A Regular Meeting and Public Hearing was held by the Planning Board on Thursday, December 16, 2021 at 7:00 p.m. with Boardmembers participating via Zoom, live-streaming via WHoH-TV (Channel 75), and online at WHoH-TV.org

PRESENT: Acting Chairperson Eva Alligood, Boardmember Richard Bass, Boardmember Thomas Speyer, Boardmember John Mondello, Boardmember Charles Kim, Alternate Boardmember Richard Martin, Village Counsel Linda Whitehead, Building Inspector Charles Minozzi, Jr., and Planning Board Secretary Mary Ellen Ballantine

I. MEETING PARAMETERS

Boardmember Alligood: Good evening and welcome to the Hastings Planning Board meeting of December 16th, 2021.

"Due to the public health and safety concerns associated with the Covid-19 pandemic the board is meeting via videoconference using the Zoom platform in accordance with chapter 417 of the laws of 2021. There is no public participation in person tonight. Rather, the public can watch the live meeting through Zoom, online, and on cable. Notice of tonight's meeting was published as required and posted on the Village Web site. The Web notice included instructions for members of the public to access the meeting and participate in any public hearings.

"If you wish to comment on an application, at the appropriate time please do the following. Members of the public attending online via the Zoom app may use the 'raise-hand' feature at the appropriate time if you would like to make a comment. The feature is located at the bottom of the screen. Those attending via telephone can press 'star-9.' The meeting host will see that your hand is raised or that you've pressed star-9 and will unmute those waiting, one at a time, so that you can speak."

So with that, I am going to ask Mary Ellen to do roll call.

II. ROLL CALL

Planning Board Secretary Ballantine: That is it.
Chairperson Alligood: All right, thank you.

III. APPROVAL OF MINUTES

Regular Meeting of October 21, 2021
Regular Meeting of November 18, 2021

Chairperson Alligood: Continuing on, next on the agenda is approval of minutes of the October 21st, 2021 and November 18th, 2021 meetings. Does anyone have any comments on those two sets of minutes? I'm not seeing anyone speak up.

Attorney Whitehead: We might have to do them separately just because I think different people were at different meetings.

Chairperson Alligood: Can I have a motion to approve the minutes of October 21st?

Attorney Whitehead: Does someone have the minutes in front of them to see who was there?

Planning Board Secretary Ballantine: John Mondello was there.

Attorney Whitehead: Who was at the October meeting?

Planning Board Secretary Ballantine: It was Eva, Richard Bass, Kerry, John Mondello, and that's it.

Attorney Whitehead: So actually we can't do those. Sorry, I didn't realize we didn't have four people who were at that meeting.

Bldg. Inspector Minozzi: We'll have to hold that one over.

Chairperson Alligood: All right, let's do the next one. Can I have a motion to approve the minutes of November 18th, 2021. And maybe, Mary Ellen, we should start with you letting us know who was at that meeting so we know.

Planning Board Secretary Ballantine: Sure. Yourself, Tom Speyer, John Mondello, Charles Kim, and Bill.
On MOTION of Boardmember Speyer, SECONDED by Boardmember Mondello, with a voice vote of all in favor the Minutes of the Regular Meeting and Public Hearing of November 18, 2021 were approved as presented.

Attorney Whitehead: You got four on that one.

Chairperson Alligood: Okay, 50 out of 50 there completed. Thanks everyone.

IV. OLD PUBLIC HEARINGS

None

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Chairperson Alligood: We just have one application tonight and it's a new public hearing.

Steep Slopes Approval as per Section 249-4 of the Village Code for the application of Peter Gisolfi for a new rear retaining wall on his property located at 35 Sheldon Place. Said property is located in the R-10 Zoning District and is known as SBL: #4.20-9-3 on the Village Tax Maps.

Chairperson Alligood: Would the applicant like to present the application?

Ronen Wilk, landscape architect: I'm a senior associate at Peter Gisolfi Associates. The issue here is about a 20-year-old or more – between 20- and 30-year-old – system of walls; two walls, timber walls, that over the years have decayed. And with the last immense storm we had in September the lower wall washed away so it became a real potentially dangerous situation. What we are asking, the two timber retaining walls at the maximum height between the two were about 20 feet high. They were retaining a yard of about 13-, or a total area about 13-hundred square feet.

