

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – NOVEMBER 15, 2022

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on November 15, 2022. Mr. Solor called the meeting to order at 7:30 p.m. and announced that since there are only four members present, three would have to vote in favor, and a tie would be a no vote.

Those present:

Zoning Hearing Board: Peter Solor, Chair
Judi Reiss, Secretary
James Dougherty, Member
Mike McVan, Member

Others: James Majewski, Community Development Director
Barbara Kirk, Township Solicitor
Adam Flager, Zoning Hearing Board Solicitor

Absent: Matthew Connors, Zoning Hearing Board Vice Chair
Fredric K. Weiss, Supervisor Liaison

APPEAL #22-1975 – ZUBAIDA FOUNDATION
Tax Parcel #20-041-002
855 BIG OAK ROAD, YARDLEY, PA 19067
(Continued from 9/20/22)

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plans were marked as Exhibit A-2. Revised Plans were 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. Mike Meginniss, attorney, was present with Mr. Eric Clase from Gilmore and Associates and Naveed Malik, President of the Zubaida Foundation, who were sworn in.

Mr. Meginniss stated he understands that Mr. Eddinger is participating remotely representing two of the neighbors and wants to make a statement at the outset which Mr. Meginniss has no objection to.

Mr. Eddinger stated he is representing Cheryl Dacey and Peter Burke who are the owners of 4 Williams Lane, which is an adjacent property to the subject property of tonight's Hearing. He stated throughout the last two months, Mr. Meginniss, the Zubaida Foundation, and his clients have engaged in negotiations; and they have reached an agreement for his clients to remain neutral in tonight's Hearing, but they do request Party Status. Mr. Eddinger stated the terms of the Agreement were forwarded to the Zoning Hearing Board solicitor today; and with that, they elect to remain neutral to the Application.

Mr. Meginniss stated he received Mr. Eddinger's letter dated November 15, have reviewed the five points therein, and they have no objection.

Mr. Meginniss thanked the Board on behalf of the Zubaida Foundation as this matter has been Continued a number of times. He stated that as Mr. Eddinger indicated they have been attempting to provide additional information regarding this project to his client and to other interested members of the community.

Mr. Meginniss stated as noted by Mr. Flager, they have provided a Revised Zoning Plan to the Zoning Hearing Board, and the effect of that Plan was to remove the loop/access drive that was to the rear of the structure. The original Site Plan had proposed the access drive, and through the last amendment that was submitted to the Board that access drive has been removed; and they are no longer seeking approval for the impervious surface percentage that correlated to that access drive. He stated the effect of the removal of that drive reduces the impervious surface percentage with this Application from 24% to 22% where there is 21% presently at the location. He stated they are not withdrawing the relief with respect to impervious surface, but the nature of the relief is reduced by one percentage point.

Mr. Meginniss stated the Zubaida Foundation owns and operates a mosque located at 855 Big Oak Road, and the subject property is approximately 4.91 acres and is Zoned R-2. He stated what they are looking to do is to demolish an accessory, secondary structure on the property and replace it with a new accessory structure which has a slightly larger footprint, but will be built entirely on impervious surface. He stated with this Application, they are not adding impervious surface due to the construction of the new building; and the reason why they are asking for relief to add an additional percentage of impervious surface is because as part of the Application they are showing

eight additional parking spaces which would be held in reserve. He stated if the Township were to ever decide that based upon the uses proposed at the site that those parking spaces would become necessary at a later date, the Applicant would agree to build out those eight parking spaces; and the 1% impervious surface would allow them to facilitate the construction of those spaces. He stated the construction of those spaces would be fully within the discretion of the Township. Mr. Meginniss stated that the 1% impervious surface coverage will not be used for any other purpose for any site improvements other than the parking spaces if they are deemed necessary at a later date.

Mr. Meginniss stated the Application is to acquire permission to re-use/re-purpose the accessory structure which is already on the site. He stated it will be demolished and a new structure will be built. He stated some of the concerns that the neighbors had when they received notice of the Application had to do with the Notice indicating that the Applicant wanted a community center, a day care center, and to provide funeral services; and without additional context, that seems like a lot for that building. Mr. Meginniss stated it will be indicated tonight that the scope of that is significantly more limited than what people were expecting when they received notice of this Hearing.

Mr. Meginniss stated the dimensional Variances needed are de minimus in nature. He stated there is a 1' additional front yard setback required because the existing building is a bit "jogged," and the new building will be rectangular in nature; and it will encroach one additional foot into the front yard setback, and they need relief to have a 38.72' front yard setback. He stated the lot area is a pre-existing condition at 4.91 acres. The community center use requires 5 acres, and this is less than .1 acres short of what would be needed so they need a dimensional Variance for ratification that they can have a community center on a site that is 4.91 acres. Mr. Meginniss stated they are requesting a side yard setback Variance. He stated they are not actually encroaching any further into the side yard, but because the footprint of the building is expanding "minorly" to the rear, it makes sense to request this. He stated they are encroaching more into the side yard in terms of the depth of the building, but they are not actually exacerbating the side yard setback, although technically that required a dimensional Variance.

Mr. Meginniss stated Mr. Malik will discuss the Use Variances which are to allow a day care, a community center, and funeral services. He stated the community center is envisioned to have dry goods at the location and approximately once a month a van comes to the site and goods are loaded onto the van and taken to serve members of at-need communities and

homeless communities. Mr. Meginniss stated members of those communities would not be coming to the site, and it is just a way to store the goods to serve those communities.

Mr. Meginniss stated the day care is an accessory use, and it is not open to the public. He stated it is designed to have a handful of children of the members associated with the Mosque who will be able to come to this accessory site and receive day care services. He stated they are not anticipating any additional parking or traffic that would be generated as part of this use, and it is purely accessory in nature and not open to the public.

Mr. Meginniss stated with regard to the funeral service use, that is the ability approximately once a month if a member of the community passes away, there is a process in the Muslim community to clean the body, with no chemicals being utilized, and there is no body storage overnight. The body is wrapped and then set to be buried. Mr. Meginniss stated he understands that process takes approximately thirty minutes.

Mr. Meginniss stated these three uses would have a negligible, if any, traffic or parking impact.

Mr. Meginniss stated as Mr. Eddinger is aware, and has been agreed to as part of the Conditions, the main peak hours of the Mosque are early in the afternoon on Friday, and this accessory structure would not be utilized during those hours.

Mr. Malik stated he serves as the President of the Zubaida Foundation, which is a non-profit charity organization which was created in 2005. He stated it has two main functions – one is to operate as a Mosque and the second is as a charity which operates in a number of ways. He stated they sponsor student scholarships and provide food at soup kitchens and homeless shelters. He stated they focus on providing food to the needy especially during COVID times when the need became bigger. He stated they store dry food items and once a month they package them and send out a message to neighboring communities to assess their needs and come pick up the packages. He stated this is done in this way so that they do not create any issues for the neighborhood. He stated it has a very high impact from a charity perspective because they are able to provide about 10,000 meals a month. He stated he does not feel that most of the neighbors do not know that they are doing this at this location. He noted as part of this Application, some of the neighbors came in and looked at the storage facility and saw the distribution taking place.

