

**VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK
ZONING BOARD OF APPEALS
REGULAR MEETING
JANUARY 23, 2014**

A Regular Meeting was held by the Zoning Board of Appeals on Thursday, January 23, 2014 at 8:00 p.m. in the Meeting Room, Municipal Building, 7 Maple Avenue.

PRESENT: Chairman Matthew Collins, Boardmember Ray Dovell, Boardmember David Forbes-Watkins, Boardmember Mark Pennington, Boardmember Adam Anuszkiewicz, Village Attorney Marianne Stecich, Building Inspector Deven, and Deputy Building Inspector Charles Minozzi, Jr.

Chairman Collins: Happy New Year, everybody. And welcome to the January 23 Zoning Board of Appeals meeting. We have, by my count, four cases – right, Deven, today? – that we're going to hearing?

Building Inspector Sharma: Yes.

Chairman Collins: OK. And just sort of looking it over and thinking it, about at least one of these cases is a return – well, two of them are coming to us for the second or more time. But I think the order is good so we'll leave the agenda as is.

Before we begin, Deven, are the mailings in order?

Building Inspector Sharma: Yeah, I was informed by my office all the mailings are, indeed, in order.

Chairman Collins: OK, very good.

I. APPLICATIONS

**Matthew Gordon
51 Warren Street**

Application for the extension of variances granted by ZBA on December 13, 2012

Application was originally reviewed during the Zoning Board of Appeals' October 2013 meeting. At this meeting, the applicant was asked to come back with some modifications to the plans to reduce the extent and nature of variances. After review of the revised and modified plans, the following variances were sought and granted:

1. **Front Yard Variance for the two story addition: Proposed and approved - 22.4 feet; Required Minimum - 30 feet {295-68F.1(a)}.**
2. **Setback for the pool for the side property line: Proposed and approved - 11.5 feet; Required Minimum 20 feet with, a condition that appropriate latticework or similar surrounds will be provided on the lower portion, exterior of the pool deck {295-52A}.**
3. **Side setback for the open deck: Proposed and approved - 8 feet Required Minimum - 9.5 feet {295-20.B.(6)}.**

Chairman Collins: So we'll proceed with the first case, the case of Matthew Gordon of 51 Warren Street. This is an application for an extension of variances that we granted just a little bit more than a year ago. I understand from your correspondence, Mr. Gordon, that circumstances sort of got in the way.

Matthew Gordon, applicant – 51 Warren Street: Sure. And what I did, I brought just a couple of pages from the originals. I understand that Deven circulated the minutes, but if you want to actually see the visuals ...

Chairman Collins: Yeah, I think it would be useful to get reacquainted with this because there was some dialogue before the meeting. There's no process for sort of renewing or rubber stamping this. It has expired, and we will sort of go in and have a chance to ask questions.

Village Attorney Stecich: Were mailings done on this one?

Mr. Gordon: Originally, yeah.

Village Attorney Stecich: No, on the renewal.

Building Inspector Sharma: Not on the renewal of application, no.

Chairman Collins: This has to be thought of as being presented again, all over again, correct? Which means that this really needs to have been noticed to the neighborhoods. Correct?

Building Inspector Sharma: There have been cases before the Planning Board where people came in for the extension on the Planning Board determinations.

Village Attorney Stecich: Yeah, there is a provision that you can extend Planning Board approvals. Unfortunately, this one says it expired. What he should have done was, on December 11, when he sent this thing and applied for the building permit it wouldn't have been an issue.

Building Inspector Sharma: By the way, his request – before the permit expired in November – that is a statement of fact. I'm not trying to make a case one way or the other. I received inquiries and a request for an extension.

Village Attorney Stecich: Did you have enough information at that point to issue a building permit?

Building Inspector Sharma: No, they never applied for a building permit.

Village Attorney Stecich: OK. Because I was going to say maybe we could backtrack the building permit to that date, and then keep in on.

Mr. Gordon: We actually pretty much had it ready to go. If anyone would have told us we would have thrown it in. Because we have the plans – it's all drawn up – it was really just finalizing things with the contractors. But they were very minor differences.

Chairman Collins: Can we at least hear what Mr. Gordon has to say? I don't think we can ... if this hasn't been noticed, then I don't think we can vote on it. Would you agree?

Village Attorney Stecich: I do think there's a problem, as it was circulated by a couple of the members today. It expired. And the code is pretty clear. It says if you don't get your building permit within a year it's null and void. It doesn't say it can be renewed. It seems kind of silly.

That's why I was thinking of the technicality of backing it into the building permit. That's a way of dealing with it because this was put in December 11, 2013 and his last approval was December 13, 2012. So if a building permit was issued of that day, then you could extend it.

Boardmember Pennington: In my mind, it seems harsh to penalize the applicant for failure of notice in a circumstance where neighbors were previously noticed. There's no change, really, in the plan.

Mr. Gordon: There's no change in the plan at all. And actually, I don't know if people recall but no neighbors attended the previous two meetings that we had on this topic.

Village Attorney Stecich: And the other thing I have to say is, unless there was some big change in circumstances in the neighborhood you would be bound to make the same decision. This is really all a technicality. It's the way the code reads, but you always have to be careful about the next case. And the code reads the way it reads. That's why I would think that if it could be fixed by ... if everything is in there for a building permit, if the building permit could be issued as of December 12, then it's all OK.

Chairman Collins: We'll sort of backdate it, but it doesn't sound like that's an option right now.

Building Inspector Sharma: No.

Chairman Collins: Is there a way for us to at least verify that, in effect, nothing of substance has changed? And then condition our approval on some mechanic here that renotices? So maybe we don't even have to hold this up until the next meeting; that we can give ...

Village Attorney Stecich: I think that's OK.

Mr. Gordon: If someone objected, then we'd have to deal with it.

Village Attorney Stecich: But the applicant would have to recognize ... it's so unlikely, but in response to that notice somebody came in and objected, well then the Board would have to deal with that.

Chairman Collins: It's a possibility.

Village Attorney Stecich: I suppose the condition should be that it be renoticed and that nothing ...

Chairman Collins: No objections from any neighbors.

Village Attorney Stecich: Right.

Boardmember Pennington: For a certain period of time.

Village Attorney Stecich: And then if they object, you listen and then you make your decision.

Building Inspector Sharma: No, the notice would be for the extension of a previously-

granted application of variances or a new ...

Village Attorney Stecich: A new variance. It has to be a new variance because the other one expired.

Chairman Collins: And I assume the notice would indicate that – as I hope we're about to learn – this is essentially the same plan.

Village Attorney Stecich: Yeah. And I understand that wouldn't hold you up. You said you wouldn't be starting ...

Mr. Gordon: Well, we were hoping to start probably in March, as soon as our wonderful weather thaws.

Village Attorney Stecich: The next meeting is in February, so that shouldn't hold them up at all if he wants to start in March.

Chairman Collins: All right. Is that true?

Mr. Gordon: Yes, that's correct. He can't do much now.

Chairman Collins: So the thing this board should do is establish that, really, nothing of substance has changed. And if we can do that, then we can go through the mechanical exercise and renoticing, wait and see in the very unlikely event that someone raises a hand and has something to say. And then either the next meeting, or certainly by the next meeting, we'll be able to say this is good to go.

Mr. Gordon: Is there some way to make it in the notice, where we'd have them reach out to Deven or somebody? So that way, we just know by a certain date? Or do we have to wait 'til the next meeting until he shows up?

Chairman Collins: Well, that's the other thing I thought of. Could we make it so the notice does have some sort of a trigger, and it says that as a neighbor you have ...

Village Attorney Stecich: See, I thought you were talking about granting a new variance tonight.

Chairman Collins: On the condition that ...

Village Attorney Stecich: On the condition that it be renoticed and nobody ... and you

could make the notice if you have any objections. You know what? Why don't you just renote it for the next meeting. And nobody's going to come, but if anybody came then the thing's open again.

Chairman Collins: I know we can do that. I think what Mr. Gordon is asking is would there be a way to trigger an approval of this prior to the next meeting.

Boardmember Pennington: So what's the typical notice period that we give in advance of the regularly scheduled meeting?

Building Inspector Sharma: Fourteen days.

Boardmember Pennington: Fourteen days. So if there are no objections within 14 days – same time period ...

Building Inspector Sharma: No. See, the people don't come to my office objecting. They only come to this meeting.

Village Attorney Stecich: But the point is, he's not losing anything. You are giving him his approval unless somebody shows up at the next meeting.

Mr. Gordon: I see there's no kind of immediate procedure. So we might as well just use the next meeting.

Building Inspector Sharma: I need a clarification. The notice normally says there's going to be some kind of a hearing held by the Zoning Board of Appeals. So will the notice say the same thing? There's going to be a public hearing scheduled for the renewal? No, not renewal actually.

Chairman Collins: Reissuance. Yeah, I think it should say that.

Village Attorney Stecich: It's the same thing as it would have said if the notice went out for tonight's meeting.

Mr. Gordon: So I just want to make sure someone can feed me the right language to put in.

Chairman Collins: Yeah. I think Deven can help you with that.

Building Inspector Sharma: My office does the notice.

Mr. Gordon: OK, so you issue the notice and we mail it. That's right.

Building Inspector Sharma: And we will give you a copy of the notice. It gets published in the papers, and you will mail it to the neighbors. We'll give you a list of the names and addresses that you need to mail the notice to.

Mr. Gordon: OK, so we need to do that relatively quickly to make sure we have the 14 days prior to the next meeting.

Building Inspector Sharma: We always do that. We've been doing it for several years now. We start the process.

Mr. Gordon: OK, great. Yeah, perfect.

Chairman Collins: And I think the next meeting is exactly five weeks from today.

Deputy Building Inspector Minozzi: You never said your name.

Mr. Gordon: Oh, I'm sorry.

Chairman Collins: Thank you, Mr. Gordon. So I think your challenge before the Board, which I think would be a pretty easy one, is just to establish that this is the same plan.

Mr. Gordon: It is, in fact, the same. And we've gone through more of the detailed planning, and nothing has materially changed unless you'd like to know what color the wallpaper is. But the plan, as submitted originally, is pretty much exactly the same.

Boardmember Pennington: And have there been any changes in the neighborhood?

Mr. Gordon: In the last year ... actually, no, I don't think there's been any new neighbors. I mean, when you say "neighborhood," I know about the block or two around us. But nobody kind of new, nobody' really ... I mean, one of the guys at the far end of Warren Street, at the beginning, he's been renovating. There's been a dumpster out there for awhile. But other than that, kind of ordinary course sort of things. No big movements of population or other changes.

Chairman Collins: Not on that street directly, but I walk in that neighborhood every Saturday and I know that in some of the blocks away there have been some transactions, some home transactions.

Mr. Gordon: Yeah, we don't really know. You sort of know the way you drive.

Chairman Collins: So you said wallpaper is the only thing ...

Mr. Gordon: No, no. I was actually being facetious there, I apologize. Actually, the plan as submitted is identical. What you would be evaluating, for the purposes of the next meeting – if there were objections – would, in fact, be identical to what we submitted prior.

Building Inspector Sharma: And we have a copy on file.

Chairman Collins: OK. So anybody else have anything they want to add, or check? You're good? Ray, are you OK?

Boardmember Dovell: Yeah. This was an application that was nicely completed to begin with. And it was very responsive to our concerns the last time around. So I have absolutely no problem with it.

Chairman Collins: OK. Well, if there's nothing further, then could I get a motion?

Boardmember Forbes-Watkins: You need to ask if there's any ...

Chairman Collins: Well, yeah. I guess in the likelihood that the non-noticed neighbors have shown up, is there any comment from the audience? OK, thank you.

All right, now may I have a motion?

On MOTION of Boardmember Forbes-Watkins, SECONDED by Boardmember Pennington with a voice vote of all in favor, the Board approved to grant the requested variances for 51 Warren Street on condition that the action be noticed and any reaction from public be taken into account.

Chairman Collins: It's unanimous.

Boardmember Forbes-Watkins: We should qualify that, excuse me.

Chairman Collins: Can we just add the condition, and then re-vote?

Boardmember Forbes-Watkins: On condition of required notice be issued, and subject to

any comment brought at the February meeting of the Zoning Board; otherwise, the variances are approved.

[re-vote]

Chairman Collins: All right, thank you, Mr. Gordon.

Mr. Gordon: Thank you very much.

