

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 20th, 2013*. 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:

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 FEB. 20, 2013

Mr. David Douglas stated one of the members had asked us to adjourn that until next month so we'll have a chance to look over those minutes. Can we have a motion to adjourn it?

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

Mr. David Douglas stated we'll adopt those minutes next month.

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ADJOURNED PUBLIC HEARING TO JUNE:

- 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. David Douglas stated that has been adjourned to June at the request of the applicant who is also in front of the Planning Board.

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ADJOURNED PUBLIC HEARING:

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 this is, as you said, the adjourned public hearing and it involves an application by the Department of Technical Services what we refer to as DOTS in the Town. Before you, you have a 7-page, I believe it was, memo from February 15th that I did and it supplements two other memos that were produced to the Board by the Town Attorney and in this memo I talk about the provision in the law for a non-conforming use lapsing because of a passes of a certain amount of time. Central to that discussion in the memo is a review of the matter of Toys 'R' Us case which was decided by the New York State Court of Appeals, our highest court, and if you go through the memo to make it short, if you go to page 4 of the memo it says: "generally abandonment of a non-conforming use requires both an intent to relinquish and some overt act or failure to act. In New York however, the inclusion of a lapse period and the Zoning provision removes the requirement of intent to abandon. Discontinuance of non-conforming activity for the specified period constitutes an abandonment regardless of intent." That matter is carried forth that discussion on the next page and on page 5 of the memo, the next page, of course in Anderson's we're aware and always known that all zoning cases by their nature are fact-specific and as a leading authority recognizes the right to a non-conforming use unless necessarily decided by a case-by-case basis. Going to the next page, page 6, from 'New York Zoning and Practice' which is an authority in the field it says "where the Zoning Ordinance does not provide for the termination of a non-conforming use, upon the mere discontinuance of the use for a specific period, proof of intent is needed to prove a betterment of the use." But, the next paragraph from the 'New York Jurisprudence' which is the section dealing with non-conforming uses it recites the following: "a number of Zoning 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 is an actual discontinuance of the use coupled with the intent to abandon the use." Essentially, from reading the memo you can see that we don't have to really look at intent it's if we have a provision that has a certain specified period that there's deemed to lapse and of course on the last page of the memo I questioned the Board that this is an administrative application. It's general or generic and it does not apply to a specific application and of course this is an overview of the law and to only be formally applied in a site-specific application to come before the Zoning Board of Appeals. I thought Mr. Chairman tonight we would receive and file this memo. I think we did received and filed it last month.

Mr. David Douglas stated I think we did it last month.

Mr. John Klarl stated but this time we're ready to close the public hearing and write a Decision and Order.

Ms. Adrian Hunte asked is there anyone in the audience who wishes to speak? Hearing none, I make a motion that we close the public hearing.

Seconded with all in favor saying "aye."

Ms. Adrian Hunte stated on Zoning Board of Appeals **case 2012-28** the applicant being the Department of Technical Services Code Enforcement, the request 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 unoccupied for more than a year...

Mr. David Douglas stated I think we were going to close and reserve.

Ms. Adrian Hunte stated I move that we close and reserve decision on this matter.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the matter is closed and it's reserved and we will have a Decision either next month or at the meeting after that.

Mr. John Klarl stated I'll prepare one for the April meeting.

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CLOSED AND RESERVED:

- A. CASE No. 2012-36 Brian & Stacey Retallick** for an Area Variance to allow storage of a travel trailer in the side yard on property located at **5 Radzivila Rd., Montrose.**

Mr. John Klarl stated this is an application for an Area Variance to allow storage of a **25** foot by **8 ½** foot by **11** foot high travel trailer in the side yard of the applicant's property located at **5** Radzivila Road in Montrose. The property in question is located in the **R-15** single-family residential district. We've closed the public hearing and I now have a Decision and Order for the Board sitting before you and I'll try to summarize it because it goes on for a couple of pages. We looked at the right side yard at the property and it was encumbered by a **20-foot** wide utility easement running to the Town of Cortlandt and into the Montrose Improvement District. Of the **20-foot** width of the utility easement, ten foot's on the applicant's property, ten foot's on the adjoining property so therefore there's a **20-foot** wide utility easement straddling the property line. the Town Zoning Ordinance Table of Permitted Uses provides that "unenclosed storage of boats, recreational vehicles, mobile homes and equipments is permitted in the rear yard and not permitted in the front or side yard." According to the applicants, the slope of their property and their existing retaining wall prevent the travel trailer to be parked in the rear yard. Placing the travel trailer in the right yard will result in a distance of the travel trailer to the right side property line of approximately **5** to **6** feet. As indicated above placing the travel trailer on the right side yard would place the travel trailer squarely on top of the MIDS (Montrose Improvement Districts) **20-foot** wide utility easement. The Board has received a letter in October from the Montrose Improvement District concerning the placement of the trailer on top of their **20-foot**

wide utility easement. In this letter Matthew Geho, Director of Operations for MID wrote: “The policy of MID as established by the commissioners is that no significant objects should ever be placed on any of its water main easements. Workers need immediate access to MID mains in the event of a break to minimize the damage such a break could cause with water pressure well over **100** psig. Accordingly, the commissioners of MID have asked me to submit this letter requesting that the Zoning Board of Appeals deny the applicant’s request to park any vehicle on the water main easement.” Given those constraints, in the February meeting the Board received a revised plan from the applicants proposing the storage of the travel trailer in the left side yard. The applicants wrote to the Board; “we’re requesting a seasonal **6-foot** Variance to park our **20-foot** wide, **20-foot** long travel trailer toy hauler on our property in the side yard.” Part of the treatment they indicated they would move **4** evergreen trees approximately **10** feet from the current location on their property line onto their neighbor’s property, that’s Mr. and Mrs. Martin. They indicate that the proposed parking space for the trailer on that side yard would be **30** feet long by **10** feet wide, slightly leveled, filled with gravel or item **4** and that boulders that are currently between the evergreen trees will be carted away. The Board focused on this revised plan and concluded a number of observations: 1) placing a large **30’ x 10’** parking area with travel trailer abutting or very close to the Martin line is not a great thing. Moving **4** evergreen trees approximately **10** feet from the current location on the property line onto the Martin property is not something that was looked on favorably. Having to place a second curb cut on Radzivila in order to park the travel trailer; that has to be reviewed by DOTS. Having to place a travel trailer parking area within reach of doing damage to the SSDS (Sanitary Sewage Disposal System) or the septic fields can occur. Number **5**: there’s an impact on property owners as indicated to this Board by Mr. and Mrs. Santucci who own and have built a house right next door and are building a house across the street. They testified that the travel trailer is an eyesore and they wrote in their submission to the Zoning Board of Appeals “in this buyer’s market a huge trailer parked on either side yard of your next door neighbor is not a good selling point.” Finally, several members stated that they were opposed placing the travel trailer on either the side yard as the applicants have other alternatives. Here they could rent space for the travel trailer and an appropriate rental property and that granting the Variance here would be a terrible precedent for other travel trailer owners in the Town who would try to use this Zoning Board of Appeals case to obtain their own side yard Variance for their own travel trailer. Finally, we concluded with a review of the **5** factors under the New York State Town Law **267-B** and we indicate the **5** factors: 1) an undesirable change would be produced in the character of the neighborhood and it will be a detriment caused to the nearby properties next door and across the street by the granting of the Variance allowing the travel trailer to be placed in either side yard. 2) The benefits sought by the applicants can be achieved by some method feasible to the applicants to pursue other than an Area Variance. Of course as indicated above, the applicants have a clear alternative; they can store their travel trailer in an appropriate property or facility in the Town or elsewhere. 3) The requested Area Variance is substantial. It is clearly substantial as to what is proposed by the applicant is not permitted under the Zoning Ordinance unless the applicants are seeking to obtain a Variance to do something not permitted under the Zoning Ordinance. 4) The proposed side yard Area Variance will have an adverse effect or impact on the physical conditions of the neighborhood and the **R-15** zoning district. The property owners next door and across the street claim the travel trailer is an eyesore and detrimental to the sale of these two single-family properties. Finally factor 5) the alleged difficulty is clearly self-created. It is due to the parking of the applicant’s travel trailer on their property that the Variance is sought. They’ve created the

