Mr. Vivona called the Meeting to Order at 7:30 P.M with the reading of the Open Public Meetings Act.

ROLL CALL:
Mr. Vivona, Mrs. Kenny, Mr. Williams, Mrs. Romano
Mr. Borsinger. Mr. Hyland, Alt. 2
Absent: Mr. Weston, Mr. Styple

**Professionals Present:** Steven Shaw, Attorney
John Ruschke, Engineer
Robert Michaels, Planner
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**Golden River Homes, Llc** **Calendar BOA 14-61-16**
11 Sunset Drive

Mr. DeAngelis, Attorney
Mr. Murphy, Engineer

Mr. DeAngelis said he had completed his case for the applicant. He had one anticipated rebuttal witness, he is a planner that I anticipate testifying on behalf of the neighbors and then I will have them testify in rebuttal.

Mr. Sherman said he was representing the neighbors to the subject lot. Mr. De Angelis indicates he has another witness but although he didn't want to be argumentative but it would seem that we should go in and further the case.

Mr. Simon said he agreed with Mr. Mills. If he has a second witness that has not presented testimony before the Board with regard to this application then procedurally he should present him as part of the case.

Mr. DeAngelis said he had no problem. He is a planner and can present his testimony now.

Mr. Michael J. Pasalano, Professional Planner, NJ was sworn and listed his qualifications.

Mr. Shaw asked if counsel had any questions of this witness. None heard.

Mr. Pasalano, for records purposes he referred to exhibit A30 showing the site in question and the surrounding area. Pg. 1 is an aerial representation of the subject property outlined in yellow rectangle (Sunset Dr.) and noted that this is the last lot in the area to be developed. Pg 2 shows photographs from the top of the hill and the subject site shown with adjoining property (17 Sunset Dr.). Photo 3 is within the interior showing the large trees at the western end and 4 is a representation of the site at a different angle. Page 3 – photo 5 shows the neighbor to the west of the property; Photo 6 shows the neighbor to the south. Properties directly across the street are shown. Photo 8 is a representation of 55 Fairmount Ave.

There are no variances for exceeding the building envelope but we do have to cover our variances relating to changes in topography. We are talking about the variation in our desire regarding the slope; retaining wall from principal structure; three variances

concerning the three different steep slope categories. These involve the change in grade within 15 ft. of the neighboring property. One other is the deviation from the height requirement of 35 ft. It is understood that the last meeting on this it was modified to 38.5 ft. .

The landscape architecture is shown on a landscape plan showing species, placements, etc. In all these regards the project promotes a good visual environment. This project proposes no hardships to the neighborhood. The trees that remain around the perimeter will continue to serve as buffers. To soften the impact of the structure there will be landscaping which will maintain harmony/privacy.

Regarding the height – in this case, the height is essential for balance and proportion. This does not create a negative effect and does not give this property any height advantage over another; There is no excessive runoff to other properties;

Regarding Steep Slopes: The steep slope relief is requested to exceed disturbance in three different categories – 100 % 125% 25%. We have 1580 sf. over that allowed for the 500 sf allowance for the above 25%; we are proposing 810 ft. above the 1000 sf allowance and for 20-25% slope areas 340 sf.; for the 15 – 20% category there is 344 sf. above the 4500 sf. proposed. He believed in steep slope protection, however, in a development setting like this steep slope protection has to be dealt with moderately with the other purposes that the land use development regulations speak to. In other words, it is not an all or nothing thing. In other words steep slope is not the only matter on the table.

The steepest slope on the lot is right in the middle of where the building envelope has to be. Tree preservation is maintained at the lower elevation of the site where trees already exist. He felt that was an appropriate from a buffering perspective too because if you place a building on a slope the down slope property otherwise would have an exaggerated view. The mature trees would have a buffering effect and impair any view of what is above. Vegetation will also be helpful. As I previously said the slopes are in the central portion of the property. The applicant here is doing what the neighboring properties have done. They are placing their home on a challenging piece of property.

Any relief requested he felt was unavoidable because of the steepness of the slope and the grade needs to be contended with in a positive way. Retaining walls are necessary to control/stabilize the soil on the slope. Any reduction in the building size would still end up with the same kind of wall. The detriments associated with the relief as requested are not substantial. The general character of the lots in the area, as a whole, is graded lots. The relief requested is necessary to achieve compatibility.

Mr. Mills represents the neighbor. He had a few questions. He asked Mr. Pasalano if he had familiarized himself with the Master Plan. Mr. Pasalano, said he had.

Mr. Mills went on to say that the Master Plan has as one of its goals a Municipality having a greater sensitivity to critically sloped land
Mr. Mills said in respect to the application in question, it appeared to him, the slopes are greater than 25% in this instance 5 times that amount 2008 sf is proposed to be disturbed.

Mr. Mills asked if Mr. Pasalano that did not find that degree of disturbance conflicts with the Master Plan.

Mr. Pasalano said it was a composite situation. We have zoning regulations that cover stages of development. To say that steep slope regulations are being violated is one element of development project but not the whole picture.

Mr. Mills asked why municipalities have ordinances and Master Plans to protect steep slopes.

Mr. Pasalano Communities are challenged to try to enumerate erosion situations on site by site bases like this

Mr. Mills asked if the lot could reasonably accommodate a home that was smaller in size from what is proposed.

Mr. Pasalano said a smaller home could be put there.

Mr. Mills – with respect to the surrounding homes, you testified that this was area primarily built in the 60's – is that correct?

Mr. Pasalano – not necessarily.

Mr. Mills – Do you know the size of the proposed square footage on this subject property (without the finished basement)

Mr. Pasalano said it was 5,393 sf.

Mr. Mills asked if he was to refresh Mr. Pasalano's recollection in respect to the square footage with the foundation approved at 7,043 – would that sound approximately accurate?

Mr. Pasalano said it did.

Mr. Mills asked if there was an indication of the number of variances that are required by the application.

Mr. Pasalano – yes.

Mr. Mills asked if there had been any discussion with the client about a smaller house.

Mr. Pasalano said he represented that his stock in trade was 5000 sf homes.

Mr. Shaw – just for your information it is March 4, 2015. The June 13th was the 2014 report.

Mr. Simon asked if Mr. Pasalano knew why the four pictures on the third sheet (5, 6, 7, and 8) were chosen over any other property.

Mr. Pasalano - No
Mr. Simon asked if Mr. Pasalano knew in which season it was created.

Mr. Pasalano said he did not.

Mr. Simon referred to page 3 number which say "view of site from interior" – are you aware in looking at the site plan where this photo was taken.

Mr. Pasalano thought it was down toward the lower portion of the site.

Mr. Simon asked if Mr. Pasalano knew what vantage point the photo was taken.

Mr. Pasalano said he did not

Mr. Simon – Do you know what date the photo was taken?

Mr. Pasalano - no

Mr. Simon – in terms of number 4 – site from interior – do you know where that picture was taken.

Mr. Pasalano - near that intersection.

Mr. Simon when you were at the neighborhood did you view the subject property from the area.

