

**VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK
ZONING BOARD OF APPEALS
REGULAR MEETING
DECEMBER 13, 2012**

A Regular Meeting was held by the Zoning Board of Appeals on Thursday, December 13, 2012 at 8:00 p.m. in the Meeting Room, Municipal Building, 7 Maple Avenue.

PRESENT: Chairman Brian Murphy, Boardmember Ray Dovell, Boardmember Matthew Collins, Boardmember David Forbes-Watkins, Boardmember Mark Pennington, Village Attorney Marianne Stecich, and Building Inspector Deven Sharma

Chairman Murphy: Let's get started. Good evening, everyone. We're here for the December 13, 2012 Hastings Zoning Board of Appeals meeting.

We have three cases on our agenda tonight. The first case is Case No. 21-12, Moonraker Acquisitions, 400 Warburton Avenue. That matter is deferred until next month, or until further notice from the applicants. Is that right, Mr. Sharma?

Building Inspector Sharma: That's exactly how we understand it, Mr. Murphy.

Chairman Murphy: OK. Our second case is No. 23-12, application of the Gordons, 51 Warren Street, for the pool and two-story addition.

And our last case is No. 26-12, application of Gordon and Neda Sokich, 17 Washington Avenue. And that's going to be a use application. So when the time comes, we'll ask our counsel to update us and remind us of the requirements for that application.

With that, Mr. Sharma, are all the mailings in order for those cases?

Building Inspector Sharma: Yes, I've been informed that all the mailings are in order, sir.

I. OLD BUSINESS – (deferred until next month or until further notice)

**Case No. 21-12
Moonraker Acquisitions LLC
400 Warburton Avenue**

(Deferred from 10/25/12 Meeting)

For the amendments to the previously granted view preservation and relief from the strict application of Sections 285-72.1.E.(1)b., 295-72.1.E.(1)c. and 295-72.1.E.(3) for the

addition of two stories and other needed alterations to convert an existing single-story building into four (4) townhouses.

- 1. Rear Yard: Existing & Proposed - 1.06 feet; Required - 30 feet {295-72.1.E.(1)b.}**
- 2. Side Yard: Existing & Proposed - 0.7/2.26 feet; Required - 12 feet {295-72.1.E.(1)c.}**
- 3. Lot Coverage: Existing - 93%, Proposed - 94%,
Permitted Maximum - 50% {295-72.1.E.(3)}**

**Case No. 23-12
Yekaterna & Matthew Gordon
51 Warren Street**

(Continued from 10/25/12 Meeting)

Construction of an above ground pool and a two-story addition.

- 1. Front Yard for the two-story addition: Proposed 17.6 feet;
Required Minimum - 30 feet {295-68F.1(a)}**
- 2. Setback for pool in other than rear yard: Proposed - 11.16 feet;
Required Minimum. 100 feet {295-52A}**
- 3. Distance from the dwelling: Proposed - 3.5 feet;
Required Minimum 5 feet**

Chairman Murphy: OK. So our first case, then, we're hearing the follow-up presentation of the Gordons. Please just identify yourself for the record so we can hear you.

Matthew Gordon, applicant – 51 Warren Street: I am the homeowner, and I have Tom Haynes, who is my architect.

Chairman Murphy: Mr. Gordon, Mr. Haynes, welcome. OK, who's going to start us off here?

Mr. Gordon: I'll start us off.

Chairman Murphy: And Mr. Gordon, for my benefit, too, because I wasn't here last meeting, if you could just quickly review that. And then I've read the paper so I think I understand the changes that you've proposed this go-round, but just to make sure I understand it.

Mr. Gordon: Sure. So for context, and to refresh memories ... and actually, even in this writeup I kind of start where we left off.

Just to summarize, I think the general consensus in the dialogue that we went through was that most of the points were kind of accepted as we presented. The Board had asked us to show, and demonstrate, that we couldn't accomplish our desired goals, essentially, with less. And so we started with that very premise. So you can see from the previous submissions, we went through the code all the various breakdowns to show how we were essentially satisfying those standards. So for the purposes of this, we're just focusing our discussion on how we can do with less.

Some of the comments we actually took to real heart. We actually said, well, maybe we missed something when we were going through our design interrogations the first time. Because initially – and obviously, when you start a project you sometimes go through a lot of design iterations – the idea of actually taking the addition and rotating it back and to the right to create the angle we'd initially dismissed pretty quickly. I'll get into why we dismissed it, and said, well, maybe it can work.

So we started off with the premise of saying, well, maybe it can really work and maybe we don't need a variance at all. If we don't, it's easier; we don't have to bother you with our time, and we can just move on and get on to business. We actually attempted that. You can see on the first page of the additional supplement we rotated it until it had full clearance. And it's a by-right design. What's wrong with this actually highlights, eventually, what becomes right with the final design we accepted. The premise we took is, OK, this doesn't work, why doesn't it work? And let's keep on pushing it as close to this until we get it until it works.

In this case, the first issue – and actually why we rejected it outright initially – is, we were very concerned about the steep slope that begins just at a point on the property after the contour marked as the 358-foot level. The reason for it is that our children are two, four and eight. And especially the older one, with his friends, plays around. As they move around the property – and you can see them – our desire is sort of naturally keep them back from the hill if possible, where we originally had designed it so the construction kept everybody on as flat a portion of the property as possible.

When we looked at this one – if you go to page two of the submission – it took a little bit to find a picture that really did it justice. This is really looking out ... and you can see on the left side of the house is where the addition would have originally been. It shows you right around the change in slope of that steep hill. I'm sorry to go back and forth. Actually, you can see it on the area below. The distance between the 360 and 362 contour is almost twice the width as you get onto the 358 and less. That's implying almost twice the slope.

You can see very clearly where that tree is, almost dead center. At that point, you really start

to get a steep downhill. Actually, I can assure you from having been back there, the photo under-represents how steep and treacherous it really is. Our desire, accounting for a natural buffer – people don't hug a structure when they go around – when they go around they're running and they're playing. There's a couple of foot offset. Where can we keep it and reduce the potential risk of injury without having to put up fences or start to get into terraforming with changing the land?

Because as we discussed in the last meeting, we bought this house a decade ago because we loved its setting. It's naturalistic, it has amazing views that cast out to the other side of the valley, and we want to keep nature as nature. It's important to the community, as well, so we wanted to try to preserve that.

The first point was just general safety. You can see, just adding any buffer of movement the children would be moved to actually going around the property where the slope becomes very steep and dangerous. So that was the first defect.

The second defect is really on the views. If you go over to page three, the views currently are kind of close to a 90-degree angle. I tried to make it as approximated, using a camera as I could, to the sought-after, the applied-for design. That's on the right. So you can see it's actually ... now all the leaves are down, but when the foliage is in it's absolutely beautiful and natural. Even all the neighbors disappear and you have this nice, great view because the property is obviously up towards the top of the hill.

If you actually take the angle from the by-right, you're thrust and it collapses back onto itself so you're really staring straight at another part of the structure. And you sort of lose the effect of having these great views available to you.

Chairman Murphy: So that's your photo on the left side of this?

Mr. Gordon: That's the left side photo, correct.

The final point – and you can see it from the previous couple of topographicals, the greater degree of angle – that you're thrusting the addition up and to the right to more, I'll call it, a "pinch point" that you create, where you're folding the structure back onto itself. When you look at some of the topographicals from the submission, you can see we're trying to kind of have a natural balance of the structure to the surrounding property. Here, it's almost artificially closed in. Instead of maintaining this naturalistic type of setting, the area between the deck and a addition sort of gets caged in artificially almost courtyard-like. Again, that's the opposite of what we're trying to maintain and achieve, and it sort of kind of kills it.

We put in a couple of the internal design iterations. You know, some designs work better than others. I put some of the writeup on that. We weren't really loving a lot of the designs that were coming out with that extreme degree. So basically – and we can talk about the next couple – just that's why I wanted to define this. So basically that one failed all across the board.

So then we ultimately came up with a design that's approximately 7.5. It requires a 7.5-foot variance. And that worked. If you actually go to page four you can see that ... especially the left-side diagram, that's drawn from the filed submission so you probably have a larger view of it there. You can see that the angles to the rear of the property, the view, it was designed so that we clear the structure. It really frees up that hinge point. It's not there. It pulls the house back a good bit so that way you don't really have the same degree of having the circulation on the outside fall onto the most dangerous portion of the slope.

If you look at page two, I illustrated that with that drawing. Some of this stuff I did so it might be 1,000 percent architecturally correct, but I was doing my best here. As you can see, it generally falls kind of right in the middle of the 358 to 360 contour, which has a much lower sloped compared to just a couple of feet past that. Like I said, we were trying to really get on to the edge to satisfy the criteria that we were trying to satisfy.

