

**Tenaflly Board of Adjustment
Regular Meeting
March 6, 2023 7:30 pm
MINUTES**

OPEN PUBLIC MEETINGS ACT STATEMENT:

Chairperson Kominsky read the Open Public Meetings Act Statement:

“In accordance with the provisions of the Open Public Meetings Act P.L. 1975, chapter 231, adequate notice has been made of this meeting by sending the same to The Record and The Star Ledger. Posting said notice on the public bulletin board in the lobby of the Municipal Center, posted to the Municipal Web-Site, and filing said notice with the Tenaflly Municipal Clerk, all which occurred within 10 days for the calendar year of 2023. Additionally, Amended and Restated Notice of Annual Meetings of the Zoning Board of Adjustment notice has been made of this meeting by sending the same to The Record and The Star Ledger. Posting said notice on the public bulletin board in the lobby of the Municipal Center, posted to the Municipal Web-Site, and filing said notice with the Tenaflly Municipal Clerk, all which occurred on December 23, 2022.”

ROLL CALL:

Present: Mr. Cho, Mr. Cytryn, Mr. Friedman, Mr. Lieberman, Mr. Rustin, Mr. Kominsky

Absent: Mr. Brensilber, Mr. Callahan, Ms. Toro

Also Present: Mr. Menon, Mr. Zenn, Ms. Peterson, Mr. Hals, Mr. Madaio, Mr. McClellan, Ms. Lerner-Lam, Mr. Spatz, Mr. Wu, Ms. Silverman, Mr. Teo, Ms. Mednick, Ms. Vilenski, Mr. Toltsis, Ms. Toltsis, Mr. Cuevas, Mr. Goldman

APPROVAL OF MINUTES:

January 9, 2023

A motion was made by Mr. Friedman and seconded by Mr. Lieberman to approve the minutes for January 9, 2023. A voice vote carried the motion. All were in favor; none were opposed.

February 6, 2023

A motion was made by Mr. Cho and seconded by Mr. Friedman to approve the minutes for February 6, 2023. A voice vote carried the motion. All were in favor; none were opposed.

REQUEST FOR EXTENSION:

Myron & Irina Toltis, 8 Lindley Ave. (ZB-2022-04)

Letter requesting an extension of approval to construct a second floor addition to the dwelling and widening the first floor to create an attached garage. Approved on 4/4/2022.

Mr. Toltis stated that he is requesting an extension due to the fact that they were waiting for construction documents. It also took them some time to decide on a contractor and by the time they did winter had arrived, so they decided to postpone the start of construction. Now that they are ready to proceed they realized that they need an extension.

Mr. Cytryn motioned to approve a one year extension. Mr. Friedman seconded the motion. A voice vote carried the motion. All were in favor; none were opposed.

UNFINISHED BUSINESS:

Fabrizio Rotati, 109 Windsor Road (ZB-2022-15)

Second story addition for closet and study over existing one story portion of home. 15' side yard required – 9.8' proposed and existing; 27' combined side yard required – 22.6' proposed and existing.

A motion was made by Mr. Friedman and seconded by Mr. Cho to approve the resolution for dismissal without prejudice.

In Favor	Opposed
Mr. Friedman	
Mr. Cho	
Mr. Lieberman	
Mr. Kominsky	

Roll Call Vote: Motion approved, 4-0

Robert & Tara Schwartz, 89 Depeyster Avenue (ZB-2023-1)

Install adjustable pergola. 22.5% FAR permitted – 25.5% proposed. (Received 10/26/2022 decision by 02/15/2023)

A motion was made by Mr. Friedman and seconded by Mr. Cho to approve the resolution with the condition that the language regarding the addition of a seepage pit be removed.

In Favor	Opposed
Mr. Friedman	
Mr. Cho	
Mr. Cytryn	
Mr. Kominsky	

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Roll Call Vote: Motion approved, 4-0

44 Norman Place LLC, 44 Norman Place (ZB-2023-3)

New construction of a new single family dwelling and in-ground pool. The proposed construction will require the following variance as noted in the Bulk Schedule provided by Lantelme, Kurens & Associates dated 10/10/22 and any other variances discovered during the technical review process by the Board Engineer. *(Received 12/07/2022 decision by 05/10/2023)*

Following the request by the applicant, the application was split up into two separate votes. One for the proposed dwelling, which was approved and one for the proposed pool, which was denied. The resolution reflects those votes.

A motion was made by Mr. Friedman and seconded by Mr. Cho to approve the resolution.

