

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 *Thursday, May 19th, 2011*. 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.
James Seirmarco
John Mattis (absent)
Adrian C. Hunte
Raymond Reber

Also Present

Wai Man Chin, Vice Chairman
Ken Hoch, Clerk of the Zoning Board
John Klarl, Deputy Town attorney

ADOPTION OF MEETING MINUTES for April 13, 2011

So moved.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the minutes for April are adopted.

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PUBLIC HEARINGS ADJOURNED TO SEPT. 2011 FOR TOWN BOARD ACTION

- A. CASE No. 11-09** **King Marine** for an Interpretation that the previous non-conforming use obtained by Briar Electric can be changed to a non-conforming use for marine storage, sales and services on the property located at **285 8th Street, Verplanck.**

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PUBLIC HEARING ADJOURNED TO JUNE 2011

- 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.**

Seconded with all in favor saying "aye."

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ADJOURNED PUBLIC HEARINGS

- A. CASE No. 09-11** **Karen Kid** for an Area Variance for a side yard setback to expand a side and rear yard deck, and add a roof and screens to part of the side deck on property located at **2393 Maple Ave., Cortlandt Manor.**

Mr. David Douglas stated if I recall correctly, when you were here last month, we had discussions about your application for a Variance and you were going to think it through and come back with a revised plan.

Mr. Kid stated that's correct. We're not going to do the screened in deck with the roof so we're just looking for the existing deck that was over the Variance when we purchased the house so you wanted to see a map of it.

Mr. Wai Man Chin stated Ken thought you were supposed to make some clarifications on this.

Mr. Ken Hoch stated Mr. Kid just handed in his site plan but it's not a survey. It's showing the existing deck: **21', 8"** from the property line. We had a scale from the architect last meeting that said it was **22' 6 1/2"**. I don't know which one is right and without a survey we don't know exactly. I'd like to put a dimension on here that we'd be comfortable with just in case the survey came in and it was four or five inches closer to the property line.

Mr. Charles Heady asked do we need another survey then?

Mr. Ken Hoch responded no they don't have a survey of the deck.

Mr. Wai Man Chin stated they don't have a survey at all.

Mr. Ken Hoch stated we have two site plans with slightly different dimensions.

Mr. Kid stated it's the same architect also.

Mr. David Douglas stated why don't we give them a Variance and make sure they're covered in case – give them a few extra inches so that they don't run into a problem down the road.

Mr. Ken Hoch stated based on this I would suggest **21** feet and give them six or seven inches leeway.

Mr. David Douglas asked six or seven inches in addition to the **21** feet or the **21** feet?

Mr. Ken Hoch stated the **21'** would include the potential to be off by a couple of inches.

Mr. Charles Heady asked **21'** even?

Mr. Ken Hoch responded yes.

Mr. David Douglas asked everybody's okay with that?

Mr. Raymond Reber responded that's acceptable as long as it's worded in such a way that means that they can't rearrange the existing deck so that everything that comes within that **21'** because that's the closest it gets, correct?

Mr. Kid responded correct.

Mr. Raymond Reber stated just be clear when we grant it that it's for the existing deck as structured and not that they can rebuild it and end up pushing the whole side over.

Mr. Charles Heady stated I make a motion on **case 9-11** to close the public hearing.

Seconded with all in favor saying "aye."

Mr. Charles Heady stated I make a motion on **case 9-11** to a required Variance an area Variance for side yard setback from an allowed **30'** down to **21'** to allow to a side rear yard deck extension SEQRA type II no further compliance required.

Mr. John Klarl asked it was **30** down to **21** right?

Mr. Charles Heady responded **21** yes.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Variance is granted.

Mr. Kid asked can we get a copy of that?

Mr. Ken Hoch responded you'll get one in the mail when I do the actual Variance.

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NEW PUBLIC HEARINGS

A. CASE NO. 11-11

William Caltagirone of 230 Watch Hill Rd.

for an interpretation that Building Permit #20110152 granted to **Padraig & Deidre Carroll** for a new single family residence on property located at 10 **Rocky Ridge, Cortlandt Manor** was not properly issued.

Mr. William Caltagirone asked you all have my documentation? Ken handed this out. My wife Silke and I from Watch Hill Road, we're adjacent to the Permit that was issued. We've been there for **34** years, something in that area.

Mr. David Douglas stated before you begin I just want to put something into the record. Part of the materials that were given to us includes a memorandum from just over four years ago from the Open Space Committee that I wrote. I personally have no – I'm abashed to admit I have no recollection of having written this but I did. It won't affect me one way or the other in this matter but I want to disclose that it's here. I just want to make sure you don't have any objection to my being part of this decision. I will recuse myself if you want.

Mr. William Caltagirone stated I think that's probably just one of the minor inputs.

Mr. David Douglas stated I think so too but I just wanted to have it on the record.

Mr. William Caltagirone stated basically what we have here – if you all look at the conclusion, the pith of this case is that there was one easement turned into two easements. Fundamentally, that can't be. There was an owner of lot 1 and there was a subdivision made in **1947**. There was a filed map with the county, **29** acres was divided into **7** lots. **Lot 1** in **1974** was subdivided into **parcel 1** and **parcel 2**. **Parcel 2**, the lot with the house on it was sold to my wife and I along with the easement. Apparently the owner of **lot 1**, Mr. Friedman reserved, which is strange language, an easement for himself an easement which didn't exist and basically that's a fiction. He then conveyed that easement to himself. Town attorney at that time Mr. Ryan said he was uncomfortable and that's in the Town record with the Friedman's conveying an easement to himself. There's a lot of law on easements, as you well know, and the controlling one is the Wilson V Ford where there was a case in New York City in **1913**, there were several people in an alley, I believe it was five people, one of those owners had another piece on the other side of the alley way conveyed an easement to himself. The others objected. It went up to the Court of Appeals and that case has stood ever since it's Lawrence [11:04 Reed] property law. That is one of the controlling issues in this case. The Town of Cortlandt Code requires that somebody has an easement. This property did not have an easement, nonetheless, even though all the parties were informed, which you'll see in point two, all parties were informed, that's the applicant, his attorney, Town Clerk, Town attorney Mr. Wood and yet somewhere along the line they – in this dragged out issue, let an easement out. Now, there's further law in that there's a certain characteristic to a neighborhood and that's point three. That the lots **1** through **7** were created with the implication filed, which is **exhibit 1** on that map, that there'd be hope in this tranquility views it would be a wooded area. The neighborhood atmosphere was created by implication and that's enforceable, there's case law on that and what we have now is basically a mine in our backyard. There's a **30** foot drop off my property, a **30** foot vertical drop off Mr. Noto's property, both houses, both properties have devalued tremendously. To me it's crazy. There