What we want to do now is just to do something that will last much longer and be a lot less intrusive. So what we're doing is, we are going to restore the slope; basically go back to the original slope, get rid of the fill that is there, remove the old timber wall, and then build what
we call an MSE wall which is a mechanically stabilized earth wall which is made out of decorative concrete blocks. But then what really holds all the soil behind is a system of geogrid and controlled fill, compacted. Then we're going to seed the top of the wall and plant ground cover on the slope. So basically, from a two-tier wall system of about 20 feet high we're going now … because we put in … going back to the original slope and moving the wall backward, reducing the yard by about half we can get away now with a wall at the maximum of about 6 feet. So it's a much less intrusive system that's going to be more stable.

And that is basically, I think … we submitted the material so you could see what we're trying to do, submitted some literature about the material we want to use. And I think that basically is the presentation and I welcome any questions or comments.

Bldg. Inspector Minozzi: Eva, I asked to tier the wall back to avoid the height variance.

Chairperson Alligood: Okay. I think before we go into comments maybe we should discuss … we did get a memo from Hahn Engineering, our engineer. Are there any highlights from that that we want to go over in order to provide them to the applicant?

Mr. Wilk: Can I just respond that that real quick? We have received initial comments from Mr. Minozzi which we incorporated into this submittal. The comments we got from Hahn came a little late so we were not … but our review of those comments, there's nothing there that we feel is problematic for the project. We are going to comply with all those comments and we are going to submit them, obviously, to Mr. Minozzi. And we'll have to obviously approve it prior to getting a permit. But I just want to say that the comments we got from Hahn Engineering are not … we're going to comply with them fully. There's nothing there that we have any issues with.

Attorney Whitehead: I spoke to Doug Hahn and he said nothing there is significant, it's mostly details, and he had no problem with going ahead, subject to his comments being addressed.

Chairperson Alligood: That's what I was going to ask.

Bldg. Inspector Minozzi: They have addressed over half of Hahn's comments that I picked up before it was sent to Hahn so they're in even better shape when Hahn saw it with this newest set of plans.

Attorney Whitehead: And I think everybody sort of feels the best thing is to try to get this going as quickly as possible [laughter].
Bldg. Inspector Minozzi: It is an imminent danger for sure. I've been out to the job.

Chairperson Alligood: Good to know. Well, with that are there any comments or questions from boardmembers? I see shaking heads, nobody has questions or comments? So if the board is satisfied then with the report – well, the presentation we just got and then the update from Mr. Minozzi and Linda Whitehead in terms of addressing the engineering memo – then are we prepared with the steep slope approval? I guess nobody addressed the need for conditions, so …

Attorney Whitehead: The only condition would be that the comments be addressed.

Chairperson Alligood: Oh, yes.

Bldg. Inspector Minozzi: Are there any hands raised, does anybody see?

Attorney Whitehead: There's nobody there [laughter]. You can ask if there's any of the public who wish to speak, but I don't see any public watching.

Chairperson Alligood: Is anyone in the public listening and has a question or wants to comment? Not seeing anything either, and not hearing anything. So with that, can I have a motion to grant steep slopes approval for the new retaining wall at the property at 35 Sheldon Place, SBL #4.20-9-3, with the following conditions: that the applicant shall address the comments in the Hahn Engineering memo dated December 7th, 2021 to the satisfaction of Hahn Engineering? So can I have a motion?

Attorney Whitehead: Can you do a roll call vote for the record?

Chairperson Alligood: Yes, a roll call. John Mondello?

Boardmember Mondello: "Aye."

Boardmember Speyer: "Yes."

Boardmember Bass: "Yes."

Boardmember Kim: "Aye."

Boardmember Martin: "Yes."
Chairperson Alligood: And I'm a "yes," as well – Eva Alligood. That covers everyone.

On MOTION of Boardmember Speyer, SECONDED by Boardmember Bass, with a voice vote of all in favor the Board resolved to grant steep slopes approval for the new retaining wall at the property at 35 Sheldon Place, SBL #4.20-9-3, with the following conditions: that the applicant shall address the comments in the Hahn Engineering memo dated December 7th, 2021, to the satisfaction of Hahn Engineering

Chairperson Alligood: It is approved, with the one condition I read out. Moving on, on tonight's agenda we just have two discussion items. Both are proposed zoning code amendments referred to us by the Board of Trustees for review and comment. The first one is proposed local law L of 2021.

V. DISCUSSION


Chairperson Alligood: Linda, would you like to explain?

Attorney Whitehead: Several years ago the Board of Trustees amended the zoning code to eliminate the requirement for site plan approval for roof-mounted solar – to add a definition of roof-mounted solar panels – and remove them from the requirement for site plan approval and view preservation. What we have subsequently discovered is that there were also references to solar in an odd way in the height section which were inconsistent with the changes the Board of Trustees made a few years ago. Therefore, we're now proposing to amend this subsection to make it consistent with the prior action of the Board of Trustees and, again, take out references to solar in relation to requirements for site plan approval. Also there was a limitation to 10 percent of the area of the roof, which applies to other rooftop improvements and not this.

