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5 VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK

6 ZONING BOARD OF APPEALS

7

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9 Held January 25, 2007 at 8:00 p.m.,

10 Seven Maple Avenue, Hastings-on-Hudson, New

11 York 10706-1497.

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13 P R E S E N T:

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Arthur Magun, Chairman

15 David Deitz, Board Member

Stanley Pycior, Board Member

16 Denise Wagner Furman, Board Member

Brian P. Murphy, Board Member

17 Sheldon A. Sorokoff, Alternate Member

18 Deven Sharma, Building Inspector

Marianne Secich, Board Counsel

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Nina Purcell, RPR  
Shorthand Reporter

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2 CHAIRMAN MAGUN: Hello  
3 everyone out there. This is the zoning  
4 board of appeals, and tonight is January  
5 25, 2007, our first meeting of 2007.  
6 Welcome. We have two items on the agenda  
7 tonight. The third item that was  
8 originally on the agenda, the proposal for  
9 discussion of rezoning of the area -- I  
10 don't know how to refer to the area --  
11 excuse me, the Holly Place/Saw Mill River  
12 Road area, thank you, is not going to be  
13 discussed tonight. The applicant is  
14 redoing the application, so that will not  
15 be on our agenda tonight.

16 So we are going to start with the  
17 first case, and that is the Klot case,  
18 and I see the applicant here tonight. And  
19 two of the board members, Steve, are going  
20 to be recusing themselves, myself, as I  
21 did last time, and Denise Furman. So  
22 Sheldon Sorokoff will be our alternate.  
23 He will be taking the place of one of the  
24 board members. So you are only going to  
25 have a board of four. That's the best you

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2 are going to have for this. So you need a  
3 majority of three.

4 And before we go on, Mr. Tarricone,  
5 hi. I want to make sure, we just  
6 announced before you walked in that we  
7 were not going to be discussing the  
8 proposal tonight. Is that your  
9 understanding?

10 MR. TARRICONE: Yes, yes. I  
11 was just coming here to make sure nobody  
12 came here on my behalf.

13 CHAIRMAN MAGUN: I wanted to  
14 make sure you weren't going to sit through  
15 waiting for it.

16 MR. TARRICONE: Thank you.

17 CHAIRMAN MAGUN: We will  
18 wait to hear what develops further.

19 MR. TARRICONE: Yes.

20 CHAIRMAN MAGUN: Stan is  
21 going to take over the running of the  
22 hearing. I'll wait a second until  
23 Mr. Sorokoff is able to take a seat.

24 CHAIRMAN PYCIOR: At this  
25 time we will be discussing Case No. 27-06

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2 which we began at our last meeting. But  
3 tonight we will be discussing issues that  
4 were raised concerning the status of an  
5 adjacent lot as to whether or not it is a  
6 buildable lot.

7 Since we have heard from the applicant  
8 before, my first question would be to the  
9 village attorney, Ms. Stecich. Could you  
10 explain to us whether or not the adjacent  
11 lot, the lot nearest where the side yard  
12 variance is being requested, is a  
13 buildable lot or not?

14 MS. STECICH: I can't answer  
15 that yes or no for sure. It appears to be  
16 a buildable lot. The lot is under sized  
17 for the district. But if it existed as a  
18 separate lot prior to when the zoning code  
19 requiring 10,000 square feet became the  
20 provision there, then it is essentially  
21 grandfathered in. That grandfathering,  
22 however, is lost if at any point that lot  
23 comes into the same ownership as the lot  
24 next to it.

25 So if right now the lot with the house

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2 on it and the lot with the vacant lot were  
3 both owned by the same person, the lots  
4 will have what are legally called merged,  
5 and it would not be a buildable lot.

6 I checked the village's tax  
7 records, and the lot in between the house  
8 and the Kliot house is in separate  
9 ownership from the lot with the house on  
10 it. They obviously are related. One  
11 party is the same but one party is  
12 different. So at first it appears as if  
13 it is a buildable lot. But I can't say so  
14 for sure because, as I understand it,  
15 well, from the village tax records it is  
16 fairly recently that it was owned -- it  
17 came into the ownership it has now or in  
18 the ownership that is shown on the tax  
19 records like I want to say within the last  
20 five years. If prior to that time the  
21 person who owned the lot with the house on  
22 it also owned that lot in the same  
23 ownership, it will have merged. We can  
24 only know that by doing a title search  
25 and --

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2 MR. DEITZ: You haven't done  
3 that?

4 MS. STECICH: No. The  
5 village's responsibility wouldn't be to do  
6 the title search.

7 MR. DEITZ: Maybe the  
8 applicant did.

9 MS. STECICH: Maybe. I  
10 mean, if the Kliots did a title search  
11 that showed it merged, well, then that is  
12 the answer, but I don't know.

13 CHAIRMAN PYCIOR: Would the  
14 applicant like to add anything to this?

15 MR. STRAUSS: Yes. Hi. My  
16 name is Steve Strauss and thank you for  
17 meeting with me again.

18 Well, I don't know if it is or  
19 isn't. And what we have done is we have  
20 substantially changed our plan for that  
21 side of the house, and we are hoping that  
22 the changes that we have made would stand  
23 unto themselves whether it was a buildable  
24 lot or not. I think we have addressed the  
25 concerns, I'm hoping, that you had last

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2 time. So I guess that would be my answer  
3 to that issue.

4 CHAIRMAN PYCIOR: You have  
5 changed the plans?

6 MR. STRAUSS: Yes. Does no  
7 one have the change in plans? And if not,  
8 I have --

9 CHAIRMAN PYCIOR: No, I did  
10 not receive anything along with the  
11 agenda.

12 MR. STRAUSS: I have one.  
13 We did distribute --

14 MR. MAGUN: I'm sorry. It  
15 was in one of the Tarricone mailings on  
16 the back. You may not have noticed it.  
17 Sorry.

18 MS. STECICH: I should  
19 check whether the board understood what I  
20 was saying --

21 CHAIRMAN PYCIOR: We would  
22 like to ask counsel about the status of  
23 the lot, whether or not it is buildable.

24 MS. STECICH: Okay.

25 MR. MURPHY: Thank you,

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2 Marianne.

3 CHAIRMAN PYCIOR:

4 Mr. Strauss, would you please explain how  
5 you changed that, now that I have plans  
6 before me? Specifically --

7 MR. STRAUSS: Yes. Well,  
8 the most significant change is that per  
9 our last meeting I think a primary concern  
10 was that we were increasing the amount of  
11 paved area from what we currently have  
12 existing in the side yard and most  
13 specifically in the six foot setback from  
14 our property line.

15 What we have done now is currently the  
16 way our house is currently configured, we  
17 have 50 square feet of paved area because  
18 there is an existing patio in that area.  
19 And we've put together a new plan that  
20 reduces that actually to 45 square feet.  
21 So our new plan actually tries to bring  
22 the lot more into conformity than it is  
23 currently. And that covers one issue of  
24 one of the variances that we are  
25 requesting tonight.



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2 The second issue was a structure, the  
3 structure being a handrail. Currently  
4 there is no handrail on that side of the  
5 house. It is a steep incline, and so  
6 putting a handrail there is primarily for  
7 safety purposes. And that would be the  
8 second variance we are requesting.

