

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – APRIL 6 2021

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held remotely on April 7, 2021. Ms. VanBlunk called the meeting to order at 7:30 p.m. and called the Roll.

Those present:

Zoning Hearing Board: Pamela VanBlunk, Vice Chair
Matthew Connors, Secretary
Peter Solor, Member

Others: James Majewski, Director Planning & Zoning
Barbara Kirk, Township Solicitor (left meeting in progress)
Adam Flager, Zoning Hearing Board Solicitor
Frederic K. Weiss, Supervisor Liaison

Absent: Anthony Zamparelli, Zoning Hearing Board Chair
Michael Tritt, Zoning Hearing Board Member

APPEAL #21-1906 – GABRIEL DECK & ALEXANDRA CALUKOVIC-DECK
Tax Parcels #20-039-004-001 & #20-039-004-002
INTERSECTION OF WOODLAND DRIVE & WEST SCHOOL LANE, YARDLEY, PA
(Continued from 3/16/21)

Mr. Flager stated their attorney, Ed Murphy, has requested a Continuance as they have been in communication with some of the neighbors and their attorney as well as the Township; and they are requesting the Continuance so that they can continue those talks and hopefully narrow some of the issues. Mr. Flager stated the attorney who represents some of the neighbors does not oppose a Continuance nor does Ms. Kirk on behalf on the Township.

Mr. Connors moved, Mr. Solor seconded and it was unanimously carried to Continue the Appeal until May 18, 2021.

APPEAL #21-1908 – JOHN & AMANDA MOHAN
Tax Parcel #20-039-213
892 DUCHESS DRIVE, YARDLEY, PA

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plan was marked as Exhibit A-2. The Impervious Surface Breakdown Calculation was marked as Exhibit A-3. The Proof of Publication was marked as Exhibit B-1. The Proof of Posting was marked as Exhibit B-2. The Notice to the neighbors was marked as Exhibit B-3.

Mr. John Mohan and Ms. Amanda Mohan were sworn in.

Ms. Mohan stated they are looking to do a small addition of a laundry room/mud room and expand their patio a little bit in the back. She stated they need a Variance for impervious surface of 21.6%.

Ms. VanBlunk asked how they will remediate the impervious surface.

Ms. Mohan stated they would like to plant ten evergreen trees around the patio and new addition which should offset more than enough cubic footage.

Ms. VanBlunk stated the existing impervious surface is 18.7%, and they are requesting an increase to 21.6%. She stated they want to plant trees, and Mr. and Ms. Mohan agreed. Ms. VanBlunk stated for this amount of increase typically the Board requires more than just planting trees. She added trees could die or a subsequent homeowner could take down the trees. She stated typically the Board is inclined to require a seepage bed or something similar. Ms. VanBlunk asked if they would be willing to consider other remedial actions such as putting in a seepage pit. Mr. Mohan stated they could do a seepage pit.

Mr. Solor asked what size seepage pit would be needed. Mr. Majewski stated based on the information provided they are required to control a volume of 92 cubic feet of run-off which would equate to a representative size seepage bed of 2 ½' deep by 5' wide by 19' long or any combination that exceeds the cubic footage of 92 cubic feet.

Ms. VanBlunk asked Mr. Majewski if he has been out to the property, and Mr. Majewski stated he has not.

Mr. Mohan stated he feels that would be a big seepage pit, and he asked if they would consider a combination of a seepage pit and the trees.

Ms. VanBlunk stated typically the Board has not in the past although other Board members may want to comment. Ms. Mohan stated if they used a combination of some new trees and a seepage pit they could reduce the size of the seepage pit.

Mr. Connors stated his preference would be for the seepage pit.

Mr. Solor stated they could reduce other impervious area on the property. He stated the drawing presented was from 1966, and asked if there was a shed or a stub on the driveway that they could remove that could offset.

Mr. Mohan stated they do not have any of those items that they could remove. He stated when they bought the house, it was at 18.7%. Mr. Solor stated he was asking if there was anything on the property that was impervious that they could remove.

Mr. Mohan noted the notch on the Plan at the upper right hand corner of the house which they want to enclose. Mr. Connors stated they are also proposing to add a little bit more to the patio, and Mr. Mohan agreed.

