A Regular Meeting and Public Hearing was held by the Zoning Board on Thursday, December 2, 2021 at 7 p.m. with Boardmembers participating via Zoom, live-streamed via WHoH-TV (Channel 75), and online at WHoH-TV.org


I. MEETING PARAMETERS

A meeting of the Zoning Board of Appeals was held on Thursday, December 2, 2021, at 7 p.m. It was conducted in accordance with Executive Order 202.1. As such, the meeting was held virtually via videoconference using the Zoom platform and was able to be seen live on Channel 75 (Cable) and Channel 43 (FIOS), or streaming live on www.whoh-tv.org. Members of the Zoning Board and staff participating in the meeting did so remotely through videoconference. Furthermore, there was no public participation in-person, however all public comments could be heard via email at zoning@hastingsgov.org. For more information on videoconferencing and how to connect, please go to the Village website at www.hastingsgov.org/zoomzoningboard.

The meeting was recorded and a transcript of the meeting will be available at a later date.

Chairman Dovell: Good evening everyone and welcome to the Thursday, December 2nd Zoning Board of Appeals Meeting. This meeting is being conducted via Zoom. There will be no in-person participation. If any member of the public wishes to be heard, at the appropriate time use the "raised-hand" feature and I will call on you. At that time, please state your name and address for the record.

II. INTRODUCTION

New Zoning Board Member

Chairman Dovell: Before we begin, I would like to welcome our newest member, Brett Gaillard, and I hope I haven't butchered the last name. Did I get that sort of correct?
Boardmember Gaillard: It's GY-ARD, but that was good.

Attorney Whitehead: Not bad [laughter].

Chairman Dovell: It's a start.

III. AGENDA

Chairman Dovell: First of all, are the mailings in order?

Bldg. Inspector Minozzi: Yes, I have been informed by my staff that all the mailings are in order.

Chairman Dovell: There's one item on the agenda this evening, Case 23-21 for 45 Chestnut Drive.

Case No. 23-21
Arthur & Laura Mitton
45 Chestnut Drive

Relief from the strict application of the Village Code Sections 295-68F.1(a) w/295-20D.2, 295-68F.1(c) w/295-55A & 295-295-68G for the application of Arthur and Laura Mitton for a front and rear addition and roof top garage deck at their single-family dwelling located at 45 Chestnut Drive. Said property is located in the R-10 Zoning District and is known as SBL: 4.40-41-13 on the Village Tax Maps.

Nonconformity details are as follows:
Side Yard Setbacks to Roof Top Garage Deck: Existing & Proposed for Side 1/Total of Both – Side 1 – 12.4 feet/Both – 24.4 feet; Required for Side 1 – 18 feet/Both – 30 feet{295-68F.1(c) w295-55A}; Variance Required for Side 1 – 5.6 feet/Both – 5.6 feet w/295-55A Extension of an Existing Nonconformity
Front Yard Setback to Addition: Existing – 27.75 feet; Proposed – 23.25 feet; Required – 30 feet Maximum {295-68F.1.a w/295.20D.2}; Variance Required – 6.75 feet w/295-20D.2 Uniformity of Alignment
FAR: Existing – 0.200; Proposed – 0.347; Required Maximum – 0.316 {295-68G}; Variance Required – 0.031
Chairman Dovell: Please note that after review an FAR variance is not required and that the proposed scheme is in compliance with the provision for maximum floor area ratio. Our Village Attorney will explain the issue.

Attorney Whitehead: We've been reviewing this for awhile and it seems there's a conflict between the definition of "basement" and the definition of "cellar" in the code. Basements count towards FAR, but cellars do not. The lower level of this house, and the proposed addition, meets the definition of cellar. It happens to also meet the definition of basement, however where there is an ambiguity, issue or conflict in a zoning ordinance it has to be decided in favor of the property owner. That's just a legal standard. I can tell you also that the Board of Trustees is considering amending the definition of "cellar" to clear up this conflict. But for the purposes of this application this evening the lower level does not count towards FAR.

So just to run through the accurate numbers pursuant to the code, the permitted maximum floor area ratio is 0.316. For a lot of this size that leads to a permitted maximum floor area for the house of 3,435 square feet. The proposed house, with the areas of the first- and second floor which count, total, 3,231 square feet – that includes the garage – is for an FAR of, I believe, 0.296. So it is under the maximum permitted. When the portion of the lower level is counted, this was increased up to 0.347, about 37-hundred square feet. But that's not the applicable floor area for purposes of Zoning Board review. Therefore, as the chair stated, the only variances to be considered by this board are the side yard setbacks and the front yard setback for the addition to the existing house.

Chairman Dovell: So that said, the only issues, as Linda said, are the yards; front- and side yard setbacks. Addressing those two issues only, who will be speaking on behalf of the applicant? We don't need to discuss floor area, Paddy, only the two issues before us.

Padraic Steinschneider, Gotham Design: Understood. I'll be making the presentation. Would you like me to share my screen?

Chairman Dovell: Yes.

Attorney Whitehead: We're seeing a blank screen. Now we're seeing it.
Mr. Steinschneider: I have more in here probably than we need to go through so I'll try and skip over some things to get, really, to the points. This is the survey of the property, we front on Chestnut Drive. The house dates from, I think, the '60s and is a house that is in need of some repair. It's kind of an interesting property because it's got frontage on both Ferndale and Chestnut, which makes it kind of an interesting lot. One of the things I liked about it most when I first looked at it was that when you look out the back you actually don't have a house that's behind you. So I think it's got good opportunities here. This is in that section that's off of Villard where you've got steep slopes, although this property is in the section that's relatively level.

The subject property is right here, arrow pointing to it, and we are proposing to build a second floor on the existing first floor and a couple of small additions. But first, to cover the actual variances we need, this area on the left – which is the left of the house – the existing garage meets the 12-foot minimum setback. But if you add the 12.4 to the 12 feet on the other side you get 24.4, and the code requires 30 feet. That's a 6.75 reduction. We are proposing making a modification to that structure, but only to change the pitched roof to a roof deck. We are modifying it, which means it has to be considered, but we're not enlarging that or making it ... you know, it's actually kind of the average height as opposed to as high as the ridge now.

