

The Chairman called the meeting via zoom to order and stated it was being held in compliance with the “Open Public Meeting Act” and had been duly noticed and published as required by law.

## ROLL CALL

Present: Mr. Weil (late), Mr. Willard, Mr. Daddario, Mr. Leoncio, Mr. Pannu, Mr. Cupersmith, Mr. Senges.

Absent: Mr. Cohen

Also, present: Chris Norman, Board Solicitor, Bennett Matlack, CME Engineer, Stella R. Sytnik, Zoning Board Secretary.

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## MINUTES FOR APPROVAL

Mr. Willard motioned to approve the Minutes from the September 10th Zoning Board meeting; seconded by Mr. Cupersmith; none (0) against; Mr. Pannu abstained.

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## RESOLUTIONS FOR APPROVAL

Mr. Cupersmith motioned to approve **RESOLUTON NO. 20-16** seconded by Mr. Willard; none (0) against.

Ayes: Mr. Willard, Mr. Daddario, Mr. Leoncio, Mr. Cupersmith, Mr. Senges.

Nays: None.

Abstention: Mr. Pannu.

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## NEW BUSINESS

### Mr. MAASI SHAMILOV

5 Stead Court  
Block 213.04 Lot 50

Mr. Norman summarized the Application stating the Applicant is seeking relief from several Sections in the Ordinance as per submitted Variance Application.

Mr. Weil joined the meeting as soon as Mr. Norman started summary of the application and took the pledge of allegiance.

Mr. Senges confirmed the Applicant, Mr. Shamilov and his Engineer, Mr. Avila were present. He also verified that the Applicant is not represented by an attorney.

Mr. Senges made announcement to the public this is the only application on agenda tonight. If anyone in the public is there for a different application, they should be aware that due to a notice issue, the other application previously listed on the agenda would not be heard tonight.

Mr. Avila presented his credentials. He advised members of the board he will be supplementing the board engineer’s letter with additional documents.

Mr. Avila introduced Mr. Shamilov.

Upon Chairman’s request, Mr. Shamilov explained to the board when and why as-built projects on his property were done. The work that was done in his backyard including the retaining wall was done in 2009.

Mr. Senges asked if he had permits then.

Mr. Shamilov said that he did and that at that time, his lot was not very convenient. Back then he has lived in Voorhees for two years. He had to address the issue of visibility of his backyard. One

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of the ways he could get it done was by building the wall and locking it with small stones. However, for the past several years, all the materials deteriorated. He spoke with several contractors and per their advice, he decided to cover the area where he had weeds with tiles to create a patio. Because of the elevation of his lot, the other side was much higher so they decided to expand and clean it up so his family could use it. He used the same permit because he didn't know he needed an additional permit. He thought he was not significantly changing the wall on the side of his property. So they moved the existing wall further to the back of the property and created a patio.

Mr. Senges asked of Mr. Shamilov had a permit to put up a wall.

Mr. Shamilov confirmed that he did.

Mr. Senges asked Mr. Shamilov to help him understand if at that time, the wall met zoning requirements but apparently since then, Mr. Shamilov moved the existing wall and added significant amount of patio and pavers. According to the variance required of impervious coverage, Mr. Shamilov currently has 52% of his total yard covered where 25% is permitted.

Mr. Shamilov confirmed all of the above to be correct.

Mr. Senges stated it was a lot.

Mr. Shamilov advised the board he never had any problems with a water runoff. However, one of the motivations for him to do all the projects was that when the water was flowing, it created erosion and he had difficulty maintaining grass. He reiterated he did not know back in 2009 he needed a permit.

Mr. Senges asked then the reason for Mr. Shamilov to come in front of the board at this time.

Mr. Shamilov replied that he believes somebody called and complained about the work being done. He does not know who called.

Mr. Senges insisted that he wanted to get to the bottom of the issue and the motivation behind coming in front of the board now.

Mr. Shamilov explained he has been living in Voorhees for twenty two (22) years and is planning on living here for many more years. He plans to pass on the property to his children. He has six (6) kids, he invested a lot of money in this property. He was trying to improve space for his family use and get rid of constantly eroding grass and other damage to his backyard. He was trying to stabilize his backyard. He believed if he had covered the open area with patio, this would help avoid erosion. His intention was to plant bushes around the perimeter to stabilize the soil and to stop erosion. He believes he doubled the cost of the house by making all these improvements. He also made sure all the water is managed, so in essence, he was trying to kill two birds with one stone.

