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VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK  
ZONING BOARD OF APPEALS

Held June 26, 2008 at 8:00 p.m., Seven  
Maple Avenue, Hastings-on-Hudson, New York  
10706-1497.

P R E S E N T :

- Brian P. Murphy, Chairman
- Stanley Pycior, Board Member
- David Forbes-Watkins, Board Member
- Ray H. Dovell, Board Member
- Marc A. Leaf, Board Member
  
- Deven Sharma, Building Inspector
- Marianne Stecich, Board Counsel

Nina Purcell, RPR  
Shorthand Reporter

1 Zoning Board of Appeals - 6/26/2008

2 CHAIRMAN MURPHY: Good  
3 evening, everyone. We are here at the June  
4 26, 2008 meeting of the zoning board of  
5 appeals. We have two cases on the agenda  
6 tonight. The first case No. 11-08 which was  
7 adjourned from the last meeting in May, the  
8 application of the Nyemcheks, 15 Wilson Place  
9 for front yard and side yard variances and  
10 also a previous case that had been continued  
11 from our meeting in February, I believe, the  
12 application of Coolidge Hastings, LLC for a  
13 variance for parking spaces minimum width at  
14 555 and 565 Broadway. Mr. Sharma, do we have  
15 all the mailings?

16 MR. SHARMA: Yes, the  
17 mailings were done at the time of the  
18 original time of the meeting.

19 CHAIRMAN MURPHY: All  
20 right. Let's start with the Nyemcheks'  
21 application, if you would.

22 MR. TWYNE: Good evening,  
23 board members. Mr. Nyemchek has been  
24 able to be with us tonight. He wasn't  
25 able to be here before. And in the

1       Zoning Board of Appeals - 6/26/2008  
2       interim the building inspector and I have  
3       also looked at the building to see that it  
4       was built properly and so forth and, I  
5       guess, with respect to the building  
6       inspection. But at the time there were a  
7       couple of items, and the owner has taken  
8       care of those now. The building inspector  
9       wishes to address those, I don't know that  
10      you wish to do that, Mr. Sharma.

11                   MR. SHARMA: Yes, I did send  
12      out a note to the board with the results  
13      of the inspection of the property.

14                   CHAIRMAN MURPHY: Yes. Why  
15      don't I make a record for Mr. Twyne and  
16      Mr. Nyemchek's benefit. Mr. Sharma did at  
17      our request go out to the property and  
18      gave us a memo dated June 19 indicating  
19      essentially that the work for the addition  
20      was in compliance with the codes, although  
21      he did note, I think, that smoke detectors  
22      are probably required. An independent  
23      electrical contractor, licensed  
24      electrician, has to just approve the  
25      electrical work before the C of O would be

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2 granted, is that correct?

3 MR. SHARMA: That is true.

4 Usually the process for legalizing, per  
5 se, illegal construction is we issue a  
6 permit based on the drawings and  
7 inspection of the site and issue a C of O  
8 at the same time, assuming that nothing  
9 has to be done. If something needs to be  
10 done, we hold off on that until the work  
11 that we think needs to be done is done.

12 CHAIRMAN MURPHY: And also  
13 pursuant to the board's request, we had  
14 our tax assessor, Mr. Valar (ph), do a  
15 hypothetical calculation of taxes that may  
16 have been owed since the date of the  
17 construction in 1988. And I think that's  
18 it. Mr. Twyne or Mr. Nyemchek, I don't  
19 know if you have anything else for us  
20 tonight before we proceed.

21 MR. NYEMCHEK: No, not  
22 really.

23 MR. TWYNE: For the owner's  
24 statement, when again I discussed this  
25 with the owner, and he says basically his

1       Zoning Board of Appeals - 6/26/2008  
2       position is that he had Mr. Kerpchar do  
3       the work on the house which he had done  
4       many additions and alterations around the  
5       village. And as a layperson he simply  
6       thought that this -- what was being done  
7       was consistent with requirements of the  
8       village building processes, and he tended  
9       to rely on the contractor for that. And  
10      as far as he knew, he was complying with  
11      the requirements, and there were no  
12      additional things that he thought he  
13      wanted to add.

14             He would -- he says that he is  
15      willing, of course, to satisfy any  
16      conditions you might place on him, you  
17      know, within his responsibilities. But  
18      other than that, he wasn't quite sure how  
19      if he wanted to make any other response.  
20      I'm not quite sure how I can otherwise  
21      provide you with any additional  
22      information. But, of course, Mr. Nyemchek  
23      is someone who was born and raised in the  
24      village and pretty much everyone knows  
25      Mr. Nyemchek. And in addition to

1       Zoning Board of Appeals - 6/26/2008  
2       everything else, I just might also add  
3       that he has been some 30 odd years as one  
4       of the volunteer fire persons here in the  
5       village and has, of course, been employed  
6       with the village. But those are just  
7       other items.

