

MINUTES

OCTOBER 4, 2011

BOARD OF ADJUSTMENT

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Dr. Behr, called the meeting to order at 8:00 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
Christopher Collins, Member
John Fagnoli, Member
Edwin F. Gerecht, Jr., Member
Maureen Malloy, Member
Felix Ruiz, Member

Michael Pesce, 1st Alternate
Richard Keegan, 2nd Alternate

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

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EXECUTIVE SESSION

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

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WALTER TERRY & DOROTHY KUNZ
(RICA PROPERTIES, LLC)

Plainfield Road & Metzler Place
Block 10515, Lot 12

#07-13Z
Request for Extension of
Approval

Present: Vincent T. Bisogno, attorney for the applicant
Donald Rica, principal of Rica Properties, LLC

Lucille Grozinski, certified shorthand reporter

Mr. Vincent Bisogno, attorney for the applicant, said that he represents Rica Properties, LLC, who is the purchaser of the subject property from Walter Terry & Dorothy Kunz. In 2007, he said that his client signed a contract to buy the 2.5 acre vacant property located at the corner of Plainfield Road and Metzler Place and received variance approval from the Board of Adjustment to construct a single family home on the site. The home is proposed to be constructed close to Plainfield Rd. and most of the property is located in a conservation easement. He said that a

Resolution of approval was adopted in February, 2009 and his client took title to the property even though the economy at that time was in a downturn. Until now, his client decided not to build because he did not receive any offers for the property, however, lately he *has* received several offers and, therefore, he would like to move forward at this time.

He said that the Ordinance states that variances expire after one year. He did not believe that there have been any changes in the Zoning Ordinance that would impact upon the approval which was granted, therefore, he said that the applicant is seeking a 6 month extension of approval to allow construction of a new home to begin.

It was Mr. Hoffman's understanding that the 6 month extension would be measured from tonight's hearing date. He noted a gap of some two years from when the original approval was granted to Walter Terry and Dorothy Kunz and assumed that Mr. Bisogno would want to fill that gap to protect his client.

Mr. Bisogno agreed.

Dr. Behr said that we are really talking about an extension from that point of time when the original approval lapsed up to tonight and then a second extension 6 months from tonight's hearing.

Mr. Hoffman replied that the second part of the extension technically is comprised of two elements. One just bringing it up to snuff to reinstate the approval of the application and the other going forward from this date for an additional period of 6 months.

Mr. Bisogno had nothing further to add other than that one of the principals, Mr. Donald Rica, is present, however he did not feel that he could add any more to what he has already stated.

Dr. Behr asked what is contemplated for the lot as compared with the original approval that was granted by the Board.

Mr. Bisogno replied that it is the same thing. He said that his client is proposing to build a single family home according to the terms of the Resolution that was adopted. He said that there have been no changes in the Zoning Ordinance that would impact upon the application at all and that it is the same house that was presented to the Board in 2008. He also wanted the Board to know that his client contemplated on defaulting on the contract because of the economy but, instead, decided to go forward with it. He said that, fortunately, Rica Properties see some spark and feel that that they can now build.

Mr. Hoffman said that he took the liberty of preparing a standard form of Resolution which covers the elements of the extension as we have just been discussing, assuming that the Board members were favorably inclined towards granting the requested extensions.

Mrs. Raimer noted that the applicant was asked to submit proof of payment of real estate taxes through the 3rd quarter of 2011, but yet the extension would be granted until 4/4/12. She asked if the proof of payment of real estate taxes shouldn't be through that period?

Mr. Hoffman said that the Resolution was drafted as standard practice and it asks for evidence of tax payment which brings the situation to the current date, not in futuro. To his knowledge and experience, no one customarily pays their taxes a year or 6 months ahead of time.

Mrs. Raimer said that she was not asking for it in advance, she was asking for the taxes to be current before anything is granted.

Mr. Hoffman said that that is what the final sentence on Pg. 2 of his Resolution does say – that it grants the extension on the same terms as the original approval to the two individuals (Mr. Terry and Ms. Kunz) and it reiterates specifically the conditions that were part of that original approval except in the case of one of the specified conditions – Condition No. 1 where the condition now says “Such original approval except that such condition being hereby modified to require that the

applicant shall submit proof of payment of real estate taxes through the 3rd quarter of 2011” and that would bring it to the current time period. He said that it updates it by a couple of years rather than lifting it from what the original approval specified.

Mr. O’Brien noted that the 4th quarter taxes are not due until the 10th day of the second month of the quarter, which would be November 10th.

Mr. Hoffman agreed.

In response to Mrs. Raimer, Mr. O’Brien agreed that no building permit would be issued (per the Resolution) until the taxes are current.

Mr. O’Brien said that the Resolution does discuss building – to begin construction within 6 months which means that permits would have to be in place and construction would actually have to start by the 4th of April, 2012.

Mr. Bisogno said that he believed that his client has satisfied all of the conditions of the Resolution and that his client plans on beginning construction shortly.

Mr. Gerecht made a motion to approve the draft Supplemental Resolution submitted by Mr. Hoffman which was seconded by Mr. Ruiz.

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

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HAMID & MARIE OVEISSI

712 Long Hill Road
Block 14007, Lot 1.05

#11-03Z

Bulk Variances

Present: Hamid & Marie Oveissi, co-applicants
William Kaufman, licensed professional architect

Lucille Grozinski, certified shorthand reporter

Proof of service was submitted.

Mr. O’Brien and Mr. Lemanowicz were sworn.

Mr. & Mrs. Hamid Oveissi, co-applicants, and Mr. William Kaufman, licensed professional architect, were sworn.

Mrs. Oveissi said that she and her husband have lived in the Township for the past 23 years and have been very active members of the community. They are proposing to do some exterior work to their property and the first thing they wished to address is the porch. When they purchased their home, the porch was existing, along with a swimming pool. With their 4 children now grown, the pool is no longer something that they use. She noted that their existing dwelling was constructed very close to the existing westerly property line and her neighbors’ trees hang over the porch and cause maintenance of the pool to be a chore. She said that she and her husband have decided to remove the pool and replace their deck with a new “dream deck” that will enable them to walk directly out onto a flat surface deck rather than to walk out and have to walk down a set of stairs in order to access the existing deck which surrounds the pool. The proposed new deck will two tiered and contain two steps leading to an area which will contain a Jacuzzi and some chairs for socializing with friends. They intend to maintain approximately the same size deck because their back yard is not very big and contains a slope and, therefore, is not very usable in terms of socializing.

Mr. William Kaufman, licensed professional architect, was accepted as an expert. He gave a brief overview of his credentials for the benefit of the newer Board members.