need for the Variance. Giving all the foregoing, this Board denies the applicant's request for an Area Variance to allow storage of the travel trailer in either side yard of the applicant's property located at 5 Radzivila Road. That's the Decision and Order before the Board Mr. Chairman.

Mr. Charles Heady stated I make a motion on **case 2012-36** to adopt the D&O that Mr. Klarl just read off to us, SEQRA no further compliance required.

Mr. John Klarl stated actually, since it's a denial there's no SEQRA determination.

Seconded.

Mr. David Douglas asked all in favor?

"Aye."

Mr. David Douglas asked any opposed?

"Yes."

Mr. Ken Hoch stated Mr. Reber; opposed, Mr. Mattis; yes, Ms. Hunte; adopt the D&O, Mr. Seirmarco; opposed, Chairman Douglas; yes, Mr. Chin; yes, Mr. Heady; yes. Motion carries **5 to 2**.

Mr. David Douglas stated that Decision and Order is issued by the vote of **5 to 2**.

B. CASE No. 2013-02 Ed McPartland, dba WackyInflatables Inc., for a Special Permit Home Occupation on property located at 17 Wharton Dr., Cortlandt Manor, NY.

Mr. David Douglas stated that's another case that's been closed and reserved and we will have that under consideration and we'll have a Decision and Order which we anticipate to be issued in April.

Mr. James Seirmarco stated I make a motion to adjourn **case #2013-02** to the next meeting for a Decision.

Seconded with all in favor saying "aye."

Mr. David Douglas stated that **case #2013-02** is adjourned until April.

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NEW PUBLIC HEARINGS:

A. CASE No. 2013-07 Bruce Folgum on behalf of Fulgum's Restaurant and Bar Corp. for an Area Variance for the front yard setback for a deck and awning on property located at **2151 Albany Post Rd., Montrose.**

Mr. Bruce Fulgum stated I'm here to answer any questions you have about the project for Fulgum's Restaurant and Bar.

Mr. David Douglas asked why don't you give us the description basically of what it is that you're seeking to do?

Mr. Bruce Fulgum responded presently I have a paved patio in front of the restaurant and just the logistics of the whole thing; going up and down the stairs, the handicapped people coming in and out using the handicap ramp, if they have to use the bathrooms or the facilities they have to go back out the handicap ramp, through the parking lot back to the patio and I think it's more feasible to and more expeditiously for the business to have the raised deck, floor level to the existing restaurant.

Mr. Raymond Reber stated I'm familiar with this facility. There is a patio that they do use for dining during the day. It also has a stone retaining wall that was put up for safety purposes since it is relatively close to a road that has quite a bit of traffic on it. Essentially, what they're asking is to be able to serve that food at a higher elevation that will be in line with the rest of the building and as the applicant has indicated it's for both convenience and safety. I guess the question we have to ask is; is it detrimental? It's kind of hard to argue that there's a significant detrimental factor by simply elevating the eating area. Again, I don't think you would normally put a deck or something in the front for safety reasons but it already has the wall and that's why the wall was put there. I think the only precaution that we would have is that I think it would be unacceptable to grant a closed-in structure because that would set a terrible precedent along that route that any business could come forward and want to build almost to the property line. We have some businesses that are like that but that's pre-zoning, we have no control but we shouldn't propagate that. My recommendation would be to grant it as a deck. He's indicated he would like some sort of a sun shade. Again, I think if it's all of a type of structure that's not any kind of an enclosure and the Planning Board of course would have to review it, then I don't see any real problem with it.

Mr. John Klarl stated and Ray, at our work session last night, we talked about the Planning Board application and how the applicant wants to put some French doors in the front of the building to go right out to the deck instead of having the cumbersome method of going down the stairs, up the stairs.

Mr. Bruce Fulgum stated we would remove the two bay windows and put two French doors swinging out towards the patio this way the traffic moving in and out wouldn't have to go back down the stairs and then to the front door. We're asking to be able to remove the two bay windows and in their place put two French doors.

Mr. John Klarl stated and actually, the Planning Board will be looking at the elevation drawing there, right Ken, I think you said there's a memo coming?

Mr. Ken Hoch responded the memo that came was from the Architectural Review Board...

Mr. John Klarl stated the CAAC.

Mr. Ken Hoch stated they had no problem with this architecturally.

Ms. Adrian Hunte stated I would just add Mr. Fulgum that if this granted, just to remind you to comply with the New York State Liquor Authority's requirements concerning alterations.

Mr. Bruce Fulgum responded I wanted to go through some of the prerequisites before I talked to a lawyer about the application for the State Liquor Authority.

Mr. John Klarl stated well, Ms. Hunte's an expert in this field.

Mr. Bruce Fulgum stated actually some people told me – I just found out Ms. Hunte, that's her specialty.

Mr. John Klarl stated people aren't sure whether you go to the SLA first or you do your Zoning Board of Appeals first.

