

1 ZONING BOARD MEETING - OCTOBER 23, 2008

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3 VILLAGE OF HASTINGS-ON-HUDSON

4 ZONING BOARD OF APPEALS MEETING

5 SEVEN MAPLE AVENUE

6 HASTINGS-ON-HUDSON, NEW YORK 10706-1497

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8 Held October 23, 2008 at 8:05 p.m.

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10 BOARD MEMBERS PRESENT:

11 Brian Murphy, Chairman

12 Stan Pycior, Deputy Chairman

13 David Forbes-Watkins, Member

14 Ray H. Dovell, Jr., Member

15 Marc Leaf, Alternate

16 Matthew Collins, Alternate

17 Marianne Stecich, Board Counsel

18 Deven Sharma, Building Inspector

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2 CHAIRMAN MURPHY: Good evening,
3 everybody. We are here at the October 23,
4 2008 zoning board of appeals meeting for the
5 town of Hastings-on-Hudson. We have four
6 cases on the agenda tonight. The first case
7 was adjourned from our last meeting. It is
8 the case of Metro PCS, case number 18-08 for
9 view preservation approval for wireless
10 antenna on the municipal building.

11 The second case, number 19-08, Mark and
12 Harriet Rubin, 2 Zinsser Way, to cover and
13 screen a permitted porch and deck.

14 The third case is case number 20-08,
15 Johannes Boeckmann and Anne Chiang, 351 and
16 349 Warburton, for repair and construction of
17 the new retaining wall.

18 Our last case will be 21-08, Judy
19 Hetzl at 10 Hollywood Drive for construction
20 of a pool, pool fence and pergola at her
21 residence.

22 Mr. Laub, you will present, but before
23 we do that, I want our counsel to update us on
24 the planning board meeting on the Metro PCS
25 case.

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2 Mr. Laub, we will have only four zoning
3 board members sitting on the application
4 because two of our members have to recuse
5 themselves. Mr. Leaf and Mr. Collins both
6 have to recuse themselves.

7 Marianne.

8 MS. STECICH: The application was acted
9 on by the planning board at last Thursday's
10 meeting. They granted the personal wireless
11 service facilities special permit. They
12 recommended view preservation --

13 CHAIRMAN MURPHY: Were there any
14 conditions attached to the approval or any --

15 MS. STECICH: Wait. The other thing is
16 they did do the negative declaration under
17 SEQRA.

18 Were there conditions like a bond and
19 just the conditions that would be relevant --
20 there was a bond. There was also a condition
21 of a review of the final cabinet that is going
22 up on the roof by the structural engineer but
23 not for any view preservation reasons but just
24 to make sure the platform would be able to
25 hold it.

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2 MR. SHARMA: There was a site plan
3 approval and the conditions were related to
4 site plan approval.

5 MS. STECICH: It was essentially a
6 special permit approval. In any event, there
7 were certainly none that would relate to how
8 things look.

9 CHAIRMAN MURPHY: Mr. Laub.

10 MR. LAUB: Good evening. My name is
11 Dan Laub. I am with the firm of Cuddy & Feder
12 in support of the application for personal
13 wireless services facilities located at 7
14 Maple Avenue.

15 I will start with a housekeeping item.
16 I want to apologize. I know our recent
17 submission had Mr. Deitz as being chairman.
18 We got that off the web site. I think there
19 was some old information on the web site. I
20 didn't catch that before. I do apologize for
21 that.

22 As counsel indicated, we appeared
23 before the planning board last week and we
24 received site plan and special permit purposes
25 approval and we received SEQRA approval and

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2 received a positive recommendation from this
3 board.

4 Just to recount the basics of the
5 facility, it would be for six panel antennae
6 to be located on the rooftop of the facility,
7 along with associated equipment needed to
8 operate the antennae. One significant
9 difference was in our submission from last
10 time. We discovered that subsequent to our
11 submission and further after some site visits
12 to the rooftop that the existing antennae up
13 on the roof which belong to AT&T are
14 approximately 167 inches wide. In our
15 simulations, those are actual photos.

16 I will note the simulations were
17 previously basically the antennae of the same
18 widths which is inaccurate. The proposed
19 antennae are actually half the width. It
20 really was even 50 percent less than the
21 existing antennae.

22 CHAIRMAN MURPHY: Understood.

23 MR. LAUB: In addition, I think one of
24 the concerns along the process was the
25 equipment and any kind of visibility.

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2 We have taken great efforts to try to
3 arrange the equipment in such a way that it is
4 back further from the -- there is
5 approximately a five foot parapet that goes
6 around the rooftop. We try to move that as
7 far back as possible and put the equipment
8 together in such a way that you won't be able
9 to see it from views around the village as
10 much as possible.

11 That is the crux of the application. I
12 think we have endeavored to work along the way
13 to try to minimize the visual impact of the
14 facilities.

15 CHAIRMAN MURPHY: I read the more
16 recent submission. I appreciate the efforts
17 that were made by you and our building
18 inspector and the village manager to do the
19 site inspections.

20 I particularly was reading your project
21 engineer's letter, Mr. Lehigh's letter from
22 September 18. These look like good changes to
23 me in terms of minimizing the impact for view
24 preservation purposes.

25 I want to make a record that in terms

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2 of our approval, I think we should make it
3 clear on the record what the conditions are.
4 One, there was an approval to use the old
5 conduit in the northwest side of the building
6 to run the necessary wires up to the roof. Is
7 that still going to happen.

8 MR. LAUB: It is not precisely a use of
9 that conduit. There is existing conduit in
10 the very corner by the fire escape. That is
11 on the northwestern corner of building.

12 That actually is, since it is unused,
13 as part of our construction process, we will
14 be able to bring that out because that conduit
15 is not for utilities as such. It might have
16 been air hoses. We can't really identify it,
17 and Metro PCS didn't feel comfortable from an
18 engineering standpoint to use that.

19 The conduit will actually come up the
20 side of the building -- not quite in that
21 corner but in a similar location.

22 The conduit will come out of the
23 basement, up the facade of the building but
24 will actually make an entry into the building
25 in the back hallway here in order to avoid

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2 going over and around the cornice of the
3 building in order to minimize the impacts of
4 that procedure instead of actually going
5 around the exterior on the cornice.

6 Essentially, you will have the conduit coming
7 into the building and up through the roof, so
8 essentially behind the cornice.

9 The interior, when it comes into the
10 building, it would actually have to be -- this
11 isn't pertinent, but it is interesting. It
12 will be by the HV equipment and it will be
13 painted so you don't see anything in the
14 hallway.

15 CHAIRMAN MURPHY: Are you reducing the
16 cabinets from four cabinets to two cabinets
17 instead of what you characterize as larger
18 cabinets? They will be reduced to smaller
19 cabinets in order to minimize the view impact?

20 MR. LAUB: Metro PCS is using a smaller
21 cabinet, lower in height. As part of that
22 reduction in using a smaller cabinet, it will
23 be actually to take one of the pieces of
24 equipment, a cantilever off the back of the
25 equipment and kind of using -- again, in an

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2 effort to try to take the equipment as far
3 from the parapet as possible.

4 CHAIRMAN MURPHY: That new equipment
5 will be pushed back as far as possible
6 according to the new drawing on Z 3, I think
7 it is September 18, 2008.

8 MR. LAUB: Precisely.

9 CHAIRMAN MURPHY: For my own
10 information, do you have any indication of the
11 size of the new smaller cabinets compared to
12 the original cabinets that were proposed?

13 MR. LAUB: I think they are
14 approximately -- I know one is at least half
15 the size -- I don't have the dimensions with
16 me. I know one cabinet is approximately half
17 the size and because there is a reduction of
18 the number of cabinets, there are actually two
19 cabinets involved, but by reducing one
20 cabinet, that is approximately half the
21 reduction.

22 CHAIRMAN MURPHY: But it will be in
23 accordance with the new plans on the drawings
24 from September 18, right?

25 MR. LAUB: Correct. It is

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2 approximately half because you have the one
3 battery cabinets and the other two cabinets.

4 MR. DOVELL: Does this represent the
5 same tonnage locations previously submitted?

6 MR. LAUB: The structural steel is in
7 the same location, but the platform itself has
8 been reduced.

9 MR. DOVELL: In height as well?

10 MR. LAUB: Not in height.

11 CHAIRMAN MURPHY: But are the two new
12 compact cabinets, are they lower in height?

13 MR. LAUB: They are lower in height
14 themselves.

15 CHAIRMAN MURPHY: That is all I am
16 driving at.

17 Can you tell me what the size is, the
18 height?

19 MR. LAUB: The four above the rooftop
20 now for the largest cabinet is approximately
21 six feet, 10 inches.

22 I believe that is at least -- I believe
23 the height difference is approximately two or
24 three foot difference. We have to look at the
25 old drawings.

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2 CHAIRMAN MURPHY: So in height, it has
3 come down a couple of feet and it has also
4 been reduced in mass --

5 MR. LAUB: It is about a two foot
6 reduction. The former cabinets were about
7 eight feet, 10 inches from the rooftop. There
8 were two primary cabinets and two battery
9 cabinets. We eliminated a battery cabinet and
10 used a compact cabinet and eliminated another
11 cabinet.

12 MR. SHARMA: I have this old plan where
13 the cabinets were. The cabinets were eight
14 feet above the roof level.

15 You can see there are four cabinets and
16 now there are only two cabinets, so it is
17 substantially less in height and fewer in
18 number.

19 CHAIRMAN MURPHY: We appreciate the
20 accommodation.

21 MR. PYCIOR: I have a question based on
22 the photograph.

23 When you first submitted the
24 application, a photo was taken of the front of
25 the village hall from the southwest and it

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2 showed the cabinets. In the new photo or the
3 new submission, we don't have a photo from a
4 similar angle. We have a tree blocking that
5 side.

6 Will the cabinets be visible above the
7 parapet if one does stand in front of the
8 village hall?

9 MR. LAUB: No. Every effort has been
10 made not to do that. So as they have taken
11 the measurements of the cabinet coming down
12 and across, they couldn't see how that would
13 be included in being able to see it from the
14 ground.

