

MINUTES

MARCH 4, 2014

BOARD OF ADJUSTMENT

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Dr. Behr, called the meeting to order at 8:05 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.

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 later 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
Edwin F. Gerecht, Jr., Vice Chairman
Michael Pesce, Member
Michael O'Mullan, 1st Alternate
Michael Pudlak, 2nd Alternate

Sandy Singer-Raimer, Member
Richard Keegan, Member
Felix Ruiz, Member
Barry Hoffman, Bd. Attorney

Daniel Bernstein, Bd. Attorney
Thomas Lemanowicz, Bd. Engineer
Kevin O'Brien, Twp. Planner
Cyndi Kiefer, Planning & Zoning Secretary

Absent:

Jerry Aroneo, Member

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EXECUTIVE SESSION

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

APPROVAL OF MINUTES

The regular minutes of June 4, 2013 were approved as written on motion by Mr. Pesce and seconded by Mr. Gerecht. Mr. O'Mullan and Mr. Pudlak abstained from voting since they were not members of the Board at that time.

The regular minutes of September 17, 2013 were approved as written on motion by Mr. Gerecht and seconded by Mr. Pesce. Mr. O'Mullan and Mr. Pudlak abstained from voting since they were not members of the Board at that time.

The minutes of January 7, 2014 were approved as written on motion by Mr. Pudlak and seconded by Mr. Gerecht.

**JENNIFER FILO &
ESTEBAN SANTIAGO**
413 Elm Street
required)
Block 13005, Lot 7

#13-05Z
Appeal of Use (“D-6”) Variance
Use (“D-6”) Variance (if
Bulk Variances
Relief from Secs. 142.1 (d & e)
Relief from Sec. 124.14(a)1

Chairman Behr announced the application and noted that the appeal of the ruling of the Township Zoning Officer and the question concerning the applicability of the standard for determining height variances would be the first items before the Board.

The court reporter swore in the professionals, Mr. O’Brien and Mr. Lemanowicz, and also Thomas DeLia, Township Zoning Officer.

Steven K. Warner, **Ventura, Miesowicz, Keough & Warner, P.C.**, 783 Springfield Avenue, Summit, New Jersey 07901, attorney for the applicants, stated that the application is relatively simple and uncomplicated. He said that the applicants had purchased the home which had belonged to Jennifer’s grandmother for over sixty (60) years. They are seeking to make a relatively modest addition to the home to bring it into current standards. That addition would include a garage, an addition on the side, and a second floor addition above the garage. He explained that it is currently a two (2) bedroom, one (1) bathroom home and from the front, it is one (1) story. The applicant is seeking to make the house a four (4) bedroom, two-and-one-half (two-and-one-half (2.5)) bathroom home with a one (1) car garage as opposed to no garage.

Mr. Warner stated that the issue that had to be addressed at the outset, as pointed out by Chairman Behr, was the appeal and interpretation. In his experience, in situations where the height of the dwelling did *not* exceed the height variance by way of vertical distance measured in feet, but *did* exceed the number of maximum stories, under this ordinance and under the Municipal Land Use Laws (M.L.U.L.), it would be determined to be a “C” Variance, not a “D” Variance. He noted that there were five (5) board members present who were qualified to vote if it was interpreted to be a “D” Variance and he further noted that all five (5) votes would be required to approve the “D-6” Variance.

Chairman Behr said that he would apprise Mr. Warner of his options in that case because there were only five (5) members present. He also felt that the appeal should be heard first and as such, the conversation should be limited to that.

Mr. Warner stated that he had two (2) witnesses. William G. Hollows, an engineer with **Murphy & Hollows LLC**, Stirling, New Jersey, who would testify and demonstrate that the height would be thirty-five (35) feet and therefore compliant with the ordinance. David Karlebach, PP, PC, 38 East Ridgewood Avenue, #396, Ridgewood, New Jersey, a professional planner would be providing testimony with regard to the appeal and interpretation.

Chairman Behr stated that only two (2) things had to be demonstrated. One was the height of the building and the other was the applicant’s case outlining that if there is compliance with the required height it should rule out the comparable statute for the number of stories.

Mr. Warner clarified that it would not rule out the statute for the number of stories. A “C” Variance would be required. A “D” Variance would be limited to significant height deviations.

Chairman Behr referred to Mr. Lemanowicz’s report. He was disturbed to see so many instances where there were discrepancies between the various documents received from the applicant’s engineer and the applicant’s architect. Until those issues could be resolved and the Board knew what it was looking at in terms of a building and for a fact, how tall it would be, Chairman Behr stated that the Board could not rule on anything. He expressed concern about a minimum of ten (10) technical comments in the report of February 17, 2014. He requested that for the time being, all testimony be restricted to the question of whether this application was a “C” or “D” Variance.

Mr. Warner introduced his first witness, the applicant's engineer, William G. Hollows.

Chairman Behr stated that because Mr. Hollows had appeared many times before the Board, he would recognize him as an expert in the field of engineering. Mr. Hollows was then sworn in by the court reporter.

Mr. Hollows produced a cross-section that he had developed based on the comments in Mr. Lemanowicz's review letter. It was marked **Exhibit A-01** by the court reporter. He stated that he had gone back into the field to verify the numbers and the basement finished floor number did not change—249.0. The grade at the lowest corner of the house in the rear, the southwest corner, is 249.0. He realized that when they surveyed the first floor, they had opened up the porch door and shot the porch. There is a slight step from the porch to the first floor (he noted that the porch would be removed during construction) which is why the first floor number is 257.15. That is an actual surveyed number.

Mr. Hollows said that the first floor has nine (9) foot ceilings. The next one foot three inches (1'-3") is the proposed floor joists for the new second floor. That second floor would be eight feet (8'-0") from floor to ceiling. He noted that this would be a hip roof house with a five-on-twelve (5:12) slope. Based on that, the final elevation would be 284.0 which is thirty-five (35) feet. He stated that the house would be built at thirty-five (35) feet even if the second floor had to be changed to seven feet ten inches (7'-10").

Chairman Behr asked if the board members had any questions. Seeing none, he asked the consultants if they had any questions.

Mr. Lemanowicz noted that the lowest grade at the building is 249.0 on **Exhibit A-01**. He then asked if the slab would be at grade.

Mr. Hollows said that that is the existing basement slab and would not be changed.

Mr. Lemanowicz said that there is a doorway going from the basement out to the yard. He questioned whether there would be a step.

Mr. Hollows said that there might be a step-over but the floor inside the basement is at 249. The door might be slightly higher but there would either be a small platform inside or there would be a step-over. He said that where the garage door is located in the back was surveyed at 249.0.

Mr. Lemanowicz said he was not arguing what the elevation is, he was trying to see how it all fit in.

Mr. Lemanowicz said that he had another issue. The foundation plan as shown in the architectural plans did not show any columns.

Mr. Hollows stated that the basement would have lally columns. They were not shown on the plan.

Mr. Lemanowicz said that the plan showed a clear span of twenty-six (26) feet.

Mr. Hollows said that was incorrect.

Mr. Lemanowicz said that it was then his understanding that it would not be a clear span and that there was information missing on the foundation plan. The girder that would be holding up the first floor must also be able to hold up the second floor.

Mr. Hollows said it was his understanding that the second floor would span the entire twenty-six (26) feet. The outside walls would be the bearing walls.

Mr. Lemanowicz said that, according to Mr. Hollows, the finished floor elevation would be 257.15.

Mr. Hollows affirmed that statement.

Mr. Lemanowicz said that the existing roof peak is 253.

Mr. Hollows said that that was a drafting error. The existing roof peak is 275.99 which was noted on the left side of **Exhibit A-01**.

Mr. Lemanowicz reiterated that the proposed project would be exactly thirty-five (35) feet above 249.