was a further step here when there was an application that the applicant was given an exception from the mined land law. New York State law says that if you mine, if you dig over **750** cubic yards and the application here is for **2,500** yards, that you are mining. The exception to the mining law was granted by one of the **district 3** mine specialist. However, that does not say that's it's not a mine, that one can mine in **R40**. What that does is exclude the applicant from complying with the extensive mining laws and the extensive reclamation process and all the filings when a mine is made. Basically what we have is a non-existent easement and a non-permissible activity going on in an **R40**. I didn't have time to include the pictures with all my write up to you all but here are a couple, you can pass them around. They're essentially in a mining atmosphere. Had this been a mine none of that would have been permitted without all the OSHA safety stuff and so forth. It would not be permitted. What's being done in **R40** would not be permitted in a mining area. There'd even be federal intervention in this project. What's going on is absolutely insane and in terms of mining there's also rock crushing as a commercial application. These are some of the shards that have been thrown up on my lawn. How it could come to pass in the Town of Cortlandt is unbelievable. Basically what's happened, and it's one of my final points, is there's been a transfer of value to the applicant from the neighbors and from the neighborhood and there's a counting regulations on that, there's a financial accounting standard board to **157** mark to market accounting. It shows that one asset should be valued as other assets are valued recently in the market. When this property was purchased it was purchased for **\$50,000**. At that time, properties down the road in Flanders were for million dollar houses and it's easy to impute a third of the value for the land, that would be **\$250,000** to **\$350,000** so essentially what's occurred here is that a property has been burdened. Our easement's been burdened, our new neighbor who owns the road has been burdened and that's why I say Wilson V Ford because it's replete and excruciatingly mentioned in that case, the issue of overburdened. To go on on other issues where the Town hasn't even complied with its own laws – when there's more than four houses on an easement road there's a certain requirement for the finish of the road. The limit goes **8, 4, 2; 8** is an underlayment, **4** inches is the number **4** and **2** inches of blacktop. The road in question is merely an oil and ship a couple of times and it's coming apart. It will continue to come apart. It's bus stop for children, it's also part of an evacuation route designated by the county in case there's an emergency at Indian Point. Town requires **200** feet view of right and left from an easement road, there's zero view to the left from this road. How it can be contemplated that the burden should be increased for the community particularly when it endangers buses and to endanger any emergency exit from the neighborhood, to me is just unfathomable. Now, go on to Mr. Wood when I cited the law to him he said “well, Wilson V Ford really doesn't stand anymore,” and he cited a case called O'Mara, that's a recent case **2007**, I believe. The town of Wappingers had agreed with a developer that open space land should be allocated to the development. There was an agreement, there was consideration exchanged, the open space for the subdivision. After that time, the builder/contractor sold his piece to another party. That party wanted the requirement for open space to be rescinded and what you have here is a completely different situation. You have something that's ordinary and usual where a Zoning Board requires an open space, there's value exchanged between the builder and the town, mainly the town gets the open space, the builder gets the subdivision. In the business at hand there was nothing exchanged, it was a fictional easement created. At that time, and it's in the Town files, the owner Mr. Aievulet at that time

strenuously objected to the fact that there was going to be another property that would come out onto his road. I was not party to this at the time, we did not live in the Town at this time. I researched that in the Town files. Additionally, in the Town files, which should have alerted Mr. Wood to the fact that there was something shaky about the easement even though it was on the applicant's deed and on the applicant's title search in **exhibit A**, there's also an **exhibit B**. **Exhibit B** which is included into your package says that "the title company is not going to ensure the right of ingress and egress." That should have keyed a further look into that right, whether it was valid or not. It was absolutely invalid. I followed up to a degree on trying to track down the title company. The title company was sold to another title company.

Mr. John Klarl asked who was the original title company?

Mr. William Caltagirone responded it's in my notes. I can't repeat it off the top of my head. The successor title company I called on. They claim they have no records. So how is the easement defensible if there's no records to defend the easement? That's another crazy part. Additionally, it seems strange to me that one insurance company would buy the book of another insurance company where there's only liability. Typically, when there's a purchase of company A by company B, there's value in the company that's purchased. If let's say All State buys a small local insurance company where there's a cash flow from the automotive...

Mr. David Douglas stated that doesn't have to do with the issues before us though does it?

Mr. William Caltagirone responded sure it does. It shows it's a hint that this property wasn't a property that could be deeded in terms of an easement. It shows that there was something in the market. It's a market hint that this property was not a building lot, that this was something other. This was a woodlot. It's not a place where it could be built. Additionally, in terms of what was given by the original **1947** map was that there'd be openness, that you would never have somebody drill down as in those pictures, with a **30** foot down, where if my neighbor steps six inches off his property he dies. That's crazy, but yet it's being done. What we're asking for is that the Permit be annulled and if it's not annulled immediately we're asking at least in fairness to all parties that construction be stopped at the site. Part of the reason is because if we don't exhaust our local remedies we can't progress onto Supreme Court in White Plains. I would say the Town is generate a liability for itself and I think that those should be cut short here.

Mr. David Douglas stated Mr. Reber I think this is your case.

Mr. Raymond Reber stated obviously this is a complex case. You've cited a number of issues which I've taken notes and I've noticed your package is quite comprehensive which I've had a chance to review but unfortunately some of these details obviously are going to take some follow up on our part. The Town has obviously made certain decisions that's why the Building Permit has been issued so it behooves us to be rationed into doing anything quickly because of the complexity. There's no way we're going to make a decision tonight. What we have to do is go back, review this material, check on some of the issues that you've brought up to make sure we understand what goes into allowing a Building Permit to be granted and I think you've raised a

key issue, one being the easement. Without an easement they don't have access, they can't get a Building Permit, that's obviously critical. We've got to sort that out. Some of the other issues, again, with the mining issue whether that's a violation, I don't know to what extent that would effect this Board. We'd have to check. We may not be able to evaluate that in terms of our jurisdiction. I think what we've got to do is sort out the various issues, go through them, do some research and then determine what falls within the purvey of what the Zoning Board can use to say "yay" or "nay" and hopefully we can do that over the next **30** days or so before our next meeting and try and move this along for you.

Mr. William Caltagirone responded I understand that there's an additional party that basically – and this is a matter of law that in the environmental quality review act it's required that if there's a physical action that causes an unlisted action to become a **type I** action and I can cite the law on that it's **617-4B, 8, 9 and 10**. If there's an action next to a park and these included publicly owned parkland, the question here is this adjoins Blue Mountain Reservation and state law requires that there be a **phase I** in this case. Now, Mr. Wood told me that "well, we didn't do a **phase I** because it's single family home." That doesn't apply in this case. By law you have to do a **phase I**. **Phase I** wasn't done. Here we've actually got somebody who is now below the water table and water as of this morning and this afternoon is leeching out from this property onto Watch Hill Road. The road was in bad condition, it's dangerous, it's falling apart and now you'll have a blind corner, zero view to the westerly part of the property...

Mr. Raymond Reber stated I hear you, but first of all right now with all the rain, I don't know where we are with water tables. My water table is very high what have you. But, aside from that, some of these issues I know are not issues that the Zoning Board can address, they're Code Enforcement, they're Planning issues, things like sight distances and what have you it's very difficult, those normally don't fall into the criteria of the legal issues that we would review. Again, that's why I say we have to sort out some of these points that you've made to determine which ones we can use and which ones we can't and then go from there to decide whether or not the Town made a mistake in issuing this Building Permit.

Mr. William Caltagirone responded thank you. Are there any other questions? I'd like to answer them now if there are because what we're asking is not for an immediate decision on annulling the Building Permit but on a stop work order so there's not more damage to the community, to the park and to my property.

Mr. Raymond Reber stated I would have to ask our council. I don't even know if we have jurisdiction over things like stop work orders.

Mr. John Klarl responded we don't do that. Code Enforcement does it. We grant Decisions based upon applications that come before our Board. We don't issue stop work orders.

Mr. Raymond Reber stated that's out of our responsibility. We can't do it.

Mr. William Caltagirone stated the issues here basically, to sum up, there's no easement. It's not

a permissible activity. I don't understand why there couldn't be a stop work order with the shipping of rock and the moving of the rock for the benefit of another property.

Mr. Raymond Reber stated Code Enforcement can do that if they believe that there's some...

Mr. William Caltagirone responded Ken doesn't believe that, that's why I'm here.

