

**MINUTES**

**FEBRUARY 15, 2011**

**BOARD OF ADJUSTMENT**

**LONG HILL TOWNSHIP**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

The Chairman, Dr. Behr, called the meeting to order at 8:03 P.M.

He then read the following statement:

Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2011.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

On a call of the roll the following were present:

- E. Thomas Behr, Chairman
- Sandi Raimer, Vice Chairman
- John Fagnoli, Member
- Maureen Malloy, Member
- Joseph Pagano, Member
  
- Christopher Collins, 1st Alternate
- Michael Pesce, 2<sup>nd</sup> Alternate
  
- Barry Hoffman, Bd. Attorney
- Thomas Lemanowicz, Bd. Engineer
- Kevin O'Brien, Twp. Planner
- Dawn Wolfe, Planning & Zoning Administrator

- Excused:
- Edwin F. Gerecht, Jr., Member
  - Felix Ruiz, Member

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**EXECUTIVE SESSION**

On motion by Mr. Collins and seconded by Mrs. Malloy, the Board of Adjustment adjourned to executive session at 8:06 PM to discuss personnel matters.

The Board re-entered public session at 8:27 P.M.

Dr. Behr explained that the Board's engineer, Thomas Lemanowicz, is now representing himself in his own company, of which he is the principal, known as TRL Engineering, LLC and, therefore, the Board must enter into an agreement with him to serve as the Board of Adjustment Engineer for the balance of 2011 at a rate to be discussed and agreed upon between the Board of Adjustment, Planning Board, and Mr. Lemanowicz.

Mr. Fagnoli made a motion to appoint Thomas Lemanowicz, principal of TRL Engineering, LLC, as Board of Adjustment Engineer for the balance of 2011 at a contract rate to be discussed and agreed upon between the Board of Adjustment, Planning Board, and Mr. Lemanowicz which was seconded by Mrs. Malloy.

A roll call vote was taken. Those in favor: Mrs. Raimer, Mr. Fagnoli, Mrs. Malloy, Mr. Pagano, Mr. Collins, Mr. Pesce, and Dr. Behr. Those Opposed: None.

Mr. Lemanowicz thanked the Board very much and said that he appreciated its vote of confidence. He said that he looked forward to continuing in his capacity as Board of Adjustment Engineer.

**RESOLUTION OF MEMORIALIZATION**

**ANTHONY & ROBYN LAKE**

21 Vickie's Place  
Block 12203, Lot 20

**#09-07Z**

**Bulk Variances  
Waiver of Relief from  
Stormwater Mgt. Reqts.**

The Board of Adjustment memorialized the annexed Resolution of approval for Anthony & Robyn Lake (App. No. 09-07Z) on motion by Mr. Pesce and seconded by Mr. Pagano.

A roll call vote was taken. Those in favor: Mrs. Raimer, Mr. Fagnoli, Mr. Pagano, Mr. Pesce, and Dr. Behr. Those opposed: None.

**ANNOUNCEMENT**

Dr. Behr announced that the application of Glenn Dryer (No. 10-03Z) is carried to May 3, 2011 *with* further notice to be served.

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**DAUNNO ASSOCIATES, LLC/RICHARD DAUNNO**

437 So. Northfield Rd.  
Block 10201, Lot 6.01

**#10-05Z**

**Bulk Variances  
Development Permit  
Unimproved Road**

Present: Alan Trembulak, attorney for the applicant  
James J. Ramentol, licensed professional architect  
Michael T. Lanzafama, licensed professional engineer  
Richard Daunno, applicant

Proof of service was submitted.

It was noted that the certified shorthand reporter who had been retained to appear this evening was, in fact, not present.

In response to Mr. Alan Trembulak, attorney for the applicant, Dr. Behr explained that an audio recording as well as a video recording of tonight's proceeding will be taken.

In that case, Mr. Trembulak requested to proceed with the application.

Mrs. Raimer noted that whatever fees were charged to the applicant for the attendance of the court reporter should be considered and Dr. Behr agreed that the hearing fee will be waived in this instance.

Mr. Trembulak said that the subject property is known as 437 So. Northfield Rd. which is located at the south end of So. Northfield Rd. His client proposes to demolish an existing somewhat dilapidated and unoccupied residence on the property and replace it with a new 2 story dwelling, essentially in the same footprint as the existing house with some additional expansion at the rear of the property to accommodate a modern new 2 story structure.

He said that the application involves several variances which are existing conditions and some of the conditions are actually being improved and others, such as needing the Board's permission to construct a house on a lot that does not front on a paved street. That is a current condition and there is a driveway that provides access to the subject property as well as to adjoining property

through a recorded easement that has been in place for many years and the proposal is to continue to utilize it.

He said that the applicant's architect and engineer are present this evening to testify and his client is also here to answer any questions that the Board might have regarding the proposal.

Mr. O'Brien and Mr. Lemanowicz were sworn. Mr. O'Brien explained that he had distributed photographs of the site to the Board and applicant which he had taken on 2/8/11 and are part of the file.

Mr. Hoffman said that Mr. O'Brien had raised an issue in his report which he considered to be of a threshold nature and could perhaps be more pertinently addressed by Mr. Trembulak before beginning with the architectural testimony. He said that he noted that there should be documentation or information provided to the Board that would establish that indeed there was a right, legally speaking, to gain access to the subject lot by crossing over another piece of property.

Mr. Trembulak replied that he had a title search on the property and copies of two deeds that make reference to the easements. He said that it was actually created originally in a deed of August 1963 and there is a subsequent deed which refers to it again in 1965 which is the deed by which the current owner of the property acquired title. He presented a copy of the 1965 deed between Elmer E. Hedden and Georgia May Hedden, his wife, and Buddy and Sondra H. Cohen, his wife, which was marked into evidence as **EXHIBIT A-1**.

Mr. James J. Ramentol, licensed professional architect, was sworn. He reviewed his educational and professional background and was accepted as an expert. He said that there is an existing single story ranch home on the subject property that contains a couple of additions that were built over time.

He referred to and described enlarged copies of Mr. O'Brien's photographs which were mounted on a display board. He noted an adjacent barn that is proposed to be removed. He said that the existing two car garage that is forward of the house is very close to the property line and is considered to be the front yard. In describing the area, he said that the farmhouse that is located beyond the access road dates back to the 1700's. He said that homes within the nearby Clover Hill Subdivision are more in keeping with the architecture and size of the home that is proposed to be constructed on the site. He also noted that there are several homes on So. Northfield Rd. that have been renovated in recent years that tend to the same "rough" square footage that is proposed. He estimated that the existing dwelling on the subject property was originally constructed in the 1950's or 1960's.

In response to Mr. Trembulak, Mr. Ramentol said that the existing house on the property has been abandoned for 4 or 5 years, is in very poor repair, and has been boarded up. He said that the former owners hoarded many animals which caused issues. Because not much of the existing house that is worth salvaging, the proposal is to demolish it down to its foundation. He said that there are some constraints due to wetlands which the applicant's engineer will speak to more specifically.

He referred to a colored rendering of a Grading/Drainage & Erosion Control Plan by Michael Lanzafama, P.E., consisting of one sheet dated 11/4/10, which was marked into evidence as **EXHIBIT A-2**. He said that they are limited to 750 S.F. of total disturbance, therefore the addition shown is within the confines of that footprint. He said that the hatched area shown represents the existing dwelling and the shaded areas represent the proposed porch area in the front and the proposed two car garage. He noted the 150' wetland buffer line. He said that the reason for the unusual shape of the house is because of the proposed septic field. The only place that the septic field could be located is in what amounts to the front yard as it relates to the Zoning Ordinance but, in essence, it is on the side of the house. The front of the house fronts on

the side yard and access road. The proposed F.A.R. is 3,654 S.F. He described the exterior design of the proposed dwelling as having “sort of an upscale farmhouse look to it with a nice covered front porch”. He also described the proposed interior floor plan which will contain 4 bedrooms on the second floor, with the possibility of a 5<sup>th</sup> bedroom if a study is converted.

In response to Mr. Trembulak, Mr. Ramentol said that the proposed 2 car garage is stepped back because of the geometry and canting of the house currently, as well as the need to establish 15’ of setback from the edge of the septic field. He said that the proposal will provide more access to a much larger basement and that he is looking at an optional secondary stair that will lead from the garage down to the basement.

In response to Mrs. Raimer, Mr. Ramentol said that the existing So. Northfield Rd. properties are somewhat eclectic relative to their sizes. There are a whole variety of houses in the older neighborhood but many of them completed major renovations and additions. He said that the size of the subject property is in keeping with a home of this nature.

In response to Dr. Behr, Mr. Ramentol said that he had not actually taken a look of the measured dimensions of the homes within the Clover Hill Subdivision and that his comment was based upon an “eyeball” estimate based upon his knowledge and experience. He said that they are probably slightly smaller, but they are not half the size of the proposed dwelling.

The meeting was opened to the public for questions. There being none, the meeting was closed to the public.

Mr. Michael T. Lanzafama, licensed professional engineer and planner, was sworn. He reviewed his educational and professional background and was accepted as an expert in the field of engineering and planning.

