr. John Klarl asked you want to convey 5,000 square feet to the team of Hagen and Klay?

Mrs. Patricia Morrow responded yes.

Mr. Wai Man Chin stated very well said.

Mr. Tom Hagen presented himself to the Board stated I can't really add anything. Melissa can't be here, we're expecting, she's with the other wee ones. As Pat said it's a flat piece of property and it's basically – we're trying to legitimize what is already in existence for all intense and purposes.

Ms. Adrian Hunte stated Mr. Hagen are you maintaining that property according to this?

Mr. Tom Hagen responded I had been, yes.

Mrs. Patricia Morrow stated Mr. Hagen recently purchased that property.

Mr. Tom Hagen stated I purchased the property in July of last year.

Mr. James Seirmarco asked do you plan any improvements?

Mr. Tom Hagen responded I plan on no improvements on the property. No structures.

Mr. James Seirmarco stated we ask these questions just to get them on the record.

Mr. Tom Hagen stated just cutting the grass is what I plan on doing.

Mrs. Patricia Morrow stated again, that's a piece that we can't see at all so that is of no value to us at all. We double checked with realtors and in terms of the value of our property, it doesn't impact it at all. We feel very comfortable.

Mr. John Klarl stated Mr. Chairman I attend the Planning Board meetings each month and they've already made an application to the Planning Board and the Planning Board had you under 'new business' on the agenda and they referred back for a review memo by the Planning Board staff and included in that review memo would be the recommendation that you have to come here for the recited Variances, that Mr. Hoch has recited our two fact sheets. You have your Planning Board application begun and of course it's subject to the necessary relief from this Board.

Mr. Wai Man Chin stated I would have no problem with the lot line adjustment. I think it will make one property a lot more in conformance and the other one slightly less but making the other one more in conformance seems to be logical.

Mr. James Seirmarco stated I agree.

Ms. Adrian Hunte stated I agree.

Mr. John Mattis stated I agree with that. In fact, I went by there and if anybody looks and tries to determine where the property line is I think they'd say it's exactly where you want to put it. It follows the contours and it makes all the sense in the world.

Mr. David Douglas stated I live down the road from you. You bought the property from the Latimer family?

Mr. Tom Hagen responded yes.

Mrs. Patricia Morrow responded from Theresa...

Mr. David Douglas stated not that generation, I know the next generation of the Latimers'. My daughter is very good friends with one of their grandchildren.

Mr. Tom Hagen stated I met Theresa daughter at the closing.

Mr. David Douglas stated I live in the neighborhood and I drive past your property every single day and have since 1994 and I never knew that the dividing line was – I assumed that the property line was roughly where you want to make it now because with the topography it seems absolutely logical to have the divide where you want it to be and until last week when I received the papers for this application I never thought that that land on the slope there in going down who's property it was, it seemed logical and it makes perfect sense to me. I don't see any reason why we wouldn't be in favor of this.

Mr. John Klarl stated the sense of the Board is that it makes sense.

Mr. Wai Man Chin stated yes. We should send something to the Planning Board that we have no...

Mr. John Klarl stated we talked about at the work session to close and reserve once again.

Mr. John Mattis stated once again this is one of the joint reviews. So, we'd close and reserve and we'd send a memo to the Planning Board telling them that we have no objection.

Mr. John Klarl stated what we could do is actually draft a Decision and Order and send it to the Board and say "here's a D&O that we're considering" and they can see exactly the proposed D&O.

Mr. Tom Hagen stated Mr. Kehoe had said that the Planning Board contingencies in this case if we hadn't come here first – I'm trying to clarify what he said but he said they usually issue these with the approval from the Town Planning Board upon contingencies of receiving the Variance.

Mr. John Klarl stated usually he does a Planning Board Resolution that has a specific condition that says the approval is based upon you're achieving in a successful Variance from this Board.

Mr. Tom Hagen stated what I was trying to do was to ask is that what you just said?

Mr. John Klarl stated yes. What will happen is – in the Planning Board process they could say "why don't you jot a line, jot a line here" which would then change the Variance so that's why we have to coordinate the review with the Planning Board.

Mrs. Patricia Morrow asked so you're sending a memo to the Planning Board?

Mr. John Klarl responded what we'll do is we'll do a proposed Decision and Order by this Board, that's the document that winds up an application for this Board and we'll do that proposed Decision and Order and we'll share it with the Planning Board to see what the Zoning Board of Appeals' thinking is and see if the Planning Board stays with the lines that you proposed or they alter them in some way which would then alter our Decision and Order. The point is this Board is looking at you favorably.

Mr. Tom Hagen asked so you would grant the Variance upon Town Planning approval?

Mr. Wai Man Chin responded right, at the same time.

Mr. John Mattis stated it's a coordinated review. They don't want one approval coming way before the other in case some of the conditions change either way and then you'd have to reopen ours or there's or what have you.

Mr. John Klarl stated you have both approvals probably in the space of two to three weeks.

Mr. Wai Man Chin stated the Planning Board is the lead Board on this that's why. So, they have to go first even though we go before them.

Mr. David Douglas asked I have to ask this because it's the rules, does anybody else want to be heard?

Mrs. Patricia Morrow stated we had a neighbor come to our house and say that they were fully in favor. The Ambrogio's who live right across the street who are fine with it.

Ms. Adrian Hunte stated on Zoning Board of Appeals **case number 08-10** and also **09-10**, I make a motion that we close and reserve to coordinate review with the Planning Board and send a draft Decision and Order to the Planning Board to coordinate review, seconded with all in favor saying "aye."

Mr. John Klarl stated and as we close and reserve just to give Mr. Hoch direction, I assume that you are contemplating the Variances that are recited in the fact sheet for **08-10** and the Variances that are recited on the fact sheet for **09-10**.

Mr. Ken Hoch responded yes.

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### **ADJOURNMENT**

Mr. John Mattis stated I move that we adjourn, seconded with all in favor saying "aye."

**NEXT MEETING DATE:  
April 21, 2010**