Mr. Raymond Reber stated we the Zoning Board don't deal with a lot of those types of issues, it's unfortunate, but for us it's convenient. We're restricted in what we consider. Obviously, this is a major cut, I agree, that's a major cut. I don't know why they had it cut that deep but again that's not something that we can evaluate per say.

Mr. William Caltagirone asked what can you evaluate?

Mr. Raymond Reber responded we have to look at the legal issues. Like I said, your easement is a critical one for us, we can look at that. Obviously if there's a zoning issue, what's allowed there, if in fact there's something in direct violation of certain laws maybe, but again that gets kind of graying in terms we're not the enforcement body to enforce EPA regulations or Department of Health regulations or those type of issues.

Mr. William Caltagirone responded during this whole issue I'm always reminded of the Conde Nest cartoon of the Tweetie ring pointing at him, the other guy – we have gone through a half dozen agencies with no satisfaction. Might I say this is the most outrageous thing I've seen happen in Town in **34** years and in fact there's been such an aggressive attempt to develop this property that initially – as you all know the first thing you have to do is dig your deep test holes. This individual couldn't even get into his own property to dig his deep test holes so what did he do? He went around two properties over Mr. Noto's property and over the Sponsetta's property. I couldn't believe that these people would let him do it so I went up to see Mrs. Sponsetta who was new in the neighborhood at the time. She was in our house trembling. The guy had driven down her driveway or around the back and over and there's – basically that's a felony. Here's the police report.

Mr. David Douglas stated that's not a zoning issue for us though.

Mr. William Caltagirone stated it's not a zoning issue but it might reflect on the character of the applicant.

Mr. David Douglas stated but that's not relevant.

Mr. Wai Man Chin stated that's not zoning.

Mr. Raymond Reber stated these are things where the police get involved and they can tell him he has no right and he gets arrested if he goes there then if he can't get on the property he can't dig his holes, he can't proceed with his projects. Somehow, that slipped through the cracks but

we don't have the power to step in on those kinds of issues.

Mr. William Caltagirone stated and another issue is it's been so aggressive to develop this property that one of the four wheel trucks pinned my car up against a wall because I was taking pictures of where they were dumping the product, where they were selling the product and in that regard trooper Winterfelt is investigating the matter, illegal detention, another felony. What you've got here is a felony...

Mr. David Douglas stated can I interrupt for a second? For our purposes we only have the legal power to address certain limited zoning issues. So, the issues of whether somebody committed a felony that's not something we can delve into. If you could just keep it to the zoning issues because we don't have any power or any jurisdiction whatsoever with those sorts of issues.

Mr. James Seirmarco stated let me ask a question to change the subject. When you come in from Route 9 on Watch Hill, Rocky Ridge is on your right, correct?

Mr. William Caltagirone responded right, it's about **300** feet before the school, the Furnace Woods school.

Mr. James Seirmarco stated the park, the Sportsman park is on the other side.

Mr. William Caltagirone responded that's correct. The sportsman park actually goes over the road the total area the sportsman is **1,550** acres, **77** acres crosses Watch Hill Road at the exit to the Sportsman Center, mile in borders the Sportsmen Center as does the applicant's land.

Mr. Raymond Reber stated this county parkland goes right over to Furnace Dock Road.

Mr. William Caltagirone responded exactly.

Mr. James Seirmarco asked just for the record, how many houses are there on Rocky Ridge?

Mr. William Caltagirone responded there's supposed to be seven. There are other people who exit the road. There's another road about **300** feet over. There had been several other houses that were negligently built there – the Town was negligent in granting permits to those. There's seven – I thought there were more than seven.

Mr. James Seirmarco asked those seven houses exit on from Rocky Ridge to Watch Hill?

Mr. William Caltagirone responded correct.

Mr. James Seirmarco asked day in, day out, looking both ways?

Mr. William Caltagirone responded well, you can't look one way.

Mr. James Seirmarco stated I drive Watch Hill constantly all day long and I pick up students on Rocky Ridge and this is me talking personally, I've never seen or heard, or experienced problems doing that.

Mr. William Caltagirone responded that may be your experience, but last spring I worked outside, I heard a crunch and I knew what it was. The lady hit an abutment on the other side. I ran down with a fire extinguisher, car was on its side, there's been a bus accident in the area. There's been a collision between a two-axle dump truck and a pickup. It's a dangerous area.

Mrs... stated there is a mirror there on the road across from Rocky Ridge to determine the cause from the right side. Making a left from Rocky Ridge onto Watch Hill Road is extremely dangerous as is even making a left from our driveway onto Watch Hill Road, making a right is a different story.

Mr. James Seirmarco stated it's an existing nuisance basically.

Mrs... responded yes.

Mr. William Caltagirone stated the mirror is some help however, it's a parabolic mirror. If someone is exceeding the speed limit, the figure eight is extremely small and it's impossible to judge speed that'll be on top of you but I guarantee there will eventually be a death at that corner. Unfortunately that's the Hodson's choice, it's not my doing.

Mr. David Douglas asked can I ask you a question? In going through your materials you've got various factors and then you've got a summary which talks, if I'm reading it correctly, strictly about the easement issue, is the crux of what you're protesting the easement issue? Because, then we can just focus on that. When you've got a summary and you talk about the easement.

Mr. William Caltagirone responded that would end it all.

Mr. David Douglas asked I just want to understand – if that's your claim then we'll focus on the easement issue.

Mr. William Caltagirone responded focus on the easement issue and the non-permissible activity and the fact that all the rules, the Town of Cortlandt rules haven't been followed in terms of the quality of the road and that's in the Code...

Mr. John Klarl asked you're talking about **Local Law 5**?

Mr. William Caltagirone responded maybe Ken would know, you've got about eight inches, four inches, two inches if it's four houses or more. That's underlayment of eight and four of mixture four and two inches of tar and that's not done.

Mr. Raymond Reber stated we have in the past been able to give an Interpretation as to whether

or not procedures were followed properly in terms of applying for various permits. That is in our jurisdiction and we will review those aspects of this to see if in fact whether or not some of these steps were ignored and improperly ignored.

Mr. William Caltagirone stated I will also say the Town is also burdened with the state law **617.4B 8, 9 and 10** and that regards the requirement to do a **phase I** because it's adjacent to a protected area. So, that's a requirement for the Town.

Mr. David Douglas asked do you discuss that in your materials here?

Mr. William Caltagirone responded I did not discuss that in my materials but...

Mr. David Douglas stated if you could give us something that would be helpful to give us something about that. Okay? Anybody else have any other questions for the applicant?

Mr. William Caltagirone responded thank you all. My hope is that you'll eventually annul the Permit because it's illegal and temporarily you just grant a stop to what's going on to the excavation. It's a public danger. Thank you all.

Mr. Wai Man Chin asked there's somebody else who wants to speak.

Ms. Susan Trager stated I live on Rocky Ridge. I'm here with my husband and some other people that live on Rocky Ridge.

Mr. David Douglas asked what's your address? Which home on Rocky Ridge?

Ms. Susan Trager stated **48** Rocky Ridge. I am one of **12** homes not seven. We have seen the owner go forward with this. We had some questions about the road, we had some questions about how this was going to affect the drainage, water lines that were coming up from Watch Hill Road and we have seen nothing but this man work within the jurisdiction of what he promised to do. He's taken care of the road. We have children that go to Furnace Woods. In the morning maybe at five to eight there's been one or two instances where there's been a dump truck there where they've let us go past. I understand his concern but his concern comes the fact of the matter that this is right against the back of his property and without being able to speak for the Noto's, which I have spoken to, they're living with it otherwise I think that they would be here as well.