He said that the design of this particular proposal was intended to reduce the visual impact against the backdrop of what currently exists on the site. He said that the proposed deck has been pulled further away from the rear and side property lines and, primarily, the applicants are seeking relief for excess lot coverage which is complicated because the lot is substantially undersized. Even by bringing the side walls in away from the property line, by virtue of the fact that the deck is now filled in from the house to where the current pool is, that particular part is what puts them over the maximum permitted lot coverage. Even though a deck is *considered* to be impervious, he said that it is virtually impossible to collect rain and storm water because the boards are spaced so that the floor boards can expand and contract with the water and it ends up going right through. He said that it is a negligible difference from what currently exists on the site in terms of proposed increase in lot coverage. He said that no roofs or other encumbrances are proposed. He said that the site complicates matters due to its steeper slope in the back and so, whereas, most people could potentially have a lawn or a yard to go outside in, this is a lot that is not conducive to that and the only outdoor space they can have is on a developed level platform which is why the proposed deck is a little larger than what might be seen in some other locations. He said that the numbers on the proposal are fairly self explanatory and that he would like to take the Board's lead if they would like to ask him questions, in which case he would go into more detail and respond directly to the comments of the Board's engineer and planner.

Dr. Behr said that at some point the Board will want to hear testimony on the very specific issues that were raised by Mr. O'Brien and Mr. Lemanowicz.

Mr. Hoffman said that he assumed that when the applicants contacted Mr. Kaufman to discuss the proposal there was some discussion in which they were advised of the fact that, as existing – without doing anything more, the lot coverage under the Ordinance's bulk requirements is already in excess of that which is permitted and that when dialogue continued it was noted to them that there would be still further utilization of area that had been pervious to make an even slightly higher impervious cover. He asked Mr. Kaufman if such type of dialogue was held and, if so, what advice he was given by his clients as to how to proceed.

Dr. Behr noted that a lot coverage of 20.8% is already in excess of what is permitted and the applicants are contemplating increasing it to 28.8%.

Mrs. Oveissi replied that she and her husband tried to make the porch smaller, in terms of bringing it in from the left (westerly) property line, as well as from the rear. However, the porch currently has a gap between the house and the garage on the right side of the house, which she felt is unsightly and contains 2' of weeds and unkempt property. She said that most porches are flush up against the house so that when you step out of the door, you are stepping right onto the porch. She said that, by bringing it flush to the house, the total size has increased, although it was brought in from the side and rear which is what she thought was an objective and to make it visually a nicer piece of property.

Mr. Kaufman said that there was a dialogue and discussion about the lot coverage. He said that the exact size was unknown at the time he proposed an original design and once it was discovered that it was already substantially over in lot coverage, the design was reduced to what the Oveissi's felt was the most that it could be reduced and still provide the furniture, layout, and activities that they wanted on the site. He said that it was originally a few feet larger in every direction, but once they started getting into the calculations, they had a dialogue about reducing it to the bare minimum because they knew it would be an issue. He said that it was impossible to get it to conform given the lot size, and it was roughly another 150 S.F. – 200 SF to get it down to make it a neutral par lot coverage which was something they were not able to achieve and still meet the objectives of his client's desires in terms of the use of the space.

In response to Dr. Behr, Mr. Kaufman agreed that the proposed upper deck measures 11' x 32' and the lower deck, with allowances for its curved shape, measures something under 20' x 29'.

Dr. Behr asked Mr. Kaufman what conversations he had with the applicants as to how to create an attractive viable outdoor space with a little bit less lot coverage? If reduced back down to what exists (27.8%), he asked what impact that would have on the overall size of the combined upper and lower deck?

Mr. Kaufman replied that it would render the step down impractical because then the space around the step down with furniture and the like becomes unmanageable in terms of going up and down. He said that that is important because now they must look at the overall 3 dimensional visual impact of the proposal and so they weighed out what was more important – a few extra feet on a deck that is not really impervious (even though it says it is impervious) versus how it looks from the outside because it is now 1 ½' or 2' taller in a grade that is sloping away. As the deck protrudes out from the house, he said that stepping it down helps reduce the overall height and the visual impact to both the neighbors out the back and to the side. He said that that was something that had a bigger weighting factor than just the simple area. He said that it could be done, but his clients don't have a lot that is really manageable short of doing a lot of grading and other things such as retaining walls which could create all kinds of other problems.

Dr. Behr said that the reason lot coverage is so important is directly related to stormwater runoff. He said that the Board has long recognized that as impervious coverage increases above 20%, the potential negative impact of stormwater runoff also becomes a factor and so it has been the practice of the Board to be very cautious in granting excess lot coverage and where it has been done in the past, the Board has been very interested in considering what kinds of concessions an applicant can make and what kinds of stormwater management can be built in. He noted that the proposal allows for an additional 3' of the upper deck beyond the width of the lower deck and he wondered why those 3' were necessary. He said that that would give an upper deck that would still be 29' x 11'. He asked if there was a particular reason why the upper deck is stepped out as proposed?

Mrs. Oveissi replied that the first design called for the bottom deck to also be as far out as the upper deck and, in consultation with Mr. Kaufman, he advised that the proposal should be made a little smaller and more manageable. She said that they were toying with ideas of different shapes and designs to make it visually appealing. She understood why the question as to why the top is not as small as the bottom, however she felt that it was an effort to make it look a little different – to have some contrast. She said that the original design also had different angles going and they felt that that was making it look a little too complicated, so they simplified it as proposed. She said that when you look at normal decks on houses, they normally run if not the whole length of the property or of the house, at least from where you exit the house to at least one side. She said that they can't go to the other side because of the garage. She said that there is a window at the corner of the house and, therefore, they decided to have the porch end where the window starts so that visually made sense as to why it was ending there. She said that to bring it in, she felt it would look awkward when you look at the whole house.

Dr. Behr said that part of the Board's responsibility is to be as mindful as it can of any impacts of additional development upon neighbors and the community. He said that they must weigh that much more heavily than factors of pure aesthetics. He referred to Mr. O'Brien's report dated 9/27/11 which he said contained some important questions.

Mr. Kaufman replied that, with respect to the question regarding lot coverage in Mr. O'Brien's comment #IV A, he said that the applicant has requested relief for lot coverage and we have already talked about percentages. He said that current lot coverage is at 27.8% and the relief being sought is for 28.8%. He said that they looked for places that they could chisel away, whether it be asphalt driveway or other places and, unfortunately given the layout of the site, it is a common driveway on two properties. Because the lots are so tight, it allows for vehicles to turn around and maneuver. Given the steepness of the driveway, he said that there is no way to get trim any more of those pieces of driveway out of the Oveissi's lot and still be able to maneuver a vehicle. He said that it is a very unusual condition but it exists and has existed since 1969 or prior to. He said that there are no other appendages to the building – other decks or pieces that could come off and turned back to green space that are not part of the building proper. He noted that there are no sheds or "low hanging fruit". He said, are there inches? Possibly, but

he did not believe there would be a net benefit to chiseling off inches to try to manipulate the driveway. He said that it would engage the neighbor and shared easements and things that they have going on and he did not think that is something that is a practical solution to lot coverage. As to “How did we get here” (Mr. O’Brien’s comment #IV B), he said that the 20’10” side yard setback appears to be the combined setback between the current existing porch and the current existing side yard of the home. He said that there is no drawing attached with it or records, so he was doing a little professional speculation as to what was meant by that. He said that, clearly, 20’10” in lieu of the 25’ combined and they are actually closer to 25’ currently and so they have more space than what was actually permitted in 1969. He did not have any information as to who built the existing deck, why, or under what circumstances. He said that the Oveissi’s bought the property free of any encumbrances, liens, or any other information to their knowledge that anything was illegal and so this is something that they inherited and did not know that there was any violation until a few months ago when they made the initial application some 23 years later.

