

**MINUTES**

**MAY 17, 2011**

**BOARD OF ADJUSTMENT**

**LONG HILL TOWNSHIP**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

The Chairman, Dr. Behr, called the meeting to order at 8:01 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  
Edwin F. Gerecht, Jr., Member  
Maureen Malloy, Member  
Felix Ruiz, Member

Christopher Collins, 1st Alternate (arrived. @ 8:06 PM)  
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: Sandi Raimer, Vice Chairman  
John Fargnoli, Member

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**EXECUTIVE SESSION**

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

**MOMENT OF SILENCE**

Mr. Gerecht announced with sadness the passing of former Board member Joseph Pagano who served faithfully on the Board from 3/2/04 until illness forced him to resign on 4/1/11.

Dr. Behr asked that each in their own way send such prayers as felt to be appropriate in his name and memory and called for a moment of silence.

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Mr. Hoffman added that his distinctive remembrance of Joe is that he was always very unassuming – not pretentious, but nevertheless always keyed in on the issues that were central to the matters that come before this Board, and insightful. For all those reasons, as well as his accommodating mannerisms, he said that Joe will be missed.

All agreed that his knowledge and experience as a civil engineer, ability to rule fairly, and most of all his warm friendship will be sorely missed by all who knew and served with him.

(Mr. Collins arrived at 8:06 P.M.)

**APPROVAL OF MINUTES**

The March 1, 2011 executive session minutes were approved as written on motion by Mr. Gerecht and seconded by Mr. Ruiz.

The March 1, 2011 regular session minutes were approved as written on motion by Mr. Ruiz and seconded by Mr. Gerecht.

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**GLENN DREYER**

32 Valley View Road  
Block 13604, Lot 3

**#10-03Z**

**Bulk Variances**

Present: Gary Haydu, attorney for the applicant  
Glenn Dreyer, applicant  
Nicholas C. Wong, licensed professional engineer

R. J. O'Connell, certified shorthand reporter

This is a continued hearing.

Mr. Gary Haydu, attorney for the applicant, introduced Nicholas C. Wong, licensed professional engineer and principal of Titan Engineers, P.C.

Mr. Wong was sworn. He reviewed his educational and professional background which includes a concentration and experience in structural engineering. He was accepted as an expert.

He said that he issued an initial report dated 8/24/09 concerning a retaining wall on the subject property which indicated that the upper wall had failed. The report stated that it was a preliminary structural analysis report of findings and that it was based solely on information given to him by the client and the contractor who constructed the retaining wall. He felt that it was appropriate to approach an investigation on a staged basis, with that being the first stage in order to see if the wall design was appropriate before visiting the site. On 10/6/09, he visited the site and observed the retaining walls and their condition and made sure that the heights and lengths were correct as reported by his client and also the surrounding conditions. He said that he noticed that the slope that was on the top of the retaining wall was *not* there and was *not* a steep slope as reported by the contractor. It was relatively level for a good 10'-12' past the retaining wall at the top which changed the calculations *significantly* for that portion of the retaining wall. Based upon that observation, he agreed that it had an impact on his altering his opinion in his letter memorandum dated 9/24/09.

In response to Mr. Haydu, Mr. Wong said that his initial visit was a *visual survey* and no physical testing was done at that time. He visited the site a second time and took photographs of test pits that were conducted by a certified testing agency that was hired. Observations included the facts that there was drainage stone behind the wall and a sampling of the backfill material was taken, which he said are very important. The reinforcement for the wall was also uncovered to confirm that it was located where it was reported.

Mr. Haydu noted that the report of Mr. Wong's findings is quite lengthy. He asked him to highlight the key factors of his findings that impacted upon his decision as to the viability and structural integrity of the wall.

