

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, November 14th, 2012*. 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 (absent)

Also Present

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

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ADOPTION OF MEETING MINUTES FOR OCT. 17, 2012

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

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

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ADJOURNED PUBLIC HEARING TO DEC., 2012:

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 **130 Highland Dr., Cortlandt Manor.**

Mr. David Douglas stated this has been adjourned until December.

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CLOSED AND RESERVED:

A. CASE No. 2012-38 Kimberly Harcourt for an Area Variance for Accessory

Structures, three sheds and a playset, in the front yard; and an Area Variance for the height of a front yard fence on property located at **29 Susan Lane, Cortlandt Manor.**

Mr. John Klarl stated I recuse myself.

Mr. David Douglas stated we have a draft Decision and Order on this case. Mr. Mattis, do you want to take this?

Mr. John Mattis asked would you want me to summarize the draft Decision and Order? “The Zoning Board of Appeals is taking into consideration the benefit to the applicant if the Variance is granted, has weighed against the detriment to the health, safety and welfare of the neighborhood of the community by such grant. In making such determination, the Board makes the following findings: 1) no undesirable change will be produced in the character of the neighborhood and no detriment to nearby properties will be created by granting of the Area Variance. 2) The benefits sought by the applicant cannot be achieved by some method feasible for the applicant to pursue other than an Area Variance. 3) The requested Area Variance is not substantial. 4) The proposed Variance will not have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district. 5) The alleged difficulty is not self-created. The applicant is hereby granted an Area Variance to allow accessory structures: three sheds and a playset in the front yard and an Area Variance for the height of a front yard fence from an allowed 6 feet up to 6 feet 6 inches to allow for support posts and decorative caps. The fence itself cannot exceed 6 feet when measured from grade. As a condition of approval, the applicant will file the necessary form with the assessor to merge lots **22.8-2-31, 22.8-3-4 and 22.8-3-3.**” This is a type II application under SEQRA and therefore no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated that Variance is granted. Mr. Hoch, you’ll be in touch with the applicant?

Mr. Ken Hoch responded yes.

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ADJOURNED PUBLIC HEARINGS:

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

Mr. David Douglas stated my understanding is that they are currently in the midst of proceeding in front of the Planning Board and they’ve asked it to be adjourned until February.

Mr. John Mattis stated I make a motion that we adjourn **case 18-09** to the February 2013 meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #18-09** is adjourned until February.

B. CASE No. 2012-25 **Mateo and Kim Velardo** for an Area Variance for an accessory structure (above ground pool) in the front yard and an Area Variance for the front yard setback for a proposed deck on property located at **8 Lent Ave., Montrose.**

Mr. David Douglas stated I think that the applicant – actually, I'm not sure if the applicant request it be adjourned to December?

Mr. Charles Heady stated yes, I make a motion on **2012-25** to adjourn the public hearing to December.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2012-25** is adjourned to December.

Mr. John Mattis stated I think that we wanted to write them a letter to remind them.

Mr. David Douglas stated okay, so Mr. Hoch you'll send a letter to them? **2012-25** is adjourned until December and Mr. Hoch will send a letter reminding the applicant.

C. 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. David Douglas stated I think we had discussed adjourning this to January to get some more information and feedback from the Town on this issue.

Ms. Adrian Hunte stated I'll make a motion on Zoning Board of Appeals **case 2012-28** that we adjourn the meeting to the January 2013 Zoning Board of Appeals meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2012-28** is adjourned to January.

**D. CASE No. 2012-30 Marcia Royce for a Special Permit for a Home Occupation
on property located at 2223 Maple Ave., Cortlandt Manor.**

Mr. Frederick Turner stated Turner & Turner for the applicant. We had a meeting at the work session of the Zoning Board of Appeals last evening and as I said, my initial remarks: we're here voluntarily on our own application to get this matter resolved. We want to take the initiative to amend our application. We have worked out the language – with the Town attorney and so we're withdrawing the initial application, amending the public notice which will require the Board's approval and discretion a re-hearing to December amending the public hearing to read that: "we seek an Interpretation that the current use of the Key Institute in Ms. Royce's home is a pre-existing non-conforming use under **307-78** of the Cortlandt Zoning Ordinance or in the alternative, the petitioner's deemed to have been granted a Special Permit under section **307-83** of the Ordinance, or in the alternative petitioner requests a Special Permit for Home Occupation pursuant to **307-40, 307-42** and **307-46.**" We've also scheduled a site visit with the Board and we would like to confirm the December 15th is agreeable to us and we welcome you visiting that day.

Mr. David Douglas stated we discussed at the work session a site visit on the 15th. I think we had talked about 10 o'clock.

Mr. Wai Man Chin responded 10 o'clock yes.

Mr. David Douglas asked that works? So we'll have a site visit at 10 o'clock on the 15th. Anything else you want to add tonight?

Mr. Frederick Turner responded nothing. We're certainly here to entertain questions.

Mr. David Douglas stated right, and I also want to find out if – does anyone else want to be heard tonight? Before you begin, let me explain: what we're going to do with this amended Interpretation that they're seeking is that we're going to have anybody who wants to be heard tonight will be heard tonight and then maybe some questions from the members of the Board and then there'll be a continued hearing next month after this revised notice is published. Tonight's not going to be the last night.

Mr. Michael Hussey stated I live on 24 Galloway Lane on the corner of Maple and Galloway. I'm a neighbor of Marcia's. I'd just like to mention a few things that I hope you'll consider when you're making your final decision. The last few meetings I've heard people come up and say that there's never any traffic problems, there's never any parking problems and that the students never wander around, that might be true for those people who are there for **10** minutes at a time but I want to give you my perspective as a neighbor. As far as the traffic is concerned, I think it's pretty simple; if she felt as though she had to hire a person with a red vest and carrying traffic cones and directing traffic, I think that takes care of that one. Parking: up behind her

house is a parking lot – when you drive up her driveway her house is on the left, my property is on the right. When you get up to the parking lot, the right side of the parking lot is **21** feet from my deck. Now I've counted, at times, **8-9** cars in that area **21** feet from my deck, the nearest one obviously as you go across they're farther away. People come in early, nice day, window down, radio on, telephone, you understand what's going on there. Another thing about the parking lot, and I don't know whether this is right or not but I believe that the fields for her septic are underneath – I don't know if that's right or not but I know when the septic comes up to pump, they're in the parking lot and the hose goes over towards the other neighbor's and I'm sure her fields are not underneath her house and I'm sure they're not over the other neighbor's house so the only place that leaves is the parking lot area and I don't know if there's a Code for that or not. As far as the students are concerned, I'm not saying this has happened often, but there have been students – because when it's really crowded and they have their schedule – I guess they schedule the pick-up and drop-off pretty much at the same time and that's why the parking attendant is needed – there will be, sometimes, cars parked along Maple and then back up on Galloway, where I am. A student has come out and if their parent is **#6** in line or **5** in line, whatever it is and she doesn't want to wait, the student doesn't want to wait, they have two options: they either got to – now there's cars on Maple, they're not completely off Maple and it's a tough spot right there. There's a big turn there and people drive at least **50** there. So, I wouldn't blame a student for not wanting to go out there and dodge those cars, so they're left with going across my property which I'm happy that they're doing that. I don't want to see an accident out there but on the other hand, if something happened to them while they're climbing through post-and-rail fence or something like that, guess whose fault it is? It seems to me like the last couple of meetings here, you get the idea that Marcia and her attorneys are feeling like they're the ones that they have a grievance. As far as I'm concerned, none of us would be standing here talking about this if she followed the rules. The only reason we're here is because she refused to follow the rules. Mr. Klarl, I believe, didn't you mention last time about a amortization plan, like a phase out plan?

Mr. John Klarl responded actually we had a work session I think it was last month and we talked about different options for the applicant to pursue. One of the things I threw out at the work session, I don't know if we had the discussion at the meeting, was sometimes when a Town tries to get rid of uses that they don't appreciate but you can't just do it because there's no one rule in the Zone that allows you to do it, you amortize the use. That's often done in junkyards. I gave an example at the work session, it's done with billboards and they put an amortization schedule to say that at the end of **10** years, the billboards have to go. So, we talked about it at the work session...

Mr. Michael Hussey asked so it's like a phase out thing?

Mr. John Klarl responded it's an amortization – yes. And also just while we're throwing out things at the meeting, I was at the work session last night where, and obviously the applicant can speak for themselves, but the applicant Mrs. Royce, apparently offered, I don't think you were in the work session room, to discontinue her school at that location, if she sold her house or if she stopped teaching but that's something for the applicant to put in the record to let you think about

and I know you weren't at the work session last night so I don't think you've heard that.

Mr. Michael Hussey responded no I didn't. First of all, I was contacted by her first lawyer I think it's Mr. Potanski, they both got a hold of me and wanted to talk but while we were talking they both mentioned that they were pretty much – they thought they had a pretty good case of having a ruling for them for being grandfathered in. From what I've heard and from what I've experienced, it seems to me like they might have a case for being grandfathered out. Being grandfathered in as far as I'm concerned, after you've refused to follow the rules for **25** years is giving a reward, an amnesty for behavior that just says rules are for anybody but me. Anyway, I hope you consider these things and I just wanted to give you a view of a next door neighbor.

Mr. John Klarl stated you do realize we're having a public hearing tonight and the public hearing, as the Chairman indicated will continue at the December meeting because at the December meeting they're going to re-advertise the application in seeking three forms of relief. So, this is not the final night. Next month there's an additional...

Mr. Michael Hussey stated the other thing I'd like to ask you, if let's say after all this is said and done or the amortization is the solution...

Mr. John Klarl stated no one's pursued that...

Mr. Michael Hussey stated I understand but I'm just – here's my question there: how would you enforce that?

Mr. John Klarl responded how do we enforce it? If you amortize a junkyard or a billboard a certain junkyard and a certain billboard, you get a certain date by which it can exist and then they can't exist. If you fail to honor that schedule it's in violation of the Zoning Board and ...

Mr. Michael Hussey asked how would you, in this situation, how would you make sure there's compliance?

Mr. John Klarl responded there's compliance, Code Enforcement, Mr. Hoch's an expert of this, he gives you a notice to remedy. If you don't do it, they bring a case against you and if the case – you can't grant that relief in local justice court, the Town attorneys go to Supreme Court and ask for relief of a judge from the Supreme Court or order the removal of a junkyard or a billboard.

Mr. Michael Hussey asked but I mean, would there be actual visits to make sure or are you going to take the word of someone whose been breaking the rules for **25** years?