Mr. Pasalano - said he had viewed the property from several stop points on Fairmount Avenue.

Mr. Simon – you didn't view the subject property from the backyards of any of the properties on Fairmount adjoining or close to that property.

Mr. Pasalano - said he had not – that would be trespassing.

Mr. Simon – from those lower neighbors can you estimate what the height would be from their vantage point up to the house as constructed?

Mr. Pasalano- about 53 ft.
Mr. Simon – do you know if it was subdivided at any time in the past?

Mr. Pasalano - said at some point the lot was created. He had no idea of when.

Mr. Simon –I believed you testified that it's possible that the lot was not developed because of the steep slopes.

Mr. Pasalano – said that was one possibility.

Mr. Simon said Mr. Mills had asked a bunch of questions about the impact if the subject house were to shrink or become smaller.

Mr. Pasalano – said he did,

Mr. Simon asked if Mr. Pasalano had done any independent analysis ascertaining the statistics of an engineer or other designer as to the impact of the variances for which you testified for.

Mr. Pasalano said he had not.

Mr. Simon – you talked about erosion, trees and little bit of rock. You are not a professional engineer, correct?

Mr. Pasalano – you are correct.

Mr. Simon – you have done no analysis as to storm water runoff impact with regard to this particular development. Correct.

Mr. Pasalano said he did not find that there were adverse effects from storm water runoff.

Mr. Simon - before today had you looked at the engineering plans.

Mr. Pessolano – he had.

Mr. Simon – as a professional planner do you make any conclusions with regard to storm water runoff or the adequacy of the proposed drywells in connection with this application?

Mr. Pasalano said he had made observations to himself about the storm water runoff.

Mr. Vivona asked for questions from the Board.

Mrs. Kenny said Mr. Pasalano had been talking about one of the benefits was the variety of housing in town. You said you had compared this application to smaller existing homes in the area and she was wondering what you considered smaller.

Mr. Pasalano said quite literally less than the square footage proposed is smaller.

Mrs. Kenny did not see how that's beneficial to the town if you are always escalating the new home. It is not a variety of housing.

Mr. Pasalano – not necessarily. There is a demand for 5000 sf. homes. To accommodate the demand it is critical to have a variety of homes.

Mrs. Kenny said she was just talking about Chatham Township. There are really no houses left for less than a million dollars. She said there is actually a deficit on smaller homes in this town. If you referring to a three thousand square foot as a smaller but it appear that you meant anything smaller than your applicants proposed home is smaller. She did not think that was a fair assessment as it is basically all the housing stock except for the three houses this year which were five thousand square feet or above.

Mr. Pasalano said that over the past five years there were thirty six sales took place of homes in the five thousand square feet range.

Mrs. Kenny said so out of all the homes in Chatham Township thirty six is a small number even if it's over the past five years or ten months.

Mr. Pasalano – we have had a case of absorption of this product in the market to present to everyone. This is not something just pulled out of the air, this is something people need.

Mrs. Kenny said it's easy to sell that initial brand new house it's harder seeing someone trying to sell the house for what they bought it for unless you have been in the house for a very long period of time. There are a lot of houses on the market in that range. She thought you were talking about variety of houses you're really not.

Mr. Pasalano said he was speaking to the idea that everybody has different preferences for what they want to live in and what they can afford. So a variety of homes with various sizes/prices is what we do.

Mrs. Kenny felt that was not variety. We are left with all the same. New homes being built in this town are generally very similar. This is on the higher end of what it is but people aren't building 3/4 bedroom homes. That is what I would consider a variety of housing stock to be. The town would have some homes for starting out, some for downsizing, etc. It was her personal opinion she did not think that the builders are building a variety of housing.

Mr. Borsinger referred to C2 height variance. He was getting the impression that the reason for the variance is to build the house out to the maximum footprint. You testified that it isn't for that but your client builds big houses. He was wondering if you were representing a different builder with expertise in smaller houses would you still be here. To me you implied that you are here because you are representing a builder who builds bid houses.

Mr. Pasalano said what he would like to emphasize is that my client had discussed with his architect to tweak the proposed, to sacrifice further to reach a number to as to what he want to accomplish on the ground.

Mr. Vivona thought the side yard was maxed out. If he is 51 ft. from the front yard, one side is closer than the other but he is not maxed out. His house could actually be larger.

Mr. Ruschke said he was going for maximum building coverage. What is required or permitted is 2706.6 sf and he is providing 2706 sf. On impervious coverage he is low. On building coverage he is maxed out.

Mr. Vivona asked for questions from the public.

Mr. Noser, 8 Sunset Drive asked if he was aware of the height of the ceilings. Would you accept that it is 10 ft. on the first floor and 9 ft. on the second floor?

Mrs. Kenny said she could confirm that as its in her notes – basement is nine ft; first floor is 10, second floor is 9 and the attic is 8-9 ft.

Mr. Vivona – lowering the house to 35 ft. only eliminates one variance and there still are several variances for steep slopes that would be affected by the height.

Mr. Vivona asked if Mr. Ruschke wanted to add anything.

Mr. Ruschke said there was some testimony regarding a detailed landscaping plan. It was mentioned that the plantings were to be mature. Is it the applicant's intent to provide a detailed landscape plan?

Mr. DeAngelis said if the Board prefers that then the answer is yes.

Mr. Vivona thought that had been requested several months ago.

Mr. DeAngelis said it would be something that would be provided if this board felt it was necessary for buffering.

Mr. Vivona thought there had been a discussion about at the last meeting. You were going to provide some sort of evergreen trees behind the deck as a buffer to the lower residents. The house sits below street level from the front so some sort of normal landscaping could be required there.

Mr. DeAngelis said he remembered the conversation but I didn't think that he said he would provide it as a condition of approval.

Mr. Shaw you were requested to supply a landscaping plan to soften the appearance of the retaining walls. He thought the comment was during Mr. Murphy's testimony. My notes show the comment as the landscaping plans would be submitted to soften the appearance of the retaining walls subject to the approval of the Township Engineer. My notes indicate that Mr. Murphy that they would agree to provide that as a condition of approval. What we are hearing is that the Boards preference to take a look at the drawings.

Mr. DeAngelis said if that is what you want then the applicant will comply.

Mr. Vivona asked for any further questions of Mr. Pasalano.

Mr. Mills introduced Mr. Haislip 5 Sunset Drive who explained where his property was relative to this application.

Mr. Haislip, said standing in front of the proposed/subject property he is to the left and has resided there since 1988. His property is a residential with a four bedroom, 2.5 baths home sitting on .8 ac. The living space is about 2700 sf. with a finished basement making it approx. 3200 sf. The house is catty corner into the lot so that the right side of the house sits back further into the lot. It was designed that way by Mr. Amato. He built it so it was on the flat part of the lot. His concern with that is the total size of the proposed project. He wants 38.5 height where our house is estimated at about 28 ft. This would be an imposing structure on our privacy.

Mr. Mills – in other words your home is sort of opened up to a more broad view of the proposed. It is not simply an end on railroad car? It's more of a stage type view.