In Favor	Opposed
Mr. Friedman	
Mr. Cho	
Mr. Lieberman	
Mr. Kominsky	

Roll Call Vote: Motion approved, 4-0

Manuel Gomez, 71 Hillside Ave (ZB-2023-4)

Change the use from one family to a two family home. Two family dwelling not permitted in R-9 zone district. Variance required to be obtained from the Board of Adjustment. Tax Assessor's record indicates one family dwelling. *(Received 11/09/2022 decision by 04/21/2023)*

A motion was made by Mr. Cho to approve the resolution and seconded by Mr. Lieberman.

In Favor	Opposed
Mr. Cho	
Mr. Lieberman	

Roll Call Vote: Motion approved, 2-0

NEW BUSINESS:

Noa Vilenski, 239 Devon (ZB-2023-05)

In-ground pool, patio and wall. The proposed construction will require variance relief from section 35-816.4 for disturbance in the steep sloped areas. *(Received 12/08/2022 decision by April 8, 2023)*

Mr. Madaio, the lawyer for the applicant, stated that the applicant is seeking variance relief for slope disturbance. The original proposal is for disturbing 950 sq. ft. of slope that is over 25%, where 0% is permitted. They are also a 4' and 5' retaining wall where only 3' is permitted.

Mr. McClellan was sworn in as an expert in the field of civil engineering. He presented a revised pool plan which was dated February 16, 2023. He stated that the lot has steep slopes, the majority of the slope is running north to south on the property.

The existing slopes that exceed 25% are shown on the plans by a light blue cross hatching and the area where the pool is being proposed has slopes between 15 to 25%. The code allows for a disturbance amount of .15 times the total lot area or 6,016 sq. feet, where 5,978 sq. feet is being proposed. The revised plan moves the pool closer to the house and uses two tier retaining wall system. With the revised proposal the slope disturbance has been reduced from the original plans. The changes were based on the suggestions of the Board Engineer, Mr. Hals.

Mr. Hals, in his review letter, suggested moving the pool closer to the house and also further north. They chose not to move it further north because of three big trees that they wanted to save. Mr. McClellan stated he also took Mr. Hals suggestion to change the plans from a three tier three foot high retaining wall system, to a two tier retaining wall system where one retaining wall would be 4' and the other 5'. This requires an additional variance for the wall height as only 3' is allowed. By eliminating the three tier 3' retaining wall system and going with the higher retaining wall that is two tiered, the disturbance to the south side of the property has been limited.

Mr. McClellan showed on the plans where the 4' and 5' walls will be placed and stated that the 5' wall will not be 5' the entire time. It will start off as a 3' wall and will eventually reach the height of 5' and will continue as 5' until the slope of the lot allows it to continue back to a 3' height. He stated that because of the topography of the lot there is no other place to put the pool that would not require variance relief.

Mr. Kominsky asked if the 5' retaining wall was necessary from an engineering perspective.

Mr. McClellan replied that a 5' wall would allow them to disturb less of a sloped area. The original proposal was for a three tiered 3' wall system. This means that there would have to be a 6' space between each tiered section of wall. With the revised proposal of a 4' and 5' wall they are able to reduce the amount of area that will need to be disturbed. So in order to not disturb more of the slope it does become an engineering necessity.

Mr. Madaio asked if there were any detriments to the neighbors by altering the slopes. Will it cause water runoff to go onto neighboring properties?

Mr. McClellan replied the area is mostly lawn. They are not proposing to remove any trees in the area. The area by the pool will be flattened out with the installation of the pool and the retaining walls, so the runoff will not have the same velocity as it did before. They are also proposing an infiltration trench that will run along the back side of the retaining wall that will empty into a seepage pit. The amount of water coming off the site will be reduced.

Questions from the Board for Mr. McClellan:

Mr. Rustin asked what was being done to protect the trees during the construction of the pool.

Mr. McClellan stated Tenafly has its own tree protection detail. The saving of the trees is very important to the client and proper measures will be taken to protect them.

Mr. Rustin asked if there was anything that will visually protect the house on the south from having to look at a 5' retaining wall.

Mr. McClellan replied that his plan does not show landscaping. He is not sure what type of planting is going in that area but he does know that landscaping will be done once the project is completed.

Mr. Rustin suggested that some type of planting be included as a condition of approval, so the retaining wall does not visually impact the neighbor.

Mr. Madaio stated the applicant would agree to the plantings as a condition of approval.