We're also proposing building an addition on the front to give us an entrance, a staircase, and a front porch. Right now the setback from the street is ... actually, I think right now we're about 30 feet. What we're proposing is 23.75, and that's to the actual structure. The porch itself would be 23.25 and we've requested the variance for the 6.75 that is to that front porch. This is a picture of the house as seen from the street, and this is what we're proposing; adding the second floor and the addition on the front. Front view of the house, angled front of the house. This is showing the second floor added on, with the front entrance porch. This is the side of the house, facing west. You can see there's work that's needed on this house [laughter], fairly extensive actually. The back of the house has a porch that wraps across the whole back, which is not structurally sound, I think, in any of our opinions. So that's being removed. We're going to put a porch on the back, but we're also building a one-story addition on the back. This is a view taken from Ferndale looking down through the tree ...

Chairman Dovell: Could you go back to the side view for one moment?

Mr. Steinschneider: This one, or the other one?
**Chairman Dovell:** No, keep going. There, just hold there for a minute. You're proposing building a retaining wall out the side from that corner facing us where the leader comes down?

**Mr. Steinschneider:** That's correct.

**Chairman Dovell:** Okay. You're going to build a retaining wall, and then you're going to push the grade up around that.

**Mr. Steinschneider:** That's correct.

**Attorney Whitehead:** So there won't be that whole area that's exposed right now. It will not be fully exposed, as it is.

**Mr. Steinschneider:** Correct.

**Chairman Dovell:** And that's done so you can categorize the lower level as a cellar rather than a basement.

**Mr. Steinschneider:** Actually no. This side of the basement is under 7 feet.

**Chairman Dovell:** Yes, but it's an aggregate Paddy. You know that. You had aggregated all the areas that are above and below the threshold to consider it a basement or a cellar, so this is … I'm just pointing this out. There's nothing we can do about this. I'm just saying this is a deliberate way to sidestep the definition of a basement and call it a cellar. That said, continue the presentation. I don't see it any other way.

**Mr. Steinschneider:** Okay. Let's see if I can catch up to where we were. This is looking towards the back of the house from Ferndale, this is with the addition on. This is directly from the back looking through there. This is actually from that little private drive that connects Ferndale to Chestnut. The house is back here in the trees, and this is showing that with the addition built. If I go back for a minute, if you count the terrain coming across here this ridge and this ridge follow the same height. So it's a similar massing as the neighbor to the west, and I'll show you pictures of some of the other houses. This is the house that's immediately to the east, which I think is one of the nicest houses in this area. It's got some really cool details, fits in with the rock gorgeous.

Now what I'm doing is going down Chestnut from that previous house to the existing subject house, then going west. So this is the house immediately to the west, next house coming
down, next house. This is the back of that house that I just showed the front. (Let's see, try and catch up to where we were – this is moving too quick, the wrong way). This is the house on the corner with Circle, which is up high and three stories. This is the house next to it on Circle. This house at 17 Circle you can't even see from the street really so we took a picture from that connecting drive-through. This is the house on the corner of Ferndale and Circle. This is the next house around the corner, at 32 Ferndale. The front of this house fits in nicely, but the back is, I think, very nice. It's done as many of the houses there, taking advantage of the slope off the street.

Coming around on Circle, kind of going back up towards Chestnut, these are the houses along the west side of Circle. Then from this house we turn back in onto Chestnut. This is the house that's at the corner of Chestnut and Circle, and these are effectively the houses on the other side of the street from the subject property, showing their massing and the size. This is the house the house that's immediately across the street from the subject property, then we get up to where we're at the corner of Chestnut. So orienting back, you see where the site is.

The first thing is dealing with what the setbacks are from the street. We're proposing 23 feet. The neighbor to the east has 6 feet, to the west is 9 feet, then 20. Then the two that are next along that side of the street are actually right up on the property line. I think if we take a look at that section – I think it's 295-20(e)(2) – there is a provision in the code that allows us to take … I don't know if they refer to as "the average" or just "the character of the setbacks." Even with our variance, setting this to 23 feet, we would at that point have the largest setback of any house on that side of the street.

This is showing what the FARs are. The only reason I'm bringing that up is there's been a concern expressed about the size of the house. We're at 296, which is kind of … I have another chart I'll show in the moment which kind of puts us in the middle. There are houses … you know, one house across the street is 596, another house is 334, a house down the street is 410. So just to get into the drawings to kind of show you what we're doing – again, I already showed you this drawing showing how the site plan works – I was going to comment about some other things, but I won't [laughter].

This is a drawing that I think is pertinent to the issue and concern. We are increasing the site coverage. We're not doing a dramatic increase, but we're changing how rainwater will be managed on the site. The current water on the site just sheds down. Our intent was to create ways of slowing that down and getting it to perc better into the soil because right now this is fairly steep on both the east and west side of the house. What we did is leveled those out. We have an area in the back that right now functions as an intermittent stream. In heavy rain
events there's water that comes from the point 7, pouring down through here. What we've done … there was really nothing we could do in the back 'cause this is a lot of rock. So we couldn't really do any drainage there that would make any difference.

What we have done is, we've proposed putting CULTEC units in the front. The idea is to pick up all the water from the middle ridge on the front, which significantly exceeds the amount of additional impervious surface that we're adding. We've designed it for a 100-year storm, which I think will help reduce the amount of water that gets contributed to that intermittent stream in a storm event. This is plans of the existing house. I don't think we need to spend much time on the moves or the elevations. If you have questions about any of that, let me know. This is the first floor of the house. What we're proposing is building these additions – this is 210 square feet on the back – to expand for their kitchen. We have eliminated the existing deck coming across the back, but we're planning to build a new deck that's 292 square feet. On the front we have 130 square feet we're adding so we can put a staircase in with a front entrance, then 154 square feet for the front porch.