Mr. Wong said that he definitely felt that his process was exhaustive in nature in order to confirm the soundness of the retaining walls. He said that there were over 12 test pits dug in front of and behind the wall. There was sampling and testing done at the site of the materials, visual observations, and also structural calculations to ensure the stability for overturning and sliding of the retaining wall. It was his understanding that the retaining walls had been in place for a period of time prior to his visual examination, although he could not recall the exact duration. He said

that he did not notice any deviations in the wall that would indicate movement which would be irregular or unexpected and that the wall appeared to be stable and sound which became the basis for his later opinion on 9/24/09 that the wall was, in fact, structurally sound and safe. Attached to his supplementary report and findings, he included a number of items such as soil test results. He said that the type of soil used to backfill retaining walls is very important and that clay and finer materials tend to expand and absorb water (which are things you do not want happening behind a retaining wall). He said that it must be granular, free draining type materials and that what was found behind the retaining walls. Compaction is also an important aspect of building the retaining walls, especially when there is reinforcement behind the retaining walls. The soil must be compacted very tightly and that was also evaluated.

In response to Mr. Haydu, Mr. Wong described the photographs contained in the back of his supplemental (and final) report of findings entitled “Appendix C: Photographic Records (Unsorted)”, noting that Mr. Lemanowicz had requested that all of the photographs taken at the site be included and not just selected ones.

In response to Mr. Haydu, Mr. Wong described a geogrid as a synthetic polymer that is manufactured in a fabric format which is a very strong weave and tensile strength. He said that the retaining wall systems utilize a geogrid reinforcement to tie the retaining walls back. After they get to a certain height, he said that they need this type of reinforcement for stability. He said that when he evaluated the geogrid at the Dreyer residence, he was satisfied that the material used was appropriate and confirmed that he had measured the length of the geogrid. He explained that the length of the geogrid embedment in the soil determines its strength and he checked it to determine that the reported length was accurate on site. As a result of his findings concerning the geogrid, he was able to conclude that the geogrid was, in fact, installed correctly and met the manufacturer’s installation requirements. It also satisfied him from a structural engineering perspective. He agreed that after all of his testing and evaluation was done, the tests were included as part of his detailed report that was submitted. His ultimate conclusion was that the retaining walls were constructed soundly and were stable and he did not observe any problems with them. He also had an opportunity to speak with the contractor that installed the geogrid and questioned him concerning the method and manner of construction and installation and was satisfied that, based upon what he told him and what he observed, that those two things were consistent. He agreed that, overall, he would characterize this as a sound, safe, and structurally well engineered retaining wall.

Mr. Hoffman said that, if he understood Mr. Wong’s testimony correctly, he issued what is labeled as a “preliminary report” – one in which the consequences were obviously significant and severe, to the effect that a portion of the retaining wall system had failed whatever it was being evaluated for and the preliminary report was based exclusively upon information and data which the client, or others, had supplied to him and not inclusive of any studies, testing, evaluation, or even a site inspection that his firm had done. He asked Mr. Wong if that was an accurate recap of what he had said?

Mr. Wong replied affirmatively. He said that his firm takes a practical approach and do not want to waste time and effort at the onset of a project. As an example of what *could* have occurred, he said that the contractor could have told him that he constructed a 15’ wall with absolutely no geogrid reinforcement and backfilled with clay that was found on site. If that were the case, he said that his company would issue a report saying that the wall would definitely fail and there is no need to come on site or do any testing if that is what was reported to be constructed on site. He said that, before the time and effort is spent on testing, site visits, observations, or engineering calculations, they want to hear from the contractor or owner as to what was constructed on site. He said that their process continues from there and, if it does pass that evaluation to a site observation of conditions, if the wall was failing or problems were observed, it could be stopped there. If no problems with the wall are observed at that point, they would continue with their evaluation with engineering calculations.

Mr. Hoffman replied that Mr. Wong, or someone from his firm, did see a problem with the highest portion of the wall system because the finding was made, albeit preliminary in nature, that it had “failed”.

Mr. Wong agreed and added that that was prior to their visit to the site. He said that this was not a physical failure, it was that it did not meet a factor of safety type of failure. He said that there was nothing physically wrong with the wall at the site and they had not even observed it yet, but just running structural calculations based on the information given to them, the wall would be unstable.

