

**MINUTES
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF CHATHAM
MAY 16, 2019**

Mr. Vivona called the Regular Meeting of the Zoning Board of Adjustment to order at 7:30 PM with the reading of the Open Public Meetings Act.

Roll Call

Answering present to the roll call were Mr. Vivona, Mr. Weston, Mr. Williams, Mr. Borsinger, Ms. Labadie, and Ms. McHugh.

Also present were Township Engineer John Ruschke, Joanna Slagle for Frank Banisch, and Board Attorney Stephen Shaw.

Mr. Newman, Mr. Fitt, and Mr. Turco (Alt 1) were absent.

Approval of Minutes

A motion was made by Mr. Williams to approve the March 21, 2019 minutes and seconded by Mr. Borsinger. All in favor.

Memorialization of Resolutions

BOA 18-60-18.02 Bhaskar Nair, 700 Farimount Avenue, Block: 60 Lot 18.02

A motion was made by Mr. Borsinger to adopt the Resolution as submitted and seconded by Mr. Williams. All in favor.

BOA 18-62.12-4 Deepti & Kush Teotia, 625 Fairmount Avenue, Block 62.12, Lot 4

A motion was made by Mr. Williams to adopt the Resolution as submitted and seconded by Mr. Borsinger. All in favor.

BOA 18-70-33 Bill & Christy Crawford, 1 Crestwood Drive, Block 70, Lot 33

A motion was made by Mr. Williams to adopt the Resolution as submitted and seconded by Mr. Borsinger. All in favor.

Hearings

BOA 19-105-5 T-Mobile Northeast LLC, 1 Spring Street, Block 105, Lot 5

Greg Meese, attorney for the applicant, stated that this is a request for the interpretation of the ordinance adopted by the Board or an amended site plan approval due to the color of the installed cable. In 2017, upon completion of the tower, Township Engineer John Ruschke sent a letter claiming that the color of the antenna cables did not comply with the resolution. The applicant believes it was possibly an error and would like the Board to amend the site plan approval to allow the cable to remain as it is. He stated that the resolution did not specify the color of the antennas, nor did the resolution specify that samples of the cable were to be supplied in advance, painted, or required to match the exact color of the tower. The only discussion of the color for the cable was grey or black. Mr. Meese said that the grey cable was specified in the resolution, the light grey cable was ordered and installed and the applicant believes the cable matches the tower and does not create a visual impact. Mr.

Meese stated that the other tower that was done on Sunset Drive was the same color cable and was marked complete without incident regarding the color.

The Sunset Drive resolution, inspection memorandum, and Certificate of Completion were marked into exhibits.

Mr. Vivona swore in Alec Norris, PE from Mazur Consulting in Mt. Laurel, NJ.

Mr. Norris testified that the final zoning drawings submitted did not designate a cable color which would designate black, but the construction drawings that were submitted and approved included the word "grey". He stated that he became aware of the color issue after the tower was completed. PSE&G was the approved installation contractor while T-Mobile was the one that ordered the cable for the job. Mr. Norris visited the site to verify the light grey model that was delivered and said that the contractor who ordered the coax cable ordered a grey cable, but unfortunately the manufacturer does not carry a standard grey and that the default is a light grey.

Mr. Vivona inquired if T-Mobile was the only antenna on the tower, and Mr. Norris said yes and that Verizon was waiting to hear the results of the cable color issue before they would add their antenna to the tower. Mr. Vivona then stated that the Board chose a design and color to create consistency in all the cell towers constructed in the Township, and that Mr. Norris was part of the previous cell tower processes and was privy to the color that was previously chosen via samples for the cable. Mr. Vivona suggested a site visit to evaluate the visual impact of the lighter color. Mr. Meese countered that samples were never requested or viewed for this tower, and the same color cable was approved on the other tower on Sunset Drive.

Mr. Shaw reiterated the idea of the site visit so the Board can see the impact of the lighter color against the tower.

Mr. Meese pointed out that there was no issue with the color of the cable until after the work was complete. He also opined that it would be cost prohibitive to change the cables now because the cell tower would have to totally shut down and new cables would have to be purchased and installed when there was no stipulation of color and T-Mobile did not violate any condition of the resolution. Mr. Shaw stated that it was listed as a requirement and even though a specific condition was not spelled out in the resolution the intent was there. Mr. Meese argued that the color is consistent with the resolution. Mr. Williams stated that it was not the color the Board wanted and should be the same color as the pole. Mr. Meese argued that the Board should then have specified the shade of grey, the color would never exactly match the pole, and that the cable color would change during different times of the day and under different weather conditions.

