

**VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK
PLANNING BOARD
REGULAR MEETING AND PUBLIC HEARING
JUNE 19, 2008**

A **Regular Meeting and Public Hearing** was held by the Planning Board on **Thursday, June 19, 2008 at 8:30 p.m.** in the Municipal Building Meeting Room, 7 Maple Avenue, Hastings-on-Hudson, New York, 10706.

PRESENT: Chairperson Patricia Speranza, Boardmembers David Hutson, Jamie Cameron, Eva Alligood, Bruce Dale, Rhoda Barr, Village Attorney Marianne Stecich, and Village Planner Angela Witkowski.

ABSENT: Boardmembers William Logan, Fred Wertz

Chairperson Speranza: This is the regular meeting of the Planning Board. Those of us who are sitting here are kind of tired because we all just came from the ribbon cutting at Kinnally Cove. Please, watch it on TV -- go down and look at the cove. It is absolutely gorgeous. We're the only ones who had to come back up here and do work. Everybody else is down there socializing, but we won't feel too sorry for ourselves.

I. Roll Call

II. Approval of Minutes: May 15, 2008 meeting

Chairperson Speranza: Changes, modifications, amendments? I have a couple, but I'll defer to someone else.

Boardmember Alligood: I have two. One is on page 6, at the very bottom, the third line up, says: "*Plus, I don't know if. . .*" it should say '*you remember,*' not '*your remember.*'"

Then on page 24, where I'm speaking, just past halfway down the page in the second sentence it should say: "*Does that reflect all of the driveways 'and' the buildings,*" not "*in' the buildings.*"

And then again when I'm speaking, several lines down, it starts with: "*I understand the difference between the two. . .*" and the last sentence, that question, just make it "*does it reflect the buildings and all the paved surfaces?*" Just make it plural. It doesn't make sense. The point was "*does it reflect the 'buildings' and all the paved surfaces.*"

That was it.

Boardmember Cameron: Page 31, where I'm speaking, fourth line down has "XXX." Just put the word '*to,*' T-O, if that makes sense. That's the only one I have.

Chairperson Speranza: I just have one, on page 25. It is the paragraph below where the motion is made. I think it's important to make clear what this sentence was. It says: "*Given*

that this 'isn't. . .' That's not what it should say. It should say ". . .*given that this 'is in' a view preservation district*" -- which is why we're taking the vote.

On MOTION of Boardmember Hutson, SECONDED by Boardmember Alligood with a voice vote of all in favor, the Minutes of the Regular Meeting and Public Hearing of May 15, 2008 were approved as amended.

III. New Business

- 1. Public Hearing. Accessory Apartment Renewal. Stephen Kanor; 101 Lefurgy Avenue; (Sheet 29/Block 690/Lots 19 – 21). Waiver needed for parking.**

Chairperson Speranza: Angie, are the mailings in order for this?

Village Planner Witkowski: Yes, they are. This property is on the west side of Lefurgy Avenue in the R-10 zoning district. The applicant is requesting renewal of accessory apartment approval. The 414-square-foot apartment occupies 13% of the 3,200-foot residence, therefore the apartment meets the 25% of floor area limitation. There have been no changes to the existing apartment, and no complaints during the last three years.

Actions required are renewals of the accessory apartment approval and the waiver for one parking space. The applicant is here.

Stephen Kanor, 101 Lefurgy Avenue: The driveway, which is next to the house, has not been changed. It's been there since Dorothy Draper and I owned the house. When we applied 10 years ago for the apartment everything was in order. Nothing has changed. All of a sudden I hear the driveway is wrong. This driveway is 67 feet long, it can hold three SUVs. I could take a picture of it with three SUVs in it, if the Board wishes.

Chairperson Speranza: You may be referring to the fact that there's a waiver required for off-street parking. Because all of your vehicles can fit in the driveway it's a formality, in that technically, within the code, tandem parking -- parking one vehicle after another when you've got an apartment like that -- isn't considered the appropriate off-street parking space. You've received a waiver in the past.

Mr. Kanor: I didn't even know about it.

Chairperson Speranza: See how simple it was?

Mr. Kanor: No, I mean I didn't know that I had received the . . .

Chairperson Speranza: Yes, yes, repeatedly for your application. So if we understand, there has been no change to your apartment and everything's been approved previously in the past, as in the current situation.

Mr. Kanor: The tenant for 12 years has had no car. That doesn't matter.

Boardmember Hutson: The idea is that because there are two different parties, obviously,

the person parked behind may be gone and the tenant wants to leave and they can't leave. That's the rationale, but it doesn't affect you.

Mr. Kanor: I don't know what I've done wrong, so I don't know . . .

Chairperson Speranza: You didn't do anything wrong.

Mr. Kanor: I didn't know the law, I didn't know I had waivers. I knew nothing until I saw this.

Chairperson Speranza: As of this moment you're perfectly fine. Now, if I could just poll the rest of the audience and see if there's anyone else here who wishes to speak. We've had no complaints on the record, but it is a public hearing. I don't hear anyone wishing to speak for, or against, the application. Therefore we will consider the public hearing on this closed, and the Board will take action.

Is there any discussion, questions, or comments from Boardmembers? If not, then could I hear a motion?

On MOTION of Boardmember Hutson, SECONDED by Boardmember Cameron with a voice vote of all in favor, the Board resolved to renew the accessory apartment at 101 Lefurgy Avenue, with the waiver for the off-street parking requirement.

Mr. Kanor: May I ask, does this happen every time I reapply?

Chairperson Speranza: The waiver?

Mr. Kanor: Yes.

Chairperson Speranza: Unless you were to change your driveway and make it wider.

Mr. Kanor: So if I don't change the driveway I don't need to come back.

Boardmember Hutson: You'd need to come anyway.

Chairperson Speranza: Yes, you need to come back every three years for the renewal, but not because of the off-street parking waiver. It's every three years -- the thought being that in that three-year period things could change. If, for instance, suddenly there was a parking problem in that area of the Village there could be an issue with your not having the appropriate off-street parking space.

Mr. Kanor: Only with the school picnic.

Chairperson Speranza: That's it. They're canceled.

Mr. Kanor: Thank you.

IV. Old Business

- 1. Public Hearing. (Continued from February 21, 20008) Site Plan Approval. 555-565 Broadway; Coolidge Hastings LLC. Additional parking spaces for apartment complex (Sheet 11 / Parcels 100A and 100C).**

Chairperson Speranza: This is a carryover from our last meeting. The main concern at that meeting was to see a lighting plan integrated with the site plan. We do also have some comments from the Building Inspector that were left for us. Mr. Whitelaw, if you'd like to go through and just summarize?

Andrew Whitelaw, architect for Coolidge Hastings LLC: We superimposed the proposed light poles on the site plan. We circled them and highlighted them in yellow for you. You can see that there are five 15-foot high light poles that will illuminate the parking lot so we can get an average of one foot candle on the driving surface for safety of the tenants going in and out. I believe that was the information you were looking for.

Chairperson Speranza: Okay, and the parking spaces. You're going to be requesting a variance from the Zoning Board for them to be 8 feet 6 inches. Is that right?

Mr. Whitelaw: Correct.

Chairperson Speranza: Again, it's a continuing public hearing. There's no public other than you in the room right now. Hearing no comments, we'll close the public hearing and I'll ask for comments from the Board. Anyone have any comments?

Boardmember Hutson: I'm only reading that the Building Inspector has one concern. He says, "*The accessibility code requires an access stripe down the middle of what I would assume is a parking space for disabled to be a minimum of 8 feet wide.*" He's just saying the plan doesn't, I guess, reflect what you actually plan to do. Did you see this from the Building Inspector?

Village Planner Witkowski: I just got it yesterday.

Chairperson Speranza: Let me just go through what we've received from Deven, the Building Inspector, with respect to his review of this plan.

"I've reviewed the latest plans we received from the applicant for the referenced project. Although there is a lot of extraneous information on the plans, they do provide the exterior lighting information the Planning Board requested. The applicant plans to illuminate the proposed new parking area with five evenly-spaced fixtures. Based on the spec sheet I have received from the applicant, and some additional information I was able to see on the Internet . . ." -- and it's a copy of a specification of a kind of lamp post."

"To the best of my knowledge and belief, the proposed lighting plan is in conformance with the intent of the provisions of the code."

Then he goes on to quote the section of the code and, as David mentioned, there's one accessibility issue.

Mr. Whitelaw: Allow me to show you. [off-mic] If you look on the plan [off-mic]. So it just got cut off.

Chairperson Speranza: Okay, well, that resolves that.

Village Attorney Stecich: There was also the issue about the depth, remember?