One of the challenges we had from the last meeting was that you said show us things that don't work. It's very hard, in some degree, to demonstrate a negative. So what we tried to do is say, "Well, let's get the one that gets really close to working, but still doesn't work." And then everything less than that of course doesn't work. So you can kind of see the compare and contrast. That's the one that's called the 6.5-foot conversion. I apologize. My math and my decimal points, my third grader will probably scold me for. It should be 1.03 differential, and I'm 1.3.

There again, it gets really close to working. It pulls it back a little bit on the topo so you're doing a pretty decent job on that. The pinch point is relieved to a degree. To us, the thing that really killed it, in the end, was that the view still is really clipping the house. What we did is, we kept on pushing back until we could clear it. And this one, you still happen to hit it just the way that it is. I mean, there's always a point where at one marginal inch it works, and then at one marginal inch it doesn't work. And it's right around this point, so we just wanted to illustrate the one that doesn't work. By meaningful amounts, it's about a foot difference.

Chairman Murphy: OK. And just so I'm clear, in terms of the angle of the proposed addition, you've altered it from the original submission, which is on A-3, right? Because what I'm looking at is the July 25, '12.

Boardmember Dovell: The original proposal's not in that package. It was a straight line.

Thomas Haynes, Jr., Thomas Haynes Architect: [off-mic] straight out towards the side. It did [unintelligible] and that's why we didn't [off-mic] variance.

Building Inspector Sharma: You will have to use this microphone, please.

Mr. Haynes: Oh, sure. So as part of the original submission, which I don't have an actual diagram with us, but we essentially extended the front of the dwelling towards the right-hand side; again, trying to maintain the addition as much as a level area as possible, again, for safety and again for cost; a number of things which were argued at the last agenda.

Chairman Murphy: OK. And this is just for my own clarification. I mean, I read the minutes, but it's not like being there. So you've altered the angle in response to the comments, and you've pulled back some of the length toward the back of the house, right?

Mr. Haynes: Absolutely, yeah. We actually decreased the requested variance fairly significantly. But also, there are some negatives because, again, the addition ... in order to achieve the amount of space that we achieved by requesting the larger variance, if you will – as per last meeting, unfortunately for Mr. Gordon – the addition has to be somewhat larger in square footage in order to accomplish all the square footages for his spaces that are required.

Boardmember Forbes-Watkins: Could you clarify one thing? Your 7.58 proposal would measure out to ... on the variance, the original proposal was a 17.6-foot against a requirement of 30 feet. What is the distance now on this?

Mr. Haynes: It's 22.5 feet.

Boardmember Forbes-Watkins: It's 22.5?

Mr. Haynes: 22.4

Mr. Gordon: I believe it's 22-foot-five.

Mr. Haynes: 22.5.

Village Attorney Stecich: 22.42.

Mr. Haynes: OK.

Boardmember Forbes-Watkins: Point-four-six?

Chairman Murphy: Actually, we're going to do it at 22.4 because you need it.

Mr. Haynes: OK.

[laughter]

Chairman Murphy: Go ahead.

Mr. Haynes: OK.

Chairman Murphy: But I'm with you on it.

Mr. Haynes: OK. So ...

Mr. Gordon: So we were almost pretty much done with that point. At the end point, the last constraining factor became the view. And the one that we said was, OK, this is the one that works is the one that had the minimum acceptable view which allowed for the maximum possible rotation. As Mr. Haynes said, it's a somewhat larger structure. It actually imposes additional construction costs on us to a fairly decent degree; you know, probably north of \$10,000 or more, given the square footage. But again, we've tried extremely hard. And Tom knows because we went through a lot of design, iterations even from the last meeting, to try to really start from scratch and see how does this work.

Just for your benefit, Mr. Murphy, it's physically impossible without ripping down the house to actually add an addition on, just given the layout of the house, in any other location.

Chairman Murphy: No, I kind of took that from the discussion.

Mr. Gordon: OK.

Chairman Murphy: So let's stop there for a minute give Mr. Dovell the floor. Because I know you had a lot of questions.

Boardmember Dovell: Well, I think your analysis is really extremely helpful, and the thoroughness of the analysis is really ... it's a terrific analysis. I wish some of the other applicants we have do the same type of exercise. I think it's terrifically improved, and I think it also addresses some issues of scale and neighborhood character that I think were lacking

the first time around.

So I'm fully in support of the new design. I think it reduces the degree of variance, both by the reduction in actual number, but also by the triangular shape of the portion that's beyond the setback line.

Mr. Gordon: Right.

Boardmember Dovell: Before, it was a rectangular piece that was much more in area. So I'm quite pleased with the result of this.

Anyone else?

Chairman Murphy: David, how about you?

Boardmember Forbes-Watkins: I have nothing on this part of it.

Chairman Murphy: Are you waiting for the fun part?

Matt?

Boardmember Collins: I'm satisfied on the front yard addition.

Chairman Murphy: Yeah, from what I can tell it looks quite good. You were certainly responsive, and I can see how you pulled it back. It all works, and if it works for you – because we try to accommodate people when we can – I think it's helpful to reduce the incursion on that setback.

Mr. Gordon: Sure.

Chairman Murphy: So I appreciate that. I think that'll be fine. Just because the notice has incorrect numbers in the revised submission, when we get to it – the front yard setback – the proposal's going to be 22.4 feet and a 30 foot required setback, OK?

Mr. Gordon: Perfect.

Chairman Murphy: And that will accommodate your revised plan for that.

Mr. Gordon: Absolutely.

Chairman Murphy: OK. So I think unless there are any comments on that, let's move to the pool. Because that's where there's more of an issue, I think.

Mr. Gordon: OK, perfect. For your benefit, Mr. Murphy, this is a very unusual type of variance request. The pool has been there for 25 years. I actually went back into the historical filings, and it was in a permit application in 1985. I sent it over to you. So it's been a feature of the property in almost its exact location, and even the way we want to do it. The look and feel of the neighbors on the street, nobody would really be able to tell we did much of anything.

We recognize that it's a potentially significant variance that we're asking for. Some of the backdrop is that we're all avid swimmers. We put our kids into swim lessons when they're infants, and it's something that we use and enjoy. The current pool is 12 by 18, and it's sort of OK for babies and little kids to splash in. But it's really not good for an adult to be able to exercise in or use in any meaningful capacity.

When we started this project, we actually were pretty set on doing quite a significant amount of changes to the back, including multiple retaining walls. Because if you notice in the property – and you can see it on the larger diagram – there's a stone wall there. And over the slope there's about 11 percent of the property that's "over the wall," as we say. So with this significant retaining wall and some terracing done, you can actually create a patio and a plateau. We were originally thinking of putting in a rather large pool, by right. And I've gone through that in some of the previous material in the last meeting, where, in that area – which is kind of up and to the left, that whole kind of middle section where there are 20-foot setbacks – which is the requirement, you can put in pretty much any kind of in-ground pool of pretty significant size.

Now that's extremely expensive, I mean, just because of the amount of ledge rock around. We had the excavators who put the in-ground pool into our neighbors talk to us. And they said you don't even have to question: there's rock down there, there's no doubt. The requirement for multiple retaining walls, the potential drainage issues of neighbors, we went through all of that in the other one. And all of that, mind you, we could do by right. And the worst of it is to the neighbors who are just illustrated where Tom's pointing to over there.

Putting the pool in the by-right area – really the only possible place – would put the pool in full view of the residence. Whereas with the current location, it's actually kind of tucked between them and their garage. Their garage is kind of right in between. We had all of that in the previous submissions. I apologize for not bringing it. So what we ...

Chairman Murphy: Is the pool on the same grade as the garage and the neighbors, do you

know? Or is it up, or down?

Mr. Haynes: Well, the pool is an above-ground pool.

Mr. Gordon: No, no. You mean the level of the pool to the garage?

Chairman Murphy: Yes.

Mr. Gordon: It's pretty much ... it's exactly where the last one was. I think it moves by like a foot up compared, just because we want to level the deck. Little kids and steps, we've had lots of issues.

Chairman Murphy: But your point is that where you're proposing to locate it is beneficial to the neighbor because they're just not going to see it as much.

Mr. Gordon: And it's also been there for 25 years. Literally, the existing pool has been in that location since the very beginning. You can actually see. If you go on – and I forget which one it is here – it's A-3, the original is there. Very finely, in the gray dots, you can see the original pool is pretty much smack in the middle of where we want to locate it. Because again, it's sort of a facet of the property for a quarter-century, and I figured the less we rocked the boat – even though we're extending it on both ends a little bit – it doesn't really change the look or feel to the neighbor's perspective.

