



basement foundation was set above the high water table which is now even higher than it was a year ago due to recent significant rains and the fact that the property backs up to Upper Lake which has no discharge point. Options were reviewed and the most logical solution was to raise the house by 2 feet which caused the height variance. Ms. Tiberi recommended lowering the rear of the property.

Mr. Toronto made a motion to open the public portion of the meeting for questions of Mr. Palus only, seconded by Mr. Messaros, all ayes. No one from the public came forward and Mr. Badenhause made a motion to close the public portion of the meeting, seconded by Mrs. Gerber, all ayes.

There was no further testimony or questions by the Board. Mrs. Gerber made a motion to open the public portion of the meeting for comments, seconded by Mr. Messaros, all ayes. Ed Farrell, 1032 Dogwood Trail, referred to the level of Upper Lake and said that 50% of his rear property has been taken over by the lake. Putting more water in the lake will exacerbate the problem for all residents around the lake and Mr. Farrell suggested that the properties be condemned for fair market value. Mr. Farrell stated that building standards relative to runoff has created an impossible situation.

Robert Gatti, 1024 Dogwood Trail, agreed that there is a serious issue with the lake but he said that this condition is not due to excessive rains. The lake has been overflowing for the last 8 or 9 years and regularly overflows onto the properties. Mr. Gatti said that the reasons for this condition are dying trees and the fact that when Lower Lake was dredged, the overflow access was allowed to be blocked. This problem needs to be addressed and neighbors intend to pursue their options because the Upper Lake is 2 feet higher than Lower Lake.

Joyce Maerz, 1036 Dogwood Trail, said she has lived at this address for the past 50 years and for the last 10 years since the dam was created, the rear of her property has become swamp land. Nancy Rosemand, 1059 Dogwood Trail, said she lives on the other side of the street and verified that there is an easement on her property containing a pipe that brings runoff from Mulberry, as well as areas above her property, into the lake.

Joseph Fabio, 1016 Dogwood Trail, said that Upper Lake is a problem and that many of the trees in his backyard are submerged in water and are dead. Mr. DiFlora said that while the Board is sympathetic to the conditions described by the neighbors, they should meet with the Borough Engineer and bring this to the attention of the Mayor and Council. Mr. Toronto made a motion to close the public portion of the meeting, seconded by Mr. Messaros, all ayes.

Mr. Davies summarized the conditions of approval:

1. The grade around the foundation of the house is to be raised 2 feet along with the entire house because the water table is 2 feet higher than expected.
2. The play area may not be impervious coverage.
3. The plans will be amended to clearly show the last revision date accurately as July 19, 2011.
4. The fence may be 50% or less opaque and no more than 5 feet high.
5. The plans should be amended to indicate that there will be four garages.

Mr. Toronto made a motion to approve the application based on the above conditions, seconded by Mr. Badenhause.

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Badenhause, Mr. Toronto, Ms. Schoenberg

Nays: Mr. Messaros

Cal.#2011-14 Application for Asani, 826 Sussex Road, Block 1104, Lot 1.02, dimensional variances, which are in violation of the following Sections of the Ordinance:

<u>TYPE</u>	<u>REQUIRED</u>	<u>PROPOSED</u>	<u>EXISTING</u>	<u>VARIANCE</u>	<u>CODE</u>
Steep Slopes Category 1	50%	83.7%		33.7%	300-132.(1)
Building Height	40'	40.40'	--	.40'	300-102

Dave Wigfield, attorney of Scura, Mealey and Wigfield, 1599 Hamburg Turnpike, Wayne, N.J., introduced himself on behalf of the applicant. Mr. Wigfield asked that Mr. Davies swear in the applicant's architect John Bleeker, 918 Scioto Drive, Franklin Lakes who has an office at 275 Belmont Avenue, North Haledon, N.J. Mr. Bleeker said that there are two issues relative to this application which are the building height and a steep slope. He stated that the height of the roof in the one rear corner of the building is above what is allowed under Borough ordinances which will require a variance. The Borough's steep slope ordinance is being violated as a result of the construction of the pool in the rear of the property. Mr. Bleeker noted that the house was designed to be orientated to the center of the site to take advantage of maximum side yards and privacy. There is a gully in the center of the parcel which is located in the area of steep slopes. Mr. Bleeker referred to his drawing SP1 which shows a dark shaded area that depicts the only area where steep slopes are encountered on the property. This is an isolated area where 86.7% of the critical steep slope area had to be disturbed. There are no issues on any other areas of the property. The height variance occurs at the northwest corner of the proposed house where the elevation has been determined to be 477.9 from the lowest existing grade at the basement walk out area. The applicant had previously been cautioned about this condition by the Board Engineer and is seeking a variance of six inches on the height because of the roof cap.