15 MR. PYCIOR: That is why they are not
16 added to any photo?

17 MR. LAUB: Right.

18 CHAIRMAN MURPHY: Stanley is referring
19 to drawing S 1 and in the new version of S 1,
20 you don't show any cabinet visible at all from
21 the street.

22 MR. LAUB: Precisely.

23 CHAIRMAN MURPHY: That is because the
24 height has been reduced and they have been
25 moved back as much as possible.

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2 MR. LAUB: It is a very tall parapet,
3 so we used that to our best advantage.

4 MR. FORBES-WATKINS: I have a section
5 29585, regarding personal wireless facilities
6 overlay. Four pages back, there is a section
7 entitled maximum height and size. I am just
8 going to read a very short section.

9 The maximum size for antenna on another
10 structure that is on a building such as this
11 building shall be six feet above the highest
12 point of the building where the structure were
13 installed.

14 Are we within those parameters?

15 MR. LAUB: Yes, I believe we are.

16 CHAIRMAN MURPHY: I think you would be
17 because the parapet is several feet above the
18 roof.

19 What Ray was driving at is, the steel
20 platform on which the cabinets is going to sit
21 is about a foot and a half.

22 MR. DOVELL: The top of the tonnage was
23 about a foot or 18 inches above the roof.

24 MR. LAUB: Yes.

25 MR. DOVELL: So the cabinet measured up

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2 from that being about six feet.

3 MR. LAUB: The top of the cabinet is
4 six feet, 10 inches from the actual roof not
5 even the parapet.

6 MR. DOVELL: So it would project only a
7 foot above the parapet?

8 MR. LAUB: Right.

9 MR. SHARMA: You said there are
10 cabinets and then there are antennas
11 themselves. Look at Z 4. It is indicated in
12 there that they are five feet above the top of
13 the parapet. So that would still be less than
14 six feet physically at the highest part of the
15 building and it is indicated five feet
16 maximum. So the cabinet and the antenna is
17 two separate entities.

18 CHAIRMAN MURPHY: Any other questions
19 from the board?

20 MR. DOVELL: No.

21 CHAIRMAN MURPHY: Is there anybody in
22 the audience who wishes to be heard on the
23 application?

24 MR. KOCH: My name is Mitchel Koch. I
25 sit the on architectural review board. In our

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2 advisory capacity in the planning board, we
3 have been looking at this case.

4 I want to start by commending Metro PCS
5 and Cuddy & Feder for how accommodating they
6 have been to us and all of the things we have
7 asked for in regard to their application.

8 In fact, they had at our last
9 architectural review board meeting agreed to
10 provide us with a mock-up on the roof of the
11 six -- or one at least of the six antennae
12 which are paddle antennae which, according to
13 the plans right now, are meant to go along the
14 parapet.

15 Our concern from the board is that
16 having these six in addition to the AT&T four
17 -- who are allowed to provide six antennae
18 along the parapet will have a very great
19 visual impact to the building. As we can all
20 see, the new whip antennae are a major thing,
21 but these will look like sentinels on the
22 parapet.

23 What they have agreed to do is actually
24 provide mock-ups for us to look at the impact
25 of the antennae if they are moved a little

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2 bit inboard, and I want to say there is a
3 caveat here; that the more inboard they go,
4 the higher they have to go, so there is not a
5 shadowing effect from the parapet in regard to
6 the signal.

7 We feel it is our due diligence to
8 study this and see if there is a trade-off
9 that is worth making between height and
10 proximity to the parapet. That is something
11 that we are still waiting to see and I thought
12 you should be aware of this.

13 CHAIRMAN MURPHY: Thank you, Mr. Koch.

14 Does anybody else from the audience
15 wish to be heard? Anything else from the
16 board?

17 MR. DOVELL: Is the location then still
18 not finalized based on what the architectural
19 review board is requesting? Are these
20 locations finalized?

21 MR. LAUB: I know we have been working
22 with the ARB along the way in trying to
23 accommodate the design of this site and its
24 aesthetics.

25 The problem is, we did discuss trying

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2 do a mockup, but I was clear with the ARB that
3 would be hard to do.

4 Part of the code for the personal
5 wireless facilities requires photo
6 simulations. That is why we did provide the
7 revised photo simulations. We took another
8 look at them; that is why we revised the photo
9 simulations showing the antennae are half the
10 width.

11 There are some technical difficulties
12 with trying to move the antennae inward. One
13 of them being what Mr. Koch referred to was
14 the shadowing effect because the signals of
15 the antennae, if you're on the edge of a roof
16 here and the signals are going out, that works
17 fine. As an antenna moves in from a roof and
18 you have a signal going down, it is hitting
19 the roof and it is not being properly going
20 out for coverage.

21 Since that ARB meeting, we also had an
22 additional site visit which I think I detailed
23 in our submission to you which was with the
24 village's RF emissions consultant.

25 It was determined then that with the

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2 antennaes -- with the whip antennaes and the
3 location of the AT&T, and in addition to the
4 Metro antennaes, the associated RF emissions
5 have certainly safety standards that have to
6 be provided for.

7 In case there is no general population
8 issue, but through the FCC, there are
9 occupational standards that have to be met.
10 So people working on the roof doing any kind
11 of maintenance work have knowledge of and are
12 aware and don't really have the easy
13 capability and ability to just go up to the
14 antennaes and touch them.

15 Moving the antennaes back becomes
16 difficult from that sense because you create
17 more space on the roof where -- one of the
18 conditions of approval for the site plan was
19 that there were going to be some stanchions on
20 the roof with radio frequency notice signs
21 delineating areas on the roof where people
22 shouldn't go past them to go to the antennaes.
23 So moving the antennaes back then moves that
24 area further back, further restricting access
25 and accessibility for a rooftop generally

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2 creating those issues. That becomes very
3 problematic from that perspective as well.

4 In addition, the process of trying to
5 move the antennae in a different location
6 requires greater structures and greater
7 height. So there would be, for example, if
8 the antennae in the front couldn't be stood
9 back further because of -- because of signal
10 issues, and even if you could move it back
11 slightly on the other side, you would require
12 larger structures, structural steel frames,
13 things that would require different mounting
14 procedures. So those were the challenges we
15 were facing.

16 CHAIRMAN MURPHY: Thank you, Mr. Laub.

17 Can I have a motion for the application
18 for view preservation approval for Metro PCS?

19 MR. PYCIOR: I will make a motion that
20 we approve the view preservation approval for
21 the Metro PCS application.

22 CHAIRMAN MURPHY: Do I have a second?

23 MR. FORBES-WATKINS: Second.

24 CHAIRMAN MURPHY: All in favor?

25 (Whereupon, approval vote for

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2 application is unanimous.)

3 CHAIRMAN MURPHY: Unanimous.

4 MR. LAUB: Thank you for your time.

5 CHAIRMAN MURPHY: Our next case is Mark
6 and Harriet Rubin, 2 Zinsser Way, application
7 for a side yard setback variance to
8 accommodate a screened in porch and deck.

9 For the record, Mr. Koch, before you
10 start, Mr. Leaf has to recuse himself from
11 this case as well. So Mr. Collins, our
12 alternate member, will be sitting in on this
13 application.

14 MR. KOCH: My name is Mitchell Koch. I
15 am the architect. I am here on behalf of Mark
16 and Harriet Rubin.

17 I have this visual aid to just lay out
18 the issue with the deck. We have been
19 approved for a deck as of right on the
20 property. However, my clients would like to
21 build a -- enclose part of the deck as a
22 screen porch.

23 I am showing on this survey the
24 allowable six foot encroachment which is
25 allowed in the zoning code for decks that are

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2 below the level of the entry of the house. So
3 based on --

4 MR. SHARMA: Below the house is not
5 covered or enclosed?

6 MR. KOCH: Just the deck.

7 -- based on that allowable
8 encroachment, this deck is as of right.

9 However, because we wish to enclose a
10 portion of this deck, this bit of it here
11 which is within the purple border that is dark
12 is nonconforming. That is why we are here. I
13 would like to say that our intention here has
14 been to integrate this nicely with the
15 property. There is a lovely maple tree in the
16 corner. We have inflected the shape of the
17 porch into an octagon to make space for the
18 tree.

19 In a nutshell, here is what the back of
20 the house currently looks like. I don't know
21 if everybody can see it, very flat, very
22 simple. Our intention here is to add some
23 relief to it, some -- a deck, as I say, but
24 this small enclosed screen porch would sit
25 centered underneath the bedroom window above

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2 and, you know, it is really -- it is a 12 --
3 it projects 12 feet only. It is a very small
4 structure, but it will give them a small place
5 to get away from the bugs on summer nights.

6 We did talk to the neighbors adjacent
7 who are immediately next door and who are the
8 ones most affected. They are right here --
9 most affected by this project. They were very
10 concerned that in the future, someone might
11 continue the enclosure and make it a permanent
12 four season room.

13 As part of our application in the
14 letter we submitted, we have asked that a
15 caveat be -- and the legality of this I need
16 help with. A caveat be included in this
17 application that this never be made into a
18 four season room; that it only be left as a
19 screen porch.

20 To that effect, I have a letter which I
21 would like to submit for your review from the
22 immediate neighbors which says basically what
23 I have said, that they approve the proposal.
24 They had very good relations with Harriet and
25 Mark and their family, but that they want to

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2 make sure this is never a permanent, four
3 season enclosure.

4 In addition, I have another letter from
5 another neighbor in support of the project.
6 That is all I have to say.

7 CHAIRMAN MURPHY: For the record,
8 Mr. Koch has handed me two letters. One from
9 Ariel and Mercedes Pablos at 6 Zinsser Way.
10 The other one is from Mark Tennenbaum, it
11 looks like, 102 Edgars Lane. I am not sure
12 where that is in relation to this.

