Present: Mayor Lee McNew; Councilmembers Chuck Poploskie, Karl Storrie, Jon Cabot, and David Haines; Attorney, Dan Christ; Building Official, Brian Oppmann; Clerk, Rosalie Lake
Visitors: Phil Incarnati and Laurie Rouse; Richard Hass, Landscape Architect with Stewart Hass & Associates; Bill Derocher, Builder; Norman Hyman, legal counsel of Strobl & Sharp, P.C; Bob Bailey, Linda Daniels, Heidi Hoyles, Paul Glantz

The meeting of the Lake Angelus City Council, acting as the Zoning Board of Appeals was opened by Mayor McNew shortly after 7 pm. Building Official, Brian Oppmann introduced the project being considered explaining that the resident was asking for variances from sections (a) and (f) of Ordinance 1248.05. He noted the criteria that needed to be satisfied for a non-use variance as identified in the Zoning Code. He noted that the reasons why a variance has been granted or denied should be identified. He introduced Landscape Architect, Richard Hass. Mr. Hass introduced the owners, Phil Incarnati and Laurie Rouse, Bill Derocher, the builder, and Norman Hyman, Attorney. Mr. Hass presented a map of land contours and a simulated model of the proposed project, as well as photos of the existing site conditions. He described a ten foot drop-off, down to the lake at its highest point. The overall drop from the house to the lake is 26 feet. Mr. Hass felt that the conditions of the drop were challenging, at best, for landscaping and would be difficult to manage and maintain. He claimed that the desired cut in the land would soften the drop-off and allow for an opportunity to beautify the area and make it more aesthetically appealing for the applicant and for the community in ways other than the present conditions allow. Mr. Hass showed a photo taken from the Lake showing the hillside covered with wild vegetation. He claimed that only wild, native plants could grow there. He felt that a more manageable site could be beautified to everyone’s benefit as other properties around the Lake have been. These properties have a less severe grade, whether naturally occurring or altered. Mr. Derocher felt that there were safety issues, noting the rocks at the shoreline as a concern. Boardmember Cabot asked Mr. Hass whether he was trying to update what was previously there, or create a whole new area as it appeared that they were asking for much more than was required for the previous owners to have access to the Lake. Mr. Hass responded that they were not trying to alter from lot line to lot line, but that they were talking about a major portion of the area. They were focusing on the area indicated on the maps, planning to make the property safer, more manageable, more maintainable and more amenable to the Board. Mr. Hass indicated that it is a project of magnitude, but not 100%. Boardmember Haines asked Mr. Hass how he felt that there was practical difficulty or hardship. Mr. Hass replied that making plant material grow on such a hillside is extremely difficult or impossible. His concern was to make a landscaping plan work given the problems of grade and erosion. He claimed that the plan presented would minimize erosion going toward the Lake. Mayor McNew asked why they feel their property is unique, looking to the properties directly to the east and to the west. Mr. Hass replied that on the property to the east, no modifications have been made at all. To the west, there is a stair going down to the lake with some washout. He observed other properties on the Lake to have less severe grade.
Dr. Haines noted that the grade was there at the time of the purchase of the property and wished to know whether there had been consideration of the resident’s concerns before the purchase of the property. Mr. Incarnati responded that they had expected to do what others on the Lake have done with creative solutions. He had not seen any property on the lake with such a steep grade. Everyone else has access to the Lake. They expect to do something that will complement the Lake and increase everyone’s property values. Mr. Incarnati said that they had spared nothing in building the house and have respected every rule in the process of building it. He claimed that the grade situation is clearly unique. There are serious issues related to safety and erosion. As to the stairs, Mr. Incarnati felt that anyone’s life would be at risk in using the present stairs to the Lake. They wouldn’t be suitable for the house he has built. He is looking to enhance the whole area and increase everyone’s property values. He indicated that he has a legal option to purchase the property next door which has the same native vegetation on it. They have examined multiple options and propose this as the best solution to enhance the property and deal with the safety issues. Mr. Incarnati believed they could comply with the 4:1 issue (1248.05(f). The major issue is the 7’ cut limitation. He felt that they would be good neighbors contributing to the property values of everyone. Mr. Storrie asked whether he had a right to buy all of the neighbor’s property and he responded that he did.

