

September 20, 2007

BOARD OF ADJUSTMENT

TOWNSHIP OF CHATHAM

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The meeting was called to order at 7:30 p.m. and the Statement of Compliance was read into the record.

ROLL CALL:

Mr. Lawrence Dalziel	Mr. Joseph Cooney	Mr. Parker Godwin
Mr. Nelson	Mrs. Therese Hough	Mrs. Nelson
Mr. Tom Quinn	Mr. Karl Schmidt	Mrs., Alcorn

Also Present: Mr. Steven Shaw, Attorney for the Board
Mr. John Ruschke, Board Engineer
Mr. Mike Bolan, Planner
Kali Tsimboukis, Secretary

MINUTES

July 19, 2007

Motion made by Mr. Cooney, Seconded by Mrs. Nelson to approve minutes as submitted. All in favor.

MEMORIALIZATION

MARK & SANDY ALLEN
13 Westminster Road.
Block 48.07 Lot 14.

Calendar BOA 07-48.07-14

Mr. & Mrs. Allen, Applicants
Mrs. Siegel, Architect

Following a brief summary of the application by Mr. Shaw a motion was made by Mr. Cooney, seconded by Mr. Nelson to approve this resolution (with minor corrections).

Roll call in favor:

Mr. Joseph Cooney	Mr. Parker Godwin	
Mr. Nelson	Mrs. Nelson	
Mr. Tom Quinn	Mr. Karl Schmidt	Mrs. Alcorn

APPLICATIONS:

Douglas Oare
42 Hilltop Terrace
Block: 68 Lot: 8. .

Calendar Boa 07-68-8

Applicant has requested an extension until October 18 th. Legal Notice was in time for this meeting.

Mr. Godwin made a motion, seconded by Mrs. Nelson to grant extension. All members in favor.

Watchung Somerset Street Partners LLC
Oak Hill Road.
Block 117 Lot 12.

Calendar BOA 06-117-12

Mr. Barry Osmun

Mr. Peter Steck, Planner

Mr. Osmun said that this was a continued hearing on the application during the course of which the setback of the house - the main portion of the house has been moved back to meet the front yard requirement. The location/placement of the house has been changed; the size of the house has been reduced. I have one witness this evening, Mr. Peter Steck, Planner. His testimony/opinion is that there is adequate reason existing for the board to grant the requested variances, from steep slope and the variance for the covered front porch, which is 45.5 ft. setback opposed to 50 ft. If there was an uncovered front porch the ordinance could be satisfied. So with that I would call Mr. Steck.

Mrs. Hough asked if what was being present new plans. Mr. Osmun said they were the older plans. There have been no changes since the last meeting.

Mr. Dalziel swore Mr. Peter G.Steck in.

Mr. Steck gave his credentials to the Board. He advised that he was a planning consultant from Maplewood NJ and licensed in the State of New Jersey. He said he has appeared before this before this Board as well as other Boards (Chatham Borough, Planner for Madison Borough and have appeared before 100+ municipalities in NJ) He said he had been retained to review this application and in particular the items of relief. I reviewed the application folder, toured the property on two occasions, took some photographs, reviewed the Zoning Ordinance and the Master Plan of Chatham Township and I discussed the nature of the application with the Applicant. The application itself is simply to demolish an existing

vacant single-family house and replace it with a new single-family house. As the Board is aware this application has a long history in that its been modified partly in a sense from the coaching of the Board and partly because the new Ordinance kicked in mid-way thru the application which established a maximum width. Because of downsizing, the building and shifting the placement there are essentially two items of relief that are needed. The bulk of the building is set back 50 ft. from the right of way, plus a front porch, if it is as shown on the plan with a roof would have a 45.6 ft. front setback which would violate the 50 ft. requirement. Alternatively, the applicant could remove the front porch and it would be conforming. The focus of much of the discussion has been on the disturbance of steep slopes. Just to remind the Board re: the three categories: in the 15-20 % slope category it would be 894 sf whereas only 433.8 is allowed; in the 20-25% - 916 sf. are proposed to be disturbed where the maximum is 338 and finally in the over 25% the applicant is proposing 1403 sf. disturbed which exceeds the maximum of 500 sf. Most of the steep slopes are in the rear of the property. My inspection of the property shows that the steep slopes in the front are in all likelihood man made. Parts of them are there because of how the cul-de-sac is cut in – the turn around part of it. Part of it is due to the existing dwelling. There is a driveway as you face the dwelling on the left hand side and that goes down to the lower level of the house. Presumably the grading to accommodate that driveway and the house placement caused those steep slopes. The largest contiguous and undisturbed area is in the rear half of the property where there is a large area of steep slopes, which goes down to Shunpike Road. The first property that the stormwater hits is essentially Shunpike Road. There is no private property that this stormwater will affect.