Ms. Adrian Hunte stated you need to have your approvals from the Zoning Board of Appeals and from Planning but before you start any construction...

Mr. Raymond Reber stated I guess I'm a little confused. You say there's a feedback from the Architectural Review but we never saw any plans so have there been any plans actually drawn up that show details of what this is going to look like?

Mr. Ken Hoch responded whatever Mr. Fulgum submitted to the Planning Board went to AARC.

Mr. Raymond Reber stated I didn't see it.

Mr. Ken Hoch stated no.

Mr. Raymond Reber stated I guess then I can ask if Mr. Fulgum would describe for us physically the deck in terms of how it's going to be structured. Is it going to be a residential railing, wood construction?

Mr. Bruce Fulgum responded we would try to use the Trek and we want to design it so that the bottom, the pillars and everything were hidden from view so it would be more esthetically pleasing and if I'm not mistaken I did describe – I thought I did describe the deck and the construction but it would be similar to a residential deck.

Mr. Raymond Reber asked and then the awning...

Mr. Bruce Fulgum responded there's two types of awnings: one would be permanent and the other would be retractable but the retractable is basically only **17** feet and I'm afraid with the storm – that's why I was asking if I could get a permanent awning.

Mr. Raymond Reber stated the reason I'm asking is if this gets into the issue of what becomes a real structure and what's not a real structure. Supporting the permanent awning; what's envisioned with that? Is that going to be pillars every **4** feet?

Mr. Bruce Fulgum responded it would just be aluminum polls. It would be your typical – from the building out and down there would be probably **6** to **8** thin aluminum polls holding the awning up.

Mr. Raymond Reber stated okay, so it's going to be aluminum structure. I think that's the only thing that was concerning me because we've seen situations where they design it in such a way it's almost a roof that they put in rather than an awning and they've got wooden posts every **4** feet and the next thing you know they're putting screen units and then they put windows in.

Mr. Bruce Fulgum stated no, nothing in the foreseeable future to do anything like that.

Mr. Raymond Reber stated okay, then like I said, I don't see a real problem with granting the Variance.

Mr. Bruce Fulgum stated I have a quick question for Ms. Hunte. It's kind of off the record with the State Liquor Authority; do I have to have everything approved by the Town...

Mr. David Douglas stated it's not off the record, it's being videotaped. It's on the Internet so it's no exactly off the record.

Mr. Bruce Fulgum stated okay, I'll just ask at a different time.

Ms. Adrian Hunte stated it's just you shouldn't start construction. You need your approvals from the Town and from wherever else you may need them from but as far as starting construction you do need to let the State Liquor Authority know that – you have to file an alteration application and depending on what you're doing, whether it might be considered a minor alteration based on cost and also whether you're expanding or contracting the premises.

Mr. Bruce Fulgum stated thank you.

Mr. John Mattis stated I would like to say that I'm in favor of this also. It's in my neighborhood and I've been there and it's always been awkward when the people are eating outside for the waitresses to get up and down. I actually saw one fall one time; girl's tripped one time.

Mr. Bruce Fulgum stated I had one customer end up being rushed to the Westchester Medical Center with a bad injury falling down the stairs. I've had several people actually fall down the stairs.

Mr. John Mattis stated and from that standpoint this would be a plus.

Mr. James Seirmarco stated I have no problem with this at all.

Mr. John Klarl asked some people have asked on the Planning Board's side is if you come out the main door, can you get onto the deck or will there be a railing there?

Mr. Bruce Fulgum responded originally we weren't going to put access from the stairs but for the – in respect to the handicapped we would like to put an opening right there. I explained to the Planning Board that we could take out a section of the railing where you can have access right from the handicap ramp immediately right into the patio, the deck.

Mr. John Klarl asked so someone could come up the deck on the handicap ramp, pass in front of the main door and get onto the...

Mr. Bruce Fulgum responded yes.

Mr. David Douglas stated I think we're basically in accord, we're in favor of what you're requesting. Since it's before the Planning Board we have to do a coordinated review with them so we wouldn't actually grant the Variance now. We would hold it in abeyance but we would let the Planning Board know that we would be leaning toward granting you the Variance.

Mr. Bruce Fulgum asked would I have to come back to the next meeting for approval?

Mr. David Douglas responded no, we'll adjourn it – what stage is the Planning Board? When should we adjourn it until?

Mr. John Klarl responded it's early. You've only had one appearance with the Planning Board so I think I would adjourn it to next month and play it...

Mr. David Douglas asked should we adjourn it to next month or should we do it two months?

Mr. John Klarl responded yes, I wouldn't do farther than two months.

Mr. David Douglas stated why don't we do two months – I'm trying to spare Mr. Fulgum from having him come back next month just to say "the Planning Board hasn't decided yet."

Mr. John Mattis stated the reason we do that is if the Planning Board wants a change and it might require some other small Variance or something. If we approve this now we'd have to re-open the case and start all over again so we just keep it open and keep adjourning it.

Mr. John Klarl stated which takes a unanimous vote also. It takes a unanimous vote to re-open a public hearing.

Mr. John Mattis stated yes.

Mr. Bruce Fulgum responded okay.

Mr. David Douglas stated so why don't we adjourn it then until May and then hopefully by then the Planning Board will be substantially down the road and we can take it from there.

Mr. Raymond Reber stated I assume there's no one in the audience who wants to add anything if not, I make a motion on **case #2013-07** to adjourn to May.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the case is adjourned to May.

Mr. Bruce Fulgum stated thank you very much.

B. CASE No. 2013-08 Susan and Gerald Morlitz for an Accessory Structure, a back-up generator, in the front yard on property located at **48 Dimond Ave., Cortlandt Manor.**

Mrs. Susan Morlitz stated I live at **48 Dimond Avenue** which is a corner property so I have **2** fronts and we are interested in putting in an auxiliary generator so that I don't have to throw out all the food in my freezer whenever I lose electricity. I have provided you with pictures of our property and in the front we have a porch and in that corner of the porch is where the gas is hooked up to the house and also the electric. We have been advised that that would be the ideal location to put the generator over here in front of the house which we would then landscape in front of so it would not be an eyesore. I've also provided pictures of what you see from the side of – looking out of the property, there's nobody across from us who would be impacted by seeing a generator which you probably wouldn't see because our house is located on a hill and so as you look up you would see the plantings in front of it.

Ms. Adrian Hunte stated thank you Ms. Morlitz. In terms of alternatives I heard you say that you've been advised that that's the best location. Normally we don't like to have – or not permit structures in the front of the property. What's going on in the back or the side?