Mr. Malik stated at certain times during an event, there could be a higher pressure on the parking, lot but normally, the parking lot is empty.

Mr. Meginniss stated they are not able to retrofit the existing building so what they are looking to do is to demolish the existing building and build a slightly larger, more modern structure on the entirely impervious surface at this site; and Mr. Malik agreed. Mr. Malik added that he believes that the existing building is more than fifty years old and it is not really designed to do what they are trying to do. He stated their objective is to help the needy in our entire area in more efficient ways than what they are able to do today. He stated many of the neighbors might agree that the facility needs a serious upgrade, and that is what they are doing with this Application.

Mr. Meginniss asked Mr. Malik to discuss the funeral component. Mr. Malik stated under the Zoning requirements it was labeled as a funeral home; however, this is a supplement to a funeral home service. He stated a funeral home service provider will bring the deceased so that they can prepare the body which involves washing the body with water and household soap and wrapping the body in a white cloth. He stated this is the last step so that the body is ready for burial. Mr. Meginniss stated there are no chemicals utilized as part of the process and no bodies would be stored overnight, and Mr. Malik agreed. Mr. Malik added that all of the standard funeral home services are provided by the funeral home, and they would not be operating anything like that. He stated they are only supplementing this service which will take half an hour to an hour. Mr. Meginniss stated that would not occur between 12 and 4 p.m. on Fridays, and Mr. Malik agreed. Mr. Malik stated that was part of their agreement with the neighbors that they would not increase the parking.

Mr. Malik stated he had represented to the Board that with respect to the day care that it would not be offered to the general public, and it is the Foundation's vision to most likely have a handful of pupils that are already involved with the Mosque; and Mr. Malik agreed that is correct.

Mr. Meginniss asked Mr. Malik to discuss the layout of the building for these uses. Mr. Malik stated while the day care and the body washing will be in the same building, there will be separate entrances for both and will be on separate floors. He stated the food storage and packaging will happen on a different floor, and the children will not be interacting with the other two floors. He stated the food packages happens on the weekend, and the day care would be open on the week days.

Mr. Meginniss stated Mr. Malik is aware that there is a need for an impervious surface Variance of an additional 1% for the parking that is being held in reserve, and Mr. Malik agreed. Mr. Meginniss asked Mr. Malik if he is willing to affirm the Condition with the Township that they will enter into an Agreement which will be provided to the Township that the Township will have the ability to require the Foundation to build the additional eight spaces at a later date if necessary, and Mr. Malik agreed. Mr. Meginniss asked Mr. Malik for an affirmation that the impervious surface relief will not be utilized for any other construction or site improvements such as a shed or some accessory structure, and Mr. Malik agreed.

Mr. Meginniss stated it is the Foundation's intent to communicate through this process with the neighbors, and if there are any concerns regarding any ongoing site conditions, they will work to their best of their ability to address those with the neighbors moving forward; and Mr. Malik agreed. Mr. Malik stated they were able to be in touch with the neighbors and discuss ideas with them.

Mr. Meginniss asked Mr. Malik if he is aware of any reason why these uses at the site would be detrimental to the neighbors or the community if the Variances are granted, and Mr. Malik stated he is not. Mr. Malik stated they do not invite the homeless to come pick up the food, and it is only representatives from organizations that come and take the food.

Mr. Clase stated there is not a lot of site work as part of this Application, and it is mostly building. He stated they know that there is a parking issue at the site, and they have decided to put eight future spaces in reserve; and if the Township determines in the future that they need to be installed, they will have them engineered and approved and ready to be installed. Mr. Clase stated in addition to the eight parking spaces, they would modify the existing detention basin on site to capture the stormwater run-off from the impervious. He showed on the Site Plan the general location of the existing residence, and that will be the general location of the proposed building. Mr. Clase showed the location of the Mosque.

Mr. Meginniss stated on the first Site Plan submitted with the Application, there was an access drive to the rear of the Mosque; and that has been removed and is no longer depicted on the Plan, and Mr. Clase agreed.

Mr. Meginniss stated the black rectangle on the Site Plan is the proposed new structure. He asked Mr. Clase to show where the “jog” is that shows the extra foot front yard encroachment. Mr. Clase stated the existing building jogs down into the site, and they will straighten that frontage off with the new structure. Mr. Meginniss stated it can be seen that they are not moving further into the side yard, but are moving down a bit in the side yard. Mr. Clase stated the building is not parallel with the property line, and he feels it will go back about one foot.

Mr. Meginniss stated as noted previously the new structure will be built entirely on impervious surface that is already in existence, and the 1% impervious surface Variance only correlates to the parking area. Mr. Clase agreed that all the new impervious would be the future parking. Mr. Meginniss stated the only other dimensional relief they are looking for is the 4.91 acres because of the community center use where 5 acres is required, and Mr. Clase agreed.

Mr. Dougherty asked the number of members at the Mosque, and Mr. Malik stated there are about 65 registered members, and about 100 unregistered members. Mr. Dougherty asked the difference between the membership categories, and Mr. Malik stated the registered members make monthly contributions, and the others do not.

Mr. Dougherty asked about the last rites, and he asked if any additional ceremonies will be performed other than preparing the body for burial. Mr. Malik stated after the body is ready, there is a prayer. Mr. Dougherty stated he understands the whole process would take about thirty minutes; and Mr. Malik stated it is thirty minutes to prepare the body, and depending on the number of people it could take thirty minutes for the prayer.

Mr. Dougherty asked if the community center will strictly be for storing food or will there be activities as well. Mr. Malik stated they might have meetings there.

Mr. Solor asked how the agreement with the neighbors as to the uses is being formalized. Mr. Meginniss stated they would be happy to entertain any reasonable Conditions the Board may have. He stated every use has to fit into some predetermined Zoning category, and he feels this is a “square peg in a round hole situation.” He stated there are a lot of religious institutions that have accessory components to them. He stated when they discussed how this would be presented with the Township, there was not a better way to present this than to say that there are basically three new principal uses in the building, but the reality is that they are accessory uses to the Mosque. He stated they had

discussed this with Mr. Majewski as to how this should be presented to apply. He stated the day care use will not be open to the public, and it will be accessory to members of the Mosque, and they would agree to that; and he feels that could be easily enforced. Mr. Meginniss stated Mr. Malik testified as to his intent regarding the frequency of package deliveries, but he is not sure how they would phrase that as a Condition other than to state that members of the community who would be served by food delivery would not come to the site so that the traffic that would be generated would be mitigated. He stated this is use where material is removed from the site rather than people coming to the site, and he feels that would be a reasonable Condition that they would agree to. Mr. Meginniss stated in terms of the funeral aspect, this is specifically a religious operation, and there will be no chemicals or overnight storage of bodies; and these are Conditions that they could agree to and Imbed into the Zoning Decision and could be easily enforced if there is an issue at a later date.

