

**VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK
PLANNING BOARD
REGULAR MEETING AND PUBLIC HEARING
FEBRUARY 21, 2013**

A Regular Meeting and Public Hearing was held by the Planning Board on Thursday, February 21, 2013 at 8:15 p.m. in the Municipal Building Meeting Room, 7 Maple Avenue, Hastings-on-Hudson, New York, 10706.

PRESENT: Chairman James Cameron, Boardmember Patricia Speranza, Boardmember Eva Alligood, , Boardmember Kathleen Sullivan, Boardmember Michael Ambrozek, Village Attorney Marianne Stecich, Building Inspector Deven Sharma, Deputy Building Inspector Charles Minozzi, Jr., and Deputy Village Clerk Mary Ellen Ballantine

I. ROLL CALL

II. APPROVAL OF MINUTES

Meeting of January 17, 2013

Chairman Cameron: I'd like to move to the approval of the minutes of January 17, 2013. There are four of us who were attendants of that meeting so we can actually vote on them. Do I have any comments? I'll start down at your end.

Boardmember Speranza: I had one clarification, page three. Eva you nominated someone named Jimmy Cameron.

Chairman Cameron: But then you had them vote on Jamie Cameron, and then they elected James Cameron.

Boardmember Alligood: Thank you for catching that.

Boardmember Speranza: Other than that, I had no other comments.

Chairman Cameron: Do you have any comments on the minutes?

Boardmember Ambrozek: I was not appointed until February.

Chairman Cameron: You weren't here, that's right. Well, I don't have any comments on the minutes either, so if anyone would like to move their approval.

On MOTION of Boardmember Alligood, SECONDED by Boardmember Speranza with a voice vote of all in favor, the Minutes of the Regular Meeting of January 17, 2013 were approved as amended.

III. OLD PUBLIC HEARINGS

None

IV. NEW PUBLIC HEARINGS

- 1. Accessory Apartment Permit Renewal -- Application for Margaret Kalanta -- 333 Warburton Avenue -- SBL 4.100-93-4.1. No waivers required.**

Chairman Cameron: Now, we actually have one accessory apartment renewal, and I guess maybe you can give a little presentation on that. It's one of our new buildings, so it's not an old building.

Deputy Building Inspector Minozzi: Hello, and welcome. This was an accessory apartment for 333 Warburton Avenue. There was no complaints, no changes in the last three years. It's code-compliant, no waivers required. So there should be no problems.

Village Attorney Stecich: Buddy, it says that the floor area of the apartment is 700 feet – oh, never mind, OK – and the principal building is 1,500. I assume that's without the apartment?

Deputy Building Inspector Minozzi: Yes.

Village Attorney Stecich: OK.

Chairman Cameron: Anybody have any comments?

Boardmember Speranza: Is there anybody here from the public?

Chairman Cameron: Anyone here from the public who would like to comment on this? Hearing no comments, anybody from the Board like to comment?

Boardmember Ambrozek: I have just one question, please. And this is old paperwork so it may not be relevant today. But looking at the floor plan layout, it's described as a

one-bedroom rental apartment. Is this unit actually being rented, or is it being used as an accessory?

Village Attorney Stecich: An accessory's a rental.

Deputy Building Inspector Minozzi: An accessory apartment is a rental apartment.

Boardmember Ambrozek: OK.

Chairman Cameron: It's an apartment within a building which the person rents out.

On MOTION of Boardmember Speranza, SECONDED by Boardmember Alligood with a voice vote of all in favor, the Board approved the accessory apartment renewal application for 333 Warburton Avenue.

2. **View Preservation and Site Plan Approval -- Application of CCI Properties Inc. for View Preservation and Site Plan approval for the construction/addition of a new detached 12-dwelling-unit building to an existing three-story, two-family dwelling at 32-34 Washington Street. Said property is in MR-1.5 Zoning District and is known as SBL 4.70-53.11 on the Village Tax Maps.**

**** Postponed Until Further Notice ****

V. NEW BUSINESS

None

VI. DISCUSSION ITEMS

1. **Advisory opinions to the Board of Trustees regarding the two proposed Local Laws amending the Village Zoning Code, Section 295-157.E to permit additional uses in the MR-C Zoning District, and Section 295-36 to exempt certain uses from the parking requirements of the MR-C Zoning District.**

Chairman Cameron: We can now move to the two laws which were sent to us for advisory opinions. I think Marianne's going to lead the discussion on these two laws and give us an explanation of the background.

Village Attorney Stecich: You know, had I thought of this, this is a memo I did for the Board of Trustees on the uses. You don't have to look at it yet. Now I'm forgetting where it started out because I sit with all three boards, but I think it was at this meeting that Dennis Rubich came and was talking about wanting to put up a hair salon.

Building Inspector Sharma: No, they came to the Zoning Board.

Village Attorney Stecich: They came to the Zoning Board, OK. It was an applicant in the MR-C district who lives in the building there, and the ground floor – I forget – he can't find anybody to rent it and wanted to be able to use it as a beauty salon, I guess for his wife, or a hair salon for his wife. But personal service establishments aren't permitted uses in the MR-C district so he came to the Zoning Board asking for a use variance. The Zoning Board pointed out to him, "Hey, listen, it's really difficult to get a use variance. Maybe it would make more sense for you to go to the Board of Trustees and ask the Board of Trustees to consider more uses in the MR-C district."