13 MS. RUBIN: It is across the street,
14 one house over directly across the street.

15 CHAIRMAN MURPHY: We will make those
16 part of the record.

17 The concern expressed -- and we
18 probably need advice from our counsel on
19 this -- is at least one of the neighbors,
20 because they are concerned they don't want to
21 turn this into a permanent enclosed structure
22 because it is rather large, the applicants are
23 offering, as I understand it, to agree in
24 perpetuity that some kind of record be made so
25 that this screened in porch structure is never

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2 permitted to be enclosed or, if you will,
3 winterized and made into a full year round
4 living space.

5 MS. STECICH: You could make it a
6 condition of the variance, but you can always
7 vary the condition -- another board could vary
8 the condition. The one way to make it
9 ironclad is to have the property owner file a
10 restrictive covenant against the property with
11 the county clerk's office. That way in the
12 future if they did that, they would have a
13 recorded document that they could proceed
14 under.

15 It is not a big deal to write up a
16 covenant. It should be between them and the
17 next door neighbor because they or anybody
18 else who was in their property would be the
19 person who would enforce it.

20 So it should be, I would think, between
21 the Rubins and the neighbors. So what you
22 could do is, you know, make the variance
23 conditional on the recording of that covenant.

24 CHAIRMAN MURPHY: Conditional on the
25 recording of a restrictive covenant by the

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2 applicant to their neighbors?

3 MS. STECICH: Yes. It would be

4 recorded at the Westchester --

5 CHAIRMAN MURPHY: At the county clerk's

6 office.

7 MR. DOVELL: Was any thought given to

8 shifting the covered porch to the other end of

9 the building thereby eliminating the need for

10 a variance altogether?

11 MR. KOCH: Yes, we looked at that and

12 because really the Rubins have been very eager

13 to accommodate their neighbors -- I mean, this

14 was their primary concern, but the fact is

15 that the yard opens up to the south, this way.

16 Purely from an architectural

17 standpoint, to put this mass here would then

18 throw the rest of the deck into kind of a

19 shadowed condition and then in addition to

20 that, unfortunately, right here is where the

21 kitchen is and so to put the screen porch

22 right out there puts a lot of shadow into the

23 kitchen and makes it a lot darker.

24 This is exactly why we had the meeting

25 with the neighbors and we discussed that and

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2 actually made a compelling case to them that
3 this would not be a happy solution and that it
4 wouldn't look as nice on the elevation of the
5 building, located here, if you will, than it
6 does kind of tucked over in this corner.

7 Based on that discussion, the neighbors
8 who are most affected by it actually came up
9 with this creative notion of a covenant to
10 restrict the enclosure because that was their
11 primary concern and really none other. They
12 agreed it was a nicely shaped, attractive
13 addition to the house and that it was well
14 located, given what we just went over.

15 So we did consider it, but it didn't
16 seem to be a good idea.

17 CHAIRMAN MURPHY: The issue is the deck
18 in that shape is uncovered; could go there as
19 of right because it is within the six foot set
20 back, but by covering it and screening it in
21 on the walls, it is a 12 foot requirement.

22 MR. KOCH: That's right.

23 CHAIRMAN MURPHY: My concern is the
24 size of the structure. It is not that small.
25 I guess it is 12 by 12 roughly.

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2 MR. KOCH: It is 15 wide by 12 deep.

3 It is the size of a bedroom, I guess you could
4 say, with the corners knocked off since it is
5 an octagon.

6 CHAIRMAN MURPHY: You have it as 18
7 feet forward from the lower grade of that side
8 of the house -- to the roof --

9 MR. KOCH: The top is, yes, that's
10 right.

11 We set the top to have some
12 relationship to the bedroom window above it.
13 The eaves are only not quite eight feet above
14 the deck, so we felt we couldn't come much
15 lower, and on the other hand, we didn't want
16 to make it feel expansible from the inside
17 looking out.

18 CHAIRMAN MURPHY: Will it connect to
19 the other portion of the deck?

20 MR. KOCH: Yes, it is connected. I
21 don't know if you can read it from here. You
22 would come out of the kitchen here and this is
23 sort of a dining area and a sunning area.
24 Then there is a door right here where you
25 would enter the screened in porch portion or

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2 go downstairs, if you wanted, to the patio.

3 MR. FORBES-WATKINS: There is no door
4 into the screen -- this proposed screen porch
5 from the adjacent interior.

6 MR. KOCH: At this time all we have
7 planned is a -- what is currently a window to
8 be converted into a pocket -- that is part of
9 the application for the as of right deck.

10 Then we planned for a door into a --

11 MR. FORBES-WATKINS: A screen door.

12 MR. KOCH: That being said, it is up to
13 the zoning board, but I mean I can imagine
14 that they may want to put a door from the
15 living room into the screen porch, just
16 because it is -- it kind of helps to have
17 circular paths available in general.

18 In terms of furniture settings, there
19 are issues that come with that. It kind of
20 messes up your living room wall and it messes
21 up your -- notwithstanding what you said,
22 fairly small furniture placements within the
23 screen porch.

24 MR. SHARMA: Currently, they have a
25 building permit to build a deck in that shape,

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2 absent the covering enclosure, but they have a
3 building permit to build a deck of that shape.

4 MR. FORBES-WATKINS: It occurred to me,
5 as I was looking at the building, there is a
6 stairway which you show in the --

7 MR. KOCH: Right here.

8 MR. FORBES-WATKINS: Will that be
9 eliminated?

10 MR. KOCH: Yes. This landing takes you
11 to the basement. This landing lets into the
12 garage and we are eliminating the exterior
13 door at this time and the concrete stair.
14 That is part of the other application with the
15 deck.

16 MR. DOVELL: What is the condition
17 along the west property line, the topography
18 and the views?

19 MR. KOCH: It is fairly flat. This is
20 a line of evergreen sort of hedges. It is, I
21 would think -- I don't know what species it
22 is. I think hues. That are about 10 feet
23 tall, plus or minus. The idea would be that
24 if the deck is inlaid, they still afford a
25 kind of level of privacy and intimacy because

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2 you can see it is tight here. So the idea was
3 that this is going to be this sort of little
4 private space up here which is kind of
5 protected from the view of the neighbors by
6 these evergreens.

7 So it is understood, our notion is that
8 there would be stairs here and there is a
9 swing set for the kids down here and they can
10 come down the stairs and play volley ball or
11 whatever they want. None of it exceeds really
12 the -- basically a 12 foot parallel line from
13 the house.

14 Part of this is conditioned by the fact
15 that the property is very rectangular, but the
16 house has been put in -- on the property is
17 kind of skewed orientation, so we are tight in
18 one corner and open in the other.

19 CHAIRMAN MURPHY: Any other questions
20 from the board?

21 MR. COLLINS: I have a quick question.
22 If there is a problem getting this condition
23 that is mentioned at the end of Mr. Koch's
24 letter and is mentioned in the Pablos' note,
25 if that condition can't be met, does their

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2 comfort level with this change?

3 CHAIRMAN MURPHY: You mean the
4 restrictive covenant?

5 MR. COLLINS: Yes, if that can't be
6 done as easily or at all.

7 CHAIRMAN MURPHY: I think the board is
8 likely going to require that restrictive
9 covenant as a condition. I understand the
10 applicant is not disagreeable to it.

11 MS. STECICH: You can go and file
12 whatever you want. It doesn't have to be
13 approved. In the division of land records, so
14 as long as the neighbors agree -- I would be
15 pretty specific about the condition, that no
16 certificate of occupancy be issued until proof
17 of filing has been --

18 MR. SHARMA: How about the permit
19 itself; should the permit be held off until
20 there is the covenant?

21 MS. STECICH: That is probably a good
22 idea. You can file it. It would take six
23 months, but you will get a receipt.

24 MR. KOCH: It is our hope that we can
25 build it actually this fall still.

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2 Would it be acceptable that we would
3 show our application for the covenant --

4 MS. STECICH: It is not any
5 application. It is just a document that you
6 write. It is just something you write. It
7 doesn't have to be approved or anything. You
8 write it up; your neighbor says it is fine
9 with me and then you record it. It can be
10 done in a day.

11 MR. KOCH: But you're saying it takes
12 six months for the approval?

13 MS. STECICH: I am saying it doesn't
14 have to be recorded. What happens is, you
15 bring it over to the division of land records.
16 You get a receipt that it has been filed.

17 MR. KOCH: Would that be sufficient
18 then or could you put the language so that
19 that would be sufficient, so that we could be
20 issued a building permit for the screen porch
21 based upon our providing the letter?

22 MR. SHARMA: Whatever you bring me, I
23 will run it by Marianne. If she says okay,
24 that is fine.

25 There is one other issue I would like

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2 of it.

3 CHAIRMAN MURPHY: That is fine.

4 Does anybody from the audience wish to
5 speak on this application? No one from the
6 audience.

7 Anything else from the board before we
8 vote on the application?

9 MR. FORBES-WATKINS: I will move
10 approval of case 19-08 to cover and screen a
11 permitted porch deck with the condition that a
12 filing of a restrictive covenant be filed with
13 the county land office indicating that the
14 porch cannot be turned into an all year or 12
15 month facility. Does that satisfy it?

16 CHAIRMAN MURPHY: Yes. Do I have a
17 second?

18 MR. DOVELL: I second.

19 CHAIRMAN MURPHY: All in favor?

20 (Whereupon, approval vote for
21 application is unanimous.)

22 CHAIRMAN MURPHY: That was unanimous by
23 vote.

24 The next case is Johannes Boeckmann and
25 Anne Chiang for the repair of the retaining

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2 wall and construction of a new wall on two
3 adjoining properties at 351 Warburton Avenue.

4 Mr. Leaf will now rejoin us.

5 There are two addresses here because
6 the wall is between 349 and 351 Warburton. I
7 saw two applications.

8 MR. SHARMA: We will be considering two
9 applications and granting two because they are
10 two separate building permits. So we handle
11 the same way as the planning board does. It
12 is a joint application by two --

13 MS. STECICH: The planning board
14 recommended the preservation.

15 CHAIRMAN MURPHY: Please identify
16 yourself.

17 MR. BOECKMANN: My name is Johannes
18 Boeckmann. I am here on behalf of myself and
19 my wife obviously and our neighbors, the Vins,
20 owners of 349 Warburton Avenue.