Mr. Vivona stated that the Board chose a color that would satisfy the entire community by keeping the towers uniform and to alleviate any companies co-locating on the towers from using just any color of cable. Mr. Meese countered by saying that Verizon is waiting to hear the outcome of this hearing so that they will use the same color cable to maintain consistency when they co-locate on the tower.

Mr. Vivona swore in Mr. Timothy Kronk, licensed Professional Planner.

Mr. Kronk stated his company TK Design ordered the coax cable for T-Mobile from RFS. When Mr. Meese asked Mr. Kronk if he thought he complied with the resolution, Mr. Kronk affirmed that he did. Mr. Kronk explained that the resolution stated a grey cable, and that the cable supplier for T-Mobile has one grey coax that does not contain blue and was considered an off-white grey. That is the color that was purchased and installed.

Mr. Shaw marked a photo series into exhibits as A-18-1, A-18-2, & A-18-3. The photos taken by Mr. Kronk and depict the cables from different angles against the tower and against the sky. Mr. Kronk pointed out that the color of the cable changes depending on the angle of the viewer. Mr. Meese then asked Mr. Kronk what the process would be to change the cables to a different color. Mr. Kronk stated that the following would be required: an approval from PSE&G to remove and replace the coax cable, removal of the cable, and installation of the new color cable from the antenna down to the equipment cabinets. He also stated that there would be two contractors involved in the replacement and the process would definitely cause an outage for T-Mobile.

Mr. Meese submitted a color chart for the cables which Mr. Shaw marked as exhibit A-19.

Mr. Kronk obtained quotes from PSE&G and the cable supplier as follows: \$61,000 for PSE&G contractors, \$31,900 for the T-Mobile ground contractors, \$66,150 for the new color cables from RFS.

Mr. Shaw marked the quotes into exhibit as A-20.

Mr. Meese then asked Mr. Kronk if he had spoken to PSE&G regarding painting the cables. Mr. Kronk produced a letter from PSE&G denying approval for painting the cables because of maintenance such as the paint eventually peeling off.

Mr. Borsinger inquired if there are other suppliers for the cable and Mr. Kronk explained that no other supplier would be used unless there was a specific color requested that wasn't on their supplier's color chart. Mr. Borsinger stated that the Board wanted consistent cables throughout the town. Mr. Vivona stated that the reason this issue arose was because the Board was notified that the grey was not available that was on previous poles.

Mr. Shaw stated that AT&T brought samples in and was able to find the manufacturer of the color that was chosen on the Southern Boulevard site that matched monopole. He also stated that there was no issue with shades of grey. It was just grey and it matched.

Mr. Vivona stated that a site visit is needed. He also stated that this one particular tower is somewhat isolated, did not have a lot of neighborhood complaints, and if the Board agrees, this one tower can have the different color and Verizon can match it. Mr. Vivona pointed out that from henceforth the Township would prefer the cable color the Board will select, the color would be put in the resolution, and that every tower in town will be the same except for this one tower. Mr. Vivona claimed that from this day forward, all cell towers will have to bring in a sample of the cable to view the color and alleviate the confusion. He then set up a site visit for June 1, 2019 at 9:00 am.

Mr. Ruschke stated that it would be prudent to get an RAL number or number of the specific color of the tower and put it in the resolution. Mr. Meese agreed. Mr. Shaw stated that this matter would be carried over to the June 20, 2019 meeting and no further legal notices are required.

BOA 19-48.16-117.27 New Cingular Wireless PCS, LLC, "AT&T", 401-405 Southern Boulevard, Block 48.16, Lot 117.27

Mr. Williams recused himself from this matter.

Ms. Judy Fairweather on behalf of AT&T stated that they are proposing to replace six antennas, add six radio heads, and add two surge protectors. The tower is 130 feet high and AT&T is at 110 feet. Pursuant to the ordinance, the antenna size does not meet Township conditions for a conditional use. Ms. Fairweather said that the federal law states that a minor modification which this is must be heard within 60 days and approved. She called Daniel Penesso, radio frequency engineer, from Paramus, NJ as a witness.

Mr. Vivona swore in Mr. Daniel Penesso.

