

MINUTES

MARCH 15, 2011

BOARD OF ADJUSTMENT

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Vice Chairman, Mrs. Raimer, called the meeting to order at 8:00 p.m.

She 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:

- Sandi Raimer, Vice Chairman
- John Fagnoli, Member
- Edwin F. Gerecht, Jr., Member
- Maureen Malloy, Member
- Felix Ruiz, Member

- Christopher Collins, 1st Alternate
- Michael Pesce, 2nd Alternate

- Barry Hoffman, Bd. Attorney
- Thomas Lemanowicz, Bd. Engineer
- Kevin O'Brien, Twp. Planner
- Dawn Wolfe, Planning & Zoning Administrator

Excused: E. Thomas Behr, Chairman
Joseph Pagano, Member

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EXECUTIVE SESSION

It was determined that there was no need to hold an executive session.

APPROVAL OF MINUTES

The minutes of January 4, 2011 were approved as written on motion by Mr. Gerecht and seconded by Mr. Ruiz. Mr. Collins abstained as he had left that meeting at 8:22 P.M. Mrs. Malloy abstained as she was not present at that meeting.

ANNOUNCEMENT

Mrs. Raimer announced that there are two applications scheduled on tonight's agenda. The first application (that of Robert & Elisa Horvot) is a continued application. The application of Hunter Property, LLC, has also been scheduled to be considered, however, it will not be heard until completion of the Horvot application. She said that she could not predict with any degree of certainty what time that may be. She advised Mr. Bisogno, attorney for Hunter Property, LLC, that he may not have the opportunity to present as much as he would have if he had the full evening. She advised him that there is an opening on the Board agenda in two weeks, at which time his client could have the entire evening if he and his client so choose.

Mr. Bisogno requested 5 minutes to speak to his client.

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ROBERT & ELISA HORVOT

268 Union Street
Block 11510, Lot 25

#01-01Z

**Bulk Variances
Development Permit
Relief from Principal Building
Setback from Critical Area**

Present: John Sullivan, attorney for the applicants
Frederick Meola, licensed professional engineer
John Peel, environmental consultant
Robert Horvot, co-applicant

Lucille Grozinski, certified shorthand reporter

This is a continued application.

New proof of service was submitted.

Mr. John Sullivan, attorney for the applicants, explained that he was filling in for Michael Rubino, attorney who had been representing the Horvot's up until now, because he was not feeling well.

He said that he understood that there were some plan revisions required and agreed upon at the last meeting and he understood that there has been a revised set of plans submitted bearing a revision date of 3/1/11. In addition, he said that he has received Mr. Lemanowicz's report dated 3/8/11; Mr. O'Brien's report dated 3/8/11; and the report of Mr. Farnell (on behalf of the Shade Tree Commission), dated 3/10/11, and is prepared to address them.

He said that he had two witnesses to present this evening. The first is the applicants' engineer, Mr. Frederick Meola, and the second is applicants' environmental consultant, Mr. John Peel, who will discuss the wetlands issue and status of the permit process.

Mr. Frederick Meola, licensed professional engineer, was sworn. He reviewed his educational and professional background and was accepted as an expert. In response to Mr. Sullivan, he explained the revisions made to his plans on 3/1/11. He said that, originally, his clients were proposing to move the dwelling back to conform to the required 50' front yard setback. He said that there is a knoll on the property above the flood elevation. Recent conversations with the NJDEP Wetlands Division however, indicated that they did not want the house moved back. They said that it could be reconstructed, but at the same location with the slight exception that they could straighten it out because the existing house is slightly tilted on the lot. Therefore, the dwelling is now proposed with a 42' front yard setback. The plan shows about 3'-4' in front of the house to the flood elevation line and approximately 7' to the rear flood elevation line. It is still sitting on the knoll in the middle of the property that is above the flood elevation. He noted that this is the only home on that side of Union St., therefore there is no alignment problem that you sometimes look for when a house is moved slightly forward. He said that the balance of the properties around the subject property will never get developed because of flood elevations and wetlands. Whether the front yard setback is 50' or 42', he did not feel there will be a noticeable difference. There were some minor changes made that came out of the previous meeting dealing with the underground piping system for the detention which resulted in a change to concrete pipe. He said that Mr. Lemanowicz brought up a good point – if they used plastic pipe, they would have to use some type of ballast material to keep it down so that it does not float during times of flooding. Because of the price of oil, the cost of concrete and plastic is almost the same, whereas plastic used to be used to save clients money. The stockpile is now shown in the front of the property, at the request of the Shade Tree Commission that it be moved to another location on the property where it will not be on the area of existing and proposed trees.