Chairman Murphy: I guess I was trying to drive at a different question. If you look at A-6, please, Mr. Haynes? OK, so on the lower drawing on A-6 to the left, the level of the pool, it's got a higher wall on the left. That's because it's set down the slope?

Mr. Haynes: Well, correct. Yeah, we're using the natural terrain, again, so we can minimize excavation costs and site disturbance. And, in fact, essentially just sitting an above-ground pool on the natural grade conditions to maximize the height and staying in compliance at the same time.

Chairman Murphy: Is that the same height the pool is now?

Mr. Haynes: No, it's actually around 2 to 3 feet higher, I believe. Is it? It's the difference between the interior ...

Mr. Gordon: Actually, I can tell you exactly. We wanted to make ...

Mr. Haynes: It's three steps. It's 24 inches.

Mr. Gordon: Yeah, it's three steps because we wanted to make the entire level of the house ... the house currently has this step-down, a sunken living room, that goes across the entire length of the house in a Z fashion.

Mr. Haynes: If you look in this diagram here you can see that these are the steps here that we're actually removing. And we're actually filling this back in so the entire deck is going to be rebuilt at the level of the first floor. So naturally the deck is going to be extended upon the pool area, and thus gaining an additional 2 feet.

Chairman Murphy: One second, just so I understand, the pool where it is now. And I understand it's where it's located, and it's more or less screened by the garage. But the pool that's proposed, of course, is bigger.

Mr. Gordon: Mm-hmm.

Chairman Murphy: So it's higher, it's longer, and it's wider, right?

Mr. Haynes: Correct.

Chairman Murphy: I mean, that's the issue. So the setback is 20 feet, but the question becomes, to me, the width issue as much as anything else. But the length also impacts the visual impact, potentially, on the neighbor. So what I'm trying to figure out is, what's between – and you could probably help me with this – what's between the full length of the proposed pool, which is much longer and 2 or 3 feet higher?

Mr. Gordon.: Well, it's their garage. And it's unfortunate we don't have a copy of the previous submission. If the other members recall, I had the photos from the pool directly to show you exactly where it is. So it's entirely screened. The few marginal feet, there's still no additional viewing of the pool. I mean, that's why it's a really nice area to tuck it into because we don't see them and they don't see us.

Chairman Murphy: Right. I understand you're in the rear yard.

Mr. Gordon: One of the other reasons we wanted to level it off, I mean we could conceivably drop it down a couple of feet. But when you actually raise it up to be level with the front of the house, or the whole level from front door to the back of the deck, it's the same. The height from the deck to where the ground is is 4 feet.

So ... oh, thank you.

Village Attorney Stecich: Here's your last submission.

Mr. Gordon: So you can see, right now it's heavily treed and with bushes. And to the extent you can see it, that's the garage.

Chairman Murphy: Oh, I see. That's not the house, that's the garage.

Mr. Gordon: No, that's their garage. It's actually one of the old manor houses for the whole area, from like the 1850s. It was all their property at that point, and then was subdivided in the '50s. So their garage ... I mean, that house is like 6,000 square feet. I think it's even more in the garage. The whole structure's tremendous.

Chairman Murphy: And just ball-parking, what's the distance from where the pool is now to that garage?

Mr. Gordon: It is actually here, OK. Just for your benefit, this is the area that we filled in by right, and that's the view to the house.

Chairman Murphy: Got it.

Boardmember Collins: It says on the previous submission that the garage is 37 feet from the property line and a distance of 50 feet from the pool.

Mr. Gordon: Right.

Boardmember Collins: Does that sound right?

Boardmember Forbes-Watkins: Proposed pool.

Boardmember Collins: Proposed pool, got it.

Chairman Murphy: And the house is further ...

Mr. Gordon: Well, it's an attached garage, but the garage kind of goes ...

Mr. Haynes: It's behind the garage.

Boardmember Collins: Yeah, there's a substantial rear yard there.

Chairman Murphy: All right, that helps.

Mr. Gordon: OK, here. This is good. You can see this from here. This is the house, this big structure is the garage. You can see how it comes out, and the pool is over here. So it's right behind. The line of the pool is exactly parallel to this. So otherwise, we're building back here. It's all visible.

Chairman Murphy: Understood. OK, I got it. Thank you.

Mr. Gordon: So the other point was that we wanted to actually raise it up one ... I mean, if we add a couple of steps down to the pool it wouldn't be a big deal. But it naturally fit very nicely because the distance between the decking at this point and the ground, the natural grade over here, is 4 feet. And then over here it's like 7 or 8 feet. So we can actually ... I mean,, we'll need to do very minimal disturbance to actually just have, essentially, an in-ground pool, but built above ground using those materials.

Otherwise, if we dropped it down, it would require excavation. It's more disturbance to the land, and cost. We're talking ... what would you say, it was a 2-foot difference?

Mr. Haynes: Yeah.

Mr. Gordon: And again, the visibility. Where you really see it is over here, but there's nobody ... they're hundreds of feet away, down a hill. It's absolutely invisible down over there.

Chairman Murphy: Got it.

Mr. Gordon: So again, likewise, we twisted and pulled. We actually – you'll even notice compared to the other one – we went to a different pool manufacturer. We still have the shaped worked a little bit better. Actually, the engineering was superior. So the other design required what's called "under straps." Because of the variable grade bottom, they would have had to do different types of reinforcement. This one is designed from the ground up, without under strap support.

Again, it was almost the same process: let's go back to the drawing board. I went through the four or five manufacturers to even come close to accommodating this type of setting. I even went as far as calling some of the engineers at the company, and said, "OK. What works best and how does it work,, and this one? And then we started putting it down.

So we actually were able to push it back and tuck it away as far as we could. You have to

leave a reasonably minimum decking around. But we were able to ... by rotating it a bit and pushing over as far as we could without completely destroying that left side of the deck, we were able to eliminate the need for the variance from the distance from the main dwelling structure. Even before, it was an encroachment but it just cut a couple of percent of the pool surface area. And now we don't need it at all.

We were actually even able to move the whole pool further away so it's less of a variance altogether; you know, a few inches. But like I said, the two trees you see indicated there at the top of the pool, those are 125-, 150-year-old lindens. So as I like to tell the kids, they own the property and we just take care of it.

Chairman Murphy: And one further clarification, then. On the elevations of A-6, you've got it wrapped in lattice and mandatory fencing.

Mr. Gordon: Mm-hmm.

Chairman Murphy: So that's going to be part of the plan?

Mr. Gordon: Oh, absolutely. Unless somebody has a prettier design. But the lattice looks nice.

Chairman Murphy: No, it looks good.

Mr. Gordon: We like the wood because, again, it's all about making it disappear into the nature.

Chairman Murphy: Right. No, I think that helps actually. I think that would be a condition.

Mr. Gordon: It's actually lattice currently.

Chairman Murphy: OK. So let's throw it out to the Board for questions.

Boardmember Forbes-Watkins: One question. The way you have the pool designed, it runs essentially north-south, the longer end, right? North-south, basically?

Mr. Haynes: Well, yes.

Boardmember Forbes-Watkins: More or less. OK. What would happen if you pivoted the pool so that it was running east-west instead of north-south behind your ...

Mr. Gordon: You mean like over here?

Boardmember Forbes-Watkins: On what is called the enlarged new deck.

Mr. Gordon: Right. Well, you see the deck is why, actually, we bought the house. Because we walked through the house, and ...

Boardmember Forbes-Watkins: Well, you could have the deck ... you could have the deck where the pool is now. You'd simply put it in a different location, and move it away from the property line. Did you consider it?

Mr. Gordon: We actually had a design very early on like that. It seemed to take ... the feature of the house was the deck because it's nice to have it wrap around. As you saw in one photo, the Jacuzzi's kind of privated (sic) over here and it's tucked away. And we really wanted to kind of push the pool away so the main focus was on this wraparound deck. We entertain out there, we've had kids' parties with 35 kids out there. And it's sort of nice to have that wraparound.

Otherwise, we'd flip it. And it's technically possible, although you have the grades and you wouldn't be able to follow the topography. It would be a more difficult, much more expensive installation. And it would flip the focus of the entertainment value of the deck to being on the pool, as opposed to just the deck and then shove ... you know, most of the time we spend right next to our neighbor's garage as opposed to off in the most private view part of the whole setting.

We actually did consider it but, again, it was one of those that it sort of put it in the wrong place for the wrong focus.

Boardmember Forbes-Watkins: No, I'll let it ride at that. I wanted to know.

