

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – JUNE 15, 2021

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held remotely on June 15, 2021. Mr. Zamparelli called the meeting to order at 7:38 p.m.

Those present:

Zoning Hearing Board: Anthony Zamparelli, Chair
 Pamela VanBlunk, Vice Chair
 Matthew Connors, Secretary
 James Dougherty, Member

Others: James Majewski, Director Planning & Zoning
 Barbara Kirk, Township Solicitor
 Adam Flager, Zoning Hearing Board Solicitor

Absent: Peter Solor, Zoning Hearing Board Member
 Frederic K. Weiss, Supervisor Liaison

APPEAL #21-1914 – JOSEPH JENNINGS
Tax Parcel #20-031-004
2 MCKINLEY AVENUE, YARDLEY, PA 19067
(Continued from 5/17/21 & 6/1/21)

Mr. Flager stated Mr. Majewski received today an e-mail from Robert Snyder, the Applicant's engineer from Kelly and Close, asking for a Continuance until the next available Zoning Hearing Board meeting and waiving all time constraints under the MPC. Mr. Flager stated the next meeting of the Zoning Hearing Board would be July 6 unless it is cancelled because it is near July 4. Mr. Majewski stated there are no other Agenda items scheduled for July 6, and it was felt that meeting would be cancelled, and the next meeting would be July 20 when this Appeal could be heard.

Mr. Connors moved, Ms. VanBlunk seconded and it was unanimously carried to Continue the matter to July 20, 2021.

APPEAL #21-1918 – RYAN HUCK
Tax Parcel #20=046-157
42 BEDFORD PLACE, YARDLEY, PA 19067

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 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. and Mrs. Ryan Huck were sworn in.

Mr. Huck stated they want to replace an existing fence which is in disrepair.

Ms. Kirk stated the Township is participating in this matter.

Mr. Zamparelli stated the Applicant should understand that they would be responsible for all costs of removal if the fence has to be removed for Township access. He stated there also needs to be a 2" minimum above the grass to allow for water to flow through it.

Mr. Huck stated they have a pool, and he asked if the 2" minimum above the grass would impact the Pool Ordinance, and Mr. Zamparelli stated it would not. The Applicants indicated they would be agreeable to those Conditions

Ms. Kirk asked if the proposed replacement fence will be solid or an open-type picket fence, and Mr. Huck stated it will be a 6' stockade fence. Ms. Kirk asked if there will be openings between the slats, and Mr. Huck stated there will not. Ms. Kirk stated the Zoning Ordinance indicates that any structure within the floodplain area is not to obstruct the flow of water, and she asked what they could do other than the 2" gap above the ground to insure that there will not be an obstruction of the flow of water in the event of a severe storm. Mr. Huck stated he would be open to suggestions. He noted they are replacing an existing solid fence so he was not aware that they would have to make any changes. He stated they would consider suggestions.

Ms. Kirk asked Mr. Majewski if a stockade fence impede the flow of water in the area, and Mr. Majewski agreed it would. Mr. Majewski stated he would recommend a different type of fence – either a wrought iron fence, although that does not provide a lot of privacy, or at a minimum a shadowbox-type fence where the boards are staggered so that water can pass through but would still meet with the Swimming Pool Code.

Ms. Kirk asked Mr. and Mrs. Huck if they would be willing choose either the wrought iron or shadowbox-style fence if the Board were inclined to grant the request. Mr. Huck stated although they have not had a chance to discuss this, he does not feel wrought iron would be an option. He stated if a shadowbox is the only way they can replace their fence, they would consider that. He asked if there are any other options. Ms. Kirk stated it would have to be whatever type of fence would insure openings other than just at the bottom to allow the flow of water which would include a picket-style fence.

Mr. Dougherty stated flood panels are installed in a foundation when a house is built in a flood zone for the lower, and those are usually only 20" wide by 8" high, and he asked if they could install something like that. Mr. Zamparelli stated he feels that would be "overdoing it." He asked Mr. Huck about a shadowbox fence which provides privacy but allows water to go through it. Mr. Huck stated they did consider the different options. Ms. Huck stated it was a cost decision as that was more than they were considering at that time; however, if that is non-negotiable, they will have to look into that. Mr. Zamparelli asked if they would like to Continue this and consider it further.

Mr. Huck stated they have been working with their fence company for some time, and he believes that they have already ordered the materials for their job. He asked if it would be possible to use the stockade fence and just remove every other picket so it would not cost them a lot of extra money to purchase a different fence given the fence has already been purchased for this job. Mr. Zamparelli stated they bought the fence without getting approval. Mr. Huck stated they were working with the fence company, and the fence company wanted to make sure that it would not put their project two months behind the date of this Hearing, and he understands that the fence company has the fencing in their yard since he had already paid the deposit; and they were just waiting for the Township to approve it. Mr. Zamparelli stated he is not sure taking every other board out is something the Township or the homeowner would want. Mr. Huck stated they know the fence that they purchased was in their price range.

Ms. VanBlunk asked if there was a Permit for the previous fence. Mr. Majewski stated that was before this property was mapped into the floodplain as the existing fence was installed some time ago. Mr. Majewski suggested that if the Board and the Township are in agreement, they provide a fence that is suitable to allow water to pass through subject to the review and approval of the Township.

He stated that way they can work with the Applicant to come up with what will work for the Applicant cost-effectively but still safeguard the public from danger from a flood.

Ms. Kirk stated this would be acceptable. She stated the concern was that even though there is the 2" gap at the bottom, if it was a solid fence it would not be as effective in a major storm.

