

**TOWN OF CORTLANDVILLE ZONING BOARD OF APPEALS**  
**Public Hearings/Meeting Minutes - Tuesday, 31 October 2017 – 6:00 PM**  
**Town Hall Court Room – 3577 Terrace Road – Cortland, NY**

**Board Members** (\*absent)

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

**Others Present**

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

**Applicants & Public Present**

See Attendance Sheet – Attachment B.

**The Public Hearings were opened at 5 p.m. by Chairman David Plew, who read aloud the Legal Notice as published in the *Cortland Standard* on 19 October 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, October 31, 2017 at 5:00 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 Bobbie Fox, for property located at 1608 Oakcrest Street, Tax Map No. 96.36-01-10.000, for a variance in the terms and conditions of Article V, Section 178-21 A(1), to allow for a side yard less than allowed.*
2. *In the matter of the application of Sky Hospitality, for property located at 3175 Fingerlakes East Drive, Tax Map No. 105.00-03-08.000, for a variance in the terms and conditions of Article XVIII, Section 178-111B, Table 2, Note 2a, to allow for a sign with a height greater than allowed and closer to the property line than allowed.*
3. *In the matter of the application of Storage Squad, for property located at 1162 NYS Route 13, Tax Map No. 96.31-01-11.000, for a variance in the terms and conditions of Article VIII, Section 178-35, for a self-storage facility in a B-2 District.*
4. *In the matter of the application of E & V Energy for property located at 3951 US Route 11, Tax Map No. 87.13-01-41.200, for a variance in the terms and conditions of Article IX A, Section 178-40.4, for bulk storage of fuel.*

The above applications are 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 #1****Bobbie C. Fox, Applicant/Reputed Owner – 1608 Oakcrest Street – TM #96.36-01-10.000 – Area Variance for Side Yard Less Than Allowed**

Chairman Plew advised the applicant that he had visited her property the other day and asked if her proposed addition was going to cover the outside access to her basement. Ms. Fox responded that it would, and described the photo attached to her application. The existing in-ground door to the basement covers with ice during the winter, so she would like to prevent this. This cover, which would match the house siding, would come closer to the side yard setback than allowed.

Chairman Plew asked if there was anyone from the public who wished to speak regarding this variance; there was no one.

**With everyone being heard who wished to be heard,  
Chairman Plew closed the Public Hearing at 5:13 p.m.**

**DISCUSSION/DECISION**

At the request of Chairman Plew, Member Joanne Aloï proceeded with the required questions (balancing test) for an area variance; the responses given by the ZBA members, were as follows:

1. Can the benefit be achieved by other means feasible to the applicant?  
Finding: No. All Board members present agreed.
2. Would there be an undesirable change in neighborhood character or to nearby property?  
Finding: No. All Board members present agreed.
3. Is the requested variance substantial?  
Finding: No. Cover will be no closer to property line than other part of home.
4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?  
Finding: No. All Board members present agreed.
5. Has the alleged difficulty been self-created.  
Finding: No. Basement door was in place when property was purchased.

At the conclusion of the test, **a motion was made by Member Tom Bilodeau to grant the area variance, as requested. The motion was seconded by Member Aloï, with the vote recorded as follows:**

<b>Ayes:</b>	<b>Chairman Plew</b>	<b>Nays:</b>	<b>None</b>
	<b>Member Finn</b>		
	<b>Member Bilodeau</b>		
	<b>Member Aloï</b>		
	<b>Member LeFevre</b>		

**Motion passed.**

**This becomes Action #23 of 2017.**

**PUBLIC HEARING #2****Sky Hospitality, LLC (dba Best Western Plus) Applicant/Bharati Desai, Reputed Owner – 3175 Fingerlakes East Drive – TM #105.00-03-08.000 – Area Variance – Proposed Signage**

Chairman David Plew recognized Ravi Desai, Property Manager. Chairman Plew then asked him if he was “putting up the sign because Best Western told you to do it.” Mr. Desai stated that they were told they had to change the sign because the company’s logo changed.

Chairman Plew then asked why do they want a sign that high and closer to the property line than allowed? Mr. Desai showed the Board a photo of the proposed sign which was proposed to be 17 feet in height and placed within three feet of the property line, as indicated. Eight feet in height is required. The Board then discussed the pros and cons of the sign height and location.

Chairman Plew then asked if there was anyone from the public who wished to speak regarding this variance; there was no one.