Chairman Collins: Yes, good luck.

I. APPLICATIONS

**Case No. 26-13
524 Warburton Corp (Tony's Restaurant)
524 Warburton Avenue
Relief from the strict application of Section 295-76.E.(2) for the previously-
constructed additions and alterations to an existing multi-use building at 524
Warburton Avenue.**

**The variance sought is as follows: Rear Yard: Existing/Proposed - zero feet;
Required Minimum - 10 feet at ground floor and 20 feet above the ground floor
{295-76.E.(2)}**

The property is in the View Preservation District, however it is determined that subject additions and alterations do not have any impact on the views of the Palisades or of the Hudson River and, as such, is exempt from reviews and approvals with regards to the View Preservation as required under Section 295-82.

Chairman Collins: Our next case is 26-13, Tony's Restaurant, 524 Warburton Avenue, Warburton Corporation. This case has two components mentioned in the agenda. The view preservation issue, my counterpart on the Planning Board and I determined was eligible for a waiver that will relieve it of a requirement to be reviewed in the Zoning Board meeting. So what that leaves is a rear yard setback variance request. And this is a retroactive request, correct?

So this is done, and what we're seeing is sort of the product of your work. And these are the sorts of cases that we really hate because the work is finished and really all the things that are replaced that sort of provide comment don't happen. But why don't we, Mr. Koch, have you introduce yourself and then walk us through what's been done.

Village Attorney Stecich: Mr. Chairman, just briefly, the Planning Board did review for site plan approval at the last meeting because this also required site plan approval. And they did grant the site plan approval, subject to them getting the variances from this board.

Chairman Collins: OK, thank you, Marianne.

Mitch Koch, 20 Marble Terrace: All right, I'll introduce myself. Tony's Restaurant has asked me to help them legalize work that was done, some of it, prior to their arrival and some of it done by the man himself. It comprises, really, two items.

If you look at the site plan there, the back of the property, we're required to have a 10-foot rear yard setback on the ground floor. This is where one of the cases in point is. There is, prior to him buying the place, someone had extended the kitchen a little bit and built a shed in the back. You can see, at the end of the concrete lane here in the photograph, part of the kitchen extension is as-of-right and it's really just what's in the rear yard that we're concerned about. Below the formerly-approved enclosure of what must have been a deck – if I understand the record properly – which is now a dining room of Tony's, in the structure below this you can see this. He built a deck below that.

Chairman Collins: I'm sorry, Mitch. Can you point to where this is?

Mr. Koch: You can see it here in this kind of diagram. It's a steep slope – apparently, all of this was previously-existing steel columns and sort of infrastructure of some framing – and he framed in a deck. What is, at this juncture, critical is the part of the deck that is within the rear yard. This is now below the street level, and to complicate a little bit more, enclosed a part of it – although you can't see it because he's got a lattice on everything. Everything is semi-enclosed, but there is actually a habitable room in the back that they use as an office.

So those are the two areas that we are seeking some relief from the zoning requirements. Notably, the entire back of the building from I don't know when, but from the 1920's at least, had been built back to the property line. You can see that in the historic record. So it's a previously-existing, nonconforming building, and he extended this a little bit.

Chairman Collins: OK. What does he use this space for? What is this space used for now?

Mr. Koch: The space below here is used as an office. The space here, if you see that there's a sort of reentrant corner here, this part which is covered by my finger is just like a storage shed. But there is an air conditioning unit located on top of it. You can see that, right? Then this portion of that nonconforming bit is the entrance to their kitchen; just basically a door. You can't really see it, it's past here. This is the bump-out, but sort of at the end of it there's a door into the kitchen.

Chairman Collins: OK. And can you give a chronology about when these changes were made?

Mr. Koch: My understanding is that they've been there for 19 years. According to Tony, this was all previously preexisting on this side. This is the enclosure that he actually did himself. So I think the air conditioning unit, that's clearly new. Whatever was there was extended or whatever.

Chairman Collins: OK. And why has it come up now?

Mr. Koch: He's hoping to sell and go back and perhaps retire to Portugal, and wants to get everything squared away if he can.

Chairman Collins: OK. Yeah, that's a common reason why these come forward. Any questions from the Board?

Boardmember Dovell: The hatched area on the site plan is the noncomplying portion?

Mr. Koch: Can you see where it's slightly pink-colored?

Boardmember Dovell: Right there it's sort of darker.

Boardmember Pennington: Those are the noncomplying.

Mr. Koch: And this is the 10-foot setback line.

Boardmember Dovell: And that, in elevation off the street, is way down, isn't it?

Mr. Koch: Yeah, it's way below here. You can see in the section here that the sidewalk's up here.

Boardmember Dovell: Right. So in the front elevation you can see how low it actually is, can't you?

Mr. Koch: That's correct, yeah.

Boardmember Dovell: And that's the best diagram to see how low it is in the back.

Mr. Koch: Exactly. We looked to see if we could get a photograph of it interrupting some kind of view of the river. We struggled, we climbed around in the neighbor's property and couldn't do it.

Boardmember Dovell: The river's the other direction.

Boardmember Pennington: So a question for you. The dining room that's approved, does that overlay the area for which he's seeking the retroactive ...

Mr. Koch: Yes. There is a nonconforming space that was issued a variance, I think, in the '90s on the ground floor that sits right into the rear yard, and here it is.

Boardmember Dovell: So this is hanging below it then.

Boardmember Pennington: And it doesn't go any farther back towards the lot line than what was approved.

Mr. Koch: No, no because you can't. They're both right on the lot line. You couldn't go further back without being in the neighbor's property. Which, you know, it works.

Building Inspector Sharma: Keep the microphone pointing towards you.

Boardmember Pennington: And this was worked on without a building permit?

Mr. Koch: Yes. This is the next step in this process, presumably. If we are granted a variance based upon the zoning setbacks, the next step will be at the Building Department to have the whole thing reviewed. So it starts again, and I have not, frankly, even studied it yet. We try to do this methodically.

We start with the zoning envelope, and next get in there and basically deconstruct it and figure out how he built it. We'll have to demonstrate it to the satisfaction of the Building Department.

Chairman Collins: Well, it is bizarre to think they got the variance for this structure. It was nonconforming, but they got the variance – and this thing lying right underneath it didn't go through. I mean, it's just bewildering. It was never submitted.

Mr. Koch: Yes. [XXX] that I think the upstairs variance may have preceded Tony. That enclosure of the dining room, I'm not sure, frankly.

Boardmember Dovell: What is the elevation through the other side of it, the north side at the back? Do the grades change significantly from what they are on the south side?

Mr. Koch: No, no. It's all level. You can see it. This shed is about 6 feet tall, something like that. So basically it's all at grade. And notably, you see this line up here?

Boardmember Dovell: Yep.

Mr. Koch: That's the wall of the adjacent building.

Boardmember Dovell: Yeah, that's right there.

Chairman Collins: But where is street level? In that top photograph, where is street level. Down there, OK. So it is right at grade; that whole side yard is at grade.

Mr. Koch: Yeah, we're looking due east.

Chairman Collins: Well, to me, in some ways the fact that there is this extension that was approved makes this a much easier thing to stomach. And the fact that the part that was never even submitted is below grade, at least on the south side. And the north side, the use there seems to be ... I'm guessing that the south side gets a lot more use than the north if it's an office as opposed to just a storage facility that people go in and out of. So the traffic to the north side of the building would seem to be less. I'm sure we'll hear from neighbors if they have concerns.

It's just that this is so not the way this should go. And I won't belabor that. David, do you have anything?

Boardmember Forbes-Watkins: Well, I just have to say I have yelled, screamed and ranted about the need for the Village to get more recompense for these preconstructed zoning issues. That's again circulating. I just think the permits that will come from a variance approval are so inexpensive, considering how long people have used spaces basically illegally. It just bothers me.

This one is less bothersome than some of the others because of the odd locations, et cetera. But it represents a problem, I think, that we're not yet facing properly. There are going to be

a lot more of these things coming along, now that the economy allows people to go back into the marketplace to sell their homes and properties. And at least we ought to get our pound of flesh in the process.

Building Inspector Sharma: Mr. Chairman, a similar concern was voiced a few meetings, maybe a year or a year-and-a-half ago. In reaction to that, we did increase the fees for coming to the Board; maybe not quite as much as the Board perhaps would want to, but they were increased like 50 percent. A normal fee for coming to legalize something is \$300, so it's more. The building permit fee is doubled. Previously if it was X amount for the same amount of work, now the fee is 2X. If sometime the Board feels that it should be more than that in some way, I think the Board should make a recommendation and it can be taken up by the Trustees and some adjustments made.

Chairman Collins: I'll take that action, and we can take that off-line. But, David, your point is, I think, spot on.

Let me just check to see if there are any more comments or questions from the Board.

Boardmember Dovell: I just wanted to follow up with something Deven mentioned. The Building Department ... the fee for a permit is based on the value of the construction, correct? How do you establish the value of construction for something that was built ... I mean, do you re-estimate, someone signs an affidavit to its value or how do you handle that?

Building Inspector Sharma: We had something like that to deal not very often, but a few times. Then we do our due diligence, check the industry standards. We do that at today's cost when they give the estimate of construction. We ask them to put it into today's dollars. And the fee, as I mentioned, for routine new work will be 1.5 percent, and for legalizing something like this is 3 percent.

Chairman Collins: OK. Anything else? Does anyone in the audience wish to be heard?

This was, I suppose, the only way I might be swayed if there was a neighboring business that had had an issue with this. It doesn't seem to bear. If they do have an issue, they haven't appeared here.

Boardmember Pennington: On the northern part there, is the un-permitted addition essential to the property? Or is it something that the current owner would agree to remove?

Mr. Koch: The only, I think, critical part of this is that the equipment – the air conditioning equipment – is on it so there would be a significant cost to relocate that. Otherwise, I don't

think so. I think they would probably not be happy to have to tear it down. But on the other hand, I leave that to the Board, really.

Boardmember Dovell: Is that north addition that's coincident with the lot line, is there any separation between that and the adjacent building?

Mr. Koch: None.

Boardmember Dovell: It's butted right up against it.

Mr. Koch: Right.

Boardmember Dovell: And what's at that level in the adjacent building, do we know?

Mr. Koch: Yes, I know that very well. This is a dressing room of Chelsea (sic) dry goods.

Boardmember Dovell: And that building is built pretty much full on its lot, isn't it?

Mr. Koch: Absolutely, yeah.

Boardmember Dovell: So that's kind of a zero clearance between it.

Mr. Koch: I mean, this is not an uncommon condition if you look around.

Boardmember Dovell: It's a firewall, basically. It's a lot line-conditioned firewall. And then the sliver of yard that's to the west of that is ... how wide is that sliver of open area?

Mr. Koch: This?

Boardmember Dovell: Yes.

Mr. Koch: It's 2.2 at its narrowest.

Boardmember Dovell: So 2.2 feet at its narrowest. I mean, is there a provision for kind of minimal areas, minimal areaways? It's one of those conditions that looks like someone could get stuck in it.

Building Inspector Sharma: If they had asked for a permit we would have definitely looked into some of those things.

Boardmember Dovell: Pardon me?

Building Inspector Sharma: If they had come for a building permit, yes, we would have ... see, no building is to be less than 3 feet away from the property lines. Then there's fire rating issue of the walls coming into the picture.

Boardmember Dovell: So 3 feet is a minimum dimension.

Building Inspector Sharma: Minimum, yeah.

Boardmember Dovell: Or it's zero where it's not required, and it's a lot line ...

Building Inspector Sharma: That's like townhouses, yes. For example, in this district there are no side setback requirements.

Boardmember Dovell: Right.

Building Inspector Sharma: So there, the buildings do come wall-to-wall together. It's only the rear setback that's required to be 10 feet.

Boardmember Dovell: And what's the construction of that wall? Is that framed?

Mr. Koch: This is all stucco, and there's no fenestration on that side. There's a door there that's a fire door. But there's a door there that sits right there. This is, I think, T-111 siding on some framing.

Boardmember Dovell: But it's all combustible construction.

Mr. Koch: This is combustible. This is combustible for ... oh, I mean I don't know honestly. But I think you'd find that ... I'm pretty sure the rating of the wall would be acceptable.

Boardmember Pennington: And in the rear, is that visible from the property to the east? What is behind that there?