In response to Mrs. Raimer, Mr. Meola confirmed that the movement of the house forward on the property was properly re-noticed. He agreed that the delays due to the snow actually weighed in the applicants' favor.

Mrs. Wolfe acknowledged that new notice was served for the second time in the Echoes-Sentinel and then it was discovered that a minor correction needed to be made and there was still time to have it published in the Courier News. She said that she had affidavits of publication from both newspapers.

It was acknowledged that this application was first heard on 8/3/10 and was carried to 10/5/10 and 11/16/10 and was carried on both of those (latter) occasions at the request of the applicant. The application was then rescheduled to 1/18/11 and 2/1/11 and the meeting was cancelled on both of those occasions due to snow events. Therefore, this meeting is only the second time the application was actually heard.

In response to Mrs. Raimer, Mr. Meola said that there are two NJDEP Land Use General Permits that are required by this application and they are basically a letter of notification of the proposal which is the reconstruction of a lawfully existing dwelling. He said that there is also a General Permit (B-3) needed because of the driveway grades which cause the need for about 3 yards of dirt in order to grade properly. The permit allows up to 5 yards of dirt to be placed within a flood plain area.

Mr. Hoffman said that those various permits are all actions that are within the purview of the NJDEP, whereas Mrs. Raimer's question was specifically who, on behalf of the applicants is going to address the need for a Flood Plain Development Permit, which is a local requirement under our Ordinance.

Mr. Meola replied that he was the best person to address the question. He referred back to the two NJDEP Land Use General Permits which are basically what they call a General Permit By Rule or a Permit By Rule. He said that all you do is send the NJDEP a letter saying that you are going to be doing those two items and just give them 14 days notice. He said that he would send Mr. Lemanowicz a copy of the letter for his file. He said that it is not a full application for those minor little items, although years ago it was, but they now have these General Permits. As far as a Township Development Permit is concerned, he said that there is a requirement for 50' outside of the building. He said that, clearly, this property is not going to be able to comply with that. It is an existing condition that has been there for years. There is an older home on it which *can* be repaired, however the cost of repairing it is worse than taking it down and rebuilding it. He said that the basement is showing signs of age and there is a lot of leaking and there also appears to be mold.

Mrs. Raimer said that when Mr. Meola reviewed Mr. Lemanowicz's 3/8/11 engineering report, there were still outstanding issues that weren't addressed since his 1/28/11 report. To the extent that it is within his purview, she asked Mr. Meola to address those items.

Mr. Meola referred to each of the items in Mr. Lemanowicz's 3/8/11 report. Under "Technical Items", he said that Item 1 deals with the L.O.I. and that he would leave that item for Mr. John Peel, environmental expert, to deal with. Item "c" deals with the NJDEP permits required for construction and he already addressed them. As to Item 3, he said that Mr. Lemanowicz correctly points out that the house has been moved to provide for a 42' front yard versus the 50' on the original plan. He said that Item 4 deals with the Development Permit that we just discussed. He said that a signed and sealed survey was submitted as required in Item 5.

In response to Mr. Lemanowicz, Mr. Meola said that the survey was prepared by James P. Deady, LS.

In that case, Mr. Lemanowicz said that all he needed to do was to reference that on his plan because he had noted a Map of Land dated 1874.

Mr. Meola replied that that is the subdivision map for the whole area. While the applicant does have a survey, it is his procedure in the office that, even if they are not doing a survey because the client already has one, they still do enough work to verify it to make sure that he is comfortable before representing to the Board that the survey is correct. He said that it was fine and did check and agreed to reference the survey.

As to Item 6, Mr. Meola said that it deals with the nonconformities in the Ordinance. He said that he parking in the critical area is the most difficult thing. He said that there is a knoll around the property and everything else is below the flood elevation. Bearing in mind that the flood elevation is at 215.6, he said that if the home were at 216 at the garage floor, 215.6 is approximately 4'-5' in front of the home and then it drops down to the road elevation which is 214.2. There is a garage with the home, so a car can park in the garage, but on the driveway, even if they park the car close to the garage door, a portion of the car is going to be below that flood elevation by about 3"-6" in elevation, depending upon the car that is parked there. It is a condition that they can't really do much about because they are locked into the "sugarloaf" that is in the middle of the property which is the only area above the flood elevation. He said that Mr. Lemanowicz pointed out that the required setback is 50' and 25' from critical areas and the proposal is anywhere from 3'-6' from those numbers. The last item deals with the 25' separation between the home and the detention system. He said that this is the area where you have to put it to connect all of the roof leaders to bring them into underground detention. It could be moved slightly but they would be running into a problem because, as you roll away from the house, the ground is dropping and then he can't get cover over the detention pipe. He said that they are kind of locked in if there is a requirement for the detention system, which there is, and this is the only location where you can put it and it will be approximately 5' from the house.

