

MINUTES

AUGUST 7, 2012

BOARD OF ADJUSTMENT

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Vice Chairman, Mrs. Raimer, called the meeting to order at 8:04 P.M.

She then read the following statement:

Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2012.

PLEDGE OF ALLEGIANCE

ROLL CALL

On a call of the roll the following were present:

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

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

Excused: E. Thomas Behr, Chairman
Christopher Collins, Member
Felix Ruiz, Member

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EXECUTIVE SESSION

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

APPROVAL OF MINUTES

The minutes of April 17, 2012 were approved as written on motion by Mr. Pesce and seconded by Mrs. Malloy. Mr. Gerecht and Mr. Keegan abstained as they were not present at that meeting.

The minutes of May 15, 2012 were approved as written on motion by Mr. Gerecht and seconded by Mr. Pesce. Mrs. Raimer, Mr. Fagnoli and Mrs. Malloy abstained as they were not present at that meeting.

The minutes of June 5, 2012 were approved as written on motion by Mr. Gerecht and seconded by Mr. Pesce. Mr. Fagnoli and Mr. Keegan abstained as they were not present at that meeting.

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ROBERT & MARTHA HEINKEL,
SUCCESSORS IN INTEREST TO
CHARLES & DEVORAH GRUNAU

204 Oaks Road
Block 12402, Lot 3

#09-09Z
Bulk Variances
Development Permit

Present: James B. Flynn, attorney for the applicants
Robert & Martha Heinkel, co-applicants

Proof of service was submitted.

Mr. Fargnoli stated on the record that he had done business with Mr. Heinkel in the past in that he has purchased cars from him.

Mr. Hoffman said that it is a fact sensitive type of evaluation and there are enough other members present to consider the application this evening, however he did not sense any result occurring from Mr. Fargnoli's past business relationship. He asked Mr. Fargnoli if his business dealings were ongoing or continuing.

Mr. Fargnoli replied, "Not for the past several years".

Mr. Hoffman did not believe there is a problem.

Mr. James Flynn, attorney for the applicants, confirmed that he too did not have a problem with Mr. Fargnoli sitting in on the application.

Mrs. Raimer felt that if Mr. Fargnoli could rule objectively, she had no objection with him sitting unless he felt otherwise.

Mr. Fargnoli did not feel otherwise and said he just wanted to bring the fact to everyone's attention.

Mr. Flynn said that he was appearing this evening on an application that is not very complicated. He said that his clients bought a piece of property and, when purchased, it contained a deck. Part of the terms of the closing was that money would be placed in escrow and that the deck would be completed. The deck has been completed and there are some bulk variances that are necessary, which he said is the extent of the application.

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

Mr. Robert Heinkel, co-applicant, was sworn. He said that, at the time he purchased the property, the deck was on the premises in its current state. He said that it was built 25 years ago and there has been no construction by him done on the deck and that it is as it was for the last 25 years and is complete. He said that none of his neighbors have ever approached him regarding the deck.

Mr. Flynn asked Mr. Heinkel if he knew whether any neighbors, if they were present this evening, would voice any objection to the deck.

Mr. Heinkel replied that he seriously doubted it. He said that he has a good relationship with his neighbors and one neighbor *is* present this evening. He added that another neighbor, immediately next door to him, which he would have liked to be present is on vacation.

In response to Mr. Flynn, Mr. Heinkel said that the deck is large and goes around his swimming pool and has a fence around it. He said that when you leave the house you walk down steps and it tapers down one level.

Mr. Flynn asked Mr. Heinkel if there were any negative aspects to the deck that he was aware of.

Mr. Heinkel replied, “Not that I am aware of”. He again added that he has not received any complaints from any neighbors. He believed that at one time someone had mentioned that it makes the surface impervious, however the deck is a wooden one with spaces in between the boards. He said that he did not have any runoff issues on his property that he is aware of. He said that the back of the property backs up to the Passaic River, which drops down a good 75’. He said that he does not have any water issues, nor does anyone on his block. He also said that he did not have any side yard issues.

In response to Mr. Flynn, Mr. Heinkel said that he did not know of any reason why the requested bulk variances should not be approved.

Mrs. Raimer asked Mr. Heinkel if he had had a chance to review the 7/2/12 report of Mr. Lemanowicz. In that report, he mentioned in his first comment that there is a concern that the deck and a retaining wall may encroach on an existing sanitary sewer easement that bisects the property in a north/south direction.

Mr. Heinkel replied that he was not aware of it.

Mrs. Raimer said that, within her paperwork, she saw an engineer associated with the application by the name of Stephen Parker, PE. She asked Mr. Heinkel if he had had a chance to review Mr. Lemanowicz’s report and advise him accordingly.

Mr. Heinkel replied that he did not advise him and that he had supplied his plans to the Township.

Mrs. Raimer asked Mr. Lemanowicz to explain why it was necessary for him to include that comment in his report and what the concerns may be associated with that comment.