Mr. Koch: There's a wall. There are no windows in the back.

Boardmember Dovell: No windows, so it basically ...

Mr. Koch: And there is a slight alley, or a space in between the buildings. You can sort of

see it here. It's very narrow and inaccessible.

Boardmember Dovell: Deven, it seems to me that it's really a code issue. It's a life, safety and code issue more than a variance issue with that little slot that you have there if it's combustible construction. I don't know how the fire department would get in there to do anything, or if somebody could get stuck in it.

Building Inspector Sharma: We'll look into it, and say it's just come to our attention. And whether or not, retroactively, something needs to be done to it. I'll have to look into it. But currently, I think the application requires [XXX]. The previous construction and new construction has gone all the way to the back property line, whereas it needs to be minimum 10 feet away. So that's the issue before the Board.

Boardmember Anuszkiewicz: Is there any minimum requirement for the air conditioning equipment from the property line?

Mr. Koch: I don't think so. I mean, there are some noise requirements, but I think we fall within that.

Boardmember Dovell: Is the air conditioner right at the lot line?

Mr. Koch: Yeah, pretty much.

Chairman Collins: It's right on top of that little jut-out.

Mr. Koch: Right there.

Boardmember Dovell: But it's over the lot line?

Mr. Koch: No, it's within the property for sure. Nothing extends beyond the lot line, as far as we can tell, and the survey doesn't indicate that it does.

Boardmember Anuszkiewicz: Is there anywhere else where the air conditioning equipment can go?

Mr. Koch: I don't know, and I don't know if that's required actually. I mean, for example, if that structure came down I would assume that they would simply place the air conditioning equipment on the ground at the back, right here, probably. That's my guess. I mean, that's something to be investigated. I think we're going to be taking this up in the next phase of this project, which is at the Building Department.

Chairman Collins: OK. Well, I suggest we vote on this unless there are new questions to ask at this point. Then can I get a motion, please?

Boardmember Forbes-Watkins: Somebody other than me? OK.

On MOTION of Boardmember Forbes-Watkins, SECONDED by Boardmember Anuszkiewicz with a voice vote of all in favor, the Board approved the requested variance for the rear yard.

Chairman Collins: OK, one opposed so the motion passes. Deven, I'll follow up with you after this to talk a little bit about the economics. And I'll relay that information back to the Board. Because I think David's point needs to be addressed. This seems to be happening more regularly.

OK, thank you, Mitch.

I. APPLICATIONS

Case No. 01-14 Brett Humphreys & Samantha Merton 76 Scenic Drive

An interpretation that is favorable to the applicants' interpretation with regards to permitted accessory uses as described in section 295-67C(2), or relief from the strict application of this code section for the alterations to an existing accessory garage for use as a spa with a wood burning stove, et cetera, as indicated/delineated in the application.

Chairman Collins: So who will represent the case?

Brett Humphreys, applicant: I'm the homeowner. Our architect is unfortunately stuck on the train – there is a signal problem. I will answer the questions as best I can.

Village Attorney Stecich: Maybe you should take the other case then.

Chairman Collins: Do you know, is your architect likely to make it?

Mr. Humphreys: It sounds like the trains have stopped running for the last hour, so it's ...

Chairman Collins: Well, it's up to you. I mean, if you want to wait for him, and then we can give it a shot. We've got another case behind you. Or if you want to tackle it on your own I'm fine with hearing it. It's up to you.

Building Inspector Sharma: Or defer it to the next meeting.

Mr. Humphreys: I'd prefer not to defer, if possible, just to get this decided. He's e-mailed me the slides, if there was a way to get them on to the ... if there's Internet access that I can use on that computer I can have those to show, as well, if necessary.

Chairman Collins: Buddy, can we get that to go?

Deputy Building Inspector Minozzi: I have no idea.

Building Inspector Sharma: Well, we have Internet access.

Chairman Collins: I'm just wondering if either one of you can log on to your e-mail account, receive it from Mr. Humphreys, and then broadcast it on the screen.

Building Inspector Sharma: Log on to the Village site, and that'll give you access to the Internet.

Chairman Collins: We'll give this a couple of minutes. But if it seems to be taking longer, then I think we should go to the next case.

Mr. Humphreys: While I send it. You could do that.

Chairman Collins: OK, why don't we do that, then? That'll give this time to kind of resolve itself. All right, so then we'll move forward to Case 2-14.

I. APPLICATIONS

**Case No. 02-14
Olga & Michael Snowden
15 High Street**

Relief from the strict application of Sections 295-70.E.(1)(a) & (c) for the replacement of an existing single family dwelling with a new one.

The variances sought are as follows:

- 1. Front Yard: Existing - 3.58 feet; Proposed - 20 feet; Required Minimum for a Single-family Dwelling - 25 feet {295-70.E.(1)(a)}.**
- 2. Side Yards: Minimum on One Side/Both Sides: Existing - 1.5 feet/5 feet; Proposed - 3 feet/7 feet; Required Minimum - 8 feet/20 feet {295-70.E.(1)(c)}.**

Chairman Collins: This case has come before us now, I think, it's the third occasion. We have, apparently, Mitch, a new design, a new proposal to look at?

Mr. Koch: Yes, that's correct.

Building Inspector Sharma: By the way, it's a new application altogether. It's not a continuation of the old one.

Chairman Collins: Oh, I sensed that just based on the design, which seemed to be substantially different from the last time around. And the very fact that we got all new ...

Building Inspector Sharma: We did new notices and new mailings. Everything's new.

Chairman Collins: OK. So this one has a history, in the first go-round, of some neighbor concerns, including some concerns about what I'll describe as construction congestion in the neighborhood, with some feedback from different neighbors specifically about the dimensions and location of the property. I could tell from your drawings that you've come back with something that is substantially different, I believe.

Mr. Koch: That's correct. Just to recap very briefly, the first go-round we asked to put a second floor on the existing structure and got some blowback from the neighbor to the east. We came back the next time with a proposal to move the building away from that property and make it conform on that side, the rear and the front. But the neighbors on the west side and the south side protested pretty vociferously, and they actually live on the properties.

This time, what we've done is, in response to their calls and their discussions that my client has had with them, we've significantly reduced the scale of the project; the size of the

structure is actually a smaller footprint than the existing one. And we have set it back on the west side and made it much shorter so it doesn't encroach as much in the sight line or the sense of space that the person who lives on the south side talked about.

Chairman Collins: You say shorter, you've reduced the height of the structure.

Mr. Koch: No, the length of the structure. The height is the same.

Chairman Collins: OK.

Mr. Koch: You can see that in this section. It's not as tall as either of the houses adjacent to nor, my guess is, the one in the rear, which is quite a large house. As you can see, it's essentially, on the ground floor, like a little one-room space with two bedrooms on the second floor. It's a little bit less ambitious than it's been.

I wanted to take a moment, and I'm not sure if you have these. These are letters from the neighbor immediately adjacent, letters of support. And I think there's some more letters of support in your package.

Chairman Collins: Can you point out ... when you talk about these neighbors, can you point out their address, their property?

Mr. Koch: This would be ... that's from the neighbor at 17 High Street. Am I right?

Chairman Collins: OK.

Mr. Koch: And I believe you have one in the back from the neighbor here on 23 Prince. In any event, they're on board with this.

Basically, it's a diminutive little thing, appropriate, I think, to the scale of the neighborhood. It's a very small lot, everybody knows this. I did a little study to kind of look at the neighborhood and the way primary structures sit on it. This is us over here, the proposed location. It's pretty tight, but it's not dissimilar from some other configurations and relationship of house to property to neighbors that you see, really, throughout the neighborhood. As you can see, this is not really much different. These are slightly larger houses, but the relationship to the property ... there's some very kind of tight adjacencies in other locations within this neighborhood. It's more of this feel of a village, so some neighbors are going to be closer than others.

If you look at the tax map, you have big houses and you have little houses that are sort of

cheek-and-jowl all mixed in. I thought this was informative just to kind of give it a sense of how it fits into its neighborhood.

Boardmember Dovell: Yeah, that is a helpful reference point. It's a useful reminder. I think the piece, though, that I had a problem with in the designs – and I see, to some extent, it's remedied here – is that I could not find anything that sort of spoke to the design that you were going for, the aesthetic, the look of the house. But what I have on my drawings is sort of a fairly generic kind of a block.

Mr. Koch: Right. I just want to clarify that. These drawings were made by my client, who is an architect. And I really recommended that she just provide a massing model. Because, really, my understanding had been that the role of the Zoning Board was to deal with the mass and the envelope of the building. Because we typically tell our clients, like, we don't want to really go too far down the design road yet because you may have to come back.

So we don't want to spend their money unnecessarily. Consequently, a lot of decisions that will really shape everything from fenestration to room locations, we defer that 'til later. We try to understand where we're going so we don't, in a typical project, end up with less than we need to do what our clients want. This is just a simple, simple, simple little house.

Chairman Collins: Yeah, I understand.

Mr. Koch: So it's really my bad. I told Olga don't overdo it. I did a rendering ... I, you know, talked to Deven today and I did a rendering of a likely construction of what this house might look like in the real world. Although I cannot ... and it says here "artist rendering subject to improvement."

Chairman Collins: And you're getting to the fact that ultimately this board has to determine impact on the character of the neighborhood. So I am sympathetic to your position but, at the same token, we're not able to really engage with the proposal without being able to really understand where you're going towards on the design.

Mr. Koch: I will take that to heart for my future submissions.

Boardmember Anuskiewicz: Do you know why, on their proposed, they're proposing a 20-foot setback in the front and there's a 25 required? I can't tell by looking at that plan why that extra 5 feet would make a difference. And where is parking proposed?

Mr. Koch: The parking is proposed in the front. And that was a continuation of what we had proposed last time, which was a 25-foot setback with parking in front. We can

accommodate a driveway – a full 20-foot van or whatever – in front of the house. The reason it was moved forward was to minimize the obstruction for these neighbors here who were very concerned about how close and how much their view to the east was going to be blocked, which was heretofore fairly open.

It's all about accommodating the neighbors, and there's been a little subtle shift of forward and back. The house is 30 feet long so there wouldn't have been, really, much of a bedroom left if we knocked the 5 feet off the length of the house; for example, if this came back and then was shortened.

So that's the deal.

Chairman Collins: So is there a driveway that you're proposing putting into this? When you say parking's going to be in the front, where does the ...

Mr. Koch: Yeah, we proposed that there be a driveway in the front.

Boardmember Dovell: Off of High Street. That's the only way it could be. OK, so that's not on the drawing either that I have here.

Boardmember Pennington: Are these the ECO Pavers that you're showing?

Mr. Koch: Yes.

Chairman Collins: Oh, here.

Boardmember Pennington: Right.

Chairman Collins: OK, so there's a curbcut. I see it.

Mr. Koch: Yes.

Chairman Collins: And cars would enter perpendicular from the street.

Mr. Koch: Yes, that's correct.

Chairman Collins: And there would be enough room for a car, or cars, to park facing in towards the house.

Mr. Koch: That's correct. This is a fairly typical orientation of the driveway, for example

like the neighbor.

Chairman Collins: How wide is the driveway? I mean, it looks like the ECO paving is even wider than the property.

Mr. Koch: Twenty-one feet, the property is 25 feet.

Boardmember Forbes-Watkins: This will all be parking area or driveway?

Boardmember Dovell: It's not going to the lot line down here.

Mr. Koch: We would like that to be possible. Frankly, some of this is obviously incorporated in just walking to the front door. Everything's very tight, so the approach would be that this would be a grassy, paved area similar to the parking spaces on Aqueduct Lane. It's a novel approach, but it's being used successfully now if you kind of keep off the grass until it establishes itself.

Boardmember Dovell: Well, I appreciate the ... this is an improved proposal, in my opinion, a significantly improved proposal.

Mr. Koch: Thank you.

Boardmember Dovell: I mean, the variances are, in my opinion, certainly a lot less onerous. I mean, the side yards are tight, but they are tight already. You're doing your best to create some separation in a space that leaves you very little flexibility if you don't want to live in a kid's playhouse.

Mr. Koch: I also want to add that we create enough space so they be fenestrated on both sides without being in violation of the fire code, which requires 3 feet.

Chairman Collins: To me, that is a big improvement. I may have misheard you. You talked about a neighbor on Prince Street, and you mentioned the neighbor as you were giving us an endorsement from Mr. Perih at 17 High Street.