Mr. Hollows affirmed that statement. He said that that is the figure they were working with or even slightly less and by slightly less, he meant one (1) inch.

Mr. Lemanowicz questioned having an outside entrance where the slab would be equal to the grade. He felt there might be issues with water.

Chairman Behr asked Mr. Lemanowicz if he was satisfied that this building as proposed could be constructed to be built within the thirty-five (35) foot height limitation.

Mr. Lemanowicz answered that because it has a nine (9) foot high first floor, there would be a foot to work with. He felt that if a problem arose during the course of review, there would be room to work out the issue.

Chairman Behr said that the plans would need to be revised to accurately reflect the project.

Chairman Behr asked if Mr. Hollows had any further testimony.

Mr. Hollows indicated that he did not.

Mr. Warner said that now that it had been established that the building could be constructed at or below the thirty-five (35) foot height limitation, he introduced his next witness, David Karlebach, PP, PC, who is a professional planner.

Mr. Karlebach was sworn in by Chairman Behr.

Mr. O'Brien indicated that he had worked with Mr. Karlebach over the years and stated that provided he is still a licensed planner, he could recommend Mr. Karlebach's qualifications as a planner to the Board.

Chairman Behr accepted Mr. Karlebach as an expert in planning.

Mr. Warner told Mr. Karlebach that he should focus on the height issue with respect to the appeal and interpretation. He should provide testimony as to why this particular zoning ordinance in the M.L.U.L. should be interpreted that the variance approval need only be established by way of the "C" Variance Criteria as opposed to the "'D-6'" Variance Criteria. Assuming that the height would be compliant in feet, but would be a three (3) story rather than a two (2) story structure from the rear perspective and not from the front streetscape perspective, Mr. Warner asked Mr. Karlebach to explain his understanding as to why there exists a "'D-6'" significant height limitation requirement and why it would not be applicable in this situation.

Mr. Karlebach answered that fundamentally there are height restrictions for two (2) reasons. First, it would limit the intensity of development at the site. The second reason would be to ensure that the massiveness of the structure would not interfere with the penetration of light and air onto the adjoining properties and onto the street. Mr. Karlebach stated that that related to height and not specifically to the number of stories. He felt that stories would be more properly aimed at regulating aesthetics which is a legitimate public concern. As an example, he said that a three (3) story home on a block of houses which are all ranches would not harmonize well with the surroundings. He said that the statute is clearly aimed at restricting the height limitations of structures and not necessarily the number of stories. That is the concern when there is a "'D-6'" Variance. Specifically, the statute says that the height requirement may not be exceeded by more than ten (10) feet or 10%. If it was referring to

the number of stories, a story could not be exceeded by ten (10) feet. It is not a unit of measurement. Nor could a story be exceeded by 10%. He asked what 10% of two (2) stories would be. He felt it was not logical. If the statute was set aside and looked at from a common sense point of view, it would direct the boards to a limitation on height not stories. He noted that in New Jersey Zoning and Land Use Administration by William Cox, Mr. Cox opined that when the number of stories is exceeded, it is more properly addressed as a "C" Variance and not a "D" Variance.

Mr. Warner clarified that that would occur when there is compliance with height ordinance by way of vertical distance or feet.

Mr. Karlebach affirmed that statement. He said that if the height limitation was not exceeded in feet, but the number of stories permitted was exceeded, Mr. Cox directed us towards a "C" Variance, not a "D" Variance.

Chairman Behr asked which edition of Cox Mr. Karlebach was referring to.

Mr. Karlebach answered that he was referring to the 2013 edition.

Mr. Warner offered **Exhibit A-02** which was a two (2) page copy of the cover and page 175. He said that Mr. O'Brien was correct in citing from Cox in his planner's memorandum. Mr. Warner said that Cox submitted that it should analyzed as a "C" Variance not a "D" Variance.

Mr. Warner further stated that according to **Exhibit A-02**, Cox said, "Sometimes ordinances provide for height limitations expressed both in terms of stories and in feet. Where the limitation as expressed in stories is exceeded but the limitation in feet is not it would seem appropriate to treat the application as a 'C' Variance inasmuch as the statute requires that the structure exceed the height imitation by '10 feet or 10%.'" He asked Mr. Karlebach if he took that submission by Cox to mean that the intent of the legislature in establishing Section 70-d, "Significant Height Limitations" in including 10% was to deal with those situations where there would be a 10% in feet greater differential between the *height* maximum set forth in an ordinance and not a 10% greater in *story* differential in ordinances.

Mr. Karlebach felt that there was only one (1) interpretation of what Cox had said in that passage. He agreed with Cox's analysis that "C" Variance would be required. He felt it was unambiguous and very clear that it directed boards to treat situations such as these as "C" Variances. It was not an attempt to regulate the intensity of use or the penetration of light or air onto adjoining properties.

Mr. Warner asked if there is a wide disparity in the height of stories.

Mr. Karlebach answered that there is. With respect to residential buildings alone, in a turn-of-the-century home or Victorian home, a story could be thirteen (13) feet high. In a modern building, it could be eight (8) or nine (9) feet. There is also a discrepancy between commercial buildings and residential buildings in story heights. Buildings that use steel frames versus wooden frames have different story heights. Although there is some correlation, there is not a direct correlation between stories and height. They are two (2) different levels of measurement.

Mr. Warner said that a thirty-five (35) foot high structure could have three (3) stories, or two (2) stories, or two-and-one-half (two-and-one-half (2.5)) stories.

Mr. Karlebach affirmed that statement. It would still be a thirty-five (35) foot high building regardless of the number of stories.

Mr. Warner said that the light, air, and open space from a thirty-five (35) foot high, three (3) story structure would be the same as thirty-five (35) foot high, two (2) story building.

Mr. Karlebach affirmed that statement.

Mr. Warner said that the definition of height in the zoning ordinance in this municipality is the vertical distance from the lowest ground elevation around the foundation to the level of the highest elevation point of the roof surface.

Mr. Karlebach affirmed that statement.

Mr. Warner asked if that indicated to Mr. Karlebach that height by the definition in this municipality's ordinance is by virtue of being a vertical distance measured in height and not stories.

Mr. Karlebach answered that it did. He felt that it was measured in height, not stories.

Mr. Warner asked Mr. Karlebach if he was aware of any municipalities other than this municipality, that in a circumstance such as this, where the height does not exceed in feet the maximum but where the stories exceed the maximum, that treats those types of variances as "D" Variances as opposed to "C" Variances.

Mr. Karlebach said that he had not encountered it in his twenty (20) years of practice. He indicated that he had testified over 1000 times before land use boards in approximately 300 municipalities and in courts in New Jersey.

Mr. Warner stated that that represented over half the municipalities in the state. He stated that he had nothing further for Mr. Karlebach.

With full respect to Mr. Cox's discretion and language, Chairman Behr noted that the passage said, "...it would seem appropriate..." He felt that that is not a hard and fast definitive statement. He asked if it was fair to say that as a general principle, the consistent practice of a municipality in terms of how it interprets various kinds of land use ordinances is to be respected. He asked what weight the M.L.U.L. places on the established practice of a community in determining how zoning standards should be interpreted.

Mr. Warner answered that that was a legal issue. He felt that if an ordinance violates the M.L.U.L. then regardless of the established practice of the municipality with respect to that ordinance, the state legislation prohibits it. He noted that there is case law cited by Mr. Cox that could be addressed. He also felt that Mr. Bernstein would agree with him that there are cases that say even in circumstances where there is an established practice, it does not necessarily mean that it is binding prospectively particularly when it is contrary to either the legislative intent of the ordinance or the legislative intent of the state legislature in drafting that particular provision of the M.L.U.L..