That's all this is meant to accomplish. Really it's just making it consistent with the board's previous actions. Anybody have any questions?
Boardmember Speyer: Yes. I just want to fully understand what's meant by "roof-mounted." Does that imply solar panels mounted flush on the roof, or does it also include solar panels which would be mounted on some type of a structure attached to the roof?

Attorney Whitehead: Here's the definition that was added in 2017: "A roof-mounted solar panel:: a photovoltaic device capable of collecting and converting solar energy into electrical energy located on the roof of any legally permitted building for the primary purpose of producing electricity for on-site or off-site consumption."

Boardmember Speyer: It doesn't answer my question, actually.

Attorney Whitehead: Well, it says "on the roof" so I would say if it was put on a structure on the roof that the structure would mean it's not really on the roof. I mean, a structure – yes, they're on a frame – they're on brackets. But if you're talking about an additional structure that lifted them up essentially …

Boardmember Speyer: That's what I'm concerned for view. Let's say you build a frame that's 6 feet high, raises them 6 feet above the roof level. Do we really want to exempt that from height restrictions and view preservation?

Attorney Whitehead: I would say that's not …

Bldg. Inspector Minozzi: That's not solar panels, that's a structure.

Attorney Whitehead: That's not a roof-mounted panel.

Boardmember Speyer: Okay, as long as you think that's clear. I don't think it is particularly. I mean, I think it'd be better to clarify that.

Chairperson Alligood: I agree with Tom. I think it's a good point because if we leave it open to interpretation what is an acceptable part of a structure of a solar panel … because the panel is the panel, and it's attached to a frame …

Boardmember Speyer: Flat.

Chairperson Alligood: … which is attached to the roof. And if we're going to be precise in adding language I think we could fix that because he's pointing out a loophole there.

Attorney Whitehead: Can I just clarify one thing? They are still subject to height
restrictions. They're not subject to site plan approval or view preservation approval, but they are not exempted from the height provisions.

**Bldg. Inspector Minozzi:** And to add to that, they still have to go through the Building Department analysis. If there's a 4- or 6-foot substructure underneath the solar panels it's going to get flagged right away.

**Chairperson Alligood:** So what you all are saying is you don't think that any potential misinterpretation – or if somebody tried to build this in a way that wasn't consistent with our existing …

**Attorney Whitehead:** Right. The section prior to this one, subsection 1, is the one that actually sets forth the items that excluded from height. That's: "Unless regulated specifically herein, the height limitations of this chapter shall not apply to chimneys, church spires and church belfries, standpipes, cross member-style television antennas – remember those? – ham operator antennas, flagpoles or sculpture provided that structures, with the exception of church spires and belfries, do not extend more than 15 feet above the level of the roof on which they are located." Roof-mounted solar panels are not listed there so they are not exempt from the height restrictions. They still cannot extend above the permitted height.

**Boardmember Bass:** I think Tom and Eva's concern is maybe the word "flush" could be added to the definition.

**Boardmember Speyer:** Yes. It just would take a few words to make it better.

**Attorney Whitehead:** But they're not flush, they're on brackets.

**Boardmember Bass:** Horizontally flush. Again, when I read this I had the image of solar panels overseas where they literally stand up to catch more of the sun.

**Attorney Whitehead:** Again, you have to put it in context of the rest of this section. All this section does is say they're not subject to site plan approval. It does not exempt them from the height requirements.

**Boardmember Speyer:** But it does take them out of the view preservation question.

**Attorney Whitehead:** Actually they were taken out of the view preservation four years ago. That's not what this does. That was done four years ago.
Boardmember Speyer: So take the following example: we're in the downtown area where most of the roofs, or many of the roofs, are flat. Someone wants a solar panel up there, and to maximize the efficiency of the panel they put it on a bracket facing south on top of their flat roof. You're saying that's now exempt from site plan and exempt from view provisions?

Attorney Whitehead: Right, but it still must comply with the height. Tom, we actually had an example which Eva and Richard will probably remember: the solar panels on the roof on Ridge Street. That's where this concern actually came from. This is the Board of Trustees saying we don't want solar panels to not be installed if they meet the height requirement, but we want to encourage them, not discourage them. That was a policy decision by the Board of Trustees.

