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

Held July 24, 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

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1 Zoning Board of Appeals - 7/24/2008

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3 CHAIRMAN MURPHY: Good

4 evening, everyone. We will call to order

5 our Thursday, July 24 meeting of the

6 Hastings Zoning Board of Appeals. We have

7 four cases on our agenda tonight, the

8 first Case No. 14-08, Ann Mackey and David

9 Makulec; second case 15-08, Judith McHale

10 and Michael O'Halloran; third case

11 No. 16-08, Peter and Andrea Rockland, and

12 our last case No. 17-08, the Newington-

13 Cropsy Foundation.

14 MR. SHARMA: We need to make

15 a change to the agenda. Case No. 1, we

16 discovered earlier today we made a mistake

17 in noticing it. They do need another

18 variance, front yard variance as well, in

19 addition to the rear yard variance. And

20 we are bringing in the applicant and the

21 architects, and we were mistaken. And we

22 are going to set it up and set up another

23 notice and forward it to you.

24 CHAIRMAN MURPHY: So we

25 will simply defer our first case then for

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1 Zoning Board of Appeals - 7/24/2008

2 in Dobbs Ferry. And I'm happy to be here

3 with the application of the McHale and

4 O'Hallorans, first of all, for an

5 interpretation of the accessory use that

6 we are proposing for the carriage house.

7 The building in question here is a

8 carriage house which is probably late

9 1900's, early 20th Century, a great

10 building which has been sitting basically

11 unused during the last couple of

12 occupancies, but the O'Hallorans would

13 like to rehabilitate it into a recreation

14 pavilion and possible future pool house.

15 It is -- the pool side is right next to

16 this building, but an outdoor venue, as it

17 were, in place of a finished basement for

18 kids, grandchildren, and so on to use as a

19 kind of garden house. It would have a

20 sink. It would have a shower and a

21 toilet. And it would have an under

22 counter fridge as a bar. It would have a

23 place for a billiard table or such uses

24 and support outdoor uses on a very large

25 lot. And we believe that that use is

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1 Zoning Board of Appeals - 7/24/2008

2 Ann Mackey and David Makulec, 60

3 Dorchester Avenue, until the next meeting,

4 to do a proper notice and add the required

5 variance for front yard setback.

6 Before we move to our next case,

7 did anyone come here tonight who wishes to

8 be heard on the first application for Ann

9 Mackey and David Makulec at 60 Dorchester?

10 If anyone came tonight, I'd be happy to

11 take your comments. Seeing none, we will

12 move on to our next case. Mr. Chairman,

13 are the other mailings in order for the

14 remainder of our cases?

15 MR. SHARMA: I didn't know I

16 was the chairman.

17 CHAIRMAN MURPHY: Sorry.

18 MR. SHARMA: Yes. All the

19 mailings are in order.

20 CHAIRMAN MURPHY: Okay. Our

21 next case then for Judith McHale and

22 Michael O'Halloran, 255 Broadway.

23 MR. TILLY: Good evening,

24 Chairman, members of the board. My name

25 is Steve Tilly, Stephen Tilly Architects

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1 Zoning Board of Appeals - 7/24/2008

2 consistent with the permitted accessory

3 uses which from the -- in the R-10

4 district, which is what would apply here,

5 which would be garden house, toolhouse,

6 playhouse, greenhouse or similar occupancy

7 use customarily incident to the permitted

8 principal uses of the premises and not

9 operated for profit.

10 Clearly this is not being operated

11 for profit. We believe the uses are

12 incidental to the permitted principal uses

13 and that they are of a similar occupancy

14 to the garden house, playhouse,

15 greenhouse, et cetera. So we feel that

16 the use that is intended and the use which

17 we are -- which they are proposing fits

18 that category. And so that's the first --

19 the threshold question about that use for

20 your consideration.

21 CHAIRMAN MURPHY: Yes. Why

22 don't we take that issue first, because I

23 think that's the important one to try to

24 work around and basically get the feeling

25 of the board members. We actually for

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1 Zoning Board of Appeals - 7/24/2008
 2 some of the board members who may be
 3 newer, we had an application not unlike
 4 this several years ago for a similar
 5 property. It is a very -- I note it is a
 6 very large and unique property. It
 7 probably has some historic significance in
 8 terms of the building.
 9 MR. TILLY: It's part of the
 10 draper kind of enclave that heads down
 11 Broadway.
 12 CHAIRMAN MURPHY: It is
 13 west of Broadway between Broadway and the
 14 river, right?
 15 MR. TILLY: Correct.
 16 CHAIRMAN MURPHY: On the
 17 application it notes the lot area where
 18 10,000 square feet is permitted, this lot
 19 is 94,000 square feet. And the current
 20 existing structures take up less than 4
 21 percent of the existing lot area when 25
 22 percent is permitted. So that is just to
 23 create some context for the type of lot
 24 you are talking about.
 25 The question of accessory use, we

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1 Zoning Board of Appeals - 7/24/2008
 2 colleague, Stephanie Reinert, describe the
 3 dimensions of the building. The -- if you
 4 have been there -- well, you can -- why
 5 don't you come to the microphone.
 6 MS. REINERT: The building
 7 is about 38 feet by 18 feet, one and a
 8 half story wood frame. And between both
 9 stories, one and a half, it's got 957
 10 square feet. There is a little area up on
 11 the second floor which has headroom, and I
 12 would -- do you want to see the plans that
 13 go with it?
 14 CHAIRMAN MURPHY: Sure.
 15 That is the existing square footage?
 16 MS. REINERT: The existing,
 17 yes, which this is actually a demo plan.
 18 So the first floor is sort of there is a
 19 long sliding door with open sort of garage
 20 base. The back there had once been a
 21 stall. It still looks like a stall, and
 22 there's some shipladder stairs to the
 23 second room which is really just an open
 24 lot.
 25 MR. TILLY: We are not

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1 Zoning Board of Appeals - 7/24/2008
 2 had a similar, as I say, application a few
 3 years ago. We never actually resolved it
 4 formally, I don't believe, because the --
 5 Marianne, of course, was here then too.
 6 We had the same question of what type of
 7 use would be permitted under the accessory
 8 use provision of the code.
 9 MS. STECICH: The reason it
 10 didn't get resolved is they also -- it was
 11 really important to the application, this
 12 height variance, because they were trying
 13 to build a 41 foot building, and the board
 14 didn't give them the height variance. So
 15 then it never got to the other question.
 16 They sort of did it in the reverse. He
 17 dealt with the height before he dealt with
 18 the use, so that was never resolved.
 19 CHAIRMAN MURPHY:
 20 Mr. Tilly, can you tell us a little bit
 21 about the size of the proposed structure
 22 as it exists now and as it is planned to
 23 be renovated into the pool house/
 24 recreation area?
 25 MR. TILLY: I'll let my

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1 Zoning Board of Appeals - 7/24/2008
 2 making the building larger in any way.
 3 The footprint is the footprint.
 4 CHAIRMAN MURPHY: Okay. And
 5 how high would you like to go or is the
 6 proposal?
 7 MS. REINERT: Well, the
 8 proposal, the existing height of the
 9 building to the ridge of the roof, it
 10 is -- it's a gable roof.
 11 CHAIRMAN MURPHY: It is
 12 listed at 21 feet 11 in our --
 13 MS. REINERT: We'd like the
 14 dormer on the west side to go up to about
 15 19 foot 4. So it is not higher than the
 16 ridge of the roof.
 17 MR. TILLY: This is a dormer
 18 which would face the river really not
 19 visible from any other property and tucked
 20 into the roof. So it is not increasing
 21 the height of the building. It is simply
 22 a little shed.
 23 MR. PYCIOR: Mr. Tilly or
 24 Mr. Reinert, I notice on drawing A 191,
 25 which is the previous one, that it

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1 Zoning Board of Appeals - 7/24/2008
 2 indicates that there will be a sink and I
 3 see a countertop. Mr. Tilly mentioned a
 4 refrigerator. Might there also be a
 5 microwave or a cooktop? I'm just thinking
 6 that people have snacks usually in
 7 recreational areas.

8 MR. TILLY: No cooking
 9 facilities. Right. Drinking, bags of
 10 potato chips, things like that. I might
 11 add, our experience in both interpreting
 12 and drafting zoning codes with respect to
 13 accessory buildings and in other
 14 municipalities is that pool houses with
 15 this kind of -- or accessory buildings are
 16 considered an incidental use to a
 17 residential -- primary residential use.

18 We have done a number of pool
 19 houses in other municipalities, and the
 20 language is very similar to the slang in
 21 the sense of those -- those cookie cutter
 22 1940s and 1950s codes that one finds.

23 MR. PYCIOR: Mr. Tilly,
 24 there is no pool. We are asked to approve
 25 a pool house before a pool?

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1 Zoning Board of Appeals - 7/24/2008
 2 running water, that kind of thing. I
 3 mean, the way that our code is written, in
 4 any event, it talks about garden houses,
 5 toolhouses, playhouses, greenhouses or
 6 "similar occupancy incidental to the
 7 permitted uses." So then it raises the
 8 question of what exactly is the use going
 9 to be and why is there a need for bathroom
 10 facilities, running water, et cetera, if
 11 there is no pool.