Mr. Messaros made a motion to open the public portion of the meeting, seconded by Mr. Toronto, all ayes. No one from the public came forward and Mr. Badenhausen made a motion to close the public portion of the meeting seconded by Mr. Messaros.

Mr. Davies reviewed the following conditions of approval:

1. The applicant will amend the application to apply for Item C: dimensional variances.
2. The reason for the granting of the variance will be that a steep slope exists in the center of the property which makes it difficult to develop the property without disturbing this slope. It is a category 1 Steep Slope which is the least steep of steep slopes.
3. There will be no impact on drainage.
4. The height variance is due to an error in the building height because of the walk-out basement and the failure to provide the additional height of finished construction. A six inch height variance is requested and will be treated as a diminimus variance. Corrected building height is 477.9.
5. Applicant will raise grade by six inches in the northwestern corner.

Mr. Messaros made a motion to approve the application based on the conditions recited by Mr. Davies, seconded by Mr. Toronto.

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Badenhausen, Mr. Messaros, Mr. Toronto, Ms. Schoenberg  
 Nays: None

Cal.#2011-15 Application For Schmit, 322 Crescent Drive, Block 1207, Lot 31, dimensional variance, which is in violation of the following Section of the Ordinance:

<u>TYPE</u>	<u>REQUIRED</u>	<u>PROPOSED</u>	<u>EXISTING</u>	<u>VARIANCE</u>	<u>CODE</u>
Side Yard Setback					
Driveway	20'	17.5'	17.5'	2.5'	300-71.D.(4)(j)

DEEMED COMPLETE: September 16, 2011

DETERMINATION DATE: January 24, 2012

Mark Schmit, stated that he is the owner of the property in question and he resides at 230 Terrace Road in Franklin Lakes. Mr. Schmit stated that he is seeking a variance for a driveway located in the side yard. There is a no disturbance area of 20 feet and he is proposing a setback of 17.5 feet. This is a pre-existing, nonconforming condition and Mr. Schmit would like to have the driveway remain as it presently exists. The property is 3.629 acres and is impacted by wetlands and wetlands buffers. The location of the proposed house is the only area in which a home could be constructed. An existing home on the property was removed and questions were raised on why the driveway couldn't be relocated since there is no building existing that would obstruct the relocation of a driveway. Mr. Schmit explained that a turn-around area in the front east side of the garage was needed and is the reason for the variance request.

ZONING BOARD OF ADJUSTMENT MEETING

10-6-11

PAGE 4

Mark Schmit, 230 Terrace Road, Franklin Lakes, N.J. and his builder Abbey Owens, 24 Hillside Avenue, Upper Saddle River, N.J., were sworn by Mr. Davies. Mr. Owens stated that he is the president of Willowbank Builders in Upper Saddle River.

Ms. Tiberi, Board Engineer, stated that she measured from the area from the garage to the end of the setback which is 35 feet. She concluded that there is more than adequate room to maneuver a car in and out. If the applicant was satisfied with an area of 32 feet, a variance wouldn't be necessary. She noted that there is an inlet in the no disturbance area. After more discussion Mr. Schmit, whose engineer had a conflict and couldn't attend this meeting, stated that what the Board Engineer explained is logical and couldn't understand why his engineer had wanted to apply for a variance on his property. Ms. Tiberi pointed out to the applicant that the height of the structure is conforming; however, there is no leeway.

Mr. Messaros made a motion to open the public portion of the meeting, seconded by Mr. Toronto, all ayes. No one from the public came forward and Mr. Badenhausen made a motion to close the public portion of the meeting, seconded by Mr. Messaros, all ayes.

Mr. Toronto made a motion to deny the variance application, seconded by Mrs. Gerber.

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Badenhausen, Mr. Messaros, Mr. Toronto, Ms. Schoenberg

Nays: None

**RESOLUTIONS**

**T-MOBILE, BLOCK 2201.08, LOT 2**

Mr. Badenhausen made a motion to approve the resolution of denial, as amended. Mrs. Gerber seconded the motion.

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Badenhausen, Mr. Messaros

Nays: None

**FLINK, BLOCK 2309.02, LOT 2.08**

Mrs. Gerber made a motion to memorialize the resolution, seconded by Ms. Schoenberg.

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Badenhausen, Mr. Messaros, Ms. Schoenberg

Nays: None

**DE LUCCIA, BLOCK 2604, LOT 1.01**

Mrs. Gerber made a motion to memorialize the resolution, seconded by Ms. Schoenberg.

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Badenhausen, Mr. Messaros, Ms. Schoenberg

Nays: None

**MINUTES**

The Minutes of September 1, 2011, were presented for approval. Mr. Toronto made a motion to approve the minutes as amended by Mrs. Gerber, seconded by Mr. Messaros.