Mr. Haislip agreed.

Mr. Mills – is there any difference between lot 11 and lot 5.

Mr. Haislip said the front of their lot has a slight slope but then flattens out. We actually have the only flat driveway in the neighborhood. The back of the lot does slope off but after 20 ft. or so from the back of the house.

Mr. Mills asked if he had looked at the application documents and asked if there were any concerns that may be imposed by the retaining walls that are suggested.

Mr. Haislip said he had two. The deck that is proposed (where it meets the retaining wall) concerns him if there were a possibility of a fire. How will the fire department going to be able to get to the back of the house. You can't put a ladder up in that area. They would have to put it down behind the retaining wall which is an additional six foot drop vertically not including the horizontal going to the roof. There is no way to get a truck back there. The threat of fire to our house and the neighbors is significant. The other aspect with the retaining will is that the retaining wall comes within several feet of our property. The amount of fill and the heavy equipment needed will impact the trees on my property. The drip line and root structure from our trees goes into that property. In addition the water tables will change so that our trees will be impacted by that. We lost about 10-15 mature trees during Irene and Sandy. I would hate to lose one more tree on my property.

Mr. Mills asked if the retaining walls would be any part of their view.

Mr. Haislip said they would. They would be seen right outside of their windows. He noted the rooms closest to the subject property would be their "adult room". Having three boys this was his and his wife's room to relax in.

Mr. Mills had addressed all on his list and asked if Mr. Haislip had anything else to add.

Mr. Haislip said he was really concerned about the change in the water table, not only for him but for the neighbors. If you look on the tree map they had one of the trees in the back of the lot is in the drip line as well as in the drywell. That tree is a forty two inch oak. I did a little research and for every inch it equals about four years. The tree is over 160 years old. The tree will go at some point. So I do have concerns environmentally and aesthetically as well.

Mr. Vivona asked if there were any questions of Mr. Haislip.

Mr. Borsinger asked which lot was his.

Mr. Haislip said the tax map shows it as lot 17. Lot 6 as shown here.

Ms. Romano - to clarify, your house is only 28 ft. from the front.

Mr. Haislip – explained they had 8 ft. ceilings on two floors with the attic there is another 8 feet which does include the spacing between the floors.

Ms. Romano asked about the adult room. How far was it from the property line? Was it within the setbacks? Mr. Haislip said it was.

Ms. Romano noted the concerns for the trees and asked if that was because of this house. If this didn't get approved and someone else built a smaller home on that lot would you still have the same concerns for the trees.

Mr. Haislip said probably not if the disturbance didn't come so close to his property. The heavy equipment and soil needed to level off the slope doesn't compact on my roots then the trees would not be in danger.

Ms. Romano – so right now this current house is within the side yard setback so it would have to actually be closer to the middle of the property to not affect the trees.

Mr. Haislip said his best guess is that the retaining wall is within three to five feet of the property line.

Mr. Hyland asked if there was a variance for the retaining wall being so close to the property. I see it for the closeness to the proposed but not for the property.

Mr. Ruschke said he does not have a variance for the retaining wall being within a certain distance of the property line but he has one because he is raising the grade
Within a certain distance of the property.

Mr. Hyland – so regardless of the size of the house someone could put a retaining wall where the applicant wants to put it and there wouldn't be a variance needed.

Mr. Ruschke said the height of the wall would have to be three times the distance from the property line. So if he is building a five ft. high wall it has to be fifteen feet but we have an ordinance that you can't fill within four feet so if you go sixteen feet he could do that.

Mr. Hyland thought his question was – if we built a smaller house but still wanted to put a retaining wall there the applicant could still do that or would he need a variance.

Mr. Ruschke said for what is proposed now he can develop an alternative grading plan to try to eliminate dimensions.

Mr. Shaw thought a question for the adjoining property he was talking about retaining walls but actually involved is the grading next to his property. His concern was ….

Mr. Hyland thought he testified that it was going to affect the view out of his adult room because he would be looking at the retaining wall.

Mr. Shaw said the variance he had an issue was the concern of the impact over putting fill in that area. There were two objections one being view and the other being concern over the trees.

Mr. Vivona – getting back to the height thing - In the back of your house its over twenty eight feet. The front of your house is less than twenty eight feet. The front of this house is actually is less than twenty eight feet. The height is mathematical equation. It's an average. Thirty eight feet takes in the slopes in the back and drives the average up. The front of the house will be the same almost as yours.
Mr. Haislip said that was correct but he would be looking at the back because of the way his house is angled on the property.

Mr. Vivona said no matter what size house goes there you would still be looking at it. Mr. Haislip agreed.

Mr. Vivona said he understood the concerns. As far as fire there is an issue with every house getting around the back. It is a valid concern but it is for every house built on a slope. Same thing with your home and the one on the other side.

Mr. Haislip said they could get a ladder up. The point is that the deck is within two feet of the retaining wall so you can't get a ladder there so you would have to put a ladder down on the other side of the retaining wall. I don't know but I am asking if the fire department has the ability/equipment to able to get up there. That is a long distance.

Mr. Vivona said it was a good concern but it's not our jurisdiction to figure out what the fireman can do. The building department would actually regulate egress etc. It's a hypothetical thing that we can't honestly consider as far as the variances go. We appreciate your input and concerns, all valid points, but we hear everything and make our decision from there. We keep your input as part of our decision.

Mr. Vivona asked if Mr. DeAngelis had any questions.

Mr. DeAngelis said that Mr. Haislip had testified as to the height of his building but he didn't have his building measured. Is that correct?

Mr. Haislip agreed.

Mr. DeAngelis asked if Mr. Haislip had applied the building height formula to his property that this applicant applied to for his height.

Mr. Haislip said he did not.

Mr. DeAngelis pointed out the Mr. Haisip had said something about water table change. Do you know for a fact that there will be a change in the water table due to this application?
Mr. Haislip said there would have to be a change.

Mr. DeAngelis asked if Mr. Haislip had studied the storm water management plan that had been submitted by the applicant.

Mr. Haislip said he had not.

Mr. DeAngelis asked if Mr. Haislip had any drywells on his property.

Mr. Haislip said he did not.

Mr.DeAngelis asked if Mr. Haislip knew if this applicant proposes dry wells on his property to control any storm water runoff.

Mr. Haislip said he was aware of that.

Mr. DeAngelis asked if such matters were required when he bought his property.

Mr. Haislip said not when he bought the property.

Mr. DeAngelis thought that Mr. Haislip really had no proof whatsoever as to the change of the water table which might kill the trees.

Mr. Haislip said he had concerns that there would be a change and that would affect the trees. I have no proof at this point.

Haislet for his input.

Gary Lobalol, Forrester was sworn and gave his qualifications.

Mr. Lobalol said he had inspected the property in question and had ample time to spend on site to familiarize himself with the various aspects. Steep slope colored rendering-applicants exhibit A27 (marked as 01 for this review) was presented for Mr. Lobalol's comment/review.