Mr. Scott Trager stated I live on Rocky Ridge.

Mr. David Douglas asked which address?

Mr. Scott Trager stated number 48, I'm Susan's husband. Rocky Ridge is a community. We are a private road. We wind up paying for the road repair ourselves. We wind up paying each year for the snow removal ourselves. We built our own mailboxes. As a group on Rocky Ridge

we're basically welcoming another family. From our perspective, someone purchased land. They got the permits to do what they needed to do. My concern right now is if there's an immediate stop work order where they just started laying down gravel now, there's going to be additional wash onto Rocky Ridge. I would like to see them continue and just finish the project as quickly as possible so that we don't have to worry about erosion on the property. I don't see a need for a stop work order immediately. As being a member of that community of Rocky Ridge, we chip in together and we help one another. I just wanted to put my two cents out there...

Mrs. Susan Trager stated Mr. Caltagirone does not pay any money on Rocky Ridge. He's adjacent to Rocky Ridge. He lives on Watch Hill.

Mr. David Douglas stated I don't want to get into that. I also live on a road just like yours and I know those sorts of issues that arise but that's not relevant to us today. I don't really think we should be getting into who's paying for what.

Mr. Scott Trager stated with all due respect, from my perspective, I'd like to see them just finish the job as quickly as possible and save whatever needs to be saved. It's an eyesore right now while they're doing the work but if it stays, if there's a stop work order and this thing stays as it is for an extended period of time, I'm worried about additional erosions. I'm worried about what it's going to do to the area.

Mr. David Douglas stated I think that the odds are good that this Board will issue its decision relatively quickly so that may moot the issue, at least for the purposes of this Board, about stop work order. I'm speaking for myself, not for everybody else, but I think that we'll probably have a decision – not today, but relatively soon. I don't know that that's going to be an issue.

Mr. Wai Man Chin asked basically you have no objection of what they're building or what they're trying to accomplish over there?

Mr. Scott Trager responded no sir, I do not. He purchased the property and he owns it. He's owned it for a little while. He went through the Town. He did what he was supposed to do. I personally, I see him and welcome him as another member of the community to also help defray the cost of maintaining the road. He has put in proper drainage. He's done what he has said he would do. We were concerned about some water lines that were going up to one third of the way up Rocky Ridge and it seems like he did everything he was supposed to do. We raised our concerns with the Town. We sent e-mails out to the Town which was responded to and I'd like to see him have an opportunity. He owns the land. It's a private road on Rocky Ridge but, like I said, it's a community and that's what I had to say.

Mr. Wai Man Chin stated thank you.

Ms. Cynthia Merend stated 62 Rocky Ridge. We feel the same way. Let it proceed.

Ms. Shirley Banker stated I have a correction, 37 Rocky Ridge. There are **12** families that live

on Rocky Ridge, not seven. It's **12** families and the mirror that was put up, we paid for the mirror. Just wanted everybody to know that and there have been many, many accidents coming out of Rocky Ridge. I was in one of them where the car was totaled. It was speeding around the corner and hit me as I was exiting. It happens often.

Mr. James Seirmarco asked but that's Watch Hill Road?

Ms. Shirley Banker responded it's Watch Hill, exactly and people speed on Watch Hill Road. The objection I have at the moment to this construction is the ridiculously deep cut that was put in. I had no idea that it was going to look like that. It's huge. When I was pulling in after work the other day I had this thought occurred to me that I was going to have to call **911** and say that the Noto's house had collapsed into this ravine. It's that deep, it's huge. I don't know if the picture that you saw shows – it's really terrifying. I find it terrifying.

Mr. Wai Man Chin stated thank you.

Mr. David Douglas asked anybody else want to be heard?

Mr. Raymond Reber stated if there's no other questions at this time, like I said, I think the Board has quite a bit of work to do and we will try to expedite this quickly so that hopefully by next month we can make some decisions. I would move that we adjourn **case 11-11** to next month's meeting.

Seconded.

Mr. William Caltagirone stated I would just like to give the Board a couple of other documents regarding mining and regarding my summary of the case of Wappingers and O'Mara.

With all in favor saying "aye."

Mr. David Douglas stated the case is adjourned to the June meeting. Ray you kept the public hearing open?

Mr. Raymond Reber responded yes.

B. CASE NO. 12-11 Signs Ink on behalf of Fortena Corp. for an Area Variance for a freestanding sign on property located at **7 Croton Ave., Cortlandt Manor.**

Mr. Steve Chester stated from Signs Ink. Back here before the Board trying to get this sign approved. We started out way bigger and we brought it down to size that we hope can be approved. The legal limit is **16** feet but we went **32**. That new sign area of **32** square feet will be something the Board finds be good. Basically, that's it.

Mr. James Seirmarco stated just before we go up to the details, this sign seems to be a difficult job for this Board, for myself and other members of the Board. The Town Board has instituted a sign Ordinance. A lot of work went into that Ordinance and basically they've come up with a sort of an algorithm that says your sign is based on the – it's commiserate with the size of your building. In the instances where we have the power to vary it by **100%** there's always been a hardship as far as why they have to be bigger, whether it's the building is set way, way back so it's difficult to see or it's in an area where there are a lot of large stores and they all have about the same size signs. There are a number of hardships that the Board has allowed Variances of up to **100%**. In this particular case, this is one building, one applicant. It is right on the road. It is on the corner of Croton Avenue and 202. It's not difficult to see the building or see the corner. I can't think, myself, I can't think of any reason that the Town would want us to vary this. There's no hardship here, to me, I just don't see the hardship.

Mr. Steve Chester stated when you look at it a different way, you see that the sign itself, just the sign is obviously within the limits and we're only talking about the structure that's holding it up. I understand that the law...

Mr. James Seirmarco stated you know the law's very clear about this that the structure is part of the sign so this is **100%** Variance on an existing – it should be half this size. The applicant has chosen to put those enlarged supports there. There's no hardship that he has to – there's not wind there. There's nothing that's required. There's no reason that they have to be that big. I'm trying to understand why it has to be this big and in my mind I can't.

Mr. Steve Chester responded it's pretty simple, it's all esthetics. My client is very much in favor of things that look great and this type of sign is **100%** better looking than a sign with just two sticks holding it up. That's the reason he wants something with a little class to it, something that adds charm to his building, something that adds something to the community which I think stone does. Every time you pass a stone wall, it gives you a certain good feeling and this kind of sign adds...

Mr. James Seirmarco stated again, we don't usually take into consideration esthetics. It's purely the size of the sign and if it's got to be larger for a technical reason or a hardship reason or any of the reasons that we've given Variances in the past, I have no problem with that. We're going to give a Variance a little bit later in the evening to another applicant, there's reasons for this. I personally can't see the reason for this being **100%** because you want to have two stone pillars next to it. Maybe one in the bottom or something and the Variance is **10%, 20%, 30%** but **100%** for esthetics? I don't think that's what the Town Board had in mind when they wrote that Code. That's the way I feel. I don't know about anybody else.

Mr. Raymond Reber stated you originally came to us, you obviously had something larger, bigger stone posts, what have you, that would have required us to do something we couldn't do which is we're limited as to how much of a Variance we can give. You've come back now modifying it so that it's within our possible allowance that we could give. I disagree with Mr.

