

1

2

3

4

5 VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK

6 ZONING BOARD OF APPEALS

7

8

9 Held May 22, 2008 at 8:00 p.m., Seven

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

11 10706-1497.

12

13 P R E S E N T:

14

Brian P. Murphy, Chairman

15 David Deitz, Board Member

Stanley Pycior, Board Member

16 (In Absentia)

David Forbes-Watkins, Board Member

17 Ray H. Dovell, Board Member

Marc A. Leaf, Alternate Member

18

Deven Sharma, Building Inspector

19 Marianne Stecich, Board Counsel

20

21

22

23

24

Nina Purcell, RPR
Shorthand Reporter

25

1 Zoning Board of Appeals - 5/22/2008

2

3 CHAIRMAN MURPHY: Good
4 evening, everyone. We are here for the
5 May 22, 2008 zoning board of appeals
6 meeting. We have three cases on our
7 agenda tonight. First case will be the
8 case of Jacqueline and Joseph Nyemchek, 15
9 Wilson Place for a second story addition.

10 Our second case will be Robert
11 Barsky, 34 Elm Place for reconstruction of
12 a garage. And our third case will be
13 Gwenael and Annie Goulet for a view
14 preservation on a proposed addition on 155
15 Southside Avenue. Mr. Sharma, are all the
16 mailings in order for tonight's cases?

17 MR. SHARMA: That's what
18 I've been informed by my office.

19 CHAIRMAN MURPHY: The first
20 case will be for the Nyemcheks, 15 Wilson
21 Place.

22 MR. TWYNE: Good afternoon.
23 Good evening. I'm Julius Twyne
24 representing the Nyemcheks who have to be
25 out of town this week. This started back

1 Zoning Board of Appeals - 5/22/2008
2 in March, and every expectation was it
3 would have been completed by now. And as
4 it turned out, it isn't. So they have
5 already made the plans.

6 CHAIRMAN MURPHY:
7 Mr. Twyne, only because I'm not familiar
8 with a little bit of the history, if you
9 could recite from March forward. I think
10 some of the board members including myself
11 may not understand what has happened with
12 the property between March and now.

13 MR. TWYNE: Okay. This
14 project is trying to legalize an existing
15 condition. I have some photographs of the
16 property. This includes how the property
17 now looks. The essence of the property is
18 that the Nyemcheks own a Dutch colonial
19 and is a two-story Dutch colonial. And
20 back in the '80s, they had a family and
21 all and precious space and all. So
22 basically what was once the scope of the
23 project was to extend the second level out
24 to increase the size of the two upper
25 bedrooms and gave them more living space.

1 Zoning Board of Appeals - 5/22/2008

2 The lower level wasn't affected,
3 because it was an enclosed porch, and it
4 was just left as it was. Now, in
5 extending the second level, they extended
6 that level a foot and a half beyond the
7 existing condition of that porch.

8 CHAIRMAN MURPHY: When did
9 that happen?

10 MR. TWYNE: Back in '80 --
11 I've got it -- I don't have the actual
12 file with me, but this happened during the
13 '80s.

14 CHAIRMAN MURPHY: Okay. So
15 20 something years ago.

16 MR. TWYNE: Yes, yes. I
17 remember it being done. I don't quite --
18 I don't have the file with me. But it was
19 during the '80s. I remember it being done
20 by Mike Kerpchar was the builder, and
21 apparently what happened was Mike never
22 got a building permit. He never closed it
23 out.

24 MR. SHARMA: Was it for the
25 addition --

1 Zoning Board of Appeals - 5/22/2008

2 MR. TWYNE: I don't think
3 so, no.

4 MR. SHARMA: That was
5 probably not closed up.

6 MR. TWYNE: I'm saying that
7 I don't know if in the beginning they
8 might have tried to start with getting a
9 permit or something and not completed it
10 or just how it worked. However, there is
11 no permit for this work. That's the
12 problem. It's not shown on the current
13 CO.

14 MR. SHARMA: There is no
15 permit for this construction?

16 MR. TWYNE: No. So what we
17 are doing simply was to show what had been
18 accomplished, and as I say, it is an
19 extension of the second floor which adds
20 space to two bedrooms which were existing
21 at that time, and it is simply made
22 larger. But in doing so additionally they
23 extended the front of the house 1 foot 6
24 into what was already an inappropriate
25 front yard. And the side yards will also

1 Zoning Board of Appeals - 5/22/2008
2 become a problem in that they simply
3 extended the sidewalls. And the summation
4 of the two sidewalls, the distance from
5 the property lines do not add up to -- do
6 not meet current requirements.

7 CHAIRMAN MURPHY: 20 feet
8 is required.

9 MR. TWYNE: Yes. They would
10 have had to have setback, and they did not
11 do this. They simply continued it along
12 the existing sidewalls and out the
13 addition a foot and a half. And that was
14 the extent of what their project was. And
15 we are trying to justify getting the
16 approval for that existing condition.

17 I have drawings for what these
18 extensions were and by -- if anyone needs
19 to look at them any further. On the top
20 you see the second floor with that
21 extended two bedrooms. And on the bottom
22 part it simply shows what is there -- what
23 was there. And --

24 CHAIRMAN MURPHY: Yes. So
25 there is basically a three bedroom

1 Zoning Board of Appeals - 5/22/2008

2 house --

3 MR. TWYNE: Yes.

4 CHAIRMAN MURPHY:

5 -- currently. Do you know anything,
6 Mr. Twyne, about when it was expanded, how
7 many bedrooms there were?

8 MR. TWYNE: No. It was
9 always a three bedroom. They simply --
10 the fact is this is simply an extension of
11 the side of these bedrooms.

12 CHAIRMAN MURPHY: For
13 example, if I look at this drawing that
14 you have handed us, which is the second
15 floor addition, am I understanding
16 correctly they expanded the front of the
17 house by 7 feet 6 inches?

18 MR. TWYNE: That's correct.

19 CHAIRMAN MURPHY: They made
20 an incursion in the front yard setback at
21 that time of 7 feet 6 inches?

22 MR. TWYNE: No, 1 foot 6.

23 CHAIRMAN MURPHY: From the
24 preexisting condition?

25 MR. TWYNE: A Dutch

1 Zoning Board of Appeals - 5/22/2008
2 colonial, it was the second level ended at
3 the beginning of the first floor porch
4 roof which extended an additional sum of,
5 well, 6 foot 6 -- 6 foot, rather.

6 CHAIRMAN MURPHY: So on
7 this photograph are you telling me that
8 the extension during the addition was the
9 distance of this overhang?

10 MS. STECICH: Look at the
11 third drawing. You can see. See the roof
12 line. That's the extension, what is in
13 front of the Dutch colonial.

14 CHAIRMAN MURPHY: No. I
15 understand, but that is 7 feet 6 inches.
16 But it only made an incursion, an
17 additional incursion, of a foot and a
18 half.

19 MR. TWYNE: Yes. And only
20 on the second level. The first level is
21 as it existed.

22 CHAIRMAN MURPHY: Is the
23 same.

24 MR. TWYNE: Yeah.

25 MS. STECICH: Yes, but it

1 Zoning Board of Appeals - 5/22/2008
2 would have required a 7 foot variance.

3 CHAIRMAN MURPHY: Sure.

4 MS. STECICH: How did it
5 come to the board's attention?

6 CHAIRMAN MURPHY: Are they
7 trying to sell it?

8 MR. TWYNE: They were trying
9 to sell the house. They are -- they live
10 in the area. They were retiring, and they
11 wanted to get rid of the house.

12 CHAIRMAN MURPHY: The one
13 thing that confused me is in the request
14 for a variance, I mean, in the front it is
15 really the front yard setback that I think
16 is the big issue here for me. 25 feet is
17 required.