Mr. John Klarl responded Code Enforcement in the Town of Cortlandt obviously – our methods are a lot better than they were in the '50s, '60s and '70s – we diary things as to when someone has to comply and if they fail to comply by a certain date they get a letter, they get a notice to remedy and they ultimately get a prosecution if they don't resolve it.

Mr. Michael Hussey asked so someone could actually visit and make sure...

Mr. John Klarl responded what happens is for different items under the Zoning of Ordinance under land use, if someone has to do something by a certain date we have a calendar to review that item – but often what happens is that a neighbor who wants to see a use ended will often contact the Town 3 to 6 months before saying “in 3 to 6 months the expiration date is going to occur, what are you going to do?” We often have our own little patrol out there by way of our citizens to let us know when a date is going to expire.

Mr. John Mattis stated excuse me, I have a couple of questions, Mr. Hussey. The parking: when there’s 8 or 9 cars back there. Do they sit there during the whole class time, do they just sit there a couple of minutes or is this just...

Mr. Michael Hussey responded sometimes they’ll sit there the whole time...

Mr. John Mattis asked so they’ll drop the child off and they’ll wait until the end of class?

Mr. Michael Hussey responded no, lots of times it’s the students themselves. They park up there, they go in and you know, they come out.

Mr. John Mattis asked so those would be the older students. In terms of the parking attendant and the cones and that stuff: how often does that occur? Is that on a weekly basis, is it a couple of times a week, monthly, daily?

Mr. Michael Hussey responded no I wouldn’t say it was weekly. I believe, and I’m not saying I know their curriculum or their schedule – I think they’re busiest time is towards the end of the school year having to do with SATs – I believe that’s when it is and that’s when it gets real crowded.

Mr. John Mattis asked so that was occurring this past spring then? Spring, maybe early summer – I think it’s spring they take the SATs.

Mr. Michael Hussey responded I can’t say for sure. I believe it was last year when it was really congested there and he would be there with – it’s not an everyday thing. Just like the situation with the kids walking across...

Mr. John Mattis asked but it isn’t the once and done that it just happened once at random...

Mr. Michael Hussey responded no, it happened more than once, yes sure.

Mr. John Klarl asked in a given year, how many times would you say you’ve seen it?

Mr. Michael Hussey responded that I’ve seen it or that it’s happened?

Mr. John Klarl asked in a given calendar year how often have you seen that type of patrol?

Mr. Michael Hussey responded maybe **5** times.

Mr. John Klarl asked **5** times in a given year?

Mr. Michael Hussey responded but that doesn't mean – I'm not there – I don't sit there with the binoculars.

Mr. John Klarl stated no, no, but in your eyes you've seen it, your approximation is **5** times a year?

Mr. Michael Hussey responded yes, but let me ask you something; isn't part of this – the rules on this Permit that she was originally – isn't it supposed to be inconspicuous...

Mr. John Mattis stated that's why I'm asking the questions.

Mr. Michael Hussey responded I mean, if it happens once, in my view, it's too much. That's not inconspicuous. Eight cars, **21** feet away from me is not inconspicuous.

Mr. John Mattis stated thank you.

Mr. David Douglas asked anybody else?

Ms. Robin Alburn stated from Peekskill. I'm sorry, I only just got here so missed what was said before. I'm here because my daughter has been going to Key Institute for **2** years and it's been a very, very excellent program. I heard when I was here last month that we're not supposed to talk about the excellent service that it provides because it's all about the rules and regulations. I think that that's a real red herring and that it actually is about the excellent service that's provided because if this were a crappy program then we could say "you know what, you're violating the rules and we're throwing you out" but it's an excellent contribution to our community so I would expect that what the Board would be about is investigating; okay, if there are some problems with this excellent program, how can we get them ironed out so that the program can continue. That would be having our rules and regulations serve our needs rather than our rules and regulations ruin good work. There's plenty of bad works going on in this area that I'm sure you could spend your time on rather than using the rules and regulations to smash something that's good.

Mr. David Douglas stated let me just interrupt you for one second. We're not trying to smash anything that's good. We're not trying to take and make things worse or just blindly apply rules and regulations. We're facing a certain situation and we're trying to do what's the right and legal and fair and equitable thing. What we've said before and it was a way of making sure that

we try to stay focus on what the issue is in front of this Board is that we all accept that Mrs. Royce does a good job, we're not going to debate that, we're not going to say her school is better or worse than other – I don't want to say "school", that's the wrong word – that her program is better or worse than other ones or anything like that and we don't want to question that she does a good job. We'll accept that she does a good job and that kids are truly being helped by it. We'll all accept that so we'll take that as a given and we're just going on to see what's the right result with that being taken as a given that kids are really being helped by this.

Ms. Robin Alburn stated I don't know, I guess I still don't quite understand why it seems like so much of the proceedings are – I don't know, they're about here say – I can appreciate a neighbor who may be frustrated if things aren't going the way the neighbor wants things to go but I would think that there would be a simpler way to do this like you're allowed to have **3** cars at a time and I'm telling you, Mrs. Royce is a martinet. The parents who were here last time and myself, we're all terrified like "uh, oh, I'm going to spend **2** minutes more in the driveway than I'm supposed to. I better get my kid and get moving." Because, she does, she polices the thing. It's for a good reason but we all know that so it just seems like it should be fairly cut and dry that "okay, since you're operating this good program; do this, do that and the other thing, done."

Mr. David Douglas stated it's really not as cut and dry as you might think because what you have to remember is that she is running a program, whether she has the right to or doesn't, that's an issue. Does she have the right to do it or doesn't have the right to do this and she's running this program in an area that the Town has zoned to be residential. So, that's the issue that we're facing. The Town has decided, the Town Board, they're doing the zoning for the Town and said this is a residential zone and there's certain rules as to what you can do or you can't do in a residential zone and you can have a Home Occupation under certain circumstances and all the rest. That's what we're facing. If this was a commercial zone then it probably wouldn't be an issue. I can't pretend that I remember exactly what the rules are for tutoring programs for schools in a commercial zone, but let's assume that that would be accepted. It's because of where it's located and what the Town has decided in terms of the zoning and that's what we're trying to consider and to weigh all the issues that that involves. There are neighbors, there is traffic, there are impacts that this has and that's what we're considering.

Ms. Robin Alburn responded one other anecdotal thing I would offer is that I have neighbors who cause problems because they've got a lot of cars, or they've got a lot of kids or I don't know, they've got a lot of parties or something and somehow the city seems to be able to tolerate because they don't happen every day and the things that have happened at Key Institute I think have been so rare that, again, it's hard to understand why we are spending all this time on it. But, what I would like to know is since I am a concerned citizen and parent, is there something that I could offer?

Mr. David Douglas responded that's what you're doing by speaking here.

Ms. Robin Alburn asked but what I'm saying is there something I missed, something I didn't think that I should address.

Mr. Wai Man Chin stated I think all the parents have addressed everything and I think we all understand what their concerns are and I don't think anybody on this Board had any concerns about the teaching there or anything that she does, it's just the area, the location, the amount of students, the traffic, this is what we've got to weigh.

Mr. David Douglas stated and we do understand the value of the program. Many of us are parents ourselves. Some of us have school age kids, including myself. I know what's entailed.

Ms. Robin Alburn stated okay, and what I'm saying is if you really understand the value of the program then I expect to count upon you to find a way to resolve this in favor of Key Institute because I think it's what's best for our community. Since you brought up the issue of safety, I will affirm again that as a parent who has been bringing my daughter over the last two years, I have not seen dangerous situations there. I have not seen any regular problems with traffic. It's very carefully monitored and controlled.

Mr. James Seirmarco stated that's a very important piece of information for us.

Ms. Robin Alburn stated well, you have it. Thank you.

Mr. David Douglas stated anybody else want to be heard on this?

Mr. Michael Hussey stated I just want to say that this is what I was mentioning before. Somehow they've got it figured out that they're the ones who are getting beat up here. The only reason we're having – if she had whatever, I don't know what it says, 4 students or whatever the original thing that she's supposed to file, if she was doing that there wouldn't be any discussion. It's not with – she doesn't have the grievance. If she followed the rules none of this discussion would be going.

Mr. Wai Man Chin stated thank you.

Mr. David Douglas asked anybody else? Mr. Turner, since you're here, I was reading your new language for the first time tonight so can I just ask a question? When you say you'd like to have a -- consider an application for an Interpretation that the tutorial service conducted by the petitioner within her home is a pre-existing, non-conforming use etc, are you saying the tutorial service as it's currently conducted?

Mr. Frederick Turner responded yes.

Mr. John Klarl asked should we add Mr. Chairman "a tutorial service as presently..."

Mr. David Douglas responded yes, I'm reading from the public notice. Would it be acceptable to you if we added to what's going to be in the public notice the words "the tutorial service as currently conducted?"

Mr. Frederick Turner responded yes.

Mr. John Klarl stated so Mr. Chairman, it's going to read: "tutorial service as currently conducted?"

Mr. David Douglas responded "as currently conducted."

Mr. Frederick Turner asked where are we putting that?

Mr. John Klarl responded I'm looking at the third line and after the words "tutorial service" put that "the tutorial service as currently conducted." Add two words "as currently."

Mr. Frederick Turner asked third line?

Mr. John Klarl responded yes. Is that acceptable to the applicant for the publication?

Mr. Frederick Turner responded yes it is.

Mr. David Douglas asked can I also ask in your letter of November 7th, you had said – I just want to get it clarified for the record, we talked a little bit about this at the work session but I just want to make sure it's in the public record. On page **3** or **4** of your letter in the paragraph before 'c' you say "it is respectfully submitted that any limitation on a number of students by this Board would be arbitrary, capricious, and contrary to the Zoning Ordinance." Is it your position that any limitation on the number of students would be improper?

Mr. Frederick Turner responded yes it is.

Mr. John Klarl stated that was sorted in last night's discussion.

Mr. David Douglas stated we already talked about it but I want it to be in the public record.

Mr. Frederick Turner stated there was no limitation imposed in **1987**.

Mr. Charles Heady stated sir, your applicant, none of the Board has a problem with what she's doing. They think she's doing a great job but the problem is she changed the garage to a studio and she never got a Permit for it so she's in violation for that right there. Now, had she done that right away I think a lot of this would have been straightened up years ago.

Mr. Frederick Turner responded we've filed to correct that and we're going to get those approvals – we'll get the CO for those improvements. We'll get that done. The application's been filed.

Mr. John Mattis stated we also spoke about the New York State Law which requires **20** square

feet per person which would allow for a maximum of **19**. Is she currently having more than **19** at any time?