Chairperson Speranza: *“It is understood that the applicant would need a variance for less than the code-mandated 9-foot wide parking space. The applicant must also delineate the depth of each parking space to be no less than 18 feet, as required by our code, unless he is planning to request a variance for that as well. Assuming that the angled parking spaces do provide a minimum depth of 18 feet, the minimum space of 24 feet, in my opinion, is appropriate.”*

Yes, we did discuss that at the last meeting, too -- how it was measured, 19, 18.

Mr. Whitelaw: Right. But it's along an angle. So the angle . . . even though the depth is shown as 16, you're going in on a 60-degree angle. So it does meet with the 18-foot depth of the stall going in.

Chairperson Speranza: And I think when you go for the Zoning Board you have to be able to show that somewhere on the plans -- that it will be an 18-foot depth -- or similarly request a variance for that.

Mr. Whitelaw: I'll do the geometry and show it.

Boardmember Hutson: Eighteen feet is required to be perpendicular to the curb, regardless of the angle parking, right? I mean, we're sure about that.

Mr. Whitelaw: I didn't see anywhere in the code that it had to be perpendicular.

Boardmember Cameron: The issue is that cars are rectangular, whether you like it or not. I could draw an angle, and if I kept drawing the angle wider and wider until you just couldn't get it, one side of the car hits the curb before the other side of the car hits the curb. If you had cars shaped in this parallelogram they'd go in every time. I'm just suggesting that you actually show a full-length car sitting there and see whether it doesn't come through the back side of your parking spot. That's the fallacy of the diagonal line.

Mr. Whitelaw: We did go by national standards of parking dimensions on that when we figured for the 60-degree, but I'll certainly show that on the drawing.

Chairperson Speranza: I think it would be helpful for the next meeting. I have to say, I don't know what the relationship is with you and the building owner, but this was an extremely confusing plan and an extremely confusing process. I think anything you do when you go to the Zoning Board to clarify this will make their lives a lot easier, which then makes your life a lot easier. Just a piece of advice for you.

Mr. Whitelaw: Okay.

Chairperson Speranza: I know Boardmember Logan did recuse himself from this application.

Village Attorney Stecich: One other thing, just so you realize: because the maneuvering aisle is less than 25 feet the Planning Board would have to approve the lesser width of the maneuvering aisle, which you can't do if it's angled parking spaces. It says: *“Backup and maneuvering aisles between rows and parking spaces shall be 25 feet wide, except that in*

areas with angled parking spaces the Planning Board may approve a lesser width, providing this action is appropriate.” I think this is what Deven was getting at.

Chairperson Speranza: Okay, any other discussion on this, questions on this? We already approved the submission for view preservation. Our action now is to approve site plan for the proposed construction of the additional parking, with the waiver of the maneuvering aisle from 25 feet to 24 feet.

Boardmember Dale: It also needs a waiver for the width.

Chairperson Speranza: Not us. No, that'll be next. We'll talk about that next. Are you ready to move it, site plan approval?

On MOTION of Boardmember Dale, SECONDED by Boardmember Alligood with a voice vote of all in favor, the Board made a motion to approve the site plan for the proposed construction of the additional parking, with the waiver of the maneuvering aisle from 25 feet to 24 feet.

Boardmember Hutson: What about Jamies' point? If it's not to code as far as depth, is that something that inherently would require a variance?

Village Attorney Stecich: Yes.

Chairperson Speranza: I think the next thing that we can do, and David maybe you would like to handle this motion, is our recommendation on variance because there is a requested variance for the width of the parking spaces. My recollection at our last Board meeting, some of us were concerned about the width being reduced and some of us weren't. I think it would be important to let the Zoning Board know that, and also to have them take a careful look at this plan with respect to the dimension for the parking.

Boardmember Hutson: Do you want a motion and then we discuss it, or do you want to discuss and then vote?

Chairperson Speranza: Okay, let's discuss it. Is there any discussion on it?

Boardmember Hutson: Bruce, I think, was concerned.

Boardmember Dale: As was Jamie. Just the fact that the code calls for 9 feet, and this is a very active driveway with a lot of people bringing in shopping and kids and stuff like that, I would prefer to see the code respected in this case and provide the extra space between the cars. Besides, a lot of people are using SUVs, which are wider and have wider door swings and require more space. So I would prefer to see the 9 feet.

I also think Jamie's absolutely right in the geometry. That if you drew a line that was perpendicular to the sides of the car you would not have the 18 feet that is anticipated. So I really think that needs to be looked at in scale.

Mr. Whitelaw: Just keep in mind, though, that when you're at the 60-degree angle, the maneuvering coming out you don't need the clearance in back of a car that you need with 90-degree spacing.

Boardmember Dale: Agreed. But you have cars on both sides and you're supposed to have 25 feet.

Mr. Whitelaw: Right, if you had 90-degree.

Boardmember Dale: And these cars are going to stick out beyond what's shown on the drawing.

Boardmember Cameron: So what you're asking is that, in fact, because of diagonal you actually need to take another couple feet you're asking for approval for a 23-foot space in between because that's all you have. That thing you say, that this spot is so many feet deep, it's only that deep because that's how you've drawn it. And, in fact, if you don't have the depth of the car then you have a narrow space in between and we have to make up our minds what we're approving.

Mr. Whitelaw: No, I realize that.

Boardmember Hutson: It could actually be more if you figure 2 feet hanging out on each side.

Mr. Whitelaw: But even if it is hanging out -- a Suburban or something hanging out -- you still have 20 feet left over for a one-way aisle width to get through. I don't think that even if it does stick out past that stall that it's a major issue. Of course, it's a one-way travel lane.

Boardmember Hutson: The question of it being a busy area, how busy is it? Let me ask it that way -- or do you anticipate it will be? Obviously it's going to be busier now because there are more cars there. You don't consider that to be an issue? I mean, why do you feel comfortable with narrower spots?

Mr. Whitelaw: Have you seen the lane going into the place? They have back-to-back stalls and barely 10 feet getting by on the other side. We're going to have over 20 feet, with proper 60-degree parking. So I think compared to the other side, and even compared to other parking in many places . . .

Boardmember Hutson: But why wouldn't somebody be able to say that at any point about the code if what you're saying is you think the code is too restrictive?

Chairperson Speranza: But see, that's why they go for a variance. Our job is whether or not we want to make a recommendation to the Zoning Board.

Boardmember Hutson: But then wouldn't the Zoning Board expect us to recommend on both issues -- the depth of the spots as well as the width of the spots -- if both of them, in fact, are not in keeping with the code; if he needs a variance on both? Is that what we're asking ourselves? If it were just the width, then I think it wouldn't be a big deal at all. Maybe it's not such a big deal now with both. But it seems to me that one thing is compounding the other. Maybe it works fine here, but I'm just saying there doesn't seem to be any special reason to think it would work fine here. Maybe it'd work fine all over town.

Chairperson Speranza: But this is a residential parking lot.

Boardmember Hutson: Right. And you're saying this code would apply to any parking lot, commercial or residential.

Boardmember Dale: Well, it's less busy than commercial.

Chairperson Speranza: The parking code? Sure.

Boardmember Hutson: There's no difference, right?

Chairperson Speranza: Yes, for parking spaces. But I think when somebody is pulling in, and you can go through there -- and when I've been through it's been in the morning -- even then there's not a whole heck of a lot of traffic. These cars, from my reading, aren't going to be here. It's not going to be like you're in a shopping center where people are moving in and out.

Boardmember Hutson: All right, that's what I'm asking.

Chairperson Speranza: In my mind they're parking. They're parking, and they're there for 12 hours.

Boardmember Cameron: We're faced with this issue not because there's no space for putting 9-foot stalls. We're faced with the issue because the landlord would like to put in extra parking spots and rent them out. So it's a pure economic issue we're faced with rather than one of hardship. That's what we're faced with.

Boardmember Alligood: He wants to rent them out?

Boardmember Cameron: Yes, he rents out his parking spots.

Mr. Whitelaw: I don't know if he rents them out separately. I know they rent out the apartments, but I also know that when they built the place people had less cars than they do now so they're facing the problem with more cars with the same amount of units. So we discussed earlier that they're under the required amount of parking; they're trying to get to compliance with that. But whether they rent them out separately, I don't know.

Boardmember Dale: My daughter has a friend who lives in the building and I've been there a number of times. I have not ever had a problem parking, although maybe it's temporary . .

Mr. Whitelaw: Night seems to be the problem.

Boardmember Dale: But I think the issue is, and Jamie's right, there's probably an incentive to build additional spots at this point.

Boardmember Hutson: Whatever the motivation is, it's your sense that it functions.

Boardmember Dale: As it is now -- without this additional parking -- it functions, yes.

Boardmember Hutson: Are the spots now 8-1/4 feet wide?

Mr. Whitelaw: They're 8 feet.

Boardmember Alligood: I've also parked there many times and never had any problem.

