

VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK

ZONING BOARD OF APPEALS

Held September 14, 2006 at

8:02

P.M., Seven Maple Avenue,

Hastings-on-Hudson, New York 10706-1497.

P R E S E N T :

Arthur Magun, Chairman  
David Deitz, Board Member  
Stanley Pycior, Board Member  
Denise Wagner Furman, Board Member  
Brian P. Murphy, Board Member

Deven Sharma, Building Inspector  
Marianne Stecich, Board Counsel

A L S O P R E S E N T: Members of the Public

VERA MONACO, RPR  
Court Reporter

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2 CHAIRMAN MAGUN: Good evening.

3 This is the Zoning Board of Appeals. Today  
4 is September 14, 2006. And we have before  
5 us tonight three cases. And we will go in  
6 the order on the agenda.

7 Are the mailings in order?

8 MR. SHARMA: All the mailings are  
9 in order.

10 CHAIRMAN MAGUN: For all three  
11 cases?

12 MR. SHARMA: For all three cases.

13 CHAIRMAN MAGUN: So the first case  
14 is 19-06, Andrew and Valerie Cursio, 12  
15 Zinsser Way. The application is for the  
16 construction of a deck in the rear of their  
17 property. The applicants are proposing a  
18 deck that will require a variance in that  
19 the deck is 18.65 feet as planned from the  
20 property line where required is 24 feet  
21 from the rear property line. Currently  
22 existing is 30.9 feet.

23 Is there anyone here to present  
24 this application? Yes, come on up.

25 MS. ANDERSON: I'm Jillian Anderson

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2 from Baldwin and Franklin Architects. I

3 have here --

4 CHAIRMAN MAGUN: I'm sorry, spell

5 your last name for me.

6 MS. ANDERSON: Anderson.

7 CHAIRMAN MAGUN: Anderson. I'm

8 sorry. Got it.

9 MS. ANDERSON: Sorry.

10 MS. FURMAN: Jillian, you are going

11 to need the handheld mike.

12 MS. ANDERSON: Thank you. We

13 took --

14 CHAIRMAN MAGUN: I'm just going to

15 ask you to wait two minutes. I'm sorry, I

16 just have to answer something, my

17 unfortunate other job. Can we just take a

18 two-minute break before you start? Thank

19 you.

20 (Whereupon, there was a brief

21 recess taken.)

22 CHAIRMAN MAGUN: Okay. I

23 apologize. Go ahead.

24 MS. ANDERSON: I have some

25 photographs here just showing what the deck

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2       would look like from the north and south of  
3       the aqueduct on either side of the house,  
4       and also from the two properties on each  
5       side of the house.

6           It's not very clear because in  
7       every case the greenery covers the area  
8       where the deck would be. But just to give  
9       you an indication, I'm going to pass this  
10      around. The plan shows where the  
11      photographs are taken from and the  
12      photographs show what the deck -- where the  
13      deck would be in relation to the house.

14          On the other side of the board I've  
15      just covered up the drawings you have,  
16      which gives you a better three-dimensional  
17      view of what the deck would look like on  
18      the house. If you are passing it around,  
19      you can look at it at the same time.

20          The house is planned so that you  
21      enter on the ground floor in the front.  
22      But the dining, living and kitchen areas at  
23      the back of the house are all elevated by a  
24      whole floor. So there's no access to the  
25      yard from all the living areas. And this

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2    is a way of having some outdoor space  
3    related to all the living areas in the  
4    house.

5           CHAIRMAN MAGUN:  Go ahead.

6           MS. ANDERSON:  Any questions?

7           CHAIRMAN MAGUN:  Yes, could you  
8    just explain a little bit more of exactly  
9    what it is you're going to do, how big it's  
10   going to be, why it needs to be the  
11   dimensions that you've outlined.

12          MS. ANDERSON:  Well, in order to  
13   have an exterior space at the same level as  
14   the kitchen and the dining room, it needs  
15   to be big enough to take a table and a  
16   barbecue.  That is basically what the  
17   length of the deck is.

18          CHAIRMAN MAGUN:  And the length,  
19   when you say the length, what is the length  
20   now?

21          MS. ANDERSON:  Twenty-three feet.  
22   So, it allows you to have six people to sit  
23   around the table and to have a barbecue in  
24   an area where you are standing around the  
25   barbecue.

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2           We did not make it wide. We kept  
3 it as minimal as possible, so it's only 12.  
4 We tried to make it look as if it had  
5 always been attached to the house and that  
6 it wasn't elevated on spindly columns. So  
7 we made the columns -- the columns are  
8 thick enough with planters on top to have  
9 less of an impact. And also from the side  
10 view there's lattice so it doesn't look  
11 like some weird platform sticking out in  
12 nowhere land.

13           MR. PYCIOR: And it will be  
14 lattice?

15           CHAIRMAN MAGUN: Can everyone speak  
16 louder, please. The mike has to pick you  
17 up.

18           Is that it? Do you want to tell us  
19 anything else about the presentation?

20           MS. ANDERSON: Well, except that  
21 there is no impact on the aqueduct and also  
22 the neighboring properties because there  
23 are evergreens on the aqueduct. And the  
24 way the house is pointing, it's very  
25 difficult see it from either house on each

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2 side.

3 The photograph I took was from the  
4 house was in the driveway where you still  
5 can't see it but they won't be sitting much  
6 in the driveway. And the same applies from  
7 the other house, the only place where you  
8 could see the house next door is another  
9 place where they would sit out.

10 And then there are letters in the  
11 file from both those neighbors saying they  
12 do not object to this.

13 CHAIRMAN MAGUN: I'm sorry, these  
14 are letters from the next door neighbors?

15 MS. ANDERSON: Yes.

16 CHAIRMAN MAGUN: On either side of  
17 the house?

18 MS. ANDERSON: Yes, yes.

19 CHAIRMAN MAGUN: Okay. Does anyone  
20 on the board want to ask the applicant any  
21 questions with regards to this application?

22 MS. FURMAN: I don't have any  
23 questions. I just have a comment from  
24 visiting the site and looking at the  
25 structure. Nobody else can see this deck,

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2 it would appear to me, other than the  
3 people who are living in the house.

4 The greenery I noticed too around  
5 it were all evergreens, pretty mature  
6 evergreens, so it's not even as if in the  
7 winter someone's going to see this deck.

8 There's not a lot of useable  
9 backyard there, and there is a fence that  
10 separates it from the aqueduct and from  
11 Zinsser Park. So when I looked at it, it  
12 looked like a great to get a little family  
13 living space out of what was a somewhat  
14 inhospitable backyard. I thought it was a  
15 lovely plan.

16 CHAIRMAN MAGUN: With regards to  
17 that, my question is why does it have to be  
18 12 feet 3 inches? Why couldn't it be  
19 10 feet? That's the real issue here to me  
20 it would seem, this incursion into the  
21 rear-yard setback.

22 MS. ANDERSON: It's quite hard to  
23 have a table and chairs and circulate in  
24 10 feet. And it's just a question of size.  
25 The family has two children, and regularly



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2       there are a lot of people that spend time  
3       there.

4           CHAIRMAN MAGUN:   So the thing is  
5       you arrived at the 12-foot figure by  
6       making --

7           MS. ANDERSON:   It's what's  
8       ergonomically correct for a table, chairs  
9       and circulation on a deck.   Ten feet was  
10      very restricting.

11          CHAIRMAN MAGUN:   Okay.

12          MS. ANDERSON:   Also, the columns  
13      are indented into the deck with the  
14      planters, and there's, of course, a  
15      railing.   All that takes out space that's  
16      actually useable.

17          CHAIRMAN MAGUN:   Okay.   I guess  
18      with regards to Denise's comment, one of my  
19      thoughts was how much of the deck can you  
20      actually see from the aqueduct when people  
21      are -- what we see is you are imagining a  
22      deck.   When the people are on the deck, is  
23      it going to interfere with the public's  
24      enjoyment of the aqueduct?   The next door  
25      neighbors, I think, are minimally impacted

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2 by this. It's really only the aqueduct  
3 that's impacted by this.

4 MS. FURMAN: I think you'd have to  
5 be standing on the table perhaps on the  
6 deck almost because the way the land slopes  
7 for someone walking down the aqueduct to  
8 see up over this fence to that deck.

9 CHAIRMAN MAGUN: You may be right.

10 MS. FURMAN: Yes, it's secluded.

11 MS. ANDERSON: Do you stand on the  
12 table much?

13 MR. CURSIO: No.

14 MS. FURMAN: I understand the  
15 question. I think that it's not --

16 MR. CURSIO: You know we don't want  
17 to see them --

18 CHAIRMAN MAGUN: Excuse me, sir.  
19 If you're going to speak, you have to come  
20 to the microphone.

21 Any other questions or comments  
22 from the board?

23 (No response.)

24 CHAIRMAN MAGUN: Is there anyone in  
25 the audience that has any comments or

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2           questions with regards to this application?

3                   (No response.)

4           CHAIRMAN MAGUN: So there are two  
5           letters here, one from Spiegel, 8 Zinsser  
6           Way. That's the next door neighbor?

7           MR. CURSIO: Yes.

8           CHAIRMAN MAGUN: Supporting the  
9           intent to build the deck. And a similar  
10          letter from Holdsworth?

11          MS. ANDERSON: Harriette  
12          Holdsworth.

13          CHAIRMAN MAGUN: And they're at 7  
14          Zinsser Way. So these are your immediate  
15          next door neighbors?

16          MR. CURSIO: Correct.

17          CHAIRMAN MAGUN: Okay. My own  
18          hesitation, at least in reading through the  
19          application, was how much of an incursion  
20          into the rear yard is really necessary to  
21          have a functional deck, which is why I  
22          asked you about how you came up with  
23          12.3 feet. Why not 9.8 feet or 11.5 feet?

24          MS. ANDERSON: Well, it's just to  
25          get enough room around the furniture and

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2 have the handrail. You know, there's  
3 always quite a setback. A deck is measured  
4 to the extreme edge. That is the deck part  
5 which then is set in. You have a handrail  
6 and banisters were just set in quite  
7 significantly from there because the  
8 structure is within that. So we just go  
9 back from the, you know, the main --

10 CHAIRMAN MAGUN: Is the applicant  
11 here?

12 MR. CURSIO: Yes.

13 CHAIRMAN MAGUN: Can I just ask you  
14 a question?

15 MR. CURSIO: Sure.

16 CHAIRMAN MAGUN: How long have you  
17 lived in this house? State your name and  
18 address.

19 MR. CURSIO: Yes, my name is Andrew  
20 Cursio. I reside at 12 Zinsser Way.  
21 Two-and-a-half years.

22 CHAIRMAN MAGUN: Two-and-a-half  
23 years?

24 MR. CURSIO: Yes.

25 CHAIRMAN MAGUN: And has there been

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2 any reason that you're coming before the  
3 board now as opposed to when you bought the  
4 house?

5 MR. CURSIO: We wanted to come  
6 before much earlier. It was just the case  
7 of we had other things to take care of in  
8 the house having recently purchased it.

9 CHAIRMAN MAGUN: Having what?

10 MR. CURSIO: Having recently  
11 purchased it, we took care of other  
12 improvements first.

13 CHAIRMAN MAGUN: I just want to  
14 look at that floor plan again. On the main  
15 floor, the kitchen opens right into the  
16 deck?

17 MR. CURSIO: That's the idea,  
18 correct. The kitchen is very small.

19 CHAIRMAN MAGUN: Are there going to  
20 be -- are there any interior changes to the  
21 house, or is this --

22 MS. ANDERSON: The only change is  
23 to turn --

24 CHAIRMAN MAGUN: You need the  
25 microphone. Sorry.

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2 MS. ANDERSON: The only change is  
3 to change the window in the kitchen into a  
4 sliding door onto the neck.

5 CHAIRMAN MAGUN: Okay. So,  
6 otherwise, this is the current floor plan?

7 MS. ANDERSON: Correct. There are  
8 no changes. And as Andrew Cursio says, the  
9 kitchen is very small, so it will feel a  
10 lot bigger having the deck out there.

11 CHAIRMAN MAGUN: Okay. It looks  
12 like no one else wants to ask any  
13 questions. So we have no --

14 MR. MURPHY: Just a minute. It was  
15 my sense that although the 5-foot incursion  
16 into the rear yard might be considered a  
17 little much, the fact is it's a pretty  
18 quiet place with a lot of space around it.  
19 It's offset by the fact that the aqueduct  
20 is there. There's a 6-foot high cedar  
21 fence. There's lots of evergreens  
22 screening.

23 As far as I can see, the neighbors  
24 on the sides aren't impacted at all. So I  
25 think all of that kind of ameliorates the

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2 fact that it might be more than an  
3 incursion than people like to see typically  
4 in a rear-yard setback. I don't see how  
5 this would be a problem.

6 MR. CURSIO: Thank you.

7 CHAIRMAN MAGUN: Okay. So the  
8 request is for a variance, or the applicant  
9 proposing an 18.65-foot setback from the  
10 rear yard where required is 24 feet. Is  
11 there a motion with regard to this  
12 application?

13 MS. FURMAN: I'll make a motion to  
14 grant the applicant's request for a  
15 variance where the existing backyard as  
16 30.9 feet, proposed is 18.65, and required  
17 is 24 feet.

18 CHAIRMAN MAGUN: Second?

19 MR. MURPHY: I will second.

20 CHAIRMAN MAGUN: All in favor?

21 MR. MURPHY: Aye.

22 MR. DEITZ: Aye.

23 MR. PYCIOR: Aye.

24 MS. FURMAN: Aye.

25 CHAIRMAN MAGUN: Aye. It's passed.

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2 MR. CURSIO: Thank you.