Referring to **EXHIBIT A-2**, he said that the subject property is located at the terminus of So. Northfield Rd. in an R-2 Zone. He said that the deed, itself, reads to the centerline of So. Northfield Rd. which, if you include the entire 33’ R.O.W. of So. Northfield Rd., the lot would contain over 2.2 acres in size. If you deduct the 16 ½’ width R.O.W., the parcel contains about 1.92 acres in size. A substantial portion of the property is impacted by wetlands and the associated buffer. He said that the area shaded in darker green is a wetland area that has been delineated by an environmental consultant and was confirmed by the NJDEP. He said that he has obtained an LOI, as well as a Freshwater Wetlands General Permit No. 8 to permit the construction of the expansion of the house into the transition area. He said that the NJDEP determined that the transition area for the property should be 150’ due to the fact that there are threatened and endangered species in and around the proximity of the site. A copy of the Freshwater Wetlands Statewide General Permit No. 8 was marked into evidence as **EXHIBIT A-3**.

In response to Mr. Hoffman, Mr. Lanzafama said that **EXHIBIT A-3** is a confirmation of the wetland line as well as a General Permit No. 8.

Based upon the L.O.I. and the General Permit from the NJDEP, he said that the property is impacted by a significant amount of critical areas. He said that the wetland area itself is .943 acres and the transitional, or buffer area, is an additional .7 acres in size. That, coupled with the fact that a drywell is proposed to be installed in the side yard area of the property, puts the total lot area that is impacted by critical areas at 1.655 acres. So the only area that is considered non-critical is the portion of the site that is located at the north end of the property which totals out to be 11,469 S.F. He said that the fact that the existing structure is located in that area, and the desire to reuse the existing foundation to minimize site disturbance results in certain practical difficulties in meeting the criteria within the Ordinance with regard to setbacks. He said that the required front yard setback from So. Northfield Rd. is 75’. The existing garage, which would have been located in the area of the proposed septic system, is only located about 11’ off the R.O.W. line. As a result of the proposed construction activity, the elimination of the structure in

the front yard, the setback will be increased to 41.06' which is a significant improvement of the existing condition, however it is still noncompliant with the Ordinance. The rear yard setback requirement is 50' and the existing building corner is located 41.38' from the rear property line and there is no plan to change that.

He said that part of the application is to provide for an access driveway to the 2 car garage located on the west side of the dwelling, as well as a circular drive across frontage. The property is located at the terminus of the road, which is about ¼ mile from Valley Rd. About half that distance is fully improved down to Aaron Drive which is where the cartway width is about 28'. Beyond that point, the cartway width really only services the subject property, the Bragg property to the east, and one more single family home between the end of the improved portion and what appears to be the private access road. He said that that cartway width is about 15' and is adequate to service these few dwellings. He was aware that there is a question with regard to a lot not fronting on an improved street and said that there is a section in the Ordinance referring to that, as well as in the MLUL. However, under Sec. 40:55D-35, which talks to the requirement of a property fronting on an improved street, he believed that if you go to the next section, Sec. 36 it really talks to the Board being able to grant a variance, deviation, or waiver from allowing a home to be *added* to. He said that Cox talks to certain cases where the courts have ruled that that section of the MLUL deals primarily with creation of new building lots and is really not applicable to additions to single family homes that already exist on lots. He referred to Sec. 9-2 and quoted as follows: "The statute is designed to protect against the construction of new buildings on lots abutting streets to which emergency vehicles cannot gain entrance. If a house already exists on a private street which has governing body approval and an application is made for a building permit to build an addition, these sections do not apply, and the administrative official is free to issue a permit...". He said that the proposal is to add to an existing structure although, granted, the existing structure is proposed to be taken down to the foundation, but the fact of the matter is that the home has existed at that location for probably 50-60 years. He said that the Police Dept. has issued a memorandum indicating that they have no concerns about the application. In his opinion, the Board could grant the requested relief, if it is appropriate, that would allow the addition or continuation of the property along a street that has basically nothing more than a gravel access road which is primarily used by members of PSE&G to gain access to the utility lines further to the south. It also allows access for recreational purposes for other adjoining property owners. He said that So. Northfield Rd. exists on the Tax Map as a 33' wide roadway R.O.W. and, without the need for improvements since access is via a 15' easement along the northern boundary line, the only thing that might be necessary is perhaps some additional improvement at the very, very corner to allow for emergency vehicles to make a k-turn and exit the site. He said that the applicant would be more than willing to provide some additional paving, but did not see the need for additional R.O.W. dedication. He said that the reason that becomes so important is the fact that the location of the septic system on the westerly side of the house is really the only place in which they have the ability to locate the septic system which is in conformance with the Bd. of Health's requirements as well as the NJDEP requirements. The requirement is that the septic system be set back a minimum of 10' from the R.O.W. line and 15' from the house. He said that they have managed to get the septic system right into that criteria – it is exactly 10' off the R.O.W. and 15' off the closest corner of the home. If they had to make that dedication of R.O.W., it would impose a certain practical difficulty and hardship on his client because he then would not be able to locate the septic system in that configuration, he would have to try and manage to get it in in some other location and they are really limited because the well is located on the very northeastern corner of the property and there is a minimum distance it must be located away from the septic field. He said that they are also proposing a drywell in that side yard area and it must be at least 50' from the well and at least 50' from the septic system. Because of the fact that they are inhibited by such a vast amount of wetlands that are being preserved, as well as a huge buffer area, he said that the site is truly constrained and there are certain practical difficulties in the development of the property. He believed that it would be appropriate to grant the variance, if it were required under the law, however he felt that it may not even be required because of the fact that it is an existing structure on a lot that has existed for some time. In addition to the issue regarding accessibility, emergency access and improvements, he said that there were certain other issues that Mr. O'Brien had identified as being issues.

In response to Mr. O'Brien, Mr. Lanzafama confirmed that he was making the argument that Sec. 35 of the MLUL does not apply to this application because an addition is merely being placed on the house.

Mr. O'Brien said that it was his understanding that the existing dwelling is to be removed.

Mr. Lanzafama disagreed. He said that the proposal is to leave the foundation in place and that it is to take the structure down to the existing foundation and then expand the foundation. He said that, in his opinion, Sec. 35 of the MLUL really speaks to creating new building lots on streets that are not improved and making sure that they do get the proper improvements prior to a developer selling the properties.

Mr. Hoffman said that he did not believe that the statute, per se, limits its applicability to the creation of newly established building lots, but talks in terms of whether the access will be along a street that has been suitably improved in accordance with the road improvement standards established by the municipality. He asked Mr. Lanzafama if that wouldn't be a more accurate characterization of what the MLUL actually says?

Mr. Lanzafama replied that he would not disagree with that, however he noted that there were cases cited that talk to the fact that that section did talk about the creation of new building lots. He said that this is really a "recycling" of an existing piece of property – something that the State's Master Plan actually talks to where they want to see us recycle existing areas.

Mr. Hoffman said that that may be an argument in support of the variances.

Mr. Lanzafama replied that he was trying to make both arguments – have his cake and eat it too, so to speak.

Dr. Behr said that he would be pleased if Mr. Lanzafama would just decide "which horse he is going to put in the race".

Mr. Lanzafama replied that they are just asking for the variance and he felt that it was appropriate to ask for that variance because there is adequate access, the property fronts on a street that is indicated on the Tax Map as a 33' R.O.W., and that the access driveway that comes to the house is adequate for the Police and Fire Departments to gain access, as evidenced by the Police Dept. indicating that they had no issues with the application.

Mr. Hoffman asked for the size of the existing dwelling on the property?

Mr. Lanzafama replied that he believed that it is about 2,400 S.F.

Mr. Hoffman said that, in that case, the proposal comes close to doubling the living area of the dwelling.

Mr. Lanzafama disagreed and said that he was talking about a footprint, although a second story is proposed to be constructed on the structure. He said that, if you look at the architect's summary on his zoning chart, the existing building footprint is 2,360 S.F. and the new building footprint is about 2,411 S.F., so you are not talking about a huge expansion because the whole area on the west side of the structure is being removed, which is where the old garage was. He said that only about 100 S.F. or so will be added to the footprint.

Mr. Hoffman said that reference was made to the fact that the Traffic Safety Officer had no issues or comments relative to the application, however the applicant would be amenable to installing some type of turnaround or k-turning area so that emergency service vehicles, as well as others, could more readily exit the property should they have occasion to be there. He asked if that would be something to be designed to a standard acceptable to the Fire Dept.?

Mr. Lanzafama replied that it could be, but it could also be simply large enough that he and Mr. Lemanowicz could sit down and work out a design using the appropriate turning templates to ensure that a vehicle could make that k-turn maneuver. He said that it would be the area at the northwest corner of the property that would be provided with additional asphalt paving to facilitate that maneuver.

For that portion of the R.O.W. of So. Northfield Rd. that does currently exist, in response to Mr. Hoffman, Mr. Lanzafama said that it is a graveled roadway. He said that there is no pavement

along the entire frontage and that the pavement ends right at the subject property line. He agreed that portions of So. Northfield Rd. (that part north of the subject property) is currently paved and adequately improved for emergency vehicles to gain access. He also agreed that existing gravel, continuing in a southerly direction along the rather extensive depth of the property is the only means of roadway improvement for those who would have occasion to go back further into the wetlands area. He noted that there is no development potential beyond this point because all of that area is wetlands and would not be developable based upon the NJDEP criteria.