Mr. Frederick Turner responded we didn't address that last night.

Mr. John Mattis stated no we didn't but I brought it up at the last meeting and we cannot ignore laws. That's a State Law and we can't grant you anything that would ignore that. So, I think that the State basically has imposed a maximum, if we decide to go that far.

Mr. Frederick Turner stated we'll address that in December.

Mr. John Mattis asked well I'm going to ask now, does she have any days where she has more than **19** people there at one time?

Mrs. Marcia Royce responded yes.

Mr. James Seirmarco stated well you said you had one course that you had **20** students and one had up to **25**. During your operation of your curriculum, during the year, do you have classes that include up to **20** students and up to **25**? That's what you said last time.

Mrs. Marcia Royce responded all my programs except one exceed **19** students.

Mr. John Mattis asked all but one?

Mr. James Seirmarco stated say it again please.

Mrs. Marcia Royce stated all my programs except one are less than **20** students. I mis-phrased it, I'm sorry. The program, as I told you in the beginning when I was first here in July, I talked about my summer learning camp in which there are **25** students. There are **5** teachers and there are **5** students per teacher. Charles Heady was there. He saw the **25** students. He said "the program worked like a well oiled machine." He told me when he was there; he said "you are doing a very good work. Your place is very cozy." And, he was smiling and he seemed to be very pleased about what was happening. He was very impressed how the students were acting. They had come in from having a snack, they all took their places in their classrooms and they sat down and they started their work. They're very well focused. They know what to do, they know how to do it and they get a lot done and that's why we have the reputation that we have.

Mr. James Seirmarco stated just for comparison, again, we're not questioning your program and your...

Mrs. Marcia Royce stated I know sir. I'm talking about when Mr. Heady was there.

Mr. James Seirmarco stated we're talking about the State legal limits from the size of the building is **19** so in the future we would not be able to allow that because we can't allow

something that goes against State Code.

Mr. John Mattis stated even if this case would continue.

Mrs. Marcia Royce stated I understand that Mr. Seirmarco. I understand. You can't have any more than **19** because there's a certain amount of feet per child. That's okay. I can go with that. I don't have a problem with that.

Mr. John Mattis stated even before we reach a decision if this drags on you cannot have more than **19** or you're in violation.

Mrs. Marcia Royce responded well, it's not summer time so I don't have a problem with disputing that because that just happens in the summer. Right now – in fact, it's a very low population in the fall. People start getting worried about their children after January.

Mr. Frederick Turner asked anything further at this time? Again, we'll be back and we'll address these questions more completely or again in December.

Mr. James Seirmarco asked is there a State requirement for the number of bathrooms, one bathroom?

Mr. Ken Hoch responded no, if I could just clarify that point. What I had given the Board in a review memo was a comparison of the State Code for a school. Those are the limitations. This wouldn't have those limitations because it's not a school. If it were, I was trying to illustrate to the Board the maximum number of students and teachers in that space for a school would be **19** however, she's not a school so there isn't that limitation. It would be based on what the Board would determine a Special Permit to be.

Ms. Adrian Hunte asked well Mr. Hoch, what about Certificates of Occupancy and Department of Health requirements in terms of the number of people...

Mr. Ken Hoch responded there would be no Department of Health – she does at present for that space not have a Certificate of Occupancy. She has filed a Building Permit application for that space. We haven't moved it forward because we're pending the Board's decision on, in fact what can be there which may change that particular application.

Ms. Adrian Hunte stated I'd just like to say that the woman who mentioned earlier that all of this is a red herring concerning these issues in terms of safety and – I just make this analogy, if the State of New York requires that a teacher have a license and is doing a fantastic job in tutoring or teaching but does not have a license, does that mean that that person should be allowed to continue if, in fact, caught and does not have a license and should that person then be required to get a license? Same as with a physician or a lawyer or someone who holds himself out or herself out as such and maybe the only one in Town and is saving lives; does that mean that that person is allowed to do that without the license? It was rhetorical.

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

Ms. Robin Alpern stated again, from Peekskill and I'm not sure if the last remark was directed to something that I had said or not but I...

Ms. Adrian Hunte stated it's just in general and I think we've been through all of this and whatever you say now is just going to probably be duplicative of what's been going forth. I appreciate your comments. We've taken all of that into consideration so unless you have something really new to add and different then I suggest that we move on.

Ms. Robin Alpern stated simply that I'm not asking us to break any laws but to support the program and do what needs to be done to have it happen.

Ms. Adrian Hunte stated thank you.

Mr. Charles Heady stated I make a motion on **case 2012-30** to adjourn it to December.

Second.

Mr. Charles Heady stated also have a site inspection December 15th at 10 o'clock.

Seconded with all in favor saying "aye."

Mr. James Seirmarco stated this will include the re-advertising.

Mr. David Douglas stated **case 2012-30** is adjourned to December. It will be re-advertised with the language that was discussed tonight and there'll be a site visit at 10 o'clock on the 15th of December. Thank you.

E. CASE No. 2012-37 Lawrence Baskind for an Area Variance to allow two back-up generator propane tanks in the front yard on property located at **5 Radzivila Rd., Montrose.**

Dr. Lawrence Baskind stated thank you for being here tonight Chairman and members of the Board. My application is just to ask for an Area Variance so I can put propane tanks next to our house in a place that's safe. It just happens to be ahead out of the house which Mr. Hoch told me you can't have things in the front yard.

Mr. Wai Man Chin stated I kind of went over there, saw where you want to put the tanks. I have really no problem where the generator is but the tanks are right in the driveway. Basically, they're in a little niche but it's still in the driveway. If there's any ice condition, the car slides and hits those tanks, you've got a big explosion and I don't see that. There's no reason why that

tank can't be moved towards the back of the house or in the back of the driveway over there.

Dr. Lawrence Baskind stated well, what happens is there's a little cut out.

Mr. Wai Man Chin stated I know. I saw it.

Dr. Lawrence Baskind stated in that area...

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

Dr. Lawrence Baskind stated never thought of it. We never park down there during the winter because of the driveway.

Mr. Wai Man Chin stated it doesn't matter. If for some reason you slide into that thing, you know what's going to happen? You're going to blow yourself up.

Dr. Lawrence Baskind stated I understand but no vehicles go down there.

Mr. Wai Man Chin stated you never know.

Mr. John Mattis asked how does your oil get delivered?

Dr. Lawrence Baskind responded it's on the other side of the house.

Mr. John Mattis asked but where does the truck go?

Dr. Lawrence Baskind responded it stays at – the driveway slopes down about **10** or **15** yards ahead of that so the cars and tanks – as a matter of fact, quite frankly, the guys plows just about **5** feet beyond my front walk. That area is about another **10** feet past that.

Mr. Wai Man Chin stated still.

Dr. Lawrence Baskind stated no, I completely understand. That's something I never even...

Mr. Wai Man Chin stated like I said, I don't mind generators. I have no problem, never had a problem, but the tanks to me is a big important thing. It should be towards the back of the house over there, in the back of the driveway, away from everything so – any propane truck can come in there and bring hose. I know many people I know with propane tanks, they're away from their driveways so you do not have any kind of accident.

Dr. Lawrence Baskind asked can I ask a question: can you then put big posts in front of it so nothing bangs into it?

Mr. John Klarl asked ballards?

Mr. Wai Man Chin responded no.

Mr. John Mattis stated one of the things we have to look at is: are there alternatives that don't need a Variance? Is there a reason you can't put it in back?

Dr. Lawrence Baskind responded no.

Mr. John Mattis asked you just said, no there's no reason?

Dr. Lawrence Baskind responded I didn't actually do the design for putting that there so I mean, if you can put tanks in the back and then run lines back up to the house I can't see a reason why not.

Mr. James Seirmarco stated I'd like to take it one step forward, your service comes in the left rear of your house, it would seem to me that a pad put there with a generator and **20** feet away the tanks would be the easiest thing for you to do and it doesn't require any kind of Variance. It would seem to me that that's what you'd want to do – and unless you can give us a reason, a hardship that says “I have to have the generator over here because of rocks, because of this or that.” I think you're better off and probably be less expensive because your service comes in on that side, put the generator and the tanks over there and you don't even have to come here.

Dr. Lawrence Baskind responded sounds right to me. The reason we had asked for it was just because that was where the area was, we thought that was a good idea but I'm okay with moving it around.

Mr. Wai Man Chin stated it's just not a good area right there.

Dr. Lawrence Baskind asked what are the rules then -- so then I don't need any Variance as long as it's not **5** feet of a window or door and **10** feet from property line, is that what it is?

Mr. Wai Man Chin stated on the other side actually he's very close to the property line if you look at it, that's why I was recommending it in the back over there.

Mr. John Klarl stated he can explore some options.

Mr. Wai Man Chin stated you have some options and I just don't want the tanks over there, that's just dangerous for anybody, anything to happen. I'd rather see the tanks back further, away from the house, away from the side yard so nobody hits it by accident. Accidents can happen. As far as the generator, like Mr. Seirmarco says, it could be on the other side but you know what, since your service is coming there, it's close to there or maybe even the back left hand corner of the house, it could be back there too. But, I really didn't have a problem where you were putting the generator but I'm just saying that the gas tanks or the propane tanks, those are my concern right now.

Dr. Lawrence Baskind stated that sounds reasonable to me so it's all right. Mr. Hoch so I can come to your office and talk about...

Mr. Ken Hoch responded yes.

Mr. David Douglas stated procedurally, you can withdraw – you won't need a Variance if you do it that way so if you just withdraw your case then you go to Mr. Hoch and you don't need us anymore.

Mr. John Klarl stated you can pursue it without a Variance.

Dr. Lawrence Baskind stated yes, I'm going to run pass the relocation – we haven't really put anything in yet so therefore it's not one of these do or die moments.

Mr. David Douglas stated okay, thank you very much.

Mr. Wai Man Chin stated on case **2012** – Dr. Baskind has withdrawn the case.

Mr. John Klarl stated sir, for the record are you withdrawing your application?

Dr. Lawrence Baskind responded withdrawn.

Mr. Charles Heady stated I want to compliment you came before us before you put the generator in. We have people put in a generator and then they want the Permit. You understand? You did a very good thing by coming here first.

Dr. Lawrence Baskind responded so I did it right.

F. CASE No. 2012-20 Department of Technical Services, Code Enforcement
for an Interpretation of how an animal rescue shelter, whether for profit or not-for-profit,
is classified under the Town Zoning Ordinance.

Mr. David Douglas stated I understand that DOTS is going to be withdrawing this.