So he did. He didn't actually make a petition for a zoning change, but just suggested it to the Board of Trustees. The Board of Trustees thought it made sense. The MR-C district, the way you can tell what uses are permitted now is if you take ... do you have the draft law with you? You take the draft law, and anything that's not in italics is permitted, besides residential uses. The retail sale is very limited right now: "*... retail sale of antiques, books, art, gifts or similar specialty items; small restaurants, artist studios, health, fitness or athletic clubs; business and professional offices; and mixed use buildings.*"

It didn't allow some of the other uses that are commonly allowed in commercial districts; certainly, that are allowed in the CC district. So what I did was went back. Now the MR-C district, let me tell you where it is, first of all. It's both sides of Washington from Warburton to Southside. And then there's five other lots on Warburton, running north from Warburton on the west side of Washington, and on Southside between the Zinsser parking lot and Washington. It's a really tiny zoning district, and it was created about 10 years ago. Part of it used to be in the CC district and part of it was in the LI district. When they did the downtown rezoning, they created this MR-C district because it actually did have quite a bit of residential in it.

The uses that they allowed there were pretty much the uses that existed. They were pretty much legitimizing what was there. So what I did was go back ... and I was not involved in

the downtown rezoning or writing the regulations for the downtown rezoning, but what I did was, I went back to the ... Susan had good files on it so I went back to the files and looked at what ... there were good memos in there from Bob Lee explaining all the different changes that were made. They were explaining the MR-C district, and some of that is what's in the memo I just gave you.

The most significant thing it said is that the proposed MR-C zoning respects and legitimizes the existing uses, interfaces well with our plan for the waterfront, and restricts growth to a level consistent with the Village's plan. So the reason why the retail was limited, again, was just to reflect what was there. It's turned out not to be really working out because there's a lot of vacant space there; vacant commercial space, vacant nonresidential space. So what I did was, prepared a list for the Board of Trustees of other uses in the CC district that aren't allowed in the MR-C, and they could see whether there are ... I mean, certainly they had no issue with a personal service establishment in that district. But they wanted to know what other uses might make sense.

So what I did was, I took the other uses in the CC district – those are on page three of the memo – that weren't allowed in the MR-C district. We took a look at them, and some of them just didn't make sense in that district, like funeral parlors, because there's no parking there. There's no parking so you can't have any uses that are going to have a lot of parking. So the Board went through those uses, and then decided to add the uses that are in this draft local law.

So the first change is, on retail uses, that it not just be limited to antiques, books, art. So you could have retail, but they didn't want to allow huge retail uses. I mean, not that there's any big stores, but you don't want somebody buying a bunch of buildings and tearing them down to build one big store. So that's why it was suggested retail uses with a gross floor area of 2,500 square feet or less; 2,500 decided just because that's been kind of the cutoff in the CC district for certain things.

All right, and then it adds eight personal service establishments. What's in italics is new. It adds other service establishments, but not gasoline filling stations and motor vehicle storage; and copy, offset and incidental job printing. It also adds ... one of the Trustees, Meg Walker, pointed out that some of the ... at least food retail uses, that sell their goods at their store here, but then also sell them beyond the Village, beyond their store.

Chairman Cameron: Yes, she gave the example of a bakery.

Village Attorney Stecich: Right. And they wanted to be able to allow that, but with some limit. So that's why, under a special permit use, we put in " ... *production and processing of*

goods, provided that goods produced and processed are sold at retail on the premises." Not all of them have to be, but some of them have to be because you don't want just a plain processing or manufacturer. And that "... the area used for the production and processing of goods does not exceed 40 percent of the use" and that "... there be no offensive noises, gases, fumes, odors, vibrations or other objectionable influences or hazards shall emanate from such use; and the operation of the use shall not be detrimental to the health, safety or general welfare of neighboring properties or the community," which certainly wouldn't be a problem with a bakery or something like that. But remember, the broad uses are production and processing of goods. So you don't want them doing some processing that could make bad smells or be loud or whatever. So anyway, that's what the one amendment was about.

The other local law, in recognition of there being no parking there ... OK, I should also back up on this. In the CC district, the parking requirement is waived for retail uses with a gross floor area of 2,500 square feet That's the way the code reads. The intention was – and if you read all the memos about the downtown rezoning, the intention was – any commercial use of 2,500 square feet wouldn't have to provide parking. Certainly restaurants wouldn't have to provide parking. And I have to say Meg Walker, who was involved with the downtown rezoning, was very surprised that restaurants of 2,500 square feet weren't excluded from the parking requirement. I think actually they've been treated as that.

So for the CC part of it, this is really a correction to the code. But it also then extends that waiver to the MR-C district. So that if you've got a restaurant and retail use of 2,500 square feet or less you don't have to provide parking. And that's what the second local law's about.

Any questions?

Boardmember Speranza: But for the other things – for example, the copy, offset, incidental ...

Village Attorney Stecich: Yes, they have to provide parking.

Boardmember Speranza: ... they have to provide parking. Because I do remember, the idea was that you had the fringe of this central commercial area that did have the mix of use, the residential. And then the lower levels were vacant because there was no use the people could put in there. But there was no desire to expand the CC into the fringe area. So that's why things were kept limited. It was supposed to be very small.

Village Attorney Stecich: Although part of the MR-C was CC. A little bit of it was CC.

Boardmember Speranza: Right.

Village Attorney Stecich: Part of it was CC. So those people, their uses would have been reduced. But part of it was LI, and that made no sense because there wasn't enough room to do any of the permitted LI uses. So the zoning just never made sense for that area. But this doesn't redo the zoning. All it does is expands the uses a little bit because things didn't play out exactly as everyone expected.

Chairman Cameron: Well, I think it's good from the restaurant point of view. Because I think most of the smaller restaurants, you don't have the big influx of cars which could otherwise clog our parking lots. And then during the evening, the lots we have would perfectly accommodate this. I think that actually works very well.

