

To: ZBA
From: Bruce Weber
September, 30, 2019

Re: Jenkins appeal

Ms. Jenkins is requesting that you review two determinations that I have made, is the Leach structure a commercial garage and is a use variance required.

How did I determine this was a commercial garage. What is the use of the building, storage of vehicles.

The definition of a garage according to Merriam Webster, is a shelter or repair shop for automotive vehicles.

The Town has two definitions for garage:

GARAGE, COMMERCIAL

An enclosed building used as a business for the indoor storage or repair of motor vehicles, including painting and the sale of parts and accessories. A junkyard or auto salvage yard is not to be construed as a garage.

GARAGE, PRIVATE

An enclosed building for use by the inhabitants of a dwelling for private storage.

I have a building that is going to be used by a business for indoor storage of motor vehicles. Since this is not a private garage, I have a commercial garage.

Ms. Jenkins states that a commercial garage provides services and goods to the public and as examples uses Tallmadge Tires and Kost. Yes, those are commercial garages, but the Town's definition does not require that services be made to the public. If I owned a taxi business and parked my cars in a structure, that would then be classified as a commercial garage. Section 178-36.2F distinguishes a difference between a commercial garage and a repair shop.

Determination that no use variance required

Please see attached minutes from the ZBA of March 28, 2017. It was determined that no use variance would be required for this use. Dan Dineen had indicated the Town should consider whether a use variance was required, and we did. Mr. Dineen was unaware of this determination until 9/23/2019(see attached). A commercial garage is an allowed use in the B-2 District. If Mr. Leach were applying for a use not permitted in the District, then he would need to apply for a use variance. I am not aware of any new information that would change my determination. Based on the previous decision of the ZBA, I stand by my determination.

TOWN OF CORTLANDVILLE ZONING BOARD OF APPEALS
Public Hearings/Meeting Minutes - Tuesday, 28 March 2017 – 6:30 PM
Town Hall Court Room – 3577 Terrace Road – Cortland, NY

Board Members (*absent)

*David Plew, Chairman
John Finn, Acting Chairman
Thomas Bilodeau
Lenore LeFevre
*Joanne Aloï

Others Present

Bruce Weber, Planning/Zoning Officer
Joan E. Fitch, Board Secretary
John B. Folmer, Town Attorney

Applicants & Public Present

Steve Terwilliger & Robert Tarson for Tarson Pools, Applicant; Pam Jenkins, Appellant; Bob Martin, Barb & Pat Leach, Andra Niggli, Diane Chu, Victor Siegle; Sharon Stevans, Ch. 2 Volunteer; Town Councilman John Proud.

The Public Hearing was opened at 6:30 p.m. by Acting Chairman John Finn, who read aloud the Legal Notice as published in the *Cortland Standard* on 17 March 2017, as follows:

NOTICE IS HEREBY GIVEN that a public hearing before the Zoning Board of Appeals of the Town of Cortlandville will be held Tuesday, March 28, 2017 at 6:30 p.m. at the Raymond G. Thorpe Municipal Building, 3577 Terrace Road, in the Town of Cortlandville, New York, to consider the following applications pursuant to the 1986 Zoning Law:

1. *In the matter of the application of Tarson Pools, for property located at 945 McLean Road, Tax Map No. 95.12-01-09.000, for a variance in the terms and conditions of Article XVIII, Section 178-112, Table 1, for building-mounted signs to be illuminated and for a greater number of signs than allowed.*
2. *In the matter Pam Jenkins, in the terms and conditions of Article XXI, Section 178-132, (A), to appeal the determination of the Zoning Officer.*

The above application is open to inspection at the office of Bruce A. Weber, Planning & Zoning Officer, Raymond G. Thorpe Municipal Building, 3577 Terrace Road, Cortland, New York, call (607) 756-7052 or (607) 423-7490. Persons wishing to appear at such hearing may do so in person, by Attorney, or other representative. Communications in writing in relation thereto may be filed with the Board or at such hearing.

David Plew, Chairperson
Zoning Board of Appeals

(Note: Proof of Publication has been placed on file for the record.)

PUBLIC HEARING

Tarson Pools, Applicant/Kimberly Kane & Sean Secord, Reputed Owners – 945 McLean Road – TM #95.12-01-09.000 – Signage

Acting Chairman Finn recognized Robert Tarson and Steve Terwilliger, representing the applicant who was requesting variances for (1) the illumination of building-mounted signs and (2) a greater number of building-mounted signs than allowed all as shown on the photos accompanying the application. Tarson Pools will be relocating to a portion of this property for their retail sales.

PZO Bruce Weber stated that square footage of the proposed signs is satisfactory.

With no one from the public present to be heard,

Acting Chairman Finn closed the Public Hearing at 6:35 p.m.

DISCUSSION/DECISION

Member Lenore LeFevre commented that this was a commercial area and was agreeable with granting of the variance with the usual stipulations regarding illumination.

With no further discussion, a motion was made by Member LeFevre to grant the variance for the building-mounted signs to be illuminated and for a greater number of signs than allowed, as requested, with sign illumination to be turned off within one hour after closing. The motion was seconded by Member Tom Bilodeau, with the vote recorded as follows:

Ayes:	Acting Chairman Finn	Nays:	None
	Member Bilodeau		
	Member LeFevre	Absent:	Chairman Plew
			Member Aloï

Motion passed.

This becomes Action #6 of 2017.

Gregory Leach, Applicant/Leach Properties LLC, Reputed Owner – 1834 NYS Route 13 – TM #77.00-13-11.000 – Appeal Determination of Zoning Officer by Pam Jenkins

Acting Chairman Finn recognized Pam Jenkins who submitted the following (a copy of which has been placed on file for the record), and started reading it aloud to those present. There were many additional comments made to the typewritten remarks, so following her submittal is the actual transcript of what Ms. Jenkins said.

Board members,

This is an appeal for you to annul, revoke or reverse the determinations made by Mr Weber, who informed me in writing on March 6, 2017 that he made those determinations at a date unknown to himself, that Leach did not need to apply for a USE VARIANCE, but that Leach only needed to apply for a Conditional Permit, to build a building on the 3.11 acres where the use (trash business) is prohibited.

Mr Weber informed me that his determination was not based upon codes or documents . He could produce no codes or documents to support his determination that Leach did not need to apply for a use variance.

In January of 2003 Leach applied for and received a use variance to build the trash transfer station on the 3.11 acres, a prohibited use in B2 zoning district, in Area 1 of the Aquifer Protection District.

In March of 2008 Leach a received a use variance to increase tonnage at the trash transfer station from 5000 to 7499 tons, on the 3.11 acres, a prohibited use in B2 zoning district, in Area 1 of the Aquifer Protection District.

In July of 2015 Leach applied for and received a use variance for a fueling facility and 2000 gallon fuel storage tank: a prohibited use in B2 zoning district, in Area 1 of the Aquifer Protection District

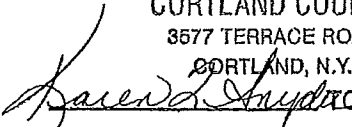
(Continued on following page)

Regarding the Leach application to build a 48x 27 foot building on the trash transfer station property, a prohibited use in B2 zoning district, in Area 1 of the Aquifer Protection District: The February 10 2017 recommendations from Dan Dineen , Cortland County Director of Planning, to the Cortland County Planning Board state that "It should be noted that the original development of this property as a transfer station required a use variance as a transfer station is not a permitted use in the B2 district. It appears that a use variance would also be required as the proposal is an expansion of a use that required a use variance. It is therefore recommended that before any positive consideration is given to this proposal, that the Town consider whether a use variance is required for expansion of a use which required a use variance when originally developed on the site."

The zoning officer failed to require the applicant to apply for a use variance . Trash transfer station building is not an approved use in B2 for a conditional permit. Mr Weber informed me that his determination was not based upon codes or documents . He could produce no codes or documents to support his determination that Leach did not need to apply for a use variance.

Thank you,

Pam Jenkins, 4023 Collegeview Drive, Cortland, NY 13045

Filed 3/10/2017 1:05 P M.
 TOWN OF CORTLANDVILLE
 CORTLAND COUNTY
 3577 TERRACE ROAD
 CORTLAND, N.Y.
 TOWN CLERK

Ms. Jenkins' verbatim comments were as follows:

"Thank you, Board Members. This is an appeal for you to annul or reverse determinations made by Mr. Weber, specifically that Mr. Leach did not need to apply for a Use Variance or an Aquifer Protection District Special Permit, but that Mr. Leach only needed to apply for a Conditional Permit to build a building on the 3.11 acres where his uses, trash business/junkyard, is prohibited in the area zoned B2 and Area 1 of the Aquifer Protection District.

"Mr. Weber informed me that his determinations were not based upon codes or documents. He could produce no codes or documents to support his determination. I requested all of those dates in writing. According to page 2 of the Feiszli Stormwater Pollution Prevention Plan of July 2016, Mr. Leach now plans to expand his trash business to over 14.23 acres in the same area. This 3.11 acres where the building is proposed is part of that 14.23-acre trash business expansion project as documented in the Feiszli Stormwater Pollution Prevention Plan. And then according to Feiszli in the same plan, there are no new buildings planned, so you can see the problem here.

"In January of 2003, Mr. Leach applied for a received a use variance and an Aquifer Protection District Special Permit to build a trash station on the 3.11 acres, a prohibited use in B2 Zoning District and Area 1 of the Aquifer Protection District. Mr. Leach received that variance only for what he built in 2003, not for whatever he proposes to build in 2017 or in the future.

"In March of 2008, Leach received an Aquifer Protection District Special Permit to increase tonnage at the transfer station by 50%. The Cortland County Planning Board recommended that a use variance would be required to expand the prohibited use in B1, Area 1 of the aquifer. Cortlandville did not require that of Leach.

“In July of 2015, Leach applied for and received an Aquifer Protection District Special Permit for a fueling facility and a 2,000-gallon fuel storage tank, both a prohibited use in B2 Zoning, Area 1 of the aquifer. Again, the Cortland County Planning Board recommended that the applicant would need to acquire a use variance to expand his prohibited use. But, again, Cortlandville did not require that of Mr. Leach.

“In the fall of 2015, Mr. Leach received numerous variances and permits from Cortlandville to build on the land he purchased from Suit-Kote. In May of 2016, all of Mr. Leach’s permits and variances were ruled . . . in violation of New York State and town laws, so were all annulled by Judge Cerio.