3 CHAIRMAN MAGUN: Congratulations.

4 The second application is 20-06,  
5 Kidd Dorn and Jennifer Dunnington of 63  
6 High Street for the repair and  
7 reconstruction of an existing  
8 non-conforming porch where two variances  
9 are being requested: The front-yard  
10 variance where required is 25 feet,  
11 existing is 17.5, and the applicant's  
12 proposing having an 18.25-foot distance  
13 from the front-yard setback -- as its  
14 front-yard setback, I'm sorry.

15 And then also a side-yard variance  
16 is required where existing is 5.6 feet on  
17 one side and 21 feet total, and the  
18 applicant is proposing 5.6 feet with a  
19 reduction in the second size so that  
20 18.5 feet would be proposed where permitted  
21 is 20 total with 8 feet on one side.

22 Mr. Levy, you are here to present  
23 this application?

24 MR. LEVY: Yes, sir.

25 CHAIRMAN MAGUN: So name and



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2 address please, and go ahead.

3 MR. LEVY: Bruce Levy, 41

4 Southgate Avenue, Hastings-on-Hudson.

5 This is a very small, tight house  
6 on a very small, tight site. And  
7 basically, there's a covered porch in the  
8 front that's in disrepair. It's settling.  
9 There are cracks in the foundation wall.  
10 And rather than try and repair it and  
11 replace it, the applicant would like to  
12 take it down and rebuild it, essentially,  
13 in the same location. But, of course, it's  
14 subject to the zoning regulations if it's  
15 taken down and rebuilt. But it certainly  
16 would be much more economical to take it  
17 down and rebuild it. Already the site is  
18 very tight, very small, limiting the use of  
19 the site, so they'd like to, essentially,  
20 replace the same space, in essence, they  
21 rebuild it.

22 We're actually going to slide it --  
23 we're proposing to slide it over slightly  
24 to the left so that we have a wider side  
25 yard to the north. By sliding it over,

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2       we're actually also moving it a little bit  
3       further away from the front yard so that  
4       the front-yard setback will be about  
5       9 inches more than it is now but still  
6       non-conforming to the 25 feet.

7           MR. MURPHY: Yes, I was wondering  
8       how you accomplished that.

9           MR. LEVY: Because the site, as you  
10      could see, is on this steep angle. So  
11      sliding it over, even though we're making  
12      it slightly wider, it's actually moving  
13      about 9 inches further from the deck.

14           And I would also note that the  
15      25-foot setback actually occurs in the  
16      middle of this, so it's only about half of  
17      this that's actually intruding into the  
18      25-foot setback.

19           At the same time, we have a total  
20      side yard requirement as well because we'd  
21      like to make it a little more -- make the  
22      space a little more proportional. And  
23      right now you walk right into -- you walk  
24      up several steps and you walk right in, so  
25      it's really not a safe condition. So we're

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2     creating sort of a small entryway right  
3     here, so we need to borrow or use about  
4     two-and-a-half feet from that side yard.

5           The structure itself actually  
6     conforms to the total of the 20-foot  
7     setback. But right on the plane of the  
8     existing building we would have to continue  
9     to use the 5.6 feet, and that's why the  
10    total side yard --

11           CHAIRMAN MAGUN: You mean the new  
12    structure that you're planning?

13           MR. LEVY: The new structure,  
14    right, is actually over 8 feet from this  
15    side, 8.5, and it's over 12 feet from the  
16    opposite side. So the structure itself  
17    actually conforms to the 20-foot setback.  
18    But on the front plane of the house,  
19    technically, you have to use the 5.6, and  
20    that's why we're under the 20-foot total.

21           MR. MURPHY: I just have a  
22    question. This is not an extension of the  
23    existing non-conformity on that side yard  
24    then; right?

25           MR. LEVY: No, we're talking about

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2 rebuilding this in its entirety.

3           MR. MURPHY: And the dimension from  
4 across the front to back, is it the same  
5 depth?

6           MR. LEVY: No, it's a foot wider  
7 because we're trying to keep pretty much  
8 the same square footage. But also it makes  
9 the room more useable because it's a little  
10 bit better proportion rather than being an  
11 elongated room. It has a little bit better  
12 proportion to the space.

13          MR. MURPHY: Even though it's a  
14 foot wider because you've moved it over,  
15 you've recaptured that so that the setback  
16 is actually less on the front yard?

17          MR. LEVY: There's less of a  
18 requirement.

19          MR. MURPHY: Okay. I got you.

20          MR. LEVY: Yes, even though this is  
21 coming out a foot, we're sliding it over a  
22 couple of feet this way. It's actually  
23 about 9 inches front to back from the front  
24 yard because of the steep, you know, angle  
25 of the front yard along High Street.

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2           The pictures which were part of the  
3 project, part of the application, as well  
4 as the ones here, the house to the south,  
5 which you could see right over here and  
6 over here, is going to be further set back.  
7 It really has very little view because it's  
8 facing in a slightly different direction.  
9 The house to the north is really all the  
10 way back over here. It doesn't really see  
11 this structure right now.

12           As well as the fact, which we don't  
13 have a picture, but the house across the  
14 street is actually offset to the north.  
15 And right in front of this house, the house  
16 directly in front of this is actually set  
17 low down. It actually enters as High  
18 Street comes around, so the roof of that  
19 house across the street is actually a few  
20 feet above street level.

21           So there is really no one across  
22 the street looking directly at this house.  
23 So we feel that it's certainly not  
24 intrusive at all to any of the neighboring  
25 properties. It really makes this house

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2 functional and gives the house some  
3 additional space. And that's it.

4 CHAIRMAN MAGUN: Why do you call it  
5 a porch?

6 MR. LEVY: It's a -- well, because  
7 you enter the house right here. It's sort  
8 of -- it probably was an outside --

9 CHAIRMAN MAGUN: It confused me  
10 because I was looking for the porch and I  
11 saw a structure that looked like part of  
12 the house.

13 MR. LEVY: Well, it's sort of part  
14 of the house. It appears that it's part of  
15 the original house, but it was built as an  
16 addendum to the house out in the front, so  
17 I would call it a covered porch, an  
18 enclosed porch. It's enclosed now and it  
19 apparently always was.

20 CHAIRMAN MAGUN: Okay.

21 MR. LEVY: So we're not actually  
22 adding.

23 CHAIRMAN MAGUN: And this project,  
24 which looks very beautiful in the drawings,  
25 are you doing anything in the house? Are

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2 there any changes being done in the house,  
3 or is this just exterior reconstruction of  
4 this structure?

5 MR. LEVY: That's what this project  
6 is. If anything else is done in the  
7 future, it's within the boundaries of the  
8 existing --

9 CHAIRMAN MAGUN: Right. And what  
10 is this room currently being used as; is it  
11 a heating room? Does it have heat  
12 presently?

13 Are you the applicant?

14 MR. DORN: I want to speak into the  
15 microphone.

16 CHAIRMAN MAGUN: Just say your  
17 name.

18 MR. DORN: My name is Kidd Dorn. I  
19 live at 63 Hight Street. You know, we  
20 bought the house about a year ago and we  
21 had another zone added.

22 CHAIRMAN MAGUN: So it's  
23 essentially part of the house?

24 MR. DORN: Yes, it's pretty cold.  
25 We just had floor boarding added, so it

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2 takes the edge off and keeps the plants  
3 alive.

4 MR. LEVY: They also recently had a  
5 new baby.

6 CHAIRMAN MAGUN: That's nice.

7 This is not germane to the  
8 discussion, but the garage has a fence on  
9 top or a railing?

10 MR. LEVY: It has a railing.

11 CHAIRMAN MAGUN: Are they new? Has  
12 that always been there?

13 MR. LEVY: It's always been there.

14 CHAIRMAN MAGUN: So is that used as  
15 a -- the garage is used as -- what is it  
16 used for?

17 MR. DORN: My daughters ride their  
18 tricycles on it.

19 CHAIRMAN MAGUN: Oh, so it's  
20 actually used as an area where people walk  
21 on it.

22 MR. DORN: It's bicycle riding and  
23 tricycle riding.

24 CHAIRMAN MAGUN: Good. I'm glad  
25 you have the railings there.



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2 MR. LEVY: One of the other  
3 reasons, by the way, for making it 9-foot  
4 wide is we actually come out and we're  
5 going to catch the corner of that garage.  
6 Structurally, it's going to also work as  
7 well because we're going to catch the  
8 corner of the foundation of that new line.  
9 So that's going to help in terms of the --

10 CHAIRMAN MAGUN: Well, be careful.  
11 Don't attach to it because then you'll have  
12 a different problem.

13 MR. LEVY: No, we're not attaching  
14 it. The garage is lower down.

15 MR. MURPHY: What's the side-yard  
16 setback on the other side away from High  
17 Street?

18 MR. LEVY: This side here?

19 MR. MURPHY: The existing?

20 MR. LEVY: The existing is  
21 15.4 feet. And we will come out 2-foot  
22 6 inches. That brings it down to  
23 12.9 feet. So it still actually needs the  
24 minimum side yard requirement of the  
25 20-foot total.

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2 MR. MURPHY: Why is it  
3 coming into -- why are you taking  
4 two-and-a-half feet on that side?

5 MR. LEVY: Well, we're actually  
6 doing it to, hopefully, maintain a similar  
7 square footage in here. But also right now  
8 you walk into the house on the side here,  
9 so we're trying to create some stone steps  
10 out in front which are actually beyond the  
11 25-foot setback even though they're stone  
12 steps. So we can come, you know, into the  
13 area here so this area almost serves as a  
14 vestibule as well as an additional space to  
15 the house.

16 MR. MURPHY: So are you eliminating  
17 the existing entry from that side of the  
18 house?

19 MR. LEVY: Yes, this is just a  
20 window here. There's no entry from that  
21 side. You come up the steps and go  
22 directly in. And then you have a little  
23 platform in the front, front of the door.

24 MR. MURPHY: And the new proposed  
25 steps do not -- they don't need any kind

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2 of --

3 MR. LEVY: Well, they are stone  
4 steps. It's not a wood deck or a wood  
5 platform. Technically, you can build that.  
6 Well, maybe the corner would be. This is  
7 sort of the line where the 25-foot setback  
8 would be.

9 MR. MURPHY: It's just hard for me  
10 to see in the angle. It's a little weird,  
11 but I think I'm with you.

12 CHAIRMAN MAGUN: Just to follow  
13 Brian's issue a little bit. The front yard  
14 incursion, I think, is clear the need for  
15 it, if you're going to have any structure  
16 there. The side yard incursion into --  
17 you're asking for a new -- you're creating  
18 a new side-yard variance where there wasn't  
19 one before. Am I correct?

20 MR. LEVY: Just on the --

21 CHAIRMAN MAGUN: The existing was  
22 21 feet on the total. Why is it necessary  
23 to build that extra 2 feet there?

24 MR. LEVY: Well, I think they'd  
25 like not to lose the square footage. But

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2   also proportionately I think the front  
3   entrance would work better. The pathway of  
4   the steps coming up next to the garage,  
5   just coming up and having a platform and  
6   then to be able to return and go into the  
7   house just makes it a more palatable space.

8           CHAIRMAN MAGUN: But if it was  
9   flush with the house, you wouldn't need  
10   that; right?

11          MR. LEVY: Well, we felt that that  
12   was a reasonable tradeoff since we are  
13   sliding this over. But again, this is  
14   still 12.9 feet from the side yard.

15          MR. MURPHY: No, I understand. But  
16   Arthur's point is that it impacts the part  
17   of the code that requires combined --

18          MR. LEVY: Right, but that's  
19   happening again just on that one plane of  
20   the house.

21          CHAIRMAN MAGUN: I am just trying  
22   to understand, is it really necessary to do  
23   it that way?

24          MR. LEVY: I think so, even though  
25   I know esthetics are not an excuse for a

1           ZONING BOARD OF APPEALS - 09/14/2006  
2       variance, but in terms of just making the  
3       space palatable and having functional  
4       square footage, you know, within a very  
5       tight and restricted site. I think that's  
6       why we're looking to borrow that extra  
7       couple of feet.

8           MR. DORN: Can I add something  
9       about that?

10          CHAIRMAN MAGUN: Sure.

11          MR. DORN: Right now you could see  
12       that -- and I'm not looking at it, but I'll  
13       just trust I'm going to say it right. We  
14       come in from the side and there are stone  
15       steps coming down. And I think maybe you  
16       came to visit today. I can't see your  
17       name. My wife said you came to visit  
18       today. Right now we have to landing, so  
19       you walk up the stairs, grab the door and  
20       then back down. And we have a two-month  
21       old and I have twin girls, and it's just  
22       the most unideal thing you could have when  
23       you're trying to get into your house.

24          So that goes out probably about  
25       four feet. I'm not -- I don't know the

1           ZONING BOARD OF APPEALS - 09/14/2006  
2 numbers technically, but the house is going  
3 to come out a little more, but the  
4 intrusion, because the stairs aren't going  
5 to be there, is actually going to be less.

6           And also, for my neighbor, we come  
7 out right on to her house. And if this  
8 is -- this proposed thing goes through,  
9 then we'll be able to go out through the  
10 front where there's nobody looking at us.  
11 And those two aspects I think it's good.

12           CHAIRMAN MAGUN: Okay.

13           MR. MURPHY: What are the  
14 dimensions of the new proposed portion,  
15 only because the drawings submitted are not  
16 as clear as it could be.