Mrs. Susan Morlitz responded the side is also a front because it's a corner lot and in order to get to the back you'd have to either go into the garage and over it or around the whole house to get to the back which has an additional problem in that the back is fenced in and when it snows you have to keep the sides of the generator clear of snow and it's very difficult to get into our back property when there is snow so that might become a problem if we then needed the generator at that time of year.

Mr. James Seirmarco stated this is a concern for me. I don't think that's a big enough hardship to place the generator in the front yard. I'm familiar with that piece of property off of Dimond and Cranberry and I just think that you could put it in the backyard with a little bit of creativity and I would...

Mrs. Susan Morlitz responded I'd either dig up my driveway or I'd have to go through my garage.

Mr. James Seirmarco stated this choice – this is not something that's required. This is a personal choice that you make to put a generator in. It's not something that's – it's not a need, it's a want so if you want to have a generator then you're going to have to facilitate, to me, going to facilitate it in the backyard. It's not a requirement. It's something that's self-imposed. You're going to have to, to me, find an alternative position in the backyard. I know that there's not very much landscaping in the front of your yard so that people will be able to see that generator up there.

Mrs. Susan Morlitz stated the landscaping that is in the front yard is in front of where the generator would be.

Mr. James Seirmarco stated I understand.

Ms. Adrian Hunte asked what are the dimensions of the generator?

Mrs. Susan Morlitz responded I'm afraid I don't have that with me.

Mr. Wai Man Chin stated it's not that big.

Mr. James Seirmarco asked it's going to be a whole house generator? **14 kw**, so that's even smaller.

Mr. Wai Man Chin it's about **2' x 2'** – something like that. It's not that big. It's approximately that size.

Mr. John Klarl asked do you know the dimension?

Mrs. Susan Morlitz responded not with me.

Mr. Wai Man Chin stated I think Mrs. Morlitz gave a good reason why it should be out front. I really don't have a problem with that generator out there only because a generator, yes for emergency uses, but I think if we have **3** or **4** emergencies a year that would be a lot and that's the only time that generator would make noise. To my opinion, I think that since the gas is there, the electric is there, trying to run it all the way around the house I just can't see that. With a **3** or **4** times a year that it goes on, if it goes on that you need it. I don't see a problem with that.

Mr. John Mattis stated I feel the other way because what you said generically could apply across the entire Town to every house and the intent of the Code is not to have these in the front yard. We have granted some but never in a situation like this where there's nothing unique. We've granted them where houses set way back. We've granted them where that maybe a front yard legally but you can't even see it. You can't see the generator. I do understand that you don't want to put it in the back. One of the reasons being that your natural gas comes there and I assume this is going to be gas-driven but the finances of this are not something that the Board is

to consider. I can sympathize with you but that is not one of the factors we look at. The intent of the Code is to grant Variances in unique situations and there's nothing unique from you or any of your neighbors up and down that street. Your houses are all about the same distance from the road. Most of the places that we have given them, and we haven't given that many, have a bunch of trees and everything else. Anybody can put bushes in front of it and hide it so if we approve this, this sets a precedent that makes it very difficult because there's nothing unique where we could turn it down anywhere else. So, in effect, we're basically saying that we condone having these in front of every house in the Town and that's not the intent of the Code so for those reasons I would have to vote against this.

Ms. Adrian Hunte stated I'd like to just go through the criteria that we do look at. Ms. Morlitz you did say that it's up on a hill so it's really not that visible and in terms of screening you can put some screening there so that it's not visible. No undesirable change will be produced in the character of the neighborhood and no detriment to nearby properties will be created by the granting of the Area Variance, that's one or whether one will be. The benefits sought by the applicant whether that can be achieved by some other method are feasible for the applicant to pursue other than an Area Variance. 3) That the requested Area Variance is or is not substantial or 4) that the proposed Area Variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district and 5) whether the alleged difficulty is not self-created. On #1) I don't believe there'd be an undesirable change in the neighborhood or the character of the neighborhood and any detriment to any nearby properties. The benefit sought by you possibly could be achieved by another method mainly placing it in the rear yard. However, you have indicated that your gas lines are in the front and the issues concerning accessibility because of the fence in the winter and at other times. Whether it's substantial there's no real distance in that sense. Whether it will have an adverse effect or impact on the physical or environmental conditions in the neighborhood, I don't think so. And, whether it is self-created well yes it would be because you are placing it there yourself. So, I see at least **3 ½** to **4** out of **5** and I would vote to grant it.

Mr. David Douglas stated I would have to disagree with regard to whether it's substantial or not. I think it is substantial. It's basically – it's not allowed under the Code and she wants to do something that's not allowed under the Code. I think that's substantial.

Mr. James Seirmarco stated I think it's substantial too. She has alternatives.

Mr. Raymond Reber stated I also have a problem with this and you've seen some of the issues here but the fundamental problem I have is, as a Zoning Board we're not supposed to let our feelings or our personal opinions affect whether this is reasonable or unreasonable. There's other things that we have in the Code too that people come to us on and from my point-of-view I'd say it's reasonable, however, there is a Code and as our Chairman has indicated, it doesn't permit it and to say that because your gas line or whatever is in the front yard, that's the case in almost every home in the Town. All lines come from the street so they're all in the front. If we grant this, there's nothing truly unique about your situation from anybody else in the Town. The uniqueness factor isn't there. The alternative is there. Self-created; yes. Is it significant? I agree with the Chairman. Normally when they say "is it significant" they're talking about things like the buildings normally are **10** feet from the side yard and they want to go **9**. The average

person wouldn't even know the difference. That's something that's considered not significant. Putting a physical object in the front, hidden or not hidden, to me that's significant. That's an obvious change in the character of front yards so I have a problem with this. I think this is another situation where more and more people are coming to us. I think what the applicant is suggesting makes a lot of sense but it's not for us to override the Code uniformly for the whole Town and that's basically what we would be doing. This is a situation where maybe residents should go to the Town Board and ask for a change in the Code to say that back-up generators of a certain size or whatever can be placed in the front or side yard under certain conditions but that's not for us to decide, so I have to vote against this.

Mr. David Douglas asked anybody else? Do you have anything else that you want to say?

Mrs. Susan Morlitz responded I'll vote for it.

Mr. David Douglas asked anybody else want to be heard that's here?

Ms. Adrian Hunte stated no one else wishes to be heard? In Zoning Board of Appeals **case 2013-08** applicant Susan and Gerald Morlitz for the Area Variance for an accessory structure back-up generator in the front yard, 48 Dimond Avenue, Cortlandt Manor, NY 10567 I make a motion that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing's closed.