Mr. O’Brien said that he believed that the 20’10” setback runs from where the southeast corner of the screened porch over is and the eastern side property line. He said that that number has not been delineated on any of the sketches provided.

Mr. Kaufman agreed. He said that they do not have a more recent survey recalculated for that one dimension, but it seemed likely that that is what it is. He noted that the applicants have not installed any additional improvements since they have taken possession of the property and there is no record of any variances granted that they could find. With respect to fence lines, he said that as part of the improvement of the property, the Oveissi’s would like to install a new fence.

Mrs. Oveissi explained that there are currently two existing fences. One is a stockade fence and in front of it is another fence. She said that both were existing when they purchased the property, along with a wire fence. She said that there was combination of different types of existing fencing which will all come down once the porch is built. She said that they have kept them to make it easy to see where the property line is.

In response to Mr. Hoffman, Mrs. Oveissi said that there will be one single type of fence around the entire property. She said that she has not picked it out yet, but it will probably be one of those new vinyl type fences which will be low – a picket type fence that will be a little higher in the front by the side porch and then standard all the way around to protect the visual look from the neighbors.

Referring to Mr. O’Brien’s comment #IV D, Mr. Kaufman said that there are no additional stormwater measures being proposed because they are not affecting the home proper, adding any rooms, or doing anything that would allow for water collection devices on the building. To his knowledge, he said that there are not any current drainage issues on the site. He believed that there have been some major storms and the property seems to have handled the water fine. He said that the deck is not adding, contributing, or taking away in this matter to a significant amount because generally the water is getting through the surface of the deck, as opposed to concentrating and running off in sheets as it would on a roof top. He described it as a grey area because we know that the ordinances are specific as to what is impervious. He said that, if stormwater collection were to be implemented on a deck, it just cannot be done in any way without making it truly an impervious surface which, ultimately, would concentrate water flow and be a detriment no matter how it was dealt with, as opposed to the current percolation that happens on a wood deck. He said that he did not believe that any underground stormwater facilities exist on the lot.

With regard to Mr. O’Brien’s comment #IV E, with regard to the left side yard setback, he said that the current distance from the pool deck is 1’, which has been expanded to 4.8’. Recalling Dr. Behr’s question as to whether there is a small piece of the deck that could be removed to increase it even further, he felt that that is still on the table for discussion as to whether or not it can be pulled another 3’ to make it align with the other portion of the deck.

Regarding Mr. O’Brien’s comment #IV F – “Below the deck area”, he said that this was not discussed. He said that the elevations do show it open, but it will not be used for storage because

it is not water tight and the intent is to build a wood lattice screening. As the deck steps down, he said that you would get less visual sight line underneath there as well which is something to consider as the deck is raised or dropped from the grade. He said that the couple of steps help to keep it close to the grade.

Dr. Behr asked if any thought was given to landscaping to help shield the lattice area?

Mrs. Oveissi replied, “Yes”, and said that they would like to do some landscaping as another part of the project. She added that everything depends on the cost.

Mr. Kaufman felt that some shrubs for screening seemed to be reasonable and part of the plan.

As to Mr. O’Brien’s comment #IV G – “Visual Impacts”, Mr. Kaufman said that he discussed this from a number of angles. Without trying to make too much of it in terms of its architectural impact, he said that they are trying to reduce the impact currently from what exists with the pool, sides of the pool, and liner. He said that this will be a new structure, screened and landscaped, and lower and pulled away from the property line. In terms of overall visual impact, he said that it is hard to say that it is not a vast improvement over what currently exists.

Mrs. Oveissi added that, to her, it is taking an eyesore and replacing it with something that will hopefully be very nice and very attractive. In terms of visibility to her neighbors, she said that to the rear there is nothing but woods and at no time can the homeowners behind them ever see onto their property. Even the winter, she said that you can’t see down into the road behind. Being that the deck is on the left, she said that the neighbor on the right also does not see it because it is shielded by the garage. She said that the only real neighbors who will see it are the property owners to the left and the fence will block it off. She noted that their house is way away from fence. She did not feel that it will be viewed very much by anybody, but will certainly be a big improvement over what is there now.

With respect to Mr. O’Brien’s comment #IV H – “Exterior Lighting”, Mr. Kaufman said that currently there is no plan for lighting, however, there was discussion as to whether not a lamp post or a traditional light that is a shielded light could be added for safety. He said that it would not emit off site lighting and would conform to the current ordinance of no off site lighting. He said that there was also discussion of possible step lights along the steps to keep the area safe at night.

In response to Dr. Behr, Mrs. Oveissi said that there is currently a light outside the kitchen door, however she would also like to install some lighting at the tip of where the garage is that looks towards the porch so that there will be some light at the bottom part of the porch. She said that she did not want to have lots of lights because she believed that they will attract more mosquitoes.

Mr. Kaufman added that the area that Mrs. Oveissi is describing is at the very corner of the flat roofed garage where it intersects the proposed lower deck.

Mr. Gerecht asked what ground surface below the deck (where the pool is not) is composed of?

Mrs. Oveissi replied that it is dirt. She agreed that there will be no cement underneath except for the stanchions holding up the deck.

Mr. Keegan referred to Pg. 4 of Mr. O’Brien’s photographs and noted a downspout on the right hand side. He asked where it currently terminates and what the current plans are for it?

Mrs. Oveissi replied that it is just a gutter drain and ends right there.

Mr. Kaufman said that it terminates at the base of the pool. He said that it appears that an extension pipe has been added at the base of the leader to keep it away from the foundation of the building so that it percolates into the ground at the surface by the pool.

In response to Mrs. Malloy, Mr. Kaufman said that it appears that rainwater is collected on the east side of the garage along a gutter and is discharged along the base of the garage on the northeast corner of the garage right to grade.

Mr. O'Brien said that his Photograph #5 shows the leader on the left side of the photo.

Mrs. Malloy referred to Mr. O'Brien's Photograph #3 and said that it appears that there is a drain that by the front door and another that leads right onto the driveway. She questioned where the drains lead to.

Mr. Kaufman replied that all of the leaders are discharged to the surface, as they have been since the 1960's.

In response to Mr. Keegan, Mrs. Oveissi said that there is curbing on both sides of the driveway.

Mr. Fagnoli expressed concern over the lack of a stormwater management plan. He noted that the applicants are requesting to increase the impervious coverage and yet there is no plan to diminish stormwater runoff. He asked why this has not been considered.

Mr. Kaufman replied, for the reasons he had already stated with respect to the type of impervious coverage that is being added.

Mr. Fagnoli said that, for the last year, the Board has asked those who propose to exceed the maximum permitted lot coverage to improve their stormwater management plan, and there is none here.

Under normal circumstances, Mr. Kaufman said that he would concur. However, he said that when think about the total disturbance and the site disturbance that would be required to now implement a plan for stormwater management.....