Boardmember Hutson: I would move that we recommend to the Zoning Board approval of the variances for both width and depth of the parking spaces, if the depth is really an issue.

Boardmember Cameron: And that they check the depth.

Boardmember Hutson: Yes, absolutely. That it be on the plan.

Boardmember Dale: That the scaled drawing indicate the size of the car and the size of the spaces.

On MOTION of Boardmember Hutson, SECONDED by Boardmember Alligood with a voice vote of all in favor, the Board resolved to recommend to the Zoning Board approval of the variances for both width and depth of the parking spaces, and that they check the depth if the depth is really an issue, that it be on the plan, and that the scaled drawing indicate the size of the car and the size of the spaces.

Mr. Whitelaw: Thank you.

2. 422 Warburton Paid Parking Proposal

Chairperson Speranza: I want to talk about 422 before steep slopes, okay? I will consider it an old business item and, yes, it takes priority over our long-awaited discussion and resolution of steep slopes. It's been called to my attention, Marianne's attention, that the developer of the affordable housing project in Hastings at 422 Warburton Avenue has been speaking with the individuals who are looking to rent the units and telling them they will have to pay for a parking space. If you recall, this is something which had come up a couple of years ago, where they wanted to be able to charge a fee in order to, quote, make ends meet.

At the time, we voiced our strong concern and essentially told them we would consider it a violation of their site plan should they decide to charge for parking. A big part of that was because of the discussions that were had during approval of that project with respect to the impacts that a project like that would have on parking in the neighborhood and on Warburton Avenue.

This has been confirmed -- Marianne, you spoke with them today, or yesterday? -- and it's a problem.

Village Attorney Stecich: What happened specifically a couple of years ago was, James came to the Board and indicated there were a couple of things he wanted to get waiver of site plan approval on. One of them was paid parking spaces. The Board just listened and didn't make any determination that night or say anything one way or the other. Then I followed up with a memo saying, in my mind, that they wouldn't meet the code's requirement of parking spaces if it was paid because it has to be available parking spaces and it's not necessarily going to be available to everybody if they have to pay for it. Apparently, according to Sue Smith, it is an issue whether people who can afford those apartments can also afford to pay separately for the parking spaces; particularly an issue where it is affordable housing.

Back then I gave an opinion to the Planning Board. It was an attorney/client opinion. But Patty suggested I call James. So I called James and told him, and said, "Listen, if you're going to do that you're going to either have to come back to the Planning Board for a revised

site plan approval or go to the Zoning Board to challenge my interpretation that that's not an available parking space if you charge money for it." They told me, "Oh, we don't want to go before the boards again." I guess it was kind of a budget deficit: "We'll just deal with it another way." And that was it, the end of it, until Sue Smith sent the memo yesterday.

So I called Eric yesterday, Eric Anderson., and said, "Eric, I heard that people looking at apartments at 422 are being told that they have to pay rent for the parking spaces." And he said, "Well, I don't know what people have been told or not told, and I'm not sure whether you're going to have to pay for the first parking space or the second parking space." And I said, "Well, we had this dialogue a couple of years ago and it was clear that before you do that you need new site plan approval." And he said, "Well, you show me where on the site plan it says that the parking spaces can't be paid for." I just explained it very briefly. I said, "We went through this two years ago." And he said, "Well, I don't see anything on the site plan." I said, "So that's it? You're going to charge for them or are you going to come for a revised site plan approval?" His response was, "I don't see why I have to come for a revised site plan approval because the first site plan approval didn't say they couldn't be paid parking spaces."

So that's where it's at.

Boardmember Cameron: Can I ask a question? Do they charge for parking over at 45 Main, or does that go with the unit? And if they don't charge for it, how are the units comparable -- since that's what they we're supposed to do, and was the purpose of having the affordable units in a separate building.

Village Attorney Stecich: I don't know. But I suppose in something like that, even if you didn't charge separately you could charge more for the unit at 45 Main. You could charge more for the unit if there's a parking space. You can't do that with 422 because there are limits on what they can charge.

Chairperson Speranza: On the affordable housing, right?

Village Attorney Stecich: Because of things having nothing to do with the site plan. So it's different. I guess the Planning Board has always assumed, in granting site plan approval, that the parking spaces you're not going to have to pay for. Because otherwise you can't be assured that there are available parking spaces for those units.

Boardmember Hutson: You didn't happen to review those minutes from then, by chance?

Chairperson Speranza: No, it just came up yesterday.

Boardmember Hutson: I think we should review the minutes. Because it would seem to me that if they want to challenge that based on the site plan that the record was pretty clear on that. Because they actually had, if I recall, a proposal to do this. I mean, it was rather specific, what they were suggesting at the time, wasn't it? -- when we said no, we thought that would be inappropriate. Do you recall?

Boardmember Barr: I don't know whether it was a question of renting spaces to people

who were not residents.

Chairperson Speranza: I remember that also. Right.

Boardmember Hutson: Part of the discussion.

Chairperson Speranza: When we were doing our review of that project, I'm sure we all recall the individuals who live on Warburton Avenue who said the parking is atrocious. He always had a representative here, and I don't believe that the Board would have said so easily, "Well, no, the affordable housing is not going to generate more parking demand than it can provide for." That's all there is to it: it wouldn't have been acceptable to us then because we knew how bad the parking situation is down there. My feeling is that if Urban Green is now taking the position that they're going to impose an extra fee that, in fact, it is different from all of our discussions; than what's on the record.

I don't know what our recourse is. I certainly have a recourse in mind. They were just here last month with respect to releasing the units on 45 Main Street. My feeling is that we released the specific units. But as far as I'm concerned, as long as they're in noncompliance with our actions with what we had expected at 422 Warburton Avenue those other three units will not be released because they are not in compliance with the site plan.

Boardmember Dale: But I do think we ought to check the minutes.

Chairperson Speranza: And I don't know what other alternatives we have.

Boardmember Dale: When you build 14 units, the code requires you to provide a certain amount of parking spaces.

Village Attorney Stecich: Right.

Boardmember Dale: Is there an assumption in the code that those are free?

Boardmember Hutson: That's certainly been our assumption all along.

Boardmember Barr: Not in luxury apartments.

Boardmember Dale: In any apartments.

Boardmember Hutson: We assume that when any required parking is available to the person, whether it's from commercial or residential . . .

Boardmember Dale: If the person's renting in an affordable housing project, and his income has to be within the guidelines, I would assume that he or she does not have the means to afford this.

Boardmember Hutson: One of the things we pointed out at the time was that if there's a cost issue related it should be as part of the overall rent, which would still have to meet the guidelines.

Boardmember Dale: Right, it should be built in.

Boardmember Hutson: It should be part of the whole package for the apartment. Because now, apparently, the reason it was pulled out initially in the discussion is because they wanted to get something beyond what was allowable for the apartment. That's what it really goes back to. I don't think they'd have a leg to stand on in the court of common sense. Now, whether in a court of law . . .

Chairperson Speranza: I don't know what the recourse is.

Village Attorney Stecich: The recourse is that they can't get certificates of occupancy for the units. Now, I imagine they're going to have a C of O for the whole building rather than for the individual units. I don't know, but I don't think they can get a C of O because they're not in compliance with the site plan. And I guess now that we know they're charging people, some sort of letter or assurance from them that, in fact, they're not charging for the parking.

Village Planner Witkowski: Did you talk to Eric, or did you talk to James, yesterday?

Village Attorney Stecich: Eric.

Village Planner Witkowski: I saw James yesterday and I told him about the situation. He said he didn't know anything about it. And he did remember all of that, and he told me that he was going to be talking to Eric to tell him.

Village Attorney Stecich: Well, Eric remembered, too. Eric remembered that conversation.

Village Planner Witkowski: I'm saying that James did remember that it was part of the site plan, and he did not know what Eric was telling the rental agents that were interviewing.

Village Attorney Stecich: My point is that in the conversation with Eric it was very clear that Eric understood the Village's position. And Eric's the boss.

Village Planner Witkowski: I understand.

Village Attorney Stecich: And Eric's position was still "I don't think it's part of site plan approval, and I don't think I need to come in for a revised site plan approval."

Boardmember Hutson: Who's handling the rentals on this? Who's communicating . . .

Boardmember Dale: The way it functions is, the Affordable Housing Committee advertises and collects the names and puts them in a list, and then they're given to Eric to basically sort through.

Boardmember Hutson: Urban Green is the agent that's doing the renting?

Boardmember Dale: Urban Green does the renting itself.

Boardmember Hutson: But Urban Green is actually having the discussions themselves.

Boardmember Dale: Urban Green is doing the interviewing and choosing the tenants.

Village Planner Witkowski: They're doing the interviews.

