

MINUTES

PLANNING BOARD

NOVEMBER 27, 2012

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Mr. Connor, called the meeting to order at 8:00 P.M. He then read the following statement:
Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2012.

PLEDGE OF ALLEGIANCE

ANNOUNCEMENT

Mr. Connor announced that tonight's meeting will be a work session only (rather than a public meeting) because a quorum of the membership is not expected to be in attendance.

ROLL CALL

On a call of the roll, the following were present:

Christopher Connor, Chairman
Charles Arentowicz, Member
Donald Butterworth, Member
Sandi Raimer, Member (arrived @ 8:15 P.M.)
Guy Roshto, Member

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

Excused: Brendan Rae, Vice Chairman
Jerry Aroneo, Member
Joseph Cilino, Member
Michael Smargiassi, Member
Ashish Moholkar, 1st Alternate

Barry Hoffman, Bd. Attorney
Dawn Wolfe, Planning & Zoning Administrator

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

PUBLIC QUESTION OR COMMENT PERIOD

Noting that no members of the public were present and the fact that this meeting is a work session only, Mr. Connor announced that the meeting would not be opened to the public.

DISCUSSION (CONT'D)

HEIGHT ORDINANCE

Mr. Lemanowicz said that the last time the Board met considerable discussion took place about the different issues with respect to building height. It was decided that using a use description in defining a basement was not the way we wanted to go and that we wanted it to be a physical description, although that was not settled either. He said that a decision was made to ask the Board of Adjustment for a little more detail as to what they were trying to accomplish. It was his understanding that he was to "stand pat" until the Planning Board is able to get the Board of Adjustment's ideas and then talk about some more examples, whether they be manufactured examples or actual examples as far as what we could do with respect to controlling the height of buildings as it relates to a dimensional height and the number of stories going into the definition of a basement as it relates to a story. He said that right now a basement is not really defined well as far as its contribution to the visible mass of a building. Aside from the use issue, he said that the Ordinance also describes a basement as an enclosed area with its floor slab below grade, so theoretically if your floor slab was 6" below grade and the rest of the basement was out of the ground, it is still a basement which obviously doesn't make sense. He said that it certainly would have the visual appearance of a story at that point. He said that we were talking about if a basement would become a story when it is 50% out of the ground or if it is *in total* 50% out of the ground. He said that there was some discussion about if the total is more than 50% or if one elevation was more than 80%. He said that a lot of things were floating around and the Board decided to hold up and check back with the Board of Adjustment to make sure that we are still going in the right direction.

Mr. Connor recalled that one of the issues was the that the current Ordinance classifies a basement by use and he felt it was almost unanimously agreed that classifying a basement by use was probably not appropriate and the Board was looking at some alternative to that. He said that he has heard that there is now a problem with the insurance companies where they are saying that where the slab is below ground isn't a basement and they won't give people any funds if their finished basement has been damaged and there are a lot of split level houses that have basements where those areas were not designed to be basements.

Mr. Lemanowicz noted that that has become an issue in Hoboken where there are a lot of basement apartments. He said that there are a lot of changes that will happen after this storm.

Mr. O'Brien noted that Mrs. Raimer had arrived at 8:15 P.M. and, therefore, a quorum was now present. He said that if the Chairman so wished, he could gavel into a regular session.

Mr. Connor confirmed that that was his wish and announced that the meeting of the Planning Board has come to order.

Mr. Arentowicz recalled that at the last meeting the Board was in unanimous agreement that it needed to redefine "basement" as well as what a "story" is although he did not think that the Board had consensus on what the exact wording should be.

Mr. Lemanowicz agreed and said that the issue was that we are not defining it in accordance with its use. He said that that was pretty much decided but then the Board got into whether it wanted 50%, 50% overall with no more than 80% on one wall, etc. and then it became unsettled and it was decided to go back to the Board of Adjustment.

Dr. Behr thanked the Board for the opportunity to attend the meeting. He said that the Board of Adjustment hears height variances and they brought the issue of how a height variance was defined to the Planning Board in 2009 because, in its experience, the definitions that existed and still exist now were very difficult for the Board of Adjustment to be able to work with in a way that would be fair and efficient in terms of hearing cases. He said that the concerns that the Board of Adjustment had were written up in the document he sent to the Planning Board. The first concern was trying to define a basement in terms of its use which he said really doesn't work and when you get into hearing cases it just makes it a terribly difficult process to go through with applicants. To the extent that the Planning Board wants to completely eliminate the use part of the definition of a basement, he said that the Board of Adjustment would very, very strongly support that. He said that the issues have to do with what a Board of Adjustment does - they hear exceptions and the purpose of zoning is to create standards that work for something like 90% of the buildings in any given zone and so you want them to be inclusive but you also want them to set the standards that really govern how things look, the look and feel, and all of the other qualities that go into effective zoning. He said that the idea is two-fold - first to create zoning that is accurate and minimizes the need for exceptions which minimizes the need for people to come before the Board of Adjustment. He said that it is a commitment of the Board of Adjustment to do everything it can to lower the cost to applicants. With the height ordinance, he said that by statute that is a d-variance which means that applicants have a higher burden of proof. They need 5 affirmative votes from the Board (rather than a simple majority) and, as a rule, a use variance is going to be more expensive for an applicant. To the degree it can be defined in such a way that you reduce the number of d-variances, he felt that that is quite important. Finally, he said that most use variances are going to be triggered by a house on a steep slope where you are taking a look at some part of the house that is a fully conforming 2 ½ story 30' high structure and the part of the house that is on a steeper slope is going to be larger than that. He said that the value of getting those before the Board is that the Board, therefore, has the ability to grant a variance if it is reasonable and appropriate according to the law but at the same time to make sure that no damage is done to the neighbors by paying attention to things like appropriate buffering and screening and the façade of the building. He said that the value of having the exception is that it is warranted when it makes sense for somebody to be able to build something that on one side of the house perhaps might exceed the standard and you are able to exercise the controls that keep that from being offensive to the people around it. He said that he could give the Board some opinions on some of the recommendations he has heard and read from Mr. Lemanowicz but he felt it might be more valuable first to ask the Planning Board if it had any questions about what the Board of Adjustment's experience has been with the many height variances it has heard.