Ms. Adrian Hunte stated on Zoning Board of Appeals **case #2013-08** for an Area Variance for accessory structures, back-up generator in the front yard – what are we doing, closing or are we going to vote?

Mr. John Klarl responded you want to either vote or reserve.

Mr. David Douglas stated I'm happy to vote but would people prefer to reserve? I'm not sure. Why don't we vote?

Ms. Adrian Hunte stated I make a motion that we approve the Area Variance for the accessory structure back-up generator in the front yard and it's a SEQRA type II no further compliance required.

Seconded.

Mr. David Douglas asked all in favor? Any opposed?

Mr. Ken Hoch polled the Board; Mr. Reber; opposed, Mr. Mattis; opposed, Ms. Hunte; approve, Mr. Seirmarco; opposed, Chairman Douglas; opposed, Mr. Chin; yes, Mr. Heady; yes. Motion fails **4 to 3**.

Mr. John Klarl stated and therefore, since it's a denial there's no SEQRA determination. You had a SEQRA determination as part of your motion to approve. It's a denial, there's no SEQRA determination because there's no action.

Mr. David Douglas stated thank you.

**C. CASE No. 2013-09 Tyrone Ijeh on behalf of Edna Ijeh for renewal of an
Accessory Apartment Special Permit on property located at 3 O'Connor Court,
Cortlandt Manor.**

Mr. Tyrone Ijeh stated I'm here on behalf of Edna Ijeh and I'm here to answer any questions if I can.

Mr. John Klarl asked who is Edna?

Mr. Tyrone Ijeh responded Edna Ijeh actually is my mother.

Mr. David Douglas stated why don't you tell us – give us an overview of what it is you want.

Mr. Tyrone Ijeh responded in **2007** we purchased the property on 3 O'Connor Court. We purchased it as what we thought was a multi-family unit. It worked out. I have a wife and two kids and it had the downstairs was existing so we felt that this was the perfect property for us so we purchased it. We were later informed that through other circumstances that the property was not legal so we have been working since **2007** with great alacrity to get this property legal. From what I understand there was an original permit that was granted for this particular property from the original owner/builder. The individual apparently was approved however, the individual did not comply with the things that I eventually and my family eventually had to for the property to make it legal, i.e. perc. test, drawings, a new septic field for both upstairs and downstairs. We had a perfectly good system and we had replaced that. We've had the drawings – I don't know if you have, yes you do have the drawings on the Board, you can see that even moving forward there are a number of further modifications. The cost has been substantial to say the least however, we are determined to make this property legal and that is why I'm here this evening.

Mr. James Seirmarco stated we reviewed this. You did receive a while back – the property did receive a Special Permit for an accessory apartment.

Mr. Tyrone Ijeh responded that's correct, in **1985** actually.

Mr. James Seirmarco stated right, but it's not – the accessory apartment has specific requirements for that and this seems to be outside of those requirements right now so we're going to have to look at what exists right now and determine whether this is something that we want to change around so that you have the accessory apartment reflects what's actually there.

Mr. Tyrone Ijeh stated I'm not quite understanding what you're saying.

Mr. James Seirmarco stated there is a requirement for a Special Permit for accessory apartment of the size of the apartment in relationship to the total size of the house.

Mr. Tyrone Ijeh asked so you're referring to the ratio upstairs to downstairs. I understand that. Clearly, in **1985** when the Permit was initially granted it was beyond the ratio at that point in time. That being said, when we purchased the place, we purchased it in good faith. The apartment was existing that is why we purchased it. It cannot be reduced. There's nothing that we can do and to do so would be disastrous. I mean financially in general, we have gone out of our way to comply. We have spent **\$75,000** so far to get this taken care of.

Mr. Raymond Reber stated my situation, and I'm familiar with this because I live in the neighborhood – I don't want to prevent you from having an accessory apartment. The question is; an accessory apartment versus a two-family house. The Codes are very specific in single-family resident communities, no two-family houses and how do you distinguish them? One way you distinguish them is you limit the square footage and you limit them to essentially a one-bedroom. In your case, your square footage is much higher than what was originally approved, granted you purchased it that way, but this reminds me of a situation we had of a building on 9A where actually **2** accessory structures were expanded into homes on one piece of property. Totally in violation of the Code, no Building Permits were obtained. The owner dies, passes it on to his children. His children say "we're innocent. What are we supposed to do?" Well, unfortunately we required them to tear down the work because without a Building Permit it was in total violation. Now, you state that there is nothing you can do. Well, I guess the question to be asked is: in the original approval and in the plans that were submitted at that time, the way they managed to meet the criteria was they isolated a zone in the back side to the – as you come down the stairs it would be to the left, that whole section was isolated and it was clearly identified as owner storage **225** square feet so the Permit was granted back at that time in **'85** for the accessory apartment on the assumption that the apartment downstairs would be limited to the remaining area. Somehow, and since they never got a Building Permit, the Town never got a chance really to go in and inspect it what actually was done and what you purchased that store room doesn't exist. That area became part of the downstairs and in fact represented **2** rooms so you have **2** rooms down there that were constructed illegally and I don't think we can just look the other and say "oh well, it's there." We understand, you're innocent but I think, personally what I would insist on is I think it has to revert back to the square footage that was approved in **'85** with a few foot Variance because I think our cut off is **600** square feet, right?

Mr. Tyrone Ijeh stated well, the approval was for **830** something square feet.

Mr. John Mattis stated **564**.

Mr. Tyrone Ijeh stated so now, what you're telling me is that I literally have to cut the place in half.

Mr. Raymond Reber stated he was given extra footage back then.

Mr. James Seirmarco stated **838**.

Mr. Raymond Reber stated so you'd have to cut back to the **838** because that's what was approved. It's too beyond what we could approve today but to me you have to go back to that. There was a design that fit that number.

Mr. Tyrone Ijeh stated here's the situation, we have, and the former owner has paid property taxes for a two-family residence. We have, sir, no disrespect intended here, however there comes a point in which culpability has to go somewhere. We have done above and beyond to comply with this Board, to comply with the Town. We have spent **\$75,000**. We replaced two perfectly fine existing septic systems that were perfectly fine. We complied with the Board of Health and now you're telling me that I must spend hundreds of thousands more to comply further.

Mr. James Seirmarco stated let's reset here. We understand your frustration with spending all the money with the other things but you have to go for what's before this Board. What's before this Board is an application for renewing an accessory apartment and nothing else.

Mr. Tyrone Ijeh stated that's correct. That's fine. That is why I'm here.

Mr. James Seirmarco stated so let's talk about the accessory apartment and the accessory apartment only whether you pay taxes and what you pay taxes on and how much money you paid for number of the years is really not relevant to this case.

