

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, September 19th, 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:

Charles P. Heady, Jr.
James Seirmarco
John Mattis
Adrian C. Hunte
Raymond Reber

Also Present

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

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ADOPTION OF MEETING MINUTES FOR AUG. 15, 2012

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

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

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ADJOURNED PUBLIC HEARINGS TO NOV., 2012:

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.**

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 read into the record.

Mr. John Klarl stated Mr. Chairman I just would like to note that as to **case 18-09**, Post Road

Holding Corp., that application's also before the Planning Board.

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CLOSED AND RESERVED:

- A. 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 at our work session we discussed the idea of further adjourning this to October if DOTS will consent to an extension. Mr. Hoch?

Mr. Ken Hoch responded yes, DOTS would consent to an extent.

Mr. James Seirmarco stated motion to adjourn.

So moved with all in favor saying "aye."

Mr. David Douglas stated **case #2012-20** is adjourned to October.

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ADJOURNED PUBLIC HEARINGS:

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

Mr. David Douglas stated at the work session we were presented with a memo that the Town attorney has prepared and we discussed that very briefly because we just got it. I think the game plan was we should adjourn this matter to the next month so we have a chance to review the memo and discuss it.

Mr. John Klarl asked we're going to receive and file the memo?

Mr. David Douglas responded we'll receive and file the memo. It's a memo from Tom Wood dated September 14th, 2012. Do we have a motion to adjourn this until October?

Ms. Adrian Hunte responded motion to adjourn to October.

Seconded.

Mr. Ken Hoch stated I know two members in the audience are here for this.

Mr. David Douglas stated that's fine, why don't we hear what they have to say?

Mr. Gary Ray stated from my point-of-view this is pretty much a non issue in that we have been in contact with our attorney over this because this could seriously affect our livelihood; we're both retired and this is basically how we're living. He said that the issue of interpreting the law as changing the function after a period of time is not correct. He says it's erroneous and contradicted by the well sited laws of this state including the Court of Appeals and Appellate Division second department. He also said that if you do not change the purpose or use, even after a year, but you're intending to maintain that use, that the courts weigh heavily on your intent and if you have absolutely no intent of changing the use of your non-conforming structure there's really no issue. It's got nothing to do with a year, it's got to do with your intent and are you willing to change the issue – anyway, that's directly from my attorney.

Mr. John Klarl asked is your attorney either going to show up at a meeting?

Mr. Gary Ray responded no he didn't – well, for one thing, as I said, we're retired and you know what attorneys cost so he told us there really didn't appear to be a reason him having to attend.

Mr. John Klarl asked but you're quoting the attorney and it would be better for the Board if we had something in writing.

Mr. Gary Ray responded I'm quoting the attorney, yes; there's Donald Campbell and he has actually communicated in writing to both Mr. Wood and Mr. Hoch.

Mr. John Klarl asked do you want to make copies...

Mr. Raymond Reber stated Mr. Chairman, if I may interrupt for a minute.

Mr. David Douglas stated let me just clarify one thing; what's technically in front of us is not, with respect to your particular situation or anybody else's particular situation of a decision of interpretation...

Mr. Gary Ray stated I understand that and the response was not to our particular situation it was to...

Mr. David Douglas asked so you do understand?

Mr. Gary Ray responded yes, I do understand.

Mr. David Douglas stated we're making a general Interpretation.

Mr. Gary Ray responded I understand that.

Mr. Raymond Reber stated we have an audience that'll view this and they have absolutely no clue what we're talking about because it wasn't explained what the Interpretation is asking.

Mr. David Douglas stated that's completely correct.

Mr. John Klarl stated that's because it was read before we knew there were members out there...

Mr. Gary Ray stated actually that's why I was a little surprised to be talking before having it explained.

Mr. David Douglas stated what is in front of us now is an Interpretation is being sought as to whether – and I'll read from what was advertised in the agenda, is whether a 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. That's the specific issue that's before us and Mr. Reber's exactly correct because somebody listening to this would have no idea what we're talking about. Is there anything else you'd like to add?

Mr. Gary Ray responded no that's it. As I said I clearly understand that it's part of the meeting based on my attorney's discussions.