Building Inspector Sharma: Do I understand personal services would require parking?

Village Attorney Stecich: Yes, he understands that. The applicant understood that.

Building Inspector Sharma: I see, OK.

Chairman Cameron: The one thing which I had a little question on – I sent you an e-mail on it – is that fear we have on the restaurants. For some reason, in the MR-C district you have restaurants with a gross square-foot area of 2,500 feet or less, and outdoor dining area accessory there, too. Whereas the restaurant we're waiving parking for has a gross square-foot area of 2,500 square feet and doesn't talk about outdoor dining areas, accessory thereto. So we could have somebody who has outdoor dining area and we might not know how to deal with it if they came through our Building Department.

Village Attorney Stecich: Yes, right. I know, this is how it read, and the use.

Chairman Cameron: No, I understand that.

Village Attorney Stecich: But you know what? Well, first of all, probably I could ...

Chairman Cameron: Well, it's impossible, I think, in the MR-C. They don't have the outside.

Village Attorney Stecich: Yes, nobody is going to have the parking there anyway. And then with the outdoor area, you would hate for them ... let's say they have, you know, 300 square feet of outdoor area and that would require three parking spaces. I'm just making numbers up. And if they had to somehow get the three other parking spaces for, let's say, three months a year, that's kind of burdensome.

Chairman Cameron: But to use a different example – and I know it's not a good one because it's not in the MR-C – the building we've been talking about, Hastings Restaurant. You could have 2,500 square feet on the top floor plus the roof, and the roof is very background and that's outdoor. Anyway, it's just some thought about it. I'm very much in favor of what you're doing. That's not in the MR-C so that's another answer to me.

Boardmember Speranza: Well, this is CC and MR-C.

Village Attorney Stecich: But the outdoor dining area is only in the MR-C.

Chairman Cameron: You're only allowed to have the outdoor in the MR-C.

Boardmember Speranza: Well, see, the CC zone doesn't prohibit outdoor space. Because we had that application, I think it was, when Comfort was just starting up. They wanted outdoor space.

Village Attorney Stecich: Yes, let me see how it reads.

Chairman Cameron: Well, then, we should make sure we're waiving what we need to waive.

Village Attorney Stecich: Let me just see how restaurants are described in the CC.

Boardmember Ambrozek: Would it help to say "with a gross floor area of 2,500 square feet or less, *excluding* any outdoor area?"

Chairman Cameron: It's just you need to go over and do that. I think you need to fix that.

Village Attorney Stecich: But, see, the other problem with that, with the outdoor thing, is requiring those parking spaces for what's essentially a very limited time of year.

Boardmember Speranza: Limited time.

Chairman Cameron: I'm not suggesting. I'm just trying to get it so the language works.

Village Attorney Stecich: And often what happens in these places ... well, I shouldn't say that. I know what you're saying, Jamie, but I'm not sure.

Chairman Cameron: I just want it to be ... I'm afraid I'm being a lawyer rather than a

Planning Board member when I say this.

Village Attorney Stecich: Yes, see, CC just says banks and restaurants.

Chairman Cameron: Right.

Village Attorney Stecich: So it's not an issue. You know what? Like I said, the truth is it's really not a question because nobody's going to have any parking in the MR-C district anyway. So let's say their restaurant's 2,500 square feet. You know, I understand what you're saying.

Chairman Cameron: I'm not trying to stop somebody from having a restaurant. I'm actually in favor of it. I'm trying to look over here at the parking waiver, and making sure that the person who comes up with a 2,500 square-foot or less restaurant with outside facilities isn't somehow thought not to fit the parking waiver. And I want to make it they do fit the parking waiver.

Village Attorney Stecich: Well, but you know what? It still has a gross ... no, the gross floor area is still 2,500 feet or less. It would be waived because gross floor area is just measured inside the walls of the building. So if you come in, and your restaurant is 2,500 square feet and you've got 300 feet outside, you've still only got a gross floor area of 2,500 square feet. So you'd be waived.

Boardmember Sullivan: Why not delete "*... and outdoor dining areas accessory thereto*"? Is that something that's causing some confusion?

Village Attorney Stecich: I don't know, it's another change. Well, let me tell you what the problem is. It's been there, and once you take it out you could have somebody say, "See, you used to allow it, and now you don't." So somebody comes in and wants to have it.

Chairman Cameron: Well, the other choice would be to put in a parking exemption.

Boardmember Speranza: Yes, that's what I was going to say.

Village Attorney Stecich: No, no, no. You don't need to put it in the parking exemption because what it says is you don't have to provide parking if your restaurant has a gross floor area of 2,500 square feet or less. So you have a restaurant. The inside is 2,500 square feet and it's got even a 500-foot outdoor dining area. The gross floor area of that restaurant is still 2,500 square feet because floor area is measured from wall to wall.

Boardmember Sullivan: How about a suggestion of changing the definition of restaurant, or adding it, where you talk about that you're not considering outdoor dining areas, square footage for parking? If that's something that could be done universally in all the zones, all the districts. Because that's really what you're saying.

Boardmember Alligood: Well, I don't know we'd want to say that. Because what if a very large restaurant was proposed, let's say, on the waterfront, and there's a huge outdoor area?

Boardmember Sullivan: You could potentially say if you have a restaurant of under 2,500 square feet that the outdoor eating area is not considered for parking. I'm just thinking you were trying to define.

Village Attorney Stecich: You don't need to say that because it wouldn't be. I'm telling you, the way you read the code you wouldn't, in deciding on the size of it. And what's exempt is a restaurant with 2,500 square feet of gross floor area. What I just described is a restaurant with 2,500 square feet of floor area. It is exempt, and it's not affected by the outdoor parking. Its gross floor area is still 2,500 square feet. So under this reading it wouldn't be an issue.