Mr. Ken Hoch responded yes Mr. Chairman, DOTS will graciously withdraw this application.

Mr. David Douglas stated you're going to refer the issue to the Town Board and have them address issues of animal rescue shelters and profit versus non-profit and all that stuff that we've been dealing with is now their problem, right? **Case #2012-20** is withdrawn.

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NEW PUBLIC HEARINGS:

A. CASE No. 2012-41 Thomas Hill for an Area Variance for an accessory structure, a 28' x 24' garage, in the front yard on property located at **125 16th St., Verplanck, NY.**

Mr. Thomas Hill stated I don't know precisely what I'm supposed to do at this point but I can answer any questions about the plan and explain it.

Mr. James Seirmarco stated just for the record, present what you want to do.

Mr. Thomas Hill responded we are planning to add a detached garage, a two-car garage and the best place for it seems to be what appears to be a side yard really if you look at it but is a front yard because of a non-existing street plan from the 19th century. It seems it's esthetically the best place for it. It comes right off our driveway and that's what we would like to do.

Mr. John Mattis stated actually it's considered, I think what you're talking about is 15th Street...

Mr. Thomas Hill responded yes, which partially exists.

Mr. John Mattis stated also because of 16th street, it's in front of your house closer to 16th and that's your legal – you have two legal front yards so it really...

Mr. Thomas Hill responded yes, but the spot we're choosing is...

Mr. John Mattis stated I guess the question we have to ask: is there alternatives that doesn't need a Variance? Is there a reason you can't move it to the other side or can't – I know that that's where the driveway goes, you can't put it back behind the house that you wouldn't have a Variance for 16th Street?

Mr. Thomas Hill responded well, most of the places, there's either – there's a septic field sort of in the back, there's a swimming pool, hard to move, there's steep slopes off of the cul-de-sac at the 16th and essentially the approach it – the left side is a steep slope and the right side is our front yard which is all front yard, that's a 16th Street front yard so...

Mr. Wai Man Chin stated very steep slope on the back.

Mr. John Mattis stated steep slope on the back and on the side, on the left side as you would enter from 16th Street.

Mr. Thomas Hill stated you could put – we consider the sort of I guess what's the back corner, you'd have to take out a lot of big trees and you'd basically be close to the dirt road of 15th Street – you could try to place it there but it's a very inconvenient spot for it I guess.

Mr. John Mattis stated and in your favor, I am somewhat familiar with that property from years ago, having walked I guess for a while, there was nobody there, was there?

Mr. Thomas Hill responded in the '70s it fell in complete disrepair I gather. We purchased it...

Mr. John Mattis stated yes, it looks nice now. I have some friends on Manor and 16th and I see the house occasionally from the road. You have placed it where #1) you're not going to really tear trees down I believe?

Mr. Thomas Hill responded no, we took out – there were two small trees...

Mr. John Mattis stated and #2) it's wooded all around there, you'll see it from your house, you may see it a little bit from the road, from 16th Street but you won't see it from virtually anywhere else. I don't think any of the neighbors will really have – maybe one neighbor on 16th Street to your right as you're approaching. So, the visual impact to the neighborhood is virtually nil.

Mr. Thomas Hill stated and I think it's probably the best spot for that, yes.

Ms. Adrian Hunte stated I don't see any undesirable change in the neighborhood and your alternatives are somewhat limited and I don't think there'll be an adverse affect or impact on the physical or environmental conditions of the neighborhood so I don't have a problem with it.

Mr. James Seirmarco stated I also concur with that.

Mr. Wai Man Chin stated I have no problem with it either.

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

Mr. John Mattis stated I move that we close the public hearing on **case #2012-41**.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. John Mattis stated I move that we grant an Area Variance for an accessory, **28' x 24'** garage in the front yard as shown on the application drawings and this is a type II SEQRA and no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Variance is granted. You should see Mr. Hoch in how many days?

Mr. Ken Hoch responded **5** or **6** days.

B. CASE No. 2012-42 Robert Brumberg and Ellen Gelber for an Interpretation that the installation of new permanent windows on an existing porch having removable screens and plastic panels is not an expansion of a non-conforming use on property located at **27 Reynolds Lane, Unit 48, Cortlandt Manor, NY.**

Ms. Ellen Gelber stated my husband Robert Brumberg and the president Nancy Vann. Do you mind if I read the statement? Is that okay with everybody?

Mr. James Seirmarco responded sure.

Ms. Ellen Gelber stated okay, good. “We’ve owned and enjoyed our seasonal vacation house at Reynolds Hill for over **10** years. We are requesting this Variance to replace the existing screens and removable plastic panels on a rear porch with conventional windows. As you can see from the photographs, we use the porch to store tools and other household items, hang laundry and as a workspace for some hobbies. It has become increasingly difficult to protect these items as our screens and panels have become worn and are failing to keep out the weather. Over the years we have been taking out a number of the plastic during the warm weather but found it necessary to replace them every time it rained heavily. However, even with the panels in place we can still be subject to leakage during inclement weather. We have to move our belongings away from the windows. The panels are heavy and have to be screwed in every time we have a downpour. We also have had damage during the winter when the cottage is shut down for the season. Because these panels are so cumbersome, now we only remove one during the summer. We would like to be able to have some fresh air in our porch during the warm weather and be able to easily close out the weather when necessary. Having regular windows with screens would make this practical and easier. The proposed new windows would be made to fit the existing openings in the porch. They would not change the character, usage, appearance or size of the cottage. However, should this Board not find in our favor would it possibly consider as acceptable a reduced alteration that would entail the replacement of not more than **3** of the **7** windows requested? This would allow us some additional protection, ventilation and ease of use. We are asking for this relief to solve purely practical circumstances and would appreciate your consideration in granting this Variance. Thank you?”

Mr. John Klarl asked how’d you result come to the conclusion you wanted **3** out of **7**? Where did that come from?

Ms. Ellen Gelber responded well, we want ventilation and we thought if you wouldn’t allow all of them then perhaps you would allow **1** or **2**. I mean, that’s basically what we need them for is for the ventilation. Taking one screen out has been okay, but it’s not great. I mean we’d really like to enjoy the air.

Mr. Robert Brumberg stated the 3 in particular would be the center or the back. If you look at the photographs, there are 3 in the middle. The ones on the sides we never open up and so 3 of them seems to make most sense.

Ms. Nancy Vann stated the cabin community also has ruled that people that are doing any sort of alteration need to get approval of the Board and the Board has approved this. We actually considered it more of a repair and replacement than an actual alteration and because there have been – the plastic windows in place and we do in terms of our property tax, the way we divide it up, we consider the room to be a full living area and we do charge full property tax on that room. We don't see it as a change in use of the room.

Mr. Charles Heady stated I understand what you want to do and I don't blame you for what you want to do. I think it would be a very nice thing if you could do it but under our circumstances – under our Code, I would like to see you have it but because of non-conforming you can't change the structure of the house in any way. Now, there's other people who had the same problem on Reynolds Lane, we're going a few years back and we rejected them for doing, they couldn't do it either. It's not because we don't want you to do it but it's just that the way the Code is written. We can't change the Code. We have to go along with the Code. Like I said, it's a very good idea what you want to do but we can't go ahead and issue a Variance to do that and that's the way it's written up.

Mr. David Douglas stated the problem here is that the homes on Reynolds Lane, or Reynolds camp their term is non-conforming use which you may have heard and the idea with a non-conforming use is that ultimately the Town wants that use to go away and the only reason it's allowed to stay is because it's only fair to people that if zoning changes you can't just say "we've changed the zoning so get out." So, what you have is non-conforming uses that are no longer allowed but the goal, the legislative goal of the Town Board, and in any Town, is that non-conforming use is gradually decreased and ultimately disappear completely. So, you're allowed to repair and replace things but you're not allowed to make improvements and changes that would be improvements and that's really where the dilemma is here.

Ms. Nancy Vann stated but like I said, the Board of the community...

Mr. David Douglas stated I understand that the community views this as a repair and replacement but I'm not sure – I can only speak for myself, I'm one vote of the other people but I'm not sure that this Board considers that what you're proposing to be just repairing something. It does seem to be an improvement where you're enclosing the porch and you make it usable all year round for instance...

Ms. Nancy Vann stated the rules of the community is that you can't use the cabins all year round. We have a water cut-off. We have people certify that they're not using it during the winter season. It would not be for the winter, it would mainly be to make it easier to use during the summer. Like I said, they do have the windows that have been there forever, they're plastic and rather than opening, they screw in and out so we consider it just a replacement of those.

Mr. David Douglas stated I understand what you're saying and I understand why the people in the Reynolds camp would take that view, I'm not sure that I agree.

Ms. Adrian Hunte stated Mr. Brumberg and Ms. Gelber, how much time do you spend at the location?

Ms. Ellen Gelber responded we're usually there on the weekends for about **4** months and we stay up there all summer; July and August.

Ms. Adrian Hunte stated when you say **4** months; during the winter or?

Ms. Ellen Gelber responded no, our season is a three-season community so we're there in the spring, on weekends, during the summer all the time and during the fall on weekends.

Mr. John Klarl asked so from what date to what date would you say?

Ms. Ellen Gelber responded well, our community opens April 1st and we close November 16th. And, also my question is; couldn't you possibly see this as a repair since the screens are really pretty shattered?

Mr. David Douglas responded to me a repair is you've got a shattered screen, you go out and you buy a new, non-shattered screen. That's how I envision a repair.

Ms. Adrian Hunte stated I can envision a repair and **3** out of **7**, that's not even total – that's less than half, is that not exceeding **25%** of the full value of the building?

Mr. Wai Man Chin stated I'm a little torn between the two right now on this replacement or let's say repair or how we want to consider this. I think I'd rather kind of close and reserve this for – not make a decision today for next month. That's how I feel about it right now.

Mr. James Seirmarco stated I'd like to make a comment. The intent, again as Mr. Douglas said before, is to have a non-conforming use disappear.

Ms. Ellen Gelber stated we've been there for **80** years.

Mr. David Douglas stated it's not a personal attack.

Mr. James Seirmarco stated let me finish. Maybe my second statement will be more positive. The reason is that people tend to embellish these things and then they become permanent homes and then next thing they'll do is have heat, and hot water, maybe a spare bathroom, whatever. So, that's the motivation for us to be very particular about...

Ms. Ellen Gelber stated I understand that.

Mr. James Seirmarco stated and your particular case is very unique. There's no water there, there's no facilities there for **6** months or whatever it is, whether you want to make it year round or not would be very difficult.