Boardmember Hutson: It seems to me that after review of the minutes -- I don't know how we authorize or make it happen -- that a letter go immediately to them saying that this is not in it. So there's a record that it's been discussed and that we're in agreement that this is not in conformity with the site plan as we understand it. I think we should look at the minutes to see exactly what the wording is. Wouldn't that be appropriate, or not? Or do you think it's on them?

Village Attorney Stecich: It may or may not be in the minutes.

Boardmember Hutson: Oh, the discussion was extensive.

Village Attorney Stecich: What, about the parking not being charged back in the beginning? You mean when he came two years ago?

Chairperson Speranza: When he came two years ago.

Village Attorney Stecich: Oh, that one. Okay.

Boardmember Dale: But is that adequate, if it's not part of the motion.

Village Attorney Stecich: Bruce, it's not just that. It's the way the code reads. My opinion was that the code says the parking spaces have to be available. If the people are charged for them, they're not available. And the reason you say they have to be available is so the people will park in them instead of on the street.

Boardmember Dale: And I think there's an assumption that they're free.

Chairperson Speranza: It may be that in another area paying for parking on top of the units, someone may say, "Well, no, I'm not going to do that." Well, that's unacceptable here because of what we know the parking in that neighborhood is like. As I said, it never would have flown the way that it did.

Boardmember Hutson: I think from a legal standpoint wouldn't it be, Marianne, particularly important that these are affordable housing units if that extra charge, in fact, affects eligibility?

Boardmember Dale: It makes it two separate points.

Village Attorney Stecich: But I think the Board's position, the Village's position, has *always* been that the provision of parking . . .

Boardmember Hutson: . . . goes with the unit in residential. Obviously, the Village charges for commercial spaces, it would have to be available. But this is a different situation. That's metered parking.

Village Attorney Stecich: But what would happen if the A&P started -- I mean, I guess it doesn't make sense from a marketing point of view -- if your businesses started, charging for parking . . .

Boardmember Hutson: . . . on their own property? Yes.

Village Attorney Stecich: Or a restaurant starts charging for you to park there. Then it's not an available space, and that was the point of the opinion that I wrote.

Boardmember Alligood: The other point I want to make just for the record is that given the string of recent developments on this project I have to say that I feel, given the description of the conversation, that they're not acting in good faith here. They're acknowledging that they know the Planning Board took a position and conveyed it very clearly, and they're just going ahead and saying, "Well, we're not going to respect that." That really, I think, is a concern.

Chairperson Speranza: You're absolutely right. It's a major concern.

Boardmember Alligood: And I hope they watch this meeting because I find it really not acceptable.

Boardmember Hutson: The reason it's not on the site plan is because we didn't assume that that was something that would ever be on a site plan. I've never seen it on a residential site plan, for the reasons you said.

Village Attorney Stecich: Or any site plan. You just don't put "*parking free.*" It's just understood.

Bruce, one question I had. From the affordable housing requirements, mainly the county's, if they charge for rent is that governed at all by that? So that if they charge for rent it kicks it out of the affordability, then they don't get the grant money or something?

Boardmember Dale: We presume that the units are supposed to be free, and that the people who are moving into that have to pay for that unit, which we presume is free. Then the cost of that parking becomes part of the tariff for living in that space. That could put them over. They're paying more of their income.

Chairperson Speranza: More of a percentage, right?

Boardmember Dale: So the issue really is the same: the assumption that the parking is available, and free.

Village Attorney Stecich: So I wonder, if it were brought to . . . did the organizations already give the grants? What would happen to him? He's already got the money from the county to build the building.

Boardmember Dale: Well, he'd be in violation of his mortgage. His mortgage is from HFA, the state Housing Finance Agency. They're setting the income requirements on that property. So it would be a complaint to them that by forcing people to pay for parking . . . normally, affordable housing doesn't necessarily include parking.

Village Attorney Stecich: Not for this, but the affordable housing.

Boardmember Dale: Affordable housing in the city has a much smaller requirement for parking than the number of units in the building. The people do not have to have cars -- so HFA may not really care that he's charging for the parking because people don't have to have cars. They can live in this particular building without cars. They have access to the train, they have access to Main Street. It would be an inquiry to them, to HFA.

Village Attorney Stecich: The other thing that sort of concerns me is, "Well, maybe we're just going to charge for a second parking space." So that means if they have two cars they'll put the other one out in the street? It's just as bad.

Boardmember Dale: Well, people do have two cars, even if their income's only 80% of the median income.

Boardmember Cameron: We should put this on our checklist of things to include when we see these Saw Mill River Lofts again, since they have affordable units. Are they going to charge rent for parking spots in that building? We should start putting a checklist together for projects like this so we have it before us when the issue comes up.

Village Attorney Stecich: That's a good point. But I think, though, that whether there's affordable units or not the position of the Village has always been you don't charge. If you have more than your required parking -- if your required parking is only six spaces and you have twelve -- then you can charge for those other six, but you can't charge for the six that are required.

Boardmember Dale: Well, there's a presumption that they're free because they're required by the code to provide parking. That's, I guess, what you would hang your hat on legally.

Chairperson Speranza: I'm glad to see that everybody is as incensed as I was. But I think, Marianne, if you could draft a letter to them, to Urban Green, reiterating what we've said: we feel that this is a violation of the site plan, and the intent of this project with respect to minimizing the impact from the parking on the neighborhood, then put them on notice formally.

Boardmember Barr: I have a very bizarre question to ask. Just take an apartment -- the top price for this apartment should be \$500 a month, including free parking -- and somebody doesn't have a car, doesn't have a need for any parking. If that person were paying less rent, got a \$75 credit -- the space it's not released? -- and then he attempted to rent the space to the public. Would this work?

Chairperson Speranza: Not here.

Boardmember Hutson: It wouldn't help him because he's losing the revenue in one place and gaining it in another.

Chairperson Speranza: He's still got to pay his \$500 rent.

Boardmember Hutson: The person's who's paying less . . .

Boardmember Dale: He doesn't get a rent credit for not taking the parking spaces.

Boardmember Barr: No, I'm saying the tenant pays his \$425, and the owner has the right to maybe rent the space for \$200.

Boardmember Dale: Yes, but he's not giving a rent credit or deduction because somebody's not taking a space.

Boardmember Barr: That's what I was saying. He was going to get a \$75 . . . I don't know . . .

Chairperson Speranza: Right. Suppose he was.

Boardmember Barr: Which means that he would wind up with more money in the space.

Boardmember Dale: No, it'd be equal.

Boardmember Barr: Because if he charged the public he could charge anything.

Village Attorney Stecich: That would be a really hard thing to control. Because then what do you do if this person buys a car, or things evolve and somebody moves in who's got two cars?

Boardmember Dale: Does he not have any parking spaces there he's providing? Angie, do you know how many parking spaces he is providing?

Village Attorney Stecich: I don't remember.

Boardmember Dale: Is it equal to one per unit?

Village Attorney Stecich: I don't think he needed a variance. Whatever the code requires, he gave.

Village Planner Witkowski: I think it was 48.

Boardmember Barr: All right, forget it. I was just playing.

Village Planner Witkowski: Because he'd want that extra property.

Village Attorney Stecich: But he didn't get a parking variance, so however many he needs . . .

Boardmember Dale: The question I really had, was there more than he needed?

Village Attorney Stecich: I don't think so.

Boardmember Dale: So if it's exactly what he needed, then we just have to make the assumption . . .

Village Attorney Stecich: And if there's more than he needed it's not an issue because he's got his available.

Can I just ask, because I'm heading out of town tomorrow morning and won't be back until Wednesday. He should know before. So if it's okay with the Board, what I'll do is send Eric an email that says that the Board met, and I'll follow this up with a formal letter that the Board considers it a violation of the site plan for you to charge for the parking. And you should understand that as long as there's any violations of the site plan you can't get certificates of occupancy. All right, I'll send that tonight.

3. Recommendation to Board of Trustees. Proposed Steep Slopes Law revision.

Chairperson Speranza: It's not 10 o'clock yet. That's amazing. I sent around last night -- and I apologize, it was late. . . you know, I was trying to grapple with all of the places we've come, and how far we've come, with steep slopes back from previous Board discussions. What I kept coming back to were some statements like: "*The steep slopes ordinance now isn't really bad; some things need to be changed; let's change this, let's change that.*" Jamie, then, of course, you brought up one of the concerns: if we're going to put deductions on each lot how do you deal with that on properties that are small, and then would be problematic with respect to having enough area to do anything. I think, Jamie, you came up with a really good way to go about doing that, particularly in the CC and MR-C districts, where we really want to have density.

So what I did was took our current Steep Slopes and inserted recommended changes and deletions. I'm not all that great with it in terms of getting it done on the computer, so that's why I've got yellow highlights and red and blue instead of your regular tracked changes. With that, I'm just curious, Boardmembers, if I've got the essence of what some of the feelings are. There was one question which I couldn't quite figure out, and it might be because it was late. If we have a subdivision, and we are going to be deducing the steep slopes from the overall creation of the number of lots in the subdivision, do we also then make the deduction on the individual lot as far as the area that could be built upon?