In response to Mr. Arentowicz, Dr. Behr agreed that most of the applicants for height variances entail house on steep slopes, but added that there are a couple of exceptions. He said that could think of houses where 3 sides of the house were fully conforming so that from a neighbor's point of view or for people driving by the house, it is a 2 ½ story 35' house but they might have a garage at a lower level so that you drive down into the garage and you might not even see it from the street or as a neighbor, but if you measure from the lowest point, that house now needs a variance even though if you look at the house, it is visually perfectly acceptable. He said that the vast, vast majority of what the Board of Adjustment hears are houses on steep slopes and there are a lot of them in the Township.

Mr. O'Brien added that anything on a steep slope automatically comes before the Board.

In that case, Mr. Arentowicz said that the proposed changes the Planning Board is considering is not going to eliminate the number of d-variances that are currently being processed if most of them are on a steep slope.

Dr. Behr replied that it really depends upon the house and the location. He said that a basement is considered a story if the *average* exposure out of the ground is 50%. In that kind of situation, he said that there could be some houses that would still need to be approved by the Board for variances, but they might move into a c-variance category. He said that the determination by statute is that either a 10% increase over the permitted height or a 10' increase triggers a d-variance, so that it is possible for people to build a house that would have 3 stories in the back but *not* trigger a d-variance.

Mr. Lemanowicz said that the only issue where you would not have a critical areas variance is if you have an existing house that looks like a ranch from the front but contains 2 stories in the back and they want to add a level. He said

that, given the amount of vacant lots left in Long Hill, there is probably an equal chance in having something like that.

Dr. Behr made it clear that this is not a huge issue for the Township as a whole. He said that if we get two instances per year like this that is a lot because there is just not a lot of development going on in town. He said that, as Mr. Lemanowicz pointed out, a lot of this is redevelopment but for the homeowner it can make a *significant* difference.

Mr. Roshto thanked Dr. Behr for his well written document which he said is very thorough. He said that he was a little confused because he had said that building height is such an issue which sounded to him like we had a bigger issue than just 2 per year.

Dr. Behr clarified by saying that from a Township point of view it is not a big issue, but if we are consistently saying that we are having a hard time administering this because the language simply isn't accurate and clear and if that recurs as a problem then that becomes a trigger to say to the Planning Board that maybe they need to take a look at this and ask themselves if they need to make changes.

Mr. Roshto said that his other question related to changing from the highest elevation to the average grade. He said that at the last Planning Board meeting we came to the conclusion that that could cause roughly a change of 4' or 5' in elevation.

Mr. Lemanowicz said that, taken on its own, changing from average grade to lowest grade could raise the house up and still be allowed, however if it is counteracted by the issue of if the basement is more than 50% of the ground, it is a story, then you catch it as a 3 ½ story instead of as over 35', so they kind of work together. He said that the issue that Dr. Behr referenced before – if you have a 2 ½ story house with a garage under, it is really tough to get that under 35' and that it is difficult if you go "min to max". However, he said that we have the concern about exposed walls, so it is a balance.

Mr. Roshto said that it seemed to him that we could be inadvertently changing from 35' and, because of the reality of it, it could be 39'.

Dr. Behr said to remember what Mr. Lemanowicz had said in that both tests operate. He said that they might come in with a building that is 39', but they will still need a variance if they are violating the 2 ½ stories. If they either are in excess of the height or in excess of the number of stories, they are before the Board. Secondly, he said that we hear applications where the logical, fair, and sensible thing to do that is consistent with the guidelines and the law is to grant the variance because it is the reasonable thing to do, but then make sure that that particular house is well buffered and protected and attractive to the neighbors. He said that the standard is not 39', it is 35' and we are talking about a small number of exceptions and not the rule.

Mr. Roshto said that he was trying to understand from a Board of Adjustment perspective and Dr. Behr made the point that they are trying to allow them to do what they are asking for.

Dr. Behr replied, so long as they can prove to the Board that they have reasons that would meet the standards that we have given in the law for granting a variance. He said that they still have a burden of proof that they have to meet and that is very carefully and specifically spelled out for us in the MLUL.

Mr. Roshto said that the burden of proof from a perspective of height is changing and it is changing by roughly 4' because we are changing how we calculate the difference.

Dr. Behr replied that the burden of proof in his mind has nothing to do with the standard. He said that the standard is the standard and the burden of proof is to demonstrate why it makes sense in this particular instance and this particular house to waive strict adherence to the standard and they have to present testimony to demonstrate to the Board that, in this instance, while the rule is still the rule and is absolutely valid, it is fair, more reasonable, and in keeping with the intent of the law to let them have something.....

Mr. Roshto interrupted and said, however, what you said earlier when we are talking about height, we are talking about a d-variance and not a c-variance and the burden of proof is much more difficult in a d-variance. He said that he gets concerned when we are talking about changing a calculation that affects a d-variance and suddenly they are now coming before the Board of Adjustment for something where the burden isn't quite as high - that we are opening the door here inadvertently. He said that he was afraid that we are going to change the way that we calculate the height and suddenly houses can get taller and they won't even need a c-variance.

