

MINUTES

JANUARY 22, 2013

BOARD OF ADJUSTMENT

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Dr. Behr, called the meeting to order at 8:04 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 December, 2012.

PLEDGE OF ALLEGIANCE

ROLL CALL

On a call of the roll the following were present:

E. Thomas Behr, Chairman
Sandi Raimer, Vice Chairman
Edwin F. Gerecht, Jr., Member
Maureen Malloy, Member
Felix Ruiz, Member

Richard Keegan, 2nd Alternate

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

Excused: Jerry Aroneo, Member
John Fagnoli, Member
Michael Pesce, 1st Alternate

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EXECUTIVE SESSION

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

RESOLUTION OF MEMORIALIZATION

STONEHOUSE DIVISION, LLC

33 Stonehouse Rd.
Block 12101, Lots 34, 35, 36 & 37

**#08-07Z
Certification of a
Nonconforming Use**

The Board of Adjustment memorialized the annexed Resolution of approval for Stonehouse Division, LLC on motion by Mr. Gerecht and seconded by Mr. Ruiz.

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

VERBAL REPORT ON JANUARY 15, 2013

COMPLETENESS/TECHNICAL REVIEW COMMITTEE MEETING

Dr. Behr stated that he observed the January 15, 2013 Completeness/Technical Review Committee Meeting and asked Mrs. Wolfe, Mr. O'Brien and Mr. Lemanowicz for their observations as to the effectiveness of the process.

Mrs. Wolfe felt that the meeting went very well. Unfortunately, she said that the applicants' attorney was held up in court that evening and could not attend the meeting, however the CRC/TRC was able to proceed in his absence with the applicants' remaining professionals. She noted that this was the second CRC/TRC meeting held for these particular applicants and the Committee reviewed the remaining outstanding items from the original meeting. She noted that the applicants had two engineers present and Mr. Lemanowicz was able to explain any questions they had. She noted that any planning issues were discussed with the applicants' architect. She felt that when the applicants and their professionals left the meeting they were very satisfied that it was an informative and helpful to them.

Mr. Lemanowicz said that in the past when a CRC meeting was held the members would go through the checklist and then Mrs. Wolfe would send the applicant a letter advising that the application was either deemed complete or not complete (and specify the reasons). He said that the applicants would submit further information and keep going through the process until their application was deemed complete. With the new process, he said that we start off like that with the applicants present and there is discussion to help them understand and avoid them from making the same mistake(s) again the next time around. He said that the CRC will give them technical issues that it sees so that they don't have to write them down in their technical report. For example, they may say that certain areas appear to be steep and they may want to look at them. He said that they obviously do not get into discussions such as proofs or issues that are for the Board, but the technical comments that the Board's consultants are going to make either now or later can be given as a "heads up" and it helps applicants to understand and it also gives them a sense that we are there to guide them as opposed to stop them. He said that he has always felt that when your first experience with a person looking at the plan is "Here is everything you did wrong", it doesn't start of a relationship well. He felt that the new procedure helps to create a better environment. He said that these particular applicants are still not complete because of some items but they understand *why* they are not. It seemed to him that they probably saved a half dozen technical comments *at least* that are never going to be made because they already made them and they have been given a chance to address them before the hearing which cuts down on the review time and meeting time. His reaction was that the meeting was helpful to them and he felt that it enhances the whole experience when you can see that we are not here to stop things and that it is a matter of getting it the way the municipality does things in a fashion where we are trying to work together and he felt it is appreciated.

Mr. O'Brien said that, as Mr. Lemanowicz pointed out, they did mention some technical comments to the applicants in terms of things they usually look at in their reports and these are standard items giving them advice as to what they will be looking at while not telling them what to do or not to do but just pointing out areas that would be of interest to the Board. He said that they were very amenable to addressing those areas which will save everybody a lot of time. He felt that it is a very positive development.

Dr. Behr confirmed with Mrs. Wolfe that the next Completeness/Technical Review Committee meeting is January 29th and asked for a Board member to volunteer to attend that meeting.

Mrs. Wolfe noted that two different applications were scheduled to be reviewed that evening between 5:00 PM and 7:30 PM.

Mr. Gerecht volunteered to attend the second meeting but could not make it to the first.

No other member was able to volunteer to attend the earlier meeting.

Mr. O'Brien said that the role of a Board member at these meetings is basically one of observation and not one of comment or discussion.

Dr. Behr added that it obviously would be completely improper for a Board member to discuss the application with the applicant because it is not a public hearing.

Noting the time and that an applicant was present at this meeting to continue their application, the Board agreed to end the discussion.

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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: Vincent T. Bisogno, attorney for the applicant
Stephen Parker, licensed professional engineer
Robert & Martha Heinkel, co-applicants

Lynn Forest, certified shorthand reporter

This is a continued application.

Mr. Vincent Bisogno, attorney for the applicants, said that his clients were last before the Board on August 7, 2012 at which time they were represented by James Flynn, Esq. Due to illness, he said that Mr. Flynn is unable to continue representing the Heinkel's in this matter.

