

**VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK
ZONING BOARD OF APPEALS
REGULAR MEETING
SEPTEMBER 7, 2017**

A Regular Meeting was held by the Zoning Board of Appeals on Thursday, September 7, 2017 at 8:00 p.m. in the Meeting Room, Municipal Building, 7 Maple Avenue.

PRESENT: Chairman Matthew Collins, Boardmember Ray Dovell, Boardmember David Forbes-Watkins, Boardmember Sean Hayes, Boardmember Adam Anuszkiewicz, Village Attorney Linda Whitehead, and Building Inspector Charles Minozzi, Jr.

Chairman Collins: Good evening, everybody, and thank you for joining us for the September 7, 2017 Zoning Board of Appeals meeting. We have three cases on our docket today and we'll get to them straightaway.

Just a couple of housekeeping items. We have two microphones for people to be heard, a standing microphone that you all can see as well a wireless up here. We have a remote transcriptionist capturing everything for the record so just make when sure you are speaking that you've got a microphone in hand or in front of you. And when you do come to speak for the first time, if you could just please introduce yourself, first and last name.

I think that's if for the procedural stuff. How are we with the mailings, Buddy?

Building Inspector Minozzi: I've been informed by my staff that all the mailings are in order.

**Case No. 08-17
Tabi Realty, LLC
425 Warburton Avenue
*** Deferred to Future Meeting *****

View Preservation approval as required under Village Code Section 295-82 and relief from the strict application of code Sections 295-72.1.E(1a,b&c), 295-40.B(1&2), 295-41.A, 295-20C(2&4) and 295-29.A for the demolition of an existing three-family and construction of a new building containing three townhouse units on its property at 425 Warburton Avenue. Said property is located in the MR-O Zoning District and is known as SBL: 4.70-52-10&11 on the Village Tax Maps.

Nonconformity details of the proposed construction are as follows:

Front Yard Setback: Existing – 0.2 feet; Proposed – zero feet; Required – 10

feet {295-72.1.E.(1a)}; Variance required – 10.0 feet
Rear Yard Setback (to Parking Structure): Existing – 53.4 feet; Proposed – 19.1 feet; Required – 30 feet {295-72.1.E.(1b)}; Variance required – 10.9 feet
Side Yard Setback: Existing – +/-50 feet; Proposed – 7.0 feet; Required – 12 feet {295-72.1.E.(1c)}; Variance required – 5 feet
Driveway Slope: Existing – 16 percent; Proposed – 15 percent; Required Maximum 12 percent {295-40.B(1)}; Variance required – 3 percent
Driveway Slope 3 percent/30 feet from Property Line: Existing – 16 percent/zero feet; Proposed – 3 percent/5.67 feet; Required Maximum – 3 percent/30 feet {295-40.B(2)}; Variance required – 3 percent/24.33 feet
Driveway Area: Existing – 500 square feet; Proposed – 1,506 square feet; Required Maximum – 960 square feet {295-41.A)}; Variance required – 546 square feet
Parking Space Size: Existing – N/A; Proposed – 8 foot 6 inches x 18 feet; Required – 9 feet x 18 feet {295-29.A)}; Variance required – 0.5 feet (width)
No Paving in a Required Yard (Parking Structure) {295-20C(2&4)}

Chairman Collins: OK, we're going to go a little bit out of order, I think, just in anticipation of some variation in the amount of discussion I anticipate for these various cases. We'll begin with 7 Ridge Street, Andrew Zimmerman.

Case No. 15-17
Andrew Zimmerman
7 Ridge Street

For View Preservation approval, as required under Village Code Section 295-82, for the erection of elevated Solar Panels on the roof of their Single-Family Townhouse located at 7 Ridge Street. Said property is located in the 2R-3.5 Zoning District and is known as SBL: 4.70-52-47.5 on the Village Tax Maps.

Case No. 16-17
Debra Cantor
9 Ridge Street

For View Preservation approval, as required under Village Code Section 295-82, for the erection of elevated Solar Panels on the roof of their Single-

Family Townhouse located at 9 Ridge Street. Said property is located in the 2R-3.5 Zoning District and is known as SBL: 4.70-52-47.4 on the Village Tax Maps.

Chairman Collins: So whenever you're ready, sir, if you just want to introduce yourself into the microphone and we'll get underway.

Village Attorney Whitehead: Matt, do you want us to report on the Planning Board?

Chairman Collins: Yes, did the Planning Board issue a recommendation?

Village Attorney Whitehead: I apologize. Yes, on both 7 and 9 Ridge Street these are adjacent townhouses. So while they're two separate applications, the Planning Board did look at the combined impact and looked at them together. The Planning Board did vote to make a recommendation of view preservation approval.

They did ask that Buddy and I check on one thing before it comes before you. There was a question about whether, as part of the site plan approval for the Ridge Street townhouses, there had been any restrictions or limitations on placing anything additional on the roof. I've reviewed all the minutes and did not see anything about limitations on the roof. As a matter of fact, the concerns expressed during the original approval were all from people on Ridge Street and all related to the building itself, not the roof. The neighbors who have objected before the Planning Board are all on Warburton and looking down on it.

Chairman Collins: OK.

Village Attorney Whitehead: The Planning Board did make the recommendation and felt there was no impact on the view.

Chairman Collins: All right, thanks Linda. Just to expedite this, could we treat this in one review, and two votes?

Village Attorney Whitehead: Yes, that's the way the Planning Board did it and that's absolutely appropriate in this case.

Chairman Collins: Then I think we'll do that here. We'll have you, if possible, present both.

Rand Manasse, Sunrise Solar Solutions, LLC: Sure.

Chairman Collins: Because I don't think, from my perspective, there are meaningful differences in these applications so we'll have you present both and then take separate votes for each of these applications. OK? Very good.

Mr. Manasse: Very good. I'm not sure how to get this display on the screen over there, sorry.

Village Attorney Whitehead: Buddy?

Mr. Manasse: Our presentation does combine both of them in one presentation, one application in a sense. I will show you what the difference between the two properties are.

This is the property we're talking about. It's the one in the middle there. That's where 7 and 9 are, on the top side of the view of the north side. This is just an aerial view. We wanted to give you a relationship between that and the water. Just another aerial view, not an actual view from the one observer that we were able to visit and show the houses. This is one of the two residences. This would be all the way, as I said, to the north end of the building. The other one is right next door to it, so when you combine them – I don't know if I have a combined picture – you'll have a combined array that goes from two residences across.

My dimensions on the array, this one is 364 inches deep and 172 inches wide. The other one is the same, 364, but now at 258 inches wide. This is what the panels will look like. It's a standard solar PV setup. This is what the proposed height originally was of the panels; it's 26 inches at it's maximum, as was originally proposed. We have now been able to lower that to 23, and there's also a potential of lowering it even more, to 20, that we're working on at this point. One thing we should notice, the skylights on top of the building are 29 inches high so these are lower than the height of the skylights that are surrounding it.

We were asked to do mockups to show what it would look like and to see what the view would be from any different angle. Here are four different panels – well, what would be the size of a panel – at 26 inches high. This is now at 23 to 20, and it's at the four edges of where both the arrays would end. We then went ahead and did a glare analysis. This is really the only way you can effectively figure out will there be any glare that's coming to any observation point. We afforded the access to one observation point and that is where the red arrow is that says FIR. That observation point is looking at three separate glare analyses: one that was PV-1, PV-2, PV-3, and you can see that on the building, where the arrays will be.

When we did the glare analyses, they all came back as no-glare and I have a hard copy of this analysis. I can show you because obviously the first one didn't transcribe well from the

printout to the PowerPoint display. But I do have a hard copy to prove they all came back with results of no glare. The analysis was done by the Sandia Labs Glare Analysis software. Sandia Labs used to be an independent entity; it's now part of NREL, which is part of the Department of Energy. In our industry, it's the official way to analyze glare from panels to any observation points.

Now I just have some pictures of what it would look like with the panels on. If you can see, very little can be shown at this view of one of the arrays. You see just the edge of it there. That's about all you'll see. If you walk up the street some more you can see more of it showing up. This is coming from the other angle. This is the look from where the observation point was, at street level down to the river; the panels aren't in this view at all. This is the view from William Street down. You can't really see it, but all the way at the bottom there there's a little red dot, which is a car. But that's really next to the building; the buildings on the top and the mockup panel is on the top of that.

Again, just another view. You can see them somewhat here, but they're in the distance and they're not affecting the view of the river. Just another view, where you can again see a little bit of the panel coming from I think this is Ridge Street, as well.

Building Inspector Minozzi: That's Warburton Avenue.

