

**VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK
ZONING BOARD OF APPEALS
REGULAR MEETING
JULY 22, 2010**

A Regular Meeting was held by the Zoning Board of Appeals on Thursday, July 22, 2010 at 8:00 p.m. in the Meeting Room, Municipal Building, 7 Maple Avenue.

PRESENT: Chairman Brian Murphy, Boardmember Ray Dovell, Boardmember Marc Leaf, Boardmember Stan Pycior, Boardmember David Forbes-Watkins, Village Attorney Marianne Stecich, and Building Inspector Deven Sharma

CITIZENS: x (x).

Chairman Murphy: Good evening, everyone. We're here for the July 22, 2010 Zoning Board of Appeals meeting. We have two cases on the agenda tonight. Our first case, the application of Dr. Panzer at 47 Jefferson, is adjourned.

So our second case, which will be our first case tonight, is case number one, 10-10, Cristofer DeBenedetto, 41 Columbia Avenue for the second floor addition and expansion, and he needs several variances. Case number two is 11-10 for Ante Erlic, 463 Warburton Avenue, for the addition of a one-bedroom apartment in the base of an existing four-family apartment building.

Mr. Sharma, are the mailings in order?

Building Inspector Sharma: Yes, I was informed today that the mailings are all in order.

I. CASE NO. 10-10

Cristofer DiBenedetto - 41 Columbia Avenue - For the second floor addition/expansion.

The variances sought are as follows:

- 1. Front Yard on Columbia Avenue – Existing Nonconforming: 10.58 feet.
Proposed for the 2nd floor addition: ±15 feet.
Required Minimum 25 feet. {295-69.F.9(a)}.**

2. Front Yard on North End Place – Existing and Proposed Nonconforming: 9’9”; Required Minimum 25 feet {295-69.F.9(a)}.

Chairman Murphy: State your name clearly because these are audio recorded and transcribed.

Louis Brugnatelli, contractor for applicant: OK. It's Louis Brugnatelli, B-R-U-G-N-A-T-E-L-L-I.

Chairman Murphy: Thanks very much, Mr. Brugnatelli. Go ahead please, and just present Mr. DiBenedetto's application for us.

Mr. Brugnatelli: Mr. DiBenedetto's looking to do an addition and remodeling of his home, and as you can see by the plans there are some variances that are required.

However, at this time the existing home is not in compliance to begin with. It's really way out of compliance with setbacks and what have you. It's not within the building envelope. Really, the only portion of the home – with the new addition – that affects anything in the future would be this second-floor addition and the front porch. I don't know if you guys have a copy of the plans.

Chairman Murphy: Yes, we do.

Mr. Brugnatelli: Very good. What he is requesting, I guess, to ... I don't know how the town works; if they'll conform everything. I don't know how you would address that. However, he's looking to do this addition and there are some variances that are needed. That's really what we're looking for, so he can move forward with the project. Most of it would really be on the front end – which would be Columbia Avenue – regarding off the existing structure now, even though that is nonconforming.

Chairman Murphy: The front yard setbacks that are required are 25 feet minimum.

Mr. Brugnatelli: Correct.

Chairman Murphy: But the house, as many houses in that neighborhood and others in Hastings, is already substantially nonconforming.

Mr. Brugnatelli: Correct.

Chairman Murphy: The real question is, so if you are extending an existing nonconformity – even though it was grandfathered in – you have to just explain why it's necessary either in terms of improving the living conditions of the house ... also why it's in character with the neighborhood. In other words, are there other homes with similar type structures and setbacks, even though they might be nonconforming.

Mr. Brugnattelli: Well, that I'm not certain of because I really haven't looked around the neighborhood to see what everybody has done.

But right now – I don't know if you're familiar with the property – there's not much of a definition as to where the front of the house is. It's kind of vague. And with this front addition, meaning on the Columbia Avenue side, you can see he's put a porch on, with some columns. And it gives a real definition as to where the house is and where the front door is. It gives much better character and, I think, even architecturally – not that I'm the architect – I think it enhances the neighborhood.

He's not asking for much there. However, it is nonconforming and it's really your decision. But without it, you're still going to have a very blank façade on the house.

Chairman Murphy: Is the applicant adding any rooms inside?

Mr. Brugnattelli: Well, he's adding square footage overall. Right now it's about 1,200 square feet and he's going to go to about 1,500, 1,600 square feet. So he's adding a little square footage, and that would be on the second floor. He's not going with any square footage as far as living space. He's not going outside of the existing foundation.

There's a cantilever on the front end, which is the Columbia Avenue side, which is cantilevered out about ... I think it's 2-1/2 feet. But he's staying, for the most part, within the existing nonconforming structure. He's really looking to do additions on the second floor.

Boardmember Leaf: But the porch was existing?

Mr. Brugnattelli: Excuse me?

Boardmember Leaf: The front porch is an existing front porch?

Mr. Brugnattelli: No.

Boardmember Leaf: But that's pushing out of the ...

Mr. Brugnatelli: Well, as far as living space. I meant habitable space.

Boardmember Leaf: In terms of footprint, that's pushing out.

Mr. Brugnatelli: Correct.

Boardmember Leaf: And then the second floor portion is following that extension most of the way.

Mr. Brugnatelli: Oh, no. Only about half the way. You can see the little shaded area. It says "second floor addition."