9 CHAIRMAN PYCIOR: On the  
10 plans last time, the side yard variance  
11 was to be or the side yard distance was to  
12 be reduced to one foot, am I right, in  
13 seeing three feet on the current --

14 MR. STRAUSS: That's  
15 correct. Now we have pulled away from  
16 that side yard three feet. The existing  
17 paved area is approximately or is three  
18 feet. So we haven't changed that  
19 condition. But we have reduced the amount  
20 of paved area that is within that area.

21 CHAIRMAN PYCIOR: And then  
22 in terms of the hot tub --

23 MR. STRAUSS: We have  
24 eliminated that from the plan all  
25 together.

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2 CHAIRMAN PYCIOR: Oh, you  
3 have. Okay. I don't see it on the plan.  
4 I thought there might be another. Okay.  
5 Thank you.

6 Do any of the members of the board  
7 have more questions for Mr. Strauss about  
8 the redesign of the plans?

9 MR. MURPHY: Just so I'm  
10 clear, Mr. Strauss, is the proposal now  
11 then to have the paved area just on the  
12 grade and no structure above grade above  
13 the paving?

14 MR. STRAUSS: Well, the  
15 structure would be the handrail is the  
16 only structure.

17 MR. MURPHY: I see. So you  
18 are just moving it two feet away from the  
19 line?

20 MR. STRAUSS: Right now  
21 there is no handrail at all. But we -- as  
22 we mentioned last time, we'd like to --  
23 the paved area is old and tired and  
24 degrading, so we want to refreshen it. We  
25 are slightly altering its shape but not

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2 really that much, but in the process we  
3 are going to be putting a handrail in.

4 MR. MURPHY: Okay. Is that  
5 handrail going to just follow the paving  
6 down the slope? I know it is a fairly  
7 steep grade down there. I'm trying to get  
8 a fix for what the plan is.

9 MR. STRAUSS: The handrail  
10 will follow along the line here, which is  
11 along the property line, and then we have  
12 some steps coming down so we can walk  
13 around our house. So the handrail will  
14 follow down the steps and then go along  
15 the cliff side, I'll call it, up to the  
16 point, you know, where we are doing our  
17 work. Yes.

18 CHAIRMAN PYCIOR: But there  
19 is no longer a deck leading to a hot tub?

20 MR. STRAUSS: That's  
21 correct. There is no decking right now.  
22 We have an existing flagstone area. We  
23 are going to be putting in a new flagstone  
24 area. It is slightly reconfigured, but  
25 the actual square footage is less, at

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2 least less in the side yard area.

3 MR. MURPHY: But you are  
4 happy to keep the paved area within the 50  
5 square feet or less?

6 MR. STRAUSS: Yes. We are  
7 making it 45 square feet, and we like the  
8 new design. It is simpler and I think  
9 actually it reduces the amount of  
10 encroachment into that side yard. And,  
11 you know, in the second thought it was  
12 simpler to do. Yes.

13 CHAIRMAN PYCIOR: Are there  
14 other questions of the applicant?

15 MR. DEITZ: How much of a  
16 variance are you now requesting?

17 MR. STRAUSS: Well, I  
18 believe we need a variance to do work in  
19 the side yard for the paved area. Even  
20 though it is a reduction of the total  
21 paved area, we are still doing work in  
22 that side yard and the handrail that  
23 doesn't exist currently.

24 MR. MURPHY: Yes. I mean,  
25 the way I understand it, David, is that

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2 the applicant would be asking for a  
3 variance of three feet, even though six  
4 feet is required.

5 MR. STRAUSS: That's  
6 correct.

7 MR. MURPHY: I guess my  
8 other thought is if we were inclined to do  
9 that, that we condition it on the plan  
10 that has been proposed, namely, that the  
11 paved area remain less than 50 square  
12 feet. And then the only structure on that  
13 side would be the proposed handrail along  
14 the steps.

15 MR. DEITZ: Right.

16 MR. MURPHY: That would make  
17 sense to me.

18 MR. DEITZ: The applicant is  
19 withdrawing the request for variance for  
20 patio spa?

21 MR. STRAUSS: Well, there  
22 is -- the paved area is a patio. There is  
23 an existing patio. The spa is certainly  
24 eliminated from the request. There is no  
25 longer a deck. It will be just all

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2 flagstone.

3 MR. DEITZ: Right. With  
4 respect to the patio, what is the variance  
5 that you need? Is that -- are we back to  
6 the three feet here?

7 MR. STRAUSS: Yes. Within  
8 the six feet from the property line, we  
9 are putting flagstone down. Even though  
10 it -- currently there is flagstone in that  
11 area, we are reconfiguring it slightly.  
12 And we are doing work in that side yard,  
13 and we are putting a handrail. That is  
14 the second variance.

15 CHAIRMAN PYCIOR: Marianne,  
16 I see you looking something up in the  
17 zoning code.

18 MS. STECICH: I was just a  
19 little confused. I think it is a typo.  
20 The notice said six and a half feet. I  
21 think it is six feet.

22 MR. STRAUSS: That's  
23 correct. I think it is six feet too, but  
24 I defer to --

25 MS. STECICH: Yes.

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2 CHAIRMAN PYCIOR: Any more  
3 questions of Mr. Strauss? Okay. I'll ask  
4 is there anyone in the audience who wishes  
5 to be heard in support of this  
6 application? Anyone who wishes to be  
7 heard in opposition to this application?  
8 Okay. Thank you, Mr. Strauss.

9 CHAIRMAN PYCIOR: I  
10 appreciate the applicant's downsizing of  
11 their request for variances. I think it  
12 is a moderate solution to some  
13 difficulties we were having in approving  
14 an application of a deck and a spa within  
15 one foot of a neighbor's property. But  
16 those are my opinions. I would like to  
17 hear some of the other members of the  
18 board.

19 MR. MURPHY: No. I'm  
20 inclined -- with the conditions I'm  
21 inclined to be in favor of the revised  
22 plan. It makes sense to me and I think  
23 they have satisfied the concerns I  
24 expressed at the last meeting.

25 CHAIRMAN PYCIOR: Anyone

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2 else?

3 MR. DEITZ: I agree. I  
4 think it is a modest proposal. It is  
5 scaled back in response to concerns that  
6 were raised. It is a very responsible --

7 MR. SOROKOFF: Sounds good.

8 CHAIRMAN PYCIOR: Do I have  
9 a motion? We need to approve -- is it a  
10 variance for the patio and the variance  
11 for the handrail? Can we package it?

12 MS. STECICH: Yes. Make  
13 sure it is a variance for paving in the  
14 side yard and for the three feet setback,  
15 right.

16 MR. MURPHY: Okay. I'll  
17 give it a try. I'll move to approve the  
18 applicant's request for side yard variance  
19 proposed three feet required six feet, and  
20 that will also include permission to  
21 permit paving of a patio on grade level  
22 within the setback to reconfigure the  
23 existing nonconformity and maintain no  
24 larger than 50 square feet and also  
25 conditioned upon the handrail that



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2 applicant has described along the steps on  
3 the side yard.

