

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – OCTOBER 16, 2007

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on October 16, 2007. Vice Chairman Malinowski called the meeting to order at 7:30 p.m.

Those present:

Zoning Hearing Board: David Malinowski, Vice Chairman
 Paul Bamburak, Secretary
 Jerry Gruen, Member
 Gregory Smith, Member
 Anthony Zamparelli, Member

Others: Robert Habgood, Code Enforcement Officer
 James Majewski, Township Engineer
 Allen Toadvine, Zoning Hearing Board Solicitor
 Ron Smith, Supervisor Liaison

APPEAL #06-1410 – NORMAN AND PATRICIA K. O'ROURKE

Mr. Toadvine stated he received a letter dated 10/15/07 from the Applicant's attorney, Mr. Murphy, requesting that the matter be continued until December 4, 2007 noting in The letter that the Township Solicitor, David Truelove, was in agreement with this Continuance. This letter was marked as Exhibit B-4.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to continue the matter until 12/4/07.

APPEAL #07-1434 – DAN MARRAZZO

Mr. Toadvine stated he received a letter dated 10/11/07 from the Applicant's attorney. This letter was marked as Exhibit B-4. Mr. Toadvine stated the letter indicates that the neighbors have retained Counsel in this matter, and there have been meetings between the neighbors and the Applicant. They will continue meeting; and as a result of this, they are asking that the matter be continued to 12/4/07. The neighbor's attorney is in agreement with the request for continuance as is Mr. Donaghy.

Mr. Bamburak moved, Mr. Smith seconded and it was unanimously carried to continue the matter until 12/4/07.

APPEAL #07-1429(A) – LUTHERAN CHURCH OF THE RESURRECTION

Mr. Toadvine stated he received a letter dated 10/15/07 from the Applicant's attorney. This letter was marked as Exhibit B-3. Mr. Toadvine stated the attorney has requested that the matter be continued to 11/20/07, and the Township Solicitor is in agreement with this request. Mr. Toadvine stated there is a meeting scheduled with the adjacent property owners on October 29 so that they can address some of the neighbors' concerns.

Mr. Gruen stated he feels the letter should be read to the audience explaining why this is being extended as he feels this is the third or fourth postponement of this matter. Mr. Gruen asked if any of those present on this matter are aware of the upcoming meeting between the Church and the neighbors. There were some people present who indicated they were advised that they were invited to go to the Church to look at the Plans

Mr. Malinowski stated the letter requesting a continuance states, "My clients have scheduled an informal meeting with all adjacent property owners for Monday evening October 29th to informally review the Plans."

Some neighbors present stated they did not feel this is a "meeting" as the letter simply stated "you should stop by." Mr. Malinowski stated this is why the letter states "informal." Mr. Toadvine stated this is a "meeting," and it appears neighbors were contacted.

One gentleman expressed concern with the delay. He stated they were also advised by the Church representatives that this evening's meeting may not be continued although they indicated they were informally notified that this evening's meeting was going to be continued. Mr. Toadvine stated the Church could not give a definite answer on this as to whether or not the matter would be continued, as it is up to the Zoning Hearing Board whether or not they would agree to the continuance. Mr. Toadvine stated the attorneys decided that it would be good to continue this until a meeting was held with the neighbors. Mr. Toadvine stated he sent a copy of the request for continuance to the Township as soon as he received it yesterday.

One gentleman asked how many requests for continuance can be given, and Mr. Toadvine stated they can be given as many as the Board will allow. He stated any delay impacts the Church as it delays what they want to do under the Application. Mr. Toadvine stated the Board does not vote based on how many neighbors show up in opposition, but votes based on the law and the application of the Zoning Ordinance. He stated the Township is also a Party to this Application and will always be present when the matter is heard and will represent what they feel is right under the law.

Mr. Bamburak stated the Board does listen to what the neighbors have to say and they will not ignore what the neighbors have to say regardless of the number of neighbors who attend. Mr. Toadvine stated a Variance has five specific criteria that must be proven by the Applicant; and one of them is the impact on health, safety, and welfare of the immediate neighbors.

Mr. Gruen stated while he does not feel they can turn down the Continuance, he is concerned that the Church waited until October 15 to send a letter, did not show up this evening, and assumed the Board would grant the postponement. Mr. Toadvine stated this is not unusual. He stated the neighbors indicated that people from the Church indicated that they felt there may be a continuance.