Mr. Hoffman asked Mr. Wong what information was provided to him before the so called preliminary finding was reached? He asked what had been told to him and by whom – what data or information was supplied upon which the preliminary determination or finding was made that there was some failure in some part of this wall system?

Mr. Wong repeated that it was not a physical failure, it was a failure to meet factors of safety based on calculations only. The information received was mostly from the contractor who constructed the retaining walls. He said that there were phone calls as well as e-mail correspondence and some of that correspondence is contained within his report. He said that the process in which they recorded the information was both verbal, e-mail, and pictorial. He said that there are drawings, sketches, as well as cross sections. At each step, he said that they asked the contractor to confirm that this is what he had constructed on site.

Mr. Hoffman asked Mr. Wong if there are instances in which, upon being apprised of potential failure conditions, he would contact the client (or property owner) and advise him/her that they may have a problem and ask if he/she would like him to put this in writing, including potentially significant consequences, or would they prefer that he go ahead and do further testing *before* issuing a preliminary report?

Mr. Wong replied that his process is definitely to keep the client informed every step of the way. He said that they do not rely solely on verbal communication and do put their findings in a letter or report that is signed and sealed, meaning that it was prepared by a licensed professional engineer.

Mr. Hoffman said that, in this case, the preliminary report of 8/24/09 was signed by Mr. Wong on behalf of Titan Engineers, PC.

Mr. Wong agreed that that is correct.

Mr. Hoffman asked if Mr. Wong if, after issuing his preliminary report, Mr. Dreyer had had an occasion to communicate with him and discuss the report or inquire as to what his next step might be?

Mr. Wong replied that he recalled several conversations with Mr. Dreyer. He said that his recollection is “a little bit grey”, but he knew there was a description of his findings to Mr. Dreyer. He said that, at some point, he requested that his firm still continue physically with their services and come to the site to observe the retaining walls.

In terms of general practices, Mr. Hoffman said that he would assume that Mr. Wong, in his experience as a structural engineer, has experienced other instances in which preliminary findings or data suggested to him that there could be a problem of some sort.

Mr. Wong agreed.

In those instances where there was some question as to stability, safety, etc., Mr. Hoffman asked Mr. Wong if he was saying that he invariably contacted the client to discuss what the next step would be, or if he simply issued his preliminary report and let the parties go their separate ways?

Mr. Wong replied that, in such situations, he issues a report and follows up with a verbal consultation to make sure that they do go over the report with the client and ask them if they have any questions and discuss further steps, if necessary.

Mr. Hoffman asked Mr. Wong if it was common place in his industry to issue written reports questioning vital aspects of structural integrity without having done actual site inspections or testing?

Mr. Wong replied, “Yes”. He said that one of the services his firm offers is called “peer review services”, where they review the work of other engineers. In those instances, he said that many times they are just document research of drawings and calculations and that they verify that the drawings and calculations to verify that they were put together correctly.

Mr. Hoffman said that, in this case, that wasn’t what was done. He assumed that whatever Mr. Wong’s findings were, of a preliminary nature, they were predicated upon data that had been supplied by someone *other than* a qualified engineer.

Mr. Wong agreed that it was information provided to him by the contractor. He said that it was his understanding that there was no engineer of record for the subject retaining walls.

Mr. Hoffman asked Mr. Wong if he could recall any other instance in which he was personally involved with on behalf of his firm where preliminary findings of a significant nature suggesting problems were arrived at and put down in writing in a report based exclusively upon information supplied by others who are not engineers, or is this the first time that he has dealt with that type of scenario?

Mr. Wong replied, “Most definitely not”. He said that for a lot of these retaining walls it is a relatively new industry – probably around 10+ years. He said that there are a lot of contractors that are constructing these retaining walls and only recently have Building Departments required building permits and engineering for them. He said that the majority of them are only required when they are over 4’ in height. So, there are a lot of retaining walls constructed that are not engineered. He agreed that this is a relatively new phase or field of structural engineering for this type of retaining wall, in particular. He said that retaining walls have been around for a very long time, but this is an engineered system that came about not too long ago.