4 CHAIRMAN PYCIOR: Do I have  
5 a second?

6 MR. DEITZ: I'll second  
7 that. And we want to make it clear what  
8 we are approving is this revised plan, not  
9 the original plan. And we see, if we can  
10 describe that by -- it is dated January  
11 17, '07, revised proposed expansion of  
12 residence at Site S, Site 1.

13 CHAIRMAN PYCIOR: All in  
14 favor? Aye.

15 MR. SOROKOFF: Aye.

16 MR. MURPHY: Aye.

17 MR. SHARMA: Aye.

18 CHAIRMAN PYCIOR: It is  
19 passed four nothing. Thank you.

20 (Case No. 27-06 concluded.)

21 CHAIRMAN MAGUN: So the  
22 second item on our agenda is discussion  
23 and vote on a motion to hear and review a  
24 determination of the board of appeals our  
25 board made on December 14 with regards to

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2       the granting of the front yard variance in  
3       Case 28-06, Snider-Stein, 125 Overlook  
4       Road. I asked that this item be put on  
5       the agenda and, as you all know, I asked  
6       you to think about it. And let me just  
7       discuss the issues, since I asked it be on  
8       the agenda. Then we can discuss it as a  
9       group.

10               There is a provision in the zoning  
11       code for a rehearing of an item if one of  
12       the board members wants to bring that up.  
13       And I would like to ask the board to  
14       consider rehearing that particular issue,  
15       that is, the granting of the front yard  
16       variance. And the reason I would like the  
17       board to consider rehearing it is because  
18       I think that perhaps we didn't have all of  
19       the information that would allow us to  
20       arrive at a reasonable decision.

21               The concerns that I wanted to  
22       raise, and then I think we should discuss  
23       them, are the fact that the applicant --  
24       and this is no fault of the applicant --  
25       has an accessory apartment in their house.

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2 And it was mentioned by the architect sort  
3 of in passing. None of us really had time  
4 to think about that ahead of time and the  
5 implications of that.

6 When I went home and thought about  
7 it after the meeting, it occurred to me  
8 that perhaps this might be a pretty  
9 significant piece of information in  
10 deciding to give an applicant an area  
11 variance, that is, to allow them to  
12 enlarge the house when there is a whole  
13 part of the house that is essentially open  
14 for further -- perhaps further building.

15 Also, as I mentioned in the note  
16 that I sent to you all, I do think that we  
17 concentrated, and perhaps that was my own  
18 doing, on the porch and the steps that the  
19 applicant was adding but also did not pay  
20 a lot of attention to the fact, although  
21 in reading through the minutes it is  
22 mentioned, that the applicants also are  
23 enlarging the corner of their house. And  
24 that is an incursion from the 30 foot  
25 setback to a setback of about 23 feet, so

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2 a 25 percent incursion.

3 So we are not really here tonight  
4 to discuss the minutia of the application  
5 or the variance as much as my request as  
6 one of the board members here just that  
7 perhaps we should rehear the variance  
8 based on those criteria. And I would  
9 welcome a discussion and then we can vote.

10 Now let me just say as a point of  
11 explanation -- and, Marianne, if I'm  
12 making any mistakes correct me -- in order  
13 to rehear the application, we would have  
14 to have an unanimous vote of all of us,  
15 and then that would trigger a  
16 renotification and a reapplication by the  
17 applicant so that the community would be  
18 renoticed and we would rehear the request  
19 for a front yard variance. We would do it  
20 at the village's expense, not at the  
21 applicant's expense. Okay. Marianne?

22 MS. STECICH: If I could  
23 add one thing that may be significant, if  
24 you vote to have a rehearing, at the  
25 rehearing the vote also has to be

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2 unanimous, so you need both unanimous vote  
3 to rehear it and unanimous vote to change  
4 it.

5 MR. PYCIOR: If I'm correct,  
6 if I voted against approving the front  
7 yard setback, would I not be permitted to  
8 move that we reconsider it? I know in  
9 some cases only the person that voted in  
10 favor of something can -- no?

11 MS. STECICH: It doesn't  
12 matter.

13 MR. DEITZ: That was the  
14 question I was going to ask as a matter of  
15 parliamentary procedure, in which the code  
16 is silent. So I wondered whether that  
17 element of parliamentary procedure would  
18 come into play, because the code doesn't  
19 say anything one way or the other on that  
20 subject.

21 MS. STECICH: What the code  
22 says is on the motion of any member of the  
23 zoning board, and so it wouldn't matter  
24 what side you voted on.

25 MR. DEITZ: Yes. That would

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2 override whatever the normal --

3 MS. STECICH: Yes. Well, we  
4 generally go by the rules that are stated  
5 in the code. I mean, if there were no  
6 rules stated, then you might like to look  
7 to Robert's rules. But I believe the code  
8 is clear. It says upon the motion of any  
9 members.

10 MR. DEITZ: Another thing  
11 is, doesn't the same board have to  
12 consider the hearing as voted at the  
13 original time?

14 MS. STECICH: No. Because  
15 it specifies that a vote of all members  
16 that are then present, meaning presently  
17 present.

18 MR. DEITZ: That doesn't  
19 necessarily mean that, though.

20 MS. STECICH: It doesn't  
21 necessarily. That issue did come up. I  
22 read it as presently present. Somebody  
23 asked me, Well, maybe that means  
24 previously. But I researched this.  
25 There were no cases deciding that issue

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2       precisely. There are no cases on this.  
3       But in the commentaries of the state  
4       Village Law by Terry Rice, one case he  
5       mentioned referred to the members present  
6       when the motion is made.

7               But in any event, it makes sense  
8       too, because in this case the rehearing is  
9       just like a month after it happened. But  
10      you could make a motion for a rehearing  
11      eight months after, and the board might  
12      have changed. And I think that's why the  
13      language is there "then present."

14              MR. DEITZ: Another question  
15      I have is, what about the reliance that  
16      the applicant might have put in the  
17      original decision? I don't know in the  
18      winter that anything has been done.  
19      Certainly if it was an eight-month period,  
20      something very well might have been done.  
21      It seems a little inappropriate to me to  
22      have a situation where an unlimited period  
23      of time could go by.

24              MS. STECICH: Well, we are  
25      not talking about an unlimited period of

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2       time. It is hypothetical. But the code  
3       does address that. And it says, Upon the  
4       rehearing, the board can change its  
5       original vote, provided that the board  
6       finds that the rights vested in persons  
7       acting in good faith and reliance upon the  
8       variance will not be prejudiced thereby.  
9       So the board would make a finding on that.

10             The applicants were notified, even  
11       though this isn't anything that they, you  
12       know, really have to be notified. Arthur  
13       and I and Deven spoke and agreed that the  
14       fairest procedure would be to let them  
15       know that this is on the agenda tonight,  
16       and I imagine had they already begun  
17       work --

18             CHAIRMAN MAGUN: There was  
19       an issue of the height. They needed to  
20       submit new plans. As designed the height  
21       variance was not granted. I don't know.  
22       Was there any new plans submitted?

23             MR. SHARMA: No. They have  
24       called me and talked to me. They are  
25       revising the plan. But they haven't found



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2 any new plans yet.