Dr. Behr replied that the Ordinance says that it can't be any more than 35'. He said that they bring in an Ordinance in which some portion of the house is 39' and then they have to come before the Board for a variance.

Mr. Roshto replied that the calculation will still be 35' and what they build today is a house 35' and, if we pass this Ordinance tomorrow, they can build that same house and it will still be 35' but distance-wise it is higher by 4 additional feet because of the way you calculate height.

Dr. Behr felt that that was a decision that the Planning Board has to make. He added that he would invite the Planning Board members to actually visualize houses and consider what differences we would actually be looking at

were that to happen. He also encouraged the Planning Board to ask Mr. Lemanowicz to talk more about how that would actually work in practice and what would have to happen in order to get a house that is now 39' tall.

Mr. Lemanowicz said that a house becomes 39' from the lowest to the highest points and he suspected that it would trigger the 50% basement issue (if we went the 50%). He said that, in order to do that, he believed that you would trigger the basement to being a story – so you would have 3 ½ stories.

Mr. Roshto said that the Board has already had this discussion and did not want to go back and talk about it again. He said that he was just trying to get a Board of Adjustment perspective and he felt that Dr. Behr had answered it for him.

Dr. Behr said that he did not see it making a significant difference in a practical reality when you think about the actual houses that you look at. He agreed with Mr. Lemanowicz that a house that is 39' tall might not trigger a height variance but it would come back and trigger a story variance.

Mr. Roshto said that it is not a house that is 39' tall, it is still 35' tall but it is how we measure it that changed.

Mr. Lemanowicz said that it is 35' from the average grade but 39' from the minimum grade.

Dr. Roshto said that today when you measure it a house can be 35' but tomorrow when we measure it it could be smaller. He said that it is the same thing in reverse when we are talking about building new houses. He said that it is still 35', it is just that the houses can be visibly bigger because there will be more of it out of the ground – essentially we just lifted it out of the ground.

Mr. Lemanowicz said that in order to achieve a large height like that at one spot, by using the average grade it gives the opportunity to make it up some place else. He said that the way the Ordinance is now, he can be at the max all the way around the building, but if you bring the basement issue in, he can't be 35' for very much time because he can't make up the average on the other sides.

Mr. Connor asked if most (if not all) of the houses that needed variances were on the south side of Long Hill Rd.

Dr. Behr replied that they are on the south *and* north. He said that the high side on almost every one of those houses is bigger.

Mr. Connor asked if the high side normally faces the road.

Dr. Behr replied that in 95% of the cases the high side is facing away from the road.

Mr. Connor said that the fact is that a house that would be 35' would actually be much less than that on the road and, in fact, the house could be 30' on the road and 45' on the back. The end result is that the face to the road will always be less than 35' simply because it has got to be the average. If there are houses there that are 35', this house will actually seem smaller from the road.

Mr. Roshto felt that on the north side it is the opposite.

Mr. Lemanowicz referred to the High Point Estates Subdivision that was developed on a portion of the site previously owned by the Sisters of the Missionary Servants of the Most Blessed Trinity. He said that the two houses that the Board of Adjustment reviewed in that subdivision were *over* the crest.

Mrs. Raimer said that the properties which Mr. Lemanowicz was referring to are on the north side of Long Hill Rd.

Mr. Roshto said that he lives off of Long Hill Rd./Basking Ridge Rd., but when you travel east from the west, on the left hand side it starts to go down and you are not on the ridge anymore after you pass Central Ave., so all of those properties are sitting on a hill.

Mr. Connor felt that most of them are almost on the crest of the hill.

Mr. Roshto agreed that *some* of them are but he did not know about *most* of them.

Mr. Lemanowicz said that the other issue on that section of Long Hill Rd. on the north side is that there is a 75' conservation easement that pushes all of the houses up to and over that ridge.

Dr. Behr said that the Board of Adjustment will count on the Planning Board to provide a more rational definition and if you say that the trigger point is "this", then that is what it is. He said that the applicant has still got to prove to the Board that the exception in their particular case is merited. While he had a personal preference for the 50% average, he said that the Planning Board must decide what it thinks is the best standard.

In response to Mr. Roshto, Dr. Behr said that when he was on the Planning Board, the current Ordinance came before the Ordinance Review Subcommittee.

Mr. Roshto asked how the 50% was arrived at – what imperial data was used to come up with 50% as opposed to 40% or 60%.

Mr. Lemanowicz replied that it was an ordinance that he had used in similar community (Mendham Twp.) that seemed to work and that is why he proposed it.

Dr. Behr agreed that the Board of Adjustment took Mr. Lemanowicz's recommendation.

Mr. Lemanowicz noted that, topographically, no two towns are the same, although he felt that Mendham Twp. is similar with a rural nature and a comparable number of smaller and larger houses. He said that it seemed workable at least as a starting point. He said that if the Board would like, he could create some examples.

Mr. Roshto replied that that may help other people but what he was trying to drive at is, if we pass these definitions and suddenly now we make it so that 99% of all the homes in our town (inadvertently) can be built to 39', he would be concerned that we have swung the pendulum too far to the right. He agreed that we have to do something (removing the use from the definition, for example), but he said he was trying to figure out where the middle of the road is. He said that 50% might be the number but nothing here has convinced him that it is.

Mr. Lemanowicz said that perhaps some sketches of elevation views of different houses on different topography where he could say that this one would be okay at 50% and this one would not be.

Mr. Roshto said that he was looking for the breadth of impact – how *many* homes would benefit from such a change. He said that if we have 2,800 residences in our town, of those are *all* of them going to benefit from this, or none of them?

Mr. O'Brien said that anyone who applied for an addition or expansion would be eligible and that would only work if what they are proposing would fit within these guidelines.