Mr. Lemanowicz said that the issue is that there is a sanitary sewer pipe within the easement and it is shown on all the applicants’ plans – in particular the plan titled “Variance Map” by Parker Engineering & Surveying and it shows that there is a railroad tie retaining wall and part of the deck extends onto the easement. The concern is that there is a pipe *somewhere* in that easement. Typically they are in the middle, but not always and there is no way to know if the installation of the deck damaged the pipe. Just because it is not bubbling out of the ground, does not mean it is not cracked. He said that, if you have a groundwater situation, you could be getting water into the sanitary main causing inflow/infiltration problems. He said that the reason for the question is that the easement language typically prohibits any structures from being built on an easement. He said that although he asked for that document in his report, he did not receive it so we don’t know if the applicants are in violation of the easement. He said that we do not know how deep the pipe is (horizontally or vertically), therefore we don’t know if potential damage was done to the pipe due to the foundations of the deck posts going into the ground.

In response to Mr. Heinkel, Mr. Lemanowicz said that the easement is running *parallel* to the River, more or less.

Mr. Heinkel noted that (the River) is way in back of the property line.

Mr. O’Brien showed Mr. Heinkel the Parker survey of the property dated 10/13/09. He pointed out the 25’ sanitary sewer easement, the railroad tie wall, and the deck. He said that Mr. Lemanowicz has pointed out the strip that runs roughly north/south, almost half way to the back of the property. He said that Mr. Lemanowicz is referring to the improvements that have been placed within the easement.

Mr. Hoffman asked for the date of the easement.

Mr. Lemanowicz replied that we don’t have a copy of it.

Mr. Hoffman noted that it is flagged on the engineer’s plan as existing.

Mr. Lemanowicz said that the survey shows it, but it doesn't make reference to a specific document. It just says "20' wide sanitary sewer easement".

Mr. Hoffman said that if, per chance, it happened to exist at the time Mr. Heinkel took title, he would presumably be charged as a matter of law with knowing of its existence just by virtue of it showing up on the title search.

Mr. Lemanowicz agreed that the title search would have picked it up.

In response to Mr. Hoffman, Mr. Flynn said that his clients purchased the property on 5/21/10.

Mr. Flynn said that they can certainly run down the title and see if there is anything in the chain of title and will stipulate that they will do that if Mr. Lemanowicz felt it necessary and return to the Board.

Mr. Lemanowicz said that it is tough to know what is necessary because we don't know where the pipe is. He said that there are manholes every certain distance along the pipe and the slope of the pipe in between those manholes is typically consistent, so you can figure out how deep the pipe is. He said that if that pipe turns out to be 12' down, there is no way the footing is going to come near it, so that puts it into a category whereby the structure is not supposed to be there but the pipe is probably safe, physically. If the information comes back that maybe the pipe is only 3 ½' underground, then typically you go down 4' in this part of the State for frost and, if the person that installed the deck did that and hit it, that could be a problem. It depends on where the pipe is. In either case, if the deck is going to stay there, there is going to have to be something done to the deed so that years from now someone doesn't come back with the same question – if the deed says you can't do a deck, why is there a deck there? He said that we are going to have to do something with that deed of easement if the deck is going to stay there. Knowing where the pipe physically is and if it has been put in danger will determine what we do.

Mr. Flynn suggested having Stephen Parker, PE, visit the site to see what he can find. In the meantime, he said that he would run the title down and the applicant will return to the Board.

Mr. Lemanowicz felt that that would probably be the safest thing to do.

Mrs. Raimer felt it would be very helpful and will be a threshold issue that we must get through before the Board can respond to anything further related to the application.

Mr. Flynn said that he would stipulate that that is acceptable and, to any time frames that have to be extended before the Board, they will consent to that.

In response to Mrs. Raimer, Mrs. Wolfe said that an extension is not needed until after 9/15/12. She said that the next available meeting date on the Board calendar is 9/4/12.

Mr. Hoffman wondered if it really makes a difference. He said that Mr. Lemanowicz said that we really need to know exactly where the pipe lies or is situated within the easement in order to know how it impacts the property, but he was not really sure that we do need to know that. If, for example, if the pipe was at location "A", in fact, but there is a 20' wide easement which is wider than the location chosen and the holder of the easement were free to put the pipe anywhere else within the designated area, he did not know that it makes all that much difference to know that they put in at location "A" when it could be anywhere else and, similarly, perhaps affecting the property. He asked if we could not safely just assume the pipe could go *anywhere* within that easement and raise the question, if the applicant has to live with it, he will have to do so.

Mr. Lemanowicz replied that there are two issues. If the pipe has been threatened by the construction, then that is something that has to be dealt with and, in fact, dealing with that may mean removing the deck. If you remove the deck, that is going to affect another comment he made about stormwater because the Board's have always treated decks, regardless of their construction, as *impervious*, so if the deck is going to be removed, stay, or be modified in some manner, it is going to affect the stormwater calculations.

Mr. Gerecht said that we need to know where the sanitary sewer lies in the easement, how the deck affected it (if any), and the condition of the sewer line.

Mr. Pesce said that it is not just a question of how deep it is and asked if there isn't also a question about accessing it in the event that it requires maintenance.

