

**MINUTES**

**JUNE 4, 2013**

**BOARD OF ADJUSTMENT**

**LONG HILL TOWNSHIP**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

The Chairman, Dr. Behr, called the meeting to order at 8:07 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  
John Fagnoli, Member  
Edwin F. Gerecht, Jr., Member  
Maureen Malloy, Member

Michael Pesce, 1st Alternate  
Richard Keegan, 2<sup>nd</sup> Alternate

Barry Hoffman, Bd. Attorney  
Thomas Lemanowicz, Bd. Engineer  
Kevin O'Brien, Twp. Planner

Excused: Sandi Raimer, Vice Chairman  
Dawn Wolfe, Planning & Zoning Administrator

Absent: Jerry Aroneo, Member  
Felix Ruiz, Member

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**EXECUTIVE SESSION**

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

**HAMID & MARIE OVEISSI**

712 Long Hill Road  
Block 14007, Lot 1.05

**#11-03Z  
Request for Extension  
of Approval**

Present: Marie Oveissi, co-applicant

R. J. O'Connell, certified shorthand reporter

Mrs. Marie Oveissi, co-applicant, was sworn. She and her husband, Hamid Oveissi, had applied to the Board of Adjustment for permission to replace an existing wood deck with a new wood deck, requiring bulk variances for exceeding the maximum permitted lot coverage and for non-compliance with the minimum required rear yard setback, as well as for certain other bulk

variances, with respect to their property. The application was approved on October 4, 2011 and a Resolution of Memorialization was adopted on December 6, 2011.

Sec. 172.12 of the Ordinance entitled “Expiration of Variance” states in part that any variance granted by the Board of Adjustment permitting the erection or alteration of any structure or structures shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by said variance within 12 months from the date of entry of the judgment or determination of the Board of Adjustment.

By letter dated April 26, 2013 to the Board of Adjustment, Mrs. Oveissi advised that it was necessary for the applicants to replace the roof over their garage, as well as the electrical wiring in the garage prior to removing the old deck and an underground oil tank located next to the deck. It was then necessary for a remedial cleanup of the soil to be completed in accordance with regulations of the NJDEP, which they were unable to complete by December 6, 2012 and, therefore, they have accordingly applied to the Board of Adjustment for an extension of their variance approval.

Mr. Lemanowicz, in a letter dated May 6, 2013, stated that there have been no Ordinance changes which had been adopted which would affect the property.

After discussion, the members of the Board indicated that they were satisfied that the applicants have proceeded with diligence relative to the Resolution adopted on December 6, 2011 and that an extension of such Resolution is warranted.

Mr. Hoffman read a draft of the annexed Supplemental Resolution of Approval.

Mr. Gerecht made a motion to approve the draft as read by Mr. Hoffman which was seconded by Mr. Pesce.

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

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**ZEN KEY HOLDINGS**

12 Elliot Road  
Block 12702, Lot 25

**#13-04Z**  
**Bulk Variances**

Present: Jay B. Bohn, Esq.  
Joseph Rivette, principal of the applicant  
A. Thomas Murphy, licensed professional engineer and planner

R. J. O’Connell, certified shorthand reporter

Proof of service was submitted.

Mr. Bohn said that this is an application for several bulk variances to allow the applicant to replace an existing house on an existing lot with a new house that will be more centrally located on the lot and more towards the front than the existing house. He presented a colored rendering of Sheet 3 of 4 of a Variance Plan by Murphy & Hollows Assoc., LLC, dated 3/7/13, last rev. 4/25/13, which was marked into evidence as **EXHIBIT A-1**.

Mr. Joseph Rivette, principal of the applicant, was sworn. He testified in support of the development proposal. He said that the proposed new dwelling on the lot will be a two-story colonial style residence. He indicated that the proposed new dwelling would be centered on the lot and will be in keeping with other homes in the neighborhood, but it will be more modest in size than the two houses at the end of the Elliot Road cul-de-sac. The proposed new dwelling will contain some 3,366 S.F. in living area, while the two houses at the end of the street contain

between 4,000 S.F. and 5,500 S.F. He explained that the transom windows on the right side and rear elevations of the proposed dwelling may be replaced by the same sized double-hung windows. He was agreeable, in general, to revising the plans to address the comments of the Board's Consultants.