8               But as far as the building, he  
9       tried to make that as -- to meet all the  
10      requirements of the village, and he had  
11      thought he had done as he was required to  
12      do.

13                       CHAIRMAN MURPHY: All  
14      right. Thank you, Mr. Twyne. I'll open  
15      it back up to the board members, if they  
16      have any questions or comments that they'd  
17      like to make.

18                       MR. FORBES-WATKINS: I'd  
19      like to make a comment or three. One,  
20      I've been given to understand that for  
21      failure to file for some 20 odd years, the  
22      total after the fact variance cost is \$50.  
23      That impresses me as being a joke. And I  
24      think that we, Mr. Chairman, I'm going to  
25      make a resolution after this, after we've

1       Zoning Board of Appeals - 6/26/2008  
2       heard our hearings, requesting that the  
3       board of trustees of the village consider  
4       fines and penalties associated with the  
5       kind of thing that happened here, because  
6       it is my understanding that we basically  
7       are sitting here as a village, and we are  
8       going to get 50 bucks and that's it.

9               The taxes for all those years are  
10       not payable. So we've just been taken on  
11       a very long ride as a village. Thank you,  
12       sir. You are not at fault necessarily. I  
13       appreciate that. I'm not a builder. I  
14       wouldn't necessarily know about  
15       requirements for filing for which or  
16       whatever. But I certainly would think  
17       that a Hastings builder who was the  
18       builder in question should have known.  
19       And I think it should be noted that we  
20       have a Hastings builder who thumbed his  
21       nose at the village.

22               Obviously -- I will make one other  
23       comment. Obviously the work that was done  
24       is not sufficient to say it's ruining the  
25       neighborhood or doing any of the other

1       Zoning Board of Appeals - 6/26/2008  
2       things. There is definitely a difficulty  
3       that was self created. But there is  
4       nothing we can do about it, and we can't  
5       even get some recompense, and that makes  
6       me mad. That's all. Thank you.

7                       CHAIRMAN MURPHY: All  
8       right. Stanley, I know you weren't  
9       present.

10                      MR. PYCIOR: I wasn't here.  
11       I read the minutes, and I visited the site  
12       just today. And I've read Deven's  
13       comments. I share David's concerns. As I  
14       read through what we are supposed to  
15       consider in determining a variance, I too  
16       agree that it doesn't really produce an  
17       undesirable change in the character of the  
18       neighborhood. The variance doesn't seem  
19       all that substantial.

20                      But certainly the alleged  
21       difficulty was self created. The  
22       applicant is a village employee or was a  
23       village employee. I would be surprised if  
24       word didn't get out if you build something  
25       substantial in the village, you need a

1       Zoning Board of Appeals - 6/26/2008  
2       building permit and so you would ask your  
3       contractor where is the permit, where is  
4       the C of O. But is that sufficient to ask  
5       someone to tear down a second floor? I  
6       wish too that we could fine contractors,  
7       fine applicants. But tonight I learned  
8       that we cannot even condition the variance  
9       upon the payment of back taxes, if we  
10      pass, if we approve the variance.

11                   CHAIRMAN MURPHY:     Ray?

12                   MR. DOVELL:     Just in  
13      thinking about the original conditions and  
14      responding only to the irregular  
15      configuration of the site and that there  
16      were certainly some issues there that  
17      would lend this to a variance and approval  
18      of a variance, I share some of the other  
19      concerns that the board has mentioned  
20      about the history of this and the  
21      inability of the town to do anything about  
22      it. But given the actual configuration  
23      and what is being asked for in the  
24      variance in the abstract, taking into  
25      account the neighborhood character, it

1 Zoning Board of Appeals - 6/26/2008  
2 doesn't seem to be -- the original work  
3 does not seem out of character.

4 MR. TWYNE: That's correct.  
5 It was done within, you know, the basic  
6 character of the surroundings, I believe,  
7 and well done. The building was well put  
8 together. But that's all I can contribute  
9 to that.

10 CHAIRMAN MURPHY: Marc, do  
11 you wish to comment?

12 MR. LEAF: I have nothing to  
13 add.

14 CHAIRMAN MURPHY:  
15 Mr. Nyemchek, I think you've heard the  
16 board. Look, if a building permit had  
17 been applied for, it would all be fine and  
18 no one would have any problem.