On the second floor, similar here. What we've done is shown we're adding … we're basically building an entire second floor over the existing first floor – we do have a situation where some of this is less than the height that would count – and the staircase. The total we're adding on the second floor is 1,285. That's added to the 1,929 on the first floor. On the second floor, this is that 244 square foot roof deck that would be above the garage. This shows the front entrance, the front view, of the house. This is the porch stretching across. You enter onto the porch, you come into the door which is at the right angle into that corner. This is the staircase coming up on the front. We've simplified the rooflines, made a number of changes, to get things and kind of calm the house down perhaps.

This is basically the west elevation, showing how we're leveling this out a bit on the side to reduce that drop, capture more water, and give us opportunities for landscaping for screening between the house. This is the back of the house. This is the deck we're proposing on the back; this is the addition for the kitchen; this is that roof deck that's above; and this is the second-floor addition. Then the northwest elevation, this enlargement showing you the back. Sections I don't think we need to go to, but this might be useful. Basically where we were before – and this has nothing to do with the lower level – we had a larger addition where we would've needed an FAR variance. We were at 0.324, we made a series of cuts to the design and reduced it by 303 square feet. So we're at the 3.214, which gives us an FAR of 0.296.

Just to give you some sense, and I think there's only three more slides, this is all the properties kind of in that block. Here's where the median in this list shows the sizes of lots. There was some concern that we had an unusually small lot. We're smaller than the middle,
but we're compliant. There are a number of houses that are actually below the 10,000 square foot minimum. We're very similar to all the others below the half so I think we're really in the middle on our lot size. This is our floor area. Again, we're higher than the middle but kind of still close into that middle half of the chart. There are certainly larger houses on the street. Then this is where we are with our FAR, which puts us very close to the center of this so really kind of fitting in, I believe, to the basic character of the neighborhood and the scale. I think we've designed a house which fits in nicely architecturally.

And that is what we've got. Anything else you'd like to look at again?

**Attorney Whitehead:** Could you focus again just on the two variances, the front yard and the side yard, just so the board is clear what you're looking for there?

**Mr. Steinschneider:** Yep. What we're looking for is, on the front, permission to reduce the front yard setback from the 30-foot requirement to a 23.25-foot setback. That's a 5.6-foot reduction in the requirement. Then we're looking for relief on the total side yards – which is a requirement of 30 feet – and we're providing 24.4, which necessitates a reduction of 6.75 feet. Again, that's to an existing structure that's not being changed in its footprint. It's how close it is to the property line, which I think also triggers Section 295-56(b).

**Bldg. Inspector Minozzi:** It's 295-55(a).

**Mr. Steinschneider:** Okay. Are there other questions about that Linda, or is that … I think it's fairly straightforward.

**Chairman Dovell:** We really can only focus on these two variances, the two variance requests: the side yard and the front setback. If I can ask a couple of questions about the side yard setback, right now what you're proposing doing is getting rid of a gabled structure and flattening it out. Is that right, Paddy?

**Mr. Steinschneider:** That's correct.

**Chairman Dovell:** So you're actually reducing the height of it overall.

**Mr. Steinschneider:** Correct.

**Chairman Dovell:** Then you're flattening it out and simply putting a railing around it for a deck, which seems like a perfectly reasonable thing to do. I understand the reason you're
asking for this variance, because it's a modification. But it in fact reduces the impact visually.

Mr. Steinschneider: Correct.

Chairman Dovell: In the front yard setback it is a small setback, and to me it's a nice mediating way to deal with kind of the … you now have a two-story face facing the street directly, which is unbroken by anything, as a gesture to the street. And the portico I think is a nice addition to it. I think it's well done.

Mr. Steinschneider: Thank you.

Chairman Dovell: Then you have your stair addition which is a two-story thing, which is really the biggest portion of that. How big is that stair in …

Mr. Steinschneider: In footprint?

Chairman Dovell: In the front. Yes, the footprint of that stair.

Mr. Steinschneider: Yeah, let me get to … I got that number on there. On the first-floor level it's 130 square feet, including the part of the stair that sticks out and the entranceway. On the second floor, yeah, I think it's 74 square feet and it's the part that actually projects forward of the building.

Chairman Dovell: So that hatch – on your drawing A-1 – the densely-hatched portion, which is the two-story portion …

Mr. Steinschneider: Right.

Chairman Dovell: … that's the double-high portion, correct?

Mr. Steinschneider: On A-1.

Chairman Dovell: A-1, "front setback plan."

Mr. Steinschneider: Well, the dark hatch is actually bigger than the stairs. That dark hatch includes the first-floor section that's under the first-floor roof. So it's approximately an 8-foot wide section that projects out 8 feet on the front. I think it's actually about 9 feet wide 'cause it's got the two …
Attorney Whitehead: The other is the entry, right?

Mr. Steinschneider: Right.

Chairman Dovell: The other's the entry. So that's the enclosed portion, 11-7 plus 4-8 at the first floor.

Mr. Steinschneider: Yep.

Chairman Dovell: And as you go to the second floor it's 9 foot 3.

Mr. Steinschneider: Right.

Bldg. Inspector Minozzi: One number Paddy left out was the existing setback currently. We know it's supposed to be 30, but it's currently 27.75.

Mr. Steinschneider: Yeah, I'm surprised I don't have that on there.

Chairman Dovell: Well, I can see programmatically why you're doing that. And to me, it's kind of a mitigating feature on the front to really bring it more into the character of the neighborhood. As you point out, the setbacks on adjacent properties are not much different. They vary, and that's simply the character of the neighborhood. I'll let other boardmembers speak, but I see this as being minimal and programmatically needed and sensitively done. So that's what I have to offer. I'd like to hear from … let's start with Jerry.

Bldg. Inspector Minozzi: Could I just make one correction before you start, Mr. Chairman? 295-20(d.2), the actual term of the code section is "uniformity of alignment." It's not "average setback." The verbiage is uniformity of alignment. I just wanted to get that straight for the record.

Mr. Steinschneider: I couldn't remember that phrase, but that's why I said it's not average. And it actually ranges dramatically if you look at those two up the street that are right on the line. But the neighborhood has a wonderful feel so I don't think there's a challenge in this neighborhood about having too-small front yards or something.