He said he had an opportunity to review the minutes of the last meeting and some documentation that is in the file. Unfortunately, he said that this application started in 2009 and his clients purchased the subject property in May of 2010. Since taking the case, he said that he told them that they should not have purchased the property. He said that \$20,000.00 was held in escrow to take care of some permits that were necessary and his clients were under the impression that they just had to apply for the permits and they would be issued. He noted that there is correspondence in the file between Mrs. Wolfe and Mr. Thomas Delia, Zoning Officer, explaining to the Heinkel's what they had to do. He said that the reason he raised that is because they were basically here asking for forgiveness for something that happened about 25 years ago by the former owner, Mr. Grunau. He said that the \$20,000.00 that Mr. Grunau gave his clients to be held in escrow is basically gone estimating that there is only about \$2,500.00 of it left.

He said that the variances that are involved in the application are not major but they are still variances. He said that the major issue is the deck being located within a sewer easement. He noted that there is a title policy of his clients which he checked where no structures are to be placed in the sewer easement. He said that the variances involved basically relate to the garage that is on the southerly side of the property. The garage is 24.2' from the southerly property line when 25' is required. On the northerly side of the property the deck is 9' from the northerly property line when 10' is required. He said that the third variance is the fact that the shed is right next to the decking when it should be 5' away. He said that a development permit is required, however he felt that it has been satisfied by placing the necessary notes on the plan. He said that there is a playground on the southerly side of the property which will be removed and not be an issue before the Board. He said that the major issue that they had, and why his clients should *not* have bought the property, is that the deck is located in the sewer easement where no structures are allowed. He said that, fortunately, Mr. Lemanowicz took the bull by the horns and wrote a letter to the Township Clerk explaining the situation by putting the facts and, fortunately, the Township Committee made a very practical decision and allowed the deck to continue provided that his clients agree to certain conditions. He said that his clients have signed that agreement with the Township and have recorded the document in the Clerk's office in Morris County, a

copy of which has been supplied to the Board. He said that the document was negotiated with Mr. Pidgeon and himself and that the major conditions were:

- The deck remains there at his clients' own risk.
- The Township may remove the deck at any time at his clients' expense.
- The Township does not waive any of its rights.
- The deck footings will not interfere with any part of the sewer line.
- His clients' must verify that by engineering testimony that the deck footings will not interfere with any part of the sewer line.

He said that his clients' engineer, Mr. Stephen Parker, will testify regarding that particular issue.

He felt that the issues regarding the variances were addressed at the last meeting by Mr. Heinkel. He noted that Mr. & Mrs. Heinkel were present this evening to answer any questions.

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

Mr. Stephen Parker was also sworn. He has appeared before the Board on many occasions and was accepted as an expert.

Mr. Parker referred to and described the Variance Map he had prepared dated 6/6/11, last rev. 10/22/12. He said that the subject property is a long narrow lot which is somewhat irregularly shaped. It slopes from the front to the back and the back (westernmost portion) of the property is bordered by the Passaic River. He said that there is about 70' in elevation difference between the front of the property and the Passaic River. There is a sewer easement that runs through the middle of the property which is labeled on the plan at the back of the deck which runs in a north/south direction near the middle of the lot. There is also an existing sanitary sewer line within that easement.

In response to Mr. Bisogno, Mr. Parker said that behind the house there is a pool and behind and around the pool is a wood deck which was partially built within the sanitary sewer easement.

Also in response to Mr. Bisogno, Mr. Parker pointed out the front corner of the garage which is located 24.2' from the southerly property line and the 9' variance being sought for the northerly side of the deck. He also pointed out the shed that is adjacent to the decking instead of 5' away. He also confirmed that he met the necessary Development Permit requirements by putting the necessary notes on the plan.

Mr. Bisogno said that the Township Committee wanted the applicants to verify that the footings for the decking would not interfere in any way with the sewer line. He asked Mr. Parker what he did to verify that.

Mr. Parker said that the concern is that if any of the support posts for the deck are on top of the sewer line there is a potential for that to cause stress which the sewer line wasn't designed to handle. He said that his survey crew went out and actually located the sewer line by locating the manholes on either side of the property. They located the decking and the posts for the deck as well. He said that he prepared a detail of that area which is shown on the plans and it shows that the post that is closest to the sewer line is not directly over the sewer line – it is in fact about 15" offset from the sewer line in a horizontal direction and vertically it is quite a bit higher. He said that the sewer line is about 7' below grade in the area of the deck. He said that they were not able to measure how deep the posts for the deck are but typically they are about 3'-4' below grade. Based upon those measurements and that information, he said that he did not see this causing any problems with the sewer line because it is not located directly over the top of it.