Mr. David Douglas stated just so you're aware, I didn't read into the record what Mr. Wood's memo – what the substance of the memo was but it's part of the public record as part of the file. His memo discusses some of the points that you just made in terms of what the case law requires.

Mr. John Klarl stated but if you want to submit – the Board is of the mind to adjourn this to October so if you want to submit something in writing that you've already given to the Town but the Board hasn't...

Mr. Gary Ray responded no, I have nothing to submit. Mr. Hoch has...

Mr. John Klarl stated but Mr. Hoch isn't the one to determine what gets submitted by the public. If you'd like a certain letter that's been sent to the Town please bring it to our attention and make it part of the record.

Mr. Gary Ray responded okay, I will discuss that with my attorney first.

Mr. David Douglas asked anybody else want to be heard? Do we have a motion to adjourn?

Ms. Adrian Hunte responded I make a motion on **case #2012-28** that we adjourn the matter to the October Zoning Board of Appeals meeting.

Seconded with all in favor saying "aye."

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

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

Mr. David Douglas stated we received a letter from a new attorney that is apparently stepping in to represent Ms. Royce in connection with this. This is a letter dated September 4th. It basically says that they are now being substituted in as council and they had requested an adjournment from this month until next month. As we discussed at the work session, I think the idea was that we would adjourn this for one month as a courtesy to Ms. Royce and her new attorney but we would not be inclined to have any further adjournments because we want this matter to get brought to closure one way or the other. Anybody want to be heard regarding this case?

Mr. Charles Heady stated on **case 2012-30** I'd like to adjourn it until October.

Seconded with all in favor saying "aye."

Mr. David Douglas stated **case 2012-30** is adjourned until October.

C. CASE No. 2012-34 Arnold Schonberg for an Area Variance for a business wall sign on property located at **1 Jerome Dr., Cortlandt Manor.**

Dr. Arnold Schonberg stated on 1 Jerome Drive in Cortlandt Manor. Last month, the Board made some suggestions how I might change my sign in order to get a Variance. We changed it. we're moving it from the lawn and we're going to place it on the side of the building because the total square footage of the sign is **25** square feet. I don't know if the Board has...

Mr. John Mattis responded yes, we do.

Ms. Adrian Hunte stated we do.

Mr. James Seirmarco stated I just want to make a comment. I spent about **25** minutes driving every direction into the Key Bank, coming out of the Key Bank, coming down Route 6, coming up Route 6, coming out of the different streets and in my humble opinion your sign that's there now is the best place for the sign. It's not our job to pick the place for the sign but I think that, for me, if you're looking to utilize the sign so people can see it coming down Route 6, you're putting it in the wrong spot but that's entirely up to you.

Dr. Arnold Schonberg responded I agree with you. The only reason that I'm doing it is because we couldn't figure out a way that I could put that small sign, schonbergdental.com, where it

would be visible on that sign and if I can't do that I'm going to have to make an entirely new sign.

Ms. Adrian Hunte stated we're looking at the shrubs and if you're at the right angle, the shrub, as it is now and even if it grows it's going to cover up the bottom, the part that you want people to see.

Dr. Arnold Schonberg responded the shrub is actually cut down now, significantly. I really agree with you.

Mr. James Seirmarco stated I'm just giving you my opinion that moving the sign there so that you can get a small sign for a .com or whatever your website is going to be, you might be throwing the baby out with the baby water here so it's up to you.

Mr. Raymond Reber stated obviously you're entitled to have a sign and if you want it there I have no problem with it.

Mr. James Seirmarco stated I agree. This is just my opinion.

Mr. John Mattis stated you can move it without a Variance. When it's there, if you don't like it being there you can move it back to where the other sign is so that's irrelevant to our case. The size is the relevance.

Dr. Arnold Schonberg responded we're adding some square footage.

Mr. Raymond Reber stated so we just have to understand the square footage and if it's reasonable.

Ms. Adrian Hunte stated so it's now **60' x 60', 25** square feet.

Dr. Arnold Schonberg responded yes.

Mr. John Mattis stated what's allowed is **20**.