Mr. Senges asked where is the water flowing off from his property.

Mr. Norman swore in Mr. Avila and verified his credentials as a licensed planner. The Chairman accepted his qualifications.

Mr. Avila said he was retained by the applicant in spring. He received a notice from the Zoning Officer, Ms. Jacklyn Bradley. She forwarded some documents from 2009. Those documents were forwarded to them for their benefit. Anyone who has been to the site would see everything is sloped to the side, and it is a very steep slope.

Mr. Senges mentioned the board does not have 2009 plans; they were not provided to them by way of application; therefore, they are not able to reference them. Mr. Avila confirmed that the plans were given to Mr. Shamilov and himself only. Mr. Avila created a topographic plan that features 2009 plan. He stated Mr. Shamilov has a very limited use of his backyard and it can be seen on the plan they prepared. He explained that without these walls it would be very difficult to grade this yard without creating erosion. And there was no way to put the patio without the wall. His client was just trying to make use of his rear yard.

Mr. Senges tried to understand when the plan was done, and whether Mr. Avila made the plan back in 2009.

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Mr. Avila stated the plan he was presenting was done in May 2020. The work was done by 2009 application. The work that was being done now is a marble terrace type patio.

Mr. Senges confirmed that since Mr. Avila got involved, all the work has stopped and that the plan that he is presenting to the board has not changed since.

Mr. Avila confirmed what you see, is what he did. He was at the end of his project. Someone called and asked him to stop the work. This plan is an existing condition.

Mr. Senges asked who gave him this plan.

Mr. Avila explained that Mr. Shamilov did not have a plan, he worked with his contractor. Mr. Avila made the plan after the work was stopped. This is as built survey.

Mr. Senges said that means Mr. Avila didn't design it so that it would avoid erosion and would not be affecting surrounding properties. He asked if Mr. Avila has done evaluation.

Mr. Avila informed the board that the stormwater management report was submitted with their application. He elaborated on the report stating it shows the soil is highly permeable. He asked Mr. Shamilov to tell him what has observed from the springtime until now and it did not increase water flow to the neighbors. They propose some landscape, some mulch bags to ensure that water that comes off his property stays in his property. He looked at the property and what has been done and evaluated the conditions. Some of the variances we are asking for is a result of a hardship for Mr. Shamilov for him to be able to make use of his backyard. The house to his right is completely sloped. Impossible to lay a patio in the steep matter, it has to be flattened. He had no choice but to extend the wall and by doing so, he is now at 52% impervious coverage. He indicated it is a unique condition.

Mr. Senges responded this is not a unique but rather a very common condition. He pointed out Mr. Shamilov could use other amenities, he has a lot of other things in his yard, benches, etc. he has plenty of room. And the real question is if the backyard could be utilized instead of being that percentage of impervious coverage but still remain well utilized backyard. The Chairman believes the answer is probably yes.

In response to Mr. Senges' question about the contractor who did the work without permits, Mr. Shamilov said it was the Paver Doctor on Rt. 73. The contractor assured him he had a permit and adding the wall to the right side, is not creating much disturbance. He gave him his professional opinion that Mr. Shamilov did not need any permits. The contractors has been doing the work in the Township for years and Mr. Shamilov put his trust in him.

Mr. Senges assured Mr. Shamilov the contractor will be notified he needs to obtain permits in this Township.

Mr. Matlack asked whether if the patio was reduced, could you grade the side to make it work or you would need additional wall?

Mr. Avila answered by doing so he would come close to property line; they did some calculations. They have slopes, they couldn't do this without having some retaining walls. That is why they have retaining wall. It does create some topographical hardships to create a leveled patio.

Mr. Senges indicated that his problem is not a level patio but the fact that it is 7% bigger than legally allowed.

Mr. Matlack offered some information for the board's reference: currently impervious coverage is 1100 sq ft over, it is equivalent to 5.5 parking stalls which makes 7% over the limit. The lot is as big as 15,000 sq ft.