The Applicants indicated that they felt this was acceptable. Mr. Majewski stated they also have to satisfy the Swimming Pool Code, and taking out every other board may not comply.

Mr. Flager stated if the Variance is granted, the Decision should state that the granting of the Variance may result increased premium rates for flood insurance and may increase the risk to life and property. He stated that applies to all Variances having to deal with the floodplain.

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

Ms. VanBlunk moved, Mr. Connors seconded and it was unanimously carried to approve the Variance subject to working with the Township on a final medium that is acceptable to both the Applicant and the Township. The granting of the Variance may result in increased premium rates for flood insurance and may increase the risk to life and property.

APPEAL #21-1906 – GABRIEL DECK & ALEXANDRA CALUKOVIC-DECK
Tax Parcel #20-039-004-001 & #20-039-004-002
INTERSECTION OF WOODLAND DR & WEST SCHOOL LN, YARDLEY, PA 19067
(Continued from 6/1/21)

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The reasons for the requested relief prepared by Mr. Murphy's office was marked as Exhibit A-2. The Impervious Surface Breakdown Calculations and Stormwater Management Controls which were updated 5/7/21 were marked as Exhibit A-3. The Zoning and ERSAM Plans dated 2/12/21 were marked as Exhibit A-4. The Wetland Floodplain Landscape and Stormwater Plan dated 5/7/21 was marked as Exhibit A-5. 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. Zamparelli stated he understands that they were originally seeking seven Variances, and he asked if that is still the number they are seeking as he had heard that some of those were eliminated. Mr. Flager stated he believes that they are down to four, and Mr. Murphy agreed they have been reduced with the submission of the Revised Plan and lay-out of the proposed home. Mr. Murphy stated the Zoning Plan shows in the lower right hand corner the list of the four current Variances that are being sought as part of the Revised Application.

Mr. John Fenningham, attorney, was present representing Scott and Kathy MacDonald, 829 Edgewood Road, which adjoins the subject flag lot, who are requesting Party Status. Mr. Fenningham stated he has advised Mr. Murphy, Mr. Flager, and Ms. Kirk that he will be requesting a Continuance to allow for the opportunity to engage an engineer to support the opposition position of his clients. Mr. Fenningham stated he will not cross-examine the Applicant's Witnesses tonight, make any opening statement, or present any opposition Evidence but will request a Continued Hearing date to do so. Mr. Zamparelli asked why the engineer could not be present tonight. Mr. Fenningham stated he felt he had an engineer as of last Thursday through his clients, but he does not have an engineer who can Testify. Mr. Fenningham stated he was in touch with a replacement engineer today, but he cannot meet with him until next week so he could not be prepared to participate this evening.

Mr. Murphy stated earlier it was indicated by the Board that they wanted to Continue an earlier Appeal to July 20, and he has a conflict on that date and Mr. Geonnotti is on vacation that week. Mr. Murphy stated they are both free on July 6. He stated he feels that waiting until August would be a hardship for the Applicant, and they had hoped that any Continuance would be to July 6. Mr. Fenningham stated he could not commit to that date because he is trying to retain an expert. He added that this matter was Continued twice before not on behalf of his clients. Mr. Fenningham stated he and Mr. MacDonald are unavailable on July 20, and he feels July 6 may be too soon although he recognizes the urgency of the Decks. He stated the Appeal was already Continued twice – one by the Applicant and once at the request of the Township. He stated he would not want to be forced to appear on July 6 and again have to ask for a Continuance.

Ms. VanBlunk stated she is unavailable to attend the meeting on July 6.

Mr. Murphy stated this was Continued once because the Township raised some objections, and it was prudent for everyone to try to meet and address them, and the second time it was Continued was the result of a lack of a quorum of the Zoning Hearing Board. He stated he understands that they are bound by the consensus of the Zoning Hearing Board as to when this matter will be re-scheduled, but he would prefer not to wait until August. Mr. Murphy stated if Ms. VanBlunk is going to hear the Testimony tonight, he would not want to proceed on July 6 if she is not available that evening.

It was noted that the first meeting in August would be August 3. This date was satisfactory to Mr. Fenningham and Mr. Murphy.

It was noted that there were twenty-three people in the waiting room on this matter. Mr. Flager stated Public Comment could still be heard this evening adding that there could be additional people wishing to speak at the Continued Hearing.

Mr. Murphy stated he has no Objection to Mr. Fenningham's clients having Party Status since they immediate about the property.

Mr. Justin Geonnotti, engineer, and Mr. Gabriel Deck were sworn in.

Mr. Murphy stated Gabriel and Alexandra Deck are the equitable owners under an Agreement of Sale to purchase two Tax Parcels that are identified in the Application as TMP #20-39-4-1 and #20-39-4-2. He stated the Plan proposes to consolidate both of those parcels, adding that each in its own way is non-conforming. The proposal is to merge both of the parcels into a single flag lot that contains slightly less than 38,000 square feet. The properties are currently vacant. The property is Zoned R-2, Medium-Density Residential. What is being proposed is to build a single-family detached dwelling for the Decks on the property. Mr. Murphy stated the sellers of the property are live immediately in front of this property.

Mr. Murphy stated this Application was originally submitted in February, 2021 with a Hearing scheduled for March 16. That Hearing was Continued because at that point Ms. Kirk on behalf of the Township indicated that the Township was opposed to the Application. Mr. Murphy stated he does not believe at that point they were aware of the opposition of the MacDonalds although they may have been. Mr. Murphy stated the matter was Continued to give the Applicants the chance to evaluate the Plan and the concerns that had been expressed to them to date at that point.