Mr. Penesso testified that AT&T is swapping current antennas with new ones because they are helping with capacity issues that they are having in the area and for carrier adds. AT&T also wants to implement FirstNet, an emergency service network nationwide that would allow first responders to use their mobile phones with a special SIM card and the 700 megahertz would be allocated in an emergency to EMS, counties could talk to counties, and states could talk to states which was a problem during 9/11. It would allow an interoperability between all the different networks and data that needs to be sent or calls to be made.

Ms. Fairweather stated that because AT&T is staying at the same height with the new antennas, federal law considers that de minimis. Mr. Shaw stated that the federal regulations define conditions which do not constitute a substantial increase, and if there is no substantial increase for an application for an eligible facility such as this, the application is subject to a 60-day time frame for the municipality to take action from when the application is submitted. Mr. Shaw also explained that there is another regulation that further provides a municipality may not disapprove and application. The Township can attach conditions to reduce impacts, but if the application qualifies as an eligible facility application, it is not a substantial increase, then the local municipal authority has no authority but to ultimately approve the application.

Mr. Vivona summed it up by stating that the current antenna is a preexisting, non-conforming condition because the original antennas did not fit the size requirement that the township allowed and now AT&T wants to replace those antennas with new ones in the exact same spot and they are still not conforming because technology does not make smaller antennas.

Mr. Borsinger asked if other carriers will have to do the same thing and increase antenna size because of FirstNet. Mr. Penesso said that it is only AT&T that is deploying FirstNet and the size increase is due to FirstNet and for the 850 megahertz lower bands. Mr. Penesso then explained that all the sites are being upgraded because they all have to be in sync. AT&T will maintain vertical separation so there is no intermodulation issues because of the carriers having adjacent frequencies allocated to them already. Mr. Penesso stated that this is the smallest antenna that they can use.

Mr. Vivona swore in Mr. Mark Harris, FCC Expert from 14 Ridgedale Avenue, Cedar Knolls, NJ.

Mr. Harris testified that even with the antenna change and energy output, AT&T still complies with the FCC requirements by 1.819%, 55 times below the FCC standard and 275 times lower than the New Jersey standard.

Mr. Vivona swore in Mr. Dave Revette, PE of Dewberry Engineers.

Mr. Revette stated that six antennas are going to be removed, three of which are 56 inches tall, eight inches wide, 2.8 inches deep, and approximately 30 pounds. The other three antennas to be removed are 48 inches tall, 12 inches wide, and seven inches deep. All six of the new antennas are 55.1 inches tall, 19.6 inches wide, 7.8 inches deep, and weigh 70 pounds. The structural analysis completed shows everything to be fine structurally to accommodate them.

Ms. Fairweather testified that all antennas will be at 110 feet and the same color they were before. Mr. Shaw questioned whether cables would be added. Mr. Penesso stated that the antennas will be mounted on the existing current array and that there is no cabling that is going to be changed from the base station equipment. Mr. Vivona asked if new coax was being installed. Ms. Fairweather said no. Ms. Fairweather and Mr. Penesso both stated that the jumper cables that are being replaced will be matched to whatever color is currently there. Mr. Vivona asked where the surge protectors are located.

Mr. Penesso stated that they are up on the tower and that it's a lattice tower with multiple carriers and is located at the police station. Mr. Vivona stated that the wire colors must be the same as they are at present and also asked if a site visit is necessary. Mr. Shaw explained that a site visit is not necessary because the changes being made will not be seen during a site inspection. Mr. Vivona stated there are no conditions other than matching what is up on the tower.

Mr. Vivona asked for a motion.

Mr. Borsinger motioned for approval of the variance. Mr. Weston seconded the motion.

Roll call: Mr. Vivona – yes; Mr. Weston – yes; Mr. Williams – recused; Mr. Borsinger – yes; Mr. Newman – absent; Ms. Labadie – yes; Mr. Fitt – absent; Mr. Turco – absent; Ms. McHugh – yes

Mr. Shaw stated that having anticipated the possibility, he had prepared a draft resolution and that nothing has to be changed in it. The conditions of the resolution are that the applicant shall paint the replacement antennas and use coax cable which are the same color as the existing antennas and coax cable.

Mr. Vivona asked for a motion to approve the resolution.

Mr. Borsinger motioned to approve the resolution. Ms. Labadie seconded the motion.