Boardmember Quinlan: Ray, could you come back to me? I'd like to hear what the other boardmembers have to say. Thank you.
Chairman Dovell: Sashi?

Boardmember Nivarthi: I have a few questions and clarifications. I have visited the site and noticed that basically if I look at the site and the proposed leveling of the grade more of the water actually is going to collect in the backyard, right? I was looking at your plans and I want to hear more about the potential impact for the neighbors. Specifically because, one, the backyard is completely rock. It's not going to hold any water. And with the proposed grades you're proposing on the site you're actually going to be channeling more into the backyard.

Mr. Steinschneider: Our intent was actually the opposite. What we were trying to do is slow down the water on the sides so it wouldn't have the velocity, which should give it the ability to perc and also to give us a grading which can be planted more heavily. Particularly on the east side so we can really – kind of with a root structure – interrupt a lot of that water flow sheeting down the side. You know, some of it actually comes off the street and washes down there. So our idea was to build that side up a couple of feet and control that better. All the water right now on the front of the house is going to be captured, where right now that goes into pipes that go to that backyard. So we're capturing half that water on the house that currently discharges to the backyard, which should be a fairly significant reduction in volume.

Boardmember Nivarthi: I understand, Paddy. My thing is I walked along the sides of the house too, right? If you are looking at Chestnut Drive to the right of the house, all the way from in the front yard to the backyard is all rock. Effectively, pretty much a quarter of the front yard is rock, right?

Mr. Steinschneider: There's a beautiful rock …

Boardmember Nivarthi: It won't be a calculation of water. All the water on the side is effectively going to go down the back.

Mr. Steinschneider: Well, any water that's running down that's not captured, but we're putting a detention-retention system in where the rock is not, which is over … we're actually taking up the driveway to put the system over where we found we had sufficient cover to the rock below. So we're putting in six CULTEC units in gravel specifically to be able to hold, I think it's like, 1,200-and-something cubic feet of water.

Chairman Dovell: So that only addresses the water coming from the front, right?
Mr. Steinschneider: Right.

Chairman Dovell: So the addition you're proposing in the front is taken care of by those CULTEC units.

Mr. Steinschneider: And actually we're capturing what right now is the entire front roof. That now will be captured, where it's not already. While this is not an addition to the footprint – it's not increasing the impervious – we're capturing all of this as well as all the water that comes off the garage, which all right now goes to the back. So we're capturing all the roof deck, all of half of the front, plus the addition on the front. That's much more than what that piece is in the back. I mean, it's better than half the house.

Boardmember Nivarthi: I know. I mean, I cannot force anything on this. But I would really appreciate it more if you had done something for managing the stormwater in the back specifically.

Mr. Steinschneider: I would love to be … we kind of played with a bunch of different ideas, but my fear is that I could actually create a problem. One of the things we were thinking of is if we actually did kind of almost like a wetland area but put in the equivalent of a small dam so we could slow down the water that's running through there in the stream. But I'm concerned that doing something like that could actually exacerbate the existing drainage issues. I mean, we can look at it more. That's something I certainly … I'm all for trying to, not only for this property but the others …

Boardmember Nivarthi: That's something in our purview, as such. But considering everything, I looked at the yard, I walked around the house. With reference specifically to the setbacks, I do believe what you're proposing is within the character and fits the neighborhood.

Mr. Steinschneider: Thank you.

Attorney Whitehead: Sashi, just for your benefit because I know there's concerns about the drainage – and Buddy can confirm this – before a building permit gets issued, the drainage will be reviewed by the Village's consulting engineer. They will have to show they're not going to have any negative impact or increase any runoff. It sounds to me like actually, by taking some of the runoff away and putting it into those CULTECs, there should be less going to the back. But it will be reviewed before a building permit can be issued.
Bldg. Inspector Minozzi: I was going to add the same thing as Linda said. This will be reviewed by the engineer, and what Paddy is saying is true. If you take a look at the site there is the gully that runs from Scenic and Chestnut all the way down to almost Ferndale behind all those houses that is capturing all that water right now. So as Linda said, it is capturing probably more than half of what's being captured now.

Chairman Dovell: What's happening in the back of the house I think is really subject to Building Department overview and not zoning; that we really have to focus on just the variances and their effect on the issues. And it sounds as if the front half of the house, with the subject variances, is taken care of with subsurface drainage. Anything else, Sashi?

Boardmember Nivarthi: I'm done.

Boardmember Heitler: Prior to the start of the meeting, most of the review I did and the concerns I had were to do with FAR. That obviously changed when the meeting opened. I actually think the variance requests are fairly reasonable for all the reasons you stated. The side yard can be argued as a decrease in bulk, and the front yard I think is a reasonable solution that's within the character of the neighborhood. So again, if we're looking strictly at the yard variances I don't have any questions or major objections.

Chairman Dovell: And Brett.

Boardmember Gaillard: Thanks, Ray, and thanks for this presentation. My feeling about the side yard: I'm in agreement with what everyone else has said, I think it's actually an improvement to the mass, and I think if I was their neighbor I probably wouldn't want them hanging on the roof deck looking into my house. But I don't think that's within our purview to be concerned about. I think that seems like a very reasonable variance.

The front yard: the only thing I've been thinking about – and I don't know, Paddy, if we could go to one of the images that show the front elevation, or a photo …

Mr. Steinschneider: You want the photo instead?

Boardmember Gaillard: You had a rendering, I think, that actually showed the landscaping as well in the front.

Mr. Steinschneider: Yeah, I don't think we showed any of the new landscaping.

