

**VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK  
ZONING BOARD OF APPEALS  
REGULAR MEETING  
SEPTEMBER 8, 2016**

A Regular Meeting was held by the Zoning Board of Appeals on Thursday, September 8, 2016 at 8:00 p.m. in the Meeting Room, Municipal Building, 7 Maple Avenue.

**PRESENT:** Chairman Matthew Collins, Boardmember David Forbes-Watkins, Boardmember Adam Anuskiewicz, Boardmember Marc Leaf, Village Attorney Linda Whitehead, and Building Inspector Charles Minozzi, Jr.

**Chairman Collins:** Good evening, everybody, and thank you for your patience. We are now in session for our September Zoning Board of Appeals meeting. We have one case before us, Case 11-16, Maya Elbaum for 169 Warburton Avenue, which we will get into in a moment.

Before we get underway in earnest, just a couple of housekeeping things. We have a couple microphones. We have the one that's in Mitch's hand, a wireless, and we have on here on the stand. They'll both be active. We'll let everyone who wants to be heard be heard. We would just ask that the first time you speak into either one of these mics. And definitely make sure you have a microphone, that you introduce yourself, let us know where you live and we'll capture that for the record.

Before we begin, Buddy, how are we on mailings?

**Building Inspector Minozzi:** We are all good.

**Case No. 11-16 Maya Elbaum  
169 Warburton Avenue**

**View preservation approval, as required under Section 295-82, and relief from the strict application of the Village Code Sections 295-55A and 295-68.F.1.a&c for a rear addition and breezeway on her single-family dwelling at 169 Warburton Avenue.**

**Said property is located in the R-10 Zoning District and is known as SBL: 4.130-138-7 on the Village Tax Maps.**

**Nonconformity details of the proposed addition and breezeway are as follows:**

**Rear yard setback: Existing – 15.5 feet; Proposed to addition – 15.5 feet;**

**Required minimum – 30 feet or 30 percent. {295-68.F(1)(b)};**

**Variance required – 14.5 feet**

**Side yard setback, one side: Existing – 5.03 feet;**

**Proposed to addition – 5.03 feet; Required minimum - 12 feet {295-68.F(1)(c)};**  
**Variance required – 6.97 feet**  
**Extension of an existing non-conformity – {295-55A}**

*[Boardmember Anuszkiewicz recused]*

**Village Attorney Whitehead:** This looks like it's a continued case.

**Chairman Collins:** Right. And because Adam is in the notice area he will recuse himself, as he did last time for the first presentation which we had in July. But we are three Boardmembers so we have a quorum. It also means the vote must be unanimous if you decide to go to the vote.

**Mitch Koch, project architect:** We're moving forward.

**Village Attorney Whitehead:** Mr. Koch, just for the record – because you wouldn't have gotten the minutes yet – the Planning Board, at its August meeting, did recommend the view preservation approval.

**Chairman Collins:** Yeah, I did see that. Thank you.

**Boardmember Forbes-Watkins:** Were there conditions?

**Village Attorney Whitehead:** No.

**Mr. Koch:** I'm the architect of record. I live at 20 Marble Terrace.

Just to recap, there are two issues before the Zoning Board at this time. One is a view preservation issue, and the other one is just a zoning issue of basically extending an existing nonconforming property – and was indicated on this drawing here – where the existing nonconformance is. We're proposing to build a second-story addition over this existing first story, in effect.

In addition to that, we are asking for permission to connect between the main house and the garage. That's also in the rear yard setback, so that's nonconforming; that would be a nonconforming addition.

Today, prior, we had objections from the next door neighbor, but this has been resolved. Terry can speak to this point. We built a mockup on the roof to show everybody what the impact would be of the addition with regard to the neighbor to the south. As you can see

from this photograph, there's no view impact to that neighbor. Recently, across the street had asked to be assured her view would be negligible. I'm asserting that's the case. From her house, there's virtually no point at which there's an impact of the addition. We've reviewed that with her and she'll have a statement to read to the Zoning Board, as well. This showed the extent to her view and the impact of our addition.

That's the gist of this. Our point of view has always been, with regard to zoning, it's a very unusual lot. There are no neighbors besides the Village property – or maybe Metro-North to the west – that would be impacted by extending this nonconforming first-floor into a second floor. No one will ever build here on the west side of the property. In addition to that, the house is situated on the lot, like so many other houses in Hastings, very close to the property line. Also, I think we demonstrated a need, on behalf of the owners with a growing family, to get another bedroom out of that second floor, essentially.

Then lastly, it's about the view. I mean, it's a wonderful, wonderful site and they have an opportunity here to really open up the view to the back. That's really also at the heart of this project. That's basically our case in a nutshell. I thought maybe the neighbors may speak at this time.