In response to Mr. Bisogno, Mr. Parker said that right now there is no stormwater management on the site and the property slopes at the rear down to the Passaic River. He said that he had a discussion regarding stormwater management with Mr. Lemanowicz and learned that it is the policy of the Board/Township for decks to be considered impervious and typically handled with stormwater management systems. He said that Mr. Lemanowicz indicated that the Board may be

likely to require that as part of this application. He said that they did not propose any stormwater management as part of the design noting that the deck has been in existence for quite some time and it is a wood deck with slats and it doesn't contribute to runoff onto the property any more than the dirt underneath it does.

Mrs. Raimer asked Mr. Parker if there was any way he could see in his professional opinion that the sanitary sewer would be compromised by the construction of the deck or where the footings may be located.

Mr. Parker replied, "No, I don't think so".

Mr. Gerecht asked how many footings are close to the sewer line.

Mr. Parker replied that there is really only one which is the footing that located at the westernmost portion of the deck. He said that there is another one within the easement but it is even further away by several more feet than the closest one.

Mrs. Raimer asked, with erosion being what it is in sloped areas, is it possible that any of the footings can shift over time or that the sanitary sewer could shift in any way. She asked Mr. Parker if he could verify that these things will remain in the positions that they are in.

Mr. Parker replied that it is possible for that to happen, however he noted that the sanitary sewer and deck have been in place for about 20 years and they appear very stable. He did not think that any more shifting or settlement will occur that would change what his prior testimony has been.

Mr. Lemanowicz said that he had no reason to take exception to what Mr. Parker had said.

Dr. Behr asked Mr. Lemanowicz to summarize what he saw as the important stormwater management issues that might apply to this application.

Mr. Lemanowicz replied that the Board knows that it has always been the policy since he began his position with the Boards in 2009 that a deck is considered impervious and, in fact, Sec. 136.2f reads that "The erection of a roof or similar structure over an existing deck, patio or walkway of a single-family residence shall not be counted as new or additional lot coverage", indicating that because it already is considered and when it was built it was considered that. He said that the Ordinance is set up to count decks as *impervious* and the Board has always treated them as such. With respect to water running through decks, he said that that is possible and there are deck materials out there now that actually tongue and groove and they do pond water on them to some extent. He said that under the deck there is no vegetation, therefore it is not like water falling on grass – it is water falling on bare earth and in the calculation of runoff bare earth does run off more than vegetated surfaces. Even though it is going through the deck, he said it is not having the same effect as if it was lawn. In this case, he said that it eventually hits grass but it hits it where it is already in a state where it is not sheet flow. He said that he understood the position, but the way the Ordinance is written and the way the Boards have been acting, it was his feeling that the intent of the Ordinance that a deck is impervious and, based upon the stormwater management requirements of the Ordinance, when you create this level of impervious cover, stormwater management is required.

Dr. Behr asked, even though this was built some time ago, for the purposes of this Board are we treating this as *new* impervious coverage.

Mr. Lemanowicz said that in cases of after the fact applications such as this, he has always felt that just because they are there it doesn't mean that this would not have been required if permission was asked when it was built the first time. He said that the fact that it is there, in his mind, really doesn't hold any strength because it wasn't approved. Since this is now the time that the application is made, he felt that we should be looking at the current ordinances, however he said that he would defer to Mr. Hoffman as to the applicable law.

Mr. Hoffman said that the law is what remains in effect as of the effective date of the proposed changes to the site.

Mr. Lemanowicz said that what Dr. Behr may have been referring to is, would we be following the Ordinances at the time this was built for this application, or following the *current* Ordinances?

Mr. Hoffman replied that he thought that the Ordinance in effect when it was built would be what governs.

Dr. Behr said that was this deck approved is the question.

Mr. Lemanowicz said that it was his understanding that the deck was never the subject of any type of application.

Mr. Bisogno said that he served an OPRA request on the Township for documents related to this property and he did not find a permit for the deck. He said that he found a permit for the pool that was issued 2 days before the closing, but not a permit for the decking.

Dr. Behr called for a short recess.

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Dr. Behr said that he thought everyone recognized the fact that the applicants are in a difficult position because they are dealing with potentially a problem that was not of their own making. He said that the issue before the Board is that it is obligated to deal with the facts that are in front of it regardless of any sympathy it may have for the applicant in terms of how those facts came to be in the first place. He said that the question is, if the current Ordinance would have required some kind of stormwater management treatment because of the existence of the deck and, if the deck had not been permitted, then arguably the deck now is a new structure that the Board has to treat as a new structure. He asked Mr. Hoffman if he had captured the facts correctly or if he could clarify the situation.

Mr. Hoffman replied that he felt that Dr. Behr's statement was a fair one and that the Board can only be governed by the law in effect when the matter comes before the Board for consideration.

Mr. Bisogno said that he had no further questions of Mr. Parker.

Mr. Keegan asked Mr. Parker if he could speak about the railroad tie retaining wall. He said that he was trying to get a sense of the elevations. He asked if it was roughly 2' high.

Mr. Parker replied that he did not believe that the plan indicates how high the wall is but he estimated it to be 18" or no more than 24" from a site inspection he had made.