Mr. Lemanowicz said to assume it is 15' down (which is not uncommon for large mains) and assume that the Board is okay with all of the other parts of the application. If the deck is going to stay there, he said that he would recommend that the applicant be required to go back to the holder of the easement (which is likely the Township) and have the easement revised and, at that level, they may say, "No, we don't want the deck there - period." He said that that is a possibility also. He said that, even if this Board is okay with that particular aspect of it, the Board can't rule on the fact that the deck is in the easement because the Board doesn't control the easement (because he believed that the Township does).

In response to Mr. Pesce, Mr. Lemanowicz said that it is not the Board's job to enforce the easement.

Mr. Pesce then asked why the Board is talking about it.

Mr. O'Brien said that the Board may wish not to take any action whatsoever on the easement because it is out of its jurisdiction.

In response to Mr. Gerecht, Mrs. Raimer said that the Board would say that it meets our standards for purposes of our approval (if that were the case), but that doesn't mean that if the Township wanted to exercise its right to access the easement that they couldn't and so, hypothetically, if there was an approval, it would be at the risk of the owner if the Township were to decide it needed to access the easement depending upon where the pipes are.

Mr. Lemanowicz said that the issue of the deck is the stormwater. If the Board wants to remove itself from the whole topic of the easement and just have the stormwater designed *as if the deck is staying in its current condition*, then regardless of what the holder of the easement does, the drainage is adequate for the most impervious case.

Mr. Gerecht said that Mr. Lemanowicz was saying that whether the deck is removed, made smaller, or altered in some way, we have approved it (hypothetically) at the size it is so, if it is made smaller, it is even better.

Mr. Lemanowicz agreed and said that a condition of approval would be that the owners go to the holder of the easement to deal with that so that it is still covered.

Mr. Pesce said, or we simply take a position that our approval in no way impacts the enforceability or any violation which may exist vis-a- vis the easement.

Mr. O'Brien said that the Board's approval or denial has no issue/effect with the easement.

Mr. Pesce said that that was why he asked the question if the Board has the obligation to enforce the easement. If not, then why would we?

Mr. Lemanowicz suggested, as a condition, to have the applicants go to the people who *can* enforce the easement and ask them what they would like to do.

Mr. Pesce said that that may be in their self-interest but was not sure that the Board can impose that as a condition of an approval.

Mr. Gerecht felt that the Board *can* impose such a condition.

Mr. Pesce added, "But need not".

Mr. O'Brien said that you are stuck with the easement being on the ground and you know it and everybody here knows it. He said that approving a construction within an easement without that easement being satisfied in some way, is something that is beyond the Board's jurisdiction because the easement still stands.

Mr. Gerecht said then we *must* include a condition that the applicants must satisfy the holder of the easement.

Mr. O'Brien agreed that it would be best.

Mr. Pesce said that he misunderstood.

Mr. O'Brien said that the Board could certainly ignore it and say nothing about it, but this Board is aware of the situation.

Mr. Gerecht asked if the Board can continue this evening.

Mrs. Raimer replied, "No".

Mr. Pesce asked why the Board wouldn't address all *other* issues other than the easement.

Mr. Gerecht agreed and said that the Board could continue tonight and address everything else and have the applicants, between this meeting and the next, go to the Township and see what it has to say.

Mr. Keegan asked, if the Board approves the deck in its current state and then the Township says that the deck must be modified because of the easement, do the applicants then have to come back before the Board.

Mr. Pesce replied that he did not believe the Board will approve anything this evening and will, instead, just take testimony on the *other* relevant issues and defer it all until we get better information on the easement.

Mr. O'Brien said that if, for some reason, the Board chose to approve the application, it sounded to him like Mr. Lemanowicz would suggest that, as a condition, the easement be satisfied or that the engineering be satisfied in some way. So if that condition was not met, then the approval would not be final.

Mr. Lemanowicz replied that the approval would go away in its entirety and the applicants would have to come back for some other....

Mr. O'Brien said that Mr. Gerecht was pointing out that it sounded like it would be best to hear the application with as much information as is available and see what other issues may arise.

Mr. Gerecht referred to Mr. Pesce's issue that if the Board says in its opinion that it is okay with the remaining aspects of the deck, its size, etc., then one of the conditions could be that if the Township decides it wants the deck altered and made smaller, then they wouldn't need to come for another approval because it would be incorporated in the approval already granted, because it was made smaller at that point. He said that he wouldn't have a problem with that if it is the Board's inclination to do that adding that something made smaller is usually better, not worse.

Mr. O'Brien said that it sounded like this application will not be completed this evening. He suggested seeing where it goes tonight and getting as much done as possible.

Mrs. Raimer wished to hear from Mr. Lemanowicz. She said that he brought out a major issue and asked him if there were *other* major issues from his report that need to be identified.

Mr. Lemanowicz replied that the other issue is the typical one of a deck being considered impervious surface so that there would have to be the standard calculations done for that, which

is 4” of water over the impervious area. He said that there is also a requirement for a development permit which, in this case, would be a matter of notes added to the plan. He said that the stormwater issue is a key issue because this does drain directly into the Passaic River, so any increase in impervious cover would go directly into the River and continue to that issue which, as Long Hill knows, flooding of the River is a significant issue for downstream residents.