21 We are here to ask for a view
22 preservation approval for the repair and
23 replacement, as well as the alteration and the
24 building of a new retaining wall between the
25 two buildings.

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2 We find ourselves unfortunately in a
3 situation that the retaining wall is really --
4 it was poured as one wall between the two
5 buildings.

6 Roughly 10 years after construction, it
7 is leaning over and gradually collapsing. It
8 has settled down and it is leaning over. We
9 have been advised that we need to repair it.
10 However, we cannot repair it in the same way
11 it was built because unfortunately, it was
12 built at a height that is not within
13 compliance with the building or the height
14 restriction of six and a half feet for
15 retaining wall.

16 The wall is roughly nine and a half
17 feet tall. We have come up with the best way
18 to do this is what is in front of you where we
19 would essentially cut down the existing wall
20 that is leaning over by six and a half feet
21 and turn it four feet closer to the street and
22 build a new six and a half feet tall wall,
23 thereby dropping a 10 foot area six and a half
24 feet down which would then be used, we
25 presume, as a play area for the kids that we

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2 have and our neighbors have and anybody who
3 will be owning these types of houses will
4 have.

5 What it does is effectively, we are
6 dropping the area, if you will, digging a hole
7 which when you look from the street, it is
8 opening up the view. It is not obviously
9 obstructing the view.

10 We were told that we have to ask for
11 view preservation approval since we are
12 building a structure but in effect, we are
13 digging a hole and opening up the view.

14 We were hoping that we could also get
15 your approval to do so.

16 CHAIRMAN MURPHY: Mr. Boeckmann, is it
17 a safety issue that the existing wall is
18 unstable?

19 MR. BOECKMANN: It is not like an
20 immediate safety issue, but it is an issue
21 that we just felt we should address. It is a
22 visible issue.

23 I can show you if you're interested.

24 CHAIRMAN MURPHY: Yes.

25 MR. BOECKMANN: This is the picture

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2 from the lower level deck on 351. You can see
3 here -- you can see the subject retaining wall
4 that was supposed to support the beams. So
5 you can see the amount of settlement. You can
6 see it is leaning over. It is actually more
7 -- this was covered up by this thing.

8 On our neighbor's side, it is much more
9 dramatic in terms of the visual, the way it is
10 obvious.

11 CHAIRMAN MURPHY: How is that going to
12 be repaired? Is this going to be cut down in
13 height?

14 MR. BOECKMANN: Cut it down to, I think
15 it is about two feet to the left that you can
16 see which then obviously doesn't have as much
17 pressure anymore. It would be stable.

18 CHAIRMAN MURPHY: Is something going to
19 hold up what is above it?

20 MR. BOECKMANN: Yes. We are planning
21 to build a column to support this beam.

22 CHAIRMAN MURPHY: Then you will build a
23 new wall close to the street, but it will be
24 how much lower than the existing wall?

25 MR. BOECKMANN: No. You would have

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2 about two feet left here looking this way and
3 this other wall would be six and a half feet
4 wall. So you cut this one six and a half feet
5 down and build another one six and a half feet
6 tall closer to the street.

7 MR. DOVELL: You're pushing the
8 retaining portion of it back? This is the
9 section that looks through it.

10 The earth was at this location
11 previously? This is the wall that is to be
12 cut down and this is the new retaining wall.
13 This is through your new courtyard.

14 You're going to cut -- excavate back
15 here, but in effect, the height of the wall is
16 about the same; this wall and this wall are
17 approximately the same.

18 MR. BOECKMANN: That is correct because
19 this is the ground level.

20 MR. DOVELL: In effect, the wall is the
21 same height.

22 MR. BOECKMANN: Except it is now built
23 up by two walls.

24 MR. DOVELL: It is pushed back?

25 MR. BOECKMANN: That is correct.

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2 MR. DOVELL: Then this projects -- this
3 fence projects up.

4 MR. BOECKMANN: Just like the existing
5 wall right now.

6 MR. DOVELL: Which is three feet?

7 MR. BOECKMANN: Yes. It is a safety
8 fence.

9 MR. DOVELL: It is really a wash. It
10 is taking it and pushing it back.

11 MR. BOECKMANN: I can't do it the way
12 it is because it would be nine and a half feet
13 tall.

14 CHAIRMAN MURPHY: On this application,
15 we are voting on the view preservation.

16 MR. SHARMA: I have a question. I
17 don't notice on the 49 or 51 side, there was a
18 wood platform installed on the ground next to
19 the house.

20 Do you intend to put a platform or
21 similar structure in this new excavated area?

22 MR. BOECKMANN: No. The plan is to use
23 it an a play area with some soft material,
24 either play sand or some other rubber -- maybe
25 pellets that you can use that you see in a

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2 playground.

3 MR. LEAF: The height of the fence that
4 will sit above the new wall, what is the
5 height of that fence above grade?

6 MR. BOECKMANN: I believe it is three
7 feet.

8 MR. SHARMA: Where the current wall is,
9 there is that guardrail already. So
10 essentially, I think what they are doing is
11 creating another flat surface at a lower level
12 for children to play, so you only have this
13 going up to the street and then you cut this
14 wall down and flatten out the land behind it,
15 maybe 20 feet or so?

16 MR. BOECKMANN: It is 24 feet by 24
17 feet.

18 MR. SHARMA: And build another wall.
19 So essentially, it is the same wall in terms
20 of height, except they take some of the usable
21 play area and make it a little more private.

22 MR. LEAF: But the fence is now 28 feet
23 closer to the road. So I was asking about the
24 height of the fence.

25 MR. BOECKMANN: That is correct.

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2 MR. LEAF: For purposes of safety, the
3 fence has to be at least 36 inches high.

4 Is there a maximum height for the fence
5 that is in any of the requirements? Does your
6 permit request state a maximum height of the
7 fence?

8 MR. BOECKMANN: I don't believe it
9 does, but it is the full and clear intention
10 is to just build a regular safety fence just
11 the way it is. I don't know if it is that but
12 around that height.

13 I believe in the pictures, you can see
14 it is a typical three foot fence.

15 CHAIRMAN MURPHY: The new retaining
16 wall will be approximately how far away from
17 the road, about 35 feet, is that it? It looks
18 like 25 feet set back to the front of the
19 building and the wall will be built -- no.

20 MR. LEAF: It is 24 feet from where --
21 from the rear wall to the front wall, 24 feet.

22 MR. BOECKMANN: It is roughly 32 feet
23 from the new retaining wall to the retaining
24 wall that is built next to the walkway.

25 MR. DOVELL: Your site plan shows 24

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2 feet to the face of the house.

3 MR. BOECKMANN: Where is that?

4 MR. DOVELL: I think this says 24 feet
5 to the edge of the house.

6 CHAIRMAN MURPHY: Anything else from
7 the board? Anybody from the audience wish to
8 be heard? A motion?

9 MR. FORBES-WATKINS: I will move for
10 case 20-08, approval of repairs of the
11 existing retaining wall and construction of a
12 new wall on two adjoining properties.

13 CHAIRMAN MURPHY: Do I have a second?

14 MR. LEAF: Second.

15 CHAIRMAN MURPHY: All in favor.

16 (Whereupon, approval vote for
17 application is unanimous.)

18 CHAIRMAN MURPHY: The vote is
19 unanimous.

20 Our next case is Judy Hetzel for
21 construction of a pool, fence and pergola at
22 10 Hollywood Drive.

23 MR. PETRUCELLI: My name is Robert
24 Colwell Petrucelli. I am an architect. I was
25 hired by Judy to design an in-ground pool for

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2 before zoning was developed in this area.

3 The existing house is here. The
4 existing garage is there. This is a covered
5 porch. The property has -- this whole area is
6 very steep. This is very flat here and then
7 it drops off here towards Ferndale.

8 Basically, I positioned the pool here;
9 used the 30 foot set back here, a 31 foot set
10 back here and 36 foot here.

11 When you do swimming pools, the set
12 back starts at the inside face of the wall of
13 the pool, not the outside wall. Then we are
14 using a flag stone pavers that are two feet
15 wide. The property is very -- it is just a
16 tremendous amount of landscaping on it at the
17 present time. Judy has been cleaning some of
18 it out. She is adding landscaping to it.

19 The way the property sets down, the
20 pool is going to be basically -- you can't
21 really see it from Hollywood Drive. We were
22 also planning a four foot high wall here of --
23 field stone wall with some brick pilasters, so
24 it is screened from Ferndale. This area here
25 is just very heavily landscaped with existing

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2 trees that have been there probably anywhere
3 from 60 to 100 years.

4 The existing house and garage, and this
5 is an existing walkway here; existing walkway
6 here. None of that area we are touching, just
7 in this area here, and Judy came up with a
8 landscape layout. She is an interior designer
9 and she also does landscape design.

10 There is an existing goldfish pond here
11 that is going to remain and we are going to
12 put a pergola here which is 17 feet four
13 inches off the property line. The pergola is
14 eight feet -- seven feet eight inches by 13
15 feet five. It is an open pergola with a
16 screened wall at the back.

17 CHAIRMAN MURPHY: How high is the
18 pergola?

19 MR. PETRUCELLI: It is 12 feet high.

20 CHAIRMAN MURPHY: Mr. Petrucelli, where
21 is the front door of the house?

22 MR. PETRUCELLI: It is here, right here
23 where there is an existing covered porch that
24 comes almost up to the property line.

25 CHAIRMAN MURPHY: Is there any question

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2 that the pool is not going in the rear yard,
3 at least under the code?

4 MR. PETRUCELLI: I am not sure. The
5 building inspector says that since the front
6 door is here, that we are in the front yard.

7 I am interpreting this as you look at
8 the layout of the land where you have three
9 abutting streets, you can basically pick what
10 you want as a street layout.

