

**MINUTES**

**NOVEMBER 5, 2013**

**BOARD OF ADJUSTMENT**

**LONG HILL TOWNSHIP**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

The Chairman, Dr. Behr, called the meeting to order at 8:03 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, 2013.

**MEETING CUT-OFF**

Chairman Behr read the following statement: Announcement is made that as a matter of procedure, it is the intention of the Board of Adjustment not to continue any matter past 11:00 P.M. at any Regular or Special Meeting of the Board unless a motion is passed by the members then present to extend the meeting to a latter specified cut-off time.

**CELL PHONES AND PAGERS**

Chairman Behr read the following statement: All in attendance are requested to turn off cell phones and pagers as they interfere with the court room taping mechanism.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

On a call of the roll the following were present:

Excused:

- E. Thomas Behr, Chairman
- Sandi Raimer, Vice Chairman (9:45 P.M.)
- Jerry Aroneo, Member (8:05 P.M.)
- Edwin F. Gerecht, Jr., Member
- Richard Keegan, Member
- Michael Pesce, Member
- Felix Ruiz, Member
- Michael O'Mullan, 1st Alternate
- Michael Pudlak, 2<sup>nd</sup> Alternate (8:20 P.M.)

Dawn Wolfe, Planning/Zoning Administrator

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

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**EXECUTIVE SESSION**

Chairman Behr asked for a motion to go into Executive Session to discuss personnel matters. Motion was made by Mr. Gerecht and seconded by Mr. Pesce. A voice vote was taken and the motion passed unanimously. The Board members went into Executive Session at 8:06 P.M. and reconvened at 8:15 P.M.

**APPROVAL OF MINUTES** – June 18, 2013

Kevin O'Brien, the Township Planner, stated that Mrs. Raimer, Mr. Aroneo, and Mr. Keegan were available to vote. Mr. O'Mullan and Mr. Pudlak were available if they had listened to the recording.

Chairman Behr asked if there were any comments or changes to the minutes for June 18, 2013.

Mr. Aroneo felt that his comments concerning the Applicant's reason for requiring a height variance were incorrect (page 10). He stated that he said, "The average can't be lower than the lowest point in the average." instead of "The average can't be lower than the average."

Chairman Behr asked for a motion to approve the amended minutes for the June 18, 2013 meeting. Mr. Ruiz moved and Mr. Keegan seconded. A roll call vote was taken. In favor: Mr. Aroneo, Mr. Keegan, Mr. Ruiz. Those opposed: None. Amended minutes were approved.

### **OATH OF OFFICE**

Mr. Hoffman administered the Oath of Office to Mr. Keegan, Member, and Mr. Pudlak, 2<sup>nd</sup> Alternate.

### **ZHONG MOU CHEN & YU W. OUYANG**

Torbert Road  
Block 13508, Lot 12

#12-05Z  
Use (D-6) Variance  
Unimproved Road Variance

August Santore, jr., attorney for the Applicants, asked Andrew Wu, P.E. and P.L.S., **Formosa Engineering Inc.**, to address the items brought forth by Mr. Lemanowicz and Mr. O'Brien. Updated plans were submitted incorporating comments by Mr. Lemanowicz and Mr. O'Brien. As a result, the plans delivered during this meeting were the plans with the most recent revisions.

Plan of Survey/Tree Plan by Formosa Engineering Inc. dated 04/13/12, last revised 11/01/13 (sheet 2) was labeled Exhibit A-2. Plot and Grading Plan by Formosa Engineering Inc. dated 04/13/12, last revised 11/01/13 (sheet 3), was labeled Exhibit-3. Soil Erosion & Sediment Control Plan by Formosa Engineering Inc. dated 04/13/12, last revised 11/01/13 (sheet 4), was labeled Exhibit A-4.

Mr. Santore addressed Mr. Lemanowicz's letter of October 29, 2013, referencing the "Technical Comments" section, Item #1. He noted that most current field work dates and revision dates were reflected on the plans.

Mr. Santore also addressed Item #3. He stated that they would provide the appropriate "will serve" letters and if the Board were to vote favorably on the application, he asked that that be a condition of any resolution as there is water in the street servicing the other property and the \$30,000 contribution would have to be made to the fund.

Mr. Wu addressed Item #9- "A trench drain has been shown. However, there is no grate or invert information and it is shown to be piped to the existing inlet in the cul-de-sac where it should be piped to the drywell." This had been addressed.