Mr. Keegan said that since it is made of railroad ties, he assumed it will have to be replaced at some point. He asked if there will need to be any footings installed in order to replace it.

Mr. Parker replied, "Typically, no – not for the railroad tie wall".

Mr. Keegan said that there was obviously some type of fill material brought in.

Mr. Parker replied that he could not really speak to that since he did not know when it was put in or constructed.

Mr. Keegan asked, given that the deck is close to the wall, would the fill required for any kind of reconstruction of the wall pose any kind of threat to the sanitary sewer line.

Mr. Parker replied that he did not believe that it would.

Dr. Behr asked Mr. Lemanowicz or Mr. O'Brien, what are the stormwater management issues that the Board needs to be mindful of regarding this application.

Mr. Lemanowicz replied that the deck is treated as an impervious surface and any increase in impervious surface has the effect of increasing runoff. He said that this particular property abuts the Passaic River and while in comparison to the entire watershed this deck may not be significant, however when you consider all the properties and all of the insignificant items that can get added together you wind up with something insignificant and that is basically the premise of why everybody has stormwater management applied to them, not just the ones that are on flat properties or near wetlands. He said that, granted this particular house may not suffer from any impact of that deck, but from a calculation standpoint the Passaic River will see more water from this property.

Dr. Behr said that there are still a few members of the Board who were on the Board when the former Chairman of the Environmental Commission (Dr. Len Hamilton) spoke to the Board about the larger issues of the Passaic Watershed. He said that the simple fact of the matter is that over the last 20-30 years, there has been a significant degradation of the ability of the Great Swamp and the Passaic Watershed to be able to retain water because of the construction that has happened and so it has long been the practice of the Board, when it is granting variances, to seek to actually improve existing conditions somewhat because the flooding problem in the Township is one that all of us recognize and, arguably, each single development bears some responsibility in trying to mitigate that wherever it is possible.

In response to Dr. Behr, Mr. Parker confirmed that the applicants are not contemplating any stormwater management provisions.

Mr. Bisogno said that he had been talking to his clients about this issue and Mr. Parker told him that the cost of stormwater management is approximately \$10,000.00. He said that the cost of removal of the deck may be \$10,000.00, or somewhat less than that, so they are debating whether to knock down the deck and "bite the bullet" and that is still up in the air with his clients.

Mrs. Martha Heinkel, co-applicant, was sworn. She said that, obviously, they bought the house in error and should not have bought it. He said that what they were told when they bought the house was that Dr. Grunau had built the pool and deck 25 years prior and that he just did not get the permits. She said that he said that he would do all of the work and get the permits without a problem and they should go ahead and buy the house. She said that she suggested that money be put in escrow to do so and felt she was being reasonable at \$20,000.00 but it is gone and it is almost 3 years later and they are still living in the same house unable to sell it at this point because of these issues. She said that she and her husband are still in contact with the prior owner who his a physician in the area and he said that when he put it in there was 5' of shale under the deck and so there is no grass or sun under there, only shale at a depth of 5'. She said that there is cement around the pool and about 5' away from the pool it is all shale. She said that theirs is the lowest house on Oaks Rd. and there is water coming from above, not from them. As a matter of fact, she said that everyone in their neighborhood parks right in front of their house so that they can walk on the street because it is a great hill for great exercise – that is how low they are and how steep it is. She said that they are not at the top with a big enormous impervious deck causing the problems that are happening at Paulie's – it is not from 204 Oaks Rd. She understood that the Board has to follow the legalities and she and her husband are being very patient and trying to do this the right way, but she felt that there needs to be some common sense here. She said that they have spent a lot of money to try to do this the right way and she thought that the deck is fine. She said that first it was the pool house and then it was the garage. She said that the house was built *years* ago and now the garage is an issue. She said that it seemed to her that we are digging up issues and they are not going away and every time they come before the Board it is another issue. She said that perhaps their attorney who was unable to continue with the application was not as aggressive as he should have been, she did not know, but the only issue in front of us is this deck. She said that, if the deck is too big, they will cut it down. If it shouldn't be there, she said they will remove it. She said that the idea of walking out of this meeting thinking that she has to hire someone and spend another \$10,000.00 to do so kind of runoff remediation that isn't even necessary was troubling. She invited the Board to view the

property to see that it is not causing runoff. She said that the sewer line is secure and the footings are not ruining it even though it is 25 years old. She asked the Board to consider what she and her husband have been put through and use a little common sense about a problem that a prior owner neglected to take care of 25 years ago. She said that the shale is there and there doesn't seem to be a problem and she was really not comfortable having to sue the prior owner for more money to do what he should have done 25 years ago. At this point, she did not know what else she and her husband can do. She said that they would like to get their house in some kind of clearance so that they can sell it.

Assuming no change to the property (meaning the deck will exist as it is), Dr. Behr asked Mr. Lemanowicz if there was any way to calculate or evaluate the impact of the predictable stormwater runoff from the property into the Passaic River.

Mr. Lemanowicz replied that there are standard calculations that can be used to calculate the runoff from the site.