Mr. Koch: Yes, we got the endorsement from this neighbor.

Chairman Collins: Did you have that available to enter into the record, as well?

Mr. Koch: It should be in your package.

Chairman Collins: We do have 17. I think there's just the one letter in the packet.

Boardmember Forbes-Watkins: Yeah.

Boardmember Pennington: What about the neighbor to the east?

Mr. Koch: My understanding is that the neighbor to the east is still unhappy with the proximity of the house.

Boardmember Anuskiewicz: I was going to say, the 20-foot setback is better for the other neighbor to the west, but for the neighbor to the east it'd be better if you have 25 feet. Has the other neighbor seen this?

Mr. Koch: Yes. This hearing was noticed, and so was the second one. So that neighbor has seen both of the iterations.

Chairman Collins: And it's an all-new application.

Boardmember Pennington: As I recall, you set this back from the street so the concern that neighbor had about blockage of their windows was mitigated to some extent.

Mr. Koch: Yes.

Boardmember Pennington: And there were changes to the roofline, as well ...

Mr. Koch: Exactly.

Boardmember Pennington: ... to allow a certain amount of light to enter the neighbor's windows. And none of that's changed by this plan, is that correct?

Mr. Koch: As a matter of fact, the roofline is a little bit more gentle to that neighbor because it's a very simple gabled roof. The other one, if you remember, had some kind of up and down business going on. This current plan is a much simpler, traditional sort of form for the house and is a little bit better with regard to the neighbor. On the other hand, admittedly it's close to the neighbor's house and, from here back, there'll be a house there. But it will be like a 5-foot alleyway. I mean, it's better than the current house is.

Chairman Collins: But taller. That's, I think, the issue.

Boardmember Anuskiewicz: But it has a smaller footprint, right?

Mr. Koch: It has a smaller footprint than the current house.

Boardmember Dovell: What's the overall increase in area from the existing house?

Mr. Koch: The existing house ... no, it's a decrease. Oh, in gross floor area?

Boardmember Dovell: Gross floor area, yeah.

Mr. Koch: I'm going to have to do the math for you. The existing house ... this is 4 percent smaller in its footprint, but it's two floors. So I'm going to have to say it's approximately 20 percent ... I'm sorry, it's little bit less than double the gross floor area of the existing house.

Boardmember Dovell: And what is the actual floor area of the house?

Mr. Koch: It is 35.18 so approximately 11-hundred and change gross floor area.

Building Inspector Sharma: Actually, 1,080: 540 twice, 1,080.

Mr. Koch: That's why he makes the big bucks. So it's a little less than 11-hundred square feet, all in.

Boardmember Dovell: That's a small house. That's very modest.

Mr. Koch: Well, you can see from the plan it is a cottage. It's a little vacation cottage, honestly, which is the primary intended use.

Chairman Collins: This is a significantly more attractive design than what exists there today.

Mr. Koch: Thank you.

Chairman Collins: Well, I remain sympathetic to the neighbor to the east. But, on the other hand, I think her concerns should be less severe than they were the first time around. You've completely cleared what appears to be roughly half of the surface area of the west-facing wall, and that was the source of her concern. And you've eased the roofline, presumably, to let the maximum amount of natural light reach her home. I'm very satisfied that the neighbor to the south has given you – on 17 High Street, I suppose west and south – an endorsement. It would be good to verify if the Prince Street neighbor has ... I mean, you're saying that does. I believe you, and it would be good to get that into the record.

Mr. Koch: We'll make sure to enter that into the record.

Chairman Collins: No, I think it's really good. It satisfies my concerns.

Any other questions or comments?

Boardmember Forbes-Watkins: Are we talking about two parking places, or one?

Chairman Collins: Two parking places, or one?

Boardmember Forbes-Watkins: Yes.

Mr. Koch: I think that accommodate two cars.

Boardmember Forbes-Watkins: I just hate the thought of developing a two-car parking space in the middle of that block. Every other aspect of this is an improvement, but the parking ... granted, the parking on High and Prince is horrible, but it's ugly, too. It really is an uglification of the whole project.

Mr. Koch: With the approval of the Zoning Board, my client has just signaled that we could limit this by half. Obviously, we want to have a walk and some plantings in front, but if you let me mark it up, I would submit that as an alternate to this, as a plan B.

Village Attorney Stecich: And then this board would have to give a variance for one parking space?

Boardmember Forbes-Watkins: I'd prefer to give a variance for one parking space for this small building, I think.

Chairman Collins: As opposed to accommodating two cars?

Boardmember Forbes-Watkins: Yes, because of the uglification, the whole front yard. The front yard will be a parking lot, period. That's ugly beyond belief.

Chairman Collins: Tell me how you really feel.

[laughter]

Boardmember Forbes-Watkins: I really feel that way.

Boardmember Anuszkiewicz: And with the 25-foot setback you have 5 more feet of planting between the parking and the building.

Chairman Collins: Does that force a vehicle onto the road?

Mr. Koch: No.

Chairman Collins: Unless they have a guest.

Boardmember Dovell: Yeah, 20 feet is adequate. But it puts the car right up against the front of the house.

Mr. Koch: Well, it depends upon the car.

Boardmember Dovell: Yes.

Chairman Collins: Fiats Welcome Here.

Boardmember Forbes-Watkins: Two Smart Cars Allowed.

Chairman Collins: OK. Well, I'll open it up to comment, then. If there are no other questions from the Board, then I'll open it up to questions from any guests in attendance. Just come forward, introduce yourself into the microphone and speak into the mic. If you want to come forward to look at the designs, then you can take the handheld mic from Mr. Koch.

Catrin Perih, 17 High Street: I have met with Olga before, but I'd just like to see it in person. I couldn't see. Yeah, the last time I saw it, it didn't have any windows or anything. So I was just curious. They've got two little windows in the bottom, OK. And this is our side, right?

And what was it to the very top of the roof, Olga, do you know?

Mr. Koch: It's 22 foot 6.

Ms. Perih: That's what we talked about.

Mr. Koch: That's a pretty good representation.

Ms. Perih: All right.

Chairman Collins: Mitch, can you walk the Board through the proposed change? You were just doodling related to the drive. Just so we clarify where now the parking space will be in, what is opened up to plantings.

Mr. Koch: Yes. The parking space will be on this side. And I would propose that we would take 15 feet of this side for parking, and leave 10 feet for planting and a walkway from the street to the house. Actually, we'd connect to the driveways. But, you know, it's shrubbery or some kind of planting in a median between the walk and the driveway.

Boardmember Forbes-Watkins: I want to comment that I also think that is an improvement. Because the house at 17 has its driveway rather adjacent. And if you have the whole thing open it's going to create an extension of ...

Mr. Koch: I agree with you. And that would be a lovely place for a specimen tree, for example.

Chairman Collins: Yeah, that's a very good point, David

OK. Mark, you good?

Boardmember Pennington: Yes.

Chairman Collins: OK. Adam, anything else?

Boardmember Forbes-Watkins: He's pushing for 25 feet.

Boardmember Anuszkiewicz: I understand the one neighbor likes it like that, but other than that I see two other positives for going to 25 feet: one, you would expose another window, showed on this west elevation of the neighbor to the left; and you would also have room for more planting with the parking.

Mr. Koch: If I can speak on behalf of my client, we would have no objection to this 30-foot house moving back 5 feet, absolutely none. It's just that we do this ... I mean, the question is it's time to ask them because they're the ones whose view is being somewhat more encroached upon.

Chairman Collins: You're talking about now the property at 17?

Mr. Koch: Yes. And it's her house and her view.

Chairman Collins: Right.

Mr. Koch: So we're just trying to be good neighbors here.

Chairman Collins: Yeah, I don't know that you'll find ... you could go and, I suppose, explore a different orientation. On the other hand, the neighbor to the east of this property has presented herself at the first meeting and has not reappeared. I sort of feel as if ...

Building Inspector Sharma: If he moves back 5 feet, they wouldn't need the front yard variance either then.

Boardmember Anuszkiewicz: You're also a lot closer to the neighbor on the east than you are to the neighbor on the west. So there are factors.

Chairman Collins: Oh, I agree with you. I'm interested in also achieving some closure on this, and not continuing the process. And if the applicant to the east was noticed and had an opportunity to weigh in on the design one way or the other, and has not presented herself – if I'm remembering right – I'm ... I mean, yes, it would be great to be able to do away with a front yard variance. But we've dealt with far more severe variance requests than this one.

Boardmember Anuszkiewicz: And the footprint is smaller so the neighbor's getting some relief from that.

Chairman Collins: That's right. So I'm inclined to move on this rather than impose another burden on the applicant. That's how I feel about it. Ray, did you have anything else?

Boardmember Dovell: No. I think I agree with your comment that it would be nice to see a little more detail. We assume the plans are fixed at this point, that planning is done.

Mr. Koch: Within reason, yeah.

Boardmember Dovell: Within reason. I agree with you it's a little hard to approve a shape on the piece of paper because it does speak to the issue of neighborhood character.

Chairman Collins: Yes, it does.

Boardmember Dovell: But if we have some representation here that's made part of the record I think that's it.

Chairman Collins: That's it, right? What we're seeing there, which gives some indication of the design that you're going for as sort of a simple cottage look, that's it, yeah?

Village Attorney Stecich: It's totally not binding though, even the way it's drawn. I mean, you can't bank on that.

Chairman Collins: Right.

Village Attorney Stecich: I mean, if it's a concern of yours you can't be satisfied by that because it's just conceptual.

Boardmember Pennington: Well, could you condition it on being substantially similar to the rendering?

Village Attorney Stecich: Yeah, you could. Could you condition it? Yeah, that would be a reasonable condition if you wanted to. I mean, I don't know how it works for them.

Chairman Collins: Well, yeah, I think the Board doesn't want the unlikely outcome of an applicant running off and building something that looks like it was left out at Disneyworld and dropped on High Street.

Mr. Koch: The whole thing's very clear. I mean, the envelope of the house, the mass of the house is established here. There's no question about that. The plan, as it is represented, is close to what it's going to be. The spirit of what I can see that they are doing is that they want their family space to be addressing the rear, the south, rather than the street. So inherently, that gives us some of our service spaces in the front on this floor.

When you get upstairs, you've basically got two bedrooms, and a bathroom intervening, and that's it. So these will tend to lend themselves to certain fenestration characteristics. I mean, I wouldn't be surprised to see another small window end up here for cross-ventilation if that would be allowable. And I think this needs to be developed.

Same thing here. I could imagine this bedroom having more than a window. But a lot of these things really come out as you begin to furnish the room on paper.

Boardmember Dovell: Well, I agree with you. But, for example, the roofline. You've got a little roofline shown there, which is counted as part of the setback. I mean, that's an encroachment as well.

Mr. Koch: This here? That's a gutter.

Boardmember Dovell: Well, where do you take the setback from, Deven? Is it from the outermost obstruction? If it might have an overhang, it might have an eave or something that establishes character that could change some of the numbers that you're looking at for setbacks.

Building Inspector Sharma: When we grant a variance, I would assume that becomes a permitted setback. There are certain projections that permit it.

Boardmember Dovell: It's a construction in the setback.

Chairman Collins: But they can't go beyond that with a gutter.

Mr. Koch: I'm not in any position to rule on this, but ...

Village Attorney Stecich: Wait. If I understood you, Matt, I don't think what you said was correct. Did you say that you can't go beyond the setback line?

Chairman Collins: I thought if we're granting this, then we're saying this is the constraint you must live within.

Village Attorney Stecich: Then you would have to say that. Because ordinarily, I think Deven said it correctly that when you grant the variance it's for the setback. Let's say it's at 8 feet. That becomes the new setback line. There's a section of the code that allows what they call obstructions or encroachments into the setback.

Building Inspector Sharma: Yeah, 295-20.

Village Attorney Stecich: That's eaves, a few things, decks. So the end point of the house, let's say the variance you've granted was for 8 feet, the very actual end point of the house could be at maybe 7 feet. There are limits on how big the encroachments could be.

Mr. Koch: There are heights above grade.

Building Inspector Sharma: Roof eaves are permitted to project beyond the permitted setback line.