Boardmember Pycior: So Mr. Brugnatelli, when our application says the second floor addition would be 15 feet from the front yard, how close would the porch be to the front yard?

Boardmember Forbes-Watkins: Somewhere it shows 7.9 feet.

Mr. Brugnatelli: That's correct.

Boardmember Pycior: OK, thank you.

Building Inspector Sharma: I was under the impression that the porch currently exists.

Mr. Brugnatelli: There's a piece of porch there now, just a doorway coming up. Are you familiar with the property?

Building Inspector Sharma: No, I didn't go out to look at it.

Boardmember Forbes-Watkins: I think there's steps.

Mr. Brugnatelli: There's steps going up, correct, off of Columbia. So it's not a porch like you'd have now. You can see those three columns that he has on the elevation from the architect.

Building Inspector Sharma: The way the porch as it's shown on these drawings, the drawings that you gave us, they've been extended out, built out?

Mr. Brugnatelli: Yes.

Building Inspector Sharma: If it is, then I was mistaken and I think the variance should then be different. We are not looking for a variance of 15 feet from the front. It's a covered porch, and whatever the dimension is from the front of the carport – 7-whatever feet – that's the extent of the variance that we're seeking here, which I misunderstood. I thought – I should have gone out to look – that the porch existed the way it was, and you're only building out the second floor to have a top to the porch.

Village Attorney Stecich: The application indicates that.

Boardmember Leaf: It does indicate it.

Boardmember Pycior: The variance listed on the agenda doesn't include that. We'd need a third variance, I think.

Village Attorney Stecich: For coverage, lot coverage.

Chairman Murphy: Yes, because you're over the 30 percent.

Village Attorney Stecich: No, that's not on the notice either.

Building Inspector Sharma: Yes.

Chairman Murphy: And frankly, that's the one that's still a little bit of a concern.

Boardmember Leaf: But the notice to the public is what is in the agenda, and not what's on the application? Because the application shows ...

Village Attorney Stecich: I know. The application has the right variance, the notice doesn't; neither the one that was published, nor in the agenda.

Chairman Murphy: But the notice is published. So all the neighbors have notice of the application.

Mr. Brugnatelli: That's correct.

Chairman Murphy: Notice of that aspect of it.

Village Attorney Stecich: They know they're expanding the house, yes. It's not proper notice, but if the Board wants to say it's adequate because it tells it in that expander that would be OK.

Chairman Murphy: I'm inclined to go that way. Anybody have a different view? I think the notice is adequate for our purpose.

The real question, from my mind, is the lot area.

Mr. Brugnatelli: Yes, lot coverage.

Chairman Murphy: Because it's a small lot, and I understand that it's tight and you're trying to maximize the space with a minimum of incursion. I mean, it's an open porch.

I'm trying to think. I'm not that familiar with the neighborhood, and what I'm trying to recall is whether anyone else in the neighborhood has similar ... it's really the front porch that's expanding the footprint and increasing your lot coverage, ...

Mr. Brugnatelli: Correct.

Chairman Murphy: ...frankly, beyond what we would normally consider. But it's an open porch. It's certainly going to enhance the house. The question is, is it going to detract from the character of the neighborhood or otherwise impinge on the neighbors.

Boardmember Forbes-Watkins: Based on my drive-around, and looking at the neighborhood, I think the porch would be a distinct enhancement to this house.

Mr. Brugnatelli: Correct.

Boardmember Forbes-Watkins: As a matter of fact, if you look at that Columbia side of the house it looks like the side of a house rather than a front of a house.

Mr. Brugnatelli: That's correct.

Boardmember Forbes-Watkins: And so this would really be an enhancement.

Mr. Brugnatelli: I agree.

Chairman Murphy: Yes, the drawings are great. I mean, the proposed – I guess it's the proposed – front elevation, the upper right drawing, is the three-column porch?

Mr. Brugnatelli: That's correct. That would be on Columbia Avenue, yes. Right now, as Mr. Forbes-Watkins said, you can't really differentiate the front from the side. This would give it some definition, as I said earlier.

Boardmember Dovell: Could you describe what's happening at the second floor? This survey calls it ... looks like it reflects the profile that's being proposed. But yet you're calling for a second-floor addition?

Mr. Brugnatelli: Correct. The second-floor addition is roughly ... right now, underneath, that is a little kitchenette area.

Boardmember Dovell: So it's one story at the back currently.

Mr. Brugnatelli: Correct. It's one story, as we speak, and there'll be a second story above it.

Boardmember Dovell: So this survey's incorrect, then, for that area.

Mr. Brugnatelli: I'm not certain. Let me get a copy.

No, the survey's correct, sir. If you look at where it says "platform to lower deck," the shaded area on the actual plans is incorporated to the right of the area that says "one story" and to the Columbia side of the platform. So it's incorporated.

If you don't mind if I come up, that shaded area right now would be right here.

Boardmember Dovell: OK. But what it's calling there, it's saying "two stories, stucco frame."

Mr. Brugnatelli: Correct. This is all ... oh, I see what you're saying.

Boardmember Dovell: This is not a two ... this says "one story" down here, so this is actually all one story.

Mr. Brugnatelli: Correct.

Boardmember Dovell: OK. So it's adding area up on top, as well.

Mr. Brugnatelli: Yes. This area over here, you're right. I guess we'd call that the rear of the house as far as the survey's concerned.

Boardmember Dovell: It would be one story?