Mr. Murphy stated as a result of what they learned were the nature of some of the objections, they prepared and submitted a Revised Application; and that Revised Application dramatically reduced the extent of Zoning relief required with significant changes to the placement of the home and the impact of that. Mr. Murphy stated he understands this evening that the Township remains in opposition to the Application as are Mr. Fenningham's clients.

Mr. Murphy stated tonight they will discuss the current site conditions, the presence of the various natural resources that are located on the property, the impact of the Township Ordinances as they are applied to those natural resources, and the available area for building a single-family home on the Lot. They will also discuss the reduced scope of Zoning relief that will be required.

Mr. Justin Geonnotti stated he is the Principal and Regional Manager of Dynamic Engineering. He stated his CV was submitted for the Record, and he has been a professional engineer for fourteen years. He stated he has been accepted by the Lower Makefield Township Zoning Hearing Board on numerous occasions in the past. Mr. Murphy stated before the Hearing this evening he provided to Mr. Flager, Mr. Fenningham, and Ms. Kirk a copy of Mr. Geonnotti's Curriculum Vitae; and Mr. Fenningham had indicated that he had no Objection to Mr. Geonnotti's qualifications to Testify about the various aspects of the Application this evening. Mr. Murphy stated Mr. Geonnotti is also known to the Zoning Hearing Board, and he has been previously qualified and has Testified in the past.

Ms. Kirk stated the Township is not in opposition to Mr. Geonnotti Testifying as an expert engineer, and she asked if the CV will be submitted as an Exhibit. Mr. Murphy agreed, and it was marked as Exhibit A-6.

The Board had no Objection to Mr. Geonnotti being an expert. Mr. Fenningham stated they do not Oppose Mr. Geonnotti Testifying as an expert.

Mr. Geonnotti stated he is familiar with the property and has visited the site multiple times and has been involved in the preparation of both the original Plan and the most-recently Amended Plan referenced.

Mr. Murphy stated yesterday afternoon he circulated a number of Exhibits to Mr. Flager, Mr. Fenningham, and Ms. Kirk; and they indicated they did have those.

Mr. Geonnotti noted Exhibit A-5 which is the Zoning Plan that was submitted as part of the Application dated 2/12 with a Revision of 5/7/21 which was submitted for this Hearing. Mr. Murphy stated that is the Plan that was part of the Revised Application which is the subject of tonight's Hearing and has the reduced scope of Zoning relief. Mr. Geonnotti stated the property in question consists of two parcels. The first parcel is the flag portion which consists of .7 acres, and that is the flag pole portion which he showed on the Plan. He stated the second parcel consists of the flag portion which is .7 acres so collectively it is .87 acres.

Mr. Murphy stated what is being referred to as the flag pole is a very long, very narrow singular strip of ground. Mr. Geonnotti stated the flag pole itself is approximately 410' long and approximately 18' wide. Mr. Murphy stated today that is an existing, free-standing separate Tax Parcel, and Mr. Geonnotti agreed that it exists as a Tax Parcel separate from the other Lot. Mr. Murphy stated no one can explain why anyone years ago would have created a Tax Parcel at that length or width. Mr. Murphy stated a parcel that 18' wide and 410' long under the current Ordinance is clearly non-conforming, and Mr. Geonnotti agreed.

Mr. Murphy stated the second parcel is a more traditional rectangle, and Mr. Geonnotti agreed adding that it is approximately 116' wide along the front by approximately 268' long along the back. Mr. Murphy stated the problem with that Lot is that it is landlocked, and it has no frontage on a public street. Mr. Geonnotti agreed adding that the flag pole itself which is where the driveway is shown is not part of that parcel, so that parcel is completely landlocked from public streets. Mr. Murphy stated both of those parcels surround a property that is identified on the Plan as #20-039-004. He stated to the north of the parcel is a property owned by the MacDonalds, and they share the northern boundary line with the landlocked rectangle.

Mr. Murphy stated this property aside from a number of burdens that will be testified to also has three existing Easements. Mr. Geonnotti showed on the Plan the 10' wide Storm Sewer Easement that exists along the flagpole portion that runs back to an existing riprap apron which is a dissipator for an existing storm sewer which discharges into the stream. He also showed the 15' wide Storm Sewer Easement which overlaps slightly but then continues down the rest of the flagpole so the flagpole itself is mostly an Easement.

Mr. Geonnotti stated the stream itself, Silver Lake, has a 50' wide Easement, 25' on either side of the center line of the stream which in an Easement for stream clearing. He stated these were all existing Easements as documented during the original Subdivision of the property in the 1950's and the further Subdivision in 1975.

Mr. Geonnotti noted the Plan of Survey dated 1/21/21 which was marked as Exhibit A-7. He stated this is a boundary location and topographic survey prepared based on field conditions as of January 21, 2021; and it is the basis for the other Plans that were submitted. It identifies all of the natural resources on the site, the topography, existing features, and the encumbrances of existing Easements on the property. Mr. Geonnotti stated this also better defines the separate parcels collectively making up the subject parcel that they are proposing to merge and further improve.

Mr. Murphy stated this Plan calls out Plan Books and pages for the three Easements that were referenced and they are highlighted on the Plan including the 10' wide Storm Sewer Easement which is in Plan Book 137, page 7, the 15' wide Storm Sewer Easement which is in Plan Book 137, page 7, and the Stream Clearing Easement which is in Plan Book 137, page 7. He stated those three Easements were all created by virtue of the Plan of Sylvan Glen that is made reference to on the Plan, and is the Plan that was originally approved in 1951 and Recorded in 1952; and Mr. Geonnotti agreed.