17           MR. LEVY: It comes out 9 feet wide  
18 and it's about 23-foot 3 inches. It comes  
19 out 9 feet from the building. And the  
20 total, you could see if you see the first  
21 floor plan, it's 14-foot 9 plus 8-foot 6,  
22 so it's 23-foot 3 inches.

23           CHAIRMAN MAGUN: So again, the  
24 reason you have the steps situated here is  
25 because that's -- they're going up the side

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2 of the garage; correct?

3 MR. LEVY: Yes, we are trying to  
4 follow the path of travel.

5 CHAIRMAN MAGUN: Following the  
6 path. But if you did that, I just don't  
7 still quite understand why you need this  
8 extra 2.6 feet, why you have to make that  
9 incursion into that side yard.

10 MR. LEVY: Well, again, I think, as  
11 Kidd said, right now there are existing  
12 stone steps in that location. So, in  
13 essence, we're not moving -- it's a  
14 structure rather than steps. But we're  
15 really using the same two-and-a-half feet.  
16 Well, it's two-and-a-half. Actually, the  
17 steps go a little further. It's really to  
18 get a better proportion as you come in, as  
19 movement to make that space more  
20 functional, and right to a little nook that  
21 can be a bench where they can put clothing  
22 or shoes. And that won't take away from  
23 the space to the right.

24 So, the space to the right of that  
25 as you walk in can be the functional space

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2     similar to the space that -- similar to the  
3     space that they are using now.

4           Now, again, that's 12.9 feet away  
5     from the side yard. So again, the  
6     structure, it's really only on the plane of  
7     the -- it's on the plane of the face of the  
8     existing house where it's really  
9     non-conforming.

10           MR. MURPHY: Right. What you're  
11     saying is that the proposed new porch will  
12     still comply with both the individual and  
13     combined side lot setbacks?

14           MR. LEVY: Yes.

15           MR. MURPHY: Even with taking this  
16     extra couple of feet?

17           MR. LEVY: That's correct. The  
18     replacement structure itself conforms.  
19     It's just that being attached to the house,  
20     on the plane of the existing house, we  
21     would have to use the 5.6 feet of the  
22     existing setback to the north.

23           MR. MURPHY: No, I understand that.  
24     And I think it's good that you are not  
25     extending that existing non-conforming on



1           ZONING BOARD OF APPEALS - 09/14/2006  
2     the High Street side which is 5.6 inches.  
3     That's good. You slid the porch over to  
4     actually less than the incursion into the  
5     front yard. That's good. The porch, it  
6     all makes sense. The steps make sense.

7           The only thing that didn't make  
8     sense was on the other side to make a  
9     doorway, that's the only thing I don't  
10    understand. But I guess on the other hand  
11    what you're saying is even having done  
12    that, you still comply with the side-yard  
13    setbacks for the new -- portion of the new  
14    proposed structure.

15           MR. LEVY: That's correct. I would  
16    reiterate. It's not esthetics, it's more  
17    functional, making it functionally useful.

18           CHAIRMAN MAGUN: You know, I  
19    respect that, and that's why I keep asking  
20    about it. I see you making that turn it  
21    looks to me like you go right up into the  
22    house and you don't need that. I see the  
23    door opening here and you're going into  
24    this new room, and I don't understand why  
25    you need that space right there.

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2 MR. LEVY: Well, I would reiterate  
3 that in a way it serves as a vestibule  
4 because as you come in, that little nook  
5 provides an opportunity to be a functional  
6 use of putting coats or boots or shoes.  
7 And if that wasn't there, then we would be  
8 coming in flat against the wall, and more  
9 of the space to the right would probably  
10 end up having to be used for that function.

11 CHAIRMAN MAGUN: I clearly  
12 understand that, but then you wouldn't have  
13 an incursion into the side yard. So that's  
14 my concern.

15 MR. LEVY: I guess you could say  
16 that we could, but you tell me that we have  
17 to. But if we notch this forward a foot  
18 and move that over that way, then the whole  
19 thing would be conforming.

20 CHAIRMAN MAGUN: Say that again.

21 MR. LEVY: I'm saying that the only  
22 place that it's non-conforming in terms of  
23 side yard is on the plane of the existing  
24 house. And we just brought this line out  
25 in the same plane as the existing house.

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2 Now, if you felt comfortable, I don't see a  
3 problem, if we bring this forward a foot  
4 and bring that over, just take off a little  
5 corner there, let's say a foot by 2-foot 6,  
6 then it would be conforming.

7 CHAIRMAN MAGUN: No, you still  
8 have -- I don't understand what you're  
9 saying.

10 MR. LEVY: It's only non-conforming  
11 on the plane of the existing house.

12 CHAIRMAN MAGUN: No, it's attached  
13 to the house.

14 MS. STECICH: As you move forward,  
15 the side yard is further over.

16 MR. LEVY: If we move this forward,  
17 then we can consider the 8.85 feet of this  
18 structure. I guess that's the way you  
19 would interpret it.

20 CHAIRMAN MAGUN: I don't  
21 understand. It's all one structure, so you  
22 measure from the --

23 MS. STECICH: No, no, you're saying  
24 because you are just measuring at the  
25 plane. No, no, you would stand at the

1           ZONING BOARD OF APPEALS - 09/14/2006  
2 street and stand in the street and say  
3 what's the side yard here and what's the  
4 side yard here. That wouldn't make a  
5 difference.

6           CHAIRMAN MAGUN: Right.

7           MR. LEVY: I'm only trying to  
8 emphasize why this is useful, functional  
9 space, the way this entry would work.

10          CHAIRMAN MAGUN: It's functional, I  
11 understand, but it's not necessary. You  
12 have this nice addition to the house. It  
13 would work very well without that -- what's  
14 the exact amount of space that you're --

15          MR. LEVY: It's 2-foot 6.

16          CHAIRMAN MAGUN: You're proposing  
17 18.5, so it would be one-and-a-half feet.

18          MR. LEVY: Right, because it's  
19 already a little over, so it's really  
20 one-and-a-half feet.

21          MR. MURPHY: But see, Arthur,  
22 that's not an incursion into that side-yard  
23 setback.

24          CHAIRMAN MAGUN: That's the total.  
25 I understand.

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2 MR. MURPHY: That's what I was  
3 trying to explain.

4 CHAIRMAN MAGUN: I understand. Any  
5 other questions? I think we pointed out --

6 MR. DEITZ: In the words of the  
7 code, I would see the lack of functionality  
8 as the hardship.

9 CHAIRMAN MAGUN: When you say the  
10 lack of functionality, what do you mean?  
11 They can get into the house.

12 MR. DEITZ: They need the space on  
13 the side on the left that you go in is  
14 because it's turnaround space, it's more  
15 functional than if that wasn't there.

16 CHAIRMAN MAGUN: Well, it's not  
17 functional. It's just a place for storage.  
18 They could walk right into the house. I  
19 would disagree with that.

20 MR. DORN: Could I add something?

21 MR. DEITZ: It's a loss of  
22 functionality, and that's what I see.

23 CHAIRMAN MAGUN: Okay.

24 MR. DORN: This is all very  
25 mathematical to me, but the thing that we

1           ZONING BOARD OF APPEALS - 09/14/2006

2    lack is wall space.  And because there's  
3    the windows and there's actually only one  
4    little bit of wall space on our whole porch  
5    between where the door from the porch into  
6    our house is and there's a couple of  
7    existing windows that face from the house  
8    into the porch and this little 2.6 feet, as  
9    it were, there's going to be a bench there.

10           We need a place for like a wet  
11   room, like where you come in and you take  
12   off all your winter clothes.  And that  
13   little space will be absolutely great for  
14   us to actually have a place to put our  
15   stuff because we don't -- you know, it's a  
16   tiny house and we have three kids.  Our  
17   whole porch is just full of shoes.

18           CHAIRMAN MAGUN:  How big is the  
19   house when you say it's a tiny house?

20           MR. DORN:  The square footage?

21           CHAIRMAN MAGUN:  Yes.

22           MR. DORN:  I think when we bought  
23   it, I remember the number, maybe  
24   1,600 square feet, I think.

25           MR. LEVY:  On two floors.

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2 MR. DORN: The whole house.

3 CHAIRMAN MAGUN: Living space?

4 MR. DORN: Yes, not much bigger  
5 than the apartment we moved out from.

6 CHAIRMAN MAGUN: Are there any  
7 other questions or comments from the board?

8 MR. PYCIOR: I want to ask you  
9 again, based on the comment about  
10 functionality. I do have a vestibule where  
11 the door opens flush against the wall, and  
12 it is difficult turning around. That is my  
13 front door, when you open it it touches the  
14 wall. So it can only be open 90 degrees.  
15 It can't be opened further. Getting  
16 appliances in and out of the front door is  
17 difficult.

18 CHAIRMAN MAGUN: You need a  
19 variance for that.

20 MR. PYCIOR: I wouldn't want to  
21 come before this board.

22 CHAIRMAN MAGUN: Thank you.

23 MR. SHARMA: Arthur?

24 CHAIRMAN MAGUN: Yes.

25 MR. SHARMA: I have something that

1 ZONING BOARD OF APPEALS - 09/14/2006

2 you touched upon earlier that makes sure  
3 that the porch doesn't touch the garage,  
4 and I think the indication was if it  
5 touches the garage, the garage is an  
6 accessory structure.

7 CHAIRMAN MAGUN: It becomes one  
8 structure. That was my implication.

9 MR. SHARMA: Because currently it  
10 does seem to touch the corner of the  
11 garage. And, you know, the structure as it  
12 is is totally non-conforming.

13 MR. LEVY: It doesn't have to.

14 CHAIRMAN MAGUN: Can we understand  
15 that? If you're building a structure and  
16 it becomes -- it's part of the garage, it  
17 touches the garage, it's all one structure,  
18 and that would change the application in a  
19 major way.

20 MR. LEVY: Well, we don't have to  
21 touch it.

22 CHAIRMAN MAGUN: Can we understand  
23 that a little better? I didn't think it  
24 did. I was afraid to walk on it.

25 MR. LEVY: Actually, on these plans



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2 it doesn't. It's short.

3 MR. DORN: Right next to it.

4 MR. SHARMA: But you did say

5 that --

6 MR. LEVY: We were considering

7 that. But if you say that's an issue, then

8 we'll not do that.

9 CHAIRMAN MAGUN: Yes, it's a big

10 issue. But I'm pretty sure that if the

11 structures are touching each other, then

12 that garage would become, you know, not an

13 accessory structure but all part of the

14 house.

15 MR. MURPHY: Can't we make that a

16 condition?

17 CHAIRMAN MAGUN: Sure, we could.

18 But it's not touching.

19 MR. MURPHY: It's not touching.

20 MR. LEVY: Right now it's not, and

21 we can confirm that we can do this without

22 that happening, and Deven can confirm that

23 when the actual construction documents are

24 submitted.

25 CHAIRMAN MAGUN: Okay, thank you.

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2 MR. SHARMA: It will be zero  
3 setback.

4 CHAIRMAN MAGUN: Yes, you have no  
5 setback. It would be a different  
6 application. I was assuming that they were  
7 two separate structures; an accessory  
8 structure which is a garage, and this  
9 structure which is the house, not one  
10 structure which would be a big house or  
11 bigger.

12 MR. LEVY: A garage.

13 CHAIRMAN MAGUN: A bigger small  
14 house.

15 MR. LEVY: That's fine.

16 CHAIRMAN MAGUN: Okay. Is there  
17 anyone in the audience that has any  
18 comments or questions about the  
19 application?

20 (No response.)

21 CHAIRMAN MAGUN: No, okay. I'll  
22 give the board a minute or two just to  
23 digest everything.

24 (Whereupon, there was a pause in  
25 the proceedings.)

1 ZONING BOARD OF APPEALS - 09/14/2006

2 CHAIRMAN MAGUN: Let me ask you one  
3 question, maybe there's something that I'm  
4 not getting. What would have been a  
5 relationship between the garage to this new  
6 porch because they're not --

7 MR. LEVY: Actually, right now the  
8 corner of the garage is about a foot away  
9 from where the foundation wall of this  
10 would be. We were probably going to  
11 integrate it, but we don't have to.

12 CHAIRMAN MAGUN: Right, you can't.  
13 I mean, you would have to --

14 MR. LEVY: We won't.

15 CHAIRMAN MAGUN: You would have to  
16 get a variance.

17 MR. LEVY: We won't. It's not  
18 necessary structurally.

19 MR. SHARMA: Is it a grade at that  
20 point at the roof level, top of the roof  
21 level?

22 MR. LEVY: Right. The foundation  
23 of this structure is actually above the  
24 foundation wall of the garage.

25 CHAIRMAN MAGUN: I hear no other

1           ZONING BOARD OF APPEALS - 09/14/2006  
2       questions. So we have before us then a  
3       request for two variances, front yard and  
4       side yard, for the repair and  
5       reconstruction of an existing  
6       non-conforming structure slash porch.

7           So, the first variance would be for  
8       the front yard where the existing  
9       non-conforming setback is 17.5 and required  
10      is 25, and the applicant is proposing a  
11      less of an incursion so that they will be  
12      18.25 feet from the front yard. Is there a  
13      motion with regards to that request?

14           MS. FURMAN: I make a motion to  
15      grant the applicant's request for a  
16      variance regarding the front yard where the  
17      existing non-conforming is 17.5, proposed  
18      is 18.25 and required is 25 feet.