Mr. Brugnatelli: Yes. This should be one story over here. Everything else should be roughly two-story. You're correct.

Actually, on that survey you can see the front elevation on Columbia Avenue, how it's not very architecturally ... pretty architecturally offensive, actually.

Boardmember Dovell: That little piece of second floor, then, is in compliance or out of compliance with the front yard setback on North End Place?

Mr. Brugnatelli: Well, it's probably not in compliance just because ...

Boardmember Dovell: It would be too close.

Chairman Murphy: It's probably further back than the existing setback, Ray, which is 11 ... according to this survey, would be 11 feet.

Mr. Brugnatelli: Correct.

Chairman Murphy: To what's there now, but it would be set back further. But I don't think it would be set back 25 feet.

Boardmember Dovell: Right.

Chairman Murphy: So you're still expanding the existing nonconformity. I guess your point is, you're staying within the footprint of the house except for the porch.

Mr. Brugnatelli: Correct.

Chairman Murphy: And one of the things we've done in this circumstance, if the Board thinks it is a significant enhancement to the property and beneficial to the neighborhood and the applicant's property, you can condition it on not enclosing the porch in the future; which is a useful way to preserve the aesthetic benefit and not get too much bulk so close to road.

Boardmember Dovell: I'd be very interested in that kind of a limitation.

Chairman Murphy: OK.

Mr. Brugnatelli: Sure.

Boardmember Dovell: That sounds realistic.

Chairman Murphy: Only because going from, you know, 30 percent lot area coverage permitted going up to 38.5 percent is a pretty big jump. On the other hand, it's a pretty small property and it would be a very nice addition, based on the plan. And otherwise the house really isn't that large.

Mr. Brugnatelli: Correct. I don't think Mr. DiBenedetto would have a problem with what you said earlier about never enclosing the front porch to add square footage.

Chairman Murphy: Oh, yes, I see.

Boardmember Leaf: Do we have information on the lot, on the coverage according to the new definition of coverage? I mean, in other words, are we including the brick driveway and the concrete walk in this coverage, or is it just the buildings?

Mr. Brugnatelli: Well, I believe those are impervious areas, and as far as the zoning code data on the actual prints that I have I believe it doesn't include any of that. It's just including lot coverage on square footage of the house of the existing and proposed. So I don't believe the driveway and the concrete walkway is included.

Chairman Murphy: How about the concrete block garage, though? That should be included.

Village Attorney Stecich: The garage would be. But, Deven, you really should fix the new form because now there's two figures, lot coverage and development coverage. I mean, development coverage isn't going to be affected in this one, but it should be on the application.

Building Inspector Sharma: I believe the coverage here – I can check, though – is building coverage and not the development coverage. I don't think any of the impervious paved area's included in this coverage.

Chairman Murphy: Right. But my only question is, that's how I understand it. But in terms of the building coverage, does that include the concrete block garage the way it's stated now?

Village Attorney Stecich: Yes, garages are included in building coverage.

Chairman Murphy: OK, fine.

Village Attorney Stecich: The only thing that wasn't included were other paved areas.

Chairman Murphy: The paved areas, right. Sure.

Boardmember Leaf: And the deck? Is the deck included in the building coverage?

Building Inspector Sharma: That was included.

Boardmember Leaf: And it's also in the development coverage.

Village Attorney Stecich: It's the building coverage.

Boardmember Leaf: So if they expand the porch, though, then they are going to be expanding the development coverage.

Village Attorney Stecich: Yes, and the building coverage both. Right. Oh, I see what you mean.

Boardmember Leaf: I'm just saying, it doesn't look like there's a lot of place for rain to seep into the ground here.

Mr. Brugnatelli: Not much of that will change, though, if he does the addition.

Boardmember Leaf: Right. But there is some over on the porch. Is that correct? In other words, the porch is being extended towards Columbia Avenue by about 4 feet.

Mr. Brugnatelli: Correct.

Boardmember Leaf: OK.

Chairman Murphy: OK, any other questions from the Board? Anyone from the audience wish to be heard? No one being here, I'll take that as a no.

So just for the Boardmembers, we need a motion for a third variance which is to grant a variance for an increase in the lot area coverage from 30 percent, which is permitted, to 38.5 percent, which is what's being proposed. And I would also suggest we put a condition on

that particular ... well, I guess we can put the condition on the granting of all the variances that the front porch remain unenclosed.

Village Attorney Stecich: You know, Mark raises a good point. There may be, because we don't have the number on the development coverage, they may also need a variance for development coverage. I think the development coverage is 10 percent over. So if the lot coverage here is 30 percent, then the building would be 10 percent. If this thing is 38.5 feet, it's probably over.

Chairman Murphy: You could grant a fourth variance now, unless the Board has a problem with that. I don't have a problem with it.

Building Inspector Sharma: We are talking about the building coverage, as opposed to 30 percent, is 38 percent. So I don't know why development coverage needs to come into it.

Village Attorney Stecich: Because we have now a new requirement in the code, and that's development coverage.

Building Inspector Sharma: No, I understand that.

Village Attorney Stecich: And my guess is that if you add this 38.5 feet to any paved areas it's over 40 percent so they need a variance.

Chairman Murphy: I suspect you're right. So I guess technically we'd need a fourth motion.

Village Attorney Stecich: Yes. And if you don't, there's nothing lost.