Roll call: Mr. Vivona – yes; Mr. Weston – yes; Mr. Williams – recused; Mr. Borsinger – yes; Mr. Newman – absent; Ms. Labadie – yes; Mr. Fitt – absent; Mr. Turco – absent; Ms. McHugh – yes

BOA 19-135-28 New Cingular Wireless PCS, LLC, "AT&T", 245 Green Village Road, Block 135, Lot 28

Ms. Fairweather stated that this application is the same as the 401-405 Southern Boulevard application. The six antennas and six radio heads are being replaced on a rooftop. The equipment room is in the building and any changes to equipment will be done in that room.

Mr. Revette stated that the existing antennas are 51 inches tall, 12 inches wide, seven inches deep, and the proposed antennas are 55.1 inches tall, 19.6 inches wide, and 7.8 inches deep. These antenna are located on a building behind Starbucks on Green Village Road. AT&T is the only carrier on the building.

Mr. Shaw asked if the changes are only being made to the antennas on the building. Mr. Revette stated that there are remote radio heads being installed behind the antennas and lower so they will not be visible.

Mr. Ruschke stated that there were inconsistencies on the plan and asked that the applicant update the plan for the record. Ms. Fairweather asked if the Township would accept the construction drawings instead of waiting one to two weeks for the updated plans. Mr. Ruschke concurred and stated that remitting updated plans would be a condition of the final sign off from the Building Department before the building permit is closed out.

Mr. Shaw asked for an explanation of remote radio head. Mr. Penesso explained that a remote radio head takes the fiber optic cable that comes from the base station equipment, that cable that goes to the radio head, and the radio head converts the signal to radio frequency (RF). This is why the coaxial jumper is needed, because the RF goes into the antenna and propagates outward. The fiber optic cable reduces the loss of the signal traveling through it.

Mr. Vivona asked for confirmation that whatever is being replaced will meet all the Board's conditions of color and match what is currently there. Mr. Penesso said yes.

Mr. Vivona swore in Mr. Bryan Grebis, Electrical Engineer and expert in radio communications.

Ms. Fairwether asked Mr. Grebis if he looked at the energy output for the site and asked if the change of antennas complies with the FCC. Mr. Grebis agreed on both counts. Mr. Grebis opined that the maximum calculated energy from the site would only be 3% of the 100% limit set forth by the FCC and that is approximately 33 times below the FCC limits. Mr. Vivona questioned why this site is at 3% when the other site at 401-405 Southern Boulevard is only at 1.819%. Mr. Grebis explained that the antennas are lower – only 47 feet – and due to the lower height, the antennas are in closer proximity to the public and therefore there is a higher power exposure.

Mr. Vivona requested a motion.

Mr. Borsinger moved for a motion to approve the variance. Mr. Weston seconded the motion.

Roll call: Mr. Vivona – yes; Mr. Weston – yes; Mr. Williams – recused; Mr. Borsinger – yes; Mr. Newman – absent; Ms. Labadie – yes; Mr. Fitt – absent; Mr. Turco – absent; Ms. McHugh – yes

Mr. Shaw asked Mr. Ruschke for a description of the condition to enter into the resolution. Mr. Ruschke stated that the elevation with the proposed equipment on pages Z-4 and Z-5 needed to be modified for consistency with the proposed application. Mr. Shaw stated that the Board had previously distributed a form of resolution providing for this approval and to which he added a submission of revised plans to be consistent with proposed modification to the equipment.

Mr. Vivona asked for a motion to accept the resolution.

Mr. Borsinger motioned to accept the resolution. Mr. Weston seconded the motion.

Roll call: Mr. Vivona – yes; Mr. Weston – yes; Mr. Williams – recused; Mr. Borsinger – yes; Mr. Newman – absent; Ms. Labadie – yes; Mr. Fitt – absent; Mr. Turco – absent; Ms. McHugh – yes

BOA 19-31-1 Ivan Levitskiy, 20 Mountainside Drive, Block 31 Lot 1

Ms. McHugh recused herself.

Mr. Borsinger read the Site Visit Report into record.

Mr. Gary Haydu of 414 Main Street, Chatham, NJ 07928, attorney representing Mr. Levitskiy, stated that the slope disturbance is acknowledged and was made by the excavators. The retaining wall height was modified so that it is no longer higher than six feet, but under four feet. Mr. Haydu felt that this would alleviate the second variance.