Mr. Dalziel – I just want to make sure that I am looking at the right plan. The numbers that Mr. Steck cited may be older numbers.

Mr. Bolan, Planner from Banish Ass. – there was never an updated memo that reflected the oldest first.

Mr. Steck – on our 15-20% the new plan shows a reduced disturbance of 650 sf. which is less than the original of 894; in the 20-25% is slightly over the permissible and no variance is needed and this category is eliminated; the steepest category of 25% or more the applicant proposes 400 sf. whereas the maximum is 636 sf. which is less than 500.

Mr. Dalziel – I am confused. What I have says that 20-25% is that 20 % is allowed – If I am reading this correctly at 338 - 500 sf disturbed so a variance is required. In the 25% and greater 1% of 500 sf is 400 sf. disturbed and no variance is required. In the 15-20%, there is 433.8 and there is 650 disturbed.

Mr. Steck – I now understand the notations. In the modest category 15-20 we are doing 650 which is a reduction but still is over the 433.8 allowed. In the second higher category – 20-25% we are disturbing 500 which is essentially the same as before, however, it exceeds the 338 and; in the steepest category we are proposing 400 which is less than what we did propose and it is so much less that the variance in this category is eliminated. The first two

categories trigger the relief. I do apologize; I looked at an older memo, which had not been updated.

Mr. Osmun – have you formed an opinion as to whether adequate reasons exist for the Board to grant the variance of relief requested.

Mr. Steck said that he had. Perhaps I should just describe what it is. There are three pages prepared by me. (Exhibit A32). The first page has an aerial photo from Google, typically about 2002, which superimposed in yellow the lot lines and labeled the subject property. As you can see the subject property (lot 12) is irregular in shape. It is probably the most irregular lot shown on the diagram. As a result of being toward the end of the cul-de-sac and as a result of having extensive frontage on Shunpike which is not accessible because of the steep slopes in the rear of the property. The second page 2, I simply shrunk the development plans to show the approximate location of the proposed dwelling and the approximate size in comparison to the other dwellings in the area. Visually the dwelling is setback from what you might anticipate, in fact, it is further back than the existing dwelling, so you can see on A2 that the aerial photograph of the existing dwelling kind of peaks out in front of the black footprint. So the house is being pushed back to conform as best as possible with the front setback but that happens to be further than the existing setback. The third page is simply a collection of data. If I recall, in discussion with the applicant, the Board was interested in how it fit within the other houses in the area. I looked at lots 8-15, which surround the end of Oak Hill cul-de-sac, and this exhibit simply shows the photo of what the existing house looks like and then I included a little table below each photo that shows the square footages as they appear on the tax records. It again, while your ordinance talks on how to treat things, (garages attached to the side of the building, it looks like part of the building and blocks light, air, and open space) and you can manipulate these the way you want but this is accurate rendition of what the size and character of the buildings are in the area. On the whole street, the newer ones tend to be almost two story houses which is typical. The older ones are typically 1.5 story buildings. What I wanted to emphasize and analyze is this. As you know the applicant has modified this over time and if you look at the site layout and forget for the moment the setback issue on the front, one could twist this dwelling so if its faced so that the right corner came closer to the cul-de-sac it would still fit within the eligible building envelope. But after twisting it a building of essentially the same footprint would fit within the building envelope and essentially not touch any steep slopes. So there is a trade off here. What I want to suggest is that there are steep slopes that are predominately in the rear of the property and that is part of the hardship argument, as they do not occur in a regular fashion. There is a finger of steep slopes that comes out toward the back of the house. If you were to rotate the house and admittedly bring it closer to the street or align it to where the old house was which is certainly an acceptable justification to replace a house where an existing house is, we could avoid encroaching on to the minor area of steep slopes. The applicant has reacted to the Boards comments that felt that a setback that largely adhered to the 50 ft. was desired and that's an issue in trade off. You can see from the aerial photograph that the proposed building on my second page, does while its oriented correctly in respect to the cul-de-sac, (actually the older house is better situated to the cul-de-sac) is twisted a little bit and at some point in time the front view will start seeing the side view of lot 11. In my mind, there is simply a trade off design issues. As I look at this diagram, and if you acknowledge