Mr. Bernstein said that he did not disagree with Mr. Warner that if a municipal ordinance is inconsistent with the state statute of the M.L.U.L., the M.L.U.L. supersedes. He then asked Mr. Karlebach if some deference should be given to the way a town has been interpreting an ordinance over the years with the caveat that if it is clearly contrary to the M.L.U.L., it is not given that deference.

Mr. Karlebach deferred to Mr. Warner for legal analysis.

Mr. Bernstein felt that the answer was obvious. Some deference should be given as long as it was not contrary.

Mr. Warner agreed.

Chairman Behr asked if it was Mr. Warner's belief that the two-and-one-half (2.5) story definition of height in addition to the feet is inconsistent with M.L.U.L.

Mr. Warner answered that the definition is not inconsistent. However, the zoning officer's interpretation that it required a "D" Variance rather than a "C" Variance is contrary to the legislative intent of the M.L.U.L. and contrary, in his opinion, to logic because height is height. If something is thirty-five (35) high, differences in stories within that thirty-five (35) feet are an issue that is of visual perspective and a "C" Variance type issue. It was not the legislative intent for significant height deviations which is the genesis of Section 70-d6 to

apply it to dwellings that comply with the vertical distance measurement height ordinance in the municipality. There is an argument that a "C" Variance should not be required but certainly the legislative intent was not to apply a "D-6" in that circumstance. Mr. Warner stated that Cox was suggesting that if and when this circumstance arose, it should not be treated as a "D" Variance. Treat it as a "C" Variance.

Chairman Behr asked if there were any questions from the public for the witness. Hearing none, he asked if there were any questions from the professionals.

Mr. O'Brien asked Mr. Karlebach if the language in Mr. Cox's book is advisory or mandatory language that the boards must follow.

Mr. Karlebach answered that it is advisory.

Mr. O'Brien said that there are 565 municipalities in New Jersey and in the over 200 municipalities he has testified in, he had seen this interpretation in other municipalities. The fact that Mr. Karlebach had not seen it did not mean that it did not exist.

Mr. O'Brien said that Section 131 of the Long Hill Township code lists the stories as a bulk requirement. He asked Mr. Karlebach if he agreed with that.

Mr. Karlebach said yes.

Mr. O'Brien said it lists two-and-one-half (2.5) stories as a bulk requirement.

Mr. Karlebach said yes.

Mr. O'Brien said that is in addition to the thirty-five (35) feet.

Mr. Karlebach answered yes.

Mr. O'Brien said he had no further questions.

Chairman Behr asked if it was Mr. Warner's position that Mr. DeLia made an error in his judgment on this application, and if so, what was that error. Or was it rather that the statute is in error.

Mr. Warner answered that neither the statute nor the ordinance is in error. The applicant was not challenging either. He was submitting that the interpretation of the ordinance and the statute is in error in that he interpreted what is clearly a situation that would require a "C" Variance as a "D" Variance and hence that is the appeal. The proper interpretation is the opposite of what was interpreted by the zoning officer. It should be that a "C" Variance is required, not a "D" Variance. He added that they intended to prove either with respect to the height. Other than this issue, Mr. Warner felt the application is a relatively uncomplicated and well deserving of approval. Theoretically, if there was a denial, and theoretically, if there was an appeal, had the applicant not appealed the decision it would appear that she had waived her ability to make that argument. Had it been treated as a "C" Variance from the beginning, he would not have burdened the Board with this appeal and interpretation.

Chairman Behr asked Mr. O'Brien how many applicants had been heard over the years where the Board had treated the height ordinance as a "D" Variance both for stories and for height.

Mr. O'Brien answered approximately nine (9) or (10) over the last twelve (12) years of his service.

Mr. DeLia added that as zoning officer, he had addressed at least three (3). He had two (2) in front of him at the moment.

Mr. O'Brien stated that although his recollection only went back twelve (12) years, he had been instructed by his predecessor that this had been the interpretation of the township going back as far as the 1986 Master Plan.

Mr. Bernstein asked Mr. O'Brien if there was a general result in circumstances such as this. He asked if there had been a consistent pattern on how the Board had acted on these variance issues themselves.

Mr. O'Brien answered that in two (2) or three (3) cases, an appeal or interpretation was requested. In the other applications, they were straight forward "D" Variances. The applicant had accepted the zoning officer's decision. Of the nine (9) or ten (10) cases, seven (7) or eight (8) were approved.

Mr. Bernstein asked if the others were resolved in a different manner.

Mr. O'Brien answered yes. In the cases where appeals and interpretations were made, the zoning officer's decision was never overturned by the Board.

Chairman Behr could not recall a denial.

Mr. O'Brien remembered that there had been a denial for some reason but his recollection was vague.

Chairman Behr said that the validity of this particular ordinance had withstood several different interpretations by the Board at different times and had been upheld by the Board.

Mr. O'Brien affirmed that this was correct. He added that a number of those cases were on extremely steep slopes in the township which created some massive buildings on the downside although the side facing the road had a fully conforming two (2) story home. He recalled times when there were four (4) stories facing the backside and because of the story issue, the township has always interpreted the stories along with the height.

Mr. DeLia affirmed that this was correct.

Chairman Behr said at street level, these houses would look like two (2) story homes however on the down side, there could be three (3) or four (4) stories.

Mr. Pesce asked if they were still within the thirty-five (35) feet limitation.

Mr. O'Brien answered that that was not necessarily the case.

Mr. Pesce felt that the thirty-five (35) feet was the crux of the issue.

Mr. Warner stated that that was the applicant's argument. If the application was compliant with the height at thirty-five (35) feet.....

Mr. Pesce asked, of the nine (9) examples, were they all cases where the story limit was exceeded but the thirty-five (35) feet limitation was not.

Mr. O'Brien answered not necessarily. In some, the thirty-five (35) feet limitation was exceeded, in some the two-and-one-half (2.5) stories were exceeded. The township has looked at it as a balance between the two. The ones that were denied might have had other bulk requirements that were an issue.

Mr. Gerecht asked about the house on Valley Road that had a similar situation where it was a two (2) story in the front and a three (3) story in back because of the garage.

Mr. DeLia noted that that was one of his examples. It was application No. 07-12Z located at 1824 Valley Road. The front was one-and-one-half (1.5) stories and the back was three (3) stories. They were utilizing a walk-out basement which was going to be finished with a family room, laundry room, and two (2) car garage and it did not exceed the thirty-five (35) feet limitation. After reviewing the application, Mr. DeLia sent a letter to Vincent Bisogno, attorney for the applicant. Mr. Bisogno withdrew his request for his appeal because he knew Mr. DeLia's interpretation was correct. He also noted that the application was ultimately approved.

Mr. Warner said that testimony as to what Mr. Bisogno knew was inadmissible.

Mr. Bernstein stated that it was simply background material.

Mr. Warner asked Mr. O'Brien if, in any of the cases where the height in feet ordinance was complied with but the story ordinance was not complied with, and this Board construed it as requiring a "D" Variance, they were appealed to the Superior Court of the State of New Jersey or any other tribunal.

Mr. O'Brien answered that there were none.

Mr. O'Brien added that there was no ruling against it either.

Mr. Warner said there would be no ruling either way if nobody brought it up. He asked Mr. O'Brien if he was aware of any case in which this specific instance was brought to a court of law in the State of New Jersey and there was a ruling one way or the other.

Mr. O'Brien said that he thought there was a passage in Cox.

Mr. Warner said he had not found a court decision in the State of New Jersey that interprets this scenario differently than the interpretation that was submitted in Cox's treatise that it should be treated as a "C" Variance not a "D" Variance. He then asked Mr. DeLia if he was aware of any appeal of any decision of this Board under this scenario first and then secondly if he was aware of any court ruling with respect to the viability of interpreting this situation requiring a "D" Variance as opposed to a "C" Variance.

Mr. DeLia answered that he was not aware of either.