Mr. Manasse: That's Warburton? Thank you, sorry.

This is the view from the first floor porch at 445 Warburton Avenue. You can see the mockups off to the right. If we move to the left on that porch you can see more of the panels. Once again, just another view; this is from ground level. This is the build. On the right-hand side is the porch we took the pictures from. And that's it.

Chairman Collins: OK. Thank you, Mr. Manasse for the presentation.

I visited 445 Warburton in preparation for the meeting and I didn't get access to the first floor, but I did go down, at the homeowner's invitation, to an outdoor patio and backyard to get a view. While the wooden boxes are there to model what the installation would look like, at least in part, you do take away some of the river view from that perspective. The subtraction is minimal. I would have liked – or it would have been useful – for me to have had some perspective on a number of different panels. The model on the rooftop is pretty minimal, I think, compared to this. Which is fair for the purposes of view preservation because, in the end, only a few of these panels actually impact the view; the rest are just an addition and a new element. But I do think they create a more realistic perspective of what the actual installation would be.

My only question for you is regarding the glare analysis. Could you take me through the methodology this analysis employs?

Mr. Manasse: It does both an analytical and an observational view analysis. I didn't write the software so I'm not sure of all of it, but it does take an analysis of what the glare would be throughout the year as the sun goes through different angles and, with that, comes back and reports whether or not any glare would be shown at any point within that year's time period.

Village Attorney Whitehead: Matt, the glare analysis was done at the request of the Planning Board and they were satisfied with it. It was explained that this is low-glare: the panels today, the newer panels, are all low-glare. That's information the Planning Board did have when they made their recommendation.

Chairman Collins: That's good to know. So the tests measured glare from one observational point, correct?

Mr. Manasse: That's correct.

Chairman Collins: And the software was able then to simulate the glare, based on different angles to the sun, that might be experienced from that observational point due to changes in the seasons.

Mr. Manasse: That's correct, against those panels viewing it from that spot. It's the reflective nature of those angles that occur that it's going to figure out whether there's glare.

Chairman Collins: OK.

Mr. Manasse: But as Ms. Whitehead said, panels today are made with an anti-reflective coating on them because it's better for the panel more than ... it's not done because of people's concerns as much as it absorbs more light that way. If there's glare, you're reflecting light off. Light is what the panel wants to generate electricity from, so they make it so that as much light as can be can be absorbed. We don't find that, normally, we're going to find any glare coming off our panels unless you're on a direct angle to view it; which these are not on a direct angle, they're on an off-angle.

Chairman Collins: OK, that's helpful. Was the observational point at 445?

Mr. Manasse: Yes, it is. It's at the location we were given access to.

Chairman Collins: OK. And last question from me on the software, does it also show potential glare from different observational points that might be, for example, within a proximity of this one?

Mr. Manasse: No, it's from that point. The analysis, the tool itself, has to have a viewing point, a point where the panels are, and the tilt in the orientation of the panel. Then it needs to know where the sun is, obviously, to figure out what the ...

Chairman Collins: OK, so it couldn't tell us if there would be any amount of glare at any other point other than the one that was used for the study.

Mr. Manasse: No, it can't. But we were asked to gain access to other points. We only do that with the curiosity to know.

Chairman Collins: OK, that's good to know. Go ahead.

Boardmember Forbes-Watkins: A couple of things, a number of things actually. First off, it seems to me that we're facing a situation where wherever we go we're going to run into ugliness with solar panels. They are just not aesthetically pleasing, to my way of thinking. Nonetheless, I encourage anybody to install solar panels if they are appropriate based on sun angles, et cetera, in order to save electricity, wasting fossil fuel, et cetera.

The second thing I want to ask is, is this really a view preservation question? I don't see – having gone to 445 Warburton – an angle I could possibly deal with that would block the view of the river or the Palisades. There's an aesthetic problem of glare which I sympathize with, but it's everywhere you have solar panels. So I don't see why we're even dealing with this. There's no blockage. It simply isn't there.

Boardmember Anuszkiewicz: I saw it.

Boardmember Forbes-Watkins: You saw actual glare.

Boardmember Anuszkiewicz: Yes, I did.

Boardmember Forbes-Watkins: A reduction in the view of the river and/or the Palisades, not of the area that is under renovation/renewal.

Chairman Collins: I spotted very minor – very minor – intrusion into the view of the river.

Chairman Collins: It's very, very modest, and the way our ...

Boardmember Forbes-Watkins: You've got better eyes than me.

Chairman Collins: No, it's a very, very small intrusion. But the way our code is now written, if there is any impact on view then the applicant must be here even if it's a tiny one.

Boardmember Forbes-Watkins: Well, we have to deal with it because it's in the view preservation area. In fact, there is none to deal with.

Chairman Collins: But if Buddy had determined there was zero impact on the view then this would be an application for the waiver. But having seen it for myself, I saw there was some modest impact on the view.

Village Attorney Whitehead: And since you're one of the ones who has to sign off on the waiver.

Boardmember Anuszkiewicz: What about the fact that these are removable things you're putting on the roof of the building? Why are we reviewing something that's not a permanent addition to the building?

Building Inspector Minozzi: Skylights are removable too.

Village Attorney Whitehead: Yes, it's considered a structure and therefore it falls within ...

Boardmember Anuszkiewicz: Does our code define solar panels as a structure, seriously?

Village Attorney Whitehead: Yes. They need a building permit.

Building Inspector Minozzi: Sure. If you read the definition of structure, sure it falls within it.

Village Attorney Whitehead: They require a building permit. If it requires a building permit it requires view preservation.

Chairman Collins: And from my experience, having had some pretty detailed conversations – it may have even been with Sunrise at one point about a potential installation on my own property – they're pretty permanent. I mean, in theory they can come down. But once ...

Boardmember Anuszkiewicz: They're not permanent. They're removable with a screwdriver.

Chairman Collins: Yes, they are. But not without a pretty ... I'll ask you, Mr. Manasse. If a homeowner were to decide unilaterally to take these things down would there be a financial penalty to the homeowner for doing so?

Mr. Manasse: Not a financial penalty. There would be a cost of removal for labor, but ...

Chairman Collins: But if a homeowner just said, "You know what? I'm done with this. I'm going up to the roof and take a screwdriver and take them down."

Mr. Manasse: There would be no issues.

Chairman Collins: They're not under contract to keep those things up there?

Mr. Manasse: No. The only contract they have is with NYSERDA because they got an incentive; they have to be up there for a certain amount of time, otherwise they have to give back all that incentive they got.

Chairman Collins: That's what I'm referring to. So if, after two years, they go up and say, "I'm done with this," they could be faced with a financial penalty.

Mr. Manasse: There could be ... I believe they have to keep them on for five years. So there would be three-fifths of a penalty on that if you removed them during that period of time. But if you look at it like a lease, we don't lease things. But if you look at the lease, the lease does say that after 30 years we will remove the panels. So they are made to be removed when necessary.

Chairman Collins: Right. Well, they have a lifespan, right? A usable lifespan?

Mr. Manasse: That's correct.

Boardmember Anuszkiewicz: That's why, generally, those kinds of things are considered different from physical, structural additions to buildings which are permanent. I mean, I understand that maybe our code is defining solar panels as something we have to consider a structure and therefore we have to go through this review. But there are things such as permissible exceptions in the New York State building code.

Building Inspector Minozzi: Why is this a problem now, when we've done air conditioning on roofs?

Boardmember Anuszkiewicz: Well, it's always a problem if we're going to be nitpicking on every little thing.

Building Inspector Minozzi: Then somebody has to draw the line for me because I'm trying to do the right thing here.

Boardmember Anuszkiewicz: I'm not saying you're not. I'm saying maybe it's something to consider in the future.

Boardmember Dovell: How do we deal with cellular? We deal with cellular antennas the same way, though, don't we?

Chairman Collins: Very much so.

Village Attorney Whitehead: And they're also removable.

Boardmember Dovell: And they're also removable.

Chairman Collins: In fact, they have probably even a shorter ... about the similar lifespan because that equipment comes in and out all the time as technology upgrades.

Boardmember Hayes: And a dish, too? Direct TV dish?

Boardmember Anuszkiewicz: Yes, sure.

Chairman Collins: I would imagine so. We were a Direct TV subscriber for years and years and then canceled it. I still have a satellite on my roof.

Boardmember Anuszkiewicz: Well, I don't have any problem with this. It doesn't block anybody's view, in my opinion, and it's so minimal I think we should just vote.

Boardmember Dovell: I would agree. I think it's absolutely de minimis.

Boardmember Hayes: I concur.