Village Attorney Stecich: Matt, I'll tell you what they are. It's *"no buildings or structures or any projection shall be permitted in a required yard, except as follows: cornices,*

canopies, eaves or cantilevered roof, or similar features may project not more than 2 feet into a required yard, but only if it's at least 10 feet above grade; bay windows can go 2 feet, balconies, window sills, chimneys, free-standing steel stair, terrace, or uncovered porch with its floor level no higher than that of the main entrance may project into the required yard not more than 6 feet, or to a point not closer than 6 feet, to any property line."

Boardmember Dovell: OK. So that gives you some ability to get some detail into the house and address the neighborhood character issue so it won't be a white shape.

Village Attorney Stecich: But it's different, I think, than what Matt's understanding.

Chairman Collins: What I was trying to get at is that this is going to create some constraints that the applicant has to live within, and there are guidelines, just as you read them, about what kind of obstruction can then go in.

Village Attorney Stecich: Right. You could also condition it on there not being any deck or whatever, if you wanted to.

Building Inspector Sharma: Projections beyond the granted variance shall not be more than 6 inches, 5 inches, I don't know.

Boardmember Dovell: I don't think we'd want to condition it like that. The house needs something to give it some character.

Chairman Collins: Right. And if they wanted to come back and they wanted to do something different they would have to come and get another variance for that. If they wanted to do an obstruction that went beyond what's permitted they'd have to get another variance and we'd have to review it. So I don't feel like we need a condition for that. But the point which we need to resolve, which we were discussing off-line, is getting a better level of detail so we can have a baseline.

Building Inspector Sharma: With reference to the architectural character of the building – whether it's one kind of siding, horizontal siding or vertical siding, whether it's stucco – these kinds of things are usually the preview of the Architectural Review Board, which usually is not applicable to single-family dwellings. I do not know whether this board can say subject to its fitting well with the environment. Approval for the ARB for the charge that they're supposed to review the plans for.

I don't think this board should really be looking at ...

Boardmember Dovell: I agree with you, Deven. But we do have to look at neighborhood character and shaping, and there are some aspects of the appearance that do relate to neighborhood character that I think we do have a right to look at or that's within our ...

Building Inspector Sharma: OK, Marianne is nodding.

Village Attorney Stecich: I think so. Especially since the variances are pretty substantial. You're in a really tight spot, and it's relevant to the character of the neighborhood and how it's affecting neighboring properties. You would be right, Deven, if there were no variances or if they were looking for a variance for something different that had nothing to do with how close it is to the houses next to it; if they were looking for a parking variance. Well, that would be irrelevant. But since the variances they're seeking are related precisely to how the house relates to the houses, the houses next door, I believe it's relevant.

Chairman Collins: We can take this up and figure out how to improve the process for next time around. But in the meantime, we've got, then, a couple of changes. There's now a need for a variance for single-car parking in the driveway, where two is required. And we have a condition about plantings and a walkway, I believe, we had talked about as well.

Boardmember Forbes-Watkins: Do we want to put that into the variance?

Chairman Collins: Well, I think it's a part of the condition that we're willing to shrink the parking and, at least on the record, look as if we're OK with moving the possibility of a car out of the driveway in return for something that improves the aesthetic quality of the property.

Boardmember Forbes-Watkins: True.

Chairman Collins: So I would like to see it as a condition.

Village Attorney Stecich: I just want to say one thing on the parking variance. That was not noticed, the parking variance wasn't noticed. I think as a general matter it's not a good idea to grant the parking variance without having given notice. Except I think this situation is different because before they had no parking and now they are going to have one parking space.

Boardmember Pennington: That's a good point.

Village Attorney Stecich: Just to distinguish it from what might be another case. And if they, in fact, were just going to keep the same house, the same footprint for the most part,

then they wouldn't even need a variance. But since they are providing an additional [XXX], I just want to distinguish this from another case that might not have the notice.

Building Inspector Sharma: Another point, too. The applicant, the owners, are not requesting that variance. The Board is asking them to make the modifications to the plan, and they're agreeing to give that variance if they make that modification, that change. They're not requesting a variance.

Chairman Collins: No, they're not. But Marianne's point is that this was not included in the notice. But there are unique circumstances unique to this property that don't necessarily bind this board's decision-making ability with future cases.

Village Attorney Stecich: Yes.

Building Inspector Sharma: It would have been in the notice if they had requested it.

Chairman Collins: Yes, exactly. We understand where the origins come from. But I think Marianne's is exactly right, and we'll note that. Then can I get a motion?

On MOTION of Boardmember Forbes-Watkins, SECONDED by Boardmember Pennington, with a voice vote of 4-1 in favor (Boardmember Anuskiewicz opposed), the Board approved the requested variances subject to the following conditions 1) that the driveway be reduced to 15 feet wide (one parking space); 2) that the rest of the front yard be appropriately landscaped and 3) that a sidewalk be provided in the front of the property.

Village Attorney Stecich: Did you say the last one was "on condition that", or did you say "four?" One, two and three are conditioned on the plantings and the walkway. That's a condition of the variances.

Boardmember Forbes-Watkins: All right.

Building Inspector Sharma: Plantings, would that be lawn, or does it have to be shrubs of a certain size, shape, color?

Boardmember Forbes-Watkins: "Appropriate."

Chairman Collins: I think we'll give the applicants the flexibility to figure that one out.

Building Inspector Sharma: Could it be just lawn. For me to enforce the decision. Is lawn

planting, grass?

Chairman Collins: I think shrubbery is what I heard come up, and that's what I would have.

Boardmember Pennington: With room for a specimen tree, if desired. So at least shrubbery, but not grass.

Boardmember Forbes-Watkins: There's going to be grass where the parking area is.

Chairman Collins: We have four in favor, and one opposed. The case passes. Thank you, Mitch.

Mr. Koch: Thank you.

Chairman Collins: One of our Boardmembers has to make a call related to a baby-sitter. I think we're going to take the opportunity to do a little bit of sidebar conversation as we prepare for the case. Could we do that, just to have a quick follow-up chat to sort of close the loop on this?

Boardmember Forbes-Watkins: Is that possible?

Village Attorney Stecich: Well, you want an advice of counsel session?

I. APPLICATIONS

Case No. 01-14 Brett Humphreys & Samantha Merton 76 Scenic Drive

An interpretation that is favorable to the applicants' interpretation with regards to permitted accessory uses as described in section 295-67C(2), or relief from the strict application of this code section for the alterations to an existing accessory garage for use as a spa with a wood burning stove, et cetera, as indicated/delineated in the application.

Chairman Collins: Yes. And then, Deven, if you can just send Adam in. He's making a phone call to his baby-sitter. Our fifth Boardmember has to leave for a family commitment. That leaves four here, which gives you the option, if you want – and I know you mentioned this earlier – of waiting. We don't have five, and we don't have the ability to have at least a

guaranteed outcome of 3-to-2.

[break for advice of counsel]

Mr. Humphreys: It's fine.

Chairman Collins: All right. So thank you for your patience. We were discussing some precedent cases that we think are relevant for how we size this one up. Why don't you tell us about what you have in mind and what you're proposing to do? And what I'd like to have you inject into your overview is also to help us understand the separation between this existing structure and the neighbor's property line.

Mr. Humphreys: OK. This shows the current structure. We're proposing to change the existing structure. It currently is a shed that was originally probably used as a stable when the house was built. We are in the process of completing an addition right here, and we are looking to update this so it is more usable with the house as to the update. That is the change. It's primarily a change to the roofline there.

This is what the shed looks like from Forest Avenue. That's the current existing floor plan, the proposed floor plan. The proposal includes the addition of the Jacuzzi here and a wood-burning stove there. This is the existing elevations, proposed elevations and the changes. It's a slight change in the roofline. This is the view from walking up from Forest Avenue, view north, view northwest. This is behind. This is the current interior, obviously very messy. I didn't know this was going to be displayed.

Just briefly, I have a signed letter from five of our neighbors saying they are fine with this change. I have spoken with the other two neighbors and, unfortunately, we're not able to get them to sign. They have also told me they have no objections, but that's me saying that as opposed to having a letter proving it. When your question was about how this relates to the neighbor's property ...

Chairman Collins: That's right. We're trying to get a sense of how far it is from the property line.

Mr. Humphreys: Let me go back a few.

Chairman Collins: And maybe the current is around 16-1/2 feet, if I'm looking at this correctly. It's hard to tell from this.

Mr. Humphreys: That shows the property line.

Chairman Collins: That's the existing.

Mr. Humphreys: Yes, the existing shed and the existing property line. So 16-1/2, and I think at the end it's 10 feet right there.

Boardmember Forbes-Watkins: The picture of the property showed one house, or it appeared to be one house, that is quite adjacent to this proposed shed.

Mr. Humphreys: The shed is already existing.

Boardmember Forbes-Watkins: Yeah, to the proposed new use.

Mr. Humphreys: This house.

Boardmember Forbes-Watkins: Yeah. Are they one of the people who have signed the letter?

Mr. Humphreys: They have verbally told me they are fine signing, but were unable to. I wasn't able to get them to sign.

Boardmember Forbes-Watkins: Do you know why they weren't willing to sign?

Mr. Humphreys: Because he went out for a 60th birthday last night when I went over to get him to sign it. I spoke to him when we were shoveling drives yesterday morning, or Tuesday morning.

Boardmember Forbes-Watkins: Because that's obviously the house that could be the most bothered by the smoke from a wood fire, for instance.

Chairman Collins: Again, the existing structure is the edge of that wall, and it's closest to the lines – according to this drawing, 16-1/2 feet. The new structure butts out a little bit. So maybe it's, I don't know, 15-1/2 feet.

Mr. Humphreys: Yes.

Chairman Collins: But the property from the neighbor who was celebrating the birthday is also then removed from the property line. It seems to me that there's a decent buffer between

this structure and the neighbor's home, their dwelling.

Boardmember Forbes-Watkins: I don't know how they feel.

Chairman Collins: Yeah, that's not in the record.

You mentioned, then, the improvements to the structure include a Jacuzzi and a wood-burning stove. What kind of infrastructure improvements are needed? For example, do you need to introduce plumbing to the structure?

Mr. Humphreys: We already have that all introduced. We put that in currently; we've run lines under the current construction to do that.

Chairman Collins: OK. And you've got electricity there. We saw the lights on.

Mr. Humphreys: Yes.

Chairman Collins: So that's already there. What other improvements to the structure are you contemplating? For example, insulation or walls that may be going in that are not there. How much of the existing structure are you planning on preserving?

Mr. Humphreys: I believe as much as we can. That's something, unfortunately, I don't know exactly.

Chairman Collins: I'll come right out and tell you that I think the biggest barrier your proposal faces is how the Village defines an accessory use structure. I believe it maybe was your architect, who provided this submission on your behalf, acknowledges this. When we get into the section of the code of what defines a permitted accessory use. Right now, we have the following: *"garden house, tool house, playhouse, greenhouse or similar that's customarily incident to the permitted principal use of the premises and not operated for profit."* I'm not worried about the profit piece unless you've got something creative in mind.

One thing these properties all have in common is that they are relatively undeveloped. Imagine a tool house being something that couldn't easily be thought of, or a remedy to become, a living space. You wouldn't think about living in a tool house. And I think that filter on how we interpret these structures; they all have in common that same element. Your proposal introduces quite a bit more finishing, or conditioning, of the property, I think, than any of these would provide.

The concern that the Board is trying to get around and avoid as a risk to the Village is that we

have sort of structures that become alternate living spaces. They go beyond just what's intended in the code to be something that's really not livable to a place that becomes an alternate living quarter. So that's what we're trying to balance. I'd like to hear your point of view. Your architect, Mr. Jacobs, suggests the structure will be used as a private garden house. I know there's no elegant definition, but maybe help me understand, from your point of view, how this Board's concern might be mitigated.

Mr. Humphreys: I think from my point of view this is a space that is part of not our living area, but part of how we use our exterior. We have a swingset. This is, in some ways, my daughters have grown up a little bit. I have three daughters; they don't use the swingset anymore. Having a space like this is, in some ways, the next evolution for them. It's a place where they might be sitting out, where they might sit with their friends, where they could have their own space but still be relatively close to the house so we know what's going on.

It's not meant to be my daughters moving out there from the house, but it's still meant to be part of our environment and part of how we live. I don't know if that addresses it, but that's how I think about it.