Seirmarco in terms of esthetics. I think many decisions that we've made for example at the Town Center is uniformity and to make sure it looks proper and it's balanced. But, again we do it within limits that we're allowed. We are given flexibility. We are given in fact **100%** flexibility. I think for that reason so that we can make adjustments. I also found it interesting that we had a joint Board meeting not too long ago and the traffic committee was telling us about the problems at the Town Center in spite of the big signs and everything that's going on. They say half the accidents that occur, occur in the Town Center where people who are trying to figure out where they're going and looking for signs and what have you. Since this sign is essentially within our limits and the thing that requires the Variance are the pillars, I'm not too sure I have a problem. I like esthetics I think it's attractive. Obviously the Town likes it because they did it with the signs right here for Town Hall. If you come to Town Hall it looks like that. They built some signs along Route 6 built it the same style. I think esthetics is important to the Town. People want things to look good. I think a lot of what went into the sign Ordinance was to make sure that things weren't visually obnoxious either too big, or flashing lights which aren't allowed or other crazy things that people might want to do. I personally have no problem with this. It does represent **100%** but it's for the pillars not the sign itself. The sign is pretty much what would be allowed. To me, I'm willing to give a Variance so that something does look attractive and is appealing to the Town. I would vote for it.

Mr. Wai Man Chin stated Mr. Reber I agree with you there because basically the sign itself is only **3' x 5'** which is **15** square feet. Again, we have to basically go by the structure which **4' x 8'** that's why it's **32** square feet but I agree that the sign itself is only **15** square feet which is even less than the **16** square feet permitted but it's the structure that's holding it up. I don't see a problem with this at all also because based on our Town Center, the way that's done and some of the other areas I think it would look good there. I would have no problem with this.

Mr. Charles Heady stated I know that the sign if it was smaller some people would have a hard time to try to find a name like in the Town Center, sometimes they have problems finding the name of the store they want to go to. A bigger sign like this would show up more especially in that busy street of Crompond Road looking for a sign, it would come up a little bit quicker. I would have no problem with it.

Ms. Adrian Hunte asked the front of the building is where? It's not on 202 is it?

Mr. Steve Chester responded no it's on Croton Avenue.

Ms. Adrian Hunte stated it's on Croton and it's not inside the – you enter, there's a parking lot there, there's a driveway – and right now there's no sign on the 202 side? Is that what you're considering the side wall where you want to put the sign as well?

Mr. Steve Chester responded we have zero signs right now.

Mr. John Klarl asked no signs on the building?

Mr. Steve Chester responded no.

Ms. Adrian Hunte asked are you going to put one on the Croton Avenue side as well?

Mr. Steve Chester responded no.

Mr. Wai Man Chin stated used to be an old gas station there.

Mr. Steve Chester stated it tried to be a car wash. I remember those meetings.

Ms. Adrian Hunte stated I don't have a problem with the sign.

Mr. David Douglas stated I agree with everything Mr. Seirmarco said with one exception. I do think that esthetics are relevant and that's part of my longstanding problem with all the sign Variances that we grant here. There seems to be a prevailing view of business owners that bigger is better and we get one after another of business owners saying "I must have **100%** Variance." I'm not convinced either on esthetics. I'm not convinced on economics. I also thought one other thing that came out of our joint Board meeting is there was a point made that people are always saying "I need to have a bigger sign because nobody can see it" is that the street signs themselves are I think what was said is that the lettering on those is three inches high and people somehow able to see what that is so when a person comes in and says "I must have my eight foot, **10** foot, **12** foot or **100** foot sign because I'll go out of business unless I do that." I'm not convinced but I'm not going to waste everybody's time by us having the – we have the same debate on this Board over and over and over and there's a split of opinion here and the Town Board is considering the issue and maybe there'll be a change in the sign Ordinance, maybe there won't be. I don't see any reason – the other thing I do want to say is that this is not the Town Center. Maybe the Town Center is different than some other places in the Town but this isn't in the Town Center. People on the Board here know what I'm going to say and you know what I'm going to say because you've been here before so I'm not going to bore everybody by keep on going on. Anybody else?

Mr. John Klarl stated it's the 4 against 2 vote.

Mr. Raymond Reber stated one of the problems is one Board member is missing so that's a negative vote.

Mr. David Douglas stated that's true but you still have enough. It'll be **4** to **2** instead of **5** to **2**.

Mr. Raymond Reber stated Mr. Heady is supporting us?

Mr. David Douglas stated the swing vote is on your side. Mr. Heady is usually the one who decides these things.

Mr. James Seirmarco stated I make a motion to close the public hearing.

Mr. David Douglas asked does anybody else want to be heard?

Seconded with all in favor saying "aye."

Mr. John Klarl stated make the motion on the affirmative.

Mr. Wai Man Chin stated I make a motion on **case 12-11** to grant the Variance to allow an area Variance for the size of a freestanding sign from **16** square feet to **32** square feet.

Seconded.

Mr. David Douglas stated all in favor? Can you poll the Board?

Mr. Ken Hoch asked Mr. Reber; yes, Ms. Hunte; yes, Mr. Seirmarco; no, Chairman Douglas; no, Mr. Chin; yes, Mr. Heady; yes. It passes **4** to **2**.

Mr. Wai Man Chin stated and this is a SEQRA type II.

C. CASE NO. 13-11 Mobile GrafX Sign Co. on behalf of Payless
Shoesource for Area Variances for front and side wall signs at **3137 E Main
St.** (Cortlandt Town Center).

Mr. Jonah Eisenberg stated with Mobile GrafX Sign Co. representing MC Sign Company and Payless Shoe Stores in the Cortlandt Town Center. Payless Shoe Stores is rebranding their company and have a new logo and they would like to replace their existing sign and they'd like to apply for a Variance for that. In this case it is **100%** of the allowed – but in the Cortlandt Town Center it appears that most of the stores have Variances and this would only fit in and look uniform with all the other signs in that center. Of course the visibility coming in from the main road, the stores are set back pretty far away and this would assist in customers being able to find their store when they're coming into the center.

Ms. Adrian Hunte asked Mr. Eisenberg the signs that you intend to replace, they're going to be in the same location?

Mr. Jonah Eisenberg responded yes.

Ms. Adrian Hunte asked it seems as though they may be a bit smaller than what's there now?

Mr. Jonah Eisenberg responded I believe the side elevation is actually smaller than what's there now because it would not be allowed – the secondary sign is just not allowed to be **100%** matching with the primary sign from what I understand from the Town Code.

Mr. Raymond Reber stated if you add the total square foot of the two proposed signs, they come in at just under **60** square feet and apparently the two existing signs actually are **75** square feet so you are reducing the signage.

Mr. Jonah Eisenberg responded correct.

Ms. Adrian Hunte stated I give you credit for reducing the size. I don't have a problem with it.

Mr. David Douglas stated I agree. I give you a lot of credit for reducing it. Next time you come in reduce it some more.

Mr. Jonah Eisenberg stated was just going based on what the Code allowed.

Mr. James Seirmarco stated in this particular case, I don't have a problem with this.

Ms. Adrian Hunte asked anybody in the audience? Concerning Zoning Board of Appeals case **#13-11** I make a motion to close the public hearing.

Seconded with all in favor saying "aye."

Ms. Adrian Hunte stated in Zoning Board of Appeals **case 13-11** for the Mobile GrafX Sign Co. on behalf of Payless Shoe Stores to grant a Variance for front and side wall signs from **25** to **40.9** and on the side wall from **12.5** to **18.2** square feet I make a motion that we grant the Variance. This is a type II SEQRA action, no further compliance required.

Second with all in favor saying "aye."

Mr. David Douglas stated your Variance is granted.