“The Aquifer Protection Plan of 2002 and the Draft Land Use Plan of 2013 recommend against the very activities which have been undertaken by Leach at Route 13 and Lorings Crossing in the area which is prone to flood. Both plans caution strongly against destruction of wetlands, against removal of forested and shrub buffers, against development in flood plains, and against the expansion of non-conforming uses because of the risk of pollution to the aquifer and the ill affect those activities have on surrounding residential properties.

“So now, regarding the Leach application to build a 48 by 27-foot building at the trash station, at the north end of the road, on the raised road that he built on the former Suit-Kote property, Dan Dineen, in his February 10th, 2017 report to the Cortland County Planning Board, wrote *‘It appears that a use variance would also be required as the proposal is an expansion of a use that required a use variance.’* And Dan Dineen knows a little about zoning and planning. He’s the Director of Planning for Cortland County. Dan Dineen made further recommendations about the increased impervious surface that would be created by the proposed building and some stormwater plan recommendations, again in his February 10, 2017 report to the Cortland County Planning Board. Part of proposed Leach building would cover part of the grass area which is part of the stormwater prevention plan, and I will show you that graphic.

“The Zoning Officer failed to require the applicant to apply for a use variance or an Aquifer Protection District Special Permit. Mr. Leach—I’m sorry—Mr. Weber determined that Leach only needed to apply for a Conditional Permit. Mr. Weber provided no documentation to show that Mr. Leach had met the requirements for a Conditional Permit under Section 178-75 a and b of Cortlandville Zoning Laws. The building Leach proposes to build would supposedly be used for storage for his trash/junkyard business. The proposed building is an accessory to the trash/junkyard business which is prohibited, and it is therefore improper to look at the accessory use in isolation; those are words directly from my lawyer. Such a building does not qualify to apply for a Conditional Permit in B2 zoning, Area 1 of the Aquifer Protection District. Again, remember that Mr. Weber informed me that his determination was not based upon code or documents and he could produce no codes or documents to support how he made his determination that Mr. Leach did not need to apply for a use variance, and Mr. Leach did not need to apply for an Aquifer Protection District Special Permit in order to expand his uses where they were prohibited.

“Since 2003, Cortlandville has filed to require use variances for development of the Leach property where his uses are prohibited. There is no reason why that should be allowed to continue. So, again, I ask you to reverse the determination of the Zoning Enforcement Officer, those being that Leach did not need to apply for a use variance and that Leach did not need to apply for an Aquifer Protection District Special Permit, and the reverse the determination that Leach only needed to apply for a Conditional Permit which he didn’t qualify for.

“This is being submitted with 26 pages of color attachments. I’m just going to flip through them. There’s the B2 area surrounded by residential and agriculture. There’s Area 1 of the aquifer with the logged area and the road that he built on the Suit-Kote property. These are the Federal and State wetlands. This is from GIF, the flood zone. This is the Feiszli Stormwater Pollution Plan, pages 1 and 2. Page 1 states that no new buildings are planned; page 2 states that the 3.11 acres where the building is planned is part of the

14.23-acre trash business expansion project. Okay, this was submitted by Feiszli to the DEC on July 14, 2016, and accepted by the DEC in October. This is a 2002 Aquifer Protection Plan—I mean it's just excerpts from it—the area where Leach is doing his activities. This is the Land Use Plan, again about the area where Leach is doing his activities. This is an aerial of the Leach addition at the north end of the road that he built on the, um, I'm sorry, that proposed building is right there at the north end of the road that he built on the Suit-Kote property; this is the area that he removed the trees and vegetation and filled with gravel which causes flooding concerns. This is, um, these are the excerpts from the Cortland County Planning Director's report to the Board. This is the site plan for where Leach wants to put his building, and this is the part of the grassy area of the Stormwater Pollution Prevention Plan that would actually be covered by the proposed building. And this is stuff from zoning. I'm sure you could get all that stuff on your own, but I put it all in one place.

“So, shall I sit? Does anyone have any questions?”

Acting Chair Finn asked the Board if they had any questions; there were none.

Planning/Zoning Officer Weber responded that he had a couple of things, as follows:

“My determination was made based on my experience, the Code of the Town of Cortlandville. Ms. Jenkins had asked for notes and when, specifically, I had made a determination. I gave her, the best of my knowledge, approximately when that was made based on a phone call with Mr. Leach. This is only for the 3.11 acres; this has nothing to do with the remaining lands that Leach has purchased. The proposed use of the building is for storage of equipment—my understanding is a truck. That use is a permitted use within the B2 Zoning District. After consultation with the Town Attorney, Mr. Folmer, and my past experience with, um, where a use variance has been granted for a use, once that use variance is granted, that use is no longer considered a non-conforming use and any expansion of that is subject to whatever the Town's regulations are. And in this case, it was a Conditional Permit. The Aquifer Permit did not come into play because it did not violate any of the sections of the Aquifer Protection District Regulations, did not exceed an estimated cost of over \$150,000, so therefore no Aquifer Permit was required for a building that is going to be used for the storage of a vehicle. And again, I relied on my past experience and consultation with the Town Attorney.

Acting Chair Finn asked if there was anyone else who wished to speak; there was no one at this time. He then acknowledged receipt of a 27 March 2017 letter to this Board from the law firm of Hinman, Howard & Kattell, signed by Richard C. Lewis, Esq., pertaining to this appeal. Acting Chair Finn read aloud that letter to those present; a copy of this letter follows on the next page of these Minutes.

HH&K

Hinman, Howard & Kattell, LLP
ATTORNEYS

80 Exchange Street | P.O. Box 5250 | Binghamton NY 13902-5250 | www.hhk.com

RICHARD C. LEWIS
Special Counsel
rlewis@hhk.com
P: (607) 231-689
F: (607) 723-660
ALSO ADMITTED IN FL AND P

March 27, 2017

Town of Cortlandville ZBA
3577 Terrace Road
Cortland, NY 13045
ATTN: Chairman John Finn

Re: Leach Properties, LLC

Dear Mr. Finn:

Please be advised that we have been contacted by Greg Leach in connection with the matter involving the property owned by his company and pertaining to the building permit that he received and the appeal filed by Pamela Jenkins.

We have had an opportunity to review the complaints set forth in the appeal, and we find them to be without merit.

Ms. Jenkins indicates that the Ordinance Officer, Bruce Webber erred in not forcing Mr. Leach to provide information with regard to a use variance. Be advised that this is not a use variance. Leach intends to use this property for the same purposes that he is permitted to use it for by a pre-existing variance. He is not changing the use, nor is he expanding in any way.

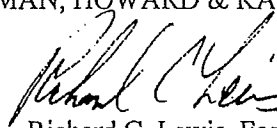
The sole purpose of this project is to add one bay to house equipment that is in existence, or which may be replaced in the future to carry on the permitted business that presently exists. There is no change of use, there is no expansion or intensification, nor any new use of the property. Based upon that, Mr. Leach's position is clearly that Ms. Jenkins is making allegations without foundation, and we believe that the building permit was issued appropriately, and in accordance with a proper review of the intended use, thus allowing a permitted accessory to an existing building.

Thank you for your consideration.

Very truly yours,

HINMAN, HOWARD & KATTELL, LLP

By



Richard C. Lewis, Esq.

RCL/jd
cc: John Folmer, Esq.
Bruce Weber

Acting Chair Finn then recognized Town Attorney John Folmer who addressed the Board, as follows:

“I want to confirm what Mr. Weber says that he and I did confer about this matter and, for the purposes of the record, this appeal was generated by a document submitted by Ms. Jenkins addressed to ‘Board Members,’ and it was originally given to the Supervisor’s office to be handled at the Town Board level. When it came to our attention that it required a determination with regard to Mr. Weber’s conclusion, it was obviously transferred to this Board because the Town Board has no authority, legally or otherwise, to override and annul or review Mr. Weber’s decision.

“With regard to the decision itself. First of all, I would point out to you that the variances which were granted in 2003 and so on are clearly beyond the scope of your review at this point. The time to question the effectiveness of those variances has long time passed, and so we’re dealing with the question of the single variance or the single request that Mr. Weber ruled on when he dealt with Mr. Leach’s application to make this, to construct this building.

“There is no question but what the Leach property, which is located on the 3-acre parcel or 3 point whatever it is-acre parcel is what we’re talking about. We’re not talking about the larger parcel because the variances for that have been annulled by Judge Cerio; the matter is on appeal and at the present moment their status is they are dead and defunct. They are not applicable, they do not exist, and it is not to be considered as part of this application. We’re talking about the 3 point something acres only. That parcel was granted a use variance many, many years ago and, as a matter of fact, it was granted more than one use variance over the course of years. Whether or not those use variances were granted with or without conditions is really immaterial at this point; the variances were, in fact, granted. The effect of the granting of a variance, in my view, is that what was once a non-conforming use by reason of the variance is now a conforming use by means of the variance. That’s not just my opinion. It is drawn, first of all, from the review of what I consider, and I think most people would consider, to be the seminal treatise on zoning, and that would be Robert Anderson’s Zoning Law treatise in which he indicates just that—that a use variance is a continuing permitted use in what was originally a non-conforming district. That document, that treatise which I have here, has been superseded by the Selken Law and Zoning Practice and refers to Mr. Anderson’s, Professor Anderson’s contracts when I was in law school. Professor Anderson’s treatise on zoning in which they say *a variance is the authorization to use land in a manner by statute or ordinance and so on, a use established or maintained pursuant to a variance is not a non-conforming use and is not subject to restrictions imposed upon such uses by zoning ordinances. Therefore, a use commence person to a variance may be enlarged without seeking an additional variance.* They cite the authority of James vs. the Town of New Hartford which can be found in 49 AD 2nd, p. 247, cited in 1975 by the Appellate Division for the Third Department which is the department in which we are located.

“In my opinion, based on these authorities, Mr. Weber’s conclusion was correct.”

Acting Chair Finn asked if there were any other comments; there were none.

**With everyone having been heard who wished to be heard,
Acting Chair John Finn closed the Public Hearing at 6:55 p.m.**

DISCUSSION/DECISION

Member LeFevre asked a question of PZO Weber regarding a permitted use, and PZO Weber responded that what Mr. Leach was proposing to do was actually a use permitted in that District, subject to a Conditional Permit, and he applied for and was granted approval for that Permit.