18 MR. TWYNE: Right.

19 CHAIRMAN MURPHY: They are
20 proposing 13.2 feet which is almost 50
21 percent of an incursion. But I guess what
22 you are trying to tell me is that, and I
23 need to be clear, I need to be sure, that
24 before they made this addition, there was
25 already an incursion, a preexisting

1 Zoning Board of Appeals - 5/22/2008
2 incursion, that was an incursion into the
3 front yard setback.

4 MR. TWYNE: That's correct.

5 CHAIRMAN MURPHY: Even
6 though they made this addition 25 or 30
7 years ago, they only incurred an
8 additional foot and a half. Are you sure
9 of that?

10 MR. TWYNE: Yes. As a
11 matter of fact, this picture drawing
12 showing the elevation, this is the line of
13 the roof. And what happened was it went
14 thusly -- went down here and the porch
15 came up. They simply took the roof of the
16 porch off, put in floor beams and extended
17 them an additional 1 foot 6 out and put in
18 a new roof.

19 MS. STECICH: They also to
20 legalize it, don't they also need a
21 variance for the -- oh, I guess it was
22 covered -- the ground floor too, if the
23 porch was open before?

24 MR. TWYNE: It was a closed
25 porch.

1 Zoning Board of Appeals - 5/22/2008

2 MS. STECICH: Oh, it was a
3 closed porch. Okay. That's not an issue.

4 CHAIRMAN MURPHY: And as
5 far as you can tell, the side yards were
6 never extended.

7 MR. TWYNE: No. They simply
8 extended the walls perpendicular in line
9 with the side yards. And in doing so you
10 were already in conflict with the side
11 yard setbacks, the two of them. The one
12 is okay but the two of them did not meet
13 requirements.

14 CHAIRMAN MURPHY: What they
15 did is effectively extended an existing
16 nonconformity of the side yards.

17 MR. TWYNE: The side and the
18 front, right.

19 CHAIRMAN MURPHY: Okay. But
20 they made no further incursion into the
21 side yard setbacks.

22 MR. TWYNE: No.

23 CHAIRMAN MURPHY: And the
24 dimensions of these bedrooms, I guess, as
25 they stand now, the master bedroom is --

1 Zoning Board of Appeals - 5/22/2008

2 I'm trying to put a dimension on the two
3 front bedrooms that were expanded. What
4 are the dimensions now?

5 MR. TWYNE: I didn't bring
6 my scale, but probably the one on the left
7 is the top of the sheet, probably about 14
8 feet and the width is something less than
9 8, slightly less than 8. And the other is
10 probably 20 feet, and in this case it is
11 about a little less than 9 foot wide. So
12 they are narrow rooms but by pushing them
13 out it made it a little more comfortable,
14 if you will. It was really a minimal kind
15 of addition. Someone thought it was a
16 good idea to get this overhang which was
17 done.

18 MR. SHARMA: Can I ask him a
19 couple questions, if I may?

20 CHAIRMAN MURPHY: Go ahead,
21 Mr. Sharma, please.

22 MR. SHARMA: Did you speak
23 to the property owners -- how and why were
24 they able to do this work without a permit
25 at that time? They did issue permits at

1 Zoning Board of Appeals - 5/22/2008

2 that time?

3 MR. TWYNE: Yes, they did.

4 That's why I did say I'm not sure if Mike,
5 Mike Kerpchar, I don't know if Mike went
6 to the building department and started the
7 process and not completed or if he simply
8 didn't go at all.

9 MR. SHARMA: You are saying
10 the Nyemcheks were not the property owners
11 at that time?

12 MR. TWYNE: Oh, they were --

13 MR. SHARMA: The contractor
14 you are referring to is Mike Kerpchar, who
15 had built this addition --

16 MR. TWYNE: Right.

17 MR. SHARMA: -- in the '80s,
18 and he didn't advise the Nyemcheks that
19 they would need a permit to do this or the
20 variances and such at that time?

21 MR. TWYNE: I can't say. I
22 can't properly answer that. I did not
23 really -- I don't quite know the
24 circumstances of why. There are other
25 instances, of course, around where things

1 Zoning Board of Appeals - 5/22/2008
2 have gotten built and that didn't get
3 followed through. And I'm not sure that
4 there might not have been an attempt to
5 start this process and not completed it.
6 I don't know that.

7 MS. STECICH: But you would
8 have had a variance. I mean, there is --
9 it seems to me there is no way they would
10 have come into the building department and
11 not known they needed a variance. The
12 files would have variances from the '80s.
13 I mean, older files may not, but I would
14 think it would be in the '80s.

15 MR. SHARMA: Not only that,
16 they had no building permit for it either.

17 MS. STECICH: I understand
18 at some times with older things it is not
19 in the files. But from the '80s on the
20 files are pretty -- well, it may be a date
21 earlier than that, but the '80s files are
22 pretty good. It would have been in the
23 files.

24 MR. SHARMA: That's what
25 surprises me, that this oversight by Mike

1 Zoning Board of Appeals - 5/22/2008
2 Kerpchar, I think he is quite familiar
3 with the process. In the '80s he must
4 have been quite familiar. If the building
5 department nobody noticed and it never got
6 brought to our attention when this thing
7 happened, it is truly amazing.

8 CHAIRMAN MURPHY: Well, I
9 mean, it is what it is. Nobody really
10 knows. It sounds like they didn't follow
11 the right process. I guess for this board
12 the question is given what has happened
13 and the nature of the variances and
14 basically is it in keeping with the
15 neighborhood or not, because I think the
16 penalty for not approving the variances is
17 going to be severe on the homeowner. So
18 the question is, that's what the board has
19 to grapple with.

20 MR. FORBES-WATKINS: I have
21 a question as to whether we have the
22 authority to grant a variance after the
23 fact.

24 MS. STECICH: You do. It's
25 been done.

1 Zoning Board of Appeals - 5/22/2008

2 MR. TWYNE: I've been
3 through this process before on other
4 buildings. It is not a known -- an
5 unknown situation. As a matter of fact,
6 happenstance is the house across the
7 street from this very house had the same
8 process done for it.

9 MR. FORBES-WATKINS: The
10 same builder?

11 MR. TWYNE: I don't know.

12 MS. STECICH: I would say
13 it's probably a good 15 years ago. The
14 zoning board because they were getting
15 really a whole lot of applications after
16 the fact, and so at that time they
17 imposed -- they recommended that a higher
18 fine -- not a higher fine, a higher
19 application fee be charged to people who
20 went ahead without a variance. I don't
21 know if that is being followed through on.
22 But I mean, in recognition of the fact
23 that it was happening quite a bit --

24 MR. TWYNE: One of the
25 things that does happen, I think you will

1 Zoning Board of Appeals - 5/22/2008
2 find quite a bit, is that there are decks
3 in the village which also they require
4 building permits and all of that as well.
5 And there are a number of those. And I'm
6 surprised that they don't come up more
7 often. Because when sales are being made,
8 you have to, you know, correct this. I've
9 done this all over. I've done it from
10 Tarrytown all through. It is not an
11 unusual situation. I mean, well, it is
12 unusual but it is not an unknown
13 situation.

14 MR. SHARMA: It usually
15 happens they come up to us for a building
16 permit or whatever.

17 CHAIRMAN MURPHY: It
18 doesn't help to redebate the process that
19 nobody knows anything about. So let's
20 just talk about whether the board is
21 willing to grant a variance. It comes
22 down to the same factors we would have to
23 consider anyway.

24 MR. FORBES-WATKINS: I have
25 to ask another question. What if we

1 Zoning Board of Appeals - 5/22/2008
2 refuse? What is the next step? I'm
3 asking our attorney.

4 MS. STECICH: You mean what
5 would the applicant do?

6 MR. FORBES-WATKINS: If the
7 board votes negatively, what does the
8 applicant do?

9 MS. STECICH: They would
10 have to appeal to the Supreme Court. They
11 would have to bring an Article 78
12 proceeding. From the village perspective
13 you are at the end. They would have to go
14 to court to challenge the decision. Then
15 the Supreme Court standard on review is
16 was your decision arbitrary and
17 capricious.