Mr. Haydu asked Mr. Symonds to explain the drainage issues, swales created, and lot improvements created to limit the disturbance. Mr. Symonds testified that two drywells were constructed and since the Engineer's inspection, both inlets have been connected to the drywells. He also stated that a large amount of steep slope had been disturbed on the site: slopes >25% - 3102 sf of which 2740 sf was disturbed, slopes 20 – 25% - 3343 sf of which 2968 sf was disturbed, and slopes 15 – 20% - 3243 sf of which 3044 sf was disturbed. The slopes are stable, sodded, and mowable.

Mr. Haydu stated that the swales were originally improperly installed but corrected after the Engineer's visit to the site. Mr. Vivona asked Mr. Ruschke if everything has been installed to his satisfaction. Mr. Ruschke explained that the one inlet Mr. Ruschke referred to on the last page of his report was still not in compliance. Mr. Symonds stated that the applicant will comply to the Mr. Ruschke's report.

Mr. Haydu asked Mr. Symonds if he took the rear neighbor into consideration so that water would be captured before it got to the neighbor's property. Mr. Symonds explained that the swales cut off the water to the neighboring property in the rear. Mr. Symonds also said that he sent Mr. Ruschke a letter stating that he felt the grading was de minimis. However, when replacing the nine trees which are approximately 2 ½ -3 inch caliper trees, there will be more disturbance to do that. Mr. Vivona inquired as to the type of trees being planted. Mr. Symonds stated that maples, pine and spruce would be planted. Mr. Borsinger asked if the trees had to be four inches in caliper or more according to the ordinance. Mr. Ruschke asked if the applicant is requesting a waiver from the ordinance by planting 2 ½ - 3 inch caliper trees. Mr. Haydu said the applicant would comply with the tree ordinance. Mr. Borsinger asked if the applicant was meeting the tree density, and Mr. Ruschke confirmed they were meeting it.

Mr. Haydu explained that the stairway was slated to come up the slope at a diagonal and end at the curve in the road where it would not allow for a car to park for someone to walk down the stairs or for a mailbox to be placed there because it is a sharp curve and would be dangerous. Instead, the staircase was installed straight up and not on the diagonal. Mr. Haydu also stated that the walkway that is perpendicular to the house was not proposed but was on the as-built plan. The applicant had the walkway installed that way because of the safety issue of the curve in the roadway, but should have gone back to the Building Department with a revision.

Mr. Vivona swore in Mr. Ivan Levitskiy.

Mr. Levitskiy stated he was the owner but was not going to live in the house. Mr. Vivona asked if Mr. Levitskiy was a builder by trade and if he had done any other work in town to which Mr. Levitskiy said yes on both accounts. Mr. Levitskiy stated he had worked on 28 Mountainview. Mr. Vivona stated that Mr. Levitskiy cannot do what he wants to do without seeking approvals first and that the Township is very strict regarding the steep slope issues for the safety of the residents as well as removing the trees that retain the steep slopes.

Mr. Haydu stated that Mr. Levitskiy's son was sick and Mr. Levitskiy had to leave the country, and it was during that time that all these things were done at the property.

Mr. Borsinger asked about the inspection process of the steep slope once the variance of the slope is approved. Mr. Ruschke stated that he does two inspections, the first one before anything starts and one at the end when the contractor requests a CO (Certificate of Occupancy). In the interim, the Construction Official Greg Impink does his normal inspections on the house – foundation, framing, etc. No neighbors called to complain about any water issues during the construction. Mr. Ruschke stated that it was only during his final inspection that he noticed that Mr. Levitskiy had exceeded the approved steep slope disturbance and stopped the job. Mr. Ruschke stated that the applicant is not asking for any waiver of any municipal code, but just that they are addressing the violation of the steep slope ordinance.

Mr. Vivona inquired if the drainage calculations were correct. Mr. Ruschke opined that they were correct and that he would check them all at his final inspection.

Mr. Vivona asked for a motion to accept the resolution with the conditions that the applicant complies with Mr. Ruschke's conditions and the Township tree ordinance with four inch caliper trees.

Mr. Williams motioned to accept the resolution. Ms. Labadie seconded the motion.

Roll call: Mr. Vivona – yes; Mr. Weston – yes; Mr. Williams – yes; Mr. Borsinger – yes; Mr. Newman – absent; Ms. Labadie – yes; Mr. Fitt – absent; Mr. Turco – absent; Ms. McHugh – recused

BOA 19-35-1 Daniel Yang, 16 Dogwood Drive, Block 35 Lot 1

Mr. Weston read the Site Visit Report into record.