Ms. VanBlunk stated the Application indicated that they would like to reduce the water that can seep into their basement by re-grading the patio to drain away from the house, and she asked if there are issues with the back yard staying wet. Ms. Mohan stated that is not the issue. Mr. Mohan stated currently the patio is draining toward the house, and they would like it to drain away from the house. He stated their mason has confirmed that is one of their issues for why they need a sump pump.

Mr. Solor stated the patio is already there, and the only thing they are adding is the Jacuzzi pad; and Mr. Mohan agreed. Mr. Connors asked if the Jacuzzi pad is an addition to the concrete patio, and Mr. Mohan agreed. Mr. Solor asked if they are sure that they are adding 600 square feet since if the Jacuzzi pad is 100 square feet and the addition is 140 square feet that does not add up to 600 square feet additional. Mr. Mohan stated his contractor gave him the numbers and he trusted him. Mr. Mohan added that he had also questioned the numbers, and the contractor advised him that the numbers were right and he deferred to the contractor. Mr. Mohan stated 10' by 10' plus 14' by 10' does not equal 600.

Ms. Mohan stated they will take out the existing patio and re-pour it in the same space. Mr. Connors stated they are adding 100 square feet and 140 square feet, and that does not add up to 600. Mr. Solor stated they only have to mitigate for 240 square feet and not for the existing patio. Mr. Majewski stated that would change the calculations since the patio is existing. Mr. Solor stated they would only have to mitigate to what it was when they moved in. Mr. Mohan stated they would still plant trees.

Mr. Majewski stated based on the calculations since the concrete patio is existing the amount of volume required to be mitigated is 40 cubic feet. He stated a representative sample of a seepage bed would be 2' by 4' by 12 ½'.

Ms. VanBlunk asked if they would be willing to do that, and the Applicants agreed.

Mr. Solor stated he feels the impervious surface breakdown calculation is inaccurate so it would be difficult for the Board to indicate what they are mitigating back to. Mr. Solor stated the worksheet does not include the driveway square footage. Mr. Majewski stated that was all included under the house. He stated he checked the house using Bucks County Board of Assessment records and the driveway dimensions using the aerial photos and walkways and came up with the numbers. He stated they are still at 21.6%. Mr. Solor stated they would then be mitigating it back to slightly over 20%, and Mr. Majewski stated 20.3% is approximately the existing impervious surface.

The aerial photograph was shown.

Ms. VanBlunk asked what is the 50 square feet of impervious surface that is being removed, and Mr. Mohan stated there is a walkway at the side door that goes along the garage which will be replaced with the addition.

Mr. Connors asked if they could look at removing the top of the driveway. Ms. Mahon stated the aerial makes it look like there is a lot more than what they see on site. Mr. Connors stated he is satisfied with the seepage pit; however, if they wanted to try to reduce the size of the seepage pit, he was looking for other impervious surface that they could remove.

It was noted that the Township was not participating in this matter.

There was no one from the public wishing to speak on this matter.

Mr. Solor moved, Mr. Connors seconded and it was unanimously carried to approve the Appeal for an increase in impervious surface to 21.6% with a reduction using stormwater management subject to Township final approval to reduce the effective impervious to 20.3%.

APPEAL #21-1909 – ROBERT & KATHLEEN WIDMER
Tax Parcel #20-054-071-001
913 NORTH PENNSYLVANIA AVENUE, YARDLEY, PA

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plan was marked as Exhibit A-2. The December 27, 2020 Stormwater Infiltration Report was marked as Exhibit A-3. The Proof of Publication was marked as Exhibit B-1. The Proof of Posting was marked as Exhibit B-2. The Notice to the neighbors was marked as Exhibit B-3.

Mr. Robert Widmer and Ms. Kathleen Widmer were sworn in.

Ms. Widmer stated they are looking for an increase to the impervious surface to 21.6%. She stated they have added a pool, a pool house, and hardscape. She stated their property has a driveway that comes in from N. Pennsylvania Avenue and goes back to a service road behind their home. She stated they were willing to take the access to the service road out and just have a front entry into the property. She stated construction started nine months ago, and it has since become clear with trucks that are blocking access to the back service road, that when friends and trucks come into the front of the driveway, they need to back out onto Pennsylvania Avenue which has become a safety issue. She stated many people travel down the road at 50 miles an hour, and they are finding it is a problem for people trying to back out. Ms. Widmer stated they want to make sure that they still have the access to the service road as a way of getting out so that it is safe.