Mr. Pesce asked Mr. DeLia when he was looking at this application and focused on the stories exceeding the two-and-one-half (2.5) story limit as stated in the ordinance, how he determined that it triggered the "D-6" problem.

Mr. DeLia answered that he looked at the bulk section of the ordinance 131 and it said thirty-five (35) feet, two-and-one-half (2.5) stories or thirty-five (35) feet. Next he looked at the definitions, specifically the section that pertained to stories and he quoted, "...that portion of a building including between the surface of any floor and any surface of a floor next above it. If there is no floor above it, then the space between the floor and the ceiling next above it. Any basement with more than 50% of its walls exposed above grade shall be considered a full story." Looking at the rear elevation, he noted that the entire back section of that basement wall would be exposed. He also took into consideration the doors and windows. In his opinion, if the doors and windows matched the ones above, that would be three (3) stories.

Mr. Pesce clarified his question. He had no doubt that this application was three (3) stories and therefore exceeded the two-and-one-half (2.5) in the ordinance. His question was whether that triggered the "D-6" requirement of being 10% or ten (10) feet higher than what the ordinance permits. He wanted to know how that calculation was made.

Mr. DeLia stated that he did not go by the 10%. He relied on the definitions.

Mr. Pesce felt that calculation had to be addressed otherwise it would not be a "D-6".

Mr. O'Brien said the Mr. Karlebach and Mr. Hollows both pointed out the difficulty in arriving at 10% of a story. When a structure goes from two-and-one-half (2.5) to three (3) stories, it jumps the 10% and goes right to a full story. Historically this Board has treated that as greater than 10%.

Mr. Pesce said mathematically that made sense since going from two-and-one-half (2.5) to three (3) is more than a 10% increase.

Chairman Behr stated that in the past the Board has always treated that as a "D" Variance.

Mr. Warner said that that assumes that the 10% was put into the statute to apply not only to feet but also to something else like stories. He stated that that is not the legislative intent of Section 70-d of the M.L.U.L. nor does it comport with the definition of height in this municipality's zoning ordinance. With respect to the way Mr. DeLia had interpreted it, for this application and apparently for some others, if it was a mistake, making that mistake nine (9) times didn't make it correct. It remained a mistake.

Mr. O'Brien said that the statute says, "A height of a principle structure which exceeds by ten (10) feet or 10% the maximum height permitted in the district for principle structure." He said it does not limit it to stories and does not state how it is to be applied. He argued that it is silent on that measure—whether it applies to stories and/or height. The fact that it is silent and the township has interpreted it one way does not make it wrong.

Mr. Pesce asked if there was any difference in the issue of either overturning the zoning officer's decision or providing an interpretation on that same issue. He felt that the zoning officer's position couldn't be sustained if the board members render a contrary interpretation.

Mr. Warner answered that they could do that. It has been done and there is case law on it. They are separate. The first question pertains to whether Mr. DeLia was correct in how he interpreted the ordinance. Only the Board has the jurisdiction to interpret that. The Board could determine that he was correct because it was based on past practice. The Board could still come to the conclusion that the legislative intent underlying Section "D-6" is contrary to the interpretation that was made.

Chairman Behr said that Mr. Warner was suggesting that the Board rule that the ordinance as it is currently stated is incorrect.

Mr. Warner said that was not correct. He submitted that the Board could find that Mr. DeLia's decision was not in error but the Board could come to its own independent interpretation. The Board did not have to continue to interpret the M.L.U.L. and this ordinance in a way in which Mr. Warner felt was incorrect.

Chairman Behr said Mr. Warner's basic premise was that if it exceeds the height in feet, it would be a "D" Variance.

Mr. Warner said if it exceeds the height in feet by more than ten (10) feet or 10%, yes.

Chairman Behr said that if it exceeds the number of stories, Mr. Warner would argue that it was a "C" Variance.

Mr. Warner answered that it would be a "C" Variance particularly in the case as set forth by Mr. Cox in his treatise where the height in feet is compliant. He felt that "D-6" was for significant height deviations. If a building complies with the vertical distance height requirement, there could not be a significant height deviation. That was not the legislative intent behind "D-6". All height variances prior to 1986 were "C" Variances. The reason they became "D" Variances was for those circumstances where there was a significant deviation from the maximum vertical distance requirement.

Chairman Behr asked Mr. O'Brien to capture for the Board exactly what the issue before the board members was.

Mr. O'Brien stated that there were two (2) decisions before the Board. The first decision was the matter of the appeal which would require that the Board decide as to whether or not the zoning officer made the correct decision or not. The second decision was for a 70-d interpretation. The applicant asked the Board to interpret the municipality's zoning ordinance to require in cases where the maximum height is thirty-five (35) feet or less, meaning it is conforming in the zone but the stories exceed the allowable in the zone of two-and-one-half (2.5), that that matter is classified as a "C" or Bulk Variance as opposed to the current interpretation of "D" Variance or Use Variance.

Mr. Gerecht asked if the look of the building from the back, having full sized windows and a door, would influence any determination.

Mr. O'Brien said that that was why the zoning officer said it was three (3) stories.

Chairman Behr asked the board members to begin by deliberating as to whether or not the zoning officer acted properly.

Mr. Gerecht said that judging from the information Mr. DeLia used in interpreting the ordinance, he felt wholeheartedly that he made the correct decision.

Mr. Pesce said he was struggling because his own conclusion was that the interpretation was inconsistent with the zoning officer's ruling. He was prepared to support Mr. DeLia and his decision because he believed Mr. DeLia ruled in good faith and based his decision on the precedent of this township

Mr. O'Mullan stated that he agreed with Mr. Pesce. He felt that Mr. DeLia's interpretation was rendered consistently with past practice and after a diligent review of the application.

Mr. Pudlak said that based on past precedent, Mr. DeLia was correct.

Chairman Behr stated that based on his fifteen (15) years of experience, Mr. DeLia's ruling was completely consistent with how the Board has handled itself in the past.

Mr. Pesce moved that the Zoning Board of Adjustment find that the Zoning Officer made the correct determination in this case. Mr. Gerecht seconded the motion. A Roll Call Vote was taken. Those in Favor: Mr. Gerecht, Mr. Pesce, Mr. O'Mullan, Mr. Pudlak, Chairman Behr. Those Opposed: None. Motion passed.

Chairman Behr referred to the second question. He asked if the Board believed that in the case of an application where the height fully conformed to the thirty-five (35) feet height restriction but the stories exceeded the two-and-one-half (2.5) story limitation, it should be treated as a "C" Variance, not a "D" Variance.

Mr. Bernstein said that the Board had decided on appeal that the "D" Variance was appropriate. The question would be if the "D" Variance would still be appropriate. The "C" Variance would imply that the Board affirmed the zoning officer's decision but that the Board disagreed with his reasoning. The Board would be seeking interpretation on the "D" Variance.

Mr. Warner said that this was an interpretation request for the scenario as described by Chairman Behr.

Mr. O'Brien said that the question was as follows: should this Board find that when the thirty-five (35) foot height limitation is met, but the two-and-one-half (2.5) height limitation is exceeded, the application would require a "D" Variance in accordance with the zoning officer's ruling and the Board's past practices.

Mr. Pesce said that he felt the zoning officer's ruling should not be included in the question.

Mr. Bernstein affirmed that.

Chairman Behr stated that he was struggling with the two (2) possibilities. The first possibility was that the two-and-one-half (2.5) stories did not belong. The second possibility was that the two-and-one-half (2.5) stories did belong but if that was the only limitation or deviation in the application and it met the thirty-five (35) feet, it should be treated as a "C" Variance, as Mr. Cox recommended.

Mr. O'Brien disagreed with the statement that Mr. Cox recommended it.

Mr. Warner stated that he had read it and that it was in the record.

Chairman Behr asked if the Board was ruling on this application alone.

Mr. Bernstein said that although they were ruling on this application, these usually become precedents.