Mr. Santore stated that the architectural plans had been revised to match the engineering plans which fulfilled Item #10.

Mr. Santore addressed Item #11- "The submission of stability calculations for the retaining wall is deferred to the construction phase. However, the wall detail now shows a fence that appeared to be simply set in a hole in the four (4) inch thick cap block that is glued to the top of the wall. The Applicant should testify as to the strength of this mounting." He stated that the calculations had been deferred to the construction phase. There has been a revised detail that was included on the plan (A-3, top left corner).

Mr. Lemanowicz indicated that he had no problem with what the detail showed.

Mr. Santore addressed Item #13. The issue with the flow arrow and the grading was resolved by removing the arrow which was meant to show the water flow for the *roof leader grading*.

Mr. Lemanowicz stated that there was still an issue as to where the water was supposed to go. He was concerned that there would not be enough room to create a swale to carry the

water away from the house. He felt it could be dealt with as a condition or during the construction phase.

Mr. Santore addressed Item #14 and referred to Exhibit A-2 which showed the tree removal. Several reports requested that the project retain as many trees as possible. He felt they had minimized the number of trees that would be removed—at this time only four (4) trees would be removed.

A board member asked Mr. Lemanowicz about a 20” tree to the west of the retaining wall. He asked if the retaining wall could be constructed without disturbing the roots of those trees.

Mr. Lemanowicz answered that the 20” tree would not survive.

Mr. Santore stated they were attempting to retain the tree, however if it were not possible, they would like the option to remove the tree. He noted that four (4) trees were being removed and forty (40) trees were being planted. He stated that they did not want to get too close to the driveway and the drywell. However, if the Board wanted the tree replaced, he felt his client would agree however, the issue would be the logical placement of that new tree.

Mr. Santore stated that his client did not want to yield on Item #15, the 15 foot width of the driveway for functional reasons.

Mr. Wu stated that the proposed grading on the north side of the driveway at Torbert Road was now incorporated into the revised plan, Exhibit A-3. Mr. Lemanowicz indicated that he had no further issue.

Mr. Lemanowicz stated that he had no further issue with Item #17.

Mr. Santore stated that all of the outstanding issues listed in Mr. Lemanowicz’s letter had been addressed.

Mr. Hoffman clarified that it was the intent of the Applicant to address and satisfy each of Mr. Lemanowicz’s recommendations.

Mr. Santore indicated that the only difference that the Applicant had with the recommendations was relative to the fact that the original recommendation was to reduce the width of the driveway to ten (10) feet.

Mr. Hoffman affirmed that that was the exception.

Mr. Santore stated that, other than that, they have no objection to conforming.

A board member asked Mr. Lemanowicz, given the steep terrain on the south side of the property, were there any long-term concerns about erosion.

Mr. Lemanowicz stated that that area would not be disturbed. Erosion may occur however, it was a natural slope and he recommended that nothing be done to prevent that possibility.

Another board member asked about the lateral connection to the sanitary sewer.

Mr. Lemanowicz stated that as long as there were cleanouts, he was not concerned.

Mr. Santore outlined the number and species of plantings along the northern lot line. Fifteen (15) eastern white pines and fourteen (14) Leland cypress trees would create the screen that was requested. The Applicant agreed that the trees would be a minimum of 4’-0” tall.

Mr. O’Brien stated that he was satisfied with the species and size.

Mr. Santore stated that his client would not object to planting a third tree to the north of the driveway. It would be the same species (katsura) and the same size.

Chairman Behr swore in Shean Chang Wang as the Architect.

Mr. Wang related his credentials to the Board and was accepted as an expert witness.

Mr. Santore asked Mr. Wang to address the height of the structure. He referred to A-4 of the architectural plans, dated 05/28/13, revised 09/30/13.

There was some confusion as to what was changed from the original plans. Mr. Wang stated that the elevation and lighting locations were changed because of the Board Engineer's comments. The 09/30/13 revised copies were the correct ones.

Mr. Santore stated that the current lighting consisted of two (2) to the side of the front door, one (1) between the garage doors, and one (1) over the kitchen by the back door.

Mr. O'Brien stated that if the Board approved this application, a lighting condition should be added. The Applicant should show light details which will demonstrate full cut off fixtures and illumination will not exceed an equivalent of 60 watts incandescent.

Mr. Wang stated that the height of the building would be 34'-8" measured from the bottom of the garage to the top of the roof. He noted that the maximum allowable height according to the ordinance was 35'-0".