Mr. David Douglas stated some of us have been living without water for the last **2** weeks.

Mr. James Seirmarco stated the motivation here is we don't have to worry about you or the next person because unless they change the whole hierarchy of the place, it's still going to remain a summer bungalow or whatever the word is. I personally, would not have any problem with repairing **3** windows because you're not going to put heat out there, it's not going to change the character of the land or the house, it's not going to embellish it to the next step of heating the space out there or make it inhabitable for you year round because there's so many other things that prohibit that so I want to think about it more but I don't really think that changing **2** windows or **3** windows and I can be swayed either way, is – I would consider a repair.

Mr. Wai Man Chin stated that's what I'm saying. I think we should close and reserve on this.

Mr. James Seirmarco stated I agree.

Mr. Robert Brumberg stated it's less expensive for us to do **3**. We've got estimates from Home Depot for both **7** and for **3** and...

Mr. James Seirmarco stated I would think up to **3** for me.

Mr. Robert Brumberg stated that's what we said and the room is not insulated so regardless of what's there, it's still pretty cold in...

Mr. James Seirmarco stated yes, but that all could be changed in a good week with a good carpenter.

Ms. Nancy Vann stated our pipes start freezing after November 15th. If we have more than **3** days below **30** the pipes freeze and then they burst and that's a real mess so we really do have all the water shut down by November 15th and nobody is allowed to use water then and until April 1st.

Mr. John Mattis asked I do have one question; how many units are there out there and how many of them have porches with screens?

Ms. Ellen Gelber stated there's **72** units and...

Ms. Nancy Vann stated **5** of them – a lot of them have – my cabin is next to Bob and Ellen and they just had windows since long before I bought it on what is the porch because it just is more pleasant to sit out there and watch the rain when it's a window.

Mr. Wai Man Chin stated so tomorrow they will be shutting the water off and draining it and airing it out?

Ms. Nancy Vann responded yes.

Mr. John Klarl asked isn't going to November 15th or 16th even a little risky?

Ms. Nancy Vann responded but no, if it does get cold, the individual cabin owners have had so many calls last week when we had that cold snap; how long is it going to be cold? Is it going to be cold more than a couple of days in a row? Should I turn my water on to drip for a day or two because people do get nervous about it and they have to pay for the repairs if their pipes burst and that could be quite expensive. Before November 15th – I would say that probably **80%** of the cabins already have the water shut off before November 15th and there are few that if people really, really want to come up for the last weekend in the Fall, there are just a few of them and mainly ones that people are coming for the weekend so they can keep an eye on it and then we have a water shut off certification that has to be given to the secretary of the Board every Fall saying “I have shut my water off” and that's part of our rules.

Mr. James Seirmarco stated give us **30** days to think about this.

Ms. Ellen Gelber asked does that mean we have to come back?

Mr. Wai Man Chin responded yes.

Ms. Ellen Gelber stated but we have no place to stay.

Mr. David Douglas stated no, no, you don't. What we're going to do is we're going to close and reserve and what that means is that it gives us **62** days, under the law it's **62** days to make a decision but it won't be open for further hearings so if you don't want to come next month, we're going to vote probably next month. You don't have to come. It's not going to be further give and take. You just want to hear the result in person.

Mr. John Klarl stated the decision could be at the December meeting or the January meeting.

Ms. Ellen Gelber stated thank you.

Ms. Adrian Hunte stated thank you for the fine organizational presentation.

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

Mr. Charles Heady stated I make a motion on **case 2012-42** to close the public hearing and to close and reserve decision.

Seconded with all in favor saying "aye."

Mr. John Klarl stated Mr. Chairman we'll discuss this at our next month's work session.

Mr. Wai Man Chin responded yes.

C. CASE No. 2012-43 Rom Thomas Ponmalayil for an Area Variance to locate accessory structures, a back-up generator and propane tank, in the front yard on property located at **32 Rocky Ridge, Cortlandt Manor, NY.**

Mr. Rom Thomas Ponmalayil stated we're looking for a Variance to install a generator and a propane tank on the side of our house which happens to be, the way the Town looks at it, happens to be the front and side as well. The tank would be **150** feet away from the road and it's the closest property line is **50** feet away. I have some pictures if you wanted to see it. It's hardly visible from the side of the road to be able to see the tank for that matter the generator.

Mr. Wai Man Chin stated I drove by there and I saw the map where you want it, the generator and also the propane tank. Again, I do not have a problem with where the generator is, approximately **8** feet away from the house but is there any way the propane tank could be closer to the generator, a little bit further away from the road? The road is kind of – it's a **20** foot easement road, what they call an easement road...

Mr. Rom Thomas Ponmalayil stated it's **150** feet away from the road.

Mr. Wai Man Chin stated I understand but why do you have it **40** feet from the generator?

Mr. Rom Thomas Ponmalayil responded the only reason why we have it is that there's a way we could drive the lawnmower down and be able to mow the lawn in that area and so if I put it in any closer than that it's going to sit smack in the middle of the path where we would be driving the lawnmower so that's the only reason why I wanted to put it besides a rock, behind the rock, and the only place you could put it and be able to cut a trench is almost **40** feet. That's the reason why.

Mr. Wai Man Chin asked the generator is being buried, not the generator, the propane tanks I mean, are being buried?

Mr. Rom Thomas Ponmalayil responded no, it's on the outside so we've got to put what do you call it, a lattice just to cover it and put some bushes around it so you can't even see it when you come on our driveway so that's the idea is to cover up everything.

Mr. Charles Heady asked you only have one propane tank or two?

Mr. Rom Thomas Ponmalayil responded one.

Mr. John Mattis asked what size?

Mr. Charles Heady stated I thought you had two.

Mr. Rom Thomas Ponmalayil responded no, that was somebody else.

Mr. John Mattis asked what size would this tank be?

Mr. Rom Thomas Ponmalayil responded we're looking at **250** gallons. It doesn't have to be but that's what...

Mr. John Mattis asked is there any reason why you can't put it beyond your house or behind your house?

Mr. Rom Thomas Ponmalayil responded the problem with the behind the house is that I have pictures of the house, the property location and it's really rocky so if you had to cut a path from the propane tank or from the generator back to the house for the electrical thing, that would be really difficult to do that because now you'd be closer to the back of the house and that's reasons why we just couldn't put it there. Ideally, we would allow to have it ...

Mr. John Klarl asked can you use the side yard, forgetting the back yard, but can you use the side yard? You were asking a question about your rear yard but can you use the side yard?

Mr. Rom Thomas Ponmalayil responded we have the same problem on the side yard as well – we won't be able to meet the requirement of being away from the property by **10** feet and from a porch by **8** feet and so that's where the problem is that we'd still end up being close to somebody else's property line.

Mr. John Mattis stated you've got **70** feet on the right of your property, at a minimum, from the house.

Mr. Rom Thomas Ponmalayil responded that's where the porch is – that's a deck right next to it.

Mr. John Mattis stated you show **70** feet from the deck, that's what's on the diagram that we have here.

Mr. Rom Thomas Ponmalayil responded it's not exactly a place where we could put it. And the power line comes on the other side of the house.

Mr. John Klarl asked you're **0.79** acres right?

Mr. Rom Thomas Ponmalayil responded no, it's **1.1** acres.

Mr. John Mattis stated I'm concerned with this front yard and moving that so far into the front yard because I drove up there and obviously I couldn't come up the driveway, you still had power lines down, but there's some trees that might shade this in the summer but in the winter, this is perfectly visible. I mean, you'll see lattice there but it's certainly – you're going to know something's there and the purpose of this is to make them as invisible as possible.

Mr. Rom Thomas Ponmalayil stated the plan is to put bushes around and just hide it with bushes so no one can see it, that's the idea.

Mr. Wai Man Chin stated I'd like to ask one quick question; the site photo, if you look at that compared to the Site Plan, it's not the same.

Mr. John Mattis asked what's not the same?

Mr. Wai Man Chin responded the house.

Mr. John Mattis stated there's an addition put on the back of the house. The back is in reference to the road.

Mr. Wai Man Chin stated in reference to the road, right, which is the side of his front entry. But, like I said, I really do not have a problem with this location. I think it's away from everything. I think anywhere closer towards the side of the house is more towards the property line. I just find that this is not a bad location for it.

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

Mr. James Seirmarco stated I don't either. You can't see it.

Mr. Rom Thomas Ponmalayil stated I have pictures so you can see it's hard to see from the roadside. That's the side of the house. You can't see it. It's hidden.

Mr. John Mattis stated well, this is approaching from the road but when you drive down to your driveway you can look right up at it.

Mr. Rom Thomas Ponmalayil stated that's if you drive down my driveway.

Mr. John Mattis stated right but you have neighbors beyond you.

Mr. Rom Thomas Ponmalayil stated right, they can't see it.

Ms. stated but the road curves around.

Mr. John Mattis stated but when they're going and coming they can see it.

Mr. Rom Thomas Ponmalayil responded we have letters from our neighbors that say they don't have a problem – I might even be able to be give you a couple of letters if you want.

Mr. David Douglas asked which neighbor is the one – we've got letters from Tragger and we have Banker.

Mr. Rom Thomas Ponmalayil responded Bankers are right opposite to us...

Mr. David Douglas stated and also Chester Logan.

Mr. Rom Thomas Ponmalayil stated Logan's are the ones that probably could see if you have a direct line of sight, if you cut all the trees down and they would be the only ones who would be able to see that if at all.

Mr. John Klarl asked who was on the property who was formerly – Eller?

Mr. Wai Man Chin stated the one that say from your – there's a big house right here, there's your house right here...

Mr. John Mattis stated to the right of your house as you look from the road, the one before your house as you'd be driving in.

Mr. Rom Thomas Ponmalayil responded the Schwartz's right?

Mr. John Mattis stated they sit up higher.

Mr. Rom Thomas Ponmalayil stated the Schwartz's right. They can't see it because the rocks cover the whole thing.

Mr. Wai Man Chin stated right, that's the house. And, that's the one who gave you a letter?

Mr. David Douglas responded no.

Mr. Rom Thomas Ponmalayil stated the ones who gave are right opposite to us.

Mr. Wai Man Chin asked the ones opposite you over there and the one to your left.

Mr. Rom Thomas Ponmalayil stated who could possibly see if you cut all the trees out, they might be able to see the Chet Logan, and the Traggers are – they live beyond our house.

Mr. Wai Man Chin stated I still don't see a problem with this based on the terrain where the house is set back from the next door neighbor on the one where is, formerly Steven and Louise Eller.