Bldg. Inspector Minozzi: And just like the ones on Ward Street. They were lowered to 10 degrees, which is the lowest it can be in our atmosphere, or in our longitude and latitude. They can be lowered as much as 10 degrees – which she did just to help the view preservation – not that she had to. These are all recommendations we can also make for the building permit process.

Boardmember Speyer: Okay, I'm good with this – and thanks for the clarification, Linda – as long as we're clear that the desire to provide clean energy overrides view preservation I'm good with it and I kind of agree. But I just want to make sure I understand that's what we're doing.

Attorney Whitehead: That's actually not what you're doing here, that's what was done in 2017 [laughter].

Chairperson Alligood: But I think if we're going to have the conversation it's helpful to go through these things. Charles, you have your hand up.

Boardmember Kim: Yes, just a point of clarification for my sake. By striking out where it says an exemption for solar heating panels that should not cover more than 10 percent of the area of the roof with the exemption being "for solar heating panels," does that not mean that now solar heating panels could not cover more than 10 percent of the area of the roof?

Attorney Whitehead: No, I went through that. If you go back to the beginning of this it talks about "such structures." Solar panels are no longer part of such structures, in this paragraph.

Boardmember Kim: Okay.
Attorney Whitehead: I kind of read that several times when drafting this to make sure that wasn't the outcome.

Boardmember Kim: Okay, good to know. Because when I read it, and I read it a few times, that's how it read. But if that's clear to others then that's all, thank you.

Chairperson Alligood: Any other comments or questions?

Attorney Whitehead: So you can tell the Board of Trustees that you reviewed this and you're okay?

Chairperson Alligood: Yes, we can send a report back with … we can tell them we had questions for clarification purposes but that at the end, with all the explanations we were provided, we don't have any comments.

Attorney Whitehead: Okay.

Chairperson Alligood: The second discussion item is the proposed local law M of 2021.


Chairperson Alligood: Linda, would you like to explain this one too?

Attorney Whitehead: Yes, and I know Richard has comments but we were trying to keep this simple. Let me explain where this came from. If you remember a year or so ago the Village adopted an FAR, floor area ratio, requirement. As part of doing that, we revised the definition of floor area and said basements count towards floor area for determining FAR but cellars do not. We also made some changes to the definition of "basement." What we have now realized is we didn't change the definition of a cellar and discovered there's some overlap. The Zoning Board recently had an application where something met the definition of both cellar and basement, as the definitions existed. That's obviously a problem.

This change, this amendment, is really to match this up with the definition of "basement" so it's clear that everything is one or the other. Some of it was just like changing "ceiling" to "the bottom of the joists supporting the floor immediately above." That's just language we
use now in "basement," so we wanted it here. The biggest change is utilizing existing grade as opposed to finished grade. That's where we ran into a problem because there was one that, under existing grade, was a basement but they were adding around the grade so on the finished grade it could be classified as a cellar. We want to use existing grade for both definitions.

I know it's a little confusing, but happy to answer any questions. This really came about from a problem we had on a Zoning Board application.

**Chairperson Alligood:** Richard, do you want to share your comments?

**Attorney Whitehead:** Richard has a longer definition [laughter].

**Boardmember Bass:** Sorry about the longer definition. Where I was wrestling – and I wrestle with it in my practice – is, let's say a site on Washington which has a really steep slope. How does one determine grade? If Buddy and Linda can answer that question – how you would determine in Hastings what's a basement and what's a cellar, when you have an extreme slope – that's my question. I threw out a definition that I pulled together from various sources. I'm not sure that's going to be helpful, but that's where I was raising my question.

**Bldg. Inspector Minozzi:** Actually, Richard, it works the same on a very steep slope as it does on a more shallow slope. If you're talking about the total definition or a partial definition, or a partial cellar or a full cellar, say we're talking about a full cellar or a full basement. We're taking all four sides, we're taking the average, and that's what the space would be. Now with the new FAR we can't do that anymore. It's only the area that meets the criteria of the new law. So if half the basement is less than 50 percent then they can only count half that basement. Even if it's a 45-degree or a 60-degree slope it's still going to calculate the same way. I'm sorry, we're still going to calculate it the same way, just it's going to obviously be much better for the resident because they're most likely going to have more basement than cellar at that point.

**Attorney Whitehead:** Well, that doesn't help them because that counts towards …

**Boardmember Bass:** Right.

**Attorney Whitehead:** It's meant so the portion that is more than 50 percent above counts towards FAR and any portion that is below does not. You're not looking at the entire space. It's different then when you measure height, where you measure height from an average
grade because you're only doing one height measurement, if you will. With this, the lower level can be split. It can be determined to be partially a basement and partially a cellar for purposes of calculating FAR.