Mr. Lemanowicz asked Mr. Meola to explain the detention system. He noted that the majority of the time, the Board sees perforated pipe with clean stone and we would make a comment that being that close to a basement might not be a good idea.

Mr. Meola replied that the system that is being proposed is buried concrete pipe that will hold the water and allow it to run off at a reduced rate into the catch basin at the street. It is all sealed – it is not perforated and there is no stone around it – they are deliberately putting QP around it. He said that, because of this home and its location, it is going have a waterproofed basement anyway – it will have to be sealed. He understood exactly what the concerns are which is the migration of water from a seepage pit or detention basin getting into the foundation. He said that 25' is the number he uses and the Board is on the same line as he is. He said that the proposed system is not your typical groundwater recharge system, it is strictly a system that is going to hold the water in a sealed vessel and allow it to run off in a prescribed rate so that it is not increasing the runoff down stream.

Mr. Hoffman could not recall an instance where a closed system is utilized for residential development, as distinguished from perhaps a commercial enterprise where there is more involved with underground piping, etc.

Mr. Meola replied that Mr. Hoffman was "pretty much correct". He said that, traditionally, closed systems are usually used on commercial sites where you need more storage and you have more area to work with. He said that, for a lot of reasons, you prefer to use the perforated system where the water seeps back into the ground because it is all clean water coming off the roof. He said that sometimes in underground systems in commercial sites, you have to put it into a sealed container because you also have to collect the pollutants that are coming off it. In this case, because of the position we are at and the location we are in, a perforated system does not work because he cannot get the system far enough away from the foundation, which is why they went with the closed system.

Mr. Hoffman felt that, ultimately, the Board will rely on the most part upon Mr. Lemanowicz's review as to the adequacy of the system be it subsurface, drywell, rain garden, or any other means.

Mrs. Raimer said that the next point deals with an inconsistency between the zoning table and the coverage calculations, which she felt is a minor point that can be addressed with Mr. Lemanowicz outside of this session.

Mr. Meola said that he and Mr. Lemanowicz have already had some conversations. One of the inconsistencies is because the applicants are going to a modular home and it is a “canned architectural plan” and, therefore, it doesn’t always meet site specific conditions. He said that he added a Note 12 which says that the “Engineering plans have priority over architectural plans in regards to elevation of floors and ground”. He said that Mr. Lemanowicz is correct in that, if you look at the architectural plan, it only shows one step between the garage and the house and that isn’t what we have here. There will have to be at least 3 or 4 steps from the garage to the first floor in order to meet the conditions of the site. He said that there were also a couple of clarifications. He said that he called it minimum floor area and what we are really trying to say is minimum building coverage. He said that the first line is, in fact, the first floor footprint, ground level. He said that he will prepare a correct plan before signature.

Mrs. Raimer referred to Item 9 and said that the Board received a memo from the Shade Tree Commission dated 3/10/11. She asked Mr. Meola to clarify if the 3 trees proposed to be removed are so that the home can be placed in its desired position.

Mr. Meola replied that the trees are being removed in order to construct the house. Since it is a modular home, it will be delivered via a crane which will have to be able to lift it up and place it on the site. He said that the 50” tree in the rear which is shown to be removed is a tree that is coming down whether it is agreed to take it down or not. He said that most of the top of it is dead and most of the branches have fallen off of it. He said that it is not a healthy, vibrant tree and should come down for safety reasons.

Mr. Lemanowicz said that the three trees he was referring to were *all* in the rear, including the 50” tree Mr. Meola spoke about, as well as two 10” caliper trees.

Mr. Meola said that he would have to look at the one 10” caliper tree that is on the other side of the fence. If the Shade Tree Commission or Mr. Lemanowicz feels it is healthy enough to stay, they will be happy to leave it. He noted that there is an evergreen tree at the corner of the fence that the applicants would really like to take down since they are fencing in the yard for their children, however it is at the Board’s wishes.