Boardmember Cameron: It won't make a difference.

Boardmember Dale: You shouldn't have to because you've eliminated the slopes from what's buildable.

Boardmember Cameron: Yes, the lot's been made big enough.

Chairperson Speranza: The lot should be big enough.

Boardmember Cameron: It's been made big enough by the first section. You don't have to double-dip.

Chairperson Speranza: Good. And do you think that's clear, or do you think that needs to be stated somewhere?

Boardmember Cameron: No, I think that's clear.

Boardmember Hutson: Patty, B, on the second page there, where it says "*for any portion of a lot subdivision. . .*"

Chairperson Speranza: "*Subdivision*" comes out, blue comes out.

Boardmember Dale: Blue comes out. She substituted "*lot*" for "*subdivision*" throughout.

Village Attorney Stecich: Patty, on 249-6, where you inserted the word "*subdivision,*" 77-38 is the cluster law. So this is just saying if you're going to determine whether there's a cluster, you do the layout and do whatever subtractions.

Chairperson Speranza: Right.

Village Attorney Stecich: So you weren't intending to make a change there, were you?

Chairperson Speranza: No, I just thought it should be somehow differentiated because the last section had been subdivisions, also, that I was proposing it to be changed to lots. So I wanted to make sure that it was clear that this was a subdivision. But you're right.

Village Attorney Stecich: It's a cluster thing.

Chairperson Speranza: So maybe we don't need to have that, subdivision, there.

Boardmember Cameron: Where are you taking out?

Village Attorney Stecich: The word "*subdivision,*" and just leave the thing. Although it probably wouldn't be bad to add "*cluster*" in there because everybody has always been confused about that. They look at that, and say, "Oh, yes, you have to subtract it." But that's just for cluster, and maybe applications involving cluster plat review or something like that. Just to clarify it. I'll take a look at 77-38 to see how it's worded.

Boardmember Cameron: Which one are you on?

Village Attorney Stecich: It's 249-6.

Boardmember Dale: So you want to add the word "*cluster*" to . . .

Village Attorney Stecich: Yes, but I'll put it in the right place. Just to clarify that that section applies to clusters. Because what you have to do in a cluster is draw a conventional lot and then take it back when you're doing those. You have to do the deductions when you're doing those conventional lots so you don't get any extra.

Boardmember Hutson: Patty, on the third page, under 249-8(a), you use the term "*property*" as opposed to "*lot*" there, and that's because you want to give it a prior relationship to the reference?

Village Attorney Stecich: Wait. Which is in, which is out? Is red in?

Chairperson Speranza: Red is in, and blue is out. I like red. "*The property cannot be developed without disturbing more than the percentage limits in 249-5.*" Yes, it could be

lot.”

Village Attorney Stecich: You’re right.

Boardmember Cameron: I actually already added it in mine.

Chairperson Speranza: And I did feel that it was important to include something in here because I’ve always felt that we should be looking at something a little more than just the stormwater management; also the retaining walls and how that affects adjacent property owners as well. So that’s why I added something to the purpose and intent.

And then 5(c) . . .

Boardmember Dale: 249-7(C).

Chairperson Speranza: About creating new steep slopes?

Boardmember Dale: *“The methods used to minimize the impact of changes. . .”* -- so that should be subject to . . .

Chairperson Speranza: Yes, on adjacent property owners. *“The methods used to minimize”* . . . oh, *“a statement prepared by a licensed architect, registered landscape architect, or engineer describing. . .”* -- what I added was *“see the methods used to minimize the impact of changes in topography on adjacent property owners through landscaping, retaining walls, or terracing of new yards,”* just as examples of ways to control it. Rather than just being presented with the plans for it, how exactly does this help to prevent the adjacent property owners from having a 10-foot high wall next to them.

And then the other thing was, *“Under no new circumstance is a new slope to be created as part of any construction activity.”* We don’t want to have a situation where someone actually grades up.

Boardmember Dale: One thing, maybe I didn’t see it, is a number of the other villages’ steep slopes laws they made it exception of normal gardening and maintenance of the yard and things of that sort.

Chairperson Speranza: We can add something like that.

Boardmember Dale: I think that should be added. Because that’s been the issue about reducing this from subdivisions to the lot. You begin to put restrictions on a homeowner on what they can and can’t do, and I think we need to separate that out. That they can do whatever gardening and normal maintenance of their property without having to come to the Planning Board.

Chairperson Speranza: And there was something about that in Croton.

Boardmember Dale: It’s in Croton, it’s in New Castle.

Boardmember Hutson: And what part of this might be interpreted to preclude that?

Boardmember Dale: I think you need to specify it, certainly, so people know that normal maintenance of your yard is exempt from steep slopes.

Village Attorney Stecich: But I remember the Board had talked a lot about that. That’s why what they did, rather than say that, is say that you can’t develop, pave, re-grade, or strip

of vegetation without appropriate measures to prevent erosion. So it's not like saying you can't do anything.

Boardmember Dale: I just find that if you specify up front that there's an exception to the homeowner to where he's allowed to do regular maintenance on this property . . .

Village Attorney Stecich: But what would prevent you from doing regular maintenance? I know it's in the other laws, but it may be that steep slopes is defined differently or what's regulated, but I don't see that here would be anything in steep slopes . . .

Boardmember Dale: Their conditions are very similar to what we have.

Village Attorney Stecich: But I would think there is nothing in the law that would keep you from it.

Chairperson Speranza: If you look at the restrictions on steep slope disturbance that's the only section: these are the only things for which you're prohibited from doing anything. Only if you're developing, paving, re-grading, or stripping of vegetation without replacing it.

Boardmember Hutson: Again, it allows you to tear up the lawn and plant vegetables if you want as long as you don't do it on a hillside where everything's going to wash down on your neighbor.

Village Attorney Stecich: It doesn't look like such a big deal, but there was a lot of discussion over that "*stripping of vegetation without appropriate measures.*" Because people were saying, "Well, can you not do this, can you not do that?" It was worded like that so it would not prevent gardening, just regular maintenance.

Boardmember Cameron: I have a question on 249-6, which says "*determine the maximum number of dwelling units that would be permitted.*" Don't we need the max number of lots that would be permitted, subdivided into lots?

Village Attorney Stecich: No. This is a cluster thing so you may not have separate lots: somebody's coming in with a townhouse cluster.

Boardmember Cameron: I see this has worked.

Boardmember Hutson: Specific to that.

Village Attorney Stecich: Yes, it's very specific to that section of the Village law.

Patty, I wanted to ask you something, where you were before: "*Under no circumstances is a new steep slope to be created as part of construction activity.*" I can't think of a situation, but I'm just wondering. I was hoping Bill was here, but might there not be . . . I don't know, under no circumstances seems very restrictive. Maybe there might be a situation where one would be created with a retaining wall for some reason or something.

Boardmember Hutson: As long as that didn't push it over the allowable percentage.

Chairperson Speranza: Maybe I don't; no, you're right. That's not in the right place. That's standing alone.

Boardmember Barr: Is that meant to be a temporary thing -- in other words, while they're working on it -- or does it mean that in the process of redesigning property you can't create a steep slope?

Chairperson Speranza: That was my intent.

Boardmember Hutson: She's saying you might be under the allowance when you start out, but in your construction you can't create a steep slope that would put you over. I guess that's the only thing on how you word that. But this does sound a little too broad.

Boardmember Cameron: Somebody could go in and bulldoze and get rid of a steep slope.

Boardmember Dale: No. If you moved all your earth to a corner of your property because you want to pay to have it removed, and you used it as landscaping, then you end up creating a steep slope. You wouldn't be faced with the reduction, but you would have created a steep slope.

Village Attorney Stecich: And maybe you don't want to prevent that if there's a reason for it and it can be created in such a way that you meet all the performance standards for steep slopes.

Boardmember Hutson: We might even want to give a reward for creating steep slopes since we're trying to protect them.

Chairperson Speranza: But if you're the property owner adjacent . . .

Boardmember Dale: Well, the issue there is runoff; that then you're creating a hazard on somebody else's property because the water's going to run off onto their property and they didn't have that before.

Chairperson Speranza: And I would say, to me, it's not just runoff.

Boardmember Hutson: It's aesthetics?

Boardmember Dale: It's what besides runoff?

Boardmember Hutson: You're saying some overwhelming presence.

Chairperson Speranza: Right. Light, shadows . . .

Boardmember Barr: Yes, but people do that with trees.

Chairperson Speranza: True.

Boardmember Barr: We used to have a beautiful view of the Hudson from our backyard. Now there's a big Blue Spruce tree there.