19           CHAIRMAN MAGUN: Okay. Is there a  
20      second to that?

21           MR. MURPHY: I'll second.

22           CHAIRMAN MAGUN: All in favor?

23           MR. MURPHY: Aye.

24           MR. PYCIOR: Aye.

25           MR. DEITZ: Aye.

1 ZONING BOARD OF APPEALS - 09/14/2006

2 MS. FURMAN: Aye.

3 CHAIRMAN MAGUN: Aye. So that  
4 variance has passed, request for a  
5 variance.

6 The second request is for a  
7 side-yard variance where currently the  
8 applicant has one side which is 5.6 feet  
9 with a total of 21 feet two sides. They're  
10 proposing that one side be -- one side is  
11 5.6 feet and the total would now be reduced  
12 to 18.5 where 20 feet is required in total  
13 and 8 feet is the minimum required.

14 So, is there a motion to approve  
15 the request for a side-yard variance?

16 MS. FURMAN: I'll make that motion.  
17 Do I need to repeat everything that you  
18 just said to make that motion?

19 CHAIRMAN MAGUN: No, you can just  
20 make the motion to approve the request for  
21 what they're proposing.

22 MS. FURMAN: I'll make a motion to  
23 approve the applicant's request for a  
24 variance as so stated by the chair.

25 CHAIRMAN MAGUN: 5.6 one side and

1 ZONING BOARD OF APPEALS - 09/14/2006

2 18.5 two sides total. Is there a second to  
3 that?

4 MR. DEITZ: I'll second.

5 CHAIRMAN MAGUN: Okay. All in  
6 favor?

7 MS. FURMAN: Aye.

8 MR. MURPHY: Aye.

9 MR. PYCIOR: Aye.

10 MR. DEITZ: Aye.

11 CHAIRMAN MAGUN: And I'm going to  
12 vote no. That's four to one. It's passed.

13 MR. LEVY: Thank you very much.

14 CHAIRMAN MAGUN: The third  
15 application is No. 22-06. Before we hear  
16 this application, the board has requested  
17 advice of counsel, so we're going to take a  
18 short break and then we'll reconvene in a  
19 few minutes. So don't run away. Excuse  
20 us.

21 (Time noted, 8:52 P.M.)

22 (Whereupon, there was a brief  
23 recess taken.)

24 (Time noted 9:05 P.M.)

25 CHAIRMAN MAGUN: So we are

1           ZONING BOARD OF APPEALS - 09/14/2006  
2 reconvening. We are going to hear case  
3 22-06, Christine Lehner, 271 South  
4 Broadway, for the construction of a barn  
5 slash accessory structure where the request  
6 for a variance concerns height of the  
7 accessory structure where 15 feet is  
8 permitted and the applicant is proposing  
9 plus/minus 40 feet.

10           And the second request is by the  
11 board for the possibility of the need for a  
12 use variance with regard to the  
13 requested -- the applicant's request for  
14 certain uses in this accessory structure.

15           Now, sir, are you presenting the  
16 application tonight?

17           MR. KIRKPATRICK: Yes, thank you.

18           CHAIRMAN MAGUN: Could you just  
19 state your name and address for us?

20           MR. KIRKPATRICK: John Kirkpatrick,  
21 partner in Oxman, Tulis, Kirkpatrick,  
22 Whyatt & Geiger, 120 Bloomingdale Road in  
23 White Plains.

24           CHAIRMAN MAGUN: Okay. And I need  
25 to ask you one question with regards to

1           ZONING BOARD OF APPEALS - 09/14/2006  
2    this application. In the letter that you  
3    wrote to the Zoning Board of Appeals dated  
4    August 17th, you said this is an Re,  
5    application for a rehearing. And I wanted  
6    to ask you before we start what exactly was  
7    your intent. Is this a new application or  
8    did you want a rehearing? And let me just  
9    discuss that for one second.

10           A rehearing would require the  
11   board -- would imply that you wanted the  
12   board to reconsider its previous vote on an  
13   application. It requires a unanimous vote  
14   of the board to open the rehearing. Or did  
15   you really mean that this is a new  
16   application, as I think you may have, just  
17   because there were some changes in the  
18   actual footprint of the house.

19           MR. KIRKPATRICK: Yes, I was trying  
20   to cover the bases because I wasn't sure  
21   how your board would interpret it. It  
22   really is a new application because we have  
23   made changes in the setback and in the uses  
24   in the building.

25           CHAIRMAN MAGUN: So, would it be



1           ZONING BOARD OF APPEALS - 09/14/2006  
2   fair to say then that you really weren't --  
3   this is a new application and not an  
4   application for a rehearing? I don't know.

5           MR. KIRKPATRICK: Yes, a new  
6   application and not a rehearing.

7           CHAIRMAN MAGUN: So, we're going to  
8   call this a new application now. Is the  
9   board comfortable with that? I mean, this  
10   was noticed, Deven, as a new application?

11          MR. SHARMA: That was the  
12   understanding from the beginning. It said  
13   it was a revised modified application. The  
14   first application was voted, not granted,  
15   so this is certainly a new application.

16          MR. MURPHY: It seems to me as long  
17   as it's noticed, I don't see any problems  
18   listening to this new application.

19          CHAIRMAN MAGUN: I'm comfortable  
20   with that. Are there any members of the  
21   board who are uncomfortable with that?

22          MR. PYCIOR: No, but I might add  
23   that since it is a new application, I'm  
24   able to sit to hear this case.

25          CHAIRMAN MAGUN: Right, Stan wasn't

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2   at the last meeting.

3           Go ahead then.

4           MR. KIRKPATRICK: Great.

5           CHAIRMAN MAGUN: Why don't you tell  
6   us about this application. What do you  
7   want to do, etcetera?

8           MR. KIRKPATRICK: Thank you. Let  
9   me first just speak in concept and then  
10   come back to the details.

11           This is a large property. It's  
12   4.4 acres in a zone, the R-10 zone, that  
13   only requires a 10,000 square foot minimum  
14   lot size. Subdivision is obviously  
15   possible, but even without a subdivision  
16   one could come in and decide to redevelop  
17   the entire property with a large new house.  
18   It could potentially have a pool, a tennis  
19   court. It certainly could have a  
20   free-standing garage. That house can be  
21   35 feet high under existing zoning and it  
22   can be within 12 feet of a side lot line.

23           In other words, in the same  
24   location we're talking about for this new  
25   structure, one could build a house almost

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2           as high and much closer. The difference is  
3           we're proposing something almost 33 feet  
4           from the side lot line which is 175 percent  
5           of the house requirement.

6           MR. MURPHY: Say that again.

7           MR. KIRKPATRICK: The house  
8           requirement -- we're putting this at 33  
9           feet. You could build a house within  
10          12 feet of a side lot line in this zone.

11          CHAIRMAN MAGUN: All right. Go  
12          ahead.

13          MR. KIRKPATRICK: We are proposing  
14          a structure that's a little taller. The  
15          house could be 35. This is proposed to be  
16          41. That's about a 17 percent difference.

17          So there's a 10-fold difference  
18          here between height and setback with what  
19          could be done on this property if it were  
20          either completely redeveloped or if it were  
21          subdivided.

22          We did not apply, but it was raised  
23          by your board that there still might be a  
24          question of whether the uses we're talking  
25          about are permitted.

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2           Now, a barn is a bit of a misnomer.  
3       It's been denominated a barn because that's  
4       what it's intended to look like.  
5       Architecturally, certainly, it looks like a  
6       barn, but it's not going to have any  
7       livestock in it. It's not classically an  
8       agricultural barn; rather, we could  
9       potentially call it a garage. We could  
10      call it just accessory structure.

11           We're proposing something that on  
12      the main floor holds vehicles and the  
13      standard maintenance equipment. In the  
14      ground floor below we're proposing rough  
15      storage. And in the partial floor above  
16      that's under the eaves, this is going to be  
17      a recreation area and clean storage.

18           When I look at the list of  
19      permitted accessory uses which are in  
20      295-67(3), I see that the phrase garage or  
21      similar structure appears with reference to  
22      storage of snowmobiles and the like, but  
23      clearly the concept of garage or similar  
24      structure is intended.

25           In C4 I find permitted accessory

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2       uses include garden house, toolhouse,  
3       playhouse, greenhouse or similar occupancy  
4       use. And in C6, off-street parking  
5       facilities which presumably would again  
6       include a garage.

7           Now, we're proposing a set of uses  
8       here that falls within that storage, garden  
9       house, playhouse, similar kinds of uses.  
10      The issue here, of course, is really  
11      height. I think we're okay -- I think that  
12      you'll find that we're perfectly okay with  
13      all of the uses that are proposed here.  
14      Whether you call it a barn or not, we're  
15      perfectly happy not to call it a barn, if  
16      that doesn't seem to be a permitted  
17      accessory use. But what we are going to  
18      put in it are permitted accessory uses.

19           But it brings us back to the  
20      question of height. Now, again, this is a  
21      very large property. We could potentially  
22      determine that we wanted to do these same  
23      uses on this property in a variety of  
24      individual buildings, all of which could  
25      meet the 15-foot height requirement, a

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2       garage, then a toolshed, then a playhouse.

3       All of these things could be there. But it

4       would be a bit of a waste of the open space

5       that is a major characteristic of this

6       property.

7           This property is what is left of

8       the Draper farm estate. The house might

9       have been built and its original barn as

10      early as 1790. To the north is Draper Park

11      which is the remainder of the whole Draper

12      property.

13           But the lot rises slowly from

14      Broadway with a thick stand of trees, both

15      evergreens and deciduous. The house sits

16      on the high barn. It falls off again

17      towards the river and then falls steeply

18      into the other quarry. It was all at one

19      time part of the farm.

20           The concept of Ms. Lehner is that

21      she wants to continue that concept of this

22      property. She wants to maintain it as one

23      single property. She doesn't have any

24      desire to subdivide it, and she wants to

25      build a structure that will fulfill what

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2   she needs; additional storage, a playroom,  
3   a garage, a place for the maintenance  
4   equipment for a large property like this in  
5   the structure that looks like a barn just  
6   because that's what would be appropriate  
7   for this kind of property.

8           Now, to come back to you, what  
9   we've done is we've taken a shed off of the  
10  side of the property, that way we're able  
11  to take this structure to almost 33 feet at  
12  its closest. It's also further away in  
13  other parts. But it also is much further  
14  from the side lot line than the neighbor's  
15  garage, which you can see on this survey.  
16  That's that little hatched block right  
17  there.

18           The questionable uses have been  
19  taken out. I think you were particularly  
20  concerned about the writer's studio. We  
21  took it out. We now have, as I said in the  
22  basement, workshop, rough storage. First  
23  floor is a full floor, a garage for three  
24  vehicles and the yard equipment. And the  
25  second floor, which is a partial floor

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2     under the roof, that's the recreation room  
3     and protected storage in a kind of a  
4     balcony around the garage.

5           That second floor is a partial  
6     story. A large portion of it opens to the  
7     floor below. The basement builds into the  
8     hillside, which is why this structure from  
9     the street would only appear to be about  
10    30 feet high. It's at its highest that  
11    it -- with the cupula, by the way, that it  
12    gets to be up to 41 feet. And by the way,  
13    that basement level, we're showing it as a  
14    full level. It may not end up being that  
15    but that's probably not relevant to your  
16    decision.

17           What we're asking for here is  
18    something that encourages the continuation  
19    of an historically great usage. As I said,  
20    this is what remains of the Draper estate.  
21    Ms. Lehner purchased this property 16 years  
22    ago. She has been lovingly restoring it.  
23    She has made appropriate architectural  
24    additions to the house. She has taken off  
25    pieces that were not appropriate. And what



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2   she's proposing here is historically  
3   correct for this property in the lower  
4   Hudson Valley in all ways, in its size, in  
5   its height, in its design and in its  
6   placement.

7           What we're asking for here is one  
8   of the ways that you preserve open space,  
9   by proposing and allowing an appropriate  
10  usage of a large estate like this. Now, in  
11  terms of Bedford this is not a large  
12  estate, but in terms of Hastings, 4.4 acres  
13  is a pretty significant piece of property.

14          Now, if your board agrees, I think  
15  that you can easily find that we meet the  
16  statutory requirements for this variance.  
17  It's not producing an undesirable change in  
18  the neighborhood.

19          The neighbor, for instance, to the  
20  immediate side here on the south has  
21  written a letter in support. The next  
22  neighbor over, who is not adjacent, has  
23  written a letter in support. The  
24  Historical Society has written a letter in  
25  support. Historic Hudson Valley has even

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2 written a letter in support that this is  
3 appropriate for this historic property.

4 The benefit that the applicant is  
5 looking for to have this kind of facility  
6 which allows the maintenance of the  
7 property can't really be pursued some other  
8 way. It's completely appropriate to the  
9 historic property, as would be construction  
10 of this same facility in other portions of  
11 the property and other heights.

12 We're not talking about a  
13 substantial variance in the context,  
14 especially with the side-yard setback that  
15 we're proposing which is much more than  
16 required. And it's not going to have an  
17 adverse effect on the surrounding area.

18 The difficulty is not self-created.  
19 This is something that's necessary for the  
20 preservation of an architecturally and  
21 historically important property in the  
22 context of the Village of Hastings. This  
23 is something that's for the good of the  
24 village. I hope that you would consider  
25 this and see it in your wisdom to grant

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2       this variance.

3           Now, with me here tonight is my  
4       client, Christine Lehner, Ned Sullivan, the  
5       architect is here.