Mr. O'Brien said that when we get into the issue of proofs later on, we will discuss whether a variance can be granted by the Board based upon the presentation that has been made and the MLUL requirement that emergency vehicles have access to a property. He pointed out that the premise that Mr. Lamafanza is using that this is merely an addition to a house does not agree with our Ordinance. He said that our Ordinance does say that if a house is more than 50% destroyed or removed, it is thereby considered to be gone and there are no inherent rights at that point. He said that NJDEP and wetlands are a whole different ballgame which is why they are requesting that they build on those foundations, in order to preserve their rights to rebuild.

In response to Mr. Trembulak, Mr. Lanzafama said that he believed there is adequate accessibility for emergency vehicles for the site, as well as for the Bragg property.

Mr. O'Brien said that you can get a truck into the Bragg property and turn around on their property, but you can't turn around on the subject property right now.

Mr. Lanzafama agreed and said that that is why they are considering a hammerhead design, so that a truck could pull up the driveway, back in, then proceed out. He said that, currently, the existing graveled area could be used.

Mr. O'Brien disagreed that a fire truck could turn around on the existing graveled area. He said that the only way they could get out would be to enter the Bragg property, turn around, then come out. He said that you could not get a 40' piece of apparatus to make a turn on a 15' wide access with the existing fence on the far side and hedge rows. He noted that the paved area of it is barely 10'-11'.

Mr. Lanzafama said that the applicant would be willing to modify the roadway and improve it to the extent necessary to allow emergency vehicles to make that turnaround.

Mr. O'Brien replied that that is for the Board to consider as part of their deliberations as to whether the applicant is improving a roadway to allow emergency vehicles or not.

In response to Mr. Pagano, Mr. Lanzafama said that the reason for the circular driveway is that there is no parking signage posted on the section of the access drive beyond Aaron Dr. and their easement does not allow them to park on the easement and obstruct access to the Bragg's. By allowing the installation of the proposed circular driveway, it gives the ability to get cars off of the roadways and onto the subject property, keeping the roadway open for emergency vehicles. In addition, a police car or ambulance could use the turnaround area.

With regard to some of the other issues at hand, Mr. Lanzafama said that one of the questions that was raised was the fact that there is an existing structure and an extensive amount of asphalt is proposed with regard to the circular drive and access to the building and whether or not they have met Sec. 142.1c of the Ordinance which restricts the coverage of noncritical areas of the site

to 70%. Based upon his analysis, he said that the coverage that would result on the noncritical area (11,469 S.F.) would only be about 32.2%, which is well within the restriction of the 70% allowed. In addition, he said that he took a second look at the size of the driveway and its configuration and one of the comments received from the Shade Tree Commission and the Environmental Commission asked if it could be shifted slightly to the east in order to save the tree that is located on the west side of the driveway. He said that they looked at reducing the size of it and could make it 12' wide as it comes across the front of the house and reduce the 20' width down to 18'. He said that about 290 S.F. of pavement could be eliminated from the driveway area to provide for more green space and still have adequate room for vehicles to park

off of the roadway area. He said that they will make that amendment to the plan. He also believed that there were some concerns about Sec. 133.5 which deals with the activities being conducted on the property. He said that the access for the property would be off-site, but it is within the 15' easement, so the access to the site is on an adjoining property and, therefore, a variance is requested. He said that Mr. O'Brien also pointed out the need for a variance for the accessory structure to be located within a front yard, and the septic system, pump, and field are technically located in the front yard. He said that, obviously, due to the site constraints this is a typical c-1 type variance due to the size of the property and the location of the lawfully existing structures on the property. He said that there is no other place for those accessory structures and noted that they are all below grade so that they don't result in any unsightly characteristics. He said that there is an existing shed to the rear that is dilapidated and will be removed which will be an improvement to the property.

In response to Mrs. Raimer, Mr. Lanzafama said that they could probably accommodate an additional 3 vehicles on the proposed circular driveway. He noted that there will be a 2 car garage and 2 cars could also be placed in front of it, and possibly even a 5<sup>th</sup> car. Therefore, there would be the ability to park 8 or 9 cars on the site. Since no parking is allowed on the street in the vicinity of the dwelling, if cars could not park on site, they would have to park all the way down the street near Aaron Dr. which is about 400' away. He said that a circular driveway will work the best in order to maneuver through the site and back out onto the driveway so that you can gain access back out to Valley Rd. He said that a conventional head-in driveway would also work, but they would lose the ability to get some additional parking off of the street. He also felt that a circular driveway will add some character to site. He said that the paving doesn't necessarily have to be asphalt and could possibly be pavers or some type of open blocks that would allow some permeability to them and allow for something more aesthetic.

Mr. Lemanowicz noted that Mr. Lanzafama had stated that the property extended to the centerline of So. Northfield Rd. He said that the way that the plan is drawn – the solid dark line that makes up the property line, appears to be 16 ½' off the centerline.

Mr. Lanzafama replied that the deed reads to the centerline, but the fact of the matter is that the Township has the right to that half width (16 ½') for roadway purposes. He said that it is shown on the Tax Map as a 33' R.O.W. He said that he indicated in his notes that there are two different lot areas, one that deals to the deed centerline which is 92,434 S.F. and he also indicated an area to the sideline (or R.O.W. line) and that is 83,523 S.F.

Mr. Lemanowicz said that he was trying to make sure that the Board understands that the underlying ownership of that 16 ½' strip is *not* the municipality.

Mr. Lanzafama replied, "Not necessarily". He said that he was not sure and had not done a full search back, but it really depends upon how some of that land was conveyed and whether or not it was conveyed to the municipality. He believed that some of the verbiage that was used in the older deeds was that it read to the centerline, including a 16 ½' R.O.W. width for roadway purposes "to the public". Whether or not that includes the municipality, he said that that might be a legal question.

Mr. Lemanowicz said that the R.O.W. there is more like an access easement more than it is the Township owning the land as if it was dedicated to the property. He said that Mr. Hoffman may be able to explain the difference.



Mr. Hoffman said that the town makes it clear that you measure the size of the lot and its area or acreage based upon the R.O.W. line, not the fact that some old deeds indicate that there may be some rights of fee ownership up until the centerline of a street – or basically it is an unimproved form of R.O.W. He tended to side more on the issue with Mr. Lanzafama in terms of how to plot out and measure the size of the lot. He said that the question is, who has the right to use which portion and for which purposes?

Mr. Lemanowicz said that in Sec. 133.4 states “Where a lot has frontage on a street that does not provide the right-of-way width required by the Township or Morris County, all required area and yard requirements shall be measured from the proposed right-of way line” and Sec. 157.1e sets the minimum R.O.W. width for roadways at 50’ which would be a 25’ half-width, not a 16 ½’ half-width. If that is the case, the setback for the house from So. Northfield Rd. would actually be 8 ½’ less than what is shown right now. He said that we have to deal with the R.O.W. line issue.

Mr. Lanzafama said that fact that the existing garage was only 11’ from the current R.O.W. line would have even put that into what would be the “dedicated” half-width of roadway. He did not think that reducing the 41.06 by 8 ½’ poses a significant difference with regard to the variance or the proofs the applicant would make. He said that, obviously we are still dealing with the same parcel of land and the 25’ half R.O.W. width is just an imaginary line on the ground. The lot is restricted by wetlands, its shallow depth, and by the location of the existing structure on the property. He felt that there is certainly an argument. Whether the variance is 41.06’ or 33.56’, he felt is inconsequential and that the proofs or arguments are still the same.

Mr. Lemanowicz said that typically he would recommend that the Board request the property be formally dedicated to make up that half width. If that occurs, he said that there will be an issue with the septic field because it will no longer be in compliance with State regulation with respect to the distance off of the R.O.W. line.

Mr. Lanzafama replied that that was what he was testifying to earlier, that he felt that it is unnecessary to grant additional R.O.W. width in light of the fact that there is no plan or desire to improve the roadway of So. Northfield Rd. along the frontage of the subject property to the south. The only reason you would dedicate additional land to the municipality would be for that purpose. He did not feel that that is necessary or warranted in this case and he asked that the Board grant the applicant a waiver or variance with regard to providing the necessary half R.O.W. width to 25’. He said that they would be more than happy to formally dedicate the 16 ½’ if the Board feels that that is necessary and transfer that full ownership to the municipality.

Mr. Hoffman noted that the NJDEP has recognized, based upon its more stringent transition area requirements, that there is some threatened or endangered species that may be located or found on the property. He asked if that could be said to be a feature that would attract visitors to the site who would be coming in their automobiles and need to access the area?

Mr. Lanzafama replied, “Absolutely”. He said that, if you look at the Master Plan, it talks about the fact that the character of this community is rural and the last thing we want to do is create fully paved roadways down into wetlands and flood plain areas which would be contrary to everything in good planning and good conservation measures. Based on the fact that there are environmental constraints on the subject property and beyond the limits to the south of the property, he asked the Board to waive the requirement of improving the road and making the dedication to 25’ of the R.O.W. width.

In response to Mr. Trembulak, Mr. Lanzafama said that, in his opinion, the existing R.O.W. of 33’ is consistent with the current character of the neighborhood. He said that it is improved as a graveled roadway and provides the necessary access needed by the utility company to gain access to their infrastructure. He added that there is no development potential on the southerly side of So. Northfield Rd. adjacent to the wetlands area that would provide a reason to widen that R.O.W. and improving the road in the future.