Boardmember Dale: I think that was one of those cases they presented in that program you went to.

Boardmember Hutson: I think the important thing is moving it in all lots, and the second important thing is exempting the CC and MR-C.

Village Attorney Stecich: Patty, I remember where that came from -- your thing about creating new steep slopes. The building permit application requirements are, for lots that contain slopes of 15% or greater, I think we said if it either contains or will create a slope. Because I suppose you could technically read this . . . somebody comes in with a flat lot, they come in for a building permit. They come in with a flat lot and they're doing some work that's going to change the slope. They could say, "Well, no, I don't have to do it because my lot doesn't contain it, I'm creating it." I remember that coming up. So you would say, on applications for building permits on lots that contain, or would create, slopes of -- or would result in a slope of -- 15%, it has to come before the Board. Would that address it?

Boardmember Dale: That means that the Building Department, in reviewing a plan that did so, would then send them here.

Village Attorney Stecich: Right, yes.

Chairperson Speranza: And they have to approve it.

Village Attorney Stecich: “*On lots that contain, or would result in. . .*”

Boardmember Hutson: That’s a funny thought, though, that we’re worried about somebody creating one. And the only reason we’d be worried about them creating it is if it presented a nuisance or a hazard.

Village Attorney Stecich: This doesn’t say you can’t, but if you’re going to create one you have to make all those same showings that the person who was going to build on it has to do.

Boardmember Barr: Logically it probably would never happen. You’d have to dig out . . .

Chairperson Speranza: I could see that.

Village Attorney Stecich: No, not 15% of the lot. No, a slope of 15% or greater. Maybe you’re putting in a pool or a gazebo or whatever, and you want it up on . . . use some retaining walls because you want to get a view of the river or something like that. If you’re going to do that, then you have to go through the steep slope review.

Boardmember Cameron: Yes, I think that’s correct. Because if you’re creating it, we can deal with the guy.

Village Attorney Stecich: Right. And the way this reads now you wouldn’t have to.

Boardmember Barr: With any building, if you’re going to do anything on your property, you’ve got to get the approval so you can’t do anything which would cause damage to somebody else. It isn’t a steep slope, so if you decide you want to do something it’s got to get approved.

Chairperson Speranza: Right, but it doesn’t necessarily have to come here. Most of the things don’t come here.

Boardmember Barr: That’s what I’m saying. Can’t the Building Inspector decide this isn’t a safe thing to do?

Village Attorney Stecich: But he wouldn’t even have the authority for that; maybe under the stormwater regs that we have now, which we didn’t have when we started talking about this. But for aesthetics or other reasons, there might be other reasons.

Boardmember Hutson: It just seems like a bit of a reach. And it’s almost like if the person created a steep slope of that amount the real problem is if they then decide to disturb it.

Chairperson Speranza: Well, let’s take an example. There were some houses, and I’m not sure if they met this parameter. There was one, maybe two, maybe even three properties that we approved the subdivision for and the property owner bought them -- and I was thinking of one in particular -- where all of a sudden what we had approved was a lot which was gently sloping and they came in and re-graded. And now their yard is flat, but the rest of the property is a steep slope.

Village Attorney Stecich: It wasn't a steep slope before, and now it is.

Boardmember Hutson: But isn't it a question of what problem does that steep slope present, and isn't that covered otherwise?

Chairperson Speranza: I don't think it's covered otherwise.

Boardmember Hutson: In terms of it creating too much runoff, it would be covered otherwise. If it's reinforced in such a way that it's considered a structure.

Boardmember Dale: Did the house sit on top of this slope?

Chairperson Speranza: Yes.

Boardmember Dale: So it is within the parameters of the Building Department to determine that it's structurally sound and that the earth can carry the building if it's an artificially-made slope.

Boardmember Cameron: I think the question we have before us is, if the person has a plan to make the property into a steep slope whether we shouldn't apply our steep slope provision to that property as they have made it -- in which case it's really a drafting issue. I think Marianne could figure out how to draft it. We all can talk about, well, we won't let them, he shouldn't do that. But the person who wants to do that is going to do that. I think we should apply the steep slope provisions to them, as they apply, if they're going to create that monstrosity. And I think it's a drafting issue: which clause you put it into, or how you make it react backwards. I'm sure we can look forward to your draft.

Village Attorney Stecich: What I would do is just add language to 249-7(a). Just add the language ". . . *applications for building permits that contain slopes of 15% or greater, or would result in a slope of 15% or greater.*"

Boardmember Dale: Rather than prohibiting it entirely.

Village Attorney Stecich: No, you're not prohibiting.

Boardmember Dale: At least you want to be able to review it.

Village Attorney Stecich: I'm thinking. Because I walk 3 miles every morning I see two houses in the neighborhood where they did re-grade the yards. I guess they wanted a bigger play area. It could have been gently sloped before, but now it's flat and then there's a drop.

Boardmember Dale: That's fine. You might do that for a landscaping effect and different aesthetics, and it might make sense.

Chairperson Speranza: And that's fine, and it may seem ridiculous that they have to come and talk to us.

Village Attorney Stecich: But remember, it's got to be 1,000 square feet. So if you just do some little thing it's not a big deal. It's a fairly sizeable piece of land.

Boardmember Dale: The New Castle law has two exempt activities. One is: the "*normal ground maintenance, including new trimming of vegetation, removal of dead or diseased vegetation,*" etc., etc. The second is: "*to service the steep slopes under temporary emergency conditions, as determined by the town engineer, where such service is necessary to protect persons or property from present and imminent danger*": landslides.

Chairperson Speranza: See, I tend to think they can do that anyway.

Village Attorney Stecich: If it's a real emergency.

Chairperson Speranza: If Mr. Picone's slope had not been stabilized prior to its falling down on the railroad tracks I would think that the railroad or the Village could come in and take care of that problem and not have to worry about coming to us before dealing with it. But again, I don't think we're prohibiting so much to have an exception.

Boardmember Dale: Where's that specifically? Is that 249-5?

Chairperson Speranza: These are the only things that they have to come and talk to us about: ". . . for a slope of 15%, not greater than 25%, not more than 35% can be developed, paved, re-graded, or stripped of vegetation without erosion control."

Boardmember Hutson: I think it's good.

Chairperson Speranza: Let's go to the CC and MR-C. I did want to make sure that I was very clear why we were exempting those two zones.

Boardmember Cameron: Just to be clear, on that list you were just referring to, if you look at item 4 it says "*stripped of vegetation without appropriate measures to prevent erosion.*" I assume that the phrase "*without appropriate measures to prevent erosion*" applies only to item 4.

Village Attorney Stecich: Yes.

Boardmember Cameron: Sometimes people reverse that phrase, so 4 would read "*without appropriate measures to prevent erosion, stripped of vegetation.*"

Village Attorney Stecich: No. I don't think there's any other way to read that. That's why there are separate paragraphs there. It used to be all one paragraph, and I was concerned that somebody would think that "*without appropriate measures*" modified all of it. I remembered that, so I made a separate paragraph so it was clear that "*without appropriate*" only applied to strips of vegetation.

Boardmember Cameron: Particularly that it had a comma.

Boardmember Hutson: I say we put this baby to bed.

Boardmember Cameron: Well, there are a few other things. I think we have some lead-in paragraphs which we need to add to it. We just have the paragraphs here with a slight change, and I think we changed it. I think we can look at a lot of the other ones Bruce was referring to, the Town of New Castle. It has one in particular which I'd like to put in, and I've rewritten it for the Village. "*Steep slopes, including vegetation or rock outcroppings located thereon, are important environmental features that contribute significantly to the visual impression one forms when traveling through the Village. Areas that are highly visible from roadways and other public places are particularly important in maintaining the Village's character. Overdevelopment, or improperly managed disturbances to these areas, are detrimental to the visual character of the Village.*"

I've just made slight changes to Item D, which is the lead-in to the Town of New Castle. And, indeed, it's in virtually every one you see out there. I think we just need to run through

the old ones and make some changes to make them a little bit more modern and reflect, I think, some of the sensitivities the people in the Village have.

The other comment I have is that to help the hardship applicant I would think Item C in 249-8 -- which presently says "*If steep slope areas will be disturbed to the minimum extent consistent with objectives of this chapter. . .*" -- we could add the phrase which includes a whole bunch of others: "*and should constitute the minimum disturbance necessary to ensure the applicant a reasonable use of the applicant's property.*" That appears in the lead-in here, too, but it may be better to have it there and I think we should consider that.

Boardmember Barr: But won't you run into trouble if you start talking about reasonable use? What you think is reasonable, what I think is reasonable, what somebody else thinks is reasonable, I think you get into enormous discussions about that. I think what it says here is, if it isn't hurting somebody . . . I mean, we're preventing it from hurting somebody, but as soon as we start talking about whether it's reasonable I think you're running into enormous questions of interpretation.