Mr. Senges indicated that it is indeed a lot. Legally, as a board, they need to understand if the owner started the job before he came to the board, and if the applicant is here only because a neighbor called. Because that usually indicates that it was causing the neighbor a problem.

Mr. Senges asked if anyone spoke to the neighbor(s).

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Mr. Shamilov stated that the neighbor from Lot 46 Mrs. Melissa Bergman and he have met today. They reviewed everything, he gave him a copy of the engineering plan, he had his friend engineer with him as well and they discussed everything. Mr. Berman told Mr. Shamilov he has no problem with the current situation.

Mr. Norman swore in Mr. Shamilov and asked him to proceed.

Mr. Leoncio asked if all the water is staying on Mr. Shamilov's property because based on the topographic survey, Lot 55 is lower than his lot, in Mr. Leoncio's opinion. He asked whether Mr. Shamilov talk to that neighbor to make sure it is ok with him.

Mr. Shamilov answered that Lot 51 is covered with grass.

Mr. Avila reiterated that Lot 51 water retention is not a result of the patio on Mr. Shamilov's property. The patio is in the back, Lot 51 is towards the front.

Mr. Leoncio indicated he was talking about the total project.

Mr. Avila mentioned that when it was built, at the time of construction there were no modifications.

Mr. Senges stated there seems to be some other structures, such as brick wall. He asked once again to clarify what the original permit allowed in 2009.

Mr. Avila responded the original permit allowed a patio in the back, but it was not a patio per se, it was not much of a patio but rather a terrace type backyard. The applicant got a permit for a wall, not for the patio.

Mr. Shamilov interjected negating to explain he had a patio in the back.

After some deliberations, whether there was in fact a patio or not, it was determined by the Chairman that the patio was built without a permit.

Mr. Avila confirmed the patio was built without a permit.

Mr. Senges asked what else was built without permits.

Mr. Avila replied it was a patio and extension of the retaining wall.

Mr. Senges verified that the walkways were also built without permits.

Mr. Avila confirmed by saying yes, that is correct.

Mr. Senges indicated that the walkway was reconstructed as well and would need a permit. He then addressed Mr. Matlack.

Mr. Senges asked Mr. Matlack if he would recommend some sort of a draining system to potentially stopping the water flowing off to Lot 44 and Lot 46.

Mr. Matlack agreed that it would be a good idea. He indicated that this is something they typically see as some sort of mitigation when impervious coverage is allowed. Mr. Matlack added the board had options and the Applicant had options. The board could request that the Applicant removes some impervious areas, since there is a lot of structures there, a patio, two (2) walkways, driveway, or they could ask for water storage to be installed.

Mr. Senges asked if Mr. Matlack would recommend it as a precaution.

Mr. Matlack explained it probably would be a good idea, particularly because the soil there has a lot of permeability.

Mr. Senges indicated he would feel more comfortable if there were some soil boring done. From his own professional and personal experience, in this particular neighborhood, one lot can have sand and another could have poor conditions. Also, in this particular neighborhood, people come and do a lot of things without permits and sometimes as a result of it, neighbors get water in the basement.

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Mr. Senges expressed concern that without some additional stormwater management plan, the Applicant would impose those issues on neighbors if the board allows things to remain as they are.

Mr. Avila indicated they would be agreeable to add additional level of protection and provide some sort of permeability testing to see what type of soil they have.

Mr. Matlack asked about conditions and type of trees in that area.

Mr. Avila responded pointed to the plan they presented where they can see the woods line. It is all wooded behind, there are isolated trees in that area, all in its natural state.

Mr. Senges asked on whose property the trees are located.

Mr. Avila replied on the adjacent lot.

Mr. Matlack asked what the depressed area consists of.

Mr. Avila replied it is a mixture of woods and underbrush, it is all good condition.

Mr. Senges asked for input from other board members.

Mr. Cupersmith indicated he had a problem with this application. He did not realize how many things are on the property. If the applicant had not built and come to the board to ask for permission, it would have made a difference. So many times other applicants would come in for the same reason and this is setting a bad example. In addition, he does not see any detriment in this situation.

Mr. Senges agreed in that this is the case where the board would be giving what the Applicant wants rather than giving what he needs.

Mr. Weil indicated he tends to agree with the Vice Chair's opinion.