Mr. Raymond Reber stated it's only a **5** square foot Variance.

Mr. John Mattis stated it's **5**.

Mr. David Douglas asked anybody else have any comments?

Mr. John Mattis responded I think that the **25** square feet is reasonable and some of it is the lattice work on top anyway which kind of increases the square footage but really doesn't add much to the size.

Mr. Raymond Reber stated I have no problem with it.

Ms. Adrian Hunte stated I have no problem with your sign.

Mr. Wai Man Chin stated no problem.

Mr. James Seirmarco stated no.

Dr. Arnold Schonberg asked we're set?

Mr. David Douglas responded well, we have to vote. Do you have anything else you'd like to add?

Dr. Arnold Schonberg responded I'd just ask the Board because I agree with you that I would like to keep it there if I could add that extra square footage. In the event that he's able to do that, would I have to come before the Board again in order to keep it there and add the square footage instead of putting it on the side of the building?

Mr. John Mattis stated I don't understand what you mean by add the square footage. The **25** square feet won't change regardless of where it's located.

Dr. Arnold Schonberg responded right, but my sign right now is **20** square feet.

Mr. Raymond Reber stated in other words you're asking; could you replace where your sign is now, could you expand it to **25** and would we approve it?

Dr. Arnold Schonberg responded right.

Mr. Raymond Reber stated personally I have no problem with **25** square feet. I had a problem with two signs. That was my issue but if you want to redo that sign and add that and make it **25** and have it out on the lawn I would have no problem with that.

Mr. John Mattis stated right.

Mr. James Seirmarco stated done deal.

Dr. Arnold Schonberg responded that would be good if I could do that.

Mr. John Mattis stated we'll approve the sign to **25** square feet.

Mr. James Seirmarco stated right where it is right now.

Dr. Arnold Schonberg responded great.

Mr. John Mattis stated and the only thing would be have subject to approval by the Town because if you have the lattice work and stuff we have to look at the total rectangle. They would confirm the size.

Dr. Arnold Schonberg asked if you approve it for **25** square feet, in the event the guy that's doing the sign for me says "you know, I could do that and keep it on the lawn," could I do that or if he says "no, I'm not going to be able to do that..."

Mr. John Mattis stated we're not telling you where to put it.

Ms. Adrian Hunte stated it's just the size.

Mr. John Mattis stated we're just telling you the maximum size.

Dr. Arnold Schonberg stated okay, great. Thank you.

Mr. Raymond Reber stated the only thing to keep in mind is the supports. If he extends it because he's got supports that's got to be included in the **25** if he extends it off to the side. If he just has it underneath the support and the supports are built into the sign itself then it's okay.

Mr. David Douglas stated that's something that he should be aware of. He's been in front of us many times.

Mr. John Mattis stated and he has a booklet explaining our Code so he should be aware of that.

Mr. James Seirmarco stated and he knows it very, very well.

Mr. John Klarl stated one thing the Board wants to underscore is whatever the Board approves it could be built on something different.

Mr. Raymond Reber stated because your existing sign, these posts here, that would be included in the **25** by our Code.

Mr. John Mattis stated but if he's going to put them underneath them and stop it there then this would be fine.

Mr. Raymond Reber stated if he makes this sign sturdy enough that he can just put the supports under it then no problem, you can use the full **25**.

Dr. Arnold Schonberg responded okay, thank you.

Mr. Charles Heady stated before you install the sign you have to check with Code Enforcement the size of it before it's installed. Do you realize that?

Mr. James Seirmarco stated yes, don't put it up before...

Mr. Charles Heady stated don't put it up before it's checked with Code Enforcement.

Mr. John Klarl stated as I said, the Board wants to make sure that what's approved gets built unless it's something different.

Mr. James Seirmarco stated and the reason we do that is that so many times we're taking signs down, the corporation changes and we find out that the sign that was up there was out of Code, it's much bigger than it was supposed to be. So, we're now requiring to pre-measure the sign before it goes up so there's no problem.

Dr. Arnold Schonberg asked but I don't have to come before the Board again for the...

Mr. John Mattis responded no.