12 MR. TILLY: Well, if you are
 13 out and either gardening or playing out in
 14 the yard, it is a big yard, and you want
 15 to have a -- you know, or you are playing
 16 billiards on the billiard table on the
 17 ground floor, having a bathroom there and
 18 building that in for future pool
 19 construction, it just makes an awful lot
 20 of sense. I mean, it's very -- garden
 21 houses in my experience have been -- I
 22 mean, there are showers and restrooms that
 23 are used -- you want to use. If you are
 24 out getting really dirty, you don't want
 25 to run all the way into the house into the

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1 Zoning Board of Appeals - 7/24/2008
 2 MR. TILLY: No. I'm saying
 3 this is -- this kind of accessory building
 4 is -- if there were a pool, this is -- we
 5 are designing it so if a pool is developed
 6 in the future, this would be a supporting
 7 facility. But there is a very large
 8 garden. This is out in -- right in the
 9 yard, as opposed to the house sits back
 10 where the basement as of now is
 11 unfinished. So this space is really a
 12 garden/recreation space and would be
 13 developed as a part -- as supportive use
 14 to the pool house.

15 But that use regardless of whether
 16 there is a pool or not is consistently
 17 permitted and interpreted as a permitted
 18 accessory use with the same slang in other
 19 municipalities. I'm just offering that
 20 up.

21 CHAIRMAN MURPHY: Well, I
 22 think the issue for the board, and this is
 23 the same issue we wrestled with a couple
 24 years ago, is the question of the intended
 25 use and the need for bathroom facilities,

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1 Zoning Board of Appeals - 7/24/2008
 2 basement or up into an upper floor. There
 3 is no bathroom in the basement in this
 4 house, so you have to run inside in a
 5 nicely finished space. So having a
 6 facility out there is really useful, and
 7 so that's the intent.

8 CHAIRMAN MURPHY: No. I
 9 think the quandary -- I have a question
 10 for counsel. Let's take a hypothetical.
 11 Let's say there was a pool, and there was
 12 a need on the property that could
 13 certainly accommodate a pool house with
 14 running water and maybe even be used for
 15 doubling as a guesthouse. What are the
 16 options for an applicant under the code?
 17 Is there any other option besides an
 18 accessory use for that type of use?

19 MS. STECICH: I'm sorry,
 20 Brian. I don't understand the question.

21 CHAIRMAN MURPHY: Other
 22 than this provision, the accessory use
 23 provision, is there any other provision
 24 that an applicant can use for what they
 25 are asking to do?

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1 Zoning Board of Appeals - 7/24/2008
2 MS. STECICH: No. I mean,
3 really not. That's why, I mean, when
4 Deven, I guess, posed the question to me
5 about a month or two ago about how to deal
6 with this, and I think the board has the
7 same concerns that they had the last go
8 around. It doesn't fit into any of our
9 categories. I know what you mean, Steve,
10 because a lot of codes have or any use,
11 you know, incidental to the main use. Our
12 code does not have that. It enumerates
13 which things you can have.
14 MR. TILLY: It says similar
15 occupancy as customarily incidental to the
16 permitted principal use.
17 MS. STECICH: Right.
18 Similar. Right. That is the thing. So
19 the only one of these things the board
20 might be able to fit it under would be
21 garden house, toolhouse, playhouse,
22 greenhouse or similar. Is this similar?
23 The only other option would be to
24 request a use variance, you know, because
25 this thing already exists, which is why I

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1 Zoning Board of Appeals - 7/24/2008
2 with some way of distinguishing the
3 situation. Let's say this were say, yes,
4 this is a permitted use. Somebody coming
5 in with a garage, you know, they don't
6 need any kind of variance. They come in
7 with a garage. They want to put a second
8 floor on it and, you know, use it as
9 recreation space. In fact, we did get an
10 application like that. And we said no,
11 that it doesn't fit.
12 The reason this case is a little
13 more difficult, as was the case -- I guess
14 it was about two years ago -- was that you
15 were dealing with -- well, that wasn't an
16 existing building but this is an existing
17 building on a big piece of property. And
18 it is a historic property, I assume. So
19 it is a different situation.
20 But then how do you distinguish it
21 from the person who just wants to use a
22 garage essentially for living space.
23 That's what we have to be careful of. And
24 it is not -- and I mentioned that those
25 questions have come in, so you don't think

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1 Zoning Board of Appeals - 7/24/2008
2 suggested that the application be framed
3 in the alternative, either an
4 interpretation, that this fits one of your
5 accessory uses or, if not, allow a use
6 variance, you know, for something like
7 this. So those are really the only two
8 options, Brian.
9 CHAIRMAN MURPHY: Right.
10 That's good for the board to know. At
11 least the concern I have is creating a
12 precedent, an unwanted precedent, for a
13 "permitted accessory use" but it might be
14 a case where the applicant can simply
15 state the requirements for an appropriate
16 use variance and that we make a proper
17 record, given particularly, I think,
18 unique size, location, historic features
19 of this property and the existing
20 structure. At least in my mind that's
21 probably a more sensible way to go.
22 MS. STECICH: Yes, because
23 I'll tell you what the concern is and
24 we've had inquiries. And maybe -- I don't
25 know -- maybe the applicant can come up

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1 Zoning Board of Appeals - 7/24/2008
2 this is just remote hypotheticals. It is
3 not. It's been -- it's an issue.
4 MR. LEAF: Is there any way
5 in which granting a use variance would be
6 disadvantageous to the applicant? In
7 other words, is there any reason why the
8 applicant might say, No, we really prefer
9 to have this resolved as an interpretation
10 or --
11 MS. STECICH: You can ask
12 the applicant.
13 MR. TILLY: I think the
14 applicant, Jim, is interested in the
15 present purposes which is to use it for
16 the purposes I have described. So I don't
17 think it is -- it makes any difference at
18 all to the applicant. We just -- we were
19 noticed for first an interpretation and
20 then for a use variance depending on your
21 interpretation of the code. And I was
22 simply raising questions based on my
23 reading of the language. So the
24 applicant, I'm sure, would be happy either
25 way.

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1 Zoning Board of Appeals - 7/24/2008
2 MR. LEAF: Is this currently
3 being used as a full-time residence?
4 MR. TILLY: It is under --
5 we are renovating the main house, and they
6 are -- so they are living elsewhere and
7 intending to move in once we finish the
8 renovation.
9 MR. LEAF: Thank you.
10 MR. SHARMA: Can I ask you a
11 question? You know, if it were truly a
12 pool house, if there were a pool and this
13 were a pool house, then all the uses that
14 are being proposed within this building
15 would then be permitted, right? A shower?
16 MS. STECICH: Yes. But like
17 Steve says, there is one big thing
18 missing. I mean. And why wouldn't -- the
19 same thing, how would someone else -- they
20 have a pretty small piece of property with
21 a house and a garage. And they say -- and
22 they put in a shower and they put in, you
23 know --
24 MR. LEAF: Shower, bathroom
25 and cooking and a sink, refrigerator.

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1 Zoning Board of Appeals - 7/24/2008
2 question, when you say similar, say what
3 is the criteria, how do you interpret
4 what is similar and not similar?
5 MS. STECICH: Yes,
6 absolutely. And the board could decide
7 that this is similar to a garden house,
8 toolhouse, which is why they are here for
9 the interpretation.
10 MR. LEAF: But if we were to
11 grant the use variance, we would never get
12 to the question of the interpretation.
13 Therefore we wouldn't have to make that
14 decision, if we didn't -- the question is
15 which one do we look at first.
16 MS. STECICH: Exactly.
17 Exactly.
18 CHAIRMAN MURPHY: Well, and
19 I'm happy to take up the interpretation
20 question only because I think we need to
21 grapple with it.
22 MS. STECICH: We've been
23 putting it off. Let's ask part 2 first.
24 CHAIRMAN MURPHY: David, I
25 don't know if you have any questions or

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1 Zoning Board of Appeals - 7/24/2008
2 MS. STECICH: Refrigerator
3 for drinks. It makes a pretty nice little
4 space. And say just like a pool house.
5 MR. SHARMA: Nothing is
6 wrong with being a pretty nice space. The
7 thing is whether the use is accessory to
8 the living.
9 MS. STECICH: No, it isn't
10 only that. No. That's the point. Our
11 code is different from a lot of the codes
12 where it is any use accessory to the
13 principal building is allowed. Our code
14 doesn't do that. Our code lists which
15 accessory are permitted. And to be sure,
16 I mean, and the odd problems that I've
17 seen over the 20 some years have always
18 been carriage houses because they are
19 different. They are a different breed.
20 It's a different breed of building which
21 is why maybe if the board felt that that
22 met the standards use variance isn't a bad
23 avenue to go, because it is unique in that
24 anyway.
25 MR. SHARMA: One last

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1 Zoning Board of Appeals - 7/24/2008
2 comments.
3 MR. FORBES-WATKINS: The
4 only question I have which in some ways
5 gets to this is if we granted this use or
6 variance, however you looked at it, for a
7 pool house without an application for a
8 pool, would this be an assurance of any
9 approvals that might be necessary from the
10 zoning board for a pool? It's an
11 interesting problem.
12 MR. TILLY: There is no
13 variance would be required for a pool,
14 because there is plenty of property.
15 MR. FORBES-WATKINS: Unless
16 you were impinging on lot lines and
17 setbacks.
18 MR. TILLY: I mean, I was
19 presenting that as a potential. We really
20 are calling it a recreation pavilion/
21 garden house. And so the pool house use
22 is a potential future use, because there
23 is a huge space and the likely place for a
24 pool which would be conforming happens to
25 be right behind this building. And so

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1 Zoning Board of Appeals - 7/24/2008
 2 that's why it made an awful lot of sense
 3 to us to outfit it so that that could
 4 happen.
 5 CHAIRMAN MURPHY: Well, the
 6 problem I see anyway is that our -- the
 7 way our code is written, it is narrower
 8 than that. And the next element after the
 9 section with the garden house, toolhouse
 10 is for a swimming pool, but there is no
 11 language for a pool house in the code.
 12 And at least I think it has always been my
 13 view that it shouldn't be an accessory
 14 use. That is a bad precedent to set at
 15 least for this code.
 16 But I certainly would be amenable
 17 to hearing a little bit more to see if we
 18 can make it fit under a use variance to
 19 get this applicant what they want, because
 20 I think there is a harsh -- particularly
 21 with a property this size and scale that
 22 clearly can handle the size of the
 23 structure and the use. I don't know if
 24 anyone else has a different view or wants
 25 to --