Mr. Connor asked how many homes does it make no difference to (which he felt is the vast majority of the homes). Then, of the ones where it might make a difference, how many are there of those? Of those that are currently built, he questioned how many of those exceed 39'? His guess was the front of some of the homes, if they are 30' high in the front, they are probably going to exceed 39' and, therefore it would be a quasi-standard that most of them are 40'-42' anyway and they had to come in for a d-variance or maybe they were built before you had to have variances and they haven't been touched. He said that it would be interesting to know how many of them actually require a d-variance if built now, nothing that it could be a significant number of them.

Mr. Lemanowicz agreed with Dr. Behr that the use definition of a basement (which the Board has already agreed upon) was the *big* thing and caused a lot of issues. He said that the Board may want to keep the 35' "min to max" and fix the basement/story issue and see how it goes.

Dr. Behr agreed that that would clear up a big issue that was a problem for the Board of Adjustment.

Mr. Roshto said that there were two other things that needed to be cleared up. One is a basement that is completely below ground that we are calling a story, which we do not want to do. He did not know if the 50% is solution or not.

Mr. Connor said that if someone comes in with two variances – one for a height variance for less than 10% *and* they happen to be on a steep slope versus one coming in that needs a d-variance and another c-variance, how much difference is there if they already have to come in with two c-variances or with a c and a d-variance. He questioned if there was much difference in the expense entailed. Although 5 affirmative votes are needed for a d-variance, he said that his guess is that most of these pass in a unanimous decision.

Dr. Behr said that he would defer the question to Mr. O'Brien, however he felt that if someone was to seek a d-variance, they are more likely to hire an attorney and possibly a planner, so their costs will go up. He said that his gut instinct says that when we've got d-variances, they tend to require more testimony and, therefore, take longer than c-variances.

Mr. O'Brien said that, because the burden of proof is different (higher for a d-variance), special reasons must be shown. He said that the 4 criteria that you have to prove for a c-variance have been increased to 8 criteria for a d-variance and they are of a different nature. He said that many applicants under those circumstances will hire an attorney, planner, and possibly an engineer to come in and give that very specialized testimony because if they don't provide that testimony before the Board, the Board has every right to vote "No".

Dr. Behr estimated the difference in cost to be \$5,000 and \$10,000.

Mr. O'Brien said that when homeowners appear before the Board for a c-variance, the Board and staff can lead them down the garden path of providing the testimony that is required based upon the reports of the Board's consultants and that is because that burden of proof is of a low level and is something that a homeowner can give because it is fairly simple but it is rooted in their impact upon the neighbors, the neighborhood and the community which they have the capability of testifying to. However, when it gets to that d-variance level, the special reasons are a whole other criteria which is very specialized and we tell the applicants what they need to do under those circumstances but that understanding is not always conveyed.

Mr. Connor said that there seems to be a consensus that we shouldn't have use and we need to get to the question of how do we define a basement.

Dr. Behr agreed and said that the Board of Adjustment is looking to the Planning Board to give as clear and unambiguous a definition as they can get.

Mr. Connor said that Mr. Lemanowicz's original recommendation based upon his information was 50%. He asked Dr. Behr if that made any sense in the cases that he has looked at or if he had any basis for saying that is good, bad, or indifferent.

Dr. Behr said that you have both factors involved so that the ones that we hear are always going to be an issue because they are on a slope and the height is always going to be higher, so they've already got a d-variance to work with. He said that you need to define a story at the point in which it impacts the visual appearance of the house so, obviously, if it is flush and everything is below ground, it is not a story. If it is sitting on top, it obviously is a story and at what point in between those two places do you say that enough of it is sticking up above the ground so that we want to call it a story.

Mr. Connor asked Mr. O'Brien and Mr. Lemanowicz, in their experience on this issue, what do other Boards do regarding stories. He asked if they had been in discussions with other Boards where this became an issue and, if so, in general how was the issue resolved?

Mr. Lemanowicz said that he was involved on one of the Chatham's on an issue like this (*very* steep slopes) and he believed that that was a percentage also. He said that the house was steep enough that it had a sub-basement. He said that they actually built the foundation wall in the back and the basement slab in the back was actually elevated above grade but it didn't require a variance with respect to story.

Mr. O'Brien said that Chatham uses the average for their building height and the stories don't change (the attic is a half story and the basement is never a story). He said that Harding uses the average finished grade 15' from the perimeter for their height.

Mr. Roshto asked Mr. O'Brien what the definition for a basement is in the examples he just gave.

Mr. O'Brien replied that Chatham does not define a basement.

Mr. Roshto asked how they then define a story.

Mr. O'Brien replied that they are not very helpful in that regard.

In response to Mr. Lemanowicz, Mr. O'Brien said that Harding has a definition for a story and a basement is the floor below grade on all sides. The height is the average finished grade 15' out and they also add that a front elevation may not exceed the foot limit for elevation.

Discussion followed regarding measuring a distance out from the house.

Mr. Roshto said that, if we are concerned about the visual look, what if we approach it from that perspective and say that if the basement has a walk-out or has windows, then it is a basement and is counted as a story.

Dr. Behr said that then you could have a 2' with a little window in it and it would still qualify as a story.

Mr. Connor added that some basements have fairly deep walk-outs. He said that it sounded like there is not a lot of data on the basement issue at this time.

Mr. Lemanowicz said that, if a ranch has a basement on a flat lot, generally you are seeing 18" – 24" of foundation right off the bat, so if you are already seeing 2' out of 8' on a flat lot, you are already at 25% exposure. If he is 2' in the front, he can be 6' in the back which is an average of 4', so that is 50% of the basement. If he is 2' across the entire front and 6' across the entire back, there is a smooth transition. If he wants a walk-out basement, he needs more than 6'. He said that you are still giving some options, but you are saying that we really don't want to see your foundation wall.