Mr. Wang stated that this would be a brick building with architectural decoration elements. The house was designed with the topographical characteristics of the property in mind. The garage location under the structure created less impervious cover and less disturbance than if the garage was built separately. The walk-out basement took advantage of the slope of the property.

Mr. Santore stated that the project conformed in all aspects of the ordinance except for the walk-out basement and garage under which was triggered by the property's topography.

Mr. Wang referenced 20 Torbert Road, which was the house most adjacent to this property and noted that that home had a garage under the house. He made the building as consistent with the neighboring homes as possible.

A board member asked for confirmation that the Architect testified that from the lowest point to the highest point was 34'-8".

Mr. Santore affirmed that that was correct.

The Front, Left, Rear, and Right Elevation in Four Quadrants Plan, marked by Shean Wang Chang, Architect, A-2, which did not have a date, was labeled Exhibit A-5. It was then marked 11/05/13.

Mr. Santore asked the Board if his client could be given the option to substitute a siding material on the rear of the home even though the plans showed brick on all sides.

Mr. Santore stated that it would not be visible to passers-by or neighbors. He noted a house on Daugherty with brick and siding and this was a very common occurrence.

Chairman Behr noted that in the past, the Board had not favored mixed siding because that gave a disjointed appearance to those looking at it.

Mr. O'Brien said that after viewing the aerial photographs, he did not feel this would be a visual detriment to the neighborhood.

Mr. Keegan asked if the application was approved and built with the siding and the Certificate of Occupancy was issued, what would prohibit them from getting a permit to reside it somewhere in the future.

Mr. O'Brien stated that if they met the code, they would be able to get a permit. However, since this application this building has been approved by the Board, it had to stay this way at least for the foreseeable future.

Chairman Behr swore in Yu Ouyang, the Owner.

Yu Ouyang stated (through Mr. Wang as an interpreter) that she was the Owner of the property along with her husband for almost three (3) years.

Mr. Hoffman stated the proofs indicated that the Applicant would connect with improvements that are within the right of way of Torbert Road, an unimproved road. He asked if there would be any reasonable likelihood of further extending the street so that this property would hypothetically be required to add to the improvements of the public street.

Mr. Santore stated that they were seeking to continue along with the same fashion as 20 Torbert Road construction which was to use the existing configuration and extend the driveway connection from that standpoint.

Mr. Hoffman stated the statute required that when a street was not improved to meet municipal standards, a variance was required.

Mr. O'Brien stated that one of the issues that the Applicant must prove was that emergency access and other necessary access could be provided regardless of the fact that the road was unimproved to municipal standards.

Mr. Hoffman spoke to the unimproved road variance. He stated that one possible element in the proofs was to inquire into the likelihood or need for the street being further extended in the approval in the future. It was one thing to tie in the property to the street as far as it had currently been extended but if there was a reasonable likelihood that there would be development in the future to the south, the question would arise as to whether this Applicant should further improve the street to their southerly property line.

Mr. O'Brien indicated that there are municipal standards for improving a roadway. The portion of Torbert Road that has been improved has only been improved to allow access to 20 Torbert Road on lot 9. It has not been improved to municipal standards.

A Board Member asked since this lot was on the corner of Daugherty and Torbert, was Daugherty considered an improved road.

Mr. O'Brien stated that Daugherty was considered improved but Torbert was not and the property fronted on Torbert.

Mr. Lemanowicz stated that the confusion stemmed from the fact that the property was located at an intersection. The property fronted on Torbert and it also had frontage on Daugherty. The portion of the frontage on Daugherty was a paper street and completely overgrown. The street that supplied access to the property was Torbert which was not completely improved. This property could gain access to Daugherty through the Torbert right-of-way at a point where the cusp of the improved section of the cul-de-sac came to the privately improved section of Torbert.

Mr. Santore was seeking a variance from creating the additional requirements to further disturb the area and improve the roadway in accordance with the same and similar standards that were granted for 20 Torbert Road. In terms of objections, there were none from the fire department or anyone else including the Long Hill Police Department. There was no concern about emergency access.

Mr. Santore stated that in terms of proofs, it was a request for a variance based upon the overall totality of what existed and whether or not the Board felt what was existing was sufficient to accommodate a single family residence.

A board member stated that these were conditions that were set by this Board and at the time there was a sign off from the fire department that they could use that lane to get their vehicles in there.

Mr. O'Brien reiterated that a variance was required because it was an unimproved road regardless of past approvals. Proof could be made by pointing out those past approvals and the justifications given.