Mr. Fagnoli replied that the Board has seen it on a number of different sizes and the size is not the issue.

Mr. Kaufman replied, "You have your answer".

Dr. Behr said that one of the opportunities that you get is to take a look at the entire development to include what already exists, as well as what is contemplated. He said that we have heard testimony that the deck itself, by its very nature as a deck, does not allow stormwater to be collected. He said that we have already heard testimony that the rear of the property slopes down significantly and so the testimony was that many typical stormwater management facilities might not be appropriate there. But it still leaves the front of the house. He said that, if there was some way to take the stormwater that is there right now and looks as though it is flowing right onto the driveway and do some kind of stormwater mitigation, that is something which he felt should at least be explored.

Mr. Kaufman asked for clarification. He asked if we are talking about channeling through swales into a collection/percolation area that is done through landscaping?

Dr. Behr said that he was not proposing a solution. He said that he was saying that there might be an opportunity to mitigate the negative effect of the increased impervious coverage by asking what else may be done if the proposed addition does not lend itself. He said that his point was to say that if you can't capture water at the back of the house with the addition, is there anything else that can be done elsewhere on the property that would in some way or another mitigate the effect of increasing lot coverage.

Mr. Kaufman replied that many things could possibly be done, but without a proposal he could not give an answer as to whether or not it makes sense.

Dr. Behr replied that it is not the Board's job to propose solutions for the applicant(s).

Mr. Kaufman replied that he understood and said that it is the applicants' position that they are not disturbing enough area and are within the threshold of not requiring additional stormwater management with the scale of disturbance that this proposal requires. He said that they are looking to the Board for suggestions because if it were a larger scale project where stormwater management measures could be taken that didn't exceed the actual cost of the project, which is probably likely to happen in the case of an underground drywell per se with piping and trenching, not to mention the disturbance of mature landscaping, that seems to be overkill for a project of this scale. He said that if there is some solution that is a ground surface one that can be done through landscaping and channeling at the recommendation of the Board's professionals, he felt his clients would be amenable to it. However, he noted that this is a deck project and the deck could be completely rebuilt in its current state with exactly the same size, shape and form, taking the pool down and filling it in and the applicants would not be before the Board looking for relief. He said that they are trying to find a solution that makes the most sense, collectively, for the applicants and the Township.

Mr. Hoffman said that the listing of existing and proposed conditions which appears on Pg. 2 of Mr. O'Brien's report notes that each of the listed 6 or 7 items are not going to be changed or affected in terms of conformity with the Ordinance, with the notable exception of the lot coverage. He said that following the item of lot coverage, it mentions the minimum rear yard setback with 40' being required in the Zone and it states that 34.75' is both existing and proposed. However on the Zoning Chart on the following page, under minimum rear yard, again in specifies 40' required and 34.75' existing, but now it seems to have been reduced by an additional 1' in the proposal. He said that it may only be a corner or a very small portion of the dwelling but, in terms of measuring for compliance or noncompliance with the Ordinance, there may be an additional, albeit it slight, variance required. He asked Mr. O'Brien to comment on the matter.

Mr. O'Brien said that the Zoning Chart on Pg. 3 of his report reflects the zoning information provided in the WesKetch Architectural plans and he apologized for missing it on Pg. 2 of his report.

Mr. Hoffman said that the applicants have noticed for insufficient rear yard setback, so he did not feel that it is a noticing or legal issue. He said that it is part of the package which is before the Board but, in the interest of completeness, it should then be noted that there is this additional new item of relief for at least a small portion of the dwelling.

Mr. Kaufman said that if this is a corner of a stair that comes down into that area, so he guessed the overall dimension from that furthest point of the lowest step.... He said that he would say for the record that if this becomes a point of interest or contention for the Board, the applicants are willing to pull it back to make it conforming to exactly what it was, whether it is building up the grade to make the steps one less step, or whether it is pulling the entire stair in. He said that he could make it match if that becomes an issue for the Board.

In response to Mr. Hoffman, Mr. Kaufman said that they would make it meet Mr. O'Brien's report so that they are not asking for additional relief – what it had been before.

In response to Dr. Behr, Mr. Kaufman said that we are talking about moving the face of the deck which is the platform of the floor and the railing back substantially from where it currently exists. He said that what is now sticking out is the lowest portion of a stair – the bottom step that is on grade that actually comes out over a foot. He said that it is inconsequential to the visual impact, but if it pleases the Board, they will make it come in to "keep the math clean".

Dr. Behr recalled an application of some years ago that entailed a property that was similarly constrained in many ways. If he recalled correctly, part of the solution was that there was going to be water that would roll off the deck and go onto the ground and there was the possibility of some additional recharge below the deck from the water that came off the deck and then entered the ground.

Mr. Lemanowicz recalled the application and said that the property was on a very narrow road and, immediately to the rear of the property, was a very steep hill leading down. On the downhill side of the deck, he said that they removed a masonry retaining wall and filled it with stone and made it almost like a seepage area which could be done in this case if such a trench were dug just inside where the lattice is going to be for the deck. So a stone trench would be there under the deck behind the lattice, so you would not get leaves clogging it and it could be used as an infiltration area.

Dr. Behr said that that might have the effect of increasing some recharge of water.

Mr. Lemanowicz agreed and said that it would be far enough away from any structure that it wouldn't effect basements. He said that the nice thing about putting it under the deck is that you don't end up clearing leaves off of it.

Mr. O'Brien added that there is a definite slope away towards the rear of the lot.

Mr. Lemanowicz said the applicants are now 4 S.F. under the limitations otherwise applied to sites with Critical Areas. Once the 1,500 S.F. of disturbance threshold is crossed, we will have to start looking at Critical Areas with respect to slopes, etc. which will require topography of the site to be done, which is an effort. Right now, he said that the increase in impervious is about 207 S.F. from existing to proposed but, in the proposed condition, the site is almost 1,800 S.F. over the maximum allowable impervious which is considerable. He said that a gravel trench lined with fabric under the deck would not be counted as more disturbance and would probably work very well. He asked Mr. Kaufman if he had any discussion with justifying the pavement on the joint driveway, as he had mentioned easements. He noted that no easement documents were provided.

Mr. Kaufman corrected his statement to say "mutual agreement". He did not know if there were any easements that actually exist. He said that he used the word "easement" as a matter of free speech but did not mean to imply that there is some legal reason. He asked the applicants' if they were aware of any legal instrument that was entered into that they knew of.

Mrs. Oveissi replied that the plan shows what part of the driveway is theirs and what part is their neighbor's. He said that, in order to back up, they each need to go into each other's driveway.

Mr. Lemanowicz referred to Mr. Kaufman's earlier statement that the applicants' could rebuild the deck that is there without coming to the Board.

Mr. Kaufman replied that that is just a matter of reconstruction. He said that the Zoning Official was clear that if they were not expanding on it, it was an existing nonconforming and any structure could be repaired or replaced in its current state without increasing by something like 150 S.F. in this case (although he acknowledged that he could not recall the exact square footage).