6           MS. GRIFFIN: Ned Baldwin.

7           MR. KIRKPATRICK: I'm sorry, Ned  
8       Baldwin. I am giving him a more historical  
9       name here. And we would be happy to answer  
10      any questions whatsoever.

11          CHAIRMAN MAGUN: Okay. Thank you  
12      for the presentation. I'm going to ask the  
13      board whether they have any questions.

14          MR. PYCIOR: First I'd like to ask  
15      a question. Mr. Kirkpatrick, you're  
16      interpreting the rec room as a playhouse?

17          MR. KIRKPATRICK: I'm interpreting  
18      the rec room as something that would be  
19      allowed as a playhouse. If you wanted to  
20      build a playhouse on the property and say  
21      this is for the kids to play in including a  
22      pool table, I believe that's a permitted  
23      use. It has to be 15 feet high, but I  
24      believe it's a permitted use.

25          CHAIRMAN MAGUN: This application

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2       in its similar form came before us in July,  
3       as you know.

4           MR. KIRKPATRICK:   Yes.

5           CHAIRMAN MAGUN:   And the height  
6       variance was voted -- was not granted.  And  
7       I guess I'm perplexed why you come back to  
8       us without change the height.  I don't  
9       quite understand that since we turned it  
10      down already.

11          MR. KIRKPATRICK:   Yes.  We believe  
12      that since we have been able to increase  
13      the setback the sky plane to this property  
14      line, we're now proposing a structure that  
15      is many times the required setback, greater  
16      than what we were showing before.  We think  
17      it fits better.  If you were concerned  
18      about the relationship to the adjacent  
19      property, we hope we fixed that.

20          CHAIRMAN MAGUN:   In point of fact,  
21      just in trying to understand the change in  
22      the setback, which is not, you know, a  
23      variance issue, it's only really a couple  
24      of feet difference at the most, the actual  
25      large structure; is that correct?  I don't

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2 know if -- I don't know how familiar you  
3 are with the previous application.

4 MR. KIRKPATRICK: I've looked at  
5 it. We took off a shed.

6 CHAIRMAN MAGUN: You took off that  
7 garage area that was --

8 MR. KIRKPATRICK: That was about  
9 10 feet right there.

10 CHAIRMAN MAGUN: Right. And is the  
11 placement -- it looks like the placement of  
12 the building now is pretty similar to the  
13 placement of the building. If you do the  
14 arithmetic, it's not much different.

15 That's really the point I'm trying to make  
16 without measuring the exact number of feet.

17 MR. KIRKPATRICK: What we've done  
18 is taken the shed off.

19 CHAIRMAN MAGUN: You've taken the  
20 shed off, which was 12 feet wide; is that  
21 right?

22 MR. KIRKPATRICK: Ten or 12 feet.  
23 And we've moved the building as much as we  
24 can without impacting the tree which is  
25 immediately adjacent to it. This is a new

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2       application, so we can't necessarily refer  
3       to the record of the prior application.  
4       But I do have an illustration, if you'd  
5       like, that shows the trees on the property.

6           CHAIRMAN MAGUN: Just because we  
7       spent a lot of time discussing some of  
8       these issues. So the previous application  
9       was about 16 feet from the side-yard  
10      setback and from the property line, and  
11      then you've taken away that 12-foot parking  
12      garage that was there. So that would -- if  
13      you do that arithmetic, that becomes I  
14      guess about 28 feet. So, the house maybe  
15      is moved over 4 or 5 feet as opposed to  
16      where it was in the July application.

17          MR. KIRKPATRICK: You can see the  
18      trunk. That's the brown spot of this green  
19      right here. That's about as close as we  
20      can feasibly get without taking out that  
21      tree.

22          CHAIRMAN MAGUN: All right. So the  
23      point I guess I'm trying to address is how  
24      substantially different -- since my  
25      question was why did you come before us

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2   with the same height, you answered because  
3   you thought that it was -- that distance  
4   from the side yard was much greater. And I  
5   guess what I'm trying to understand is it's  
6   really the main structure is only 4 or  
7   5 feet different from where it was, at  
8   most. Anyway, we don't have to -- do you  
9   understand what I'm saying?

10           MR. KIRKPATRICK: Yes, I understand  
11   what you're saying. We would be happy to  
12   put the shed back on if you don't care  
13   about it. It would be nice to have.

14           CHAIRMAN MAGUN: Well, that wasn't  
15   exactly my point.

16           MR. KIRKPATRICK: Yes, I  
17   understand.

18           CHAIRMAN MAGUN: The other question  
19   I want to ask you is why does this  
20   structure have to be 41 feet high?

21           MR. KIRKPATRICK: Part of the  
22   answer to that is that your measurement of  
23   height is from -- is the maximum possible.  
24   Many communities, as you may know, measure  
25   height in an average fashion to take into

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2   account sloping sites. In this case,  
3   because it's a sloping site, we have a  
4   structure that's, I think, about 31 feet.

5           When you're looking at it as a  
6   driveway elevation, it's going to go around  
7   the back, and now you're coming out at the  
8   lower level. You've got the 41 feet.

9           And, of course, as you pointed out  
10   with the shed, when you talk main  
11   structure, main structure is moved over.  
12   But main structure, likewise, we could  
13   maybe knock down the cupula and we might  
14   even be down to 35 feet, if we weren't  
15   counting the height of the cupula, which is  
16   just a little architectural help with the  
17   windows which give light inside on the top.

18           CHAIRMAN MAGUN: But my question  
19   is: What is the need, what is the need for  
20   a 41-foot high structure? What is the  
21   justification for that, aside from the  
22   historical aspects of this application  
23   which we've heard of and understand?

24           MR. KIRKPATRICK: That really is  
25   the justification. What my client is



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2     trying to do here is to answer these three  
3     uses, the garage, the playhouse, the  
4     toolhouse, in one integrated structure  
5     instead of spreading structures around the  
6     property that are not really appropriate to  
7     the property. She's trying to present  
8     something that will fit in architecturally  
9     and historically.

10           What you see here, for instance, my  
11     client's mother is an architectural  
12     historian. So at the time of the  
13     development of the plans, she provided  
14     these photographs which all happen to be  
15     existing barns that had been converted to  
16     just the kinds of uses we're talking about;  
17     garage, storage, playhouse above. And this  
18     is the genesis of the design of this  
19     particular one is this Hudson River  
20     vernacular to fit with the houses in  
21     Hastings.

22           One of the ways that it makes sense  
23     again to preserve this property rather than  
24     simply to wait and perhaps include it in  
25     her estate, divide it up for the maximum

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2 gain to her children and grandchildren,  
3 which is not a bad idea, but, in fact, she  
4 hopes to preserve this property for  
5 Hastings.

6 CHAIRMAN MAGUN: So if the barn, or  
7 as you pointed out, and I think that was a  
8 good point, calling this a barn is not --  
9 you can call it whatever you want because  
10 it's not technically a barn if you're  
11 talking about recreational areas. You  
12 could make this a smaller building and find  
13 other areas of the property to place  
14 whatever needs for parking, storage,  
15 recreation, etcetera, could be found. So,  
16 the applicant desires to put this all  
17 together in one building.

18 MR. KIRKPATRICK: Yes.

19 CHAIRMAN MAGUN: Rather than --

20 MR. KIRKPATRICK: One building that  
21 looks like, architecturally, a barn so that  
22 it would be appropriate to the property.

23 CHAIRMAN MAGUN: Okay. The issue  
24 of this room that you're calling it now a  
25 recreation room, it looks like it has a

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2 billiards table in it.

3 MR. KIRKPATRICK: Yes.

4 CHAIRMAN MAGUN: Why does that need  
5 to be there? I mean, I'm trying to use the  
6 code as a guide to my questions. And in  
7 the code it asks to grant -- if we're going  
8 to grant an area variance, we grant the  
9 minimum required to meet the needs of the  
10 applicant.

11 MR. KIRKPATRICK: Right. The  
12 applicant has children and grandchildren  
13 that come to visit. The writer's room was  
14 a wonderful idea, but it didn't fit. And  
15 we together thought about it and came up  
16 with something that would be really quite  
17 nice to put the grandchildren in. They  
18 don't want them to be able to go into this  
19 kind of structure playing in the barn, but  
20 there to actually be a safe room to go play  
21 billiards, other games, put a top on it,  
22 play ping-pong. And it's a nice location.

23 MR. MURPHY: Mr. Kirkpatrick, I  
24 think the difficulty the board is having  
25 with the height variance is because this is

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2    an accessory structure.

3           MR. KIRKPATRICK:  Yes.

4           MR. MURPHY:  The square footage of

5    this accessory structure is 47 by 32.

6    That's 1,500 square feet, and that's about

7    three floors.  That's 4,500 square feet.

8           MR. KIRKPATRICK:  Yes.

9           MR. MURPHY:  That's bigger than

10   most houses in Hastings.

11          MR. KIRKPATRICK:  Not the new ones.

12          MR. MURPHY:  With all due respect,

13   I have lived here a long time myself.

14   That's a very big house for this community.

15   So the difficulty we're having, just so

16   we're clear, at least in my view, is the

17   height, and particularly the third story.

18          I understand the terrain.  I

19   understand the slope.  I understand the use

20   of the lowest level is a work shed storage.

21   I understand the use of the second level as

22   a garage for the cars.  It's the third

23   level, which is where all the height is.

24   My goodness, this is bigger than a house,

25   and that's why we have a problem with it.

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2           Fifteen feet is what the code says.  
3 This is more than a substantial variance.  
4 This is a huge variance. And so the  
5 difficulty the board has is -- and it's not  
6 only this application, as I'm sure we will  
7 well appreciate this, it's the precedent  
8 that we set for the village.

9           Now, offsetting that, you have a  
10 fabulous property that is very large that  
11 can handle it. There's no question it can  
12 handle a bigger structure. What we're  
13 struggling with is what's the minimum  
14 structure that it can handle that's really  
15 necessary for what the applicant really  
16 needs?

17           I'm not saying it's a detriment to  
18 the neighborhood. I appreciate that it's  
19 been moved away from the side-yard setback  
20 because I had a big problem with that. And  
21 so I appreciate that. And that makes a  
22 difference to me.

23           You know, when you try to visualize  
24 what's supposed to be a playhouse, a  
25 dollhouse, a toolshed, an accessory storage

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2    facility for a very large property that  
3    needs to be maintained and clearly needs  
4    some size, that's an awfully big proposal.

5           We love the design. Mr. Baldwin  
6    does terrific work. It looks fabulous.  
7    The motives are terrific. It's just  
8    really, really big. And I'm struggling  
9    with that because this board, in my  
10   experience, unlike many other boards, and  
11   I'm sure you have a great deal more  
12   experience than I do, really tries to -- we  
13   try to do what we can do for the applicants  
14   in a densely populated town. And so we  
15   understand that this property is unique and  
16   is entitled to special consideration, it  
17   is.

18           But this is self-created, with all  
19    due respect. I disagree with you. You  
20    can't tell me that this is not  
21    self-created. It is more than a  
22    substantial variance, so, therefore, it's  
23    the need that's most important. And that's  
24    why I think you'll hear our chairman trying  
25    to focus you on is it really necessary to

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2    have a structure with that height.

3           MR. KIRKPATRICK:  In order to get  
4    the individual pieces, and I understand  
5    that that top floor is not a full floor,  
6    it's a balcony around the garage below,  
7    which is, again, an historically  
8    appropriate design, but in order to get --  
9    I have some pictures, by the way, if you're  
10   interested, of the storage situation in the  
11   basement of the existing house.  You'll  
12   note that the existing house -- actually,  
13   the existing house is built with a  
14   basement, but it's an old house, so it was  
15   never built with the kind of nice, dry  
16   finished basement that you would expect.

17           The attic of the existing house is  
18    very much just a little attic; second floor  
19    kind of fits up under it.  The only storage  
20    now is that basement.  We're looking for an  
21    area that we can have that kind of clean  
22    storage that could be easily accessed.  The  
23    advantage of the open area to the garage  
24    below is that it's even possible to arrange  
25    a pulley system if you needed to lift a

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2 heavy piece of furniture up there.

3           We could make the whole thing  
4 storage. It's a shame to give up the  
5 playroom. The whole thing could be  
6 storage. That's the main concept. But you  
7 don't change very much when you do that.  
8 And you know, again, you're looking at a  
9 property where you could cover the land  
10 with lots of little buildings, which is not  
11 appropriate to it, or you could do one nice  
12 one. It's still smaller than the house  
13 that some -- I hope saying Wall Street and  
14 it doesn't insult anyone here, but somebody  
15 who wants to be closer to New York City and  
16 wants that unique property and comes here  
17 and decides to build one of the new  
18 knock-'em dead mini-mansions overlooking  
19 the Hudson.

20           MR. MURPHY: But that's not  
21 relevant to this. Come on. We're talking  
22 about an accessory structure. We're not  
23 talking about subdividing it and selling it  
24 to a developer.

25           MR. KIRKPATRICK: With all due



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2   respect, we're talking about a way of  
3   encouraging this person to preserve this  
4   property, which she has been doing. You  
5   know, you talk about her need. You know,  
6   this is a very personal thing, deciding  
7   what is the need, what is the desire.

8           This person wants to add some uses,  
9   all of which are permitted and all of which  
10   can be in individual buildings on this  
11   property, or perhaps even one long building  
12   covering even more floor area that would be  
13   15 feet tall. You know, we might take out  
14   that tree and just spread the building out  
15   so that we can have garage, storage and  
16   playroom on one floor with a much larger  
17   basement underneath, perhaps even less  
18   expensive because then we wouldn't excavate  
19   as far as the hillside and we wouldn't run  
20   into any rock. You could have it.