that replacement in approximately the same location as the old house is an appropriate setback, there is justification for that, in my judgment the house again, could be twisted and the footprint would essentially comply albeit without the front porch. What I want to emphasize is that the variance in my opinion is not triggered by the footprint size of the house. It is immaterial whether this is a house on a slab or a six-story house on the same footprint. They both disturb the same amount of the land. The applicant proposes a two-story house because that is what is marketable, that is what customers want. But in this case, in my judgment, there is a logical justification for supporting this house not being oversized. It complies with all the other standards of you ordinance. The only issue is the front porch. At the end of the day, I look at this as being both a C1 and C2 argument. The steep slopes do not occur in a regular fashion and there is a small finger of steep slopes that comes off of the larger area and I would say the larger contiguous area ought to be looked at as a more safe area for steep slopes because it has established vegetation (large trees). The two areas of small steep slopes in the front are man made issues and again some have landscaping that's been replanted. I think the pattern of steep slopes in the back, if strictly applied, results in hardship and practical difficulties in terms of the placement of the house. The applicant responding to what it perceives are the wishes of the Board, has shifted the house back although I think there is a perfectly logical argument to line the house up with the historic front line but they have perceived by the board to have benefits that outweigh the detriments, in my judgment by adhering to the front setback. At the end of the day, when this house is build (ref. to page two of exhibit) this is not a house that is in alignment with the other houses. You are not going to be able to compare it right away. In fact no one will see the rear end of this house. If you climb up from Shunpike (it is a steep climb) that is heavily wooded, no one will really be able to visually align this house with anything else in the area. It will not look out of kilter. I think the house, from them the point of view, of someone walking or riding in the street is proportional. What I did on the third page of my exhibit, at the bottom of the page I say, with the house from street façade, and I put numbers on the front portion of each lot showing how wide the houses are. Just going around counter clock wise there is a 62, 55, 70, 75, and ours is 63. Then there is a 52, 67, & 64. Therefore, this house in terms of footprint can physically fit within the area that does not disturb steep slopes but we are choosing to push it back, which is a benefit that outweighs the detriment. I think to someone riding down the street after the landscaping is established, this will look like a natural part of the street. It is similar to the house at the end of the cul-de-sac which is the most visible one as its right in front of you as you ride to the end. It is a two-story house, which roughly follows the bend of the cul-de-sac. It starts encroaching but we believe it is reasonably positioned in terms of the abutting lot (75). Now we are starting to align ourselves with all the rear yards. In summary I think that there is a C1 having to do with the way the steep slopes occur. I believe there is also independently a C2 and that the Board has expressed interest in respect to the front setback and the applicant has done that but by doing that it pushes the building to the rear. In terms of the negative criteria, I note that the applicant has modified the building and its placement over time. In my judgment, it is typical to have a new building be two stories. The number of stories does not relate to land disturbance and that is really the whole focus to this. I would suggest is that the cause of the variance request is not the size of the house but the irregular shape of the lot and the irregular pattern that steep slopes occur in. I believe that if this is approved as shown on the plan with storm drainage that the Board could comfortably conclude that this could be approved without substantial detriment to the public good or impairment to the Zone Plan/Ordinance.

Mr. Dalziel – re: twisting the house – which direction were you referring to.

Mr. Steck – clockwise. Therefore, the right side is aligned with the sideline, which would be a typical arrangement.

Mr. Dalziel – how many of these other houses on page 3 of your exhibit are within the front yard setback. Three are shown on Murphy & Hollows Plan.

Mr. Steck - the one on lot 11 is substandard (41.9), the building on lot 13 is 45.6 – both of which are substandard. The aerial photograph does not permit for an accurate rendition but I would suggest that just looking at the first/second page – I tried to approximate 1” = 11 ft. and I would suspect some of the houses like lot 10 are approx. 45’ back but I cannot verify that at this scale.

Mr. Dalziel – from a Planning perspective the justification for the porch in the front yard setback would be..?