Mr. Lemanowicz recalled a discussion regarding a different application in which the discussion was concerned a building that was destroyed by fire and it was deemed that since the nonconforming structure was completely removed, for whatever reason, it was no longer grandfathered in and it could not just be rebuilt.

Mr. Kaufman replied that he did not say "removed", he had said repaired, replaced, or reconditioned.

Mr. O'Brien said that, to remove the pool and deck it over, would be a new structure within the required setbacks, so you would still need variances.

Mrs. Oveissi said that in thinking about what they wanted to do, one of the options was to fill in just the pool and rebuild the porch. She said that she was told that, if she built the exact same structure, she would have to leave the pool – it would have to be identical to what is there now. She said that, if she wanted to surface over the pool, then it would be considered a brand new

porch and it would have to conform to the current Township Ordinances. But if she left exactly the same structure with the pool and just replaced the wood with new material, and not changed any of the design, then it would be okay. She was uncertain of exactly whom she had spoken to, but that was her understanding.

Mr. O'Brien said that it was not he who had spoken to Mrs. Oveissi, however he said that he would agree with that statement, but he felt that Mr. Kaufman's statement earlier was that he could build this deck within its current footprint and basically fill in where the pool was.

Mr. Kaufman replied that that was his understanding but if that was not.....He said that he was getting the information from his client who spoke directly with Mr. Delia. He said that he did not really feel that we need to get caught up in this unless you think this is where we are headed. He apologized for "that little bit of semantics" and said that it is still a matter of impervious surface – it is a pool and, if you can't deck over it, they will leave the pool. He said that his point was that it is existing and they are not trying to make this an exaggerated condition by any means, they are just looking for a solution to be reasonable within the size of what exists and within the context of the visual and environmental impact of the whole application.

Mr. O'Brien said that then we all agreed that, basically, to remove that pool and put a deck over it would require variances before this Board.

Mr. Kaufman replied, "To put a deck over it", but he did not believe that to remove the pool would require any variances.

Mr. O'Brien apologized and changed his statement to "to put a deck over an existing pool."

Dr. Behr replied that, in any case, that is not what is before the Board at this time. The application before the Board is to build what is being proposed.

Mr. Lemanowicz said that the current area of disturbance is listed as 1,496 S.F. and that the line that determines that limit of disturbance only allows a 5' wide walkway and it appears on the top left corner of Sheet SP-01 that the shaded area is only a 5' wide walkway to remove the existing deck and build a new one. That means that all of the materials removed would have to be carried by hand and all of the materials for the new deck would have to be carried by hand. He said that you would not be able to get machinery back there to dig holes or do anything. He asked Mr. Kaufman and the applicants if they were aware of that?

Mr. Kaufman replied that he felt that the area of disturbance plays to the type of construction we are talking about. He said that this is a deck with posts that are in the dirt currently and so removing them is not going to require heavy equipment or machinery, nor is it going to require any up earthen of any stockpiling and fill.

Mr. Lemanowicz said that he has seen Bobcat machines with post hole diggers that are zipped in and out of places, but that will not fit within the 5' aisle.

Mr. Kaufman agreed but said that once the deck is removed there is plenty of room to get a small machine in there to arbor those holes. He said that we are not talking about digging a foundation and stockpiling soil, we are talking about decks and posts.

Mr. Lemanowicz asked Mr. Kaufman if he was saying that this deck can be removed and a new one built with the only access by a 5' wide aisle?

Mr. Kaufman replied, "Within the 1,500 S.F. is what we are saying". He said that he did not see any reason why that would be impossible to do.

Mr. Lemanowicz replied that he was specifically addressing the 5' wide access aisle.

Mr. Kaufman replied that he did not see any reason why the disturbance area that he indicated wouldn't be adequate.

Mr. Lemanowicz replied that he was not talking about the area of disturbance. He said that he was talking about the 5' wide access aisle from the driveway to the work area.

Mr. Kaufman replied that they would not be disturbing that area – people would be carrying boards or other things. Again, he said that it all comes down to the definition of what “disturbance” is. In terms of building practices and environmental disturbance, he said that we are talking about an area that is disrupting the ground surface and so there is really no reason to believe that that can't be done on a project like this. He said that, if it were a building, he would 100% agree with Mr. Lemanowicz – there is no way you could dig a foundation, stockpile dirt, and have equipment brought in, including stone and gravel, etc. But in the case of the deck, he said that there is really no reason why they can't be contained to that area (that he could see). He acknowledged that he will not be constructing the project, but he said that it seems reasonable given the type of construction we are talking about.

Mr. Lemanowicz said that, because of how close to the limit, he was recommending to the Board that the limit of disturbance be delineated by a snow fence prior to the start of construction to make sure that they stay within the limit of disturbance.

Dr. Behr asked Mr. Lemanowicz if he had any further questions or comments.

Mr. Lemanowicz replied that we have talked about the drainage already and he had explained some of the issues with putting something outside of the limit of disturbance like a drywell which would be a little more common but again that would trip the 1,500 S.F. also. He said that Dr. Behr's idea of a gravel trench underneath the lower end of the deck would make sense here. He said that he would work out a detail with Mr. Kaufman which would probably be 2' wide by 4' deep, with filter fabric and stone, and the water would come out from the house underneath the deck and go into that stone area and fill it. Some water would probably stay there and some would infiltrate under the ground. If it does overflow, it would continue on its way. He felt that it would probably work very well.

Dr. Behr asked what the effects of it would be in terms of mitigating some of the stormwater runoff, noting that it is not a precise figure.

Mr. Lemanowicz referred to the photographs and said that there was one that showed the back of the house very well. He said that on Sheet 4 there is a leader very close to the camera and there is another one back by the door by a small porch going into the house. He said that if you pick up those two leaders, just because that is where they are pointing...and in fact, once the deck is gone, you can make sure that those two leaders point towards that gravel trench and so that would probably pick up the back half of the house plus whatever drips through the deck. He said that it would be more than there is now for sure.

To be clear, Mr. Hoffman said that, by implementing those suggested measures, it could achieve the benefits of increased stormwater detention without triggering additional compliance or Ordinance compliance requirements.

Mr. Lemanowicz agreed.

Dr. Behr said that we are also hearing that that would represent an improvement over what is currently in place now.

Mr. Lemanowicz also agreed. He said that it looks like it would pick up about a 15' x 25' portion of the roof.

Mr. Hoffman asked Mr. Lemanowicz what bearing, if any, would this type of additional improvement or construction of a trench area have on his reference to proximity to Critical Area standards in the Ordinance. He asked if there is any relationship between those topics?

Mr. Lemanowicz replied that the Ordinance classifies drywells as a Critical Area and there is a setback requirement from Critical Areas to the principal building. He said that this is very

similar to a drywell so it may be worth discussing relief from that Critical Areas Ordinance for the purposes of that drywell-like structure just to make sure that we cover it.

Mr. Hoffman said that it technically and strictly would not have to comply with the standards that are applicable to subsurface type of new facilities - it is a batch of stone running along the surface, if he understood correctly.

Mr. Lemanowicz agreed. He said that if it was across a surface it was, but this is actually going to be a trench and he did not think there is any harm in at least acknowledging that it is similar to a drywell and that there are setback issues.