21           But we're asking what's the owner  
22   trying to achieve here? What's the owner's  
23   need when we are looking at the state law  
24   that says we are balancing the equities?  
25   We're looking at the advantage to the

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2   applicant, what the applicant is trying to  
3   achieve versus, phrased one way, the  
4   necessity of the municipality to enforce  
5   the particular requirement and the  
6   particular instance, or phrased the other  
7   way, how does the variance requested affect  
8   the neighborhood?

9           I think we're okay on no effect on  
10   the neighborhood. We haven't really talked  
11   about -- you had mentioned it. What's the  
12   village's interest in holding to a 15-foot  
13   requirement on this particular property?  
14   The wonderful advantage of the Zoning Board  
15   of Appeals is that it can do these things  
16   on a very case-by-case basis.

17           The Trustees, under state law,  
18   passes on the ordinance that says  
19   throughout the Village of Hastings what we  
20   need is a 15-foot limit on accessory  
21   building height. Makes very good sense for  
22   99 percent of the Village of Hastings.  
23   Your job is to be the safety valve. Do you  
24   see a situation where, under these  
25   particular circumstances, you could allow

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2   more?

3           Now, there have been cases that  
4   said you have to watch it because when  
5   you're dealing with essentially similar  
6   circumstances, you need to keep making the  
7   same decision. But as long as we're  
8   dealing with sufficiently dissimilar  
9   circumstances, and this is a very large  
10   property for the Village of Hastings and a  
11   very unique situation with an historical  
12   location and an historical house, this is  
13   your power. This is where you can say  
14   under this particular circumstance we can  
15   do it because we don't need -- the village  
16   doesn't need a 15-foot height limit in this  
17   particular circumstance. And it's  
18   something that's a significant advantage to  
19   the applicant.

20           MR. MURPHY: I had one other  
21   question for you. In your letter in  
22   Paragraph 3 you talk about the nature of  
23   the slope and the fact that the ground will  
24   be excavated, and there may be rock  
25   present. But then you say it's very

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2 possible that will be smaller than shown.  
3 I didn't understand what you were referring  
4 to and what was smaller and why the  
5 excavation might change that.

6           MR. KIRKPATRICK: The floor plans  
7 show a full basement. We suspect that  
8 there's a reason for the topography here  
9 and there's probably rock. And while that  
10 may make great sense for a foundation, if  
11 it comes to the question of having to blast  
12 or chip out a significant hunk of rock to  
13 have that basement area, the client may  
14 decide the basement could be smaller.

15           I don't think it's a relevant  
16 issue, and I probably shouldn't even have  
17 mentioned it.

18           CHAIRMAN MAGUN: I want to just  
19 pickup on what Brian was talking about a  
20 little bit, it's the massive size of the  
21 building. It's really a very big building.  
22 And I understand that barns are big. I was  
23 reading about barns, and I appreciate you  
24 showing us these pictures about barns.

25           Nonetheless, the south elevation to

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2       me says it all. It's a massive structure,  
3       and that's what's facing the two neighbors,  
4       rather one neighbor and -- anyway there was  
5       one neighbor and there was another one.  
6       It's 46 feet long. And when you look at  
7       it, you know, it's 41 feet high. And as  
8       was said already, that's bigger than most  
9       of the houses around here. And it's very  
10      hard for me to allow an accessory structure  
11      to be built that would be so massive. And  
12      this is where the height impacts on the  
13      whole issue.

14           Ms. Lehner has 4 acres, that's  
15      160,000 square feet of property. So  
16      there's room to put some little areas of  
17      storage somewhere else. Nobody is going to  
18      argue that point. And so if you need that,  
19      you can find it some place.

20           So, to me, to have a massive  
21      structure like this, you can see it here,  
22      because of its length and height, I have a  
23      lot of trouble with it. And I think it's  
24      close enough to the property line that it  
25      really significantly impacts on the

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2 neighborhood in contrast.

3           So, I would disagree again with  
4 your point. And I think, also, you note  
5 the issues of what Brian was eluding to,  
6 this is self-created. I totally agree.

7           And again, I want to emphasize that  
8 the need here for this large structure is  
9 not apparent to me. I don't see the need  
10 for this. And that's what we have to deal  
11 with a lot, is why do you need to have a  
12 structure? And I think that to me makes it  
13 very hard to accept such a large barn slash  
14 garage, recreation room built.

15           MR. KIRKPATRICK: Well, certainly  
16 you're aware that the immediate neighbor is  
17 in support.

18           CHAIRMAN MAGUN: Let me just  
19 comment on the immediate neighbors. The  
20 immediate neighbor who wrote the letter,  
21 the owner of the house doesn't live there,  
22 and the other neighbor who wrote the letter  
23 sold the house and is moving. I'm pretty  
24 sure those facts are correct.

25           MR. KIRKPATRICK: I thought she had

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2 sold the house that was immediately  
3 adjacent and lives at the next one over.

4 MS. FURMAN: And she happens to be  
5 my client.

6 CHAIRMAN MAGUN: So she is leaving  
7 and the other one doesn't live there. But  
8 nonetheless, so you know, I think that that  
9 issue is of some importance, but not key.

10 MR. KIRKPATRICK: Well, we also  
11 brought photographs. This is looking at  
12 the house to the south through the trees.  
13 This actually is looking at the garage next  
14 door which is through that whole tangle. I  
15 will pass this up. This is looking up  
16 through the trees at the adjacent house,  
17 which, in its own way, you know, is fairly  
18 close.

19 As a matter of fact, I have an air  
20 photo which will give you an even better  
21 idea. Here are a couple of air photos  
22 which will show you the relationship.  
23 Ms. Lehner's house is the one in the very  
24 middle, and you see Broadway, and then you  
25 can see the barn. You can see the

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2 neighbor's house. You can see the next  
3 house, getting an idea of how close this  
4 all is.

5           But we come back to the issue of  
6 the need, and this is a very personal  
7 thing. This may not be your need, but I  
8 see that your job is not necessarily to  
9 stand in the shoes of the applicant but to  
10 stand for the village and say, if this is  
11 something that makes a big difference to  
12 the applicant, if this would be an  
13 advantage to the applicant, then the  
14 question shifts to what's the harm to the  
15 village? What's the potential impact to  
16 the neighborhood?

17           Now, impact to the neighborhood is  
18 something that you really touched on. How  
19 does this affect the property to the south?  
20 Property owners to the south has a house.  
21 It's not very far away either, a garage  
22 that's quite a bit closer. It's sits quite  
23 close to the side lot line, possibly  
24 non-conforming itself. And we're proposing  
25 something that is a pretty significant



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2       setback, even considering what it is.

3           From part of it we're talking about

4       31 feet high, and that's even including the

5       cupula. If you take the whole mass of the

6       building, we're probably talking about

7       something that's maybe 26 feet high.

8       That's still more than 15, but we're also

9       achieving a minimum of almost a 33-foot

10      setback.

11           When you analyze this in terms of

12      what they call sky exposure plane, which is

13      to say what's the relationship of the

14      height of a building to its setback and how

15      much sunlight is going to come in, how much

16      sky can you see when you're adjacent to or

17      near a building? I think you'll understand

18      this building fades back under the adjacent

19      tree, which is a great deal high. Not to

20      mention, as you can see in that photograph,

21      there's quite a tangle of trees,

22      underbrush, landscaping, etcetera, between

23      the two properties. That screens it to

24      quite a large degree also.

25           CHAIRMAN MAGUN: Go ahead, David.

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2 MR. DEITZ: I have a question maybe  
3 for Mr. Sharma as much as for the  
4 applicant. I see that there's a garage on  
5 the lower level, so you have engines and  
6 possibly gasoline or other fuel stored  
7 there. And then on the upper level you  
8 have a recreation area where you have  
9 people who are taking their recreation and  
10 not necessarily paying attention to the  
11 hazards on the ground below. And I was  
12 just wondering what the safety requirements  
13 would be for an accessory structure. I  
14 understand they're not the same or as  
15 stringent as they would be for residences.  
16 And is it going to be safe?

17 MR. SHARMA: I haven't had a chance  
18 to review that last part with the fire  
19 chief. And if and when that situation --  
20 when I get to that point, I will obviously  
21 review with the fire inspector and see if  
22 there is a specific code that prohibits it  
23 from doing it on a state level and local  
24 level.

25 MR. DEITZ: Right. And this would

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2       be something that would prohibit the  
3       recreation area to be in the same structure  
4       as the car storage area, or would there be  
5       extra safety requirements if you did have  
6       the two so close together?

7           MR. KIRKPATRICK:   If I may?

8           MR. DEITZ:   Certainly.

9           MR. KIRKPATRICK:   You allow  
10       single-family houses with garages  
11       underneath.

12          MR. DEITZ:   Attached garages,  
13       correct.

14          MR. PYCIOR:   But they have to  
15       comply to the building code for a whole.  
16       We're not certain that an accessory  
17       structure would have to comply.

18          MR. KIRKPATRICK:   Right, I'm sure  
19       this would comply with state building code.

20          MR. SHARMA:   Garages under the code  
21       are habited spaces by one-hour rated  
22       partition.   So, in this particular case,  
23       that may become necessary.

24          MR. KIRKPATRICK:   It might be a  
25       one --

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2 MR. SHARMA: Partition or --

3 MR. DEITZ: So that would be  
4 handled by the Building Department --

5 MR. SHARMA: Yes.

6 MR. DEITZ: -- if we grant the  
7 variance. But we don't have to worry about  
8 that.

9 MS. STECICH: But the balcony, how  
10 does it work if there is a balcony around?

11 MR. SHARMA: Obviously, I have not  
12 reviewed the plans from that perspective  
13 yet. If there comes a point where I will  
14 need to --

15 MS. STECICH: Am I right that on  
16 the design of it the garage isn't all  
17 covered by a ceiling; is that correct?

18 MR. KIRKPATRICK: The ceiling of  
19 the garage and the floor of the recreation  
20 room may have to be one-hour rated.  
21 Mr. Sharma knows a lot more about this.  
22 And the wall which separates that  
23 recreation room from the more open area  
24 might have to be one-hour rated.

25 But of course, where we're really

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2 going with this is if, blessedly, it comes  
3 to that point where we're submitting a set  
4 of drawings to Mr. Sharma, it may be  
5 determined that the recreation room is not  
6 a possibility, and we will just be using  
7 that partial second floor for storage.

8 MR. SHARMA: Right now, as you see,  
9 the recreation room is a room with walls  
10 and a door to it. So, if we determine that  
11 this room is to be separated from the rest  
12 of the utility and the garage by some type  
13 of fire separation partition, we have to  
14 make sure it's there before we issue a  
15 permit.

16 MR. DEITZ: It may be a separate  
17 exit.

18 MR. SHARMA: It may be a what?

19 MR. DEITZ: A separate exit.

20 MR. SHARMA: That may be a  
21 possibility as well. Because again, we  
22 haven't studied it. We haven't looked at  
23 these plans from that perspective yet.

24 CHAIRMAN MAGUN: Any other  
25 questions from the board?

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2 MS. FURMAN: Yes.

3 CHAIRMAN MAGUN: Go ahead.

4 MS. FURMAN: The current plan has  
5 how many bathrooms in it?

6 MR. KIRKPATRICK: Bathrooms?

7 MS. FURMAN: Yes.

8 MR. KIRKPATRICK: One, one half  
9 bath. One toilet I should say.

10 MS. FURMAN: It has one-and-a-half  
11 baths in it?

12 MR. KIRKPATRICK: No, I'm sorry.  
13 One half bath.

14 MS. FURMAN: There's only a half  
15 bath in the entire structure?

16 MR. KIRKPATRICK: Yes, on the  
17 second floor.

18 MS. STECICH: No, in the whole  
19 structure.

20 MR. KIRKPATRICK: Excuse me?

21 MS. FURMAN: The whole accessory  
22 structure.

23 MR. PYCIOR: The plans show one on  
24 the basement level and one on the second  
25 floor.

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2 MR. KIRKPATRICK: This is the  
3 architect. He understands this much better  
4 than I do.

5 CHAIRMAN MAGUN: Just give us your  
6 name.

7 MR. BALDWIN: Ned Baldwin. There  
8 is a half bath, just a wash room, a wash  
9 basement and a toilet on the basement level  
10 and on the recreation level.

11 MS. FURMAN: So both levels have a  
12 half bath?

13 MR. BALDWIN: Um-hum, that's  
14 correct.

15 MS. FURMAN: And the need in your  
16 thought for two half baths?

17 MR. BALDWIN: Well, simply to make  
18 the recreation space more useful. This  
19 building is still 70 feet away from the  
20 main house.

21 MS. FURMAN: Thank you.

22 CHAIRMAN MAGUN: You know, I don't  
23 want to keep going over the same issues, I  
24 think we have heard them. But Denise  
25 raised an issue that let me just pursue

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2       that a little bit, and then Mr. Baldwin or  
3       Mr. Kirkpatrick, you can answer it.

4           So, the fact that there's a  
5       bathroom and a recreation room, basically,  
6       this is an accessory structure where  
7       planned living is going to occur, not  
8       necessarily sleeping or cooking but  
9       essentially living in the accessory  
10      structure, bathroom, play area, you can  
11      hang out there all day.

12          And, you know, as much as we've  
13      read through the code, that's clearly not  
14      the intent of an accessory structure, at  
15      least the way I read it. Accessory use, we  
16      read them and you reiterated them to us.  
17      The basic idea is that none of those uses  
18      are for people to hang out in and live  
19      there. And to me this envelops the whole  
20      issue that the height and large area that  
21      this structure is requiring one begets the  
22      other.