Mr. Mills said it was an existing tree plan coupled with a proposal by the applicant for the trees to be removed. He assumed those were marked with an "X". It is a rendition of the tree and tree canopies existing on the proposed application. The applicants are proposing certain retaining walls which are shown on this document. There are a number circles depicting trees marked with an X such is in the area of the driveway and proposed dwelling. In your experience from reviewing plans of this nature they would be trees that are proposed to come down. Do you have an opinion with respect to the proposed construction of the dwelling and the retaining walls about any further impact on trees not marked with an X.?

Mr. Lobalol as far as what I can do in reviewing these plans is to see the status of the trees. The current configuration tells me right away that there is dramatic impact to trees that are designated to eliminate. It has been my experience over thirty years with the fact of the building is not restricted to the foot print of the house. The construction frequently goes outside of those areas to have access with concrete trucks, siding, plumbers, electricians, etc. As part of that we try to designate trees that are not only in good condition and will survive and protect them during this construction. With the retaining walls they are not just on ground but in the ground with footings which require excavation

particularly to the ones to the south. The concern we also have is not only the changing of grade with fill but the severance of roots. Which makes this particularly risky to the neighbor is that when the roots are cut on the side of the construction the trees are held up by root attention. The roots are actually pulling on the tree and holding it down. When you cut that side of the roots that tree is no longer being held up by the tension of the root. It hinges to the far side. If you look at the south side by the property line those roots are cut and what that has done is structurally weakened those trees. The only way they can fall is over to the neighboring property.

The peripheral construction is going to cause some soil compaction and soil compaction is detrimental to the trees. One comment was made about a tree being 160 years old. There is an oak in Monroe Twp.which is 360 years old and continues to thrive. As a side note the oldest tree in history is 4,300 years old. So trees can live a long time under the right conditions. With this type of construction, especially with the trees close to the perimeter their life span is shortened and the stability is compromised. Particularly to the back where the large trees are, when I walked back there I noticed the stakes in the ground where the dry well is going. When you look out in the field the picture in this map is not as accurate as I would like it to be. The canopy of the tree or the drip line is well within the area of the drywells. The profile of the drywell is twelve ft. deep that is a significant amount of soil and within the proximity of those trees and a definite impact to those trees. No doubt about it.

Mr. Mills – your conclusion is that the tree impact associated with the retaining wall comes from a) excavation of the footing and b) fill will be added on the inside/outside of the retaining wall which causes direct damage to the roots and the additional soil over the roof also causes a problem.

Mr. Lobalol said anything more than six inches is sufficient to compact the surface and suffocate the roots. The feeder roots need to be 8-10 inches of soil that way the oxygen and carbon dioxide exchange occurs. When you fill that with six inches or more the roots essentially suffocate and die.

Mr. Mills – in part two you have just given an opinion that the construction of the proposed seepage pits will also jeopardize a number of trees. Correct?

Mr. Lobalol said particularly the ones in the back.

Mr. Mills asked, based on 01, can you approximate for the Board the number of trees you might deem to be in potential jeopardy.

Mr. Lobalol said without hesitation I can tell you that all of them will be. The damage to trees sometimes can take five to seven years to show up. When you do not have adequate control in tree preservation management taking place and roots aren't protected and making sure that erosion doesn't occur because soil exposure that turns out to be five to seven years later. By that time when the trees start to die its why do they die? No one goes back and says that happen five to seven years ago but that is the direct result.

Mr. Mills – so essentially, accept for a couple of obvious instances where there is area of intervention by humans all the trees depicted on the conservation plan (01) are in jeopardy.

Mr. Lobalol said that was correct.

Mr. Mills said he had no further questions.

Mr. Vivona said that when they did their site visit one thing I noticed was the amount of dead trees on the property already. Probably twenty percent of the trees there now are dead/dying/falling over. Is any of that accounted for in this in your visit today?

Mr. Lobalol said the dead trees that were lying down have been there for a while, probably from Sandy. In a forest situation it is normal to have what is known as cold trees which die because of being suppressed. The competition for life some of those will not make it and is a natural thing that occurs. Some of those were not quality trees, some were sassafras/locust trees which are kind of volunteer trees and not what we consider climax trees or mature trees.

Mr. Lobalol said the installation of the retaining wall along the one side. The dotted line shown is the retaining wall. Those trees are pretty significant. He noted that roots do not mimic canopies. Roots go their own way. A lot of people believe when you see the top you see the bottom but that is not the case. The root will extend out two to three times where the drip line is. Tap roots will go down and will either hit water, compaction or lack of air. What I am concerned with is the anchor roots which are flares that come right off the trunk and immediately disperses into many more roots and that is the holding power of the tree. Once those are cut the big root is just a circle. Once it rains and gets a little bit of lubrication it can fall over.

Mr. Lobalol : when you can count roots in an excavation zone. First you can try to design the project so it can minimize the effect on trees. You can move the structure over, minimize the driveway, and reconfigure to save some of the trees. If that is not possible then the tree should go. You don't rip roots out with a back hoe. Back hoe goes in and grabs it and tears the roots. Once the roots are threatened that portion of the root will die back up to the trunk. You either cut the root clean so it can regenerate.

Mr. Lobalol : When the excavation begins a certified tree expert should be there to see how much of an impact is done to the roots. Frequently I get called to go look at it and have to guess on how much of the root was cut because of the excavation using a back hoe. A tree expert can look into that trench and can say yes you can do that or no the tree has got to go as there is too much damage.

Mrs. Kenny had a question regarding the tree in the back south corner – how is that impacted in a negative way by the construction?

Mr. Lobalol said that would probably be the most minimal impacted tree because it is out of the way. Where is the soil going from the excavation of the drywell?

Mrs. Kenny asked if John knew that.

Mr. Ruschke said if you look at the fill analysis on the site, sometimes you have to haul material out as they don't have enough … sometimes it's not a basic cut and fill. Sometime

materials come in and sometimes it goes out. He did not recall seeing any cut/fill analysis on this application.

Mrs. Kenny asked if all the trees in the back had the tree fencing around. She thought it was on the notes on the plan.

Mr. Ruschke said what we would require of this application to do is to install super silt fence.

Mrs. Kenny so you are saying that even with the super silt fence installation things beyond that can be negatively impacted by the construction. If there is no soil piling on it, no …

Mr. Lobalol asked if there was any plan where the limit of disturbance is shown.

Mrs. Kenny thought it would be on page one of the lot grading plan. Installation of the super silt fence is shown, etc. (Heavy black line)

Mr. Lobalol asked if the super silt fence was from a soil erosion troll or the preservation ordinance.

Mrs. Kenny thought it was soil erosion. She went on to say she got the retaining wall thing but she didn't see how the trees in the back to the south would be impacted. I've seen it in town, what you are talking about. They will put a house up and the tree will be there and then maybe five years later it will die.

Mr. Lobalol said what his analysis always is what is the long term effect to that tree and then if it is impacted it is removed.

Mr. Hyland asked if Mr. Lobalol was suggesting that all the trees on the south side of the house be removed.