In response to Mrs. Raimer, Mr. Lemanowicz said that the stormwater is currently not being captured. He said that the roof leaders appear to go out onto the surface and everything flows directly down to the River from the surface.

In response to Mr. Pesce, Mr. Lemanowicz said that it did not appear that there is an impervious surface 20% problem in this case.

Mr. Pesce felt that the lot is more than adequate to support a deck of this size (coverage-wise).

Mr. Lemanowicz agreed. He also said that the Ordinance has a 400 S.F. limit and once you go over that, you are required to have drywells, and this is well over that.

Mr. Pesce asked, if there was no variance and the applicant was not before this Board, would the Building Dept. enforce that requirement (in lieu of the Board).

Mr. Lemanowicz replied that he has never come across that situation with the Township because he only represents the Board.

Mr. O’Brien replied that the short answer is that they should, “Yes”.

Mrs. Wolfe agreed.

In response to Mrs. Raimer, Mr. Flynn said that he had no additional testimony.

Mr. Heinkel asked, if this were an issue with the sanitary sewer, it has been 25 years and what kind of effect would it have if something *was* broken during the construction? He asked if we wouldn’t have seen some sort of a negative reaction to how the system works.

Mrs. Raimer replied that that could be an argument made in the applicants’ favor in the event that there is a concern with the location of the sanitary sewer pipe but, because it is there, the Board has an obligation to at least address the affect that it could *potentially* have. She said that it would have been in everybody’s best interest if the information could have been submitted so that we could have eliminated this issue altogether hoping that the applicants were to come in and say that the sewer pipe is so far down it may be irrelevant. However, we do not have that so we have no assurance but, if it were the case that it was interfering, the fact that there has been no activity that is concerning on the property is an argument in the applicants’ favor.

Mr. Lemanowicz noted that the applicant stated that the deck was built 25 years ago and he purchased the house 2 years ago. He asked Mr. Heinkel where the 25 years came from.

Mr. Heinkel replied that it came from the previous owner. He said that you can look at the age of the material/swimming pool and see that it is not brand new.

In response to Mr. Gerecht, Mr. Heinkel said that the swimming pool is an inground pool. He said that Mr. Grunau had told him that when they excavated for the pool, the ground was all shale and rock. He said that it is a *long way* from the pool and deck to the Passaic River and there is a lot of grass area in between. He said that he has never seen water runoff.

Mr. Gerecht asked Mr. Heinkel what he has observed during a hard or “monsoon” type rain.

Mr. Heinkel said that that is the part that concerned him because he was here through Hurricane Irene and saw what it was like by Jaeger Lumber and Paulie’s Pizza where they had 4’ of water in their stores. He said that he does not have that.

Mr. Gerecht replied that the problem is that, if you are feeding into the Passaic River, you are causing flooding somewhere else by doing that. He asked Mr. Heinkel, when he looks onto his backyard, if he saw a flow of water that naturally tends to do down the backyard towards the Passaic River.

Mr. Heinkel replied that he has grass his backyard and typically when you have that kind of water flow it washes the grass away and causes erosion. He stressed that it is a long distance for that water to run and he felt that there is plenty of ground to absorb the water.

Mr. Gerecht replied that the Board understood what he was saying as a layman, but must go by what the Board Engineer and Planner suggest. What he was concerned with (and Mr. Heinkel may not visually see something), but whenever any property along the Passaic River feeds into it, the Board has to make sure that more water is not going into the River than should be so that it does not raise the level of the water during a storm.

Mr. Heinkel understood. He said that Oak St. goes downhill and his home is towards Basking Ridge Rd. where it gets lower and lower. He said that he did not see water coming down from his neighbors who are higher up on the hill either, but when water comes down Oaks Rd. it is just straight downhill.

Mr. Gerecht said that one of the reasons we want mitigation of stormwater is to avoid any surface flow of water into a tributary or River itself.

Mr. Heinkel felt that, in a heavy rain, water is going to find the Passaic River. He said that that is what is happening by Paulie's Pizza. However, he did not see a problem in his own area and noted that we have had some pretty bad storms in the last 2 years. He said that, other than having Board members visit his property during a storm, he did not see how else he could document it.

Mr. Lemanowicz said that the point that Mr. Gerecht is trying to get across is that the water that you see at Paulie's, as an example, came from up on top because it wasn't absorbed. He said that you may not see the flooding, but the increased impervious could be causing flooding somewhere else.

Mr. Heinkel agreed that the Passaic River gets a lot water from a little bit of everywhere.

Mr. Pesce noted that the prior owner of the subject property had filed an application before the property was purchased from them. He asked Mr. Heinkel if he knew the circumstances as to why it was never pursued and if he was aware of it at the time of purchase.