Mr. Roshto said that he was most concerned about 50% on a steep slope. He said that it seemed doable to make it such that your back door is a full walk-out back door, so visually when you see it your neighbor who is down the hill from you looks up and sees 3 stories. He said that that is what he was trying to prevent. He asked how we do that on a slope where we only want to visually see 2 ½ stories, not 3 ½.

Mr. Lemanowicz said that you could write an ordinance preventing it and then it comes to the Board of Adjustment for mitigation. Whether you are going to prevent it or not is a problem because if you have a steeply sloped property, the variance proofs are there for a c-variance because you have a unique topographic condition. He said that you could go for percentage of exposed foundation per elevation and could put a max on it and then put an average so that you could have a face average and then a building average.

Mr. Roshto felt that the fundamental question for the Board is, in a situation where on one side of the house it looks like 3 ½ stories but on the other side of the house it looks like 2 ½ stories, what do we want?

Dr. Behr said that the tricky thing though is if somebody comes before the Board of Adjustment and they have a 1 story house with 2 stories on the back on a steep slope and they have a growing family and they want to expand the house so that it has the kind of amenities that are common in a house nowadays, so their reasons are justifiable and plausible, and they could wind up getting a variance and they will have 3 stories in the back of the house because the law may permit that. He said that, if the Board ruled against it, it is entirely possible that they could appeal and the ruling against it could, theoretically, be defeated by an appellate court. He said that the law allows people to do things when they can prove their case that are exceptions from the norm that applies to 90% of the houses in the town.

He said that you can't necessarily keep somebody from building 3 stories on a steep slope.

Mr. Roshto asked, if the Planning Board decides it does not want 3 ½ stories on a steep slope, is there a way to make it more difficult where the Board of Adjustment would rule "No" and not grant the requested variance.

Mr. O'Brien replied that that is a road that we really can't go down in this discussion because it is going to depend entirely upon the factors and uniqueness of the application before the Board of Adjustment as well as the proofs that they give to that Board. However, he said that what the Planning Board does here in making the ordinance is what the 90%-95% of the homes adhere to and it is the exceptions that go to the Board of Adjustment and ask for a variance.

Mr. Roshto said that he asked Mr. O'Brien at the last Planning Board meeting if we can make zones along Long Hill Rd. and he recalled that the answer was "Yes". He said that, if we make it a zone, it can be made more difficult for anyone living in that zone to build. He felt that there are ways to do it and to him it boils down to, does the Planning Board *wish* to do it? He asked if we want to make it easier for people to obtain a variance that are living in 80% of the areas besides these steep slopes (essentially on Long Hill Rd.), but still keep the character of Long Hill? He said that he was afraid that if we make these kinds of changes (averaging and changing the definition of a basement) that we *are* going to make it easier to develop and change the character of the hill. He said that that is something that he is not interested in doing.

Mr. Connor felt that the argument against that is that, if you keep it at 35' "min to max", that really controls the height that you can have. He agreed that you could have some additional exposure in the back but, nevertheless, if you are doing a "min to max" at 35', then the bigger the slope the smaller the house on top. He felt that there is a control and it is both the fact that you have a maximum height and what the slope is. He said that if you look at a basement as a sort of rectangle, it is pretty easy to draw lines through it and look at what a 50% line looks like. He said that you could take whatever the front to back is and say what is the average depth of a basement and the average height is 5' and draw a triangle. He said that you could look at 50% as essentially a line if you drop it a foot or two below and stop at a foot or two below the drop. He said that it looks like a box with a big "x" in it. He said that the fact is, is the slope undulating or is it not a straight line, which he felt makes minimal difference. He said that you could probably get 6' in the back which means that the rest of the house is going to have to be 27' and it is basically self-limiting because the bigger the angle, the more you have to bring down the other roof. He felt that a couple of simple examples could point out between the two that having a 50% or 60% makes reasonable sense. He did not feel that having anything less than 50% makes sense. He said that is something to try and if the Board of Adjustment finds that it doesn't work, then the Planning Board could do this again.

Addressing Mr. Roshto, Dr. Behr said that if you say that you don't want any houses on steep slopes to be bigger than 2 ½ stories on the back (steep) side, that means in all practicality that on the street side they can never be any more than a single story. He said that if you take a look at the point of a homeowner that wants to provide reasonable accommodation to their family and happens to be stuck on a steep slope, some people might view that as being very Draconian. He also asked the Planning Board to keep in mind that the job of the Board of Adjustment is to make sure that the building that is 3 ½ stories is properly buffered so that neighbors are visually protected and also that the façade is attractive. He said that he could not think of a case in 15 years where the Board of Adjustment has allowed something to be built that was 3 ½ stories on a steep slope that was ugly because we have architectural design standards that would prevent that. He said that the Board can also insist that there be appropriate buffers so that neighbors are not actually looking at a huge mass staring them right in the face.

Mr. Connor said that it is not so much the fact that we want to avoid them from coming to the Zoning Board but we might want to preclude their need for so many d-variances.

Dr. Behr said that he could not estimate what the number of people coming in might be and did not know how many houses are capable of being developed on Long Hill Rd.

Mr. Connor replied that he did not think there are many but questioned existing homes that need to be modified. He said that the question is, how many nonconforming houses are there right now?

Dr. Behr said that, ultimately, the Board of Adjustment needs a clearer definition than we have and the Planning Board must decide what it thinks is most appropriate for the Township. He said that his preference would be to be a little bit more generous for people who are stuck with living on a steep slope but want to do something appropriate for their family because that has been the kinds of decisions that the Board has tended to make.