Ms. VanBlunk stated she understands they already came in for relief, and part of the relief provided was conditioned on removal of the back road. Ms. Widmer stated there is space next to their garage for them to turn around their own cars; however, the issue has been trucks cannot use that space to make a three-point turn to get out so they have to back out the length of that driveway to get out to Pennsylvania Avenue which is a relatively high speed road. She stated it is not that clear when pulling out of the driveway, and they have had safety concerns with people and trucks trying to pull out.

Mr. Bruno Morganheira, the pool contractor, was sworn in.

Mr. Morganheira stated they had not asked for relief, and they originally intended to remove part of the driveway from the garage back toward the stone road which would have offset the additional impervious that they had added onto the property with the pool, the marble stone deck, and the pool house. He stated as they went through the work and were getting toward the end, they noticed that the driveway is very tight and it is a hard space to turn around. He stated small vehicles up to large Amazon trucks are having a hard time turning around in the driveway so they end up backing up the long, skinny driveway and try to back out onto Pennsylvania Avenue which is very dangerous. He stated they want to keep the driveway on the property and have access to the stone road in the back. He stated the impervious surface was 18.41% before they started the construction, and they will increase it up to 21.64% which is an increase of 3.23%. He stated to offset that increase, they have designed a stormwater facility which is 1.6' deep, 40' long, and 17' wide. He stated this facility would be located to the left of the pool area, and it will collect a lot of the run-off from the pool deck where there are drains along the pool deck and run-off from the roof as well. He stated they calculated that this bed will hold up to 425 cubic feet which is sufficient for the additional 2,407 square feet that was added on, and it will actually hold up to 2,500 square feet so they are a little over. Mr. Morganheira stated the area was tested by Enviro Technology to make sure that they have the proper permeability for the space. He stated this will bring them back to the 18%.

Mr. Solor stated there is a rain garden detail shown in Appendix A which is not on the Plan. Mr. Morganheira stated the original thought was to have a rain garden; however, they have decided to go with the stormwater bed since it will have a cleaner appearance around the edge of the pool. He stated it is shown where the test was done.

It was noted that the Township was not participating in this matter.

Mr. Connors asked if they have considered reducing the driveway turns and radii since there seems to be a lot of space in the existing driveway, and they could then reduce some of the impervious. He stated it seems that there is a fence coming across a section of the driveway toward the alley, and he is not sure that is used anymore so that could be a way to reduce the impervious.

Mr. Morganheira stated that they will be installing less than they are asking for. Mr. Connors noted a location on the Plan, and Mr. Morganheira stated that is coming out.

Mr. Solor asked Mr. Majewski asked if the calculation is correct, and Mr. Majewski stated it is. Ms. VanBlunk stated the increase in impervious surface may not be correct because they included a portion of the driveway that they are removing.

Mr. Connors moved, Mr. Solor seconded and it was unanimously carried to the Appeal subject to Township review and approval.

APPEAL #21-1910 – WILLIAM HARN
Tax Parcel #20-060-238
1131 LILY POND LANE, YARDLEY, PA

Mr. Harn was sworn in.

Mr. Harn stated he wanted to put in a split rail fence around the back yard, and in the process he discovered that there is a wetlands line running diagonally through the back yard which would impede the overall space that is usable if he is not allowed a Variance to install the fence. He stated he did provide a drawing of where he wants to place the fence. Mr. Harn stated he also provided a picture to show that there is an existing lawn that was in place well before he moved into the property versus what he would feel is a wetlands.

Mr. Connors asked if this is a flagged wetlands or transitional; however, Mr. Harn stated he does not know what that means. Mr. Majewski stated this was on the Recorded Plan that was done in the late 1980's/early 1990's. He stated he did go out to the property, and there does not appear to be any evidence of a wetland on this property. He stated the nearest wetland property is probably about 75' away from the property at a location he showed on the Plan. He stated this may have been an attempt to put in a wetlands buffer, but there are no wetlands on the lot.

Mr. Solor asked where the 100 year floodplain is relative to this; and Mr. Majewski stated it is well off the property, and the nearest stream is Rock Run which is about 1000' away from this property. Mr. Majewski showed an aerial photo showing the property in question and where on

the property he wants to put the fence. Mr. Majewski also showed an area area owned by the Township. He showed the location of the nearest wetlands which he estimates to be approximately 100' away from the property.