Chairman Behr asked the board members to deliberate.

Mr. Pesce felt that the board members needed to be clear that if in fact the Board ruled that this would not trigger the "D-6" criteria, it would do no violence to the township's story limitation in the ordinance. He said that Mr. DeLia had every right to look at the application and say that it exceeds two-and-one-half (2.5) stories. The only other question was whether it would trigger a "D-6" requirement if the height was under the thirty-five (35) foot limitation. He wanted to ensure that they would not lose the ability to restrict stories. Based on that, he stated that he supported an interpretation that this would not trigger the "D" but it would trigger the "C".

Mr. Gerecht disagreed with Mr. Pesce. He believed through the Board's past practices and the various applications that he had heard as a board member, when the story level was clearly exceeded which is the case in this application, the Board had always held that they were "D" Variances despite the fact that they were still under thirty-five (35) feet. He felt that stories do matter from an aesthetic viewpoint, from the use of the building, and from the neighborhood's perspective. For those reasons, he felt that it should rise to the level of a "D" Variance.

Mr. O'Mullan stated that he was having a hard time reconciling the distinction between stories and height with the language of the "D-6". He agreed with Mr. Pesce on the set of facts.

Mr. Pudlak stated that he would treat this as a "C" Variance. In his opinion, the "tiebreaker" would be the thirty-five (35) feet. Based on Mr. Hollows' testimony and Mr. Lemanowicz's comments regarding the extra foot availability on the first floor ensuring the ability to stay below the thirty-five (35) feet, and based on the direction and guidance from Cox, he did feel that it should be treated as a "C" Variance.

Chairman Behr referred back to Mr. Gerecht's reasons and also to his own experience. He stated that the Board had historically allowed itself the power to control while using that power in very reasonable and fair ways. While the Board had always treated the stories as a trigger for a "D" Variance, it had been very reasonable in granting those variances. The Board had always given itself the ability to have that little bit of extra control in that matter.

Mr. Bernstein stated that at this point, the Board had to formally vote. He stated that he would prepare two (2) resolutions. The first would be to affirm the zoning officer's decision. The second would be that based on the Board's independent review of the application, a "C" Variance would be required.

Chairman Behr said the motion before the Board would be that while the Board acknowledged that Mr. DeLia made the correct decision, the Board felt that in this particular instance, this matter should be treated as a "C" Variance and not a "D" Variance.

Mr. Bernstein added that Mr. DeLia had rendered his decision based on past practices and precedent and for that reason his decision would not be disturbed. That would be the first resolution. Upon independent review, consideration of the state statute, and commentary by William M. Cox, the Board concludes that the "C" Variance is appropriate when the height limitation is met but the story limitation is exceeded.

Mr. Pesce motioned and Mr. Pudlak seconded. A Roll Call Vote was taken. Those in favor: Mr. Pesce, Mr. O'Mullan, and Mr. Pudlak. Those Opposed: Mr. Gerecht and Chairman Behr. Motion passed 3-2.

Chairman Behr requested a short recess at 9:29 P.M.

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Chairman Behr called the meeting back to order at 9:38 P.M.

Chairman Behr referred back to Mr. Lemanowicz's report and noted that there were a number of problems identified and because they spoke to the factual accuracy of the application, until those were resolved, the Board could not rule on the application. He felt it would be useful if any corrections or amendments could be made to remove any of the concerns raised in the report.

Mr. Warner summarized the application. The applicants wish to construct a garage addition and a second story addition on the single family residence which had been in the family for over sixty (60) years. It is an undersized property which is a preexisting condition. It is fifty (50) feet wide as opposed to 150 feet wide as required and approximately 10,000 square feet as opposed to 30,000 square feet. The adjacent properties are developed and undersized such that there is no ability to acquire additional land to bring the subject property closer to conformity. There are other constraints also. The lot is bi-sected by critical areas and steep slopes which reduces the building envelope to something very di minimis. Most of the nonconformities are preexisting. One would be alleviated and two would be eliminated by this application. The front yard setback would be greater, more in conformity, and the number of garage spaces would be more in conformity, one space as opposed to zero. There is a driveway setback deviation, previously two (2) feet from the side property line whereas five (5) feet is required. As a result of this application, the driveway would be conforming. The new home with four (4) bedrooms and two-and-one-half (2.5) baths in a style that is commensurate with the other homes in the neighborhood would be substantially more beneficial from a visual perspective. The additional garage would be safer also. He emphasized that from the street, it would be a two (2) story building.

Jennifer Filo, 1302 Duchess Lane, Woodbridge, New Jersey, was sworn in by Chairman Behr. She testified that she and her fiancé, Estaban Santiago own the property which was previously owned by her grandmother since 1953. Ms. Filo has one (1) child who is eighteen (18) months old.

Mr. Warner asked what her intentions are with respect to the dwelling.

Ms. Filo answered that she plans to raise her family in the home. She stated that she had worked in the Stirling Shop Rite for ten (10) years and her father had worked there for about twenty (20) years. She added that she likes the community and the schools.

Mr. Warner asked her to describe the existing condition of the dwelling.

Ms. Filo answered that there had been no remodeling since 1956. It has two (2) bedrooms and one (1) bathroom. There is currently no garage and she strongly felt there should be one for safety reasons. She said that once the garage door was closed, her son could not run out into the street and that he would be safely inside.

Ms. Filo affirmed that there would be a vehicle parked inside the garage as opposed to outside or on the street.

Ms. Filo stated that she had a builder who was experienced in renovating and remodeling homes of this nature in the area.

Mr. Warner asked Ms. Filo if she had spoken to any of the neighbors with respect to the proposed addition.

Ms. Filo answered that she had. She had shown them floor plans and they had no issues with them.

Mr. Bernstein noted that that was hearsay. He said he would not object but the Board should take that testimony for what it was worth.

Chairman Behr noted Mr. Bernstein's remark.

Mr. Gerecht said that on page 1 of the planner's report dated January 15, 2014, Item No. 6 referred to some black & white and color photos and they were not provided to the Board.

Mr. Warner said that he had the photos that were going to be introduced into evidence. It was his understanding the Ms. Filo took the photos and that they are an accurate depiction of the present condition of the property.

Mr. Gerecht said that he had some front, back, left, right pictures of the house, however, he was referring to those photos referred to in Item No. 6 of the planner's report.

Mr. Warner said that he had copies of some of those photos and that he was under the impression that the board members were provided with all the photos that were submitted with the application materials. Item No. 6 stated that that consisted of twenty (20) sheets. He stated that the applicant was relying only on the ones that would be introduced into evidence this evening.

Mr. O'Brien said that a number of items were introduced during the completeness process. Whether they were carried on was up to the applicant. Perhaps the applicant chose not to use them but they remained in his file because he had received them.

Mr. Warner felt that the majority would be before the Board and that they would receive copies.

Ms. Filo stated that she had taken the photos in May and July of 2013.

Mr. Warner stated that he had no further questions for Ms. Filo.

Chairman Behr asked if any of the board members had any questions.

Mr. Pesce referred to the picture of the rear of the home, asked if what appeared to be a garage door had not been used as a garage since there appeared to be no way to get to it with a car.

Ms. Filo answered not in many many years.

Mr. Pesce said that theoretically there was a garage there. It just had not been used for that purpose.

Ms. Filo reiterated that a car could not fit in there. It had been used as tractor storage.

Mr. Pesce asked, looking at her property from the street, the lot to the right had a great deal of distance between the existing house and the house to the right. Looking at the site plan, it appeared that there is a double lot with a house between the two (2) lots.

Ms. Filo said that the lot had been recently subdivided.

Mr. Pesce asked if ultimately, there would be a house centered on the lot to the right.

Mr. Warner answered that Mr. Hollows would address that specific issue.