Mr. Lieberman questioned why they are now proposing to go higher with the retaining walls creating a need for a variance when at first they proposed a three tier 3' high wall system.

Mr. McClellan stated that with the original proposal the disturbed area would have been larger because there would have been three walls with six feet in between each wall. The wall would have stopped closer to the property line on the south. With the new proposal instead of having a wall then a six foot space another wall and another six foot space finishing with another wall; there will just be a wall, a ten foot space and another wall.

Mr. Madaio clarified by stating that the height of the walls have been increased slightly creating the need for a height variance, but the tradeoff is that it alleviates all of the slope variance between 15 and 25%.

Mr. Lieberman asked what the cons are for having a taller wall. He questioned if there is more of a potential for the wall not holding up over the years. He also questioned why there is a 3' maximum height requirement.

Mr. Madaio replied that there is a 3' maximum height requirement set by the town but you can seek a variance for it when the benefits outweigh the detriments. He believes that if two walls could be built slightly higher than permitted rather than three walls with significant slope disturbances it would appear that a variance for the wall heights is justified.

Mr. Rustin asked what the distance is between the retaining wall and the southern property line. He also questioned whose property the sewer easement is on.

Mr. McClellan answered the retaining wall is 14' from the property line and that the sewer easement is split between the two properties with each property having 7.5'

Mr. Rustin asked how that easement can be accessed.

Mr. McClellan stated that he believe there is a cul-de-sac at the rear of the property that access can be gained from.

Questions from the public for Mr. McClellan:

Mr. Cuevas of Suffolk Lane questioned if the height of the proposed retaining wall have an impact on the flow of water on the street below.

Mr. McClellan stated that right now there are berms and a swale. As it exists now, when it rains the water runs down the steep slope of the property to the swale. The proposal will flatten out the area by the pool, which will slow the flow of the water. The pool will also collect some of the rain water. There is also going to be an infiltration trench that will catch the rest of the water. There is a one thousand gallon seepage pit at the rear southerly side of the property that will collect the water from the trench. Once the project is finished there will be less water going into the street. The swale is not going to be disturbed, so any water that does not utilize the infiltration trench will be utilized by the swale.

Ms. Lerner-Lam questioned if there is an approved soil erosion and sediment control plan.

Mr. McClellan stated that there is one for the construction of the house but not one for the pool yet as the pool has to be approved by the Board first.

Ms. Lerner-Lam questioned if the Bergen County Soil Erosion Committee will be monitoring the soil movement during the construction of the pool.

Mr. McClellan stated that he is not sure if they are able to visit each job site, but the committee does monitor it.

Mr. Hals was sworn in as the Board Engineer. He stated the first proposal for the application he received affected a much larger area in the rear of the yard and also affected the trees along the rear of the property. It had a greater impact on grading and a greater impact on the neighbor's properties to the south and on Suffolk Lane. He suggested to the applicant to move the pool closer to the house and possibly move it a little more north. This would reduce the impact of disturbing the slopes which are between 15 - 25 %.

He stated that even by moving the pool you would still have to disturb the slopes if you didn't ask for the retaining wall height variance. He went on to state that part of the Borough code requires that there is a landscape plan for the area between the tiers of the retaining walls. The landscape plan needs to be approved by the Board Engineer or the Borough Engineer, whichever one reviews the plan.

He went on to explain there are two agencies that review the soil erosion on site on a regular basis. The Borough Engineer goes out and makes an inspection and also the Bergen County Soil Conservation also will make inspections. The County's inspections are fewer than the Borough's inspections.

Mr. Hals summed it up by stating the applicant is proposing to minimize the steep slope area, reduce the run off and eliminate the removal of trees, and has increased the space of the wall from the southern property line from about 8' to 14'. They are also preserving the existing water flow.

Questions from the Board for Mr. Hals:

Mr. Rustin asked if he was satisfied with the new proposed location of the pool. He also asked if the proposal will create problems with access to the sewer easement.

Mr. Hals replied that from what was presented tonight he believes the applicant has made an attempt to meet his suggestions. He stated that the next door neighbor has a fence on the property line and he sees nothing on the proposal that should cause any issues with the sewer easement. He stated that the applicant will need to put up a fence because of the pool. He suggested that the fence be placed along the edge of the easement and not along the edge of the property line.

Questions for Mr. Hals from the public: None

Comments from the Public:

Ms. Lerner-Lam of 221 Devon Rd was sworn in by Mr. Zenn. She is concerned about the soil movement during construction and the amount of soil that is going to have to be moved to create a pool. She is concerned on where all the soil is going to go.