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1 Zoning Board of Appeals - 7/24/2008
 2 MS. STECICH: They are in
 3 code 295-146 (B)(2). No use variance
 4 shall be granted by the Board of Appeals
 5 without a showing by the applicant that
 6 applicable government regulations and
 7 restrictions have caused unnecessary
 8 hardship. In order to prove the
 9 unnecessary hardship, the applicant shall
 10 demonstrate to the Board of Appeals that
 11 for each and every permitted use under the
 12 zoning rights for the particular district
 13 where the property is located, the
 14 applicant cannot -- well, this is a little
 15 bit different, that part of it, but,
 16 anyway, this is the show the applicant
 17 should make; that the applicant cannot
 18 realize a reasonable return, provided that
 19 that return is substantial as demonstrated
 20 by competent financial items; that alleged
 21 hardship relating to the property in
 22 question is unique and does not apply to a
 23 substantial portion of the district or
 24 neighborhood; the requested use variance,
 25 if granted, will not alter the essential

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1 Zoning Board of Appeals - 7/24/2008
 2 MR. PYCIOR: No, I concur.
 3 In fact, one of the standards for use
 4 variance is "the alleged hardship relating
 5 to the property in question is unique and
 6 does not apply to a substantial portion of
 7 the district or the neighborhood." Most
 8 people in the district don't have barns
 9 and certainly don't have much property.
 10 So it is unique.
 11 CHAIRMAN MURPHY: So,
 12 Counsel, I don't know if we need to take a
 13 formal vote on the interpretation
 14 question.
 15 MS. STECICH: Well, if you
 16 cared to, I mean, just for the purposes of
 17 setting a precedent or just go to the use
 18 variance question. I think it might be a
 19 little better that way. You have that
 20 opportunity to resolve each one of the
 21 zones. And the standards -- do you want
 22 me -- the standards, do you want me to
 23 read for you the use variance?
 24 MR. LEAF: Would you,
 25 please.

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1 Zoning Board of Appeals - 7/24/2008
 2 character of the neighborhood and the
 3 alleged hardship is not self created. And
 4 those are the four things that have to be
 5 shown.
 6 CHAIRMAN MURPHY: Right. I
 7 think, Mr. Tilly, you are familiar with
 8 these requirements, I think, as well.
 9 MR. TILLY: Yes.
 10 CHAIRMAN MURPHY: At least
 11 in my view of the use variance
 12 applications we have had have come down
 13 to is the first one is the problematic
 14 one -- we should talk about a little -- is
 15 the cannot realize a reasonable return
 16 shown by some kind of financial evidence,
 17 because the others I agree with Stan.
 18 This is a unique situation. It has not
 19 been self created. It certainly won't
 20 alter the essential character of the
 21 neighborhood. And so we are looking for a
 22 way to get you where you need to go
 23 consistent with our code.
 24 MR. TILLY: Yes. The
 25 argument that really has to do with the

26

1 Zoning Board of Appeals - 7/24/2008
2 financial side is that the building is
3 sitting there and it is deteriorating and
4 the making of reasonable use of it is
5 the -- really is the occasion for us to
6 make an investment in the structure in
7 order to rehabilitate it in order to gain
8 that use. So that's really in a nutshell
9 the argument I would make about the
10 structure, which is allowing it --
11 permitting it to -- since barn uses or
12 architectural uses are no longer
13 applicable and we are -- and cars are --
14 and vehicles are no longer permitted. In
15 fact, we are organizing them so that they
16 don't get anywhere back into this part of
17 the site. It is a beautiful site. And so
18 it is sitting there without any reasonable
19 use. And so I think permitting some kind
20 of reasonable use allows this kind of
21 investment to be made.
22 CHAIRMAN MURPHY: Are you
23 saying also that the alternative is that
24 it is in such deteriorated condition that
25 at some point it would have to be -- it

28

1 Zoning Board of Appeals - 7/24/2008
2 it would just take that to become a
3 dwelling. And what kind of assurances
4 could we have that that would not take
5 place? Just there are three distinct
6 uses. There is a pool -- there is a pool
7 component which is the bath and the water
8 closet and the shower. And there is a
9 billiard room. Then there is a large
10 upstairs loft. There are three pretty big
11 uses up here. And that is the only part
12 of it that I find -- I understand the
13 desire, but I'm just wondering what kind
14 of assurances that we have that that
15 doesn't take place.
16 MR. TILLY: You could impose
17 whatever kind of conditions you would like
18 on the approval. Certainly it is very
19 similar -- I mean, in the last few years
20 I've done pool houses in New Castle and
21 Dobbs Ferry which have even more
22 facilities than this, where they -- and
23 where it was a permitted accessory use.
24 But there certainly were the same kind of
25 concerns about still second units or

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1 Zoning Board of Appeals - 7/24/2008
2 would incur costs just to tear it down so
3 it is safe?
4 MR. TILLY: In a sense the
5 process is kind of demolition by neglect
6 or that kind of sequence. And this does
7 give the occasion. So that's in the sense
8 how I frame the argument from that
9 economic side. I think there is -- I
10 mean, that is a real problem as far as we
11 are concerned.
12 CHAIRMAN MURPHY: Anyone
13 else? Ray, do you have some questions?
14 MR. DOVELL: The only thing
15 that troubles me about -- what I'm looking
16 at right here is that just to look at
17 this, it looks like a really nice
18 guesthouse. It has all the components to
19 be a dwelling. Simply with the addition
20 of a stove it becomes a dwelling. And it
21 even has an upstairs, a lovely upstairs.
22 It has a bathroom and it has an area for a
23 kitchen.
24 We understand it doesn't have -- it
25 is not being outfitted with a stove, but

29

1 Zoning Board of Appeals - 7/24/2008
2 guesthouses or what have you. And I think
3 there are remedies that you can by
4 condition of approval of a variance that
5 you grant that no use of that type should
6 be -- no cooking facilities or what have
7 you could be installed. So that seems to
8 me a remedy that is available.
9 CHAIRMAN MURPHY: For
10 example, the application is styled as a
11 pool house, playhouse and I think that
12 could be and should be a condition of the
13 motion, if someone were to -- if the board
14 would wish to grant a favorable motion.
15 MR. LEAF: We could even add
16 the phrase "and not as a dwelling."
17 CHAIRMAN MURPHY: And not
18 as a dwelling, yes. And I think that
19 would satisfy everyone's concern on that
20 point, because that really is -- that's
21 the issue. We don't want to set that
22 precedent, and it is not provided for in
23 the code. So it shouldn't be done.
24 MR. TILLY: No. We would be
25 here applying for an accessory unit if

30

1 Zoning Board of Appeals - 7/24/2008
2 that was what our intent was.
3 MS. STECICH: Which is
4 actually an interesting point because they
5 could apply for an accessory apartment.
6 So you might want to clarify that, if the
7 board would want this. But I think it
8 would be clear. I would clarify that the
9 board doesn't want it used as an accessory
10 apartment. Say it will not be used for
11 dwelling purposes, including as an
12 accessory apartment.
13 MR. LEAF: Marianne, my
14 concern is not that if an accessory unit
15 were applied for it would necessarily be
16 rejected, it is that it hasn't been
17 applied for. Using the application for a
18 pool house to become a way around future
19 applications that might look for a
20 guesthouse dwelling --
21 MS. STECICH: I wanted to
22 make sure the board understood.
23 MR. LEAF: -- for college
24 students --
25 MS. STECICH: You could do

32

1 Zoning Board of Appeals - 7/24/2008
2 have concern about that.
3 Our concern -- Alice Shafran is our
4 treasurer at Hastings Landing -- and our
5 concern for the whole community is that
6 our new neighbor Broad View Properties has
7 also bought No. 17 in Hastings Landing.
8 And it is a rental property. There have
9 been other situations at Hastings Landing
10 where there have been rentals. So -- but
11 the control of it, particularly since we
12 are dealing with an LLC corporation, it is
13 a little suspect. And I'm speaking from
14 years of real estate experience in New
15 York City. And we have that concern.
16 But we are here to welcome our new
17 neighbors, Broad View Properties, but with
18 the understanding that there should be
19 some restraint about using something like
20 what we are considering here strictly for
21 their family and the owners of the
22 property and not for outsiders or not for
23 rentals or at least have some sort of
24 strict control on that sort of a
25 situation, because it could slip out of

31

1 Zoning Board of Appeals - 7/24/2008
2 that as well.
3 CHAIRMAN MURPHY: Any other
4 comments or questions from the board?
5 Mr. Tilly, do you have anything else on
6 this?
7 MR. TILLY: No. I mean,
8 there is this second variance about the
9 dormer. But on this particular issue, I
10 don't have anything else to add.
11 CHAIRMAN MURPHY: How about
12 anyone in the audience? Anyone in the
13 audience wish to be heard?
14 MR. BRITZ: Yes.
15 CHAIRMAN MURPHY: Just
16 please identify yourself.
17 MR. BRITZ: My name is
18 Everett Britz. I'm here representing
19 Hastings Landing, and my concern -- I see
20 the board addressing it right here -- is
21 that if this goes down to becoming a
22 situation where Broad View Properties
23 starts renting it out, it becomes more
24 likely it is going to be a problem,
25 heading up to a second dwelling. And I

33

1 Zoning Board of Appeals - 7/24/2008
2 your hands. That's my comment on behalf
3 of Hastings Landing.
4 CHAIRMAN MURPHY: Thank you.
5 No, we do understand that. And frankly
6 the best enforcement is our good
7 neighbors. So we will make the
8 appropriate --
9 MS. STECICH: I have a
10 question, though. Deven, isn't part of
11 the application an affidavit of ownership,
12 which I don't see on this. I thought that
13 the owner was McHale and O'Halloran. But
14 on the -- in other words, I don't have --
15 I don't see an affidavit of ownership on
16 the application.
17 MR. BRITZ: I think both
18 entities are mentioned. It would be nice
19 to get a clarification as to whether we
20 are dealing with two individuals here or
21 whether we are dealing with the LLC
22 corporation.
23 MR. SHARMA: I didn't pick
24 up on that. What I see, I see an
25 affidavit on page 3 of the application.