Dr. Behr asked if this could be done without triggering any additional changes or complexities in the application?

Mr. Lemanowicz replied, "Yes", because of the fact that they are exempt from the Critical Areas Ordinance because they are under 1,500 S.F. and, therefore, the setbacks don't apply. He said that this is not typical and that is why he was going that way.

Mr. O'Brien added that drywells are defined differently in our Ordinance as subsurface storage facilities for water and this is clearly not that.

Dr. Behr confirmed that none of this is an issue. He addressed Mr. Kaufman and said that he has heard the Board's concern about stormwater management because it has a responsibility to the Township and we all know what happens to the Township when it rains. He said that he has heard suggestions about what might be done that could actually represent a significant improvement without triggering any additional complexities for the applicants in terms of the application and be done within the scope of what he has already applied. He asked Mr. Kaufman if he understood what Mr. Lemanowicz was talking about?

Mr. Kaufman replied affirmatively.

Dr. Behr announced that the Board will take a 10 minute recess after which Mr. Kaufman will be given the opportunity to sum up and add any additional comments he may wish to make about the application.

Mr. O'Brien said that he would like to offer an idea based on what Mrs. Oveissi had said a few moments prior when she talked about the natural length of the deck and how, in many cases, they run along the back line of a house. He said that, although the lot line is straight, this particular house is skewed over to the side line, so if you take that deck and keep going to the back, it is going to go over the side of the property which is why it is stepped back, in order to keep it away. So, in terms of natural lines, if you take a look at Pg. 5 of the photographs (Photograph #7), Mrs. Oveissi was saying that she wanted to stop the deck in line with the window on the right which has an air conditioner in it). Above that and to the left, he said that you can make out a clear break where the roof splits – there is a dormer to the left and a slant, sloped roof to the right. He said that perhaps that might make another natural break in which case you could pull that deck away from the sideline a little bit and line it up with the lower deck so that that might all flow better.

Mr. Pesce asked Mr. Lemanowicz if, when he talked about what roof drainage the suggested drywell (or trench) will catch, it looked to him like there are actually 3 leaders running from the back of the house. He said that you can best see it if you look at Pg. 5 of the photographs, Photograph #7, which shows one leader at the far right in the rear of the house, one then coming down from the tall section of the house on the right, and then one on the left. He asked if all 3 could be captured, and was that included in his calculation of the 15' x 25' roof surface?

Mr. Lemanowicz replied that Photograph #4 (which was what he was looking at) and said that, apparently, the corner leader is just off the right side of the photograph (not shown). He said that he basically scaled off the back half of the house.

Mr. Pesce said that it looked to him like you could pick it all up with perhaps some creative running of the one from the far right to get it underneath.

Mr. Lemanowicz agreed that since it is all under the deck it doesn't matter what it looks like.

Mr. O'Brien said that he felt Mr. Pesce is right in that the leader is to the right of the camera and, therefore, not in Photograph #6.

Mr. Pesce said that you can actually see it best in the black and white photographs which the Board members received. He said that the winter shot actually shows it quite well.

Dr. Behr noted that there were no members of the public present and, therefore, the meeting will not be opened to the public for any questions.

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Dr. Behr requested Mr. Lemanowicz to repeat the point he had previously made because he felt it was a critical point covering construction, should the application be approved.

Mr. Lemanowicz said that the issue of the limit of the amount of the area of disturbance has to do with the Critical Areas calculation. If you are over 1,500 S.F. of disturbance, there are Critical Area Ordinances that apply. He said that you have to delineate the steep slopes to see if you are disturbing any of it (which would require a surveyor to go out and take a survey of the land). You also would have to deal with the setback to the drywells. He said that there are a number of things in his report that you would have to deal with, however, the applicants are not at 1,500 S.F. They are at 1,496 S.F., so those requirements are not applying to them. They do not need to show the topography, limit of steep slopes, and if they are disturbing any. In order to get that number below 1,500 S.F., the access from the driveway to the area of the construction is only 5' wide and all of the equipment and material is going to have to come through a small space. He pointed out the area he was referring to on the plan. He said that he wanted to make sure that the Board understands that. He said that he was not saying that it is impossible because they do make some micro-excavating equipment now, but in order to meet the condition, they would have to make sure that their contractor does understand the limit of disturbance. He said that they cannot go into the back yard and disturb that area with the gravel or the dumpster for the old deck. He said that he wanted to be sure that the applicants understand what they are committing to.

Mr. Keegan referred to Photograph #5 of the color photos which is on Pg. 3 of the color photos. He noted there is a rather sizable existing mound behind the garage.

Mr. Lemanowicz said that he was not sure what it is, however it will have to be removed prior to getting in to the deck, because that is where the path is.

Mrs. Oveissi said that it is a pile of debris of things that she has picked up and needs to bring down to the Township dump.

Dr. Behr said that what Mr. Lemanowicz is saying right now is that what the applicants are doing right now is fine and do not trigger all of the additional measures, however their contractors have got to be very careful that they don't disturb any land outside of the shaded area on the plan and that, as they bring in equipment, it has got to fit within the pathway otherwise they run the risk of disturbing more land than they received approval for. He asked the applicants if they understood what he was saying?

Mrs. Oveissi said that she understood what Dr. Behr was saying although they do not have a contractor yet.

Dr. Behr replied that, as the owners of the property, it is incumbent upon the applicants to sit down with their contractor and advise them of the rules they must play by. He said that he was confident that they could find people that could do that and that it will not be a problem.

However, he said that it is really important that they understand this and communicate those limitations to the contractor.

Mr. Hoffman asked if, practically speaking, it wouldn't be more effective or useful if, instead of simply sitting down with the contractors and discussing the principle of disturbance and non-disturbance, if these areas were specifically flagged or delineated in the field so as to effectively achieve what we are talking about?

Mr. Lemanowicz replied that that is what he discussed earlier in that, before the construction starts, that there be plastic orange snow fencing placed along the limit of disturbance line and the applicants must tell their contractor(s) that there is where they must stay. He said that he recommended that as a condition.