Chairman Collins: I appreciate your sharing that. It gets back to the question about how you intend to build out the space. You mentioned putting a stove in and a Jacuzzi. I can imagine that being really rustic, but I can also imagine it being something that could be pretty sophisticated and something that would be much more built out than that.

Mr. Humphreys: I would rather have it look nice. I don't care so much if it's rustic or perfectly finished, but this is always going to be an external building. I don't think it's ever going to be set up for four-season use. I would definitely not want to be in on a day like this. It's just given the dirt, the leaves and everything else that come out, this is not designed as something that's going to be pristine and kept that way.

Chairman Collins: Will you provide insulation, or is there insulation already in the building? I may have asked that earlier but that, I think, is relevant.

Mr. Humphreys: I don't know if there is insulation, and I don't know if the plans have said we should do it. If it makes a difference to this board, I'm comfortable going either way.

Building Inspector Sharma: If it's a conditioned space, if it's heated, it would require to be insulated. The code requires any space that's conditioned, heated or cooled, needs to be ...

Chairman Collins: Including with a woodstove. A woodstove would qualify as a heating source?

Building Inspector Sharma: That, I'll have to check.

Chairman Collins: Because I think it is relevant. If this becomes not a four-season, all-season property that, to me, is relevant in how we size it up. Again, the code is inelegant in this way.

Boardmember Dovell: You used the word "spa" on the drawing. Could you elaborate on what that means a little bit? It's pointing to the tub.

Mr. Humphreys: A hot tub. That's the entire meaning of it.

Boardmember Dovell: How deep is the tub?

Mr. Humphreys: We don't know. We haven't chosen one.

Boardmember Dovell: I mean, it's a relevant question. Because if it's deeper than 2 feet, it's considered a swimming pool. And that has a different ...

Mr. Humphreys: I would assume it's probably deeper than 2 feet simply because most hot tubs I've been in are deeper than 2 feet, it feels like.

Boardmember Dovell: It adds a little bit of a wrinkle.

Village Attorney Stecich: Here, I'll read a definition.

Boardmember Pennington: If it's enclosed in a structure?

Boardmember Dovell: It doesn't elaborate. It just says if it's intended for swimming, if the water is deeper than 2 feet at any part.

Boardmember Pennington: But this is not swimming.

Village Attorney Stecich: No, nor bathing. Just let me read the definition. *"Any pool, structure, excavation, pond, tank, depression, body of water or receptacle for water, having a depth at any point greater than 2 feet together with the apparatus and equipment, if any, used, usable, or intended to be used for swimming or bathing."* That's the code definition, which came up only because Ray had asked.

Boardmember Pennington: And it doesn't speak to whether it's inside a structure or

outside.

Village Attorney Stecich: No.

Boardmember Pennington: And bathing, swimming.

Village Attorney Stecich: This was written before the really elaborate swimming pools that you have now. I mean, I'm sorry, not swimming pools – bathtubs. There are some really very elaborate bathtubs that would probably meet this definition.

Building Inspector Sharma: That's what I was going to raise. Is it the depth of the water, or the depth of ...

Village Attorney Stecich: Well, you heard the definition. It's obviously dated.

Chairman Collins: Adding a little more confusion to it.

Boardmember Pennington: Let me just give you a little more sense of what we're struggling with, and tie it to the specific language in the code. Uses are not allowed unless they're explicitly permitted in the code, and there are certain definitions. In the definition of a principal use, there's one-family detached dwellings not to exceed one per lot. So what we're grappling with here is whether this is, in effect, a dwelling and where you draw the line in terms of precedent for other people that come before the Board who might want to do a similar thing, repurposing an existing structure in a way where you're adding heat and someone could actually live there.

So what we're struggling with is these ill-defined terms in terms of what is a dwelling and what does a dwelling connote. We're having difficulty knowing where to draw the line. You could think of a dwelling as a place where there is cooking and bathing and sleeping. From what I'm hearing, you're not proposing any of those activities in this space.

Mr. Humphreys: I'd add a bathroom, and there's not going to be one of those either. What I'm saying is there's no cooking, there's no sleeping, there's no bathroom, there's no way someone could live there effectively. I mean, yes, if Samantha got mad and threw me out, I could sleep there overnight. But that's not where I'd want to be.

Boardmember Pennington: And the reason, just so you know, that we haven't focused on the customary home application language, which is also in your letter, is that as we read that it really refers to an activity that's carried on in the main building, which this would not be because this is a detached building. So we thought that language was a stretch in terms of

what you're wanting to do, which is the reason why we're focusing on the definition of the garden house. We have looked also at the list of examples in the code – garden house, tool house, playhouse, greenhouse or similar occupancy – and we're trying to evaluate what are the common features of all of the items on that list. Most of them seem to be relatively unconditioned, unimproved types of uses.

You can think of this as a place where there's leisure activity happening, but it doesn't look a lot like a tool shed or a gazebo or a garden house. So then we look also at the language about similar occupancy or use, and we're trying to think about where that word could take us. And we're frankly struggling a little bit, just in terms of the kind of precedent that this might set if it were a rec room or a playroom or something that would be close to a neighbor's property that might have more elements of nuisance than what you propose, we would worry about that.

Mike Jacobs, architect: I apologize for the tardiness. I was stuck on the train.

Chairman Collins: Yeah, we heard.

Mr. Jacobs: To the point about use, there are a lot of vagaries in terms of the listed acceptable accessory uses. I think what's different in this case is that we have an existing structure. It's not that we're proposing building it; we're really just improving it. It's 80 years old. It needs improvements. From the photographs – did you walk them through? – that you saw, it really is in its original state.

So I think in terms of setting precedent I think there's a little bit of a gray line there. I understand where the Board might be uncomfortable approving a rec room, ground-up, in somebody's yard. But that's not, in fact, what we're doing. I think what the owners have done is kind of satisfy the parking requirements elsewhere on the property. This is a structure that really is in disrepair and it does need to be upgraded. It's that old. It's probably past its lifespan of not being upgraded. The upgrades we're proposing are very modest. It's a little bit of a steeper pitch on the roof and extension of an eave. And really, I think, in terms of use it really is ... there's nothing subversive about what we're proposing here.

It's simply use for the family. If I could make an argument on that path, I think there's not much precedent to be set there. I think that's what the code allows for. And I think because it's so vague we are allowed to interpret scale, size, use of how we define tool house, garden shed, playhouse, greenhouse. It could be either a garden house or a playhouse, but it also really, I think, ultimately fits into customarily incident use, which is residential.

Mr. Humphreys: There was one concern of the Board about whether this is going to be

insulated.

Mr. Jacobs: Ideally, yes. I mean, I think there are a couple of sort of fallbacks. But I think if we're going to go through the trouble of putting walls up we might as well insulate them. Just seems a sound solution to a building issue.

Chairman Collins: David, did you have something?

Boardmember Forbes-Watkins: Well, I'd like to know where you picked up the dictionary definition of a garden house.

Mr. Jacobs: I looked it up in the dictionary.

Boardmember Forbes-Watkins: What dictionary?

Mr. Jacobs: I don't recall. I think it was dictionary.com, actually.

Boardmember Forbes-Watkins: Oh, OK. Because the definition that you quote is "a structure providing shelter in the garden." Now, I think of providing shelter in the garden like a gazebo, where you might stay under cover to avoid the rain or something of that sort. I certainly don't think of being sheltered with a hot tub, a wood-burning fireplace because of my understanding of the building code – all nicely insulated and tight. That does not sound like the definition that you've given us of a garden house.

Mr. Jacobs: Well, there is a list of definitions. And with all due respect, Deven and I had a long discussion about this a couple of times about what these definitions are, how we might interpret them. And I think ultimately our first impulse was to call it a customarily incident use because it's not actually defined – the specific use of like having a hot tub and a stove is not actually listed on that list. But to that point ...

Boardmember Forbes-Watkins: Maybe because they aren't intended to be on that list.

Mr. Jacobs: Well, that certainly is an opinion. I can't argue that. But I think playhouse is certainly another definition that fits quite nicely into what we're proposing here. And, you know, Deven's opinion was different than mine on that, so we decided to call it a garden house. I think what we're talking about is sort of a series of definitions that may or may not fit the mold but that ultimately follow the language and guidance that the code is providing, which is that there's a space in the yard for the family in a residential district. And in this case, it's just really adaptive reuse of an existing structure.

Chairman Collins: I think that the ... and, Mr. Jacobs, you weren't here for the beginning part, but I think the customary home occupation, the challenge with that is that the code says that the principal use allows for one dwelling not to exceed one per lot, which puts you then outside of being able to define this because you already have the main structure. So I think this board is trying to figure out how it might therefore find a way to live within the definitions that we've now talked about, which is section C.4, the garden house, tool house, et cetera.

I am very sympathetic to what you're trying to do here because there's no question it's an improvement. The alternative, at some point, is going to require a remediation resulting in something that may not be as useful to the family. The fact that it's got some buffer from the neighbors, with what seems like substantial endorsement from the neighborhood matters, I think. The fact that there's no bathroom in this to me limits its use. I mean, you can appreciate what we're trying to avoid.

Mr. Jacobs: I do.

Chairman Collins: Is a place that people live in.

Mr. Jacobs: Well, look, I'm a resident of town, too, so I totally appreciate what you're trying to do.

Boardmember Pennington: Or that it's simply an extension of the house.

Chairman Collins: Right, an extension of the house that's not attached. And to really make that happen, these factors like insulation and how you outfit the room matter in the interpretation. I actually would see this more fitting, of all of these things here, to a playhouse as the closest definition. And I say that just because I have been in some spectacular playhouses that are smaller versions of the regular house.

Mr. Jacobs: Well, to that point I think if we were proposing something ground-up I think there'd be a really strong argument for questioning the size and scale of the room itself. I think because we don't have that luxury we're trying to use something that's already there and just repurpose it. It's a little bit challenging to sort of ... perhaps the perception of it is that it could be more than it is. And, in fact, it's not, and I think that's maybe where the hang-up is here. I mean, we're not proposing this to sort of start from scratch.

Chairman Collins: Well, that is a big part of it. And I think to the extent that you can remove any vagueness through your design and your intention that would result in people going, geez, this really does look like the kind of thing where people move from occasional

use to being in that part of the property more than half the time. That'd be productive.

Boardmember Dovell: And the first reading of this seemed to me like a little Finnish spa, a little Finnish sauna, that's heated entirely ...

Mr. Jacobs: "Spa" was probably the wrong word, but "hot tub."

Boardmember Dovell: Well, fine. But it's got a wood-burning stove in it. So you'd trudge out there in weather like this, and you put a fire in, and you do what you do. You jump in and then roll around in snow or whatever. But that's clearly something that can't exist in the house, so that helps in understanding this as something other than what might go in the house. The way it's been described right now it's got sheet rock on the ceilings and it's heated and it's lit, it almost seems like an extension or something that really belongs in the house, not an accessory structure.

I mean, that's just my two cents on it. That idea of it being rustic is the only way I can kind of see it happening with that definition.

Chairman Collins: I agree with you.

Mr. Jacobs: To just go back to the question of insulation, part of our thinking on this was simply that the owners would love this to be a room that also has like a ping-pong table for the kids and a place for the girls, as they grow up, to sort of entertain their friends.

Boardmember Dovell: But then you're right back to definitions that belong in a house. You've got an extension of a house.'

Mr. Jacobs: Well, I think if it's a question of insulation I think we can offer to remove any insulation.

Building Inspector Sharma: Then you remove the heat.

Boardmember Dovell: It's a trick. It's very large. It's 18 by 21 because that's just what it is. That's the existing.

Mr. Jacobs: If it helps also, we're still at least 5 percent under our allowable development coverage after all this is said and done.

Village Attorney Stecich: I thought you said you were adding on to it.

Mr. Jacobs: We're extending the roof towards the house a little bit.

Village Attorney Stecich: Oh, just the roof.

Mr. Jacobs: Not the interior.

Village Attorney Stecich: I'm sorry, I misunderstood.

Chairman Collins: Mark, did you have anything?

Boardmember Pennington: Just more of the thought process. Have you thought about the notion of conditions that would limit it to really what you're describing? But it would get, I think, ludicrous to say, well, there'll be no sleeping allowed. Because someone may fall asleep, there may be a sleepover. ? But we're trying to distinguish this from a regularly-occupied dwelling. And I'm personally not so troubled by some activities that resemble what might happen in a house, as long as this is really not becoming, in effect, a home that would be regularly occupied by people and not otherwise permitted as an accessory apartment or something like that.