Chairman Collins: OK. Anyone else in the audience wish to be heard on the case?

I'll ask for two separate motions for these two separate cases for Case 16-17, 9 Ridge Street and Case 15-17 for 7 Ridge Street.

On MOTION of Boardmember Forbes-Watkins, SECONDED by Boardmember Hayes with a voice vote of all in favor, the Board resolved to approve Case No. 15-17 for view preservation for the installation of solar panels on the roof.

Chairman Collins: All right, the vote on 7 Ridge Street is unanimous.

On MOTION of Boardmember Forbes-Watkins, SECONDED by Boardmember Hayes with a voice vote of all in favor, the Board resolved to approve Case No. 16-17 for view preservation approval for the installation of solar panels on the roof.

Chairman Collins: The vote again is unanimous. Congratulations. Thank you very much for a very solid presentation.

Mr. Manasse: I appreciate that. Our next step is ...

Building Inspector Minozzi: Remove the mockups.

[laughter]

Mr. Manasse: Will do. They'll be out tomorrow.

Chairman Collins: Buddy will work with you on taking the next step. And I think the next step, if I understand it, is to get a permit.

Building Inspector Minozzi: Yes, give me a call tomorrow.

Mr. Manasse: I will call you, Buddy. Thank you very much.

Building Inspector Minozzi: I'll be at my desk all day.

Chairman Collins: We will then proceed to our final case on tonight's docket, which is Case 9-17.

**Case No. 9-17
Dean & Marie Wetherell
196 Warburton Avenue**

For View Preservation approval as required under Village Code Section 295-82 and relief from the strict application of Sections 295-68E & 295-68F.2.a.2, for the creation of two nonconforming lots and a new proposed single-family dwelling on their property at 196 Warburton Avenue. Said property is located in the R-10 Zoning District and is known as SBL: 4.130-139-17&18 on the Village Tax Maps.

Non-conformity details of the subdivision and proposed construction are as follows:

Lot width: Proposed – 65.76 feet average (Lot #1) & 79.09 feet average; (Lot #2) – Required; 100 feet (each) {295-68.E.}; Variance Required – 34.24 feet (Lot #1) & 20.91 feet (Lot #2) Developmental Coverage (Lot #2): Proposed – 36.35 percent; Required – Maximum 35 percent {295-68.F.2 (a.2)}; Variance Required – 1.35 percent

Chairman Collins: So we're looking for lot width ...

Boardmember Forbes-Watkins: Development coverage.

Chairman Collins: ... 1 and 2. And developmental coverage, as well as view preservation.

Village Attorney Whitehead: You're not doing view preservation now.

Chairman Collins: Oh, we're not?

Village Attorney Whitehead: If you remember, the Planning Board did not make their recommendation on view preservation. They felt the lot width variances here were a major sort of issue on this application and they did not want to go any further without knowing if you were actually going to give the lot width variance.

Without the lot width variances there's no more application. Actually, no, David. This is them trying to get your input early on something that is a clear yes or no for this application. If you weren't going to grant the lot width variances there was nothing more for them to consider.

Chairman Collins: That makes sense. OK.

Boardmember Forbes-Watkins: But a question. The lot width: assuming we approve the lot width variance, have we also approved the building as drawn, or not drawn, as shown on the plan?

Village Attorney Whitehead: No, it will then go back to the Planning Board which will have to do subdivision approval and make a recommendation on view preservation.

Boardmember Forbes-Watkins: So then the development coverage does not apply because the development coverage cannot be covered until we've had development approved.

Village Attorney Whitehead: Well, no, the Planning Board does not have to approve ... there's no site plan approval for a single-family house. So the only thing they'll be looking at is the subdivision and view preservation.

Boardmember Forbes-Watkins: So we can ...

Village Attorney Whitehead: You can do it if the Planning Board shrinks the house because of concerns about view preservation. Well, first of all, the development coverage is for the existing house. It's not for the proposed house. The proposed house complies. Actually, I'm changing my thinking: it's for the existing house.

Boardmember Forbes-Watkins: Except it doesn't necessarily comply because we don't know whether the proposed house is going to be the final house.

Village Attorney Whitehead: We have been told by the applicant that this *is* the house they're proposing.

Boardmember Forbes-Watkins: But then it should be coming to us as a full proposal.

Chairman Collins: But it doesn't need a variance.

Village Attorney Whitehead: It doesn't need a variance.

Boardmember Forbes-Watkins: At all.

Village Attorney Whitehead: It's not going to get bigger.

Boardmember Anuskiewicz: But it will need view preservation.

Village Attorney Whitehead: It will need view preservation.

Boardmember Anuszkiewicz: Again, I get hung up on why the Planning Board is doing view preservation and so are we, and the difference being ...

Village Attorney Whitehead: It's the way the code reads that they make a recommendation to you.

Chairman Collins: OK?

Boardmember Anuszkiewicz: All right.

Boardmember Forbes-Watkins: OK.

Chairman Collins: Go ahead.

Paul Petretti, civil engineer/land surveyor: I'm representing the applicant. We appeared before you, I think, two months ago. And I'd like to get to the point of the heart of the matter. Some questions came up as to how I could balance the lots to make the area of the lots more equal, and also get the width of the lot actually more equal. We have been able to do that.

I redesigned the subdivision. When you're looking at the subdivision plat right now, what evolved out of that process is that we came up with two lots with average widths, which we have represented in the application and revised application. Those would be 72, 92 and 74.01, which kind of balances out now they're both closer to each other. That's the average lot width and that's what I revised the application to.

The way I was able to achieve that is, I took this line in the back and moved it 11 feet. That's 11 feet more here, 11 feet less there. As a result of that, the two lots are pretty much balanced in size. The first lot, the vacant land lot, is 10,930 square feet and the second lot is 11,017. I'd like to speak to the issue of coverage, especially on lot number one. It's shown to be substantially less than the allowable building coverage and substantially less than the development coverage.

I advised the client before I brought the application before the Planning Board that we actually design a house that's going to fit on this lot that is large enough to make a salable house. That would be fixed because it's been my experience, when you have small lots like this, to design a house, go to the Planning Board. That's the house you're going to build.

That coverage that I've expressed in those charts, and my application within, I would say, two-tenths of a percent is really what's going to happen.

Chairman Collins: OK. In our correspondence in the buildup to this meeting – and some of which we had today – I had asked you about what I'll call the "pink shading" in the table you shared. I appreciate your clarification what blue indicated. I think just a couple zeroes got lopped off in the table, or in the legend. But the pink I'm not clear on because it looks like the pink shading includes both 162 and 196, lot 12. Can you ...

Mr. Petretti: I want to clarify that. Now I'm trying to find words. We made an analysis with 63 lots, and in that analysis I had the two Wetherell lots in the analysis. I decided to change the analysis, not to bias the analysis of two small lots, two small tax lots. I combined them together, reduced the number in the lots in the analysis from 63 to 62, and that's where the pink was. The pink was an identifier to me to make sure I did that.

I asked Thomas to come over to the office and give me the Excel spread sheet. I have the Excel spread sheet, which is now revised to 62 lots because I combined the Wetherell tax lots into one.

Chairman Collins: OK.

Mr. Petretti: The statistics of the analysis don't change all that much. It's pretty much in the same general statistical analysis we presented the last time. I can go through that if you like, but it hasn't changed.

Chairman Collins: Well, I think you've got a good summary at the base here, which I'll get to in a moment. But the pink shading of the property at 162 Warburton Avenue has no ... that's meaningless.

Mr. Petretti: That's meaningless.

Chairman Collins: OK, all right.

Then your take-out here is – and by the way, I did ask the Building Inspector to do a random sampling of several properties to just validate the measurements that were featured here and he did, I believe, a random sampling of 25 – his numbers match yours. I feel pretty good about the accuracy of the overall ... that's a little bit less than half of the total number of 63, now, you have here.

The analysis, then, shows that 43 percent of the existing lots are nonconforming by area; 63

percent of the lots, in the 63 you've canvassed, are nonconforming by width, as is; a full 44 percent of them are below 75 feet, correct?

Mr. Petretti: Correct.

Chairman Collins: For width, which both of these proposed lots would also be.

Mr. Petretti: Yes.

Chairman Collins: And the average width of all the lots is 81 feet, so yours is about – on a percentage basis – in the neighborhood of 10 percent less than the average.

Mr. Petretti: Yes. I have 82.9 on my chart.

Chairman Collins: I've got 81.18 in your application, but that's close. And for those lots that fall under 75 feet the average is 52.5.

Mr. Petretti: Yeah.