Mr. Pesce asked if the railroad is behind her so there would be no neighbors that would be disturbed by the height of the house from the rear.

Ms. Filo affirmed that the railroad is at the rear of the property.

Chairman Behr asked if there were any other questions from the Board. Seeing none, he asked the professionals if they had any questions.

Mr. Lemanowicz referred to the proposed deck. He said the stairs go down away from the house ending at a critical area. He asked if she would object to taking that stair and rotating it 90 degrees so that it would go towards the garage.

Ms. Filo said that there would be a landing and that then the stairs would turn further away from the critical area.

Chairman Behr asked if there were any questions from the public. Seeing none, he closed the meeting to the public.

Mr. Warner called Mr. Hollows to testify.

Mr. Hollows identified the property as 413 Elm Street. It is on the southerly side of Elm Street. The back yard abuts New Jersey Transit. It is approximately 235 feet from North Avenue and there are three (3) homes between North Avenue and the subject property. To the west are two (2) lots, 8.02 and 8.01 which were subject to a subdivision in 2010 by Joseph Natale who lives on Lot 13. To date there has been no improvement to those lots.

Mr. Hollows referred to a colorized version of the plans that board members had (Sheet 2). It was marked **Exhibit A-07**. He identified the lot as Lot 7, Block 13005 and said it is located in the R-3 Zone. It is fifty (50) feet wide by one hundred ninety-five (195) deep. It is 9,750 square feet in lot area. The existing house is depicted in one color and the addition in another color. He stated that the front porch would be removed and the addition would consist of a garage, some living space behind it, and living space above the garage.

Mr. Hollows stated the existing house is 1,154 square feet. With the addition it would be close to 2,800 or 3,000 square feet including the garage. The new footprint would be 1,485 square feet. By removing the porch, the front setback would be increased from 16.2 to 21.2. Mr. Lemanowicz suggested that the dead tree opposite the garage be removed and by doing that, the driveway could be maintained at five (5) feet from the property. Currently the driveway which is gravel is two (2) feet off the property line.

Chairman Behr asked that Mr. Hollows refer to Mr. Lemanowicz's actual numbered technical comments. As each was resolved, they could be checked off.

Mr. Warner stated that for the record, they were referring to the February 17, 2014 review letter from Mr. Lemanowicz.

Mr. Hollows stated that he had addressed No. 2, the building height, earlier.

In reference to No. 3, Mr. Hollows said that he would correct the lot area to 9,750 square feet in the revised plans.

No. 5 referred to the stories of the house and he felt that that had been covered earlier. The home would be a two (2) story home from the street. The three (3) story view of the home would face only New Jersey Transit which is consistent with the three (3) homes going to the east toward North Avenue.

Mr. Hollows could not answer No. 6 since he did not know what the narrative was.

Mr. Lemanowicz said that there was a narrative submitted with the application that said a "C" Variance was required where the plans indicated a "D" Variance or vice versa. Since the matter had been decided earlier, it was just a matter of consistency. He noted that there had been reference to the home being a one-and-one-half (1.5) story home and that the addition was the second story not the third. If the engineering plans and the architect's plan could agree with each other, it would serve the purpose.

Mr. Lemanowicz noted that No. 7, No. 9, and No. 10 had already been addressed by Mr. Hollows.

Chairman Behr said that No. 8 had been addressed earlier.

Mr. Hollows said that part of No. 8 had been addressed. He had assumed that since it was an existing house, the utilities were there and that they would be utilized however there may be a possibility that because the house is older, there may be some utilities that have to be replaced.

Mr. Gerecht asked if the electric utilities would be repositioned, where would they hit the house since the house would be higher in the front.

Mr. Hollows said that that was a good question. He felt they would be repositioned somewhat but the wires would come off a pole from the Natale subdivision lot. He noted that there was an easement across the property for those overhead wires.

Mr. Gerecht said that in effect, they might be higher than they are now.

Mr. Hollows affirmed that statement.

Mr. Lemanowicz asked if Mr. Hollows knew where the sanitary lateral and the water lateral are currently located.

Mr. Hollows saw the water valves and the gas valves. He did not see a cleanout but assuming the way the sewer would flow, it would come out somewhat towards the garage side. He did not know exactly.

Mr. Lemanowicz asked if it would be a problem if the Board chose to approve the application subject to the condition that the utilities would come out near the left front corner. There are two (2) good trees and he wanted to stay away from the roots of those two (2) trees.

Mr. Hollows did not see a problem with staying away from the northeast corner of the property where the two (2) trees were located. He felt that No. 9 was complete.

Mr. Hollows referred to No. 10 and stated that the architectural plans needed more work to show that there would be a girder and lally columns and that it is *not* a twenty-six (26) foot clear span in the basementg.

Mr. Hollows explained that No. 11 referred to the deck and staircase which is shown going straight out towards the railroad. He stated that they had been redesigned to include a landing and the remainder of the staircase heading towards the addition or towards the vacant lot with the intent of avoiding the critical area by almost ten (10) feet.

Mr. Gerecht said that if the staircase headed to the left towards the new addition, they would be further away from the critical slope than if they headed to the right.

Mr. Hollows indicated that that was correct and that the homeowner was amenable to that adjustment.

Ms. Filo agreed.

Mr. Hollows stated that in reference to No. 11a, the existing foundation would not be changed. There would be new foundation work for the addition.

Mr. Gerecht asked if the existing foundation was adequate to support the second floor.

Mr. Hollows said that, although he was not the person to answer that, it was his understanding that all of the second floor would be clear span and the interior walls would not be support walls. The outside walls would be the bearing walls.

Mr. Gerecht asked when the house was built.

Mr. Hollows answered sometime around the turn of the century.

Mr. Gerecht asked if the foundation had been inspected to see if it was structurally sound.

Ms. Filo answered that she had had several contractors and an appraiser inspect the site and they all indicated that the foundation was structurally sound.

Mr. Gerecht asked if there were any reports or information in writing for the board members.

Ms. Filo said she could look for an appraisal report but she was not sure there was any documentation in reference to the foundation.

Mr. Gerecht said that it was a concern to the Board. There were no interior pictures of the foundation or close up pictures. He felt that it was an issue that should be addressed in something more than just the applicant's testimony and that it was important to have an expert attest to the structural integrity of the foundation.

Mr. Lemanowicz added that an appraiser is not an expert. He said there should be a structural analysis done by a professional. He asked Mr. Hollows if he knew what the foundation was made out of.

Mr. Hollows answered that he did not know.

Mr. Warner said that he had a witness who could advise Mr. Hollows as to the answer.

Mr. Bernstein asked if the Board would like to hear that witness as to the structural soundness now or at the end of Mr. Hollows' testimony.

Chairman Behr answered that he would like to hear the testimony now.

After a brief discussion with Mr. Hollows, Mr. Warner stated that they would defer for the moment, the issue of the structural integrity of the foundation and proceed.

Mr. Hollows addressed No. 12. He said they are proposing one (1) drywell which would collect the stormwater from the proposed addition and it would be more than the increase in impervious coverage. It would be adjacent to the critical area and not fifty (50) feet from the house. Because of the lot size and the critical area, there is no better location.

Mr. Lemanowicz noted that he was in the process of having that ordinance reworked because he did not feel the intent of the ordinance was to create the issues such as this that have been generated.

Chairman Behr agreed that there have been problems with the ordinance.

Mr. Hollows said that the roof leader collection system would be shown on plans and that that would address No. 14.

Mr. Hollows said that all drawings would be amended to include the requested details and that that would address No. 13.

Mr. Hollows said that, in reference to No. 15, he acknowledged that gutter helmets or screens would not be acceptable. There would be a note on the plan referencing some sort of leaf separation device on the gutter system.

Mr. Hollows stated that a note would be added to the drawing that would refer to the survey that was done by **Murphy & Hollows** which would satisfy No. 16.