Mr. Heinkel replied that he and his wife bought the house with all of the assurance of the realtors involved and "cheerleaders all the way" that Mr. Grunau was taking care of it and that it was done and applied for and he would see it through. He said that the Grunau's escrowed \$20,000.00 for any work that might need to be done. He said that he sometimes wonders how he was able to buy the house if this is such a severe problem. He said that Mr. Grunau then "just left Dodge", dropped the ball, and didn't want to be bothered anymore. He said that Steven Parker, PE, was secured by Mr. Grunau and he felt that he needed them since they were there before him. He said that he just inherited the problem and, if he had any clue what the problem was going to be, he would not have purchased the house.

Mr. Gerecht sympathized with the Heinkel's position but said that the Board is still held to a standard that it must enforce.

Mr. Heinkel understood.

In response to Mr. Pesce, Mr. Heinkel said that he and his wife are using up the \$20,000.00 on costs for all of this type of work. He said that it is like pulling teeth because they must get permission for its release because it is in an escrow account. He predicted that the money will be used up in the process.

Mr. Pesce asked if he understood that the side yard setbacks are minor (less than a 1' in one case).

Mr. O'Brien replied that the required setback is 25' in the R-3 Zone and the existing and proposed is 24.2' on the right (north) side and on the left side the playground sits right on the boundary. He said that the shed has a 0' setback, where 6' is required which is a pre-existing condition.

Mr. Heinkel disagreed and said that the shed is not even close to the property line.

Mr. O'Brien apologized. He said that the shed is to be 6' from the other accessory structure (which is the deck) and 0' are provided.

In response to Mr. Gerecht, Mr. Heinkel said that the playground and slate patio were there when he bought the house. He said that the playground will be removed because it is unsafe.

Mr. Gerecht explained that, if that condition is going to be eliminated and replaced with grass, the Board needs to know that because it is one less impervious area and one more pervious area.

Mr. Hoffman said that, in that case, 1 of the 4 variances will go away.

Mrs. Raimer asked about the shed and its proximity to the deck. She asked if there is anything that could be done there to eliminate that variance.

In response to Mr. Gerecht, Mr. Heinkel said that the shed is used for pool storage (chemicals, etc.).

Mr. Gerecht said that he had less of a problem with the shed because it is being utilized for the pool and felt that it would be counter productive to move it away.

Mr. Keegan asked if there was any kind of special permitting required because the property is in a flood hazard area.

Mr. Lemanowicz replied that that is the Development Permit discussed in his report. He said that there is some information required such as the flood elevation and some notes. He said that it is mainly administrative because Mr. Parker *does* show the flood elevation. He said that Pg. 3 of his report goes through the notes that are required in order to allow consideration for a Development Permit. He said that the items are not that difficult to obtain and could easily be put in as a condition if the Board so chooses to proceed.

In response to Mrs. Raimer, he said that typically we would require 4" of stormwater storage over the entire impervious area. He said that the area that is subject to this application is the deck. He said that the pool was already permitted, so that wouldn't be considered part of our discussion unless we were over 20%. He said that, if this property was much smaller and we were at 30%, then sometimes we try to bring it back even farther. But, in this case, we are not hitting that 20%, so it would basically be 4" of water over the surface area of the impervious cover as part of the application. He said that Mr. Parker did break out some of the impervious areas, but he did not break it out in such a way that we can see what is what because he put the deck in with the patio and the concrete patio is part of another application (which was the pool), so he has one area where he doesn't know what the pieces are, so he has to break out the deck to show what that is. He said that right now the concrete patio and deck is almost 1,300 S.F. and the shed is 86 S.F. and that totals 1,384 S.F. He said that the patio has to be backed out and you take 4" over that area and that is what your storage is supposed to be.

It was Mr. Gerecht's understanding that the prior owner had permission to build the pool and the cement around it.

Mr. Lemanowicz believed that a permit was taken out for the pool.

Mrs. Wolfe agreed.

Mr. Gerecht added that then the Grunau's went beyond the permit and built the deck.

Mr. Lemanowicz agreed. He said that if the Township wanted stormwater measures taken with the pool, that was the time they should have been asked for them.

Mr. Gerecht said that it would benefit the Board before it makes any decision as to what measures are to be taken, if any, to mitigate water runoff to know *exactly* the square footage we are dealing with, which would just be the deck and the shed.

Mr. Lemanowicz agreed.

In response to Mrs. Raimer, Mr. Flynn acknowledged that he was clear on that issue.

Mrs. Raimer advised Mr. Flynn that, if he is coming back to the Board with information with respect to the location of the sanitary sewer, it would be in his best interest to come back with a stormwater mitigation proposal.

Mr. Lemanowicz said that he has worked with Mr. Parker for a number of years and he has his contact information. He said that he would be more than happy to speak with him if he gives him call to touch base before he starts doing anything.

In response to Mr. Gerecht, Mr. Lemanowicz agreed that the size of the deck would mandate the size of whatever stormwater mitigation system is installed.

Mr. Gerecht asked if the Board could discuss the roof runoff from the house and the leaders to be put into the system.