Mr. Cuevas of 27 Suffolk Lane was sworn in by Mr. Zenn. He is concerned because there has been a lot of construction projects on his Cul-de-sac within the past year. This was the last area in town that had a wooded area and now it has been decimated. He is afraid that when a big storm comes the houses on Suffolk Lane will get flooded because of all the new construction in the area and the removal of trees.

Motion by Mr. Rustin and seconded by Mr. Cytryn to move to Executive Session.

Mr. Friedman feels the pool isn't the question it is more about the slopes and retaining walls. He feels both have been adequately addressed.

Mr. Rustin feels the buyer bought the property knowing about the steep slopes. He does have concerns regarding the amount of soil being moved, but feels that this is a good application.

Mr. Kominsky is in agreement. He wanted to let the neighbors know the Board is very conscientious of soil movement, the digging of pools and the use of pools when they encroach, but feels that the pool is not the issue here. It is not encroaching on anyone. The issue is the steep slopes and the retaining walls. He is in favor of the application.

Mr. Lieberman stated what he heard was there is going to be a reduction in water runoff based on the proposal, which should improve the situation.

Mr. Zenn stated there are three conditions for the approval of the application. 1. Landscaping needs to be added to the south side of the property by the retaining walls subject to the engineer's approval. 2. There needs to be a notation on the plan that the three trees are to be preserved. 3. In the event that the Borough needs access to the easement, the property owner will remove the fence at their own expense.

Mr. Madaio agreed to all the conditions.

Motion by Mr. Cytryn and seconded by Mr. Rustin to approve the application with the above mentioned three conditions.

In Favor	Opposed
Mr. Cytryn	
Mr. Rustin	
Mr. Cho	
Mr. Friedman	
Mr. Lieberman	
Mr. Kominsky	

Roll Call Vote: Motion approved 6-0

Xiao Jing Li, 15 Ravine Road (ZB-2023-6)

Construct a new single family dwelling with a front loading 2-car garage. FAR proposed 31.3%, where 30% is permitted. Proposed 3 stories and a height of 27.0' where 2 ½ stories and 30' are permitted. Proposed 9.5' retaining wall where maximum 3' is permitted. Proposed driveway with a slope of 15%. The proposed driveway and lot grading will disturb slopes greater than 25% where no disturbance is permitted.

Mr. Teo explained that he is not related to the homeowner, but is working with the architect on behalf of the homeowner. He stated that they are seeking relief for FAR, steep slope, building height and retaining wall height.

Mr. Wu was sworn in by Mr. Zenn as an expert in the field of architecture. He explained that the lot is very narrow and has steep slopes. The original dwelling has a garage at road level. You need to park there and then walk up many steps to get to the house, which is located at the top of the hill. He is proposing a plan that will connect the garage with the house.

Mr. Wu shared a drawing of a cross section of the proposed dwelling including the garage. This was marked as exhibit 1. He explained that the homeowner will be able to gain access to the home through the garage either by stairs or by elevator. He explained that there will be a basement in the rear of the house with a few steps up to a living room in the front of the house. The living room will be two stories in height. Over the basement area in the back of the house will be the main living area. There will be one more level on top of that area. He then presented the plans he submitted to the Board showing the height elevations.

Questions for Mr. Wu from the Board.

Mr. Cytryn asked if he could be shown where the story variance was.

Mr. Wu stated that the story variance is needed because of the grade of the property, which causes the basement to be counted as a story.

Mr. Rustin questioned why this is considered a three story house when it appears to be a four story house.

Mr. Hals was sworn in as the Board Engineer. He explained that looking at the dwelling from Ravine Road, the house has the appearance of being four stories because of the garage underneath. He stated that the garage level does not meet the definition of a story, it meets the definition of a cellar.

Mr. Cho asked if the overall height of the dwelling is still in compliance.

Mr. Hals answered yes, because the overall height is measured from grade.

Mr. Cho asked if there were similar homes on Ravine Rd that also have the appearance of a four story look.

Mr. Hals replied no. He stated that the front of the existing house is 27' above Ravine Rd. There is a detached garage in the front and then there are a lot of stairs to get up to the level of the house.

Mr. Friedman asked if it was correct to say that even though the house appears to be three or four stories from the front, the back of the house is only two stories.

Mr. Wu replied that was correct.

Mr. Friedman questioned why they need a variance for FAR when the home is being built as new construction. He asked why they couldn't draw a plan that complied with the FAR.