19 MR. NYEMCHEK: I understand  
20 that very well.

21 CHAIRMAN MURPHY: You can  
22 understand the board who is trying to do  
23 right by the whole community, we really do  
24 work hard to take care of the people in  
25 the village and make sure they get their

1       Zoning Board of Appeals - 6/26/2008  
2       variances when appropriate. It is not a  
3       difficult board. You can see how we are  
4       concerned when the process is not  
5       followed. So that is what you are hearing  
6       from the board.

7               I agree with the board members.  
8       The work is fine, subject to the  
9       appropriate certifications being obtained  
10      from an electrician. I certainly share  
11      the concern that -- you know, that the  
12      rules weren't followed at the time of the  
13      building permit.

14               MR. NYEMCHEK: Did you say  
15      about the electrician, the electrician  
16      guy, pardon me, the electrician was Walter  
17      DeSousa, a reputable guy in the village  
18      before he died. He done my house, not  
19      that Kerpchar, not the contractor. That  
20      was done by a local electrician, and he  
21      was a very good electrician in Hastings.

22               CHAIRMAN MURPHY: That's  
23      fine, Mr. Nyemchek.

24               MR. NYEMCHEK: I just want  
25      you to know that you wouldn't think I got

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2 somebody that wasn't licensed.

3 CHAIRMAN MURPHY: No, no.

4 Just so you understand, though, right now

5 you need an electrician to approve the

6 work, a licensed electrician to come in

7 and approve the work.

8 MR. NYEMCHEK: Oh, I

9 understand. Okay. I misunderstood what

10 you mean.

11 CHAIRMAN MURPHY: That's

12 all I'm saying.

13 MR. NYEMCHEK: Right.

14 CHAIRMAN MURPHY: So the

15 board -- you know, our hands are tied.

16 It's otherwise an appropriate variance in

17 my opinion. It is in keeping with the

18 character of the neighborhood. The

19 reasons were to expand the bedrooms for a

20 growing family at the time. Those are all

21 reasons we've relied on in the past for

22 granting variances like this.

23 But, you know, it is not an

24 insignificant -- mistakes get made

25 sometimes. Small things happen. This is

1 Zoning Board of Appeals - 6/26/2008  
2 not such a small thing. So it seems odd  
3 that a building permit wasn't obtained and  
4 provided.

5 MR. NYEMCHEK: Right.

6 CHAIRMAN MURPHY: If you  
7 could bear that in mind, the fact is the  
8 village was entitled to those taxes for an  
9 increased space, and that's not  
10 insignificant. So I wish you would keep  
11 that in mind. And I guess that is all I  
12 have to say. I think we've had our chance  
13 to express ourselves. So if I could have  
14 a motion from one of the board members for  
15 the variance.

16 MR. LEAF: I'll move that we  
17 approve the variance for a second story  
18 addition at 15 Wilson Place. The variance  
19 requires two area variances in the front  
20 yard, existing 14.8 feet proposed 13.2  
21 feet. And on the side yard the combined  
22 requirement is 20 feet, and there would be  
23 only 18.14 feet.

24 CHAIRMAN MURPHY: All  
25 right. Do I have a second?

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2 MR. PYCIOR: I'll second.

3 CHAIRMAN MURPHY: All in  
4 favor? Aye.

5 MR. LEAF: Aye.

6 MR. DOVELL: Aye.

7 MR. PYCIOR: Aye.

8 MR. FORBES-WATKINS: Record  
9 me as not voting.

10 CHAIRMAN MURPHY:  
11 Mr. Forbes-Watkins has abstained from  
12 voting.

13 MR. TWYNE: Thank you very  
14 much.

15 MS. STECICH: Deven, you  
16 are requiring the new building permit fee,  
17 right?

18 MR. SHARMA: Excuse me?

19 MS. STECICH: They are going  
20 to have to pay a building permit fee?

21 MR. SHARMA: Yes.

22 MS. STECICH: That wasn't  
23 so obvious from your comments.

24 MR. SHARMA: Yes, there is  
25 always a building permit fee.

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2 CHAIRMAN MURPHY: Our second  
3 case is 555-565 Broadway, request for a  
4 variance with a minimum width for parking  
5 spaces.