34

1 Zoning Board of Appeals - 7/24/2008
 2 MS. STECICH: Is it on
 3 there?
 4 MR. SHARMA: Yes.
 5 MS. STECICH: No, the one
 6 that says that all statements are true.
 7 No. We don't have a page that is an
 8 affidavit of ownership?
 9 MR. SHARMA: No.
 10 MS. STECICH: I don't know
 11 why I thought that was a part of the
 12 application.
 13 MR. LEAF: That's for a
 14 building permit.
 15 MR. SHARMA: Yes, it is.
 16 MS. STECICH: It is.
 17 MR. SHARMA: Yes.
 18 MS. STECICH: I don't see
 19 it in this.
 20 MR. SHARMA: I don't see it
 21 on this, unless we have it on the forms
 22 downstairs.
 23 MR. PYCIOR: Mr. Tilly, who
 24 owns the property, the McHales or Broad
 25 View?

36

1 Zoning Board of Appeals - 7/24/2008
 2 did not personally.
 3 MS. STECICH: Oh, I bet the
 4 notice is to Hastings Landing, goes to the
 5 building.
 6 MR. FORBES-WATKINS:
 7 Apparently there is a potential conflict,
 8 so I must recuse myself from this
 9 particular issue. I will come back after.
 10 CHAIRMAN MURPHY: All right.
 11 Thank you. We will let the record reflect
 12 Mr. Forbes-Watkins has to recuse himself
 13 from this application, so we have a voting
 14 group of four. Mr. O'Halloran, you
 15 understand the concern here? The concern
 16 of the board is simply that if the use
 17 variance gets approved that it is not to
 18 be used as a dwelling unit.
 19 MR. O'HALLORAN: I
 20 understand.
 21 CHAIRMAN MURPHY: Thank
 22 you. I guess we clarified the ownership.
 23 Anything else from the board or comment?
 24 Anyone else in the audience wish to be
 25 heard on this application? Hearing none,

35

1 Zoning Board of Appeals - 7/24/2008
 2 MR. TILLY: Here is Michael.
 3 MR. O'HALLORAN: Let me
 4 introduce myself. I'm Michael O'Halloran,
 5 and my wife is Judith McHale. And we are
 6 Broad View Properties, the two of us, as
 7 an LLC that was set up to -- basically for
 8 tax purposes for the ownership of this
 9 property, the one next-door, 253 Broadway,
 10 and we just purchased 17 Hastings Landing.
 11 MR. PYCIOR: Do you intend
 12 to live at 255 Broadway?
 13 MR. O'HALLORAN: Yes. We
 14 are renovating it now towards the view of
 15 living there. We live in Maryland now.
 16 We plan to move back when the renovation
 17 is complete.
 18 MR. FORBES-WATKINS: I have
 19 to recuse myself. I live in Hastings
 20 Landing, and apparently Hastings Landing
 21 has made a statement.
 22 MS. STECICH: Are you in
 23 the noticed area? Did you get a notice of
 24 this?
 25 MR. FORBES-WATKINS: No, I

37

1 Zoning Board of Appeals - 7/24/2008
 2 board members, does someone want to make a
 3 motion? Marc, do you want to give it a
 4 try?
 5 MR. LEAF: Would this be a
 6 motion on the use?
 7 CHAIRMAN MURPHY: For the
 8 use variance. Yes.
 9 MR. LEAF: Marianne, is
 10 there a form for making a motion on a use
 11 variance that is required?
 12 MS. STECICH: No. There is
 13 no required form. I'll correct you if you
 14 are wrong.
 15 MR. LEAF: So I move that
 16 the board approve a use variance to use an
 17 existing carriage house to be renovated
 18 for use as a recreation room, bar and bath
 19 for use as a pool house or playhouse --
 20 well, this is not a playhouse, right?
 21 MS. STECICH: Well, you
 22 could say it is for the uses shown on
 23 whatever drawings those are in, and
 24 reference those drawings and it is limited
 25 to that. Do you know what I mean?

38

1 Zoning Board of Appeals - 7/24/2008
 2 MR. LEAF: They take down a
 3 billiard table and put up a ping-pong
 4 table, it should still be -- it is to be
 5 used for a recreational facility and as a
 6 pool house, not as a dwelling.
 7 MR. TILLY: My term was
 8 recreation pavilion for lack of a better
 9 term.
 10 MR. LEAF: At least we would
 11 be approving the only recreational
 12 pavilion in Hastings. So the motion is to
 13 approve a use variance to use the existing
 14 carriage house as renovated as a
 15 recreational pavilion and possible future
 16 pool house and not as a dwelling.
 17 CHAIRMAN MURPHY: Do I have
 18 a second?
 19 MR. PYCIOR: I'll second.
 20 CHAIRMAN MURPHY: All in
 21 favor? Aye.
 22 MR. LEAF: Aye.
 23 MR. DOVELL: Aye.
 24 MR. PYCIOR: Aye.
 25 CHAIRMAN MURPHY: The vote

40

1 Zoning Board of Appeals - 7/24/2008
 2 height of the proposed dormer is above the
 3 15 foot requirement, but it is below the
 4 current height of the structure.
 5 MR. TILLY: That is correct.
 6 CHAIRMAN MURPHY: Let's
 7 just -- how far out -- does it come out
 8 beyond the edge of the --
 9 MR. TILLY: No, it sits in
 10 the back --
 11 CHAIRMAN MURPHY: --
 12 structure?
 13 MR. TILLY: Yeah.
 14 CHAIRMAN MURPHY: Anyone
 15 else have any questions on the board for
 16 the proposed height variance for the
 17 dormer? Ray, do you have anything?
 18 MR. DOVELL: No.
 19 CHAIRMAN MURPHY: Anyone
 20 from the audience wish to be heard on the
 21 area variance for the dormer? All right.
 22 Hearing none, do I have a motion for the
 23 height variance on the dormer?
 24 MR. LEAF: I move that we
 25 approve an area variance to approve a

39

1 Zoning Board of Appeals - 7/24/2008
 2 was unanimous. All right. Next,
 3 Mr. Tilly?
 4 MR. TILLY: Okay. The next
 5 is the dormer on the second floor facing
 6 west which requires an area variance
 7 because the existing building, as you
 8 know, is 19 feet. And to get a little
 9 daylight in there on the west, we are
 10 proposing this little shed dormer. And
 11 the height of that dormer exceeds the 15
 12 feet requirement. Therefore, we are
 13 building in the area above the area
 14 limited by the height restriction for
 15 accessory building as the building exists.
 16 CHAIRMAN MURPHY: So on
 17 your application you have the new dormer
 18 as 19.3 feet in height which is below the
 19 current ridge line structure which is 29.9
 20 feet.
 21 MR. TILLY: That's correct.
 22 And that's the top of the slope of the
 23 dormer, and it slopes down from there to
 24 where the glazing needs to --
 25 CHAIRMAN MURPHY: The

41

1 Zoning Board of Appeals - 7/24/2008
 2 proposed new dormer 19.3 feet where 15
 3 feet is permitted.
 4 CHAIRMAN MURPHY: And that
 5 is on the accessory structure?
 6 MR. LEAF: That is on the
 7 accessory structure.
 8 MS. STECICH: That would be
 9 19.3 feet in height.
 10 MR. LEAF: 19.3 feet in
 11 height where the proposed new dormer --
 12 where 15 feet is permitted.
 13 CHAIRMAN MURPHY: Do I have
 14 a second?
 15 MR. DOVELL: Second.
 16 CHAIRMAN MURPHY: All in
 17 favor?
 18 MR. PYCIOR: Aye.
 19 CHAIRMAN MURPHY: Aye.
 20 MR. LEAF: Aye.
 21 MR. DOVELL: Aye.
 22 CHAIRMAN MURPHY: Four/O.
 23 Thank you. Our next case is Peter and
 24 Andrea Rockland, 45 Circle Drive for a
 25 proposed addition and alterations to an

42

1 Zoning Board of Appeals - 7/24/2008
 2 existing deck. The variance is being
 3 sought for the corner lot front yard for
 4 an open deck at or below the entrance
 5 level. Please give us your name, sir.
 6 MR. LEWIS: Yes. Hi, I'm
 7 Michael Lewis, Michael Lewis Architects,
 8 P.C. I'm going to come up closer because
 9 the drawings are not that large.
 10 This project that is on
 11 Circle Drive is in a neighborhood where
 12 many of the lots are non-conforming.
 13 There are many lots irregular, smaller
 14 than the required lot size non-conforming.
 15 This lot on the corner is unusual because
 16 as a corner lot it has the 30 foot setback
 17 on a large percentage of the lot. The
 18 building, of course, is existing
 19 non-conforming, and with it there is a
 20 non-conforming deck right there. And the
 21 deck is narrow for use.
 22 The Rockland family of four would
 23 like to eat and entertain on the deck, and
 24 so they wanted to add about 5 feet to it.
 25 That is what this proposal is about,

44

1 Zoning Board of Appeals - 7/24/2008
 2 CHAIRMAN MURPHY: At least
 3 I didn't receive it.
 4 MR. SHARMA: We didn't
 5 receive any letters in support of the
 6 approval.
 7 MR. LEWIS: They were in the
 8 file. I know I saw it. Sorry.
 9 CHAIRMAN MURPHY: Just bear
 10 with us for a moment. When you said that,
 11 it occurred to me that we hadn't seen
 12 letters.
 13 MR. SHARMA: I apologize.
 14 MR. LEWIS: I'm glad you
 15 found that.
 16 CHAIRMAN MURPHY:
 17 Mr. Sharma, thank you. I'll just pass
 18 these around. Mr. Lewis, if you would
 19 give us one moment. So we have letters
 20 from residents at 24 Chestnut Drive, 50
 21 Circle Drive, 57 Circle Drive, 56 Circle
 22 Drive, 48 Circle Drive, 18 Chestnut, 38
 23 Circle Drive all in support of the
 24 proposed variance. I'll let the other
 25 members take a look at that.