Mr. Wu state the reason they are over the FAR is because of the balcony in the living room. He explained the client is a musician and she sometimes holds concerts in her living room. The balcony will be for her guests to enjoy the music.

Mr. Friedman asked if there was anywhere else they could have cut back on the FAR.

Mr. Wu stated he talked to the client and she can't sacrifice any of the other areas of the house because those areas are not big.

Mr. Friedman asked how many square feet the house is.

Mr. Wu stated the house is 2,500 Sq. Ft. and that does not include the balcony area but it does include the garage.

Mr. Hals stated the garage is not counted in the FAR.

Questions for Mr. Wu from the public:

Mr. Goldman questioned if the sunken patio, which allows egress from the basement, could allow for the basement to be turned into a legal bedroom which would then increase the FAR.

Mr. Wu replied that the basement should not be part of the FAR.

Ms. Silverman asked if the neighbor to on the right will have to look at a wall because of the height of the proposed retaining wall.

Mr. Wu replied the retaining wall will be below grade.

Mr. McClellan was sworn in as an expert in the field of civil engineering. He answered questions that the public had regarding drainage. He stated that the house is small and the one seepage pit more than exceeds the capacity required. The current house does not have a drainage system. The proposed seepage pit will benefit the drainage for the property. He stated he looked at the site plans and will add a swale to the left side of the property to make sure no water goes onto Lot 11.

He stated the property is in the R-10 zone. The lot is very narrow, it is only 56'. The existing house is non-conforming in side yard and rear yard setbacks. The removal of the existing house will remove all the existing non-conformities.

Mr. McClellan explained they are proposing to build a new house that will be conforming in both rear and side yard setbacks. The new house will extend further to the street in the front. The proposed driveway is fairly steep at the max slope of 15%. That is how the garage elevation is established. The garage contour line is at 107.5. They can't go any higher than this because of the steepness of the driveway. The existing contour in that area is 116. To make up the difference of 8' they are proposing 4' retaining walls, where 3' is permitted.

There is also a steep slope variance of 25% where 0% is permitted. They are proposing to disturb 2,074 Sq. Ft. of slope. The slope is between the existing house and Ravine Rd. It currently has steps running through it as well as a garage embedded into it. He doesn't see any impact as far as disturbing the slope environmentally.

The rear sunken patio on the right side will require 9.5' high retaining walls, where 3' is permitted. The basement elevation is 114.8 and the grade just outside, at the back corner of the house is 124.3, which is the reason the wall needs to be so tall. The sunken patio will have stairs that lead to the rear yard.

Questions for Mr. McClellan from the Board:

Mr. Cytryn questioned if the room that opens into the sunken patio should be included in the FAR. Mr. McClellan stated he is not qualified to answer that question.

Mr. Cytryn asked if there is a code for how far a seepage pit needs to be from the property line, and wonders if there is any risk of the neighbors basement flooding.

Mr. McClellan replied they like to stay at least 10' from the house and property line. He stated that after reviewing his plans he will revise them to move the seepage pit 10' from the property line of lot 11.

Mr. Cho questioned if the sunken patio is there because of code or if it is more for the convenience of the homeowner for access in and out of the basement.

Mr. McClellan replied he believes it is for architectural convenience. He stated that a simple window well would be enough to bring it up to code. That would still require a variance for retaining wall height but it would be for a height that is less than the 9.5' being asked for.

Questions for Mr. McClellan from the public:

Mr. Goldman question where all the runoff that used to soak into the ground between the existing house and garage will go now that a house will be covering that land.

Mr. McClellan responded that when it rains the ground does soak up a certain amount of the water, but once the ground is saturated the water will start to runoff the grass as well. With the way they are proposing the seepage pit none of the water is going to leave the site. All run off will be retained by the seepage pit.

Mr. Kominsky asked if there will be two conditions to the plan. 1.) Putting in a swale between the subject property and lot 11 and 2.) Moving the seepage pit 10' off the property line.

Ms. Silverman questioned if when the retaining wall is built if the tree's roots, near the wall, will need to be cut destabilizing the tree. She questions what is being done to make sure the 20' pine tree near the eastern most retaining wall will not fall on her house or anyone else's house.

Mr. McClellan stated he does not know the radius of the root system of the pine tree. If the construction of the retaining wall will interfere with the roots of the tree then they may have to move the location of the wall.

Mr. Rustin recused himself at 10:15 pm, as he realized that his son has been noticed on this application.