Chairman Murphy: Yeah, OK. Go ahead, Matt.

Boardmember Collins: Mr. Gordon, have you talked to your neighbor? Is it 47 Warren that has the ... is that the address for the property that has the garage in the back? Is it 47 or 49? It's one of the two.

Mr. Gordon: I think it's 47. I don't think there's a 49.

Boardmember Collins: Have you engaged, or had a conversation with, that neighbor about

this pool project?

Mr. Gordon: The neighbors who live there, he's a retired photographer of some international repute. I've probably seen him half a dozen times in 10 years. It's just a couple that live in that big house, an older couple. They're not there all that much. So the answer is no.

The one time that a tree died right on their side of the property line and was precarious, it took be a month to be able to locate him to say one of the two of our houses is going to get crushed. I try knocking on the door, but he's gone for extended periods of time.

Boardmember Collins: OK. I ask because though I appreciate the fact that you found a way to minimize the variance request, which I've noted, now, I think they're proposing 11-1/2 foot as opposed to an 11.16 foot setback.

Chairman Murphy: Well, that's a question I had.

Boardmember Collins: I mean, that's what they state in here. So I saw here in the notes, if I can find the right papers ...

Mr. Gordon: Even before you get on to that about attracting the neighbor's attention, if you remember from the last time – and it was even on the e-mail this time – the actual variance request was erroneously put out as a variance from the 100-foot front yard setback.

Boardmember Collins: Right, right.

Mr. Gordon: So if anything's going to attract a neighbor who's next door to you and got a mailing it's that you're going to violate that front yard 100-foot setback. And he still didn't care.

Boardmember Collins: And I've noted that here. I think it's something we clarified in the last meeting is that the requirement was 20 feet.

Mr. Gordon: I just mean as a ...

Chairman Murphy: Hang on, Mr. Gordon.

Mr. Gordon: Sorry.

Boardmember Collins: That it was a 20-foot requirement minimum, not 100 feet.

Chairman Murphy: Right. That was clear to me just from ...

Boardmember Collins: Which yes, that became clear. What I want to clarify is, now that you're asking for ... because it says here that the variance has been ... the variance needed has been reduced from 8.84 to 8.5. Is that right?

Mr. Gordon: Right. And it depends ... and this is a question. So it's 8.5 to the corner of ... these are actually submerged steps. They're part of it. And to the edge of the actual pool it's only 8. We weren't exactly how a step into a pool is treated, but for conservative sake we were calling it the 8.5. It could be as little as 8, depending on how that's counted under the law.

Building Inspector Sharma: I believe it's to the edge of the pool.

Mr. Gordon: Do the steps count as the pool?

Building Inspector Sharma: The pool is on the edge itself. Anything underwater, the vertical surface ... the edge of the pool, that's what ...

[cross-talk]

Mr. Gordon: OK. We weren't sure if like, you know, the first step might not even be submerged. You know what I mean? It gets to be a little ... so anyway, we didn't want to be too cute about it. We said OK, it's 8.5. If it's to the edge of what you would think of as a pool, it would be 8.

Boardmember Collins: You know, the reason I had asked about your interaction with the neighbors is that this is still a substantial variance request. Whether we call it 8 feet or 8.5 feet or 8.84 feet, the requirement minimum is 20. And that's a pretty substantial request. My perception, walking the property, is that this would be visible to the activity in the pool, and the pool itself will be visible – fairly well visible – to anyone occupying the rear yard of, I'll call it 47 Warren. And they had the address wrong.

And though the neighbor there now sounds reclusive, a future homeowner may look at that and say, "You know, this is ... it's awfully close to my property, the pool is." Of course they won't know what it was before, but you're essentially doubling the size.

Mr. Gordon: Yeah, absolutely. I completely acknowledge that. But I think the right analysis is not whether this is marginally more visible than the very, very small pool that was

there. This pool that's currently there is shot. The heating system went, the piping system is gone. It's 25 years, and it's had its run.

The question for us, because this is what we use as a major facet of the way we use our property, is not whether this is marginally more visible than what's currently there. It's whether this is more marginally visible than this. Because that's our alternative location, and it's a by-right location. And that's why I said at the beginning this is an unusual variance request. Because drafting the variance would be least burdensome on all the constituencies, we do less to the topography. Because we would have retaining walls here and the whole 9 yards, so it's bad for the community in general. It's bad for the neighbor because it's far more visible. And it costs us an extra \$100,000. But this is how we live our lives, and we can afford it we'll do it.

This is one of the cases where the criteria of the law sort of is a little bit of a rough fit. Because the current location, even in its expanded size, is better for all the constituencies, but yet it requires a variance. It shouldn't be that way. It should be what's best for everybody. There's no trade-off between the interests of the community and our interest. In this case, everybody wants us to build it here. And the alternative ... because we went from 40 by 60, a really full-size residential in-ground pool, which we could do over here, to something quite a bit smaller. We talked through in the last meeting, when you go any less width – and they kind of drop down in stages – you lose the ability to have that kind of second swim lane.

So we really did our homework. And said, OK, as you start dropping back from different sizes and step functions that these come in, what's the minimum? You know, they do make smaller versions. But once you're down to the smaller, we're back to a sort of kiddie splash pool, for our purposes. That's why I invite you to make the analysis between, now, what is there. What is there will never be there again because it's going away, it's shot. I'm not going to spend \$5,000 on a heating system for a pool that nobody really is having any fun in. So it's either we do it right here, or we do it right over here.

I would argue, in this case, everybody's interests are served by granting the variance. We really have ... we've pushed it right to the point where any more would destroy this. And frankly, there's even the play area here. We like being able to have a line of sight. Right over here is where we have a nice big dining table that can seat 12. It's actually two rectangular tables. You can see again where Tom did a great job. He's always saying how can we maintain – and this was his consideration – how can we maintain a line of sight right into that play area. As we push forward we start blocking it; that, and the deck.

Boardmember Dovell: How do you get into the pool area? It's not clear from your ...

[cross-talk]

Mr. Gordon: There's going to be a gate right here, where it opens up into a little wider area. You can't ... by the law, you're not allowed to have a gate in the deep end section. We're technically allowed to have two entrance points under the code, and we might put one up here. I'm not so sure I want to do that. I might want to force everyone to have to sort of go through the house as a little extra safety barrier, but we haven't ... I'm not sure if anybody really ...

Chairman Murphy: Well, according to your elevations you come up the rear steps onto the deck, right?

Mr. Gordon: Yes, but that's isolated from the pool. You do not get ...

Chairman Murphy: You can't enter the pool from that end?

Mr. Gordon: No, no. The steps actually run alongside it. It's actually how it is now, currently. It's a smart ...

Chairman Murphy: So what's currently planned, you have one gate access from the house?

Mr. Gordon: Yeah. Pretty much at this point here so people can flow in nicely to where it gets wider.

Chairman Murphy: And another question. In terms of the view corridor, the neighbor ... is that an outline of the neighbor's home, or is that the garage?

Mr. Gordon: No, that's the garage.

Chairman Murphy: How is the sight line of the home oriented then? Is it above the garage? I can't ...

Mr. Haynes: Part of it, at least, does go above the garage. There's a fairly decent buffer of trees. Look at this last submission of the supplement [off-mic].

Mr. Gordon: You can see the shape of this one. This is the garage here, and then the home is ... it's actually more than a 45-degree angle [off-mic] the house [inaudible] pool is over here.

Chairman Murphy: For me, that's the only concern. Because you left out one alternative,

which is you could rebuild smaller, right?

Mr. Gordon: No, that is not ... it's not [inaudible].

Chairman Murphy: Well, that's your choice.

Mr. Gordon: Right, but that's ... [off-mic].

Chairman Murphy: Mr. Gordon, you know what I call that? Heads I win, tails you lose. That is an alternative for us. It may not be for you.

But I take your point. You want a bigger pool, you want a functional pool. And I just want to make sure that the home that's next door isn't going to look down into that pool from like a main viewing corridor, from their living room or something, or their bedroom.

Mr. Gordon: No, it's ...

Chairman Murphy: That's my only real concern. And I would also require as a condition of approving this variance that the pool be constructed and the lower portion wrapped either in lattice or some other appropriate screening material the way it's depicted in the plans.

Mr. Gordon: Oh, yeah. Sure.

Chairman Murphy: Because I think that helps.

Mr. Gordon: It's hard with the foliage, unfortunately, which is a nice part of the [off-mic]. But those are the garage doors. And this is from ... and then as you kind of move back, it's sort of ... by the back of the house, it's angled to that corner of the garage. It's constantly blocking the sight lines all throughout that area.