3 MR. DEITZ: Has a permit  
4 been issued on the parts that were  
5 approved?

6 MR. SHARMA: No, no.

7 MR. MURPHY: I don't think  
8 they could, because they need to redesign  
9 the building because of the height issue.

10 CHAIRMAN MAGUN: Right.

11 MR. MURPHY: They would have  
12 to redesign the roof line and pitch and  
13 the whole slope of the roof because the  
14 way they had it designed, it was very  
15 steep. They needed three or four feet  
16 above what was permitted.

17 MR. SHARMA: Actually, they  
18 were advised as soon as Arthur made that  
19 request that they have a hearing  
20 possibility. So I advised them that they  
21 had to check with the village attorney and  
22 the chairman here. What if they voted  
23 before the public based on the previous  
24 resolution of the board on the variance?  
25 And I was told -- we are lucky it didn't

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2           happen. But I was then advised -- I  
3           think, Marianne, you advised me -- to let  
4           them know what the situation is and  
5           whether the variance was granted, they may  
6           be negated by the board. So they are  
7           going to have to take a chance if they  
8           were to file the papers with me, and I  
9           would have to issue a permit.

10                   CHAIRMAN MAGUN: Remember,  
11           we looked at those plans. And once the  
12           variance for height was taken away, they  
13           had to really withdraw it. They were  
14           pretty dependent on that drawing. So I  
15           think that would be a fair statement.

16                   MR. SHARMA: But they would  
17           have to come back to the board if they  
18           were to reduce the height to within  
19           acceptable limits.

20                   CHAIRMAN MAGUN: Correct.  
21           But they would have to give you the  
22           drawings.

23                   MR. SHARMA: Yes.

24                   CHAIRMAN MAGUN: Okay.

25                   MR. DEITZ: You are saying

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2 even if they no longer have to have a  
3 height variance, they have to come back to  
4 the board?

5 CHAIRMAN MAGUN: No, they  
6 would not. Any other comments, thoughts?

7 MR. MURPHY: I mean, I read  
8 the minutes and thought about the  
9 chairman's comments. I voted in favor of  
10 the front yard variance, and I guess it  
11 certainly -- for my case I wasn't focused  
12 on some of the things that Arthur has  
13 brought out during that study. I was more  
14 focused on the height variance than  
15 actually what the structure was going to  
16 be in that front yard.

17 But frankly because the chairman  
18 feels so strongly about it and because I  
19 thought it was a close decision anyway,  
20 I'm happy to rehear it and just hear what  
21 people have to say and maybe take a closer  
22 look at it. That doesn't offend me. But  
23 I do think in fairness to the applicant if  
24 we are going to do that, we need to do  
25 that now.

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2 CHAIRMAN MAGUN: We can't do  
3 it tonight.

4 MR. MURPHY: I think we  
5 should take a vote tonight whether we are  
6 going to review the application.

7 CHAIRMAN MAGUN: No, no. We  
8 would vote on it tonight. If we don't  
9 vote unanimously then we let it stand.  
10 Denise?

11 MS. FURMAN: I was the  
12 member that was not here at the hearing.  
13 Unfortunately I arrived late that evening  
14 and heard some of the testimony, went over  
15 the minutes, but I would like the  
16 opportunity to review the case.

17 CHAIRMAN MAGUN: Any other  
18 comments?

19 MR. DEITZ: I agree that it  
20 was a close call. And most of the  
21 decisions we make are not close, but some  
22 of them are. I try not to lose too much  
23 sleep over things after they are decided.  
24 I make an effort. I'm not always  
25 successful.

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2 I mean, I know that the chairman is  
3 concerned about this and sincerely so.  
4 But the issues that were not focused on at  
5 the last meeting were there. We knew  
6 about them. It is just that they came to  
7 light during the testimony, and so you  
8 didn't have a chance to think about it  
9 beforehand. But it is not as if some new  
10 fact has come to light or some new issue  
11 has been identified that wasn't before the  
12 board at the time.

13 CHAIRMAN MAGUN: Well, can I  
14 ask you something? I don't think  
15 anyone -- at least I didn't know they had  
16 an accessory apartment there. I just  
17 assumed it was basement space. And  
18 knowing that, knowing that it is usable  
19 livable space certainly, I think, put --  
20 would influence my thinking on the case.  
21 But I can understand if you think it  
22 wouldn't. But that's what I'm sort of  
23 asking you to consider.

24 MR. DEITZ: What I'm saying  
25 is the applicant didn't keep it a secret.

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2 I mean --

3 CHAIRMAN MAGUN: That's  
4 correct.

5 MR. DEITZ: He mentioned it  
6 in the testimony. Now, maybe he should  
7 have mentioned it in the application.  
8 Maybe it should have been something that  
9 was highlighted when the agenda went out.  
10 That didn't happen. But it wasn't  
11 concealed, and it was disclosed by the  
12 applicant during the hearing.

13 MS. FURMAN: Are we now  
14 getting to the question of whether or not  
15 you would grant the variance and not  
16 staying on with the question of whether or  
17 not you would allow more time?

18 MR. DEITZ: No, no. I'm  
19 talking about the idea of the motion to  
20 rehear.

21 MS. FURMAN: Right. But  
22 my question is, is the motion to rehear  
23 really because the information about the  
24 accessory apartment came in so late in the  
25 process? I mean, I don't know.

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2 CHAIRMAN MAGUN: We found  
3 out about it during the discussion. We  
4 didn't know about it at the time.

5 MS. FURMAN: Right. Maybe  
6 that is a material fact that should have  
7 been disclosed if the reason for  
8 requesting the variance is the need for  
9 more livable space.

10 CHAIRMAN MAGUN: Yes.

11 MR. PYCIOR: That's what I'm  
12 wondering. I threw away the plans. I  
13 recycled them after the meeting. I  
14 remember the plan showed construction on  
15 the first floor, second floor. Did the  
16 plans contain diagrams of the accessory  
17 apartment?

18 CHAIRMAN MAGUN: No.

19 MR. PYCIOR: That's  
20 important.

21 CHAIRMAN MAGUN: It just  
22 says basement area. When you look at  
23 it -- I looked at it again -- it says  
24 existing basement, existing basement,  
25 existing basement. There is no reason to

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2 believe that it was livable space. So,  
3 you know, I think that's a big deal. I  
4 think that it's a lot -- it's a big house  
5 to begin with. I don't want to reiterate  
6 all the issues I brought up, but I think,  
7 as Denise said, it is an important piece  
8 of information for us to think about in  
9 granting a significant variance.

10 So I don't want to push this more.  
11 I think I spoke my piece. Does anyone  
12 else have any more comments that would be  
13 germane to whether or not we should rehear  
14 it? Again, one other thing, I guess, I  
15 will say is that I do think in going  
16 through the area variance suggestions that  
17 the code makes in making things -- to  
18 consider making the determination, I think  
19 one could argue that a lot of the  
20 determinations that we should consider are  
21 not being met by the applicant. But  
22 that's -- you know, we went through that  
23 at the time of the hearing initially.

24 MR. DEITZ: Let me ask, does  
25 the code set forth criteria to be



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2 considered in granting or denying a motion  
3 to rehear?