Mr. Lemanowicz asked Mr. Lanzafama to discuss if, for some reason, the town wanted to create a bird blind back there, the issue of widening and creating a roadway through the transition area.

Mr. Lanzafama replied that, as part of the threatened and endangered species and 150' buffer that is required in that area, any disturbance of the area requires a permit from the State. He said that, obviously, the State is not going to issue a permit that negatively impacts the wetlands or the environment that exists in that area. He said that the widening of the roadway would be totally unnecessary. If people wanted to have a nature trail down that area, he said that the existing gravel path would be more than adequate for them to gain access to the area to watch birds and habitat and things of that sort. He felt that the NJDEP would definitely look negatively upon paving a roadway for that purpose.

Mr. Lemanowicz said that the applicant's architect indicated that the proposed dwelling will contain 4 bedrooms, with a potential for 5.

Mr. Lanzafama stated that the proposed dwelling was only designed for 4 bedrooms and it *cannot* be a 5 bedroom home.

Mr. Lemanowicz felt that that should be made very clear when it is marketed, due to the septic design. He asked Mr. Lanzafama to briefly touch on the issue of the septic disposal field and transition area and how and if the Transition Area Waiver can apply to a septic field.

Mr. Lanzafama replied, "No". He said that the NJDEP does not allow the placement of a septic field within the transition area. He said that the only area that they have for the septic field (tank and pumps) is as shown on the plan which provides adequate setback from the R.O.W., the house, and outside of the transition area. He said that they had to obtain a General Permit #8 to construct the addition which is limited to under 800 S.F., so there are a lot of limitations on the property. He agreed that, even though they could get a permit to put the *house* in a transition area, they could not get a permit to put the *septic system* in a transition area.

Mr. Pesce asked whose property would be improved if the mouth of the unimproved street was improved for the purposes of providing an area for a k-turn?

Mr. Lanzafama replied that that would be part of that 33' cartway or roadway as indicated on the Tax Map. He said that it is a public road, so it can be improved within that area. If for some reason they had to dedicate a small piece to facilitate the swing, he said that they could certainly do that, however he did not anticipate that as being an issue.

The meeting was opened to the public for questions.

Ms. Margaret Davis, Poppy Place, said that her property backs up to the road. She said that it is not a graveled road, it is a dirt road. She said that the size of the foundation is proposed to be increased substantially and she was seriously worried about water displacement. She said the road has a gradual decline to the south and, when we get a heavy rain, runoff goes into the Passaic River. She said that the Passaic River comes up behind her house that far and there is water underneath the ground near the existing barn on the subject property. She said that the erosion along that road is like a river. She said that on the easement side of the line, the roots of the trees are exposed and they are falling over, one by one. Pointing out the easement, she said that there was a chain link running across between two wooden pillars. She said that it is strictly an easement for PSE&G and the Morris County Mosquito Commission and they are the only ones that are suppose to travel down it. She said that her property actually goes into the easement and they are allowed to cross her property. She implored the Board to physically walk the property in the Spring to see the erosion. Her concern was that the increased coverage of the foundation and the digging of a septic system will displace water and she wanted to know if anything is proposed that would address that.

Dr. Behr said that the Board will be hearing testimony about that.

Mr. Hoffman felt that it is a fair question for Mr. Lanzafama to address in terms of whether the applicant's development proposal will affect, exacerbate, or have no effect on existing stormwater conditions in the neighborhood.

Mr. Lanzafama said that part of the project is to eliminate some of the existing structures on the property. The existing structure located on the northeast corner is being removed as well as a portion of the existing structure that extended out to the west. That is the area where the septic system will be constructed. As part of the overall project, he said that there will be an increase in the total impervious coverage from what currently exists, however what the architect had indicated on the zoning table is not correct. The existing lot coverage is around 4,088 S.F. and the proposed lot coverage, with the reduction in the driveway as proposed, would come down to about 5,500 S.F. Therefore, the proposed increase is about 1,500 S.F. To mitigate that, currently there are no stormwater management measures employed on the property. As required by the Ordinance, the applicant is proposing to install a drywell in that side yard area that would receive runoff from the roof area. He said that that will mitigate any negative impact associated with the 1,500 S. F. of additional impervious area. He said that the building footprint is about 2,400 S.F. – 2,500 S.F. and all of that roof area will be directed to the drywell, so there will actually be a net decrease in surface water runoff that the neighbor might experience.

Mr. Hoffman asked Mr. Lanzafama what he knew as far as the types of soils in the area of the proposed drywell and stormwater facilities? He asked if they will be accepting or permeable in terms of the additional runoff that will be directed to those facilities?

Mr. Lanzafama replied, "Yes", and said that there were a number of soil logs performed as part of the investigation for the septic system. There happened to be one test pit done in the immediate vicinity of the drywell which showed that there was no evidence of groundwater. No mottling occurred within 136" of the surface and an appropriate baling test was done and a permeability test to determine that that location would have been adequate if a septic system was designed to be percolated there. In light of the information he reviewed, he said that the location of the proposed seepage pit for roof runoff would be an appropriate one and the soils will receive and accept that runoff from that area.

Mr. Hoffman asked if the soil logs were taken and performed in the springtime when there were heavy water conditions that tend to be more saturated?

Mr. Lanzafama replied that his firm had hired Yannaccone Associates to handle the septic system design and they performed the soil logs. He did not have the exact date but he believed that Mr. Villa performed those tests in the appropriate time period as prescribed by the Board of Health.

In response to Dr. Behr, Mr. Lanzafama said that it was his understanding that the proposed septic system has been approved, although he did not have any documentation with him.

Mr. Trembulak said that it would be provided to the Board as a condition.

Mr. O'Brien said that the Bernards Twp. Health Dept. had written a memo dated 11/4/10 on the matter.

Mr. Lemanowicz asked Mr. Lanzafama if the building envelope on the subject property drains towards So. Northfield Rd.?

Mr. Lanzafama replied, "No", and said that the runoff runs perpendicular to the contours and, therefore, it runs in a southeasterly direction, away from So. Northfield Rd. He said that all of the runoff from the roof area will be directed to the drywell and any overflow would spill out of the downspouts that are located along the back side and the east side of the building and they would run over land, down into the wetland area.

Mr. O'Brien requested permission to ask Ms. Davis some questions.

Ms. Davis was sworn. She pointed out the location of her property on the Township Zoning Map.

Mr. O'Brien said that Ms. Davis has indicated that she lives in the very last home on Poppy Place which is the southeasterly property before you encounter the Morris County owned land and the State Game Preserve. He said that Ms. Davis had indicated that her deed easement only allowed PSE&G trucks to use that easement. He asked if her deed actually says that in the easement itself.

Ms. Davis replied that that was what she was told when she purchased the home 17 years ago – that it was strictly a utility easement for PSE&G to access the lines in the back. She said that the Morris County Mosquito Commission does go back there and spray when there is an issue with mosquitoes and heavy water buildup. She said that nobody else goes back there. She said that she had her property surveyed and stakes put in. She said that one of her stakes is on the opposite side of the easement road so, essentially, if somebody were to walk down that way, they would have to cross her property.

Mr. O'Brien replied, "Only if it were true that there were a prohibition and you don't know that personally".

Ms. Davis agreed.

Mr. Collins noted that Mr. O'Brien had said that Ms. Davis' property was the southeasterly property before encountering the Morris County owned land, whereas he believed that it is the southwesterly property.

Mr. O'Brien replied that it is southwest of the So. Northfield Rd. line, but it is the southeasterly property of Poppy Place.

Mr. Lanzafama said that there are some issues with the design of the drywell that he must still work out with Mr. Lemanowicz. Because some of the impervious areas were changed, some of the computations need to be adjusted and must meet with his approval. He said that there are also some minor typos – two of the contours at the very end were both labeled 249 and one should have been 249 and one should have been 248. He said that the drywell was factored in as part of the critical area of the site. The way the drywell is currently configured, it is closer than 5' to the side property line. It will be relocated to provide the 5' setback. Because the drywell is in the side yard, a 25' setback is required from the house to the drywell. The proposed setback is 29', therefore he believed that it is in compliance. He said that there was some plan coordination between his drawing and the architect's plan with regard to the septic system. The architect's plan had showed an earlier design and he said that he will update that drawing and ensure that both plans are in sync with Mr. Villa's septic system design plan.

In summary, Mr. Lanzafama said that there are a number of existing nonconforming conditions with regard to front and rear setbacks and the issue of the unimproved street and whether or not additional R.O.W. dedication is appropriate. He believed that all of those conditions could be argued as a c-1 or c-2 variance. He felt that the fact that the site is significantly constrained by the wetlands, transition area, shallow depth, and the location of the structures which are lawfully existing on the property pose a certain practical difficulty in the development of the property and that the front and rear setbacks can be granted without substantial detriment to the public good or the intent and purpose of the Zone Plan. As to the location of the septic system or the accessory structure in the front yard, again he felt that it is a c-1 variance because of the constraints of the property and the fact that it is a below grade structure does not pose any detrimental impact to light, air, and open space or to the vista that someone might see as they look out their back yard or down the street. With regard to the unimproved lot, he said that this house has existed there for over 60 years and he felt that the c-2 criteria falls into play here. He felt that the proposal is a better planning alternative than leaving the house alone or abandoning it. He felt that to create a buildable lot with a house that adds to the community and betterment of the existing homes along So. Northfield Rd. is a positive and one that is in keeping with the Master Plan objectives of the community to create the rural character of a community setting. To have the house continue in

disrepair, he felt would be a negative. He felt that the whole issue of redevelopment of the property, allowing it to continue without improving the roadway or making the additional dedication of R.O.W. is appropriate under the c-2 criteria.