6 MR. NYEMCHEK: Thank you  
7 very much.

8 CHAIRMAN MURPHY: Have a  
9 good evening. Yes, sir.

10 MR. WHITELAW: Andrew  
11 Whitelaw, Whitelaw Architects. We  
12 appeared before you back in February with  
13 a slightly different parking plan.  
14 Tonight we've reduced it to a total of 15  
15 additional parking spaces. We just  
16 received an approval from the planning  
17 board. And we are seeking your approval  
18 on the reduction of 9 feet to 8 foot 6.  
19 That's it.

20 CHAIRMAN MURPHY: Could you  
21 remind us, sir, what the differences or  
22 changes that you made from when you  
23 presented it in February just to refresh  
24 our recollection, please?

25 MR. WHITELAW: The

1       Zoning Board of Appeals - 6/26/2008  
2       configuration was a little different.  
3       There was a few more parking spaces. It  
4       was 18 or 19. I don't remember the exact  
5       number. We were going with 90 degree  
6       parking, and we've changed it now, since  
7       it is one-way traffic. We changed it to  
8       diagonal parking, in an effort to make it  
9       worthwhile for the owners to get spaces in  
10      there. But all the existing spaces are 8  
11      feet now. So we feel 8 foot 6 is more  
12      than adequate for this complex, as far as  
13      their needs, private apartment complex.  
14      We provided a handicapped stall on the  
15      end. We provided lighting.

16                   MR. PYCIOR: Mr. Whitelaw,  
17      originally you were also proposing spaces  
18      elsewhere on the property?

19                   MR. WHITELAW: We did, yes.  
20      We dropped that, in the back.

21                   CHAIRMAN MURPHY: So the  
22      net, I think you were asking for 8 foot  
23      minimum last time?

24                   MR. WHITELAW: Yes. We  
25      were asking for 8 feet. We tried nine,

1       Zoning Board of Appeals - 6/26/2008  
2       but we ran into some other setback issues  
3       and lost even more spaces. So we said  
4       let's go to 8 foot 6 and tried to come to  
5       a compromise. I think this plan really  
6       works the best.

7                       MR. DOVELL: Is all the  
8       paving new paving now?

9                       MR. WHITELAW: The paving  
10       from this side of the line is the existing  
11       roadway, so this here is the new paving  
12       here.

13                      MR. DOVELL: The existing  
14       paving is being resurfaced or --

15                      MR. WHITELAW: Yes. They  
16       will have to take that up to pitch it to  
17       the catch basin, regrade.

18                      MR. SHARMA: You also  
19       changed the width from 8 foot to 8 foot 6  
20       inches now.

21                      MR. WHITELAW: Right,  
22       right. So since the last meeting it went  
23       from 8 to 8 foot 6, right.

24                      CHAIRMAN MURPHY: So the  
25       width of the new paving is approximately

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2 16 feet or --

3 MR. WHITELAW: Well, the  
4 stall measured along the short distance,  
5 the angle distance here coming out this  
6 way, the length of it is 18.4 feet.

7 CHAIRMAN MURPHY: There is  
8 a net increase then of, I guess, 15  
9 parking spaces now.

10 MR. WHITELAW: Yes, we are  
11 talking some parking along that roadway  
12 now. It is a net of 15.

13 CHAIRMAN MURPHY: All right.  
14 The board members recall there was some  
15 discussion about trying to balance the  
16 need for getting the cars off the street  
17 and into the parking area around the  
18 building which is a useful thing. On the  
19 other hand, there was some concern that at  
20 least the 8 foot width was so narrow that  
21 it might be counter productive. So I take  
22 it that the applicant has gone back to the  
23 planning board a couple of times since  
24 then.

25 MR. WHITELAW: Yes, we had

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2 a couple of meetings, yes.

3 CHAIRMAN MURPHY: Marianne,  
4 I guess the planning board, do they have a  
5 recommendation?

6 MS. STECICH: Yes. The  
7 planning board recommended the variance  
8 for the width of the stalls at 8 and a  
9 half feet and also if they needed a  
10 variance for the length of the stalls, now  
11 this is -- and this is still a concern. I  
12 don't think it is so clear. The line --  
13 and, Deven, I don't know whether you  
14 measured these, how you measured the 18  
15 feet when it is a diagonal parking space,  
16 because the truth is a car doesn't have a  
17 diagonal front. So it is not really 18  
18 feet. And I think -- I thought the board  
19 had asked for drawings to show what the  
20 real depth of each parking space is.