4 MS. STECICH: No.

5 MR. DEITZ: Normally if it  
6 was a legal matter it would be new  
7 evidence, new facts or a misapprehension  
8 of the law or in this case the code that  
9 applies. And I don't think any of those  
10 things are present here.

11 MR. MURPHY: Well, no. I  
12 think, David, it affects the factor in the  
13 code of whether the benefit sought by the  
14 applicant can be achieved by some other  
15 method other than the area variance, which  
16 I think is what Arthur is saying. You  
17 know, there is space in theory that could  
18 be used in the basement.

19 CHAIRMAN MAGUN: The  
20 applicant argued they needed a bigger  
21 office space, and they have a whole  
22 basement that they could use for bigger  
23 office space.

24 MR. PYCIOR: Yes, but the  
25 argument I would make is that somebody

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2 lives there and then the village and their  
3 neighbors are paying the price of -- so  
4 that they can have an accessory apartment  
5 and collect the rent. And somebody else  
6 can pay the rent and live there.

7 CHAIRMAN MAGUN: Correct,  
8 correct.

9 MR. PYCIOR: And no  
10 neighbors showed up to object.

11 MR. DEITZ: No.

12 MS. FURMAN: But if the  
13 neighbors made a decision whether to show  
14 up or not based on what was submitted for  
15 review, the plans which are beautiful and  
16 very, very detailed on what every room is  
17 do fail to mention anywhere that there is  
18 an accessory apartment. So frankly I'm  
19 not sure that it was good notice then.

20 CHAIRMAN MAGUN: David, I  
21 mean, we are just asking to consider  
22 rehearing it.

23 MR. DEITZ: Well, let me ask  
24 you, Marianne, should the application and  
25 the notice disclose whether there is an

1 ZONING BOARD OF APPEALS - 1/25/2007  
2 accessory apartment? Is there something  
3 that is not being done that should be  
4 done?

5 MS. STECICH: Well, I  
6 don't -- the application for variance  
7 until now there wouldn't have been any  
8 reason to have to say you had an accessory  
9 apartment on that application. It doesn't  
10 ask. It doesn't ask if you have ever been  
11 before the planning board for approval.

12 It asks if you've been before the  
13 zoning board for any variances, but you  
14 don't have to for an accessory apartment.  
15 In that way it is not in the application.  
16 That does not, however, address the  
17 question of whether the drawings submitted  
18 that -- that did not show the  
19 appropriate --

20 CHAIRMAN MAGUN: I would  
21 even suggest that the applicant should  
22 have said the existing basement, and it  
23 should have said accessory apartment. It  
24 is not a basement. It is an apartment. A  
25 basement implies a nonlivable.

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2 MS. STECICH: That's where  
3 the apartment is is in the basement.

4 CHAIRMAN MAGUN: Yes.  
5 That's where it is. And there is no other  
6 description of an apartment anywhere. So  
7 there should have been -- I would suggest  
8 that really on the plans it should have  
9 said accessory apartment, not existing  
10 basement, because all of us look at these  
11 plans and come to the meeting with some  
12 serious thoughts that we -- obviously we  
13 hear what the applicant has to say, but we  
14 also look at the plans.

15 MS. STECICH: It doesn't  
16 show -- it also doesn't show that there is  
17 a bathroom. It doesn't show that there is  
18 a bathroom -- it just looks like open  
19 space -- or a kitchen or anything.

20 MR. DEITZ: So you are  
21 saying the plans are incomplete?

22 CHAIRMAN MAGUN: Is that  
23 where he says the apartment is, in the  
24 basement?

25 MR. SHARMA: I don't know

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2 whether you can ask them.

3 CHAIRMAN MAGUN: Are either  
4 of you the applicants?

5 MR. HEITLER: Yes.

6 CHAIRMAN MAGUN: Can you  
7 come to the microphone and answer that  
8 question for us?

9 MR. HEITLER: We were told  
10 this was a nonspeaking part.

11 CHAIRMAN MAGUN: This is  
12 just a point of information. I'm sorry.  
13 You don't have to but you could state your  
14 name.

15 MR. HEITLER: Josh Heitler,  
16 the senior architect.

17 CHAIRMAN MAGUN: You are the  
18 architect.

19 MR. HEITLER: Yes, and this  
20 is Mr. Stein.

21 CHAIRMAN MAGUN: Is there a  
22 kitchen, a bathroom in the basement?

23 MR. HEITLER: There is no  
24 kitchen. Is there a kitchen?

25 MR. STEIN: There is a

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2 kitchen space, but there is not a stove.

3 CHAIRMAN MAGUN: There is a  
4 bathroom?

5 MR. STEIN: There is a  
6 bathroom.

7 MR. SHARMA: If it is an  
8 approved accessory apartment, it has to  
9 have a kitchen, bathroom. If it is  
10 approved, it is coming up for renewal in  
11 another couple of months.

12 MR. STEIN: It is a kitchen  
13 space with a refrigerator and a microwave  
14 and a sink.

15 MR. SHARMA: It is an  
16 approved apartment?

17 MR. STEIN: Right.

18 MR. SHARMA: It has to have  
19 the facilities, and it does have both?

20 MR. STEIN: Right.

21 CHAIRMAN MAGUN: Thank you.  
22 Sorry.

23 MR. SHARMA: When I looked  
24 at the basement, I did have some question.  
25 There was no reason to explore further. I

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2           wanted to see what was in the basement,  
3           what the height was. It was ambiguous.  
4           There was no need at this point for me to  
5           ask any questions. Even I reviewed this  
6           myself.

7                           CHAIRMAN MAGUN: So I mean,  
8           I think those are the issues. Any other  
9           comments or thoughts? Brian articulated,  
10          I guess, what I was trying to say, that if  
11          we are granting an area variance and there  
12          is -- you know, if the applicant could  
13          achieve their goals in a different way,  
14          and it wasn't clear to us for some reason,  
15          and maybe that should be a reason to  
16          reconsider.

17                          MR. DEITZ: Well, it  
18          disturbs me that the plans are incomplete.  
19          As you may have gathered, I was tending  
20          toward a negative view of the application  
21          and maybe I still am. None of the  
22          proposed variances involved the basement,  
23          did they? There was no proposed change to  
24          the basement.

25                          CHAIRMAN MAGUN: I think

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2 they were going to add crawl space,  
3 additional space.

4 MR. DEITZ: That requires a  
5 variance?

6 CHAIRMAN MAGUN: I -- no.

7 MR. MURPHY: I don't think  
8 that would require a variance.

9 MR. SHARMA: I don't think  
10 that encroaches.

11 CHAIRMAN MAGUN: Yes. The  
12 new crawl space, I think it is below the  
13 new -- yeah.

14 MS. FURMAN: Additional 150  
15 square feet of crawl space is required at  
16 basement level to provide adequate  
17 foundation for the 150 square foot  
18 expansion of the existing first floor  
19 undersized office space. That's a  
20 sentence from the summary of the  
21 application.