Ms. Kirk stated she and Mr. Meginniss have had discussions about the Condition that the impervious surface increase, if granted, would be limited only to those reserved parking spaces and that would be formalized by a Declaration of Restrictions that would be Recorded in Doylestown. She stated she believes those reserved parking spaces are being generated as a result of the accessory uses of the day care, the community center, and the funeral services; and Mr. Meginniss agreed. Ms. Kirk stated those items can be included in the Declaration of Restrictions that those three uses are wholly accessory to the religious use of the premises for the Mosque.

Ms. Kirk asked Mr. Malik how many children he expects to be at the day care center, and Mr. Malik estimated it would be five children. Ms. Kirk asked about the hours of operation for the day care, and Mr. Malik stated it would be Monday to Friday except on Friday it will end at 12:00. Ms. Kirk asked what time it would start; and Mr. Malik stated while they have not discussed that, he assumes that it would start around 8:00 a.m. Ms. Kirk asked how late it would go Monday through Thursday, and Mr. Malik stated it would be to 5:00 p.m. Ms. Kirk asked if there would be one person there with the children at the day care. Mr. Malik stated they have not decided if this would be a volunteer-run or an employee-run operation; and it is likely that volunteers will do it. He stated currently almost everything is done by volunteers, and there is just one employee who is the Imam. He stated he hopes that there will be some people from the community who will take care of the day care operation.

Ms. Kirk asked how many adults he feels would be present with the children, and Mr. Malik stated he feels it would be one to two adults.

Ms. Kirk asked with regard to the funeral service if there is a typical time when that would take place, and she asked if that has to occur within so many hours after death like in the Jewish tradition. Mr. Malik stated it is the same rulings as the Jewish tradition, and he has heard that the process is also the same. He stated usually it happens in the afternoon between 1:00 p.m. and sunset. Mr. Malik stated usually it is within 24 hours after the time of death. Ms. Kirk stated she understands that they agreed as part of the arrangement with the adjacent neighbors that a funeral service would not occur on Friday between 12 and 4 p.m., and Mr. Malik agreed.

Ms. Kirk asked if 12 to 4 p.m. is the time that the Mosque generally has its services. Mr. Malik stated it is the most crowded between 12 and 2:00 p.m. on Friday as that is the prayer time, and the time till 4 was just extra time. Mr. Meginniss stated they wanted to be a bit conservative to make sure that there was as little impact as possible. Ms. Kirk stated the service is held every Friday, and Mr. Malik agreed. Ms. Kirk asked if there are large services held on other days of the year that coincide with special events. Mr. Malik stated there are two Eid prayers/celebrations a year; and at that time the building would not be used for anything else, and the day care would be closed as everyone would be celebrating. Ms. Kirk stated with the exception of the day care and the children in the building, she understands that they do not expect any of the other uses to coincide with Mosque services, and Mr. Malik adding that the day care would not coincide with the Friday prayers.

Mr. Mark Sanford, 879 Big Oak Road, was sworn in. He stated he is the western neighbor to the Mosque property. He stated he is concerned with the impervious surface. He stated he has been there thirty-five years, and there is a problem with the parking on Fridays which encroaches into his "neighbor's house who are part of the Mosque," and it has blocked his driveway at times. Mr. Sanford noted the location of his property and his driveway on the Plan, adding that on occasion on Fridays cars are parked wherever they can get to so he is concerned about traffic. Mr. Sanford stated he was at the property today and noticed that at a location he showed on the Plan there is stone that has been put down for parking. He stated if you bring the property up on Google maps, you can see where the property is encroaching on his property, and about 100 square feet of his property has stone on it. He stated he assumes that is there for extra parking, and asked if that was included in the impervious surface calculations. Mr. Clase stated that he was not aware that there was

stone in that location. Mr. Sanford stated it is has been there for a while, and it is not in the retention basin. Mr. Sanford stated the proposed eight parking spaces appear to be in the retention basin; and Mr. Clase stated they are, and they are going to have to modify the detention basin to install the parking spaces.

Mr. Sanford noted a grey area on the aerial and stated it is all stone and he would assume that would be part of the impervious surface. Mr. Sanford stated it goes behind where the shed is, and there is also a little driveway that goes up to it which is paved. Mr. Sanford stated vehicles have been parked in this area in the past. He stated there is also some rubbish and scaffolding stored there.

Mr. Sanford noted the prior neighbor always had water problems in the front, and it is a very swamp area. He stated his neighbor, Dave Ferri, who preceded the development that is there now dug a hole in the front and it filled up with water, and it is a pond that has been there ever since.

Mr. Sanford asked how they are going to deal with the water if they are putting in a basement. Mr. Clase stated that would be up to the builder, and they would put in a system that would pump the water out of the basement if there is water which is a common practice.

Mr. Meginniss stated the Application, if approved, is adding 0% impervious unless the parking is built out at the Township's directive. He stated in the event that the parking is built out, the increase of the 1% impervious surface will have to be mitigated. Mr. Sanford asked about the existing stone.

Mr. Sanford stated his other concern is the 9' setback on the side, and he asked if that is all that is needed to build in Lower Makefield. Mr. Meginniss stated the existing building is presently within the side yard setback, and they are not going any further into the side yard setback. Mr. Sanford that is 9', and Mr. Meginniss stated it is about 9.8'. Mr. Sanford asked if that is "okay." Mr. Majewski stated the existing building was there, and now that they are reconstructing it, they are requesting the Variance because it is an expansion of a non-conformity. Mr. Sanford asked why they would not back off the encroachment on the side yards.

Mr. Sanford stated he is concerned about the traffic and the parking. He noted a neighbor who is part of the Mosque who lets people park on his property; however at times Mr. Sanford stated his own driveway is blocked and he cannot

get out or in. He showed his driveway which is a shared common driveway along the front. Mr. Solor stated that is not part of what the Zoning Hearing Board can deal with, and other agencies in the Township would deal with that.

Mr. Sanford asked if the stone is going to be taken care of as part of the impervious surface because he does not think it is included. Mr. Solor stated he does not believe it is in the calculations as impervious, and Mr. Clase stated his calculations do not show the area referenced as impervious. Mr. Solor stated that would affect the percentages in the calculations, and Mr. Clase agreed. Mr. Clase stated when he visited the site, he walked around the obvious existing impervious – the parking lot and the buildings, but he did not go back past the wood line to see if there was a stone parking area there. Mr. Malik stated in recent times he went behind the shed, and he does not recall seeing stones. He added that if that is a concern, they will take care of it. Mr. Solor stated he understands that they will remove the problem if it exists as part of this process, and that will guarantee that the calculations that are being presented are accurate.

Ms. Kirk stated now that this has been brought up, the Township is on notice that there might be a violation, and she assumes someone will go out to the property to see if there is one; and Mr. Majewski agreed.