Mr. Kaufman gave his summation. He said that he would like to say that he is acting as the applicants' architect and he did not profess to be an attorney. He said that we discussed all the poignant facts of the application earlier with respect to the relief that the applicants' are seeking and the hardship required of a c-1 variance. He submitted that the lot is of an unusual configuration and the existing nonconformance of the structures that have existed some 40+ years contribute to that nonconformity, therefore triggering the variances requested, particularly that of the setbacks. Being more specific, he said that the skewed nature that was referred to by Mr. O'Brien in his discussions, making the sight lines not intuitive with respect to the geometries of the architecture, therefore having to stagger the corners of the deck or the addition in order to make the project align with the building and parallel to the property's edge. He said that there are some topographical conditions that contribute to the decision making of the design which he stated with respect to the slopes on the property and the usable area surrounding the area, particularly to the rear and the front. As you get further from the precinct of the house, he said that those areas are not developable space in terms of usable area and, therefore, this contributes to the deck size and the larger desire for the outdoor space. Finally, he said that the existence of the current pool and the unsafe nature of the current condition of the structure is triggering the project and the applicants' desire to make a substantial improvement to the property with a lessened visual impact on both the neighbors and on the property itself by lowering it and bringing it further from the property lines. He said that those conditions all contribute to an improved, enhanced appearance, which is required and stated in the Master Plan and the Ordinances. He said that we have discussed a number of options. With respect to stormwater, he felt that the owners recognize that stormwater is a significant issue within the municipality and would agree that some measures might be able to be taken in order to take corrective actions but they are also requesting that the Board take into account the scale of the project and the financing and economics of a project of this caliber with respect to not only what might be proposed in terms of stormwater collection, even though in his professional opinion it is not contributing to any more stormwater collection despite the fact that they have increased some of the impervious area, but also with respect to the Critical Area and disturbance component, this clearly is a condition where the relief possibly described by the engineer would require an extreme amount of professional work, topography, site visits, and engineering fees. He said that we are getting into what would be a site plan approval project for what is essentially a repair or replacement of a deck. He said that he hoped that the Board will take that into consideration when it is making its recommendations and its consideration for the feasibility of a project like this because it would essentially make it impossible to do anything to improve it whatsoever. He said that he hoped that resonates with the Board.

Dr. Behr said that Mr. Kaufman has suggested that the idea that came out of basically collecting stormwater from the back of the house and leading this into what would basically be a trench with stone in it.

Mr. Lemanowicz confirmed that that was the basic idea.

Dr. Behr asked how complicated a project that would be?

Mr. Lemanowicz replied that is essentially digging a trench and filling it with stone. He said that the trench would probably be between 1 ½' – 2' wide and 3' or 4' deep.

Mr. Hoffman asked if it would need a base of solid impervious concrete?

Mr. Lemanowicz replied, “No”, and added that there is no foundation. He agreed that it is a matter of digging down, placing a filter fabric, and dropping stone into it. He said that the filter fabric will not allow the fine soils to infiltrate the stone void.

Mr. O’Brien added that it will also discourage plantings from coming up.

Dr. Behr said that he was having trouble squaring that comment with the assertion that this rises to the level of a complete site plan.

Mr. O’Brien said that Mr. Kaufman was going to get back to the Board about suggestions to reduce the size of the deck. He said that he did not hear any response to that.

Dr. Behr asked if the applicants have considered reducing the size of the deck?

Mr. Kaufman felt that this had been discussed earlier in the testimony in that the applicants had a larger size and it was reduced already.

Dr. Behr asked if the applicants are *not* proposing any additional reduction in the size of the deck?

Mr. Kaufman replied that they really haven’t proposed anything and that they are waiting for the Board to make its recommendation.

Dr. Behr explained that the Board does not make a recommendation. He said that the applicants are to make an application for consideration.

Mr. Kaufman replied that their application was submitted and it has been discussed. He said that, if you are referring to the 3’ section on the westerly side of the deck, he felt that it is up for discussion pending on what the decision might be with respect to stormwater. He felt that to request both would be overkill because they are already correcting a measure and that is a negligible amount in terms of stormwater that would be effective. He said that if it is in lieu of, he felt that they would be open to that as a resolution.

Mr. Hoffman said that to clarify what he felt was a significant potential procedural point, Mr. Kaufman began his last remarks by saying “We’re not proposing anything as far as the deck” and that is not technically accurate. He said that if nothing is said whatsoever by the Board, by the applicant, by the applicants’ witnesses, then the proposal is still before the Board – namely whatever is noted or shown on the plan. That then constitutes the proposal to which the Board will react as it deems appropriate.

Dr. Behr said that once you are done, you’ve got a proposal, and the proposal is what you presented to us in documents plus any other verbal changes which you might have added to that. He said that the Board will rule on that and either based upon what you’ve proposed, either approve or disapprove, as the Board sees fit. He said that we are not discussing it at that point, we are ruling.

Mr. Kaufman said that he understood and did not think that they were in a position to redesign here for the Board to make a presentation. He said that, if we are talking about a suggestive alternative, that would be something that would be explained to us from the Board’s position and they were open to those suggested alternatives, but they can not move the pen around on the paper here and come up with a definitive numerical and empirical solution or design change and resubmit the application. He said that what he was suggesting was that generally the Board will have a discussion and someone might make a motion with a certain condition or maybe reengage the property owner in an understanding of that.

Dr. Behr said that he did not want to extend this and wanted to get this resolved because that way the Board is saving the applicants' money. He said that it would be intolerable in his mind to force the applicants to come back for another meeting in this case.

Mr. Collins asked Mr. Kaufman if the applicants are proposing the application as is, without the trench or with the trench?

Mr. Kaufman replied that he did not think that they fully understood the trench yet. He said that they understood it to be a ditch.

Dr. Behr explained that a hole would be dug, 1' – 2' wide, underneath the deck, 3' – 4' deep, which would be filled with stones.

Mr. Kaufman said that they have agreed that that would be a reasonable solution. He said that, if it comes up as a matter of Resolution, there is work to be done between the Township Engineer and the applicant or its professionals because, is there a sewer line that comes back there to the septic? Can things be moved around? He said that these are things will have to be worked out, so he would prefer not to have a descriptive, definitive size and just simply say "a trench, with stone, of a certain amount of volume, in the location of the disturbed area that exists under the deck – we are agreeable". He said that that makes sense to them.

Dr. Behr replied that that is what the Board needed to hear and, typically, what the Board will say is that that is a matter of getting together with the *Board's engineer* and figuring out what makes sense, is feasible, and will be safe and appropriate once they get a chance to look at it.

Mr. Kaufman said that, if in fact that is what they are going to agree on, this is a trench that now needs to be dug with a machine – so the 5' area now comes back into play because now the engineer is correct, because a reasonable construction piece of equipment needs to get back to that hole. If this is something the Board is proposing as a resolution to the stormwater problem, they will agree to it but he would then respectfully ask for a little more width on the fence. He said that he would not have a problem pulling it in closer to the property line because they don't need a lot of area of the property but they may, in fact, get close to that 1,500 S.F. (or over it) to get a piece of equipment back there to oblige the stormwater condition. He said that he did not want to be in a position where the client had to move the fence 2' or 3' and they get flagged and have to come back to this Board, so he was hoping that there was a resolution that they could solve without making it complicated. He asked if that made any sense?

In response to Dr. Behr, Mr. Lemanowicz said that they make some very small excavating equipment right now, he believed as narrow as 35". Granted, it will take more than a few scoops to dig the trench and it might take them a while longer, but it is not impossible. He said that if the Board wants to widen the 5' to 8' over 20' or so, so now that is 56 S.F. over – you would not be able to get a *full sized* machine back in there, but you would get something that would be able to dig a 3' trench.

In response to Dr. Behr, Mr. O'Brien said that if the Board decides to approve the application, it could not basically grant them a waiver to exceed the 1,500 S.F. limit – that would be a variance condition. He said that we went through this whole process through the completeness review, where the applicant was informed that the 1,500 S.F. was there and they came back with a plan with 1,496 S.F. of disturbance. He said that everybody knew that this was an issue. He said that they can do 8', but then they've got to take off feet at the back.