Mr. Lobalol said if the construction was going to go on over there from what he is looking at right now, the prudent thing to do in order to provide lower risk for tree failure would be to either remove that excavation away from the roots or to remove the trees. A lot of the trees shown are on the adjacent property.

Mr. Hyland – they seem to be right down the middle. So what do we do?

Mr. Lobalol said that was up to you. He would recommend to remove that construction away from the tree to preserve them.

Mr. Hyland asked how big the anchor roots were. Do they go to the drip line?

Mr. Lobalol described the anchor roots. He said the further out you go the very fine roots are the feeder roots. Those will have the most impact to the health of the tree but not the stability. If you remove any of those feeder roots and 8-10 inches of soil affects the trees health. Where getting close to the tree affects tree stability.

Mr. Hyland asked how close you could get to the tree anchor roots, where they begin.

Mr. Lobalol said the rule of thumb, which is not scientific at all, is a minimum of fifteen feet based on the diameter of the tree. If you are looking at a 42 inch tree you need to significantly away from that tree in order to protect/preserve it. There is a huge amount of feed roots and a whole root system where you have a smaller tree, like 18 inches, the impact is less. There is no formula that will tell you this type of tree, that size tree, that soil condition, that climate that is how far the roots are.

Ms. Romano asked if there was anything else the applicant could do that to preserve the trees.

Mr. Lobalol said they could minimize grade, eliminate cuts, fill no more than 6 inches, moving excavation away from the roots, that's pretty much it. The trees are where they are and can't be moved.

Mr. Mr. Hyland – going back to this co-owned thing - there is a fifteen ft. tree that is off the front corner of the house that is clearly in the applicant's property but the limbs go into the neighboring property. Can the applicant cut that tree down?

Mr. Lobalol said if the entire above ground part of the tree are entirely on that property then yes.

Mr. Mr. Hyland pointed out that the branches extend into the neighboring property.

Mr. Lobalol said the air space belongs to the neighbor and he is allowed to cut those branches that are a nuisance to him but not the tree.

Mr. Hyland asked if the applicant cut the tree down the neighbor has no say.

Mr. Lobabol agreed.

Mr. Hyland – those trees that are on the property line are joint owned. If the trunk is on one side or the other that one party owns them.

Mr. Lobalol agreed.

Mr. Ruschke said the Township does have a standard practice. We do have an arborist who reviews tree removal permits. He doesn't review all of them as it is a bit selective based on magnitude of the proposed development. This one for him to sign off on the tree removal permits. The Board is asking the applicant to provide a landscape plan so the arborist can review this plan and we can get feedback from him on this plan and also this development plan. His comments on the trees are part of that.

Mrs. Kenny was not sure we had an arborist anymore.

Mr. Ruschke thought it would be possible for the administrator to contact him if needed.

Mr. Vivona asked if there were any other questions. He asked Mrs. DeAngelis if he had any questions.

Mr. DeAngelis said he thought the board had covered all his questions
Mr. Vivona asked if Mr. Simon had any questions.

Mr. Simon asked in Mr. Lobalol's experience in reviewing many many landscaping plans is it your opinion that the limit of disturbance shown on the plan is really contemplating the actual structure's themselves and is not contemplate any disturbance that will take place for any other purposes such as to regrading for a usable grassed back yard.

Mr. Lobalol said it was his impression that if that heavy dashed line is the silt fence or orange fence (which is different) and takes care of erosion and make sure it is indicated where the trees are I would think that would be….

Mr. Simon said that wasn't his question. His question was that beyond the dark dashed lines if you are going to be regrading – considering the slopes on this property – if you are going to be regarding to have a usable back yard on this property you are going to have more disturbance that what is shown on this plan, Correct?

Mr. Lobalol said it would make sense that it might be that way although he did not have….

Mr. Simon – you can't tell- let me put it this way – from what the limits of disturbance shown on this plan is it fair to say that if the developer wanted to create a lawn area in the rear there would have to be more disturbance than what is shown on the dashed lines.

Mr. Lobalol said no doubt.

Mr. Simon asked if there were less building coverage – you are here by the way for the testimony that was confirmed by Mr. Ruschke – that the applicant has in essence maxed out in terms of building coverage. Correct?

Mr. Lobalol – yes.

Mr. Simon asked if there were less building coverage than what is shown on the plan there would be, in your experience, less disturbance.

Mr. Lobalol – yes

Mr. Simon suggested that less disturbance would result in less impact on the tree roots (feeder/anchor).

Mr. Lobalol – yes

Mr. Simon asked, based on your review of this plan, there is no identification or location of trees less than six inches in diameter. Correct?

Mr. Lobalol said that was correct.

Mr. Simon said that you did not know based on looking at this plan if any trees six inches or more in diameter will be lost in the rear just outside the common boundaries to this property.

Mr. Lobalol said he did not know that.

Mr. Simon asked if Mr. Lobalot could guarantee any of the trees just outside of the borders of the property, the mature trees in respect of root systems, will not be adversely affected by the proposed development, especially along the areas that it is shown as disturbance adjacent to the common property lines. Correct?

Mr. Lobalol – yes

Mr. Simon questioned the trees in the rear. Are they evergreen or deciduous?

Mr. Lobalol said they were deciduous trees.

Mr. Simon clarified that they would then lose their leaves in the winter time. Correct?

Mr. Lobalol – yes all winter time.

Mr. Simon then questioned the heights of the trees in the rear that would potentially be lost as a result of the disturbance on this property. Is it fair to say that those heights are not insignificant?

Mr. Lobalol said they are significant.

Mr. Simon questioned the removal of the trees, big or small, six inches or less in diameter as well as other native vegetation will affect the screening of the site to adjacent properties on Fairmount. Correct?

Mr. Lobalol – yes. There is significant small vegetation on the site. There is virtually no bare soil until you get way to the back where it levels out. The canopy is so shaded that nothing else is growing down there. The upper part of the site is vegetated.

Mr. Simon – the site to the west also has healthy trees.

Mr. Lobalol – yes.

Mr. Simon – trees facilitate recharge small erosion flows caused by service waters. Correct?

Mr. Lobalol- they not only slow it down but absorb some water. The key to erosion control is the flushing capabilities that can be provided before it hits the trees and deflect it outside which is why they call it the drip line. When the trees are gone the water directly impacts the soil which causes erosion.

Mr. Simon –that process is particularly effective and necessary in the areas where you have steep slopes greater than 10%. Correct?

Mr. Lobalol said the roots stabilize the slope as well.

Mr. Simon – by maintaining slopes in their existing natural conditions you certainly protect trees and habitat from erosion. Correct?

Mr. Lobalol said there was no doubt.

Mr. Simon said he had nothing further.

Mr. Vivona – to clarify – we don't have a ruling about cutting down trees 6 inches or less.

Mr. Simon said the reason why he asked the question is that it goes to screening. Testimony that was presented earlier in this case, not presented by the applicant in terms of the impact of this proposed development from the neighbors on Fairmount.

Mr. Vivona you also mentioned if they wanted to create a level spot for the lawn down below they would have to apply for additional variances and it is not in his plan right now.