Member Tom Bilodeau stated he had no other questions. A brief Board discussion followed.

At the conclusion of the discussion, a motion was made by Member LeFevre that the Town of Cortlandville Zoning Board of Appeals upholds Planning & Zoning Officer Bruce Weber's determination that a Use Variance is not required. The motion was seconded by Member Bilodeau, with the vote recorded as follows:

Ayes:	Acting Chairman Finn	Nays:	None
	Member Bilodeau		
	Member LeFevre	Absent:	Chairman Plew
			Member Aloï

Motion passed.

This becomes Action #7 of 2017.

APPROVAL OF MINUTES - 21 FEBRUARY 2017

A motion was made by Member Bilodeau to approve the Minutes of the 21 January 2017 Zoning Board of Appeals meeting, as submitted. The motion was seconded by Member LeFevre, with the vote recorded as follows:


Ayes:	Acting Chairman Finn	Nays:	None
	Member Bilodeau		
	Member LeFevre	Absent:	Chairman Plew
			Member Aloï

Motion passed.

This becomes Action #8 of 2017.

ADJOURNMENT

At 7 p.m., on a motion by Member Bilodeau, seconded by Member LeFevre, with everyone present voting in the affirmative, the meeting was adjourned.


 Joan E. Fitch, Board Secretary

Emailed to KS, Bd. Members, JBF, BW, DD, DC, KM on 4/22/17.

From: Dan Dineen <ddineen@cortland-co.org>
To: Bruce Weber <codeofficer@cortlandville.org>
Date: 09/23/2019 08:49 AM
Subject: RE: Message from "RNP002673AB980A"

Bruce:

Thanks. I was not aware that the Town ZBA already made an interpretation on this matter.

Dan

Daniel S. Dineen, Director
Cortland County Planning Department
37 Church St.
Cortland, NY 13045
Tel. (607) 753-5043
FAX (607) 753-5150
e-mail ddineen@cortland-co.org

From: Bruce Weber [mailto:codeofficer@cortlandville.org]
Sent: Monday, September 23, 2019 8:13 AM
To: Dan Dineen
Subject: Fwd: Message from "RNP002673AB980A"

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

FYI attached

-----Original Message-----

From: copier@cortlandville.org
To: "bruce" <codeofficer@cortlandville.org>
Date: Mon, 16 Sep 2019 08:56:57 -0400
Subject: Message from "RNP002673AB980A"

This E-mail was sent from "RNP002673AB980A" (MP C3003).

Scan Date: 09.16.2019 08:56:55 (-0400)
Queries to: copier@cortlandville.org

This email, including attachments, may include confidential and/or proprietary information and is intended for persons sent to only. If the reader of this email is not the intended recipient or his or her authorized agent, the reader is hereby notified that any dissemination, distribution, or copying of this email is prohibited. If you have received this email in error, please notify the sender by replying to this message and deleting this email immediately.

This email, including attachments, may include confidential and/or proprietary information and is intended for persons sent to only. If the reader of this email is not the intended recipient or his or her authorized agent, the reader is hereby notified that any dissemination, distribution, or copying of this email is prohibited. If you have received this email in error, please notify the sender by replying to this message and deleting this email immediately.

Leach 2019 PJ 10 10 2019 request to be on agendas for 10/29/2019 ZBA meeting and PI Bd meetings
10/10/2019

Dear Ms Rocco-Petrella,

Addendum to 9/16/2019 Notice of Administrative Appeal of ZEO Determination and request for Interpretation, and 9/19/2019 Amended Appeal.

Please would you forward this on to ZEO Weber and Town Attorney DelVecchio. ZBA chair, Mr Finn, and ZBA members, and chair of the Cortlandville Planning Board, Mr Newell.

This is in addition to and in support of the documents I submitted to the Town and ZBA on 9/16/2019: Notice of Appeal and 9/19/2019: Amended Appeal.

Included in this Addendum are Exhibits D and Exhibit E.

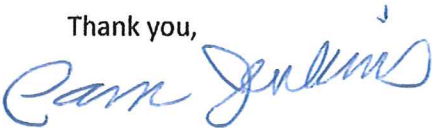
I am confirming my request to be placed on the agenda for the 10/29/2019 ZBA meeting to Appeal the Determination of the ZEO, requesting Annulment of the ZEO Weber's determination that Leach's September 12, 2019 does not require a use variance from the ZBA;

and interpretation of "commercial garage" to exclude truck bay for equipment storage including garbage hauling trucks and equipment related to Leach's trash service, as conceded in Leach's September 12, 2019 application materials.

I am also requesting to be placed on the agenda for the 10/29/2019 meeting of the Cortlandville Planning Board, if this matter (or if any, as yet unseen, application) is going to be discussed at the 10/29/2019 Planning Board meeting.

I am hand-delivering 7 copies of this Addendum to my 9/16/2019 Notice of Administrative Appeal, and 9/19/2019 Amended Appeal to the ZBA, which includes my request to be placed on the agenda for the 10/29/2019 Cortlandville Planning Board meeting.

Thank you,



Pam Jenkins

Filed October 10, 2019 11:45 a. M.

TOWN OF CORTLANDVILLE

CORTLAND COUNTY

3577 TERRACE ROAD

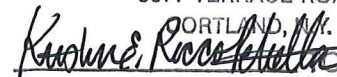
CORTLAND, N.Y.
 TOWN CLERK

Exhibit D

MEMO

To: Pamela Jenkins

From: Douglas H. Zamelis

Re: Matter of Leach/Response to Memo by Town Board Member Randy Ross

Date: October 3, 2019

In his September 23, 2019 memo, Town Board Member Randy Ross asserts that Greg Leach's most recent application for a condition permit for a "Garage, commercial" does not require a use variance. However, the cases cited by Mr. Ross in his memo are easily distinguishable from this matter because Mr. Ross overlooks statutory revisions to Village, Town and General City Laws in the early 1990s which, among other things, require zoning boards of appeal to grant "the minimum variance necessary" to provide the relief requested. Additionally, administrative agencies like the Cortlandville Zoning Board of Appeals ("CZBA") are bound by their prior precedents unless there is a rational and reasonable basis to arrive at a different determination, and here the Cortlandville Zoning Enforcement Officer's and Zoning Board of Appeals' 2017 determinations in this matter were in violation of law, therefore the CZBA is not bound by its prior unlawful determination. Leach's most recent application is merely a transparent and clumsy attempt to circumvent the Town of Cortlandville Zoning Law and prior holdings. At first blush Mr. Ross' memo may appear compelling, but further scrutiny and analysis demonstrates that his assertions are, with all due respect, misguided and unpersuasive. The interpretation of "Garage, commercial" is a matter for the CZBA not Mr. Ross, and you have set forth your grounds for appeal in your appeal for an interpretation to the CZBA.

Prior to the statutory revisions to the Village, Town and General City Laws in the early 1990s, standards and requirements for use and area variances lacked standardization and varied from jurisdiction to jurisdiction creating a "patchwork" of rules across the state. The statutory revisions in the early 1990s were intended by the legislature to standardize, among other things, procedures and standards for zoning boards of appeal in the review of variances. Town Law Section 267-b(2)(c) as revised in the early 1990s requires that:

The board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community (emphasis added).

Mr. Leach first applied for a use variance from the CZBA in or about 2003, well after the adoption of Town Law Section 267-b, and in granting the variance the CZBA January 28, 2003 meeting minutes appropriately confirm that "a motion was made by Member John Finn to grant the variance *as requested*" (emphasis added), and the motion was approved and became Resolution #4 of 2003. At that time, Leach had presented a specific site plan setting forth the

solid waste transfer station exactly as he proposed to construct it, that plan was properly denied by the Cortlandville Zoning Enforcement Officer because the use was not permitted in the subject zoning district, and Leach was then entitled to apply to the ZBA for a use variance for the facility exactly as he had proposed it. Because the CZBA was required by Town Law Section 267-b(2)(c) to grant “the minimum variance necessary”, the use variance granted to Leach by the CZBA in 2003 could only be for the project as he proposed it in 2003.

Mr. Moss cites *Matter of Scarsdale Shopping Center Associates, LLC v. Board of Zoning Appeals of Town of Brookhaven*, 64 A.D.3d 604, (2nd Dept. 2009); *Borer v. Vineberg*, 213 A.D.2d 828, (3rd Dept. 1995); and *Angel Plants, Inc. v. Schoenfeld*, 154 A.D.2d 459, 461 (2nd Dept. 1989) to support his assertions.

Angel Plants, Inc. was decided by the Appellate Division, Second Department in 1989, years prior to the statutory revisions in the early 1990s, so it is not at all instructive. And as a matter of jurisdiction, Cortland County is located in the Appellate Division, Third Judicial Department, not the Second, and courts within the Sixth Judicial District (in which Cortland County is located) are not bound by decisions of the Second Department.

Matter of Scarsdale Shopping Center Associates, LLC was also decided by the Appellate Division, Second Department and is not binding in the Third Department. Furthermore, the use variance at issue in *Matter of Scarsdale Shopping Center Associates, LLC* was granted prior to the revision of Town Law Section 267-b in the early 1990s, and “the resolution granting the use variance was destroyed in a fire and, as a result, the terms of the variance must be gleaned from the available extrinsic evidence”. Leach’s variance was granted in 2003 about a decade after the revision to Section 267-b(2)(c) requiring the CZBA and all other zoning boards of appeal across the state to grant the “minimum variance necessary”. The CZBA minutes clearly indicate the use variance was granted “as requested” and shown on the site plan Leach had proposed at the time. *Matter of Scarsdale Shopping Center Associates, LLC* is therefore distinguishable from the Leach matter.

Borer was decided by the Appellate Division, Third Department and is indeed binding on courts within the Sixth Judicial District. However, just like *Matter of Scarsdale Shopping Center Associates, LLC* the use variance in *Borer* had been granted before the revision of Town Law Section 267-b in the early 1990s, and the “board records in connection with the 1957 expansion application were missing” and the original plot plan was “no longer in existence”. Therefore, similar to *Matter of Scarsdale Shopping Center Associates, LLC*, *Borer* is easily distinguishable on that point.