Mr. Jacobs: I mean, I don't know how else to convey that it's not intended that way at all. I completely appreciate the position of the Board. It's not going to be rented out in our lifetime, as these guys being the owners there's no other argument there.

Chairman Collins: I think we might be, for example, planning in a place that would condition it on, for example, not having a bathroom and not having a kitchen or a bar.

Mr. Jacobs: Yeah, agreed.

Chairman Collins: Things that become ...

Mr. Jacobs: And in other jurisdictions those are certainly part of accessory structures, that they don't have bathrooms.

Chairman Collins: Right.

Mr. Jacobs: Again, that's not part of our proposal.

Chairman Collins: And that becomes a built-in limiter for how long people can be there. And the fact that it is clearly recreational. I mean, this part of the code does envision a recreational use to these properties. And, as I said, there are a lot of playhouses that are

actually quite well-developed and meant to occupy hours at a time. It's not the old build a tree house, climb up and hope that you don't get splinters on the ladder. This is a recreational use that seems to be in keeping.

There are lots of structures that have the utility hookup that this one already has. I'm just trying to think if there are any other conditions that would be helpful to distinguishing what we're considering here from alternate proposals. Because we don't want a future applicant to come and wave this in front of us and say, hey, we want that plus something else.

If you've got a copy, Mr. Humphreys, of the correspondence from your neighbors can we take those now and we'll enter them into the record?

Mr. Humphreys: Just so you know, the neighbors that signed that are this one – that's the Oakdale – this one, this one, this one and this one.

Chairman Collins: And so who are the two that you hadn't yet signed, but indicated they would.

Mr. Humphreys: [Tubors] XXX live right there agreed, but were unable to. And Rick Bohm I think is his last name, agreed but was not able to.

Chairman Collins: Marianne, anything. I'm trying to think here if there's anything that has been said here about the possible uses that you think ...

Village Attorney Stecich: No, the only thing I would say about what you've got to decide – and this, I think, is the language that Mr. Jacobs was getting at – I don't think, when he was just speaking, he was trying to get in the customary home occupation. But he was talking about similar occupancy use, customarily incidental to the permitted principal use. Because pretty clearly it's not a garden house, tool house, playhouse, greenhouse. So the question is, is it a similar customarily incidental use.

Boardmember Dovell: "Incidental," not "identical to."

Village Attorney Stecich: No, it says "simple occupancy use, customarily incidental to the permitted."

Boardmember Dovell: Yes, incidental. But I think you have to assume, then, that it's not creating another living room outside.

Village Attorney Stecich: Absolutely.

Boardmember Dovell: And that's where I have a problem. I don't want to see this become an extension of a living room. I think that's an extension that's setting a bad precedent.

Village Attorney Stecich: I think it's important to focus on that whole phrase.

Chairman Collins: Well, I agree. But I'd like to find a way to apply the right language so that we remove any vagueness, as much vagueness as we can from that.

Village Attorney Stecich: Well, that language is real specific.

Chairman Collins: It is, but I would say I think there's an argument to be made that there's a similar occupancy that's proposed here, and the primary use of a hot tub – at least of the kind that I'm imagining, and maybe we should talk about the dimensions – this is not a hot tub that you drop into your living room or even your bathroom, not to be absurd about the living room.

Mr. Jacobs: What we're planning right now is certainly not decided, but it's in the neighborhood of 6 feet by 6 feet.

Chairman Collins: I mean, it would be a pretty big bathroom if you were going to put that in. Because this is a furnishing that you wouldn't expect to see in a house that it satisfies the incidental definition. Wood-burning stove, you see that in homes. That's pretty common. But no bathroom, no kitchen, no bar. There might be places for people to sit down, but that's true in garages. I'm just trying to think, are there other things we can insert into this to make it so it's very clear this doesn't become something that's not incidental, it becomes just an extension, I think to Ray's point, which I'm very sympathetic to.

Village Attorney Stecich: Well, you can limit that it can be as proposed, and used for a hot tub and a wood stove, whatever. And then I would specify no bathroom, no sink, no kitchen, whatever.

Chairman Collins: No kitchen, no bar.

Village Attorney Stecich: No, I think you hit on the conditions. And I think, Matt, even though you said you didn't want ... I think what you did was apply that language. What you just did was go through an exercise in applying that language, and that's your interpretation of it. I think it's a fair way to look at it.

Chairman Collins: Can you talk about what the pathway connecting this spa room to the

house looks like? Is it the same as what already exists, or are you going to be doing something there, too?

Mr. Jacobs: Yeah. Are the slides still up? That might be easiest. OK. The original house is this shape right here, that was built in the '20s. This addition was put on probably in the '80s. This addition was put on very recently; it's actually still an open C of O. This is a two-car garage and a family room. So this now doesn't need to be a garage because cars are parked here. The driveway, which is actually a very unique type of driveway, is accessed through here. There's still a curbcut. And the original driveway, it was just cars rolling over the bedrock which is exposed on the property. And then there's this little sort of concrete pathway into the garage. That stuff would be removed.

The connection between the family room, which has a small patio outside – this is not quite this big – small patio outside, and it's just going to be natural landscaping between the two structures. There's really going to be no additional hardscape or no gravel; maybe a couple of the stones that got pulled out here may get sunk in the ground here to kind of give it the natural feel. But it's going to be very natural.

Chairman Collins: OK. Again, that makes it less of an extension of the house and more of a sort of stand-alone ...

Mr. Jacobs: This is the original drive. This is very much in keeping with what's there right now.

Chairman Collins: Au natural.

Mr. Jacobs: This is sort of the feel of the place, since that's really what we're trying to maintain.

Chairman Collins: OK. Well, I know this is sticky terrain. But if we can condition this so no bathroom, no kitchen, no appliances associated with those rooms, no bar.

Boardmember Forbes-Watkins: Wet bar.

Chairman Collins: Yeah, a wet bar. I think we can establish that this is similar to other definitions outlined in the code for its recreational use, and very much incidental to the primary use of the main dwelling because of what's going in and the centerpiece of this property, of this structure. That's how I feel.

I'll ask maybe, while the Board sort of collects their thoughts, if there's anyone in the

audience who wishes to be heard on this. OK. Good to know. Gentlemen, anything else that you'd like to ask or that you want to talk about?

Boardmember Dovell: The only thing, I think I'm in agreement generally with what we're coming to. The thing that troubles me a little bit is it's a big structure. It's roughly 20 by 20 of the enclosed space. And you enclose it, you condition a space like this, it becomes living area and the spa component of it is relatively small. So I'm just thinking of precedent-setting here, that it becomes automatically living space. So I'm wondering about the condition of it, and do we want to limit this in terms of conditioning. Or can we, from a building code point of view, do that? I mean, heating and insulating and sheet-rocking and making it living space.

Building Inspector Sharma: There's a term "habitable space" that is used in the code all the time. It could become habitable space.

Boardmember Dovell: And when it becomes habitable space is it contrary to the spirit of this definition that we're looking at?

Building Inspector Sharma: See, I already made a decision on it, and that's what they're appealing.

Boardmember Dovell: The word "incidental" might support that some way, conditioning it. I don't know.

Chairman Collins: Yeah, I wouldn't want to put them in a position where they're running afoul of the building code.

Boardmember Dovell: No, of course.

Boardmember Forbes-Watkins: You can't.

Chairman Collins: No, that's right.

Village Attorney Stecich: But, Deven, if you're going to have a building with ... I guess the question is, and maybe you don't know off the top of your head, but if you're going to have a building with essentially a spa and a woodstove does it ...

Building Inspector Sharma: That's what I need to check. Whether, when the building is heated with a wood-burning stove, in that case also it would require the energy code to kick in to require the building be insulated. Because electrical heat, oil heat, that kind of heat, any

time you put in that kind of heating the building definitely requires to be insulated in the ceiling and walls. But I would need to check whether a woodstove falls into that category or not. If it's air conditioned, if it's cooled ...

Village Attorney Stecich: Do you happen to kind of with a fireplace whether it needs to be?

Building Inspector Sharma: The same thing. It's a wood-burning fireplace ...

Village Attorney Stecich: So you don't know what the rule is for fireplaces. Do you happen to know?

Mr. Jacobs: No.

Village Attorney Stecich: You just took the exam, and that's why I was asking.

Mr. Jacobs: It's a really good point.

Chairman Collins: It would not be air conditioned, I assume.

Mr. Jacobs: The air conditioning would be just like what Deven said. It would be electric, and then that would cause it to have to be insulated and finished.

Building Inspector Sharma: Only heating, I'm not sure. I will need to check that. Heating with wood-burning stove and nothing else, that I'll have to check.

Boardmember Dovell: But you see, these definitions all are kind of outbuildings, and all of them – a garden house, a tool house, a playhouse, a greenhouse or similar occupancy, customarily incident – would suggest unimproved structures apart from not meant for living and not containing all of the things that you associate with that. Heating and power. Obviously, you're going to have to have power. That's one thing that I'm hung up on a little bit. And, again, it's relating the setting a precedent.

Chairman Collins: Right. I agree with that. The only place where I pause because I have seen it – I mean, I've had family that built them, or playhouses that are quite finished – and the definition of a playhouse nowadays, and maybe even for some families in Hastings that have indulged in them, this is a very different thing than a playhouse when I was a kid and I was sharing space with poison ivy.

Village Attorney Stecich: But if we talk about the playhouse like on Churchill's property or on Roosevelt's property, on those rich people's property. They're still a playhouse. No

matter what, they're very, very different from the main living space.

Boardmember Dovell: They are, they're incidental.

Village Attorney Stecich: I've been in a million of those estates, and they are very elaborate – nicer than houses I've been in – nonetheless they are clearly not the same kind of living space as a rec room.

Chairman Collins: But I think actually in this case I'm more comfortable with this. Because in a playhouse of the kind that you're describing a kid could go and be gone all day very comfortably because it is a replacement for their bedrooms.

Building Inspector Sharma: Sleep there in good weather.

Village Attorney Stecich: Yeah, but they don't have kitchens. I don't think that probably helps, though.

Chairman Collins: No, except to Ray's point about the finishing, the level of finishing. Playhouses can actually have quite a bit.

Boardmember Dovell: It's not so much the level of finishing. It's kind of the environmental expectation of a house.

Village Attorney Stecich: That's exactly right.

Boardmember Dovell: It's the only other way I can explain it.

Building Inspector Sharma: Environmental perception of how many of us. See, I don't have that perception. Of course I don't have a vote, but as a building inspector if I would interpret the code the place being conditioned or not will not enter my concentration to see whether it can be an accessory structure, or not. It will not enter my mind that it has to be un-conditioned for it to be one of the permitted accessory uses. That will not occur to me.

Chairman Collins: I think what Ray and all of us are going for is whether or not, or similar, occupancy could become the catch for this. Because a garden house, no; tool house, certainly no; playhouse, and adult playhouse, really probably not; greenhouse, no. So similar – what makes them similar? And in my mind it's similar in that it's recreational – I think we could argue – and conditioned for minimally conditioned. And this customarily incident to the permitted principal use really is very valid here. Because you're not going to take this hot tub and say, "You know what? On second thought, I think I'm going to put that on the deck."

This lives, this use" ... you either put it out in the open, you put it on an outdoor deck, or you put it in there, in my book.

Building Inspector Sharma: Another thing we will check, I will check whether industry has caught on to the fact that anything deeper than 2 feet might. Because it has a pool, I'll check and see whether general spas and pools are 24 inches deep or less. Maybe they are. We're going to have to check that.

Chairman Collins: All right. Well, I think in this case the fact that it's really not intended for bathing, at least in a hygienic sense ...

Mr. Jacobs: I think a pool is as-of-right.

Boardmember Dovell: My question was driven for that very reason. Because if it's a pool there's maybe another way to look at it.

Mr. Jacobs: Well, I don't think it is a pool.

Village Attorney Stecich: No. It may be as-of-right, but you don't have the setbacks for it.

Boardmember Dovell: Right.

Village Attorney Stecich: No, they couldn't.

Chairman Collins: Well, I think if there's nothing further then I would suggest that we put this to a vote. David, did you have anything else you wanted to explore?

Boardmember Forbes-Watkins: No, I feel as if I've made up my mind.

Chairman Collins: Mark, are you good to go?