Ms. Siegel resubmitted new cover sheet with final height calculations and variance notes on it. Mr. Shaw marked the cover sheet into exhibits as number A-10. Ms. Siegel also submitted plans of proposed views of 16 Dogwood Drive marked into exhibits by Mr. Shaw as A-11 and A-12 respectively.

Ms. Siegel stated that the house was built for the garage to be a side entrance garage due to the placement of the lally columns. She stated that the applicant is trying to correct the garage and the structure (header and lally columns) will remain the same. On the first floor, proposed new stairs were lined up over the basement stairs to give it a clean look. The proposed portico stoop will be built over the existing stairs. Ms. Siegel proposed the creation of a sidewalk from the front of the house to the street to reach the house easier. Ms. Siegel stated that there is no variance for another story.

Mr. Borsinger asked for the distance of the base of the garage to the peak of the roof. Ms. Siegel stated that there were two heights, 34' 9" and 35' 8". Mr. Vivona asked why there are two heights. Ms. Siegel explained that because of the sewer pipes, they are hoping to dig lower to avoid underpinning of the basement and garage floor and allow the retaining wall height to be lower. The applicant is asking for the extreme, but hopes to come in lower.

Mr. Ruschke asked Ms. Siegel to explain the difference between the new sheets just submitted and the sheets the Board already has in their possession. She stated the following items were revised: the height line, the number of stories, and some site notes were removed and the variance notes were added.

Mr. Shaw marked photo composites of neighboring homes into exhibits as A-13. Ms. Siegel explained and compared the characteristics of the neighboring homes to the applicant's home and variance requests.

Mr. Shaw marked a comparison of the surveys of the neighbor's property versus the applicant's property into exhibits as A-14.

Mr. Vivona swore in Mr. Ryan Smith, PE and Surveyor of 460 Main Street, Chester, NJ

Mr. Smith stated the biggest concern is the retaining wall and bringing up the side yard to the new garage doors. The garage floor was lowered and the pitch from the garage doors is at the maximum of 5% to minimize the height of the retaining wall, lowering the retaining wall to five feet. The variances sought have to do mostly with the retaining walls and their proximity to the house, deck and property line, and the amount of steep slope disturbance. Mr. Smith stated that he would comply to Mr. Ruschke's lot grading requirements regarding stormwater drainage. Mr. Smith also explained that the biggest variance would be for the steep slope disturbance of greater than 25% in the back, left corner of the property and at the driveway location. The solution to the runoff from the proposed driveway to the neighbor was addressed by pitching the driveway down to the lowest corner and installing an inlet there. Mr. Smith also stated that there will be a scupper on the other side of the wall in case any runoff goes over.

Mr. Vivona asked if anything will be pitched toward the street. Mr. Smith said no. Mr. Vivona asked if there currently was a drain in the driveway. When Mr. Smith said there was no drain, Mr. Vivona then asked where the water was presently going. Mr. Smith surmised that the water was currently sheet flowing into the neighbor's back yard through the trees and stated that the proposed drywell will capture all of that water that is currently entering the neighbor's property.

Mr. Weston asked about the retaining wall ordinances being sought and what is the purpose of the code in the first place regarding the retaining wall being attached to the structure. Mr. Smith surmised that the code was put into place to keep the property owners from terracing all the properties for flat yards and creating high walls the neighbors see, and the code also keeps property owners from greatly disturbing the steep slopes to terrace their yards.

Mr. Borsinger questioned if the applicant had alternate designs. Mr. Smith countered that there is only 35 feet to the property line and in order to alleviate raising the grade of the side yard four feet and dig the garage floor down several feet, this current plan was created. Mr. Borsinger suggested that the applicant carve out more property to the left and Mr. Yang stated that that would eat up most of his front yard. Ms. Siegel stated that in keeping with the value and aesthetic of the house, the side loading garage is more a more natural flow to the house and property, and that the property is located at the apex of the slope. She also stated that the side yards of this property and the neighboring property offer approximately 60 feet or more collectively, so the impact of a retaining wall to the neighbor is minimized due to distance from the neighbor's house.

Mr. Vivona asked what material would be used to construct the retaining wall. Ms. Siegel stated that the wall would not be a block wall, and that a stone veneer would be used to match the veneer currently on the house.