Mr. Simon agreed and gave an explanation for raising the question. It was intended to specifically show that to propose a typical single family dwelling in this area typically many of them have usable lawn area. If the applicant is basically stipulating that they will not have a usable lawn area. He believed that goes to the proofs of the applicant.

Mr. DeAngelis said it was not on the proposal or the plans.

Mr. Hyland questioned the trees in the back of the lot. We went through everything is going to die in five to seven years. Mrs. Kenny said she didn't know how that tree in the back left was going to die because it wouldn't be impacted. Now everything is going to survive. If you have to put a number on the survival culpability of this trees in the back – whether they will be there in ten years or not is the number a big number or a small number? Is it a five percent chance they will die or ninety five percent chances they will die?

Mr. Lobalol said it was a question that cannot be answered.

Mr. Hyland said you could state statistics about the average life of a tree, etc. There are tools and statistics that describe the length of time something will be alive a certain numbers of years from now. What is the number?

Mr. Lobalol said it didn't exist. Look at it this way. These are large Oak trees back there. Now we have a disease that is going through the state. As a disease, there is nothing known, no treatment for it and we do not know its consequences. To have me tell you that the 160 year old oak tree is going to live one hundred years longer is not possible.

Mr. Hyland gave a synopsis of what a life insurance agent could tell him about the probabilities of what could happen in his life time and an average span of his life time. You're a certified arborist, what is the likelihood that these trees are still here ten years from now.

Mr. Lobalol said if they were left undisturbed?

Mr. Hyland said no – if they are disturbed as per this plan.

Mr. Lobalol asked what the degree of disturbance was.

Mr. Hyland said we just said it was none.

Mr. Lobalol said where the dry well is going in that is a disturbance for those large trees.

Mr. Hyland asked to be told what the number was. That's the disturbance and I completely agree. But I don't have a feel for whether that is a big disturbance or a two percent disturbance.

Mr. Lobalol said the larger and older and more mature the tree is the more sensitive it is to those kinds of disturbances. The disturbance in that area to that large tree will have a greater impact than a smaller tree in the same situation. For me to tell you that it has five or ten years is playing God and I can't do that. No one knows that. There are so many factors there, drought, fire, etc.

Mr. Hyland - if there was no disturbance what is the likelihood that those trees would be dead in ten years.

Mr. Lobalol said it was slim. I can't give you a number (percentage). It is not possible, it doesn't exist.

Mrs. Kenny had a question. The front yard is going to be a lawn, Correct?

Mr. DeAngelis said the applicant was going to comply with whatever the recommendations are from the Engineering Department
Mr.Vivona asked Mr. Lobalol if we had someone on site when excavation occurs the likelihood of damaging trees is significantly less. If someone were to be there to direct which root to cut, you have to be this far away – having a qualified professional there would definitely increase the chances for the survival of those trees.

Mr. Lobalol agreed.

Mr. Vivona noted that the handout listed ten new trees going up. With a new landscaping plan he was sure there would be more trees plus natural shrubbery. Even though it looks like approximately twenty to twenty six trees above six inches will be cut down ten are being replaced according to the current plan and he was sure more would be included in the new landscaping plan. It appears the majority of trees are in the driveway and structure and the front yard only had a handful of trees to be removed for a lawn. The majority of trees are on the border of Mr. Haislip's house.

Mrs. Kenny referred to sheet two it says fourteen trees over twelve inches to be removed. She read the description as shown on the plan.

Mr. Vivona said there are a lot of dead trees there and they might just be putting the dead trees that are being removed.

Mrs. Kenny thought the new trees are really a screening.

Mr. Vivona agreed.

Mrs. Kenny asked Mr. Ruschke about getting the equipment around to do the work on the house and things in the back yard.

Mr. Ruschke they will build the foundation first so the deck will not be on the back. They will have some equipment to work around the house. Once the foundation is in they can start with the backhoe and work their way out.

Mrs. Kenny – then the retaining wall goes in after all the equipment…

Mr. Ruschke said what was required as far as lot grading is for them to give us a detail sequence of construction and show us each step of how they will demonstrate the minimizing of the amount of disturbance to the back where possible.

Mrs. Kenny asked for a repetition on rules on if trees are already on the property line owned by both property owners and about taking them down.

Mr. Lobalol said it would require the approval of both property owners. If the tree is dead it should go, no doubt about it. If one wanted to take it down and the other didn't it would probably fall under a code for property maintenance?

Mr. Vivona pointed out that Homeowners' won't cover it if it falls you know its dead.

Mr. Vivona asked if there were any further questions for Mr. Lobalol. None Heard.

Mr. Simon presented Roger DeNiscia, Professional Planner who was sworn and listed his qualifications.

Mr. DeNiscia said he had familiarized himself with this application. He had done some studies and research. He reviewed the application and the zoning as it pertains to the application. He also inspected the site. Mr. Simon asked if Mr. DeNiscia had been on the site.

Mr. DeNiscia said he had.

Mr. Simon asked Mr. DeNiscia to briefly describe the site.

Mr. DeNiscia said he would like to just point out the factors on the site that relate to the proposed and the variances being requested. An important consideration was the size of the site. It is 21,777 sf. and is 125 x 175 sf. It is a rectangular site. From the size/shape it is a normal typical building lot. It is in undeveloped and in its natural state and has been that way for as long as anyone can remember. It does have a regular topography with steep slopes. The street elevation is at 202 ft. and the rear is 175 ft. which is a 27 ft. difference.

It's a slope of 15.4 percent. There are areas on the site with steep slopes in excess of 15% & 20% and those were stipulated and cited on the plans. As testified previously the steeper slopes are in the center of the site. Where the building is going is at the steepest slope. Topographic conditions that are reflected on the site result, in his opinion, severe limitations for development. Anytime there are steep slopes or irregular topography you have a condition. The site characteristics obviously indicate some difficulty that could be encountered in the development to the maximum extent permitted. It is obviously a site that has extreme topographic conditions. You would not necessarily be able to develop it to the full extent. In other words, the conditions on site typically cannot support the same extent of development that you would expect on a regular shaped site. The site is situated in the R3 zone.

Mr. Simon asked if Mr. DeNiscia had an opportunity to familiarize himself with the proposal. He asked if Mr. DeNiscia could tell us about the salient facts of that proposal.

Mr. DeNiscia said he had familiarized himself with the site. The intent of the proposal is to construct a single family home. When the applicant explained that his business model is what he called "Market Driven" and consists of constructing a large home ($2.2-2.4 million dollars) with five bedrooms and high ceilings.