In response to Dr. Behr, Mr. Wong agreed that he was initially given data that suggested that the land surface above the top wall was a steep slope and it was based upon the belief that he had a steep slope to deal with that was putting pressure on the top wall that caused him to initially determine a failure and that, upon inspection, he later determined that it was *not* a steep slope. He acknowledged that he did not know who took the photo that was attached to his 10/30/09 report. It was something that Mr. Dreyer had made available for his firm to use as a background. He also agreed that the telling event was the difference between the physical conditions that a steep slope would put on a wall and the discovery that he was not dealing with a steep slope.

Mr. Lemanowicz said that the technology of a modular block wall goes back considerably more than 10 years and is probably closer to 25-30 years and the technology is not new. He felt that the final report (that had the test pits) was the correct way about doing this. He said that on 3/10/11, he indicated that he was satisfied with the final report and the levels of investigations that were taken. He said that he had no issues with Mr. Wong’s 12/16/10 supplemental report. He felt that the testimony reflects the knowledge of the type of wall and what needs to be taken into account in its design. He said that he was “comfortable”.

Mr. Hoffman asked Mr. Lemanowicz what his experience has been in reading structural engineering reports of this nature?

Mr. Lemanowicz replied that he has reviewed such reports and actually designed such walls and, therefore, was familiar with how they are done.

Mr. Hoffman asked Mr. Lemanowicz if it was customary to have preliminary reports and then later reports?

Mr. Lemanowicz replied that that is partially a business decision and partially a professional decision. He said that there are situations where preliminary reports come in handy. In

determining what information the professional gathers to make that report is basically up to the professional. He said that he would not say that it is unusual to take a general look before going into something detailed. He said that Mr. Wong had explained that if he was described a wall of dramatic proportion, he could basically say right off the bat that that wall is not safe. He said that he could see the logic in doing a preliminary report before getting into the expense of test pits, pictures, soil testing, etc.

Dr. Behr said that it seemed to him that the sole matter before the Board at this point is whether the wall is safe and he felt that testimony about that was provided. He said that he was having a hard time seeing why the applicant's engineer's procedure in working with his client, in terms of the various kinds of deliberations, is germane to what the Board needs to do at this point as a Board.

Mr. Hoffman replied that it all bears, in a general sense, upon the credibility of the witness and the probative value or worth to be accorded his testimony.

Dr. Behr said that he understood that, but where we have had testimony from the Board's own engineer that corroborates the findings of the applicant's engineer, he was perfectly willing to take Mr. Lemanowicz's word.

Mr. Hoffman replied that he was not suggesting anything other than that, but the reason the Board wanted to have this witness here live was precisely so that we would have the opportunity to carefully scrutinize and evaluate the testimony.

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

Mr. Haydu stated that Mr. Wong was the last witness he intended to present.

Mr. O'Brien said that he had some items to point out to the Board that they may or may not be concerned about. He said that there are front retaining walls that are in Valley View Rd. in the R.O.W., noting that they are not within the jurisdiction of the Board since they are located in the R.O.W.

Mr. Hoffman said that it has been our customary practice that when there have been structures of various sorts, be they gates, walls, or what have you, either physically or partially within a public R.O.W. to include a statement in any approval Resolution noting that very fact – that this Board does not have the ability, legally speaking, to sanction or approve encroachments of that nature and, to the extent that the applicant wishes to continue with that factual situation, he would be doing so at his own risk.

Dr. Behr felt that that is something that the Board may continue to do. He did not see any action from the Board on the matter unless some other Board member had other thoughts. He agreed that the language mentioned by Mr. Hoffman has been customarily included and he felt it would be appropriate in a Resolution should the Board vote to approve this application.

Mr. O'Brien noted that there is a driveway encroaching from the eastern property which encroaches on the subject property and 174 S.F. of that encroachment has *not* been included in the lot coverage calculations although it is coverage on the lot. He said that, whether the Board wishes to take that into consideration and adjust the calculations or make any direction about the encroaching driveway, is a Board decision.