Boardmember Leaf: Have we previously granted variances to development coverage without any kind of testimony or evidence regarding the drainage? And this is very level property. Is there any kind of a sink here?

Mr. Brugnattelli: You mean a catchbasin or something? No, not now. No, there's not.

Chairman Murphy: Usually, Mark, it comes up when there's, you know, the many sloped properties in the Village. And that can be a problem, particularly for the neighbors who are below the applicant's property. And there have been conditions for catchbasins, that kind of thing. It's just I guess with this property it didn't appear to be necessary. But we didn't ... I don't know.

Boardmember Leaf: It's very level property.

Mr. Brugnatelli: As far as runoff from water, the only thing we'd be increasing is just a little bit of the porch. As far as roofline, no matter if the roof goes steeper, or less, we're still going to have the same volume of water. The only volume of water we have is on the front porch, which is not very significant as far as gallons of water.

Boardmember Leaf: It's just that it's a very significant variance for lot coverage. And because of that, I just want to make sure that we're not setting a precedent that we approve this without being confident that we're not causing a problem.

Mr. Brugnatelli: I understand.

Chairman Murphy: I think, for this property and this application, that doesn't choke me for this particular one. And I don't think it would be a precedent that would bind us in the future, I really don't.

Boardmember Leaf: I think that's right. I agree with you.

Mr. Brugnatelli: I agree also.

Chairman Murphy: We thought you might.

Boardmember Dovell: Development coverage isn't one of the things that's covered in the standard sheet.

Village Attorney Stecich: No. That's what I just said. That's my point: it has to be fixed.

Chairman Murphy: Yes, it really does, Deven, just so the applicants know that they have to look at that and determine whether they're in compliance with the full coverage for impervious surfaces as well as the building.

Building Inspector Sharma: True.

Chairman Murphy: Appreciate your effort on that.

So if the Board is ready to make a motion, with condition imposed, there will be two additional variances. One to permit a variance above the lot area coverage of 30 percent, and also above the development area coverage, which would be 40 percent.

Village Attorney Stecich: I think so, but I just took my abbreviated coverage. It doesn't have the changes in it. But I remember it was 10 percent, an additional 10 percent.

Chairman Murphy: Does anyone want to take a crack at a motion? We can do them one at a time.

On MOTION of Boardmember Leaf, SECONDED by Boardmember Forbes-Watkins with a voice vote of all in favor, the Board resolved [*approval of a variance from the requirements of zoning code to permit a second floor addition and expansion of the covered porch at the corner lot property at 41 Columbia Avenue to approve the following variances: for the front yard, minimum 25 feet; to permit a 7-foot setback from Columbia Avenue; and to permit a 6.92 percent setback for North End Place. On the lot area, to permit a lot coverage of 38.5 percent, where 30 percent is required. And on development area, to permit the development coverage as shown on the survey attached to the application, notwithstanding the current provisions. Such variances to be conditioned on the covered porch remaining open on three sides, and not enclosed*].

Chairman Murphy: The vote is unanimous.

Mr. Brugnatelli: Very good.

Chairman Murphy: Congratulations to you and Mr. DiBenedetto.

Mr. Brugnatelli: Thank you very much. I appreciate it.

Chairman Murphy: Good luck with the project.

Mr. Brugnatelli: Thank you.

Chairman Murphy: Mark, thank you for that. That was well done.

II. CASE NO. 11-10

Ante Erlic - 463 Warburton Avenue - For the addition of a one bedroom apartment in the basement of an existing four- family apartment building.

The variances sought are as follows:

1. **Off-street Parking: minimum required with the proposed additional one bedroom apartment – 9.
Existing and Proposed – None {295-36.A.}.**
2. **Lot Area: minimum lot area required for 5 dwelling units – 9,500 square feet (5,000 square feet for the first two dwelling units, plus 1,500 square feet for each additional dwelling unit).
Existing and Proposed Nonconforming – 2,535 square feet {295-72.1.D.(2)}**
3. **Improved and Useable Open Recreation Area:
Minimum required – 1,800 square feet (200 square feet for each bedroom in all dwelling units, total nine bedrooms).
Existing and proposed – None {295-72.1.B.2}.**
4. **Prohibition against Extension of Nonconformity {295-55A}.**

Chairman Murphy: Our next case is the application of Mr. Erlic for a series of variances for the multi-family dwelling at 463 Warburton.

Who's going to present? You're Mr. Erlic? Welcome.

Boardmember Forbes-Watkins: I want to note, in passing, that this is within the view preservation area, even though there's no view to deal with. But we have to deal with view preservation.

Chairman Murphy: Well, it is in the view preservation district, but this is for ... at least my understanding is, he's adding a bedroom apartment in the basement of the existing structure. Right?

I'm sorry. Do me a favor. You didn't get to finish. Just identify yourself, please, for the record.

Ante Erlic, applicant – 463 Warburton Avenue: Ante Erlic.

Chairman Murphy: Mr. Erlic, welcome. Why don't you go ahead and just explain the proposed project, the current condition of the dwelling, and what you're proposing to do and why.

Mr. Erlic: First why, because I'm going to get a little more money to bring the place up. It's a hundred years and more old so it needs a little more funds. I'm going to bring it back as it used to be. That's my trade, and a little more money wouldn't hurt. As is, this half of the basement is CO'd and ready for additional apartment above.

Chairman Murphy: I'm sorry. Say that again, please?