Similar variance relief to that sought by the applicant was granted to Brian and Melissa Martin, pursuant to a Resolution adopted on April 21, 2009 (App. No. 08-16Z). However, the conditions of approval of the Resolution were never satisfied and the variances subsequently expired.

Mr. Bohn introduced his next witness, A. Thomas Murphy, licensed professional engineer and planner, who was sworn. He has appeared before the Board on many occasions as was accepted as an expert.

Mr. Murphy reviewed the features of the property and the applicant's development proposal. He emphasized that the subject lot is substandard in area. He noted that the adjacent lots are all developed and that there is no available land which could be appended to the property in question. He pointed out that the removal of the existing residence on the site and the relocation of the dwelling as shown on the proposed Variance Plan will result in the elimination of a side yard deficiency at the property. He also commented that, while the front yard setback on the lot will be decreasing (i.e. from the existing 70' to 40'), the new front yard offset on the property will match that which prevails in the neighborhood. The rear yard setback of the property will be increased from the present 8.0' to 29.4'.

The meeting was opened to the public for questions.

Mr. William Miron and Ms. Debra Christiani, 127 Shawnee Path, was sworn. Their lot is located behind the proposed dwelling and they expressed concern about the location of the proposed new driveway for the dwelling, maintaining that additional buffering would be needed to prevent the light from automobile headlights from impacting them, as well as runoff from the site.

After discussion, it was agreed that a row of deer-resistant plantings shall be placed at the western end of the driveway to act as a buffer to the neighboring properties. Mr. Rivette also agreed to provide a fence at the back end of the property which would further block any headlights.

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

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Dr. Behr asked Mr. Lemanowicz what the implications would be of moving the driveway to the north side of the proposed dwelling.

Mr. Lemanowicz replied that Mr. Murphy had indicated that, in order to protect the remaining trees, you would have more driveway and more impervious coverage. Also, because the grade on the north side of the house is higher than on the south side of the house, in order to get the driveway into the garage, you would either have to raise the house 1' – 1 ½' or you would have to grade out a low area in order to get into the garage to push the grade down. He said that putting the driveway on the north side of the house would put that impervious area upstream of the neighbor's property. At this point, he said that the driveway is more downstream of the neighbor's property, so if anything does happen, the water is not going to turn around and go back up to get to that piece of property. He felt that the driveway is safer on the side it is shown.

Mr. Murphy agreed with Mr. Lemanowicz. He said that any runoff from the driveway will go into two detention areas, so it will not impact any of the neighbors.

The meeting was opened to the public for questions.

Mr. Miron asked how much bigger the proposed dwelling is than the existing dwelling on the subject property.

Mr. Rivette replied that he believed that the existing structure is in the neighborhood of 1,950 S.F. The proposed new dwelling will contain some 3,366 S.F.

Mr. O'Brien said that he believed that Mr. Rivette's answer was incorrect. He suggested recalling Mr. Murphy who could provide the square footage of the footprint of the house and, if possible, the square footage of the total house (which is a two-story home).

Mr. Murphy said that the footprint of the existing house is 1,668 S.F. He acknowledged that it is a two-story dwelling, however he was not sure of the size of the one-story garage.

Mr. O'Brien said that he was looking at pictures from the former (Martin's) application in 2009 and the garage and ridge between the home and garage seemed to be less than half the size of the house, plus there was a photograph from the applicant, undated, which also shows a one-story addition to the left (or south). He felt that the footprint should be defined, as opposed to the square footage.

Mr. Murphy explained the difference between the footprint and the square footage of the dwelling.

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

Mr. Bohn pointed out that the Board previously granted c-1 and c-2 variances for similar relief to what the applicant is currently seeking.