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Mr. Hoffman said that, during the recess, he was furnished with an envelope sent by Mr. Trembulak addressed to the Clover Heights Homeowner's Assn. in care of Michael Pesce at 3 Aaron Dr., Millington. Mr. Pesce is an alternate member of the Board and he said that he told him that, while he is currently a resident of the Clover Hill Subdivision (not within 200' of the subject property), he is no longer the official or agent of the Homeowner's Assn. Nevertheless, with the issue now having been brought to his attention and having also discussed this matter with Mr. Trembulak during the recess, both he and Mr. Trembulak felt that the more prudent course of action would be for Mr. Pesce to recuse himself from further participation in this particular application just so that we, hopefully, remove any question of there even being an issue of his participating in the matter after having gotten notice of this sort.

Mr. Pesce said that he would be happy to do so and left the dais.

Mr. O'Brien noted that that would leave 6 voting members and a majority would be needed to approve any application for relief, which would be 4 votes.

Dr. Behr noted that, following this application, there will be a presentation by Mayor Harrington, therefore he requested Mr. Pesce to remain present for that portion of the meeting.

Mr. Hoffman turned the envelope addressed to Mr. Pesce over to Mrs. Wolfe to retain as part of her file.

Dr. Behr said that it was brought to his attention that there are a number of issues in both Mr. O'Brien's and the Environmental Commission's reports that have not yet been addressed by the applicant.

Mr. Lanzafama replied that the Environmental Commission had raised the question about the driveway and whether or not it could be reduced. He said that his testimony was that it could be cut down by 290 S.F. and that they were in compliance with the 70% maximum allowable coverage for the noncritical area of the lot, as well as the existing septic system and well will be abandoned and they will be done with the appropriate approvals from the Board of Health. A new septic system and well will also be installed on the property.

Mrs. Raimer noted that Mr. Lanzafama had not responded to the Environmental Commission's concern regarding stormwater mitigation for the proposed driveway.

Mr. Lanzafama replied that he had talked about that briefly when he spoke about possibly using a different material other than asphalt. He said that he could work that out with Mr. Lemanowicz as far as a design for how runoff from the driveway area can be addressed. He said that they would be happy to do that – whether it is an additional drywell or some type of other measure. He felt confident that they could develop something that the Board and Environmental Commission will be happy with. He confirmed that he would be open to either option, whether it be an additional drywell *or* some kind of porous pavers.

Mr. Lemanowicz asked the Board to give him a preference if that is indeed put forth as a condition later this evening.

Mr. Hoffman said that we sort of, potentially, go back and forth on that. He said that, if he were a Board member asked to comment on that, he would first like to hear not only from the applicant's engineer, but from the Board's own engineering consultant as to some of the pros and cons and going one way or the other.

Mr. Lanzafama said that he would not want to necessarily use a drywell for the driveway area. He felt that a more porous pavement material might be more appropriate. He said that in Livingston recently he has done some small rain gardens where driveway water was discharged to a rain garden. He said that, if you do a drywell, sometimes there is a lot of sand and salt on the driveway and you might run into a problem with the drywell.

Mr. Collins recalled continuing to have this discussion and we have talked about pavers and we say that they are *not* actually allowing more water to infiltrate the ground water. He did not understand why we, as a Board, continue to have this discussion. He said that it has been said that when they get clogged up at some point, they are no longer porous and do not really mitigate water. He said that if we have a rain garden or another drywell, at least we are addressing those permanent or mostly permanent needs. While the Board needs to address each situation independently, he said that he would like to have a Board policy in place to start from and take from there.

Mr. Lemanowicz replied that the Planning Board has asked him to develop a Township level Best Management Practices (BMP) Manual which is in progress. He said that it will address items such as this. He agreed that there is a lot of talk about various pavers being permeable and a lot of them aren't. He said that the BMP Manual will give specifications if you are going to claim a paver area to be porous which will make it easier for the Boards to apply.

In response to Dr. Behr, Mr. Lemanowicz said that, in this case, the property has a 2 car garage. He felt that it would seem that the loop portion of the driveway would not be used that often - you would be backing out onto the access easement and leaving rather than going away from the access easement and coming back. If the loop was constructed of grass pavers, it might survive. He said that you would not want to put a grass paver on something that is used continually. He said that, at the east end of the driveway where the existing frame shed is, the ground drops off. There is a 248 contour there that is also outside of the 150' wetland buffer line. He said that it looks like in the area of the framed shed, there might be a potential to put something there to get the grading to work. Since the area will be disturbed to take the framed shed out, that might be a convenient place to put it.

In response to Dr. Behr, Mr. Lemanowicz said that there will clearly be revisions to the plan. Whether they will become conditions of approval, or if the Board is going to want to see the plan come back to them, has yet to be determined. However, he felt that we should try to design to some extent how big a rain garden needs to be. He said that there are some trees there which we would obviously want to retain. If the Board chooses to make it a condition that it be sized, he said that that would be okay with him. He said that, if the Board chooses to wait until he gets to review a plan and let the Board see that design again, along with some of the other changes that were discussed - that is the Board's choice.

Mr. Lanzafama referred to Item D on Pg. 4 of Mr. O'Brien's report in which he had stated that approximately 17 trees will be removed. He said that the applicant is proposing to provide some additional shade trees and noted that the Shade Tree Commission had asked for some new street trees to be installed along the easement and common driveway with the Bragg's. He said that the applicant will be happy to do that and add it to the plan, as well as some additional shade trees to mitigate the loss of the existing trees on the property.

Mr. O'Brien said that the Shade Tree Commission recommended 1 street tree along the frontage of the driveway. He asked Mr. Lanzafama if he was saying that the 1 street tree would replace the 17 destroyed trees? If not, he asked where the other 16 trees would be.

Mr. Lanzafama replied that they are obviously limited as to what they could do with regard to where the septic system is. He said that there is certainly an opportunity to plant some trees on the site and he said that they will plant as many as they possibly can. He did not know if they could foot 17 trees in and around the structure without significant disturbance to the transition area which he said is his problem. He said that he could see the opportunity to plant at least 4 or 5 trees in and around the frontage and around the house.

He said that Item E deals with the existing concrete block barn at the south end of the property. He said that the structure is in somewhat disrepair and the roof structure is starting to go. He said that for them to take that out, they would have to secure another General Permit from the NJDEP. He said that there is no plan at this point to renovate it, although they could certainly explore that possibility. He said that they would like to get an approval with a condition that they will do whatever the NJDEP *allows* them to do in the wetland area. He said that it is in heart of the wetlands and whether or not it is better to just leave it remains to be seen, however the owner will explore the possibility of removing it – there are no plans to renovate it and reuse it because of its location.

Mr. Hoffman said that he appreciated what he perceived to be Mr. Lanzafama's and his client's concern that they can only do within a designated wetlands area what the NJDEP will permit the

property owner to do vis-a vis the existing structure, but separate and apart from the state agency's jurisdiction over what can and cannot be done in that area, he asked him if he would disagree if he were to offer the statement or comment that this Board, as an agency of the municipality has an obligation as part of its consideration of the overall plan to not allow something in the nature of an "attractive nuisance" to remain there that could be potentially hazardous to youngsters, etc.?

Mr. Lanzafama replied that he would not disagree at all and would agree that you would have a responsibility. He said that, what he was trying to convey is that the applicant wants to take it down, but will have to go back to the NJDEP to secure the appropriate General Permit to do that work and provide the necessary restoration. He said that they were hoping not to have to wait for the Board to act until they secure that permit – they were hoping that, perhaps, that approval or the removal of that structure could be tied to the C.O. instead of the building permit.

Mr. Hoffman said that he felt it was in the nature of a compromise to say that you need a little more time to work it out and perhaps the C.O. should be the timing trigger, but that is up to the Board to make the call.

With regard to Mr. O'Brien's Item F "Reuse Old Foundation", Mr. Lanzafama said that he believed that the architect spoke to that and also the fact that it allows them to rework the site without significant impact on the transition or wetlands areas. He felt that there are definite advantages to reusing the existing foundation from an environmental point of view and minimizing site disturbance in a sensitive area.

He believed that Item G "Circular Drive" was discussed.

With regard to Item H "Garage", he said that he believed that the architect spoke to whether or not it should be squared off and about the setback to the septic system and also the articulation in the building. He felt that it gives a nice look to the building in providing the setback to the façade.

He said that no exterior lighting is proposed except for the normal porch type lighting that might be appropriate on a single family home. There is no driveway lighting proposed.

He said that there is no flood plain that impacts the property. The flood hazard design elevation is a good 10'-12' below the level of the house and so he said that there is no need to raise the electrical sockets, for example, or to make special provisions for the mechanical equipment.