Chairman Murphy: No. I mean, the only thing it doesn't show me is where the view from the second level of your neighbor's house is, that's all.

Mr. Gordon: Yeah, I'd have to trespass to get that.

Boardmember Collins: It seemed to me, in walking the property, that the neighbors in the rear yard – or what appeared to be a window that I could see above the structure you're describing as a garage – would have a pretty clear shot. This was not an enclosed ... your property, and this part of the property, is not enclosed in trees. And maybe that's a product of the time of year, but right now – as I walked the property, and I was right to the side of the

pool along that side property line – I could see very clearly the neighbor's property and that structure. And I could imagine very easily they could see you.

Mr. Gordon: I mean, yeah. I mean, it is at a higher elevation point. They're going to drop in from that corner of whatever's in there above the garage – I'm not sure, the 6,000 square feet – what they have in there.

But again, compared to the by-right area it's by far a much more minimal exposure. I mean, I'll acknowledge there is some degree of visibility. It's not completely screened. It's the most heavily foliated area right along here. And I think over the last 25 years, that was sort of done on purpose. There's a lot of bushes put in and whatnot. But as their property is up here, and it's on a slightly ... that top portion, yeah, they do have some shot to it. And I couldn't tell you ... I mean, I don't see them up there so I can't tell you whether they use it, or stare out.

Boardmember Collins: Well, to your point, the neighbors are not around much. But maybe the new owners decide to do something with that space that ...

[cross-talk]

Mr. Gordon: Oh, I ...

[cross-talk]

Boardmember Collins: And I brought this up in the last meeting: that the Board here has to consider things that are not there now, or could be.

Mr. Gordon: No. I can acknowledge at some point there might be new owners. But I would put the premise out there that any owner – any future owners from now until infinity – if you ask them, not me, where do you want that pool between this pool or an even bigger pool right back here, which is where we'd put it, you pick – and I would say 99 out of 100 of them – except for the one crazy, there always are – will say give them the variance.

Boardmember Collins: Well, yeah. Or they might say they'd like your preferred pool to be the Chemka Pool, which is another ... to Mr. Murphy's point.

Mr. Gordon: But we don't ... but that's not one of the choices because this is by-right and we're prepared to do it.

So, you know, we like the heated pool. I was a member for one year.

Boardmember Dovell: Could you flip to your drawing A-003, and draw ... just draw a line on that plan, and show us what the encroachment is over the side lot line?

Mr. Haynes: [off-mic], which was the first floor plan, right?

Boardmember Dovell: Yeah, your first, where the pool shows.

Mr. Haynes: Yeah, it's right here.

Boardmember Dovell: Draw a line on that plan, parallel to the side lot line, which shows us the encroachment. It's a 20-foot requirement, is that correct, to the pool?

Mr. Gordon: Yeah.

Mr. Haynes: Correct.

Boardmember Dovell: To the pool. So right now, you're at 11.6.

Mr. Haynes: Do you want me to just draw it ...

Boardmember Dovell: A parallel line.

Mr. Haynes: At 11.6, right?

Boardmember Dovell: At 20 feet.

Mr. Gordon: At 20. Well, you can just do it right there. That's the spot.

Boardmember Dovell: Just parallel to the ... OK? So that's the portion that we're talking about.

Mr. Gordon: Yeah, he's a little off.

Boardmember Collins: And it's really ... the deck, Deven, is not part of the equation. It's really the pool.

Building Inspector Sharma: As a matter of fact, now that I'm looking at it with the new configuration, the setback on the other side is 14.6 inches. So by code, the setback on the other side would need to be minimum 15 feet 6 inches; total of ...

[cross-talk]

Boardmember Dovell: Fifteen feet. So there's another line that's a 15-foot line. Sketch in another ...

[cross-talk]

Building Inspector Sharma: No, but the deck open ...

[cross-talk]

Boardmember Dovell: I understand. It's just the deck portion.

Building Inspector Sharma: ... can project up to 6 feet into the required 50 feet. So it can go up to 9 foot ... the setback would be 9 feet 6 inches.

Boardmember Dovell: So there's a 9 foot 6 setback, so there's another line that's a 9 foot 6. There's a 9 foot 6, and that's kind of a deck encroachment, right?

Building Inspector Sharma: Exactly.

Mr. Gordon: I thought it was an 8 foot for an accessory structure.

Building Inspector Sharma: Any open terrace or deck can project up to 6 feet into the required yard. In this particular case, the required yard would be 15 foot 6 because on the other side it's 14 foot 6. The total of the two has to be 32.

Boardmember Dovell: So, Deven, if he respected that 9 foot 6 line he could, in fact, build a deck right where that 9 foot 6 line ... that's level, in elevation, to the primary floor.

Building Inspector Sharma: Primary floor, that's correct.

Boardmember Dovell: OK.

Chairman Murphy: Which is more than what he's proposing now.

Boardmember Dovell: That's the reality of the situation.

Building Inspector Sharma: So in other words, although it's not listed here that would be ...

Boardmember Dovell: The only encroachment would be that little sliver ...

Chairman Murphy: On the edge.

Boardmember Dovell: ... on the deck side. So that's the visual. That represents the total visual impact of what you're looking at of the encroachment. Because the pool itself doesn't have an elevation consequence; it's level in the back. So that's the reality of it. That's the visual reality.

Chairman Murphy: Right. Which minimizes the impact. That's the consequence.

Boardmember Dovell: Right. Because he's entitled to build a deck there to that 9 foot 6 line.

Chairman Murphy: Right, got it.

Boardmember Dovell: It's just the pool that is the issue.

Chairman Murphy: OK.

Mark?

Boardmember Pennington: I think that was a very helpful analysis to understand the impact.

Boardmember Dovell: What the degree is. You know, it's that bit of water there in that wedge.

Chairman Murphy: Right. Because of the open deck, you're allowed additional encroachment.

Boardmember Dovell: Because of the pool, right.

Chairman Murphy: Mm-hmm, I got it. Well, that is a very helpful way to look at it. Thank you, Ray.

Anybody from the audience? No.

OK, any other questions for Mr. Gordon or Mr. Haynes?

Boardmember Dovell: What would be involved in lowering it? You said you could lower it easily 2 or 3 feet.

Mr. Gordon: We could. It just creates steps. And with the children and falling on decks and splinters and tears ...

Boardmember Dovell: But they get splinters on decks anyway.

Mr. Gordon: Yeah. It was the steps. Well, there's two parts. We could theoretically do it, again, over here. The height from the deck to the pool is almost exactly 4 feet. I'm sorry, the height from the deck to the grade is 4 feet, which is the actual height the pool would be. And over here, it's ... I forget what the drop is. I actually have it. I think it's an additional 4 feet or something.

So if we dropped it by 2 feet we would have to excavate a couple of feet, and there's cost and disturbance. This way, you're almost just dropping the pool. They're going to make, essentially ... you know, they're going to put the concrete and sand bottom and mold it on top of there. And they just kind of drop it down. It just very ... it was a very elegant thing to raise the deck by a foot-and-a-half so that way you didn't have to dig down. And that obviously reduces the cost quite a bit. And then it gives it where we have no steps, which was ...

Chairman Murphy: Right. It leaves you at the same level as the deck, right?

Mr. Gordon: Right.

Boardmember Dovell: But the deck was lower. You're raising the deck now, right? The whole deck is being raised up because you're getting rid of the sunken living room. Is that what you're doing?

Mr. Gordon: Yeah, that's been a nightmare.

Chairman Murphy: OK. I mean, I'm satisfied. There's plenty of space there, I think, between the house and the main view corridors of the neighbor. That's what would concern me most. Well, the fact is that it's in the rear yard. So otherwise, it's a complete non-starter.

Mr. Gordon: Oh, yeah.

Chairman Murphy: So that's where it's supposed to be. It's OK with me, as long as ... to me, again, because of that lower elevation – particularly at the deep end – it needs to be wrapped in either the way you've shown it on the plan or some comparable screening material around it.

Mr. Gordon: Well, aesthetically it would be an eyesore without it. I mean for us more than anyone else.

Boardmember Dovell: I think you might even consider plantings at the perimeter there.

Mr. Gordon: The deer really like that idea.

Boardmember Dovell: Well, there's a lot of plants that deer don't like.

Mr. Gordon: Yeah, we could. We could do it in combination.

Boardmember Dovell: We often require plantings for things like this.

Mr. Gordon: Again, the part back here where it's really high, nobody can see that except us in our own backyard.

Boardmember Dovell: No, it's only the angled area, and then the alleyway there.