Ms. Kirk stated the Township is participating in this Appeal only because under the Ordinance there is to be no structures within a wetland area, and the Plans are showing that there are wetlands from that diagonal line that Mr. Harn mentioned that would normally preclude structures.

Ms. Kirk stated Mr. Harn indicated that there did not appear to be any water in the rear property, and Mr. Harn agreed. Ms. Kirk asked Mr. Harn if he has been in contact with the U.S. Army Corps of Engineers to do a study and confirm that there are no wetlands on the property, and Mr. Harn stated he has not. Ms. Kirk asked if it would not make sense to do that in the event that he wants to do some other construction in the rear of the property. Mr. Harn stated this is all new to him, and he only discovered it when he was trying to get the Permit for the fence.

Ms. Kirk asked the material of the proposed split-rail fence, and Mr. Harn stated it would be a wooden split-rail fence with wire mesh. Ms. Kirk asked if it would be similar to the kennel enclosure he has shown in one of the pictures, and Mr. Harn stated the wire mesh would be similar to that. Ms. Kirk asked if there will be a gap between the bottom of the fence and the ground, and Mr. Harn stated that was not the plan. Ms. Kirk stated if this is a wetland area besides the fact that the Township supports its Ordinances that there be no construction, should the Zoning Hearing Board decide to grant the Variance request, the concern would be that there should be some sort of opening that would allow water to freely flow if for some reason it was a wetland area. Mr. Harn stated given it is a wire mesh, he assumes water would flow. Ms. Kirk stated in the fall leaves could be up against the wire mesh and stop it up. She asked if he would agree to maintaining at least a 2" gap between the ground and the bottom of the fence, and Mr. Harn agreed.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plan was marked as Exhibit A-2. Photos were marked as Exhibit A-3. The Proof Publication was marked as Exhibit B-1. The Proof of Posting was marked as Exhibit B-2. The Notice to the neighbors was marked as Exhibit B-3.

Mr. Connors stated they do not really have an understanding of whether or not it is a wetlands or not. He stated Mr. Majewski has indicated that the nearest one is about 100' away and the Township has a resource protection buffer of 100' for wetlands. He stated this may or may not even need a Variance from the Zoning Hearing Board depending on what is going on. Mr. Connors stated he would prefer to allow the Applicant to have a Continuance and get a wetlands scientist to go out and flag and make a determination of where the wetlands actually are.

Ms. VanBlunk stated she feels this is reasonable.

Mr. Solor stated he feels this would also resolve the Township's concern that they are not violating the resource protection "act."

Mr. Harn asked if Mr. Majewski's inspection and determination was not valid for this purpose. Ms. VanBlunk stated Mr. Majewski measured it from the "satellite" and believes that it is about 100' away. She stated if it is 100' away from the nearest wetlands, a Variance would not be needed.

Mr. Solor advised Mr. Harn that he needs to get someone who has a wetlands delineation certificate from the Corps of Engineers to come to the property and determine where the boundary is. Mr. Solor stated if it is more than 100' away from the property, there is no issue; and even if it is closer but not on the property, Mr. Harn could come back to the Zoning Hearing Board.

Mr. Connors stated the problem is that the Plan indicates that it is on the property. He stated the aerial indicates it is about 100' away which could or could not be the transition area. He stated as a Board member, he is not comfortable issuing a Variance for something we do not have jurisdiction over; and he would prefer getting a professional to look at it and then decide what needs to happen based on that.

Mr. Majewski stated the wetland buffer that we require for a wooded area such as this is 50'. He stated a 100' wetlands buffer is required if the area has no vegetation to help protect the wetlands.

Mr. Joe Weir, 1125 Lily Pond Lane, was sworn in.

Ms. VanBlunk advised Mr. Weir that the Applicant is going to have a professional come in because based upon the Township's review of the Plan it appears that Mr. Harn's property may not be within the wetlands.

Mr. Weir stated he has been here for twenty years, and he knows how wet that area. He stated he is "about protecting the space," and he wants the safeguards to be in place for that area adding it is a very pristine area. He stated there is also a reason why the Township has an Ordinance because at some point in time the Township found it important enough to put those safeguards in place. Mr. Weir asked if there is a Continuance should he come back on at the next meeting. Ms. VanBlunk stated if it is determined that he does need a Variance, it will come back; however, he may not need a Variance. Ms. VanBlunk stated Mr. Weir will be notified if that occurs.