**With everyone being heard who wished to be heard,  
Chairman Plew closed the Public Hearing at 5:26 p.m.**

**DISCUSSION/DECISION**

At the request of Chairman Plew, Member Joanne Aloï proceeded with the required questions (balancing test) for an area variance; the responses given by the ZBA members, were as follows:

1. Can the benefit be achieved by other means feasible to the applicant?  
Finding: Yes. All Board members present agreed.
2. Would there be an undesirable change in neighborhood character or to nearby property?  
Finding: No. All Board members present agreed.
3. Is the requested variance substantial?  
Finding: Yes. All Board members present agreed.
4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?  
Finding: No. All Board members present agreed.
5. Has the alleged difficulty been self-created.  
Finding: No. The company has changed their logo design. All agreed.

At the conclusion of the test, **a motion was made by Member John Finn to grant the area variance for (1) a sign height of 17 feet, and (2) for a sign with a rear edge to be even with the parking area. The motion was seconded by Member Bilodeau, with the vote recorded as follows:**

<b>Ayes:</b>	<b>Chairman Plew</b>	<b>Nays:</b>	<b>None</b>
	<b>Member Finn</b>		
	<b>Member Bilodeau</b>		
	<b>Member Aloï</b>		
	<b>Member LeFevre</b>		

**Motion passed.**

**This becomes Action #24 of 2017.**

**PUBLIC HEARING #3****Storage Squad, LLC, Applicant/Church of the Redeemer, Reputed Owner – 1162 NYS Route 13 – TM #96.06-01-15.210 – Use Variance Request for Self-Storage Facility in B-2 District**

Chairman David Plew recognized Nick Huber, representing the applicant who was seeking a variance for a self-storage facility in a B-2 District where it is not allowed. Mr. Huber described the proposed facility to everyone present; there would be a total of seven buildings. The church has been trying to sell the subject property for 10± years. Granting of the variance would add this now-exempt property back on the tax rolls. He also explained that the property goes back twice as far as the proposed construction area, and there were no plans to use this rear portion.

Chairman Plew asked Mr. Huber what the proposed hours of operation would be, and he replied they would be open from 6 a.m. to 11 p.m., but are open to suggestions. The facility would be gated and fenced in, with a key code required in order to gain access.

At the conclusion of an extensive discussion, Chairman Plew asked if there was anyone from the public who wished to speak regarding this variance; there were, as follows:

Sherry Boone – 3707 Abdallah Ave. – She has an easement on her deed for Cortlandville water and NYSEG where it comes across the subject property into her back yard. How will proposed project affect that? Mr. Huber did not think the proposed project would have any impact on the utilities. Ms. Boone asked about access for fire trucks; PZO Weber advised that this would be covered under the NYS Building Code.

At this time, Town Attorney Folmer advised the Board to consider variance items, focusing on the four requirements that must be met before any use variance can be granted.

Jill Holl – 25 Abdallah Ave. – At what point would a variance be needed to expand back farther? PZO Weber responded that a variance would not be needed, but a Conditional Permit would be needed from the Town Planning Board.

Attorney Mike Shafer – 75 Greenbush St. – Represents Nancy Richards, owner of a storage facility on Luker Road. Subject property gifted to the church. Reasonable rate of return would be significantly different than for commercial property. Church is not the applicant; Storage Squad is. It's creating its own hardship. There are plenty of places in Town where storage facilities can be built legally on available land. You're talking about converting B-2 zoning, which is part of the Comprehensive Plan, into spot zoning so the storage facility can be located here. County Planning recommended against granting of the variance. It does not comply with County's Comprehensive Plan either. This is a totally inappropriate use for this site.

Gregg McConnell – 186 LaFayette Rd. – McLean – Elder in the Church of the Redeemer, Reputed Owner of subject property. Advised that property was purchased 50% with 50% being a gift. Purchase price was \$83,000 total; \$41,500 gifted.

Town Attorney Folmer commented on Attorney Shafer's remarks by stating that it is required that "the applicant show financial hardship. And it also requires that it do so by competent financial evidence." No dollars and cents proof has been submitted in this application to begin with. Also, the applicant has to prove hardship, not someone else. Member Lenore LeFevre asked "why not purchase a property in the proper zone?" Attorney Folmer commented, "Why is it, if you're making . . .this purchase because you can, why isn't that admitting that your situation is self-

created? And if it is self-created, a use variance cannot be granted pursuant to the section of the Town Law.”

Gregg McConnell commented that if the church had known what they were going to get into, they would have been the applicant. PZO Weber brought the CHA letter of 15 August 2017, addressed to the Planning Board, to everyone’s attention and read aloud Item #2 of that letter (a copy of which has been placed on file for the record). Arguments continued. Attorney Folmer asked the Board, “how do you avoid the issue of self-created hardship?” He again reiterated, “And if it is self-created, it is clear under the section of Town Law that you are not permitted to grant a use variance unless all four criteria have been satisfactorily met.”