21 MR. WHITELOW: I did. I  
22 labeled it as 18.4. That's the line along  
23 the diagonal. But yes, a car isn't --

24 MR. SHARMA: Andrew and I  
25 spoke this morning when he brought in his

1       Zoning Board of Appeals - 6/26/2008  
2       plans. He is only asking for a variance  
3       for the width of the stall, not the  
4       length. If he doesn't get that variance  
5       and the question is he didn't get it, I  
6       will make sure that it can be a rectangle  
7       of a percentage of width and 18 feet, so  
8       so many can be placed side-by-side with  
9       adequate maneuvering space.

10                   MS. STECICH: But you know  
11       what, it is pretty clear that it can't. I  
12       mean, if it is 18 at an angle, I think  
13       you're probably a lot better off at least  
14       a foot when you straighten it out. I  
15       mean, I can do -- maybe I can do --

16                   MR. SHARMA: What I'm saying  
17       is we need to make minor modifications to  
18       the plans.

19                   MS. STECICH: If you can  
20       make the plan alternatively, if that in  
21       fact is the case and the board is disposed  
22       to giving the variance for that, it can,  
23       rather than him coming back. And that was  
24       what -- that was why the planning board  
25       recommended both variances. But I see

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2 what Deven is saying.

3 MR. SHARMA: As we discussed  
4 earlier today, he is now requesting in  
5 order to do what you and I think needs to  
6 be done, we will not alter the plans so  
7 much that he needs to come back to the  
8 zoning board. It can be accomplished. I  
9 just have to make sure that he has a  
10 permit, that that variance is not taken  
11 for granted. It is still 18 feet by 8  
12 feet 6 inches wide.

13 MR. FORBES-WATKINS: Is the  
14 maneuvering row, the maneuvering aisle, 25  
15 feet?

16 MR. SHARMA: For angled  
17 parking, it can be less. I think it says  
18 in the code as well.

19 MR. WHITELAW: You need a  
20 lot less maneuvering space, because you  
21 are already at an angle. So you only have  
22 120 degrees to come out versus 180  
23 degrees. So you need less space to move  
24 in and out.

25 MR. DOVELL: It is also one-

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2 way traffic.

3 MR. WHITELAW: Yes.

4 CHAIRMAN MURPHY: I think  
5 that makes a real difference in the  
6 accessibility.

7 MR. WHITELAW: Right.

8 CHAIRMAN MURPHY: But to  
9 answer Mr. Forbe's question, is it 24  
10 feet?

11 MR. WHITELAW: It is 24. I  
12 believe the 25 is related specifically to  
13 90 degree parking.

14 MR. FORBES-WATKINS: It is  
15 the requirement in paragraph 295-29, size  
16 of parking spaces.

17 MS. STECICH: Right. Except  
18 that it says between slots should be 25  
19 feet except in an area with angled parking  
20 spaces. The planning board may approve a  
21 lesser width, provided it is adequate and  
22 appropriate. So in approving the site  
23 plan last week, they did recognize that it  
24 was not 25 feet wide, and they approved  
25 it.

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2 MR. FORBES-WATKINS: I have  
3 one more question. The fact that you are  
4 not doing anything in the other half of  
5 the area that had originally been  
6 proposed, you are leaving then the spaces  
7 exactly the way they were diagrammed on  
8 the original drawing?

9 MR. WHITELOW: That's the  
10 way they painted them.

11 MR. FORBES-WATKINS: They  
12 are going to stay that way, because you  
13 originally asked for changes on the entire  
14 parking lot. I want to make certain that  
15 we are talking about only now a question  
16 of approval for this one half.

17 MR. WHITELOW: Correct.  
18 Just this area.

19 MR. LEAF: What is the  
20 widths of the existing parking spaces on  
21 the other side of the parking lot?

22 MR. WHITELOW: 8 feet.  
23 They are all 8 feet. They are not all. I  
24 spot checked them in a couple different  
25 areas. They were 8 feet.

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2 MR. LEAF: I recognize the  
3 variance is being requested for those  
4 slots on the other side of the driveway.  
5 Is one necessary, since we are working on  
6 the driveway as a whole? Once you begin  
7 to change the driveway, can the existing  
8 nonconforming spaces continue without a  
9 variance?

10 MS. STECICH: Yes, he is  
11 not doing work on it.

12 MR. LEAF: So the question  
13 is to whether you work on a specific  
14 space, as opposed to working on the  
15 driveway or the parking lot?