Borer however goes on to hold:

However, the 1957 variance limits the use of petitioner’s property to a specific use (see, *Abbey Is. Park v. Board of Zoning Appeals*, 133 A.D.2d 150), i.e., operation of a gas station. Therefore, *any change to a different commercial use in the residential district requires a new variance* (see, *Matter of Baker v. Board of Zoning Appeals*, 67 A.D.2d 1071). By selling grocery-type items and lottery tickets, *petitioner changed the use of the property from that of a pure gas station*

to include a convenience store use. Because petitioner did not obtain a variance for such change, the Board properly restricted the use to that permitted by the 1957 variance (emphasis added).

The foregoing holding in *Borer* is “on all fours” with the Leach situation, because the CZBA granted Leach a variance in 2003 to operate a solid waste transfer station, Leach has now applied for approval of a “Garage, commercial” which Leach concedes in his application is merely just an expansion of his solid waste transfer station, and Leach’s 2003 variance allowing him to construct and operate a solid waste transfer station doesn’t include the authorization to construct and operate a “Garage, commercial” use. Leach can’t have it both ways. To the extent Mr. Ross submits that we should provide citation to relevant caselaw, Mr. Ross has already done so for us by citing *Borer*.

Given the current statutory scheme and Town Law Section 267-b(2)(c) (under which the Leach use variance was granted in 2003), any argument that the 2003 use variance granted to Leach is now an unlimited license to expand his solid waste transfer station is unsupported and strained.

With respect to the 2017 determination by the CZBA, it is not binding on this application for several reasons. First, this application for a supposed “Garage, commercial” is indisputably a different application from previous applications. Second, an administrative agency is not required to follow precedent established by prior decisions if an agency can “provide a rational explanation for its failure to do so”. *Yelle v. Woodworth's Painting Co.*, 289 A.D.2d 758 (3rd Dept. 2001) citing *Matter of Field Delivery Service*, 66 N.Y.2d 516, 520 (1985). Third, the scope of the use variance granted to Leach is a matter of legal interpretation, not fact, and “where the question is one of pure legal interpretation of statutory terms, deference to the [agency] is not required”. *Matter of Gonzalez v Annucci*, 32 N.Y.3d 461 (2018).

Thank you for the opportunity to assist.

Exhibit E

Leach 2019 Dan Dineen on DZ memo and use variance requirement

10 8 2019 PJ to and from Dan Dineen

failure to require use variance for trash transfer station business expansion

Inbox

Pam Jenkins <meadowlark54@gmail.com>)

to Dan, me

Hi Dan,

Please would you consider and comment on the attached memo from Douglas Zamelis, Esq.?

The fact that they (ZEO and ZBA) failed to require a use variance for the last application does not burden them with having to repeat that violation of law for this application.

Land use attorney Zamelis explains why the previous the violation of law does not have to be sustained or repeated by the ZBA for this 2019 application.