Chairman Collins: OK. I mean, the take-out from the analysis you've done – which is not unlike other summaries we've had of other neighborhoods within various zones in the Village – is that our zoning code, in some instances, does a pretty lousy job of describing what a norm should be. When you have almost two-thirds of the properties existing that are nonconforming, it's very difficult to look at that part of the code and say it's working; like it's a suitable yardstick with which to assess new projects as they become available.

So as I look at this I find that it's actually close enough to the norm – within 10 percent, and I suppose we could get into the standard deviations here – that my guess is you are within a standard deviation. Which means that, essentially, you're talking about a rounding error between the width of your property and the average. I mean, I'm just finding it very difficult, on the lot width issue, to find a basis for objection. As for the developmental coverage, it's such a small ... you're talking here about a tiny gap over the max. I think we have ...

Boardmember Forbes-Watkins: 4.12 percent.

Chairman Collins: The proposed is 36.35, and the maximum is 35.

Boardmember Forbes-Watkins: No, proposed is 39.12.

Village Attorney Whitehead: Because the lot size went down.

Boardmember Dovell: The lot size changed.

Boardmember Forbes-Watkins: Those were not changed on the ...

Building Inspector Minozzi: Yes, we inadvertently didn't change the notice.

Chairman Collins: OK. All right, so you're 4 percentage points. Again, you're about 10 percent over the coverage, but we've seen far larger variances people have requested. All in all, I'm comfortable with where this has netted out, and I actually think it's very much in keeping with the neighborhood, regardless of what the code has to say.

Boardmember Forbes-Watkins: The real question, though, is that this is a new property, a new lot – not a grandfathered lot of pre-code days. So the question really is, do we want to continue to perpetuate the old way of squeezing things into space. Does the Village want that? I don't know, but I'm concerned by that. And this is the first time in the 8-1/2 years I've been on the Zoning Board when this type of issue has come before us where we're taking ... we're creating a new lot in opposition to the stated goal of the Village – namely the zoning code – to set parameters for new stuff. I've got a real problem here.

Boardmember Hayes: I couldn't agree with you more. I actually don't find the argument that you made, Matt, very compelling. And I say that with all due respect: it's not an argument that I believe is compelling. When we look at a variance for an existing building and we say, "Look, a bunch of other neighbors have gotten a similar variance," or "This is what the neighborhood looks like so we're really not making much of a change," often times I can agree with that argument. To make an argument that, look, all of these houses that were done before the code was put in place don't conform to how the code is and therefore, when we look at a new lot, we should ... instead of looking at the code, which supersedes those buildings, we should look at what happened before. I think that's faulty logic.

I think the code was put in for a reason. We can say it's not realistic, it's not our job, it's the legislative branch's job to say the code needs to be changed and it's not realistic. It's not our job to say, well, look at all the houses that are orange so the lots are below 75, so here for this new build let's make two lots that are, I believe, both below 75 – if I'm reading this table right – because I know we've had a lot of confusion about where the numbers went. I'm not very comfortable with that.

Boardmember Dovell: But the lot area, it complies in both cases, does it not?

Mr. Petretti: Yes, it does.

Boardmember Dovell: That's why I'm looking a little more favorably on this. This proposal does maintain the lot area, which is really the driver of coverage and, ultimately, building size. So the fact that these things are narrower, to me, is the function of the reality of the topography of Hastings-on-Hudson where you get these crazy lots all over the place. We see them all the time. The zoning code is an attempt to try to codify the end result, but it is imperfect due to the nature of the town.

I'm looking at this a little more favorably because the lot area is, to me, the driver of this: the fact that it's narrow and the fact that the new structure you're proposing – of the new structure on the new lot – doesn't require a variance for setback or lot coverage or anything else, the only waiver you're looking for is view preservation, if understand it correctly. Is that right?

Mr. Petretti: Yes.

Village Attorney Whitehead: For the new house.

Boardmember Dovell: For the new house; I'm talking about the new house. The new house on the lot does not require any waivers.

Mr. Petretti: No. May I speak to that issue a little bit? The lot as proposed – and I said earlier on that when I took this application on I said to the applicant, "Listen, I'm going to have to design a house here that works." I've designed many subdivisions on the Rivertowns, and that's the way you have to do it because you just can't come in and do exactly what the gentleman said: come in, put a building envelope in, and then come back later on and build a huge house.

Just to make some points here, you're allowed 25 percent building coverage. The building coverage for the proposed lot is 17 percent. So as it works out, this house that's going to be built is substantially smaller. I'd also like to point out that the lots immediately to the north are also in the same genre of 75 feet wide. So I think in fairness I have to express the fact that these lots ... one of the reasons why these lots are working out this way is that as you look up the hill they're all deep. When people bought these lots, and (inaudible) in time – and I worked in the Rivertowns for years, Dobbs Ferry has the same issue – things happen, lots got built.

But these lots are not out of proportion, they are the right size. Certainly the house that's proposed is substantially less than the building coverage that's allowed in the code. The same thing with the other lot. The second lot, its building coverage is 15 percent. It's development coverage because it has a lot of walks and steps and a wall system around it,

and a patio. That's what throws that to be over 35 percent. In fairness to the application, we're not trying to build a huge house. We are building ... I'm showing you lots that are almost equal in width to the two lots to the north and a couple lots to the south.

Boardmember Anuszkiewicz: When you speak about width, since many of these lots are regular-shaped are you speaking about the average width?

Mr. Petretti: Yes.

Village Attorney Whitehead: That's what your code requires.

Chairman Collins: So when our code's talking making a new lot for new residences, does it talk about average width?

Village Attorney Whitehead: Yes.

Boardmember Forbes-Watkins: No, it says a number.

Chairman Collins: Doesn't it talk about street frontage, or does it talk about both?

Building Inspector Minozzi: It talks about street frontage, I believe, at 70 percent of the lot width.

Chairman Collins: So street frontage, required street frontage, on a developable lot is 70 percent?

Building Inspector Minozzi: I think it's 70 percent of the lot width.

Village Attorney Whitehead: So it would comply.

Building Inspector Minozzi: But in this particular case we're at 100 percent.

Boardmember Dovell: What is the coverage in aggregate if you looked at both lots and footprints of both houses? Where are you in aggregate?

Village Attorney Whitehead: It's not the houses because it's the development coverage.

Boardmember Dovell: I'm sorry, the development coverage.

Village Attorney Whitehead: My understanding is, the building coverage complies. Paul,

is that correct, the variances for the development coverage?

Mr. Petretti: Both building coverages comply. I think if you take the two of them together, one is over 4.1 percent and the other one is under by 12.5 percent. So on balance, if I had to add them up ...

Boardmember Dovell: So in aggregate, you could – and let's just forget the subdivision for a minute – take the coverage and put it on that lot.

Building Inspector Minozzi: Correct.

Boardmember Dovell: It would comply, and you could put that anywhere you wanted to on the lot. You could put it within the setback to the north side the way you've shown it now if you desired that.

Mr. Petretti: That's right.

Chairman Collins: I think this gets to, actually, an extension of my observation about the inelegance of the way our code is written to describe a neighborhood, and why I think it's really important. Sean, I appreciate your articulation of the code intent, and the assumption that the code has been written in a thoughtful way to achieve what's stated. Which, by the way, I'm not sure is the case.

Boardmember Hayes: You may be right.

Chairman Collins: But if we play it out to its logical conclusion, and if we as a board say that in spite of the fact that nearly two-thirds of the properties listed in this area are existing nonconforming, how is it that a developer going forward will achieve the required minimum or something close to it? The answer, of course, is they will be incentivized to start buying up these properties, these adjoining properties, to get bigger lots to result in bigger developments of the kind that many in Hastings feel anxious about. Because you start to creep into these larger, bulkier developments that have come before us and stir a lot of negative passions, understandably, because they're – especially in this neighborhood – out of character.

Boardmember Hayes: They don't come before us if they don't need a variance.

Chairman Collins: Yes, but when they do ...

Boardmember Hayes: That's different. If someone buys up the other lots and they're

within the code, go for it.

Chairman Collins: OK, sure. That's right.

Boardmember Hayes: It's not our place to say ...

Chairman Collins: You're right. And we could say, at that point, you've taken a lot of risk, Mr. and Mrs. Homeowner, shame on you, we're not approving that. But then they develop something that doesn't require a variance, but they've built something on that stretch, that we don't get to see, that starts to fundamentally change the character of the neighborhood. And we're talking about the arc of decades, not of the immediate future. But to me, if we send a signal to the homeowners and developers look at this area and say that in spite of the reality of what the neighborhood tells us we are going to hold to this strict interpretation of what the code says, we are sending a signal that the way through that is to start buying up multiple lots over time and building things that are not in character with the Village.