Nancy Haeslip – 10 Abdallah Ave. – Asked if there was an opportunity to submit more comments after the public hearing is closed. PZO Weber explains that if the ZBA denies the use variance, the matter would end at this meeting. If the requested variance was granted, the application would then proceed to the Town Planning Board who would then review everything pertaining to the project. Ms. Haeslip did not agree that the proposed project fit into the character of the community. Concerned with stormwater ponds at rear of property.

Robert Beard – 4615 Streeter Road – Owns storage unit on Starr Road. Asked who maintains retention ponds proposed for rear of property. PZO Weber answered that they would be maintained by the applicant in accordance with the stormwater plan. Inspections would be done by County Soil & Water.

Sherron Brow – 1146B The Park – Concerned about project fitting in with the community and asked for response from Mr. Huber who responded by explaining what B-2 zone allowed. The proposed project, he stated, would better fit the community than what is allowed there now as it is less intrusive.

**With everyone being heard who wished to be heard,  
Chairman Plew closed the Public Hearing at 6:10 p.m.**

#### DISCUSSION/DECISION

Town Attorney Folmer directed everyone’s attention to the Cortland County Planning Board’s Resolution No. 17-09 of 12 April 2017 which recommended denial of this application because the proposed use is incompatible with the surrounding neighborhood.

At the request of Chairman Plew, Member Joanne Aloï proceeded with the required questions (balancing test) for a use variance; the responses given by the ZBA members, were as follows:

1. The Applicant cannot realize a reasonable return, as shown by competent financial evidence.

Finding: No. This has not been demonstrated by the applicant. All Board members present agreed.

2. The alleged hardship relating to the property is unique.

Finding: No. It is not unique. All Board members present agreed.

3. The requested variance, if granted, will not alter the essential character of the neighborhood.

Finding: No, it will alter the essential character of the neighborhood. All Board members present agreed.

4. The alleged hardship has not been self-created.

Finding: No. The applicant has failed to show the alleged hardship was not self-created. All Board members present agreed.

At the conclusion of this lengthy discussion, and completion of the Balancing Test, **a motion was made by Member Finn to deny the requested Use Variance for a self-storage facility in a B-2 District, having reviewed the record and finding as follows: (1) the applicant failed to provide competent financial evidence that a reasonable return cannot be realized, (2) the property is not unique, (3) the proposed project would alter the character of the neighborhood, and (4) the applicant failed to demonstrate that a hardship was not self-created. The motion was seconded by Member Aloï, with the vote recorded as follows:**

<b>Ayes:</b>	<b>Chairman Plew</b>	<b>Nays:</b>	<b>None</b>
	<b>Member Finn</b>		
	<b>Member Bilodeau</b>		
	<b>Member Aloï</b>		
	<b>Member LeFevre</b>		

**Motion passed.**

**This becomes Action #25 of 2017.**

<b>PUBLIC HEARING #4</b>
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**E & V Energy, Applicant/Reputed Owner – 3957 US Route 11 – TM #s 87.13-01-41.120 & 200 – Use Variance Request for Bulk Storage of Fuel**

Chairman David Plew recognized James Marshall, representing the applicant who was seeking a Use Variance to install four above-ground 25,000-gallon fuel storage tanks on this site. A Use Variance is required as the bulk storage of fuel is not a permitted use in the I-2 District; it was, however, a permitted use at the time the original propane facility was installed. Mr. Marshall advised that if E & V Energy was allowed to do this, they would be removing the storage facility they have in Polkville at the “travel center,” which they have outgrown. Relocating the storage facility would provide for more security and make it easier for inspection.

At the conclusion of the Board’s discussion, Chairman Plew asked if there was anyone from the public who wished to speak regarding this variance; there were, as follows:

Pam Jenkins – 4023 Collegeview Drive – Ms. Jenkins read aloud a four-page statement she had prepared, which stated all of the reasons/questions she had in opposition to granting of the requested Use Variance. A copy of this lengthy statement is attached to these Minutes as Attachment A. She asked that the ZBA deny the requested variance.

Valerie Natoli – 247 Port Watson Street – She and her family have owned this City of Cortland property for 100 years, and have been offered an opportunity for a 7-11 Store, but was told by the City it was not allowed. There’s a school across the street along the river. Need to think twice when developing properties. Does not like idea of fuel being stored above ground so close to the Tioughnioga River. Asked Board to consider quality of life for those living along the river which she felt would be impacted by granting of the requested variance. Opposed to granting of the use variance.