Mr. Geonnotti stated there are a number of natural resources including wetlands. He stated the wetlands that they have delineated on the Plan were delineated in the field by an ecologist, surveyed based on flag locations, and the locations of the wetlands as delineated in the field are shown on this Plan of Survey and carried through the Plan, the Zoning Plan, and the Existing Features Plan throughout the Application. It was all based on a survey and not just a visual inspection. Mr. Murphy stated the survey upon which the Application is based is current and just done a few months ago, and the wetlands delineation is also current and just done a few months ago with points labeled in the field picked up by the surveyor and then translated onto the Plans; and Mr. Geonnotti agreed.

Mr. Geonnotti stated this property is located approximately 700' south of Edgewood Road along Woodland Drive.

Mr. Geonnotti noted Exhibit A-4 which is the Environmental Resources Site Analysis Map Plan (ERSAM). He stated this is a requirement of Lower Makefield Township which delineates all natural resources, Easements, and other restrictions on a property and presents them to a point where you can determine the site capacity. He stated what is shown in pink are the Easements on the property and immediately gets removed from the Base Site Area which means that it is undevelopable.

Mr. Zamparelli asked the location of the stream, and Mr. Geonnotti showed the stream on the Plan which is in the center of the pink area. He stated the Stream Clearing Easement is a 25' offset on either side of the center line of the stream.

Mr. Murphy stated all of the Easements, assuming they were approved in 1951 and Recorded in 1952 are all seventy years old; and Mr. Geonnotti agreed. Mr. Geonnotti stated the Easements equate to .27 acres of the property so they are down to .6 for a Base Site Area.

Mr. Geonnotti stated what is shown in yellow is the Wetland Buffer which is not already covered by a floodplain or a wetland area. He stated the way natural resources are done in Lower Makefield, if they overlap such that the wetland overlaps a woodland, you count the wetland and not the woodland as well. He stated there is an order of magnitude that they go through as a breakdown; and as you work through the natural resources on a site, you do not "double dip and count them twice." Mr. Murphy stated the Ordinance requires that they count the resource that has the most restrictions; and since woodlands can be disturbed more than a wetlands, they count the wetland, but do not double dip and count the woods; and Mr. Geonnotti agreed. Mr. Geonnotti stated Easements are the most restrictive, and the second most restrictive is the floodplain. Mr. Geonnotti stated the yellow area is the wetland buffer and not the wetlands themselves. He stated anything that is within the 100' buffer that is not covered by another natural resource on site is delineated and shaded in yellow. He stated it is in the back of the property, and there is a portion in the front of the property as well. Mr. Murphy stated across the entire width of the rear, they are showing the yellow-shaded wetland buffer area, and Mr. Geonnotti agreed.

Mr. Murphy stated in between the yellow area and the pink area, there is a very small triangular sliver of green and then light blue. Mr. Geonnotti stated the green is wetlands; and because the wetlands are almost entirely covered by the floodplain area, they are only showing a small portion of wetlands.

He stated the floodplain and the Easements cover most of the wetlands, and this is the only portion of the site is wetlands not restricted by another natural resource or Easement. Mr. Geonnotti stated the light blue and the dark blue are the floodplain. He added that Lower Makefield Township does not delineate between floodway and flood fringe, but they are showing the difference on the Plan for clarity. He stated the dark blue is the limit of the FEMA floodway. He stated the light blue is the flood hazard area/flood fringe. He stated that is the area which could be covered by a 100 year storm which has a 1% chance of occurring in any year.

Mr. Murphy asked Mr. Geonnotti where he obtained the limit of the FEMA floodway. Mr. Geonnotti stated FEMA studied the stream, and there is a known base flood elevation of 88. He stated their survey was done which was a boundary location and topographic survey, and the grades on the property were field verified by a survey. He showed where 88 contour hits the property, and that is the limit of the flood fringe.

Mr. Murphy stated all of the areas shown in the colors yellow, pink, blue, green, light blue have been separately tabulated in the chart below the map; and Mr. Geonnotti agreed. Mr. Murphy stated this results in the total resource protection land which is listed as 0.52 acres out of the total 0.87 acres, and Mr. Geonnotti agreed. Mr. Geonnotti stated the gross site area minus the Easements got them to .6 acres; and once you subtract the natural resources that are protected at different magnitudes depending on their class there is another .52 acres of resource-protected land which is land that is not available to be used on the property. Mr. Murphy asked what is left, and Mr. Geonnotti stated .08 acres is left which is the net buildable area. He stated the .08 acres is the white area shown on the Plan that is not shaded by any natural resources on the property.

Mr. Murphy stated Mr. Geonnotti has identified in the middle of the Plan a 100' wetland buffer which was measured from the edge of the delineated wetland. Mr. Geonnotti stated that is based on ground cover of the existing conditions on site, and they have confirmed that a 100' wetland buffer is required.