Mr. Senges asked Mr. Weil what he would recommend, reduction in the impervious coverage or additional remediation to make sure that this doesn't cause a problem now and in the future.

Mr. Weil replied by saying it he ponders who would be liable if the board approves it. Mr. Shamilov would not assume the liability, in his opinion. Mr. Weil stated he would like to hear Mr. Matlack's opinion. He saw what his report says but he wants to hear what his feelings are.

Mr. Matlack responded that he had given his recommendations before. The applicant should either reduce amount of impervious coverage or set up a required stormwater management system. He indicated he is not asking because of his concern of run off to Lot 51. He feels that the water runs off to that wetland area which is behind the house. His real concern is more about the principle of having more impervious area than what it is allowed by the ordinance.

Mr. Weil asked if there may be some other type of permitting authorities.

Mr. Matlack replied that there are and asked Mr. Avila to speak to the wetlands.

Mr. Avila stated that other than wetlands they showed up until now, they do not have additional information. The wall was approved by earlier application, but the sidewalk was not approved where it is now. Both walk sides were on the original approval but the prior application one was closer to the property line. This information was provided to them by the Zoning Officer.

Mr. Senges asked several questions about the patio distance from the property line and elevation size.

Mr. Cupersmith asked if the Applicant is prepared to make the change and come back; or if they want the board to vote on what they propose now.

Mr. Avila said Mr. Shamilov would like to keep the patio, but having said that, they clearly see the board's concern regarding impervious coverage and proximity to the property line. He asked the board for a few minutes to confer with his client.

The board agreed and Mr. Norman approved a two-minute conference between Mr. Avail and his client.

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Ms. Sytnik advised the Chairman and the board there is a couple in the public who are Mr. Shamilov's neighbors from Lot 46, and they would like to testify. The Chairman and the meeting host confirmed the couple can be included in the hearing when the board is ready to hear them out.

Upon his return, Mr. Avila outlined his client's proposal to include cutting back the area where it is close to the property line. He presented the board with a rough drawing to give board members an idea where the retaining wall would be to stay away from the property line as best as they could. In addition to making that change in compliance with the board recommendation, they are willing to install some water control system, inlet, and mulch so that there is no water runoff from the property.

Mr. Senges asked if they would be willing to conduct soil boring and soil analysis.

Mr. Avila answered positive.

Mr. Senges asked if they would agree for the board engineer to oversee and approve all design and site inspections.

Mr. Avila answered positive.

Mr. Matlack asked how big the area of reduction would be.

Mr. Avila could not provide an exact answer other than indicating it would start with the retaining wall and the curve where the tree is and will be moved more away from property line.

Mr. Matlack asked if they would be willing to reduce the patio area as per his quick calculations would constitute roughly 100 or 150 sq ft. Mr. Shamilov asked if he suggested to cut it in half as right now the entire area is about 300 sq ft.

Mr. Matlack explained he was just giving the board a point of reference; it is up to the Applicant to present a new plan.

Mr. Avila said based on Mr. Matlack's calculations and if they cut the patio as required, they'd reduce impervious coverage by 10% and will have 950 sq ft. So instead of 7% coverage it will be close to 5% which is closer to conformance but not at conformance. They are willing to make other adjustments. They do consider neighbors. They will provide open bottom inlet to comply with the board recommendations.

Mr. Senges asked why there was no topographical survey from Lot 44.

Mr. Avila responded there is a physical barrier, a fence and without permission, they are not willing to step on to the property.

Mr. Senges addressed Vice Chair Mr. Cupersmith as to how he felt about the matter.

Mr. Cupersmith stated he would love to see that at least one time someone complies with the laws. To this specific matter, he would like to see the impervious coverage reduced to 45%. He is getting annoyed by how many people come in and ask the board to approve what they have already done.

Mr. Senges presented to the board a drawing of his own which he believed would be some sort of compromise.

Mr. Willard reminded the board not to forget that this has been previously approved, and the board cannot make deals outside of what has already been built and approved in the past.

Mr. Chairman agreed and shared his drawing with the board. Mr. Cupersmith agreed that he could go along with it.

Mr. Senges asked Mr. Matlack to do calculations based on his drawing.

Mr. Matlack informed the board if they go by this drawing, it will bring them to 200 sq ft cut instead of 150 sf ft.