11 CHAIRMAN MURPHY: We can't do that.

12 MS. STECICH: On this side it may be
13 vacant land, but it doesn't abut a street. It
14 abuts a street on two sides, Hollywood and
15 Ferndale. It doesn't abut Seaman.

16 MR. PETRUCELLI: But this piece here is
17 owned by the village, so it won't be
18 developed.

19 MS. STECICH: It is not a street, so I
20 am explaining to the board how the code would
21 go. Actually, where there is -- essentially,
22 when a house abuts on two streets, where it is
23 a thru street, one of them -- the front lot
24 line is the one decided by the building owner
25 -- the building owner can decide if it is the

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2 Hollywood -- if Hollywood is the front lot
3 line, then the -- in any event, the rear yard
4 is either on Ferndale or Hollywood.

5 Does that answer your question?

6 MR. SHARMA: Marianne and I discussed
7 this one aspect.

8 When there is a corner lot which it is
9 not and two fronts of the house and the
10 property owner has the option to call one of
11 the other two rear and one side, that option
12 we discussed was not available. You can't opt
13 to call this the rear.

14 MS. STECICH: No, no. You know, there
15 was a change to the code when they did the
16 downtown zoning. It is what I said. It says,
17 in the case of a thru lot not located within
18 the CC district, that lot line abutting the
19 street selected by the owner is the front lot
20 line; it is the front lot line, but the rear
21 lot line is the opposite one. It wouldn't
22 matter anyway.

23 Definitely, that one there can't be the
24 rear lot line, the one next to the village
25 property. No. It is a side lot. No matter

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2 how you read it, that is going to be a side
3 lot.

4 MR. PETRUCELLI: Then you have to use
5 Ferndale as the rear yard.

6 MS. STECICH: Yes -- Ferndale -- I
7 don't know. I guess it is if you're calling
8 the Hollywood side your front lot.

9 MR. PETRUCELLI: The problem with this
10 site is that this side here, the right-hand
11 side, if you consider Hollywood the front of
12 the house, is only 78 feet deep. This side,
13 it is 112 feet deep. The front and rear yard
14 are approximately 165 feet. She has 15,000
15 square feet of property. She has basically,
16 in terms of lot coverage, enough area to put a
17 pool in it.

18 Basically, the property isn't
19 configured by your ordinance to allow it to be
20 behind the house, because if it was behind the
21 house, we would be hanging over into Ferndale.
22 The pool is 25 feet long and 15 feet wide. It
23 is a small pool.

24 CHAIRMAN MURPHY: Can you go through
25 for us, please, the setbacks on each of the

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2 three sides of the pool?

3 MR. PETRUCELLI: This side here is 31
4 feet.

5 CHAIRMAN MURPHY: What is the setback
6 to the pergola?

7 MR. PETRUCELLI: The pergola is 17
8 feet, four inches.

9 On Hollywood, it is 30 feet from the
10 property line to the inside edge of the pool
11 and Ferndale, it is 36 feet.

12 CHAIRMAN MURPHY: So the difficulty is
13 if the pool was in the rear yard, it has to
14 satisfy a 20 feet set back --

15 MS. STECICH: No -- you're right.
16 Sorry.

17 CHAIRMAN MURPHY: If the pool is in the
18 rear yard, every part of the pool should be at
19 least 20 feet from every side, rear lot or
20 street lot, and no less than five feet from
21 the main building on the premises.

22 MR. PETRUCELLI: We have 41 feet
23 between the pool and the main building.

24 The reason why I put the pool at 36
25 feet in from Ferndale is that Ferndale starts

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2 the -- the rear yard starts to drop off.

3 To reduce the amount of fill and steep
4 slopes that would be created -- because you
5 would be changing a lot of the topography, the
6 only topography that is being changed is this
7 little triangle, this little section right
8 here. This here is very level on the site.
9 So that this becomes an ideal location for the
10 pool.

11 The pool equipment is 25 feet of
12 Ferndale. So it is within -- it exceeds the
13 minimum set back of 20 feet if you use that as
14 the rear yard.

15 MR. LEAF: The land slopes down --

16 MR. PETRUCELLI: What happens is you
17 have -- this is say point A here, the property
18 is dropping down this way and it raises up
19 here on the streets. Then you have the --
20 these are two foot contours here. You have a
21 retaining wall along Hollywood and then it
22 drops down anywhere from four to six feet.
23 Then it flattens out over to here and then it
24 drops off another -- in this area about five
25 feet to the property line.

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2 On this end of the property, it goes
3 from 198 up to -- no, 95 rather -- it goes
4 from 98 to 126. So you have almost a 30 foot
5 difference on this part of the property.

6 CHAIRMAN MURPHY: If you were standing
7 on the edge of Hollywood Drive, would you be
8 able to see over the retaining wall down to
9 this pool?

10 MR. PETRUCELLI: Not really.

11 The retaining wall along through here
12 is about two feet high above the street, Judy?

13 MS. HETZEL: Actually, it is not really
14 above the street, but there is this depression
15 that goes --

16 MR. PETRUCELLI: The top of the
17 retaining wall.

18 MS. HETZEL: Maybe a foot.

19 MR. DOVELL: I walked up there this
20 afternoon and wherever you walk on Hollywood,
21 you can look straight through. There is
22 terrific transparency all the way from the
23 edge of the house to the -- it is a
24 beautifully landscaped parcel, but it is
25 visible and it is even more visible --

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2 MR. PETRUCELLI: When the leaves are on
3 the trees --

4 MR. DOVELL: The leaves are on the
5 trees now.

6 MR. PETRUCELLI: You lose a lot of that
7 transparency --

8 MR. DOVELL: Even with the leaves on
9 today, there is a real amount of transparency;
10 you can see road to road. It is more so from
11 Ferndale, the lay of the land. This whole
12 ensemble of the pergola and the pool will be
13 quite visible.

14 MS. HETZEL: May I add something?

15 CHAIRMAN MURPHY: You need to use the
16 mike, please. Just identify yourself.

17 MS. HETZEL: I am Judy Hetzel.

18 There would be a tremendous amount of
19 landscaping going on. I love to garden and I
20 want this to be a really beautiful garden and
21 I would want it to be private. So really, the
22 perimeter would be very heavily landscaped, I
23 would say. So I think it would -- we wouldn't
24 want to be there if you felt like you were
25 exposed from the owner's point of view either.

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2 So the holes in the landscaping --
3 actually, along Hollywood, there is a lot of
4 huge landscaping that is old that has been
5 there for a long time, but I would certainly
6 want to have the holes plugged.

7 MR. PETRUCELLI: Would you like to
8 explain the landscaping layout that you did?

9 MS. HETZEL: This stone wall is a
10 critical piece of it too. It is a four foot
11 beautiful stone wall on this side so that
12 you're looking up and you're seeing into the
13 wall.

14 MR. PETRUCELLI: This wall is going to
15 impede your view of the pool from down on
16 Ferndale because the top of the wall from
17 Ferndale in this area is going to be about
18 nine feet above the surface of the roadway.

19 MR. PYCIOR: Where is the eight foot
20 fence?

21 MR. PETRUCELLI: That will be along the
22 property line.

23 CHAIRMAN MURPHY: Can you trace it for
24 us?

25 MR. PETRUCELLI: The fence is going to

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2 run from the existing house here, come around
3 here, along here and here, and then come back
4 here and come back into this porch which is up
5 above -- it is about -- the porch is about six
6 feet above this area in through here.

7 MR. PYCIOR: In which spots would it be
8 eight feet high?

9 MR. PETRUCELLI: We will use a regular
10 pool fence of four feet high. Then we will
11 use a deer fence on top of it another two feet
12 high.

13 CHAIRMAN MURPHY: Wait a minute. We
14 can't -- you need to repeat that.

15 MR. PETRUCELLI: The minimum fence high
16 for a pool is four feet by New York State
17 code. It can be a wood fence. It can be a
18 wood fence, a chain link fence or a vertical
19 bar fence. It can't be a horizontal bar
20 fence. It can only be exposed two inches the
21 at the ground and if you use chain link, it
22 has to project up over the top rail half an
23 inch and you have to have a minimum of two
24 inch diameter piping.

25 Most people specify a black vinyl

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2 coated because it becomes more transparent.

3 It doesn't become offensive. On top of the

4 fence, we would use a black vinyl coated -- it

5 is a four by six inch galvanized rods that are

6 welded together with nothing along the top, no

7 bar along the top of it.

8 The deer cannot jump over an eight foot

9 high fence. They can go over a six foot high

10 fence and Judy is already having problems with

11 the six foot fence she put in. She can't keep

12 the deer out.

13 MR. DOVELL: The property is already

14 fenced?

15 MR. PETRUCELLI: Yes, it is a brand new

16 fence. She started to install it since she

17 bought the property, but she didn't put the

18 top section on.

19 MR. DOVELL: The intention is to rip

20 out that fence and put in a new fence?

21 MR. PETRUCELLI: No. This is part of

22 the new fence she is planning to put in, but

23 she only built what she is permitted to build

24 under the zone ordinance, a six foot fence.

25 MR. DOVELL: But the application says

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2 it will be a vinyl chain link fence in that
3 location.

4 MR. PETRUCELLI: The whole fence -- we
5 are putting a two foot extension above the six
6 foot chain link fence.

7 MR. DOVELL: The fence there is a
8 galvanized metal fence --

9 MR. PETRUCELLI: But my drawings call
10 for --

11 MR. DOVELL: There is a little
12 confusion on what is being planned.

13 MR. SHARMA: The fence is already
14 there. It is not going the way you're
15 describing. It is a different kind of fence.
16 Is that what it is going to be or you're going
17 to move that fence or make it the way you're
18 describing?

19 MS. HETZEL: I am trying to get some
20 landscaping in before it is too cold. You
21 can't, as you know, plant anything without
22 protection. The deer will eat it.