Mr. Eddinger stated on behalf of Cheryl Dacey and Peter Burke of 4 Williams Lane, they presented an agreed upon set of Conditions for his clients neutrality in this Application. Items 1 and 3 have already been complied with in that letter. He stated Item 2 is the restriction of hours of operation as recited by Ms. Kirk which is 12 to 4 on Friday. He stated Item 4 is that the Applicant consult with an arborist and comply with recommendations, and do so within forty-five days to address any errant, dying trees along the property line. The final Condition is that the Applicant increase the size of any outdoor trash receptacles and/or increase the rate at which they are emptied and to generally maintain the property in a clean and orderly manner. Mr. Eddinger stated Items 1 and 3 have already been complied with, and they deal with an Easement being granted to his clients.

Ms. Kirk stated while she is not unsympathetic, the Zoning Hearing Board does not have the power to approve as Conditions of the Zoning approval, negotiates between the two private parties although she understands there is an Easement Agreement that has been signed and is intended to be Recorded for the benefit of Ms. Dacey and Mr. Burke, and they would have full enforcement powers if those Conditions are violated. Mr. Eddinger stated he does

not dispute that the that there is not necessarily authority on behalf of the Zoning Hearing Board to Condition relief that is uniquely to the benefit of one property owner, and his clients are satisfied, and the Applicant has already executed the Easement.

Mr. Dougherty asked the number of square feet for the day care center; and Mr. Clase stated the building is 2,800 square feet so each floor would be somewhat less as you have to subtract out walls, hallways, and bathrooms. Mr. Dougherty asked if they should cap the number of children/students that could be at the day care center on a given day similar to what other day care centers would have. Mr. Clase stated the parking calculations show a maximum of twenty pupils. Mr. Meginniss stated it has already been Testified that there is no present intention to have twenty children there, and they wanted to be very conservative from a parking standpoint to make sure that they had adequate parking. Mr. Malik stated capacity-wise it cannot be more than twenty, but the expectation is to have about five children.

Mr. McVan asked what the setback should be from the side for the new building. Mr. Majewski stated 100' is required under the Zoning Ordinance. Mr. Clase stated all setbacks are 100' – front, side, and rear. Mr. McVan stated they are supposed to be at 100', and they are at 14'. Mr. Clase stated if they were to start from scratch, it should be 100'; however, this is an existing building. Mr. Solor stated it does have the envelope marked on the Plan to build, and the setback consumes the vast majority of the property. Mr. Majewski stated the existing house was built in approximately 1960, and at that time the setback was probably 10' to 15'; and even then it was not quite rights and is a little bit off.

Mr. Dougherty moved and Ms. Reiss seconded to approve the Appeal subject to the Recorded Declaration of Restrictions with language that the Township agrees to with the Applicant.

Mr. Eddinger asked that the Conditions that were requested by Dacey and Burke in the letter also be imposed, and those would be #2, #4, and #5. He stated they are not part of the Recorded Declaration Restrictions. Mr. Flager stated #2 is that they would not operate the funeral services during Friday prayers which would be from 12 to 4. He stated #4 is that they would consult annually with a licensed arborist for the tree cover in the back property. He stated #5 is that they would increase the size of the outdoor trash receptacle on the property

and/or the rate at which the receptacle is emptied. Mr. Flager stated #2 is the only one that could be put in as a Condition, as #4 and #5 would be outside of the Board's control.

Mr. Dougherty moved and Ms. Reiss seconded to approve the Appeal subject to the Recorded Declaration of Restrictions language in the said Declaration of Restrictions to be agreed upon by the Township and the Applicant with a Condition that the Applicant cannot use the day care center between 12 and 5 on every Friday of the fifty-two weeks of the year.

Ms. Kirk asked if the restriction is on the use of the day care center.

Mr. Meginniss stated it is the day care and the funeral service that will not be operated between 12 and 4 on Friday.

Mr. Dougherty moved and Ms. Reiss seconded to approve the Appeal subject to the Recorded Declaration of Restrictions with language agreed upon between the Township and the Applicant and restricting the use of the day care center and the funeral. floor to not include the hours of 12 to 4 on the fifty-two Fridays of the year.

Mr. Solor asked if the front and side yard setbacks adequately detailed with that or do we need to reference the dimensions as shown on the drawing.

Ms. Kirk stated there was an original Plan with the measurements provided that has since been modified to show the removal of the rear loop driveway. She stated she feels the Plan is sufficient for Township purposes to inspect, and Mr. Majewski agreed.

Mr. Dougherty asked if we need to address the impervious in the language of the approval because right now as proposed they will be at 22% assuming that the eight spots get built. He stated he understands that the plan at that point would be to re-do the detention basin to account for the extra impervious.

Mr. Majewski stated he feels they should indicate that it is for an impervious surface area of 22%. Mr. Dougherty asked if we would have to say that it should be mitigated back to 21%, and Mr. Majewski stated they would not have to say that because that is a requirement of the Township.

Mr. Dougherty moved and Ms. Reiss seconded to amend the Motion to include that the impervious surface is approved at 22%.

Ms. Kirk stated she and Mr. Meginniss will clarify all of this in the Declaration of Restrictions. Mr. Solor asked if that would include the fact that the day care and funeral service are basically accessory uses, and Ms. Kirk agreed.

Motion carried unanimously.

Mr. Solor reminded the Applicant to check out the area behind their building.

APPEAL #22-1980 – HYDROSCAPE/WALDMAN
Tax Parcel #20-039-218
848 DUCHESS DRIVE, YARDLEY, PA 19067
(Continued from 11/1/22)

Mr. Nathan Simcox was sworn in.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plan was marked as 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. Simcox stated they are looking to install a pool at the Waldman residence, and they are over their impervious. He stated they looked to do stormwater management in the Pool Plan with an infiltration trench to compensate. He stated they are looking at a proposed 26.4% impervious, and the allowable is 18%. He stated the existing impervious surface was 22.4%. He stated he does not know that has been mitigated, and the plan that the engineer will put in place will compensate for that 8.4% to get it to 18%.

Mr. Solor stated the Application has it as 24.1% but the Plans show a different number. Mr. Simcox stated they will get it back to 18%. Mr. Majewski stated he did check the calculations, and the Plan is accurate, but the Application had a typo. Mr. Simcox stated the correct number is 26.4%. Mr. Majewski stated the existing is 22.4% and the proposed is 26.4%. Mr. Solor stated Mr. Simcox indicated that they are mitigating it back to the 18%, and Mr. Simcox stated he believes that is where it should be. He stated it does not look like there was any stormwater management ever done to get the 22% to 18%, and he would plan to doing the infiltration trench size to get to the 18%. Mr. Majewski stated the way the calculation is laid out, they are mitigating it back to the 18% from the proposed 26.4%. Mr. Majewski showed on the Plan where they are proposing the trench that will be 4' deep by 4' wide by 45' long.

Mr. Solor asked if it was advertised at 24% and they are asking for 26%, does that impact the advertising. Mr. Flager stated they have advertised the right section and what is the effect of the project and that the impervious is increasing. He stated the neighbors were still on notice that they were building a pool and increasing the impervious surface.

Mr. Dougherty asked Mr. Majewski if they have mitigated it back to 18%, and Mr. Majewski agreed.

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

Mr. Dougherty moved, Ms. Reiss seconded and it was unanimously carried to approve the Appeal subject to impervious surface of 26.4% mitigated back to 18%.