18 MR. TWYNE: One other
19 comment I would like to make possibly
20 about this is that if you look at the
21 photograph that you have, I think if you
22 look at the houses, you know, either side
23 of this, this is not a very pronounced
24 kind of setback violation. In the time of
25 these houses that were built, they

1 Zoning Board of Appeals - 5/22/2008
2 initially were built, the setbacks were a
3 lot less than they are now. And no --
4 almost -- I don't believe any house on the
5 block would have been possibly rebuilt on
6 the current standards.

7 CHAIRMAN MURPHY: I think
8 you are right. In that neighborhood,
9 first of all, this is an R 7.5 zone and
10 almost all the lots are under sized. So
11 most of the houses are narrow and built
12 closer than the 25 foot setback
13 requirement. And this house in terms of
14 the actual setback which is now 13.2 feet
15 is not unusual for the neighborhood. The
16 size of the house is not in any way
17 unusual for the neighborhood.

18 MR. TWYNE: No.

19 CHAIRMAN MURPHY: What is
20 unusual is the fact that the proper
21 process wasn't followed for what was a
22 significant addition to the house. It's
23 just not right. But I guess my view is it
24 is what it is. If there was a reason why
25 the house as it currently exists given the

1 Zoning Board of Appeals - 5/22/2008
2 encroachment on the front yard in
3 comparison to the other homes in the
4 neighborhood, if the board feels strongly
5 that there is something unusual or that
6 negatively impacts the character of the
7 neighborhood, then that's something to
8 discuss.

9 If the board feels, and my own view
10 is I don't see any negative impact or
11 anything unusual in the size or the scale.
12 And I guess my attitude is it's a pretty
13 hard penalty on the homeowner even if it's
14 ultimately their fault and their
15 responsibility for not having gone through
16 the process. So I guess it really comes
17 down to each board member.

18 But, David, I do think if any board
19 member feels strongly about perhaps not
20 granting a variance, it is important to
21 articulate the reasons, the standards that
22 we have to meet.

23 MR. FORBES-WATKINS: What I
24 would like to know is, in fact, a higher
25 fee being charged for this application?

1 Zoning Board of Appeals - 5/22/2008

2 MR. SHARMA: Currently, no.

3 We don't have any higher fees for any
4 legalization of previously built.

5 MS. STECICH: It should be,
6 because I remember voting on it.

7 MR. SHARMA: We don't have
8 in our fee schedule any such fee yet. And
9 I have seen the fee schedule myself.

10 CHAIRMAN MURPHY:

11 Mr. Twyne, I have another question. The
12 drawings you provided to us that I
13 appreciate that show the extent of the
14 addition, how are you able to determine
15 how much of an addition there was?

16 MR. TWYNE: By examination,
17 I went there and went through the house
18 and measured what was there, and there is
19 a property file which all properties have
20 that exists of previous conditions. For
21 instance, these properties have such a
22 sheet which actually indicates what is on
23 the various properties.

24 CHAIRMAN MURPHY: And
25 Mr. Twyne is referring to a page he has

1 Zoning Board of Appeals - 5/22/2008
2 handed me which is a page from the
3 assessment record of the Town of
4 Greenburgh for the Nyemcheks' property.

5 MR. FORBES-WATKINS: Is that
6 the assessment record at this point?

7 MR. TWYNE: It is a copy of
8 what the town has, which isn't necessarily
9 current.

10 MR. FORBES-WATKINS: All
11 right. For 25 years roughly the town has
12 been short on its assessment on the
13 building also, is that correct?

14 MR. TWYNE: That's probably
15 an accurate statement of fact. Yes.

16 MR. FORBES-WATKINS: And we
17 have no extra charge. You get to go
18 without taxes at the right level for 25
19 years and walk away scot free if we vote
20 for it. Boy, does that encourage people
21 to violate the rules.

22 MR. TWYNE: I would say that
23 in defense of things, there had been a
24 time previously that the building process
25 was a lot more lax than it is now. I

1 Zoning Board of Appeals - 5/22/2008
2 would dare say that there would be few
3 situations nowadays where this would
4 occur. And I think it is just that the
5 process has gradually tightened up. I
6 think all the villages have a similar kind
7 of history of that. They are more and
8 more restrictive now than they were
9 previously.

10 CHAIRMAN MURPHY: David, I
11 share your feelings. I think the
12 difficulty is given what we have --

13 MR. FORBES-WATKINS: Given
14 the house and the change, I have no
15 problem, no problem at all. But the
16 process and all of the things around it
17 stink. And I am declaring myself a
18 negative on this one.

19 CHAIRMAN MURPHY: We didn't
20 vote yet but --

21 MR. FORBES-WATKINS: All
22 right.

23 CHAIRMAN MURPHY: I just
24 wanted to be clear. That's why. That's
25 why. I would encourage the other board

1 Zoning Board of Appeals - 5/22/2008
2 members to express themselves because,
3 Mr. Twyne, we have four members. We
4 usually have five, but Mr. Deitz had to
5 recuse himself. A positive vote requires
6 a minimum of three.

7 MR. TWYNE: Right.

8 CHAIRMAN MURPHY: And, you
9 know, I think you at least ought to hear
10 from each of us and then decide whether
11 you may want to adjourn this application
12 until we have a full board which may or
13 may not help you but we're inclined, I
14 should say.

15 MR. TWYNE: Okay. Further,
16 I'm wondering if you might think there is
17 anything that I could further do for you
18 in that interim time that might very well
19 impact upon your decision. In other
20 words, as I say, this is not a totally
21 unique situation. I'm not saying it is a
22 usual situation, but there are other
23 instances of this kind of thing. I don't
24 know that advice, sir, if I could help you
25 in any way by giving some information

1 Zoning Board of Appeals - 5/22/2008

2 about, you know -- I surely --

3 MR. FORBES-WATKINS: The
4 builder knew the rules. He chose not to
5 come in to the building department. As of
6 right now I could ask the building
7 department is this in code. Was this
8 built in code? Was it inspected? I don't
9 believe it was inspected, so we don't know
10 if it is in code, whether it is safe. I
11 am sorry. But I think this is truly
12 something that should not be allowed to
13 just go off into the dust.

14 MR. TWYNE: I don't disagree
15 with you.

16 CHAIRMAN MURPHY: I
17 understand that. But the board and,
18 David, I want you to think about it too,
19 the board is required to articulate the
20 reasons why any variance is not
21 appropriate. And those reasons are in
22 295-146 (C)(2).

23 MR. FORBES-WATKINS: That's
24 why I asked whether we have the right to
25 bring this, whether we have the authority

1 Zoning Board of Appeals - 5/22/2008

2 to deal with this because --

3 CHAIRMAN MURPHY: Well, I
4 think the answer is --

5 MS. STECICH: That is a
6 different question.

7 MR. FORBES-WATKINS: It all
8 relates.

9 CHAIRMAN MURPHY: I'm not
10 disagreeing with you. I'm saying if you
11 want to make a negative vote, you need to
12 understand that the consequence is an
13 Article 78 proceeding, and it is what it
14 is. In order to satisfy what is required
15 under that kind of a legal proceeding, you
16 owe it to the board and to yourself to
17 make a record under the code of the
18 reasons why this -- these two variances
19 are not appropriate. That's not only for
20 our own benefit.

21 And so what I'm suggesting is that
22 we take a look at that code and that each
23 of the board members think about it,
24 because, for example, one of the key
25 factors is whether the variance is

1 Zoning Board of Appeals - 5/22/2008
2 substantial. I think there is no question
3 that it is a substantial variance. The
4 other factors that usually bear on our
5 decision is whether there is a negative
6 impact of the variance on the neighboring
7 properties, whether it impacts negatively
8 on the character of the neighborhood,
9 whether it was self created.

10 MR. FORBES-WATKINS: I would
11 say we have found reason. This was a self
12 created problem to come before us, in this
13 light.

14 MR. TWYNE: Well, almost
15 every problem does have some sort of
16 solution which while it doesn't correct
17 what has been done, there might be
18 something that you would consider as an
19 appropriate kind of response to this
20 situation.

21 MR. FORBES-WATKINS: This is
22 why I was asking about higher application
23 fees. And if we don't have those, I think
24 there is just no response here.