Mr. Hoffman stated that for whatever reason the road had not been formally accepted, the township still plowed it and treated it as a municipal road which was entitled to be kept free and clear, suitable for access. That might go a long way to buttress the request for a variance.

Mr. O'Brien noted for the record that Mrs. Raimer joined the meeting at 9:45 p.m.

Mr. Santore stated they were requesting the variance based on previously approved applications. He asked that what had been previously approved to be extended to this lot from a matter of logic.

Mr. Santore addressed the height variance. He felt there was no height variance required since the dwelling does not supersede the maximum height of 35 feet. The walk-out basement was a prohibited factor and was the main triggering factor of this application in Long Hill Township.

Mr. Hoffman clarified that it created a separate story.

Mr. Santore agreed that it would create a separate story on two (2) sides. It still would *not* exceed the height. He stated by virtue of the topography, he was seeking relief from the section of the ordinance that stated there could not be a walk-out basement because it created the perception of a third story thereby showing that it may be more of a commercial style structure.

Mr. Hoffman stated that the Board had determined in the past that even when the height restriction was complied with, the construction of a dwelling with an additional story in excess of the allowable number of stories was in and of itself a violation of the height limitations.

Mr. Santore stated that that being said, it would revert to what was discussed throughout the engineering and architecture from a proof perspective which was that this particular lot had a particular topography. It sloped backwards and was naturally conducive to a garage under much like the house immediately adjacent. Otherwise massive retaining walls would have to be built and filled. From a detriment or impact perspective, this design created the least amount of impact. The Architect worked with the natural topography by not having a separate detached garage.

In addition to what the other impact would be, there was effective screening on the one side with an unimproved road on the other side. There would be a significant buffer between this house and the house behind it so there was no detriment or impact where someone could see something that would otherwise be visually not conducive. The variance was being created by the natural topography. The Applicant was seeking relief in order to create the least amount of impact by not creating huge retaining walls.

Chairman Behr invited members of the public to speak. Seeing that there were no members of the public present, the meeting was closed to the public.

Mr. Santore noted that the neighbors were noticed in reference to the meetings pertaining to this application and no one has come out to object. That lack of objection indicates that we are in conformance to what would be expected within that neighborhood. There are no impervious surface issues and all planting and tree issues have been addressed.

Chairman Behr referred to Mr. O'Brien's latest report on page 6 which outlined the three (3) pronged burden that the application for a D-6 Height variance had to satisfy.

Mr. Santore cited the natural topography of the property created the special reason for relief. Without that relief, massive retaining walls would have to be built and filled which would create significant disturbance. Had that been the chosen path, the only reason the Applicant

would have had to appear before the Board would have been for the unimproved road. Instead the Applicant chose to work with the natural topography and create as little impact as possible with this design.

Mr. Santore indicated that he had finished his summation.

Chairman Behr requested a recess.

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Mr. O'Brien provided a summary of the application. There were two (2) variances attached to it.

The first revolved around the fact that the property faced an unimproved road and according to the Municipal Land Use Law (M.L.U.L.) Section 35, any property that faced an unimproved road must demonstrate to the Board that it can resolve the problems of access for emergency vehicle purposes. The testimony presented has shown that an adjacent property to the north had been approved by this Board and had demonstrated to this Board in its proofs that it did meet that requirement. This Applicant had taken that previous testimony and was relying upon it to show that that emergency access was demonstrated, still remained today, and was part of the proof before this Board.

The second requested variance was called a D-6 Height Variance. This structure would violate the maximum height requirements of the township. The Applicant had demonstrated that the structure would meet the absolute height in terms of feet, however would miss it in terms of stories. The Applicant must show to the Board that they could accommodate that variance on their property without impact to the township or the neighbors. Testimony before the Board had shown that there was a positive angle to building a house of this height rather than building two (2) structures which would require a large amount of fill. The Applicant had demonstrated there would be a positive impact to the placement of the building at the applied for height and they had also shown that there would be no negative impact on the surrounding properties by virtue of the topography. This property was lower than the properties to the north, higher than the properties to the south, and buffered from the properties to the rear by a large landscape buffer.

Mr. Hoffman established the board members who were eligible to vote. Mrs. Raimer indicated that she was ineligible to vote. The first alternate, Mr. O'Mullan, indicated that he had listened to the recording of the earlier meeting and was therefore eligible to vote. The signed document to that effect was placed in the Applicant's file. Mr. Aroneo, Mr. Gerecht, Mr. Keegan, Mr. Pesce, Mr. Ruiz, and Chairman Behr were also eligible to vote.