Mr. Hoffman replied that the c-2 criteria for that particular variance were based substantially, if not *entirely*, upon unique and extraordinary medical reasons pertinent to that applicant.

Mr. Murphy said that a c-2 variance could also be that you are improving the property - you are not increasing the density, that stays the same, so it is in harmony with the road. The setbacks are now more in conformance with what exists on Elliot Road. He said that when the house is built, the applicant will be improving the lawn. The low spots and divots will be filled and the lawn area will be improved to be similar to the other lawns along Elliot Road. He felt that by moving the house to a better location, that will serve as an improvement and will meet the requirements of a c-2 variance.

In response to Mr. Bohn, Mr. Murphy agreed that the existing and proposed single family use is permitted in the Zone. He also said that the existing side yard deficiency will be eliminated. With the improvements proposed, he did not feel that the proposal will serve as a substantial detriment to the public good. He noted that as you drive by the property now, you see an abandoned house and the proposal will finish the streetscape of Elliot Rd. and serve as an improvement to that area of the Township. He also did not feel that the proposal will substantially impair the intent and purpose of the Zoning Ordinance, noting that there will be no increase in density.

The meeting was opened to the public for comments.

Mr. Miron said that he believed that the Board knew of his concerns. He said that anything that is built on the property will be an improvement over an abandoned house at this point. He asked the applicant to do anything he can do in terms of landscaping. Although a fence might help block the headlights, he was unsure if it will help aesthetically. He questioned if trees could be planted in the back of his own property at the expense of the applicant.

In response to Dr. Behr, Mr. Hoffman said that it is not the usual way which landscaping is added. He said that it can and sometimes is done by means of an easement that the neighbor would have to grant to the applicant to install such landscaping on the property, however the predominant way in which added landscaping is preferred is to have it on the subject property.

Dr. Behr added that the Board cannot *require* such an easement.

Mr. Hoffman agreed because then the neighbor would then have a veto over the application. However, if they are offering their property and feel it is more suitable and, if the applicant is amenable, it could be done if it proves to be a definite better way to go in that direction.

Mr. O'Brien said that his concerns are of a liability issue as well as a maintenance issue, plus the fact that there is a 20' wide easement already on the back of the neighbor's property which cannot be encroached upon.

Dr. Behr said that there is not the physical space to put the trees behind the house itself.

Mr. Miron said that he appreciated those concerns and he and his wife just came to the meeting to get some information.

Mr. Bohn gave his summation. He said that the property exists as it is and it is certainly undersized which is a condition that the applicant cannot change. He said that it is in the same condition that it was in four years ago when the Board granted similar relief. He said that the applicant is proposing some substantial improvements in terms of making the front setback conforming and eliminating an existing side yard setback deficiency. He said that the applicant has dealt with any increased drainage issue because of the increased impervious area and he will make an "old tired house" into a modern looking house which is not excessively large. He submitted that the applicant has proven its case for both the c-1 and c-2 variance relief.

The Board began its deliberations. All Board members expressed their approval of the application *except* for Mr. Keegan. While he did believe that there is a hardship, Mr. Keegan did not feel that the applicant in this case met the negative criteria. He felt that the proposed development will substantially impact the surrounding properties, noting the testimony that was provided by the adjoining property owners. He said that, in this instance, we are taking a home and completely changing the footprint which he felt will directly impact the neighbors who testified this evening. He expressed concern over the proposed patio which he believed will create additional noise for the neighbors. He also believed that the construction of the property does not meet the Master Plan goal of enhancing the essential rural and residential character of Long Hill Township and believed that the *existing* structure on the property more conforms to that goal of the Master Plan.

Conditions of approval were discussed.

Mr. Gerecht made a motion to approve the application with the conditions discussed which was seconded by Mrs. Malloy.

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

There being no further business, the meeting adjourned at 10:50 P.M.

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DAWN V. WOLFE  
Planning & Zoning Administrator