Mr. Hoffman recalled that, at a previous hearing, Mr. Dreyer had testified that he was not intending to take any affirmative action to require or even request his neighbor to remove the encroachment and that it could remain as far as he was concerned.

Mr. O'Brien agreed.

Dr. Behr said that the Board's interest is in lot coverage as a function of how the overall site is managing stormwater. From that point of view, he asked Mr. Lemanowicz if there is anything material in the encroaching driveway that the Board should be paying attention to, or is it a non-issue?

Mr. Lemanowicz replied that an approval goes with the property and that impervious area is on the property. He said that the fact that it was put there by someone other than the owner would seem to have limited impact. Who put it there is really not a concern of the Board, just the fact that it is there. He said that, if the Board chooses to take some different tact because it was put there by someone else, that is up to the Board. He felt that it would not be inappropriate to at least acknowledge it in the calculations just to make sure that the numbers are there.

Dr. Behr said that the point Mr. Lemanowicz made is a fair one – it is still impervious coverage on the property.

Mr. Lemanowicz said that the property contain 37,501 S.F. and is at 22.87% lot coverage which is 8,575 S.F. The area of the encroachment is 174 S.F., which would bring the lot coverage up to 23.33%.

Mr. Hoffman said that he understood the proposal in tonight's presentation to be for 22.87%. He respectfully suggested for the Board's consideration that the applicant should not be entitled to have it treated both ways. If he is going to permit the encroachment onto his property of an impervious nature, he shouldn't be able to take credit in the engineering calculations as if it were pervious.

Dr. Behr felt that Mr. Hoffman's point is well taken.

Mr. O'Brien pointed out that the proposed stormwater management system takes in 1,076 S.F. over what is on the property right now, so there is room in the proposed stormwater management system to cover the additional lot coverage, but that is a matter for the Board to decide.

Mrs. Malloy asked how much impact the walkway to be removed would have? She said that we are still talking about removing the entire patio in order to get to where at 22.87%.

Mr. Lemanowicz said that the patio removal would bring it down by 825 S.F. and the sidewalk removal brings it down by 436 S.F.

Mrs. Malloy asked what the impact would be with the encroachment and walkway gone and half of the patio gone? She noted that the patio is extending out the better part of the 3 car garage and, if it doesn't extend out the entirety of that distance but a lot closer to the house than it is, perhaps some of it can be saved.

Mr. Lemanowicz said that, if the driveway encroachment was removed and that same area was put back as patio, the patio would be at its current width of about 25' x 7'.

Mrs. Malloy said that, instead of taking out the whole patio, if we cut off some of the patio so that there is something of it left, and remove the walkway and driveway encroachment, we still have a stormwater management system that is able to handle the stormwater runoff but the applicant would at least have some kind of patio instead of just grass.

Mr. O'Brien said that, if you assumed a 400 S.F. patio, as opposed to the 825 S.F. currently being removed.....

Mr. Lemanowicz said that his January memo indicated that the application will result in a lot coverage that exceeds the Ordinance limit by 1,076 S.F. As part of the application, the plans show an expansion of the drywell system to capture runoff from an additional 2,300 S.F. of impervious cover to remain. So, essentially the applicant is catching almost twice as much water as he needs to in order to bring the number down to the permitted 20%. So, if you gave back half the patio you would be adding 425 S.F., but taking away the encroachment minus 174 S.F., that

would be a net increase of 251 S.F. + 8,575 S.F., divided by 37,501 S.F., brings you to 23.5% lot coverage (up from the 22.87%). He said that, basically, if the driveway encroachment is removed and approximately *half* of the patio is given back it would result in 23.5%, where 22.87% is currently proposed and 20% is permitted. Because the stormwater system was designed at the previous level of impervious, he said that it is still oversized, even if the patio is swapped for impervious area. He said that that he did not know the impact to the house with the encroaching driveway or what it would do to that maneuverability.