Mr. Roshto said that when he reads the definition of a basement today, it is as clear as if we put 50% in there. He said that a basement is when the foundation is below grade. He said that, obviously, you were trying to get to something there that he missed.

Dr. Behr replied that he probably did not express it well and invited Mrs. Raimer to weigh in. He said that he was thinking in the larger context of what is appropriate and desirable. He felt that Mr. Roshto's point is that 50% is as good a definition as any other percentage and any other percentage is as clear as 50%.

Mr. Connor said that if you say that a basement is when the foundation is below grade, it has got to be below grade by a certain amount, noting the situations of split-level homes such as his.

Mr. Lemanowicz said that the *slab* has to be below grade. He said that if you have a 9' high basement, from floor to floor, and a 9' second floor, and your basement floor is 1' below grade, that gives you 8' for your attic pitch. He said that entire building (all 35' of it) can be out of the ground even though visually it is a 3 ½ story building because you need to be able to take that lowest level and say, if it is not far enough into the ground, it's a story. He said that the way the ordinance is written now, as long as the basement slab is inches below grade, it is a basement and you can get 3 stories in 35' without a problem.

Mr. Roshto said that the way the ordinance is written today, what Mr. Connor described for his house would be irrelevant, whether it is counted as a basement or not.

Mr. Connor agreed because it is finished. He said that they are not basements because of their use, but if the use goes away, he's got a basement. He said that that could be good or bad – bad if it flooded and he is told that he cannot get insurance money because the insurance company is claiming it is a basement.

Dr. Behr asked if it doesn't boil down to what percentage of a basement is visible above ground triggers that basement getting called a story? He said that that is the issue and the answer is going to be some number that is agreeable to the Planning Board. He said that Mr. Lemanowicz is saying that we have to change what we have now and he agreed with him.

Mr. Lemanowicz said that it may be a matter of bringing in a couple of hand sketches showing 40%, 50% & 60% exposure on a steep slope to see what it looks like.

Mr. Roshto said that, if it helps people on the Board, he was fine with Mr. Lemanowicz doing that work.

Mr. Connor asked Mr. Roshto how he would define a basement.

Mr. Roshto replied that he liked the idea of the face averaging that Mr. Lemanowicz had mentioned. He said that it is a visual thing and if he can see that a building is 50% out of the ground on a face, he could get his head around that. He said that no developer out there can "fudge" that, hopefully.

Mr. Connor agreed.

In response to Mr. Lemanowicz, Mr. Roshto clarified that he was saying that if 50% of the basement is exposed on *any* side, it is a story.

Mr. Connor said that that met his simple view of it too. He said that if you can see more than 50% of the floor, he felt it is not a basement. He said that if for some reason someone designs something that doesn't meet that criteria, that is what the Board of Adjustment is for.

Dr. Behr said that it was his understanding that one proposal is, if more than 50% of *any* surface of the basement is exposed above ground, it counts as a story and that would trigger the story variance. He asked if anyone on the Planning Board had an alternative recommendation.

Mr. Butterworth said that he felt that the 50% on *any* surface is too stringent and that it should be more of an average because he felt that you will always be over 50%. For example, he said that his basement would be over and his house is not located on a steep slope.

Mr. Connor said that the other question is the garage. He said that a side garage could trigger it because, obviously, you are going to expose the entire side, so every time you have an underground garage it becomes a story which is probably a negative. He said that there may be another way to handle it or we may have to make exceptions that an area opening to a garage does not count.

Mr. O'Brien said that currently we do not count car parking on the lower floor as a story.

Mr. Roshto asked how that is written in our ordinance.

Mr. O'Brien replied that "an unfinished or flood resistant enclosure usable solely for the parking of vehicles, building access, or storage in an area other than a basement is not considered the building's lowest floor provided that such enclosure is not built so to render the structure in violation of other applicable non-elevation design requirements".

Mr. Roshto replied that it read strange to him. He said that it is not considered the lower floor but it mentions nothing about whether it is considered a story.

Mr. O'Brien replied that if it is not a lower floor, it is not a story because then you go to the definition of a story and then the basement only counts if it is used for the principal use. He said that if this is only used for car parking and storage, then it does not apply.

Mr. Lemanowicz noted that we are taking the principal use clause out.

Mr. O'Brien understood but said that this is how it reads right now and how they cover it both ways.

Dr. Behr asked if it was possible to deal first with what determines whether a basement is a story in terms of the exposed height and just take a vote on it. He said that we have heard 50% of the basement on any side and we have heard 50% as an average. He wondered if the Planning Board could first vote on that and then they would also have to deal with the issue of a garage.

Mr. Lemanowicz said that you could just exempt the area of garage doors from the basement exposure calculation. He said that he could write that out and to the numbers but somehow, if it is a garage door, ignore it entirely and don't count it towards any percentages. He said that that might be possible.

Dr. Behr asked if it was possible for the Planning Board to resolve the question of do you want to count a basement as a story if it is 50% on *any* side, or do you want to count it as a story if it the *average* of all 4 sides exceeds 50%.

Mr. Butterworth felt that average is what it should be.

Mrs. Raimer said that she would prefer to see an average of all sides as 50%. She said that she was having some trouble with the one side issue and had other issues.

Mr. Arentowicz said that his view is one side.

Mr. Connor said that he had a feeling for one side only because he lives in an area where that would make some sense. However, he said that he would prefer using the average although he did not have strong feelings on it but he did not feel that there is enough consensus to vote on it tonight.

Dr. Behr said that the Board of Adjustment's plea is for the Planning Board to figure out a way to make a decision.