thank you,

Pam Jenkins

~~~~

10/08/2019

**Dan Dineen**

Pam:

I agree with Mr. Zamelis' assertions that a use variance is required for any expansions of a use that was previously granted a use variance. I am not an attorney but this is my professional opinion.

Dan

Daniel S. Dineen, Director  
Cortland County Planning Department  
37 Church St.



Leach 2019 Amended Appeal of Determination of the ZEO cover letter to KRP Town Clerk

9/19/2019

Ms Kristin Rocco-Petrella, Town Clerk

Town of Cortlandville

3577 Terrace Rd

Cortland, NY 13045

**Re: Amended Appeal of ZEO Determination** regarding Leach Properties, LLC., September 12, 2019  
application for a Conditional Permit

Dear Ms Rocco-Petrella,

Please would you forward this Amended Appeal to the ZBA and ZEO and copies to the Cortlandville  
Town Board, Cortlandville Planning Board, and Cortlandville Town Attorney.

Twelve copies are enclosed for distribution.

Thank you,



Pam Jenkins

4023 Collegeview Drive

Cortland, NY 13045

Filed September 19, 2019 M.  
TOWN OF CORTLANDVILLE  
CORTLAND COUNTY  
3577 TERRACE ROAD  
CORTLAND, N.Y.  
K. Rocco-Petrella TOWN CLERK

**AMENDED APPEAL TO TOWN OF CORTLANDVILLE ZONING BOARD OF APPEALS**

**DATED: September 19, 2019**

**To:** Town of Cortlandville Zoning Enforcement Officer Weber and Town of Cortlandville Zoning Board of Appeals

**Copies To:** Town of Cortlandville Town Board, Town of Cortlandville Planning Board, and Town of Cortlandville Attorney

**From:** Pamela Jenkins, 4023 Collegeview Drive, Cortland, NY

**Date of Original Appeal:** September 16, 2019, attached as Exhibit "A"

**Determination Appealed From:**

Determination of Cortlandville Zoning Enforcement Officer Weber that the September 12, 2019 application of Gregory Leach for a conditional permit for a "commercial garage" at his solid waste transfer station does not require a use variance for expansion of the solid waste transfer station use without a use variance from the Cortlandville Zoning Board of Appeals.

**Relief Sought:**

i) Annulment of Cortlandville Zoning Enforcement Officer Weber's determination that Gregory Leach's September 12, 2019 application for conditional permit does not require a use variance from the Cortlandville Zoning Board of Appeals; and ii) interpretation of "commercial garage" at Cortlandville Zoning Law Section 178-2(C) and 178-36-2F to exclude a "truck bay" for "equipment storage" including "garbage hauling trucks and equipment for "operation related to Leach's trash service" as conceded in Leach's September 12, 2019 application materials attached as Exhibit "B" to this amended appeal.

**Grounds for Appeal:**

Leach's trash and recycling business is not a Commercial Garage as defined by Section 178-2(C) of the Cortlandville Zoning Law. A commercial garage is a garage that provides services and goods to the public, not storage for an existing business benefitting only the applicant himself. As acknowledged in the September 12, 2019 application materials, Leach has no intention of providing good or services typically associated with a commercial garage to the general public, only himself.

Since 2003, each and every time Leach built or expanded his trash transfer station business on this 3.11 acres in the B-2 zoning district where transfer stations are otherwise prohibited, Cortlandville required him to apply for a use variance.

As plainly acknowledged in Leach's September 12, 2019 application materials, this 1300 sq ft building is another attempted expansion of Leach's Custom Trash transfer

business. Leach must be required to apply for a use variance to further expand his trash transfer use in the B2, Area 1 of the Aquifer Protection zoning district where trash transfer stations are otherwise prohibited.

The Cortland County Director of Planning, Dan Dineen has repeatedly written that expansion of a non-permitted use which was originally allowed by a use variance requires a new use variance for each expansion. The use variance initially granted by the Cortlandville Zoning Board of Appeals was only for that specific project proposed at that time. Attached as "Exhibit C"

**Stay of Proceedings:**

Pursuant to Town Law Section 267-a(6) the filing of this appeal stays all proceeding in furtherance of Gregory Leach's application, including but not limited to any further proceeding before the Town of Cortlandville Planning Board, until this appeal is decided.

Signed   
Pamela Jenkins

cc:

Cheri Sheridan

Olga Smith

Douglas H. Zamelis, Esq.

Cortland County Planning Department

Att: Dan Dineen

# Exhibit A

TOWN OF CORTLANDVILLE  
CORTLAND COUNTY

3577 TERRACE ROAD

CORTLAND, N.Y.

*Kristin E. Rocco*  
TOWN CLERK

Leach 2019 PJ Notice of Administrative Appeal of ZEO Determination, submitted to Cortlandville Town Clerk 9/16/2019

9/16/2019

Leach: Notice of Administrative Appeal of the Code Enforcement Officer's determinations which were that Leach did not have to apply for a USE VARIANCE, for the 48 x 27 ft building on the 3.11 acre trash transfer station, at 1834 Rt 13, Cortland, in the B2 zone of Area 1 of the Aquifer, where the use (trash business) is prohibited.

Each and every other time Leach built or expanded on the 3.11 acre parcel, he required a Use Variance.

Mr Weber informed me on September 13, 2019 that Mr Leach has not applied for a Use Variance, but instead he applied 9/12/2019 for a Conditional Permit under Chapter 178 , Article VIII 178-36-2F : Commercial Garage.

This building is not a Commercial garage by **Cortlandville's definition** but it is another expansion of Leach's trash business.

This building was built after we filed Article 78 Jenkins 11.

Judge Cerio Ordered in October 2017 and June 2019 that all of the actions of the Town of Cortlandville were negated. See Cerio's Orders of October 2017 and June 2019.

In January of 2003 Leach applied for and received a Use Variance to build the trash transfer station on the 3.11 acres, a prohibited use in B2 zoning district, in Area 1 of the Aquifer Protection District.

In March of 2008 Leach a received another Use Variance to increase tonnage at the trash transfer station from 5000 to 7499 tons, on the 3.11 acres, a prohibited use in B2 zoning district, in Area 1 of the Aquifer Protection District.

In July of 2015 Leach applied for and received another Use Variance for a fueling facility and 2000 gallon fuel storage tank: a prohibited use in B2 zoning district, in Area 1 of the Aquifer Protection District.

Each and every time Leach built or expanded on the 3.11 acre parcel, he required a Use Variance.

On September 12, 2019 Leach applied, not for a Use Variance, but under Chapter 178 , Article VIII 178-36-2F for a permit for a Commercial garage, automotive repair shop.

See this Cortlandville Codes definition of Garage Commercial: "An enclosed building used as a business for the indoor storage or repair of motor vehicles, including painting and the sale of parts and accessories."

Leach does not own or operate a Commercial garage or automotive repair shop at that 3.11 acre location. The building he built is another expansion of his trash and recycling business and will be used as such according to the narrative he wrote and signed and submitted on September 12, 2019 with his permit application for a Commercial garage and automotive repair shop business.

Regarding the 2017 Leach application to build a 48x 27 foot building on the trash transfer station property, a prohibited use in B2 zoning district, in Area 1 of the Aquifer Protection District: The February 10 2017 recommendations from Dan Dineen , Cortland County Director of Planning, to the Cortland County Planning Board state that "It should be noted that the original development of this property as a transfer station required a use variance as a transfer station is not a permitted use in the B2 district. It appears that a use variance would also be required as the proposal is an expansion of a use that required a use variance. It is therefore recommended that before any positive consideration is given to this proposal, that the Town consider whether a use variance is required for expansion of a use which required a use variance when originally developed on the site."

September 12, 2019: the zoning officer failed to require the applicant to apply for a Use Variance for the expansion of his trash business.

Mr Leach applied for a permit for a Commercial garage. Parking garbage trucks and recycling equipment in that building does not make it a Commercial garage...that makes it part of his trash business expansion.

Mr Leach does not own or operate a Commercial garage as defined by Cortlandville codes. Examples of Commercial garages are Tallmadge Tire, Monroe Muffler, Kost , CARS...etc)

Trash transfer and recycling station building is not an approved use in B2 for a Conditional Permit in Area 1 of the Aquifer. Mr Leach does not own or operate a Commercial garage as defined by Cortlandville codes.

Each and every other time Leach expanded his trash and recycling business on that 3.11 acres, Cortlandville required him to apply for a Use Variance.

This is another expansion of Leach's trash business.

All of the actions which Cortlandville had taken on the previous permit have been negated by the court Order in October 2017 and again by court Order in June of 2019.

Thank you,

Pam Jenkins, Cheri Sheridan, Olga Smith

4023 Collegeview Drive, Cortland, NY 13045

# Exhibit B

This narrative is to be added to the description of my conditional permit request for the addition to our storage building.

In 2017 I asked and received a conditional permit to construct an addition to my existing truck equipment storage building at 1834 Route 13. I had the addition constructed and received a certificate of occupancy and began usage of the building, at such time legal action commenced. Originally I intended to have the building be drive through capable but after negative court decisions I have had to change my intended use. In 2017 flow control legislation was enacted locally which limits my over the road transportation operations. Therefore, no need for a drive through of the building and consequently I have sold my spare tractor trailer that was to be housed in the addition.

Now my intentions are to put my garbage hauling trucks and equipment in the addition which will allow me to put under cover my recycle trailers used for household recycling, my sweeper and my snow removal equipment. This equipment is for the operation related to Leach's Trash Service, residential and commercial hauling, on this site since 1986.

Lastly, I cannot use the land behind the building, as it cannot be used in conjunction with the hauling business; therefore the construction included a wall, eliminating the drive through ability. Also, the addition is merely an extension of my already constructed building on the original property owned by me since 1986.

Sincerely,



Gregory K. Leach

EXHIBIT C

Leach 2019 Dan Dineen on use variance required to expand

**From:** Dan Dineen <[ddineen@cortland-co.org](mailto:ddineen@cortland-co.org)>

**Sent:** Thursday, September 19, 2019 12:24 PM

**To:** Pam Jenkins <[meadowlark54@gmail.com](mailto:meadowlark54@gmail.com)>

**Cc:** Kathy Wickwire <[KWickwire@twcny.rr.com](mailto:KWickwire@twcny.rr.com)>; Nick Renzi <[nrenzi@twcny.rr.com](mailto:nrenzi@twcny.rr.com)>; Douglas H. Zamelis <[dzamelis@windstream.net](mailto:dzamelis@windstream.net)>

**Subject:** RE: documents you rely upon

Pam:

My past recommendations regarding the need for a use variance for any expansions on the Leach property which was granted a use variance to operate a trash transfer station is based on NYS Town Law §267-b (2)(c); 'The board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.' The 2003 use variance for this site was granted based on the applicant's proposal at that time. This established parameters for the operation, including the development and layout of the site. Therefore, any proposed changes to the site outside of what was proposed in 2003, is beyond the scope of the 2003 approval and therefore requires another use variance. If a use variance is not required for the expansion of a use permitted by a use variance, what would prevent an applicant to obtain a use variance for a 2,000 sq. ft. retail operation and then develop the site as a 200,000 sq. ft. operation as business increases?

Dan

Daniel S. Dineen, Director  
Cortland County Planning Department  
37 Church St.  
Cortland, NY 13045  
Tel. (607) 753-5043  
FAX (607) 753-5150  
e-mail [ddineen@cortland-co.org](mailto:ddineen@cortland-co.org)



Leach 2019 PJ request to be on agenda for 9 24 2019 PI Bd mtg

9/16/2019

Mr Weber,

This is my hand-delivered request to be placed on the agenda for the 9/24/2019 Cortandville Planning Board meeting.


Our attorney may attend as well or be asked to speak for us.

7 copious are hand-delivered.

This AM I hand- delivered 11 copies of the 19 page packets (letter and documents) to be sent to Cortlandville Planning Board members.

Thank you,

  
Pam Jenkins  
607 756-6715

Filed September 16, 2019 <sup>12:55p.m.</sup> M.  
TOWN OF CORTLANDVILLE  
CORTLAND COUNTY  
3577 TERRACE ROAD  
CORTLAND, N.Y.  
 TOWN CLERK

Leach 2019 PJ to Cortlandville Pl Bd and officials 9 16 2017 submitted

Dear Mr DelVecchio, Mr Tupper, Ms Wickwire and Cortlandville Planning Board members; Cortlandville Town Board members and officials; Mr Dineen and Cortland County Planning Board members,