25 CHAIRMAN MURPHY: There has

1 Zoning Board of Appeals - 5/22/2008
2 to be a response. We have to articulate.

3 MR. FORBES-WATKINS: I have
4 a response at this point. Yes. I think
5 they should go to court.

6 CHAIRMAN MURPHY: Okay. Why
7 don't we take a break and get the advice
8 of our counsel so we can have, I think, a
9 better discussion of the case.

10 (Recess taken.)

11 CHAIRMAN MURPHY: We are
12 back from a session with our counsel.
13 Board members, any other questions of
14 Mr. Twyne before we proceed? All right.
15 Mr. Twyne, we appreciate the information
16 you have provided to us. I think what the
17 board would like to do is further this
18 application, and we would like to have
19 Mr. Sharma and the building department
20 conduct an inspection of the premises and
21 give us a report on whether it is in
22 compliance with the appropriate building
23 codes and the fire code.

24 And we will also make a request of
25 the tax assessor to advise us of what the

1 Zoning Board of Appeals - 5/22/2008
2 difference, if any, in the back taxes
3 would have been in the structure before
4 and after the proposed addition which is a
5 significant addition. And we will wait
6 until we get that information, and we will
7 take up the application again at that
8 time.

9 MR. TWYNE: All right.

10 MR. SHARMA: Procedurally
11 whenever cases like this where they are
12 legalizing something that was constructed
13 previously, we treat it like a new project
14 all together. As a matter of fact, after
15 getting the variance I will issue a
16 building permit and do the inspection and
17 give the property a CO after everything.

18 CHAIRMAN MURPHY: That's
19 right. They need to pay the appropriate
20 fee for that activity.

21 MR. SHARMA: But the house
22 has to comply with the building codes.
23 That happens in the process when you issue
24 the permit and go and do the inspection.
25 Nothing happens all at one time.

1 Zoning Board of Appeals - 5/22/2008

2 MS. STECICH: This is not
3 an unusual situation.

4 CHAIRMAN MURPHY: They have
5 already built the structure. They don't
6 need a permit, but the board wants your
7 report, having conducted an inspection to
8 make sure that whatever has been built is
9 in compliance with the appropriate
10 building code or, if not, advise us what
11 the problems there might be.

12 MR. SHARMA: All right.

13 CHAIRMAN MURPHY: Thank
14 you, Mr. Twyne. Thank you. Okay. Our
15 next case is Robert Barsky for
16 reconstruction of a garage at 134 Elm
17 Place.

18 MR. BARSKY: Okay,
19 gentlemen, I see you have the paperwork
20 that I submitted.

21 CHAIRMAN MURPHY: State
22 your name, please.

23 MR. BARSKY: Yes, Robert
24 Barsky.

25 CHAIRMAN MURPHY: Good

1 Zoning Board of Appeals - 5/22/2008

2 evening, Mr. Barsky.

3 MR. BARSKY: Good evening.

4 CHAIRMAN MURPHY: The
5 protocol here is you just tell us kind of
6 what you are doing and what the plans are
7 for the garage, why you had to take it
8 down, what you are going to do to replace
9 it.

10 MR. BARSKY: Right. So we
11 purchased the home 13 years ago, and it is
12 a 1908 colonial. It has a garage, a frame
13 garage, nothing fancy, but that was built
14 in 1957. And the home borders on the
15 aqueduct, so there is a stone wall. And
16 then on the other side of the stone wall
17 on our property is the garage -- was the
18 garage. So that was okay.

19 The garage had some historical
20 issues before we -- legacy issues of some
21 infestations of termites and carpenter
22 ants and things that we tried to correct
23 over the years. And then last summer
24 there was a tremendous amount of rain, and
25 apparently there was an enormous quantity

1 Zoning Board of Appeals - 5/22/2008
2 of water that collected on the aqueduct
3 right behind the garage structure. And I
4 didn't know it at the time, but at some
5 point my wall had washed out and so --

6 CHAIRMAN MURPHY: The wall
7 of the garage?

8 MR. BARSKY: No, the rock
9 wall had washed out. And I couldn't see
10 it because it was behind the garage. And
11 so the garage received a fair amount of
12 water, not standing water that I observed,
13 but enough to -- so you can see the water
14 line on the outside of the garage. And so
15 the structure was rotting in the back.
16 And on the side and the garage door itself
17 also was rotting that was on the other
18 side.

19 So it got to the point where I felt
20 I needed to make substantial repairs. As
21 we were beginning to make those repairs, I
22 felt that the building was unsafe and so I
23 had it dismantled, not realizing if I had
24 left one wall standing that I could have
25 not had to go through a process. But

1 Zoning Board of Appeals - 5/22/2008

2 there was a whole foundation and footings
3 and all that which I left exactly the
4 same, so I didn't realize it.

5 In any case, I took it down and now
6 I would like to just reconstruct the exact
7 building with the same exact appearance,
8 because it really is a part of the
9 neighborhood. And I think it went well
10 with the home and it was useful. It is
11 along the aqueduct. Okay.

12 So it happened that the structure
13 when it was built was not too far from the
14 property line, but it is in the corner of
15 the property. It is 100 by 100 property.
16 So on -- the garage had been on the
17 southeast corner, and the south side
18 borders on the backyard of another home
19 that is on Villard. And the east side
20 borders right on the aqueduct. Needless
21 to say, I have repaired the rock wall
22 already.

23 CHAIRMAN MURPHY: All
24 right. On the plans that you proposed, it
25 looks like the dimensions are roughly 20

1 Zoning Board of Appeals - 5/22/2008
2 feet 3 inches by 16 feet. That's the area
3 of the --

4 MR. BARSKY: That sounds
5 right. It is identical to the previous
6 structure.

7 CHAIRMAN MURPHY: Identical
8 in size, identical in location.

9 MR. BARSKY: Exactly. It is
10 on the same -- the whole foundation is
11 still intact, the original foundation. So
12 all I did, I didn't change that at all.
13 What I did was I replaced some of the
14 cinder blocks that had become saturated,
15 and then I added some cinder blocks so
16 that the next time that this water
17 wouldn't happen.

18 CHAIRMAN MURPHY: You are
19 not altering the height of the garage?

20 MR. BARSKY: No. Exactly
21 the same.

22 CHAIRMAN MURPHY: The only
23 thing I was looking for was a height
24 dimension, just so we have it in the
25 record.

1 Zoning Board of Appeals - 5/22/2008

2 MR. LEAF: We probably have
3 it in here.

4 MR. DOVELL: 12.10 and a
5 half.

6 MR. BARSKY: I'm sure that
7 is in compliance.

8 CHAIRMAN MURPHY: For the
9 record, the drawings provided in drawing
10 A-4, the proposed height of the
11 replacement garage will be 12 feet 10 and
12 a half inches, to the peak of the roof.

13 MR. BARSKY: That's correct,
14 which should be identical to the one that
15 was there before.

16 CHAIRMAN MURPHY: Okay.
17 Essentially this is to replace a 15 plus
18 year old garage and put it back into a
19 safe and appropriate condition for storing
20 the cars.

21 MR. BARSKY: Exactly. Still
22 matching the house. The asbestos shingles
23 are no longer available, but the exact
24 same shingles without the asbestos are
25 available, the same color, same structure,

1 Zoning Board of Appeals - 5/22/2008
2 just a lot of money to put into it to
3 preserve the look and feel. But I feel
4 that it was worth it because it was an
5 attractive structure before. I have a
6 picture there.

7 CHAIRMAN MURPHY: Yes, we
8 have that. You intend to continue using
9 it to store your cars and other stuff?

10 MR. BARSKY: Yes, it is
11 large enough for one car. I probably
12 won't store as many things as I had in it
13 before, but at least a bicycle and some
14 garden tools.