Boardmember Cameron: Well, we have it actually in C, a little bit differently. It says, "*At the same time, the Planning Board recognizes the need to achieve a balance between protection of public interest and safeguarding the rights of property owners regarding the use of their land.*"

Boardmember Alligood: Where's that?

Boardmember Dale: I think she's right.

Chairperson Speranza: It's "*purpose and intent.*"

Village Attorney Stecich: To put this all in context, is everybody agreed then that we're going to have the deductions in 249 apply to everything, to all of this?

Boardmember Hutson: I'm in favor of that.

Chairperson Speranza: I could do that.

Boardmember Cameron: Yes.

Village Attorney Stecich: Okay. Because then the hardship exception's more important.

Boardmember Dale: Yes, absolutely. Without the hardship exception I would not support it.

Boardmember Cameron: So we need to know the hardship is written in a balanced way.

Village Attorney Stecich: What about the section that says, "*The steep slope area will be disturbed to the minimum extent consistent with the objectives of this chapter.*" Does that cover it?

Boardmember Cameron: I think we need to -- maybe in the purpose clauses -- get out the objectives of this thing a little clearer. I think we all recognize that if we're faced with a lot on which someone's had a house for years, and the bloody thing burns down, that we find a way to let them have a new house on that lot. I want to make sure we do that.

Chairperson Speranza: And you don't think that that could happen with this kind of a hardship, with what's in here? "*The lot cannot be developed without disturbing more than*

the percentage limits in 249-5.”

Boardmember Dale: The house originally may not have complied with this, and now it’s burned down and he would be prohibited from rebuilding.

Chairperson Speranza: But that’s why he comes here for a hardship exception, and we say, “Omgosh, your house burned down. That’s terrible. Of course you can rebuild.”

Boardmember Hutson: Would you lose your footprint?

Boardmember Cameron: What we don’t know is what the words “*the steep slope. . .*”

Boardmember Hutson: Under the rest of the Village code, if a house burns down do you lose your footprint?

Chairperson Speranza: It depends on how much . . .

Village Attorney Stecich: If it’s all burned down. If it’s 50% you can build on the same footprint, I think.

Boardmember Dale: Fifty percent?

Village Attorney Stecich: I think it distinguishes between residential and . . .

Boardmember Cameron: Right. Well, I’d like the person to be able to build a house even if it’s not on the same footprint.

Boardmember Hutson: I can’t imagine. I mean, that would be a callous board that said, “Tough luck.” Mean bunch of people.

Boardmember Dale: Collect your insurance and move on.

Boardmember Cameron: And forget about the value of your lot.

Village Attorney Stecich: Here: “*a single-family dwelling in any district, or a two-family dwelling. . .*” -- oh, that’s about nonconforming -- “*can be rebuilt or restored on its original foundations.*” And then beyond that is pretty much like a 50%, then you can . . . if more than 50% is damaged, so I’d have to start from scratch. There’s a little exception if your lot is real small.

Chairperson Speranza: Jamie, were there other things?

Boardmember Cameron: Actually I just brought up one of them in the “*whereas*” clauses, and maybe I can send these to Marianne. I would have drafted some of the exceptions a little differently, but that’s not really of substance. You know, you refer to “*for any portion of a lot.*” I think you should say “*a lot or a subdivision,*” but that’s just drafting, that’s not really substance. I think we have in substance what we want to do.

Chairperson Speranza: No, wait a minute. That is substance. You said “*lot or subdivision*”?

Boardmember Cameron: I think it could say, in 249-5, “. . . *for any lot, or any portion of a subdivision, that contains a slope in excess of 50%.*”

Chairperson Speranza: You’re right. It could say any lot.

Boardmember Cameron: I would say “. . . *for any lot, or any portion of a subdivision.*” These are just drafting things, they’re not substantive things.

Village Attorney Stecich: Actually, there are two things I thought of. I was looking at a memo I sent out a little more than a year ago, and it triggered my thinking. One thing is, we

keep saying the stormwater law applies. But right now it applies to disturbances -- I think the Village settled on an acre. So it's not really going to apply to a most of the properties, in the Village. I don't think that affects this because you're saying if you have a steep slope you've got to put it in.

The other thing is, I remember talking about a year ago or two years ago -- that maybe all of the applications shouldn't come to the Planning Board. You talked about maybe the Building Inspector. . .

Boardmember Alligood: Marianne, in some of the other codes, the reason they defined steep slope, very steep, extremely steep slope is that they say very steep and extremely steep slopes applications come to us, or whoever the governing authority is, and then just the steep slopes go to Building inspector. That's how the other towns deal with that.

Village Attorney Stecich: Yes, so they don't all have to come here.

Boardmember Alligood: But we don't have those gradations within steep slopes. That would be a reason to put that in there, if you wanted to do it that way.

Chairperson Speranza: Although we haven't seen very many at all with respect to the building on steep slopes. I think the way this reads now, it's just my sense that the Building Inspector puts it all together and then it comes to us, we ask our thousand questions -- and because we've had differing opinions on how to deal with steep slopes and what we should be looking at -- and there has been lots of discussion on some of those applications.

Boardmember Alligood: I would agree with that.

Village Attorney Stecich: Frankly I think it's a good idea.

Chairperson Speranza: That they all come before . . .

Village Attorney Stecich: It's just that that issue was raised before.

Boardmember Barr: I had a question. We were talking, dramatically, of a house burning down. But what's much more likely to happen is that a house that's been existing on property which has a steep slope on it, somebody new comes in and they want to take down the existing house and build a newer house. As long as they are still within the footprint of the original house, does the steep slope come in?

Chairperson Speranza: I think it does.

Boardmember Cameron: Oh, yes.

Village Attorney Stecich: Because it's an application for a building permit on a lot that has a steep slope. It's triggered, it has to come in, something like that. The review might be simpler if they're just doing what was there before.

Boardmember Barr: But the original house didn't have the deduction taken from it.

Chairperson Speranza: But that's easy enough in terms of a hardship, and looking at what it is they want to put up.

Boardmember Alligood: It's already been something.

Chairperson Speranza: Right. It's been disturbed, and if it's something that's three times as large as what was there, and it's clearly going to have much more of an impact on the

slope than the original structure, then maybe this gives us a way to kind of tone it down and protect the slope and the downstream neighbors.

Boardmember Barr: I suspect there are lots that are not buildable lots, in a sense.

Boardmember Alligood: But we want to review them with the major changes. I think that's one of the ones we'd want to come to us.

I agree. I don't see this being this overwhelming flood, and I think it is helpful for us to review these things. On that note, I think, given recent experience in terms of applications sometimes coming in without all the information that we feel we need, that what I would recommend under, it says here, "*building permit application requirements*" -- in New Castle, it says "*application requirements.*" -- their code is much more specific. I mean, it adds more detail in terms of what should come to us. So for instance, just for an example, in New Castle they say "*the applicant should show the location of the proposed area of disturbance and it's relation to neighboring properties, together with structures, roads, and effective wetlands, etc.*" The specificity is very important. Because then if we're trying to determine does this make sense in the context of the neighborhood where it's being proposed, we need that information. So I think that's really key for our review that we have a really good list of what we need to make that determination; so we have all the information at hand. There are probably others here -- you know, I'd need to compare this -- but that was one that jumped out at me.

Our site plan list of what's required for site plan approval is quite detailed, so I just think we'd want to have that same type of detail here. And then we'd want our Building Inspector to make sure the applicant knows we want all that information.

Boardmember Hutson: Those provisions in site plan, those requirements in site plan, would still apply.

Village Attorney Stecich: Not for one- or two- because one- and two-family houses don't . . .

Boardmember Alligood: Don't come before you for site plan approval.

Boardmember Hutson: Right. But in terms of what the Building Inspector . . . you're just saying if the Building Inspector would get those. Doesn't it require showing the relationship to the neighboring properties?

Chairperson Speranza: Not in here.

Boardmember Hutson: No, not in here. I'm talking about wouldn't the Building Inspector require that they see that.

Village Attorney Stecich: No, they don't come for site plan approval. If it's a one-family house they come to him for a building permit.

Boardmember Hutson: And they don't have to show anything in regard to the relationship.

Village Attorney Stecich: No.

Boardmember Alligood: And sometimes the site plans we get still don't show us what's

next. So I think the more we spell it out, the better position we are. It does say site plan in our current code -- you know, site plan of a property at a scale of one inch equals 50 feet -- but it doesn't specify what goes in . . .

Boardmember Cameron: Can I ask a question? You have a lot which is 200 feet by 100 feet. Am I right that we get a thing that's 3 by 4 inches? What is 1 inch equals 50 feet? I started reading that, and I said, well, our lots are 100 by 200 feet at most, and how many inches is that. It gives us a piece of paper that thick. There's something wrong with those numbers in there.