43

1 Zoning Board of Appeals - 7/24/2008
 2 extending the deck about 5 feet. Most of
 3 that 5 feet or about half of it is
 4 occurring in the 30 foot setback there.
 5 So we are enlarging the non-conforming
 6 condition we are proposing by adding this
 7 deck.
 8 As I mentioned, many of the lots
 9 and the houses are non-conforming in this
 10 area. And so it is really sort of a
 11 thing -- it is not really terribly outside
 12 the character of the neighborhood to push
 13 the limits a little bit. And so Peter and
 14 Andrea went and talked to all the
 15 neighbors in advance. The houses in green
 16 are the ones that have submitted letters
 17 as far as this application in support of
 18 the project. That little bit of red
 19 there, it is small but that --
 20 CHAIRMAN MURPHY: Sorry,
 21 Mr. Lewis, let me stop you for one moment.
 22 Do we have letters from the neighbors in
 23 the file?
 24 MR. LEWIS: Part of the
 25 application.

45

1 Zoning Board of Appeals - 7/24/2008
 2 MR. FORBES-WATKINS: Could
 3 you show me the map?
 4 MR. LEWIS: Yes, sir, the
 5 houses in green.
 6 MR. FORBES-WATKINS: The
 7 house right there (indicating).
 8 MR. LEWIS: This one?
 9 MR. FORBES-WATKINS: Yes.
 10 MR. LEWIS: Right. They're
 11 neighbors also and my understanding is
 12 that they are not opposed to it and Andrea
 13 spoke with them.
 14 MS. ROCKLAND: I spoke with
 15 them. We didn't -- I wasn't able to get
 16 the letter but we can get that letter in.
 17 MR. FORBES-WATKINS: The
 18 reason I ask is that particular dwelling
 19 is probably the one that is most directly
 20 in line of sight, is it not?
 21 MR. LEWIS: Not necessarily.
 22 I don't think they can even see it.
 23 MR. FORBES-WATKINS: Oh, I'm
 24 sorry. You're correct. It is one of the
 25 greens. It is one of the green ones is

46

1 Zoning Board of Appeals - 7/24/2008
2 the direct.
3 MR. LEWIS: In fact, we were
4 trying to get letters all the way around.
5 Why not? I think the reason we don't have
6 this is pure logistics. There is no
7 opposition as far as I know.
8 MR. DOVELL: Can you
9 describe the topography that goes through
10 there?
11 MR. LEWIS: I'll show you
12 photographs that show. Here is the
13 existing deck basically. This is the end
14 view from Circle Drive as it comes around
15 to the west. And then this is the back
16 view of the deck. This area right here is
17 where we want to extend it 5 feet further
18 into the backyard or technically it is the
19 side yard, but it is so confusing with the
20 corner lot.
21 And, of course, again, the idea is
22 that the deck is in disrepair. It is
23 unsightly. I think the owners are
24 certainly looking forward to repairing it
25 and making a nice deck there. And I think

48

1 Zoning Board of Appeals - 7/24/2008
2 CHAIRMAN MURPHY: So
3 whichever direction it is where you are
4 building out 5 more feet, the setback
5 according to your plans will be 14 feet 5
6 inches?
7 MR. LEWIS: Yes, sir. That
8 is the side yard, 12 foot required.
9 MR. PYCIOR: Are you
10 demolishing -- will they demolish the
11 existing deck?
12 MR. LEWIS: Yes, sir,
13 entirely demolishing it and then
14 rebuilding it.
15 MR. PYCIOR: Why approach
16 approximately 5 feet into the front yard?
17 That is -- right now it is not flush with
18 the house. It protrudes about 5 feet out
19 from the house.
20 MR. LEWIS: That's right.
21 It is basically they are just matching the
22 existing deck and using the existing
23 footings in that area and extending it out
24 into topography.
25 MR. PYCIOR: You wouldn't

47

1 Zoning Board of Appeals - 7/24/2008
2 the neighbors also are looking forward to
3 that.
4 MR. DOVELL: Does the grade
5 pitch up towards the street or is it --
6 MR. LEWIS: The grade on the
7 yard which is down in this direction
8 (indicating).
9 MR. DOVELL: Okay.
10 CHAIRMAN MURPHY:
11 Mr. Lewis, one question I had in terms of
12 extending the width of the deck, currently
13 it is just under 10 feet wide, roughly 30
14 feet long. But the variances that you are
15 applying for indicates that the existing
16 non-conformity, the setback is 13.4 feet
17 and that you are going to maintain that
18 13.4 foot setback.
19 MR. LEWIS: I think that --
20 that's right, because it is so odd because
21 of the corner lot, the way it is measured.
22 You can see the lot here and you can see
23 the 30 foot setback. And this thing here
24 is 13.4. And so that's continuing
25 straight across.

49

1 Zoning Board of Appeals - 7/24/2008
2 need as much of a variance if you made the
3 deck flush with the house.
4 MR. LEWIS: That's correct,
5 if we were to push that back it would be
6 less of a variance. It would still be a
7 variance. In fact, what it would mean is
8 that -- well, sure. It would be less of a
9 square footage of the deck would be in the
10 non-conforming zone. I guess when the
11 deck was originally built, the idea is
12 that by having it protrude by the house it
13 opened up more view. And so in that
14 regard it's advantageous to the owners.
15 CHAIRMAN MURPHY: Yes, I
16 was concerned about the same thing, Stan,
17 but on that side what the applicant is
18 saying, it is only -- required setback is
19 only 12 feet. Even with the 5 foot bump
20 out, it is going to be 14 feet 5 inches
21 from the line because of the weirdness of
22 the lot.
23 MR. FORBES-WATKINS: Will
24 the -- in the plan will there be an under
25 coverage? I found the -- looking at the

50

1 Zoning Board of Appeals - 7/24/2008
2 deck from down looking from Circle Drive
3 and looking up, I found it particularly
4 unattractive.
5 MR. LEWIS: Yes, it is. We
6 are proposing a cedar lattice screen.
7 I'll show you on the elevation. That, of
8 course, so the deck is cantilever. It
9 will give it a nice shadow line, a lattice
10 screen that wraps all the way around the
11 corner.
12 CHAIRMAN MURPHY: I think
13 the plan is great. It is a big
14 improvement over what exists now. That's
15 for sure. My only question is really the
16 need to increase the size. Roughly you
17 are adding another 50 percent or so square
18 foot.
19 MR. LEWIS: 150 feet.
20 CHAIRMAN MURPHY: Is that
21 just to -- why does the applicant need the
22 space, the extra space?
23 MR. LEWIS: Basically when
24 we lay out seating and a table, it makes
25 it comfortable. The additional 5 feet

52

1 Zoning Board of Appeals - 7/24/2008
2 That's what bothered me. What bothered me
3 when I went out there is the fact that the
4 posts are at the end of the deck. But I
5 notice in the new one you are going to
6 cantilever.
7 MR. LEWIS: Yes, sir.
8 MR. PYCIOR: It doesn't
9 bother me nearly as much, because the
10 mass of the deck --
11 MR. LEWIS: Right. I think
12 the cantilever deck will be a lot nicer.
13 CHAIRMAN MURPHY: Any other
14 questions from any of the board members?
15 MR. DOVELL: I think the
16 fact that you have a skirting around the
17 base of it does improve the appearance
18 from the street enormously. Is it the
19 intention to plant that out or how are
20 you --
21 MR. LEWIS: We haven't
22 really discussed it. I would assume that
23 once the deck is completed, it would be
24 natural to landscape it and enhance the
25 lot as much as possible. It is not part

51

1 Zoning Board of Appeals - 7/24/2008
2 makes it much more comfortable for
3 entertaining.
4 CHAIRMAN MURPHY: I do note
5 that in terms of the footprint area, 2500
6 feet is permitted in the district. And
7 with the proposed deck addition, the
8 applicant will still be slightly under
9 2,000. And the percent lot area will go
10 to about 19 percent, when 25 percent is
11 permitted. It is certainly well within
12 the permitted area of coverage based on
13 the applicant's information.
14 MR. LEWIS: Again, I think
15 one of the reasons that the deck becomes
16 perhaps a little more critical is because
17 it is so rocky there on the corner of
18 Circle as you come up and around, that the
19 yard space is really limited for the kids.
20 But in particular a level place to eat
21 outside, and it is really -- the idea by
22 adding this additional width they can sit
23 comfortably outside.
24 MR. PYCIOR: Can I see the
25 photo of the existing deck again? Okay.