Mr. Robert Horvot, co-applicant, was previously sworn. He said that he is willing to keep all of the trees at the rear of the house. He said that he had a picture of the 50” caliper tree that was discussed and described it as “not really a tree – it is a 10’ high stump” because it broke it half and crashed down on the shed next to it. He said that, as long as his fence is 10’ from the stream bank (which is where all the trees sit), he will not touch any of that property back there and those trees can stay. He said that his concern was mainly the trees in the front of the house which are “bent”. He said that he needed to get them out of there because they are “horrible” and also in order to get the home delivered and placed on the site. He said that the trees on the side of the property are diseased and dying and the Shade Tree Commission indicated that they did not have a problem with him trimming them or cutting them down. He said that it is mainly the one side and the front of the property that he would like to clear out and clean up.

In response to Mr. Hoffman, Mr. Horvot said that the large existing fir tree is on the westerly property line near a decrepit shed. He said that he would have no problem leaving it there.

Also in response to Mr. Hoffman, Mr. Meola said that the large tree he indicated is in poor shape is one that Mr. Horvot took a picture of and described as a “10’ high stump”.

In response to Mr. Ruiz, Mr. Meola said that the tree in the corner is *inside* the fence.

Mr. Hovot noted that it will be *outside* of his new fence.

Mr. Meola said that Item 10 has already been covered and he will handle it with Mr. Lemanowicz. He said that Item 11 deals with the architectural plan but, for the record, from the finished floor to the peak of the roof, it is 27' 1 1/2" (which he verified with the modular company). He said that, if the Board would like, he will add it onto his plan for clarity sake.

Mr. Lemanowicz said that he preferred that to show that distance.

Mr. Meola confirmed that there will be 4' from the garage to the first floor.

After doing some calculations, Mr. Lemanowicz said that it sounded like the height will still be under 35' without a problem.

Mrs. Raimer said that Mr. Meola had provided a lot of detail regarding the concrete pipe, therefore she did not believe it to be necessary to go into a lot of detail on Item 12.

Mr. Lemanowicz felt that the details could be worked out.

In response to Mrs. Raimer, Mr. Meola said that he felt that he had sufficiently addressed Item 13 when he discussed the proposed concrete piping system. He said that it is the outflow pipe that will control how much water is running off.

Mr. Collins asked for the plan concerning water disbursement. He asked if it will always dissipate 100%, or will there be some retention during any given period of time?

Mr. Meola replied that the pipe system will be taking the small outflow pipe, whether it be 3" or 4", and the bottom of that, which is the bottom flow channel of that pipe, is going to be level with the bottom flow channel of the 24" pipe, so the water backs up and then flows out at a very gradual rate, but the whole pipe will disburse. He said that it will dissipate in the vicinity of about 48-72 hours.

Mr. Collins asked if we have the ability to retain it longer? He said that this has been the problem in the town because during those 48 hours there is lots of water coming from multiple places. He did not feel that it really helps address the whole problem, although it addresses the problem on the property.

Mr. Meola said that you must bear in mind that, what is coming off the site today is coming off the roof and is getting into the system with no type of control. With the proposed control, it is as if the house isn't there and just the lawn area is running into the street. For this site, he said that it is a dramatic reduction, but Mr. Collins is correct that for overall site, it is probably not a noticeable number, but it is probably not going in the wrong direction.

Mr. Collins asked if there is *the ability* to retain the water during opportunities when we can, and is it practical? He said that, if the system is full and the water is still flowing, we need to get the water off the property.

Mr. Lemanowicz said that the issue is who is going to make the decision? He said that you can put a valve in anything, but who makes the decision to open or close the valve – the homeowner?

Mr. Collins said that it could be a positive thing for a homeowner for water retention for irrigation.

Mr. Lemanowicz said, however, if the homeowner closes it and goes on vacation and forgets....he was concerned about having someone do that. In the smaller storms like this, he said that we still need to try to control it.

Mr. O'Brien said that the river here peaks about 24 hours after the rain stops, so they have it for 48 hrs. and are adding on the tail end of everything when, presumably, there is more capacity.

In response to Mr. Ruiz, Mr. Meola said that the capacity of the pipe is 440 C.F. He said that there are approximately 7.5 gallons per C.F.

Mrs. Raimer noted that Items 14 & 15 are for the Board to consider, rather than Mr. Meola.

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

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ANNOUNCEMENT

After conferring with Mr. Bisogno, Mrs. Raimer announced that the application of Hunter Property, LLC, No. 10-04Z, is carried to April 5, 2011, with no further notice.