Boardmember Dovell: That was my point by asking, in aggregate, what you could build. You could build a much larger house and that, in effect, is not the character so much. So the neighborhood character comes into play here, I think.

Chairman Collins: Yes.

Boardmember Anuszkiewicz: Existing neighborhood character.

Chairman Collins: Yes.

Boardmember Dovell: The existing character.

Boardmember Anuszkiewicz: Which gets to David's point. Which is, are you going to use as your measuring stick existing character or some other ideal that sits in the code?

Boardmember Dovell: And neighborhood character is something we're supposed to consider.

Village Attorney Whitehead: It's the character of the existing neighborhood, and that's been something the courts have looked at repeatedly. If you remember the factors and the balancing, it's this going to result in an undesirable change being produced in the character of the neighborhood.

Boardmember Hayes: I'm going to cut through what you said, Matt, and you're not going

to like this.

Boardmember Anuszkiewicz: Go for it.

Boardmember Hayes: Basically, if I take your statement to it's sort of logical conclusion it becomes the job of this board to preserve nonconformities in an effort to prevent developers from creating lots that conform with the code. That's what you said. I mean, it sounds funny but that's what you said.

Boardmember Forbes-Watkins: You're right.

Chairman Collins: No, I think you're right, but I think ...

Boardmember Hayes: And I don't think that's our job.

Chairman Collins: No, no, no, I hear you. And I would say that it's in service of a larger good, a larger goal, which is preserving the character of a neighborhood and, by extension, the character of the Village. That I think not only do villagers feel uncomfortable with seeing change, but I've seen people on this board understandably react with some negativity when it does happen, right?

Boardmember Hayes: I have, but that's when no one's asking for a variance. It's not the job of this board to tell people who are in conformity what to do. There are other boards for that, I think. I mean, I think there's architectural review boards and planning boards and Mr. Minozzi, and there's a board of trustees.

Village Attorney Whitehead: Yes, the Architectural Review Board.

Boardmember Hayes: Or the Architectural Review Board, sorry.

Boardmember Anuszkiewicz: The Planning Board.

Boardmember Hayes: Planning boards.

Village Attorney Whitehead: Well, single-family homes don't go to the Planning Board.

Boardmember Hayes: I'm just not comfortable with that line of thinking; to the idea that ... and you're right, I don't like McMansions any more than anyone else does, whether they conform or not, right?

Chairman Collins: Right.

Boardmember Hayes: And it's not what I think this village is about, but it's also not my right, on *this* board, to tell people if they're within the parameters of the zoning code and don't need a variance that they can't build a McMansion. That's someone else's job. It's not our job. So I'm not comfortable with this line at all. I can't think of them right now, but I bet by the morning – after I have time to sleep on it – I could think of a dozen ways that could get twisted in a way you would not like. And someone would come up here, and you'd be really disturbed at what they would throw back at you, using that line of reasoning.

Chairman Collins: And I would have to be well-prepared to handle that. That's why I would say I would frame, in this case, my comfort with this is based on not so much the reading of the code as I am reading the neighborhood. And I would assert that this code – as it relates to this neighborhood in this very small segment of our code – is not serving the homeowners of this community very well at all. It's just not. It's not an accurate assessment, it's not an accurate measuring stick so we can assess the way these properties are. And it's off by a lot. It's not even close.

I look at it, and I have to conclude it was done arbitrarily because if you were going in to describe it in a way that would be homeowner-friendly you would not have this outcome. It's not to damn the whole code, but this part of it is flawed. So what I'm saying here is that in that case ...

Boardmember Forbes-Watkins: But you're saying, then, the Zoning Board is going to act in lieu of the Board of Trustees to change the zoning code, and you can't *do* that.

Village Attorney Whitehead: You're not changing the zoning code; you're granting a variance. That's this board's job.

Boardmember Hayes: But Linda, that's the sentiment. We're not talking about the variance; we're talking about the sentiment.

Village Attorney Whitehead: I'm talking about the law.

Boardmember Hayes: It's two different things. I agree.

Village Attorney Whitehead: The law says you are to act as a relief valve where the ordinance doesn't make sense in a particular situation. You're given five factors to consider in making that determination.

Boardmember Hayes: There's a broader discussion here.

Village Attorney Whitehead: OK, so as your attorney I have to say yes, but you have to act within what the law says.

Chairman Collins: I think the Board is understandably reacting to broader consequences of my line of thinking of this. Which is, I am saying this particular language in the zoning code is wrong. I'm saying it's poorly worded and it's flawed. And when an applicant comes to us with properties that, dimensionally, are in keeping with two-thirds of the homes in the neighborhood I find it very difficult to withhold a variance.

Boardmember Forbes-Watkins: I'm thinking of a case we had before us a couple of years ago where a person wanted to put a barber shop down on ...

Chairman Collins: Yes, yes, that was on Washington.

Boardmember Forbes-Watkins: ... on Washington. And it was not within the code. The code did not include barber shops for that particular area. What did we do? We sent the person to the Board of Trustees to change the code because the code was written the way it was written, OK?

Village Attorney Whitehead: But that was a use variance. I don't think you can compare a use variance to an area variance. It's a very different standard for granting. In terms of what Matt's saying, that's also not really the way. You're supposed to look at it for the specific property, not part of the bigger picture: for *this special property*.

Boardmember Forbes-Watkins: We're not supposed to think in terms of the bigger picture?

Village Attorney Whitehead: Because you have to be property-specific.

Boardmember Forbes-Watkins: Well, you have to think in terms of the character of the neighborhood, but you have to look at what's being requested for this particular property because every property is different. On this particular property, and looking at the balancing and looking at the five criteria, is it appropriate to grant the variance, is there a problem with complying with the code? And where it will not produce a change in the character of the neighborhood ...

Boardmember Dovell: If this project related to a lot area, and we were looking to build two noncomplying lots in terms of the required lot area, I would not be for this at all. But the

mitigating factor here is the weird shape of the depth of this lot, which is driving the narrowness of it.

Boardmember Forbes-Watkins: Yes, but it's not buildable on the back half because it's up a hill.

Boardmember Dovell: Right, understood. But it's still a lot, it's still property, and the demising of this property was the result of certain factors like, you know, the street and the Aqueduct and other things. That's how the lot was derived. So to me, this is a reasonable ... you know, there's a hardship here in how you go about things like this. And having some relief on the width that does not change the character of the street I personally support.

But again, if they were looking for a substandard lot I would not be in support of this at all. It's the terrain, it's the existing streetscape of Hastings-on-Hudson, and as you point out, an imperfect overlay of zoning over it – which is just blocked by nature – and we have to make these decisions. I mean, we've seen some crazy things: these strange pie-shaped lots where the only thing you could build would be a bathroom in the middle of a lot. You know, it's crazy, but in this case I am sympathetic to this. I'm sympathetic because the lot coverage for both structures is well under what it would be in aggregate.

Chairman Collins: Anything else from this board? David?

Boardmember Forbes-Watkins: I don't know what more to say one way or the other. I'm still deeply bothered by thinking in terms of creating a new lot that's outside the zoning code, in simple terms.

Chairman Collins: That's fair. I would say that if the applicant decided they feel confident enough to take this to a vote, and it were to be denied, I would personally reach out to the Mayor and the Board of Trustees to change the language of this particular line item. Which I think would relieve some pressure.

Boardmember Forbes-Watkins: I wouldn't disagree with that.

Chairman Collins: I mean, that would take away your concern, Sean. It creates a ... you know, there's some hardship for the applicant to have to come back and go through essentially the same presentation, but do so without having to meet as high a burden.

Village Attorney Whitehead: I don't think ... you know, you're talking about the R-10 zone, which is throughout this entire village. This area is unique in that a lot of the lots are deeper and therefore narrower. I don't think they're going to look to, or want to, change the

criteria for the R-10 throughout the entire Village.

Chairman Collins: Maybe not, but I feel strongly enough about this particular case that I would suggest that, again, the zoning language as it relates to lot – if it holds up this particular applicant in this neighborhood – is then not serving its purpose well.

Village Attorney Whitehead: And that's what variances are for.

Chairman Collins: Right.

Village Attorney Whitehead: Where it doesn't work for a particular lot.

Mr. Petretti: I would like to add (off-mic) this area. If you look, these two lots ...

Chairman Collins: Hold the microphone close to your mouth.