Chairman Cameron: All right. Actually, I think this is a good idea because I think a few more restaurants could probably work quite well. I'm not sure how soon we're able to get one in the MR-C district. A new restaurant called The Library in one of those used bookstores? But there you are.

Boardmember Ambrozek: Well, maybe the Southside Club will open a restaurant.

Boardmember Sullivan: If we could move on, I have a couple of questions about other ... I know, in number nine, it says "*... other service establishments, but excluding gas filling stations and motor vehicle storage.*" I think we might want to say motor vehicle stations. That came from, think, the LC district. There was another description of what you're excluding. And does other service establishments need a definition? Is there any confusion that's ever come up in what's a service establishment?

Chairman Cameron: I think 9 nicely gets around the fact that there's something called Straub, which is an automobile repair store right on the corner of Washington and Warburton: a three-bay garage, but doesn't have gasoline. But it does service a lot of cars in this town.

Boardmember Ambrozek: There's also a car wash right below them.

Chairman Cameron: Underneath them, right. But neither one of them does gasoline filling.

Village Attorney Stecich: But that was what was done to get around. I do think the intention here was not to have auto service – in the MR-C district, not to have automobile repairs. So that might be better language. I forget what Kathy said.

Boardmember Sullivan: I think, in the LC district, I was looking for something that had a similar exclusion. That they mentioned motor vehicle stations, which actually we have a definition of.

Village Attorney Stecich: In the LC?

Boardmember Sullivan: I think so. That's my notes. I may have written it down incorrectly.

Village Attorney Stecich: I don't see it in the LC.

Chairman Cameron: Well, it was probably written to help them. Because they did actually build another bay on their garage about 10 years ago, and they couldn't do that – not that there's room for – if we ...

Village Attorney Stecich: You know what? No, this is supposed to be the way it reads in the CC. Which is: "*... other service establishments, but excluding gasoline filling stations and motor vehicle storage, repair or service establishments.*" That would be what the intention was, and I think that's better language.

Boardmember Sullivan: I think my LC was a CC then.

Chairman Cameron: So you're going to make Straub a nonconforming use.

Village Attorney Stecich: I'll make that change. Because it's supposed to mirror what's in the CC. You know what? My guess is that just got dropped in the typing. That it's a typographical mistake.

Chairman Cameron: If it's a nonconforming use, how did he get to build the extra bay onto his garage, which he did about 10 years ago?

Boardmember Speranza: Right, I remember when that was before the Planning Board.

Village Attorney Stecich: Just the last line was dropped off there. That's all that happened. That was really typographic. I'm glad you caught that.

Boardmember Sullivan: One other thing, if you don't mind, and then I'm done. So in the production and processing of goods, I think that's really exciting to encourage. I looked again, I think, at the CC. And I think what first caught my eye was the " ... *area used for the production and processing of goods does not exceed 40 percent of the use.*" And I think in your memo it actually said a retail area or something like that. It was much more realistic to do a physical thing so you could actually say it's this size space, with only 40 percent of it should be attributed to this versus that.

Village Attorney Stecich: Yes, well, that was something that the Board actually talked about a lot.

Boardmember Sullivan: But what is the use? I think the definition is ...

Village Attorney Stecich: No, the problem is if doesn't exceed 40 percent of the retail area. You've got a little store in the front. What's odd is the language "*40 percent of the retail area.*" Because let's say you've got a little bakery and you've got a retail area in the front, and in the back you do all your baking. Let's say it's 1,000 square feet. The 200 feet in the front is retail area, and the 800 in the back is where you do your baking. Forty-percent of the retail area was the 40 percent of the 200. It would only be 80 square feet, and that was not ... so they said the entire ... you know, they meant 40 percent of the store or 40 percent of your building.

Boardmember Speranza: And not even the building. It's the use.

Village Attorney Stecich: It's of your use.

Chairman Cameron: You mean 40 percent of the total space in the store?

Village Attorney Stecich: Yes, 40 percent. Your use is bakery and processing of goods, and you're using 1,000 square feet. Four-hundred of that square feet ... only 400 square feet of that could be used for the processing of goods.

Boardmember Ambrozek: I would like to suggest instead of the word "*40 percent of the use,*" to say 40 percent of the gross floor area. That's, I think, fairly specific. That the entire establishment is 1,000 square feet, say, then the production area can be no more than 40 percent, or 400 square feet.

Village Attorney Stecich: It's a little confusing.

Boardmember Speranza: Just because you could have a mixed-use building. So the first floor could be the bakery. You just have to watch, and I'm sure that's how they ended up getting to the term "use." Maybe it's 40 percent of the space of the use.

Chairman Cameron: Well, what bothers me is that I thought what this was aimed at was trying to prevent somebody from having a bakery which produced whatever they're making, pastries, for restaurants across Westchester. Whereas the way this is worded, if I have a bakery and I'm selling everything out the front door to anxious people in Hastings who want to buy it, but it takes me 60 percent of the place to do the baking, I'm somehow violating this provision, I believe. And I don't think that's what we intend. I mean, I think we're trying to stop ...

Village Attorney Stecich: But, Jamie, then you're a retail use. I mean, this was put in there to make things a little bit broader. If you're not talking about bakeries, a jewelry maker or something. To be able to sell their stuff in the front and then also farm it out, but to put a limit on it because you don't want little factories down there.

Boardmember Sullivan: And why different than a CC? What's the distinction?