Dr. Behr asked Mr. Lemanowicz if he would be comfortable in rendering an opinion about the *scope* of the problem – whether it is a major or minor issue or someplace in between.

Mr. Hoffman asked Dr. Behr if, with his consent, we could factor into the question is it a major or minor issue *for this size lot*.

Dr. Behr replied that he was speaking *for this specific property*.

Mr. Lemanowicz said that you can calculate the change in runoff with the additional impervious cover and the Ordinance has the requirement that, if you are over 400 S.F. of new impervious, you need stormwater management. However, he has not done that and did not believe that Mr. Parker had either.

Dr. Behr said that, when we think about the negative criteria, what is the potential harm that might result were the Board to approve the application and to allow a condition that has existed for 25 years to continue to exist.

Mr. Lemanowicz replied that, proportionately, you can see that the wood deck area on the site is a substantial proportion of the total impervious.

In response to Mr. Ruiz, Mr. Lemanowicz said that the total impervious is 10,231 S.F. and the dwelling is 1,271 S.F. He said that the decks alone are 2,682 S.F. (more than double the dwelling). The overall percentage compared to the lot is 15.4%.

Mr. O'Brien noted that it is a very large lot (54,000 S.F.).

Mr. Lemanowicz said that the chart actually says that the total lot coverage is 18.8% and there is a 20% maximum permitted per Ordinance, however the Ordinance does require storage for that impervious cover. He said that the unpermitted deck is 26% of the total impervious coverage on the entire lot, so it is noticeable.

In response to Mr. Gerecht, Mr. O'Brien agreed that stormwater retention cannot be anywhere near the sewer easement. He said there is no required setback on an easement, but it would have to be clear of it.

Also in response to Mr. Gerecht, Mr. O'Brien said that there are woods and also grass and other natural growth along the back of the property going down the slope to the Passaic River.

Mr. Gerecht said that, in the past, the Board has given deference to rain gardens and other water absorbing foliage that can be planted. He asked if there were any methods of the applicants "beefing up" the area beyond the grassy area (between the civilized and wild areas) with more absorbent materials and keeping the water from getting to the Passaic River.

Mr. Lemanowicz replied that we have done that in the past.

Mr. Ruiz asked if we knew that what is there at present is not sufficient enough.

Mr. Lemanowicz replied that there is nothing there at present.

Mr. Ruiz said that there are woods and grass and asked if that is ample enough to provide time for water that is running off of the property now to get into the river. He said that the question is, is it affecting the river or is whatever is there now adequate retention?

Mr. Lemanowicz said that the issue is that, with the added impervious cover to the lot, that now has more water to deal with. He said that the additional water running off *does* affect the water in the river. He said that the issue is and the Ordinance states that, if you are over 400 S.F., everybody has got to do it. He said that the Passaic River has got thousands of properties that abut it and the concern when the Ordinance was written was, if all of those thousands or properties add 400 S.F., now you have got 400,000 S.F. of impervious cover and *that* you will notice. He said that that was the idea back when we just worried about the *big* developments (the 25 lot subdivisions), they were the only ones who required stormwater back in the 1970's – 1980's and we soon realized that the rivers were still coming up and that was because it was all of the single lots we were doing nothing about that were developed.

Addressing Mr. Lemanowicz, Mr. Gerecht said, along those lines, if you looked at the rear of the property and instituted a gravel ditch or more plantings, do you view that as potentially enough increase to take up that extra 400 S.F.

Mr. Lemanowicz replied that the Ordinance says drywells and it gives a way to calculate the volume of that drywell. He said that we have talked about it and have the BMP Manual that the Township had him prepare and, basically, we are taking that same volume but we are looking at it in other ways – in rain gardens and gravel infiltration trenches. He said that we can get the number from the Ordinance and now we have ways to deal with it *other than* a concrete ring. He said that the most innocuous way on this piece of property is to install a trench 4' - 5' deep for a certain length back before you get too close to the steep part of the hill, so that it captures that volume. If it overflows, then it will pass right by and go into the ground. He said that shale is a fractured rock which does take water, so we are not in a situation where there is clay material and, when the trench fills, it will not stay filled for weeks. However he said that, in some cases and some places, shale does get to point of refusal. He said that there are ways to do this without having to bring a truck back there carrying a large concrete ring and, as long as you can get a piece of equipment back there to dig a trench, you can do it.

Dr. Behr asked if there might be also be some more remediation, not in terms of a trench, but in terms of more plantings that would have the effect of slowing down the sheet flow and enabling more absorption.

Mr. Lemanowicz replied that plantings do help, but the reality is that the Ordinance requires storage. He said that plantings would help just downstream of this thing to help break up velocities and such, but once water is running across a property, a plant is not going to catch much.

Mr. Keegan asked if a new owner wanted to come in and put a massive roof over the deck area, would they just be able to get a building permit to do so.