Mr. Steck – the porch is, in my opinion, a 100% aesthetic issue. I think the addition of a roof over a porch is a safety issue but frankly, an equally valid public purpose is the aesthetics that adds more interest to the front façade. Because the porch is open and a small structure if you allow that 45.6 ft. setback in lieu of the 50 the benefits would substantially outweighs the detriments.

Mr. Dalziel- do you know from your survey if any of these other houses on page 3 have covered porches.

Mr. Steck.. I can consult photographs but aerials do not show those details. On Lot 11 there is an alcove in the center of the building which is covered by a roof. It is not a protrusion but rather an indent into the building. Lot 10 does not have porch. Lot 9 does. The corner house lot 15 does have a porch but it is an oddly designed house. On lot 14 that has an indent into the front door. There is quite a large range of sizes/designs of houses. Lot 13 has kind of a ceremonial balcony over the center window, which is shallow.

Mr. Cooney – re: steep slope issue, correct me if I am wrong, is to prevent the runoff of water. In this case, as far as Shunpike Road goes, is there flooding on this road.

Mr. Steck did not know but thought it was more of an engineering issue. He did point out that there would be storm water management of this property so he could not see a problem.

Mr. Ruschke said he was not aware of any.

Mrs. Nelson – did I understand you to say that if you twisted the house to the right so that it is closer to the lot line it should eliminate some of the steep slope.

Mr. Steck – said it would. He thought if it was twisted so that the side of the house was parallel to the side property line that would take the house of the steepest category. As you

can see the heavier dot pattern on the site plan the twisting of the house would pull it completely out of that.

Mr. Dalziel – in this discussion you are still maintain that the house is behind the 50 ft. setback.

Mr. Steck – to rotate it it would require a front yard variance of more severity. In the beginning it would be for the porch.

Mr. Dalziel - If the porch is out of the discussion – when you rotate the house are you maintaining the front yard setback.

Mr. Steck – you have to do 2 things. You have to rotate the house and have it match the setback of the existing house which I think there is no rationale for. Its already been disturbed. If you do that you will eliminate all disturbance of the sever category in the rear of the building. You would probably disturb the front but those are man made steep slopes.

Mr. Dalziel – then you would need approximately a 40 ft. front yard instead of a 50;

Mr. Steck thought that was likely the case.

Mr. Schmidt – why is the trade-off only between the steep slope and the setback.

Mr. Steck – because the footprint is 100% conforming and the square footage of the building is conforming.

Mr. Osmun – the original setback of the house was 40.5 ft.

Mrs. Alcorn – if you rotate the house and brought it forward to the original setback would that have any impact from the side yard setback because you are bringing it closer toward the narrower portion of the lot in the front.

Mr. Steck – I'm not sure you would hold the left corner still but in an earlier plan I believe, with a larger house, align it with the side property line (right)..

Mrs. Alcorn – bringing the side of the house parallel with the side yard you would also have to drag it up so wouldn't the left corner also then change and would that affect the side yard on the left side of the property. Is the house reduced in width enough that it would not impact the sideyard.

Mr. Steck – I don't think a side yard would be triggered by that rotation.

Mr. Godwin – what would a chart for the proposed structure look like compared to the charts you have made for all the other houses.

Mr. Steck – I will give you the figures..

Mr. Godwin - I did them quickly so for me the figure is 7626 without the 98 for covered porch.

Mr. Steck – as I understand it there is a first floor of 2630 sf, second floor 2568 sf, there is a cellar with 1484 sf and there is a garage of 944 sf and a covered porch of 98 sf with a deck of 288 sf. I did not include any decks from the assessor's record.

Mr. Godwin - so it would be 1000 sf larger than any other dwelling in that area.

Mr. Steck – the point I made originally is it is a conforming area so in terms of your ordinance (this is one of the larger lots approx 30000 sf) but it complies with all the standards in terms of area, can comply with setbacks and in my judgment and you did a ranch and knocked off the second floor you would certainly drop the square footage but it has nothing to do with slope disturbance.

Mr. Godwin - aesthetically, the additional 1000 sf. makes it much larger than the other houses.

Mr. Steck – you are right except with walking/driving down the street you do not have these numbers in front of you. You just see what the house looks like and frankly, the most telling would be the width of the house. One of the most recent zoning amendments was the width of the house as it was a sensitive issue. If you go down the street this house, fits in width wise with the other houses on the cul-de-sac.