D. CASE NO. 14-11 **Capurro Contracting, Inc.** on behalf of Patricia Doherty for an Area Variances for a front yard setback to rebuild a deck and for the existing front steps; and the side yard setback for the existing house on property located at **122 Westchester Ave., Verplanck.**

Mr. Sebastian Capurro stated I'm with Capurro Contracting. I'm just applying for a new porch for Mrs. Doherty.

Mr. David Douglas asked are you authorized to act on behalf of the applicant?

Mr. Sebastian Capurro responded yes I am. She's right here with me.

Mr. David Douglas stated if you could tell us what you're seeking.

Mr. Sebastian Capurro responded we're seeking a new front porch to be rebuilt. The existing one is in much disrepair. We're not going to be changing the current location at all. Everything will be set pretty much as is and that's pretty much it. I have some pictures to show you the disrepair of the porch.

Mr. Charles Heady stated I was there looking at the situation there and as far as the porch I have nothing against building the porch that you have there now. You do have some violations but you weren't assigned any violations because the men were at school today and they couldn't get out there. But, there are some other issues that I'd like to bring up. On the deed itself you've got a note here "complete title search has not been proven to this survey and property line show heir respect those as described in the current deed's patrol evidence from Patricia Doherty and adjoining property owners and are based on **190** foot back with her adjoining deeds." Also, there's a discrepancy with another survey we have from the neighbor. It doesn't correspond and the surveys don't match up at all. So, there is a question on that and how we can go ahead at this point and give you the Variance for the porch because I don't think it can be done right now. But, we could adjourn it to next month until we get that straightened out because one of the surveys is off. The way you posted the line here – I've never seen it before on this deed it says "deed overlap on two places." All the surveys I've ever gotten here on the Board, I've never seen that done before like that.

Mr. Raymond Reber stated your survey that you provided shows on the side there a setback of, you claim **3.1** in the front section and **3.4** feet in the back, however, the neighbor's survey says it's a lot less than that which means we're not in a position to grant the Variance since there's a dispute as to the dimensions. My understanding that, and Mr. Klarl can correct me, in the past when certain issues like this have arisen something has to be worked out between the two neighbors to come to some agreement with surveys and then, if in fact, the line has to be moved or adjusted that's a lot line adjustment which has to go through the Planning Board correct?

Mr. John Klarl responded what happens when there's disputed boundary lines, it's often resolved by what's called a boundary line agreement where people agree and it's not so much we do a lot line adjustment because the Town is concerned where the line is to start with if you're concerned, we don't know exactly where it is, so the boundary line agreement would be entertained and accepted by the Town and that would establish the boundaries for everyone going forward. But, gore strips do occur from time to time, overlapping strips and typical ways, Mr. Reber described it, is a boundary line agreement.

Mr. Raymond Reber stated and once that's agreed to and we know what the exact dimension is then you can come back before us so we can consider this Variance.

Mr. Sebastian Capurro stated I understand all that and she does as well. I was just asking if we could have some sort of stipulation where we could actually repair the porch. It is dangerous for her to use it at the moment, while we try to sort out all of the boundary lines, all the survey lines. I can certainly have the surveyor come back out but at the meantime, in the moment, if we could somehow repair – as you can see with the pictures, she's basically falling through it at this point.

In one of the pictures as well, you'll see that one of the beams that's holding it up, one of the **6' x 6'** beams are pretty much floating in air. I don't think she's going to have a problem going back with the surveyor to correct the issue but in the meantime if we could be granted...

Mr. John Klarl asked how has this porch been in this dangerous condition would you say?

Ms. Patricia Doherty responded about a year, it started to get bad but a lot of the rain that we had worsened the condition. But, right now it's very unsafe for me to walk on and also this porch has been here for numerous years. The property line to the left, which might be in question, at one time did have a fence that was out about maybe four feet from the property. I know I have at least four feet on that side and **10** feet on the other side where the driveway is. The property has always been **39** feet across and the existing porch is **25** feet across, I believe and five or six feet outward. At one time, there was a fence to the left side of the porch and that was out about three to four feet. We always had what I would call an alleyway there and there was a flower garden there at one time but one of the tenants that lived next door took it down on us.

Mr. Raymond Reber asked a question for my colleagues, with respect to the porch, would it be possible for us to grant a Variance assuming the worse case on the survey just for the porch for the purpose of just maintenance and repair of the existing porch within its existing dimensions and then hold off on the issue of the whole entire building which would require them to get this lot line resolved somehow?

Mr. Charles Heady responded as far as the porch it should have been repaired way before this. This thing's a disaster. I was afraid to walk on the porch itself. The roof is all coming in, leaking through. The beams are rotted. It's more than a year it's been going like this. It's been going quite a while.

Mr. Raymond Reber stated I guess the reason they're before us is I guess they want a Building Permit to work on the porch. Is that the problem Ken?

Mr. Charles Heady asked what about the lot line on the side?

Mr. John Klarl stated Ray's trying to carve out one area of the premises to give a Variance to...

Mr. Raymond Reber stated just deal with the porch itself so they can fix it.

Mr. Wai Man Chin stated replace the porch.

Mr. John Klarl stated deal with the barrier line issues...

Mr. Charles Heady stated give a Variance in the back part of the brick building is falling down in the house in the back.

Mr. Raymond Reber asked Mr. Hoch, do they need a Building Permit to redo this porch? That's

the problem?

Mr. Ken Hoch responded they filed for the Building Permit so that's why they're here.

Mr. Raymond Reber asked so that's the issue we're here why we have to decide whether they can rebuild it?

Mr. Ken Hoch responded now the complicating issue is they may now need a side yard setback if they actually have less property than was shown on the survey they've submitted.

Mr. Raymond Reber stated that's why I'm proposing maybe we just give them whatever Variance is necessary based on the minimum dimensions so they can redo the porch and hold off on the more critical one which is the overall structure and the setback which would require them to resolve with their neighbor and get an agreement on a lot line and then we could complete the Variances that are needed for this building.

Mr. Wai Man Chin stated I would tend to agree only for safety reasons but the porch has to be replaced exactly the same location and the Building Department will come out there to make sure that it is only in that same location.

Mr. Raymond Reber stated right, same dimensions, same basic structure – they can't close it in or do anything, it's going to be a porch.

Mr. David Douglas asked John is there any prohibition or limitation to doing this?

Mr. John Klarl responded if you're aiming in the way that Mr. Reber is describing, I was thinking maybe creating a file **14-11a** and a **14-11b, a)** for one request and close the public hearing and grant a Variance, and **b)** so you don't have to do a separate application, a separate fee for something to keep it open. So try to bifurcate her request to something that you can grant now and something that you want to withhold the decision on to a later date.

Mr. Wai Man Chin stated I would agree. Based on the Romeo survey, the lot line is indicated as **0.13** feet to the house or the structure while the TEC land survey indicates it to be **3.1** in the back, **3.4** where the house begins and **3.1** again towards some other part of the house where Romeo indicated at that point was **0.21** feet.

Mr. David Douglas stated right and that's what needs to get resolved. What Mr. Reber's trying to do is come up with an approach that allows her to fix the porch and then we'll deal with the rest of it.

Mr. Wai Man Chin stated right now, if they build where it is, at least it's not going beyond that property line. It's still within their property line. But, the Variance has to be figured out afterwards then.

Ms. Adrian Hunte stated I agree that we should do something as per Mr. Reber and it seems as though if we don't grant a Variance to at least allow repair of the porch then there will be an adverse physical or environmental impact.