15 CHAIRMAN MURPHY: All
16 right. Do any of the board members have
17 any other questions for Mr. Barsky?

18 MR. LEAF: Have there been
19 any comments from your neighbor to the
20 south?

21 MR. BARSKY: No comments
22 from my neighbor to the south. I -- the
23 neighborhood is represented by Arthur
24 Lowenstein who is a close friend and
25 resident on the street. And one of my

1 Zoning Board of Appeals - 5/22/2008
2 neighbors expressed his support and said
3 he might have been able to come tonight.
4 But I have not spoken with my neighbor to
5 the south, but we have a friendly
6 relationship. And no, not had any
7 feedback from her.

8 MR. LEAF: Thank you.

9 CHAIRMAN MURPHY: All
10 right. I note on the application that the
11 lot area coverage is increasing from 17
12 percent to 20 percent. 30 percent is
13 permitted in that district so that is not
14 an issue. I would say, Mr. Barsky -- you
15 can do this perhaps with Mr. Sharma
16 afterwards -- your application actually
17 wasn't signed properly or it wasn't signed
18 at all, at least the copy I got. So if
19 you could attend to that detail, I would
20 appreciate it.

21 MR. BARSKY: Of course. I
22 did have the applications, were notarized
23 here in the building department. But I
24 apologize if I missed something.

25 CHAIRMAN MURPHY: At least

1 Zoning Board of Appeals - 5/22/2008
2 on my copy, Mr. Sharma, I have a blank
3 page.

4 MR. SHARMA: I guess we
5 missed that.

6 MR. BARSKY: I'm sure I have
7 a signed version.

8 MR. SHARMA: Yes.

9 MR. BARSKY: All the ones
10 you have are unsigned?

11 MR. SHARMA: Yes. This one
12 is also unsigned. Obviously we all missed
13 it. My office is supposed to check all
14 these things. I will get it signed and a
15 notarized copy from him later.

16 MR. BARSKY: Let me check.
17 I'm positive that I signed a copy.

18 CHAIRMAN MURPHY: All
19 right. Take your time. While you are
20 looking for that, are we -- is the board
21 prepared to vote?

22 MR. FORBES-WATKINS: I move
23 to approve the side yard for accessory
24 structure previously --

25 CHAIRMAN MURPHY: Let me

1 Zoning Board of Appeals - 5/22/2008
2 interrupt you. Any comments from the
3 audience or the neighbors?

4 MR. LOWENSTEIN: Thanks for
5 taking this tonight. My name is Art
6 Lowenstein. I've been a resident on Elm
7 Place for 15 years. The garage as you
8 drive up the block is not even visible.
9 The footprint of the house essentially
10 blocks out the view of the garage. It is
11 something that is -- you know, I doubt
12 that there are very many people in
13 Hastings who going up and down the
14 aqueduct would not have noticed it as, you
15 know, being as much a part of the
16 environment as the trees surrounding it.
17 So you know, I certainly have absolutely
18 no objection, and I would be very happy to
19 see a proper structure put back in its
20 place.

21 CHAIRMAN MURPHY: Thank
22 you, Mr. Lowenstein. I appreciate it.

23 MR. DEITZ: Mr. Lowenstein,
24 what is your address?

25 MR. LOWENSTEIN: 11 Elm.

1 Zoning Board of Appeals - 5/22/2008

2 MR. SHARMA: Mr. Chairman,
3 Mr. Barsky can sign and Marianne can
4 notarize it.

5 CHAIRMAN MURPHY: Sure.

6 MR. BARSKY: Thank you.

7 CHAIRMAN MURPHY: Any other
8 comments from the audience on the Barsky
9 application? Let's try again.

10 MR. FORBES-WATKINS: With
11 respect to case 12-8, I move for approval
12 of reconstruction of a garage on its
13 previous lawful existing but nonconforming
14 footprint, a side yard for an accessory
15 structure previously an existing --
16 previously existing and proposed 1.7 feet
17 required 8 feet, and rear yard for
18 accessory structure previously existing
19 and proposed 2.1 feet, required 8 feet.

20 CHAIRMAN MURPHY: Do I have
21 a second for that motion?

22 MR. DEITZ: I'll second.

23 CHAIRMAN MURPHY: All in
24 favor. Aye.

25 MR. DEITZ: Aye.

1 Zoning Board of Appeals - 5/22/2008

2 MR. DOVELL: Aye.

3 MR. LEAF: Aye.

4 CHAIRMAN MURPHY: Vote is

5 unanimous. Thank you, Mr. Barsky.

6 Appreciate it.

7 CHAIRMAN MURPHY: All

8 right. Our third and final case tonight

9 is the application of the Goulets for

10 approval of an addition at 155 Southside.

11 Miss Griffin will be presenting for the

12 applicant.

13 MS. STECICH: On this

14 application it was before the planning

15 board, and they recommended view

16 preservation be approved.

17 CHAIRMAN MURPHY: Thank

18 you, Marianne.

19 MS. GRIFFIN: Good evening.

20 I'm Christine Griffin, the architect

21 representing Annie and Gwenael Goulet. We

22 are planning to extend the front of the

23 restaurant, and this is necessary because

24 the restaurant is actually downscaling.

25 They are going to be eliminating the

1 Zoning Board of Appeals - 5/22/2008
2 room -- their lease will be terminated
3 for the room that they were renting
4 next-door. And the restaurant will now be
5 a small bistro.

6 Because the toilets were in that
7 other building, we need to build new
8 toilets in the small bistro, and we have
9 found that the only way to provide a
10 handicapped toilet which is required by
11 New York State code is to build this
12 little toilet area in the front. We
13 started the project by meeting with Erica
14 Krieger.

15 CHAIRMAN MURPHY: We can't
16 see that one. If you could put it on the
17 other easel, that would be great.

18 MS. GRIFFIN: We will start
19 with this one. This is the extension we
20 are talking about. The restaurant
21 formerly had another room with two
22 toilets. We now need to create new toilet
23 space. The Westchester Health Department
24 requires two toilets. And while they
25 actually originally required separate male

1 Zoning Board of Appeals - 5/22/2008
2 and female, but they are going to accept
3 two unisex toilets, because by New York
4 State code we need a handicapped toilet
5 and it can't be -- we can't give
6 preferential treatment. So now that the
7 restaurant is so tiny, the only way to add
8 this handicapped toilet is to come in
9 front, so that we don't remove any more
10 table space and also so that we don't
11 interfere with the bar. The bar is a very
12 beautiful piece. It's been there for many
13 years. It is original to the building.

14 We met with Erica Krieger and Deven
15 Sharma. It was our first meeting because
16 we wanted to see if there was a way to get
17 a variance or do something to avoid the
18 handicapped toilet. New York State does
19 not give variances for that. So this is
20 the solution we have come up with.

21 And to make this work and to keep
22 the bar, we would like to extend a bay
23 that is about 20 feet 9 inches long and
24 this will come right up to the property
25 line. And because this isn't a view

1 Zoning Board of Appeals - 5/22/2008
2 preservation district, we went to the
3 planning board and now we are here to ask
4 for your approval for doing this.

5 This is an elevation of the new
6 facade. Although the toilet is here to
7 get access into it, we had to bring --
8 have some space in front of it. Then we
9 decided to recreate the large window that
10 they have. This addition is 3 feet 8 from
11 this wall. And it actually is 1 foot 8
12 from the second floor. This dash line
13 shows an overhang. Right currently the
14 second floor overhangs the first floor.
15 And although this is an elevation showing
16 an awning, under that awning we were
17 planning to have a traditional cornice
18 with brackets and transit windows, a
19 traditional storefront facade.

20 Now here are photographs, and I'd
21 just like to hand out a little bit more
22 information. I did a little 3-D sketch to
23 help visualize three dimensionally how the
24 building fits in here. We also took four
25 more photographs in response to comments

1 Zoning Board of Appeals - 5/22/2008
2 from the planning board. They were asking
3 questions about a few views that we didn't
4 have, and I'd like to hand that out so you
5 can see it close-up. I don't know if you
6 can see it from here.

7 This is an enlargement of the tax
8 map, 155 Southside, Buffet De la Gare,
9 this building in pink here. We took
10 photographs looking down the street going
11 around and looking up. Even though the
12 river is west, we are taking views that
13 show how the addition affects the view
14 looking out the buildings, because we
15 can't take pictures looking at the river.