Mr. Hyman reiterated that they are not asking for the second variance (1248.05(f). They withdraw that request. They are only asking for the variance from the 7’ cut (1248.05(a). They had gone through the site plan approval process and no one had raised the issue then. It wasn’t raised at the Planning Commission. There was no anticipation that there would be a problem at the time of purchasing the lot and building the home. As the project progressed, the problems became apparent to them. Attorney Christ asked as to the amount/depth of cut the Applicant is requesting. Mr. Hass said that, on average, it would be a 10 foot cut moving away from the center to the outside in somewhat of a heart-shaped mass. Bob Bailey asked how many cubic feet of earth would be removed. Mr. Hass did not know for sure. Mrs. McNew asked whether the original site plan indicated the grade as it is today. Mr. Oppmann indicated that it did. Mr. Storrie asked whether they were going to backfill behind the retaining walls. Mr. Derocher said that they were not.

Mr. Cabot reminded everyone that they had not met to discuss aesthetics. What one feels is a beautiful result and an improvement, another will think should have been left natural to obtain the best result.

Mr. Christ asked the Clerk if there had been any responses from neighbors delivered to her. She provided copies of the email that had been received from Joe and Elaine Kosik. The Kosiks felt that ordinances had already been violated by much more excavation having been done than the 7’ limit. They felt that other neighbors on Gray Woods with steep slopes have landscaped successfully, maintaining access to the shoreline. The full text of this letter is a part of this record. Bob Bailey indicated that, on the Northeast bluff of the Lake, the property at 355 Gray Woods Lane is the lowest of all the 12 sites along the bluff. Other residents have landscaped without a cut, using natural vegetation to secure the area from erosion and sculpturing with boulders. He described Mr. Storrie’s grade as having been terraced and landscaped while retaining its natural height. Dr. Haines emphasized that the Board is not judging aesthetics. The Board’s mandate is to look to the ordinances to make judgments and has applied the ordinances to other properties on the Lake, as well. Mr. Hass felt that the Board does have a concern regarding aesthetics and it is its duty to the community to consider this. Laurie Rouse said she
had gone down the old stairs that are presently there and she considered them as dangerous especially for the elderly or children. She felt the problem goes beyond beautification to issues of function and safety. She disagreed that they could do what everyone else on the Lake, or on Grey Woods Lane, has done.

Mr. Hyman felt they had addressed the issue of practical difficulty. There was only one place on the site to put a house. They now have to deal with the rest of the property. Reasonable enjoyment of the property should be considered. That is what they mean by practical difficulty. Although not direct aesthetic issues, if there are substantial barriers to reasonable enjoyment of the property, such as vegetation, erosion and drop-off to the Lake, those are issues of practical difficulty. Mr. Hass noted that, as much as they might wish to work from property line to property line, they are still proposing to maintain portions of the property at its present grade. Paul Glantz, 303 Gray Woods Lane, noted that there was an enormous amount of excavation from the property already. He questioned whether ordinances were being applied evenly and fairly. He discussed his own building project indicating that he had been required to contain stormwater runoff on his property, at great expense to him, instead of allowing it to run into the marsh behind him, while his neighbor had not been required to do so. He pointed to ordinances that houses be placed so as not to obstruct a neighbors view, and yet, he claimed the home at 355 is much farther toward the Lake than his own. He is concerned about consistency in applying the ordinances. Mr. Derocher indicated that not much soil had been dug out from the site. Mr. Oppmann commented that the building at 355 Gray Woods has followed the approved site plan and ordinances.

Boardmember Cabot stated again that the Board was not constituted to judge aesthetics, but whether the requirements for granting a variance to the ordinances are being met. He moved to have Attorney Christ and Building Official Oppmann draft a motion, referencing the Ordinances and the facts introduced during the public hearing that would support denying a variance. Boardmember Storrie seconded. Motion carried unanimously.

A Zoning Board of Appeals meeting could be held at the next meeting or a special meeting could be called to consider approval of the draft motion prepared by Mr. Christ and Mr. Oppmann. Mr. Hyman asked to have a copy of the draft motion after it is prepared.

Boardmember Haines moved to adjourn the Zoning Board of Appeals meeting at 7:45. Boardmember Poploskie seconded. Motion carried unanimously.

Approved: Respectfully submitted,

Lee McNew, Chair Rosalie Lake, Clerk