Mr. Erlic: This half of basement's already certified as addition to above apartment. It can be duplex. So I figured out maybe there's such a big waste of space, add another one-bedroom apartment down there if it's possible.

Boardmember Leaf: You're saying that the C of O permits the basement to be used as part of an extension of the first floor apartment that's directly above the basement.

Mr. Erlic: Yes.

Boardmember Leaf: So you could expand that and make it a larger apartment.

[crosstalk]

Mr. Erlic: Well, I don't think it would be ...

[crosstalk]

Boardmember Leaf: You don't want to expand it and make it a larger apartment. You want to make it a new fifth apartment.

Mr. Erlic: Yes.

Boardmember Leaf: And this is a 2,500 square foot building? Is that correct, or is that just the lot? I thought that was the footprint of the ... oh, lot area. OK, that's just the lot area. My mistake.

Boardmember Dovell: What is down there currently?

Mr. Erlic: Nothing.

Boardmember Dovell: Well, your plans show existing.

Mr. Erlic: Existing, yes. But it used to be rented before I purchased it almost a year ago.

Boardmember Dovell: So it had this unit in it?

Mr. Erlic: He knows about it. Deven knows about it.

Chairman Murphy: No, no. We're just trying to understand what ... Mr. Sharma, can you perhaps answer Mr. Dovell's question so we understand what was there before?

Building Inspector Sharma: Sure. The owner of the building before Mr. Erlic had an illegal apartment there in the basement.

Village Attorney Stecich: I'm sorry. Did you say "legal" or "illegal?"

Building Inspector Sharma: Illegal. And it was brought to our attention, we made our inspections, and we gave them the violation notice, et cetera, and pursued it until that apartment was taken out.

Also, a portion of the basement which was finished a few years ago also had similar circumstances. The previous owner had started work on the basement, and somebody brought it to our attention. He was asked to stop until he got a permit for it. He was given a permit, and indicated the area he was finishing off would be used by the apartment immediately above it. So they do have a C of O for the basement being partially finished as an extension of an apartment on the first floor.

Boardmember Dovell: Is that how it's currently being used now, as an extension?

Mr. Erlic: No.

Boardmember Dovell: It's not connected at all to the ...

Mr. Erlic: It is connected from the front, but it's not used at all. It's a little too large. It's too expensive to rent.

Boardmember Dovell: So it's basically just vacant at the moment.

Mr. Erlic: It's empty.

Boardmember Dovell: There's a kitchen and dining room in it?

Mr. Erlic: No. Downstairs, actually I threw all the stoves out. There used to be stoves and all that junk. I threw everything out. So there's nothing downstairs.

Building Inspector Sharma: When we gave them the violation, the kitchen had to be taken out. All the cooking appliances had to be removed.

Boardmember Dovell: Well, the plans show a dining room. What I'm looking at are two plans. One is existing, the basement plan existing, and one is basement plan proposed. And the basement plan existing shows a kitchen and a dining room on one half and an exercise room on the other half.

Mr. Erlic: There is a kitchen in here behind the bathroom, which was used when they rented a couple of years ago. It shows a sink behind the bathtub right there. But in the new proposal, where the big closet area is, that used to be a kitchen.

Chairman Murphy: I think what we're just trying to clarify is the existing condition of the basement. Is any of this functional bathroom or kitchen stuff?

Mr. Erlic: The bathroom is functional, the kitchen is not. This bathroom has a certified bathroom. It operates.

Boardmember Forbes-Watkins: Both bathrooms, as exist, are functional.

Mr. Erlic: No. One is out, cleaned.

Boardmember Forbes-Watkins: The one on the right side. If you're looking from the porch, it says "bath."

Boardmember Forbes-Watkins: The one that was next to the kitchen?

Mr. Erlic: Yes.

Boardmember Forbes-Watkins: That's no longer ...

Mr. Erlic: No. That was actually the illegal side. That was built illegally.

Boardmember Dovell: And on the other side, there's something called an "exercise room."

Mr. Erlic: Yes, that's what this is.

Boardmember Dovell: And that is currently an exercise room?

Mr. Erlic: No.

Boardmember Forbes-Watkins: But there's a bath.

Mr. Erlic: No. I cleaned up and found so much mess, and I tried to see what's in the ceiling in the cleaning to make sure it doesn't catch fire or wires are not connected improperly. I just checked everything, and it's empty.

Chairman Murphy: But how could the basement connect to the apartment above it on the first floor?

Mr. Erlic: There's a staircase behind there.

Chairman Murphy: Is it internal, then?

Mr. Erlic: Yes.

Building Inspector Sharma: No, it's not an internal stair.

Mr. Erlic: It is now.

Boardmember Forbes-Watkins: Internal to the apartment above?

Mr. Erlic: Yes, because it's closed in the front, those two front apartments.

Building Inspector Sharma: From the apartment ... see, I remember going down in the basement. We had to knock at the first-floor apartment to get access to the stairs.

Chairman Murphy: That's what I'm saying. How are you going to access the basement apartment if that stairway is closed up?

Mr. Erlic: You can from the front now, the same staircase. Just a hallway.

Boardmember Forbes-Watkins: But through an apartment.

Mr. Erlic: No. You have to pull the door over. I picked up the idea from my next door neighbor just to pull 10 or 12 feet in the inside hallway and open up that space to go downstairs.

Boardmember Forbes-Watkins: But if I go down the stairway, in either drawing, I end up in a mechanical room or in a storage room and not in what you're calling the apartment. Is that correct?