Mr. Lemanowicz replied that, typically when an applicant comes forth and they are already over the 20% and the proposal is increasing it, the Board has in the past had enough stormwater mitigation to bring it all the way back to the 20%. In this case, the applicants are not over 20%

Mrs. Raimer said that, at this point, all that is pending are the two items that were discussed. She asked Mr. Lemanowicz if there was a minimum that he would suggest or recommend as acceptable. For example, if we knew the footings were 4' deep and the sewer line was 5' down or greater.

Mr. Lemanowicz said that part of it will be if Mr. Parker is able to find out the *material* of the pipe. He said that, if it is a ductile iron pipe, the answer will be much different than if it is a clay pipe. He said that he did not know how old the main is and it could be made of some other type of pipe.

In response to Mr. Gerecht, Mr. Heinkel said that the house was built in 1967.

Mr. Heinkel said that he has noticed that on Oaks Rd. some of the manholes have the year in the 1960's on them.

Mr. Pesce asked if another way for the applicants to approach the easement issue is to get approval from the holder of the easement to let the deck remain in its current location.

Mr. Lemanowicz said that the applicants could now put this application on hold, go deal with the easement, and then come back and say that the holder of the easement said that they don't care, for example. He said that, if the holder of the easement says they must remove the deck, then that could affect the stormwater design. In the alternative, he said that he would think (but would leave it up to Mr. Hoffman) that you could also say, as a condition of approval, the applicants must go to the holder of the easement and subsequently design the stormwater system to accommodate 4" over the area of the deck allowed to remain, and leave it until later. He acknowledged, however, that that would be leaving a lot as a condition.

Mr. Gerecht did not feel that that would be a “what if” because, as a Board, we sometimes have our engineer work with an applicant’s engineer as far as the size of the water mitigation, so it would not be that unusual to do that because it is just square footage and size of the water runoff unit.

Mr. Lemanowicz agreed that that would determine the size of a drywell. He said that it has been done before, but in this case there is another entity, so rather than him getting a phone call a week after the Resolution has been memorialized, it might be 3 months after by the time it gets to the Township Committee and is discussed.

Mr. Gerecht agreed but felt that the Board could at least make progress on the other issues.

Mr. Lemanowicz agreed.

Mr. O’Brien said that, in the meantime, Mr. Parker could do some explorations and the issue may be dealt with adequately in Mr. Lemanowicz’s opinion.

Mr. Heinkel said that his property naturally slopes from Oaks Rd. downhill. As a matter of fact, he said that his basement is subterranean in the front of the house and yet there is a door leading out of the house in the back. He said that it is the only house he has ever owned (out of 5) that does not have a sump pump. He said that it didn’t even make sense and asked if there was someone who come over during a storm and observe.

Mr. Gerecht said that he understood and appreciated what Mr. Heinkel was saying, but he was looking at it from his own perspective. He said that the Board is discussing creating a problem in the River in general and raising the water level in a falling body of water. He said that the applicants’ house may be high and dry, but that is not the issue we are talking about. If the property was undeveloped, he said that there still would be a natural flow of water into the River. He said that developing property changes that and the Board is basically saying that it wants to make sure that the houses along the River do not contribute to the water overflowing the River. He said that the fact that the applicants do not have a sump pump is probably due to the design of the property because it probably goes around the house. He understood Mr. Heinkel’s point but said it is not relevant to the Board’s issue.

Mr. Heinkel said that his only point is that his property naturally slopes towards the River – from the street all the way down. He agreed that the sump pump issue isn’t *the* issue, it is just that he has watched the house through a hurricane and the ground seems to be able to handle the water.

Mr. Gerecht replied that, if the property sloped *away* from the River, that would be better for us and would be considered a positive because the water wouldn’t be getting into the River. He said that the fact that it slopes *towards* the River gives the Board a moment of concern to make sure that there isn’t more water potentially going back there.

Mr. Heinkel said that he lives on the low point of his block and everyone is higher than him. He agreed that there is water running by which goes somewhere. He said that he agreed and saw the problem.

Having listened to the discussion among the Board members, Mr. Flynn said that he would ask that the Board rule on the bulk variances this evening because he classified them as de minimis, and that way the variances would be behind us and take a little “heat” off the applicant.

Mrs. Raimer replied that she would take the request under consideration.

Looking at the survey where the easement is and there is already impervious coverage, including the macadam driveway, Mr. Keegan asked Mr. Lemanowicz if he saw any issues in having room for a drywell.

Mr. Lemanowicz replied that a drywell might go behind the shed or it could go off to the side. He said that drywells don’t need to catch the water from the deck. They need to catch water from

an impervious surface the same size as the deck. He said that you could just pipe the roof leaders into a drywell between the driveway and the side yard. He said that it doesn't have to be from that particular impervious, as long as the equivalent area of *some* impervious goes there. He said that the Board may also want to consider the drywell issue because once we get a location of the drywells, drywells are still considered a critical area and there are setbacks that we fairly regularly give relief from because of the nature of the property.

Mr. Gerecht replied that Mr. Lemanowicz was saying that a drywell could be put along the driveway to capture the driveway, roof water, and the equivalent of what the deck now covers.

Mr. Lemanowicz said that it could come off the garage as long as it comes off an impervious area equivalent in size to the deck.