Dr. Behr agreed that we do not know what is on the other side of this and what, if any, implications it may have on the homeowner on the adjacent lot. He said that that is not a concern of this Board.

Mr. Lemanowicz noted a retaining wall and agreed that he was not sure would it would do to the house next door.

In response to Mr. Hoffman, Mr. Lemanowicz said that, what was posed to him was “What would happen if we gave back half the patio and wiped out the encroachment?” He agreed that the net effect of all of that would be a proposed revised lot coverage figure of approximately 23.5%, which is using 425 S.F. of patio.

Dr. Behr said that the decision is that of the applicant and it is not the Board’s job to recommend to an applicant what they should or should not do.

Mr. Haydu agreed and requested time to speak with his client before offering a decision on his part. He said that he wanted to be realistic about the approach and investigate what impact, if any, it would have on a neighbor. He said that, not only could it have a financial impact, but it could have a practical impact as well. He said that they are still neighbors and that must be factored in to the decision.

Mr. O’Brien said that, prior to deliberations, he will go over the burden of proof if the Chairman would like.

In response to Mr. Pesce, Mr. Lemanowicz said that the drainage from the patio would go around the west side of the building, but that whole hillside going up to Ellis Ave. flows down that driveway, so there will be plenty of surface area heading towards the drywell system. He said that, currently, the drywells only handle the roof area and do not take any of the driveway runoff.

Dr. Behr called for a recess.

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Mr. Haydu said that he had conferred with his client and, in an effort to keep good neighborhood relations, his preference would be *not* to require the removal of the additional impervious coverage (encroachment). However, he said that he would like to reduce the patio size from the anticipated 825 S.F., down to 250 S.F. which basically accommodates the existing impervious coverage that he is choosing to leave in favor of his neighbor.

Dr. Behr asked Mr. Lemanowicz if there would be a material that the applicant could use for the patio that would be satisfactory for the uses of a patio that would have some kind of benefit in terms of increased permeability.

Mr. Lemanowicz replied that most paver manufacturers say that their pavers will allow water to infiltrate. However, he said that a lot of the older styles simply don’t, even if there is sand in between them. But there are some newer styles that, when the pavers go together there is actually a 2” by 2” hole (rather than a ½” gap) and it is filled with pea gravel and that really *does* allow it to infiltrate. He said that the only issue with the one he just described, or any of the pavers with a wider gap that is filled with pea gravel, is that you can’t walk barefoot on the patio because if a piece of the pea gravel comes out and is on top of the paver and you step on it



barefoot, it will hurt. He said that, if there was a pool out there, you would expect people to be out there barefoot a lot. If it not something you are concerned about, it *could* be done that way.

Dr. Behr said that the Board could simply accept what the applicant is proposing, which is a 250 S.F. patio, or it could see if the applicant has any appetite for a patio that might offer some additional permeability, whatever that might be.

Mr. Lemanowicz agreed.

Mr. Haydu said that the applicant would prefer to go with a 250 S.F. patio. He said that his understanding of the Zoning Ordinance in Long Hill Township is that the alternative that is being discussed would still be treated as impervious coverage, while it might have a more utilitarian approach and may be positive in terms of some seepage into the property, for purposes of the Ordinance, he felt that it is still treated as impervious coverage. For instance, driveways that are 1 ¼" crushed stone are treated as impervious coverage.

Mr. Lemanowicz said that Mr. Haydu is correct.

Mr. O'Brien noted that the Ordinance does have a provision that allows for pervious pavers, as such, to be calculated by an engineer as to degree of perviousness and the Board is allowed to take those numbers into account.

Mr. Lemanowicz added, however, that there is no hard number that is in there.

Dr. Behr said that the applicant is proposing a 250 S.F. patio instead of removing 825 S.F. of patio and the encroachment would remain.

Discussion followed as to what the proposed lot coverage would be in that case. After calculating, Mr. Lemanowicz said that it would result in approximately 23.99% coverage.