53

1 Zoning Board of Appeals - 7/24/2008
2 of our plans at this point.
3 MR. PYCIOR: Ray, we can
4 always specify landscaping if you wish
5 when we grant the variance.
6 MR. DOVELL: I think it
7 would help because of the proximity. It
8 is quite visible, and the proximity to the
9 street, I think we would want that.
10 MR. LEWIS: I'm all for
11 landscaping it. How to specify in advance
12 without really designing it, what kind of
13 landscaping would be the nicest, it
14 usually takes some time and consideration
15 in figuring out the best way to do it.
16 CHAIRMAN MURPHY: Well, I
17 don't think we need to micromanage the
18 landscaping. If you want to put that in
19 as a condition of the motion, just that
20 the applicant landscape that end of the
21 deck on Circle and screening this, I think
22 that's all you need to say.
23 MR. DOVELL: Okay.
24 CHAIRMAN MURPHY: Anyone
25 else? David?

54

1 Zoning Board of Appeals - 7/24/2008
2 MR. FORBES-WATKINS: No.
3 CHAIRMAN MURPHY: Anyone
4 from the audience, anyone wish to speak?
5 MR. LEPRE: My name is Jorge
6 Lepre and my wife, Gretchen. We are the
7 neighbors on the end of the deck of the
8 Rocklands. We support them in their
9 renovation. We just when they ask us, we
10 didn't know that this would require a
11 variance. So we would like to ask you to
12 explain to us why they request a variance
13 and what could be the disadvantages to us
14 if the building gets done, because we
15 don't really understand very well why the
16 variance is required and maybe it is just
17 maintaining it but --
18 CHAIRMAN MURPHY: As
19 Mr. Lewis was explaining, the applicant
20 needs a variance because they are
21 expanding the deck. They are going to
22 tear down the old deck, build a new deck,
23 and they are widening the current deck.
24 So the current deck is approximately 10
25 feet wide, and the new deck they are

56

1 Zoning Board of Appeals - 7/24/2008
2 yard, certain number of feet from the rear
3 yard for protection of the neighbors.
4 Everybody has that. If you've got a 12
5 foot -- if your side yard is supposed to
6 be 12 feet, you want to build your -- you
7 only want to be 8 feet with your deck,
8 then you need permission from the zoning
9 board because you are building within the
10 setback.
11 MR. LEPRE: Okay. Okay. In
12 this case this deck is too close to what
13 limit of the property? Too close to the
14 street or the --
15 MR. LEWIS: Excuse me. If
16 you like, I can show you. This is the
17 lot. And they have the lot. The lot is a
18 corner lot. Normally you'd have a certain
19 number of space allowed on the front. You
20 have a certain distance you are allowed on
21 the front, a certain distance you are
22 allowed on the back and then the distance
23 on the side. And initially the side
24 setbacks are small and the front and back
25 are big since this is on the corner.

55

1 Zoning Board of Appeals - 7/24/2008
2 proposing will be about 15 feet wide along
3 the length of that house.
4 MR. LEPRE: Um, so then why
5 is the village limiting the size of the
6 deck? Why -- it sounds like something
7 very trivial to build on. And why is a
8 variance required?
9 CHAIRMAN MURPHY: Because
10 the code -- because whenever you construct
11 or make an alteration to a house, you need
12 to get a building permit. And if you need
13 a variance, because you are not in
14 compliance with the strict requirements of
15 the zoning code, you need to apply for
16 one. And that is what they are doing.
17 MR. LEPRE: Why is there a
18 restriction? It is because the way it
19 looks in the neighborhood or because --
20 CHAIRMAN MURPHY: Marianne,
21 would you like to take over?
22 MS. STECICH: All
23 construction has setbacks. It has to be a
24 certain number of feet from the side yard,
25 certain number of feet from the front

57

1 Zoning Board of Appeals - 7/24/2008
2 The buildable area for this house
3 legally is this line here. The existing
4 house is non-conforming. The reason is
5 that this house was in place before the
6 zoning -- before the laws were made. So
7 the laws came in afterward and they don't
8 fit in. Anything that happens in this
9 area, any enlargement that occurs in this
10 area outside of this line requires a
11 special approval. Since we are adding
12 this piece here, it is outside of that
13 line, we require a special variance.
14 That's the reason that we are here.
15 MR. LEPRE: Okay. Thank you
16 very much. Yes, we support the
17 renovation.
18 CHAIRMAN MURPHY: Thank
19 you. Mr. Lewis, thank you too. Anyone
20 else have anything? David?
21 MR. FORBES-WATKINS: No, I'm
22 ready to make a motion.
23 CHAIRMAN MURPHY: Either
24 one.
25 MR. DOVELL: I'll make a

58

1 Zoning Board of Appeals - 7/24/2008
 2 motion to approve the variance for a front
 3 yard setback for a new wood deck where the
 4 required is 24 feet and proposed is 13.4
 5 feet, provided the deck contain wood
 6 skirting and landscaping to conceal the
 7 lower portion of it.
 8 MR. FORBES-WATKINS: Second.
 9 CHAIRMAN MURPHY: Do I have
 10 a second?
 11 MR. FORBES-WATKINS: Second.
 12 CHAIRMAN MURPHY: All in
 13 favor?
 14 MR. DOVELL: Aye.
 15 MR. LEAF: Aye.
 16 CHAIRMAN MURPHY: Aye.
 17 MR. PYCIOR: Aye.
 18 MR. FORBES-WATKINS: Aye.
 19 CHAIRMAN MURPHY: The vote
 20 is unanimous. Thank you.
 21 All right. Our last case tonight,
 22 the Newington-Cropsey Foundation, 25
 23 Cropsey Lane.
 24 MR. SPILATRO: My name is
 25 Gary Spilatro. The foundation is

60

1 Zoning Board of Appeals - 7/24/2008
 2 in particular.
 3 MR. DOVELL: Could you
 4 describe the topography of that? It looks
 5 from the drawings and from the
 6 photographs, that it is quite -- it is
 7 nestled.
 8 MR. SPILATRO: Okay. The
 9 existing structure in front -- there is
 10 the patio in the back on a concrete slab,
 11 where the structure will be built. There
 12 is a retaining wall, and then it goes up
 13 the side of the hill about 20 feet
 14 straight up to the next structure above,
 15 the property above. So this is a 20 feet
 16 drop to a retaining wall to a concrete
 17 slab. There is no increase in impervious
 18 surface or anything else. There is no
 19 increasing of anything. So we would be
 20 removing the slab and putting the slab
 21 back in place. Then there is the house,
 22 below the ridge of the house, smaller than
 23 the house and sitting in tuck behind that,
 24 where the building is an L-shaped building
 25 where it will not even touch the retaining

59

1 Zoning Board of Appeals - 7/24/2008
 2 proposing to build a studio behind the
 3 existing structure. And we are here for
 4 the view preservation. As I think you've
 5 been out there, the complex -- the
 6 foundation is in a ravine. The nearest
 7 property is 20 feet above this property,
 8 and I don't think there is any question
 9 about --
 10 CHAIRMAN MURPHY: Just give
 11 us the dimensions of the proposed
 12 structure so we make a record of that.
 13 MR. PERCIASEPE: My name is
 14 John Perciasepe. I'm the contractor.
 15 That structure on the front side will be
 16 17.4 and project back 14 foot.
 17 CHAIRMAN MURPHY: The
 18 height?
 19 MR. PERCIASEPE: The highest
 20 point would be 14 foot.
 21 CHAIRMAN MURPHY: Anything
 22 else from the applicant? The board? I
 23 know we've had a chance to look at the
 24 plans and are familiar with the property.
 25 I don't know if anyone had any questions

61

1 Zoning Board of Appeals - 7/24/2008
 2 wall or the side hill. So this will be
 3 strictly just removing slab surface and
 4 putting it back, right back in place.
 5 CHAIRMAN MURPHY: And was
 6 there a recommendation from the planning
 7 board?
 8 MR. SPILATRO: Yes, last
 9 week.
 10 CHAIRMAN MURPHY: What was
 11 that recommendation?
 12 MR. SPILATRO: They
 13 recommended. They passed us.
 14 CHAIRMAN MURPHY: They
 15 recommend that we approve?
 16 MR. SPILATRO: Yes.
 17 CHAIRMAN MURPHY: David?
 18 MR. FORBES-WATKINS: My only
 19 comment is if you go and stand where this
 20 facility will be added, not only is there
 21 no view issue that I can think of, that
 22 what you view from there is the abutment
 23 of the bridge. So this is not a view
 24 issue.
 25 CHAIRMAN MURPHY: Right.