Village Attorney Stecich: Why is it different? Because when we looked at the language in the CC it didn't make sense, the 40 percent of the retail area. This was just a fix for this.

Boardmember Sullivan: So that'll be changed at some point in the CC?

Village Attorney Stecich: If we get to it, yes.

Boardmember Ambrozek: I'm still looking at the idea of using gross floor area. I mean, yes, you could have a multi-story building where the ground floor is being used for the production of goods, but the other two floors are used for residential. You could not consider the residential area in the gross floor area. That would not make sense.

Village Attorney Stecich: I just want to say, for what it's worth ... and I'm not saying these aren't valuable comments. They are, but people who are applying sort of understand it, what we mean by the use.

Building Inspector Sharma: Yes, I understand it. If I were to enforce it, this is how I would understand. Given floor area for a given use, 40 percent ... they can't use more than 40 percent for the production of goods. And the rest needs to be used for selling, actually, at

that location. I think that's my understanding.

Village Attorney Stecich: If it's a use that's production and processing of goods. I mean, there might be some other use. If you were an artists studio you'll maybe use the whole thing for the processing of goods. This limitation is only on production and processing.

Building Inspector Sharma: But the artists studio, processing and selling.

Village Attorney Stecich: Yes, yes. But you don't have to look at every use and see only 40 percent of that could be for processing.

Building Inspector Sharma: Got it.

Village Attorney Stecich: This is a special permit use that doesn't fit into one of these other uses.

Boardmember Speranza: So, Jamie, if I could just clarify. Because this requires a special permit, letter A: "*... goods produced and processed are sold at retail on the premises.*" But it doesn't necessarily mean only on the premises. So they have to sell something. They have to have their little factory outlet store.

Village Attorney Stecich: Or they have to have the bakery counter.

Boardmember Speranza: You have to have a display.

Village Attorney Stecich: Or the jewelry counter.

Boardmember Speranza: Yes, we have one of those on Spring Street now.

Village Attorney Stecich: Yes, there's some in the CC district. When we first read it, somebody said, well, wait. There's businesses there that I know are selling stuff beyond just there. And when I looked at the language again, I said no, that's all right. It doesn't say that they can only be sold on premises, but *some* have to be sold on premises.

Chairman Cameron: I must say I don't understand the 40 percent. So if I have a bakery and I'm taking 50 percent of the square footage and I'm using it for making baked goods – some of which are sold at retail – is that OK, or is that a problem?

Village Attorney Stecich: I'm sorry, Jamie.

Chairman Cameron: I have a space which I'm using for creating baked goods, and 50 percent – I'm doing this arbitrarily – of that space is used for my baking ovens and kitchen where I make the baked goods, and the rest of the store is used for selling them at retail. Is that OK, or I have a problem with the 40 percent?

Village Attorney Stecich: Well, I would say that if you're selling only in the Village you're not shipping stuff out. You're selling only in the ...

Chairman Cameron: No, no. Let's say that I'm selling 25- or 30 percent outside the Village. If B was focused on more than half of what I produce and process is not sold at retail, well, then I'd understand the definition. But if it's somehow the space used for producing all these baked goods, I still don't understand the definition.

Village Attorney Stecich: I will say that the Board did have some concern about the number.

Chairman Cameron: I know they did.

Village Attorney Stecich: And they said you know what? Let's just use the same number they use in the CC district, and if we think it needs to be changed we'll change it. And that was why they got to the 40 percent. Meg Walker, in particular, was concerned about the number because she didn't know that it made sense.

Chairman Cameron: Right, I listened to the broadcast.

Village Attorney Stecich: So then they just decided, you know what, that's what is in the CC district. Let's keep it the same way it is in the CC district. If that ends up being a problem we'll fix it. The point here was not to fix every single thing. That's not to say that there aren't things that could be fixed to broaden the uses. But that's how they settled on that one.

Chairman Cameron: So it is actually a limitation on what portion of your space you can use for producing and processing of goods.

Village Attorney Stecich: Yes.

Chairman Cameron: And if it gets too much into the producing and processing, and it exceeds 40 percent, you have a potential issue even though there may be some flexibility in the Trustees to change it.

Village Attorney Stecich: Exactly. And you could always come in and get a variance if there's something about your use that required it. But if you don't put some limit on it, then you're allowing small manufacturing, which is not the intention.

Chairman Cameron: OK, now we're clear. We know what it means.

Boardmember Ambrozek: Well, I have an alternate way of phrasing this that I think might address Kathleen's concern, as well. And that is, rephrase it to say that the area used for retail distribution of the goods must be at least 60 percent of the gross floor area. So now if they want to include the residential areas in the gross floor area, then they're going to have to make their retail area much bigger.

Chairman Cameron: No, I think the 40 percent is better. Because you might only have 30 percent used for retail and you might have other things used for ancillary uses. The thing they're trying to stop is too much production. So I think the percentage should apply to production and not apply to forcing people to have a larger retail space.

Village Attorney Stecich: You could have storage. You could have a lot of storage.

Boardmember Sullivan: It sounds like it's been thought about and you're going to give it a shot. I just think making the CC consistent with this would make sense if you're making small tweaks and changes and there's a different thinking about things. But if the Trustees are willing to change this and see how it works, willing to go along with it, it just seems consistency between the district that you're trying to emulate makes sense.

Chairman Cameron: It's very interesting. There's an article in the *New York Times* in the last week about a number of people from Brooklyn moving, actually, up to ... you may have seen the article in the *New York Times*.

Village Attorney Stecich: "Hipsturbia."

Chairman Cameron: And not only that, they are bringing some of their stores with them. So we may see more sort of funky places where they make things.

Village Attorney Stecich: Make soap.