APPEAL #22-1982 – MUNZ CONSTRUCTION/JOYCE PATAY
Tax Parcel #20-042-154
60 SUTPHIN ROAD, YARDLEY, PA 19067

Mr. Colin Craige, Ms. Joyce Patay, and Mr. Gabe Patay were sworn in.

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 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. Craige provided impervious surface calculations. Mr. Flager stated these are different from what was submitted with the Application, and Mr. Craige agreed. Mr. Flager marked the Impervious Surface Breakdown Calculation as Exhibit A-4. The Shady Maple Contractor, Inc. estimate was marked as Exhibit A-5. Mr. Flager stated another Impervious Surface Breakdown submitted was marked as Exhibit A-6. The Drywell Detail Plans were marked as Exhibit A-7. Another Impervious Surface Calculation was marked as Exhibit A-8. Mr. Flager stated Exhibit A-4 is for the existing conditions, the second one is for the dry well, and the last one which is Exhibit A-8 is for the trees.

Ms. Patay stated they are moving into their senior years, and they have an existing deck on the side of the house. She stated with the increase in the hot, humid weather, they have found that it is almost impossible to sit on their deck for very long. She stated they wanted to provide an outdoor feeling with a little air conditioning. Mr. Patay stated they want to have an enclosed surface from the elements on part of the deck.

Mr. Craig stated the footprint of the enclosed sunroom is staying within the existing footprint as far as setbacks, and they are taking a portion of their deck away and enclosing it to be the sunroom space. He stated the existing impervious surface ratio on their lot is 29.5% and 18% is allowed. He stated Exhibit A-4 which is the Maple Contractors Inc. proof of estimate of work done in 2012, shows that they mitigated 300 cubic feet via a French drain system. He stated that would bring the 29.5% down. He stated the planting of 22 evergreen trees done in April, 2022 would bring that to 520 cubic feet of mitigation when 436 is only necessary. He stated it is their understanding that they are already brought back below 18% by the mitigation they have already gone through and documented.

Mr. Majewski stated the first page says the proposed impervious surface to be constructed is 2,615 square feet which would get them up to 42.6%. He stated he does not see that shown on the Plan anywhere. Mr. Craig stated on the sheet from the Township's Website, you are not able to alter certain elements of it, and this was just to provide the calculations showing any disparity between the existing and what they have already done. He noted the second mitigation sheet which he understands is Exhibit A-6, and he stated that shows the representation of it as existing 29.5% and the proposed impervious surface to 31.1%.

Mr. Solor asked with regard to the trench, was there a drainage issue in the neighborhood. Mr. Patay stated they did a renovation in 2012, and part of it was to replace the deck and to modernize the existing carport. He stated as part of their "building and inspection, they were not aware of that, and there was a request to do stormwater mitigation at that time." Mr. Solor asked what is the impact to the calculations for the French drain installation, and he asked what it is actually mitigated back to. Mr. Craig stated it is his understanding that it is the combination of that and the trees that they have planted. Mr. Solor stated the trees are a separate issue because generally the Board does not look at trees as a mitigating factor since the next person moving in could cut them down. He stated right now they are only looking at the French drain and how it relates to this.

Mr. Craige stated anticipating that may be the case, they have also provided dry well details, and the Patays are more than willing to mitigate in other ways to get to where they need to be.

Mr. Dougherty stated it was indicated that a Building Inspector was at the house and brought up stormwater management; and as a result they did the French drain system. Mr. Dougherty asked if there is a record at the Township for any of this. Mr. Majewski stated he does not have those records readily available, and he will have to check the files. Mr. Craige stated he spoke to Dan at the Township who sent a copy today of the Building Permit that was taken in 2012. This was shown to Mr. Majewski at this time. Mr. Majewski stated the Permit that was issued in 2012 was for the replacement of existing wood deck with patio pavers of the same size and the existing carport, and there was no increase to the impervious surface.

Mr. Majewski asked the homeowners if someone suggested that they add in some stormwater management to alleviate a problem because according to the Permit nothing would have been required. Ms. Patay stated they had some excess when a spring rain would come, and it would take a little bit longer for the drainage so that is why they did it. She stated it was more for their purpose as well because they could not walk as easy there in the spring-time to do any gardening so they had it done. Mr. Majewski stated that is the 2' deep by 3' wide by 125' long trench, and Ms. Patay agreed. Mr. Majewski stated a trench of that size account for all of the impervious surface that is currently proposed and would make a big decrease in everything.

Mr. Dougherty asked Mr. Majewski if he is talking about the dry well detail or the French drain that was referenced earlier. Mr. Majewski asked Mr. Craige if the dry well detail was what was put in, and Mr. Craige stated that was in anticipation if the Board was requiring additional mitigation, but they were hoping that what was done so far was suitable.

Mr. Majewski stated in 2012, although it was not required because there was no increase in impervious surface, the homeowner took it upon themselves to add in a French drain system – 125' long, 2' wide, and 3' deep – and that mitigates about five times the amount of run-off generated by this addition. He stated if the Board were to give them credit for something that they had done ten years ago, they could be compliant. Mr. Majewski stated in their calculations they have indicated that if they did put in something new as

the contractor has indicated, they could put in a new dry well or infiltration trench that would be 3' deep by 3' wide by 15' and that would address all of the increase in the impervious surface proposed by this Application.

Ms. Reiss asked what it would then go down to. Mr. Craige stated he believes the intention would be to get it back to 18%. Mr. Solor stated he understands that the current French drain mitigates about 6% to 7% of impervious.

Mr. Majewski stated he would estimate it to be about 7% impervious. Mr. Solor stated he would be happy to take mitigation back to 18%, but technically it is just the increase in impervious area that they need to do. Mr. Solor stated the design for the small French drain would account for everything additional that they are creating, and he understands that is the proposal; and Mr. Craige agreed. Mr. Majewski stated that would be the 3' by 3' by 15' system.

Mr. Solor asked if the 20' setback is acceptable, and Mr. Majewski agreed.

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

Mr. Solor moved, Mr. Dougherty seconded and it was unanimously carried to approve the Appeal to increase the impervious from 29.48% to 31.07% with mitigation to the approval of the Township back to 29.48%.

APPEAL #22-1983 – MUNZ CONSTRUCTION/AMY SHEAFFER

Tax Parcel #20-039-127

3 CENTRAL DRIVE, YARDLEY, PA 19067

Mr. Colin Craige and Ms. Amy Sheaffer was sworn in.

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 Calculations and Stormwater Management Form were collectively 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 were marked as Exhibit B-3.

Ms. Sheaffer stated she would like to add on some additional living space. She stated her mother lives with her, and they feel that they could use some additional room. She stated they are hoping to add on some additional space off the kitchen to expand the kitchen area to allow some seating and extra storage and also hoping to bring the laundry to the first floor.