**Chairman Collins:** Well, we'll have plenty of time for any public reaction. I think we'll start with just some commentary and questions from the Board.

I went back and reviewed the minutes, and the minutes captured well the family's need for the additional space and the justification you cited for this development, which I think was important to capture for the record. We did talk a little bit about the fact that, if I'm understanding correctly, the first-floor existing structure here is not in good shape; it's going to need to come down. That's correct?

**Mr. Koch:** Yes, I can speak to that. The first floor is an enclosed porch over what was once an open porch with an extension off of it. Everything's sketchy and bad. I wouldn't propose to build anything else on it.

**Chairman Collins:** Linda, this may be more just a question of clarification for the record. I think of being less an extension of the existing nonconformity, and more you're tearing down something and building it back up I don't know whether that makes a distinction.

**Village Attorney Whitehead:** No, it really doesn't. It's there, it's existing today, it's an existing nonconformity. The addition to it is the second story.

**Chairman Collins:** Right, but the whole thing is going to be rebuilt. I mean, that first story nonconformity is coming down. It's not being built on top.

**Village Attorney Whitehead:** But if you looked at it that way, you'd be encouraging them to keep a poor structure and try to reinforce it, which isn't really what you ... so it's not; it's considered an existing nonconforming. They have the right to keep it there, it doesn't reach any of the 50 percent thresholds damaged. So no, the variance is really just for the second story addition above it.

**Mr. Koch:** And we're explicit that we are not going outside the footprint of the existing footprint.

**Village Attorney Whitehead:** Right, the footprint is remaining exactly the same.

**Building Inspector Minozzi:** They could actually have torn it down and rebuilt is as-of-right, even though it was not conforming.

**Boardmember Forbes-Watkins:** Because it's less than 50 percent.

**Building Inspector Minozzi:** Correct.

**Chairman Collins:** The last time – refresh my memory – were we looking at an attached garage? Was that in the plan last time?

**Boardmember Forbes-Watkins:** Attached.

**Village Attorney Whitehead:** Attaching – taking the existing garage and attaching it – which makes it part of the main structure and therefore makes it nonconforming as to the setback because it's part of the main structure.

**Building Inspector Minozzi:** It's all calculated into coverage the same way so that doesn't change. They're both counted as building coverage. The only thing, as Linda just said, it's just going to make everything as one structure.

**Village Attorney Whitehead:** So it changes the setback. It's no longer an attached accessory garage; it's part of the main structure.

**Chairman Collins:** Right.

**Mr. Koch:** That's correct. Although for what it's worth, in the side yard there's no impact.

**Village Attorney Whitehead:** Nothing's moving closer.

**Chairman Collins:** I think the last time we covered some important ground on the variances. I think we were all waiting for the outcome of the view preservation issue. We had seen the mockups, most of the mockups, on the view you had last time. So I got a sense this was a likely outcome that we would be here. I think last time we talked at length on the record about the trickiness of the lot, trying to accomplish the homeowner's goals in some way that would allow for minimizing this variance request. And we really couldn't find a way to do that without torturing the project in ways that would have made it clearly worse.

I was satisfied on the variance issue. I am also satisfied on the view issue. So I'm comfortable with this, but I'll let my fellow Boardmembers speak up.

**Boardmember Forbes-Watkins:** I think it's a worthwhile project, well thought out. And I agree the view situation in this particular issue is not an issue, in my opinion.

**Chairman Collins:** I agree.

**Boardmember Leaf:** I agree, Matt, and I was here sitting the last time this proposal was here so I had an opportunity to participate in those deliberations as well and to review the submission. I guess the only thing I would say, just for precedential purposes, is that I am relying on the fact that the neighbor to the west is unlikely to be able to build, or would ever build, back there.

So even though this is a really extensive variance, a very substantial variance, in this particular case I don't see it as being a problem as you weigh the five factors.

**Village Attorney Whitehead:** Just to clarify, the neighbor to the west is the town. It's a Village property that slopes steeply down to the train station.

**Boardmember Leaf:** But because it's the town ...

**Boardmember Forbes-Watkins:** Even if, by some miraculous circumstance, the lot to the west were buildable and somebody proposed to do it, the issue would not be whether there's a view preservation on 169 Warburton. It would be on the proposed new building.

**Boardmember Leaf:** Not view, just the setback to the rear lot. I'm just saying this setback goes pretty far to the rear lot. That's all I'm saying, and if somebody comes next week and say I want to be able to put my property right up against their rear line – only we're talking

about somebody between Prince and Rose – we're going to have a different view from somebody here.

**Village Attorney Whitehead:** And the other piece of that is, it's not going any closer to the property line than the existing just in terms of why this property is unique in that sense.