Mr. Heinkel said that he had flower type boxes that he had reconstructed after he moved in which are 3' - 3 1/2' high and come out about 24" from the house on each side of the front door and run approximately 15' in length. He said that they are filled with soil and contain flowers but the rain gutters for the entire front drainage of the house go into them. He said that it is like an above ground drywell.

Mr. Lemanowicz said that he would talk to Mr. Parker and that they may be able to devise some type of credit for what Mr. Heinkel described. He said that, if it takes up the front half of the house that is a considerable area, however the *capacity* might not be there.

Mr. O'Brien asked Mr. Heinkel if there are any other areas like this on his property where he utilizes stormwater.

Mr. Heinkel replied that the leaders off the garage roof run onto the driveway and the back leaders run on top of the ground.

Mr. Lemanowicz advised Mr. Heinkel to remind Mr. Parker that, when he removes the slate that is next to the playground, that is also a credit for impervious coverage. He said that the surface of the playground is generally not considered to be impervious if it is made of wood chips or dirt. He said that Mr. Parker knows what he looks for and things that can be done.

Mrs. Raimer asked Mr. Hoffman to address Mr. Flynn's last point when he asked the Board to consider ruling on the variances.

Mr. Hoffman reviewed the reasons that the applicant's were appearing before the Board and said that there is some law to the effect that you stand in the shoes of your predecessor and still must justify, not only their having to seek a variance, but in this case their predecessor having to seek a variance because this location was considered to be more appropriate. He asked Mr. Heinkel if he was in a position to explain why the locations for which various relief has been sought are *preferable* to locations that might not comply with the Ordinance and which would still be too close to the property line.

In response to Mr. Hoffman, Mr. Heinkel again confirmed that he will remove the existing playground area.

Mr. Hoffman then stated that that can be eliminated as being an issue. He then noted that the garage structure is about 1' – 2' too close to the side line. He asked Mr. Heinkel if he felt it necessary that the garage be of the size that it is and, if so, why should the Board consider that in evaluating whether it is at an appropriate place or not to grant such a variance.

Mr. Heinkel replied that he believed that the garage was probably a part of the original construction of the home due to its physical wear and tear. He said that it is a 2 car garage which he did not believe was added on.

Mr. Hoffman said that on the northerly side there is a wooden deck which wraps around the rear of the pool and side of the pool and is only 9' (rather than the required 10') from a side line of

the property. He asked why the deck couldn't be a foot less in its offset distance so that it would comply with the 10' requirement of the Ordinance.

Mr. Heinkel replied that it would require moving the footings and some deconstruction. He said that there was no reason why they had to build it there in the first place, but they did.

Mr. Hoffman asked if remedying the problem would be a worse alternative than fixing it.

Mr. Heinkel replied that he certainly did not think it would affect the runoff by moving it 1' back.

Mr. Hoffman said that on the southerly side there is a shed which actually has a zero offset from the deck area when a 6' minimum is required between the two types of accessory structures. He asked why the shed couldn't be put someplace else on the property that met the setback requirement.

Mr. Heinkel did not believe that it would create any harm but was not sure of the advantage to it. He said that it would still cover the same footprint on the property as far as drainage is concerned. He said that it is actually not that close to the pool, there is just a deck area between the pool and the shed.

In response to Mr. Gerecht, Mr. Heinkel said that the shed is used to store pool items such as chemicals. He also keeps his lawnmower in it.

Mr. Hoffman said that he thought he was hearing that, in storing pool type equipment, it would naturally tend to be more logically placed in closer proximity to the pool and its abutting deck structure.

Mr. Heinkel replied that that is why he was assuming that his predecessor put it there – for pool storage.

In response to Mr. Gerecht, Mr. Heinkel said that the shed is a basic wooden framed structure with asphalt shingles. He said that it is in very good shape, has one window and a door, and is not an eyesore.

Mr. Hoffman asked Mr. Heinkel how much of the construction which took place a number of years ago would even be visible to the neighbors from their respective lots.

Mr. Heinkel replied, "Probably very little", just thinking how far he is from his neighbors. He said that they are not close to each other. He noted that there is a fence around the property and the deck.

The meeting was opened to the public for questions and comments.

Mr. Ted Laffey, 179 Oaks Rd., was sworn. He said that he has lived on Oaks Rd. for the past 40 years. He said that the Heinkel's home and garage are exactly the way they were 40 years ago. He said that the area was gravity sewered in approximately 1973-1974 and that Oaks Rd. is located on the Millington ravine which he felt is unique in N.J. He said that the sewer main in the rear of the property is a gravity main and is constructed of RCP pipe. It was installed in Oaks Rd., which also serves his property and the properties up above. He said that if you stand on one of the manholes you can see the alignment of the piping, noting that the manholes are every 30'-50' apart. If you pull the covers on the manholes, he said that you can physically see the invert where a pipe comes in and then exits the manhole.

Mr. Gerecht asked Mr. Laffey if he had looked down a manhole.