William Fiske – Employed by Intertek Testing at 3933 US Route 11 – Speaking on behalf of Intertek who is the applicant’s adjacent neighbor. No one at Intertek knew anything about the proposed facility. Intertek is in the testing business, some of

which is extremely sensitive to disturbances: air, vibrations, etc. Construction would create considerable oscillations in the ground which would disturb their testing. Any change in the air also. Concerned about failure of proposed tanks. Opposed to granting of requested variance.

Lee Miller – McGraw, NY – Company purchased next-door land knowing that what they wanted to do was not allowed. It's a self-created hardship. Asked depth to groundwater on subject property. William Fiske, an engineer, responded 8 to 10 feet, varying during seasons. Ms. Miller asked if anyone had read the reasons why a Negative Declaration under SEQRA was given. PZO Weber responded that they had not received a copy. Town Attorney Folmer commented that this Board only needed to know if the SEQRA had been accomplished and, if so, was there a Negative or Positive Declaration?

Andrea Rankin – 437 McLean Road – Worked for County Health Department for 25 years. Spoke of her respect for Jim Feuss, PE, and the time of the SCM pollution years ago. We need to maintain the Aquifer Protection Law.

Marie Kautz – Homer, NY – Given toxic algae blooms in some of our surrounding communities that depend on water bodies, we need to emphasize wonder and beauty of our aquifer and keeping it relatively clean and in a healthy state. Very concerned about that as it pertains to the proposed project.

**With everyone being heard who wished to be heard,  
Chairman Plew closed the Public Hearing at 7:53 p.m.**

#### DISCUSSION/DECISION

Member Lenore LeFever asked Mr. Marshall if competent financial evidence had been submitted showing E & V Energy could not realize a reasonable return. He explained their costs for purchasing the adjoining property, but stated that he had not. She then asked who would monitor such a facility, and if they purchased the adjoining lot knowing a bulk petroleum facility was not a permitted use. Mr. Marshall stated he did not know this. PZO Weber added that the property purchased 2015/2016 is what's being proposed for the bulk storage; the property purchased in 2003 is where the propane storage tanks are located which, at the time was a permitted use. The two properties have now been combined.

At the request of Chairman Plew, Member Joanne Aloï proceeded with the required questions (balancing test) for a use variance; the responses given by the ZBA members, were as follows:

1. The Applicant cannot realize a reasonable return, as shown by competent financial evidence.

Finding: No. This was not provided by the applicant. All Board members present agreed.

2. The alleged hardship relating to the property is unique.

Finding: No. It is not unique. All Board members present agreed.

3. The requested variance, if granted, will not alter the essential character of the neighborhood.

Finding: Applicant has failed to demonstrate that the variance, if granted, will not alter the essential character of the neighborhood, especially considering Intertek's concerns. All Board members present agreed.

4. The alleged hardship has not been self-created.

Finding: No. The applicant has failed to show the alleged hardship was not self-created. All Board members present agreed.

At the conclusion of this lengthy discussion, and completion of the Balancing Test, **a motion was made by Member Aloï to deny the requested Use Variance for the bulk storage of fuel, having reviewed the record and finding as follows: (1) the applicant failed to provide competent financial evidence that a reasonable return cannot be realized, (2) the property is not unique, (3) the proposed project would alter the character of the neighborhood, and (4) the applicant failed to demonstrate that a hardship was not self-created. The motion was seconded by Member Finn, with the vote recorded as follows:**

<b>Ayes:</b>	<b>Chairman Plew</b>	<b>Nays:</b>	<b>None</b>
	<b>Member Finn</b>		
	<b>Member Bilodeau</b>		
	<b>Member Aloï</b>		
	<b>Member LeFevre</b>		

**Motion passed.**

**This becomes Action #26 of 2017.**

**APPROVAL OF MINUTES – 29 AUGUST & 26 SEPTEMBER 2017**

**A motion was made by Member Bilodeau to approve the Minutes of the 29 August and 26 September 2017 Zoning Board of Appeals hearings/meetings as submitted. The motion was seconded by Member Aloï, with the vote recorded as follows:**

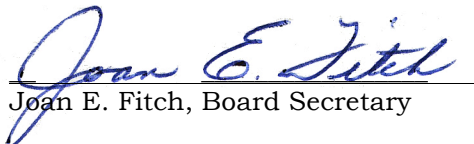
<b>Ayes:</b>	<b>Chairman Plew</b>	<b>Nays:</b>	<b>None</b>
	<b>Member Finn</b>		
	<b>Member Bilodeau</b>		
	<b>Member Aloï</b>		
	<b>Member LeFevre</b>		

**Motion passed.**

**This becomes Action #27 of 2017.**

**ADJOURNMENT**

At 8:05 p.m., on a motion by Member Finn, seconded by Member Bilodeau, 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 12/15/17. (R)

Attachment A - (4 pgs.)

Attachment B – (2 pgs.)