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Mr. John Peel, environmental consultant, was sworn. He reviewed his educational and professional background and was accepted as an expert.

He said that, following Mr. Horvot's first appearance before the Board, he was advised to address the wetlands issue. He said that he became involved in the application in September, 2010 and identified wetlands mostly off site. He said that there are really no wetlands on site, excluding the creek at the rear of the property. He said that he delineated the wetlands and Mr. Meola's office surveyed it and they submitted a joint application to the NJDEP in November, 2010. The application was form a combined LOI, General Permit #8, and a Transition Area Waiver for redevelopment. He said that the application is currently pending with the NJDEP. He said that the review is technically over and he has to make some minor administrative calculation changes. He said that Ms. Sue McNefsky of the NJDEP has verbally signed off on the application and they are just waiting to get the permit approved and expect to receive it in about 30 days.

In response to Mr. Hoffman, Mr. Peel said that General Permit #8 allows a property owner a disturbance of up to about 750 S.F. in either wetlands or a wetlands buffer transition area if the house is older. The house would have to have been built before 1988 for that permit to even be applicable. He said that Mr. Horvot's house meets that test since it is an older house. He believed that the application for General Permit #8 is for 736 S.F. of disturbance and it is only of the buffer – no wetlands. The Transition Area Waiver for redevelopment is as simple as it gets with the NJDEP and is for an activity in a transition area where it is already disturbed. In this case, he said that Mr. Horvot is literally replacing the house and is disturbing the foundation, which is the Transition Area Waiver aspect of it. He said that the NJDEP has looked at this thoroughly and is ready to sign off.

In response to Mr. Sullivan, Mr. Peel confirmed that, if the permits are issued to Mr. Horvot, he will be able to develop his property in accordance with the current proposal. He added that even the NJDEP preferred that the house basically stay in its footprint and it is *nearly* in the same footprint – there are minor deviations, but they are happy where the house is now proposed to be located.

Mr. O'Brien asked Mr. Peel if he anticipated that the upcoming NJDEP approval will require any change whatsoever to the location of the house which might entail further variances?

Mr. Peel replied, "No, I don't". He said that this is a pretty simple application for the NJDEP and he did not anticipate that it will change.

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

Mr. Sullivan requested to bring Mr. Horvot back up to discuss Mr. O'Brien's report dated 3/8/11 and, in conjunction with that, Mr. Farnell's 3/10/11 report because he believed that they both

address the tree issues. He asked Mr. O'Brien if his question regarding the 4 trees at the front of the property has been addressed.

Mr. O'Brien replied that it was pretty clear and thanked Mr. Sullivan.

Mr. Sullivan noted that Mr. O'Brien's report recommends a native plant species and, in particular, Mr. Farnell recommends that the trees be replaced with red maples at 3"-3 1/2" caliper, evenly spaced.

In response to Mr. Sullivan, Mr. Horvot acknowledged that he had had an opportunity to review the reports. He said that he was amenable to replacing the 4 trees along the street with red maples. He also said that he advised the Shade Tree Commission that he would plant trees on his property to replace any that he is taking down.

Mr. Sullivan said that the report is suggesting that 3 replacement trees be planted and that they be red maples, 3"-3 1/2" in caliper, and should be evenly spaced inside the property line between the western edge of the proposed driveway in the location of the sanitary sewer lateral (essentially along the front of the property).

Mr. Horvot said that he did not have a problem with that, but he would prefer to plant 2 in the front and 1 on the side or in the rear, although he will plant them all in the front if requested to do so. He said that, since the house has not been placed yet, he did not know how he planned to landscape.

Mr. Hoffman asked, "How about if the final determination as to the location of those trees be left up to the Shade Tree Committee to set?"

Mr. Horvot replied that they can recommend, but he wanted the final decision of where he is going to plant trees on his property to his determination.

Mr. O'Brien advised Mr. Horvot that he had a landscaping plan before the Board and the decision is before the Board right now, and he has already made a suggestion. He said that the decision is to take a look at the landscaping plan before the Board, which today calls for 4 trees in the front and the removal of the trees in the back. He said that that if he wanted to move things around, it should be made clear as to what is going to happen.

Mr. Horvot replied that the only trees he will be removing are the four in the front and the ones on the side, which he already noted to the Shade Tree Commission. He said that the one in the back is the "huge stump" which he will have removed since it is broken and has fallen already. He said that he would like to plant two trees in the front – where exactly in the front, he was not sure, and possibly one along the side.