**Bldg. Inspector Minozzi:** The only reason we would do it the other way would be if we're considering it a story or not. Then we're going to take all four sides, average it out, see if it's more or less than 50 percent, and then tell if it's a story. Other than that, we do it as Linda just said: it's only for FAR purposes, so we're only counting that section that meets the FAR code.

**Boardmember Bass:** Again, and not to be difficult – I know you're going to smile at this – we're balancing the issues of floor area, stories, and habitability because you can live in a basement. You can have a room in the basement counted as a living room but not in a cellar. Correct?

**Attorney Whitehead:** Habitable space has other requirements. And by the way, anything that's under 7 feet in height also does not count.

**Boardmember Speyer:** We might call it a crawl space-type thing.

**Attorney Whitehead:** A crawl space is a cellar, it doesn't count.

**Bldg. Inspector Minozzi:** Right, that's not habitable space and wouldn't count in either aspect.

**Boardmember Bass:** So if it's 6 feet 11 inches it would be a cellar regardless.

**Attorney Whitehead:** Right.

**Bldg. Inspector Minozzi:** That is correct.

**Attorney Whitehead:** Or it wouldn't count towards FAR.

**Bldg. Inspector Minozzi:** Right.

**Attorney Whitehead:** We had some of that on that application, too [laughter].

**Boardmember Bass:** Okay, I withdraw my suggestion.
Chairperson Alligood: Do others have comments or questions? Then I'll say it seems necessary to remedy the issue that was raised.

Attorney Whitehead: Yes, very much so.

Chairperson Alligood: I don't have a better suggestion.

Attorney Whitehead: It caused Buddy, Ray Dovell, and I a lot of angst …

[Laughter]

Bldg. Inspector Minozzi: That's a good word to use Linda, for sure.

Attorney Whitehead: … and the applicant [laughter].

Chairperson Alligood: And you don't want confusion emanating from the way the code is written.

Boardmember Speyer: I have just one more comment, which is one I've made before. It's that this is an area where a reference drawing would really help a lot of people to interpret it. I've seen it in some of the better codes now. You know, supply illustrations. Or I'd call it a reference drawing.

Attorney Whitehead: We do have some in the code, we have some in some of the height sections.

Boardmember Speyer: Right. And this is one of those, I'm just saying.

Bldg. Inspector Minozzi: Right. We've been learning a lot very fast with the new FAR law. And going forward – not that we haven't done it in the past – most definitely they have to give us elevations of all four sides, with bottom of the first floor indicated. Because it could cause heartache on all sides of the spectrum. So that is definitely something we now 100 percent require for FAR calculations because we have to check them. We can't just go by the architect's word that it's this, that or the other. We need to see it and we need to do our own calculations. At least give them a quick check to make sure they're hasn't been a mistake made. Let's put it nicely; there hasn't been a mistake made.
Attorney Whitehead: Tom, I don't disagree with your comment. There are some things that do have illustrations, there might be some we want to start looking at adding, but I don't want to hold this up for that.

Chairperson Alligood: And it could be adding it as a comment to the Board of Trustees.

Boardmember Speyer: Just put it in as a comment, yes.

Attorney Whitehead: I will put it in as a comment.

Boardmember Speyer: It's not a requirement, but …

Attorney Whitehead: No, but it's a suggestion. And I think going forward it might be a thought to kind of go through all the definitions and see where we might be able to use some illustrations.

Chairperson Alligood: Okay, unless anybody else has comments we are ready to pass this along back to the trustees with that one comment, and other than that we're in support of his change.

With that, our next meeting.

VI. ANNOUNCEMENTS

Next Meeting Date – January 20, 2022

VII. ADJOURNMENT

Chairperson Alligood: We’ve come to the end of the year. Does anyone want to make a motion to adjourn, before I say Happy Holidays to everyone?

Boardmember Mondello: Eva, I just want to say thank you for running a ship-shape meeting here. You did a great job.

[Laughter]

Bldg. Inspector Minozzi: You did a very good job, Eva.
Chairperson Alligood: [Laughter] Thank you, happy to do it. Do I have a motion to adjourn for the end of the 2021 series of Planning Board meeting?

On MOTION of Boardmember Speyer, SECONDED by Richard Martin with a voice vote of all in favor Acting Chairperson Alligood adjourned the Regular Meeting.

Chairperson Alligood: Thanks, everyone. Nice to see you.

Entire Assembly: Happy Holidays.