Mr. Connor said that if there was more of a full Board present he would feel better, but 3 to 2 is not what he would like to see this matter decided on.

Dr. Behr said that it was not a problem and whatever is decided is what the Board of Adjustment will enforce.

Mr. Connor said that the Planning Board will define a basement and it will probably be on some version of the amount of exposure but it just has to come up with the right numbers.

Mr. Butterworth said that he was saying the average, but not necessarily 50%. He said that the reason he was in favor of the average is that you are looking at bulk exposure here where taking one wall is not bulk – it is area and not volume.

Mr. Connor felt that this discussion gets Mr. Lemanowicz to do some very simple work. He said that his job is to put together a couple of examples prior to the next Board meeting.

Mr. Roshto said that this is the second meeting that the Planning Board spent almost all of its time talking about 3 or 4 definitions and we have a lot more things to tackle. He said that if we keep doing this meeting after meeting we are never going to achieve our goal.

Mr. Connor said that he could call for a vote on the issue and knew what the result is going to be but his concern is that with a full Board there will be people who would move the vote the other way.

Mr. Roshto wondered if it would be a better approach to have an ordinance crafted that the Board of Adjustment would *think* would pass the Planning Board. He said that you have heard how we feel about stories; keeping the character of our town; we want to keep the 35' height (min to max); we would like to have something changed with the definition of a basement; and if you could come up with an ordinance with all of those things in it and come back, maybe the Planning Board can answer the question of 50% average.

Mr. Connor said that the Planning Board is pretty much split on the first issue ("min to max") and said that he would poll the Board.

Mr. Arentowicz and Mr. Roshto said that they were in favor of high to low.

Mr. Butterworth and Mrs. Raimer were in favor of average.

Mr. Connor said that, if we keep a definition of average for the definition of a basement, he would probably then agree to high to low. His *guess* was that the Planning Board will do high to low.

Mr. Lemanowicz said that he would do that with a couple of examples and however he works percentages with a couple of illustrations for the next meeting.

Mr. Connor asked Mr. Lemanowicz to get that information out by the middle of next week so that the members will have a chance to look at it and think about it and individually come to some sort of conclusion on what they agree so that when it comes before the Board it can be taken care of reasonably quickly.

Dr. Behr thanked Mr. Connor and said that the Board of Adjustment appreciates the fact that the Planning Board is making it easier for them to do their job by being more concrete and specific.

Mrs. Raimer thanked Dr. Behr for his willingness to come to this meeting. She said that she knew it was extremely beneficial for everyone here to benefit from his experience and knowledge and felt that the Board of Adjustment and Planning Board are well served by his expertise.

Mr. Connor echoed Mrs. Raimer’s comments and also thanked Dr. Behr.

Dr. Behr added that he had sent a communication to the Planning Board about the process of moving along some ordinances that the Planning Board had gone through. He said that he sent them to the Board because he absolutely believes that the Planning Board could have a profound impact upon the cost of applications for those who come before a Board.

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DISCUSSION
BOARD CALENDAR

Mr. O’Brien said that the attorney for Copper Springs is available for the next meeting date and he is prepared to come in and make a presentation regarding what they would like to see done. He said that if the Board is in agreement, he will confirm the date with the attorney. He said that if that meeting is scheduled, perhaps the Board would be interested reviewing drafts of the Morristown Rd. rezoning study and the horse farm work that has been done. He said that, so far, the only open question on both of those items is the feedback from the Township Committee that Committeeman Aroneo had said he would try to get for us. He said that he had suggested that he had discussed those items before the Township Committee to see if there was interest in pursuing the issue and then letting us know where that goes. In terms of the horse farms, he said that he believed that there was a discussion at the Township Committee level although he was unsure of the date.

Mr. Roshto apologized and said that he could not recall the answer and suggested that Mr. Aroneo be contacted.

Mrs. Raimer said that the Fee & Escrow Subcommittee (a joint effort of the Planning Board and Board of Adjustment) might have been ready for a presentation of a draft ordinance, however it sounded like the Planning Board has a full agenda.

Mr. Connor replied that this discussion is setting the agenda and he felt that the Board needs to get things done that are high priority. He said that, obviously, we are going to try to wrap up the heights/stories issue at that meeting along with Copper Springs. He said that, hopefully, there will be room for another issue and mentioned horse farms and Meyersville Rd. He asked Mrs. Raimer to speak about the Fees & Escrow progress.

Mrs. Raimer said that the Subcommittee has been working for months to come up with what they feel are appropriate revisions to the statute and they met as recently as last week to go over some final items and it looked like it was ready to be shared, but before getting to that point she asked the Board for its sense of vision and what the steps are that this has to take. She said that this took a very unique road and that it didn’t just go to the Ordinance Review Subcommittee, it went to a separate subcommittee. She asked for the sequence of things because she wanted to be sure that it is efficient from everyone’s point of view.

Mr. Connor said that there isn’t a pattern and there can be work done by a subcommittee such as this and only one subcommittee – it is not subcommittee to subcommittee. He said that it would go to the Planning Board for its review. From a standpoint of doing things that need to be done, he said that the Fees & Escrows are quite high on his list because of the difficulties that both the Planning Board and the Board of Adjustment can have because of the current fee structure which he termed to be “user unfriendly” to say the least. He said that it is written in such a way that it is like having a leader price and needs to be written to provide a more reasonable estimate of the true cost. He invited comments from the Board as to a third item to be placed on the next agenda.

Mrs. Raimer said that she would like to invite Dr. Behr back for the discussion on the Fees & Escrows. She also felt that it was important to point out that Committeeman Roshto attended their last meeting and he was good enough to weigh in with some comments and so it is being viewed by a member of the Ordinance Review Subcommittee with a separate set of eyes. She said that they also had the Township Engineer weigh in on the Tax Revision Map issue today (which was the last element they were waiting for) and that was forwarded to the Fee & Escrow Subcommittee.