Mr. Senges said it was a bit disappointing but at least they can take the lot further away from the property line.

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Mr. Matlack pointed out that because they discussed another variance required to comply with maximum coverage of the rear yard being 37. 9% covered with only allowed 25%, the change will help both situations, maximum impervious and maximum rear yard. In both cases, it won't meet the requirement exactly, but it will be reduced.

Mr. Willard asked Mr. Matlack what the percentage of the reduction would be.

Mr. Matlack replied the impervious coverage will be reduced from 7.3% to 6%, and rear yard from 12.9% to about 9.5%, the total impervious will be brought up to 200 sq ft.

Mr. Senges agreed with Mr. Cupersmith and Mr. Willard that it is less than what the applicants is willing to offer.

Mr. Avila stated he does not want to get into specific percentage at this time. He asked for some latitude and time to put the plan together. He stated they agree with board recommendations, but they do not want to come back to see the numbers they did not discuss.

Mr. Willard reminded Mr. Avila the problem that got them here in the first place is they built structures without approval. He added he did not feel comfortable leaving an open-ended approval.

Mr. Senges confirmed he will not agree to an open-ended approval, perhaps it made sense to adjourn the meeting and have the Applicant come back with a specific plan.

Mr. Cupersmith agreed the Applicant needs more time. They know how the board feels.

Mr. Norman mentioned it was the appropriate time to hear from the public. There may be other information that was not considered.

Mr. Senges opened the floor to the public.

Mr. Derek and Melissa Squire of Lot 44 were sworn in by Mr. Norman to testify.

Mr. Derek Squire stated they were very sympathetic to Mr. Shamilov's slope issue. They have the same issue, they are sympathetic and they want him to use his property but they want to protect their property. He asked for the board to consider several things, such as nobody approached them asking to measure the grade their property; they are fine with contractors to measure their property; they have lived at this property for 19 years; their property is the lowest level lot. They added it was said that the stormwater stays on Lot 50 but it is not the case, it does not. In fact, all three Lot 50, Lot 46, Lot 51 drain into their property. That area becomes a mush, there is an existing drainpipe from Lot 50 to their property, and it funnels water to their property. They want to make sure that drainage to their property is not exacerbated by what is being done.

Mr. Senges asked if Mrs. Squire wanted to add anything. Melissa said her husband has covered everything.

Mr. Senges asked if anyone knew about the pipe.

Mr. Avila answered he did not, but they can find out. He offered his opinion. The pipe could be there because of the wetland. He assumes when the property was developed, the pipe was installed as part of the construction and as a recommendation to convey flow and feed the wetland, so it does not get dried out. It is not uncommon.

Mr. Senges asked if Mr. Avila knew for sure or was just speculating, Mr. Avila confirmed it was just based on the neighbor's testimony.

Mr. Matlack inquired of the pipe record; perhaps it was mentioned during the subdivision of the property development application. He suggested that the Applicant provides that information. The pipe is not on the property and it is not quite clear where it is.

Mr. Senges addressed the Applicant asking him to figure it out.

Noting there are two other people in the public who are not interested in speaking and seeing no one in the public in terms of commenting or having any questions about the application, the Chairman closed public portion and brought it back to the board.

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Seeing no additional feedback from the board, Mr. Senges asked the applicant if they would like to adjust the application and come back or would like the board to vote on the application at this time.

The Applicant stated they will come back with a revised plan. They indicated they needed a couple of weeks to put the plan together.

Based on current schedule confirmed by the Chairman with the Secretary, the first opening falls on November 12<sup>th</sup>.

Upon confirming with the Applicant, Chairman Senges asked for the motion to continue the application on November 12<sup>th</sup>, 2020.

Motion made by Mr. Cupersmith and seconded by Mr. Willard.

AYE: Mr. Weil, Mr. Willard, Mr. Daddario, Mr. Leoncio, Mr. Cupersmith, Mr. Senges.

NAY: None

ABSTENTION: Mr. Pannu

Ms. Senges thanked the Board and the Applicant for working on this matter as a team.

Mr. Norman informed all that no further notice is required.

Seeing no further business Mr. Cupersmith made a motion to adjourn the meeting, seconded by Mr. Daddario.

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Stella R. Sytnik  
Zoning Board Secretary