Boardmember Gaillard: No, and I think this is … oh, sorry. Go ahead Paddy, please.
Mr. Steinschneider: That's something that we … I mean, all we're doing in this is, this is something somebody in my office was able to put together quickly. I think we're going to try and do some really fun things with the way the landscape in the front works. The area over here, we're really trying to get this leveled out so we can do a lot more planting between the two houses. The neighbor to the west is very close to the property line and it would be good to have something there that really helps screen it. The whole reason for this retaining wall over here on the right-hand as you go down is so we'd be able to put some decent-sized, probably coniferous, trees in that would get a height of about, say, 15 feet or so, so if you were sitting out there you wouldn't be seen and if people were looking out they wouldn't see you. The idea is to get that side of the house feel like it's ... it's a little stark as it is. If we were starting from scratch on this I think we'd do the garage very differently. But we're just trying to work with what we've got, and I think the landscaping will help a lot.

Boardmember Gaillard: I totally agree. Again, I think this is a little bit out of our purview so I need Linda and Ray to tell me to stop going on with this because I'm new to this.

[Laughter]

But you know, the FAR I fully understand is not within our purview. But given the width of the lot and the size of the building I understand the concerns around that, especially that that large tree in the front – which is awfully close to the porch – is coming out is pretty important. So I think as part of the setting back farther you allow there to be more landscaping – whatever that might be – which kind of negotiates the scale, the new scale, of the house with the scale of the street. And I think programmatically everything you're describing makes a ton of sense. And I actually think the double-height stair is nice as a way to kind of negotiate between those two different things.

But I do think there's something to be said for leaving a little space for landscaping. And even keeping some trees if you can. That doesn't necessarily mean I don't agree with granting the variance in the front. It's more of a question to other boardmembers about their thoughts on that, if that's something we are even allowed to comment on or take into consideration.

Bldg. Inspector Minozzi: In all actuality, when the engineer takes a look at the drainage I will have him also look at the landscaping for absorbing some of the runoff in the front. We can have that looked at as well, and maybe give Paddy some suggestions about plantings.
Mr. Steinschneider: We haven't given you a landscaping plan yet. I've got Susan Jainchill, who's going to work with us on that. She's really good with those things, she's very practical. So yeah, I think we're all thinking the same things. While it's not necessarily a solution for issues of setback, having some nice landscaping on the front of the house that softens the view from the street – at that point, whether it's 30 feet or 23 feet – if it looks nice and feels screened well I think the feet don't matter, I think it looks appropriate in the neighborhood.

Bldg. Inspector Minozzi: I would like that rendering of the planting plan so I can send it to the engineer as soon as possible.

Mr. Steinschneider: Sure.

Bldg. Inspector Minozzi: Once we're done with the meeting, if you get the approvals tonight.

Mr. Steinschneider: If.

Chairman Dovell: Anything else you'd like to add, Brett?

Boardmember Gaillard: Can I ask you a question, Ray? If the foundation of that new porch means that tree gets killed is that something we can comment on, or no? That big tree in the front.

Chairman Dovell: I don't think we can.

Bldg. Inspector Minozzi: Our village code right now doesn't say we can.

Boardmember Gaillard: Okay. It's just it's noticeable, it's an important tree.

Mr. Steinschneider: Right.

Attorney Whitehead: I think we can say that even as a condition of the variance you'd like them to provide tree protection and try to save that tree.

Mr. Steinschneider: Definitely.

Chairman Dovell: So we can word that into a motion if we come to agreement.
Boardmember Gaillard: That's the only flag I have. Otherwise I'm in agreement with what everybody else said. Thank you.

Mr. Steinschneider: Yeah, that's important to us too. And one of the things it doesn't really show in this is that right off that tree is where the rock ledge outcropping is. So my guess is that that pretty well controls those roots. What we're coming out with is on the other side of that rock outcropping. That rock outcropping probably means that tree is pretty heroic to have gotten to its status. So protecting that, feeding it, doing some … you know, I think there's some dead wood in it. We could strengthen the tree and improve its ability to survive. We think it's part of the character of this house. The way it's shown in the rendering it's part of the whole look.

Chairman Dovell: And Jerry?

Boardmember Quinlan: This is an interesting picture on the staircase and the front yard setback. Because right now, we have a one story house that doesn't have a 30-foot setback, and now we're going up. I can't help but think that going up with the staircase and the porch it's actually, at least visually – and I'm thinking about the neighbors … I have three letters that don't believe this is within the character of the neighborhood. It kind of increases the front yard setback problem because there's more bulk. That's one idea I have. You know, visually it does. And also because it's higher we're basically doubling the size of the house, doubling the height of the house. And we're increasing the visual impact of the front yard setback. So that's one thing.

Ray, let's go back to the east side basement that you commented on at the beginning of the meeting. You're a lot smarter than I am. You're an architect, I'm only a lawyer.

Chairman Dovell: No I wouldn't say that at all, Jerry.

Boardmember Quinlan: I'm trying to figure out, and I don't understand, why the retaining wall itself reduces the FAR for the basement not being counted. Could you try to explain to me and …

Chairman Dovell: Before I get into that, Linda is that something we should be discussing at this time? I mean, I'm happy to answer the question.

Attorney Whitehead: It's been a determination that it's up to the Building Inspector. But the definition of "cellar" is measured from finished grade, not existing grade. So the finished
grade is what needs to be looked at. It also lets you look from the grade at the curb and being below the grade at the curb. So with those two definitions that lower level is a cellar.

**Boardmember Quinlan:** Okay, I still don't understand it. I'm only bringing it up because it was brought up by the chair. And I don't think these are improper questions.

**Attorney Whitehead:** No.

**Boardmember Quinlan:** I'm just trying to understand it, okay? I didn't bring it up.

**Chairman Dovell:** I did, Jerry, but I'll just elaborate a little bit more. One of the measures of determination between a cellar and a basement is the …

**Boardmember Quinlan:** Is the 7-foot.

**Chairman Dovell:** Not just the 7 foot, but it is the portion of the floor that is more than 50 percent below grade, right? So what the applicant did was they moved, changed, the grade adjacent to the house.

**Attorney Whitehead:** That's in the grade.

**Chairman Dovell:** The finished grade. And the defined term says "finished grade." So by changing the grade against the side of the house he was able to characterize the lower level as a cellar because he demonstrated it's more than 50 percent below grade as measured from average grade around the house. But as Linda points out as well, it can also be measured – under current definition – from average curb on the street.