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

Mr. Wai Man Chin stated I'm going to make a motion on **case 2012-43** to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated public hearing is closed.

Mr. Wai Man Chin stated I'll make a motion on **case 2012-43** to grant an Area Variance for an accessory structure generator, propane tank in the front yard. This is a type II under SEQRA no further compliance is required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Variance is granted.

Mr. Rom Thomas Ponmalayil stated thank you Chairman and Board members.

D. CASE No. 2012-44 Signs Ink on behalf of 97 Locust Ave. LLC for an Area Variance for the total allowed business signage on property located at **97 Locust Ave., Cortlandt Manor, NY.**

Mr. Steve Chester stated from Signs Ink representing Felix Massonette. This is his agency. He's already in the Pike Plaza right now in Cortlandt and he's moving to Locust Avenue. In this Zone, you're allowed **20** square feet and right now there's **12** square feet existing with the professional building sign. We're proposing to add a **25** square foot sign to the building, a wall sign, and a **2** square foot sign to the freestanding sign so that would bring it up to **39**.

Mr. John Mattis asked what about on the door?

Mr. Steve Chester responded the door is window graphics. I don't know if we count that.

Mr. Charles Heady asked tell me something? Are the signs already made up?

Mr. Steve Chester responded no. And, then I passed along a picture – we put up a temporary banner and which is the right size to show you how it would look in reality if we were granted the Variance.

Mr. John Mattis stated see, on your application it shows **3** signs and it shows “sign on the door” so you're not putting a sign, you're putting window graphics?

Mr. Steve Chester responded yes, just window graphics.

Mr. John Mattis asked so it's only **2**?

Mr. Steve Chester responded it's really just **2**. I also passed along the sign that he has now. Right now he has channel letters in Pike Plaza, right on Route 6, high visibility. It's a retail type environment and he surely needs some signage to get some kind of walk-in traffic. The sign points to the parking lot of the old Hyundai, so it's very commercial across the street. It's not like anybody is going to be looking at it from their house so we're kind of hoping you might grant it.

Mr. James Seirmarco stated looking at the building and the sign that's freestanding; why do you need **2** signs? Why wouldn't one of them just work?

Mr. Steve Chester responded that's not out of the realm of possibilities.

Mr. John Mattis asked I'd like to ask Mr. Hoch something: doesn't the Code only allow for one without a Variance? So, we have to grant a Variance for a second sign and for the size, correct?

Mr. Ken Hoch responded correct, the Code allows, in a transitional zone...

Mr. John Mattis stated it was noted on our fact sheet.

Mr. Ken Hoch continued **20** square feet of signage which could either be freestanding or wall.

Mr. John Mattis stated either or, yes.

Mr. Ken Hoch stated but the Board could grant a freestanding...

Mr. John Mattis stated yes, but I want to make it clear that they're allowed one. We would have to grant a Variance for a second one and grant a Variance for size.

Mr. Steve Chester stated obviously our preference would be for the wall sign because that little, I mean, any kind of snow, it's hidden. If the grass grows, you're not going to see it. It's right on the ground. I mean, they're just squeezing it in there so it's really almost useless. The wall sign would be our preference.

Mr. John Mattis stated I question why it has to say "Locust Avenue Professional Building."

Mr. Steve Chester responded that's the landlord.

Mr. John Mattis asked are there **3** businesses in there or **2**?

Mr. Steve Chester responded no, **3**. This is the biggest one. They have the older front and upstairs...

Mr. John Mattis stated because this is a transitional zone and I think – it was an old church and then it was a financial planning insurance building and then it was something else and it looks more like a house now and to put a big sign on the building like that in a transitional zone – I don't care if there's commercial across the street, it's a transitional zone. It's not a business zone. Transitional means part of it is residential, part of it is business. I think it's inappropriate. They could raise that sign up so that the grass doesn't grow over it and the alternative is to cut the grass. If the landlord doesn't want to make his part of it, the professional building part smaller then he's penalizing the rest of the people but that's not our call. Our call is the total size.

Mr. James Seirmarco asked how much of the building is utilized by the professional building?

Mr. Steve Chester asked by Allstate?

Mr. James Seirmarco responded no, it says "Locust Avenue Professional Building," is there an office for them in that building?

Mr. Steve Chester responded there's the downstairs that has two different tenants and the upstairs which has Allstate. It's all professional.

Mr. James Seirmarco stated one is a chiropractor and the third one is?

Mr. Steve Chester responded I forget. It's a chiropractor because obviously you could see that but the other one I don't remember what it was.

Mr. James Seirmarco stated it would seem to me that...

Mr. John Mattis stated but it doesn't seem that they need any identification.

Mr. Steve Chester stated I don't know what they do.

Mr. James Seirmarco continued that the freestanding sign could accommodate all of this without another sign. Cut the professional's building sign down, leave the doctor's sign and use a rather large Allstate sign and it's enough.

Mr. Steve Chester stated I was hoping you would consider another alternative.

Mr. John Mattis stated I would not grant 2 signs and by granting an Allstate on the building we're telling them to get rid of the other sign and that takes away the identification of the chiropractor that's already there. That's up to the owner to decide – we'll grant the size. It's not up to us to say what's on that sign. If he wants it all Allstate, if he wants to put all the people on there, equal size that's their business but I oppose a sign on that building like that.

Mr. Steve Chester responded I understand.

Mr. James Seirmarco stated John, it looks like they reduced it here...

Mr. John Mattis responded it doesn't matter, I don't think it's appropriate to have a sign on the building.

Mr. James Seirmarco stated let me finish. They've taken down the freestanding sign period.

Mr. John Mattis stated and put Allstate and now there's no identification for the other one.

Mr. David Douglas asked you're not proposing taking down the freestanding sign?

Mr. Steve Chester responded no, I'm not proposing that. I'm proposing to bring it down to a **2' x 8'**, a **16** square foot sign.

Mr. John Mattis stated we had a case recently right around the corner which was in a transitional zone, on Route 6 and we were going to allow one sign. They did not put a sign on the building, we didn't think it was right and I think this is the same type of case. I think it's more appropriate when somebody drives by – that's sits back a little bit on a curb. I think it's more appropriate to have a freestanding sign out front that people can see.

Mr. James Seirmarco stated it's closer to the road and with a little cleverness...

Mr. John Mattis stated and there's no reason to have **2** signs.

Mr. James Seirmarco continued you can have **3** individual signs there and everybody will be served properly. I don't see any reason to have them build the sign on the building at all.

Mr. John Mattis stated they can make that front sign up to **20** square feet without a Variance. It's only **14** square feet now. They're allowed **20**.

Mr. David Douglas stated it's **12** now.

Mr. John Mattis stated well, they're asking for **2**.

Mr. David Douglas stated right.

Mr. John Mattis stated they can put **8** more square feet on there and solve the whole problem without a Variance. We have to look: is there an alternative without a Variance and there certainly is.

Mr. James Seirmarco stated yes, it's like **12** square feet now.

Mr. John Klarl stated having heard all this, what does the client want?

Mr. Steve Chester responded the client would love to have a wall sign. He has one now. Big channel letter sign, right on Route 6. He's the major tenant in the building.

Mr. John Mattis stated in a commercial zone.

Mr. Steve Chester stated he'd get rid of that little sign that's there in the freestanding area.

Mr. David Douglas stated but you've heard what we've been talking about. Do you need to talk further with him?

Mr. Steve Chester responded no, you want him to do it without a Variance. What would I be telling him?

Mr. James Seirmarco stated freestanding sign and to combine the **3** people.

Mr. Wai Man Chin stated what we're saying is the freestanding sign rather than have that sign up on the wall. If it was a little bit bigger or whatever. You've got **20** feet to work with. If you raise it up a little bit I think right now, like everybody says, **12** square feet...

Mr. David Douglas stated but he's right, he can raise it up to **20**, he doesn't need us.

Mr. John Mattis stated and even if it's a little larger than **20** and you come back to us, I think we'll probably look favorably on that. I have a problem with a sign on the building or **2** signs. I think you can accomplish what he's trying to accomplish with the one sign in the front.

Mr. Steve Chester stated it's a clear message.

Mr. David Douglas asked we can keep it open and adjourn it until next month.

Mr. Steve Chester responded, yes why don't we keep it open and I'll see if I want to come back with a bigger freestander because that's the way the Board's leaning and that's fine.

Ms. Adrian Hunte stated perhaps reverse the order here of Allstate and Dr. Messina on the bottom. Try to put that on the top.

Mr. Steve Chester responded yes, we would definitely get rid of the name "Profession Building" probably and just list tenants which makes sense.

Mr. John Klarl stated the Board is saying the freestanding sign will serve your client well.

Mr. Steve Chester responded I hear ya.

Mr. John Mattis stated that would give more identity actually if you could increase the size of the sign for the chiropractor. That would be helpful.

Mr. Steve Chester and whoever that other tenant is which we don't know who they are but...

Mr. David Douglas stated okay, so why don't we adjourn it and then you'll either come back or you won't.

Mr. James Seirmarco stated Mr. Chairman I make a motion we adjourn the case.

Mr. John Mattis asked anybody in the audience?

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

Mr. James Seirmarco stated adjourn to next month for reconsideration of distribution of signs on **case #2012-44**.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case #2012-44** is adjourned to next month.

E. CASE No. 2012-45 Signs Ink on behalf of CITGO for an Area Variance for the size and height of a freestanding sign located on property at **96 Oregon Rd., Cortlandt Manor, NY.**

Mr. Steve Chester stated we have Lagen, Jose. He's the owner of the station and a little history is in order. When he took over the business, the sign is exactly as it is right now and the Town came to him – I'm not sure the history. I'm sure Ken knows it but they came to him and said "you have to raise up the sign because the sight distance isn't so good."

Mr. John Mattis stated just for the record, we have on here that it says Marcus Perez is the owner.

Mr. Jose Lagen responded the landlord yes.

Ms. Adrian Hunte asked you're the owner of the business? The tenant.

Mr. John Klarl asked do you have the permission of the owner to make this application?

Mr. Steve Chester responded yes. They said "you have to raise it up" and he called me. I gave him a price, he wasn't so happy about it, you have to put another pole there and it's not that easy. You don't just lift it up and it stays by itself. It's over a **\$1,000** just to do that and while he's doing that he says "well, one of the biggest problems I'm having is that people pass by all the

time and they don't realize there's a deli here. So it would be great for a little bit more exposure. My deli is definitely underused and the sign is so far set back that's on the building that pretty much, if you're not stopping for the gas, you don't notice it." And, he has the idea that if you put a little sign on the top, nothing huge, he would, at the same time as spending the money for this, he could maybe increase his income by having more notice for the deli. So, that's why we're here.