Mr. Gordon: But you can see from the photos, just over at the property line there actually are a lot of plantings there already. And to your point, that doesn't help with the second story of the neighbor's property. We can't put 30-foot plantings up.

Boardmember Dovell: No, I understand that.

Boardmember Forbes-Watkins: (This is no longer extant).

Chairman Murphy: And Mr. Gordon, one last question.

Mr. Gordon: Sure.

Chairman Murphy: On the original application there was the third request for variance because the distance from the dwelling to the pool wasn't sufficient. Has that gone away now?

Mr. Gordon: That's eliminated.

Mr. Haynes: That's been eliminated.

Chairman Murphy: That's how I understood it. Mr. Sharma, just to note for your record.

Building Inspector Sharma: Yeah, we can re-notice this.

Village Attorney Stecich: He can change the notice.

Chairman Murphy: OK. Unless there are further questions or clarifications, could we have a motion? And I'd like a motion with a condition about screening the lower portion of the pool.

Boardmember Collins: You want to take them one at a time, and do the front yard first?

Chairman Murphy: Yeah, sure, we could do that. Again, they're requesting now 22.4.

Boardmember Collins: Yeah, sure.

Village Attorney Stecich: No, 22.6. They're requesting ... they're going to be set back 22.58. Am I right?

Chairman Murphy: No.

Mr. Haynes: [off-mic].

Boardmember Collins: The proposed is 22.4, I believe.

Village Attorney Stecich: Oh, it is?

Mr. Gordon: Yeah, I apologize. Some of my stuff, I was a little off on a couple of decimals occasionally.

Village Attorney Stecich: Oh, OK.

Mr. Gordon: Writing architectural supplements is not my day job.

Chairman Murphy: 22.4 is ...

Boardmember Collins: That's what I got.

Village Attorney Stecich: I'm sorry.

Building Inspector Sharma: Which is about 22 feet 5 inches, just about.

Village Attorney Stecich: Your drawing says 22.5.

Building Inspector Sharma: Twenty-two feet, five inches.

Boardmember Forbes-Watkins: You add the 7.58 to the 22 ...

Boardmember Collins: It's 22.58 ...

[cross-talk]

Village Attorney Stecich: Oh, 22 feet 5 inches. OK, OK. That's why you have 24, OK.

Mr. Gordon: NASA lost a spacecraft for that. You all know that story.

On MOTION of Boardmember Collins, SECONDED by Boardmember Forbes-Watkins, with a voice vote of all in favor the Board resolved approve the front yard variance, proposed 22.4 feet against required minimum of 30 feet.

Chairman Murphy: The vote's unanimous.

OK, let's do the ... Matt, the setback for the pool.

Boardmember Collins: I am tipping my hand. I am not going to vote in favor of the second variance request, so I'll defer to someone else if they wish to make a motion.

Chairman Murphy: All right, anyone else? And it would be 11.5 for the proposed setback, and a 20-foot requirement.

On MOTION of Boardmember Forbes-Watkins, SECONDED by Boardmember Pennington, with a voice vote the Board resolved [setback for pool, proposed 11.5 feet with a required minimum of 20 feet, with the condition that appropriate latticework or similar surrounds be

provided on the lower portion, the exterior of the pool.

Chairman Murphy: OK. There's four ... all right, the vote's 4-1.

Mr. Gordon: Thank you very much.

Boardmember Dovell: Deven, the deck? We have a deck variance, too.

Building Inspector Sharma: No, hold up. The side setback for the deck.

Chairman Murphy: That wasn't on the notice.

Mr. Haynes: Because the distance of the home was increased, the combined setbacks are requesting that we have a deck variance now, I believe, by ... I forgot the number off-hand, but 1.5 feet or so.

Building Inspector Sharma: Required is 9 feet 6 inches, or 9.5. And proposed is, I believe ...

[cross-talk]

Chairman Murphy: Deven, you have to speak into your microphone.

Building Inspector Sharma: Required setback on this side of the property – being that on the other side is 14.6 inches – and the total of the two setbacks needs to add up to 30 feet. So required on this side's 15 feet 6, and you can project up to 6 feet into the required yard. So that would need 9 feet 6 inches from the property line. So the required setback from the property line for an open deck terrace would need to be 9 feet 6 inches, or 9.5 feet. And proposed is 8 feet, I believe.

Mr. Haynes: So the variance request would be a foot-and-a-half – is that correct? – on the deck.

Chairman Murphy: Can we do that? Is that OK?

Village Attorney Stecich: In terms of the numbers? I would think it's encompassed within ...

Chairman Murphy: Because yeah, I mean it's fairly encompassed with it, but it wasn't

technically noticed.

Village Attorney Stecich: Right.

Chairman Murphy: OK.

Boardmember Forbes-Watkins: That would be an 11-foot variance, then, against ...

Boardmember Dovell: No.

Village Attorney Stecich: No, a 1-foot variance.

Building Inspector Sharma: One foot, six inches.

Boardmember Collins: It's a 1 foot 6 inch ...

Chairman Murphy: And they would be requesting 8 foot, where 9 ...

Village Attorney Stecich: Nine-and-a-half is required.

Boardmember Collins: Nine foot, six inches is required.

Building Inspector Sharma: It may not have been noted, but it evolved during the process.

Village Attorney Stecich: Yeah.

Chairman Murphy: No, understood. And that's fine. As long as counsel's OK with it, I'm OK with it.

Village Attorney Stecich: Yeah, I'm comfortable with the notice. Exactly.

On MOTION of Boardmember Forbes-Watkins, SECONDED by Boardmember Collins, with a voice vote of all in favor the Board resolved deck on the side of the dwelling, where the proposed setback will be 8 feet as opposed to a required 9.5 feet.

Chairman Murphy: Five-zero.

Village Attorney Stecich: Brian, one other thing. Deven, have you analyzed this? This

may need a steep slopes permit, it may need steep slopes review. So you should take a look at the application, speak with them, because there is going to be construction near the steep slope. So that's a Planning Board issue. That's not for your board.

Mr. Gordon: Oh, you know, I understand. We talked about that. I think we're clear ...

[cross-talk]

Village Attorney Stecich: I know, but you have to look. It could affect the steep slope. Eyeballing it, it's possible it could. So work that out with Deven.

Mr. Gordon: OK, fair enough. I mean, we got to do it anyway.

Mr. Haynes: Thank you very much.

Chairman Murphy: Mr. Haynes, Mr. Gordon, thank you.

Mr. Gordon: Thank you.

Village Attorney Stecich: Mr. Gordon, here. Maybe you can use this.

II. NEW BUSINESS

**Case No. 26-12
Gordon & Neda Sokich
7 Washington Avenue**

To use an existing vacant retail space on the first floor of an existing mixed-use building at 7 Washington Avenue as a beauty/hair Salon, which is not a permitted use in the MR-C zoning district.

Chairman Murphy: OK, we're ready for our second case. This is the application of Gordon and Neda Sokich for ... they're proposing a use variance or a special use permit, right?

Village Attorney Stecich: No, a use variance.

Chairman Murphy: Use variance, OK, for the property at 7 Washington Avenue to be used

as a beauty and hair salon, which is not permitted in the designated MR-C zoning district.

So before we begin, counsel, if you could just remind me and the rest of the Board what our job is here.

Village Attorney Stecich: OK. Well, actually, I first ... let me pass out handouts for the Board. I first wanted to explain why this use isn't permitted. Wait a minute. Actually you need this other one, too, and then I'll go through the standards for use variance.

It's in the MR-C district. The property's located in the MR-C district. And the first handout I gave you – the bottom number is 295-67 – has the uses permitted in the MR-C district. Any principle use permitted in a 2R-35 district – and I attached those, that's on the last of the pages, it's at the top – it's just one-family dwellings, two-family dwellings and parks. And then these other uses: dwellings for three or more families; the retail sale of antiques; restaurants; artists studios; health, fitness or athletic clubs; business and professional offices; or mixed use buildings.

Now, you have to look at the definition of the mixed use building, which I also passed out to you. And a mixed use building is a building that has residential and nonresidential uses. But the nonresidential uses all have to be permitted in that district. So that you could have a building with a residence and an artists studio or a residence and a restaurant, but it can't be a residence and something else that's not permitted in there.

These were questions raised to me, so I can .. Boardmembers have them, so I wanted to explain why the use otherwise wouldn't be permitted. And then somebody said, well, couldn't it fit as a fitness club like an office, like a business office. Well, under the code – and if you look at the page I gave you that has "mixed use building" on the front, the third page of that, the number on the bottom is 21 – it says that the listing of any use in the district as being permitted means that it's not permitted anywhere else.