**Boardmember Quinlan:** So let me just take a look at that picture again you pointed out in the beginning. I just want to understand it. Not that.

**Mr. Steinschneider:** I'm getting around to it, I think. This one?

**Attorney Whitehead:** That was it.

**Chairman Dovell:** No, next one.

**Boardmember Quinlan:** Go back, you had it. Let me just understand this. What he's going to do is build a retaining wall and then fill it full of dirt right to where the wood starts, and that's going to be the new grade. Is that what's happening?


**Attorney Whitehead:** It's not going up that high, it's in between. But even without that, Jerry – because there's the language in there now that talks about "below the curb elevation" – it still meets the definition of cellar because it's more than 50 percent below the curb.

**Boardmember Quinlan:** Then my questions are not relevant because it's from the curb. So even if he doesn't put the retaining wall in and doesn't fill in the dirt halfway up, that cement part, he'd still be under the definition of a cellar?

**Attorney Whitehead:** Yes. Buddy, you figured out it's even under from the curb, right?

**Bldg. Inspector Minozzi:** It's even under from the curb, yes. They're within our guidelines.

**Boardmember Quinlan:** Okay, that's great. Thank you. Thank you for explaining that to me, I really appreciate it. Now let's go back to the drainage. When I went out to the house – and I know this is pretty "engineer," but Buddy's here and we've been talking about it already – I was invited, and I went down to see the backyard of 32 Ferndale where the McDermotts live. It's so amazing how that … it's like a bowl when it comes back. In other words, that house is higher and everything runs down into quite a natural bowl, especially in their backyard and other backyards. I don't see how they're going to solve that problem. I just don't see how they're going to solve that problem, and the people who live around that bowl are very concerned about that. Because once the house is built, and there's no change, they're going to continue to be flooded. Maybe that has nothing to do with the variances, but it has something to do with, I think, doubling the size of the house on the property.

**Attorney Whitehead:** But you're doubling going up. So what affects drainage is the new impervious area.

**Bldg. Inspector Minozzi:** And what the applicant is saying, Jerry, is that they are now going to be capturing over 50 percent of the house, the new house. And what is being captured now is zero. So it's going to be a substantial reduction in the rear runoff of the bowl that you can clearly see.

**Boardmember Quinlan:** Well, we'll see. Then the last thing, my last point, is that while I was there going around to the different properties there's a gentleman that lives on Chestnut and was very concerned about that tree. We thought that tree, like you said, is a warrior tree. It's amazing that it grew to be that size and be that healthy. So the neighbors are concerned about that and that makes it my concern also. I agree with Brett, and just ask if we could do
anything to save the tree, that tree, and any other older trees on the property you plan to take down.

I'm not particularly happy with doubling the size of the house, but it has nothing to do with the variances. That's all the questions I have. And again, just as Josh said, as soon as we took away the FAR variance then I have no objection to the two variances that are currently before the board.

**Chairman Dovell:** Thank you, Jerry. Does anyone from the public wish to be heard?

**Attorney Whitehead:** There is someone with a hand up.

**Chairman Dovell:** I don't see anything.

**John McDermott, 32 Ferndale:** Hey, can you guys hear me? The comment I want to make is not really around the variance, which I realize everybody's discussed. But I want to reiterate that I really do not think you have considered seriously …

**Chairman Dovell:** You're breaking up.

**Mr. McDermott:** I realize the front of the house is going to catch the roof that's leaning towards the front, but that went out onto the street anyway as all of those who live there know. But if anything changes in the back garden, there's a drain between our house and one of the houses on Chestnut that collects absolute everything that comes down that bowl. During the flood a couple of months ago one of the houses was completely flooded by the water that flows down through there. So we've got to not just consider what happens now, we've got to consider that we're in a new paradigm in terms of rain and flooding and that that drain is already at its limit. Anything that increases that will flood all our gardens.

I've spent about $11,000 re-grading (off-mic) so that it drains into that drain properly. I paid, not the town, for that drain to be fixed so it would actually … the people that bought the house you're talking about, it actually stopped their garden from flooding as well. But it catches an enormous amount of water. And I don't buy for a second that changing that on the front changes anything.

Also the idea that you can plant stuff. Everyone that lives there knows it's really hard to grow stuff there because it's all rock. I've gone thru multiple levels of planting to get stuff to stick in my garden, and most of that (off-mic) really drain anything. I think you need to reassure those of us around there that this is being seriously considered and you'll get a lot
Attorney Whitehead: Again, the Village's engineer will be reviewing the drainage plan before a building permit can be issued.

Mr. McDermott: Thank you.

Chairman Dovell: Does anyone else wish to be heard?

Attorney Whitehead: There's a couple more hands up.

Chairman Dovell: I don't see them.

Norm Luetters, 21 Chestnut Drive: I'm two houses down, and we have that chronic problem in our backyard. Mr. Jerry mentioned our concern with the great oak tree that's behind the house. I'm not sure if that's jeopardized by this construction. But we're also concerned about the incidence of water as being a major consideration. And we're actually beyond the capacity to address it ourselves and rely on good judgment and insight to prevent that from increasing – even as we've had a tremendous history of water drainage from the street itself, Chestnut Drive – which the town is well aware of and has tried to remedy a number of times somewhat successfully in the last period. But the water issue, as our neighbor McDermott said, is a major concern.

I also feel a concern about the presentation of the house, especially in the front, as it encroaches the street. And I do believe this comes well within the characteristic of a change of character to the neighborhood in terms of its size and dominance at close range to the street. Whether it was set back further would possibly alleviate some of it. But the stairway itself, as an architectural statement, is rather severe I think and lends itself to the feeling of a warehouse rather than a home. That seems to be not well envisioned in my opinion.