Mr. John Klarl stated and you'd allow repair/report in a certain dimension, lock it into a certain dimension.

Ms. Adrian Hunte stated certain dimension.

Mr. Raymond Reber stated it looks to me that if you use the neighbor's survey, they give a dimension of **4.12** from the line to the structure and it's sort of consistent if we gave a Variance of no closer than **4** feet – the setback has to be how much side yard? We require **5.85** so – you don't have the porch on here do you? Is that the first one? Ken, is that the porch?

Mr. Ken Hoch responded that's just the house. The porch would be slightly less but I don't know what that dimension is.

Mr. Raymond Reber asked the side dimension setback then for the porch that would be for the **5.85**?

Mr. Ken Hoch responded right.

Mr. Raymond Reber stated if you believe the neighbor's survey they'd be within four so it would just be a Variance from **5.85** down to **4** and then we'd have to grant a Variance for the front. That makes sense.

Mr. John Klarl asked Mr. Reber you're trying to resolve the whole thing tonight?

Mr. Raymond Reber responded no, just the porch. We're talking about the porch. There's two Variances for the porch, there's the Variance to the side line slot and there's the Variance to the front.

Mr. John Klarl asked so you'd like to try to grant what we can grant and what we...

Mr. Raymond Reber stated take care of those and stop there.

Mr. John Klarl asked so it would make it like an **a)** and a **b)**?

Mr. Raymond Reber responded right.

Mr. Wai Man Chin stated I agree. Are you okay with that?

Mr. Charles Heady responded not really.

Mr. Wai Man Chin stated we're not giving them a Variance for anything else except for just rebuilding the porch.

Mr. James Seirmarco stated it doesn't fix the problem Charlie, you're right.

Mr. Charles Heady stated it's not complete you know.

Mr. Raymond Reber stated no it's not, that's what we're saying. We're not going to give them the rest of what they need.

Mr. Wai Man Chin stated that's just for the lot line.

Mr. David Douglas stated if there are violations that's for Code Enforcement to address.

Mr. Charles Heady stated that will be taken care of probably tomorrow, I mean, I don't know.

Mr. Sebastian Capurro responded if you would give us the time to do the repairs I would certainly grab our surveyor in conjunction with the survey that the neighbor has they could easily come to...

Mr. Charles Heady asked you can work it out with the neighbors on that lot line then?

Mr. Sebastian Capurro responded I will have to. She will have to.

Mr. Charles Heady stated yes.

Mr. John Klarl stated the only thing is the neighbor isn't here tonight.

Mr. Charles Heady stated yes he is.

Mr. Anthony Carbone stated I don't have a problem with her...

Mr. John Klarl asked you're the adjoining property owner?

Mr. Anthony Carbone responded yes.

Mr. John Klarl asked what's the address for your premises?

Mr. Anthony Carbone responded **116** Westchester Avenue. I don't have a problem with her fixing her porch. It should have been done a long time ago. My problem is the property line. We have a survey from **1971** when we bought the property. John did it. Verplanck has a problem. There should be no reason why we should have this problem here. My survey is correct.

Mr. John Klarl asked meaning which year?

Mr. Anthony Carbone responded '71. When the surveyor was out that day I even told him "make sure the property line goes in the middle of the alley." She knows, because when I cut the grass there she goes "don't come on my side," I said "okay, no problem." She knows where the property line is. That's where I know where the property line is. I have a door on the side of the house that my tenant comes in and out. We store the garbage cans there and everything. I called the surveyor. I told him what the problem was. He didn't want to hear it. He hung up the phone on me twice. I said "how did you get your information?" He said "from the owner next door." So, apparently she said "my property line is right against that wall" and that's what he took.

Mr. Raymond Reber stated what we're saying is that we're going to assume your survey for now is correct as far as the porch is concerned and we'll give the Variance to allow them to repair it. That's going to be done. The other part, our hands are tied. There's got to be an agreement somehow. You've got to resolve it. Surveys can get resolved...

Mr. Anthony Carbone stated but not by a lot line agreement because that's just covering the mistakes. You really have to have – the surveyors are copying each other. That's what they're doing. They're not actually going out there and physically saying "okay, where's the mistake? How can we correct this?" They're not doing that. They're just copying papers because I don't know any better, she doesn't know any better, nobody knows any better and they have a seal on top of there that says this is correct when it's not.

Mr. Wai Man Chin stated I understand what you're saying. This is yours which I see and this one is yours that was made only back in April of this year. Did he go by an existing survey that you have originally from somebody?

Mr. John Klarl stated he could also go by recorded instruments.

Mr. Wai Man Chin stated or just by recorded...

Mr. John Klarl stated he's supposed to do both.

Mr. Wai Man Chin stated you're saying your property is **39** feet but was there an old survey from – because the Carbone's over here have a survey from **1970** something.

Ms. Patricia Doherty responded not that I'm aware of. It was my father's property and he passed away in the year **2000** and he did leave the deed to me.

Mr. Dominick Narciso stated I live on **115 6** Street in the Town of Verplanck very close to this very nice lady. When the surveyor came I followed them every step of the way and I spoke to them at length and told them "make sure you do things the right way. Do not copy from other surveyors, this corrupts a little Town." So, what does he do – I don't know what he charged you.

He came up with a piece of junk. This piece of survey here I marked it in red...

Mr. David Douglas stated we have it.

Mr. Dominick Narciso stated the difference is that I marked it in pink and where those pink things are they're all mistakes. He doesn't spell the word of Verplanck correctly. The bottom of the map...

Mr. David Douglas stated we don't resolve the survey issue. What we're trying to do is to resolve the short term situation to get her to get the deck to be fixed and then we'll deal with the other issue.

Mr. Dominick Narciso stated I'm very happy to see the lady fix her porch.

Mr. David Douglas stated that's what we'll do tonight.

Mr. Dominick Narciso stated for a surveyor to come into our Town and do this, this is garbage.

Mr. Wai Man Chin stated we understand that.

Mr. David Douglas asked does anybody else want to be heard? Let's make a motion then.

Mr. Charles Heady asked Mr. Carbone are you satisfied with what we're going to do here?

Mr. Anthony Carbone responded I don't have a problem with her putting up her porch...

Mr. David Douglas stated and that's all we're voting on.

Mr. Anthony Carbone stated but my problem is I don't want the boundary agreement -- this to go on forever.

Mr. David Douglas stated it won't. What we're going to do tonight has to do with the porch and the rest we'll get resolved later.

Mr. Anthony Carbone stated because I will definitely put a fence up in between the property lines just to protect myself.

Mr. David Douglas continued the rest will get dealt with but tonight we're just going to deal with the porch. Do we need to bifurcate it first?

Mr. John Klarl responded if you were thinking about granting part of the application when we're closing and leaving the rest of it open, that's why I would bifurcate.

Mr. David Douglas stated why don't we do that then. John you want to make the motion?

Mr. John Klarl responded I'll do the preamble to it. Having had discussions with the applicant, the professionals and neighbors that the Board is of the mind to grant certain relief to the applicant tonight and not grant certain relief to the applicant tonight. Therefore, I would suggest and recommend that we bifurcate this application **14-11** into **14-11a** where you're going to close the public hearing tonight and **14-11b** where you're not going to close the public hearing tonight. I'd let Mr. Reber do the filler as to what is **14-11a** and what's **14-11b**.