Mr. Meola said that red maple trees get larger than the cherry trees that were originally proposed, which would have a slightly smaller canopy. He suggested that one red maple be planted to the right of the driveway and plant the other two centered between the sanitary sewer and the driveway. He said that that will allow enough space in between them so that when they start becoming mature trees the canopies are not overlapping. He said that, if Mr. Horvot wants to do some additional landscaping in the back, he assumed the Board would not have a problem with that since it is not a requirement.

Mrs. Raimer agreed.

Mr. Lemanowicz asked how much space there is between the gas service and the sanitary service?

Mr. Meola replied that there is approximately 40' in between. He agreed that a tree would be 10' from the gas line on either side. He said that the gas line probably has a little flexibility and could be moved underneath the driveway. He said the sanitary sewer is locked in because of the detention system.

Mr. Lemanowicz said that he was not too stressed about the sanitary sewer line. He noted that it will take a while for a red maple to get out 10' with its roots to get to the gas service. He asked Mr. Meola if he had talked to PSE&G as to whether they will allow the applicants to keep that service, or are they going to install a new one?

Mr. Meola replied that they had *not* spoken to PSE&G yet. He said that, as part of the construction, they will meet with PSE&G. He said that one of the possibilities is to take the gas line and come around the side which would allow more room to get the tree in the front, with the gas under the driveway.

Further discussion of the trees in the front yard followed. Mr. O'Brien noted that cherry trees would serve as a "fruit stand" for every deer in the neighborhood and he felt that maple trees are a much better way to go. He said that the question is one of position and number. He suggested that Mr. Lemanowicz help move them around amongst the lines.

Mr. Lemanowicz said that the issue is putting a tree too close to the service lines which is something he did not prefer. He said that, if it is within 10', eventually that pipe is going to be within the drip line of a red maple because they get substantial in size. He said that, if you plant red maples 20' o.c., they will touch eventually although it may take a while.

After further discussion, it was agreed that there will be three red maple trees planted along the street frontage of the property, two of which will be located to the west of the driveway, and one of which will be planted to the east of the driveway.

In response to Mr. Sullivan, Mr. Horvot said that he had agreed to preserve the large fir tree in the rear of the property and will protect it with fencing during construction. He also agreed that the top soil stockpile will be moved to the front of the property.

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

Mr. Sullivan gave his summation. He felt that the application proposes an appropriate use of the site and that it is at an appropriate scale and fits well into the area. He said that his clients face several practical hardships which arise, essentially, from pre-existing conditions, the first of which is that the lot is undersized. The Ordinance requires a minimum lot size of 20,000 S.F., and the existing lot area is 15,000 S.F. It was his understanding that the applicants were unable to obtain additional lands or sell this lot to adjoining property owners and so they have not been able to correct that nonconformity. Due to the critical area, as Mr. Meola had indicated, he said that the NJDEP requires that the existing 42' front yard setback be maintained rather than the 50' that was originally proposed. He noted that the Environmental Commission has also urged that the applicants go with a 42' front yard setback as opposed to 50'. Due to the shape of the lot, topography, and flood elevation, he said that he understood that it is basically impossible to locate the driveway outside of a critical area. For these same reasons, he said that they cannot observe the building setback from a critical area, but they are providing a slight improvement over what currently exists there. He said that this is a property which, obviously, without the granting of these variances cannot be developed for residential purposes although it is in a residential zone. He felt that the proposal is consistent with the Master Plan objectives – in particular, to conserve and enhance the essential rural and residential character of the Township and to best provide for the health, safety, and general welfare of the residents and to maintain the Township's identity as a fundamentally low density residential community and to ensure that development is compatible with, and sensitive to, existing residential areas and established neighborhoods. He said that they felt that they have been able to present, through testimony of professionals, both special reasons and substantial benefits from the application. First, that the accessory structures which total 200 S.F. of coverage and are located within 5' of the bank of the brook will be removed completely and will not be replaced. He said that the dwelling is attractively designed, appropriately scaled, incorporates the current engineering standards, and is designed specifically for this area. He said that they feel it is consistent with the neighborhood and is somewhat smaller than what would be permitted under the Ordinance. In particular, he said that the house has been designed with some ideas to specifically address its location in or