23 So I have decided to just put a deer
24 fence in. That is a permitted --

25 MR. SHARMA: The six inches --

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2 MS. HETZEL: Exactly. I didn't need a
3 permit for that. I want to get fencing in
4 this area. I want to run it up the side of
5 the garage and fence in a piece of this too,
6 because this porch, the deer come through the
7 woods and they climb up these stairs, stone
8 steps, they walk across the porch. Their
9 droppings are everywhere. I have a
10 granddaughter in this -- I mean, I think
11 people that should have some civil rights.

12 Anyway, they walk down into this, so
13 this really has to have a piece of the fence
14 around it too so they can't get by the house.
15 So I put in this natural cedar post with an
16 open galvanized mesh fence to take care of the
17 deer. I would like it to be higher because
18 the ground is so uneven and there are rocks.
19 So if you maintain that six foot fence in most
20 places, occasionally you will come to a spot
21 where a rock comes out of the ground, so then
22 the fence is like five feet tall and they go
23 right over it.

24 If it could be higher --

25 MR. PETRUCELLI: Also, the deer fence

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2 she has put in to date will not meet code for
3 a swimming pool. If she gets approval for a
4 swimming pool, she will have to replace this
5 fence.

6 MS. HETZEL: The idea is that we would
7 just take the pool fence around the pool. The
8 property line fence, this would be the -- this
9 would be the cedar post with the galvanized
10 wire, but the pool fence would be in this
11 area. So this would be fenced.

12 MR. PETRUCELLI: What she may do is to
13 put a secondary pool fence in around the pool
14 and leave the deer fence at the property line.

15 This is something that I found out
16 about tonight when we showed up at the
17 meeting. She just bought the property in
18 July.

19 MR. FORBES-WATKINS: You're proposing a
20 stockade fence at the end by the village
21 property?

22 MR. PETRUCELLI: No.

23 MS. HETZEL: Yes.

24 MR. PETRUCELLI: My thinking was a
25 chain link fence -- that is a drawing that

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2 Judy prepared. She could have a stockade
3 fence under state code. It is permitted.

4 As I said before, you can use any kind
5 of a solid wood fence, chain link fence which
6 can't be more than two and three/eighths in
7 either direction and vertical bars that cannot
8 be more than four inches on center; the
9 minimum height is four feet.

10 Different towns in Westchester require
11 four feet, five feet or six feet. The closer
12 you get to New York City, the higher the fence
13 is.

14 MR. LEAF: Just to keep all of fences
15 discussion together, a stone wall on the
16 Ferndale side of the property, the four feet
17 height dimension, is this a freestanding wall
18 or is it a retaining wall? Because I know the
19 property slopes down towards Ferndale.

20 MR. PETRUCELLI: On the back side, it
21 will be a retaining wall, but the fence -- but
22 the wall itself on the pool side will be four
23 feet high. It will only be --

24 MS. HETZEL: No --

25 CHAIRMAN MURPHY: Only the one with the

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2 microphone can talk.

3 MR. PETRUCELLI: It is hard to say how
4 much of this will be a retaining wall on the
5 Ferndale side. It might be a foot difference
6 or two feet difference because any time you
7 get a topography, if it is within two feet is
8 acceptable of what is on the drawings to what
9 the field conditions are.

10 CHAIRMAN MURPHY: Do you have any plans
11 for screening either on the Hollywood Drive
12 side or Ferndale site; I mean plantings,
13 visible screenings?

14 MS. HETZEL: Like I said, this right
15 now, I put in 12 foot arbor vitae trees along
16 this section and there is now probably a 30
17 foot heavy holly tree in here. There are
18 other trees behind this. There is a spruce
19 tree here and then I will fill all the spaces
20 with shrubbery and evergreens to keep this
21 solid.

22 This goes onto this town property which
23 is all wooded and this is already -- already
24 these hues have been planted and some of this
25 is here, but that will be increased, but I

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2 can't do it until I can get the fence in
3 order, you know.

4 Then this wall here which will
5 basically be the four feet high, that will
6 screen this from this road and then this will
7 all be filled with plantings too, and there
8 will be plantings along the road and up
9 against the wall. So like I said, I am as
10 interested in privacy from inside as it would
11 be from outside. So it would be basically
12 covered.

13 This is all house. The house is all on
14 this side. This is all heavily planted
15 already, this whole section.

16 MR. LEAF: I am still interested in
17 understanding the mass of the wall from the
18 Ferndale side and looking up from Ferndale to
19 the wall, what the dimensions of the wall will
20 be.

21 MR. PETRUCELLI: It will be between
22 four to five feet high, depending on the
23 grading, the way they rework the grading in
24 that area. The wall -- if you take the
25 terrace, the wall will be on the terrace side,

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2 four feet high. That is going to be -- the
3 top of the wall is going to be in that area
4 about eight to nine feet above Ferndale, but
5 it is going to be -- the wall is basically --
6 from the pool, it is seven and a half feet.

7 It is going to be basically -- this is
8 -- basically, it will be 30 feet from the
9 property line. Basically, if you look at the
10 window trim, that is what you will be seeing.
11 You will never see the pool.

12 MR. SHARMA: When it is dropping in
13 this direction, it would have to be more than
14 the height on the other side. So if it is
15 four feet on the other side, it has to be more
16 than four feet above the ground on this side.

17 MR. LEAF: Thank you, Deven.

18 CHAIRMAN MURPHY: The difficulty is the
19 way the code is written because the code is
20 fairly clear and of course it is intended to
21 prevent pools from being put anywhere other
22 than in the rear yard.

23 On the other hand, you have a very
24 large lot. You have very large setbacks.
25 Otherwise --

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2 MR. PETRUCELLI: Unfortunately, you
3 have an existing house that was built before
4 zoning that never took into account a pool to
5 be put behind it.

6 CHAIRMAN MURPHY: That is the whole
7 village. That doesn't mean anything. The
8 difficulty is when we wrote the code -- I
9 don't know. I appreciate that the pool isn't
10 really that large. The setbacks are all
11 around bigger than the length of the pool.
12 Certainly, the wall that Mark was asking about
13 on the Ferndale side will provide visual
14 screening.

15 I am more concerned about from the
16 Hollywood side, as Mr. Dovell was asking you,
17 because the leaves are on the trees, you can
18 see all the way through and certainly
19 something would need to be done there anyway.
20 An eight foot fence, I don't get that. I mean
21 the code says six feet and it is six feet,
22 unless we are going to get rid of the deer
23 throughout the village.

24 MR. PETRUCELLI: Which you never will.

25 CHAIRMAN MURPHY: I know.

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2 Anything else from the board before we
3 open it up to the audience? We have a couple
4 of members in the audience. Anybody want to
5 be heard on this application?

6 Yes, sir.

7 MR. MITCHELL: Edward Mitchell11 from
8 Nobile, Magarian & DiSalvo, 111 Kraft Avenue,
9 Bronxville, New York on behalf the owners of
10 63 Ferndale, that is Carolyn Summers and David
11 Brittenham (phonetic). They own the property
12 directly across Ferndale to the south --
13 first, if I may, I would like to hand in my
14 opposition papers.

15 CHAIRMAN MURPHY: Mr. Mitchell, do you
16 have seven copies?

17 MR. MITCHELL: Yes, and one for
18 Mr. Petrucelli.

19 This is a lot with 15,000 square feet,
20 but it is not a typical 10 by 150 size cookie
21 cutter lot. It is an irregularly shaped,
22 elongated lot.

23 There are slope issues and the key
24 thing is that it has frontage on two different
25 streets. It fronts both Hollywood and

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2 Ferndale.

3 My clients's house is oriented towards
4 Ferndale. Their front door, their living room
5 faces Ferndale and faces the spot on the
6 applicant's lot where the pool is going to be.
7 So when they look out their picture window,
8 they will see not a pool, but they will see a
9 fence and it is going to be a big fence
10 because there is an elevation issue to begin
11 with.

12 Then there will be a retaining wall.
13 There is no way to avoid a retaining wall. A
14 pool has to be flat. It is lower on the
15 Ferndale side than it is on the Hollywood
16 side. So fill will have to be added; a
17 retaining wall will be needed. Then there
18 will be a fence on top of that.

19 Plus, the proximity to Ferndale is --
20 maybe I am exaggerating, it will make it look
21 like a green monster. Right now, they have a
22 clear view across. They won't have it
23 anymore.

24 You can understand that problem if that
25 was the view from the back of their property,

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2 but this is the front of their property. This
3 is the way their house is oriented.

4 It is going to affect their curb
5 appeal. It will affect the view from their
6 house. That is, I think, the main issue.
7 There are other issues as well.

8 The plan calls for adding a substantial
9 amount of impervious surfaces on the lot. It
10 is not just the pool. There is the pergola
11 and the patio around it.

12 Right now, the property slopes down
13 towards Ferndale. There is rock and ledge
14 underneath a lot of it. I guess you can say
15 there is an existing drainage issue. There
16 are not storm sewers there. There are
17 bubblers. I believe that is what they are
18 called.

19 Any time there is a severe rain, there
20 is a water flow issue and they can get backed
21 up. In the winter, it is more severe because
22 you can get ice dams in the bubblers. That
23 creates a back-up of water from melting snow
24 and when it refreezes, you have ice along the
25 curbs. The additional impervious surface is

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2 only going to exacerbate that environmental
3 issue.

4 The other points are adequately covered
5 in my opposition papers. So I will just --

6 CHAIRMAN MURPHY: Just a couple of
7 questions. So the main issue for your clients
8 is the view, if you will, out their front part
9 of their house. They do have a two story
10 home, I take it?

11 MR. MITCHELL: Yes. It is also set
12 down below Ferndale a little bit. The
13 elevation drop continues and my client's house
14 is below the street level.

15 MR. PETRUCELLI: I would like to say
16 something. When you design any type of a
17 structure in New York State at the present
18 time, all of the run-off has to be contained
19 on your client's property.

20 I did a perk test. I did a design
21 analysis that there is an under drain system
22 that will lead into infiltrators. Each
23 infiltrator will hold 122 gallons of water.

24 CHAIRMAN MURPHY: Is that on the plans?

25 MR. PETRUCELLI: Yes. I did an actual

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2 drainage plan.