So there is a use permitted in the CC district: personal service establishment. And personal service establishment, which I also included the definition for, includes beauty salons. So, clearly, a beauty salon is a personal service establishment. There are districts it's allowed in, so you can't sweep it into any of the other broader districts someplace else. That's the point of that provision that I boxed out on page 21.

Chairman Murphy: So the fact that the central commercial district does expressly permit hair salons, and this is in the mixed use MR-C district that abuts the central commercial district, you can't read it into the other zoning district.

Village Attorney Stecich: Yeah, exactly. If it doesn't say "personal service establishment" it's not a permitted use.

Chairman Murphy: OK.

Village Attorney Stecich: OK? So that's why they're coming for a use variance. But there's a lot of sections of the code that you had to know to get to that.

So then the other thing I'm going to pass out ... so those papers you can just toss. That was just by way of background. This next page, hold on to because this tells you what the standards are for a use variance. And the standards with an area variance, you balance different factors. You look at the benefit to the applicant, if it's granted, against a detriment to the community. There's five factors you weigh. But sometimes a factor is or isn't present in the application. You can still grant the variance if the benefits outweigh the detriments to the community.

Use variances are different. There's four requirements to get a use variance. The applicant has to prove the four things that are on the bottom of this page I just handed out. And this is in the Hastings code, but it's state law. It's state law so Hastings could ... even if it weren't in the Hastings code, this would be the law. First, the applicant has to show that they cannot realize a reasonable return on the property, provided that the lack of return is substantial as demonstrated by competent financial evidence.

Secondly, that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. Third, that the requested use variance, if granted, will not alter the essential character of the neighborhood, and that the alleged hardship has not been self-created. All four of those have to be proved.

So that's what the applicants are going to have to try to convince you of tonight. One other thing I noticed that wasn't in this application: because it is a use variance it would require a SEQRA determination. I don't think you need to go through a big thing, but you will have to fill – if you haven't already filled in – an Environmental Assessment Form so the Board can decide.

They did fill in an Environmental Assessment Form? Was that in the application?

Building Inspector Sharma: I have it.

Village Attorney Stecich: Oh. OK, fine. That's good then. So then you'll have to make a determination. But don't do that until after you've heard the whole presentation.

Does anybody have any questions about that?

Boardmember Pennington: About the identity of the applicant in terms of the self-created hardship issue, is the applicant the owner of the property, or prospective ...

Gordon Sokich, applicant - 7 Washington Avenue : Well, it's been in the family forever. So my mom and my father ... and my father ...

Chairman Murphy: Sorry, you have to talk into the microphone.

Mr. Sokich: Oh, sorry about that.

Mr. Sokich: My parents owned the property. My dad passed away in 2008, so the property was left to my mother. So then we created an LLC when he passed away, so now I'm on board with it also. So we've owned the property for over 35 years, so we're very familiar with the street, the activities, and what's going on on that particular block.

Chairman Murphy: OK. And Counsel, thank you for that explanation. It helped refresh me anyway because we don't get use variances very often.

Village Attorney Stecich: You don't get them often.

Chairman Murphy: So your job is— and it's not easy, and you may have to come back if you want to pursue this – you've got to show a few things that are not so easy to show because you're not in the central commercial district. You abut it, but you're not in it; you're in a mixed use district. And as I understand it, you've got residential on – is it two, or three floors above?

Mr. Sokich: Two floors above.

Chairman Murphy: So on the street level, down Washington, this is – so people understand – below Warburton on Washington, heading down towards Southside.

Mr. Sokich: Southside, correct. So like you mentioned ... I mean, pretty much there's not probably a lot of thought typically for the town to put in that area because most businesses are typically there for a very long time. So there was a bookstore where that current section is on the right-hand side. Chris, who was our tenant in there, couldn't afford the rent anymore. He had the other side, across the street, where he has the other bookstore next to the ballet school.

So a lot of those uses have been there forever, and it's never changed. And I think maybe at the time – I'm planning, I'm not sure, I don't know how it all went about – I think they probably looked at the block, and said, "Hey, you know what? Offices used to be here 40 years ago, we could put offices." There was a bar on the corner, but I really don't think a restaurant would be great on that block. I mean, you're going to have a bar, you'll have a restaurant, the impact with cars and traffic and everything else would be a big disturbance. But that's zoned in there.

So I think there are certain things that are there, but we got to think a little bit outside of the box. The business that we want to put in is a business that I personally want to run with my fiancé. She would put it there. And I think aesthetically it would look beautiful. Two, it's very difficult to rent. I can't get any lawyers or architects in there because of the parking situation. They allow two-hour parking, but there are not meters so it's not enforced. So that's the biggest issue. Because when the tenants leave – because we have tenants there, and then after tenants on Southside the tenants were Rob Sanzo – we got the corner, the two large buildings with multiple units in there, 20-plus units or so.

Those tenants then either go on the train, or they take their cars and they're driving to White Plains or Tarrytown, wherever they're work. And then the train people park there all day long and they do not leave until they get back. Then the parking opens up again from 6 to 9 o'clock, where the tenants are coming back from their jobs and they can slip right in. Because I've been there – I take care of the property, I take out the garbage, I shovel the snow – I know what's going on on that block on a daily basis. And even with the bookstore, his biggest problem was parking, which has always been a big issue there.

But the town already has enforced the rules for a two-hour park, but there are no meters so it's not enforced. Or, you know, the cops aren't marking the tires to check and say, OK, they deserve a ticket. If people know they're getting ticketed, they're not going to park on the street. Then that would help out those businesses.

On that particular area from Warburton down to Southside Avenue, there's only four or five spots where there is ever going to be a business, ever, for the history that's going to happen in this town unless something happens and they knock down all the buildings. So you've got the car wash/gas station. We have the bookstore that used to be on both sides, the ballet school, and down below used to be a bar. Now it's a psychiatrist's office or something along those lines. I'm not even too sure what they have going on there.

So as an owner of the building, I have trouble renting that spot for a particular reason. One, it's very difficult to get somebody to take the whole space for an office because they're

always going to complain about parking, getting their clients in. Aesthetically, that block's not the greatest to look at. From the corner coming up ... when you look up from this particular area over here, we're on the right side of the street when you're coming down. When you look to the left, you see a big car wash sign. It feels like you're really in a commercial area.

And I don't know how the car wash isn't even listed on the zoning, but they got the permission to get a car wash there at some point. But it's been there for awhile. But you have a lot of walk-by traffic, so for a hair salon that's fine. If there were at least a few meters or something for two-hour parking ... because it's really not being enforced. The law is there, the signs are there: two-hour parking from 8 a.m. to 6 p.m. But I think for a hair salon usage it would be fine.

The only reason I'm coming up with this is because we can't rent it. It's been vacant. The prior tenant didn't pay the rent for almost a year.

Chairman Murphy: Well, let me ask you this. What we're really talking about now is the hardship issue. And so one of the things you need to do is give us some evidence, some written evidence or a statement, of what efforts you've made to try to rent it, and why it hasn't ...

[cross-talk]

Mr. Sokich: Sure. Just to give you a little background.

Chairman Murphy: Hang on. You got to let me finish.

Mr. Sokich: Sure.

Chairman Murphy: Otherwise, our person up there can't take down the transcription, OK?

And so what you need to do for us, because this is not easy and we can't just argue around it, you need to give us evidence. All right? And so one way to establish hardship is to explain to us, and give us a letter and if there's any other support behind it, what efforts you've made to actually try to rent it and why people refuse to rent it. Is it a parking problem, not enough street traffic problem, or the neighborhood's just not the right visibility for someone's office, whatever it is.

But you have to demonstrate that, and you have to submit documentation to back it up to make a hardship case. And that's just the hardship case, all right? Then you've got to show

why you can't make a reasonable return financially for whatever business that is permitted that you've tried to rent it for. And so you've got to do some kind of basic accounting and math for us so we can see what do the rents go for, what are you asking, why is it not sufficient, why have you had trouble renting it at those rental rates, and so why you have a reason financially that you can't make a reasonable return on what we'll call the retail street level space. Right?

Mr. Sokich: Sure.

Chairman Murphy: That's what we're talking about.

Mr. Sokich: Well, I could put that all together for you all. My background's in real estate. I have my own real estate firm in Manhattan. So for me to try to rent over here, it's a different MLS system. But I know Peter Riolo, I know Mike Gibbons and everybody knows about the property. There's a large sign in the window for walk-by traffic. So the only people that currently ... you got to remember also, as a landlord/ – I evaluate businesses, too, and I sell them – you can't just take anybody who comes in and says I want to open up a restaurant and it fits in the code.