Mr. Lemanowicz replied that, in this particular case, it depends on what the Board does, but that is definitely possible and that is why at this stage of the game we are saying that it is impervious and we need stormwater management now because, leaving setback issues aside, they could come back in the future and put a roof over any of this and it would not be coming back to for stormwater review.

Dr. Behr said that the applicant has also mentioned that one of their options is simply to remove the deck. Were they to do that, he asked Mr. Lemanowicz if that would represent any improvement in terms of stormwater management.

Mr. Lemanowicz replied that if the deck was removed and the area beneath it landscaped so that it is not bare soil then, obviously, that would reduce the impervious cover on the site and reduce the runoff.

Mr. Bisogno asked Mr. Parker to show the Board on his plan where the vegetative area begins in back of the pool.

Mr. Parker said that generally right behind the pool area (where it is labeled “playground”) there is some very thin grass and large mature trees. He said that he would consider from the chain link fence towards the river to be wooded. He said that from the Passaic River to that point is about 150’ of the heavily wooded portion. He said that the problem with any kind of disturbance in the back (for a rain garden or drywell) is no doubt going to impact some of the existing large trees. He felt that it would help, but would need to be weighed against the loss of the trees that would result from the construction.

Mr. Lemanowicz said that there was testimony the last time that the playground was going to be removed.

Mr. Parker said that that was correct.

Mr. Lemanowicz asked if there are trees in the playground.

Mr. Parker replied that there are not, however he said that if you look at the elevation it would be difficult by gravity to get stormwater to flow from the area behind the deck to that part, noting that that is the highest part of the back yard.

Mr. Lemanowicz said that we don’t necessarily need to catch the water from the deck – we need to catch water from an area *equivalent* to the deck. He said that you could do something with the garage roof such as tie it to a roof leader and run it down to where the playground is and have a drywell there.

Mr. Parker replied that, in theory, you could do that and agreed that there are no trees in the playground area.

Mr. Lemanowicz said that the trees were not located on the plan, so it is a little hard to have this discussion.

Mr. O’Brien referred to his photographs that were taken on 6/26/12 and said that Photo #4 on Page 2 was taken looking up at the house from the chain link fence and you can see the beginning of the playground on the right with the railroad ties to the left and the pool in front. He said that there are a number of trees there and it is grassed. He then referred to Photo #5 on Page 3 which was taken looking down at the river from the actual pool itself and said that you can see the trees and the grass between you and the chain link fence which is shown very clearly on the plan last revised 10/22/12 and, in the distance at the end of the cleared area, you can see where the chain link fence is and beyond the chain link fence is a heavily wooded area that is not landscaped.

Based upon the photograph, Mr. Lemanowicz said that it certainly seemed that there is room to do something back there. He said that he calculated just for the deck that over 6,600 gallons of water storage is required.

In response to Mr. Gerecht, Mr. Lemanowicz said that a 5’ deep, 2’ wide trench would be about 89’ long to handle that amount of storage.

Dr. Behr said that the Board is obligated to treat the deck (because it was not approved) as new impervious coverage. He said that we also have a standard that the Board has consistently

upheld that when you have new impervious coverage, the standards require that stormwater management be installed much as Mr. Lemanowicz has described. He said that the mitigating factor is that, while legally this is a new structure, the interesting challenge for the Board is that in a de-facto sense this is not new impervious coverage because this is a condition that has existed for 25 years. Therefore, he said that the question before the Board is do you feel that the conditions that exist on this property rise to the level where it becomes necessary to hold the applicants to the standard, or do you feel that grounds exist for saying that were this to be approved without additional impervious coverage, both the positive and negative criteria could be met.

In response to Dr. Behr, Mr. O'Brien said that in the eyes of this Board, it is new impervious coverage and Mrs. Heinkel has shown that it has been there for quite some time and has also given testimony about the affects that rainwater has upon her property and the neighbors. He then proceeded to explain the c-1 criteria.

Mr. Lemanowicz said that he missed a co-efficient in his prior calculation and a 5' deep, 2' wide trench would have to be well over 200' long. He said that the calculation he previously made did not calculate for the voids in the stone, it was for an open storage structure.

In response to Mrs. Raimer, Mr. Lemanowicz said that there *are* practical ways of allowing stormwater management on the property. He said that the trench he referred to would be completely filled with gravel and the problem with that is that you only get about 1/3 of the volume of the trench to store water because the rest of the trench has got stone in it and you are only filling the voids, but when you put a drywell in, it is empty and there is *nothing* in it. He said that what you save in not having to lug a 6' – 8' diameter drywell back there, you lose because you don't have pure volume. He said that you could also dig a trench 4' wide and put a perforated pipe in so that that now gives you pure storage. He said that there are always ways you can do it.

In response to Mr. Gerecht, Mr. Lemanowicz said that, if you constructed it with a perforated pipe (whatever the diameter has to be), that would cut down the 200', but it would still be considerable in size.

Dr. Behr asked if there were any further questions by the Board or its consultants for the witness. There were none. He also noted that there were no members of the public present.