3 Look at sheet S Y 10. It shows the
4 pool, pergola, it shows the retaining wall,
5 the pool equipment. There is a heavy pipeline
6 with arrows on it. That is the direction of
7 the drainage pipe under the terrace.

8 When I did the calculations, you also
9 include the pool cover so that this whole area
10 has been taken up and I need five
11 infiltrators, that would be roughly 600
12 gallons of water that they will store under a
13 25 year storm which is 5.7 inches of water in
14 here. None of this water will ever make its
15 way down to Ferndale onto their property.

16 MS. HETZEL: I am not sure what you
17 represented, but on the big drawing --

18 MR. PETRUCELLI: The property is
19 here and the --

20 MS. HETZEL: I think the house is over
21 here, is it not? Is that the house you're
22 talking about? The house is directly off
23 this. It is not over here.

24 MR. MITCHELL: It is further to the
25 left than where you indicated.

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2 MS. HETZEL: Well, I look out of this
3 onto their house -- the other house you can't
4 even see. So is this the house that is -- it
5 is like in this section? It is not over here,
6 is that correct?

7 MR. MITCHELL: It is 63 Ferndale. It
8 is a larger house, so it is not just limit to
9 that one area. It extends further to the
10 left.

11 MS. HETZEL: It isn't over here?

12 MR. MITCHELL: Yes.

13 There is a 100 foot set back here for a
14 reason and a 20 foot set back from the -- on a
15 rear lot for a reason. There is a reason for
16 that distinction; that is that, if a pool is
17 located in the back of a property, adjacent
18 homeowners will expect that kind of noise and
19 pool equipment and whatever incumbent with
20 having a pool, but when it is in the front lot
21 -- as far as my clients are concerned, this is
22 the front of the applicant's property because
23 they look directly across the street at it.

24 Although they may consider it to be a
25 side lot, it is definitely not a rear lot, but

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2 as far as we are concerned, it is the front
3 lot because of the frontage of the applicant's
4 property on to Ferndale. Thank you.

5 MR. PETRUCELLI: In terms of setbacks,
6 you also have to take into consideration the
7 right-of-way as part of the set back, so that
8 instead of having just 36 feet, you add in the
9 width of the street; you're now up to anywhere
10 from 70 to 80 feet before you get to their
11 front yard, and then you have to have the
12 setback of their house from the property line.

13 MR. MITCHELL: The code says it is 100
14 feet to the street from the inside of the
15 pool. You're not counting the pool
16 accessories, the patio around the sides, but
17 that is what the code says, 100 feet to the
18 street.

19 CHAIRMAN MURPHY: Mr. Mitchell, thank
20 you.

21 Would anybody else like to be heard
22 from the audience?

23 MR. LUETTERS: My name is Norman
24 Luetters. I live with Rosemarie, my wife, at
25 21 Chestnut Drive. I have met our neighbors.

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2 They are very pleasant. They have a nice
3 landscaping program going on. I don't know
4 where it is leading to, but I think at this
5 time it is enhancing the neighborhood.

6 Our two concerns are the water drainage
7 from the pool which I think has been addressed
8 already and the second item was the visual
9 scenic obstruction which the fence may have.

10 The present fence, we are not just
11 speaking for ourselves but the neighborhood
12 generally has considered it unpleasant, but it
13 may be just temporary which is hopefully a
14 good thing because we are concerned about
15 that, and about the height of the fence. So I
16 just wanted to express that.

17 MS. HETZEL: I don't know what to say.
18 You have a right to put in a fence. It is
19 about as natural as a fence can be.

20 CHAIRMAN MURPHY: Any further comments
21 from the audience? Back to the board.

22 MR. FORBES-WATKINS: I will make this
23 comment. I am surprised that nobody has
24 mentioned noise from a pool. Pools tend to
25 have lots of noise.

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2 MR. PETRUCELLI: Basically --

3 CHAIRMAN MURPHY: Mr. Petrucelli, have
4 you considered any alternatives to the fence
5 in terms of bringing it closer to the pool and
6 screening it from the street?

7 MR. PETRUCELLI: The state required
8 fence I can put any place on the property as
9 long as I enclose the pool area.

10 CHAIRMAN MURPHY: I understand that. I
11 am asking you --

12 MR. PETRUCELLI: The deer fence --

13 CHAIRMAN MURPHY: Mr. Petrucelli, I am
14 asking you if you and your client are willing
15 to put the fence closer to the pool and screen
16 it from the street.

17 MR. PETRUCELLI: Would you be willing
18 to move the fence in from the property line
19 and -- the problem is -- you will have to get
20 plantings that are supposed to be deer proof
21 and it doesn't exist.

22 MR. PYCIOR: I have to say, permitting
23 an eight foot fence would be a disastrous
24 precedent for this board because everybody who
25 fears deer in this town would be applying

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2 immediately for eight foot fences.

3 CHAIRMAN MURPHY: And ringing the
4 property with a six foot or eight foot fence
5 is no small visual impact on the neighborhood.
6 It is a problem.

7 Look, you have a big problem because
8 this is a very substantial piece of property.
9 On the other hand, I am sympathetic to the
10 size and location of the property, but it
11 seems to me there is no way I am voting for
12 this unless I get a very significant
13 accommodation from you and your client about
14 the fence and the screening.

15 MR. PETRUCELLI: There is another way
16 to handle the fence. If she needs the four
17 foot fence at the property line that came back
18 -- what is the minimum distance you need
19 between fences where deer can't jump the
20 fences?

21 MS. HETZEL: I think it is four feet.

22 I believe that I can do two four and a
23 half foot fences about four or five feet apart
24 and they are not supposed to -- they aren't
25 supposed to be able to jump the distance to go

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2 over the two fences, so I can do something
3 like that.

4 I mean this fence is a very -- contrary
5 to what this gentleman has said, I have had --
6 first of all, the neighbors have been just
7 wonderful and I have a lot of them stop by and
8 say hello and they have said they think it
9 looks terrific. I think we sent out 32
10 letters to people here. I mean, there is deer
11 fence all over the neighborhood. It is
12 everywhere. This is a better looking fence.
13 I have to have a deer fence. I have to have a
14 garden. I have to have a garden. It is not
15 very big.

16 MR. PETRUCELLI: Also, I would like
17 this to be voted on, one for the pool and then
18 two for the fence as two separate items
19 because I don't want to see her -- if you vote
20 against the fence, I don't want to see her
21 lose the pool if she can get a pool. That is
22 not fair to her.

23 MR. DOVELL: I think there has been
24 some sensitivity in terms of scale in the
25 pool. It is a small pool, as you said. What

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2 you're proposing in materials looks quite
3 attractive around it. It is a modest pool,
4 but what troubles me about its location is, it
5 is right in the middle of that piece of
6 property. It will be visible all the way
7 around, from three sides, from Ferndale, from
8 Hollywood and from the diagonal road which is
9 Seaman.

10 Has any thought been given to perhaps
11 pushing it back towards the house that makes
12 it more of a patio extension from the house in
13 a way that preserves a greater portion of the
14 yard whether we call it front or rear yard?
15 It seems to be another object floating in a
16 very --

17 MR. PETRUCELLI: The reason we put the
18 pool down this end is because she wanted as
19 much area for planting between the pool and
20 the house. So if you move the pool down this
21 way, you would have to rebuild -- re-design
22 this existing stairway here to get the pool to
23 work in this area. You need a minimum of five
24 feet from -- which is tight -- in your code
25 from the building to the pool. Most towns are

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2 10 or 15 feet.

3 I do a lot of pools in my practice. I
4 did a lot of upscale houses and I do a lot of
5 small commercial buildings that are upscale
6 buildings. I also have a master's degree in
7 architectural design. So I am very sensitive
8 about what I do as an architect. I have been
9 in private practice for 28 years now. I have
10 a very good reputation.

11 MR. DOVELL: I am only responding to
12 what is on the paper.

13 MR. PETRUCELLI: If you moved it up,
14 you would end up with probably -- you reduce
15 this 41 feet down to 31 or 28 feet.

16 Could you live with that, Judy?

17 MS. HETZEL: I don't know. I have to
18 re-think that.

19 MR. PETRUCELLI: My client would be
20 willing to go with a double fence of four and
21 a half foot high fence to enclose the property
22 and keep the pool here.

23 I am spending her money, so I think she
24 better say something about it.

25 MS. HETZEL: I really want -- if I

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2 can't go higher than six, then that is what it
3 is, but I want the six-six to go around, so I
4 can have a garden. I mean, if I can't have a
5 pool, I can't have a pool, but it is a little
6 piece of property and it is what I want to do
7 with the rest of my life is have a garden. I
8 can't do it without a fence.

9 So to say give up the right to have a
10 fence when you can have a fence anyway without
11 a permit, I just can't do that. It will be
12 planted all around it. You won't even see it.
13 In two or three years, you won't even be able
14 to see it. The fence will disappear. It is
15 made out of cedar posts. Without the pool
16 fence which would be under the trees in the
17 front, the fence will be buried. You have to
18 give it a chance to be landscaped and you
19 can't landscape until the fence is there or
20 there won't be anything left.

21 It seems like there is a right to put
22 it in at that level. I mean, I can't give
23 that up. They can get over that. I don't
24 know what I would do about that, but in some
25 areas, you can't even get it to be the six-six

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2 because of the rocks and so forth. In those
3 areas, maybe you can do the double four foot,
4 but I can't give up the fence.

5 MR. LUETTERS: Can I make a comment?

6 CHAIRMAN MURPHY: Yes.

7 MR. LUETTERS: We have severe deer
8 problems. I have been here over 20 years. I
9 was one of the first ones in the neighborhood
10 with a deer fence. We have an unobtrusive
11 black netting all around which has been fairly
12 effective, although still not high enough.

13 There are certain plants the deer have
14 not attacked. That is English Boxwood. We
15 have seen that holly is not generally
16 attacked. We see there are certain other
17 plants like even arbor vitae, but generally
18 speaking, we found there are plants -- and, in
19 fact, the Sprain Brook Nursery has a list of
20 plants that are deer resistant and it may be
21 helpful to soften the fence line. So that
22 might be a consideration, as well as a type of
23 fence.