In response to Mr. Connor, Mr. Roshto said that he originally thought that Fee & Escrow Study should have gone to the Ordinance Review Subcommittee, however after thinking about it more he also realized that if it went to the Ordinance Review Subcommittee more than a quorum of the Planning Board would have reviewed it and he did not know if that would be appropriate or not.

Mr. Arentowicz said that, with a few more things, he felt that they are ready to go with it.

Mr. Connor said that, as Chair, he would prefer to have the Fee & Escrow Study as the third item on the next agenda. It seemed to him that the order of the agenda should be Copper Springs, followed by the continued height/story discussion, followed by the Fee & Escrow Study.

Mr. Roshto asked why we feel we need to rush the Fee & Escrow Ordinance, noting that it will go to the Township Committee next year.

Mr. Connor replied that he understood that but would like to get it on their agenda for early next year. He said that he knew almost by personal experience and certainly by people complaining to him about the difficulties in understanding what the total cost will actually be. He said that it is really a way to have clients very upset with meeting the Board.

Mr. Roshto said that, at best case, it will not get onto the Township Committee agenda until February. He said that if the Board decides upon this in January, then can still get on that same agenda in February. He said that he could pretty much assure that within 2 weeks of the Township Committee's decision it can be placed on the Township Committee's agenda.

Mr. Connor said that the other option would be look at the work that has been done on Morristown Rd. and the horse farms. He said that for discussion we clearly don't need anyone here and if we don't get to the discussion it can be rescheduled. He said that he was trying to resolve as much as possible with the Board so that we don't keep pushing things off.

Mr. Roshto said that he felt that the Planning Board seems to weight ordinances higher in priority than its elements. If that is true, he felt that we need to give some consideration to continue on with our elements.

Mr. Connor said that currently none are ready to come before the Planning Board.

Mr. Arentowicz said that at the last Planning Board meeting we said that on 12/11/12 we were going to discuss the Open Space Element and the Recreation Element.

Mr. O'Brien said that that was based upon sending the Open Space Element over to the Open Space Committee and he did not get his office back until last week, therefore he has been unable make progress.

In response to Mr. Connor, Mr. Roshto said that (at the risk of not having any notes in front of him) the Township Committee discussed the horse farm issue at great length and the general consensus is that they *would* like to do something and they would like the Planning Board to help them figure out what that something is. He said that there are multiple horse farms and there were discussions about do we zone a larger area, such as an overlay, or do we do each individual one. He felt that it needs to be discussed at the Planning Board.

Mr. Connor suggested putting horse farms as the third agenda item. He said that Fee & Escrow Study could possibly be discussed at the second meeting in January.

Mr. O'Brien noted that there is an additional Tuesday in December (the 18th) which *may* be a possibility, noting that each Board is scheduled to meet once in December.

Mr. Connor said that he will be away beginning on December 17th although it is not absolutely necessary that he be present. He said that if it is felt that we need a meeting at that point and a quorum is available it can be considered.

Mrs. Raimer asked if would be reasonable (if that date was available for most of the Board members) to put the Open Space Element on the agenda.

Mr. Conner said that that process has been delayed and they still have to look at a revision, however he said he could check.

Mr. O'Brien said that that would allow 3 weeks for him to get it done and then ship it over to them which might be ambitious. However, he said that what we don't get done between Morristown Rd., horse farms, or Fees & Escrows could certainly be done in order to wrap them up.

Mr. Conner said that these options could be considered at the next meeting.

Mrs. Raimer asked if the members could get some guidance in advance of the meeting of exactly what they need to be focusing on or exactly what they need to define. She said that it becomes hard for the members not to know what they should be focusing upon in order to move things forward.

Mr. Connor asked if the Township Committee could provide a brief note as to what they are looking for.

Mr. Roshto suggested that Mr. Aroneo be contacted and he will articulate very well.

Mr. Connor said that he would like something to get out to the Board members prior to the meeting so that they understand what the issues are that we will be dealing with so that they can be thinking about them in advance.

Mr. O'Brien asked Mr. Roshto if the Township Committee had discussed Morristown Rd. at all.

Mr. Roshto replied that they did. He said that he would go back and review his notes on that one and get something out to Mr. O'Brien.

Mrs. Raimer asked if Copper Springs had submitted an application for rezoning. She said that it was unclear at the last meeting what Copper Springs actual application was for.

Mr. O'Brien replied that initially there was an application because they required site plan approval and probably use variance approval for what they are currently doing but in the midst of that application process and calling upon several years worth of discussions at various Township levels, ad hoc committees, the Township Committee and the Planning Board, there were some discussions on Copper Springs' part that they would have non-Board discussions on the process and procedure and this Board has decided that they would like to hear from them as to where they are going and what they are doing and he presumed that this Board is going to make a decision as to what direction they are going to go as to whether or not they will suggest a rezoning or other zoning answers to what they are suggesting, or send them back to the application.

Mr. Connor said that he understood that there are monies in escrow but not necessarily for a rezoning hearing and it is now being used for a different purpose than it was initially established for.

Mr. O'Brien added, "All with the ascent of the applicant".

Mr. Connor said that Mr. O'Brien will be putting together an agenda with his input and Mrs. Wolfe will be back the day before the next Board meeting.

In response to Mrs. Raimer, Mr. Connor said that the Fee & Escrow Study will be put off until (hopefully) the second meeting of the Planning Board in January which will allow time for it to get over to the Township Committee for its first meeting in February.

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

DAWN V. WOLFE
Planning & Zoning Administrator