22 So they are saying, and then it  
23 goes on to say on the second floor 235  
24 square feet will be added and another 60  
25 square feet. So, David, it does go to the



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2       heart of this, because they are saying  
3       they need to add square feet because the  
4       place is undersized. And I think the  
5       issue is that if we know that there is  
6       space they could use for their personal  
7       use, that that might affect the  
8       decision-making process.

9                   MR. DEITZ: You are saying  
10       that there was a variance required for the  
11       changes in the basement?

12                   MS. FURMAN: Yes.

13                   CHAIRMAN MAGUN: I believe  
14       that is correct. We are looking at it.

15                   MS. FURMAN: Is that your  
16       reading of it too? I'm reading from the  
17       applicant's summary, their own summary.

18                   CHAIRMAN MAGUN: Right,  
19       because the basement crawl space is being  
20       constructed within -- below the new  
21       one-story addition which is in the -- as  
22       you can see, is in the front yard area  
23       that requires a variance.

24                   MR. SHARMA: Any  
25       construction that is below grade or above

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2 grade beyond the setback line is decreed  
3 in nonconformity or extension of a non-  
4 conformity.

5 MR. DEITZ: So the change to  
6 the basement did require a variance?

7 CHAIRMAN MAGUN: Yes.

8 MR. SHARMA: Yes.

9 MR. PYCIOR: I've been on  
10 the zoning board a long time, perhaps too  
11 long. But I was an alternate member for  
12 seven years. I just finished my five year  
13 term and reentered for another five years.  
14 I can't recall a single case that we have  
15 reviewed. And there have been a lot of  
16 close calls, and at times I've walked away  
17 unhappy.

18 I was the minority on this vote,  
19 and that's not to say how I would vote  
20 should someone move that we review it.  
21 But I wonder if it is a dangerous  
22 precedent to begin reviewing cases that  
23 were decided three/two. I just don't  
24 know.

25 MR. DEITZ: Yes, I share

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2 that concern.

3 MR. MURPHY: Stan, that  
4 really doesn't bother me at all. And the  
5 reason I think here is, one, Chairman  
6 Magun has what I consider good reasons for  
7 the request. One, as you say, it is  
8 rarely one of the rights that any board  
9 member insists upon. It is very rare, so  
10 I think it's been judiciously used. And  
11 obviously there is at least some more  
12 information in the application that we at  
13 least should have discussed, even though  
14 it may not change the vote.

15 So just because we haven't done it  
16 before, I mean, it is provided for in the  
17 code. I think the chairman has good  
18 reasons for it, so it doesn't particularly  
19 trouble me to have a discussion, as long  
20 as when and if any such request in the  
21 future might come about from any board  
22 member that it is appropriately  
23 articulated and it is given serious  
24 thought. And I think that the chairman  
25 has done that in this case. So I don't

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2 think that should dissuade us.

3 CHAIRMAN MAGUN: Thank you  
4 for saying that. I appreciate that. I  
5 also remember it has to be a unanimous  
6 vote. The code as written makes it  
7 difficult for any decision to be changed.

8 MR. MURPHY: And rightly so.

9 CHAIRMAN MAGUN: Yes. I  
10 agree. That's why it hasn't come up.  
11 David, do you need more time? Because we  
12 have a lot of time so take your time.

13 MR. MURPHY: We are trying  
14 to fill for you, David, but nobody has a  
15 stand-up routine so --

16 MR. DEITZ: I don't see that  
17 any of these -- none of these construction  
18 plans or demolition plans identify  
19 plumbing fixtures. So there is an  
20 existing bath shown on the first floor  
21 construction plan and on the second floor  
22 construction plan.

23 Well, I appreciate the sincerity  
24 with which the motion was made. And there  
25 is a problem that the plans are not as

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2       complete as we would like them to be. The  
3       construction plan for the foundation  
4       doesn't show bathrooms and fixtures the  
5       way the construction plan for other floors  
6       does. And this is the only basis on which  
7       I would vote to rehear. But the fact that  
8       some of the other members have expressed  
9       that you can take an accessory apartment  
10      for the use of the owner and kick out the  
11      tenant and therefore find your space  
12      there, that really doesn't cut it with me.

13             I mean, at this point I'd be open  
14      to if it is reheard. So even if I vote to  
15      rehear, I don't see that I'm going to vote  
16      a different way when we do rehear.

17             CHAIRMAN MAGUN: Well, that  
18      certainly is reasonable. I think we have  
19      to rehear the application and then we can  
20      discuss it. But I appreciate your  
21      considering to rehear. I really do.  
22      Clearly you are struggling with it, and I  
23      think that's fair. It is not a light  
24      thing to undertake. And the fact that in  
25      the ten years that I've been on the board

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2 this never happened before, I think,  
3 speaks of the fact it is certainly not  
4 something that we do or abuse.

5 MR. DEITZ: Right.

6 CHAIRMAN MAGUN: Okay.

7 So --

8 MR. DEITZ: I'm also  
9 influenced by the fact that the applicant  
10 hasn't relied on it to the extent of  
11 applying for a permit or taken any steps  
12 to carry on any construction. If that's  
13 not the case, and one of the witnesses  
14 wants to say something about it, I'd be  
15 glad to hear it. If the applicant has  
16 relied on the decision and taken any  
17 steps.

18 MR. STEIN: No, we haven't.

19 CHAIRMAN MAGUN: Okay. Any  
20 other discussion? I'm willing to make the  
21 motion since I introduced it. It says any  
22 member of the board can do it. The  
23 chairman doesn't usually do it, but I  
24 should do it since I brought it out. So  
25 I'd like to make a motion we rehear the

1 ZONING BOARD OF APPEALS - 1/25/2007  
2 granting of the front yard variance in  
3 case No. 28-06, Snider-Stein that was made  
4 on December 14.

5 MS. FURMAN: I'll second  
6 that motion.

7 CHAIRMAN MAGUN: All in  
8 favor?

9 MR. DEITZ: I'll vote for  
10 that reluctantly.

11 MR. PYCIOR: Aye.

12 MR. MURPHY: Aye.

13 MR. DEITZ: I've expressed  
14 my considerations.

15 CHAIRMAN MAGUN: I  
16 appreciate your thoughtfulness, really  
17 the whole board's thoughtfulness. What  
18 this means is that the application will be  
19 reheard. The consideration of the front  
20 yard variance will be reheard. We will  
21 renotice it at the village's expense, and  
22 if there are any changes and obviously  
23 this will be the time to change plans and  
24 height issues, et cetera, should you  
25 choose to do that. Speak to the

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2 applicant. Go ahead if you have any  
3 questions.

4 MR. HEITLER: One  
5 clarification issue on that. We are  
6 obviously in the process -- the reason why  
7 I don't have a permit, we are in the  
8 process of adjusting the height and  
9 requirements of the variance. At the time  
10 this is reheard, will you also reconsider  
11 the height variance?

12 CHAIRMAN MAGUN: Well, the  
13 height variance was turned down. We were  
14 just discussing the front -- rehearing the  
15 front yard variance now.

16 MR. HEITLER: There is a  
17 motion -- the three to two is a close  
18 vote, and that was the same vote for the  
19 height. So I'm just wondering if since we  
20 are in front of the board again and I'm  
21 not sure the owner even wants to do this.