Boardmember Alligood: Well, it's the same thing it says in New Castle. Maybe we want to take a really close look at what we put in there.

Chairperson Speranza: Okay, I will task that to you. And Jamie, why don't you take the purpose and intent, if there are a couple more things. But I'm serious when I say that while some of these codes are good, there are some very good, let's not add words to it.

Boardmember Cameron: I'll go for the guts and not for the glory.

The only other thing on this, at the end you've added at, 249-9 -- which is sort of a whole purpose clause on the CC and MR-C districts -- I don't . . .

Chairperson Speranza: And why we're treating it differently.

Boardmember Cameron: Well, I don't think it's necessary to do that. I would have just gone up at the beginning of when we made it applicable, 294-4, and I would have just sort of taken the two districts out. I mean, if we want to have a whole purpose . . .

Village Attorney Stecich: No, I think you want it in 249-5. You want the rest of the law to apply no matter what; calling the rest of them performance standards. See, I think that's wrong in 249-4. Because I would think that on a steep slope anywhere you would want to see -- no matter how dense you want your district -- what I'll call the performance standards. So I think that exception you wanted in 249-5, in the deduction, it would just go down there.

Boardmember Cameron: The exception I wrote was simply that ". . . *except the provisions of 249-5 shall not apply to lots in the CC and MR-C districts.*"

Village Attorney Stecich: Or you could just put in 249-5 ". . . *for any portion of a lot anywhere except in the CC and MR-C district these things apply.*"

Boardmember Cameron: I'm really trying to discuss whether we want a long sort of "purpose" clause. I'm for brevity. We either excluded them or we didn't. I don't think we have a long "purpose" clause.

Village Attorney Stecich: It's a point. I think you could take 249-9 out altogether and just put in 249-5 that ". . . *except in the CC and MR-C districts.*"

Chairperson Speranza: But let's not forget why. That's my concern. Because we're often forgetting why these districts and why is it only this way. What I was trying to do was make the link between we're not going to have these steep slope deductions here, but we are still looking to control the impact of the impacts of building on slopes; we just feel it's different in the CC district.

Boardmember Cameron: Right. I might have put that into a “*whereas*” clause when I passed this law.

Chairperson Speranza: That’s good. That’s fine.

Boardmember Cameron: Because it doesn’t really show up in the law.

Village Attorney Stecich: The problem with “*whereases*” . . . you know another way to do it? You could probably come up with, when you’re working on the purpose and intents, something that would cover that. You know, recognizing the balance between whatever.

Chairperson Speranza: That’s fine.

Village Attorney Stecich: And put it in there because it’s better if it’s there. I mean, it’s great to put the things in the “*whereases*,” but the “*whereases*” don’t show up in the code. And when you’ve got a board 20 years later they might not know. So I think you could probably come up with an intent paragraph that would cover that.

Boardmember Hutson: The truth of the matter is, it’s another kind of exception. That’s why it kind of flows where it is. I mean, there are exceptions; there’s a hardship exception, and then there’s the density-desired exception, you know. But wherever you put it, as long as it’s in there and clear. But I think giving a little bit of the rationale is important.

Village Attorney Stecich: Can I read the really hard point? The whole retaining wall thing, we kept putting in regulations for retaining walls when we were talking about structures and everything else. In fact, it did come up at the Board of Trustees meeting the other night. Finally there was a work session on those amendments that we worked on awhile ago. Somebody said, “Well, what about retaining walls?” I said they’re not included because the Board is still working on the retaining walls as part of the steep slopes thing. I’m just wondering if there would be some way to get around this law by doing things with terracing instead.

Chairperson Speranza: But see, that may not be a bad thing for construction. Something like that -- terracing the properties with a series of low retaining walls -- I think is fine in certain circumstances, as compared to having a 10-foot high retaining wall.

Village Attorney Stecich: Yes, I know. But how do you get that in? How do you deal with that? Because we had that issue with those really high retaining walls. I don’t think we thought there was anything in the code, and I don’t think there is, that said you can’t build a 10-foot retaining wall.

Chairperson Speranza: See, that’s one of the reasons I added this last sentence for the Building Department application requirement. That we should have, “. . . *from a licensed architect or landscape architect, the methods used to minimize impact of changes in topography on adjacent property owners through landscaping and retaining walls.*”

Boardmember Cameron: I think we do need to get something in the code on retaining walls, both as a limit to how high a retaining wall can be without being permanent and also the ratios of retaining walls to each other. It may be one-on-one, or whatever we decide on.

Boardmember Barr: I suggest before you do that you drive around the Village. I'm just thinking now that if you went from Yale to Amherst, and you didn't have a 10-foot retaining wall there, you'd be in serious trouble.

Boardmember Cameron: Right. I'm not prohibiting people from having them.

Boardmember Barr: I think we have to be very careful.

Chairperson Speranza: Right. It doesn't have to be a prohibition.

Boardmember Cameron: It's not a prohibition. It's getting a permit to put it up.

Chairperson Speranza: It's going through the process to just say hey, this'll work here.

Village Attorney Stecich: Could you have a retaining wall -- I guess you could -- could you have a 10-foot high retaining wall on a property that didn't have a steep slope that met this requirement. I'm having a hard time picturing it.

Boardmember Cameron: Well, you could have a piece of property on which there was a 10-foot rise over -- you pick the distance, a 25-foot distance -- and I could decide . . . and you're in the next property in front of me, and I could put up a wall and fill it full of dirt. You'd be looking at a 10-foot wall the next morning if somebody could build that fast.

Village Attorney Stecich: But to do that you'd be creating a steep slope. Wouldn't you be creating a steep slope?

Boardmember Cameron: Am I creating a steep slope?

Village Attorney Stecich: Yes.

Boardmember Cameron: Then we have a cure for the whole question of a retaining wall because it becomes a steep slope. It can't be that, within 10 feet. I'm sorry, it can't be that.

Boardmember Hutson: You can do it as long as you stay within 1,000 square feet.

Boardmember Dale: The point seems to be that beyond a certain height a retaining wall is a structure, and structures have to be reviewed. We could just adjust it by picking when does a wall start to need engineering in order to be built -- you know, 4 feet, 10 feet.

Boardmember Cameron: And also put a ratio in there to stop people from getting around it by building four 6-foot walls in a row all 2 feet away from each other, getting an 18-foot wall. You've got a ratio in there someplace.

Village Attorney Stecich: Let me make a suggestion, and I'll get us out of here. These zoning amendments that originally came from Deven and me -- and then here, and then went to the Board of Trustees -- once they schedule the public hearing, they're going to have to come back to the Planning Board. Those are the ones that included structure, what's the definition of a structure. We might be ready at that point.

Chairperson Speranza: Wait a minute. They're going to come back here? Even if it comes from us, then it's got to come back here?

Village Attorney Stecich: You could spend two minutes on it, and say we already approved it. But there are state rules on how you have to pass a zoning law, and one of them is schedule a public hearing and it's sent to the planning board. Say we already looked at it, it's fine. And you could do that, or you could use that as an occasion to look at it and stick retaining walls in the definition of structure. Because we kept putting it off, and I thought it

actually should have been there. But you said, "No, we'll deal with retaining walls when we deal with steep slopes."

Boardmember Dale: Let's put it back in structures.

Chairperson Speranza: So Jamie, you're going to look at purpose and need. Eva, you're going to take a look at what we want to see in the permit application. Okay, then Fred and Bill are going to do anything else.

Boardmember Cameron: Marianne and I won't be hurt if you have a comment.

Boardmember Dale: Will you be hurt if we don't have a comment?

Boardmember Cameron: No, no, that's fine.

VI. Discussion

Chairperson Speranza: Okay, no announcements. Our next meeting is July 17th, 8:15.

Boardmember Cameron: Are we going to have a meeting in August, or is that something we make up our mind about in July?

Chairperson Speranza: Think about August. We typically have had a meeting in August.

Boardmember Cameron: Actually, even two in August: one to approve the signs of that church down the street.

Chairperson Speranza: The 21st of August?

Boardmember Alligood: The first year I was on the Board too many people were going to be out of town so we did make two meetings in August. But then last year there was an August meeting.

Chairperson Speranza: So next meeting, let everybody know availability. I think I'm okay for that. The 21st, you might be here. No, you're not.

Boardmember Hutson: No. Because Labor Day's early.

Boardmember Cameron: So the target is to try to get both of these things off our desk and onto someone else's desk for the next meeting?

Chairperson Speranza: Wouldn't that be great?

Boardmember Cameron: That would be wonderful.

VII. Adjournment

On MOTION of Boardmember Hutson, SECONDED by Boardmember with a voice vote of all in favor, Chairperson Speranza adjourned the Regular Meeting at 10:30PM.