Dr. Behr said that 24% coverage is quite high for this Board, however he noted that the applicant has made considerable stormwater enhancements in his proposal

In response to Dr. Behr, Mr. Lemanowicz said that the proposed stormwater management was designed prior to the removal of any of the impervious coverage, therefore, it would still be under the design calculation for stormwater.

Mr. O'Brien said that one of the odd parts about this particular application is that, since the house was given its initial approval in 2003, a Floor Area Ratio (F.A.R.) Ordinance was passed by the Township (in 2008). Because that Ordinance is in place now, and because the house is larger than what is allowed by F.A.R. standards in the Township, the overall variance that is front of the Board is for F.A.R. The F.A.R. approval is based upon a showing that the site can accommodate the problems associated with a floor area that is larger than what is permitted. He said that, if the applicant has demonstrated that the site can adequately handle that size of a house, then the Board would have within its right the ability to grant a variance. Because the house has been there (since it was built after its 2003 approval) and has continued to be there, the Board can certainly that into consideration during their deliberations.

Mr. Hoffman said that, perhaps the applicant has demonstrated that, however he respectfully suggested that he need not do so in view of the discussion and interim decision of the Board at the meeting two weeks ago wherein it was decided that, since the construction of the dwelling *preceded* the enactment in Long Hill of a floor area ratio requirement or standard for residential development, and there is no current proposal to expand the footprint of the house. In view of those circumstances, he said that he thought a decision was made that the applicant need *not* obtain an F.A.R. variance.

Dr. Behr said that that was his recollection also. Other members also agreed.

Mr. O'Brien said that we then fall to the bulk variances in which the burden of proof is either one of hardship based upon the size, shape or topography of the land, or what is called a flexible c variance in which case the benefits of granting the variance outweigh any detriments. He said that a showing of either or both of those and a showing of negative criteria, meaning that this application will not have a negative effect upon the neighbors or upon the Township itself, should be shown to the Board.

Mr. Haydu said that, having taken the use (or "d") variance off the table so to speak, he would move onto the bulk variances. He felt that it has been established that we have a lot and development that is consistent with the neighborhood and we have an issue that *could* impact the neighborhood, which would be the stormwater runoff. However, that issue has been dealt with in the new proposal, so that they are anticipating that, if anything, they are going to capture surface water runoff in excess of that which would have otherwise been required. He said that the overdesign of the water retention system eliminates a negative impact to the neighbors. Based upon his recollection of some earlier testimony and comments, as visited the property, he said that this property was elegantly developed. Having an occasion to see it, he said that he wished it was his. He said that a magnificent effort went into developing the property and he felt that it is an asset to the Township and is *clearly* an asset to the property values in the neighborhood and is clearly an asset on both an aesthetic basis, as well as a functional basis. He felt that the creativity of doing what was done with the back yard enhances the safety and use of the property and allows the property to be used as a residential parcel with a viable back yard, as opposed to one that would be minimally usable had the original plan been adhered to. He felt that his client has gone to great lengths to eliminate excess impervious coverage where at all possible and has pared his proposal down about as far as he can pare it down and still keep this as a safe residence – one that is able to have adequate ingress and egress and accommodate emergency vehicles, should that ever become necessary. He felt that the lot coverage issue, while there is no question it exceeds what is permitted, he felt that the applicant has gone above and beyond to create a system to deal with the water so that it does not become a negative issue for the property. He said that he felt that the proposal is clearly consistent with the Master Plan and much of the intent of the zoning ordinances. He said that there is not a negative impact to be derived from the development either to the neighbors or to the municipality as a whole. He said that the only impact that would be of a negative nature would be one of runoff and he felt that has been dealt with and adequately handled. He did not think that the public good has been negatively impacted in any way and, if anything, it has been enhanced. He said that it has enhanced the public good through the utilitarian use of the property and the retainage of water on the property. If left as originally designed in the plan, he said that there would be runoff of all of the surface water from the driveway going out onto the municipal road and they now have that water going into a designated retention system which is clearly a benefit to the neighbors and community as a whole and certainly puts far less stress on municipal services and community issues. He said that we are here and we have this situation and Mr. Dreyer is trying everything within his power to mitigate the situation and is going to expend large sums of money to readjust what he has already constructed and what has been done. He recalled that Mr. Dreyer was beset with many personal issues early in the process during the original hearing and he thought he had the necessary approvals but he did not have them in writing and, therefore, could not count on them. He said that he has now stepped up to the plate and done everything within his power to bring this as close to conformity as possible and still retain the beautiful property that he has developed. For those reasons, he asked the Board to approve the application as submitted.