**Chairman Collins:** OK. Then, with that, I'll invite anyone from the public who wishes to be heard on the matter just come forward and grab a mic and introduce yourself.

**Terri McMahon, 165 Warburton Avenue:** I am the neighbor to the south and west. No, I am south. Do I know where I live? I originally had a concern, which was voiced as an objection. That has been addressed and I am now here in support of my neighbors to the north. I thank you.

**Chairman Collins:** Thank you very much.

**Phyllis Vine, 168 Warburton Avenue:** I'm directly across the street, and Mitch referenced the location. My husband and I – Gary Burke, who is on crutches after having had a biking accident and would otherwise have been here but sends me as his emissary – have had the pleasure of having conversations with Maya and Patrick, and have spoken about our concerns that Mitch referenced. That would be the view preservation we have from the street and the first and second levels of our house.

We are comfortable that the plans, as they are going to be presented to you, will not impede any views we currently have; none of the intended addition or construction will obscure of the pleasure we have looking at the river or the Palisades. One of the reasons we bought the house – and I'm sure if and when we sell the house it will be a reason why somebody would also want to buy it – that was very important to us. We have had a couple of conversations, and we are delighted to welcome this family, based on the fact that we all agree about the necessity and the desirability of keeping this view for us.

So I just want to say that we are happy to be here.

**Chairman Collins:** Great, thank you very much. If you'd like to enter your letter into the record we'd be happy to take it. Should I read this?

**Village Attorney Whitehead:** Does the letter say different from what you just said?

**Ms. Vine:** It shouldn't, but go ahead and read it to make sure.

**Chairman Collins:** OK. This is from Phyllis Vine and Gary Burke at 168 Warburton, written September 8:

*"Dear members of the Zoning Board of Appeals,*

*We reside at 168 Warburton Avenue on the east side of Warburton directly across the street from 169 Warburton where Maya Elbaum and Patrick Keenan are requesting an addition and expansion to their home.*

*"We have spoken with Ms. Elbaum and Mr. Keenan about the plans which have been submitted by their architect, Mitchell Koch. They assure us that the plans, as they understand them, do not intend or contain any obstacles to the views of the Hudson River and the Palisades we now have from our house. I understand our views are as important to us today as they were 33 years ago when we purchased our house, and that they express their concern with maintaining this visibility – not just for us, but for pedestrians who marvel from the street.*

*"Based on their assurances that there will be no obstructions as seen from the property, and consistent with the protections of the view preservation district, we have no objections to their application for an addition and expansion. This is predicated on the Zoning Board's agreeing that the views remain unobstructed, governed by height of the current garage and the grassy corridor to the north of the garage. Should these conditions be met, we welcome the Elbaum-Keenan family as a lovely addition to our enclave.*

*"Sincerely,*

*Phyllis Vine and Gary Burke"*

**Village Attorney Whitehead:** Because of that last statement, just to clarify, there is no change to the height of the garage being proposed and no change to that grassy area.

**Chairman Collins:** Yeah, the project is silent on that.

**Boardmember Forbes-Watkins:** It's not within the project.

**Chairman Collins:** And I think we've established that the views are unobstructed. Thank you. Does anyone else wish to be heard?

May I have a motion then?

On MOTION of Boardmember Forbes-Watkins, SECONDED by Boardmember Leaf with a voice vote of all in favor, the Board resolved to approve of Case 11-16, with respect to, first view preservation issues; and secondly nonconformity details regarding a rear yard setback -- existing 15.5 feet, proposed addition 15.5 feet; side yard setback, one side existing 5.03, proposed addition 5.03 feet, with a minimum of 12 feet; and extension of the existing nonconformity which relates to the connection of the garage to the main house, and the second story addition.

**Chairman Collins:** The vote is unanimous, congratulations. Good luck to you.

### **APPROVAL OF MINUTES**

#### **Meeting of July 28, 2016**

**Chairman Collins:** We do have the matter of the minutes, then, to review. Buddy, I will e-mail you my markup. I did find, actually, in this particular issue of the minutes there were quite a few word omissions and just words that have been, understandably, transcribed in ways that don't make sense.

**Building Inspector Minozzi:** OK.

**Chairman Collins:** So I'll give that to you, but there is nothing material insofar as changing anyone's understanding.

Did you have any?

**Boardmember Forbes-Watkins:** I find exactly the same concept.

**Chairman Collins:** OK, anyone else have any comments on the meeting minutes?

**Boardmember Leaf:** Nothing more than that.

On MOTION of Boardmember Forbes-Watkins, SECONDED by Boardmember Leaf with a voice vote of all in favor, the Minutes of the Regular Meeting of July 28, 2016 were approved as amended.

### **ANNOUNCEMENTS**

Next meeting date October 27.

### **ADJOURNMENT**

Chairman Collins adjourned the meeting.