23          So if you had a smaller structure  
24      that wasn't 40 feet high, you wouldn't have  
25      necessarily a recreation area and a



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2 bathroom which is the intent of the village  
3 code. An accessory structure should not  
4 have that.

5           I understand your point the purpose  
6 of our board, and I would totally agree  
7 with you. The purpose of the board is to  
8 allow applicants to build structures that  
9 the code, by its nature, could not vision  
10 and would not allow.

11           I have a lot of trouble though with  
12 the basic simple question, what is the  
13 reason and the need for this on such a  
14 large piece of property? Garage space,  
15 yes; tractor space, yes. We understand  
16 there is not going to be a hay loft because  
17 you don't need hay, which is what barns  
18 frequently have. Basically, this is an  
19 area for living. There is a garage and an  
20 area for living. And that's not the intent  
21 of an accessory structure.

22           And furthermore, it's a very large  
23 accessory structure. And that's what I'm  
24 struggling with. And that's what I'm  
25 having a lot of trouble in understanding

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2       why you came back to us with the same  
3       height on the same massive square footage  
4       that we had turned down six weeks, seven  
5       weeks ago.

6           MR. KIRKPATRICK: Well, again, we  
7       did make the whole thing smaller by taking  
8       off the shed.

9           CHAIRMAN MAGUN: Yes.

10          MR. KIRKPATRICK: And I think I  
11       have gone on at length that, you know, this  
12       is the applicant's personal need which is  
13       the standard here. There isn't anything  
14       that says that a playhouse can't have a  
15       bathroom. We're not proposing a shower  
16       though. This is not somewhere where  
17       somebody could spend overnight. It's not a  
18       full bath.

19          We could potentially take out one  
20       of those half baths, if that is a serious  
21       issue. Once you got the plumbing, it's not  
22       exactly a big deal to have a slop sink in  
23       the cellar, a toilet for convenience, to  
24       enclose it for privacy.

25          Those are not major items on this.

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2    We're not looking for living space.  If you  
3    need just to take out a half bath,  
4    certainly, that's an acceptable condition.  
5    But there isn't anything that says that a  
6    playhouse, if we built it as a separate  
7    accessory structure, couldn't have a half  
8    bath, couldn't even have a full bath.  You  
9    can't build it with a kitchen and have a  
10   full bath because now we've got a separate  
11   dwelling unit.

12           But there are many pool houses --  
13   perhaps not so many in Hastings but  
14   certainly, you know, in the area, pool  
15   houses that have two bathrooms.  Some of  
16   them even have wet bars which come  
17   perilously close to being a kitchen.  
18   There's certainly changing facilities with  
19   tennis courts and other recreational  
20   facilities.

21           The code is written to permit the  
22   kinds of things people normally do.  People  
23   normally want more bathrooms now.  It's a  
24   convenience.  We're not looking for a full  
25   bath.  We're not talking about a tub or a

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2 shower. This is simply a convenience.

3           CHAIRMAN MAGUN: Let me just pick  
4 that point up because when you --  
5 specifically with regards to this issue of  
6 what's a permitted use. What the code says  
7 is that garden house, toolhouse, playhouse,  
8 greenhouse or similar occupancy use  
9 customarily incident to the permitted  
10 principal use. I have been on the board  
11 for almost 10 years. So all the customary  
12 uses that are incident to the principal use  
13 of the house, never has anyone, you know,  
14 told me that a recreation room is a  
15 customary incident use to a principal  
16 structure. And I think the code is written  
17 purposely that way so that -- but it  
18 doesn't resonate with me as a customary  
19 use.

20           What you just said I would agree  
21 with, yes, pools have wet bars. There's  
22 running water there. I understand that.  
23 Garages have slop sinks. I understand  
24 that. But I wouldn't say that this is a  
25 customarily incident common use of an

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2           accessory structure. And that impacts not  
3           so much on the height issue but on the use  
4           variance.

5           MR. KIRKPATRICK: But that's the  
6           playhouse. If you built a greenhouse  
7           that --

8           CHAIRMAN MAGUN: I'm not talking  
9           about the word playhouse. I'm talking  
10          about the concept of what is customarily an  
11          incident to a principal use. You can call  
12          it whatever you want. You can call it a  
13          billiards room. Call it a billiards room.

14          MR. KIRKPATRICK: But it's in a  
15          string; toolhouse, playhouse, greenhouse,  
16          similar.

17          CHAIRMAN MAGUN: Okay.

18          MR. KIRKPATRICK: That's what I'm  
19          saying.

20          MR. PYCIOR: Perhaps I've lived a  
21          sheltered life, but I've never seen a pool  
22          house or a playhouse or a garage 47 feet  
23          deep, 31 feet high on average and 26 to  
24          41 feet high.

25          MR. KIRKPATRICK: Agreed. We're

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2    talking about combining three different  
3    things here. And the reason my client  
4    wants to combine those -- sorry to beat the  
5    dead horse, but my client wants to combine  
6    those three into an architecturally and an  
7    historically appropriate structure.

8           CHAIRMAN MAGUN: Okay. Any other  
9    comments from the board? Questions?

10          MR. DEITZ: I would just comment to  
11    that.

12          CHAIRMAN MAGUN: Yes, David. Go  
13    ahead.

14          MR. DEITZ: I heard the last  
15    application too. I'm struck by the unique  
16    size and openness of the space. And it's  
17    the rural kind of feel that you get when  
18    you're there and you kind of expect to see  
19    a barn there. And I don't think a barn is  
20    jarring in that situation. I think it's  
21    preferrable for lots of small storage  
22    areas. So it doesn't bother me as much as  
23    it seems to bother some other people.

24          CHAIRMAN MAGUN: Okay. Anyone in  
25    the audience have any comments for or

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2 against?

3 (No response.)

4 CHAIRMAN MAGUN: Ms. Lehner?

5 MS. LEHNER: Well, obviously --

6 CHAIRMAN MAGUN: Why don't you take  
7 the microphone.

8 MS. LEHNER: Obviously I'm for this  
9 project. I would hope that you would see  
10 your way to voting to grant the  
11 application.

12 I realize the size is causing a lot  
13 of people problems, but I think part of the  
14 reason for the size is because that's what  
15 looks architecturally appropriate, and  
16 that's why we came up with it. And I do  
17 think it would be -- if it is built, it  
18 will look good and it would be an asset to  
19 the property.

20 MS. FURMAN: I think that it just  
21 needs restating that the board's power,  
22 according to the code in granting an area  
23 variance, which is what you're looking for,  
24 is that we have to grant the minimum  
25 variance that we deem necessary and

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2   adequate, and at the same time preserve and  
3   protect the character of the neighborhood  
4   and promote the safety and welfare of the  
5   community.

6           I think part of our charge, and I  
7   think it was gone over in depth in the  
8   application before you which dealt with  
9   much smaller square footage where we were  
10   talking about inches, actually, and not  
11   feet, is that it's got to be the minimum  
12   variance that can be -- that can lead to  
13   the desired result.

14           MR. PYCIOR: I am on the same line.  
15   We have to consider whether the benefits  
16   sought by the applicant can be achieved by  
17   some other method feasible for the  
18   applicant to pursue other than the area  
19   variance. I think as Dr. Magun has pointed  
20   out, since you have such a large property,  
21   these accessory uses could be distributed  
22   so as not to need a 40-foot high single  
23   building. Your needs would be met in an --

24           MR. DEITZ: In light of saying  
25   that, it would not protect the character of



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2    this lot as well as a single structure.

3           MR. KIRKPATRICK:  If I may, let me  
4    point out to you that that's not exactly  
5    what your code says.  What your code does  
6    say is that you take into consideration the  
7    benefit to the applicant if the variance is  
8    granted as weighed against the detriment to  
9    the health, safety and welfare of the  
10   community by such grant.

11           In making such a determination, the  
12   Board of Appeals shall also consider, and  
13   then it lists A through E.  It doesn't say  
14   you have to meet each one of these.  It  
15   doesn't say each one of these is an  
16   absolute requirement.  It says you're  
17   weighing the benefit to the applicant  
18   against the detriment to the community, and  
19   these are what you consider to decide that.

20           MR. MURPHY:  We understand that,  
21   and we are struggling to weigh them.  
22   Because, Mr. Kirkpatrick, the difficulty is  
23   on the one hand to the applicant you've got  
24   obviously a personal need, a real incentive  
25   to preserve an historic property in the

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2       community. In a way from the applicant's  
3       perspective it's quite positive and is an  
4       incentive to keep it that way, which is  
5       good for the community.

6           Against that you have a huge  
7       self-created request for a variance,  
8       particularly the height dimension. And  
9       then the question becomes, well, what's the  
10      detriment or the potential detriment to the  
11      neighboring properties? Is there a way to  
12      minimize it?

13          Now, I also take your point. I'm  
14      not so sure that this particular property  
15      that spreading out multiple toolsheds and  
16      storage areas, which could be done without  
17      any variance, is a positive. I'm not sure  
18      that that's the case. So I would tend to  
19      side with the applicant's point of view on  
20      that. That may well be better to  
21      concentrate the storage area.

22          Having said that, you haven't  
23      convinced me with the need for a structure  
24      of this size with the requested height.  
25      You know, it's really overcome by the --

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2 what I feel is the kind of heavy drag of  
3 such a substantial request that is  
4 self-created.

5 So, I just think that's what you're  
6 hearing. The weighing is not easy because  
7 there is some -- on each side you have some  
8 pretty heavy considerations. But the  
9 tiebreaker is you're supposed to do just  
10 the minimum necessary to reflect what the  
11 applicant wants in keeping with our  
12 precedent of the community. It's a  
13 question of size and scale.

14 MR. KIRKPATRICK: You've certainly  
15 heard my argument, so I'm not going to  
16 repeat it.

17 CHAIRMAN MAGUN: Go ahead.

18 MS. ANDERSON: Yes, I was involved  
19 when Christine Lehner bought the house  
20 originally. There was a '50s garage  
21 attached to the house, which was extremely  
22 ugly and inappropriate, which she removed.

23 I was involved in the first design  
24 on the house. It's very difficult to  
25 design something appropriate to such a

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2       unique property. It's very difficult to  
3       design a small accessory building that will  
4       go with this house.

5           And I quite understand your point  
6       of view. From our point of view as the  
7       architects, we have struggled to produce  
8       something. We have done many designs with  
9       small buildings, and they look stupid.  
10      That is our problem.

11           What we've tried to do with this  
12      barn was put it on the two levels so  
13      that -- and have a cupola which brings the  
14      scale down. I'm not explaining very well,  
15      but it is -- it's a design problem to  
16      produce something small on the scale of  
17      this property with the scale of the house  
18      that would be appropriate.

19           MR. DEITZ: Excuse me, you said you  
20      would consider two levels. Can you explain  
21      why you went to three?

22           MS. ANDERSON: Well, it is two  
23      levels. Basically, when you see it there's  
24      only one view or the side view that it's  
25      three levels.

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2           Also, a barn is normally on two  
3 levels for access by animals. It's an  
4 appropriate location and it's appropriate  
5 for a barn to have three levels. And it  
6 sits so neatly into the site.

7           MR. DEITZ: If it was one-story you  
8 are saying it would look stupid?

9           MS. ANDERSON: Well, it's not  
10 normally done like that for historic  
11 reasons. It wasn't usually done like that  
12 way because you had your livestock down  
13 below and your hay in the loft and you had  
14 your storage.

15          MR. DEITZ: So if you cut off a  
16 one-story level of this it would not look  
17 like a barn anymore?

18          MS. ANDERSON: Correct.

19          MR. DEITZ: I see.

20          CHAIRMAN MAGUN: I have trouble  
21 with that, I must say. I'm not an  
22 architect, but clearly I think we all  
23 thought about that particular issue. And  
24 what Brian had said before that if this  
25 were -- and what David is asking is if this

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2       were not three stories but two stories, it  
3       would reduce the size. It would reduce the  
4       whole magnanimous kind of structure that  
5       one views from the south elevation. And  
6       that might be something to pursue if the  
7       application were not passed tonight.

8           I think we should get moving.

9           MR. DEITZ: Excuse me, I took the  
10       testimony to be that if it was one story  
11       less, it wouldn't look like a barn.

12          CHAIRMAN MAGUN: I understand. My  
13       retort to that would be that as the  
14       attorney pointed out, calling this a barn,  
15       a barn is not a permitted structure anyway  
16       in Hastings. So I don't want to get into  
17       that, so I don't think we should even call  
18       it a barn.

19          If you look up the definition of a  
20       barn, and I don't mean to be so pedantic,  
21       but if you look up the definition of a barn  
22       in any dictionary, it talks about a storage  
23       area for animals or vehicles as to what a  
24       barn is. And in that way this isn't a barn  
25       because it has other uses associated with

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2     it.

3           Are there any other arguments or  
4     discussions that anybody wishes to raise  
5     because I think we're now hearing  
6     everything being reiterated.

7           (No response.)

8           CHAIRMAN MAGUN: Okay. So the  
9     applicant is before us asking for a  
10    variance for height. We also had been  
11    asked and put on the agenda the  
12    interpretation of the village code for  
13    permissibility of the proposed accessory  
14    use. I'm not sure how the board feels  
15    about No. 2. I think we certainly  
16    discussed all of these issues.

17           I don't know, counsel, in terms of  
18    advice, do we need to vote on Item No. 2 or  
19    is the discussion in and of itself  
20    sufficient?