Mr. DeNiscia said the applicant gave the architect design instructions as I just described and the architect, as he explained, was also provided with a boundary survey only which showed the limits of the property. The architect explained that he positioned the building corresponding with the applicants design program on the site. He further explained that what he did was delineated the required setbacks on the boundary survey and then proceeded to place a building that corresponded into the applicants design model on that survey. What that included was the proposed building, a rear deck and a ground level rear patio. Of course there is a driveway from the street which leads to the garages. Then the engineer explained his plan. He explained it in fashion of grading and retaining wall plan to accommodate the architects design. Now, in his opinion, this process especially on a site that has certain physical challenges is much more effective if conducted in reverse. For example, the engineer is giving the survey with the boundaries on it. When the engineer looks at the topography as he should he then devises a grading plan to best utilize the site, to define a building plot that minimizes disturbance to the greatest extent. In this case the primary disturbances are steep slopes. It is likely that such a process is the result of the building plot. That could not necessarily accommodate the applicants' intent.

Mr. Simon asked even if this procedure took place in the usual order?

Mr. DeNiscia said yes. It is quite possible that the engineer might not come up with a building footprint placement that would accommodate what the applicant's business policy required. What did result is a building with a footprint of a little over 2700 sf. with a gross floor area of about 5400 sf. and 2000 sf. of finished basement. In addition to that there would be a 660 sf. deck attached to the rear of the house. Now the building height was original a little over 40 ft. and later scaled down to 38 ft. The applicant and architect also explained that the market conditions call for higher than normal ceiling. It is what people want. It wasn't necessarily any architectural reason or structural reason but because the people purchasing a 2.4 million dollar houses like high ceilings. That is a design consideration. In order to design the model that the applicant brings to the architect the

engineer designs a system of retaining walls into the slopes on the site amounting to 224 lineal feet and with a substantial amount of basement exposed. In his opinion, this proposal represents either the extreme limits or very close to the extreme limits of site development. In his opinion, the applicant has not demonstrated that the site cannot be developed without the same degree of disturbance as proposed. In other words, is it possible for a conforming plan onto the site? When the applicant's planner testified he indicated that any development on this site would result in similar type variance(s) because of where the steep slopes are. There was no basis for that. There was no plan comparably to show how a smaller foot print or smaller building or what kind of variances/impacts would result. Mr. Simon asked if that would be a normal analysis that a planner would engage in.

Mr. DeNiscia thought it could be. It doesn't necessarily have to be but it certainly could be. A site with the physical challenges which this site exhibits it would be reasonable to start in the opposite direction to see what the minimal disturbance/changes to the topography and minimal retaining walls are needed. Then to see what size house it would accommodate and if that is much too small to be acceptable move on from there. We don't have that information. We just have the maximum. Again, that is maximum because the building coverage and building width on the site are maxed out. There is a maximum building width requirement of 70 ft. There is maximum coverage of about 2700 sf. and this is at the maximum. It certainly does represent the maximum development that could occur on this site.

Mr. Simon said he would ask Mr. DeNiscia to discuss a few of the variances

Mr. DeNiscia said there has been disturbance to steep slopes in various categories; there is setback distance from the structure; changes to the existing grade; raising a portion of the lot within 15 ft. of property line; proposed change in the existing grade which raises a portion of the lot within 15 ft. of the property line to an elevation to more than 4 ft. above existing ground level. These were all explained by the engineer and by the applicants' client.

Mr. Simon asked if there was a common thread or driver for some of these variances.

Mr. DeNiscia said in looking at the variances that have been generated it is clear that all the variances except for the height, are due to the size of the proposed building. That is exemplified by the building width, which is up to the maximum. Certainly it's the size of the building that is generating the need for the variances including all the retaining walls. The height variance is due only to market conditions as explained – it's what people want for ceiling height. There is no actual design or a professional reason for this height as I understand it.

Mr. Simon asked if he would find anywhere in the MLUL consideration for that particular issue.

Mr. DeNiscia said market conditions or market demand or what people want in my opinion is of no consequence in reviewing or justification for a variance.

Mr. Simon asked Mr. DeNiscia to discuss the existing neighborhood and how the proposed project will jive with the character.

Mr. DeNiscia said it was important to understand as what was explained by other witnesses that the physical conditions of the area of the sight are very subtle. All of the lot sizes are very similar, about one half acre or a little more. They are not obviously all the same. The character of the houses in the area demonstrates how those peculiar conditions on the hillside have been addressed in the terms of extent and development. In other words what size houses have been built on the lot? In the collected information from the tax assessor the 18 lots that are surrounding that property –

Mr. Simon directed Mr. DeNiscia to exhibit 02 which appears to be an aerial showing the subject property. Having been on the site and to your minds' eye, the subject lot 16 which is a vacant lot between two occupied lots and then your client Mr. Haislip's property where you can see a continuation of some of the heavily wooded conditions.

Mr. DeNiscia said that was correct.

Mr.Simon said the next property seems to be a similar sort. Is that correct?

Mr. DeNiscia – yes.

Mr. Simon said it is showing relative to the subject property a greater number of homes whether or not that constitutes the neighborhood, I can't say, but it's a different scale.

Mr. DeNiscia said that was correct.

Mr. Simon referring to the first table with a foot note at the bottom left 110 (tax assessor source of information) which talks about without a finished basement. Could you review that?

Mr. DeNiscia said that the information indicates that on each of the lots in the studied area, the size of the dwelling, the lot size and the ratio. The average home size 3,180 sf. and median is a little different at 3,164 sf. The lot sizes are shown which range from 16,000 sf. to….(unclear). Also shown is lot 16, the subject property, with a proposed dwelling site of 5,393 sf, lot size is 21,777 sf. and that is on a floor area ratio of 24.7 sf. It we look at the bottom the average is median area in general is 12.7 for the average and 11.8 for ratio for the median. What that indicates is that the proposed house is more than twice the size of the average houses in the area. In other words it doesn't share the same character of these houses which were developed addressing the topography/terrain that exists on the site.

Mr. Simon asked how you know that when they built these houses in the 60's that it wasn't a market factor that drove how big the houses were.

Mr. DeNiscia said to look at the result. The result is the houses were scaled to the site and obviously because all of the sites have extreme topographic conditions the houses were scaled to fit. They are a little bit smaller than the proposed house. The conclusion is that this was considered the best use of the sites even if it was market driven. When you look at the character of the area no matter what the stimulus was this is the extent of houses that have been built. In his opinion, it's entirely due to the topography of the site.

Mr. Hyland asked if it had nothing to do with the fact that 3200 sf houses in the 60's were really big.

Mr. DeNiscia said he did not think so.

Mr. Hyland said his neighborhood has all 2000 sf houses being replaced by 5000 sf houses.

Mr. Borsinger asked if the Master Plan wanted to keep a neighborhood the way you are representing it shouldn't the Master Plan then have a smaller building coverage requirement or more impervious to match the neighborhood.

Mr. DeNiscia said not necessarily. He thought if there is a building coverage requirement, setback requirement, FAR applied it doesn't mean that every site can accommodate the maximum. The point is that these sites cannot necessarily accommodate the maximum because of their visible characteristics. What is being proposed is the maximum and the fact is that this site cannot accommodate that maximum unless there are substantial conditional improvements made in terms of retaining walls. Take away the retaining walls completely and see how large a house could be accommodated on the site. The development on the site is not just the building it's also the retaining walls. The point is the applicant needs to show why these variances that are being created to construct all these insularly structures. What is the reason that this is necessary? In other words is the only house that can be built on this site or is it possible to develop this site and not incur all the variances in terms of grading, retaining walls, etc. Is it possible to construct a reasonable size house? When we look at the zoning ordinance and the requirements that the previous requirements for judging this we will see how this relates.