Ms. Adrian Hunte stated while we're at it, the muscle milk and the body armor, I don't think those are supposed to be there.

Mr. Jose Lagen stated these are posted by my [inaudible] I will take those out.

Mr. Steve Chester responded we'll take them off.

Mr. John Mattis stated and the 5 cents off every gallon, all of those – they have to go.

Mr. Steve Chester stated this one too. Okay.

Mr. Jose Lagen stated these are the marketing people actually.

Mr. Steve Chester stated so the new sign would be 6 square feet. Right now he has an 18 square foot sign which was allowed via a Variance process. I'm thinking – what is he really allowed? 15 in that zone Ken?

Mr. Ken Hoch responded 16.

Mr. Steve Chester stated so he got a Variance to be 18 which is what he has now and we're looking for a new Variance to be 24 that would make it right for the new sign. At the same time as spending the money to raise it up, which he had no interest in doing at all, at least he gets some kind of benefit out of the whole ordeal.

Mr. Wai Man Chin stated the height allows 10 feet, the pole is 11 feet.

Mr. David Douglas stated it's only because he wants to add "Deli Hot Foods." If he doesn't add the "Deli Hot Foods" it'll be the 10 feet.

Mr. Wai Man Chin asked aren't we raising that whole sign up higher?

Mr. Steve Chester responded we have to for the sight...

Mr. David Douglas stated if he raises it without adding – tell me if I'm wrong but if he just raises it without the "Deli Hot Foods" it'll be 10 feet and he doesn't need a Variance for that but with adding the "Deli Hot Foods" part he's going to have to...

Mr. Wai Man Chin stated I'm looking at this as if it was existing.

Mr. Steve Chester responded no, it's not there yet.

Mr. Wai Man Chin stated it's almost down to the ground.

Mr. Steve Chester stated yes, it's very close to the ground. Right now it's 4 feet off the ground.

Mr. John Mattis stated it's difficult to see if there's any kind of traffic or anything. It's better to be higher.

Mr. Steve Chester stated through no fault of his. He had no clue.

Mr. Wai Man Chin stated no, I'm not saying that. I'm just looking at the picture and it looks so real.

Mr. Steve Chester responded we're very good at that.

Ms. Adrian Hunte stated will the "Deli Hot Foods" actually be a part of that sign with the CITGO is that a separate piece?

Mr. Jose Lagen responded no, just on the top a strip like, just one foot.

Mr. John Klarl asked is it manufactured as one sign or 2 signs?

Ms. Adrian Hunte asked is it one full sign or is it a piece on top?

Mr. Steve Chester responded we're screwing it right to the existing.

Mr. John Mattis asked so it'll appear to be one continuous sign?

Mr. Steve Chester responded yes, it would look like one sign.

Mr. Charles Heady stated maybe you could cut that "Deli Hot Foods" down a little bit, less square footage.

Mr. Steve Chester responded it's only 6 square feet.

Mr. Wai Man Chin stated I don't mind that. It's only 6 square feet.

Ms. Adrian Hunte asked is it visible if you put it underneath the CITGO part?

Mr. John Klarl asked it's 1' x 6'?

Mr. Steve Chester responded either way we're going to have to raise it up...

Ms. Adrian Hunte stated you have to raise the sign anyway.

Mr. Steve Chester responded yes, we have to raise the Town order is we have to raise it.

Mr. John Mattis stated I think higher is better than lower from sight of somebody driving by.

Mr. Wai Man Chin stated I don't see a problem with what they're asking for.

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

Mr. John Mattis stated I don't have a problem.

Mr. David Douglas stated I have some problem – here's my problem and it's my general problem that I have with signs. The Town Board in its wisdom and their role is the legislative body here, has made a decision as to what size the sign should be and the formula is for using it. I think we should defer to that unless there's a hardship, unless there's a real reason to grant a Variance and when we get faced with signs in the Cortlandt Town Center I hear from my fellow members of the Board all the time "the Cortlandt Town Center is different that's why we're going to grant a Variance. Give them a bigger sign because the Town Center is different, the Town Center is different, the Town Center is different." I don't buy that as they know but I don't want to debate that again here. This isn't in the Town Center. This is in an area which is largely residential and the Town Board has set a size that they deem appropriate and I don't see any reason why we should make it bigger. I don't see it. Every business wants to have as large a sign as they can. And, if I had a business in Town I would too. That's entirely natural and logical and makes sense but I don't see why we should move away from what the Town Board in its exercise of its legislative powers has decided. That's my rationale. It's not arbitrary. It's not just because I don't like it. That's my rationale.

Mr. John Mattis stated and I'll do a counterpoint to your point okay? The Town in their wisdom has allowed us to give **100%** Variance. In fact we can grant Variances to almost setbacks and everything else on the Code. This is **8** square feet more. It's a **50%** Variance, but it's really not **50%** from what's there. They have **18** now. We're giving them from **18** to **24**. We're giving them a **33%** Variance from what exists. Perceptibly there will be no difference. People won't notice that that's an overpowering large sign because a **1' x 6'** "Deli Hot Foods" is put there. I don't think it changes the neighborhood. I don't think it makes any impact on the neighborhood quite frankly, so that's my counterpoint. We're allowed to differ.

Mr. David Douglas stated and we will. I have no hopes of convincing you. I'm trying to convince some of the other people.

Mr. John Mattis stated that's why we're a Board of 7.

Mr. David Douglas stated right, and I'm saying what I'm saying today because it's not in the Town Center and maybe I can convince somebody else that is up here.

Mr. John Mattis stated I don't think I'd grant **100%** Variance here like we do in the Town Center but when you're at **18** square feet and you go to **24**, you've got one little strip on the top. I don't think it really impacts anything.

Mr. Wai Man Chin asked anybody in the audience?

Ms. Adrian Hunte stated I don't think there's an undesirable change that will be produced in the character of this particular neighborhood and that it will be secured properly and I don't think there'll be any detriment to the other properties in the neighborhood. I think, in terms of, especially in this economy and you mention that there is some hardship that people do not know that you have these other amenities so this will help. I don't think that the one foot Variance is necessarily that substantial and also I don't think there's going to be any adverse impact on the environment, therefore I don't see that...

Mr. John Mattis stated and I see that the prices that you're charging now are less than what you're showing on the sign.

Mr. David Douglas stated on note, for the record, that I bought gas to your place on the way to the meeting and I bought trail mix. It's not deli foot but that's been my dinner so far is the trail mix I bought for a **\$1,49** a good price.

Ms. Adrian Hunte asked does anybody in the audience want to be heard or anybody else on the Board?

Mr. James Seirmarco stated I just want to say, normally I concur with David's comments but in this case I think that it's **50%** is probably only a small amount and the **1** – I don't have a major problem with this.

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

Mr. Paul Goldstein stated I live at Clara Court, which is right across the street and the only thing I knew about a sign was the big orange one in front of his gas station saying he had the meeting tonight.

Mr. John Mattis stated I think that's **24** square feet.

Mr. David Douglas stated that's going away.

Mr. Paul Goldstein stated I basically just came by to – I'm also on the Board of Development so we just wanted an idea of what the sign would look like and it's a nice sign.

Mr. John Klarl asked so you're satisfied then with the sign?

Mr. Paul Goldstein responded I was just concerned how high it would be because you know, I'm living right across the street. You just don't want too much light.

Mr. John Klarl asked have you noticed a sight distance problem?

Mr. Wai Man Chin stated when you come out of the road a little bit there.

Mr. Paul Goldstein responded between you and me, everyday just going back and forth. As soon as you round the bend from Smith Street, you don't even know that there's anything there until you're actually around the bend and from the other side, basically it's coming right – until you get passed the stop light here you're not going to notice anything anyway.

Mr. Charles Heady stated but if you go up Smith Street it really blinds the sight. You can't see cars coming on Oregon Road towards you.

Mr. John Klarl stated if you're coming up Smith Street and making a left.

Mr. Charles Heady stated it's bad. It's real bad the way it is now.

Ms. Adrian Hunte asked is the "Deli Hot Foods" portion illuminated?

Mr. Wai Man Chin stated the sign is right smack in front of you. This way lifting it up...

Mr. Paul Goldstein stated I live right across on Clara Court. I'm on the other side.

Mr. John Mattis stated for the record, I believe somebody just mentioned that the "Deli Hot Foods" sign will not be illuminated.

Mr. Paul Goldstein responded okay, that's good.

Mr. John Mattis stated so there will be no more illumination like there is now. It'll just be raised up.

Ms. Adrian Hunte asked is there anyone else in the audience that would like to speak? On Zoning Board of Appeals **case #2012-45**, Signs Ink on behalf of CITGO; Marcus Perez 19 Shady Brook Lane, Cortlandt Manor, property 96 Oregon Road, I make a motion that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Ms. Adrian Hunte stated on Zoning Board of Appeals **case #2012-45** for an Area Variance for the size and height of the freestanding sign to **24** square feet, that's an **8** square foot Variance and also the height from **10** feet to **11** feet which is a one foot Variance. I make a motion that we grant the Variance and that this is a type II SEQRA action no further compliance required.

Seconded.

Mr. David Douglas stated I'm opposed, so you want to pole the Board?

Mr. Ken Hoch stated Mr. Mattis; yes, Ms. Hunte; yes, Mr. Seirmarco; yes, Chairman Douglas; no, Mr. Chin; yes, Mr. Heady; yes. Motion carries **5** to **1**.

Mr. Steve Chester stated thank you.

F. CASE No. 2012-46 Somendu Banerjee for an Area Variance to locate an accessory structure, a back-up generator, in the front yard on property located at **44 Chester Court, Cortlandt Manor, NY.**

Mr. Somendu Banerjee stated we lived at 44 Chester Court since **1990**, since we bought the place. Over the years, we got a little older. We've got some health issues. Recently we were planning to put in this generator for **7** years, the storm that went through here; Sandy, kind of clinched it for us. We are proposing to, if it's approved, install a Generac Guardian 20K generator that's run off of natural gas. We have natural gas to the house. No propane tanks. The size of the unit is: it's **48** inches long, **25** inches wide, **29** inches high. It's really modest for what it can do. From the technical specs, the noise db level for the unit is **66** decibels at **23** feet. This is a lot less than the portable gas generator that we had to set up for the couple of days when we had the storm. We propose to locate the generator on the southwest corner of the house. This is the rear left side of the house. The reason for that is it would give us much more direct and shorter line for both the natural gas and the power because both the gas and power come in on that side of the house on the front corner. The front of the property, actually there's no yard, there's no lawn to speak of, it's trees. The sides are bounded by trees. There's a small back lawn with trees behind it, woods, and it sits on top of our septic fields so there's not much possibility to put the generator in the backyard because there's really no place to put it aside from the gas and electric run. Looking at the survey that was done of the property, I'm estimating that the proposed location is about **80** feet to Chester Court and about **160** feet from Rockhill Drive. In terms of visibility, what you can see, there's a dry stone wall and trees that basically screen us from Chester Court, that area and trees, shrubbery and a rise in the terrain, you can't actually see anything much of the house from Rockhill Drive. I've got a bunch of photographs which we took yesterday which I would like to bring forward to the bench. They were taken yesterday so there are no leaves on the trees.