62

1 Zoning Board of Appeals - 7/24/2008
 2 Stanley?
 3 MR. PYCIOR: No.
 4 CHAIRMAN MURPHY: Would
 5 anyone like to make a motion on the
 6 applicant's request for view preservation
 7 approval for the construction of the
 8 summer art studio?
 9 MR. FORBES-WATKINS: I so
 10 move that the zoning board approve view
 11 preservation issue for the
 12 Newington-Cropsey Foundation, Case
 13 No. 17-08.
 14 CHAIRMAN MURPHY: Second?
 15 MR. PYCIOR: I'll second.
 16 CHAIRMAN MURPHY: All in
 17 favor?
 18 MR. DOVELL: Aye.
 19 MR. LEAF: Aye.
 20 CHAIRMAN MURPHY: Aye.
 21 MR. PYCIOR: Aye.
 22 MR. FORBES-WATKINS: Aye.
 23 CHAIRMAN MURPHY: Vote is
 24 unanimous. Thank you very much. Counsel,
 25 I know we have another agenda item. Are

64

1 Zoning Board of Appeals - 7/24/2008
 2 public hearing, it goes to both the
 3 planning board and the zoning board for
 4 its recommendations. And so did you want
 5 me to go through each of these amendments?
 6 CHAIRMAN MURPHY: No, no.
 7 MS. STECICH: I think my
 8 memo explained each of them and why they
 9 were in there. Mainly they were to
 10 clarify the building coverage and stuff,
 11 because right now there are not too many
 12 limits on paving coverage except it can't
 13 be in required yards and stuff. So there
 14 was -- mainly what it was aimed at was
 15 clearing up a couple of definitions.
 16 And actually the thing that has
 17 given Deven and me the most trouble over
 18 the years is what is a structure, and it
 19 was a little unclear what is considered a
 20 structure, not a structure and that the
 21 planning board also spent a lot of time on
 22 that. And if we just take the definition
 23 of anything affixed to the ground, well,
 24 you know, that includes swing sets, jungle
 25 gyms. Do you really want to require a

63

1 Zoning Board of Appeals - 7/24/2008
 2 we ready to --
 3 MS. STECICH: The first
 4 memo attached on there has nothing to do
 5 with the recommendation. That is just to
 6 let you know that I did pass it on to the
 7 board of trustees.
 8 CHAIRMAN MURPHY: Thank
 9 you, Marianne. We appreciate it.
 10 MS. STECICH: We'll see
 11 what happens. Then I don't know -- just
 12 with working with the code over the many
 13 years, there are a bunch of things we came
 14 across that we thought needed to be
 15 clarified in the code. Some of the stuff
 16 we weren't maybe definite on or we
 17 disagreed, or we thought it was important
 18 to get the planning board's input on it.
 19 We met with the planning board a
 20 couple of times and got their
 21 recommendations about things like building
 22 coverage and abutment coverage and came up
 23 with a set of amendments that were
 24 presented to the board of trustees which
 25 set a public hearing. When it sets the

65

1 Zoning Board of Appeals - 7/24/2008
 2 building permit for that? So the
 3 definition of structure was made, we hope,
 4 clearer. And then most of the other stuff
 5 dealt with coverage.
 6 But I think the cover memo is
 7 self-explanatory. I'll be glad to answer
 8 any questions.
 9 MR. PYCIOR: Marianne, under
 10 structure a few times we faced storage
 11 sheds. And they are structures.
 12 MS. STECICH: Yes.
 13 MR. PYCIOR: That is not
 14 listed. Would it be beneficial to list
 15 that, because I think three or four
 16 occasions that the storage shed has been
 17 the issue in terms of a side yard or rear
 18 yard.
 19 MR. SHARMA: We are clear;
 20 it is a structure. We didn't have
 21 difficulty, a problem, with it. The
 22 problem we had was like a barbecue,
 23 barbecue grill kind of thing. Would that
 24 be a structure? A swing set, jungle gym,
 25 would that be a structure? So those are

66

1 Zoning Board of Appeals - 7/24/2008
2 some of the things. But a storage shed is
3 an accessory structure.
4 MR. PYCIOR: It is clearly a
5 structure.
6 MS. STECICH: I think it is
7 pretty clearly a building. The other
8 things that are in there and -- you know,
9 is a patio a structure? Deven and I were
10 always disagreeing on that. I thought it
11 was; Deven didn't.
12 CHAIRMAN MURPHY: So now we
13 are clear. As you defined it in the new
14 definition of structure, a patio is an
15 impervious surface and will now be
16 considered a structure.
17 MS. STECICH: Right.
18 CHAIRMAN MURPHY: And I
19 think that's a good idea.
20 MR. SHARMA: Two things
21 happen in terms of lot coverage. That was
22 another thing, whether to count it towards
23 lot coverage or not. So we have the lot
24 coverage, what we also call the
25 development coverage. So there is

68

1 Zoning Board of Appeals - 7/24/2008
2 listed.
3 MS. STECICH: Yes. It
4 doesn't say, you know, house, garage, you
5 know. If you start listing all of them,
6 if you don't include it, it really
7 includes the things that aren't so clear.
8 Deven?
9 MR. SHARMA: Garbage sheds,
10 garbage container sheds, for practical
11 purposes we are not using them, you know,
12 because they are not structures. We are
13 not asking people to get permits if they
14 happen to be a certain distance from the
15 property line, things like that. But if
16 it is not clearly a garbage container, a
17 shape and size of it, then it is a shed
18 and then it is an accessory structure.
19 And it can only be a certain distance away
20 from the front line and side.
21 MR. LEAF: The things that
22 are not mentioned here -- so a garbage
23 container is not a structure?
24 MR. SHARMA: For the
25 purposes of building permit or the zoning

67

1 Zoning Board of Appeals - 7/24/2008
2 buildings and other structures, patios and
3 other things, so they have a separate
4 percent of the lot that can be covered
5 through that kind of development. So that
6 will help us a lot.
7 MS. STECICH: What is a
8 structure? The reason it is significant
9 is for two things. No. 1, you have to get
10 a building permit for a structure. And
11 secondly, it gets included in coverage.
12 If it is a structure it gets included in
13 coverage and lot coverage. If it is not,
14 obviously it doesn't.
15 MR. FORBES-WATKINS: If I go
16 to Home Depot or one of the places and buy
17 one of those tool sheds, that I can truck
18 in, throw together, is that a structure?
19 MS. STECICH: Yes. It is a
20 building. It might be a small building,
21 but it is a building.
22 MR. FORBES-WATKINS: That
23 may be a toolshed question.
24 MR. PYCIOR: No, but that is
25 obviously a structure so it may not be

69

1 Zoning Board of Appeals - 7/24/2008
2 code application.
3 MR. LEAF: And the barbecue
4 you were discussing, if the barbecue
5 rolls, it is clearly not a structure. If
6 the barbecue is built into a cinder block
7 or brick or --
8 MS. STECICH: Or a patio.
9 MR. LEAF: I'm going to get
10 to the impervious patio in a second. What
11 is the point of the barbecue? Is a
12 barbecue a structure or not a structure if
13 it were built in?
14 MS. STECICH: If it is
15 built in, yes, it is a structure.
16 Actually, I think to tell you the truth, I
17 probably would differ with that than about
18 the shelter. I mean, yes, this is the
19 first I've heard about these little
20 garbage sheds. I would say a garbage shed
21 is a building structure, but I can
22 understand why.
23 But it is always going to be the
24 case that sometimes you just have to use a
25 common sense approach to it. And if it

70

1 Zoning Board of Appeals - 7/24/2008
2 makes sense, then it is -- you know, how
3 much things cover. The garbage can is
4 covered up. I understand that.
5 MR. SHARMA: You may not be
6 able to cover all eventualities. But
7 whenever it is not, Marianne and I do
8 speak, and we will concur one way or the
9 other which way to go and take a chance.
10 If something comes up, we deal with it.
11 Normally if something comes up on the
12 borderline, then we talk and see if we can
13 concur.
14 MS. STECICH: Actually, one
15 of the biggest problems was, and it is not
16 really so much a problem but people
17 calling the building department and saying
18 I want to put in -- some of those jungle
19 gyms are pretty elaborate these days. And
20 you know, so this was -- that the planning
21 board just didn't make -- think that kind
22 of thing made sense.
23 MR. LEAF: I think that's
24 fine. Patio with an impervious surface,
25 does impervious refer to the materials

72

1 Zoning Board of Appeals - 7/24/2008
2 they have a space in them and that space
3 could make it pervious, that's why rather
4 than just saying impervious patio, yes, a
5 patio is an impervious surface as opposed
6 to one with grasscrete or gravel. There
7 was no concern about gravel. I guess you
8 could say a little piece of gravel is
9 impervious, but it is one of those things
10 you use in common sense.
11 No, that's a fair point.
12 And I don't remember where it happened
13 that we finally decided on the language
14 patio was an impervious surface. So you
15 would count those things that have space
16 in between, because you want people to
17 have to come in for building permits for
18 them because it is going to affect
19 drainage. That is the main thing. It is
20 going to affect drainage.
21 MR. LEAF: You have all
22 these new development coverages which are
23 greater than building coverage.
24 MS. STECICH: Right.
25 MR. LEAF: Where did those

71

1 Zoning Board of Appeals - 7/24/2008
2 with which the surface is constructed --
3 MS. STECICH: Yes.
4 MR. LEAF: -- or does it
5 refer to the manner in which the surface
6 is connected, the surface is put together?
7 MS. STECICH: I would say
8 that a blue stone patio with spaces in
9 between the blue stone, I think that the
10 understanding it is an impervious surface.
11 MR. SHARMA: If you
12 remember, we talked about concrete pavers
13 or blue stone pavers with space in
14 between, the square footage, the total
15 area of the patio, will be the total area
16 of the patio less for some formula the
17 open spaces in between. So say 10 feet by
18 10 feet the patio with, you know,
19 grasscrete or concrete pavers --
20 MS. STECICH: Grasscrete, I
21 don't know why you said that, why you
22 mentioned grasscrete. That is not
23 impervious. We are talking about blue
24 stone or pavers or whatever. And I think
25 the understanding was that even though

73

1 Zoning Board of Appeals - 7/24/2008
2 percentages come from?
3 MS. STECICH: It is all ten
4 percent or greater. And that's what a lot
5 of municipalities have. Pretty much what
6 we've got now is the building coverage
7 that we've got. And the question is what
8 is considered included in a building
9 coverage. Well, driveways aren't. Paved
10 areas aren't. And they haven't been.
11 So you want to put a limit on the
12 paving. So what they did is they took
13 whatever -- if the zoning district said
14 you can add 25 percent lot coverage,
15 that's the way the code reads. Now we
16 say, Okay, you have 25 percent building
17 coverage. Those numbers weren't changed.
18 And the coverage that -- the development
19 coverage limit is that plus ten percent,
20 is 35 percent. And that's how those
21 numbers came out.
22 MR. LEAF: Clearly it is an
23 improvement that we are now looking at
24 developing coverage and limiting it. My
25 only question was, did we get engineering