Mr. Borsinger you are kind of representing this as all being equal. This lot is unique in the fact that it is undeveloped. You would anticipate more disturbances. If you are looking a house that is already developed, the building platform is there, then tear down rebuild and looking at these and they are going to require a steep slope variances on all these other houses/lots if they are torn down and rebuilt. The will fall under the same criteria. If you have a teardown/rebuild are you saying that they should not be enlarged because it is uncharacteristic of the neighborhood?
Mr. DeNiscia said not at all. What I am saying is that the applicant is portraying this proposal as being a suitable on this site. The applicant has not shown that other size houses would reduce the variances that are being requested. He felt the applicant has an obligation to do that. When the applicant's planner testified that a smaller house would have the result of the same variances he had no foundation for that. Had he shown a plan that said well look here is a smaller house and it's exactly the same variances so what we propose is no different? That would be one thing but that was not done. So what we are led to believe is this is the only development that can occur on the site. All the variance has to be granted no matter what. In his opinion that is not the case. To demonstrate this we are looking at the developing on the surrounding properties and none are the extreme case so it's obvious that certainly a smaller house can be built. If these are all 5000 sf houses one would say gee there must be a reason why we have to build a 5000 sf house. That is the point.

Mr. Vivona said the house right across the street is 4900 sf.

Mr. DeNiscia said some of them are larger.

Mr. Vivona listed the square footage of several homes in the area. These are not all small houses. There are several smaller ones that bring the average down.

Mr. DeNiscia asked if the topography was similar across the street.

Mr. DeNiscia said each lot is separate but when looking at the USGS topo map shows this whole area of hillside was sloped. As development occurred it changes slightly from lot to lot. This is what is left as it wasn't part of the overall subdivision. It has become unique. It has the same physical characteristics of all of the other lots.

Mr. Vivona asked if this was not part of the same subdivision.

Mr. DeNiscia said it was but was never developed.

Mr. Vivona referred to the house on Fairmount that adjoins it to the rear….

Mr. DeNiscia said the zoning ordinance does address the proofs for the burden of the applicant for granting the variances. However he was not necessarily sure that it is valid at this point because at one part in looking at it, it shows the provisions and in another part it notes that it was delete. He was not sure what the case is but it doesn't provide an excellent way to judge this kind of a variance. Without the steep slope provision of the ordinance it says "steep slope limits" – for steep slopes any disturbance shall be prohibited except as provided to prevent extraordinary hardship. Provided the hardship is not created by the property owner; that would not permit a minimum economically viable use of the property based on reasonable investment. What that is saying is try a small house first and go from the smaller houses and not start with the maximum as this is the only thing that can be built. The applicant indicated that very honestly – he didn't say this is the only house that could be built but this is what he wanted to build. He was in the business of building 5000 sf houses worth 2.4 million dollars. Steep slopes as permitted in the ordinance are saying start the other way and prove to the Board that this is the only house that can be feasibly constructed on this site. In his opinion, the applicant has the burden to show that a conforming plan or a plan that does not require the same extent of variances as requested cannot be developed on this site. To me, the applicant has not shown that in any of the plans or any of the testimony that anything else can be built on the site.

In Chatham Township it is part of the zoning ordinance and you can see how it evolved if all of this consideration and pains taking attention paid into steep slopes and other considerations finally accumulating in the steep slope ordinance which specifically provides the board with a means, a way to judge whether or not there is a hardship or another reason to grant the variances. What this says is the Board should look at minimal viable plan. That was not done in this application. What was started was the maximum viable plan because the applicants' business model and he was very honest in portraying it. The problem is his business model does not provide any benefits in the land use law or for the community unless it can be shown that these are the minimal variances.

Mr. Simon asked if applying a C1 variance for hardship or C2 for benefits out weighing the detriments – you do not find the applicant has done this.

Mr. DeNiscia said he did not because when the planner described the C2 he was really describing a C1 because he said that no matter what you do you need the same variances. He did not show any engineering plans or architectural plans or any kind of a plan that would demonstrate this. How are we to know that a smaller building would not result in less variances and less impact on the slope and the surrounding impact considering the fact that the Master Plan has put so much effort in making this a very critical issue? Also, by incorporating it to the zoning ordinance and not including it in the subdivision ordinance as designed…….

Mr. Simon asked if it was part of any application to demonstrate that this could be granted without substantial detriment to the Zone Plan is that correct.

Mr. DeNiscia – yes

Mr. Simon asked if Mr. DeNiscia had heard sufficient proof in that regard.

Mr. DeNiscia said he had not.
Mr. Simon had no further questions.

Mr. Vivona asked for questions from the Board.

Mr. Weston noted the houses were built in the 60's and the houses on Fairmount were built shortly after the second world war. Some were built in 1946. There was no Sunset Drive only Fairmount. People bought the lots down there to buy the backup lot to be on Sunset if it were built. This lot was never built on because of the topography.

Mrs. Kenny felt that we know more now about disturbing the steep slopes.

Mr. Vivona asked Mr. Simon if he has any questions.

Mr. Simon asked Mr. DeNiscia if there was any exceptional or extraordinary situation uniquely affecting the land as compared to the land of the surrounding properties.

Mr. DeNiscia said the only feature that distinguishes which makes it unique and it is undeveloped.

Mr. Simon you said it was undeveloped. Under the MLUL does that fact that one property is developed and one property is undeveloped – does the undeveloped property under MLUL and common law that interprets it render that property unique as a matter of law?

Mr. DeNiscia – no

Mr. Simon – so putting that aside for a moment is there anything – you have steep slopes throughout this neighborhood – is there anything that is unique about this particular property that distinguishes it from the properties in the neighborhood.

Mr. DeNiscia – no

Mr. Simon Isn't it true, based on your review of the application/plans develop this property with a single family residence house with a smaller footprint that would in turn steep slopes on the property to a lesser degree than what is now proposed.

Mr. DeNiscia thought it was possible but I cannot have to make that opinion now because in order to do that you would have to show how the site could be developed. It seems to me that it is likely that a smaller footprint could result in a lesser number of variances. You don't know that until you have some plan or document that will illustrate that.

Mr. Simon asked if it didn't follow if you didn't max out the building coverage and shrunk the building so that the deviations from the items of the ordinance that require variance relief would need to be so great.

Mr. DeNiscia said he would expect that to be the case and listed variances being requested as part of this application including not only steep slope variances but also the setbacks; retaining walls; the proposed change in the grade in two locations.

Mr. Simon had no further questions.

Mr. Vivona said this would be continued to the December 10 meeting.

Mr. DeAngelis asked to confirm that there would be a quorum present. Confirmed.

Meeting Adjourned
Respectfully submitted:

Mary Ann Fasano
Transcribing Secretary