One woman stated she was advised by Township staff that they did not know whether or not a continuance would be approved. Mr. Habgood stated he had six calls from residents regarding this matter; and he advised that the matter still had to be on the Agenda because the Board would have to vote whether or not they would agree to a continuance. Mr. Toadvine stated he did send a letter to the Township indicating the matter would be continued. Mr. Habgood stated technically the matter still had to be on the Agenda. He stated the residents were asking if the matter was off the Agenda, and Mr. Toadvine advised that it was still on the Agenda as the Board would have to vote on the continuance and decide what meeting date to which it would be continued. Mr. Malinowski stated technically this is correct. Mr. Toadvine stated while it does have to be on the Agenda, he feels they could indicate that the matter would be continued to a date specific. Mr. Habgood stated he does not feel he cannot speak for the Board. Mr. Gruen asked what would happen if the Board turned down the request for continuance. Mr. Toadvine stated the attorneys decided that it would be good to continue this until the meeting was held with the neighbors, and the neighbors were contacted. Mr. Habgood stated the Applicant's attorney contacted the Township and requested a copy of the list of all the neighbors who had been notified of this matter per the Municipalities Planning Code requirements.

A copy of the letter sent to the neighbors dated October 11, 2007 from the Church was marked as Exhibit B-4 which indicates that the matter scheduled for October 16 will again be continued and that they are inviting the neighbors to a meeting on October 29 at 7:30 p.m.

One gentleman again stated he did not feel this was a "meeting." Mr. Bamburak stated they were invited to go to the Church to look at the Plans. One woman stated she feels the Church is trying to take the matter out of the Zoning Hearing Board's hands. The Board stated this is incorrect. Mr. Toadvine stated the neighbors do not have to attend the meeting at the Church if they choose not to go. He stated the Church invited the neighbors to the Church to discuss the Plans, listen to the neighbors' issues, and hopefully work some things out. Mr. Toadvine stated the final decision will be made by the Zoning Hearing Board and not at the meeting at the Church.

Mr. Bamburak stated for the time he has been on the Board, whenever a continuance was requested, it was granted by the Board. He agreed it must be on the Agenda. He stated the reason they request continuances is so that all documentation can be properly presented and it would not make sense to force someone to come in to a meeting if they were not yet prepared. He stated while he cannot guarantee that all requests for continuance will be granted in the future, they have been approved in the past three years since he has been on the Board. One woman questioned why they had to keep showing up for the meetings when they keep getting continued; and Mr. Bamburak stated in these cases, he would recommend that they show up every time.

Mr. Malinowski moved to continue the matter to 11/20/07.

One woman noted this is Thanksgiving week and she feels it should be continued to a later date. There was concern expressed by the Board that continuing it to the next meeting which would be 12/4/07 would result in a very long Agenda as a number of other issues have been continued to that date, and they may not get to this matter as the Board has an 11:00 p.m. curfew. Mr. Ron Smith suggested that they schedule a different meeting date as opposed to November 20. Mr. Toadvine noted the Church has scheduled a meeting with the neighbors on October 29, and something may come out of that meeting. A number of residents disagreed.

Motion died for lack of a second.

Mr. Gruen suggested postponing the matter until January. Mr. Toadvine stated at this point they are only being given a continuance until 11/20/07, and the Board is under an obligation to hear the case within the time limits required. He stated if the Board does not hear the case within the time limits, it is deemed approved. Mr. Toadvine stated while the Board can schedule it for any date they wish, he will have to contact the Applicant's attorney to obtain a waiver from the time limits beyond 11/20/07.

Mr. Smith moved, Mr. Bamburak seconded and it was unanimously carried to continue the matter to 12/4/07.

Mr. Toadvine agreed to contact the Applicant's attorney to obtain an extension to 12/4/07.

Mr. Toadvine suggested that the residents contact Mr. Habgood so he can advise them whether or not the matter is to be continued. Mr. Habgood expressed concern with speaking for the Board. Mr. Toadvine stated the Chairman has indicated that if Mr. Toadvine advises Mr. Habgood that it will be continued, he can so advise the residents. Mr. Habgood asked that this be put in writing.

APPEAL #07-1445 – ERIC & DENISE TRIMBLE

Mr. Eric Trimble was present and was reminded that he was still under oath.

Mr. Trimble presented a Plan to the Board this evening. Mr. Trimble stated at the last meeting there was concern with impervious surface and run off from the decking around the pool. He stated he discussed with his architects the possibility of installing a drainage pit which would be four feet wide, three feet deep, and eight feet long. It would take all run off from the decking around the pool.

Mr. Toadvine marked as Exhibit A-3 the two-sheet Plan dated last revised 9/29/07.

Mr. Toadvine asked if he provided this Plan to the Township engineer prior to this evening, and Mr. Trimble stated he did not.

Mr. Trimble stated with regard to the proposed size of the drainage pit, his architect explained that Lower Makefield Township does not have a formula for run off so he reviewed formulas from other Townships in the area to come up with the size of this pit.

Mr. Smith asked the material of the decking, and Mr. Trimble stated it is concrete. Mr. Trimble stated their request is for 21.9% impervious surface, and the existing impervious surface is 20%. Permitted for the District is 18%.