Mr. Schmidt – has anyone looked at what the maximum footprint of the house could be if you actually complied with all the steep slope ordinance.

Mr. Steck – it would be exactly the same because you can shift the house but then I am breaking literal application of the setback but then that pushes me back farther than the existing house.

Mr. Schmidt – setting aside the porch issue, if you were to comply with the setback and the steep slope, what is the maximum size footprint that can go on the property?

Mr. Steck – I think they are just independent functions. The square footage – the word steep slopes issues in my opinion, unrelated to the footprint of this house. It has to do with the placement of the house. I didn't calculate it but in my judgment, I don't know what the mathematical answer is but I think it is irrelevant to justifying the variance.

Mr. Schmidt – are you saying that you think you could build a house consistent with the size of the first story here and comply with the setback and steep slopes?

Mr. Steck – No.

Mr. Schmidt – you don't think a footprint of 16-1800 sf on the first floor is something that can be drawn on this property and comply with the ordinance.

Mr. Steck – you could have a weird kind of “Z” shaped house but the answer is that it has to be practical. It has to be a house that is marketable, that fits with the area. Again, in my judgment, the square footage of the footprint is not what is causing the hardship.

Mr. Schmidt – I am only skeptical of that because the footprint is 1000 sf higher than anything around it.

Mr. Steck – I just invite you to look at the second page of my exhibit and while this house is deeper than some of the other houses it has to do with the shape of the lot. We have technically a more narrow lot because it is pie shaped than the other lots in the area. Every other lot is more rectangular, even lot 13. So part of the issue has to do with the shape of the lot, the occurrence of steep slopes but in my opinion the driving force is not the square footage of the footprint.

Mr. Osmun – the setback from the existing house (approx. 40 ft.) is less than what the ordinance requires, is that not correct.

Mr. Steck – that is correct

Mr. Osmun – the existing conditions which I have gotten from the original application has the setback as 40.2 ft.

Mr. Steck – I scale it – on the site plan its scales to about 36-37 ft to the front of the old house.

Mr. Godwin - I am a little skeptical that the depth doesn't affect the intrusion of the setback or into the steep slopes. Though it is not as deep it seems to me the house could comply with both.

Mr. Osmun – in summarizing what Mr. Speck has said – the appearance of the house from the street is going to look the same as the other homes. The depth of the house will not be and can't be seen. The ordinance for steep slopes necessitates their runoff of water. These steep slope variances, in all the times that I have been before the Board, these are the smallest ones that I have seen. These are minor.

Mr. Godwin - it seems they are there for a reason and this does not comply with it.

Mr. Osmun – they are there for a reason that you don't have runoff that can disturb other properties. This building will not do that. It does not relate to the size of the building.

Mr. Shaw - asked Mr. Ruschke if there were any other reason for the concerns of steep slopes other than storm water runoff.

Mr. Ruschke – that is the primary reason for minimizing the disturbance during/after construction. The stabilizing of steep slopes is important. The ordinance for greater than 25% has a threshold of allowable disturbance of 1% or 500 sf. The disturbance between 20-25% and 15-20% don't have that threshold. In you concerns with steep slopes are the greater

slopes. Not to say that this is a flaw in the ordinance but the threshold for those lesser slopes is not set but is based on percentages. If you have a very small sloped area it doesn't take much to create a variance. In this particular case the disturbances are rather small when you are looking at the threshold – you are permitted to disturb up to 500 sf. in the 25% zone. There are disturbances of 20-25 is 500 sf. and then your disturbance in 15-20 is 650 sf. so the 500 and 650's close to the threshold is for the 25. In fact if we go back and look at this ordinance, perhaps if they did put a threshold in for the 15-25% you would likely have threshold higher than the 500. The 500 represents the worse case scenario. Before 15-20 you are allowed up to 30% - it might be a 1000 or from 20-25 maybe 750. Again, looking at the perspective of the magnitude of the disturbances – it is small.

Mr. Schmidt – I understand that but I guess I go back to the second page of the engineering drawings and it looks like much of the disturbance of the 20-25% mostly and it doesn't matter on the 25 because we are actually within the curves at the back of the house. If one were to take a ruler and draw a straight line ...

Mr. Ruschke – absolutely. There is no question if the house were to be pulled back and reduced and the portico's removed you could have a complying plan.