16 MS. STECICH: Yes,  
17 especially since it is sort of, you know,  
18 divided. It is not they are taking this  
19 driveway and redoing it, a little bit of  
20 it. You know, but the thing is you are  
21 right in the sense once you start doing  
22 the work, you should bring everything up  
23 to conformity. But there is no way to  
24 bring it all up to conformity with  
25 increasing the spaces. So I think Deven

1 Zoning Board of Appeals - 6/26/2008  
2 and I decided, you know, fairly early on  
3 that it doesn't make sense to have to try  
4 to come in to conformity or get variances  
5 for the prior parking lot region.

6 CHAIRMAN MURPHY: Just to  
7 be clear, we would be voting on variances  
8 for the parking spaces on Mr. Whitelaw's  
9 drawing dated June 20, 2008, drawing  
10 No. A-1 which is, I guess, the northern  
11 side of the parking area off Broadway.

12 MR. WHITELAW: Northeastern  
13 corner. Right.

14 CHAIRMAN MURPHY: Okay.  
15 Anyone else on the board have questions or  
16 comments they would like to make?

17 MR. DOVELL: In this current  
18 layout which is quite a change from the  
19 one we saw last time, you feel you would  
20 have -- that getting, using the nine foot  
21 standard, you would not be able to make  
22 this count?

23 MR. WHITELAW: It is just a  
24 matter of losing yet more spaces.

25 MR. DOVELL: You are showing

1       Zoning Board of Appeals - 6/26/2008  
2       22 spaces in this lot. By going to nine,  
3       how many spaces would you lose?

4                   MR. WHITELAW: We lose two  
5       or three.

6                   MR. DOVELL: Okay.

7                   CHAIRMAN MURPHY: Stanley,  
8       do you have any questions?

9                   MR. PYCIOR: No.

10                  CHAIRMAN MURPHY: David?

11                  MR. FORBES-WATKINS: No.

12                  CHAIRMAN MURPHY: Okay. I  
13       guess anyone from the audience wish to  
14       speak on this? Hearing nothing, I think  
15       we can take a vote. Anyone wish to make a  
16       motion?

17                  MR. FORBES-WATKINS: I'll  
18       move to approve the variance on the size  
19       of the parking area spaces, parking  
20       spaces, to be set at 8 and a half feet  
21       rather than required 9 for the location of  
22       555-565 Broadway.

23                  CHAIRMAN MURPHY: Do I have  
24       a second?

25                  MR. DOVELL: I second.

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2 CHAIRMAN MURPHY: All in  
3 favor?

4 MR. DOVELL: Aye.

5 MR. LEAF: Aye.

6 CHAIRMAN MURPHY: Aye.

7 MR. PYCIOR: Aye.

8 MR. FORBES-WATKINS: Aye.

9 CHAIRMAN MURPHY:

10 Mr. Whitelaw, thank you. Okay. That  
11 concludes our cases for this evening.

12 We do have to vote on the minutes  
13 from May's meeting, those of us who were  
14 here. Nina, you have one minor correction  
15 on page 28, line 16 and 17. Just says --  
16 it should read I think what the board  
17 would like to do is defer this  
18 application, rather than further the  
19 application. Other than that, if no one  
20 else has any changes, just a motion to  
21 approve the minutes from the May 22  
22 meeting.

23 MR. FORBES-WATKINS: So  
24 move.

25 CHAIRMAN MURPHY: I'll

1 Zoning Board of Appeals - 6/26/2008

2 second it. All in favor?

3 MR. DOVELL: Aye.

4 MR. LEAF: Aye.

5 MR. FORBES-WATKINS: Aye.

6 MR. PYCIOR: Aye.

7 MR. FORBES-WATKINS: I would  
8 like to suggest that the zoning board  
9 would like to bring to the attention of  
10 the board of trustees the situation that  
11 developed here. Obviously this was a  
12 particularly, I hope -- I shouldn't say I  
13 hope -- it was a particularly unusual case  
14 with the number of years involved, et  
15 cetera.

16 But somehow the village needs to  
17 have some protection for itself and for  
18 its revenues, if this turns out to be an  
19 issue that we run across with some  
20 frequency. And frankly seeing a \$50  
21 filing fee for a late filing, you know, if  
22 that's for two weeks late or two months  
23 late, that sounds fine. But for 25 years  
24 late, that is so absurd as to be beyond  
25 belief.

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2 Therefore, I recommend or propose  
3 that the zoning board request for the  
4 trustees to look at the issues related to  
5 late fees for permits and consider what  
6 possible fines and fees would be  
7 appropriate.