16 But starting with this photograph
17 looking down the sidewalk, photograph A is
18 looking straight down the sidewalk, and we
19 have shown a profile of the building.
20 But, of course, in that view it is not
21 affecting the river. And then B is
22 slightly at an angle, and as you keep
23 going down C is right in front of the
24 building. D is up and then looking up the
25 other way. So I hope that these

1 Zoning Board of Appeals - 5/22/2008
2 photographs help you with a profile, show
3 you how the building fits, the addition
4 would be fitting on the building. This
5 addition will not be coming out any
6 further than the building to the right.
7 And on this drawing you can see the
8 building to the right.

9 CHAIRMAN MURPHY: We can't
10 see it there. Sorry.

11 MS. GRIFFIN: G is looking
12 up. Okay. If you look at photograph H,
13 this photograph is looking straight down
14 the street. And there is a profile of
15 where the -- approximately where the
16 addition will be. And then we took -- we
17 were asked to take a look at the planning
18 board meeting the view from the building
19 next-door. This is looking straight down
20 the street. And then J is a view right at
21 the window next-door, and we have a piece
22 of wood here in the photograph. That is
23 exactly where the addition will be. And
24 we did this to show that you can get a
25 little view of the top of the Palisades,

1 Zoning Board of Appeals - 5/22/2008
2 but that is still to the right of the
3 addition.

4 The next photograph we did K. This
5 is not easy to see but this is actually
6 looking out from I think it is 157
7 Southside, the window in the building. It
8 is an obscured glass. You can see out a
9 little bit of it. You can see that you
10 can see a piece of the original awning.
11 And we have a board up where the addition
12 is. You just can't see it in this view.

13 And the last photograph L is
14 showing the street looking down from the
15 buffet, because I wanted to show how this
16 is not the only building that projects
17 out. The building next-door we planned
18 not to come any further than the building
19 next-door, and then the Maude's tavern has
20 a two-story porch that comes out. On our
21 floor plan I have shown indicated the size
22 of the sidewalk. With the addition, we
23 would have 8 feet 2 inches of sidewalk.
24 At the building next door it sort of
25 angles, and it becomes 9 feet 4. And down

1 Zoning Board of Appeals - 5/22/2008
2 at Maude's tavern the sidewalk is 5 feet 4
3 up to the edge of the ramp. This is
4 actually in response to planning board
5 questions in case you would like to know.

6 CHAIRMAN MURPHY: Right.
7 Okay. And no variances are required, even
8 though they are coming out into the
9 sidewalk a little bit, right. So it is
10 purely a view preservation question. I
11 appreciate the photographs. They
12 certainly help me a lot. I honestly don't
13 have really any questions. It seems
14 pretty straightforward there. The need is
15 there with the state mandates and the
16 toilets required for the restaurant. The
17 impact on the view is almost nonexistent
18 from a practical point of view. I think
19 the south or southwest is arguable whether
20 there is any impact at all on the view, as
21 far as I see it. Any questions or
22 comments from the board members?

23 MR. DOVELL: You are
24 building right to the front lot line?

25 MS. GRIFFIN: Yes.

1 Zoning Board of Appeals - 5/22/2008

2 MR. DOVELL: I was just
3 curious. That is going to make you
4 commensurate with the building to the
5 right but not with the building to the
6 left and the ones up the street, so those
7 buildings must not be built to their lot
8 lines.

9 MS. GRIFFIN: I think so.

10 MR. DOVELL: I think it is
11 quite nicely done. I think it is in
12 character and I think it is in scale. I
13 have just one minor question. You are
14 showing some windows sweeping out over the
15 lot line.

16 MS. GRIFFIN: We are
17 abandoning that idea.

18 MS. STECICH: It was a
19 condition at the planning board, that it
20 was also before the planning board for
21 site plan approval. And one of their
22 conditions was that the windows had to
23 open in. If they were going to be
24 opening, they had to be opening in.

25 MS. GRIFFIN: Yes, that's

1 Zoning Board of Appeals - 5/22/2008

2 fine.

3 CHAIRMAN MURPHY: But that
4 is not something for us to make, right?

5 MS. STECICH: No.

6 CHAIRMAN MURPHY: All
7 right. David, Marc, anything else?

8 MR. FORBES-WATKINS: No.

9 CHAIRMAN MURPHY: Anyone
10 from the audience wish to comment in favor
11 or against the application? Seeing none,
12 unless there are other comments or
13 questions from the board, I'm happy to
14 take a motion for this application for
15 approval of the view preservation.

16 MR. FORBES-WATKINS: I'll
17 move with respect to case No. 13-08, 155
18 Southside Avenue, I move approval for
19 construction in a view preservation
20 district.

21 MR. LEAF: Second.

22 CHAIRMAN MURPHY: All in
23 favor? Aye.

24 MR. DEITZ: Aye.

25 MR. DOVELL: Aye.

1 Zoning Board of Appeals - 5/22/2008

2 MR. LEAF: Aye.

3 CHAIRMAN MURPHY: The vote
4 is unanimous. Congratulations. Good luck
5 with it. Thank you.

6 CHAIRMAN MURPHY: That ends
7 our consideration of cases tonight.
8 Counsel has prepared for us for, I guess,
9 a recommendation to be made to the board
10 of trustees on some amendments to the
11 local zoning code and, Marianne, why don't
12 I have you introduce that to the board
13 members and then we can discuss it.

14 MS. STECICH: Just the
15 overall is there were actually four sets
16 of amendments presented to the board of
17 trustees all to implement the state
18 building code. The state building code is
19 the building code for the village, but it
20 does not have enforcement mechanisms. And
21 the department recently told all the guys
22 in the state you better come up with
23 mechanisms and did a model code. We have
24 some of them in the code, but not others.
25 So I need to go through different sections

1 Zoning Board of Appeals - 5/22/2008
2 in the code and integrate the provisions
3 that need to be in there. Some of them
4 are in the building construction section
5 which are irrelevant to you. Some are in
6 the fire safety section which are not
7 relevant to you.

8 But any amendment to the zoning
9 code has to go past the planning board and
10 the zoning board. So these changes were
11 the changes in the zoning code so they
12 have to be reviewed by you. There is
13 really ten points I need to highlight
14 without going through every page because a
15 lot of them are a repetition of the same
16 thing.

17 And the first change, it is shown
18 in section 1 (B)(1) on the first page. It
19 is reflected many times throughout this
20 amendment. But it is to provide for
21 certificates of completion, because right
22 now if there is a building permit, you
23 close it out with a certificate of
24 occupancy.

25 Sometimes a certificate of

1 Zoning Board of Appeals - 5/22/2008
2 occupancy doesn't make sense. If somebody
3 puts up a stone wall, they are not going
4 to be occupying the stone wall. So a
5 certificate of completion makes more
6 sense. So we never had it in the code.
7 They used CO and it was a discussion with
8 Deven why don't we add a certificate of
9 completion, so that's why.

10 CHAIRMAN MURPHY: I'm
11 curious. Does that mean if you do --
12 let's say you build a new addition with a
13 bathroom and bedroom. Do you need a
14 certificate of completion and a
15 certificate of occupancy?

16 MS. STECICH: No. Then you
17 would need a certificate of occupancy. A
18 certificate of completion is for something
19 you don't occupy.

20 CHAIRMAN MURPHY: Right.

21 MS. STECICH: All right.
22 Then go to page 2 to 2-C, that's the
23 paragraph in italics. What is in italics
24 is new. It says the obvious, that you
25 can't get a building permit, a certificate

1 Zoning Board of Appeals - 5/22/2008
2 of completion or certificate of occupancy
3 unless it is in substantial conformance
4 with the State Uniform Fire Prevention
5 Building Code and the State Energy
6 Conservation Construction Code. That is
7 actually new; the State Energy
8 Conservation is new.