Mr. Hollows agreed with the suggestion outlined in No. 17 which was to install a snow fence along the top of the bank of the critical area to keep the disturbance down to as little as possible.

Mr. Hollows stated that he had addressed all of the issues in Mr. Lemanowicz's letter. He did not think there were any issues in Mr. O'Brien's letter that referred to engineering.

Mr. O'Brien said that there were none.

Mr. Warner asked Mr. Hollows if he had reviewed the Environmental Commission dated February 18, 2014 with respect to the addition of a drywell.

Mr. Hollows answered that there was a dry well proposed.

Mr. Warner said that the report from the Long Hill Township Police Department had no recommendations.

Mr. Hollows affirmed that that was correct.

Mr. Warner said that the application was exempt from the Morris County Planning Board.

Mr. Hollows affirmed that that was correct.

Mr. Warner said that the fire official had no comment or recommendations.

Mr. Hollows affirmed that that was correct.

Mr. Hollows noted that the application is seeking a side yard variance. The existing wall is 5.2 feet from the westerly property line and there is nothing that could be done about that. To the east, where the proposed addition would be built, the side yard would be reduced to 4.8 feet but the driveway on that adjoining property to the east abuts the applicant's driveway. The porch on the house on that property is 20.8 feet from the property line. The closest part of the house is 18.8 feet.

Mr. Warner said that it was his understanding that there would be at least thirty (30) feet on the westerly side if the dwelling was constructed in accordance with the subdivision approval.

Mr. Hollows affirmed that that was correct.

Mr. Warner said that there would be in excess of twenty (20) feet between the proposed garage addition and the easterly side neighboring dwelling.

Mr. Hollows affirmed that that was correct. He referred to **Exhibit A-05** (should be **Exhibit A-03**) which is labeled "Existing left side yard" and "Existing right side yard" and shows the applicant's house on the right and on the left is the house on the adjoining lot. It shows the two (2) driveways abutting one another. The proposed garage would be going to the east but there is still greater than twenty (20) feet between that building and the house on the adjoining lot.

Mr. O'Brien asked if the proposed house to the west is conforming.

Mr. Hollows said that the proposed new house to the west would be conforming.

Mr. Warner said the dwelling on the other side of the subject property is not conforming with respect to the side yard setback requirements since it would have to be at least twenty-five (25) feet from the property line.

Mr. Hollows affirmed that that was correct. There would be no building envelop since the property is similar to the subject property with respect to the fifty (50) foot lot width.

Mr. Hollows referred to **Exhibit A-06** which was labeled "405 Elm Street and 409 Elm Street". It shows the two (2) houses to the east of the subject property, towards Central Avenue. The green house being the house adjacent and the white house being one lot over (Lot 5), both appear to be two (2) stories from the front but three (3) stories with walk-outs in the rear. They have similar slopes to the subject property.

Mr. Warner said that according to Mr. Hollows' earlier testimony, the three (3) homes to the east are taller than the existing dwelling on the subject property. With the proposed addition, that dwelling would be commensurate in height with those other three (3).

Mr. Hollows affirmed that that was correct. He showed photos of the green house and the white house demonstrating that they are walk-out basements with three (3) stories in the rear.

Mr. Warner said, with respect to the lot width and lot area conditions, that the adjacent properties would be rendered more non-conforming in lot area and/or lot width if there were to be an effort to purchase additional land from one of the adjacent properties to bring the subject lot more into conformity in lot size. He asked if both adjacent properties are developed.

Mr. Hollows answered that the lot to the east is developed and to the west there are two (2) subdivided lots that are not developed but have variances for the lot area. There is no ability for the applicant to acquire property to bring the subject property more into conformity.

Chairman Behr asked the board members if there were any questions for this witness.

Mr. Pesce asked if the addition would have leaders that would go underground to the dry well.

Mr. Hollows affirmed that it would. There would be one coming down in the front and one in the back. Both would be piped underground into the drywell. There would be a splash block so that if the drywell were to fill up, the water would back up and come out on the splash block at the lower location. He indicated that there was a detail on the plan to that effect.

Mr. Warner said that the proposed dry well would provide benefits from a storm water retention and ground water recharge perspective as required by the ordinance.

Mr. Hollows affirmed that that was correct.

Chairman Behr asked if there were any questions from the consultants.

Mr. Bernstein asked Mr. Hollows if he had listed the variances he felt were required.

Mr. Hollows said that he reviewed only those that fell into engineering. He indicated that Mr. Karlebach would review all of the variances.

Mr. Bernstein said that per the decision by the Board, a "C" Variance would be required for the number of stories.

Mr. Warner asked Mr. Hollows if he was aware of adjacent and/or nearby properties with three (3) stories similar to the proposed renovated dwelling.

Mr. Hollows answered that the three (3) lots to the east of the subject property are similar along with the first of couple houses on the next block over. There is also a three (3) story building right across from his office. Some of this is shown on Sheet 1 of 2 which was submitted with the application.

Mr. Warner said that because Mr. Hollows' office is not far from the subject property, he is familiar with the area and he asked if there are neighboring properties with garages.

Mr. Hollows answered that there is a new house with a two (2) car garage underneath which made it a three (3) story house.

Mr. Warner asked if it was an accurate characterization that most of the homes in the neighborhood (40 or more on Elm St., Chestnut St., North and a fourth street he could not remember the name of) have either no garage or a one (1) car which deviated from the two (2) to four (4) garage requirement in the R-3 Zone.

Mr. Hollows said that the older homes on the south side of Elm Street which would be similar to the ones depicted in the photos of the adjacent homes (Lots 5 and 6) normally have no garage or a detached garage. The few lots across the street from the subject property have somewhat newer houses which might have a garage incorporated into the structure itself. On the next block on Elm Street, on both sides of the street, if there are garages, they are detached. There are not many since the lots are so narrow.

Mr. Warner addressed the building plans and asked Mr. Hollows to run through them quickly. He noted that they had been previously submitted more than ten (10) days in advance so they did not need to be marked into exhibit.

The board members indicated that they had copies of the plans.

Mr. Hollows said that the first drawing is the front view of the house with the existing structure to the right (he pointed). He then pointed to the left which shows the proposed garage and addition with a Timberline roof in charcoal. The house would have vinyl siding in willow green with a stone veneer on the middle portion, the entrance area, and underneath the living room window.

Mr. Hollows then showed the right side elevation with the garage.

Chairman Behr asked which neighboring house would be looking at that right side.

Mr. Hollows answered that the green house or the house to the east. Facing the subject property, it would be the house to the left. It would be the property where the driveway is adjacent.

Chairman Behr asked if any thought had been given to putting in a window since as a rule, the Board had not reacted favorably to large expanses of blank walls. He asked if it would be possible to put a window in the garage.

Ms. Filo answered that it would.

Mr. Hollows referred to earlier testimony concerning reorienting the stairs from the deck.

Mr. Hollows then showed the drawing of the right side of the house which would be the side facing the Natale subdivision. He noted that there are plenty of windows on that side of the house.

Chairman Behr asked what the visible foundation material is.

Mr. Hollows answered that it is concrete block walls of the existing foundation.

Mr. Lemanowicz asked if that would be replastered and painted.

Ms. Filo answered that it could be if necessary.

Mr. Hollows added that it is painted and it would be painted to match or correspond to the siding.

Mr. Warner asked the applicant if it would be substantially similar in style and color so as to maintain the uniformity.

Ms. Filo affirmed that it would be.

Mr. Hollows then showed the drawing of the rear of the building. He noted that the siding would go all the way down the three (3) stories. He also noted that the stairs would be turned and go towards the right side of the drawing.

Mr. Bernstein asked about the siding.

Mr. Hollows stated that it would be vinyl and willow green or sage green in color.