Chairman Cameron: I personally think that the only way the stores here can really compete is by selling unique goods that can't be found in the big box stores over on Central Avenue. So we should do everything to encourage that sort of creation of stores in the town.

Village Attorney Stecich: But I think this law is a good example of responding to changes in the district that were brought to the Board's attention. And there may be other ones that pop up, too.

Boardmember Ambrozek: I have a question on item A-9, as to we said that there's very limited parking spaces available, and certainly off-street. So I'm wondering why we are excluding motor vehicle storage. Because that would exclude off-street parking. You could not run a parking garage.

Village Attorney Stecich: No, we don't want that as a use.

Boardmember Speranza: Right. And I think that was intentional. I mean, when you think about where that MR-C zone is, that's not the kind of use that you would want to necessarily encourage in that area – an off-street lot or a garage. I mean, you don't want to flip it too much into the light industrial kind of uses.

Village Attorney Stecich: No, and you certainly don't want them on small streets.

Chairman Cameron: And it's not likely that someone's going to go and build a 50-car garage there.

Boardmember Ambrozek: Well, with the current technologies that they have they can put a lot more vehicles into a small amount of space.

Chairman Cameron: That's true. What we really need is less vehicles.

Boardmember Sullivan: That's Jamie's theme.

Chairman Cameron: Jamie's theme, yes. One of my themes in life.

So any more comments on this before we send it back to the Board with our comments which, I think, Marianne, you can write up? Can I have a motion to approve those comments? I guess we need that to send it back to them. And those comments are, I think, fixing number 9.

Village Attorney Stecich: And then I'll just say that the Board had concerns about this 40 percent limit on processing, and it's something we should keep an eye on.

Chairman Cameron: Yes. I mean, an example of processing I know that came up at the Trustees meeting was the fact of those bookstores that we have on lower Washington

probably have one customer a week. And most of the time they're packaging up and shipping out old books that they have collected. So I don't know whether that's processing or not, but it takes up a lot of the square footage under the building.

Then on to the next item. Does anybody else have any comments on that before I go on?

2. Washington-Warburton Application

Chairman Cameron: We actually had something that came off our list, which was the building on the corner of Washington and Warburton. I guess we can give you a little report, in that it was taken off the agenda. I believe Deven sent you out an announcement on that, which was the e-mail sent to you by the owner, the builder, who sent that out. That's off the agenda. You could also see from that what they would like to do.

Quite frankly, Marianne has spent a lot of time looking at all the legal issues involved with this, and did raise the point – which I actually support – that we should ask the developer to actually put an escrow up, with some amount which we'll discuss in a minute, to pay Marianne's legal fees to look at this. Because Marianne actually is not paid by the hour by this town. She's actually under a retainer, and she's burning up her goodwill.

Village Attorney Stecich: And it's not included in my retainer. So I would then have to bill the Village for it. I generally haven't done that, but I'm going to have to start billing the Village and then the Village is going to have to pay for it. The Village shouldn't have to pay for somebody else.

Chairman Cameron: So I forgot. How much were you thinking of, Marianne?

Village Attorney Stecich: Well, I don't know, a couple thousand. It may not come to that. But I think Deven thought you may need an engineer on this for some drainage stuff. If, in fact, it goes forward a little bit there may well be some drainage issues that you want an engineer to review. So the escrow should be for professional fees.

Building Inspector Sharma: Not just legal, but all professional services. But right now, that application really is not formally before the Board yet.

Chairman Cameron: Right. But they want to meet with us. And before we meet with them we do need to get their agreement.

Building Inspector Sharma: After we advise them about it. They do have an attorney, by

the way, and they may decide not to ... if they're advised that there is some cost involved they may or may not want to have that meeting. A meeting with you and you, of course, there's no cost involved there, I believe. I believe if I'm free I have the time to meet them.

Boardmember Alligood: What meeting are you talking about?

Chairman Cameron: Well, in the e-mail – which I'm sorry you didn't get ...

Building Inspector Sharma: Yes, I'm sorry, too.

Chairman Cameron: ... they canceled their appearance before us tonight. And they suggested that they would like to meet with Deven and Marianne and me. Anyone who wants to take my place? No. And at that point, we just said, well, look, we've gone around in circles too often on this. If we're going to do that, they should ... because they've come up with variations of things which I don't personally think are that well thought through. And people really should think it through, and they should have their own lawyers if they're going to do that.

On the other hand, I think the size of the building they're proposing you're certainly going to need engineering, you may well need engineering, help. I'm not going to speak for you, Deven. And we're a little bit in a quandary because they have burned up a lot of our time. And I don't really want us to get another application which has not been well thought through by their legal counsel. The good news, I thought, is they were asking for a copy of our laws – which was a good step, in the right direction – in one of their e-mails.

Boardmember Speranza: Finally.

Chairman Cameron: I'd like to actually say that we're going to do this, and then they can decide what they're going to do. But I don't think they should have a meeting on that basis. I'd like Marianne to be there.

Village Attorney Stecich: Just to put this into context, every other village I work for – and I've worked for a lot of villages – the applicants pay for the attorneys review. This is the only place where the applicants don't pay for the attorneys review, even on single-family houses. In Irvington, every application – and it's not just me, it's the engineers – every application that comes in, no matter what, people pay in escrow. And out of that escrow comes the lawyers' fees, the engineers' fees. And if they have an environmental consultant, they come out of it. Standard practice. It just hasn't been here.

I've never asked for it. Once in awhile, on the big projects, we get it. We get it on Ginsburg

or whatever. But it's not a question of ... there's professional review required, and it's not negotiable. You pay it.