74

1 Zoning Board of Appeals - 7/24/2008
2 or expert advice --
3 MS. STECICH: No.
4 MR. LEAF: -- regarding what
5 is the appropriate coverage? What you are
6 saying is kind of rule of thumb. If you
7 are assuming that buildings can go up to
8 25 percent, then if there is going to be
9 some kind of other things, like driveways,
10 that's giving them a little extra. The
11 ten percent is what you are allowed with
12 the building and a little extra.
13 MS. STECICH: The number
14 wasn't just pulled out of the sky. It was
15 not done scientifically. There were no
16 studies done, but except looking at other
17 codes. I know that is how a lot of other
18 codes do it, and the board did discuss it.
19 Deven had a different scheme. He had
20 instead of plus ten percent, he had plus a
21 certain percentage of. And the planning
22 board considered that and didn't like
23 that. They really liked the plus ten
24 percent. They thought about it in terms
25 of different properties, and it made sense

76

1 Zoning Board of Appeals - 7/24/2008
2 you require a building permit for paving
3 expressly now. But there is an exception
4 and the building permit shall not be
5 required to repair or repave a driveway so
6 long as the dimensions of the driveway are
7 not being altered. So repair, I get, or
8 repaved, suggesting it has been paved
9 before.
10 If you take a driveway which is not
11 paved, like a gravel driveway or a
12 driveway which is dirt or something, and
13 then you pave it, I assume what you mean
14 here, it is not paved before so it will
15 not have been -- that will not be repaved.
16 MS. STECICH: Exactly.
17 MR. LEAF: You take a gravel
18 driveway and I pave it, that is a paving,
19 even though the driveway exists and you
20 are not changing the dimensions.
21 MS. STECICH: Right.
22 MR. LEAF: It is a paving.
23 MS. STECICH: Right. It is
24 not repaving. It is not repair. It is
25 paving, so you have to come in.

75

1 Zoning Board of Appeals - 7/24/2008
2 to them.
3 MR. SHARMA: Let me explain
4 one other thing. One of the main issues I
5 had, in current codes there has been no
6 paving in any required yards. So that's
7 kind of very difficult. What do you mean?
8 No walkways, no pathways, no patio? So by
9 putting that number five, ten, whatever
10 percent it is, yes, you can have some
11 paving, but there is a limit to how much
12 you can pave.
13 MS. STECICH: You still
14 can't have paving in a required yard.
15 That wasn't changed.
16 MR. SHARMA: But the --
17 MS. STECICH: You still
18 cannot have paving in a required yard.
19 Right now the way the code is, you can't
20 have it in the required yard. You can
21 have everything else, right? You can have
22 the house and you can have all kinds of --
23 and, again, the concern, big concern, do I
24 mention obviously, you know, green.
25 MR. LEAF: Last question,

77

1 Zoning Board of Appeals - 7/24/2008
2 MR. LEAF: Thank you.
3 MR. DOVELL: It does seem we
4 will have a lot more variance cases
5 regarding this just given the small size
6 of the lots in Hastings and a lot -- the
7 fact that they are not complying
8 currently. Ten percent doesn't seem like
9 a lot even given the topography and given
10 where people have terraces because of the
11 change in grade. And those terraces
12 generally are made of impervious material.
13 It does seem that the percentage -- it
14 seems to me the percentage is low, is an
15 awful low percentage and that we are all
16 of a sudden going to see a lot more.
17 MS. STECICH: Well, you
18 know, and if and when that happens, you
19 can -- you know, you can make the
20 suggestion, say, "Listen, ten percent
21 doesn't seem to make sense. Maybe you
22 ought to revisit it." That could be done.
23 That happened many years -- it actually
24 happened when the code was first enacted,
25 and, whoe, almost everybody had to come in

78

1 Zoning Board of Appeals - 7/24/2008
2 if they did anything on their property.
3 So that was why then a section was
4 added -- Well, if it does -- to get rid of
5 what they call nuisance variances. If it
6 doesn't increase the non-conformity, you
7 can do it. And so you can tweak it. You
8 can tweak it. Maybe, you say, maybe there
9 are certain circumstances you think it
10 shouldn't have to come before or maybe you
11 think the number is too small. But -- and
12 maybe you do -- if somebody has that much
13 of their lot covered, you may want them to
14 be more restrained about it.
15 MR. DOVELL: It is going to
16 rule out a lot of home improvement
17 projects. Trips to Home Depot will be cut
18 down.
19 CHAIRMAN MURPHY: Well, I
20 don't know, Ray. 35 percent, that is a
21 pretty good size lot coverage. I'm not
22 sure you would want to go much higher than
23 that.
24 MS. STECICH: It is amazing
25 when you look at -- sometimes you look at

80

1 Zoning Board of Appeals - 7/24/2008
2 MR. PYCIOR: Yes, but right
3 at the property line. Yes.
4 CHAIRMAN MURPHY: That's
5 your point. Certainly if you are going to
6 include air conditioning units and
7 generators, a pool filtration system is
8 exactly the same kind of thing in my
9 judgment. I don't know that --
10 MS. STECICH: Again, these
11 are just -- I mean, including without
12 limitation -- you know, there is the
13 general structure. These are some
14 examples. These are the things that come
15 up more. And I would think if you came in
16 with something -- the question came to the
17 building department, I would say, "Yes, I
18 think it is really like a generator. It
19 is an assembled, constructed, permanently
20 affixed location. It is a structure."
21 MR. SHARMA: The way the
22 interpretation of the code by the building
23 department -- and they can always
24 challenge it. They come to me. Here it
25 is and it is now specifically managed. I

79

1 Zoning Board of Appeals - 7/24/2008
2 something and say this has to be 50
3 percent, because there is stuff all over
4 it. When you actually do the calculation,
5 it is lower than it looks frequently.
6 CHAIRMAN MURPHY: All right.
7 Do we need to give advisory approval?
8 MS. STECICH: Yes.
9 CHAIRMAN MURPHY: All right.
10 Do we do it by motion?
11 MS. STECICH: Yes.
12 MR. PYCIOR: I have one more
13 question. I notice under the structure,
14 generator or air conditioning equipment is
15 listed. How about pool filtering
16 equipment? I walk by a property on a
17 regular basis that has their filtration
18 system at the property line, and the pool
19 is 30 feet away. Would filtration be at
20 the same category as generator or air
21 conditioning equipment?
22 MR. SHARMA: I would tend to
23 think that way.
24 MR. FORBES-WATKINS: It is
25 probably on a cement path.

81

1 Zoning Board of Appeals - 7/24/2008
2 can say it to be a certain way. If they
3 don't agree, they can, of course, come
4 here. I would treat it the same way as
5 some kind of accessory device that used to
6 be a certain distance away from certain
7 property lines, and that's how we treat
8 it.
9 CHAIRMAN MURPHY: All right.
10 I'll move to approve our advisory approval
11 of local law No. 24 amending the zoning
12 code to impose limits on development
13 coverage and curb cuts to clarify
14 provisions relating to driveways and
15 paving, to prohibit carports and clarify
16 definitions of "structure" and "half
17 story."
18 MR. PYCIOR: I'll second.
19 CHAIRMAN MURPHY: All in
20 favor?
21 MR. DOVELL: Aye.
22 MR. LEAF: Aye.
23 CHAIRMAN MURPHY: Aye.
24 MR. PYCIOR: Aye.
25 MR. FORBES-WATKINS: Aye.

82

1 Zoning Board of Appeals - 7/24/2008
 2 CHAIRMAN MURPHY: Vote is
 3 unanimous. Counselor, thank you very
 4 much. Approval of last month's minutes,
 5 the meeting of June 26, 2008, fairly short
 6 meeting. Do I have a motion to approve
 7 the minutes?
 8 MR. FORBES-WATKINS: I have
 9 one. Page 26, line 22, I moved only 565
 10 Broadway, not 555-565 Broadway. I made
 11 that motion that way because I wanted to
 12 exclude the southern half of that
 13 property, which did not -- was not subject
 14 to consideration.
 15 CHAIRMAN MURPHY: Yes, I
 16 think that's right. So we will have our
 17 court reporter note that correction.
 18 Thank you.
 19 MR. LEAF: Appropriate to
 20 that, there is a change on page 24, in
 21 line 2. I was speaking. I said, I
 22 recognize -- that it is not "the" but
 23 "that." I recognize that no variance has
 24 been requested. In line 2 of page 24,
 25 please.

83

1 Zoning Board of Appeals - 7/24/2008
 2 CHAIRMAN MURPHY: All right.
 3 MR. LEAF: And then on page
 4 13, line 19, if you would indulge me and
 5 put a colon between variances, after the
 6 word "variances" in line 19, page 13.
 7 Thank you.
 8 CHAIRMAN MURPHY: So noted
 9 and corrected. Anything else from the
 10 board? Do I have a motion to approve the
 11 minutes from our meeting of June 26, 2008?
 12 MR. LEAF: So move.
 13 CHAIRMAN MURPHY: Second?
 14 MR. PYCIOR: Second.
 15 CHAIRMAN MURPHY: All in
 16 favor?
 17 MR. DOVELL: Aye.
 18 MR. LEAF: Aye.
 19 CHAIRMAN MURPHY: Aye.
 20 MR. PYCIOR: Aye.
 21 MR. FORBES-WATKINS: Aye.
 22 CHAIRMAN MURPHY: Our
 23 meeting is concluded until our meeting in
 24 September.
 25 (Hearing concluded at 9:30 p.m.)

84

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 31st day of July, 2008.
 22
 23 NINA PURCELL,
 24 NOTARY PUBLIC
 25

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