The reason is, how much money do they have behind them. They can't get business loans. The SBA's not giving pretty much any loans these days.

Chairman Murphy: Oh, look, I'm not disagreeing with you. I'm just saying the burden's on you.

Mr. Sokich: Oh, yeah. No, I have no problem supplying documentation; talk about the impact of the neighborhood, which you guys probably all know, in terms of steep slope, in terms of parking. Pretty much, that's probably common knowledge already. And in terms of probably even level areas on Warburton, there's plenty of empty space, in a better location, that are empty. I mean, we're living in a time of where the economy is nothing, the U.S. dollar's lost the buying power of almost nothing. You might as well just buy silver and gold.

But right now, you have plenty of empty spaces on Warburton where the old movie theater used to be, been empty forever. There's empty spots constantly. The one spot that's going to survive, that will look aesthetically nice on that block, is when I open the salon. It's not going to go out of business because we own the building. So, economically, we're not collecting rent. We're paying the taxes.

What's difficult to rent are the apartments. That's difficult because of parking also. So it's twofold. It's not just the stores, this is also just for the residents. Residents would love to

have two-hour meters – why not? I come home early from work at 4 o'clock, I just pay a couple of dollars to keep my car there for a couple hours longer. Hey, that would probably help all the landlords around in the area instead of the commuters who park on that street all day long. And then what? If I had a restaurant that fit in that current location, where's the delivery truck going to park? So you double park, and now you have nowhere to go.

So I'll spell everything out, outline everything. And then yeah, the impact is yes, I'm not collecting rent and it's difficult then to pay taxes. But we have to pay taxes no matter what. But I think it's a twofold type of thing. Yes, impact on the neighborhood. But no matter what business goes in there, you're going to have traffic. If I put a gym in there, there's going to be foot traffic, even more foot traffic ...

Chairman Murphy: Well, no. You're missing the point. You need to read the code: 295-72.2 has a whole list of permitted uses. And you've got to show us why you can't use one of them. You want to do something different. And look, I didn't make the rules. But somebody made the rules in this town and it says you can't have a salon in that district. You can have a salon in the central business district.

So that's the rule I have to judge. And what you're saying is, you want an exception to that rule, and I get it. But my point is, there are a whole lot of other permitted uses where you wouldn't need an exception. So if you wanted to rent it for a bookstore, an artists studio – which are there, of course, across the street – professional office, that kind of stuff. So you need to show us convincingly why that's not good enough for you and why that's a hardship. That's the point I'm driving at. You can't just put any business you want to put in that neighborhood.

Mr. Sokich: No. Honestly, I'd rather not open up a business and put a business in there myself. I would rather rent it out in terms of renting out to an office or to something that fits in the code. It's either one of two things. Either I have to get a variance ... and I'm thinking, OK, this is viable for a hair salon. Because I've seen in Dobbs Ferry, from Main Street to Cedar Street, there's 12 hair salons in that one area and they're all viable.

So this particular zoning is literally for a two-block area. So I have no idea how this stuff works in the architectural world or how the town works in terms of coming up with certain solutions. Either one, I have to prove myself in terms of this is why it should be viable and why my hardship. Or I don't know, maybe a suggestion is to maybe just change the code and just allow other types of businesses in.

Boardmember Forbes-Watkins: We can't do that.

Mr. Sokich: I mean, I don't know. I don't know how that whole procedure works. But I'm just saying if rules were changed in the past, or whatever ... not just for me. I'm just saying also for the other three or four landlords.

Village Attorney Stecich: Could I suggest – and I'm really hesitant to do this – it might be worth you talking to a lawyer to ask him to make the argument for you.

Chairman Murphy: Yeah, you haven't given us anything.

Boardmember Pennington: I think the point that you're missing is that we're not authorized to give you what you want unless you fulfill these requirements.

Mr. Sokich: Got it.

Village Attorney Stecich: Right. You have two ...

Boardmember Pennington: Because we are not a legislative body, and it's not in our purview to do something which is, in effect, a change of use. That's why these standards are so high.

Village Attorney Stecich: It's very rare. I would say on the 30 years I've been representing ... 25 or 30 years I've been representing this board I don't know that we ... maybe we had one other application ever for a use variance. They're very, very rare and they're very difficult to grant. And you've got to make out a case for it, and right now you're not making out the case. You're making a sympathetic case, but what you have to do is prove these four things.

You have an alternative, and the alternative is to go to the Board of Trustees and ask them to amend the zoning to permit that use. That's it, you know.

Mr. Sokich: I think it will be easier to show the hardship. Because my father had the income coming in, my mom solely relies on these buildings for her income. Then also to talk about the traffic coming in, the types of businesses. Yes, if it's on the market maybe for three years, and I give it away for free, somebody will take it.

Village Attorney Stecich: But realize, there's four things you have to prove here.

Mr. Sokich: On these four.

Village Attorney Stecich: You have to prove A, B, C and D, OK? And you may need somebody to help you make that argument, or maybe you can sit down with Dennis and the

two of you can do it yourself. But if you find that you're not making the convincing argument yourself, I suggest you talk to someone.

Mr. Sokich: No, makes sense.

Chairman Murphy: Yes. I understand where you're coming from, but we can't do anything with it the way it is. This is very difficult to do.

Mr. Sokich: Could you guys recommend a lawyer?

Chairman Murphy: No.

Boardmember Forbes-Watkins: I wish we could.

Chairman Murphy: But yes, you should go find one.

Village Attorney Stecich: I'll recommend ... do you mean a person in particular? Dennis knows somebody.

Mr. Sokich: But maybe another issue I'd like to talk about in regard to that, since we're on the topic, is, honestly, about the parking on that area. Whether it's for the commercial space or the residential, there is ...

Building Inspector Sharma: That's another place to talk about it.

Mr. Sokich: Oh, that's another place to talk? OK.

Village Attorney Stecich: You should get ... that's a Board of Trustees issue, yeah.

Mr. Sokich: Gotcha. All right.

Building Inspector Sharma: Dennis, come by. We can talk some more about it. At this point, I don't think the Board can go any further on it. Certain things need to be done, and with this application we don't have any of that.

Village Attorney Stecich: And it really should be in writing. You should make this argument in writing.

Chairman Murphy: Correct.

Village Attorney Stecich: So the Board can absorb it ahead of time, and so there's then a record. They have to make their decision on record.

Chairman Murphy: And just forewarned is forearmed, as they say. We've denied use applications that have been very well supported with lots of documentation and lots of financial evidence. Because the town has zoned these districts the way they want them zoned, and it's just not easy to change that for a use variance.

Village Attorney Stecich: And this was not rezoned that long ago. It was 2003. It's not like this is one of districts where there's really old rules that never kept up. That's not to say that it wouldn't be different now.

Mr. Sokich: I mean, technically, we would never want like a restaurant over there. I mean, who wants to smell food? Then you get rodents in the building and everything else. Or a bar. I mean, for us – especially my mother – then we're limited. Because she'll never allow that; not in a million years. And that's maybe part of our problem.

But the thing is, the last thing I want is rats in the garbage area and stuff like that. Because I have to rely on that person running the restaurant to make sure they throw the garbage out correctly. And then I'm at commercial zone usage?

Building Inspector Sharma: It's kind of [cross-talk] at this point, all right?

Mr. Sokich: All right, gotcha.

Building Inspector Sharma: Go and ask for a review.

Village Attorney Stecich: The thing is, you've got to show that ... not that you don't like those uses, but that the building can't be used as that for some reason, for some physical reason or financial reason or you can't get anybody to rent it, or whatever.

Mr. Sokich: OK. Well, thank you for your time.

Boardmember Forbes-Watkins: And good luck.

Chairman Murphy: OK, thank you.

APPROVAL OF MINUTES

Regular Meeting and Public Hearing of October 25, 2012

Chairman Murphy: Now I wasn't here, so we need approval of our minutes or motion for any changes.

Boardmember Collins: I had a change. On page 13, there's a word omission. The sentence currently reads, I believe, "*Does it have to 24 feet, for example.*" And what I believe I said: "*Does it have to 'be' 24 feet, for example.*"

Chairman Murphy: OK. That's Boardmember Collins, toward the top of the page, line three.

Boardmember Collins: Page 13.

Boardmember Forbes-Watkins: I found nothing egregious.

Chairman Murphy: OK. Well, I guess I can't vote.

On MOTION of , SECONDED by Boardmember Pennington with a voice vote of all in favor, the Minutes of the Regular Meeting and Public Hearing of October 25, 2012 were approved as amended.

Chairman Murphy: Any other business? No? Good. All right, we're adjourned until January 24.

ADJOURNMENT