Mr. Petretti: Yes. The two lots that are immediately to the north, if you take the averages of those two frontages it's 74 feet, and we're 73.47. I think this is the way development occurred, and we are following the pattern of what happened in time. Believe me, I've lived here a long time and I know what's happened in Ardsley and Dobbs Ferry. I've seen things happen, and I understand how they happened. The depth of the lot is what's pushing these people to have created these lots that were less than 100 feet deep; they satisfied the area requirement and that's the way it was developed.

If you look at that, I think my application is fair, it's balanced, makes horse sense. We're not building houses that are substantially larger than the allowable building code on coverage. I think it's a very reasonable application in view of what's exactly right over there: all those lots are less than – and some of them are substantially less than ... some of them are 50 feet. I think the application speaks for itself.

Boardmember Anuszkiewicz: You know, I understand Ray's point and I think I have to agree with Ray's point. And I guess I don't quite understand the other side of that in terms of ... I mean, I get that you guys are uncomfortable with language that may be inadequate in the code, but it's a different kind of a conversation than what Ray is making. He's actually articulating what would be acceptable. I mean, what can you say? What is unacceptable to you about this proposal instead of referring to the existing code? I mean, what is it that in terms of ... can you frame it the way, maybe, that Ray framed it?

I think it's a valid point to say the proposed development is less than what would be allowed on an aggregate basis. So the spirit of what's happening here seems to be upholding the

code, and I think if you're uncomfortable could you say specifically what you're uncomfortable with in terms of what they're proposing?

Boardmember Forbes-Watkins: That's a good question.

Chairman Collins: I think I do.

Boardmember Forbes-Watkins: I'm comfortable with what they're proposing.

Chairman Collins: And what I'm hearing you guys say is that relative to what our code says this is a big variance ask, and that's what's making you uncomfortable.

Village Attorney Whitehead: It's created a nonconformity.

Boardmember Dovell: But how is this a big ask compared with a lot of things we have seen before in terms of strange-shaped lots that don't comply except in area, that don't comply in any way, shape or form. We've granted things that are what you would consider out of the norm, and it's due to the geometry of all these lots.

Chairman Collins: Yes.

Boardmember Dovell: I would argue that this is not a major ask.

Boardmember Forbes-Watkins: But the difference is, in all the cases we've dealt with over this period of time we've been within a lot. Whether it's the oddest-shaped lot you could imagine didn't matter, we're dealing within a lot. Now we're being asked to deal with creating a lot, and that's a lot of difference.

Boardmember Anuszkiewicz: Right. But assuming you're willing to take that step, again you're saying it's just a big variance to grant. But what part of it numerically is too big for you?

Chairman Collins: It's not. I'm comfortable with this. I'm speaking for what I sense is ... like if you were to bring it back to this application – and I think that's what I'm hearing from David and Sean – the applicant is asking for a large variance on lot width.

Boardmember Hayes: There's more to it. I mean, I'm going to take Ray's extreme outhouse example. When someone comes before us and they have a strange lot and therefore they could only really have an outhouse, there's a hardship. You say OK, then they explain, "I really need to have this addition because we had a third child" – whatever it is, right? –

and, "This lot is bizarre, and we're still under the ... you know, we conform with all these other things, and we're under this and that, but because of the shape of the lot we really need to have this ... make this change."

We weigh those things, we go through our five factors, and we say OK. I think what we're seeing here is ... the only hardship, I guess, is economic hardship.

Village Attorney Whitehead: You don't need a hardship under the law. The law very specifically does not require that they prove a hardship.

Boardmember Hayes: So what's the ...

Village Attorney Whitehead: So I don't want you relying on that. For a use variance you need a hardship.

Boardmember Hayes: I just don't ... well, what's the compelling reason for us to create a new lot?

Village Attorney Whitehead: Again, it's a balance. It's the benefit to the applicant that you have to balance against the impact to the neighborhood. The law says you balance the benefit to the applicant versus the impact to the neighborhood and the community.

Boardmember Hayes: Right.

Village Attorney Whitehead: It's that side of the equation: the benefit to the applicant is getting an additional lot, then you have to balance that against ... and I'm hearing – I think what you and David are trying to say – that there is an impact on the community because you're creating nonconforming lots.

Boardmember Hayes: There's an impact on the community, and it directly contravenes the zoning code.

Village Attorney Whitehead: Well, everything you grant a variance for directly contravenes the zoning code.

Boardmember Hayes: Technically true, but it's different; for me, it's different.

Boardmember Anuskiewicz: Well, I think there is a hardship. I think that's similar to the triangular set at the back. I mean, it was explained to us – the first time this was presented – that the taxes are very high on the property. So it's a hardship on the owner of the property to

have to pay a lot of taxes on something they really can't use.

Boardmember Hayes: But that's something to bring up with the assessor. I mean, it's clearly incorrectly assessed. It's not our job to ... that's letting the tail wag the dog.

Chairman Collins: And I think it's the hardship, which gets to the motivation of the applicant and something we really have to discount, if not ignore, because it's a property owner. The property owner wants to do it and we determine it's something in keeping with the neighborhood, then who are we to question it? The motivation of the property owner is outside our purview.

Boardmember Anuszkiewicz: How is that any different from the triangular ...

Village Attorney Whitehead: It's not, it's the benefit side.

Boardmember Hayes: Benefit and hardship are like this. It's the same thing, on some level.

Village Attorney Whitehead: But it's in a balance. It's not a word, it's part of the balance. You do balance the benefit versus the impact so it's part of the equation in that sense.

Boardmember Anuszkiewicz: I think we need to judge the negative impact on the community also. You're talking about another single-family house in a neighborhood of single-family houses. I think that would be more convincing if you were talking about a business or an apartment building or something that, programmatically, was out of character with the existing neighborhood. It's not, so in my view it is consistent with the neighborhood and I don't have a problem with it on that basis.

Boardmember Hayes: I think if the reasons you and Ray have given were all we talked about tonight this would be a lot easier decision for me, and maybe this is because I am still a lawyer. A lot of things were said here around why we are thinking about granting this variance that make me uncomfortable. I don't like the idea of circumventing the zoning code, or programmatically circumventing the zoning code, 'cause that's not what a variance is. A variance is a single instance, a single circumstance, and you grant a variance because you think it's in keeping with the neighborhood, it's in keeping with the character of the neighborhood; the benefit to the applicant is greater than the hardship – or whatever we want to call it tonight – to the community. Those kinds of things are fine with me.

I really do find it troubling when we say things like the code really doesn't work here; the R-10 code has been foolishly ... which may be true, believe me. I know enough lawmakers,

I would tend to agree with it. They usually are not thoughtful. I mean, deer number 31 was in my yard again today, but that's a different issue. I agree with Adam and Ray: it doesn't seem offensive to me, and on some level ... normally, I would say fine but it's gotten blown up a little bit on the Board today. I don't want – because we are still a common law-right country – someone to come back and say, "Well, the Zoning Board thinks that R-10 zoning on Warburton, between 100 and 250, is rubbish and therefore you guys should give us this variance and that variance." Obviously then we have to fight that. But I just don't want to set that precedent. It makes me nervous.

Village Attorney Whitehead: That's why I go back again to what I said before: any decision needs to be very property-specific.

Boardmember Hayes: Yes.

Village Attorney Whitehead: And Ray has set forth some of the things that make it specific on this property: that they meet the minimum lot area, the depth of the lots; that the character in this area is these sort of narrower but very deep lots. You can't just say R-10 doesn't work. You have to make it property-specific.

Boardmember Anuskiewicz: I would have the same issue you're having if, for example, it was a developer we were talking about. But we try and divide the two largest lots on the block and turn that – which had, currently, two homes on them – into five or six homes. Because they could make this argument. You know, that would be a different set of circumstances that we're not evaluating right now. I'm not sure how I would feel about that – probably very different – but that's not what we're talking about.

We're talking about a homeowner who is trying to subdivide his property and who is going to be living right next to it and who has lived in that community for 20 years and is proposing another structure that's within the parameters of everything that's there. That's what we're looking at right in front of us, right here, and that's why I can see the point Ray has made. That I think it's OK in this case. It doesn't mean that in the bigger picture that you're describing it would always be OK. Again, that gets hypothetical for me because we're not looking at six houses.

Boardmember Hayes: I'll reiterate my point. The problem is, people go back and look at the record.

Boardmember Anuskiewicz: I understand.

Boardmember Hayes: That's where we have to be careful here because the last thing I want

is to be sitting out there in 10 years and someone comes up here and says, "Yeah. Hey look, I bought these four lots here and I'm going to put 15 houses on it. And by the way, you guys said that was cool because the zoning code's dumb, it doesn't work." And that's what I don't want to happen here.

Chairman Collins: Right, and one has said that. I know we haven't even gone that far.