22 CHAIRMAN MAGUN: We didn't  
23 vote to rehear that, at least I didn't  
24 make the motion to rehear the height  
25 variance.



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2 MR. HEITLER: I understand.

3 If you remember.

4 MR. SHARMA: Since there is  
5 going to be a new variance, not the old  
6 variance, they are going to change the  
7 height and they are putting the notice.

8 MS. STECICH: That wasn't  
9 so clear that that was what he was asking.

10 Are you asking about a  
11 different height variance than the one you  
12 had before or the previous one?

13 MR. HEITLER: I'm asking  
14 both. I'm wondering if this is an  
15 opportunity --

16 MS. STECICH: You have to  
17 pick the height you want it to be.

18 MR. HEITLER: Understood.

19 MS. STECICH: Okay. So the  
20 question is, are you asking them to  
21 reconsider the same height you proposed  
22 the last time?

23 MR. HEITLER: Well, this is  
24 the first that we've even known there is a  
25 rehearing. I don't have a particular

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2 answer. My question was, does the  
3 rehearing apply to the entire application  
4 or just the front yard part.

5 CHAIRMAN MAGUN: Front yard  
6 variance is what we were discussing.

7 MR. HEITLER: Right.

8 CHAIRMAN MAGUN: Not the  
9 height variance.

10 MR. HEITLER: Okay.

11 CHAIRMAN MAGUN: But when  
12 you come back with -- when you come back  
13 with your application, you can change the  
14 application. They don't have to resubmit.  
15 We are rehearing -- well, I don't want  
16 to --

17 MS. STECICH: Yes, you can  
18 submit a different application with a  
19 different height that might still require  
20 a height variance.

21 MR. HEITLER: Understood.

22 MS. STECICH: But not the  
23 same one. It can't be the same one that  
24 you put in the last time.

25 MR. HEITLER: I have to

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2 coordinate that with you, so it is noticed  
3 correctly.

4 MS. STECICH: Yes, with the  
5 building department.

6 MR. HEITLER: Would we be at  
7 the very next agenda for the very next  
8 zoning meeting?

9 CHAIRMAN MAGUN: Well, I  
10 think in all fairness to you -- well, I'll  
11 let --

12 MR. SHARMA: Supposing they  
13 do change the front yard say, as long as  
14 they are renoticing, you can bring a  
15 revised plan not only different height and  
16 different variance. So you can change it  
17 any way you like. If I get it in the next  
18 week or so we can send a renotice, because  
19 otherwise it will be too late. You can  
20 send out the notice next week with regards  
21 to the information we have in the past.  
22 But if you are going to change any of  
23 that information, change the plans.

24 CHAIRMAN MAGUN: If you read  
25 the board, and I'm not going to try to

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2           read the board, you saw what you have  
3           here. If your read of the board they  
4           might not approve the request for the  
5           front yard variance on the rehearing, you  
6           could come back with a -- your application  
7           could have a different front yard variance  
8           request or none.

9                       MR. HEITLER: We have to  
10          decide that in the next week.

11                      CHAIRMAN MAGUN: If you want  
12          to be at the next hearing, the next  
13          meeting is March 1. So instead of four  
14          weeks, there are five weeks so there is a  
15          little extra time.

16                      MR. MURPHY: Mr. Chairman,  
17          there is a possibility I might not be able  
18          to make the March 1 meeting. I have to be  
19          out of town. I plan to get back in town  
20          before 8 p.m. but --

21                      CHAIRMAN MAGUN: That always  
22          can happen.

23                      MR. MURPHY: So the board is  
24          aware.

25                      CHAIRMAN MAGUN: Okay. Are

1 ZONING BOARD OF APPEALS - 1/25/2007  
2 we answering? I want to try to answer  
3 your question. I'm trying to help out.

4 MR. HEITLER: Obviously we  
5 have just learned something, so I don't  
6 know what -- I haven't spoken to the  
7 client. I want to understand what the  
8 time frame is. If we do nothing, it gets  
9 renoticed as it was, and we are on the  
10 agenda, as I understand what you are  
11 saying, for March 1. If we want to change  
12 any part of our application, we have to  
13 coordinate that with Deven in the next  
14 week or so to be properly noticed for the  
15 next hearing.

16 CHAIRMAN MAGUN: I think  
17 that would be a fair thing to say. We are  
18 going to renotify all of the neighbors who  
19 would be affected that we are going to  
20 rehear the current previously submitted  
21 application again, unless we get another  
22 application from you. Would that be fair?

23 MS. STECICH: To clarify,  
24 except I think you should clarify you are  
25 rehearing only for the purpose of

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2 considering the front yard variance.

3 CHAIRMAN MAGUN: The front  
4 yard.

5 MR. SHARMA: Assuming the  
6 height has not changed. Sometimes they  
7 change the height.

8 CHAIRMAN MAGUN: If you want  
9 a height variance, you would have to have  
10 a new application. We turned down the  
11 height. You have to have a different  
12 height variance, correct, a new  
13 application.

14 MR. STEIN: You are starting  
15 to imply the front yard variance could be  
16 changed during this review. But I would  
17 assume as a point of legal clarification  
18 that you can't change it if you are  
19 reviewing -- making a decision to revisit  
20 the same variance. Otherwise, you are  
21 simply voiding the variance and moving on  
22 to a new one. Would that be true?

23 MS. FURMAN: I believe  
24 that's what we are saying. It is your  
25 choice.

1 ZONING BOARD OF APPEALS - 1/25/2007

2 MR. STEIN: Is that truly a  
3 choice? You have decided to revisit an  
4 existing variance vote.

5 CHAIRMAN MAGUN: Correct.

6 MR. STEIN: Are you allowing  
7 that vote and allowing us to come back  
8 with any variance we want, request or are  
9 you going to revisit that exact same  
10 variance for the front yard? That's one  
11 of the clarifications we need.

12 MR. MURPHY: We are going to  
13 revisit the exact same variance for the  
14 front yard unless you decide you want to  
15 change it.

16 MR. STEIN: Well, is that  
17 okay?

18 MS. STECICH: Yes. I think  
19 you are dwelling on a technicality  
20 because -- no, no, no. I'll explain why.  
21 I'm not criticizing you. You can always,  
22 whether they rehear or didn't rehear,  
23 before the March 1 meeting make an  
24 application for a different variance. And  
25 if it is a substantial change, it is your

1       ZONING BOARD OF APPEALS - 1/25/2007  
2       right. So we really are just talking  
3       about the same thing. At that point,  
4       though, the board still technically can  
5       vote on the rehearing of this. It would  
6       be a waste of time, since you'd put in a  
7       new application. Then they would be  
8       considering a new application. If the  
9       board doesn't hear from you, they will  
10      rehear this one. If they do hear from  
11      you, actually, the rehearing on this is  
12      moot and you'd consider what would  
13      essentially be a new application.