Ms. Adrian Hunte stated on Zoning Board of Appeals **case #2012-34** is there anyone in the audience who wishes to be heard? This is the application of Dr. Arnold Schonberg for a front yard Variance and restriction for dental unit sign at 1 Jerome Drive of Cortlandt Manor. No one in the audience. On **case #2012-34** the applicant Dr. Arnold Schonberg for a front yard Variance and the restriction from one dental unit, 1 Jerome Drive, Cortlandt Manor 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 this matter for the application for a Variance to have a sign **25** square feet which is a Variance of about **5** square feet, I make a motion that we approve the Variance.

Seconded with all in favor saying "aye."

Mr. David Douglas stated it's a SEQRA type II.

Ms. Adrian Hunte stated this is a SEQRA type II no further compliance required.

Seconded with all in favor saying "aye."

Mr. David Douglas stated your Variance is granted.

Dr. Arnold Schonberg stated thank you so much. I appreciate that.

Mr. David Douglas stated you should speak with Mr. Hoch about the mechanics and the logistics of it.

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NEW PUBLIC HEARING:

A. CASE No. 2012-35 Gabriel Levison, architect, on behalf of Alan and Sue Bandes for an Area Variance to construct a rear sun room and deck addition on property located at **7 Harrison Dr., Cortlandt Manor.**

Mr. Gabriel Levison stated basically we'd like to add a sun room in the back of the house and extend a piece of an existing deck. The sun room will be built partially on an existing deck is going to take off and encroaches **10** feet into the property line. The property line is **30** feet by Code and we're asking to bring it to **20** foot line, basically **10** foot there.

Mr. John Mattis stated I actually was out there with Mr. Reber and we talked with Mrs. Bandes. This is a case where a Variance is appropriate. If you look at the property, in the back, it's all wooded. The closest house in the back is just – if you're looking straight back, it's a little to the right and it's at least **75** yards away with woods in between. Where they want the sun room it is appropriate because they have sliding doors there to the deck now which will become some – it doesn't make sense to put it on the side or anything and in terms of visibility the neighbors on your immediate left are in front of it and won't really see it and the neighbors on the right which I guess are the closest. First of all, it's on the other side of the back yard and there's trees, including pine trees which aren't seasonal and it'll provide a buffer for the entire year. In my opinion, that **10** foot Variance is appropriate in this case.

Mr. Raymond Reber stated I concur. As Mr. Mattis said, I was out there also and the three neighbors that would possibly be impacted probably will not even notice this is there, that's the distance and the blockage of the view and it still leaves them a **20** foot buffer to the property line. I also concur, this is a reasonable request.

Mr. John Mattis stated and the true buffer to the other neighbors is much more than that because it's all the way in the back there.

Mr. David Douglas asked and can you just tell us for the record where the septic fields on this...

Mr. Gabriel Levison responded if you're standing in the back looking at the house on the right of the property, if you're standing in the front of house looking at the house, it would be on the left of the property.

Mr. John Klarl asked is it in the rear yard?

Mr. Gabriel Levison responded yes, we're going to build it – we're proposing in the rear yard, yes. The septic would be on the side yard.

Ms. Adrian Hunte stated I concur with my colleagues.

Mr. James Seirmarco stated yes, me too.

Mr. Wai Man Chin stated I have no problem since the case was made.

Mr. John Mattis asked anyone in the audience would like to speak? On **case #2012-35** I move that we close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated the public hearing is closed.

Mr. John Mattis stated on **case #2012-35** for a Variance from **30** square feet down to **20** square feet for a composed rear yard setback for a sun room and an addition to the existing deck, this is a type II SEQRA and no further compliance is required.

Seconded.

Mr. Gabriel Levison stated feet, not square feet.

Mr. John Mattis responded feet, yes, not square feet.

With all in favor saying "aye."

Mr. David Douglas stated your Variance is granted.

Mr. Gabriel Levison stated thank you very much.

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ADJOURNMENT

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

Seconded with all in favor saying "aye."

Mr. David Douglas stated we're adjourned.

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**NEXT MEETING DATE:
WEDNESDAY OCTOBER 17, 2012**