He polled the Board members as to their belief that it is necessary to have some sort of stormwater management added to the property.

Mrs. Malloy and Mr. Ruiz did *not* believe stormwater management is necessary. Mr. Gerecht also did not believe it is necessary based on the unique nature of the property, the testimony as to what the water is doing now, and the testimony as to what would be needed to put in on the property and it may harm the property more than help it. Mrs. Raimer was undecided at that point. Mr. Keegan *did* believe stormwater management is necessary given that the deck is 26% of the impervious coverage on the site. Dr. Behr believed that some kind of stormwater management could be applied here but he was not convinced at this point that it would be needed. Given the other factors that other Board members had mentioned, he was not sure it would rise to the level of the standard in order to gain his approval. He then asked Mr. Bisogno if he wished to summarize.

Mr. Bisogno said that he did not have anything else to add. He said that Mr. O'Brien and Mr. Hoffman covered the basic variances and talked about the shape of the lot and its topography. He said that the variances are not major, are minor in nature, and noted that they have been there for 24-25 years. He said that no neighbors appeared before the Board to indicate that they were issues for them. He felt that the negative criteria are also covered by that. He also said that there is no substantial detriment to the public good (the neighbors) and no substantial detriment to the Zone Plan and the Zoning Ordinance. He said that he appreciated the Board's consideration of the drainage issue which he said is very important to his clients.

Mr. O'Brien said that the Board has the ability to look at the various parts of this application independently and noted that setback on the garage, setback of the deck, and the impervious cover are all separate and unique items which the Board can consider individually.

Dr. Behr said that he would like to go through all of the variance relief required *except* for stormwater management and then come back to the stormwater management.

Mr. Gerecht said that as far as the other variances go, with the garage and existence of a shed, he said that he would be willing to accept that and vote in favor of what is existing. He felt that they are minor deviations. He said that the fact that the shed is so close to the deck is not proper. He said that, if you were to move it, it would be closer to the side yard, so that is a "Catch 22". He did not see a problem with the garage and felt that it was probably meant to be set back 25' but got moved when it was built. He said that it was encouraging that no neighbors appeared to complain and he did not see an adverse affect of those things on the property or upon the neighbors. He said that he would vote in favor of the variances of that nature to be allowed to remain.

Mr. Ruiz concurred with Mr. Gerecht. He felt that there is no detriment and also noted that no neighbors appeared. He said that he would vote in favor of the variances.

Mrs. Malloy agreed with Mr. Ruiz and Mr. Gerecht.

Mr. Keegan said that he, too, was in concurrence with his fellow Board members on the setback variances.

Mrs. Raimer said that on the setbacks she had no objection. She said that when she came here tonight her concern was the deck constructed over the sewer easement. She felt that the fact that the applicants have received permission from the Township and filed a sanitary sewer easement in Morris County and it allows them to maintain the existing deck in the location that it is in and the fact that their engineer provided testimony as to the depth of the sewer and the fact that the construction of the deck won't compromise the sewer put her somewhat at ease, therefore she did not have an objection to that aspect of the application.

Dr. Behr concurred with his fellow Board members. He felt that the issue of the sewer easement was a major issue here and it was unfortunate that this was not dealt with earlier because it would have saved the applicants time and money, but it has been dealt with now. He appreciated the efforts that Mr. Lemanowicz underwent in trying to move the application forward. That said, with the assurances that were given, and with the protections that are contingent on the Township Committee's ruling, he said that he had no problem granting the other kinds of setback variances. He then called for a motion.

Mr. Gerecht made a motion to approve the relief required *with the exception* of stormwater management. Mr. Ruiz seconded the motion.

Mrs. Raimer said that she was having a hard time and questioned how the Board can rule in favor of an application when we have positive and negative criteria to satisfy and she felt that the stormwater management was a key feature in the negative criteria.

Dr. Behr said that Mr. O'Brien had said that the Board could separate the relief. He said that the application is not granted if the application passes on the setbacks but fails on stormwater.

Mr. O'Brien agreed.

Dr. Behr said that a motion was made to grant relief for all parts of this application *except* for the stormwater management.

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

Mr. Gerecht requested a recess.

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Dr. Behr said that it is the applicant's position that they are not intending to provide any additional stormwater mitigation. With that as the condition, and keeping in mind that we are looking solely at the issue of stormwater management, he called for deliberations.

Mr. Keegan said that, given the size of the deck and the impervious coverage that it takes up (in excess of 25% of the impervious coverage) and given that in the eyes of the law we are looking at this as something in which we would apply the current standards to, he felt that stormwater management is key for the property. He did not think it needs to meet the *entire* standard of 6,600 gallons, but he believed that a compromise is needed for the property. He noted that it does back up to the Passaic River which means that there will be runoff from the property into the river which will then ultimately impact the rest of the community. He said that, as the application stands right now, he was not in favor of not addressing stormwater management.