Mr. Kaufman said that that is fine and that they understand and are willing to go for it. He said that there is obviously not a clear, logical, easy way to get through this without.....

Dr. Behr asked, "We are will to go for it" means what?

Mr. Kaufman replied, "We are willing to work with the requirements...or the suggested trench or pit or some condition within the 1,500 S.F."

Mr. O'Brien asked the Board what it would like to do about the width of the deck at the back of the house line?

Mr. Collins said that it is specifically what he would call the deck proper versus a step. He asked if it is the step that encroaches or makes the change and not the deck proper?

Mr. O'Brien replied, "No". He said that step encroaches into the rear yard and the *entire* deck encroaches into the side yard.

Mr. Collins added, "To the tune of 3' additional from what currently exists?"

Mr. O'Brien disagreed and said that it is *less* than what currently exists. It is almost 4' better than what currently exists, but it is still less than 5' away from the side yard.

Mr. Pesce expressed confusion. He said that there were two suggestions. One was to take off the 3' x 11' section, but he felt that Mr. O'Brien had suggested doing something further. He asked if that was intended to deal with the side yard issue or the impervious coverage issue, or both?

Mr. O'Brien replied, "Both", because you've got that little 3' x 11' piece right next to the back of the house and he just threw out that if you remove that, it makes the side of the deck even and it reduces a little bit more impervious and might actually knock that down towards that 1% that it is over what currently exists.

In response to Mr. Pesce, Mr. O'Brien said that the 3' x 11' piece is on the westerly side of the house below the existing window at the rear of the house, so it would be even with the back portion of the deck where the hot tub is proposed to sit. He said that he threw out to the Board the fact that the applicant has not offered anything on that and wanted to know what the Board wanted to do, or did it wish to proceed to deliberation?

Dr. Behr again noted that no members of the public were present to make comments and called for deliberations.

Mr. Gerecht said that, before that, he would like to know from Mr. Lemanowicz what the ground coverage would be if you took off the 3' x 11' piece, because we don't know.

Mr. Lemanowicz replied that it would equal 33 S.F.

Mr. Gerecht asked what the percentage of reduction would be.

Mr. Lemanowicz replied that it would reduce the *increase* in impervious coverage by 15%. He said that, right now, they are increasing by 207 S.F.

The Board began its deliberations.

Mrs. Raimer said that she had weighed the testimony before the Board. As for the proofs, she believed that a hardship exists and that this is a nonconforming lot. She said that the lot is undersized with steep slopes in the back. As for the negative criteria, she said that the applicant has testified that she is proposing a new deck to replace one that is older and in a state of disrepair. She felt that the size of the proposed deck is practical given the configuration, the topography, and the impracticalities that might exist if the deck was to be configured in any other way. She felt that the applicants have also shown that they have lessened the visual impact by pulling the deck back away from the rear and side yard line and as for the runoff. She said that she would be in favor of the application on the condition that the infiltration area can be established by digging the trench, as suggested, underneath the deck line. She also noted that Mrs. Oveissi said that she would be willing to put in some landscaping and, while it was not part of the initial plan, that will also serve to capture some of the runoff. She said that Mr. Kaufman was also helpful in supporting her statement in that regard as well. She felt that the runoff can be adequately captured with the landscape suggestions if they were to be incorporated into what is immediately before the Board, as well as the trench that can be established right before the

lattice. She said that it was her opinion that the applicants have met the burden of proof with those conditions.

Mr. Gerecht concurred with Mrs. Raimer. He also emphasized the fact of the landscaping and also the trench to be agreed upon in location and size with Mr. Lemanowicz, however he felt that it can be positioned so that it captures the runoff from the roof and any additional potential runoff from the deck itself. He believed that the situation will be made much better in this case because of taking it away from the side yard and making it a little less obtrusive to the neighbor. He felt that it is a rather unique lot and so the applicants are dealing with somewhat of a hardship. He believed that the applicants have met the burdens expressed by Mrs. Raimer and said that he would be in favor of the application.

Mr. Fargnoli agreed with his colleagues and said that he had nothing more to add. He said that he was in favor of the application with Mr. Lemanowicz monitoring the situation.

Mr. Ruiz agreed.

Mrs. Malloy also agreed. She felt that the applicants are taking something that is unusual and difficult to bear and have lived with it successfully for 23 years and are willing to remediate. She said that she would be in favor of the application, conditioned on the installation of the trench and the conditions that Mr. Lemanowicz had suggested earlier.

Mr. Collins said that, with the inclusion of the trench, he was in favor of the application.

Mr. Pesce agreed and said that he felt that the trench solves the drainage problem to a point where he did not feel that the elimination of a 3' x 11' section is meaningful enough to cause the applicants to alter the plan as submitted.

Mr. Keegan concurred. He felt that the requested stormwater measures are a cost effective way to improve the conditions on the site. He said that he would be in favor of the application.

Dr. Behr also concurred with his fellow Board members. He said that, clearly, there are significant hardships with the site and what is existing right now is unattractive and in disrepair. He felt that it is very clear from the proposal that what the applicants are planning to build will be a significant visual improvement over what is there now. He also felt that the applicants have provided testimony to say that it represents in no way any kind of detriment to their neighbors. He said that the issue before the Board was looking for creative ways to try and mitigate the increase in impervious coverage because of the stormwater issues that are involved. He felt that the trench that has been described and agreed to, along with some reasonable landscaping in front of the lattice, will provide significant relief for that so that the advantages of granting this application significantly outweigh any negatives. He felt that another thing that must be emphasized as a condition is that the limitation of disturbance be clearly marked at the start of construction so that the 1,500 S.F. limitations are not exceeded. He said that the applicants have created that issue and so that becomes the boundary in which they must work. He said that with the conditions discussed, he would approve the application.

Mr. O'Brien reviewed the conditions of approval for the Board's consideration as follows:

- Revised plans be submitted that will show a new vinyl fence on the northern and western boundary lines.
- Lattice screening be shown around the deck.
- Landscaping around the deck be shown.
- Proposed lighting be shown.
- Provide a gravel trench for stormwater under the deck.
- Show a snow fence delineating the limit of disturbance.

He said that he would send a copy of the list of conditions to Mr. Hoffman and Mr. Kaufman at the same time, presuming the Board is in agreement with them.

Mr. Hoffman said that it would be appropriate based upon the discussions during the Board's deliberations for someone to offer a motion to approve the requested variance relief subject to conditions which will be spelled out in more detail in the follow up Resolution.

Mrs. Raimer made the suggested motion which was seconded by Mr. Gerecht.

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

Dr. Behr explained that Mrs. Wolfe will get a copy of the draft Resolution once it is prepared by Mr. Hoffman which she will send to Mr. & Mrs. Oveissi. After reviewing the same, if they have any issues, they may communicate them back to Mrs. Wolfe. At a subsequent meeting of the Board, the Resolution will be formally approved. He congratulated the applicants and wished them luck in construction with their proposal.

The meeting adjourned at 10:15 P.M.

DAWN V. WOLFE
Planning & Zoning Administrator