Boardmember Pennington: Yes.

Chairman Collins: Ray, yeah? OK. Then may I get a motion?

Boardmember Forbes-Watkins: You probably have, in your mind, the more complete motion than everybody else. I'll move it if you state it.

Chairman Collins: OK, well, I'm going to move that we interpret this as a permitted ... how do we have the language on this? A permitted accessory use.

Boardmember Dovell: Do you want to address the conditioning of this and does it remain an unimproved structure?

Chairman Collins: Well, my only reluctance to that is that I don't know enough about the building code to know whether or not we can do that.

Village Attorney Stecich: Well, you could say remain unimproved except to the extent required by the building code, something like that. Would that do it, Ray?

Boardmember Dovell: I think that does it. I think that does it.

Village Attorney Stecich: So remain unimproved except to the extent required by the building code. So if the building code said it has to be insulated because of this wood-burning stove seems to be the only issue.

Chairman Collins: Then it's insulated.

Village Attorney Stecich: Then they would have to put in insulation.

Boardmember Dovell: But none of these other uses would require improvements under the building code. A garden house, a tool house, a playhouse or a greenhouse, or similar occupancy would not necessarily require improvements – heating and ...

Chairman Collins: That's correct.

Mr. Jacobs: It may be my ... I don't know the answer to this. I think it's a good question to ask. But I'm reluctant to sort of go down this path and find myself back here in a month discussing whether or not the definition of insulation on an outbuilding is part of the code or not part of the code. I mean, I think it's clear that the language is intentionally a little vague on this topic as just use groups. And I think we're all talking about that right now. Is there some clarity we can get on the insulation, at this point?

Building Inspector Sharma: There is required by code versus discretionary/optional.

Mr. Jacobs: Right. I think that's the trouble we're having.

Building Inspector Sharma: The code sets minimum standards.

Boardmember Dovell: Minimum standards for habitable space.

Village Attorney Stecich: Is it that hard to look it up?

Chairman Collins: Is there something you could check?

Village Attorney Stecich: I was going to say, is it that hard to look it up? Can't you look on the computer? No?

Mr. Jacobs: It's late.

Building Inspector Sharma: But to continue on my thought, some people do more than what's minimally required by code. I cannot ask them not to do that unless, of course, the Board ...

Village Attorney Stecich: Well, yes you can. If the Board set the condition that it not be improved except to the extent required by the building code.

Building Inspector Sharma: So they cannot put insulation. Is that it?

Chairman Collins: If the code were to say that, then yeah. That would be the limitation.

Building Inspector Sharma: OK. So I would be following the Board's condition, the Board's mandate, and not the code mandate.

Village Attorney Stecich: No.

Mr. Jacobs: It's the code minimum.

Chairman Collins: The code prevails. If we somehow prescribe something that runs afoul of the building code, then we need to go back and change the language. But that's not what we're saying.

Village Attorney Stecich: But you don't need to.

Chairman Collins: Well, basically we're saying that whatever the building code is, whatever that minimum standard is, that's what they will meet.

Boardmember Forbes-Watkins: And no more.

Village Attorney Stecich: And no more, right.

Mr. Jacobs: Is there maybe an asterisk if that actually is defined in the building code? Because it very well may not be, and I think that's ... then it's going to be the discretionary to Deven.

Village Attorney Stecich: Well, if it's not required in the building code then you don't do it.

Boardmember Dovell: But it's not habitable space. You don't have to insulate a garage that's a free-standing structure, do you?

Building Inspector Sharma: You can. It depends how it is heated or cooled. If it is heated or cooled a certain way, then it will require it.

Boardmember Dovell: Oh, I see. It's energy code.

Building Inspector Sharma: Insulation, energy code.

Boardmember Pennington: Should we be phrasing this condition linking it to the particular design and the issue of the heating? Because otherwise, how would the building code apply, and what kinds of requirements might it impose? It all depends on the particular use that is the subject of the application, right?

Mr. Jacobs: I think so. And my understanding with the green building codes – and I might be a little off here – is that any new construction or changes to construction, like renovations, are required to adhere to the new green building standards. And building standards, in general, obviously; structural and whatnot. And in that case, I don't think it discriminates between whether it's an accessory structure or not. I think it's just simply ... or I should say habitable space, or not. I think simply if it's a space it adheres to certain building code standard. And I think that is the new standard.

I may be wrong about that. But I guess my concern here is voicing this simply that we may be talking about this next month simply on the point of insulation or not if they decide they want to insulate it.

Building Inspector Sharma: For example, solar-heated buildings will not require insulation if they don't want to put it in. That's in here, but I'm looking for wood-burning.

Deputy Building Inspector Minozzi: 101.4.5 is one section, but it doesn't mention wood-burning stoves: *"Any conditioned space that is altered to become conditioned space shall be required [off-mic] with this code."* That's just one statement. That doesn't say anything

about wood-burning stoves though.

Building Inspector Sharma: Quickly, I can't find the references here that I'm looking for.

Village Attorney Stecich: Let's do it. He can't find it.

Building Inspector Sharma: You can put that in your decision, I'll definitely have to look it up. It's probably someplace in there, but this doesn't mention it. Solar heat, spaces heated by solar energy, is new. They don't have to be insulated if they don't want to.

Boardmember Pennington: Well, we can still make an interpretation tonight.

Building Inspector Sharma: Yes, we can.

Village Attorney Stecich: Yeah, I think so.

Building Inspector Sharma: Since you're saying it's required by code, then they'll have to do it. And I'll check that a space heated by a wood-burning stove is required to be, by code, insulated. Then they'll have to do it.

Chairman Collins: So you'll have your answer.

Mr. Jacobs: I think that seems clear, yeah.

Boardmember Dovell: I'm just concerned with it becoming completely fitted out. I think we're edging towards some language here.

Boardmember Pennington: Can I take a stab?

Mr. Jacobs: Is there a possibility that the plumbing code – Deven, this is probably directed towards you – that the plumbing code may require us, where we have plumbing lines running to a space, to be insulated for weeks like we have now, where pipes are simply going to freeze if the space isn't insulated? And I guess my question is, obviously ...

Boardmember Dovell: Well, hot tubs are routinely installed outdoors. I mean, they're designed ... a lot of them are designed to be installed just out in the open.

Mr. Jacobs: OK. I don't know enough about it, but I think you're probably right.

Boardmember Dovell: I think as long as that standard's met, I think it should be fine.

Mr. Jacobs: OK.

Boardmember Dovell: Of course, if you have to insulate the piping I think for the normal functioning of it you do.

Chairman Collins: I like the language that you proposed. Can you summon that again?

Boardmember Pennington: It's late, I don't know.

Village Attorney Stecich: I have it down. It would also be conditioned on the space remaining unfinished space, except to the extent required by the New York State building code for the spa and wood-burning stove. That it remains unfinished except to the extent the building code requires some finishing for the spa and the wood-burning stove. Or you could just say ...

Boardmember Dovell: Unimproved, maybe unimproved.

Village Attorney Stecich: ... and it remain unimproved except to the extent required by the New York State building code, and just end it there.

Boardmember Dovell: Yes, that gets you a little more flexibility with what you want to do to the inside.

Village Attorney Stecich: To remain unimproved except to the extent required by the New York State building code. And only that. So if the building code says you need to have insulation, then you put the insulation in, that doesn't mean you get to put walls and stuff up, as well, unless ...

Boardmember Dovell: You have some flexibility with the finishing out of the interior. I mean, that's why I like the word "unimproved."

Chairman Collins: OK, that's good. I think that strikes it. Did you have something you wanted to add?

Boardmember Pennington: I was just going to suggest that it would be real headache for anybody to read the minutes of this meetings and figure out what we've decided. And we ought to take the time to write this up for the record.

Village Attorney Stecich: I usually do.

Boardmember Pennington: You do?

Village Attorney Stecich: Yes.

Boardmember Pennington: OK, good.

Village Attorney Stecich: On the complicated ones I have the minutes sent to me, and then I correct them.

Mr. Jacobs: Can I just clarify that last point that you were making, Marianne? Which is that improvements only to the limits of the minimum building standards, but nothing improved beyond that. Does that include us taking a roof off which has not collapsed yet so it's not required to be changed? Is the rest of the renovation of this thing ... can we move windows around? They're not in danger of falling out, but they're old, they're scratched up, some of them are acrylic.

So I guess my question is, to me it seems a little vague. I just want to clarify for the record what we're talking about in terms of unimproved.

Boardmember Dovell: Well, I think we're talking about an environmental standard here.

Mr. Jacobs: That's great. I think you're right.

Boardmember Dovell: Putting a new roof on, with new structure and new windows, I think that's all ... I mean, I think also it complies with ...

Village Attorney Stecich: Can you say the interior space? And the interior space remaining unimproved, except to the extent required by the building code?

Mr. Jacobs: OK.

Village Attorney Stecich: The interior space, OK. Because I think that's what we were getting at.

Building Inspector Sharma: So does that mean no sheet rocking, no new lighting or anything? Is that what you're talking about?

Mr. Jacobs: If we have uninsulated walls I don't think we want to be looking at raw lumber. But if we can put sheeting up, whether it's painted walls or strawboard or something like that,

I think that's what we're expecting. Does that seem correct?

Boardmember Dovell: And it keeps a rustic character.

Mr. Jacobs: Yeah, I think we would like to expose the beams in the ceiling or something like that, but probably not the studs on the wall.

Boardmember Dovell: Exactly.

Boardmember Forbes-Watkins: Oh, boy.

Chairman Collins: Yeah, that's the cottage look. So should I try to recapsulate (sic) this, or do you feel like you got it?

Village Attorney Stecich: Oh, I have it. Do you want me to read it?

Chairman Collins: Yeah, let's get it back. Because I want David to second the final thing.

On MOTION of Chairman Collins, SECONDED by Boardmember Forbes-Watkins with a voice vote of all in favor, the Board interprets the proposed space to be a permitted accessory use under C(4) of the code because of its similar occupancy and incidental use to the permitted principal use, subject to the conditions that there be no bathroom now or in the future; that there be no kitchen, no wet bar, and no appliances typically associated with those rooms and those functions; the structure will abide by the minimum standard required by building code with respect to heating and insulation; conditioned on this remaining unfinished space, except to the extent that finishing is required under the building code for a wood-burning stove and sauna; and it remain unimproved except to the extent required by the New York State building code.

Chairman Collins: All right, the vote is unanimous.

Mr. Jacobs: Thank you. Thank you for your patience tonight.

Chairman Collins: Thank you.

Mr. Jacobs: You know, I think going forward, just on an aside, this portion of the code is clearly very vague. And it's come up big here, and that's simply because it is an old structure and it is larger than most permitted, probably, accessory uses that anybody would propose to

build. But I think it's probably in everybody's best interests to be a little bit more clear about what the definitions are. Because I think this is something that will come up again. I know that it is somewhat costly to go through this process, and I think it would help homeowners, property owners, if these definitions were a little bit more clear regarding size of these structures, adaptive reuse versus ground-up. And quite frankly, what is a garden or a playhouse. I mean, a playhouse for children is a different scale than a playhouse for an adult.

Chairman Collins: You point is taken. The Board, unfortunately, doesn't have the flexibility to craft the language in the code.

Mr. Jacobs: It will come up again.

Chairman Collins: No, you're right, you're right. And we can let the right people know about this particular case. Thank you very much.

Mr. Jacobs: Yeah, thanks.

II. APPROVAL OF MINUTES

Regular Meeting of October 24, 2013

Chairman Collins: Anyone have any changes to the minutes?

Boardmember Forbes-Watkins: Page 17, the entire heading says: "*CCI Properties*," et cetera, but all of the discussion that follows concerns the Farragut Avenue property. So the whole heading has to be fixed.

Chairman Collins: OK, good catch.

Boardmember Forbes-Watkins: That's it.

Chairman Collins: All right. Any others? OK.

On MOTION of Boardmember Forbes-Watkins, SECONDED by Boardmember Pennington with a voice vote of all in favor, the Minutes of the Regular Meeting of October 24, 2013 were approved as amended.

III. ADJOURNMENT

Chairman Collins: Thank you. I think our meeting is adjourned. Our next meeting is, I think, exactly five weeks from today. Right? Isn't the next meeting February 27? I will not be at that meeting.

Boardmember Forbes-Watkins: I get to chair.