9 MR. LEAF: Is that currently
10 a binding --

11 MS. STECICH: Yes.

12 MR. LEAF: Is that statute
13 binding as opposed to a recommendation?

14 MS. STECICH: Those are
15 binding; you have to. So this is not what
16 makes it binding. It is just saying you
17 are not going to get it until you comply.
18 At the bottom of the page another change
19 made several times. Instead of five
20 copies of everything, only three copies,
21 so we are being green in that respect.

22 MR. FORBES-WATKINS: Save a
23 tree.

24 MS. STECICH: Exactly. The
25 top of page 3, that new section 5 also

1 Zoning Board of Appeals - 5/22/2008
2 states the obvious, that all applications
3 for building permits shall be accompanied
4 by three sets of construction plans that
5 define the scope of the proposed work. It
6 is actually required, but believe it or
7 not it is not listed as one of the things
8 that has to be submitted with the building
9 permit. It didn't make any sense.

10 CHAIRMAN MURPHY: We always
11 required that.

12 MS. STECICH: It would make
13 sense that you would submit it. And then
14 I suppose it went to the building
15 department and they weren't there. So
16 they said, "Oh, wait a minute. You need
17 construction plans." But just none of
18 this is monumental, believe me. The most
19 monumental is the certificate of
20 completion and reducing to three copies.

21 All right. Page 4, section 11,
22 Paragraph 3, that is a new provision, that
23 the building department has to be notified
24 if they make any changes during
25 construction. If they are out there and

1 Zoning Board of Appeals - 5/22/2008
2 there are some changes, they have to
3 notify the building department. Then the
4 next paragraph requires the applicant to
5 maintain a set of documents at the work
6 site so it is available.

7 CHAIRMAN MURPHY: I have a
8 question about the language of the
9 changes. Is it changes to the
10 construction plans or is it meant to be
11 more than that, basically any change to
12 anything? I was just curious.

13 MS. STECICH: What else
14 would there be a change to? It has to be
15 in compliance with the building plans, and
16 I guess if you make any changes, can you
17 think of another change that wouldn't be a
18 change in the building code?

19 CHAIRMAN MURPHY: No,
20 that's how I would read it.

21 MS. STECICH: Yes. A
22 change in the work you are doing.

23 CHAIRMAN MURPHY: Okay.

24 MS. STECICH: Paragraph --
25 I mean page 5, actually on Section 15 in

1 Zoning Board of Appeals - 5/22/2008
2 the middle there, one of the planning
3 board members made a suggestion that I
4 think is a good idea, and I'm going to
5 recommend it to the planning board right
6 now. It says that if the building
7 inspector determines that a building
8 permit was issued in error because of
9 incorrect, inaccurate or incomplete
10 information, or that the work for which a
11 building permit was issued violates the
12 code, the building inspector shall revoke
13 the permit. This is pretty limiting to
14 say it is issued in error because of
15 incorrect, inaccurate or incomplete
16 information. So the language -- the idea
17 they suggested and the language I thought
18 would be is if a building permit was
19 issued in error or that it was issued on
20 the basis of incorrect, inaccurate or
21 incomplete information. That's two
22 different things, because the building
23 inspector could -- not Deven but another
24 building inspector might read the code
25 wrong and then somebody points this out.

1 Zoning Board of Appeals - 5/22/2008

2 So this just broadens it.

3 The bottom of the page, Section
4 17, makes provision for construction
5 inspections and a lot of detail. I mean,
6 again, most of the stuff probably isn't
7 new, but it becomes clear to the applicant
8 at which point all of the inspections will
9 be done and notifications have to be
10 given.

11 And then jump to page 7 on this
12 provision for stop work orders, again, we
13 have stop work orders but it has never
14 really detailed how they are granted, in
15 what situations they are granted, and this
16 spells that out for the protection of the
17 village and the builders.

18 CHAIRMAN MURPHY: I'm just
19 curious, Marianne, what do we have now
20 about stop work orders? Just does it say
21 anything?

22 MS. STECICH: There are
23 some general provisions, but it is just
24 not that clear. So if the -- pretty much
25 if they are doing work that is not in

1 Zoning Board of Appeals - 5/22/2008
2 compliance with the approved plans, the
3 building inspectors can go out.

4 MR. SHARMA: There would be
5 a number of reasons why we would feel the
6 work should be stopped until we clarify
7 some things or something is not happening,
8 until we figure out how to do it, and
9 proceeding with the work might be harmful
10 in some form or another. So we can issue
11 what we believe is an informal written
12 stop order.

13 CHAIRMAN MURPHY: This just
14 formalizes it and puts the guidance in the
15 code.

16 MS. STECICH: Yes. It is
17 there, but it's just -- it is there and
18 certainly it is an inherent power, but
19 this just clarifies it. It specifies that
20 it has to be in writing. It specifies who
21 the stop work order goes to besides just
22 going out to the site and let the building
23 owner know because often the property
24 owner might not be at the site.

25 CHAIRMAN MURPHY: Right.

1 Zoning Board of Appeals - 5/22/2008

2 MS. STECICH: Then starting
3 on page 8, what I referred to before is
4 the provision for a certificate of
5 completion. And before the meeting Marc
6 pointed out -- and although he is the
7 second person to point out because one of
8 the planning board members also picked up
9 on it -- several points in Paragraph 2, 3
10 and 4 -- no, 2, 3 and 4, it refers to a
11 certificate of compliance. We have to
12 change that to certificate of completion,
13 so that is really just a typo which I will
14 correct. Then these other changes we just
15 provided for the certificate of
16 completion.

17 Then go to page 10, at the bottom,
18 there is a little bit more specification
19 about temporary certificates of occupancy.
20 They are provided under the existing code,
21 but the new language, what is in italics,
22 says that a temporary certificate of
23 occupancy can't be issued unless the
24 building inspector determines first that
25 the building or structure can be occupied

1 Zoning Board of Appeals - 5/22/2008
2 safely, that any fire protection equipment
3 that has been installed is operational and
4 that all required means of egress from the
5 building and structure have been provided.

6 At the moment the building
7 inspector wouldn't give a temporary CO in
8 the absence of those requirements, but
9 this clarifies it. And in Paragraph 7 if
10 it is issued in error, it can be revoked.
11 And that's it.

12 And so your job would be to
13 recommend or not recommend them to the
14 board of trustees. It was actually up on
15 the agenda for last Tuesday's board of
16 trustees meeting, and they deferred the
17 vote on it until they got the
18 recommendation of the ZPA.

19 MR. LEAF: The change made
20 to section 15 on page 5, where it
21 previously would say if issued in error
22 because of incorrect, inaccurate or
23 incomplete information, and then this
24 becomes issued in error or on the basis of
25 incorrect, incomplete or inaccurate

1 Zoning Board of Appeals - 5/22/2008
2 information. I guess I'm concerned that a
3 building inspector, not Deven, could make
4 an error that was not as a result of
5 incorrect or inaccurate or incomplete
6 information and that therefore no one
7 could ever rely on a building permit as
8 being dispositive, because anyone could go
9 and challenge it after the fact and say,
10 Well, go back and determine that it is in
11 accordance with these codes.

12 Is there a limit, a time limit,
13 after which you can no longer object to a
14 building permit? For instance, after the
15 CO was actually issued. At that point --

16 MS. STECICH: Oh, yes,
17 sure. After the CO is issued, the
18 building permit just doesn't exist, once
19 you have a CO.

20 MR. LEAF: You can't revoke
21 or suspend the building permit after the
22 CO has been issued?

23 MS. STECICH: No.

24 MR. SHARMA: The building
25 permit ceases to exist after the CO.

1 Zoning Board of Appeals - 5/22/2008

2 MS. STECICH: You wouldn't
3 be able to. Right.

4 MR. LEAF: It is clear the
5 CO can't be revoked because someone
6 determines that the building permit was
7 issued in error?

8 MS. STECICH: You'd have
9 some real issues. This is -- yes, because
10 it is already in there, right. I mean,
11 this is -- if it is discovered, if there
12 is an error during the course of the
13 building, I mean, that could happen. I
14 mean, it could be harmful. You know, it
15 could be prejudicial. But if it is a
16 mistake, it's a mistake. But once the
17 certificate of occupancy is issued, there
18 is no more building permit.