Ms. VanBlunk asked Mr. Weir if he wants Party Status. Mr. Weir stated he just opposes it because he is very familiar with the area, and he knows what the wetlands are "back there." He stated he knows there will have to be studies there. He stated he understands that is just a fence for pets, but other neighbors have done alternatives like invisible fencing. He stated a lot of accommodations have been made by a lot of neighbors to keep this area the way it is.

Mr. Richard Eisner and Ms. Laurie Eisner, 1137 Lily Pond Lane, were sworn in.

Mr. Eisner stated he is next door to Mr. Harn, and he saw the flags showing where they are going to put the fence. He stated they have no objection to what he is trying to do.

Mr. Harn asked who he provides the report to once he engages the professional, and Ms. VanBlunk stated it should be submitted to Mr. Majewski.

Mr. Flager stated if it is determined that the property is outside of the 50' then the Application could be withdrawn because no Variance would be needed.

Mr. Harn stated the property immediately behind his is owned by the Township which is close to 50' on its own before you get to the woods where the wetlands is inside of. He asked before he has to spend more money and go through more Hearings would that not be enough to show that his property is 50' away.

Mr. Connors stated there are multiple aspects of what a wetlands comprises, and there are soil characteristics, water, and plants. He stated while Mr. Majewski is competent going out and looking at for what is obviously a wetlands, may not be necessarily be the limit of what the wetland is. He stated that is why a soil scientist comes in to determine where the actual limit is. It will be flagged, and it will be determined how far away it is from where Mr. Harn wants to do the work. He stated there is a line on the paper, and that wetlands may have been at that location when it was drawn; and through development it has been covered. He stated he wants to determine if the Board actually has jurisdiction to approve a Variance.

Mr. Solor stated he agrees with Mr. Connors adding that there is documentation that there is a wetlands there even if it is does not appeal that there is, and this is why he wants someone to go out and make the determination.

Mr. Harn asked if that same drawing does not show that there is a Deed Restriction that it tied to the wetlands. Mr. Majewski stated it does, and the Plan shows the wetlands which is why Mr. Harn is before the Board until they have evidence to the contrary that it is not a wetland or unless the Board is satisfied that the encroachment into the wetlands would not be detrimental to the Township. Mr. Harn stated his attorney advised him that there is no Deed Restriction on the Deed that he has right now.

Mr. Majewski stated while it states on the map that it is a Deed Restriction, it is still a delineated that is on a Recorded Plan on file with the Township and the County; and absent any information to the contrary, that is where the wetlands are. Mr. Majewski stated he believes based on what he saw that the wetlands line is not where it is shown on that map; however, they need to know where exactly that line is to confirm how far away it is from Mr. Harn's property. Mr. Majewski stated Mr. Harn should contact an engineer/environmentalist who is more familiar with wetlands delineations, and they could go out and flag the wetlands closest to Mr. Harn's property and measure how far away it is from the property line.

There was discussion as to the date that the matter should be Continued to. Mr. Solor stated it is possibly that Mr. Harn may not need the Variance and may not have to come back to the Zoning Hearing Board. Mr. Harn stated he does have a fence contractor scheduled to start as soon as possible.

Mr. Connors moved, Mr. Solor seconded and it was unanimously carried to Continue the matter to May 4, 2021.

Ms. Kirk left the meeting at this time.

APPEAL #21-1911 – WILLIAM MOLONEY
Tax Parcel #20-003-036-015
1240 SILVER STREAM DRIVE, YARDLEY, PA

Mr. Majewski stated he had the opportunity to speak to Mr. Moloney who indicated he had a family emergency that prevented him from appearing tonight. Mr. Majewski stated Mr. Maloney indicated that he would be available for the next meeting on April 20. Mr. Majewski stated since the Application was submitted on March 5, 2021, the sixty day time period would take them to the first meeting in May if necessary.

Mr. Connors moved, Mr. Solor seconded and it was unanimously carried to Continue the matter to April 20, 2021.

There being no further business, Ms. VanBlunk moved, Mr. Connors seconded and it was unanimously carried to adjourn the meeting at 8:30 p.m.

Respectfully Submitted,

Matthew Connors, Secretary