24 MR. PETRUCELLI: Some of the planting
25 only grows to be fairly low. You need to

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2 really screen the fence and you need trees
3 that are going to grow eight to 10 feet high.

4 You can't start to get limited on what
5 is acceptable planting because I know a lot of
6 towns -- I don't know if you do it in your
7 village, when you go before the planning
8 board, they hand out a list of trees that they
9 like to see planted that are either salt
10 resistant or deer resistant.

11 You go up in Dutchess and Putnam County,
12 a lot of people are planting evergreens along
13 highways and the damn trees have no foliage on
14 one side from the chemicals they are using in
15 the salt at the present time. This was not a
16 problem 10 years ago.

17 MS. HETZEL: I would say in any case,
18 this gentleman's point is, what I would be
19 doing is landscaping the fence to keep the
20 permitter of the fence covered with greenery.
21 That would be the -- that is the goal.

22 CHAIRMAN MURPHY: Anything else from
23 the board?

24 MR. LEAF: I would note while it is a
25 modest pool, it is a very significant variance

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2 given the 100 foot setback required in this
3 yard. Since there is an opposition that has
4 been filed and I haven't had a chance to read
5 it yet, I don't know that I would be prepared
6 to vote on it at this time.

7 CHAIRMAN MURPHY: I am prepared to
8 vote. Does the rest of the board have a view?

9 MR. PYCIOR: I am prepared to vote, but
10 I believe the applicant might be better served
11 by considering some of the suggestions made by
12 Mr. Dovell about possibly coming back with an
13 application which moves the pool from the
14 middle of the property much closer to the
15 house, almost like a patio effect. That is my
16 personal thoughts.

17 CHAIRMAN MURPHY: I would suggest
18 screening and changing the fence location, but
19 that is up to you. You can consider that and
20 come back to us with a revised application or
21 we can vote now.

22 MS. HETZEL: The property isn't very
23 big. The property line is significantly off
24 the road, so that it adds even -- more of the
25 property is not the property. So the property

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2 itself within the property line is just not
3 very big. To move the fence in, I mean it
4 becomes -- there is no space at all. If you
5 want to have a garden and if you want to have
6 a pool, there is just nothing left. So I
7 can't give up the property that I have got.
8 It is tiny.

9 MR. PETRUCELLI: If you look at S Y 3,
10 there are site photographs, and S Y 2 gives
11 the location where these photographs are taken
12 from.

13 MS. HETZEL: Maybe I would consider
14 moving the pool up to the house, but I don't
15 want to give up being able to put at least the
16 standard fence around that property line
17 because -- I am totally willing to screen it
18 and landscape it and completely do that. I am
19 happy to do that. I am happy to spend the
20 money to do that, but I don't want to give up
21 the space. I will have nothing left.

22 If I had any idea this would be -- I
23 never would have bought the house. I mean,
24 your property is your property.

25 MR. PETRUCELLI: I think one of the

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2 problems -- I see this all the time with
3 property owners. They buy pieces of property;
4 the realtor jumps through the hoop and gives
5 them every scenario in the world. Realtors
6 don't know anything about land use. I think
7 it should be part of the sales of houses that
8 every piece of property should be inspected by
9 either a professional engineer or a registered
10 architect or a landscape architect to tell the
11 client what they can do with their property.

12 A friend of mine who is an attorney,
13 Whitney Singleton, does a lot of municipal
14 planning type work. He said to me, people in
15 this country do not realize how much civil
16 liberties they are losing and personal freedom
17 of developing their own pieces of property.

18 CHAIRMAN MURPHY: Mr. Petrucelli, I
19 hear you. All I want to know is --

20 MR. PETRUCELLI: I know you have an
21 ordinance.

22 CHAIRMAN MURPHY: It is what it is.
23 You're not making it easy for us.

24 So you have a choice. You can consider
25 our comments and come back to us again with

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2 your client with a revised proposal. If you
3 like to take a minute to talk to your client,
4 I would suggest you do that or we can vote
5 now.

6 (Recess taken.)

7 MR. PETRUCELLI: She would like you to
8 keep the pool as it is. She would like you to
9 vote on this as two items. The fence she will
10 put in -- that fence at the present time is
11 six and a half feet or six?

12 MS. HETZEL: Between --

13 MR. PETRUCELLI: It is between six and
14 a six and a half foot. She is permitted to
15 put a fence on her property up to six and a
16 half feet.

17 CHAIRMAN MURPHY: I think it is six
18 feet.

19 MR. PETRUCELLI: We will paint the
20 metal part of the fence black to make it so it
21 is not as visible --

22 MS. HETZEL: No. Wait --

23 MR. PYCIOR: I thought the post could
24 be --

25 MS. STECICH: Fences or walls or a

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2 fence on top of a wall less than six and a
3 half feet in height may be erected anywhere on
4 a lot.

5 MS. HETZEL: So then I am permitted
6 that fence; is that right? Then I think we
7 should just withdraw this.

8 MR. PETRUCELLI: My client has decided
9 on the fence, that it will be a maximum six
10 and a half feet. She can do whatever she
11 wants.

12 On the pool, do you want to hold off on
13 the pool and see if I can relocate it?

14 MS. HETZEL: We will consider redoing
15 it.

16 CHAIRMAN MURPHY: Do you want us to
17 adjourn the application?

18 MR. PETRUCELLI: Do you want it
19 adjourned?

20 MS. HETZEL: Yes.

21 CHAIRMAN MURPHY: We will do it. Thank
22 you for your patience.

23 Do we have to do something with the
24 Lynn Osborne letter or is that taken care of?

25 MR. SHARMA: The letter is addressed to

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2 the board. I am seeking the board's advice as
3 to how to answer this letter. Can I seek the
4 board's advice? The board needs to respond in
5 some way.

6 MS. STECICH: It is addressed to the
7 zoning board. If the board wants to respond,
8 you can. If you don't want to, you don't have
9 to. You don't have to worry about it. It is
10 up to the board.

11 You recall that we decided at the end
12 of the last meeting, we said, think about it,
13 and that we would discuss it at this meeting.

14 CHAIRMAN MURPHY: This is the
15 wheelchair --

16 MR. LEAF: Yes. It is a structure
17 according to the code.

18 MS. STECICH: Yes, we discussed that.

19 MR. LEAF: I gather that the letter is
20 requesting that we change the law -- I don't
21 understand what the letter is requesting.

22 MR. PYCIOR: I think she is requesting
23 that she not have to go through the
24 application process, but if I recall
25 correctly, when we had a similar case like

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2 this on Warburton, we made the applicant go
3 through the application process, but we
4 expedited it.

5 MS. STECICH: The person had been
6 injured coming out of the hospital --

7 MR. PYCIOR: Yes.

8 MS. STECICH: Before most of you were
9 on the board, we did it for Mark's mom. She
10 was coming home from the hospital and they
11 needed to put a ramp or something in front of
12 the house and I remember your father coming in
13 and requesting the variance for that.

14 MR. SHARMA: Supposing that there is a
15 variance given for this kind of ramp, and the
16 need after some time is no longer there; would
17 the variance then be taken away, because the
18 variance sometimes stays with the property?

19 MS. STECICH: Yes, but once it is
20 discontinued for a period, it is not there.

21 But did that happen here?

22 MR. SHARMA: It could happen.

23 MS. STECICH: No. Did it happen?

24 MR. SHARMA: No.

25 MS. STECICH: Then we don't need to

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2 worry about that.

3 CHAIRMAN MURPHY: I thought the only
4 issue is whether a building permit would be
5 required.

6 MS. STECICH: To get the building
7 permit, she would need a variance because the
8 house is probably already within the front
9 yard is my guess. It is probably not
10 conforming already. This would be an
11 exacerbation of not conforming.

12 CHAIRMAN MURPHY: I think an
13 application needs to be made and we can waive
14 the fees for the applicant.

15 MS. STECICH: If you want to.

16 CHAIRMAN MURPHY: I would be happy to
17 do that, to minimize the burden.

18 MR. PYCIOR: I will second that.

19 CHAIRMAN MURPHY: The board seems to be
20 in agreement on that.

21 Mr. Sharma, if you can perhaps assist
22 the applicant for the paperwork filing and we
23 will act on it as quickly as we can.

24 MR. SHARMA: I will let the applicant
25 know what the board deliberated and decided

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2 and tell her what she has to do, that is the
3 only thing that will expedite it, and waive
4 the fee and it certainly needs to be done.

5 CHAIRMAN MURPHY: Our next meeting
6 is on --

7 MR. SHARMA: I believe the next meeting
8 is on December 11. There is no meeting in
9 November.

10 CHAIRMAN MURPHY: Before we conclude
11 tonight, can I have a motion to approve the
12 minutes of our September 11 meeting?

13 MR. SHARMA: So moved.

14 CHAIRMAN MURPHY: Second?

15 MR. SHARMA: Second.

16 CHAIRMAN MURPHY: All in favor.

17 (Whereupon, approval vote to accept
18 minutes is unanimous.)

19 CHAIRMAN MURPHY: No further business,
20 our meeting is adjourned.

21 (Time noted: 10:25 p.m.)
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24
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2 C E R T I F I C A T E

3 STATE OF NEW YORK)

4 : ss.

5 COUNTY OF NEW YORK)

6

7 I, BARBARA DRISCOLL, a Shorthand Reporter and

8 Notary Public within and for the State of New

9 York, do hereby certify that the foregoing

10 proceedings were taken before me on October 23,

11 2008;

12 That the within transcript is a true record

13 of said proceedings;

14 That I am not connected by blood or marriage

15 with any of the parties herein nor interested

16 directly or indirectly in the matter in

17 controversy, nor am I in the employ of any of the

18 counsel.

19 IN WITNESS WHEREOF, I have hereunto set my

20 hand this 5th of November, 2008.

21

22

23

BARBARA DRISCOLL

24

25