Boardmember Hayes: I know you haven't gone that far, but people will take the next step. That's the issue.

Chairman Collins: But that's why we're here. It's not the implication.

Village Attorney Whitehead: I think Ray has done a good job articulating for this property.

Chairman Collins: I agree with that. And I think, if I can frame it more narrowly, the lot width issue here on this property – the crux of this argument – is not a concern for me because relative to the other properties listed here it is not a big variance.

Boardmember Hayes: I actually agree. I totally agree, I just wanted to get on the record. And believe me, I want to see the football as much as anyone. I know it meant we took an extra 20 minutes.

Village Attorney Whitehead: You want to see the tennis, trust me.

Boardmember Hayes: That too. I just wanted to make sure we had it on the record that this is not a free pass ...

Chairman Collins: Absolutely not.

Boardmember Hayes: ... for developers to come and start wiping it out and turning it into whatever; something very undesirable.

Chairman Collins: And I think the commentary here around actually working within the dimension, or the dimensionality, of this neighborhood – and trying to find a way to make it work as is – is actually a block against that potential. Because if you take a very strict and literal hard line that says this is too large of a lot width variance we do invite that kind of developer action.

Boardmember Dovell: But what didn't happen by saying should we grant this variance, the width of the lot did not impact the side lot line issue at all, right? You're not asking for side

lot line waivers, you're only asking for just a lot width waiver. So in many ways it's supporting neighborhood character, it's doing all of those things.

Chairman Collins: Absolutely it is.

Boardmember Hayes: And by the way, adds inventory. Which we need, to be fair.

Village Attorney Whitehead: And by keeping the side yard setbacks, visually it doesn't affect anything ...

Chairman Collins: Right, visually.

Village Attorney Whitehead: ... because the houses are still as far apart as they're required to be.

Boardmember Dovell: And it is totally in the neighborhood character.

Chairman Collins: Yes. Does anyone object here if I invite anyone in the public to speak at this point? All right. Does anyone in the public wish to be heard on the matter? You could just introduce yourself.

Daniel Cleary, 200 Warburton: I'm the lot directly north of the proposed subdivision. Thank you for giving me the opportunity to voice objections to this development again. We're opposed to the subdivision and creation of the two nonconforming lots. We just feel the width is inappropriate and not in character to the area, and I will go through that in a bit.

We also want to echo some of the stuff that's been said tonight in terms of the Village code. We believe it's there for multiple reasons and should be adhered to. Just because some of the existing lots in the area are not strictly compatible with the current code does not mean that new spaces should not be held to that code. Some of these homes were built 50 years ago, or a hundred years ago in some cases. And the new homes should be held not to those standards, but to the standards of today in the same way electric wiring or lead paint. You wouldn't go back to a hundred years and go to those standards. And we believe space is even more important because it cannot really be reversed. Once this home is built, that space isn't going to be reclaimed.

Really, it goes back to my point I raised in the previous meeting in terms of what is the code worth to anyone looking at purchasing a property in Hastings-on-Hudson. If you're looking at the code and looking at the property around you, if the code is easily violated in terms of lot width then it kind of devalues the value of the code in looking at that.

Now, in terms of the analysis done in terms of lot width in the area and developmental coverage, we don't necessarily agree this actually reflects the nature, character and location of the lot in terms of the neighborhood. Could I just change one of the slides here? Could we go to the one that shows R-10? In looking at this map, if you look at the R-10 zone – really the distance from Warburton Avenue from the junction of Pinecrest Drive, which is at the north end of the R-10 zone, to the end of the R-10 zone in Warburton – I estimate that to be approximately 16-hundred feet. There are six homes on the west side and eight homes on the east side, so there are large areas without homes at all in terms of frontage.

Between the north proposed lot here and the junction of Pinecrest Drive, I estimate that to be about 8-hundred feet and there are only two homes. If you look on the opposite side of the street – north of the subdivision in question – I estimate that to be in excess of about a thousand feet, and there are no homes. If you look at the two homes up, 204 Warburton, even though the width is about 75 feet, as stated earlier, it definitely appears larger. Especially walking along the street due to the absence of any homes up to Pinecrest Drive. When you're actually looking at that, even though the lot line is there it doesn't really reflect the character of what actually exists there.

Chairman Collins: Mr. Cleary, which property are you speaking of? What's the address?

Mr. Cleary: I believe it's 204; it could be 202. The lot to the north of my home.

Chairman Collins: We have 204 as 51.5. Your property, interestingly, is 72.4 feet

Mr. Cleary: I'm talking about frontage here, not average.

Chairman Collins: Right, but we're not ruling on frontage. We're only discussing ...

Mr. Cleary: I'm talking about the character of the area, and the frontage is a big key part of the character of the area.

Chairman Collins: How so?

Mr. Cleary: How could it not be when you're walking down this street and actually in the neighborhood? Of course, frontage is a big character of the area. If there are houses all the way along both sides of the street from Pinecrest Drive down to the proposed subdivision, the character there it would be very different.

Chairman Collins: Well, I understand what you're saying about ... I, of course, understand

that frontage is an important factor in determining character, but I'm not following your argument here about why you think, by frontage, this subdivision violates the character of the neighborhood. Help me understand that.

Mr. Cleary: OK, so when I look at this neighborhood, and living there, anything to the east of the Aqueduct is not really part of the neighborhood. There's a big physical divide running down through that area. For example, if you had kids, like where I live you wouldn't send your kid trick-or-treating up to the neighborhoods around Pinecrest Park. We feel that's not really a true reflection of the neighborhood. In my point of view, you're just looking at the area from the junction of Pinecrest Drive down to the Yonkers border. That's really how I would view the neighborhood.

Chairman Collins: There's, generally speaking, a relationship between frontage and width. I mean, there has to be some relationship, right?

Mr. Cleary: Absolutely, and I'm not disputing the widths are incorrect. I'm talking about the character, in that there only a small number of houses there and most of that road there aren't any houses.

Chairman Collins: OK. I can't speak to the ones for lots – or maybe this list doesn't include them – the stuff that's on Warburton here, I have to say – and I'm happy to show you the data – it's ...

Mr. Cleary: No, I'm not disputing the data. I'm saying in terms of the character I don't think it's appropriate to just look at existing lot widths. You actually have to walk down that street and look at that area and understand actually what it looks like and what it feels to walk down there. I feel just looking at lot width in an expanded area doesn't really necessarily illustrate that. So we feel the open nature of the road is lost by cramming another house in a quite crowded area already.

In terms of developmental coverage, we agree it meets all requirements. However, where the actual proposed building ends there's a rock outcrop. And from there, there's a very steep slope back to the Aqueduct trail. You know, there's no way that could ever be built on. We feel, essentially, that the coverage is not necessarily in the true spirit of what is intended. Like if you actually look at the land that's buildable in terms of that lot, we would say the proposed building covers probably around 80 percent of that, just by looking visually at the plans. There's no way. Once the house stops at the back it's almost straight up. So we don't feel that's necessarily in the spirit of the developmental coverage.

Furthermore, we do have other concerns about it setting a precedent. I think that's already

been discussed here extensively. We also know this isn't for an affordable home, and we do not believe there is a significant economic hardship in this case here and feel there are other ways that could be resolved as well.

We also have arguments against the view preservation that's been asked. If the Board would like to hear them now we can go through that, or we can do that at some subsequent meeting.

Chairman Collins: Well, we're not going to be making any determinations on view preservation because the Planning Board precedes us on that.

Mr. Cleary: OK, that's fine.

Chairman Collins: If you'd like to come back, that will be noticed when or if this project proceeds. Yes, keep your powder dry on that one.

Mr. Cleary: OK, cool. Thank you for your time.

Chairman Collins: OK, thank you, Mr. Cleary.

Does anyone else wish to be heard on the matter? OK. Does the applicant wish for us to proceed to a vote?

Dean Wetherell, applicant: Yes. I'm sorry I'm huddled over there.

Chairman Collins: It's chilly.

Village Attorney Whitehead: It's cold.

Mr. Wetherell: The wind blows down your neck.

Building Inspector Minozzi: It was really warm in here before. I should have lowered it back down.

Mr. Wetherell: I'm freezing. Yes, I feel comfortable that Thomas and Paul have presented the case for this very well, and I'm comfortable with you going forward on a vote. I believe so.

Chairman Collins: OK. Linda, I don't pretend to know how the whole Board will vote, but would you suggest that I or anyone else here more clearly or narrowly define either reasons for or against?

Boardmember Forbes-Watkins: I'd like to say a couple things.

Chairman Collins: Yes, go ahead, David.