Mr. Schmidt – I am going back again to the idea that there is 1000 sf of extra square footage here, relative to the neighborhood. If I take a look at the plan and simply draw a straight line where the actual 20-25% slope starts in the rear of the house that can't be cutting more than the 6th or 7th of the house. The house is 2700 sf footprint in total and 1/6th of that is approx. 400 which leaves the house at 2300 sf. With the deck and the back portion of the deck gone I think it not only minimizes the disturbance in the 20-25% it probably takes it away in its entirety. I am not convinced that...

Mr. Steck – what is the harm of building the house where it is with the deck and disturbing a small finger of steep slope? Part of the formula is what is the detriment that happens from that.

Mr. Schmidt – I thought your testimony was that that finger was the most sensitive part.

Mr. Steck – no, I said that the contiguous area is the most sensitive part. The finger of it kind of an anomaly. What if you had a finger where your lot was flat except for the finger that ran right through where the house should go? You would think that is goofy not to put a house there just because of small finger of land. In this case you have a large established steep slope area in the rear. We are not touching the bulk of that area. We are only disturbing a finger of it which is the least sensitive part.

Mr. Schmidt – I understand, but in my mind, just by eyeballing these plans it would seem that a house of over 2000 sf can be built on this without being in non-compliance even with the steep slope.

Mr. Steck – sure you could put up a 2000 sf house to make it complying. My contention is that, first of all, absence of steep slope; we do not violate house size. In my judgment, we would have a logical right to align this house with the historical line. It is a natural part of the screen. If we had pushed the house back based on Board Members comments (maybe

we had misread the Board comments) but we felt that the 50 ft. setback to the body of the house was important and that's what has caused us to inch into the back. Again, I think you have to take into account the irregular nature of that steep slope pattern in the rear as well as the position of the other houses.

Mr. Godwin - well I still think the size of the house has something to do with it because you can obviously build a reasonable home there without requiring any variances whatsoever. It can be done. It may not be as big as you want it to be but it would still be a marketable home.

Mr. Steck – from a point of view of someone walking/driving the street this is not going to look oversized in my judgment. And the point that I am saying is “yes, with this design, if we took off the back 20 ft. of the house you are right, it would not impinge on anything” but I don't think that's the test of a variance. Any application that you have ever had, whether it be an office building or a house, you can always cut it in half. That is not the statutory test.

Mr. Godwin - there has to be a viable reason to need a variance.

Mr. Steck – and it has to do with the irregular occurrence of steep slopes on this property.

Mr. Godwin – and you are saying it is that one finger.

Mr. Steck - yes that is the irregular occurrence of steep slope. The more valuable steep slopes in my opinion are the large continuous areas.

Mr. Schmidt – that steep slope finger violate/encroachment could be eliminated by building a house of 2000 sf. foot print as opposed to 2700 sf.

Mr. Steck – that is correct but that does not address, in my judgment, the statutory proofs.

Mr. Dalziel asked if there were any other questions from the Board. There were none.

Mr. Bolan – re Mr. Godwin 's question, I have found the section of the Ordinance he was referring to. Section 30-96.14e which states that the following may project into any front/side/rear yard... *uncovered steps, chimneys and portions of the building including but not limited to eaves, bay windows, balconies, overhangs and coverings. Overhangs and coverings over steps providing that no such portion shall project more than 3 feet.*

Mr. Godwin - but if you put columns in...

Mr. Ruschke – once columns in that would be a variance. It is no longer an overhang but a supported structure.

Mr. Dalziel – one other clarification I have. Mr. Ruschke – there is an ordinance that has to do with grading within a certain distance of the property line. It would appear to me that in some locations they are changing grade within the distance of the property line. We have not talked about that as a variance.

Mr. Ruschke – that is true, its 96.20, item H2 of number 4 page 3258.5

Mr. Osmun – is that a zoning variance or is a design criteria.

Mr. Ruschke – it's a design exception. Its not a zoning exception. With the construction of the driveway they are disturbing grass. There is minor grading as well. The grades are not be changed so the intent is that you are not changing the drainage patterns on adjoining property.

Mr. Steck – it manages water on our site and will not affect adjoining lots.

Mr. Dalziel – asked Mr. Ruschke if he had any other questions.