Mr. Tyrone Ijeh stated however, it is part and parcel to the whole situation, clearly.

Mr. James Seirmarco stated no it's not.

Mr. Tyrone Ijeh stated these offices are next door to each other so clearly I am paying here.

Mr. James Seirmarco stated excuse me, what you're here for at the Zoning Board of Appeals is to renew a Permit for an accessory apartment and nothing else.

Mr. Tyrone Ijeh stated okay, well let's move forward on that issue.

Mr. James Seirmarco stated you may want to file a tax tertiary to get your money back from – but that's got nothing to do with us.

Mr. John Klarl stated Mr. Seirmarco he said he also paid over the years for a two-family house. I think he's confusing a two-family house and an accessory apartment.

Mr. James Seirmarco stated I agree, this is not – you do not have a two-family house. If you've been paying taxes for those it's not this Board that rectifies that.

Mr. Tyrone Ijeh responded I understand. At this point, let's move forward. Let's come to a conclusion.

Mr. John Klarl stated if we look at the record...

Mr. Wai Man Chin stated I'm trying to establish one thing quickly. Mr. Hoch, on the accessory apartment it's indicated as **1,063** square feet?

Mr. Ken Hoch responded yes, that's what the architect put.

Mr. Wai Man Chin asked did we take out the closet, the storage spaces and those items like the stairway out of that structure or out of that square footage?

Mr. Ken Hoch responded no, we would consider the whole habitable space of the apartment.

Mr. Raymond Reber stated it's all habitable the way it's laid out.

Mr. Wai Man Chin stated we take those out.

Mr. John Klarl stated we used to take out the boiler room, closets...

Mr. Wai Man Chin stated closets, bathrooms – it used to be taken out of the equation.

Mr. James Seirmarco stated yes, we did. We have to remove those.

Mr. Wai Man Chin stated if you took that out we're back down to the square footage that he was allowed to...

Mr. John Mattis stated no we're not, nowhere close.

Mr. Raymond Reber stated nowhere near it.

Mr. Wai Man Chin stated I'm figuring if it's – from what I figure on the square footage I was counting if we took out the from the storage, the stairs we're taking out almost **200** square feet.

Mr. James Seirmarco stated and you're back down to **838** which was approved.

Mr. Wai Man Chin stated which was approved.

Mr. Raymond Reber stated yes, and that's what we're saying...

Mr. Wai Man Chin stated that's what I'm saying so it's really not **1,063** square feet, it's **830** something is what was originally approved.

Mr. James Seirmarco stated if you take the **1,063** and you take out the owner storage from the original approval that's **225** you get **838**.

Mr. Raymond Reber stated right, and that's how they calculated it.

Mr. Wai Man Chin stated right, if I took out the bathroom, the storage room, the stair you're

coming back down the same thing.

Mr. Raymond Reber stated you're comparing apples and oranges.

Mr. Wai Man Chin stated no I'm not. I'm sorry but...

Mr. Raymond Reber stated in '85 they took a net number, like John said it was very clear what their intent was. They gave **800** and some odd square feet all inclusive. That is what they decided. To come back now and say "well we're going to change the ground rules" then we go back to **600**. Then we go back to the **600**.

Mr. David Douglas stated no, no it's changing from what they did in **1985**.

Mr. Wai Man Chin stated I understand that but we always, from what he has there now you always took out the stairs, the storage room, the closets...

Mr. Raymond Reber stated and our limit is **600**. If you're going to use a different system...

Mr. Tyrone Ijeh stated actually, with regards to actual living space, actually I did that calculation and I added the upstairs because the foyer is actually part of the upstairs unit. The upstairs is **1,284** square feet. The downstairs is **875** square feet if you remove the bathroom and storage room since obviously once doesn't live in there or live in those places so we are relatively close here. I am not asking – I'm simply asking for just a touch of understanding.

Mr. John Klarl stated you're asking for them to renew the Special Permit.

Mr. Tyrone Ijeh stated that's simply it. That's simply it sir.

Mr. John Mattis stated we're showing **1,193** for the first floor. You're showing **1,200** and something. We'd have to reconcile that, somehow.

Mr. James Seirmarco stated that's not the issue.

Mr. James Seirmarco stated yes, because we're looking at ratios here. At the end of the day we're going to look at a ratio here of what he is allowed and if we're taking stuff out of the bottom and he's saying it's bigger on the top, we have to confirm that because we have a different figure. Our official sheet is **1,193** – you get a ratio of accessory...

Mr. James Seirmarco stated I understand.

Mr. Tyrone Ijeh stated I simply added in the open foyer for the upstairs that's the increase in size.

Mr. John Mattis stated we don't count it downstairs.

Mr. Charles Heady stated we don't count that.

Mr. Tyrone Ijeh stated so then we leave that alone then we're back to the original – if we pull that out – let's be reasonable here. I'm simply asking for a touch of understanding. We have complied. We have done everything necessary to comply. I don't even know what to say. This has been extremely expensive.

Mr. David Douglas stated we understand your frustration and we're not your enemies so just relax. We understand your frustration. We're trying to do the right thing.

Mr. James Seirmarco stated we're trying to figure out a way to renew your accessory apartment and meet the criteria that we need and satisfy you. We're working this out and we're trying to help you.

Ms. Adrian Hunte stated we're talking **200** square feet, **225** which is...

Mr. Tyrone Ijeh stated with the **R2**.

Ms. Adrian Hunte stated the difference between **838**.

Mr. John Klarl stated under the Chin calculation.

Ms. Adrian Hunte stated under the Chin calculation.

Mr. Raymond Reber stated the applicant is asking permission to do some limited renovations downstairs to rearrange to accomplish what we need which is to isolate the original storage area requires some minimum renovations. So, from a cost point-of-view, to comply with going back to what was originally approved is not going to cost him any more than what he has to do now. It's not a major revision.

Mr. James Seirmarco stated I agree.

Mr. Raymond Reber stated that's not an issue here and getting back to what was originally approved as far as the layout is not impossible. It can be done and the changes were made without a Building Permit and it really violates the intent of the accessory apartment ruling. No matter how you calculate it, the intent is not to have that kind of ratio with that size space. To me, it's inappropriate.

Mr. James Seirmarco stated the Town did grant it once.

Mr. Tyrone Ijeh asked are we looking at intent or are we looking at the spirit of this here.

Mr. James Seirmarco stated **838** feet.

Mr. Raymond Reber stated yes, total inclusive; bathrooms, halls, closet everything included in the formula. We can't change the formula now and say "oh well it doesn't matter." Yes, if they can comply with the current **600** square feet, fine you can change any rule you want but the only

way they got it from **600** to **800** some odd square feet back then was to be all inclusive.