8 MS. STECICH: I just want  
9 to share just one thing and just to the  
10 ridiculousness of the \$50, it wasn't  
11 originally. Remember at the last meeting  
12 I said that I know there was something --  
13 I know there was something, and it was  
14 never in the fee schedule. But I made  
15 Susan go back through the minutes. I  
16 think it was about -- I don't know why I  
17 remember it -- I think it was 18 years  
18 ago. It was exactly 18 years ago that  
19 they had voted on it. And at the time I  
20 forget if it was \$250, an extra \$250,  
21 extra \$500. I mean, that still may not be  
22 enough, but it was a substantial amount  
23 more.

24 But what happened was the rest of  
25 the permit fees went up, so the building

1       Zoning Board of Appeals - 6/26/2008  
2       permit -- no, the variance fee went up,  
3       but it never did because it never got into  
4       the fee schedule because it wasn't  
5       enacted. So it wasn't enacted in the new  
6       fee schedule. But there was a bigger  
7       differential. What is the fee for a  
8       variance now, Deven?

9                       MR. SHARMA: The current fee  
10       is \$200 for one or two-family dwelling.

11                      MS. STECICH: So maybe it  
12       was 50, 250. I think it was 50 and then  
13       this was 250.

14                      MR. SHARMA: Yeah.

15                      MS. STECICH: But then what  
16       happened, that went up to 200, and that  
17       one never went up at all. So I'm still  
18       not saying that that did not, but it does  
19       account -- I know the \$50 seems silly. 18  
20       years ago it didn't seem so silly.

21                      MR. SHARMA: I know in Dobbs  
22       Ferry they do have a building permit fee  
23       50 percent or more for legalizing illegal  
24       constructions. And we are -- I'm working  
25       on a fee schedule to include that kind of

1 Zoning Board of Appeals - 6/26/2008  
2 compensation for a new permit as opposed  
3 to a permit more --

4 MS. STECICH: Building  
5 permit fee, not a flat amount. It is  
6 based on the cost of construction.

7 MR. SHARMA: It is one  
8 percent of the construction.

9 MS. STECICH: One percent  
10 of the construction cost, so you are not  
11 talking about nickels and dimes.

12 CHAIRMAN MURPHY: What  
13 would the mechanism be to just giving him  
14 the fee schedule or get a new schedule?

15 MS. STECICH: The board of  
16 trustees would have to do that. But what  
17 I could do is write a memo to the board of  
18 trustees from the zoning board  
19 recommending that they, if you like  
20 Deven's proposal, I would recommend, if  
21 you would agree that the zoning permit fee  
22 should be 50 percent greater, that's 50  
23 percent greater for legalizing already  
24 constructed. So whatever --

25 MR. SHARMA: I have prepared

1       Zoning Board of Appeals - 6/26/2008  
2       a draft of all the fee schedules for many  
3       different things, including  
4       re-inspections, partial inspections. So  
5       right now, for example, we have a pile of  
6       plans that have been reviewed. They never  
7       come back with a permit. We spent all the  
8       time for nothing. So I'm going to do an  
9       application fee for that process as well.

10               I do have a schedule which I've  
11       been planning to send to the board of  
12       trustees for review and work on it and  
13       approve. And I think -- I don't remember  
14       doing anything with the variance fee, but  
15       we will include that also.

16               MS. STECICH: The variance  
17       fee isn't as significant probably as the  
18       building permit, increasing the building  
19       permit, right?

20               MR. SHARMA: The building  
21       permit fee is rather substantial as  
22       compared to the variance fees, the zoning  
23       board application fees. But you can  
24       understand, that's probably why at one  
25       time we did add \$50. It is more than what

1       Zoning Board of Appeals - 6/26/2008  
2       it is for a regular variance application.  
3       So if the board thinks it should be more  
4       than \$50, it is a percentage of the  
5       construction, we can do it that way.

6                       MR. FORBES-WATKINS:   The  
7       thing that bothers me is not a high fee  
8       for a variance; it is for somebody who has  
9       clearly avoided coming before us for a  
10      variance, and that should be a fine, which  
11      could be substantial.  I don't know how  
12      much.  It certainly is worth considering.

13                     I mean, we've -- the town, the  
14      village and the town have lost thousands  
15      of dollars of taxes in this particular  
16      case.  If it would have been 3,000 to  
17      \$4,000 for the village, how much would the  
18      town have gotten, how much for the school  
19      board?  \$15,000 total, 12,000, somewhere  
20      in that neighborhood.  And we are talking  
21      about a \$50 difference.  It is just  
22      absurd.

23                     CHAIRMAN MURPHY:   Well,  
24      fortunately at least in our experience it  
25      has been a rare event.

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2 MR. FORBES-WATKINS: 18

3 years.