Mr. Vivona inquired about screening and Ms. Siegel stated that staggered arborvitae would be used.

Mr. Ruschke asked if an alternate plan of connecting laterally to the sewer somewhere down the line had been entertained as it would lower the retaining wall needed. Ms. Siegel stated that that is not traditionally done and it would be a lot more work. Mr. Ruschke suggested that maybe Ms. Siegel should revise the plans and come back to the Board with at least one alternate plan. Ms. Siegel stated that they are unsure of what is under the foundation and that is why the plans were created the way they currently are. Mr. Shaw asked what it would take to find out what's under the foundation. Ms. Siegel stated that finding out would consist of exploration by a contractor and that it would drastically add to the cost of the project. She also stated that if they went that alternate route, it would require underpinning of the foundation and garage floor to find the sewer.

Mr. Borsinger asked Mr. Ruschke how he feels about maintaining the 27 foot turnaround. Mr. Ruschke opined that it should not be cut short when there is a retaining wall instead of grass on the other side and that he does not believe that a 27 foot turnaround is a practical design.

Mr. Vivona opined that the proposed design is better than what is presently there because Mr. Yang's house is not getting closer to the neighbor's house, only the driveway is getting closer and the water issue will be better managed with the new design and alleviate runoff into the neighbor's property.

Mr. Vivona asked why the retaining walls are not proposed to be connected to the house. Mr. Smith stated that the walls are lower than the foundation of the house.

Mr. Ruschke stated that although there are a lot of little variances, the real issue is the wall and that can be addressed by landscaping in the corner where it is highest.

Ms. Siegel summed up that this is a C variance and that the hardship is the slope. In trying to get the garage functional, the retaining wall is necessary. She feels that the design is promoting a visual and desirable environment. There will be no curb cut out on the street. The only other item being asked for is the front yard setback for the portico over the stairs which falls in line with the neighbor's homes and the rest of the addition falls within the requirements.

Stephen Bloom of 10 Dogwood Drive voiced concerns over privacy in his bedrooms facing the driveway. Mr. Bloom also requested that Mr. Yang install a high fence or evergreens along the driveway side for privacy and that Mr. Yang replace any trees that may be damaged during construction. Mr. Bloom requested an extensive water study be done and a sun study. He is concerned that the house will block the sun in the latter part of the day. Mr. Bloom also appealed to Mr. Yang's architect to visit an alternate plan of building the addition on the north side of the house instead of the south side to alleviate blocking of the sun and runoff onto his property.

Mr. Vivona stated that Mr. Bloom's house receives sun from north to south over his house rather than east to west, so the blocking of the sun should not be an issue. Mr. Vivona also commented that the high fence Mr. Bloom requested would be greater than the height of the proposed retaining wall and would not be in Mr. Bloom's best interest. Mr. Vivona assured Mr. Bloom that there are strict rules regarding silt fencing with chain link fencing to alleviate mud runoff.

Mr. Borsinger raised a concern about the existing trees and the frost line required for the footing of the retaining wall. Mr. Smith stated that he believes the existing spruce tree should not be harmed because he believes the tree has a deep tap root and deep roots to sustain the tree. Mr. Smith also stated that he believes that less than 30% of the trees roots will be damaged during construction.

Ms. McHugh asked that if the spruce tree is damaged during construction, how long would Mr. Smith give the tree before coming to the conclusion that it was damaged during construction and replacing it. Mr. Smith stated that the effects of damage would readily show itself by pine needles dropping within one or two weeks as it is a large tree and requires a lot of water to survive.

Mr. Shaw stated that the conditions of approval would be: compliance with Mr. Ruschke's technical review comments, retaining a Licensed Tree Expert to consult during construction, and additional screening along the driveway (arborvitae).

Mr. Vivona asked for a motion.

Ms. Labadie motioned to accept the resolution. Ms. McHugh seconded the motion.

Roll call: Mr. Vivona – yes; Mr. Weston – yes; Mr. Williams – yes; Mr. Borsinger – yes; Mr. Newman – absent; Ms. Labadie – yes; Mr. Fitt – absent; Mr. Turco – absent; Ms. McHugh – yes

Mr. Vivona motioned to adjourn. Mr. Williams moved to adjourn.

All in favor.

Kathleen Nagy-DeRosa

Zoning Board Secretary