Mr. Majewski stated in general the concept they are proposing is fine, and the use of a seepage pit would mitigate the increase in impervious surface; but he feels it may need to be larger. Mr. Toadvine stated since the Township engineer has not had an opportunity to review this, he asked if the Applicant would be willing to agree to a Condition of Approval that the seepage pit would be designed to the Township engineer's specifications; and Mr. Trimble agreed.

Mr. Robert Archibald, 390 Sherwood Drive, was present and stated his rear yard abuts the Applicant's rear yard. He stated his concern is not with the pool but with the run off that comes from Barn Drive in general into Sherwood Drive properties. He stated he wants to make sure that no additional run off is created.

Mr. Byron Remus, 398 Sherwood Drive, was present and stated his property is behind the Trimble property. He stated he is opposed to this Variance because of concerns with drainage. He noted over three feet of water can be in the area adjacent to his home on the right as a result of run off from Barn Drive. He stated they have submitted a request to the Township to assign an engineer to inspect what he believes was faulty drainage from the homes that were built after his home was built. He stated they do have photos to show of the problem. He stated he has consulted with an engineer, and there is no question a pool will exacerbate the problems. Mr. Gruen stated he would like to see a copy of the engineer's report. Mr. Remus stated he does not have it but could get it.

Mr. Majewski stated he is aware that there are drainage problems throughout the entire area, and this is why he questioned whether the seepage pit was of a sufficient size; although he does feel they could build a seepage pit large enough to ensure there is no adverse impact from the extra impervious surface that will be added.

Mr. Smith asked if they could design a seepage bed large enough so that the net effect is that the property drains as if it fell within the 18% as required by the Code for impervious surface; and Mr. Majewski stated they could. Mr. Trimble stated he would agree to this.

Mr. Toadvine noted the house is twenty-three years old and the permitted impervious ratio may have been higher when it was built. Mr. Smith stated while he understands this, today's requirements are 18%.

The Public Hearing portion was closed.

Mr. Bamburak moved and Mr. Gruen seconded to grant the Variance for impervious surface of 21.9% with the Condition that the seepage pit be designed to the Township engineer's specifications to a net of 18% impervious surface. Motion carried with Mr. Bamburak, Mr. Gruen, and Mr. Zamparelli in favor and Mr. Malinowski and Mr. Smith opposed.

It was noted the Township engineer will need time to review the plans with regard to the size of the seepage pit, and Mr. Majewski stated he will contact the Applicant and make a site visit as well.

APPEAL #07-1447 – T. M. KRAUTHEIM CO. INC.

Mr. Todd Krautheim was present and was sworn in. The Application submitted was marked as Exhibit A-1. Submitted with the Application was a one-page Plan dated 12/13/05, and this was marked as Exhibit A-2. Mr. Toadvine stated he understands the issue is with regard to trees which were removed from the resource-protected area. Mr. Majewski stated this property was the subject of a previous Zoning Hearing Board Application, and this lot was allowed to be built with a lower resource-protected area of woodlands. As part of that, they identified which trees would be removed and which would be saved. During construction an additional four trees were damaged; and due to safety concerns, they took the four trees down since they were dead and were quite large. Mr. Majewski stated the Subdivision and Land Development Ordinance requires that one tree be replaced for each tree that is removed during construction; but because these trees were much larger than a normal tree, they would recommend that they be replaced at a two to one ratio. Mr. Majewski stated he agrees that the trees were dead.

Mr. Toadvine asked if Mr. Krautheim would agree to planting eight trees. Mr. Krautheim stated he feels eight trees may be too many for the area. Mr. Majewski stated he feels there is enough room that if they plant smaller-growing trees, they would not impact the house. The Subdivision and Land Development Ordinance specifies 2 ½” caliper trees should be planted. Mr. Toadvine asked about the species, and Mr. Majewski stated the Applicant could submit a list or Mr. Majewski could make recommendations. Mr. Gruen asked if they would be required to plant native species because of the new Ordinance. Mr. Majewski stated they would request that they be native species although if they wanted to install an ornamental, he would not have an objection. Mr. Krautheim agreed to work with the Township engineer on this. He noted he did have the Township engineer out to the site before cutting down the trees.

The Public Hearing portion of the meeting was closed.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried that the Variance requested be granted conditioned on the placement of eight 2 ½” minimum caliper trees subject to approval of the Township engineer.

OTHER BUSINESS

Approval of Extension for Appeal #07-1413 – Paul and Nancy Koestler

Mr. Smith moved, Mr. Bamburak seconded and it was unanimously carried to grant a six-month Extension for Appeal #07-1413 – Paul and Nancy Koestler.

There being no further business, Mr. Bamburak moved, Mr. Smith seconded and it was unanimously carried to adjourn the meeting at 8:20 p.m.

Respectfully Submitted,

Paul Bamburak, Secretary