He said that the frame shed is definitely coming down.

As to Item L "Access to Rest of South Northfield", he said that this application would not impact negatively on that access and PSE&G will be able to continue to access their easement as they always have.

He said that he believed that the reports of the Environmental Commission and Shade Tree Commission have been addressed.

Mr. O'Brien disagreed and said that he did not believe that the Shade Tree Commission's report was addressed, specifically Items 1, 4, 5 & 6.

With regard to Item 1, Mr. Lanzafama said that tree protection fencing was shown on his plan, but it will be expanded as necessary. He said that he has a Grading and Drainage Plan separate from the architect's plan. As Item 4, he said that when they go in to do the work on the site and take down the existing trees as necessary, all of the existing trees to be retained will be pruned of dead wood and the tree roots will be fertilized to revigorate the trees. As to Item 5, any dead material will be removed from the site, including the existing downed tree by the driveway. As to Item 6, he said that we talked about the possibility of doing a rain garden as opposed to a second drywell and felt that that is probably the better alternative. He felt that he could work the design in such a way that it would not negatively impact any of the trees to remain on the site.

Mr. Lemanowicz referred to Item 1 under "Technical Comments" of his report dated 1/11/11, and said that we do not have a signed and sealed survey for the property which should show the easement on Lot 6.

Mr. Lanzafama replied that he did not know why that did not plot on the Grading Plan and that it is on his survey.

Mr. Lemanowicz said that the property line should be labeled versus a R.O.W. line along So. Northfield Rd. because the resident from the Clover Hill Subdivision made reference to an easement, as opposed to a R.O.W. He said that we need to make sure that we understand what is going on there as part of the survey. He said that he had also asked for the plan that is referenced in the wetlands permitting, which is two generations earlier than what we are looking at to be provided to make sure that they coincide. He said that there were some minor issues with the proposed drywell. He did not believe that those revisions will make a dramatic change to the drywell size. He said that Mr. Lanzafama also touched on the other items about coordination and it has been acknowledged that it needs to be completed.

The meeting was opened to the public for questions. There were none.

Mr. Lanzafama confirmed that his testimony was concluded.

The meeting was opened to the public for comments.

Mr. Sanford Bragg, co-owner of 433 So. Northfield Rd., was sworn. He said that he and his wife own the property over which access would be provided, as it is currently to the subject lot. He commended Mr. Daunno and his team on producing a very good plan on what is a very difficult lot. He felt that in his opening statement upon describing the current residence as somewhat dilapidated is an understatement. He said that, not only is it an eyesore, it is a hazard. He said that it has been boarded up, but there are a lot of children in the neighborhood and a lot of opportunity for a mishap. In his opinion, the proposal would be very consistent and positive with the neighborhood. He said that the dwelling is proposed to contain approximately 3,700 S.F. which is consistent with the size of his house which contains just under 4,000 S.F. He said that he and his wife are very supportive of the easement and if there is a need for additional easements, they would be happy to provide the same. As to the improvements to So. Northfield Rd., he said that he would strongly support the so-called "no improvements" and felt that any widening of So. Northfield Rd. would be detrimental to the character of the neighborhood and would cause a lot of established trees to come down. As a resident of So. Northfield Rd. for 28 years, he said that he has not experienced any problems in terms of emergency access. He understood the concern about emergency access and he felt that the proposal to provide space for a k-turn at the end where the access road is would be a viable plan. He said that, during hunting season, many people park at the end of So. Northfield Rd. where the access road starts, so paving that for a k-turn would also help people who use the access road to go down for hunting or other activities, including walking. He noted that the Shade Tree Commission had mentioned that 17 trees will be removed, however it was his impression that a lot of those trees are "junk trees". He said that the lot is already quite wooded and felt that, even if you took 17 trees off of it, it will still be pretty wooded. One concern that was discussed that he shared was with the runoff from



the circular driveway. He said that the way runoff works right now is that, because So. Northfield Rd. has a hill coming down a slope towards his property and the property in question, when there is rain it comes down So. Northfield Rd. and then turns into his driveway and flows onto his property. He felt that the remediation that was discussed in terms of the runoff from the circular driveway would be helpful in not contributing to any more runoff onto his driveway. He said that he and his wife were given a copy of the plan some months ago and are fine with it. Overall, he said that he was very supportive of the plan and felt that the steps that have been taken so far have been very responsible. He said that he was aware that this is not the first attempt to try to develop the property. From what he saw from the previous attempt, he said that it was done in a much less sensitive way and did not go very far for that reason.

In response to Mr. Hoffman, Mr. Bragg said that he did not believe that the previous plan ever came to the Board because it ran afoul of discussions with the State.

Mr. Hoffman said that he was not sure that that amounts to an attempt to develop or at least any disposition of any such proposal because the application includes a certification that there was no prior development proposal for the site.

Mr. Bragg replied that he believed that he misspoke. However, he believed that there were some very preliminary actions that were taken but they did not rise to the level of an application.

Dr. Behr said that, assuming that all of the questions of the Board's consultants and the Board members themselves have been answered properly, he said that there are a number of items that, if the Board were to approve this application, would need to be conditioned and they deal with substantive issues as well as matters of stormwater. He said that the choice is either that the Board consider an approval with a number of conditions or require that the applicant come back to the Board with a fully completed set of plans showing the existence of all of the things that have been discussed tonight.

Mr. Hoffman said that a middle ground might be a need to go back and have the engineer for the applicant and the Bd. Engineer confer to whittle down the number of potential engineering issues and where there are apparently open questions that warrant some commentary or determination such as how the runoff should be handled put them into place before the Board is asked to render a vote.

Dr. Behr asked the Board members if they felt that they had sufficient information to vote on the application this evening or require the applicant to return having made the changes that were discussed so that there is clear agreement between the engineers as to exactly what they are going to do and, where possible, provide plans to support that.

Upon a poll of the Board, the members unanimously agreed that they had enough information/evidence to proceed with a vote this evening.

Dr. Behr said that, based upon the testimony presented, he felt that the applicant needs to present this as a new building and make sure that the proofs are sufficient to deal with a new building.

Mr. O'Brien agreed that Dr. Behr's statement was a fair one to make and that, in terms of the MLUL Sec. 40:55D-35, this Board's burden of proof to consider in its deliberations is whether or not the applicant has provided the proper access for emergency vehicles and should the applicant show that that he can provide such access, then the Board can approve a variance for an unimproved street and segue into the burden of proof for the remainder of the bulk variances. He said that the applicant's planner/engineer has discussed both c-1 – that there is a hardship based upon the size and shape of the land and topographic conditions, as well as c-2 – that the benefits of the application outweigh the detriments and whether the applicant has met that burden of proof. Lastly, the Board must consider whether or not there is a negative impact on the Zone Plan, Ordinance, or upon the neighborhood and town.

Mr. Trembulak gave his summation. He said that it is important to remember that we have an existing house on the subject property already. The standards for granting relief are spelled out

in the MLUL and noted that Mr. O'Brien had mentioned Sec. 40:55D-35. He then quoted Sec. 40:55D-36 and said that the Statute makes it clear that the whole purpose of this requirement for abutting an improved street is really related to the issue of emergency access. He said that the Statute is very broad and says that, in any case where the circumstances justify the Board can grant relief provided that there is adequate emergency vehicle access. He felt that Mr. Lanzafama has indicated without dispute that there *will* be adequate access. In fact, he said that the emergency vehicles access will be improved from what presently exists today. He said that there is a house there now that could be occupied without making any changes to enhance accessibility for emergency vehicles and the applicant is proposing to add an additional turnaround to create a k-turn. He felt that the application clearly complies with the requirements of the Statute for granting relief and the circumstances justify it. He said that Mr. Lanzafama has already touched upon the other variances and noted existing nonconformities that the applicant is either not changing or is reducing in order to bring the property into a condition that is more compliant, as well as being an obvious enhancement not only to the subject property but to the entire neighborhood. Therefore, he felt that there are many benefits to the proposal with no opposition, and actually support from a neighboring property owner. For all of the above reasons, he requested that the Board approve the application for the relief requested.

The Board began its deliberations.

Mrs. Raimer said that the topographic conditions are such that the applicant meets the criteria for a c-1 variance. She said that the applicant is proposing measures that will positively impact the neighborhood by including stormwater management measures on the property where none previously existed; by the applicant's willingness to improve the property at the end of the R.O.W. in order to provide access for emergency vehicles; by addressing runoff from the driveway in a manner that is mutually acceptable to the engineers; and by improving the visual appearance of the property by taking an otherwise dilapidated home and an unsafe condition and creating a beautiful structure that will no longer be unsafe for the residents in the area. She also wanted to make it clear with regard to the R.O.W. or access road that, if the town has rights to this pathway, she wanted to ensure that the development of the property doesn't deprive the public from continued use of the pathway or R.O.W. for recreational purposes. For the reasons stated and the limitations expressed, she said that she would be in favor of granting the application.

Mr. Collins agreed and said that Mrs. Raimer's comments were well stated.

Mr. Pagano also agreed. He said that the proposed improvement to the area and the property, in general, is a great improvement over what exists today. He did not feel there would be a negative impact. He also noted that one important neighbor was in support of the application, therefore he said that he would vote in favor.