Boardmember Dovell: That's how the plan reads. It reads as if access to the apartment is from the back, off a deck.

Mr. Erlic: There's access there, and from the front.

Boardmember Dovell: And that faces away from the road.

Mr. Erlic: It faces Ridge Street.

Boardmember Dovell: The road is the bottom of the sheet, correct?

Mr. Erlic: Yes.

Boardmember Dovell: So access to the apartment is from outside at the back of the building. Correct?

Building Inspector Sharma: That is correct.

Mr. Erlic: That is correct, yes.

Boardmember Dovell: How do you get there?

Mr. Erlic: There's an easement between two houses. If you look at this survey, from Ridge Street there's a 10-foot easement here for that house.

Boardmember Forbes-Watkins: If you go down on Ridge Street, there is an access through. Do you have an easement on that access?

Mr. Erlic: It's here.

Boardmember Forbes-Watkins: You have an easement on that access?

Mr. Erlic: Yes.

Boardmember Forbes-Watkins: That appears to be on somebody's property other than yours.

Mr. Erlic: I don't know, but this survey says that I have easement on it.

Chairman Murphy: Do we have this survey? I didn't see it. Mr. Erlic, do you have an extra copy or can we please see the copy that you have of the survey?

Mr. Erlic: I'll give it to you.

Building Inspector Sharma: It was attached to it.

Chairman Murphy: I think our packages did not have the survey, so let's take a look at what you have. Which side, Mr. Erlic, is Ridge Street?

Building Inspector Sharma: Take the microphone with you.

Boardmember Forbes-Watkins: Is that an easement, or is it just in between two yards?

Mr. Erlic: No, it says "easement" on it right there. I was looking the other day. It says "easement" in the back also.

Boardmember Forbes-Watkins: Because, frankly, when I looked at that ...

Village Attorney Stecich: There definitely has to be within ... the fact that it says it on the survey doesn't mean that it's ...

Boardmember Forbes-Watkins: A legal easement.

Village Attorney Stecich: Right.

Boardmember Forbes-Watkins: When I looked at it, it looked to me to be [junk stream], as if somebody had used their backyard or their side yard to store stuff. And you have to go up and around this stuff in order to get to a stairway to get up one level in order to get to this basement. I don't consider it safe in the slightest. It's dangerous.

Chairman Murphy: Well, I agree with that. I think our question is, how are you going propose ... what we want – what I want – to know is, how are you proposing access from the front? From the Warburton side.

Mr. Erlic: Let's say that this is the upstairs hallway.

Chairman Murphy: Assuming this is first-floor hallway, OK.

Mr. Erlic: This door is going to come right here. And this is going to open up the existing door to go downstairs. This would be a public hallway.

Boardmember Dovell: That's not shown.

Boardmember Forbes-Watkins: But then that goes into the mechanical room and the storage area, which are blocked off from the apartment.

Boardmember Dovell: It would be on this plan here, on the proposed plan.

Boardmember Forbes-Watkins: And that's blocked by this wall. You don't have an access.

Boardmember Dovell: But even with a door here, you're in an electrically-paneled storage room to get around the back.

Chairman Murphy: Here's the stairs. So how are you going to access these stairs from this hallway?

Boardmember Forbes-Watkins: This stair goes up to the first floor. So it's coming down. It would have to be blocked here.

Mr. Erlic: It is going to get blocked.

Chairman Murphy: But it's not shown.

Building Inspector Sharma: Currently, the way I remember, the stair that goes out includes the first-floor apartment. Because when we needed to come down to the basement area we had to knock at that lady's apartment. She had to open the door and let us in so we could go down the stairs into this back area where the meters are. So the question they're asking is, the stairs we're looking at – the other end of the stairs – happen to be in a private apartment and not in a public area.

Boardmember Forbes-Watkins: Even if it's in a public area, when you get downstairs the drawing shows a blockage. So you can't get from the stairs into the apartment.

Chairman Murphy: We all agree.

Mr. Erlic: I didn't notice that one.

Chairman Murphy: So you have an idea that there's a way to access it. Let's assume that could be done. I think the Board needs to talk about whether we want to allow that.

Village Attorney Stecich: And I think also this is a use variance because this is a ... a lot in this district is only a one- and two-family house in addition to some commercial. I understand this was previously ... there's a certificate of occupancy for a fourth family. Is that correct?

Building Inspector Sharma: Yes.

Chairman Murphy: And this basement is allowed, I guess, to connect to the lower unit as part of that C of O.

Village Attorney Stecich: No. I think the application's for a fifth unit, isn't it?

Chairman Murphy: This one is.

Village Attorney Stecich: However many units, that's what you should focus on. They want to go up from four to five. I think it's very clearly a use variance, and you really don't have the proof to grant one. The applicant has to show that there's no way that he can make a reasonable return by competent financial evidence. The standard's really hard – by competent financial evidence – that you can't make a reasonable return using it for a permitted use.

The permitted use right now is for four families. It's not forbidden in that district. But sometimes it's a little unclear whether something's a use variance. But to me, this one's very clear. Especially since the maximum number allowed in that district is two.

Chairman Murphy: Well, that's the other problem. Even if it wasn't a use variance, that's still very substantial.