Mr. Craig stated they need to discuss the setbacks for the side yard and the rear and also impervious. He stated they are seeking relief for extension into the rear yard setback by 1' due to the design by the architect for the lay-out of the structure, and they are seeking relief into the side yard setback of 5' with a side yard setback of 10' instead of 15'. He stated looking at the Site Plan and the building envelope of the existing structure, there is no ideal place to build this as far as the function of the space that they are using it as. He stated it is an extension of the kitchen. He stated if they were to go out the back, they would be further into the rear yard, and the front of the home is their front entrance and it would not be applicable there.

Mr. Solor asked if this has been reviewed with the neighbor that this is facing. Ms. Sheaffer stated she has and also showed the neighbor the Plans so that she could see where everything was, and she indicated that she did not have an issue.

Ms. Reiss stated the impervious surface is going up from 18.6% to 20.4%. Mr. Solor stated they are mitigating.

Mr. Jeff Bebser stated he has no objection to the Plan submitted.

Mr. Dougherty stated he is not sure how he feels about going from 15' to 10', and he would have like the neighbor on that side to have been present; however, the advertisement did go out and they had an opportunity to comment. Mr. Flager asked the current setback, and Mr. Solor stated it shows as 23'6" on the Plan. Mr. Dougherty stated the deck does go out. Mr. Craig stated there is a dotted line on the Plan, and he feels it looks to be about 8' of the house. Mr. McVan stated there is a tree line there.

Ms. Reiss moved, Mr. McVan seconded and it was unanimously carried to approve the Appeal with mitigation and approval of the Township.

APPEAL #22-1984 – HALE & SON CONSTRUCTION/CATHERINE WHARRY & JOE LATZKO
Tax Parcel #20-065-276
1474 WOODVIEW ROAD, YARDLEY, PA 19067

Mr. Dylan Hale and Ms. Catherine Wharry were sworn in.

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 Chart 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.

Ms. Wharry stated their driveway is in desperate need of repaving, and they decided that while doing that, they would like to widen it a little bit. She stated early 1980 houses have small garages and narrow driveways, and they would like a little more room to maneuver so that they are not taking their trash cans across the grass. She stated they want to add a little bit of driveway and a path that goes around the side where they store their trash cans and back toward the gate leading into their back yard.

Mr. Hale stated the driveway will extend about 5'. He stated currently the width is about 16' which is narrow for two cars to fit, and they want to extent it to about 25' but starting at about 20' at the bottom of the apron adding that the apron is currently 20' wide. He stated it is an old design that they were doing in the 1980's.

Ms. Wharry stated many of their neighbors have done this, and they were inspired by what they saw in the neighborhood as a lot of people have done this out of necessity because of the tiny driveways.

Mr. Hale stated it also looks cleaner when you have your garbage cans on some pavement or on a hard surface than against your house or on the grass.

Mr. Hale stated they are increasing the impervious coverage. He stated 26% is the allowable amount, and they are currently at about 27.1%. He stated it is a small increase to 30.1%. Mr. Hale asked Ms. Wharry how long they have lived at the house, and Ms. Wharry stated they purchased in 2014. She stated this is the first really substantial change they have made other than replacing fences.

Mr. Joe Latzko was sworn in and stated they moved in on March 13, 2013.

Mr. Hale stated when they moved in, they were already over the impervious surface, and they had not made any additions to the property. He stated it came to light when they filed to get the Permit for the driveway that they were above the impervious allotment. He stated they are now requesting a Variance for the extra 3%.

Mr. Solor asked what they are proposing for mitigation. Mr. Hale stated he assumes a dry well will be the best method. He stated he was advised by the Township that the Board would lead him to what they would want as to mitigation. He stated there will be a 300 square foot increase. Mr. Majewski stated he had explained to Mr. Hale that they could dig a trench about 3' deep, 3' wide, and a certain length that would be wrapped in a filter fabric and add in stone so that water from the driveway would flow into that. It could be covered with River Jack stone or grass. He stated that would take the water from the driveway so that it would not impact the neighbor. Mr. Majewski stated the length they would need would be a minimum of 15' long. Mr. Hale stated typically they do that for Commercial projects. Mr. Hale added that they do have an inlet at the bottom of their driveway so most of that will sheet drain to there. Mr. Solor stated they could take the roof drains to the trench.

Mr. Dougherty asked if there will be a side setback issue by extending the driveway within 9' of the property line. Mr. Hale stated the current setback is 14' from the house to the property line. Ms. Wharry stated the neighbors from that side are present this evening. Mr. Hale stated he does not know what the Township's requirements are for the exact distance it has to be from that side. Mr. Majewski stated the setback for a driveway is 5' so they are within the setback.

Mr. Solor stated he sees that they are extending the 5' the whole length of the driveway, but the garage frontage is only 20'. He asked what if it was capped at the 20' distance most of the way back to the garage, and then just have the sidewalk around the side of the garage. Ms. Wharry stated she would prefer not to do that because with two cars parked in the driveway she cannot get the garbage around the cars. Mr. Hale stated 20' is not a large distance for parking two cars, and they typically install driveways with 18' as a bare minimum, and 20' is "okay." He stated 22' is where it gets "nice," and if you have anyone other, you need it a little wider than 20' or 22'. He stated at 25' you can try to fit three cars parked on an angle. Ms. Wharry stated on Halloween, she had to pull a car out of the driveway so that people could get up to the front door as there is no room to maneuver around the cars if they are both parked there.

Mr. James Elbrecht, 1472 Woodview Road, was sworn in. He stated he has been a resident for over twenty-eight years. He stated he saw the Plans that were provided by Mr. Majewski, and he sent him a few pictures digitally so that he could review them. Mr. Elbrecht stated at the present time, he does get some

run-off and puddling on that side of the yard where the driveway is going to be extended; and his concerns are that this will create even more water. He stated his garage is pretty close to that, and his lot is only a quarter of an acre. He stated with the run-off from his house and with the driveways side by side, he feels there will be issues. He stated he has had a 16' wide driveway for over twenty-eight years, and he has no problem rolling garbage cans down the driveway. He stated the idea of enlarging the driveway does not bother him, but he is concerned that the stormwater run-off is properly managed and that when it is done it will look correct aesthetically like the rest of the neighborhood. He stated a lot of the driveways are still 16' but some of them have been enlarged. He stated the 1472 Woodview property is slightly higher, and that is why he gets the run-off into the side of his yard.

The pictures he provided were shown, and Mr. Elbrecht stated that was during the rain this past Friday. He stated he is concerned that in the future, more blacktop will create a problem. He stated he understands the Chair has suggested a sidewalk and to have that alongside the garage and extend the driveway some, and he feels that would be a better solution.

Mr. Hale stated adding the dry well/seepage pit will help mitigate a lot of that water. He stated they could also extend the dry well to 20' by 3' by 3' instead of 15' and add a little extra stone. He stated he feels there will be fewer problems once it is in there. Mr. Flager asked Mr. Majewski if it were 20' by 3' by 3', what would that take the effective rate to, and Mr. Majewski stated that would take it down to about 26%.