4 CHAIRMAN MURPHY: But I  
5 think the notion of a fine would have to  
6 be taken up by the board of trustees. All  
7 I would recommend at least from the zoning  
8 board for at least an area variance where  
9 you are coming before the board to correct  
10 an illegal construction like this case,  
11 why can't we just increase the fee, double  
12 the fee. Is it 200; make it 400. And  
13 that's about all we can do.

14 MR. FORBES-WATKINS: That's  
15 why I think we should make the suggestion  
16 to the board of trustees look at this and  
17 consider fines.

18 MR. DOVELL: What you are  
19 proposing, Deven, is also increasing a  
20 refiling fee to double what the original  
21 filing fee was? Is that what I  
22 understand?

23 MR. SHARMA: I think double  
24 it. I think I included 50 percent of it  
25 now. Again, that is only a proposal based

1       Zoning Board of Appeals - 6/26/2008  
2       on what I saw happening in some of the  
3       other inspections. That was an area of  
4       concern in illegal construction or  
5       whatever. Taking the benefit of a doubt,  
6       you can't decide whether it was  
7       intentional. In some cases it could be  
8       totally inadvertent. Sometimes people  
9       really don't know. They get misled by the  
10      contractor.

11                   MR. DOVELL: But the  
12      contractors in the town have to be  
13      licensed contractors. They have an  
14      obligation to understand that.

15                   MR. SHARMA: It becomes a  
16      case of judgment. Who is going to pass  
17      the judgment that there was menace  
18      intended, there was an intentional act of  
19      deceiving the village in some way? How do  
20      you prove that? The contractor may come  
21      by and say I didn't know at the time.

22                   MR. FORBES-WATKINS: But  
23      most law, and I'm not a lawyer, but I'm  
24      sufficiently aware that most laws if you  
25      break them, you don't have the defense

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2 that I didn't know them.

3 MR. SHARMA: That, again --

4 CHAIRMAN MURPHY: All  
5 right. I think we've had our say. But I  
6 think it would be worth, Marianne, for at  
7 least for the area variance doubling the  
8 fee for correction of an illegal  
9 construction.

10 MS. STECICH: We can go to  
11 the board.

12 CHAIRMAN MURPHY: Does that  
13 make sense to everybody? I think that is  
14 something we can do that makes some sense.  
15 Shall we take a vote on that proposal?

16 MS. STECICH: Yes. And if  
17 we do, yes, I'll write up for the board of  
18 trustees.

19 CHAIRMAN MURPHY: Do we need  
20 a formal motion for this or just as I  
21 stated it?

22 MS. STECICH: What you  
23 stated is fine.

24 CHAIRMAN MURPHY: Are the  
25 board members in favor of that proposal?

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2 Yes. Show of hands unanimous.

3 MS. STECICH: Okay. I'll  
4 send something.

5 CHAIRMAN MURPHY: Our next  
6 meeting, I guess, is we have one more  
7 meeting before the summer break. It will  
8 be July 24. The next meeting will be July  
9 24. And then I think we had agreed last  
10 meeting to have September 11 as the post  
11 summer meeting. Do I have a motion to  
12 adjourn tonight's meeting?

13 MR. FORBES-WATKINS: So  
14 moved.

15 CHAIRMAN MURPHY: Anybody  
16 second?

17 MR. LEAF: I second.

18 CHAIRMAN MURPHY: All in  
19 favor?

20 MR. DOVELL: Aye.

21 MR. LEAF: Aye.

22 CHAIRMAN MURPHY: Aye.

23 MR. PYCIOR: Aye.

24 MR. FORBES-WATKINS: Aye.

25 CHAIRMAN MURPHY: The

1 Zoning Board of Appeals - 6/26/2008

2 meeting is adjourned.

3 (Hearing adjourned at 8:50 p.m.)

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1

2 STATE OF NEW YORK )

3 ) ss

4 COUNTY OF WESTCHESTER )

5

6

7 I, Nina Purcell, Notary Public within and  
8 for the State of New York, do hereby certify:

9

10 That I reported the proceedings in the  
11 within entitled matter, and that the within  
12 transcript is a true record of said  
13 proceedings.

14

15 I further certify that I am not  
16 related to any of the parties to the action by  
17 blood or marriage, and that I am in no way  
18 interested in the outcome of this matter.

19

20 IN WITNESS WHEREOF, I have hereunto  
21 set my hand this 7th day of July, 2009.

22

23 NINA PURCELL,  
24 NOTARY PUBLIC

24

25