Mr. Raymond Reber stated there are two issues before us: one is the front porch that the applicant wants to repair and he needs certain Variances; a side yard Variance and a front yard Variance for that porch so they can get a Building Permit. We are proposing that that be **14a** and we would close the public hearing on that. The other Variance they are requesting is the building itself has a side yard Variance that's needed there also but because of the issue of the surveys and our overall concern here in getting this resolved properly we want to leave that open with the hope that that can get resolved because otherwise we are in a position where it's difficult for us to make a decision on Variances so that would be **14b**, the issue of a side yard Variance for the building itself. With that I would make a proposal that we close the public hearing then on case **#14a**.

Seconded with all in favor saying "aye."

Mr. Raymond Reber stated on the case of **14a** I would propose that we grant a side yard Variance for the front porch to enable it to be repaired down from a required **5.85** feet to **4** feet and then for a front yard setback Variance from a required **30** feet down to **6.7** feet, this is a type II SEQRA no further would be required.

Mr. Anthony Carbone asked excuse me, what side are you talking about? The left side, the right side?

Mr. Raymond Reber responded the side facing you. We're using your survey for that Variance.

Mr. Wai Man Chin stated they're not building the porch any further. It's staying exactly the way it is.

Seconded with all in favor saying "aye."

Mr. David Douglas stated that Variance is granted.

Mr. Raymond Reber stated on the case of **14b** I make a motion that we adjourn to the June meeting to permit the applicant to try and resolve the inconsistencies of the two surveys with the neighbor so that we can grant an accurate Variance necessary for the building itself.

Seconded with all in favor saying "aye."

Mr. John Klarl stated Mrs. Doherty and the contractor, both of you understand what the Board did tonight?

Mr. Sebastian Capurro responded I do yes.

Mr. James Seirmarco stated I just want to make a comment that we hold off on building anything on the Carbone side. No fences. Hold off until we get this...

Mr. Wai Man Chin stated Mr. Capurro will find out from his surveyor how he got this information because Mr. Carbone's survey is from **1970** something while this survey is only from last month. I think there's a discrepancy on this survey right now.

Mr. Sebastian Capurro stated I will certainly will call him and find out.

Mr. Wai Man Chin stated he must have gotten this from something. You can't just go by somebody saying "my property is **39** feet." I'm not saying it isn't or that it starts here. You've got to start at a point and there's got to be points given by surveyors and they have to have that somewhere.

Mr. David Douglas asked everybody's clear what the next steps are?

Mr. James Seirmarco stated I'd just like to repeat, let's hold off on the fences.

Mr. Anthony Carbone stated I just have a problem because I have a door on the side and it comes out and then four inches you can't even open the door. I don't want her to say "you can't come on my property" when that's not the case. That's my only problem.

Mr. Wai Man Chin stated let's not get into that right now.

E. CASE NO. 15-11 **James Meaney** for an interpretation - does Local Law 12 of 2010 prevent the Green Materials application to the Planning Board, PB No. 28-08 filed 8/22/08, from proceeding; and does Local Law 12 negate the ZBA Decision and Order in Case No. 33-08.

Mr. John Klarl stated Mr. Chairman just before we begin the last application tonight, Mr. Pagano, the attorney for the applicant. You're the attorney to the property applicant or the tenant applicant or both?

Mr. Pagano responded the applicant.

Mr. John Klarl stated he's given me a letter tonight. It's dated **August 5th, 2008** and says "I George Liaskos hereby grant James Meaney of Green Materials of Westchester Inc. permission to submit plans and applications for approval before the Town of Cortlandt Zoning Board of

Appeals and Planning Board pursuant to agreement for the property located at **5716** Albany Post Road.” This covers both the Zoning Board of Appeals and Planning Board and I think Mr. Hoch was missing one of those so now it’s filled in. Mr. Pagano this is an August **2008** letter, there’s been no revocation or revisions?

Mr. Pagano responded no revocation no.

Mr. David Douglas asked can you tell us what you’re seeking?

Mr. Pagano responded one thing we’re looking for is an Interpretation on whether or not the new law applies to my client. If it doesn’t apply to my client is it possible for a Variance to be approved? If not then we’ll bring a Decision so that we move on to the next forum.

Mr. David Douglas asked are you seeking a Variance? Just the Interpretation you’re seeking at the moment correct?

Mr. Pagano responded at the moment the Interpretation but I’m thinking maybe we’ll adjourn that to the next month and maybe we’ll adjourn this too to the next month and do them both together. I thought they both were filed. Apparently only one was filed unfortunately.

Mr. David Douglas stated all that we have in front of us is an Interpretation and if you want us to consider the possibility of a Variance to with the Interpretation then maybe adjourning it makes sense.

Mr. Pagano stated I agree.

Mr. John Klarl stated in short, Mr. Pagano will agree that his client looks favorably upon the Decision and Order of this Board in **case #33-08** so with Special Trade Contractor and his client may not be completely in line with the Zoning Board of Appeals Decision and Order granted in **case #6-09** with concerned an Interpretation as to what constitutes demolition/distribution of concrete aggregate as that term was utilized in this Board’s Decision and Order in Zoning Board of Appeals **case 13-08** and that was a DOTS application.

Mr. Pagano asked wasn’t that withdrawn by DOTS?

Mr. John Klarl responded you agree and you take issue with the second. In the second one, yes...

Mr. Pagano asked but in the second one is there even a Decision when it was withdrawn? How could it be?

Mr. John Klarl responded the second one lines up with an ultimate paragraph that says “therefore in light of the enactment of **Local Law 12** of **2010** and these provisions, the Department of Technical Services thus concludes the Zoning Board of Appeals application by withdrawing this

Interpretation application in Zoning Board of Appeals **case 6-09.**” So, yes they withdrew.

Mr. Pagano stated right, so there is no Decision from that.

Mr. John Klarl responded well the Decision was to...

Mr. Pagano stated right, to withdraw. I don't know is there something for me to disagree with when something's withdrawn. I don't know.

Mr. John Klarl stated I think you believe, and I'll let you make your own case that the case if it was looked in comparison there was no withdrawal for the reasons stated that you believe that **Local Law 12** would not prohibit the completion of that application. That's your thinking I assume.

Mr. Pagano stated right but I would argue in the Court of Appeals Law which maybe we could talk about later John, is that my client already has vested rights based upon the extent of where his approvals were and the fact that the time involved his application is already at the point a year and a half or two years in the pipeline at the time the Moratorium was entered and therefore he has vested rights and therefore he is allowed to rely upon his previous...

Mr. David Douglas asked let me ask just as a procedural thing? Do you want to consider the Variance and the Interpretation together or not?

Mr. Pagano responded yes, I think it's better to do them together honestly.

Mr. David Douglas stated then let's adjourn it.

Mr. Pagano stated it will make you guys happier on this thing.

Mr. David Douglas stated it doesn't make me happy or unhappy.

Mr. Pagano stated but I think we should do them together yes. I think perhaps we'll adjourn it and in the meantime we'll add the Variance so we can do them both together it just makes more sense.

Mr. John Klarl stated best to do the whole thing yes.

Mr. David Douglas stated you would like to adjourn this to June and you're adding your application for a Variance we'll have to re-advertise the Variance part.

Mr. Pagano stated and this way we can do both together. It makes sense.

Mr. David Douglas asked does somebody want to make a motion to adjourn this to next month?

So moved. Seconded with all in favor saying "aye."

Mr. David Douglas stated **case 15-11** is adjourned to June.

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ADJOURNMENT

Mr. James Seirmarco stated I make a motion to adjourn

Seconded with all in favor saying "aye."

Mr. David Douglas stated the meeting is adjourned.

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**NEXT MEETING DATE:
WEDNESDAY JUNE 15, 2011**