Mr. Dougherty stated Mr. Elbrecht's concerns are reasonable, and they get that a lot; but the point that the driveway contractor is making is typically what happens and when mitigation is done correctly, the neighbors find that their condition improves. He stated the Township engineer is very competent and oversees this, and he feels Mr. Elbrecht will see an improvement in his situation. Mr. Elbrecht asked if the Township will have oversight and come out and review the land prior to starting and then after the driveway is finished to inspect it to make sure that it is what it was on the Plans.

Mr. Majewski stated the Township could come out and look at it prior to the work being started. He stated when the work is done, it is required that there be an inspection of the seepage pit/dry well to make sure it was made to the right dimensions and that they have the filter fabric, the stone, and that it will work properly.

Mr. Solor stated a typical request by the Board is that it be mitigated back to what the area is zoned for, and the Applicant is offering to mitigate it back to the 26% that it is zoned for. Ms. Wharry agreed that would be an improvement over the current situation.

Mr. Elbrecht asked the normal allowance for impervious surface on a quarter acre lot in the Township. Mr. Dougherty stated it depends on the District, and in this District it is 26%. Mr. Majewski stated although they originally planned just to mitigate what they are increasing, they will take it back to what it would be as if they were complying with the Ordinance due to the effect of the dry well. Mr. Elbrecht stated this would be for the existing proposal, and Mr. Solor stated it would be for the existing Plan but they would put in more stormwater mitigation so that it actually mitigates it to a lower impervious than what it is currently so theoretically there would be less ponding. Mr. Dougherty stated he feels it is good that the contractor, without any encouragement, suggested that they would increase the size of the dry well to bring it back to the allowable 26%, and he feels that they are acting in good faith.

Mr. Elbrecht asked if you will be able to see crushed stone alongside the driveway. Mr. Majewski stated there are two ways this is typically done, and some top the trench with a River Jack stone and others just have grass. It will be a slightly lower area so that water will come off the driveway, go into that low area, and seep into the grass and into the dry well. He stated it takes the water that would otherwise be laying above ground and hides it underground. Mr. Elbrecht asked if that would create undue saturation in the sub-soil that could cause a sinkhole, and Mr. Majewski stated although there is never a 100% guarantee, typically there is no issue with it.

Mr. Elbrecht stated he would like Party Status to the proceedings.

Mr. Dougherty moved, Ms. Reiss seconded and it was unanimously carried to approve the Appeal subject to Township approval of mitigating the impervious surface from its existing 27.71%, increasing it to 30.01%, and taking it back through mitigation to 26%.

APPEAL #22-1985 – MORNINGSIDE MASSAGE LLC/DIANA SLAYMAKER
Tax Parcel #20-038-153
7 MORNINGSIDE DRIVE, YARDLEY, PA 19067

Mr. Chris Slaymaker and Ms. Diana Slaymaker were sworn in.

Mr. Christopher Mahoney, attorney from Stuckert & Yates, was present on behalf of the Applicants.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Plot Plan was marked as Exhibit A-2. The Site Plan was marked as Exhibit A-3. The Proposed Lay-Out Plans were marked as Exhibit A-4. 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. Mahoney stated the Application was brought as massage therapy as a profession; and as it relates to Zoning Ordinances, this is “kind of a square peg trying to look for a round hole.” He stated there are four separate home office classifications in the Zoning Ordinance, and this does not seem to really fit in the definition of any of the four of them as Mr. Slaymaker will be carrying it out.

Mr. Mahoney stated it is a home owned by Diana, Chris’ mother, and he does reside there so by definition it is a home office, but it does not fit as an accessory office such as provided in Section 10 such that it would require three “parking lots.” Mr. Mahoney stated there are no employees, and there is no client or customer overflow. He stated it does not qualify under Section 9 as it is not a day care. He stated that brings them to either Home Occupation Class 2 or Home Occupation Class 1 both which are as of right within the particular Residential District. He stated the usage as the Home Occupation does have customers/clients coming “to treat” which is not permitted under Section 7 which they applied for the Variance from; however, it is not such that there will be clients one after the other such that there would be a parking issue such that there could be street parking. He stated there will also not be signage. He stated this is why they ultimately applied for the Variance under the lesser impact of Class 1 as opposed to either Class 2 or Class 4.

Mr. Slaymaker stated he is proposing to have the master bedroom converted to a home office and to practice out of it as deep tissue massage therapist. Mr. Slaymaker stated he is currently licensed. He stated he was trained at the School of Body Therapy as a massage therapist. He stated he resides at 7 Morningside Drive, Yardley; and that is the same house for which he is applying for the Home Occupation Variance.

Mr. Slaymaker stated he would schedule by appointment and make sure that there is no overlap. He added that he needs time in order to turn over the office and sterilize it in between patients so there should be no issue with over-scheduling patients. He stated he would be using the existing structure as is, and there would be no additional construction. He would have one client at his house at a time. He stated there is sufficient parking in the driveway for one client, and street parking would not be required. He stated there would be no signage on the front of the house.

Mr. Mahoney asked Mr. Slaymaker how he would advertise the business, and Mr. Slaymaker stated word-of-mouth is the best method that he knows of. He would see no more than thirty clients a week on average. He stated the hours would typically be 10 a.m. to 4 p.m. Mr. Mahoney asked Mr. Slaymaker if he would conduct business under any particular name, and Mr. Slaymaker stated it would be Morningside Massage LLC. Mr. Mahoney asked if that is the Applicant that Mr. Slaymaker filed the Zoning Appeal for, and Mr. Slaymaker agreed.

Mr. Mahoney asked how the clients would make use of the house; and Mr. Slaymaker stated they would come in through the side entrance that already exists, or if they are physically disabled, there is a wheelchair-compliant front entrance.

Mr. Mahoney asked if there would be any impact to the neighbors at all, and Mr. Slaymaker stated there would not that he knows of.

Mr. Mahoney asked what would be done at the house, and Mr. Slaymaker stated he would be treating them for deep tissue stress or performing reflexology which is a method of accessing the body through the feet. There would be no employees.

Mr. Dougherty asked how long a massage appointment would take, and Mr. Slaymaker stated it depends on what they ask for. He stated reflexology typically takes around forty-five minutes, and deep tissue massage is much more involved, and typically takes an hour and a half to two hours. Mr. Dougherty asked if appointments would be staggered or would they be right behind the other. Mr. Slaymaker stated they would be staggered as he needs to have time to clean the office in between each session. Mr. Dougherty asked what he estimates that staggered time to be, and Mr. Slaymaker stated it would be about half an hour.

Ms. Kirk stated it was indicated the hours of operation would be 10 a.m. to 4 p.m., and she asked if that is Monday through Friday, and Mr. Slaymaker stated it would be Monday through Sunday. Ms. Kirk stated he indicated he would average thirty clients per week, and Mr. Slaymaker stated it would be a maximum of thirty. Ms. Kirk asked how many he would expect each day, and Mr. Slaymaker stated the maximum would be four to six depending on what is scheduled. Ms. Kirk stated it was stated that there was a separate side access to the house to be used, and Mr. Slaymaker agreed. Ms. Kirk stated she understands that if they were handicapped, they would use the front entrance, and Mr. Slaymaker agreed.