Mr. Ruschke – they have revised the plans per my previous comment/concerns. The only issue that they did not incorporate into the plan was that I asked that in sequence of construction that the roof leaders get connected to the drywell as soon as the roof is finished. Other than that they addressed all my questions

Mr. Dalziel – asked Mr. Bolan for his input

Mr. Bolan – we still had tree replacement. At the end of the last meeting they said that they would comply with any discrepancies. On the slope, it's a very interesting set of circumstances that you have to balance here. Theoretically, you could reduce the depth of this building, definitely reduce the encroachment on the slopes and whether it would completely eliminate the variances, we don't know. But, that still would not change the mass that you would see from the street. They did adjust the plans so that they complied with the mass that you see from the street by reducing the size of the house. Progressively, if you look at the slopes in total the January plan they disturbed 2100 sf, in the April plan the disturbance was higher (3200 sf) and not its 1500 sf. There has been that reduction throughout. John raised an interesting point. In the lower category of slopes (15-20 and 20-25%) there is no threshold which I don't know if it was an oversight or intentional. To clarify threshold is that in 25% zone its allowable % or 500 sf. which they are staying below. In the other zones its just percentages. It is not a default threshold. As John indicated, if its 500 sf. in the most sever category your default in the lower severity categories would probably be at least that, probably be more.

Discussion ensued regarding percentages for various slopes and their Visual effects

Mr. Dalziel asked for further questions from the Board. There being none he asked for comment/questions from the audience. As there were none the public portion of the meeting was closed.

Mr. Osmun – in summing up said that he felt the applicant has made a good faith attempt to reduce the size of the house and move it so it complies with the front yard setback with the exception of the closed covered porch. He did not believe that steep slopes are not intended to do anything to regulate the size of a house but are addressed because of runoff and erosion. He felt that the negative/positive criteria to advance this variance have been addressed and testified to.

Board Comments:

Mr. Cooney felt it was a difficult application. The steep slopes no longer bothered him as the Experts had satisfied his questions with their presentations. Personally, but I don't think the size of the house is important. Yes, the house could fit within the framework of not needing a variance. However, I don't see that the variance that we would be granting would be that erroneous.

Mrs. Alcorn – thought having the extended setback, even though a lot of the original houses on the street are only at 40 and this one is at 50, gives a better perspective of the house because it will be larger from the front and by setting it back a little will give it a better appearance on the street. I also know if the lot was level obviously you would not be here for variances but there are a lot of other surrounding streets with lots/houses as large or larger which have been maxed out. I think this will not be detrimental looking in terms of the general neighborhood.

Mr. Godwin - I think the house is to big and doesn't need to be.

Mr. Schmidt – had no personal concern on the house size. Is there any precedent that we have for granting this type of waiver where a reasonable house, as a matter of fact the largest house, could be constructed? That is my primary concern.

Mr. Dalziel – thought the steep slope issue is relatively minor. I would agree that it is something of an anomaly here. My real issue with Mr. Washington's plan was that he could not seem to get the house out of the front variance setback. At the same time, we granted variances for front porches on houses that did not have them and were of a similar nature as this. I don't know that this one is all that erroneous in nature.

Mr. Shaw – we are trying to verify the voting members on this particular application. In checking our records we find that Mrs. Alcorn, who seconded the motion, was not eligible to vote as an alternate so we have to revote at this time. Mr. Quinn also needs to review the application.

Mr. Osmun - suggested that the vote be taken at the next meeting, as the record was not clear as to the voting eligibility of all the members. He extended an extension.

John Howlett

12 Lori Lane

Block: 48.14 Lot: 7.

Calendar BOA 07-48.14-7

Mr. Osmun – representing the Howletts said there was an issue. He had applied himself for a variance which had been denied. This is substantially the same. I will come on the 18th of October, make a short argument regarding this application. The public will be noticed.

OTHER MATTERS:

Mrs.Nelson - re: the construction on Shunpike - the Tower facility. The plantings have not been put in. We need to follow up on this.

Mr.Dalziel – it would be the construction official and it is possible that they are waiting for the fall to plant. I don't know if they have received their CO as yet.

We would also like to know happened to the plantings at Colony Pool. The terms of the resolution requires maintenance in perpetuity, they have not been there for several years, and I have enquired on numerous occasions.

Mr. Cooney made a motion to adjourn the meeting, seconded by Mr. Godwin

Meeting adjourned at 9:30