around the flood plain. The house itself will be above the flood elevation, but it will provide for waterproofing, double sump pumps, and raised mechanicals so that it will then meet current State environmental requirements. He said that the setback to the critical area is being slightly improved. Of equal importance, he said that the site contains a structure which we have heard is in poor condition. It could possibly be renovated but, financially, it is really not feasible. He said that the applicants are going to invest a lot of money into the site and put an attractive new home on it with stormwater management which are all things that do not exist now, therefore he felt that it will be a major aesthetic improvement which is a benefit, not only to the neighborhood, but to the community as well. Finally, he said that he did not believe that there will be any negative impacts. A single family dwelling is proposed in a zoning district which allows single family dwellings. Although the lot is undersized, he said that his clients are really only asking for a couple of variances which are the result of the existing conditions on the site – the front yard setback, setback from a critical area, and the driveway within a critical area. He said that they all come not from the size of the lot, but basically the environmental constraints of the lot. Otherwise, they are able to conform with the other setbacks, impervious coverage requirement, and the F.A.R., as well. He said that that tells us basically that the site, even through it is a bit undersized, can accommodate this particular house and this particular use. He said that the applicant indicated that he would satisfy all stormwater and environmental concerns and, ultimately because of all of that, he did not see that there is *any* substantial detriment to the public good or significant impact on the Master Plan or the Zoning Ordinance. He asked the Board to consider approving the application.

At Mrs. Raimer's request, Mr. O'Brien reviewed the required proofs. He said that Mr. Sullivan is correct in that he points out that the relief that they are requesting this evening consists of bulk variances, some of which are existing on the site, as well as a Development Permit, which is required for any property in the Township that is affected by flood waters. The burden of proof that has to be met consists of either proving the case via hardship based upon the size or shape of the land itself, or for various topographic qualities of the land, or an extraordinary and exceptional situation affecting the land itself, or what is called a "flexible c", meaning that the benefits outweigh the detriments of granting the application. He said that this applicant is making a case for the topographic and size and shape of the actual lot itself and the constraints that occur on the lot because of its substandardness. In addition, the applicants have to show that they meet the negative criteria by showing that there will be no substantial impairment of the Zone Plan, Master Plan, or the Zoning Ordinance, as well as the neighbors and surrounding properties. He noted that he and Mr. Lemanowicz have a proposed set of conditions for the Board to consider should it wish to view the application favorably.

Mrs. Raimer asked to hear the potential list of conditions up front.

Mr. O'Brien said that, from his report, items to be dealt with include the fact that the exterior lighting would have to be shown. He said that, at the last meeting, we discussed that the windows could be shown on the left side, first floor, and the garage side of the house. It is up to the Board members to decide whether or not they want that. Right now there are large blank expanses on the house. He said that the 3 red maple trees are to be planted in the front and 2 other trees are to remain in the rear.

Referring to his own report, Mr. Lemanowicz added that his notes also include a reference to the Boundary Survey as noted in Comment 5; Comment 7 – coordination of zoning data; Comment 9 with respect to trees; Comment 11 with respect to building height; Comment 12 with respect to stormwater; and Comment 14 with respect to the conservation easement for the water courses.

In response to Mr. Pesce, Mr. Hoffman confirmed that the Board grants Development Permits.

Mr. O'Brien explained that a Development Permit is not a variance, it is an item of relief that this Board can grant based upon a showing by the applicant that all of the problems entailed with that flood plain in those areas have been adequately addressed to its satisfaction.

Mr. Hoffman added that a Development Permit is needed when the property is located within a designated flood hazard area, in which case such an approval or permit from the reviewing

agency is necessary separate and apart from whether there are any bulk variances. He said that there have been some instances where a variance free application still has to come before the Planning Board for a Development Permit and, among other things, it would call for a showing that appropriate flood proofing measures are undertaken to help preserve the development that is proposed on the site as well as to not detrimentally affect nearby properties. They may include things such as “flow-through designs”. There are also other criteria such as flood proofing measures, as needed, that can and often are considered incidental to that type of application.

The Board began its deliberations.

Mr. Gerecht said that he felt that the applicants have met their burdens and have shown that they are improving the property and overcoming any detriments, if there are any. He said that they are very willing to work with the professionals to overcome any minor details that may need to be remedied and have addressed the water runoff. He felt that the proposal will be a large improvement over what is currently there, which he described as “an eyesore”. He believed that there will be no detriment to the neighborhood and felt that it will, in fact, improve it and serve as a benefit to the street. Although the lot is undersized, he said that there is nothing around it and, therefore, it looks bigger than it is. He said that he would be in favor of the application.

Mr. Fargnoli agreed and said that he saw absolutely no reason not to approve the application. He felt that the applicants have proven their case and that the benefits definitely outweigh the detriments, if there are any. He felt that the pre-existing conditions have been dealt with properly and said that he would approve the application, with the conditions discussed.