We are submitting 12 copies of the following documents for the record.

- \* Town of Cortlandville definition of **Commercial Garage**
- \* Leach's signed narrative which accompanies his September 12, 2019 application, in which he explains the building was built for his garbage and recycling business equipment. "This equipment is for the operation related to Leach's Trash Service, residential and commercial hauling..."
- \* Chapter 178, Article VIII, 178-36.2 : Uses subject to Conditional Permit in B2 (trash and recycling business does not appear on this list)
- \* Leach's GML form indicating he is applying for Article VIII 178-36-2F. (Commercial garages and automotive repair shops)
- \* Chapter 178, Article XIV 178 -75 A and B : Structure/use requirements for Conditional Permit
- \* Pam Jenkins' 2017 Notice of Administrative Appeal of the Code Enforcement Officer's determinations. This will be followed by a 2019 Appeal.
- \* October 2017 Judge Cerio's Order on Jenkins II Article 78 (first and last page)
- \* June 2019 Judge Cerio's Order on Jenkins 11 Article 78 (first and last page)

Leach does not own or operate a **Commercial Garage** on the 3.11 acre site of his trash and recycling business. He never has. Tallmadge Tire is a Commercial Garage. CARS on Rt 13 is a Commercial Garage, various auto repair and muffler

shops are Commercial Garages. Leach's Trash and recycling business is not a Commercial Garage.

Leach's signed narrative details how the building was built for his trash and recycling business...he does not plan to operate a Commercial Garage at that site.

Parking a garbage truck or recycling equipment in that building does not cause that building to meet the **Cortlandville definition of a Commercial Garage.**

Under General Municipal Law Article VIII 178-36-2F does not apply, he cannot apply for that permit.

Every other time Leach built or expanded his trash business on that site he was required to apply for a Use Variance.

This is another expansion of Leach Custom Trash.

Please see Judge Cerio's Order of June 2019.

Thank you,

Pam Jenkins, Cheri Sheridan, Olga Sheridan

607 756-6715

4023 Collegeview Drive

Cortland, NY 13045

CC

Kristin Rocco-Petrella, Town Clerk

Mary Roodenburg,

Douglas H Zamelis, Esq.

- (3) A group of individuals living together in the same dwelling unit shall be presumed not to be a functional family unit, as defined in this section, if the dwelling unit is occupied by four or more unrelated adults over the age of 16 years and is not occupied by minor children.
- (4) The presumptions set forth in Subsections (2) and (3) of this definition may be rebutted by evidence of characteristics set forth in Subsection (1) of this definition.

**GARAGE, COMMERCIAL**

An enclosed building used as a business for the indoor storage or repair of motor vehicles, including painting and the sale of parts and accessories. A junkyard or auto salvage yard is not to be construed as a garage.

**GARAGE, PRIVATE**

An enclosed building for use by the inhabitants of a dwelling for private storage.

**GARAGE SALE**

Sale of used goods from a private residence.

**GASOLINE STATION**

A building servicing motor vehicles and/or supplying fuel, lubrication, supplies or accessories but not including painting or body repair. (See "filling station.")

**GRADING**

Alteration of the surface or subsurface conditions of land or water bodies by excavating, filling (including hydraulic fill) or stockpiling of earth materials or any combination thereof.

[Added 1-16-2008 by L.L. No. 1-2008]

**GROUP HOME**

A single-family residence used for the provision of health or social care for unrelated persons.

**HABITABLE FLOOR**

Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof (a floor used only for storage purposes is not a habitable floor).

**HAZARDOUS MATERIAL**

Any substance found listed in either 40 CFR Part 261, 40 CFR Part 302, or 6 NYCRR Part 371, alone or in combination, including but not limited to petroleum products, organic chemical solvents, heavy metal sludges, acids with a pH less than or equal to two alkalis with a pH greater than or equal to radioactive substances, pathological or infectious wastes or any material exhibiting the characteristics of ignitability, corrosivity, reactivity or EP toxicity.

[Added 5-1-1988 by L.L. No. 1-1988]

**HOME OCCUPATION**

An occupation or profession which is carried on by a person residing in the dwelling unit, and is clearly incidental and accessory or secondary to the use of the dwelling unit for residential purposes. Home occupations shall be such things as hairdressing, tailoring, teaching, carpentry, electrical and plumbing work and similar activities, and professional offices such as doctors, lawyers, architects, and real estate brokers. For the purposes of this chapter, a home occupation shall be limited by the following requirements:

- (1) There shall be no more than one paid employee on premises.
- (2) There shall be no indication from the exterior that the building is used as other than a dwelling, except as permitted under Article XVIII, Signs.
- (3) The home occupation shall encompass no more than 1/4 of the total floor space of the principal dwelling structure (including basement). If an accessory structure is used for this purpose, floor area is limited to 200 square feet.

**HORTICULTURE**

The science or art of growing fruit, flowers, vegetables or ornamental plants.

**HOSPITAL**

This narrative is to be added to the description of my conditional permit request for the addition to our storage building.

In 2017 I asked and received a conditional permit to construct an addition to my existing truck equipment storage building at 1834 Route 13. I had the addition constructed and received a certificate of occupancy and began usage of the building, at such time legal action commenced. Originally I intended to have the building be drive through capable but after negative court decisions I have had to change my intended use. In 2017 flow control legislation was enacted locally which limits my over the road transportation operations. Therefore, no need for a drive through of the building and consequently I have sold my spare tractor trailer that was to be housed in the addition.

Now my intentions are to put my garbage hauling trucks and equipment in the addition which will allow me to put under cover my recycle trailers used for household recycling, my sweeper and my snow removal equipment. This equipment is for the operation related to Leach's Trash Service, residential and commercial hauling, on this site since 1986.

Lastly, I cannot use the land behind the building, as it cannot be used in conjunction with the hauling business; therefore the construction included a wall, eliminating the drive through ability. Also, the addition is merely an extension of my already constructed building on the original property owned by me since 1986.

Sincerely,

A handwritten signature in cursive script that reads "Gregory K. Leach".

Gregory K. Leach

Town of Cortlandville, NY  
Friday, September 13, 2019

## Chapter 178. Zoning

### Article VIII. Highway Commercial Business B-2 District

[Added 1-16-2008 by L.L. No. 1-2008<sup>[1]</sup>]

[1] *Editor's Note: This local law also repealed former Art. VIII, Business Transition District, added 7-19-1989 by L.L. No. 2-1989.*

#### § 178-35. Statement of intent.

- A. The purpose of this district is to provide areas in the Town for retail sales and commercial business enterprises that primarily serve the motoring public and that are auto-oriented in size and use, and that are compatible with, but function independently from, other adjacent and nearby nonresidential uses on highways designed to handle large traffic volumes. It is the intent of this district to prohibit uses that would be detrimental to adjoining districts, community aesthetics, aquifer protection and an orderly flow of on-site and off-site vehicular traffic.
- B. In addition to the requirements of this article, compliance with the applicable provisions of Article X, Aquifer Protection District, is required.

#### § 178-36. (Reserved)

[1] *Editor's Note: Former § 178-36, Permitted structures and uses, was repealed 12-16-2009 by L.L. No. 3-2009.*

#### § 178-36.1. Permitted uses subject to site plan approval.

- A. Permitted structures and uses subject to site plan approval shall be as follows:
- (1) All those permitted structures and uses, and those permitted uses subject to site plan approval, allowed under a B-1 District, except for multiple-family dwellings and their permitted accessory uses.  
[Amended 12-16-2009 by L.L. No. 3-2009]
  - (2) Retail stores and sales.
  - (3) Bakeries, laundromats, dry-cleaning pick-up establishments, drugstores and pharmacies.
  - (4) Banks, savings and loans, and credit bureaus.
  - (5) Indoor and drive-through restaurants and taverns.
  - (6) Veterinary clinics, animal shelters, kennels and pet shops.
  - (7) Indoor theaters.
  - (8) Indoor commercial recreation facilities.

(9) Automobile and vehicular sales; used vehicle sales permitted only in combination with new vehicle sales.

(10) Customary uses accessory to the above, as defined in this chapter, which are an integral part of and used solely for the permitted use and deemed appropriate by the Zoning Officer.  
[Amended 12-16-2009 by L.L. No. 3-2009]

B. Upon determination by the Zoning Officer that a specific use originally permitted within this district is to be changed so that it involves a separate, different and distinct service, use, process or product, or involves a new operator, an application for a conditional permit must be made to the Planning Board. Prior to authorizing issuance of the conditional permit, the Planning Board may require the correction of any and all phases of the operation, which may become or have become detrimental to the neighborhood.  
[Amended 12-16-2009 by L.L. No. 3-2009]

## § 178-36.2. Uses subject to conditional permit.

Uses subject to conditional permit shall be as follows:

A. Residential:

(1) Multiple-family dwellings with over four dwelling units.

B. Religious institutions:

(1) Churches, chapels, temples, synagogues and related uses.

C. Educational institutions:

(1) Schools, public and private; all age groups.

(2) Libraries.

D. Recreational facilities and social activities:

(1) Public and private clubs.

(2) Parks and playgrounds.

(3) Public swimming pools.

(4) Miniature golf, golf courses and driving ranges.

(5) Campgrounds, public and commercial.

(6) Outdoor amusement centers, outdoor theaters and drive-in theaters.

E. Health, medical, and care services:

(1) Hospitals.

(2) Clinics.

(3) Child day-care centers.

(4) Nursing homes.

(5) Mortuaries and funeral homes.

(6) Cemeteries.



- F. Commercial garages and automotive repair shops.
- G. Car wash operations.
- H. Outdoor and drive-in restaurants.
- I. Motor vehicle leasing facilities.
- J. Outdoor sales of:
  - (1) Boats.
  - (2) House trailers.
  - (3) Recreational vehicles.
  - (4) Horticultural products and supplies.
- K. Animal hospitals.
- L. Used car sales.

### § 178-36.3. Hours of operation.

No business establishments in any B-2 District shall be open to the public except between the hours of 6:00 a.m. and 12:00 midnight without prior Planning Board approval, and the Planning Board may modify hours of operation with the granting of a conditional use permit based upon the intensity of the use and potential impact on neighboring areas.

### § 178-36.4. Dimensional requirements.

- A. Lot area. The minimum lot area shall be appropriate to accommodate the necessary structures and comply with this chapter, as well as other Town requirements.
- B. Floor area. Any separate commercial, retail, professional or business use, owned or leased, shall not exceed 30,000 square feet in floor area without first obtaining a conditional permit unless otherwise noted herein.

### § 178-36.5. Prohibited uses.

Prohibited uses shall be as follows:

- A. Outside storage. The outside storage of any equipment, products, raw materials, waste or similar materials in this district that is detrimental to nearby residential uses, adjacent districts, community aesthetics, and aquifer protection, as determined by the Planning Board, is prohibited, as well as the outside storage of disabled vehicles, parts thereof, vehicles not qualifying for a New York State automobile inspection sticker, wrecked vehicles and parts thereof, and junk of any kind.

**GENERAL MUNICIPAL LAW**

**Zoning Referral Form**

**Conditional Permits, Special Permits, Site Plan Reviews & Variances**

Director  
CORTLAND COUNTY PLANNING DEPARTMENT  
37 Church St.  
Cortland, NY 13045-2838  
Telephone: (607) 753-5043  
Fax: (607) 753-5150

GML No. \_\_\_\_\_  
(Tax Map Number)

Date: \_\_\_\_\_

Submitting Officer: Bruce Weber, Planning & Zoning Officer

Municipality: Town of Cortlandville

Mailing Address: 3577 Terrace Road, Cortland, NY 13045

Phone Number: (607) 756-7052

Fax Number: (607) 758-7922

**Type of Referral**

The applicant request the following:

Variance: \_\_\_\_\_ Bulk – Article \_\_\_\_\_ Section \_\_\_\_\_  
                  \_\_\_\_\_ Use – Article \_\_\_\_\_ Section \_\_\_\_\_

Special Permit: Article \_\_\_\_\_ Section \_\_\_\_\_

Conditional Permit: Article V III Section 178-36-2F