The Board began its deliberations.

Mr. Collins said that he was happy to know that the applicant has actually gone back to the drawing board and listened to the majority of the Board and formulated a plan which he thought is more in line with what many of the members of the Board were looking for. He said that he would vote in favor of the application.

Mr. Pesce said that it was clear to him that there has been a significant effort to deal with the concerns expressed at the last go around and he felt that, at this point, the benefits certainly outweigh the detriments to the community.

Mrs. Malloy felt that the efforts to comply with the concerns of the Board, the ability to cut the impervious coverage to maintain a safe and aesthetically pleasing home, the ability to prove the safety of the walls, and the implementation of the increased stormwater system, are all benefits which she felt outweigh the detriments. She said that she was in favor of the application.

Mr. Ruiz said that there is no debating the assets of Mr. Dreyer's house, but the lot coverage is still an issue in his eyes and is a little more than he and the Board is used to. However, he said that providing the proposed stormwater management system exceeds that which is needed, he would vote in favor of the application. He said that the retaining wall was also an issue for him and he thanked the applicant for having Mr. Wong provide the expert testimony needed to satisfy his concerns and make him feel a lot more comfortable in that regard.

Mr. Gerecht concurred with the statements made by his fellow Board members. He thanked Mr. Dreyer for bringing in Mr. Wong to answer questions about the retaining wall and address the matter of his reports being conflicting. He said that it reassured him that the wall will be standing for many years and will not pose to be a hazard. He asked for clarification that the current proposal is to retain a 250 S.F. patio (which was answered affirmatively).

Mr. Hoffman said that that would be an essential condition of what the board is voting on.

Mr. Gerecht said that he would be in favor of that (the 250 S.F. patio) because he was a little bit leery about removing the patio entirely because he figured at some point it may be desired to put it back in. He felt that the proposed plan captures the stormwater significantly and if Mr. Dreyer only developed the property to 20% and *didn't* capture the runoff, there would probably be greater runoff than there is now. He said that he was also impressed that no objectors appeared in connection with the application. He said that he was in favor of the application.

Dr. Behr agreed with the comments of his fellow Board members and felt that the applicant has demonstrated that his proposal advances the purposes of the M.L.U.L. The testimony presented indicated to him that what the applicant constructed is safer than what had initially been proposed. He agreed that while 24% lot coverage is more than what the Board is usually comfortable with, the proposed stormwater management very clearly moves this into an area of a very positive benefit for the Township. He felt that the benefits of granting approval to the application will far outweigh any detriments and, therefore, he said he would vote in favor of it.

Mrs. Malloy made a motion to approve the applicant's latest proposal subject to the terms all being set forth in the follow-up memorializing Resolution. Mr. Gerecht seconded the motion.

Mr. O'Brien said that, amongst the conditions, would be the keeping of a 250 S.F. patio; the 174 S.F. driveway to be included in the calculations of impervious surface; and that the stormwater management system as proposed remain.

Mrs. Malloy made another motion to approve the application which was seconded by Mr. Gerecht.

A roll call vote was taken. Those in favor: Mr. Gerecht, Mrs. Malloy, Mr. Ruiz, Mr. Collins, Mr. Pesce and Dr. Behr. Those opposed: None.

Mr. Haydu thanked the Board for its time and attention to the application and said that he was appreciative of the efforts everyone made.

The Board adjourned its formal meeting at 9:45 P.M. and held an educational session led by Mr. O'Brien, the topic of which was "The Burden of Proof – What Is It".