Then there are the other concerns. Planting, we know well and have to concur with the fact that the back of your yard is full of fill – what's called "fill." I think the reason for that is a historical point where there was an actual pond that was there in that area. That pond was surrounded by an area of grazing for the local cows – we're going back to the 1800s – and this is not thoroughly documented but is generally understood. One of the houses was a barn. The foundation is now a beautiful home, and the house that was dominant in the area is up on the hill, which you showed before us, and has a smaller square footage but is on a
2-acre site. That 2-acres, or approximate 2-acre area – 24 Chestnut, I think – has enhanced the area without encumbering on it as this one will do.

The setbacks itself on your map are not as perceptive as the actual because those lines are the town lines rather than the actual street line. There is an appearance of a bit more setback with that due to the fact that there are no sidewalks. Overall we've understood and appreciated the tremendous effort, and it's obviously a high-end change for our neighborhood in terms of the investment. But in terms of the character of the neighborhood I think it would be making a significant statement that would make it stand out rather than fit in to the character of the neighborhood as we have appreciated for many years, being one of the senior couples that live in this area. Thank you for your consideration, and I appreciate your diligence in addressing these matters.

**Chairman Dovell:** Thank you.

**Kate Starr, 50 Chestnut Drive:** I appreciate all the concerns about drainage. I agree we're in a whole new world with that. I also appreciate that 45 Chestnut has a new owner. Muncie was a wonderful, warm and loving neighbor and we miss her very much, but it'll be nice to see her house get some TLC. But I agree with Norm. I think it's a little bit (unintelligible) around the look and feel of the other houses in the neighborhood, around the size. And I just think it's a little unfortunate that we're working around a technicality in the definition of cellar versus basement when it's clear that some of the other committee members feel the same way the neighbors do and would've liked to weigh in on that issue.

I feel like we can talk about the setbacks, and feel Norm raised some really, really good points about the feel, the sidewalks, and where the house is and where the house would sit. But I think the biggest issue is the size and, you know, it sounds like that's off the table and that's unfortunate.

**Chairman Dovell:** Thank you. Anyone else?

**Don Westrich, 30 Chestnut Drive:** Hi, I'm with my wife, Mary Scranton …

**Mary Scranton, 30 Chestnut Drive:** Hi.

**Mr. Westrich:** … and we're across the street from Norm Luetters. We just want to sort of reinforce what our other neighbors before us had said. We're obviously in agreement with John McDermott and Norm Luetters about the drainage issue and how there's a reality to that that may or may not have been adequately taken into account. From our own perspective,
the issue of the impact of design of the house – whether or not it's within the parameters of the variance – is less a concern than we agree that it does seem like it's going to have an awful lot of visual impact on what is a very cozy neighborhood.

I also want to reiterate that we are certainly welcoming to any new neighbors. You know, there’s been a wonderful churn-over on Chestnut Drive just in the last year, let alone in the last five, with wonderful families coming in, a lot of kids running around. So certainly we would love whoever moves in to 45 Chestnut to be part of that. And we are making our comments and criticisms with full understanding that we want them in the neighborhood, but we have concerns about what their specific plan is. Anything else, Babe?

Ms. Scranton: Hi, I’m Don’s wife. He’s my better half. I just want to point out – and John McDermott referred to it as the “paradigm shift,” and I submitted an e-mail to the Zoning Board – the rainfall predictions with climate change to the Northeast are significantly greater than they are now and will be in the future; like next year and the year after and the year after. I think the runoff issue, which is already a pain for all of my neighbors across the street, needs to be taken very seriously. I'm not sure if … I mean, I don't know how to read an engineering report, but I would like us to be able to feel comfortable with that aspect of the appeal decision. You guys have my letter … so I've said everything I need to say.

Chairman Dovell: We did receive your letter, and thank you very much for that.

Ms. Scranton: You’re welcome.

Chairman Dovell: Anyone else wish to be heard?

Boardmember Nivarthi: I think the homeowner would like to talk. He has his hand up.

Andy Mitton, applicant: Hi, there. Hearing me? I’m here with my wife, Laura.

Laura Mitton, applicant: Hi.

Mr. Mitton: We just wanted to make our voices heard to first say thank you, Paddy, for presenting it so well. Thank you for everyone's time and consideration on this. Obviously it's not easy for us to hear these sorts of concerns from our neighbors to be outside of the variances. There are some issue here we feel a little bit more subjective about in terms of the character and how it fits in, but I guess all we can say is rest assured from our perspective we love the feeling of this neighborhood. We fell in love with it, it's totally charming. We do feel we've worked with Paddy on something that will fit in. I hope that surprises the
doubters, but obviously that's an area where we all may feel differently. But what's important of us is that you know like we intend to live here a long time, we intend to be supportive, active, positive members of your community.

**Ms. Mitton:** We've got two young kids who are at Hillside and we are really excited to be a part of this neighborhood and to work with everybody. We love the trees surrounding our property. We want to take care of them and preserve them too. We have just incredibly good faith and best intentions here and we're really excited to move into this neighborhood. I hope as you get to know us you see that we're looking to be a part of what you guys have built and that we value what you have built.

**Mr. Mitton:** You know, we do it with a collaborative spirit. We will not be peeping into anyone's house from our deck, I promise you.

**Ms. Mitton:** We like trees.

**Mr. Mitton:** We want everyone to be happy and we want to be part of the positive warmth and everything we've found in this community so far. For what that's worth in the midst of all this, that comes from our hearts. And thanks for letting us say so.

**Ms. Mitton:** Yeah, thank you.

**Chairman Dovell:** Anyone else?

**Mr. Steinschneider:** Ray, do you need any response from me on some of those concerns? I mean, I don't know if it's appropriate. The one thing I would say is that … is George Pommer, is Hahn Engineering, still the engineer for the Village?

**Attorney Whitehead:** Yes, it's Hahn. It's Doug Hahn.

**Bldg. Inspector Minozzi:** Doug Hahn will be looking either by himself or with George.

**Mr. Steinschneider:** Right. Well, what I've done on other projects is work specifically with George where we have these same kind of water issues. Because as everyone has said, times have changed. We've got new names for storms now. I mean, it is definitely different. What George and I have been successful with on a number of projects is walking the whole basin and figuring out what's going on and seeing what we can do that helps mitigate it. I don't think there's anything that 45 Chestnut – in and of itself as one property – could do other than what we're already doing, which is to capture half the water that's currently going
down there. We're reducing that significantly. We're reducing the velocity of the water on the sides by building the retaining walls up. We're going to have additional earth to capture more water on the sides. We're going to do a generous landscaping plan that's going to have material that specifically absorbs the water.