21           MS. STECICH: You might want to ask  
22    the applicant. The only reason I could see  
23    voting on No. 2 is let's say the board  
24    votes down the height, and so then the  
25    applicant comes back with a new

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2 application, and instead of maybe it's  
3 41-feet high it's 33 feet high. I don't  
4 think they'll come back 39 feet, but let's  
5 say they came back with something 33 feet,  
6 it still had the pool room, the billiard  
7 room or whatever. I don't know if the  
8 applicant wants some direction as to that.  
9 That would be the only reason you would  
10 want to vote on the second one. But that's  
11 also the board's choice.

12           I think you're right that I think  
13 that sentiments were made pretty clear if  
14 there was some issue about whether a  
15 billiards room is part of a playhouse.

16           CHAIRMAN MAGUN: Okay. I hear what  
17 you're saying. I think that it's very hard  
18 though, at least for me, and I think we  
19 talked about this a little bit in both  
20 meetings, that the whole structure has to  
21 be considered in its entirety. So, I would  
22 be a little bit -- it would be hard for me  
23 to say that you definitely could have a  
24 recreation room without seeing how the  
25 whole building and size of the building



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2 really is.

3 So I think we discussed it. But it  
4 would be my feeling, and I'll ask the board  
5 how they feel, not to try to vote on a  
6 particular issue unless we passed the  
7 height variance, in which case we might ask  
8 whether we think that a use variance for  
9 this particular specific proposal is  
10 necessary.

11 Does that seem reasonable?

12 MR. MURPHY: Yes, that makes sense  
13 to me. Let's tackle the height issue  
14 first.

15 CHAIRMAN MAGUN: Okay. So, the  
16 applicant is proposing a structure,  
17 whatever you want to call it, of about  
18 40 feet plus/minus as its written, but  
19 41 feet in height where accessory use  
20 permits a structure to 15 feet.

21 Is there a motion in favor of  
22 granting the variance?

23 MR. DEITZ: I would make such a  
24 motion, but I have a feeling about which  
25 way things are going to go. So if you want

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2       me to make a motion like that, I will, but  
3       I suggest you get the opposite motion then.

4           CHAIRMAN MAGUN: Okay. So no one  
5       wants to make that motion.

6           Is there a motion to deny the  
7       variance for the proposal as it stands?

8           MS. FURMAN: I make the motion to  
9       deny the request for a variance.

10          CHAIRMAN MAGUN: Is there a second?

11          MR. MURPHY: Second.

12          CHAIRMAN MAGUN: So the motion then  
13       is to deny the request for the proposed 40  
14       plus or minus foot height variance.

15          All in favor of denying?

16          MR. MURPHY: Aye.

17          MR. PYCIOR: Aye.

18          CHAIRMAN MAGUN: Aye.

19          MS. FURMAN: Aye.

20          CHAIRMAN MAGUN: All opposed?

21          MR. DEITZ: Nay.

22          CHAIRMAN MAGUN: One. So the  
23       application is denied.

24          The interpretation of the village  
25       code issue, I think you heard the

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2       discussion.  Should you at some point  
3       readdress this, we would have to again  
4       readdress this, if it was an issue whether  
5       any of the uses would be required as a use  
6       variance.

7           MR. KIRKPATRICK:  Would you be  
8       willing informally, however, to give my  
9       client some guidance as to whether there's  
10      a problem strictly with height or with  
11      there being an extra floor?  Are you more  
12      interested in seeing --

13          CHAIRMAN MAGUN:  We discussed that  
14      a little bit at the previous meeting.  The  
15      question of stories was raised by  
16      Mr. Sharma.  We voted on height.  You  
17      didn't hear much discussion about the  
18      number of stories a little bit, but I think  
19      the number of stories and the height are  
20      pretty closely related.

21          MR. KIRKPATRICK:  Right.

22          MS. STECICH:  Can we make sure the  
23      court reporter has the -- do you have the  
24      names of who voted how?

25          THE COURT REPORTER:  Yes.

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2 MR. KIRKPATRICK: Is the board  
3 willing to give a guidance as to what  
4 height might be permitted, might be  
5 acceptable?

6 CHAIRMAN MAGUN: I don't think so.  
7 I think you would have to just go by what  
8 you heard tonight.

9 MR. KIRKPATRICK: Well, obviously,  
10 we didn't get much interest.

11 CHAIRMAN MAGUN: I don't think we  
12 can really do that. And I mean that  
13 honestly, I don't think we know. In our  
14 experience with applications that have come  
15 back and forth over the years, it really --  
16 each time the application comes there are  
17 different nuances and twists that take  
18 effect.

19 MR. KIRKPATRICK: But we could come  
20 back?

21 CHAIRMAN MAGUN: You could always  
22 reapply as a new application. A rehearing  
23 would require the unanimous vote.

24 MR. KIRKPATRICK: Maybe you will  
25 change four members of the board. I'm

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2 sorry, just joking.

3 I did want to say thank you very  
4 much. You've considered this very  
5 thoroughly and thoughtfully.

6 CHAIRMAN MAGUN: I also meant to  
7 thank the applicant for getting us an  
8 updated survey. We appreciate that.

9 MR. PYCIOR: Mr. Kirkpatrick, I  
10 want to thank you for a fine presentation.

11 MR. KIRKPATRICK: Thanks very much.

12 CHAIRMAN MAGUN: Marianne, you had  
13 another item on the agenda that you wanted  
14 to raise?

15 MS. STECICH: Well, I don't know.  
16 Let me just say I'm not sure how much Deven  
17 can say. There was apparently a garage  
18 that's in very bad shape, in need of  
19 repair, and it really needs to come all the  
20 way down. It's non-conforming. And under  
21 the code, if a non-conforming structure is  
22 damaged up to 50 percent, it can just be  
23 rebuilt without any issue.

24 If, however, a non-conforming  
25 structure is damaged of more than

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2   50 percent, it requires Zoning Board  
3   approval before it can be rebuilt. Not a  
4   variance, not a special permit, just  
5   approval, just generic approval.

6           So, apparently, Deven has an  
7   application that -- so it wouldn't have to  
8   be noticed. There wouldn't have to be a  
9   hearing, unless the board thought that  
10  there should be for some reason. But Deven  
11  has the details of it. If the board cared  
12  to hear it tonight, they could.

13           CHAIRMAN MAGUN: Well, let me just  
14  ask a question, what is the reason we  
15  couldn't hear it in a regular meeting next  
16  month? Is there some emergency? Is it  
17  life threatening?

18           MR. SHARMA: It is an emergency.  
19  Actually, there are a lot of complaints  
20  about it from the neighbors that it might  
21  collapse at any time. Here are some  
22  pictures, if you want to look at it.

23           MR. MURPHY: Where is this?

24           MR. SHARMA: On Rosedale Avenue.

25   And I sent them a letter that they must do

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2 something about it. This structure is  
3 falling down and it is collapsable.

4 MR. PYCIOR: Marianne, does it have  
5 to be built to the exact same dimensions,  
6 that's why there was no --

7 MS. STECICH: Yes, or smaller.

8 MR. SHARMA: It's more than  
9 50 percent damaged. And when it is more  
10 than 50 percent damaged, a permit can be  
11 issued with the Zoning Board's approval.  
12 It can be issued to rebuild it.

13 MS. STECICH: But it can't be  
14 bigger than it is now.

15 MR. SHARMA: No.

16 MS. STECICH: It would have to be  
17 the same or smaller.

18 MR. SHARMA: The way it says --

19 CHAIRMAN MAGUN: I'm a little  
20 uncomfortable without seeing the real  
21 elevations.

22 MR. MURPHY: Mr. Sharma, I have a  
23 question. It looks from the photographs  
24 like this falling down garage has been at  
25 least temporarily supported with new beams

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2 or a new two by four?

3 MR. SHARMA: That's inside.

4 MR. MURPHY: But what's been done

5 sufficient to keep it up until we could

6 hear a formal application next month?

7 MR. SHARMA: I don't know.

8 CHAIRMAN MAGUN: But even if it

9 falls down, so then we can hear it next

10 month anyway. I mean, I'm not sure I

11 understand why we can't see the elevation.

12 I mean, we've had issues like this before.

13 We always get to see and look at the

14 property and see the elevations. We've had

15 people who've been in serious accidents and

16 needed a ramp put in or something like

17 that. But I don't know. I don't really

18 see the --

19 MR. MURPHY: There doesn't seem to

20 be a safety issue.

21 CHAIRMAN MAGUN: Unless you can

22 convince me about this.

23 MR. SHARMA: I asked them to

24 rebuild it because it's an unsafe

25 structure, and they weren't volunteering to



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2    rebuild it or anything. So the neighbors  
3    are complaining that I should be doing  
4    something to get that garage repaired or  
5    rebuilt. And they started to do something  
6    in response to my letter. And it came to  
7    me what I needed to do, and I checked with  
8    Marianne and she said maybe just bring it  
9    to your attention.

10           MS. STECICH: Well, you should  
11   understand the issue came up after the  
12   agenda was put together and everything was  
13   published and stuff. You don't have to do  
14   it tonight. I said bring it to the board,  
15   maybe the board will feel comfortable doing  
16   it. If not, I guess it will just have to  
17   be on for the next meeting.

18           CHAIRMAN MAGUN: I would prefer  
19   that, and if we could see it, look at it  
20   and see the plans for the new structure.

21           MR. SHARMA: Okay.

22           CHAIRMAN MAGUN: It's not a house.

23           MS. FURMAN: What happens if the  
24   homeowner says I don't want to fix it, I  
25   want to let it just fall apart?

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2 MR. SHARMA: If it's really unsafe  
3 and it could collapse and damage the  
4 neighbor's property, we can declare it  
5 unsafe and demand that the homeowner do  
6 something about it, fix it. And if they  
7 refuse to do it, we can go and demolish or  
8 fix it or do something.

9 MS. FURMAN: Thank you.

10 CHAIRMAN MAGUN: You don't mean the  
11 Zoning Board?

12 MR. SHARMA: No, the Building  
13 Department.

14 MS. STECICH: So just tell the  
15 neighbors the Zoning Board won't let them  
16 fix it.

17 CHAIRMAN MAGUN: Thank you.

18 MR. MURPHY: Thanks, Marianne.  
19 That's just what we needed to hear.

20 CHAIRMAN MAGUN: I think that  
21 completes the agenda. Our next meeting is  
22 October --

23 MS. STECICH: Actually, there's two  
24 corrections in the minutes, and rather  
25 significant, I thought. On Page 48,

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2 Arthur, you're talking. You said, "Right,  
3 that's not what we're asking. We're making  
4 a value judgment." I wasn't here, but I  
5 assume you said, "we're not making a value  
6 judgment."

7 CHAIRMAN MAGUN: Yes, that's  
8 correct.

9 MS. STECICH: On Page 48, Line 2  
10 add not making a value judgment.

11 And then on the vote on Page 145 it  
12 says opposed, and the three opposed people  
13 are saying aye. They should say nay. So  
14 Page 145, Lines 7, 8, 9 should be nay, nay,  
15 nay.

16 CHAIRMAN MAGUN: Wait a second.

17 MS. FURMAN: Or are we saying aye  
18 we agree that we oppose?

19 MS. STECICH: Right, but they're  
20 nay votes. So change seven, eight and nine  
21 to nay instead of aye.

22 CHAIRMAN MAGUN: Any other comments  
23 in the minutes?

24 (No response.)

25 CHAIRMAN MAGUN: A motion to

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2   approve the minutes?

3           MS. FURMAN: I make a motion to

4   approve the minutes.

5           CHAIRMAN MAGUN: Second?

6           MR. MURPHY: Second.

7           CHAIRMAN MAGUN: All in favor?

8           MR. DEITZ: Aye.

9           MS. FURMAN: Aye.

10          MR. MURPHY: Aye.

11          CHAIRMAN MAGUN: Aye.

12          MR. PYCIOR: I wasn't here so I

13   can't vote.

14          CHAIRMAN MAGUN: Our next meeting

15   is October the fourth week, which is

16   October 26th. Denise is not going to be

17   here. As it stands now, is everybody

18   likely to be here?

19          MR. MURPHY: That's a problem for

20   me, I think. I won't here.

21          CHAIRMAN MAGUN: You won't be here.

22   Okay, so you know what, I may then canvass

23   everybody and see if we could come up with

24   a date close to that where everyone is here

25   quickly. I'll have to do that because we

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2 have six weeks.

3 MS. FURMAN: I'm away from the  
4 18th to the 28th.

5 MR. SHARMA: Eight days, seven  
6 days.

7 CHAIRMAN MAGUN: Okay. And Brian,  
8 you're not sure. Okay, I'll talk to you.

9 MR. MURPHY: My schedule --

10 CHAIRMAN MAGUN: Is there a motion  
11 to adjourn?

12 MS. FURMAN: I make a motion to  
13 adjourn.

14 CHAIRMAN MAGUN: All in favor?

15 MR. MURPHY: Aye.

16 MR. PYCIOR: Aye.

17 CHAIRMAN MAGUN: Aye.

18 MS. FURMAN: Aye.

19 MR. DEITZ: Aye.

20 (Time noted 10:25 P.M.)

21

22

23

24

25

## C E R T I F I C A T E

I, Vera Monaco, a Registered  
Professional Reporter, do hereby certify  
that the foregoing transcript is a true and  
accurate transcript taken by me on this 14th  
day of September, 2006.

---

VERA MONACO, RPR  
Court Reporter