Mr. Friedman pointed out that there is a D variance that needs a super majority vote and there are only five members present to vote.

Mr. Kominsky asked Mr. Teo if he would like to continue with the hearing or have it postponed so more board members can be present.

Mr. Teo stated the hearing can continue.

Mr. Spatz was sworn in as a professional planner.

Mr. Kominsky asked Mr. Spatz to explain the number of stories of the house.

Mr. Spatz explained that the town ordinance defines what counts as a story in terms of height limitations and the ordinance is defining this house as a three story, even though it appears to be four stories in height. The fourth story is recessed from the front of the house so from Ravine Rd it still appears to be a three story building.

Mr. Kominsky questioned if the indoor balcony in the living room is calculated in the FAR.

Mr. Spatz replied he believes it would be included in the FAR and the 31.3% calculation is correct.

Mr. Spatz presented four photos which was marked as exhibit A2. The exhibit showed the existing house and the neighboring houses to the left and right and across the street.

He stated that as far as the D variance goes he feels the property can withstand the slightly larger dwelling. The proposal is exceeding the FAR allowance by 110', which is a relatively small amount. The proposed balcony in the living room is what is putting the proposal over the limitation. In terms of impact from the space, it is meant to be used for gatherings and does not add to the intensity of the use of the building.

Mr. Spatz stated the proposed dwelling fits better into the neighborhood than what is currently there and that the design is more consistent to the newer homes in the neighborhood. He feels the topographic challenges have been described accurately, and given the steep slope of the property it is difficult to construct a home where the slopes would not be disturbed.

He feels the 9.5' retaining wall will have no impact on the neighbors as it is below grade.

Questions for Mr. Spatz from the Board.

Mr. Kominsky asked if the applicant is willing to jeopardize the application and keep the balcony in the proposal, knowing that a super majority vote is needed and there are only five Board members voting.

Mr. Spatz stated he can't speak for the applicant but he would suggest that if the balcony is going to cause the denial of the application, then it might not be worth having.

Questions for Mr. Spatz from the public: None

Mr. Hals was sworn in as the Board Engineer. He stated that almost anything that is done on this property is going to disturb the 25% slope.

He stated that the need for a 9.5' retaining wall could be eliminated if they removed the sunken patio and just put a staircase from the basement to the yard.

Questions from the Board for Mr. Hals: None

Questions from the public for Mr. Hals: None

Mr. Wu asked the Board if he could have a few minutes to discuss with his client, the possible removal of the balcony from the proposal.

The meeting was adjourned at 10:40 so the Architect and client could discuss the plans.

The meeting was called back in session at 10:50.

Mr. Wu stated that the homeowner is willing to remove the balcony from the plans.

Comments from the public.

Mr. Goldman, of 11 Ravine Road, was sworn in. He hopes that there is some assurance that care will be taken near his property, with the heavy construction equipment, during construction. He also voiced concerns with preserving the character of the neighborhood.

Motion by Mr. Cytryn and seconded by Mr. Cho to move to executive session. A voice vote carried the motion. All voted in favor; none were opposed.

Mr. Cytryn was impressed by the cleverness of the insight and design. He does have concerns about the character of the neighborhood.

Mr. Cho appreciated the effort that was made to work with the topography. He has an issue with the sunken patio and 9.5' retaining wall. He feels they need to stick with code and get rid of that variance.

Mr. Friedman feels taking out the sunken patio and leaving a staircase to alleviate the retaining wall is a good idea. He feels it is almost impossible to stay within code for story height because of the slopes of the property. He stated he doesn't feel there are many options.

Mr. Kominsky stated he feels the water runoff has been addressed. He is pleased that the applicant decided to remove the performance balcony, eliminating the FAR.

Motion by Mr. Cho and seconded by Mr. Friedman to approve the proposed dwelling with the following conditions: 1. The removal of the sunken patio and 9.5' retaining wall from the plans. 2. The elimination of the performance balcony, which the applicant has already agreed to. 3. Moving the seepage pit 10' off the property line. 4. The addition of a swale to direct the water.

In Favor	Opposed
Mr. Cho	
Mr. Friedman	
Mr. Cytryn	
Mr. Lieberman	
Mr. Kominsky	

Roll Call Vote: Motion approved 5-0

ADJOURNMENT:

Motion made by Mr. Friedman and seconded by Mr. Cho to adjourn the meeting. A voice vote carried the motion, and the meeting adjourned at 11:11pm.

Respectfully submitted,

Sharon Peterson

Board Secretary