Mr. Murphy asked if the origin of the 100' wetland buffer is the same as the FEMA-established limit of the floodway. Mr. Geonnotti stated the wetland buffer is strictly a Township Ordinance requirement, and DEP and FEMA do not require a wetland buffer. Mr. Geonnotti stated there is no disturbance of the wetlands. Mr. Murphy asked if the 100' wetland buffer an objective

standard or is it subjective, and he asked how the width of the wetland buffer is determined assuming that it varies based on site characteristics. Mr. Geonnotti stated it does vary based on site characteristics which are the vegetation from the edge of the wetlands, and that determine the subjective wetland buffer width. Mr. Murphy asked who determines what the width of the buffer is; and Mr. Geonnotti stated his ecologist did the field analysis for the wetlands based on the criteria and determined that it was a 100' wetland buffer, and the Township Zoning Officer also confirmed that. He stated it is a subjectively-determined criteria of natural resource protection. Mr. Murphy stated if the vegetation adjacent to the limit of the floodplain was heavier or taller, etc. that could influence the width of the buffer, and Mr. Geonnotti agreed. Mr. Geonnotti stated the intent of the wetland buffer is to preserve the water quality and the ecology of the wetland itself. He stated you do not want to disturb too close to the buffer because you get treatment of the stormwater as it flows over the buffer. He stated the thicker the vegetation, the more treatment, so the smaller the buffer needs to be. Mr. Geonnotti stated you could reduce the width of the buffer with additional plantings and trying to promote more vegetation closer to the stream. He stated the 100' is the maximum that the Township would require. He stated it is in the range of 50', 75', or 100' based on the vegetation.

Mr. Murphy stated the triangular area in white in the upper corner is the .08 acres of the total site that is not encumbered by natural resources, Easements, wetland buffers, floodplain, flood fringe, or wetlands; and Mr. Geonnotti agreed. Mr. Murphy stated that is before you consider what the building area is based on the application of the Township Ordinances, and Mr. Geonnotti agreed that there is no building setbacks or building envelopes shown on the Plan.

Mr. Geonnotti showed a slide of the area shaded in red which is the total encumbered area of .08 acres. Mr. Murphy stated they had indicated earlier that the total square feet of the site was 37,915, and out of that all that is left to work with is less than 3,700 which is 10% of the total site; and Mr. Geonnotti agreed. Mr. Murphy stated to that red area, they have to apply the Ordinances that establish various yards. Mr. Murphy stated those are not measured from property lines in Lower Makefield, and Mr. Geonnotti agreed.

Mr. Geonnotti noted Township Ordinance 200-61.c requires that all building setbacks be taken from the natural resources to be protected. He stated for this site the front yard setback would be 35' and the rear yard setback would be 45' and side yards of 15' each so that you are left with a negative building envelope. He stated if you apply all of the restrictions within the Township

Ordinance and the existing Easements on the property, the site has no building envelope. Mr. Murphy stated the site is therefore effectively sterilized, and Mr. Geonnotti agreed.

Mr. Geonnotti showed a Plan that shows that they would be left with .01 acres if they ignored the requirement that yards be measured from the edge of resources.

Mr. Geonnotti showed the Plan which was the original Application when they were to before the Zoning Hearing Board on March 16. He stated the dwelling they were proposing extended into the floodplain area. He stated this does not show the overlapping resources, and it is just the floodplain; and that was a source of opposition on the first Application. Mr. Geonnotti showed the the new Application which is what is being presented for tonight's Hearing, the house is now smaller, and they removed approximately 556 square feet; and it is entirely outside the floodplain area. Mr. Geonnotti stated this new Application was a result of hearing the concerns and trying to respect the flood fringe area so that the house was pulled entirely out of that area, re-oriented the house, and made it smaller. He stated there would be zero impact in the flood hazard area.

Mr. Murphy stated the version of the Plan that is being shown this evening is slightly different from what was circulated yesterday because the size of the proposed dwelling under the current Application was mislabeled on the Plan circulated yesterday. He stated it was labeled as the same size as the original house, and that is not accurate. He stated what is being shown this evening is accurate, and it is 2,008 square feet first-floor footprint which includes the house and the garage. Mr. Geonnotti stated it is 556 square feet smaller between the original Application and the Application tonight. Mr. Geonnotti stated that the Exhibit is dated June 15, and is noted as the Floodplain Exhibit. Mr. Flager stated this will be marked as Exhibit A-8. Mr. Connors stated it was just a typo that was fixed, and the building footprint did not change from what was circulated yesterday; and Mr. Murphy agreed.

Mr. Geonnotti showed a slide which focuses on the wetlands. Mr. Geonnotti stated the green is the delineated wetlands and the yellow is the 100' wetland buffer. He stated in the original Application the house was in the floodplain and also in the wetland buffer. He stated as part of the new Application respecting the wetland buffer to the best of their ability while still developing the Lot, they significantly reduced the impact into the wetland buffer. He stated

they are holding a 30' front yard, and there are overhead utility poles which they are trying to respect. He stated the area of impact is outside the floodplain but just inside the wetland buffer, and they are proposing no closer than 53' at the closest point to the wetland buffer. Mr. Geonnotti stated they will not touch the wetland itself, and they are still maintaining a sizable buffer throughout the entire property.

Mr. Geonnotti noted on the Plan the rip rap apron and the storm sewer conveyance system that comes from inlets in the road, down the driveway, and discharging into the existing stream. Mr. Murphy stated this is an existing storm sewer piping that extends from Woodland down the driveway to the area of rip rap, and Mr. Geonnotti agreed. Mr. Geonnotti stated there are three inlets in the road connecting to the one inlet and to another inlet in the road all being conveyed to the 32" pipe to an existing rip rap. He stated all of this exists today. Mr. Zamparelli stated that is all underneath the pole of the flag lot, and Mr. Geonnotti agreed.

The wetlands Exhibit was marked as Exhibit A-9.