Mrs. Raimer said that, based upon a strict legal interpretation, stormwater management is required. She believed that relief from the stormwater management measures is something that should have been separately requested as part of this application. She said that, even though it wasn't separately requested, it is required and as such she would give it the same type of analysis as we would for any other type of variance request which is the hardship and in this case it the homeowner is testifying that there is no more money left in the escrow. She said that she can't consider that a hardship but she *would* consider Mr. O'Brien's suggestion that the hardship is created based upon the fact that it is an extraordinary and exceptional situation affecting the specific piece of property. Using that interpretation, she said that the hardship is met. As far as the negative criteria, she said that Mr. Laffey came at the last hearing and did not suggest that there was any detrimental affect to his property, he just provided information. Without any other neighbors declaring any kind of affect, she said that she would say that there is no substantial impact upon the surrounding properties and the neighborhood. As far as the substantial detriment to the public good, she said that she would go based on the fact that the applicants have testified that the property remains able to manage the water in all types of situations and that it has not been a problem. As far as impairing the intent and purpose of the Zoning Ordinance, she said that the Zoning Ordinance was created to deal with these stormwater management measures if, based upon the facts of the situation that there is no water to be managed, then she would grant the application in its current form with tremendous reservation.

Mr. Gerecht said that he concurred with Mrs. Raimer's analysis. He believed that the property has some unique features and said that we are dealing with wooded property - even on the grassed area there are large trees and a lot of woods beyond that down to the river. He did not see any evidence on the property of extreme water runoff or gouging of the property with any type of directed streams of water going backwards. With that said, he said that it is always important and this Board has always looked toward reducing water runoff from any property and making sure that: 1) it doesn't affect someone else's property and 2) it doesn't affect the negative impact on the water flow into a river source into any type of water body that is near it and, in this case, we have the Passaic River right behind it. He said that we have to be mindful that we don't want to increase the level of the river or any body of water that might adversely affect someone down the line. He said that his property seems to be able to absorb a lot of the water that is coming off of it, whether it be from the house, deck, or pool area. He said that he would be upset if by doing some sort of measures on it that we disturb trees or eliminate trees which he did not think would be a positive thing to do. He said that he would not want to disturb what is there and possibly not get any more benefit than we already have. Due to the unique nature of the property and the fact that we can look at the fact that we have a longstanding problem that the property appears to be accommodating in that way and not affecting the surrounding areas around it, he said that he would be willing to accept it the way it is now.

Mr. Ruiz said that every drop of water in this town eventually makes its way towards the river. That being said, he said that he had to look at every property by itself. He felt that the way the property is right now, it does enough for it to hold the water or allowing it to go a certain time

towards the river. He said that they haven't been flooded, especially with Hurricane Sandy, the two nor'easters, or Hurricane Irene and he felt that they would have been one of the first ones to know if they had water on their property. With that being said, he said that he was in favor of the application as proposed.

Mrs. Malloy said that under the c-1 hardship she agreed that it is an unusual piece of property and to her it has no substantial water issue. Based on the individual property, she said that there is no concrete evidence of real water damage or threat to the surrounding areas. She said that she would approve of the application as proposed under the c-1 hardship.

Dr. Behr said that he would vote for the application with *severe* reservations. He felt that the telling points for him have already been made by other Board members. He agreed that the Board cannot entertain a lack of money as an issue and it is quite possible with a different process followed by the applicants they might have additional money for stormwater management, however, he agreed with the other Board members that pointed out that we have heard no evidence to suggest that this property cannot currently manage the water that is flowing off of it. He said that we do know and should recognize the point that other Board members have made that there are some unusual circumstances around this which would make the granting of a c-1 variance appropriate. He agreed with Mrs. Raimer that there is nothing here in this application that struck him as failing to meet the negative criteria. He said that another point that was made that he felt was important is that while in theory one could put stormwater management procedures in here, and Mr. Lemanowicz has talked about some of them. He was not convinced that those could be done in such a way that you wouldn't be generating other kinds of problems. Finally, and most important for him, he said that we need to be absolutely rigorous in insisting that there be appropriate stormwater management for any new construction that happens in Long Hill Township. He said that he was mindful of the fact that, in fact, this is *not* new construction since it has existed for 25 years. Therefore, he said that he would vote for the application with significant reservations and no suggestion for the reasons discussed that this might be a precedent of any kind.

Mr. Gerecht made a motion to approve the application with no stormwater management which was seconded by Mr. Ruiz.

A roll call vote was taken. Those in favor: Mrs. Raimer, Mr. Gerecht, Mrs. Malloy, Mr. Ruiz and Dr. Behr. Those opposed: Mr. Keegan.

Dr. Behr read a statement advising the applicants that the next step will be for the Board Attorney to prepare a draft Resolution of Memorialization, a copy of which will be provided to the applicants for their review prior to its adoption at a subsequent meeting. He stated that all conditions of approval must be satisfied prior to the signing of the plans by the Board Officers after which the applicants may apply for the required construction permits.

There being no further business, the meeting adjourned at 10:00 PM.

DAWN V. WOLFE
Planning & Zoning Administrator