Mr. Laffey replied affirmatively and said that he worked in the mechanical contracting industry. He said that in his business he built huge projects, including wastewater plants.

Mr. Gerecht asked if, by removing the manhole lid, he could estimate the approximate depth of the pipe.

Mr. Laffey replied, “Absolutely”. He said that he has never looked down the manhole in question, however he looked down the manhole on his own property. He said that the elevation of the invert (location of the pipe in relation to the top of the manhole) would vary depending upon how the engineer laid out the slope of the pipe. He said that, naturally, you would lay it out as shallow as possible to eliminate the excavation work.

In response to Mr. Gerecht, Mr. Laffey said that his house is across the road from the subject property and two houses parallel to him. He noted that the lots are quite large (about 300’ laterally). He said that he tried to put a deck on own property but could not get below 3’ with the rock. He said that many times they had to drill and blast to get the pipe into an elevation that was called for on the drawings.

There being no further questions or comments from the public, the meeting was closed to the public.

Mrs. Raimer thanked Mr. Hoffman and said that it was very clear to her what he was doing – he was setting it up so that the information is on the record if the Board wanted to decide on the variance.

Mr. Hoffman said that someone had commented about resolving issues apart from the possible impact on the sewer easement, runoff, etc., and he tried to do that.

Mrs. Raimer said, however, that the fact that the Board does not have the information that was requested bears on part of its analysis if the Board was to decide on the variances, because we have the negative criteria that we have to satisfy. Her concern was that without that information the Board couldn’t effectively satisfy the negative criteria, which is why she was looking to Mr. Hoffman for a little more guidance. She felt that what Mr. Hoffman provided was very substantial in helping the Board to consider the criteria for the variances.

Mr. Hoffman said that there should be a partial bifurcation of this application seemed to him to be hardly necessary. He said that we’ve got a long existing factual situation and nothing is going to change between now and a month or so by carrying it. Also, resolving it all in one fell swoop rather than a multiplicity of hearings seemed to make sense in view of the scope of this single lot longstanding factual situation. He had no problem, now that he had elicited his responses to the proximity questions of why these structures are where they are, letting us just sit on that. It is on the record and the Board can weigh that along with proofs relative to the sewer easement, etc. in rendering a single decision if it so chooses. He said that the Board could have it either way.

Mrs. Raimer said that, typically, the Board does not split up the deliberation on a variance (the positive criteria versus the negative criteria) and she did not think it would be in the Board’s best interest to do so now, but said that if a Board member wished to sway the Board otherwise, they should feel free.

Mr. Gerecht was more concerned with getting as much information on the record tonight as possible.

Mrs. Raimer said that, although for a moment it was going to be redundant, it was very effective in establishing the positive criteria that the Board needs to go forward. She felt that it was clear to the applicants what they must present for the next time. She asked the Board’s professionals if they had any additional advice for Mr. Flynn for what else he should come prepared with so that it could be the most efficient and expedient hearing that we could possibly offer the next time around.

Mr. O’Brien said that it has been Board practice for any newly submitted application that additional information is to be submitted two weeks *prior to* the hearing date in question, which would give him and Mr. Lemanowicz about a week to review it and issue a subsequent report if

necessary which allows a week for that report to be circulated amongst both the applicants and the Board. He said that, if the applicants wish to proceed at the 9/4/12 date, they would need to have whatever information is to be submitted to the Board Administrator 2 weeks from this evening. He said that the applicants should consider if that is possible and, if not, perhaps the Board should consider a subsequent date.

Mrs. Wolfe said that the following available date would be 9/18/12.

Mr. Flynn said that he felt that that date is a more reasonable one than 9/4. He signed a consent to extension of time for the Board's decision to 10/18/12.

Mr. O'Brien advised Mr. Flynn that it would be very helpful to provide any information about the easement and piping (including its physical condition) that the applicants' engineer can attest to.

Mr. Heinkel felt that Mr. Parker's time is the issue. He said that he needs time to do this work and he might not be able to accomplish that in 2 weeks time.

Mr. Pesce added that the Heinkel's also have the potential to reach out to the Township on the easement that they might not be able to turn around and answer immediately either.

Mr. Gerecht said that the applicants may wish to get Mr. Parker's input and information to *give* to the Township before reaching out to them.

Mr. Flynn confirmed that 9/18/12 is an acceptable continuation date.

Mrs. Raimer announced that this application is carried to 9/18/12 with no further notice.

Mr. Hoffman acknowledged that he heard that there is going to be an *elimination* of variances, rather than adding more between now and then.

Mr. O'Brien said that any subsequent information that the applicants will be submitting to the Board must be submitted by the close of business on 9/4/12. If it is not in by then, he said that their ability to be heard on 9/18/12 is in jeopardy.

Mr. Flynn acknowledged that he understood.

Mr. Lemanowicz reminded Mr. Flynn to have Mr. Parker contact him if he so chooses (the sooner the better) in order to set him off on the right path.

Mr. Heinkel said that he would call Mr. Parker tomorrow.

There being no further business, the meeting adjourned at 9:25 P.M.

DAWN V. WOLFE
Planning & Zoning Administrator