The Alternate Wetland Plan was noted. Mr. Geonnotti stated if they were to apply a 50' wetland buffer onto the property the house would be entirely outside of the wetland buffer. He noted the red area which is the building envelope. Mr. Murphy stated this shows a Plan that is entirely out of the flood plain and the flood fringe and respects a minimum 50' wetland buffer from the delineated wetlands; and this gives the opportunity to have a deck off the back of the house. This was marked as Exhibit A-10.

The Stormwater Routing Plan was marked as Exhibit A-11. Mr. Murphy stated this also shows some additional plantings. Mr. Geonnotti stated this Plan corresponds to Exhibit A-3 which was the Stormwater Calculations and it shows how they are providing stormwater management for this Application. He stated as part of the Application, they are proposing impervious of 4,655 square feet. Mr. Geonnotti stated that includes the driveway, the house, patios and everything that is shown on the Plan as proposed impervious surface. Mr. Geonnotti stated they are required to provide stormwater management for that impervious surface.

Mr. Geonnotti stated the next part of that Exhibit, A-3, is the stormwater management, and this is for small projects proposing less than 5,000 square feet of new impervious which is what they are doing. He stated based on the calculations, 2" of rainfall over the impervious surface needs to be

treated and infiltrated into the ground, recharge the aquifer, and take care of water quality on the site. He stated they are required to provide 767 cubic feet of stormwater volume on the project. He stated the end result is that they are proposing 1,516 cubic feet of stormwater volume control which is 198% or almost two times what they are required to provide per the Ordinance.

Mr. Geonnotti stated the biggest component of the stormwater management control is the proposed rain garden in the front of the property. He stated while it is not required, they did do infiltration testing to confirm that infiltration rates could be obtained in that area. He stated it is in the only area available for stormwater management outside of the natural resources. He stated the entire roof will be conveyed to this rain garden including the back side roof so it will not flow out the back into the wetlands. Mr. Geonnotti stated it will go through a planted soil media and an amended soil media which is a sand soil mixture which provides water quality, stormwater detention, and rate controls even though that is not required in this District because they are less than 5,000 square feet.

Mr. Zamparelli asked how they will get the water to the rain garden; and Mr. Geonnotti stated the gutters will be conveyed into downspouts, and the downspouts will be piped underground to the rain garden. He stated they are also potentially proposing a rain barrel on the corner of the building which could be used for capture and re-use for landscaping.

Mr. Geonnotti stated the rain garden in the front of the property has the capacity to infiltrate and control up to the ten-year, twenty-four hour storm. He stated anything in excess of that will be contained and slowly released by an outlet control structure into the existing stormwater conveyance system which is contained within the existing Easement to an existing rip rap apron all on the Lot, and then conveyed to the stream. Mr. Geonnotti stated the 100-year storm is the maximum storm that engineers design to for large projects; and even though this is not required for this Application, they are doing it anyway with the rain garden. He stated they are also proposing evergreen trees, buffer plantings adjacent to the MacDonald area which will buffer the pool area, and additional deciduous trees which will enhance the buffer and which will soak up additional water on the site. Mr. Geonnotti stated the BMP Manual does not favor when impervious surfaces run right into a stream, and they prefer that the stormwater off of impervious surface go through some kind of filtration device and run over land before getting to the stream so the driveway will be disconnected, and it will run through a river stone apron before it goes overland through the wetlands buffer and slowly

gets conveyed into the stream. He stated all of these proposed Best Management Practices which are stormwater management controls collectively provide what he originally noted as 1,516 cubic feet of run-off volume control on the Application. He stated they are only required to do 767 cubic feet. He stated Mr. Deck is trying to be a good resident and good steward of the land and has agreed to go above what is required.

Mr. Murphy stated all of the calculations that Mr. Geonnotti discussed are shown on Exhibit A-3 and graphically shown on Exhibit A-11.

Mr. Zamparelli asked if the existing storm drain has the capacity to absorb the extra water, and Mr. Geonnotti stated it does. He stated they are also providing stormwater management by way of the rain garden and they are providing the peak rate control which will be a benefit to those concerned about the storm surge in Silver Creek.

Mr. Geonnotti stated the smaller storms which are the one-year through ten-year storms which are the majority of the storms that are encountered in this area are 100% detained in the rain garden so that nothing would be getting to the stream while today there is run-off getting overland to the stream so they are improving conditions during the lower storms which is above what is required. Mr. Geonnotti stated they are providing capacity on the site by this Application.

Exhibit A-12 was noted which is the Aerial Exhibit from 6/15/21. He stated the property is denoted by the thicker white line, and the thinner dashed line is the flag lot that they are proposing to consolidate. He stated this is an exact overlay of the proposed house on the Lot. The MacDonald property with their pool was noted on this Exhibit. Mr. Geonnotti stated this shows that they are trying to stay as far away from the street as possible for the house and it is consistent in size if not smaller than the surrounding homes in the area.

Mr. Murphy stated they are trying to show that the proposed house is consistent with the character of the neighborhood, and it is not overlay large as it relates to any of the existing homes. He stated a rooftop view is typically a good way to show what it will look like, and he feels it fits well with the other existing rooftops than can be seen. Mr. Murphy stated what they are showing includes the garage so it is not all living space.

Mr. Connors asked for a review of the requested Variances. Mr. Murphy stated the first is a Variance from Section 200-61C to allow setbacks from natural resources to be measured from Lot lines and not from the edge of the resources. He stated as noted earlier, if they had to measure everything from the edge of the resources, they would have a negative building envelope, and there would be no opportunity to build at home at all.