Mr. James Seirmarco stated we can go more than **600** square feet?

Ms. Adrian Hunte responded yes.

Mr. Raymond Reber responded yes we can.

Mr. John Mattis stated but we never even approached **700** but the real difference in this case is real simple. It was approved for **838** all inclusive with an owner storage area of **225** square feet. Without a Building Permit that was changed to inhabitable space and basically all that was changed was some non-load bearing walls. I have no problem saying **838** that's what was approved but letting him take that **225** now on top of it and saying we're giving him that, that blows out any intent or anything that we have ever approved before. There was no Building Permit for that. It was done without any knowledge of anybody and I don't see how we can give something that large. We generally – the formula only allows **564** today. By saying; bring it back to what it was. You move a couple of walls. You make that storage space again and I would live with the original approval but to let him have that storage area. To add **225** square feet, now we're talking about a Variance on our own calculations of **75** or **80%**.

Mr. John Klarl asked so John, you would approve what was granted?

Mr. John Mattis responded I would approve what was granted and then no major renovations that are needed other than moving some walls to make that storage area again. You will have a **12** foot **9** by **12** foot **3** bedroom – the only thing is you're going to have a smaller bedroom. Basically, that's the only difference. You're going to have your living room. You're going to have your dining room. You're going to have your kitchen. You're going to have your bathroom and everything else. The only thing that's changed is this area right here that was supposed to be a storage area and illegally was made part of that apartment.

Mr. Tyrone Ijeh asked you're referring to the bedroom.

Mr. John Mattis responded yes.

Mr. Tyrone Ijeh stated according to this we were supposed to add – based on this alone I was supposed to go through the wall of the bedroom, of the primary bedroom here, I was to go through the wall, open that wall up. That was simply supposed to be a storage area.

Mr. Raymond Reber stated yes, but it's an area that becomes part of that accessory apartment and that's the problem.

Mr. Tyrone Ijeh stated this is true. I don't know as to whether or not you have kept current with the cost of contractors. Even in doing so myself – this is – putting up walls, putting up walls, blocking up entire sections. This is a not a simple deal here. This is my mother's home here.

Mr. James Seirmarco stated let me put it this way. Unfortunately, it's buyer beware. When you

bought this house, I'm going to be frank with you, you didn't do your homework so you didn't realize that it wasn't a two-family house, it was a house with an accessory apartment.

Mr. John Klarl stated which some people think it's interchangeable but they're not.

Mr. James Seirmarco stated that is not interchangeable with a two-family house.

Mr. Raymond Reber stated and you had an accessory apartment that was approved.

Mr. James Seirmarco stated if you come down here to the Town Hall you would have seen that it had an accessory apartment, an approved accessory apartment so you didn't do your homework so some of the illness falls on you.

Mr. Tyrone Ijeh stated so you're putting some of the culpability on me.

Mr. James Seirmarco stated some but let me finish now, we do appreciate the fact that you're trying to rectify a lot of the things that have come up since **2007**, since you bought the house and we appreciate that...

Mr. Tyrone Ijeh stated I was told to enlarge the septic fields; **\$30,000** just for the septic fields.

Mr. James Seirmarco stated that's the Health Department.

Mr. David Douglas stated we have nothing to do with that.

Mr. Tyrone Ijeh stated but that was part and parcel to legalizing the downstairs. For you to just simply disregard...

Mr. David Douglas stated hold on a second. Let me explain something to you. The septic issue has nothing to do with us. We don't have any say in that, that's the County of Westchester and the Department of Health. We don't have anything to do with that whatsoever.

Mr. Tyrone Ijeh stated we were instructed Mr. Chairman that we had more than enough space...

Mr. David Douglas stated by the County. What I'm saying is that we don't anything to do with that.

Mr. Tyrone Ijeh stated so we have departmentalization.

Mr. David Douglas stated no, no.

Mr. Tyrone Ijeh asked what would you have me do? My mother's a Custom's officer. She worked for **42** years. She worked for **42** years. She put all of her money into this. Would you have me rip down this whole place down really?

Mr. David Douglas responded sir, we're trying to work with you.

Mr. Tyrone Ijeh stated but you're not working with me. This is further expense added to this and I have to remove all of these ceilings as is; I must enlarge a window. I mean, this is cost probative. How much would you have me spend and what would...

Mr. David Douglas stated we didn't do anything. We're trying to listen, we're trying to work it through.

Mr. Wai Man Chin stated you're jumping the gun right now. Could you let us talk? I'm on your side right now.

Mr. Tyrone Ijeh stated and I appreciate that sir.

Mr. Wai Man Chin stated let me finish. Everybody is trying to explain certain things but you're starting to get a little excited on this thing. What we're trying to do is we're trying to figure out what you could do the minimal. That's what some of the other Board members are trying to say, the minimum to get back to what was approved back in **1985**.

Mr. James Seirmarco stated and try to make it legal.

Mr. John Klarl stated we're trying to analyze the original approval.

Mr. Wai Man Chin stated we're to analyze what was approved in **1985** which is way before your time. I don't know how many owners have gone by.

Mr. Tyrone Ijeh stated that was the primary owner and builder that individual.

Mr. Wai Man Chin stated I understand but you're not letting people finish. You're jumping on everybody's throat over here without letting us finish. We're trying to help you out here. I'm for you on this thing all the way but some of the other Board members they have to go by a certain Code; what was approved, what was there, what's the minimum that can be done to rectify it where you get your accessory apartment permit back. It's not a legal two-family, it's a building, a house with a Special for accessory apartment. It always has been. I don't know who indicated when you bought the house; they should have indicated that to you or your lawyers. I mean, I don't know how that happened but they're trying to help you, we're trying to help you, I'm trying to help you. We're trying to figure out the best way to do the minimal work where we get it back to...

Mr. Raymond Reber stated actually looking it – if I understand the way your house is laid out right now, theoretically, all you have to do is, as the primary owner upstairs, put locks on the door to the storage area, put locks on that one bedroom and you don't have to change a thing. That becomes the property of the owner upstairs and you don't have to spend one penny other than to buy **2** locks. That's all you have to do.

Mr. Wai Man Chin stated you're absolutely right Mr. Reber.

Mr. Tyrone Ijeh stated I don't quite understand.

Mr. James Seirmarco stated that's to isolate that area, the extra area, to isolate that and that isolated area becomes part of the upstairs apartment. It reduces the overall footprint of the downstairs accessory apartment to a compliant level and that's it.