Mr. Gerecht began deliberations by stating that through the Applicant's testimony, the reasons to grant the variances had been met in the sense that the positives outweigh whatever small negatives there might be such as the three (3) story appearance of the structure. Because of the multiple windows, the structure would not appear overpowering. He also felt that the Applicant was working with the topography of the property which necessitated the three story design instead of filling and disturbing the property. He noted that there was evidence from past applications that the improved roadway was paved but still not up to the township's standards of a roadway but was able to sustain emergency vehicles. The other structures on the roadway have been properly serviced by the roadway.

He felt that he would be in favor of granting the variances.

Mr. Pesce agreed that the Applicant had met her burden on the unimproved street issue. He felt that the Board should condition its approval on an affirmative representation by the township that they will continue to plow this street to guarantee emergency vehicle access.

In reference to the height variance, Mr. Pesce felt that the topography did justify approval of the variance. It would be much less invasive than filling and covering the lot.

Mr. Pesce stated that he was in favor of the application with the suggested condition.

Mr. Hoffman indicated that as a point of law, if the township was already plowing the street, it would have to pass a resolution or ordinance accepting the street as their responsibility to maintain it and he questioned if there was such a document. If not, and Mr. Pesce's condition was accepted as a requirement, it might be impossible to meet that condition.

A discussion ensued on this subject. Mr. Lemanowicz added that although the address was technically Torbert Road, the cul-de-sac was really an extension of Daugherty and Daugherty was a township roadway that was maintained. Testimony indicated that Torbert was also currently plowed by the township however the driveway was located on the cul-de-sac so even if the Township did not plow Torbert, the end of the drive was touching the cul-de-sac bulb which did get plowed.

Mr. Pesce stated that he would withdraw his suggestion if that were the case.

Mr. Aroneo stated exceeding the two (2) story height restriction would not negatively impact the neighborhood or the Township given the hardship that was presented. The design was an improvement over the other alternative which would be to build two (2) structures and retaining walls. Given the generous screening, this project could be accommodated.

Mr. Aroneo also was comfortable granting the variance for the driveway given the existing conditions.

Mr. Keegan stated that he too was in favor of the application for the reasons previously stated. He added that he did not think the Applicant should be made to put a third tree north of the driveway.

Mr. O'Mullan agreed with the other members of the Board. He also agreed with Mr. Keegan in that he also did not feel that a third tree north of the driveway was necessary.

Mr. Ruiz was also in favor of the application.

Chairman Behr stated that he, too, was in favor of the application for the reasons stated previously. He asked Mr. O'Brien for a list of conditions before a vote was taken.

Mr. O'Brien listed them as follows:

1. Grading issues on the north side of the house to facilitate surface drainage to the satisfaction of the Board Engineer,
2. The 20" tree to the west of the retaining wall is to be removed if it can not be saved,
3. A four (4) foot minimum height of plantings is to be placed on the north side,
4. Show light details to demonstrate full cut-off fixtures and an intensity of less than 60 watt incandescent equivalent,
5. Provide revised architectural plans to reflect consistency with testimony and the engineering plans,
6. Provide architectural revisions to show brick on three (3) faces and rear face of hardy plank in earth tones, and
7. Add a third tree to the north of the driveway of the same species and same size as the other species.

Chairman Behr conducted a poll concerning the Board's feeling about the third tree (Condition #7). The majority felt that the third tree was not necessary so it was no longer a condition.

Mr. Santore wanted clarification on the siding on the plans. It was determined that if the Applicant decided on brick, that would be shown on the plan. If the decision was to use hardy plank, that material would be shown on the plan.

Mr. Hoffman asked for a motion to approve the variances with the conditions to be listed in the resolution. Mr. Gerecht moved and Mr. Pesce seconded. A roll call vote was taken. Those in favor: Chairman Behr, Mr. Aroneo, Mr. Gerecht, Mr. Keegan, Mr. Pesce, Mr. Ruiz, and Mr. O'Mullan. Those opposed: None. Motion carried.

Chairman Behr asked that the meeting on November 19, 2013 be devoted to Board's rules. He asked the board member to review the model rules and what is stated in Cox's (*New Jersey Zoning & Land Use Administration* by William Cox).

Motion was made and seconded to adjourn at 10:28 P.M.

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CYNTHIA KIEFER  
Planning and Zoning Secretary