Mrs. Malloy felt that the application will be a wonderful improvement to the neighborhood. She agreed with everything that Mrs. Raimer had said and felt that the proposal is consistent with all of the other homes and improvements that are currently being made in the neighborhood. She was in favor of the application.

Mr. Fargnoli agreed and felt that the benefits will definitely outweigh any detriments. He felt that getting rid of the existing dwelling that is just a hazard and may cause nothing but mischief by children in the area would be a good thing.

Dr. Behr concurred with his colleagues. He felt that the conditions must specifically address what is going to happen to the dilapidated barn. While he recognized that there may be some issues with the NJDEP, he said that this Board's concern that what could be a potential nuisance is not allowed to remain a nuisance. He felt that it is very important that the applicant meet with Mr. Lemanowicz and take care of the enhancements to stormwater that were indicated in the conversations. He believed that we were moving in the direction of a rain garden as the best choice for capturing runoff. Other than that, he felt that the applicant has met his burden of proof and the benefits of granting this application would far outweigh any potential negatives. He was in favor of the application.

Mrs. Raimer wanted to make it clear that whatever necessary documentation reflects that this will be a 4 bedroom home, because that is what the septic system can accommodate to ensure the safe and effective operation of that system.

With regard to the issue of the barn at the rear, Mr. Lemanowicz said that there were discussions about having that resolved as a condition of a C.O. He felt that that might be problematic because the barn has nothing to do with the C.O. for the house. He felt that it might be a condition of the Zoning Official signing off for the issuance of a building permit. He was concerned that departments are being mixed between the Construction and Zoning Departments.

Mr. Hoffman said that it is a timing catch-all that would preclude further development of the project unless and until this structure were, in fact, removed. He said that that can be a useful tool.

Mr. Lemanowicz said that he has seen issues like this go back where the Construction Official says that the barn has nothing to do with any permits.

Dr. Behr believed that this can be properly handled at the level of the Final Zoning Permit.

Mr. Trembulak said that his concern was a timing issue. He said that they had no problem removing the barn as quickly as they can, however, if it is going to require NJDEP approval, that may take many months and their only request is that, if they are waiting for NJDEP approval in order to remove the barn, that that not hold up the issuance of a building permit and delay his client from starting to build the house. He said that he understood that nobody can occupy the house unless a C.O. can be issued.

Mr. Collins asked if some additional type of escrows could be requested to be released at such time when the building has been removed?

Mr. Trembulak said that his client is not going to be able to occupy the house or sell it to someone to occupy it without a C.O. If they cannot get a C.O. without the barn being removed....

Mr. Collins said that we don't think that we want to have that coordination. It is a difficult process is what we are being told by our professionals.

Mr. Lemanowicz said that, when the Mayor speaks on the new processes, there is actually a second stage of the Zoning Permit that *immediately* precedes a C.O. Under the current way it is done, he said that there would be an issue but if the Township adopts what Mayor Harrington will describe in her presentation, then this may be moot.

Dr. Behr did not see it as an issue because they will not be able to use the property until all of the conditions of the approval have been met and if one of the conditions of the approval is that the barn is removed or otherwise made safe, then he felt that is sufficient protection. He said that it has to do with a change in the State law, so there are times when a C.O. is appropriate and some times when it is not, however the Township has ample protection in that they cannot sell or use this property until all of the conditions of the approval have been met. If one of the conditions is that the barn be made safe, then he felt that would be sufficient protection.

Mr. Hoffman said that since this involves legal ways to achieve a desirable purpose, he said that he would personally feel more comfortable in withholding the Final C.O. as being a far more useful tool than posting "x" dollars in some escrow account which a developer, or its successor, might say that it is the town's problem and can take the money and do what they will with it. He did not feel that that is an adequate substitute. He preferred it to be part of the overall permitting process.

Dr. Behr said that it was his clear understanding that we have adequate protection under the permitting process without requiring any escrow. Since there would be additional review

required by our consultants, he said that the applicant has to provide sufficient escrow to cover those costs anyway.

Mr. Collins said that he was not following what the trigger is because we are going back and forth – it's the C.O., it's not the C.O.

Dr. Behr replied that it absolutely must be a Zoning Permit. He said that they cannot occupy the premises without a Zoning Permit and, in order to get a Zoning Permit, they need to meet all of the conditions in the Resolution. He felt that the proper protection is the Zoning Permit which gives us ample protection to make sure that all of the things that they say they will do are, in fact, done and that the plans reflect all the changes that are required by the Board.

Mr. Collins replied that, if we have a mechanism to follow through, he was fine.

Mr. O'Brien said that the Zoning Permit issue is not done.

Dr. Behr agreed that it is waiting for the Planning Board.

Mr. Collins said, however, if we are acting on this tonight, we must deal with this issue before that is done.

Mr. O'Brien said that it would be a wise consideration by the Board.

Dr. Behr said that what he was hearing was that we cannot vote on this tonight, or can we?

Mr. Collins said not unless we come to some agreement of the mechanism.

Dr. Behr asked Mr. Hoffman if he had a solution?

Mr. Hoffman said that you could say that before either of those documents can issue, and if the applicant doesn't need both of them – he certainly needs one or the other, before either of those might issue, it would have to be removal of this existing accessory structure done to the satisfaction to the Board's Engineer or the Township Engineer – or some other official. He said that before either a C.O. or a Zoning Permit can issue, we have covered it two ways then.

Mr. Lemanowicz suggested making mention of both of them and then, hopefully, by the time the applicant is actually ready for the C.O., we will have this other mechanism in place.

Mr. Collins said that he was not comfortable with any other mechanism other than what we have right now. He said that he cannot rely upon anything that is in the future and could not vote on something that is "a possibility".

In response to Dr. Behr, Mr. Collins made a retroactive motion to agree to continue the meeting past 11:00 P.M. until 11:25 P.M. Mr. Fagnoli seconded the motion. All were in favor.

Dr. Behr said it was his understanding that the law states the requirements for both a C.O. and a Zoning Permit so the issue is that our Township Ordinance has not yet been amended to bring us into compliance with the new law. He asked if that is the issue?

Mr. Hoffman replied that he did not dispute what Dr. Behr had just stated.

Mr. O'Brien replied, "My answer is a yes".

Dr. Behr advised Mr. Collins that we are waiting for the Township Committee in all due speed to act on the Mayor's Planning & Zoning Process Design. Once they have acted on it, he said that the protection exists.

Mr. Collins replied that with no disrespect for the Chair, he was familiar with that body and things don't always act in post haste and so he could not act on something and give his vote to

something where there is no mechanism in place to actually fulfill what our votes are accommodating.

Dr. Behr said that he had the same familiarity with the pace of the Township Committee in taking action on some issues that are important to us.

Mr. O'Brien asked if our counsel's recommendation on language, which includes what exists as well as what may possibly exist in the future - having both triggers cited there - would that be sufficient?

Mr. Collins said that he was yet to hear from all of you that we have a mechanism in place to deal with what we want to vote on tonight to actually follow through on this. He asked if he was mishearing something?

Mr. O'Brien replied, "You are not".

Mr. Collins said that that was what he needed to hear.

Mr. Lemanowicz asked Mr. Hoffman if we could insert language similar to what we are talking about, as far as procedures, that instead of saying that a C.O. should not be issued until the building is removed, to say that the Construction Official should consider the verification of the building removal by the Zoning Official....

Mr. Hoffman replied that we do not give direction or instruction to the Construction Official. He said that what he felt we are interested in each of the Board members seeing happen, and which the applicant is saying he will endeavor to have happen, is for this old accessory structure to be removed so that it is not a potential hazard or other type of problem. It seemed to him that, as long as at least one mechanism is in place that provides some leverage or assurance for that to happen sooner rather than later, that goal or aim of the Board is protected and recognized. So long as we have a stipulation in this Resolution to the effect that before "x" or "y" can happen, the structure will have had to have been removed in a satisfactory way, he believed that the aims and purpose of the Board of Adjustment are sufficiently addressed.

Mr. Collins asked Mr. Hoffman if he was saying that, from a Board Attorney's perspective, he did not care if we currently have a mechanism to actually follow through on this?

Mr. Hoffman replied that he was being placed in a role beyond that of giving guidance to the Board on a given application.

Mr. Collins replied that he was being asked to vote on something based upon several conditions which need to be verified and, if we don't have a mechanism in place to verify them, he felt that we are going in a circular argument here.

Mr. Pagano asked if the application could be approved, including the removal of the structure?

Mr. Trembulak said that his client would remove the structure tomorrow or next week. The only concern they had was a timing concern because of the fact that they can't go out there and just do it because it is in wetlands, which means they must go to the NJDEP, and he felt that everyone knows they are dealing with one of the slowest moving bureaucracies known to man and it may take 6 months or longer to get the NJDEP approval. He said that all they are asking for is that it not hold up the issuance of a building permit while they are waiting for NJDEP to act on the application to remove the shed. As long as they can get a building permit issued so that they can start working on the project, he would be satisfied with the understanding that they cannot get a C.O.