Boardmember Leaf: This is a very substantial variance, and I'm concerned about the off-street parking, I'm concerned about the minimum lot area, I'm concerned about the recreation area, and I'm concerned about the use variance, which has – as counsel has explained – a much higher standard of care for us to approve. In fact, we are prohibited by law from approving it unless you establish what counsel said.

So I'm not prepared to vote on this, at least positively, at this point.

Chairman Murphy: And I tend to agree. Mr. Erlic, this is a tough one. And what you have now before us isn't sufficient anyway. And, of course, we're going to take our counsel's advice. This looks, to us, like a use variance for which the standard is even higher than a typical area variance, particularly in that neighborhood where parking is already a huge problem.

So my recommendation is that you go back and think about this. And talk further with Mr. Sharma if you want to pursue it so we get the standards clear, for one. And two, of course, whoever the architect is, obviously this is a kind of basic error in the proposed plan just as it is. But also, the code requires – as Mr. Leaf has said – significant additional submissions on your part.

So it's a higher standard. It's not easy to meet; it's very hard to meet. We're not unsympathetic to you. It's just that this is a tough one. And in that neighborhood there's already been enough development and dislocation on some of these applications that I just think the Board's going to have a hard time with this. I do.

So I want to be honest with you, but also if you want to pursue it there's a way to pursue it. It's just going to take more time, effort, and money on your part to establish the minimum just to try to come before us and have a chance of a positive approval.

Mr. Erlic: I would like to go forward with it, and correct these things and see what else is involved with it.

Chairman Murphy: OK. Well, there's more than that. That's fine, you can.

Mr. Erlic: The guy next door to me has the exact same thing.

Chairman Murphy: See, that would be the kind of evidence you'd need to show us.

Boardmember Forbes-Watkins: Is *he* in violation?

Chairman Murphy: But again, I think if you really do want to pursue it, that's fine. But you have to go back, I think, and talk to Mr. Sharma and resubmit your application after you investigate what additional information would be required for a use variance. And all I'm telling you now is that it's a higher standard, and the Board looks very much more cautiously at use variances. It's not easy to get it approved.

Boardmember Forbes-Watkins: How long have you owned the property?

Mr. Erlic: It will be a year in September.

Boardmember Forbes-Watkins: You don't live in the property?

Mr. Erlic: No.

Boardmember Forbes-Watkins: It's strictly an investment for you.

Chairman Murphy: How about the other four dwelling units, though? Because if this is the property I think it is ...

Village Attorney Stecich: No, maybe it's not. I think I might be wrong. Because if he's owned it since September it's a different piece.

Boardmember Leaf: See the difference between use variance and area variance?

Village Attorney Stecich: This isn't the [off-mic], is it?

Building Inspector Sharma: Excuse me?

Village Attorney Stecich: This isn't the [off-mic] house, is it?

Building Inspector Sharma: No.

By the way, previously, the owner before you, they had two illegal apartments there; and, of course, access through the porch in the back. And obviously the porch is a [fire] egress, and it can discharge into somebody else's yard. But there was not access to those apartments from any public areas from the front.

Chairman Murphy: Well, I think that was Dave's point.

Building Inspector Sharma: That had to be taken up.

Chairman Murphy: That's unsafe, so we don't want to encourage that either.

Village Attorney Stecich: Has it been a four-bedroom all along? The use wasn't discontinued, was it?

Building Inspector Sharma: Going through the files, we saw there have been four apartment units.

Village Attorney Stecich: I was just trying to determine whether there was an discontinuance of the nonconforming units, but apparently not.

Building Inspector Sharma: No. It's been a four-apartment building for some time.

Chairman Murphy: And are all of those four units currently occupied, Mr. Erlic? OK.

Boardmember Dovell: But Deven, provided there is legal light and air, and egress from a space including the basement space that has the requisite open, fresh-air requirement, is there any compelling reason why he couldn't duplex down with these units? If you're looking to maximize your return is that an avenue to explore, provided you don't go beyond the four units to trigger a use variance?

Building Inspector Sharma: There are other zoning issues, obviously. But from the building code point of view, yes. If you can provide, from the first-floor entrance for a public area, access to this apartment downstairs, and if it has the right width and everything, and light, yes, it can.

Chairman Murphy: No, I think Ray's saying something different. He's saying duplex it. Because Mr. Erlic was saying earlier that the C of O already permits him to do that with the lowest apartment on the ground floor; permits him to duplex down into the basement.

Building Inspector Sharma: As a duplex, yes.

Chairman Murphy: So you could charge higher rent.

Boardmember Dovell: Because what you're confronted with right now is that you've got a big block of space down here which is empty, basically, and you want to use it and get a return on it.

Mr. Erlic: Yes, that's right.

Boardmember Dovell: But maybe you could explore a way to do that without triggering a use variance. That's my point.

Mr. Erlic: That's my backup plan.

Boardmember Dovell: Because I think the use variance is very hard to swallow. I think it's going to be very difficult for this board to entertain that.

Chairman Murphy: Yes, and one of requirements would be what are the legitimate alternatives. And it appears clear that one of your alternatives is to – so-called – "duplex down," or connect down, the lowest apartment to the basement and make it living space. And of course your return would be a higher rent on that particular unit.

Boardmember Dovell: It's bigger units, more desirable units.

Boardmember Leaf: How many units are on the first floor now? Is it a single unit?

Building Inspector Sharma: Two-and-two.

Boardmember Leaf: It's two-and-two, so you could have two duplexes by going down. Or is that not possible?