Boardmember Alligood: I agree with that, Marianne. And I also agree with your point, Jamie, that we shouldn't serve as a way for them to figure out the legalities of their application. They should be doing that themselves and paying their own professionals to do that. And then they should come before us with some review of what's available publicly.

Boardmember Speranza: So is the idea that now ... OK, so they have an application, it's a formally submitted application. They've paid all the fees. To go down that path, maybe there's got to be something put with every application, or every application of over a certain size, that requires an escrow.

Village Attorney Stecich: Yes, well, the code reads that the Planning Board ...

Boardmember Speranza: Sets the fee, or can hire their own.

Village Attorney Stecich: ... requires an escrow if it wants to. And you know, there aren't that many applications that come up that do. Most of them are small applications. They're done in one meeting. Or it's like the affordable housing projects. I consider that pro bono. But once in awhile they come up, and in those cases ... but there's a couple that have been like ... there've been other ones. They're squeaking in. It takes a lot of time. And they shouldn't be getting ... there's never an issue if you call in an engineer, never an issue if you call in an engineer. Somehow, just because I'm here ...

Chairman Cameron: Actually, I would not suggest this if we were dealing with a single-family dwelling or even a two-family dwelling. But we've got someone who's suggesting building 12 dwelling units in this town, and that's a major project. I'm concerned, and I don't think, considering the size of the project, that I'm at all embarrassed about asking the person for an escrow.

Boardmember Sullivan: I would like to thank Marianne for bringing this up, and I'd like to move that Jamie and Deven and Marianne determine an escrow that's given to the applicant to provide to the Village so we can get Marianne's services paid for.

Chairman Cameron: Well, I would combine the two together. But other than that, I think somewhere in the range of \$4,000 to \$5,000 I would say.

Building Inspector Sharma: There are fees, for example, for an application. There's a thousand-dollar fee which we have received. We recently increased our building permit fees

from 1 percent to 1-1/2 percent, like 50 percent. So sometimes I have discussions with other building officials. I'm not talking about Marianne. Our code provides that any board can retain consultants to advise the board. Not to advise the client, not the applicant. So if Marianne is advising the Board, then it could be paid. I don't think she should be advising the applicant.

Chairman Cameron: I don't think she is advising them. I'm not suggesting she advise the applicant. The problem is that the applicant isn't doing a good enough job in going through and figuring out a very complicated building which has a lot of problems with it, what they need to do with it. And we need advice from our legal counsel since they're not doing their job properly. And I think they should pay for it.

Boardmember Speranza: Agreed.

Building Inspector Sharma: Marianne is advising the Board, yes.

Chairman Cameron: Right, that's fine.

Boardmember Ambrozek: And I think we need to be looking forward also to what's the development involved on the waterfront that we are going to be looking at. And some of the engineering and legal issues there are going to be something new and different, as well.

Chairman Cameron: When someone comes in with a large development, and I mean a really large development, this is not an issue. I mean, it just goes straightforward. It won't be an issue.

Boardmember Speranza: They know they're going to be paying.

Village Attorney Stecich: Like Ginsburg.

Chairman Cameron: This person is just a little bit different in size, and they're resisting it. But I'd like to suggest somebody move that.

On MOTION of Boardmember Sullivan, SECONDED by Boardmember Speranza with a voice vote of all in favor, the Board approved the establishment of an escrow account for professional services related to application of CCI Properties Inc. for 32-34 Washington Avenue.

Chairman Cameron: In the amount of \$4,000? We'll start low.

Boardmember Sullivan: Good.

Building Inspector Sharma: So I'll advise the applicant to start an escrow account with us before we do any further deliberations or meetings or anything.

Boardmember Speranza: Right.

Chairman Cameron: Right.

Boardmember Sullivan: May I ask one question about this application, just because it's something that they have on their site plan application? They've checked that they have steep slopes on their property, and that hasn't been addressed in any of the materials. So if you look, it may be an error. But it's on their application so I expected to see that show up at some point. Given that we didn't get view preservation the first time around, I expected to see it in this package. So I'm not sure there are steep slopes, but the applicant checked it.

Village Attorney Stecich: Yes, it's possible – I don't know because it's not that big a lot – it's possible he has a steep slope. But it's not ... I think it's got to be 1,000 square feet to be covered by the law. I'll just double-check.

Boardmember Sullivan: Just if it's the case that that was done in error, then they should just modify their application at some point. But, again, like I said, because the first set of drawings and materials did not include the view preservation I wasn't sure that was ... I expected to see that, now that the second package came through with the view preservation stuff.

Boardmember Alligood: And speaking of view preservation, I might as well say it now rather than when they come back. The photographs they provided were really not helpful. They were on a cloudy day, you couldn't see the sky, you couldn't see where the Palisades start. They have to provide visuals that are useful, and maybe we can show them examples. We have plenty of packets that were submitted that we can really work from.

But what they submitted, if we had discussed it tonight we would have just said this doesn't give us any information that we can use. We might as well send that message to them now so that when they come back they provide something we can use.

Chairman Cameron: Well, Deven actually has already sent that message to them. I sat down with Deven and we went through that.

Building Inspector Sharma: The way I see it, they've done their best to come up with an application. Of course, their best is not good enough. That can happen. But they can be told that when they come the process can take longer or whatever. So the fact that the photos don't do much, of course they can be told ahead of time, which is fine, or when they come again.

Boardmember Alligood: That's fine. Deven, I'm saying it tonight so that when they come back they don't have to be told on the spot and have to come back again. So I'm doing that as a courtesy to them that the next time they come with those visuals that they need to be done in a way that we can use.