Mr. Hollows showed the next drawing which is the foundation plan. The left side of the drawing represents the addition. The right side is of the existing foundation.

Mr. Hollows said the next drawing is of the first floor. The garage is to the left with a family room behind it. The kitchen is to the rear of the house and the dining area is to the right, front to back.

Mr. Hollows then referred to the upper floor plan. It shows the new bedroom area where there are four (4) bedrooms and two (2) baths.

Mr. Warner said that this is a typical home for a growing family.

Mr. Hollows agreed that it is. He felt that a two (2) bedroom, one (1) bath residence is more suited to a retired owner.

Mr. Gerecht asked if the furnace, water heater, and any other utility would be in the basement.

Ms. Filo affirmed that they would be.

Mr. Gerecht noted that they are not drawn in on the foundation plan. He asked her to point to where they would be located.

Ms. Filo said that she planned to keep them in their current location which is approximately here (she pointed to an area near the stairs).

Mr. Gerecht asked if there is a chimney going up through the house.

Ms. Filo indicated that there was a wood burning stove in the basement at one time that had a chimney that went all the way up.

Mr. Gerecht asked if there is a regular furnace that heated the whole house in that location.

Mr. Hollows answered that the new furnace would be a direct vent out the side. The new furnaces have a PVC pipe that goes out. It draws air in and then exhausts air out.

Mr. Gerecht asked how high it would be on the exterior of the building.

Mr. Hollows answered three (3) or four (4) feet.

Mr. Gerecht asked about snow accumulation along the side.

Mr. Hollows answered that he had a new furnace in his house and there was never an issue with snow.

Mr. O'Brien added that for those types of furnaces, building codes require that they be more than five (5) feet away from any opening in the house. That is the only requirement.

Mr. Hollows told Mr. Gerecht that all the mechanicals would be in the basement in that general location along the wall. He said that the PVC piping could be run through the basement.

Mr. Gerecht said that since they had to be five (5) feet from any opening in the building, he wanted to know where they would be located. Currently, that is not shown on the plan.

Mr. Hollows noted that the construction department would receive more detailed drawings when the applicant applies for the construction permit.

Mr. Gerecht stated that he would have liked to have seen it on the plans given to the board members.

Mr. Hollows indicated that revisions would be made to his drawings and some of those items would have to be placed on architectural drawings also.

Mr. O'Brien advised Mr. Gerecht that any mechanical would have to meet code.

Mr. Lemanowicz noted that the garage length was not dimensioned on the first floor plans. However, on the foundation plans, it is shown to be 19'-7". On the first floor plan, there is a staircase that comes in from the family room that would take three (3) feet off the length leaving less than seventeen (17) feet to park the car. That would mean the front bumper would be right up against the staircase.

Mr. Hollows agreed. He stated that there had to be a modification.

Mr. Lemanowicz said the garage is wide, 13'-6", but even so the bathroom might become an obstacle.

Mr. Hollows said they might be able to put the stairs between the closet and the bathroom so they would be out of the way.

Mr. Lemanowicz noted that there is a lot going on in the garage.

Mr. Hollows responded that the applicant would revisit both the foundation and the garage.

Chairman Behr asked if any members of the public had any questions for the witness. Seeing none, he closed the meeting to the public.

Chairman Behr asked if board members were still going to get testimony concerning the structural integrity of the foundation.

Mr. Warner answered that the applicant would be returning with an expert to address that issue along with the planner to address the variances requested.

Mr. Gerecht asked if the heating system would be hot water, baseboard.

Mr. Hollows responded that it would be forced hot air.

Mr. Gerecht asked if the ductwork was accounted for in spacing etc. in the plans.

Mr. Hollows responded that it would not create any problems.

Mr. O'Brien asked if it would be a new system.

Mr. Hollows answered that it would be completely new.

Chairman Behr said that it was extremely important that any revisions to drawings or submissions get to the Board fourteen (14) days before the meeting so that the board members are adequately prepared to move forward expeditiously to wrap this up in a productive way.

Mr. Lemanowicz said that the roof on the architectural is six-on-twelve (6:12). When Mr. Hollows prepared his cross-section, it shows a five-on-twelve (5:12) roof which would be "squattier". He expressed concern as to how it would look and if the applicant would be happy with it. He asked if the applicant might want to take the one (1) foot out of the nine (9) foot first floor and add it to the roof. The current style is for relatively steep roofs and this one is getting fairly flat. Mr. Lemanowicz wanted to ensure that the actual height of the structure really got nailed down. Changing the roof pitch from 6:12 to 5:12 would generate about one-and-one-half feet (1'-6") so even with the nine (9) foot ceiling on the first floor, it would be getting close.

Chairman Behr stated that the plans should be revised to accurately depict the conclusion of what the applicant wants to do.

Mr. Lemanowicz said whether it was revised plans or not, there had to be some acknowledgment that the applicant fully understood what the roof pitch would look like so there would be no issue later. At that point, any changes might exceed the height restriction since it is so very close. He reminded the board members that at the basement level, there is a doorway that is right on grade which is not typical since there is generally a step down out of a house.

Mr. O'Brien said that the applicant had noticed for a height variance and noticed for a "C" Variance or Bulk Variance which would allow them 10% or ten (10) feet higher than what was allowed. In this case, the applicant would be allowed 3.5 feet above the thirty-five (35) feet that was allowed in the zone. So they could raise their height to 38.5 feet and be within the notice that is current. They would still have to prove to the Board that that request for a variance would meet proofs necessary, conform to the Master Plan, meet the negative criteria, and not have a substantial detriment on the neighborhood or the township. They do have the ability to go higher within the notice given.

Mr. Lemanowicz said that that would complicate discussions held first in reference to interpreting the ordinance. During those discussions, it was decided that when a structure met the thirty-five (35) feet height restriction but not the story restriction, it would be a "C" Variance. Now the Board was discussing being over thirty-five (35) feet *and* over the story restriction.

Mr. Bernstein said that if it was thirty-six (36) or thirty-seven (37) or thirty-eight (38), it would be a "C" Variance in and of itself.

Mr. Pesce felt that Mr. Lemanowicz had a legitimate point. The ruling was that the "D" Variance was not triggered by the excess stories so long as it met the thirty-five (35) feet height restriction. But if there was a combination of both, it would be a "D" Variance problem.

Chairman Behr said the thirty-five (35) feet allowed the applicant the extra 10% but they would have to get a "C" Variance for it.

Mr. Pesce said that if it had been proposed from the beginning as thirty-eight (38) feet and three (3) stories, he felt it was a "'D-6'" Variance.

Mr. Bernstein said the motion should be predicated on thirty-five (35) feet.

Mr. Pesce responded that that was what was said. It was conditioned upon it being less than thirty-five (35) feet but more than two-and-one-half (2.5) stories.

Mr. Bernstein said that if that was the motion, the applicant would have to comply with the thirty-five (35) feet.

Mr. Pesce said otherwise they would have to revisit the "D" issue.

Chairman Behr said, referring to Mr. Lemanowicz's point, the structure must meet the thirty-five (35) feet height restriction. Once again, he asked the applicant to review the roof pitch.

Chairman Behr asked Ms. Kiefer for the next available meeting.

Ms. Kiefer responded that March 18, 2014 was the next available date and that it was fourteen (14) days away.

Mr. Warner advised that Board that the applicant would not be able to produce the necessary revised documents in time for the March 18, 2014 meeting. He requested that the application be carried to April 1, 2014.

Chairman Behr announced that the application of Filo/Santiago, No. 13-05Z, would be carried to April 1, 2014 without further notice.

Chairman Behr asked for a motion to adjourn. Mr. Gerecht motioned and Mr. Pesce seconded. A Voice Vote was taken and the motion passed unanimously. The meeting was adjourned at 11:00 P.M.

CYNTHIA KIEFER
Planning and Zoning Secretary