Ms. Kirk asked if the master bedroom is on the first or second level, and Mr. Slaymaker stated it is on the first level. Ms. Kirk asked where that room is located in relation to the side entrance, and Mr. Slaymaker stated it is directly adjacent to the room with the access. He added there is a sitting room which leads directly into the massage office.

Ms. Kirk stated it was stated that there would be only one client at a time, and Mr. Slaymaker agreed. Ms. Kirk stated there are no other employees other than Mr. Slaymaker, and Mr. Slaymaker agreed.

Mr. Dougherty asked Mr. Slaymaker if both his car and his mother's car are in the garage at present, and Mr. Slaymaker stated both cars are in the garage. He stated they do have an RV in the driveway, but they do not go out that much so anyone who would be coming in could park in the driveway as they have a long driveway and they can fit two cars in the driveway if needed, although they would only need one there.

Mr. Dougherty asked Mr. Slaymaker if he has discussed this with his neighbors; and Mr. Slaymaker stated he has, and he has not heard any complaints or objections.

Mr. Mahoney asked Ms. Slaymaker if before this meeting she discussed this with her neighbors, and Ms. Slaymaker stated they did. She stated they generated templates that described what was proposed and what the practice would be. She stated they went around their entire half of Morningside and met with everyone, and they were all very receptive to the idea. She stated they have brought pamphlets this evening if the Board has any further questions.

Mr. Mahoney asked Ms. Slaymaker if she is the actual owner of the house through her Living Trust, and Ms. Slaymaker agreed she is the owner. Mr. Mahoney asked Ms. Slaymaker if she created the Site Plan that was marked as part of the Application, and she stated she did. Ms. Slaymaker added that when she bought the house in 2011 she had a mortgage on the property. She stated it was appraised and there was a professional floor plan and plot plan drawn, and she used those plans to update it and make it look a little cleaner. She stated nothing has changed as far as the footprint. She stated clients would park in the driveway, and they would enter along the side walkway past the garage, and enter through the back of the house into the sitting room which is already existing, and into the massage office which was the former master bedroom. She stated what she is designating as the massage office is about 300 square feet of a 2,800 square foot house. Mr. Mahoney asked if accommodating the office would require any demolition or other modifications to the house, and Ms. Slaymaker stated it would not.

Ms. Kirk stated she understands that the whole office area is about 300 square feet, and Ms. Slaymaker agreed. Ms. Slaymaker stated that include the en suite bathroom and the sitting area. She added that area on the Plans is designated in red as A, B, and C. Ms. Kirk asked if the sitting area is adjacent to the office area, and Ms. Slaymaker agreed. Ms. Slaymaker added that she believes that it was originally the former owner's laundry area. Ms. Kirk stated that is at the rear of the house, and Ms. Slaymaker agreed. Mr. Mahoney stated as shown on the Plan, if they come around the walkway onto the deck, it is then into the sitting room area which is attached to the bedroom/office and bathroom.

The Plan was shown to the Board.

Ms. Kirk stated Ms. Slaymaker owns the house in a Real Estate Trust, and Ms. Slaymaker agreed. Ms. Kirk asked if there is any provision of that Trust that would preclude or prevent a Home Occupation of this nature, and Ms. Slaymaker stated there is not that she is aware of. Ms. Kirk asked if she has researched that, and Ms. Slaymaker stated she has not. Mr. Mahoney stated even if it did, it is a Revocable Trust, and she could "get it out of that Trust tomorrow." Ms. Kirk asked if it is Revocable, and Mr. Mahoney stated it is not a Qualified Housing Trust or anything along those lines. Ms. Slaymaker stated it was originally drawn up because her mother lived with her and she was handicapped and they wanted to make sure that she was protected. Ms. Slaymaker stated she is "no longer with us," and she just never revoked the Trust.

Mr. McVan asked if there are any security provisions since they are accepting people by word of mouth into the house and into the neighborhood, having people getting directly into their living space. Ms. Slaymaker stated with regard to the interior access to the house, they were proposing to put a lock on it and a dead bolt if that were necessary; however, everything else is secure. She stated there would not be any other access to the main part of the house. She stated the only time anyone would enter the residence would be in they had ambulatory difficulties requiring a wheelchair or walker, and they would then enter through the main house through the foyer and then into the massage office that way.

Mr. Dougherty stated those with ADA needs would have to ingress and egress through the main entrance, and Ms. Slaymaker agreed. She stated she is in the process of re-doing the insurance on the property to accept the massage office, and they are aware of that. She stated this is they do not anticipate having a large percentage of clients that require coming through the front door.

Mr. Dougherty stated Mr. Mahoney has asserted that the proposed use best fits Section 200-69.A.7 – Home Occupation Class I Home Office. He asked Ms. Kirk if she feels that is correct. Ms. Kirk stated based on her reading, that would seem to be the only Home Occupation that would meet the requirements. She stated the problem is that this Home Occupation requires clients to come to the residence which is prohibited in this Section. She stated Class 2 states that you would be providing instructions to students, etc. so it is not a traditional teaching-type business. She stated she is not aware of any other Section that would fit this classification. Mr. Majewski stated they did go through this and struggled with the fact that it did not fit into any category. He stated they felt it could fit into Class 1 which requires a Variance or Class 4 which requires a Variance. He stated with Class 4 it is more like a doctor's office or a dentist's office where there is more of a turnover of patients, and they are not doing one per hour; and that would have a much higher impact. He stated they felt what they have shown fit the best. Mr. Majewski stated they do have to make their case of how this will not impact the neighborhood, and what is the intensity of the use. He stated it does not quite fit into Class 1 since they are having people come in, but there are no employees as there would be for other offices. Mr. Mahoney stated there is also no medical waste or noise pollution. Mr. Majewski stated it does not really neatly fit into any category.

Ms. Kirk stated if the Board were inclined to grant the Variance relief, there could be a Condition that Mr. Slaymaker can be the only employee at the facility to provide this type of therapeutic treatment, and any clients cannot exceed more than one for any scheduled business. She stated that would

minimize the impact and not lead to something more akin to a doctor's office which would have required him to come in for a Class 4 Home Occupation. Mr. Mahoney stated they would have no objection to that.

Mr. Solor stated he also feels that they should restrict the hours to what was discussed by Mr. Slaymaker that it would only be open to clients between 10 and 4, and this was agreeable to the Applicant.

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

Mr. Dougherty stated he is struggling with the fact that they are asking for a Variance, and the owner of the property is not directly benefitting from the Variance as it is her son. He stated he also feels it would be "a little hostile not to make that accommodation." He stated normally he would think the owner would be asking for this for their benefit.

Mr. Dougherty moved, Mr. Solor seconded and it was unanimously carried to approve the Appeal subject to Agreement with the Township that only Mr. Slaymaker can be an employee and/or therapist on site, that the hours of operation are 10 a.m. to 4 p.m. on a daily basis, and that only one patient can be on the property at a time.

There being no further business, Ms. Reiss moved, Mr. Dougherty seconded and it was unanimously carried to adjourn the meeting at 9:49 p.m.

Respectfully Submitted,

Judi Reiss, Secretary