In response to Mrs. Raimer, Mr. Gerecht and Mr. Fargnoli confirmed that they also felt that the applicants have met the criteria for the grant of a Development Permit.

Mr. Ruiz concurred. He said that the applicants have agreed to the suggestions made by the Board, its consultants, and other commissions. He said that he looked forward to seeing the proposed new dwelling on the property.

Mrs. Malloy said that she was in favor of the application as well. She felt that a terrible piece of property will be improved with a wonderful house for the applicants’ family. Contingent on receiving the required NJDEP approvals, she said that she was satisfied that approval of the application can be granted.

Mr. Connor agreed with his colleagues.

Mr. Pesce added that he felt that the applicants should be commended for taking on a very challenging lot in an area that could benefit greatly from a face lift and coming up with a creative plan to deal with it.

Mrs. Raimer said that she appreciated the applicants’ patience in the process, but she noted that the property has a lot of challenges on it that the applicants are aware of and so it was important from the Board’s point of view that all that could be done was going to be done with regard to protecting the applicants and their family in the event that there is excessive water which inevitably will be there. She said that they have taken the necessary steps that were advised by their engineer, the Environmental Commission, and every other board and professional that has come their way and given advice regarding the application. She said that she did not know if there is any other flood proofing or stormwater mitigation measures that could be taken at this point. She felt that the applicants have met their burden with regard to the undersized lot, its shape, and the flood elevation. She felt that the applicants are proposing to add a beautiful home to a neighborhood that otherwise would not have such an attractive piece of property. She said that the existing property is one that would be abandoned and left in perpetuity to look as it does and far worse. She felt that the applicants are also doing pretty well in addressing the water runoff from the property, which is more than before. For all those reasons and the reasons for which her colleagues have stated, she said that she would grant approval of the application. She added that she wished to clarify that her approval is conditioned upon the environmental and engineering issues that were discussed, however the one item which she did *not* find critical to

her determination is where the applicants place the windows on the side of their house and would *not* include that as a condition of her approval. Mr. Gerecht, Mr. Felix, and Mr. Fagnoli agreed.

Mr. Hoffman asked if the conservation easement would be as Mr. Lemanowicz suggested, to protect the water course that traverses the site? He said that the Board can impose such a condition, but if the applicants wish to stipulate to it, all the better.

Mr. Sullivan said that his clients have no problem providing (a conservation easement), but the question is describing it. He said that they will work with Mr. Lemanowicz as to where it will come off of the rear property line. He said that, obviously, it would cover the brook itself and he assumed the bank of the brook, but he was not quite sure how much further they would be going from there.

Mr. Lemanowicz said that he wanted to look at what the Township has done in the past on items like this. He said that it would probably be some line parallel to the south top of bank and from that line to the rear of the property. He said that the question is how far south of the southerly bank and, at this point, with the shed and all that we will have to make sure that we try to allow the Horvot's adequate use of their rear yard. He said that that is a dimension that he will have to look at.

Mrs. Raimer advised Mr. Lemanowicz that when he looks at that dimension and compares like properties or other reference sources, he look at the most *minimally* invasive line to be drawn on the Horvot's property.

Mr. Lemanowicz replied, "Definitely".

Mr. Hoffman asked if the NJDEP, incidental to its grant of permits needed from that agency, often sets forth their own deed restrictions or conservation easement and, if so, would the Board be duplicating their standards?

Mr. Lemanowicz explained that each standard is somewhat unique, however he said that he would let Mr. Peel answer the question.

Mr. Peel said that the Wetlands Permit will be built into the transition area, although it is not the same as the stream buffer. He noted that there are wetlands off site. He said that there is a stream buffer under the Flood Hazard Area rules and they don't want anybody doing anything within 25' of any brook. In this case, he said that everything proposed is under a Permit By Rule Flood Hazard and doesn't even require a formal permit under Flood Hazard Permit By Rule.

Mr. Hoffman asked Mr. Peel if he was concurring that the Board is *not* duplicating a requirement of the NJDEP if it sets its own conservation or restricted area on the water course in the back of the property.

Mr. Peel replied, "That is correct".

Mr. Gerecht made a motion to grant the requested bulk variance and Development Permit relief subject to the conditions discussed, all of which will be set forth in detail in a subsequent Resolution of Memorialization. Mr. Fagnoli seconded the motion.

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

The meeting adjourned at 9:30 P.M.