14                   MR. STEIN: Okay.

15                   CHAIRMAN MAGUN: Thank you  
16      for asking those questions. Is there  
17      anyone else in the audience that has any  
18      business that we don't know about? Sir,  
19      are you here for --

20                   SPEAKER: No, just amusing  
21      myself.

22                   CHAIRMAN MAGUN: We  
23      appreciate that. Well, I do want to thank  
24      the board for consideration of my  
25      concerns. And hopefully we will arrive at



1 ZONING BOARD OF APPEALS - 1/25/2007  
2 the best decision for everyone. The  
3 Tarricone application, as I announced, an  
4 application request for rezoning is not  
5 going to be discussed tonight and I don't  
6 know what is going to happen with that.  
7 So we will all wait to see.

8 MR. MURPHY: Can I ask  
9 counsel so I understand the latest  
10 position of the Tarricone application?

11 MS. STECICH: Well, on  
12 Tuesday at the board trustees' meeting,  
13 Mr. Tarricone asked the board to consider  
14 a different zoning matter that would  
15 instead of rezoning the area MRC would  
16 rezone it MRO which has less -- more  
17 restrictive setbacks, no more restrictive  
18 bulk requirements and some uses are more  
19 controlled. For the most part, special  
20 permits are required.

21 In addition, he explained that some  
22 of the properties that were in the  
23 original petition for rezoning either were  
24 removed or were moot. That was Tuesday.  
25 The board said, Well, put in a new

1       ZONING BOARD OF APPEALS - 1/25/2007  
2       application, put in a new application. I  
3       understand that since then the attorney  
4       was in touch with me and their intention  
5       is to remove even another property. So  
6       the only properties that would be in the  
7       rezoning proposal are the properties  
8       directly along Saw Mill River Road,  
9       although one of them goes kind of deep,  
10      you know, goes somewhat up Holly Place.  
11      So that was yesterday.

12                So once they settle on what the  
13      proposal is going to be, and I think they  
14      have, they are going to resubmit to the  
15      board of trustees. The board then will  
16      call for -- my suggestion is going to be  
17      that they reopen the public hearing rather  
18      than call for a new public hearing, so all  
19      the testimony that came in before not  
20      really before this board but before the  
21      board of trustees will already be part of  
22      the record. Then it will be referred to  
23      the planning board and the zoning board.

24                    MR. MURPHY: Thank you.

25                    MS. STECICH: The Tarricone

1 ZONING BOARD OF APPEALS - 1/25/2007  
2 lawyer expected to have the revised  
3 application in by the early February board  
4 of trustees so it should then be before  
5 you in March probably.

6 CHAIRMAN MAGUN: Go ahead.

7 MR. MURPHY: That's fine.

8 CHAIRMAN MAGUN: I don't  
9 know how many of you on the board -- I  
10 know Stan has, maybe David. In the past  
11 when there is a request for a rezoning in  
12 the village code, the trustees ask the  
13 zoning board for its opinion of it. We  
14 can give them the opinion in any way we  
15 like. We can give them six different  
16 opinions, I mean, the five of us plus  
17 Sheldon or an alternate if each one of us  
18 has a different opinion. We can say we  
19 unanimously feel, that we can see three of  
20 us feel this, so it is not like a typical  
21 zoning decision. It is really an opinion,  
22 and we can choose to do it in any way we  
23 want.

24 In the past when Mr. Quinlan was  
25 running the board as a chairman, we -- it

1 ZONING BOARD OF APPEALS - 1/25/2007  
2 came up once, and I recall that he asked  
3 us just to write down, each individual  
4 member. And I think he literally  
5 submitted each individual member's opinion  
6 about it to the trustees. So anyway, in  
7 case you are worried about that, we can do  
8 that any way we want.

9 MR. SHARMA: It is opinion  
10 or recommendations?

11 MS. STECICH:  
12 Recommendations essentially.

13 MR. SHARMA: They say the  
14 recommendation by the planning board,  
15 zoning board. Is it a collective board  
16 recommendation?

17 CHAIRMAN MAGUN: That's what  
18 I'm saying.

19 MS. STECICH: Obviously  
20 that's the best way to do it. I think  
21 what happened the last time there wasn't  
22 agreement.

23 CHAIRMAN MAGUN: We can  
24 choose to do that, but we don't have to.  
25 In other words, we don't have to say the

1 ZONING BOARD OF APPEALS - 1/25/2007  
2 zoning board recommends four to one, three  
3 to two. We can -- if we feel that way, we  
4 can.

5 MR. SHARMA: I didn't know  
6 that.

7 MS. STECICH: Deven is  
8 making a good point, though. If you don't  
9 come down to a majority and you just have  
10 individual things that Arthur Magun and  
11 Brian Murphy's recommendation aren't going  
12 to be the same as any resident, because it  
13 is not the zoning board's recommendation.

14 MR. MURPHY: We always try  
15 to build a consensus on whether it is an  
16 interpretation of the code. This board  
17 works pretty well.

18 CHAIRMAN MAGUN: We try to  
19 do that. I just don't want the board to  
20 worry we have to come up with one solid  
21 recommendation that we all agree on.

22 MR. SHARMA: It has not come  
23 up.

24 CHAIRMAN MAGUN: Since you  
25 brought this up, the planning board, am I

1 ZONING BOARD OF APPEALS - 1/25/2007

2 correct, that they did not recommend the  
3 first previous application?

4 MS. STECICH: Correct.

5 CHAIRMAN MAGUN: Okay. Who  
6 knows what we will do.

7 MS. STECICH: I thought  
8 about sending their memo on to you, but it  
9 seemed --

10 CHAIRMAN MAGUN: We have to  
11 approve the minutes from the previous  
12 meeting from December 14. Is there a  
13 motion to approve the minutes?

14 MR. MURPHY: Yes, I'll move  
15 to approve the minutes from the zoning  
16 board meeting of December 14, 2006.

17 CHAIRMAN MAGUN: Second?

18 MR. PYCIOR: I'll second.

19 CHAIRMAN MAGUN: In favor?

20 MR. SHARMA: Aye.

21 MR. DEITZ: Aye.

22 MR. MURPHY: Aye.

23 CHAIRMAN MAGUN: So the next  
24 meeting of the zoning board is not as  
25 originally scheduled, February 22. It is

1           ZONING BOARD OF APPEALS - 1/25/2007  
2           not then. It is March 1, because that  
3           week is a school vacation week and a  
4           number of the board members are not going  
5           to be here, et cetera. And if there is no  
6           other business?

7                       MS. FURMAN: I make a motion  
8           to adjourn.

9                       MR. MURPHY: I'll second.

10                      CHAIRMAN MAGUN: In favor?

11                      MS. FURMAN: Aye.

12                      CHAIRMAN MAGUN: Aye.

13                      MR. PYCIOR: Aye.

14                      MR. MURPHY: Aye.

15                      MR. SHARMA: Aye.

16                      (Time noted: 9:05 p.m.)

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2 STATE OF NEW YORK )

3 )

4 COUNTY OF WESTCHESTER )

5

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7 I, NINA PURCELL, RPR, a shorthand  
8 reporter and Notary Public within and for the  
9 State of New York, do hereby certify:

10 That I appeared at the Village of  
11 Hastings-on-Hudson Town Hall and that the within  
12 transcript is a true record of such proceedings.

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

17

18 IN WITNESS WHEREOF, I have hereunto  
19 set my hand this 7th day of February, 2007.

20

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