Mr. John Mattis stated I went out and looked at that. It really is not in the front yard from Chester Court because it does not come in front of your house. It's really a Variance for the side

yard which is the front yard on Rockhill Drive. I concur with you. You can hardly see your house from there and this is in the winter when you have the least foliage because it's mostly pine trees and pine shrubs that give it that natural look all year round. I would just say that I would impose one condition and that would be that Code Enforcement make sure that you put some kind of shrubbery around there so that it is not visible. You can put it around it somehow.

Mr. John Klarl stated natural screening?

Mr. Somendu Banerjee asked visible from where?

Mr. John Mattis responded from Rockhill Road.

Mr. Somendu Banerjee responded you can't see the house from Rockhill Road.

Mr. John Mattis stated you can barely see it but you can. If Code Enforcement goes out and says "yes, you can't really see it" that's fine with me but if they feel that there's something inappropriate to put there, put a couple of shrubs there or something.

Mr. Somendu Banerjee responded okay, we'll talk to DOTS. I'm glad to do that.

Mr. John Mattis stated and I noticed there was that stone wall. They're not going to see it from Chester Court. And, you'd be putting it in the woods if you put it anywhere else. With natural gas it's a little different than somebody that comes in and places a propane tank. You've got natural gas lines and stuff and it's tough to start moving them around to the other side. I think you've given it a lot of thought and I think this is a fairly appropriate place to put it.

Mr. Somendu Banerjee responded thank you.

Ms. Adrian Hunte stated I agree.

Mr. Wai Man Chin stated I have no problem with the location.

Mr. Somendu Banerjee responded thank you very much.

Mr. Charles Heady stated me neither.

Mr. Ira Starr stated I live at 43 Chester Court. I'm diagonal to their property and I guess I'd like to actually see where this structure would go because I'm not quite sure what the southwest part of the house is.

Mr. James Seirmarco stated I'm looking on the map if you want to look at the map.

Mr. John Klarl stated surveys shows generators.

Mr. Ira Starr stated my house is over here. I walk out my front driveway and I see a stone wall.

Mr. James Seirmarco stated it's going to be behind that.

Mr. John Mattis stated it's going to be on the other side of it.

Mr. Ira Starr stated I literally can't see it.

Mr. James Seirmarco stated no, probably not.

Mr. Ira Starr stated okay, and how big is this structure did you say?

Mr. James Seirmarco responded what did he say: **24** inches wide...

Ms. Adrian Hunte asked what were the dimensions?

Mr. Somendu Banerjee responded **46** inches long, **24** inches wide – it's very small for a 20K generator.

Mr. John Mattis stated we'll make a condition in the opinion of the Code Enforcement that if it is visible they'll make him put some shrubs in front of it that will cover it, that will be high enough to cover it.

Mr. Ira Starr asked after that gets installed, Code Enforcement comes down to see if it's done properly, is that what that is?

Mr. John Mattis responded yes.

Mr. Ira Starr stated and they have to do that because you're using natural gas?

Mr. James Seirmarco responded no, it's just...

Mr. Ira Starr responded part of the process?

Mr. John Klarl asked sir, you don't have a generator do you?

Mr. Ira Starr responded no.

Mr. Wai Man Chin asked you have a generator?

Mr. Somendu Banerjee stated that's the view from your house. It's behind the stone wall.

Mr. Ira Starr asked so you can't possibly see it?

Mr. John Mattis responded no.

Mr. Somendu Banerjee stated this is the stone wall, right? It's behind here.

Mr. John Mattis stated yes, I had a hard time seeing the house in that section.

Mr. Somendu Banerjee stated the location is behind on the southwest corner. This is the back of our house.

Mr. Ira Starr asked and that's where you're sticking it?

Mr. Somendu Banerjee responded yes, right here.

Mr. Ira Starr stated because I don't even know where that is.

Mr. John Mattis stated because you probably can't see it right?

Mr. Somendu Banerjee stated this is the back of the house; **2** air conditioning units and this is the stone wall.

Mr. Ira Starr responded if I walked up Rockhill Drive...

Mr. Somendu Banerjee stated you'd have to come to our house because of Rockhill Drive, there's a hill – you can't see our house from Rockhill Drive.

Mr. Ira Starr stated if I stand on the street I can see that it's brown.

Mr. Somendu Banerjee responded the top part yes. And size wise, I think someone asked, it's **48** inches long, **25** inches wide and **29** inches high so it's going to sit about this high off the ground from here.

Mr. Ira Starr asked it sits down here?

Mr. Wai Man Chin stated the height of a table.

Mr. John Mattis stated **4** feet high.

Mr. James Seirmarco stated which is quite small for a 20K unit.

Ms. Adrian Hunte stated no, **29** inches, **2 ½** feet.

Mr. John Mattis stated less than **2 ½** feet high. I think we could say that it's not high enough you're going to see it.

Mr. Ira Starr asked and I guess, correct me if I'm wrong, you have a generator now that has 'x' number of decibels – this one's quieter, is that what you said?

Mr. Somendu Banerjee responded gas generators by definition make a lot of noise. What this runs off is natural gas and from what I understand, from folks who know about it, it's basically an automobile engine, a small automobile engine which makes a lot less noise than one of these tanks...

Mr. John Mattis asked did you lose your power or did you use the other generator?

Mr. Somendu Banerjee stated we lost our power for **9** days and we bought the generator, luckily.

Mr. John Mattis asked did you hear the other generator? But, that was much louder.

Mr. Somendu Banerjee responded that's much louder and there are a whole bunch of them...

Mr. Ira Starr stated a lot of people in my neighborhood that have generators that were running because we had no power – it was loud.

Mr. John Mattis stated but this will be much less loud.

Mr. Ira Starr stated and I guess from a gasoline smell perspective, because when you burn a lot of fuel and everybody's burning it...

Mr. John Mattis stated natural gas.

Mr. Ira Starr continued you don't smell anything.

Mr. John Mattis stated you don't smell natural gas. It's going to be better than a generator they have now because it'll be quieter and there'll be no smell.

Ms. Adrian Hunte stated Mr. Banerjee you mentioned **66** decibels at **23** feet. How far away from **23** feet for you would you say, to Mr. Starr's property? But, in relation to your property.

Mr. Ira Starr responded across the street.

Ms. Adrian Hunte asked it's more than **23** feet?

Mr. John Mattis asked is this your house here?

Ms. Adrian Hunte stated so it would be even less noise.

Mr. John Mattis asked is this your house here or is it this one? This is Chester Court, this is Rockhill. Is this your house?

Mr. Ira Starr responded yes.

Mr. John Mattis stated you're a good **200** feet away and the drop off in sound is exponential.

Mr. Ira Starr stated this is only going to be used during an emergency right?

Mr. John Mattis responded that's correct.

Mr. Ira Starr stated so hopefully we won't have...

Mr. John Mattis stated hopefully it'll never be used.

Mr. Ira Starr stated not in the Town of Cortlandt, sorry.

Mr. David Douglas stated it'll probably be used at the time that everybody in the neighborhood is using loud ones.

Mr. Ira Starr stated I guess we all have generators running. Let me get this straight because I know a lot of people have generators. You can't put a generator in your front yard? Is that what the...

Mr. James Seirmarco responded that's what the Code says...

Mr. John Mattis stated without a Variance.

Mr. Ira Starr asked in the front yard, what's the definition of a front yard?

Mr. John Mattis responded it breaks the plain of the house.

Mr. Ira Starr asked if you stand on the street and you look and see what appears to be the front side of your house, whatever you can see from the street line that's considered the front yard?

Mr. David Douglas responded no, it's not whatever you can see, it's...

Mr. Wai Man Chin stated the front yard is the street to the house or in this case you have **2** streets to the house so you've got **2** front yards.

Mr. John Mattis stated once you break the plain of the house then it becomes side yard.

Mr. Ira Starr asked so if you can't see your garage doors from the street...

Mr. James Seirmarco stated they'd be in the side yard.

Mr. Ira Starr asked and you can put a generator there without a Variance is that correct?

Mr. John Mattis responded no, not if it's in the front yard?

Mr. Ira Starr asked no, no if you put it on the side of your garage?

Mr. David Douglas stated you know what would be best to do sir...

Mr. John Mattis stated yes, if you put it in your back yard or your side yard, you don't need a Variance.

Mr. David Douglas stated if you have questions about that at some point, go see Mr. Hoch sometime during the regular business hours and he'll explain it to you.

Mr. John Mattis asked did you have a generator?

Mr. Ira Starr responded yes.

Mr. John Mattis asked you had a generator and it was gas fired?

Mr. Ira Starr responded yes.

Mr. John Mattis asked and it was louder? And, you smelled it I bet?

Mr. Ira Starr responded yes.

Mr. John Mattis stated but it provided power.

Mr. Ira Starr stated yes, I just want to make sure that it's not considered a front yard.

Members stated no.

Mr. John Mattis stated I think we've covered everything.

Mr. David Douglas stated okay, thank you.

Mr. John Mattis stated I move that we close **case #2012-46**.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. John Mattis stated I move that we grant an Area Variance for an accessory structure, a back-up generator, in the front yard as shown on the document presented to us by Mr. Banerjee. This

is a type II SEQRA no further compliance is required.

Mr. David Douglas stated and this is subject to Code Enforcement.

Mr. John Mattis stated this is subject to Code Enforcement approval of proper screening if necessary. I don't think it'll be necessary but...

Seconded with all in favor saying "aye."

Mr. David Douglas stated it's granted.

Mr. Somendu Banerjee stated thank you very much.

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ADJOURNMENT

Mr. Wai Man Chin stated I make a motion to adjourn

Seconded with all in favor saying "aye."

Mr. David Douglas stated we're adjourned.

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**NEXT MEETING DATE:
WEDNESDAY DECEMBER 19, 2012**