But the larger issue is really that when you go all the way up to the top of 63 Ferndale and you come all the way down it's exactly what it is: it's a bowl and it's a lot of rock and the water's running down there. I don't know if it helps or if ... I'm just afraid of doing something that has some collateral impact that I don't understand. But I think George and Doug would be able to advise us if there's anything else we can do in the back. I mean, I could even see where if it's a matter of the velocity of the water – and particularly if that's capturing sediment and washing dirt down the way – there are things we could do with rock and riprap that would slow the water down, capture the fines, and promote different, almost wetland, material that would help absorb more water there. So we're open to all those things, and that can certainly be part of any resolution you'd consider.

**Bldg. Inspector Minozzi:** Well Paddy, rest assured that you will be working with George and Doug on this to make sure they're both in conjunction with what your plan is going to be to capture this water.

**Mr. Steinschneider:** Excellent.

**Bldg. Inspector Minozzi:** This will be one of the first things we attack, so to say, as far as your plan review, besides just reviewing it for code. This will be first and foremost.

**Chairman Dovell:** Any further comments from the board? Jerry?

**Boardmember Quinlan:** No, no thank you Ray.

**Boardmember Nivarthi:** One thing I was thinking, Ray – it might be, again, out of our purview – would the height of the roof, because of the second-floor addition – impact anything they've got in the view, especially around 63 Ferndale?

**Bldg. Inspector Minozzi:** This is not in the view preservation district.

**Attorney Whitehead:** And the height complies.

**Boardmember Nivarthi:** Okay, no questions. No further questions.
Boardmember Gaillard:  None for me, thanks Ray.

Boardmember Heitler:  Nothing further, thank you.

Chairman Dovell:  Okay.  I think everyone's been heard.  May I have a motion?

Boardmember Nivarthi:  I make a move to approve Case 23-21, 45 Chestnut Drive, seeking relief from strict application of the Village code: nonconformity details:: side yard setback, rooftop garage, existing and proposed for side one – 12.4 feet, total of both 24.4 feet, required 30 feet.  Variance required 5.65 feet.  Front yard setback: existing 37.5 feet, proposed 23.05 feet, variance required 6.75 feet.

Chairman Dovell:  And would you like to cover the landscaping?

Attorney Whitehead:  Yes, with a condition.

Boardmember Nivarthi:  On the condition that architects and the property owners work with the Village, figure out the best possible way to mitigate any water drainage issues, specifically around the property, and ensure that the damage is as minimal as possible.

Chairman Dovell:  And the trees?  Protection?

Attorney Whitehead:  And that protection be provided for the tree in the front.

Chairman Dovell:  And a landscaping plan perhaps?

Boardmember Nivarthi:  And the landscaping.

Boardmember Quinlan:  I believe there's also a tree in the back that's important, too.

Boardmember Nivarthi:  Yes, the trees in the back.

Chairman Dovell:  Jerry?

Boardmember Quinlan:  "Approved."

Boardmember Nivarthi:  "Approved."

Boardmember Gaillard:  "Approved."
Boardmember Heitler: "Approved."

Chairman Dovell: And "approved."

On MOTION of Boardmember Nivarthi, SECONDED by Boardmember Heitler, with a roll call vote of all in favor the Board resolved to approve Case 23-21, 45 Chestnut Drive, seeking relief from strict application of the Village code: nonconformity details: side yard setback, rooftop garage, existing and proposed for side one – 12.4 feet, total of both 24.4 feet, required 30 feet, variance required 5.65 feet. Front yard setback: existing 37.5 feet, proposed 23.05 feet, variance required 6.75 feet, on the condition that architects and the property owners work with the Village, figure out the best possible way to mitigate any water drainage issues, specifically around the property, and ensure that the damage is as minimal as possible, providing protection for existing landscaping, as well as the trees in the front and rear of the property.

Mr. Steinschneider: Thank you very much everyone.

Chairman Dovell: Thank you, good luck with it.

Mr. Steinschneider: Short meeting.

Attorney Whitehead: We're not done [laughter].

Mr. Steinschneider: You're done with us, right?

Bldg. Inspector Minozzi: We're done with you. We have to do minutes.

Mr. Steinschneider: Okay, I'll let you guys take care of that. I appreciate everything, the concerns that were expressed are all valid, and we certainly are concerned about those and will do whatever we can to make sure it's good. Thank you so much.

Chairman Dovell: Thank you, Paddy. Okay, on to the excitement of approving the minutes.

IV. APPROVAL OF MINUTES
Regular Meeting of October 23, 2021

Chairman Dovell: Did anyone have comments on the minutes? All right, may I have a motion?

On MOTION of Boardmember Quinlan, SECONDED by Boardmember Nivarthi with a voice vote of all in favor, the Minutes of the Regular Meeting of October 23, 2021 were approved as presented.

Chairman Dovell: It's unanimous. Brett can't vote on that one.

Boardmember Gaillard: Oh, I did anyway [laughter].

Chairman Dovell: You can next time.

V. ANNOUNCEMENTS

Next Meeting Date – January 27, 2022

Chairman Dovell: Is it January 27th, Buddy?

Attorney Whitehead: Yes.

Chairman Dovell: The 27th at 7 o'clock.

Attorney Whitehead: Yes. Now, I can tell you that the current law allowing for remote meetings expires before then, but we do anticipate it will be extended. So we will let you all know in advance if we are still on Zoom.

Chairman Dovell: I think that concludes our business. Thank you very much.

Boardmember Nivarthi: Thanks everybody.

Boardmember Quinlan: Thanks, Ray.
Attorney Whitehead: Thanks everyone, good night. Have a nice holiday.

VI. ADJOURNMENT

Chairman Collins adjourned the Regular Meeting.