Chairman Cameron: Yes, if you stand on Washington ... if you stand on William Street and look out, you can see straight up the river. And they took pictures which they never showed that at all. And that's not ... I think they need to be told that unless they do a good job in what they do, then we look at their stuff and say they're not really putting a good application before us.

Boardmember Ambrozek: Well, I also had a concern. They had an outline of the existing buildings in the vicinity between William and Washington, and they show that there is at least a dozen buildings. But they only gave us photographs from three existing buildings, and there's many other buildings that are impacted as well.

Building Inspector Sharma: My position, I'm just kind of wondering how judgmental I can be in reviewing the stuff. You know, I can give my personal opinion. But the fact is, the Board has to be able to see. And say, now that you have seen it, if you want to give me any comments to pass on give me some e-mails, something more definitive, and I'll pass it on.

Boardmember Alligood: Deven, it's not being judgmental by saying that the photographs you provided to us are not legible. We cannot see what it is that we need to see. And we have examples of packages that were done in a way that we came here and we were able to make a determination without telling them to come back.

Building Inspector Sharma: I'll be very happy to pass that comment on to the applicant.

Boardmember Alligood: I think it's actually helpful to the applicant to be told, before it gets to us, that if the photographs don't show the sky then that's not something we can ... we can't see where the view is being obstructed because all we see is a blur of white.

Building Inspector Sharma: I understand.

Boardmember Alligood: That's not helpful. And I think that's something that could be told to them before it even gets to us.

Building Inspector Sharma: So do me a favor. I think Jamie mentioned I did pass on the comment that I got from Jamie. It was in the form of an e-mail. I forwarded it. I'll definitely say it in my language, but if you want it described in a particular way please send me an e-mail so I can forward it to them.

Boardmember Alligood: But it's too late. By the time I get my packet it's a couple days before the meeting.

Building Inspector Sharma: Well, what would happen, then, is they would just have to come back the next month. That's the chance they take anyway, no matter what kind of packet they provide. I may have thought, from my personal perspective, it was good and you may not.

Chairman Cameron: Did you think those pictures were actually good?

Building Inspector Sharma: No, I'm not saying that at all.

Boardmember Alligood: That's all we're saying.

Chairman Cameron: So you have to be a bit of a gatekeeper, whether you like it or not. And if the pictures come out that really don't show the view, and they've been colored in our turned down, I actually expect you to say to them, "Gee, you know you can do a much better job on these pictures, and please furnish the Planning Board pictures that fit up to their specifications," which is a clear picture of the situation. So that's my point of view.

Building Inspector Sharma: Got it. I'll give it some thought.

Chairman Cameron: Great.

3. Consideration of Recreation Fees

Chairman Cameron: The next thing I distributed to you by e-mail is actually something Mary Ellen kindly got for me: both the rec fee memo done by the Trustees, and also the resolutions passed by the Board. And I'm not intending to discuss them tonight, much as you're all anxious to do so, because some of you didn't them yet or just got them this

afternoon. What I'd like to do is to have each of us read this packet and read the resolutions. And at our next meeting, the end of the meeting if we have time, we'll sit and discuss this and see whether we have a uniform or a clear view on what our mandate is in this area.

And also we have a couple things sort of on our list. One was some question we had at our prior meeting of whether or not the rec fee is appropriate downtown or not appropriate. We should just discuss that through and say whatever we feel about them. And also, we might also look at the level of the rec fee. Because if you look at the resolution carefully passed by the Board of Trustees they said, in 2005, they would look at the fee in three years. I'm not suggesting they go back and look at it because that's up to them. But we might just look at the level of the fee and see how we feel about it. Things have not been great, necessarily, from 2007 to the present for developers. So maybe it's not out of line.

But it's just like to put those two things on our agenda so we can get more comfortable with this going forward.

Boardmember Sullivan: Jamie, can I make a comment? In looking at the Washington Street application, the rec fee, I should say. When you look at a multi-family, there is a requirement for a certain amount of open space per bedroom. And also you get into language that talks about providing open space and appropriate recreation space, which I think is some of the places where this comes into play.

Eva and I were talking a little bit, I mentioned this to her before. If you think it's appropriate, I would like to talk about what open space is in relationship to rec space. And what kind of open space, in the past, the Board has provided for or looked for a developer or an owner to provide when they had a multi-family situation, separate from any particular application. I just sort of see they may go hand-in-hand, and I just need some guidance and people's thoughts about that. They seem to be related; different, but there's no definition of open space in the code. So I'm lost.

Chairman Cameron: Well, you'll see when you go through the memo – perhaps you've already been through it – the report for the Trustees reveals that we probably have a lot of, I will call it, unused space, but undeveloped space belonging to the town. And the town's focus may be more upon getting the fee to fix up what we have than getting a piece of space from somebody when it's in the path. And that was the import of the report and, quite frankly, of the Trustees' thing. But certainly we can discuss the meaning of open space. That's fine.

Boardmember Sullivan: And open space would be on a particular piece of property, rather than a recreational, Village-wide, community space. Thank you.

4. Advice of Counsel

Chairman Cameron: The other thing I have, actually, on the agenda ... I apologize for the agenda. It's shorter than it might otherwise have been because I thought we had more things on it. But they began to fall off the agenda at the end, in particular the Warburton and Washington situation. But I don't actually have anything else for the agenda, except we want to take a few minutes to decide to meet with legal counsel on a legal issue coming up. So I wanted to put it at the end of the meeting so we can meet in this nice little room back here.

We can turn the camera off? Just adjourn the meeting and turn the camera off.

VII. ANNOUNCEMENTS

Next Meeting Date – March 21, 2013

IIX. ADJOURNMENT