19 MR. SHARMA: Exactly. The
20 building permit is closed.

21 MS. STECICH: It closes it
22 out, the CO. That's why I was talking
23 about the certificate of completion. The
24 certificate of completion and the
25 certificate of occupancy closes out the

1 Zoning Board of Appeals - 5/22/2008
2 building permit. It doesn't exist any
3 more.

4 MR. SHARMA: There could be
5 a similar provision, though. I wonder if
6 I read someplace that CO can also be
7 revoked on a similar basis, if they got
8 issued in error.

9 MS. STECICH: No.

10 MR. LEAF: Whether it is
11 being revoked because the applicant failed
12 to disclose things or the applicant did
13 nothing wrong at all but the building
14 inspector found something.

15 MR. SHARMA: Yes, that's
16 possible. I know we don't have the
17 provision, but this provision could very
18 well be there too, the revocation of COs,
19 for any number of reasons.

20 MS. STECICH: It doesn't.
21 So let's --

22 MR. DOVELL: Who determines
23 whether it is a certificate of completion
24 or a certificate of occupancy? How is
25 that determination made, based on the

1 Zoning Board of Appeals - 5/22/2008

2 nature of the work? That's all you --

3 MR. SHARMA: We do all the
4 inspections and the final inspection. And
5 as long as we satisfy ourselves that the
6 work has been completed as permitted and
7 as we say it and it complies with the code
8 and we are satisfied, that is when we
9 recommend the issuance of the CO by the
10 management.

11 MS. STECICH: I think the
12 question was who decides whether it is a
13 certificate of occupancy or certificate of
14 completion.

15 MR. SHARMA: Oh, I guess my
16 office does. For example, if somebody
17 takes out a permit to do a roof repair, so
18 that's more like a completion rather than
19 a certificate of occupancy, or a retaining
20 wall or things like that.

21 MR. DOVELL: But moving a
22 partition in your house, for example, that
23 doesn't affect -- it is not creating a new
24 room. It is making one room smaller or
25 larger. Is that a certificate of

1 Zoning Board of Appeals - 5/22/2008

2 occupancy?

3 MR. SHARMA: Theoretically
4 we haven't imposed it. We haven't
5 enforced it. During certain kinds of
6 construction, there should really be no
7 occupancy of the space while that is
8 happening, which that is pretty much
9 completion is the same thing. You can
10 occupy and use that space.

11 So we do use certificate of
12 occupancy where there is after the work
13 has been completed. People can move in
14 and begin to indulge in their daily
15 activities. But permits for wall
16 construction, retaining wall, that needs
17 permits, demolition permit, for that.
18 After a demolition there is no certificate
19 of occupancy. It is certificate of
20 completion. So yes.

21 MR. DOVELL: I can see a lot
22 of gray areas in the enforcement of this.

23 MR. SHARMA: But the final
24 result is the same. It is closing out.

25 MR. DOVELL: The result is

1 Zoning Board of Appeals - 5/22/2008

2 the same.

3 MR. SHARMA: It is closing
4 out the permit. The permit is issued.
5 And the certificate of occupancy or
6 completion, the permit is closed.

7 CHAIRMAN MURPHY: Anything
8 else from any of the board members, in
9 terms of recommending these proposed
10 changes so artfully drafted by counsel?
11 All right. I'll take a motion if the
12 board is ready to make a motion on these
13 amended changes to the zoning code.

14 MR. FORBES-WATKINS: I'll
15 move we recommend these amended changes to
16 the building code.

17 CHAIRMAN MURPHY: Second?

18 MR. LEAF: Second.

19 CHAIRMAN MURPHY: All in
20 favor. Aye.

21 MR. DOVELL: Aye.

22 MR. DEITZ: Aye.

23 CHAIRMAN MURPHY: We have
24 voted unanimously recommending the
25 building changes to the zoning code to the

1 Zoning Board of Appeals - 5/22/2008

2 board of trustees.

3 And finally we have what were
4 fairly short minutes from last month's
5 meeting from the April 24, 2008 meeting.
6 And the board members have had a chance to
7 read through those. If I could have a
8 motion to approve the minutes from the
9 April 24, 2008 meeting.

10 MR. LEAF: I wasn't at the
11 meeting but --

12 CHAIRMAN MURPHY: That's
13 right. Well, we have -- we only have two
14 of us here.

15 MS. STECICH: Only two of
16 you were here? Then you have to wait
17 until the next meeting.

18 MR. FORBES-WATKINS: I will
19 adopt approval of the minutes.

20 MS. STECICH: It is not
21 enough. We don't have enough people to
22 vote on it.

23 CHAIRMAN MURPHY: We need
24 at least three.

25 MR. LEAF: It says here on

1 Zoning Board of Appeals - 5/22/2008
2 the caption that I was present, but I was
3 not present.

4 MS. STECICH: All right.
5 That's a correction.

6 MR. LEAF: That's a
7 correction to be made.

8 MS. STECICH: So remember
9 the next time you vote you can make that
10 change.

11 CHAIRMAN MURPHY: Wait a
12 minute. Let's see. Marc wasn't here.
13 Stan is not here. David, you were here.
14 So we have myself, David and Ray.

15 MR. FORBES-WATKINS: Yes.

16 CHAIRMAN MURPHY: Can three
17 of us --

18 MS. STECICH: Oh, three can
19 vote. If there are three of you, sure.

20 MR. FORBES-WATKINS: I vote
21 we approve the minutes as written.

22 CHAIRMAN MURPHY: Ray,
23 would you like to second that?

24 MR. DOVELL: I'll second.

25 CHAIRMAN MURPHY: All in

1 Zoning Board of Appeals - 5/22/2008

2 favor?

3 MR. DOVELL: Aye.

4 CHAIRMAN MURPHY: Aye.

5 MR. FORBES-WATKINS: Aye.

6 CHAIRMAN MURPHY: The vote

7 is unanimous. The minutes are approved.

8 Meeting is adjourned.

9 MR. DOVELL: Do we have the

10 next meeting?

11 MR. FORBES-WATKINS: Did we

12 determine the September date?

13 MS. STECICH: June 26.

14 CHAIRMAN MURPHY: The next

15 meeting of the zoning board of appeals

16 would be Thursday, June 26 at 8 p.m.

17 MR. FORBES-WATKINS: Did we

18 determine a September date for the end of

19 summer early fall date? That was hanging

20 from the minutes of the last meeting.

21 CHAIRMAN MURPHY: Deven,

22 who decides that?

23 MR. SHARMA: I think the

24 board decides that.

25 MS. STECICH: The board can

1 Zoning Board of Appeals - 5/22/2008

2 decide that.

3 CHAIRMAN MURPHY: Well, we
4 have a meeting in June and July, right,
5 and usually we skip August and we do it
6 early September.

7 MS. STECICH: So it should
8 be the second Thursday, the fourth or the
9 eleventh.

10 CHAIRMAN MURPHY: I would
11 suggest we do it on the 11th, Thursday,
12 September 11. Is that okay if the members
13 have their calendars? I guess, David,
14 this won't affect you.

15 All right. So the meeting
16 we will not have a meeting in August.
17 After the summer our first meeting will be
18 Thursday, September 11, 2008. That's it.

19 MR. SHARMA: Thank you.

20 (Hearing adjourned at 9:30 p.m.)

21

22

23

24

25

1

2 STATE OF NEW YORK)

3) ss

4 COUNTY OF WESTCHESTER)

5

6

7 I, Nina Purcell, Notary Public within and
8 for the State of New York, do hereby certify:

9

10 That I reported the proceedings in the
11 within entitled matter, and that the within
12 transcript is a true record of said
13 proceedings.

14

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

19

20 IN WITNESS WHEREOF, I have hereunto
21 set my hand this 3rd day of June, 2008.

22

23 NINA PURCELL,
24 NOTARY PUBLIC

24

25