Mr. Hoffman said that it is a rather common and frequently utilized mechanism that this Board or the Planning Board utilize in terms of assuring removal of existing structures, sheds, relocation of them, removal of some type of condition, or stockpiling of questionable items on a piece of property. He said that we frequently have, as a condition to any approval of a redevelopment

proposal for that type of site, a stipulation or condition saying that before the applicant can go forward – he could understand in this case that they want to extend it beyond the date of a building permit – but before any C.O. is issued, “x, y and/or z” have to happen. He said that he was not at all uncomfortable, in fact he was quite comfortable, with a condition along the lines of what is being discussed. He said that it is not at all atypical of the way this Board or other land use agencies normally operate.

Dr. Behr said that we need to resolve this in fairness to the applicant. He said that we will have a motion and vote on it. He said that he believed that sufficient protection exists in various ways to ensure that this building will be taken care of. He said that he would feel much more confident if he could be assured by the Mayor that the changes to the zoning permit that have been, in fact, in front of the Township Committee for some time now, would finally be acted upon, but he imagined that there will be further action by the Planning Board on that.

Mr. O’Brien said that he and Mr. Lemanowicz had a suggestion about possible wording. He asked Mr. Hoffman if he would be comfortable in directing the Zoning Officer to report to this Board that the barn had been removed prior to the Construction Official issuing a C.O.?

Mr. Hoffman asked Mr. O’Brien to state his suggestion one more time.

Mr. O’Brien said that the Resolution would direct the Zoning Officer to advise this Board whether or not the barn had been removed prior to the Construction Official issuing a C.O.?

Mr. Hoffman replied, “No”, and said that the Zoning Officer does not give advice to this Board.

Mr. O’Brien and Dr. Behr said that it would be a report.

Mr. Hoffman said that it would be an informational certification as to what the status of the removal process is and that would have to be issued by what point?

Mr. O’Brien replied, “Prior to C.O.”. He said that that way the Board has it and the Construction Official has it. It would serve as a paper trail for everybody.

Mr. Hoffman replied that he could work that in.

Mr. Trembulak asked to offer something either in addition to or in lieu of what is being discussed. He said that they would agree, as a condition to the issuance of a building permit, that they would have to provide proof to the Construction Official, Mr. Lemanowicz, or whomever, that they have made the application to the NJDEP in order to remove the barn.

Dr. Behr replied that that would be *in addition* to what Mr. Lemanowicz and Mr. O’Brien had suggested.

Mr. Lemanowicz replied that that would allow him to track it individually and see everything.

Dr. Behr asked Mr. Hoffman if he had a draft motion for the Board to consider?

Mr. O’Brien said that the broad area conditions that the Board has discussed so far this evening included stormwater, landscaping and lighting, the provision of a k-turn, and removal of the barn, including the Engineering, Planning, Environmental Commission and Shade Tree Commission reports.

Mr. Lemanowicz also added the survey and L.O.I.

Mr. Hoffman suggested that someone might want to offer a motion to approve the variance application of Daunno Associates, LLC, subject to all of the terms and conditions which have been discussed or which are set forth in the reports received from the Board’s consultants or reviewing agencies, as well as standard administrative types of conditions that are included in the

Board's Resolutions, all of which conditions will be set forth in more detail in the follow-up Resolution of Memorialization.

Mr. Fagnoli made the motion which was seconded by Mr. Collins.

A roll call vote was taken. Those in favor: Mrs. Raimer, Mr. Fagnoli, Mrs. Malloy, Mr. Pagano, Mr. Collins, and Dr. Behr. Those opposed: None.

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**DISCUSSION - PLANNING & ZONING PROCESS DESIGN**

Mayor Harrington said that, over the course of last year, it was clear that the process of planning & zoning, issuing permits, and following up was broken. Some of the things that were clear evidence of that included evidence of escrow accounts that were going into arrears, confusion on what was approved, and a lot of other things. After some discussion and deliberation on trying to

decide what to do, a team which included the list of participants on the front page of a document entitled "Long Hill Township Planning and Zoning Process Design, 11/9/10", which was distributed to the Board. She said that the team sat down, talked through the process, identified where there were issues, came up with resolutions which were documented, and came up with at least a start of an action plan on how to implement them. She said that results are contained in the document presently before the Board.

She said that the team met twice and broke the process into 5 segments and dealt with each of them at what they felt were some natural break points. The first segment being the Application Process which was defined as the initial contact from the time that someone walks into the Zoning Office and asks a question, until the time that they submit an application to the Board. The next phase was called the Pre-Hearing Process and includes the submission of the application to the point where that application is ready to process. She said that they tried to avoid the phrase of the application being *complete* because of the Time of Decision laws and that has a very specific legal meaning. Although it is probable that those two things coincide in this process, at the time it was felt to be prudent to just determine that the application is really ready to process/be heard. The third segment of the process is from that point in time until the Board makes a decision and that is called the Hearing Process. The fourth segment is called the Decision Process and runs from the time the decision is rendered by the Board through the time construction permits are issued. The last segment is called the Follow Up and runs from the time the construction permits are issued and all the follow ups beyond that.

She said that the first page of the document is a high level process flow and she described the color coded highlights of the steps of the application.

Referring to Pg. 9, she said that each of the bars that are shown indicate the responsible individual that would perform that action. Once the plans are signed, both the Zoning Officer and the Construction Official get copies of the signed plans and those signed plans are what each of them work from.

Referring to Pg. 11, she said that either all of the conditions can be met at the same time that construction is completed, or it is possible that some of the conditions are longer term. For example, if construction is completed in January and the landscaping cannot be completed until the springtime. If there are only long term conditions that have not been met yet, a mechanism was put in place to have a calendar reminder at the appropriate point in time to call for the Zoning Officer to go out and do the inspections. At that point, if the conditions have not been met within the time frame that was determined by the Board, then we have a zoning enforcement process that would kick in. Otherwise, the Final Zoning Permit would be issued.

Dr. Behr said that his understanding of a Zoning Permit is that you can't use the property until you receive the Zoning Permit. He asked if he was correct in terms of how the law reads?

Mr. O'Brien replied, "Yes". He added that, prior to the change in the State law, the process flowed through the Construction Official who was responsible for ensuring that the conditions of the Board were met. The State changed their law so that the Construction Official no longer has any jurisdiction on the zoning side and that is why we are in this mess.

Mayor Harrington said that, for each of the 5 segments of the process, where we thought the issues were identified and then what the action plan was (how the issues would be addressed). For example, for small projects that are less than 400 S.F., currently a homeowner could come into the Construction/Zoning Office and want to start their project without any kind of reference, without anyone looking at a map to see if there are wetlands or steep slope issues that need to be addressed. It is entirely possible that a homeowner could start their project and get half way through it and find NJDEP issues. She said that it is a nightmare for both the Board, as well as the homeowners. One of the things that she said we want to put in place is a reference map that would overlay our Tax Map and allow the Zoning Officer to identify potential issues. It may not be 100% successful, but maybe we will hit 95%. It also gives the homeowner the option and warning that they may be running into those kinds of issues.

Dr. Behr said that the intent of this is to try to significantly cut down on situations whereby an applicant must unnecessarily spend two meetings before the Board because he/she is not adequately prepared, when the matter could have been handled in one meeting.

Mayor Harrington agreed and noted that good checklists and qualitative and technical reviews were also included in the process as a means of shortening time spent before a Board. She said that there will be some additional up front review costs in review time but those costs are *far* well offset by the costs of having to reschedule and continue hearings for applicants.

In response to Mr. Collins, Mayor Harrington referred to and explained the last page of the document which contains Action Items that were developed.

She said that she has already presented the Planning and Zoning Process Design to the Planning Board and warned them that Mr. Pidgeon's next step was to go through the Zoning Permit Ordinance and make sure it is consistent with this process. She said that, hopefully, that will happen in a timely fashion and the Township Committee will move those ordinances fairly quickly given that they are consistent with the process that has already been seen.

She said that Mr. Batista is working on the new checklists and Dr. Behr is working on the Tax Maps. The Chairs of the Board of Adjustment and Planning Board also need to sit with the Chairs of the Environmental and Shade Tree Commissions and make sure that timing is worked out so that the applications get to those commissions in a timely fashion and that the Board's get feedback from them in a timely fashion. Also included is the notion that applications not be scheduled for hearing unless the escrow accounts are up to date with sufficient funds to cover at least one more hearing.

Mr. Collins noted that one of the last items is to establish a department calendar. He assumed that that was for Construction *and* for Zoning.

Mayor Harrington replied that it is mostly for Zoning and is for those long term conditions and Mr. O'Brien agreed.

Mr. Collins looked at it differently. He assumed that there are many software programs available for Township's to utilize. He said that we should get to the 21<sup>st</sup> century.

Mayor Harrington said that she understood, but the primary goal is to at least have a tickler file.

Dr. Behr said that part of his report will include some of the steps to include which will take us in that direction, but then it is a question of budget.



Mayor Harrington said that some of the cost would be for initial data entry. She agreed that we could make much better use of technology but how far that will get initially, she could not say.

Dr. Behr thanked Mayor Harrington for appearing and making the presentation and the Board members for remaining longer than usual.

Mr. O'Brien suggested that the revised document be sent out with Mr. Lemanowicz's suggestions about the Preliminary and Final Zoning Permit and this way the Board will see the up-to-date version.

Mayor Harrington invited the Board members to call or e-mail her with any questions they may have.

The meeting adjourned at 11:46 P.M.

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DAWN V. WOLFE  
Planning & Zoning Administrator