Mr. Tyrone Ijeh stated even though access is granted via downstairs? Even though there's not a separate access from downstairs to go upstairs – so it's simply by virtue of being locked is considered to be upstairs.

Mr. Raymond Reber stated that was the original approval. It said there would be a room down there locked up for the owner to use, not for the accessory resident to use and since the owner has the right to go through the hall or whatever they can get to it. So, that's what I'm saying, you put locks on those two rooms they become the property of the upstairs primary owner...

Mr. Wai Man Chin stated which is your mother.

Mr. Raymond Reber stated and whoever's downstairs doesn't have access to those areas so it's not part of their living space.

Mr. John Mattis stated that's the big difference between a two-family and an accessory apartment. The apartment itself, only that part of the apartment becomes the accessory to the main house so the fact that you can't use that means it's part of the main house. It belongs to the owner upstairs. You follow me? If it were a two-family that wouldn't apply because that would all be your downstairs or whoever's downstairs so that works in your favor.

Mr. Tyrone Ijeh asked so with regards to the additional modifications here...

Mr. Raymond Reber stated you don't need them.

Mr. Wai Man Chin stated just put locks on the doors.

Mr. Raymond Reber stated just put locks on the doors and you're done.

Mr. James Seirmarco asked do you rent the accessory apartment?

Mr. Tyrone Ijeh responded actually, my mother's downstairs.

Mr. James Seirmarco asked she lives in the accessory apartment and you live upstairs?

Mr. Tyrone Ijeh stated which clearly makes this...

Mr. James Seirmarco stated the zoning goes with the land or with the property, not with the owner. So, it would make it legal for the next owner if there's going to be a next owner. The accessory apartment does go with the owner.

Mr. John Klarl stated if you sell 2 years from now...

Mr. Tyrone Ijeh stated they would have to go back and come before the Board again.

Mr. James Seirmarco stated just to renew the accessory apartment.

Mr. Tyrone Ijeh stated just to renew it.

Mr. John Mattis stated but if it hasn't changed there'd be no problem renewing it.

Mr. John Klarl stated you could educate them on the process.

Mr. John Mattis stated then they wouldn't have to go through what you're unfortunately going through.

Mr. Raymond Reber stated the other difference for an accessory apartment is a two-family house truly has 2 isolated living areas that separate entrances, totally independent and they're there. An accessory apartment, why you have to come for the permit – say well why even bother coming back? Is, the concept of an accessory apartment is that it doesn't change the character of single-family homes. Theoretically, you say you rent it out to some young person who likes to have beer drinking, boozing, drug parties and brings 15 people into the neighborhood we could pull the accessory and say that's it you lose it. So, there are certain rules about what you can even do within that accessory apartment that in a two-family house we would not have those same restrictions.

Mr. James Seirmarco stated you wouldn't have multiple bedrooms usually, there's just one bedroom so it tries to minimize this. It's supposed to be good neighbors in a residential area.

Mr. John Klarl asked does the Board generally agree with the Reber solution?

Mr. James Seirmarco responded yes.

Ms. Adrian Hunte responded yes, and the accessory apartment is just – it's by Permit as a two-family house would be by deed.

Mr. David Douglas asked do people think that we should have a site visit because that would helpful to other people or is that needed?

Mr. Raymond Reber responded I'm familiar...

Mr. Wai Man Chin stated I think we should close and reserve.

Mr. David Douglas stated I'm just asking in addition to that. Do people think we need a site visit?

Ms. Adrian Hunte responded no.

Mr. Charles Heady responded no, I don't think so.

Mr. Ken Hoch stated I would like to see the architect put that on the plan, revise the drawings.

Mr. David Douglas asked rather than closing and reserving, why don't we adjourn it? We can adjourn it and we'll hope to see revised plans and we'll take it from there. Does that make sense?

Mr. John Mattis stated you can work with Mr. Hoch, with his direction and you can get Mr. Yates to revise it and those areas, if they're closed off, then it reverts back to what was originally approved and you wouldn't really have to change anything. Some of these things you're going to knock out you wouldn't have to.

Mr. Raymond Reber stated like the original plans – you put the locks on the door and don't change anything and you're done.

Mr. John Mattis stated so if you work with Mr. Hoch and Mr. Yates and come back next month it's probably something that we would very easily approve.

Mr. Tyrone Ijeh stated members of the Board, I thank you.

Mr. James Seirmarco asked that wasn't too painful was it?

Mr. David Douglas stated it was painful.

Mr. Tyrone Ijeh stated it's a very stressful situation. My mother's there.

Mr. Wai Man Chin stated you know what it is, this was given in **1985** and the original owner never got a Permit, never got anything...

Mr. John Mattis stated this is frustrating for me for two reasons: number one the original owner could care less what is approved he just went ahead and did stuff. He never got a Building Permit. Number two, whoever the realtors are, they're supposed to check these things out and some realtors weren't – and I don't know who they are and I don't want to know who they are but they weren't doing their job. And you're the unfortunate beneficiary of those two situations because if the realtor had checked in Town Hall, they would have found out what was approved and they would have found out there is a violation and the previous owner would have had to do something and you wouldn't have gotten stuck with it. We sympathize with what happened and I think we found a very good solution to that.

Mr. Raymond Reber stated we acknowledge you're an innocent victim.

Mr. Tyrone Ijeh stated I concur, I really do.

Mr. John Mattis stated and you're an innocent victim in this whole thing and I would feel exactly

the same way you did if I walked in there and I were in your shoes.

Mr. David Douglas stated and he would have yelled even louder.

Mr. John Mattis stated probably.

Mr. Tyrone Ijeh stated once again, my apologies, it's just a very stressful situation. It's been going on since **2007** and it's just...

Mr. John Klarl stated it affects every day life.

Mr. Tyrone Ijeh responded yes.

Mr. John Mattis stated I remember one thing that Mr. Reber said because it's an accessory apartment your mother can't have any of these wild parties.

Mr. James Seirmarco stated I'll make a motion that we adjourn **case #2013-09** adjourn this for the purpose of redoing the drawings to reflect the accessory apartment of approximately **838** square feet and to isolate the areas and access to the accessory apartment to the upstairs portion of the house, the primary residence.

Mr. John Klarl asked did you adjourned it to April?

Mr. David Douglas stated you forgot to say when the adjournment was for.

Mr. James Seirmarco stated adjourned to April.

Mr. Tyrone Ijeh stated thank you very much members of the Board.

With all in favor saying "aye."

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ADJOURNMENT

Mr. John Mattis stated I move that we adjourn the meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the meeting is adjourned.

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NEXT MEETING DATE:

WEDNESDAY APRIL 17, 2013