Site Plan Review: Article \_\_\_\_\_ Section \_\_\_\_\_

Reason(s) for request: For the application of construction of  
a ~~24~~ 48 x 27 truck bay.

Is the above action a Type 1 \_\_\_\_\_ ; Type 2 \_\_\_\_\_ , or unlisted action under the State Environmental Quality Review Act? Attach required environmental assessment forms for Type I and unlisted actions.

The following information is required for your application to be complete:

1. Name of petitioner: LEACH PROPERTIES LLC

Owners name (if different): Beuyk Leach

Date of acquisition: \_\_\_\_\_

Town of Cortlandville, NY  
Sunday, September 15, 2019

## Chapter 178. Zoning

### Article XIV. Conditional Permit

#### § 178-73. Purpose.

- A. The uses and structures listed in each district, with the exception of the Aquifer Protection District, which require conditional permits are recognized as potentially desirable for the town. However, the uses and structures requiring conditional permits may, because of their nature, present some degree of hazard or danger to the Town and its people. In the Aquifer Protection District, special permits shall be considered pursuant to Article X.  
[Amended 5-1-1988 by L.L. No. 1-1988]
- B. The purpose of this article is to establish guidelines for the Planning Board to use in determining whether or not a conditional permit should be issued.

#### § 178-74. Application procedure; Planning Board review and decision.

- A. Application shall be made to the Zoning Officer and shall include detailed site plan to scale. Topographic information may be required in certain instances. With each application a fee shall be paid in the amount as set forth from time to time by Town Board resolution, except with an application for a change in use, in which case a fee in a different amount as set forth from time to time by Town Board resolution shall be paid.  
[Amended 4-1-1987 by L.L. No. 4-1987; 8-5-1998 by L.L. No. 2-1998]
- B. At its next regular meeting following application, the Planning Board shall review the plan and give tentative approval or ask for revisions or for more detail. More detail may include complete architectural drawings of proposed structures and landscaping. (At the same time the Planning Board may set a date for a final review of the application).
- C. Referral; public hearing.
- (1) Within five days of first review, the Planning Board shall refer the application to the Cortland County Planning Board along with Town comments and recommendations (if required by General Municipal Law) and set a date for final review.
  - (2) The Planning Board may conduct a public hearing on the application. If a public hearing is considered desirable by a majority of the authorized members of the Planning Board, such public hearing shall be conducted within 45 days of the acceptance of the application and shall be advertised in a newspaper of general circulation in the Town at least five days before the public hearing.  
[Added 5-1-1988 by L.L. No. 1-1988]
- D. The Town Planning Board will take no final action until it has received comments and recommendations from the County Planning Board or 45 days have passed from the date of submittal to the County Planning Board, if such is required by General Municipal Law § 239.
- E. The Town Planning Board, on the date set for final review, shall:

- (1) Approve with county recommendations;
  - (2) Approve against county recommendations with a majority plus one vote;
  - (3) Disapprove; or
  - (4) Give conditional approval.
- F. The Town Planning Board will make a factual record of all proceedings in issuing a conditional permit, and such record shall contain the reasons for the decision.
- G. If approval or conditional approval is given, a building permit shall be authorized at such time as all conditions are met. Application to the Zoning Officer for any building permit or certificate of zoning compliance authorized by resolution of the Planning Board under which a conditional permit is granted shall be made within 60 days from the date the resolution is filed with the Town Clerk or within a time period agreed upon by the applicant and the Planning Board. If a building permit is not applied for within this time frame or a building permit has expired, the applicant shall submit a new application to the Planning Board.  
[Amended 8-17-1988 by L.L. No. 2-1988; amended 12-16-2009 by L.L. No. 3-2009]
- H. The Planning Board, on its own motion, may revoke any conditional permit for noncompliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing as provided in § 178-74C. The foregoing shall not be the exclusive remedy, and it shall be unlawful and punishable hereunder for any person to violate any condition imposed by a conditional permit.  
[Added 8-17-1988 by L.L. No. 2-1988]

## § 178-75. Structure/use requirements for permit approval.

- A. In order to grant approval for a conditional permit, the applicant must prove that the structure and/or use:
- (1) Is appropriate for the particular lot and area, and will not conflict with allowed uses.
  - (2) Is in compliance with all other applicable sections of this chapter.
  - (3) Is physically and visually compatible with general neighborhood or planned neighborhood development.
  - (4) Provides a suitable transition when located between differing uses or districts where none is provided or provides a visual buffer by landscaped green areas or fencing.
  - (5) Has adequate space and plans for off-street parking.
  - (6) Has future expansion or revision capabilities without need for variances.
  - (7) Provides for safe handling of vehicular traffic to and from the site without causing congestion. No new vehicular entrances shall be permitted within 50 feet of an existing intersection.
  - (8) Provides for safe passage of pedestrians.
  - (9) Enhances neighboring property and does not lead to depreciation of properties (by reason of noise, traffic, dust, fumes, smoke, odor, fire, glare, flashing lights or sewage disposal).
- B. In granting a conditional use, the Planning Board shall make findings of fact consistent with the provisions of this chapter. The Planning Board shall not approve a conditional use except in conformity with the spirit, purposes, conditions and standards outlined in this chapter. In order to obtain the Planning Board's approval of a conditional permit, the applicant must prove that the location, structure, and/or use:  
[Added 1-16-2008 by L.L. No. 1-2008]

- (1) Is consistent with the general intent of the Town of Cortlandville's Land Use and Aquifer Protection Plan.
- (2) Is in conformity with all applicable requirements of this chapter and all Town ordinances.
- (3) Will not pose a significant threat to the quality and/or quantity of Cortlandville's sole source aquifer or its delineated wellhead protection zones.
- (4) Is in the best interests of the Town, the community, and the public welfare, and shall not be a detriment to the properties in the immediate vicinity.
- (5) Is suitable for the property in question and designed to be constructed, operated, and maintained so as to be in harmony with and appropriate in appearance with the existing or intended character of the general vicinity.
- (6) Does not cause unsuitable effects on highway traffic and safety with adequate access to protect streets from undue congestion and hazard.

## § 178-76. Additional specific requirements.

### A. Residential.

- (1) Multifamily dwellings with over four dwelling units must have two means of egress and ingress. One may be for emergency use only.
- (2) Public sewer and water facilities must be provided for multifamily dwellings with over four dwelling units.
- (3) Customary home occupations must be of a type that will not create noise and traffic problems in residential neighborhoods.
- (4) Customary home occupations must have sufficient off-street parking for all customer vehicles.
- (5) In the B2 and B3 District, multiple-family is only allowed as a mixed use with commercial. For one-story structures the commercial use shall have a minimum of 50% of the gross floor area in use for business. For multistory buildings the commercial use shall have a minimum gross floor area equal to the story with the greatest floor area. For projects with multiple structures, these percentages shall apply to gross square footage allowing for a mix of commercial and residential structures.  
[Added 12-16-2009 by L.L. No. 3-2009]

### B. Agricultural related uses.

- (1) Liquid and solid manure storage facilities shall be sited in a manner to reduce odor problems with adjacent residential areas.
- (2) Land application of human and animal waste products shall be carried out in a manner to reduce environmental hazard.
- (3) Visual screening of used equipment may be required for agricultural implement sales areas.

### C. Educational and cultural facilities.

- (1) Lighting of fields and parking areas shall not create a glare on adjacent residential properties or roadways.
- (2) Pedestrian access must be located in a manner to reduce impact on neighborhoods.
- (3) Architectural design shall be compatible with neighborhoods.



7629A State Highway 80 • Cooperstown, New York 13326

• 315.858.6002 • dzamelis@windstream.net •

STATE OF NEW YORK

SUPREME COURT

COUNTY OF MADISON

In the Matter of the Application for a Judgment  
Pursuant to Article 78 of the Civil Practice Law  
and Rules of:

TOWN OF  
CORTLANDVILLE  
PLANNING BOARD,

Respondents

PAMELA JENKINS, CHERI SHERIDAN and OLGA  
SMITH

Petitioners

NOTICE OF ENTRY


Index No.: 2017-1248

Hon. Donald F. Cerio, Jr.

GREGORY LEACH, LEACH PROPERTIES, LLC, and  
PLEASE TAKE NOTICE THAT the attached is a true copy of the Decision and Order of the  
Honorable Donald F. Cerio, Jr, of the Cortland County Supreme Court dated October 2, 2017,  
which was filed and entered in the Office of the Cortland County Clerk on October 4, 2017.

Dated: October 5, 2016

Douglas H.

By:   
Douglas H. Zamelis

Zamelis

Attorney for Petitioners

7629A State Highway 80

Cooperstown, New York 13326

(315) 858-6002

TO:

Richard C. Lewis, Esq.

Hinman Howard & Kattell

80 Exchange Street

P.O. Box 5250

Binghamton, New York 13902

John B. Folmer, Esq.

Town of Cortlandville Town Attorney

3577 Terrace Rd.

Cortland, New York 13045



STATE OF NEW YORK  
COUNTY OF MADISON SUPREME COURT

---

In the matter of the Application for Judgment Pursuant  
to Article 78 of the Civil Practice Law and Rules of:

Decision and Order

PAMELA JENKINS, CHERI SHERIDAN AND OLGA  
SMITH,

Index No. 2017-  
1248

Petitioners,

-against-

GREGORY LEACH, LEACH PROPERTIES,  
LLC, and TOWN OF CORTLANDVILLE  
PLANNING BOARD,

Respondent

s.

---

The present matter comes before the Court upon the Petitioners' Notice of Verified Petition and Verified Petition, dated April 4, 2017, pursuant to Civil Practice Law and Rules Article 78, seeking to null and vacate the February 21, 2017, determination by Respondent Town of Cortlandville Planning Board, which granted a conditional permit to Respondent Leach to construct an addition to his solid waste transfer facility located in Cortlandville, County of Cortland, New York. Respondent Leach (Leach) filed a Verified Answer on July 10, 2017, and an Amended Verified Answer, dated July 18, 2017, raising therein both Objection in Point of Law and a Counterclaim sounding in the nature of harassment as it pertained primarily to Petitioner Pamela Jenkins. <sup>1</sup> Respondent Town of Cortlandville Planning Board (Board) filed a

---

<sup>1</sup> This court, by Decision and Order dated June 26, 2017, directed that the respondents file their respective answers by not later than July 10, 2017. Respondent Leach filed his Amended Verified Answer on July 20, 2017.

Verified Answer and Certified record of the underlying proceedings, on July 10, 2017.<sup>12</sup>

11

Petitioners subsequently moved, by Notice of Motion and Reply Affirmation in Support of Motion to Dismiss Counterclaim, dated July 12, 2017, to dismiss the counterclaim as asserted in the Leach Amended Verified Answer alleging that such consisted of a so-called SLAPP Suit, i.e., a Strategic Lawsuit Against Public Participation (See Civil Rights Law "70-a and 76-a). Respondent Leach, in response to the motion, submitted an Affidavit in Opposition to Motion of counsel dated July 19, 2017, opposing the relief sought and asserting that Petitioner Jenkins was using the legal process merely as a device by which to harass Respondent Leach.<sup>4</sup>

On July 20, 2017, in Cortland County Supreme Court, the parties appeared by counsel and were heard.

Thereafter, under cover letter dated July 26, 2017, received on July 27, 2017, Respondent Leach submitted: (1) the undated Attorney Affirmation of counsel; (2) the July 25, 2017, Affidavit of Gregory Leach (Respondent, herein), and; (3) the July 25, 2017, Affidavit of Larie Cifaratta. Petitioners' counsel responded by letter dated July 27, 2017, received on August 1, 2017, seeking to strike the Respondent's late submission or, in the alternative, to find such submissions to be without merit.

---

<sup>1</sup> Respondent Cortlandville filed its Verified Answer and Certified Record of Proceedings on July 14, 2017, though having mailed copies of such to counsel and the clerk on July 7, 2017.