Boardmember Forbes-Watkins: First off, I agree generally with you and Ray that this particular lot plan fits the neighborhood and it's appropriate for it. Therefore, even though I am very reluctant – *very* reluctant – to vote against the code in this case, or in any case, I will support this application. Again, I want to emphasize that I'm very concerned about how the code is dealt with in this situation.

Chairman Collins: OK, thanks, David. Linda?

Village Attorney Whitehead: My suggestion would be that you make the motion. But I would recommend that somebody just run quickly through ... I mean, you can refer back to the discussion that's already taken place because I think there's been a lot of good matters brought forth in the discussion and they don't all need to be repeated now as part of the discussion. Maybe Ray can do it best because I think he voiced it. But sort of go through the factors, to some degree, just to support your decision. And like I said, you can refer back to the discussions that have taken place and what's already been said.

Chairman Collins: OK.

Boardmember Dovell: Ray is not a lawyer. He would prefer not to.

[laughter]

Boardmember Hayes: This lawyer's not doing it.

Village Attorney Whitehead: I was going to say Sean's not going to do it.

Boardmember Hayes: This lawyer's not doin' it.

Village Attorney Whitehead: I can sort of read, and you can sort of supplement.

Chairman Collins: Is Adam within ...

Boardmember Hayes: I think you should ask this. Is he allowed to vote on this? His house is, what, six down?

Village Attorney Whitehead: We talked about this before. If Adam feels he can be impartial then he is absolutely entitled to vote. And I think you can say you live I don't know how many houses down. Were you within the notice area? Because if he was going to recuse himself he should have done it at the beginning. But I think we talked about it at the last meeting.

Boardmember Hayes: That must be right because he was part of the last meeting.

Village Attorney Whitehead: And you had said at that time you felt you could be impartial. Were you within the notice area?

Boardmember Anuszkiewicz: I'm not sure.

Village Attorney Whitehead: I think we checked and you weren't. I think Buddy checked at the last meeting.

Boardmember Anuszkiewicz: I may be right outside of it. I think I would abstain from voting because I do live in this neighborhood and my property is similar to the one that's being considered here. I think that's maybe appropriate for me to abstain, if that's OK.

Chairman Collins: Yes, you can abstain.

Village Attorney Whitehead: Well, yes. You're not supposed to really abstain, but you can.

Chairman Collins: I'm fine with articulating it. If I can have a copy of your code I can go through the five factors.

Village Attorney Whitehead: And I think what's important – because obviously the Board is concerned about precedent – as we discussed before, really focus it on this property and how this property relates to the character of the neighborhood.

Chairman Collins: All right, thanks Linda.

There are five factors the state requires we consider in the review of any variance request, and those five factors are whether ... and I'm just going to go through them one by one and articulate why I ...

Village Attorney Whitehead: Do you want to have a motion on the table and use that to support it?

Chairman Collins: I would actually prefer to state this first just because there may be some healthy discussion or additions to go on top of it, and then we can take a vote based on the rationale.

Village Attorney Whitehead: OK.

Chairman Collins: The first is whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. And I believe it is this board's contention that the combination of the developmental coverage – or the lot coverage, rather – being well within ...

Village Attorney Whitehead: It's developmental.

Chairman Collins: ... developmental coverage, thank you – being well within the code's limits certainly are an indicator that this property will be in keeping with the neighborhood and thereby an undesirable change will *not* occur. It's also the case that in this particular neighborhood the lot width – which is one of the variances that is being requested – that is proposed for these two lots is very much in keeping with the character of the neighborhood.

The second factor is whether the benefits sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance. We did talk about the possibility of one particular alternative, but believe that in so pursuing that alternative it might actually take us back to an undesirable change in the character of the neighborhood by essentially building a very, very large structure on these two lots that would not be keeping with the neighborhood; whether the requested area variance is substantial.

Here, I would look at the ... in this case we're talking about developmental coverage. The applicant has requested a variance that is about 10 percent over the maximum in the code, which is not substantial. And the lot width variance request is not substantial when viewed in the context of the average and the norms for the neighborhood, nearly two-thirds of which are ...

Building Inspector Minozzi: The developmental coverage is only 4.12 percent.

Village Attorney Whitehead: Over.

Chairman Collins: Right, which is a developmental coverage maximum of 35 percent is a little bit more than 10 percent over.

Village Attorney Whitehead: Well, do you know the square footage that it's actually over by? It seems like that's a nice number to give it context. Sorry.

Mr. Petretti: It's about 1,193 square feet over.

Village Attorney Whitehead: On the developmental coverage for existing patio, walkways.

Mr. Petretti: Let me give you the right percentage.

Chairman Collins: We're not having you mic'd here so can you just repeat it?

Village Attorney Whitehead: Yes, I think that's fine. It's a little more than a thousand square feet over the developmental coverage, which is existing patio, walkways, and stairways and walks, I believe.

Chairman Collins: OK. The fourth is whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. It's this board's opinion that the construction of single-family homes in an entirely single-family neighborhood is absolutely in keeping and therefore hard to argue that it will have an adverse event, especially in light of some of the other considerations that I've already discussed.

And then whether the alleged difficulty was self-created, which consideration shall be relevant to the Board of Appeals but shall not necessarily preclude the granting of the area variance. And in this case, that does not apply. Correct?

Village Attorney Whitehead: Yes, this is a result of that code.

Chairman Collins: So for all of those reasons – I'm getting a little bit over my skis, but I'm ...

Boardmember Forbes-Watkins: You're asking for a proposed.

Chairman Collins: Yes, why don't we skip to that stuff. Can I get a motion?

Chairman Collins: Just to piggyback on this, we are, again, tabling the view preservation in spite of what the notice indicates.

On MOTION of Boardmember Forbes-Watkins, SECONDED by Boardmember Dovell with

a voice vote of 4 to 1 (Boardmember Anuskiewicz opposed), the Board resolved to approve Case No. 09-17 for subdivision, creating two lots. Proposed Lot One, with a width of 72.92 feet, and Lot Two with a proposed average width of 74.1 feet, each requiring 100 feet. Therefore, the variance for Lot One is 27.08 feet, or percent, and the variance for Lot Two is 25.99 percent, or feet. Development coverage on Lot Two: Proposed 39.12 percent; Required maximum 35 feet; therefore, the variance is 4.12 percent."

Chairman Collins verbatim: For all reasons stated in my preface.

Chairman Collins: It's four, one abstaining.

Boardmember Forbes-Watkins: Abstain is a negative.

Village Attorney Whitehead: Well, it's not a positive vote so it's 4 to 1.

Chairman Collins: OK, good luck. We'll be seeing you when view preservation comes.

Boardmember Forbes-Watkins: If it comes.

Village Attorney Whitehead: For the record, send Buddy an e-mail correcting that so he can just stick it in the record: 490 feet, not a thousand something.

Chairman Collins: Four-hundred-ninety, yes.

Village Attorney Whitehead: A thousand sounded too high.

APPROVAL OF MINUTES

Meeting of June 22, 2017

Meeting of July 27, 2017

Chairman Collins: Let's do just a quick recap of the minutes. We have two sets of meeting minutes to review. I sent my comments on the June meeting minutes to Buddy. I will note that Planning Board Member Jamie Cameron made an appearance in our minutes so I flagged that and a couple other just minor word mistakes. But as usual, the transcription is pretty accurate.

On MOTION of Boardmember Forbes-Watkins, SECONDED by Boardmember Hayes, with

a voice vote of all in favor the Minutes of the Regular Meeting and Public Hearing of June 22, 2017 were approved as amended.

Chairman Collins: I will be sending my comments on the July meeting minutes.

Village Attorney Whitehead: Do you want to hold July?

Chairman Collins: No, I think we can review them. I have no objection to their contents, but I'd like to send a markup as a separate action to Buddy.

Building Inspector Minozzi: Sure, no problem.

Chairman Collins: David is not going to be issuing a motion on July minutes because he was not in attendance.

On MOTION of Boardmember Hayes, SECONDED by Boardmember Anuszkiewicz, with a voice vote of all in favor (Boardmember Forbes-Watkins abstained) the Minutes of the Regular Meeting and Public Hearing of June 22, 2017 were approved as amended.

Chairman Collins: I'll send you my comments, Buddy.

Building Inspector Minozzi: And David, you did not vote on July

Village Attorney Whitehead: Because he wasn't here.

Chairman Collins: Yes, so it was four-nil on the ...

Boardmember Hayes: He abstained.

ANNOUNCEMENTS

Next Meeting Date – October 26, 2017

ADJOURNMENT

Chairman Collins adjourned the Regular Meeting.