Mr. Murphy stated the second Variance is from Section 200-51B1b to permit a 10% temporary disturbance from the flood fringe. Mr. Geonnotti stated this is more of a formality, and because they are building up to a flood fringe, construction activities will require some level of staging and possibly some disturbance temporarily within that area in order to construct the house. He stated they are not proposing to change the grading within the area, and that is the intent of the flood hazard boundary area. He stated they are not proposing a permanent change to the elevation, but they are being proactive in saying for construction activities, they will be in the area temporarily.

Mr. Murphy stated the third Variance deals with a request to permit a 22% disturbance of the wetland buffer. Exhibit A-9 was shown, and Mr. Geonnotti showed the area that they are proposing to disturb for the house. Mr. Murphy stated that is assuming that it is a 100' wetland buffer. He added that if the wetland buffer is reduced to 50' that Variance would go away.

Mr. Murphy stated the last Variance deals with the flag lot where the pole of the flag is not 25' but 18' which is the existing condition. Mr. Geonnotti stated this is an existing non-conformity. Mr. Geonnotti stated because they are doing the Subdivision and consolidation, they are now creating the Variance, and they need to request relief.

Mr. Howard Hunter, President of the Makefield Lakes Community Association, stated this is the community around Silver Lake; and there are currently issues with the Lake filling in. He stated any time it rains it brings the water and silt down from the stream. This has also caused erosion to the Lake. Mr. Hunter stated their Community includes approximately 90 families around the two lakes, and as a Board they are strongly against this proposal because it will cause more problems. He stated they feel that when the Township created the 100' wetland buffer did that with good reasons, and they do not feel it is a good idea to be building within that 100' wetland buffer.

Mr. Zamparelli stated according to the engineer, there will be not water heading that way into the stream with what they are proposing with the trees and the rain garden.

Mr. Hunter was sworn in at this time.

Mr. Hunter stated their treatment will take some time to develop and be able to hold all of that. He stated they will also build a driveway. He stated while he feels they have good intentions, he does not agree that it will do everything for years. He stated there is a problem now with stormwater running into the stream, and it is just going to create more.

Ms. Sara Spengler-Campanella, 29 Greenridge Road, was sworn in. She stated she is concerned that there is no Environmental Impact Study considering the level of encroachment on the wetlands buffer and the fact that the property does back to Silver Creek which does flow down into Silver Lake. She stated Silver Lake already has a silt build-up issue. She stated she is concerned about how this will impact the wildlife in the wetlands area and the Lake itself. She stated without an Environmental Impact Study that would give a better picture of potential impacts to wildlife and the Lake, she feels a key piece is missing in order for the Zoning Hearing Board to make an informed decision.

Mr. Sean Wagner, 564 Countess Drive, was sworn in. He stated his property abuts Silver Creek, and he has lived here twenty-three years. He stated he is next to South Drive which is where Silver Creek crosses. He stated he sent a photo of his property from a recent flood. He urged the Board to consider that there have been many more frequent medium and large floods in recent years, and those storms have caused the kind of damage that is shown in the photo he provided. He stated he feels this has escalated in recent years, and there have been a number of disturbances in the neighborhood to the creek bed including a neighbor on South Drive which the "Zoning Board has not detected or enforced." Mr. Wagner urged the Board to deny this request and to protect the creek bed from further disturbance and property owners from flood damage going forward.

Ms. VanBlunk asked Mr. Flager if he marked as Exhibits this photo and the letters which were received. Mr. Flager stated they generally do not mark them unless people appear and present them to the Board. Mr. Murphy stated he has not seen them.

Mr. Wagner stated the water that is shown in the photo that has encroached on his yard is from what he feels would be called a medium storm, and he is concerned that they are seeing more of these. He stated he believes that that the Zoning Ordinances were set up for fifty and one hundred year floods, and we have had several extremely large floods in recent years. He stated he is not sure what they can count on from a rain garden. He stated he is concerned that the assumptions in the Ordinances and the Plans submitted may be dated at this point. He stated they are putting wildlife and property at risk. He stated as a homeowner who is upstream from the proposed building, he wants to express his strong opposition to this.

Ms. VanBlunk stated Mr. Wagner also sent a video today, and Mr. Wagner agreed. Ms. VanBlunk asked when the video was taken, and Mr. Wagner stated he believe it was 2018. Mr. Zamparelli stated he did see the two-second video. Mr. Wagner stated every time we get a significant rain, the creek comes up. He stated it is not just his property, and it is other properties. He stated his property is outside of the floodplain and outside of the “wetlands barrier;” and his concern is that even “with those kinds of assumptions, they see the creek rising the way it is.” He stated he feels this is because of continued disturbances as well as weather changes since there have been significant weather changes over the last twenty-three years. He stated his concern is that they not be aggressive and push these properties beyond what they can handle.

Ms. VanBlunk asked if they would have to forward the information provided by Mr. Wagner to all the other Parties, and Mr. Flager stated they could share the video submitted since Mr. Wagner is present and Testifying. Mr. Wagner stated he would also provide the date of the video if he can find it.

Mr. Fenningham stated since the Board has seen the video and read some letter, he would request that they be made part of the Record and identified., Mr. Flager stated while they can with the video because Mr. Wagner is present, generally if they are not here to present it, they do not make it part of the Record since they are not present to authenticate. Mr. Murphy stated Mr. Wagner does not even know what the date of it is, and he does not feel it should be part of the Record. Mr. Wagner stated he can produce the date, and he objects to Mr. Murphy’s attitude.