<sup>2</sup> Though the matter of standing had been tangentially addressed by the respondents, no motion to dismiss nor objection in point of law was raised specifically addressing the matter of the petitioners' standing to commence the present Article 78 proceeding. As such, this court declines to address the issue of standing.

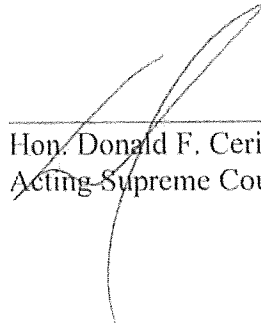
ORDERED, that the grant of the conditional permit as granted by the Cortlandville Planning Board to the respondent on February 21, 2017, is vacated and annulled, and the matter is remanded to the Planning Board of the Town of Cortlandville for further consideration consistent with Environmental Conservation Law Article 8, 6 NYCRR Section and the Town of Cortlandville Zoning Law, specifically, Sections 178-75(A) and (B); and it is

ORDERED, Respondent Leach is enjoined from using or occupying the drive-through addition which is the subject of the instant proceeding until further order of this court; and it is

ORDERED, that the Petitioners' motion seeking to dismiss the Respondent's counterclaim is denied, subject to renewal, and further subject to the Scheduling Order set forth herein.

Enter.

DATED:      October 2, 2017  
              Oneida, New York



---

Hon. Donald F. Cerio, Jr.  
Acting Supreme Court Justice

STATE OF NEW YORK  
COUNTY OF MADISON SUPREME COURT

---

In the matter of the Application for Judgment Pursuant to  
Article 78 of the Civil Practice Law and Rules of:

Decision and Order

PAMELA JENKINS, CHERI SHERIDAN AND OLGA  
SMITH,

Index No. 2017-  
1248

Petitioners,

-against-

GREGORY LEACH, LEACH PROPERTIES,  
LLC, and TOWN OF CORTLANDVILLE  
PLANNING BOARD,

Respondents

---

The present matter comes before the Court upon the February 21, 2019, Notice of Motion filed on behalf of Respondent Gregory Leach and Leach Properties, LLC, which was accompanied by the February 20, 2019, Petition of Gregory Leach and the February 21, 2019, Attorney Affirmation of Richard C. Lewis, Esq., seeking clarification of this court's October 2, 2017, Decision and Order. John B. Folmer, Esq., Town Attorney for Respondent Town of Cortlandville Planning Board, submitted an Affidavit dated February 26, 2019, in furtherance of the aforesaid motion. Douglas H. Zamelis, Esq., thereafter submitted an Affirmation in Opposition to Motion to Clarify dated March 12, 2019, in response to the above. Respondent Leach subsequently submitted the March 19, 2019, Attorney Affirmation in Response of Attorney Lewis.<sup>1</sup>

This matter was scheduled to be heard in Madison County Supreme Court at the motion term held on April 12, 2019.

---

<sup>1</sup> Town Attorney Folmer, by Memo dated July 24, 2018, provided to the Court Clerk for filing the following: The July 24, 2018, Affidavit of Attorney Folmer, with attachments, and the July 24, 2018, Affidavit of Katherine S. Wickwire, with attachments. This court is also in receipt of Attorney Zamelis' letter to Attorney Folmer dated August 1, 2018, in response to the aforesaid submissions.

Initially, this court notes that the previous Decision and Order of this court which addressed the petitioners' Notice of Verified Petition and Verified Petition dated April 4, 2017, which sought to annul and vacate the respondent's February 21, 2017, grant of a condition permit to Respondent Leach (Leach) to construct an addition to his solid waste transfer facility located in Cortlandville, Cortland, New York, was issued on October 2, 2017. That particular Decision and Order, at the first decretal paragraph, held as follows:

ORDERED, that the grant of the conditional permit as granted by the Cortlandville Planning Board to the respondent on February 21, 2017, is vacated and annulled, and the matter is remanded to the Planning Board of the Town of Cortlandville for further consideration consistent with Environmental Conservation Law Article 8, 6 NYCRR Section and the Town of Cortlandville Zoning Law, specifically, Sections 178-75(A) and (B). (Emphasis added).

The second decretal paragraph provided that:

ORDERED, Respondent Leach is enjoined from using or occupying the drive-through addition which is the subject of the instant proceeding until further order of this court.

It is from these two decretal paragraphs that the present motion ensues.<sup>2</sup>

In the first instance, this court finds that the present motion is more akin to a motion to resettle the prior order of this court as a matter of clarification rather than as a motion to reargue or renew pursuant to CPLR Section 2221. (See *Foley v. Roche*, 68 ad2d 558, 1<sup>st</sup> Dpt. 1999; *Simon v. Mehryara*, 16 AD3d 664, 2<sup>nd</sup> Dpt. 2005). The respondents' motion, if deemed to be made pursuant to Section 2221, would be substantively and procedurally infirmed and subject to summary dismissal as it does not seek to reargue that the court had overlooked or misapprehended matters of fact or law, or, for that matter, that there exist new facts exist or a change in the law would otherwise affect the earlier decision. Here, as a motion to resettle, the movant seeks merely to clarify that which this court had previously decided with respect to the October 2, 2017, Decision and Order and does not, nor can it, seek a substantive change in this court's prior order. Any such substantive change to this court's order would need be the product of appellate review rather than a motion to clarify (or resettle).

This court, upon review of the relevant decretal paragraphs of the referenced Decision and Order clearly states that the prior determination by the Town of Cortlandville Planning Board was annulled and vacated. As such, the February 21, 2017, determination of the Cortlandville Planning Board in granting to the respondent a conditional permit was for all intents and purpose invalidated by this court. This court's direction that the matter be remanded to the Cortlandville Planning Board "for further consideration" required the Planning Board to comply fully with all provisions of the Environmental Conservation Law, Article 8, and to comply with the Town of Cortlandville Zoning

Initially, this court notes that the previous Decision and Order of this court which addressed the petitioners' Notice of Verified Petition and Verified Petition dated April 4, 2017, which sought to annul and vacate the respondent's February 21, 2017, grant of a condition permit to Respondent Leach (Leach) to construct an addition to his solid waste transfer facility located in Cortlandville, Cortland, New York, was issued on October 2, 2017. That particular Decision and Order, at the first decretal paragraph, held as follows:

ORDERED, that the grant of the conditional permit as granted by the Cortlandville Planning Board to the respondent on February 21, 2017, is vacated and annulled, and the matter is remanded to the Planning Board of the Town of Cortlandville for further consideration consistent with Environmental Conservation Law Article 8, 6 NYCRR Section and the Town of Cortlandville Zoning Law, specifically, Sections 178-75(A) and (B). (Emphasis added).

The second decretal paragraph provided that:

ORDERED, Respondent Leach is enjoined from using or occupying the drive-through addition which is the subject of the instant proceeding until further order of this court.

It is from these two decretal paragraphs that the present motion ensues.<sup>2</sup>

In the first instance, this court finds that the present motion is more akin to a motion to resettle the prior order of this court as a matter of clarification rather than as a motion to reargue or renew pursuant to CPLR Section 2221. (See *Foley v. Roche*, 68 ad2d 558, 1<sup>st</sup> Dpt. 1999; *Simon v. Mehryara*, 16 AD3d 664, 2<sup>nd</sup> Dpt. 2005). The respondents' motion, if deemed to be made pursuant to Section 2221, would be substantively and procedurally infirmed and subject to summary dismissal as it does not seek to reargue that the court had overlooked or misapprehended matters of fact or law, or, for that matter, that there exist new facts exist or a change in the law would otherwise affect the earlier decision. Here, as a motion to resettle, the movant seeks merely to clarify that which this court had previously decided with respect to the October 2, 2017, Decision and Order and does not, nor can it, seek a substantive change in this court's prior order. Any such substantive change to this court's order would need be the product of appellate review rather than a motion to clarify (or resettle).

This court, upon review of the relevant decretal paragraphs of the referenced Decision and Order clearly states that the prior determination by the Town of Cortlandville Planning Board was annulled and vacated. As such, the February 21, 2017, determination of the Cortlandville Planning Board in granting to the respondent a conditional permit was for all intents and purpose invalidated by this court. This court's direction that the matter be remanded to the Cortlandville Planning Board "for further consideration" required the Planning Board to comply fully with all provisions of the Environmental Conservation Law, Article 8, and to comply with the Town of Cortlandville Zoning

Law, specifically Sections 178-75(A) and (B). To clarify further, this court, in effect, set aside, dismissed and otherwise nullified those actions undertaken by the Planning Board with respect to the issuance of the conditional permit and required the Planning Board to undertake a thorough and complete review of the respondents' application in conformity with the

---

2

It should be noted for the record that the parties had entered into an "Agreement & Mutual Release" with respect to the respondents' counterclaim which was "So Ordered" by this court on or about October 30, 2017.

relevant mandates as contained in Environmental Conservation Law and the Cortlandville Zoning Law. In so doing, the Planning Board was not to simply reconstruct that which it had previously undertaken to do but to begin anew the processes required by which to assess and review the propriety of the respondents' application in conformity with the applicable law as set forth above. To merely reconfirm post hoc ergo propter hoc that which had been previously undertaken by the Planning Board during the course of its original review of this application would serve to suffer a disservice upon the petitioners as the mechanism by which a full, fair and open review of the application would be substantially abbreviated thereby depriving the petitioners, or others, of their right to notice and an opportunity to express reservations or objections to the application or to otherwise seek denial of the application. It is the Planning Board's obligation to fully comply with the provisions of the relevant and controlling provisions of law which this court addressed, in coordination with any other applicable provisions of law. As this court had found in its Decision and Order that the Planning Board had failed to comply with the requisite provisions of law as identified, nullification was appropriate as was a remand for further consideration of the respondents' application.

Therefore, upon the foregoing, the respondents' motion to resettle, or, more precisely, to clarify the October 17, 2017, Decision and Order, is granted as set forth herein and the Respondent Cortlandville Planning Board is ordered to comply with the provisions of the Environmental Conservation Law in toto and Town of Cortlandville Zoning Law as previously directed in all respects.

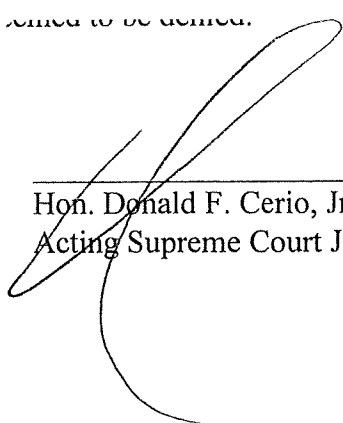
All other relief not specifically granted herein is ~~deemed to be denied.~~  
deemed to be denied.

Enter.

DATED: June 11, 2019  
Wampsville, New York

---

Hon. Donald F. Cerio, Jr.  
Acting Supreme Court Justice



STATE OF NEW YORK  
COUNTY OF MADISON SUPREME COURT

---

In the matter of the Application for Judgment Pursuant to  
Article 78 of the Civil Practice Law and Rules of:

Decision and Order

PAMELA JENKINS, CHERI SHERIDAN AND OLGA  
SMITH,

Petitioners,

Index No. 2017-  
1248

-against-

GREGORY LEACH, LEACH PROPERTIES,  
LLC, and TOWN OF CORTLANDVILLE  
PLANNING BOARD,

Respondents

---

The present matter comes before the Court upon the February 21, 2019, Notice of Motion filed on behalf of Respondent Gregory Leach and Leach Properties, LLC, which was accompanied by the February 20, 2019, Petition of Gregory Leach and the February 21, 2019, Attorney Affirmation of Richard C. Lewis, Esq., seeking clarification of this court's October 2, 2017, Decision and Order. John B. Folmer, Esq., Town Attorney for Respondent Town of Cortlandville Planning Board, submitted an Affidavit dated February 26, 2019, in furtherance of the aforesaid motion. Douglas H. Zamelis, Esq., thereafter submitted an Affirmation in Opposition to Motion to Clarify dated March 12, 2019, in response to the above. Respondent Leach subsequently submitted the March 19, 2019, Attorney Affirmation in Response of Attorney Lewis.<sup>1</sup>

This matter was scheduled to be heard in Madison County Supreme Court at the motion term held on April 12, 2019.

---

Town Attorney Folmer, by Memo dated July 24, 2018, provided to the Court Clerk for filing the following: The July 24, 2018, Affidavit of Attorney Folmer, with attachments, and the July 24, 2018, Affidavit of Katherine S. Wickwire, with attachments. This court is also in receipt of Attorney Zamelis' letter to Attorney Folmer dated August 1, 2018, in response to the aforesaid submissions.