Boardmember Forbes-Watkins: It is possible.

Boardmember Leaf: It's already done as a duplex.

Mr. Erlic: Part of this is that if you're renting a duplex at high rents, the small apartments you get one person, maybe two young people.

Boardmember Dovell: But that's triggering all sorts of variance requirements. It's not just use, it's also the recreation space. You have no recreation space, and you're not providing any.

Chairman Murphy: Yes, you're not ameliorating ...

Boardmember Dovell: No parking.

Village Attorney Stecich: I don't think he would even need any other variances.

Boardmember Dovell: Five single people living there require five cars.

Building Inspector Sharma: The duplexes were to add additional bedrooms. Then the parking requirements change. If it's additional area, dense space, that would be a different thing. But if he adds extra bedrooms, additional parking will be required.

Chairman Murphy: But it's still not a use variance. We have the issue that came before us last meeting on a Warburton property where the off-street parking was put in the back off Ridge Street.

Boardmember Forbes-Watkins: Not in this one.

Chairman Murphy: Well, I'm just throwing it out there. But I guess our point is, Mr. Erlic, you're welcome to pursue this. I suggest you talk more carefully with Mr. Sharma and also the architect to make sure you know what you want to do and that it's clear from the application what you're asking for. Because I don't think we're inclined to do this.

Boardmember Leaf: And before you spend a lot of money on it you should just be aware ... I mean, I have an open mind. I'm willing to look at anything you submit. But it's going to be difficult to get over my initial concerns about adding a fifth basement apartment in an area that's zoned for one- and two-unit housing. That's going to be a problem for me.

I'm willing to view anything you submit with an open mind, but I don't want you to spend a lot of money and a lot of time on something that's going to not be successful.

Chairman Murphy: So take that as our best effort to consider this.

Mr. Erlic: I'll take that as a no.

Chairman Murphy: Well, it's not a no because we can only react to what you presented to us. What you presented to us is not going to fly. OK? That's clear. So we're trying to help you with what we might think would be reasonable alternatives that might get you at least partway to where you're trying to go. And we're happy to consider that, but you're probably going to have to go about it a different way.

Village Attorney Stecich: Just to follow up on David Forbes-Watkins' question, even though it is in the view preservation area, the application has to be for the erection or exterior alteration of a building. So because there's no exterior alterations here it would be view preservation, even though it's in the district.

Boardmember Forbes-Watkins: OK, thank you, Marianne.

Chairman Murphy: All right, Mr. Erlic?

Mr. Erlic: Well, I guess it is.

Chairman Murphy: Well, it will have to be for tonight.

Mr. Erlic: I have to talk to him more.

Chairman Murphy: Yes.

Boardmember Dovell: And a lot more, too.

Boardmember Leaf: And take this, too, so you can see what the standards are.

Village Attorney Stecich: It's included on the application. You should have had it.

Boardmember Forbes-Watkins: It's going to have to be a whole new ball game.

III. APPROVAL OF MINUTES

Regular Meeting of April 22, 2010

Chairman Murphy: We also need to approve minutes from each of our last two meetings. And David, I take your point about crosstalk. But frankly, under the circumstances, unless ... my own view of this is, unless there's something significant I don't think we should get too hung up on it.

Boardmember Forbes-Watkins: It's impossible.

Chairman Murphy: Because it is. It's just impossible. But having said that, Mark, I know you usually take pretty good care of these things. And I commend you for that.

Boardmember Leaf: I have nothing right now.

On MOTION of Boardmember Forbes-Watkins, SECONDED by Boardmember Pycior with a voice vote of all in favor, the Minutes of the Regular Meeting of April 22, 2010 were approved as presented.

Regular Meeting of June 24, 2010

Boardmember Forbes-Watkins: Let Mark have a shot at the verbiage, and then I'll make my motion.

Boardmember Leaf: That one, I'm still looking at.

On MOTION of Boardmember Forbes-Watkins, SECONDED by Boardmember Pycior with a voice vote, the Minutes of the Regular Meeting of June 24, 2010 were approved as presented.

Boardmember Dovell: It's not unanimous. I wasn't here.

IV. MISCELLANEOUS

Boardmember Pycior: Our next meeting is sometime in September?

Chairman Murphy: Yes. We traditionally skip the August Thursday and, I think, Marianne, we do the second Thursday in September. Right?

Village Attorney Stecich: You seemed to do it earlier.

Building Inspector Sharma: I think the date is September 9 on our calendar.

Village Attorney Stecich: Well, that would be the second.

Boardmember Leaf: Yes, that might be a problem. I think that's Rosh Hashanah.

Chairman Murphy: It is.

Building Inspector Sharma: Somebody mentioned that.

Chairman Murphy: The 16th? We could do the third Thursday. It would still be relatively early.

Village Attorney Stecich: No, that's the Planning Board night. The third Thursday's always the Planning Board, which is probably why you do the ... the first you don't do because it's Labor Day.

Chairman Murphy: That's why we did the second. Unless there's a rush of applications, we could leave it at the fourth Thursday, which would be September 23. I'm certainly content to do that if the Boardmembers don't mind. I mean, if I thought we had a lot of business coming through, then I suppose, Mr. Sharma, you can let us know and we can reconsider. But in the absence of a lot more applications, we'll set our next Zoning Board meeting for Thursday, September 23.

V. ADJOURNMENT