Mr. Geonnotti stated Mr. Wagner did indicate that he is upstream of the property, and Mr. Wagner stated he is eight houses away, and he is affected. Mr. Wagner stated a lot of the development that surrounds the subject property were constructed in the 1950's and the 1970's with no stormwater management on any of those properties. He stated what they are proposing to do with this project is to comply with the new stormwater regulations. He stated he feels it would be a benefit if some of the Agencies would go door-to-door to some of the older houses and try to promote awareness of the stormwater concerns and address some of the run-off off of the older properties. Mr. Geonnotti added that Mr. Wagner has already indicated that he is upstream of the subject property, anything that is constructed downstream of his site will have no impact on him; and if anything, they will improve the situation by taking some of the run-off from upstream out of the watershed by their Application. Mr. Geonnotti stated he has already Testified that they will be removing stormwater; and if there is concern about flood relief, awareness needs to be regional based on the drainage area contributing to Silver Lake. He stated Mr. Deck coming in here is already taking the first step to do that. Mr. Geonnotti stated these developments built in the 1950's did not have the stormwater management controls that they are proposing today with new Applications nor did a lot of "extra curricular activities" in the area that he is sure were not Permitted have stormwater controls, and all of that is contributing to the degradation of Silver Creek that the Makefield Lakes Community Association has Testified to. He stated he feels they need to put it in context with how old the community is and where the problem really lies.

Ms. VanBlunk asked if there has been a ruling on whether the video would be made part of the Record. Mr. Zamparelli stated he looked at the video, and he did not see anything "special." He stated while he would not Object to it being part of the Record, Mr. Murphy has an Objection. He stated he understands there is a "time-stamp issue." Mr. Murphy stated while the Board/ Mr. Flager will decide whether it is admissible, he would note his Objection for the Record. Mr. Zamparelli stated his decision would be that he does not feel that it is necessary that it be made part of the Record. Mr. Flager stated Mr. Wagner can Testify that he took the video and where the video was taken. He stated part of Mr. Murphy's Objection is that Mr. Wagner cannot Testify today as to when the video was taken. Ms. VanBlunk stated he Testified that it was taken in 2018. Mr. Flager stated you do have to authenticate Evidence to admit Evidence. Ms. VanBlunk stated Mr. Wagner Testified that he took the video. Mr. Flager stated Mr. Wagner can state that it accurately portrays what

it looked like after a storm, but there could still be an Objection do admitting it due to the fact that it was one of 365 days in a year. Mr. Zamparelli stated his decision is not to admit it.

Ms. VanBlunk stated she felt it would be respectful to the other attorneys to provide it to them since the Board had seen it, and Mr. Majewski agreed to send it out to the Parties.

Mr. Peter Dodds, 843 Edgewood Road, was sworn in. He stated he is an adjacent resident to the subject property, and the rear southeast corner of his property abuts the subject property by approximately 116' and then proceeds down toward Edgewood Road where Silver Creek runs on both sides of his property for approximately 150' to 200'. He stated he has lived there for over thirty-five years and seen continual deterioration of the creek. He stated he understands that this site is supposed to enhance the existing run-off, but as a downstream owner, he does not see any improvements. He stated it is "a joke that there is a Maintenance Easement there because in twenty-seven years he has never seen anyone maintain the creek and it only continues to worsen." He stated he has to continually spend money on site clean-up and tree removal as a result of the banks deteriorating and the excess water coming through the site. He stated it is a "real joke as to how the Township is managing Silver Creek." He stated a number of years ago when Toll Bros. was building across from Edgewood Road at Afton, he complained to the Township, and they sent engineers at one point to put monuments on the side of his property to measure the expansion of the creek, and those monuments are now in the creek bed no longer. He stated he used to be able to walk 5' around those monuments in a radius so there is significant damage to the creek, and it continues to get worse every year. He stated it does not take much of a storm for the creek to rise above the banks and many times the creek is running fifteen to twenty yards in excess of the banks on either side. He stated he strongly opposes any development that will potentially have any risk of further water going in.

Mr. Zamparelli asked Mr. Dodds if he feels that there is the potential that this development will have further degradation downstream, and Mr. Dodds stated he does. Mr. Dodds stated he feels it will have further impact downstream and the wild habitats.

Mr. Dodds stated that while he realizes that these are two separate Tax Lots and are owned by the person who currently lives on Woodland Lane, while they described this as a separate Lot, he feels that is somewhat misleading. He stated in “reality, this is just the back yard of the house in front of it.” He stated he feels the property owner who acquired the house initially “was the bargain they negotiated for or the people prior to them that they had this beautiful wooded back yard.” Mr. Dodds stated he feels this is “exploiting the monetization of trying to develop a wetlands lot.”

There was no one else from the public wishing to speak at this time.

Mr. Fenningham requested a Continuance to August 3 to cross-examine Mr. Geonnotti and other Applicant Witnesses and present opposition evidence.

Mr. Majewski stated he did receive an e-mail that some people were having difficulty entering the meeting, and they will have to check into this prior to the next meeting. It was noted that *6 was not working.

Mr. Connors moved, Ms. VanBlunk seconded and it was unanimously carried to Continue the matter to August 3, 2021.

CANCEL JULY 6 MEETING

Mr. Dougherty moved, Mr. Connors seconded and it was unanimously carried to cancel the July 6, 2021 meeting.

There being no further business, the meeting was adjourned at 9:45 p.m.

Respectfully Submitted,

Matthew Connors, Secretary

