

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – MAY 20, 2008

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on May 20, 2008. Chairman Malinowski called the meeting to order at 7:35 p.m.

Those present:

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

Others: Robert Habgood, Code Enforcement Officer
 Maureen Carlton, Township Solicitor
 James Majewski, Township Engineer
 Allen Toadvine, Zoning Hearing Board Solicitor

Absent: Matt Maloney, Supervisor Liaison

APPEAL #08-1472 – SHADYBROOK INVESTORS, L.P.

Mr. Jeffrey Garton, attorney, was present. The Application submitted was marked as Exhibit A-1. Attached to the Application was a two-sheet Plan for Capstone Terrace dated 2/18/08 which was marked as Exhibit A-2. Mr. Garton marked as Exhibit A-3 the Affidavit of Posting along with a photograph of the posting in compliance with the Ordinance.

Mr. Garton stated he discussed this matter earlier today with Mr. Toadvine. Mr. Garton stated he would like to summarize the Application to save time. He stated he feels the Township engineer will confirm that he is generally supportive of the Application before the Board. Mr. Garton stated this is a Land Development Application presently pending before the Planning Commission and the Board of Supervisors to construct an office building. The property has an existing detention basin that was built ten to fifteen years ago. The Applicant intends to retrofit that detention basin by adding some ecological features including the restoration of water quality, wetlands plantings, etc. all of which are designed to improve the quality of the water leaving the basin. In addition, the basin will be picking up water from the various streets that are flowing directly off the site to an existing low-flow channel. He stated the request is to encroach into the slopes of the existing man-made detention basin and the existing roadbed of the

Old Stony Hill Road that was a road until the reconfiguration of Township Line Road which took place ten to fifteen years ago.

Mr. Majewski stated he would agree that he has no objection to what is proposed and he feels that the proposal makes sense.

Mr. Eric Garton was sworn in and stated he is an engineer licensed in the Commonwealth of Pennsylvania and prepared the Plans that are the Exhibits before the Board this evening. He stated he would agree that the Plans are accurate representations of the current existing and proposed features with respect to the detention basin. He agreed with Mr. Jeffrey's Garton summary as to the reasons for the retrofit and the need to encroach into the steep slopes.

Mr. Bob Riviezzo was sworn in and stated he is employed by BPG Properties, which is the developer for Shadybrook Investors, L.P, and he has the authority to be present on behalf of the owners. He stated he participated in the preparation of the Application, and agrees that everything in the Application is true and correct. He stated Shadybrook Investors are the owners of the property.

Mr. Garton stated the relief being requested is for a Variance to permit 100% encroachment into the steep slopes of the existing detention basin and on the Stony Hill Road side of the abandoned roadbed of Stony Hill Road. Mr. Toadvine asked if there is a question as to the amount of encroachment, and asked if the approval should be conditioned on the Township engineer's approval. Mr. Garton stated they are seeking the right to encroach 100% into the slopes described and added that during the planning process there will be changes made, and they would not want to have to come back to the Zoning Hearing Board if there is a recommendation made by the Township engineer that they are willing to abide by. He stated if the relief granted is to permit them to encroach up to 100% of the steep slopes associated with the existing detention basin as well as the roadbed of Old Stony Hill Road on the Stony Hill Road side of the project, this would meet the needs of the Applicant and provide clarity for the Township.

Mr. Toadvine stated that this matter will go through Land Development so that if there are any modifications to the detention basin, it will be approved by the Township engineer and the Board of Supervisors; and Mr. Garton agreed.

Ms. Carlton stated the Township is not taking a position on this matter. There was no public comment, and the Public Hearing portion was closed.

Mr. Bamburak moved, Mr. Smith seconded and it was unanimously carried to grant the Variance as requested to encroach into the steep slope by 100% and into the roadbed.

APPEAL #08-1473 – DAVID AND JANET GOODWIN, JR.

Mr. Lee Rockafellow, attorney, was present representing the Applicants. Mr. Malinowski asked if Mr. and Mrs. Goodwin will be testifying, and Mr. Rockafellow stated they will not. He stated he would like to give an overview of the property. Mr. Toadvine asked if he will be calling Mr. and Mrs. Goodwin as witnesses, or if there is an engineer or architect present who will be testifying, and Mr. Rockafellow stated he does not have anyone else present. He stated this is a non-designated wetland that has some wetness in certain areas. He stated the lot is over two acres and the surrounding lots are about one fifth the size. Mr. Toadvine stated there would have to be testimony on the record for the Board to make a decision; and the only way to do that is by having a witness testify.

The Application submitted was marked as Exhibit A-1. Attached to the Application is a one-page plan for Tax Map Parcel #20-050-159-001 dated 9/12/07, and this was marked as Exhibit A-2.

Mr. Toadvine advised Mr. Rockafellow that while he can provide an overview, the Board will need testimony to rely on to base their decision. Mr. Rockafellow asked from whom they would need testimony that is not on the Plan. He stated this is not a designated wetland. Mr. Toadvine stated an attorney cannot offer testimony. He stated the Plan could be placed in evidence but there will be questions from the Board about issues involved in the Application.

Mr. Rockafellow stated he feels an explanation of this particular area as well as what they are attempting to accomplish is important as it may raise some questions.

Mr. Smith asked if the Applicants are related to Jason Goodwin, and Mr. Goodwin stated Jason is his younger brother. Mr. Smith stated he will need to abstain from a vote on this matter.

Mr. Rockafellow stated the property was divided off by Lower Makefield Township in the early 1970s. He stated there is an existing dwelling which was subdivided off and they sold the other lot to Mr. and Mrs. Goodwin, Sr. who are still the actual owners who intend to “gift over” the property to Mr. and Mrs. David Goodwin so that they will be able to build. Mr. Rockafellow stated the lot was approved by Lower Makefield Township years ago. He stated it is not a designated wetlands and never has been. He stated it goes nowhere and does not originate anywhere and appears to be natural drainage from some of the surrounding areas including on the north side where there are a number of new houses on relatively small lots. He stated on the other side is the Church of Latter Day Saints which also has an impervious surface parking lot covering a large area adjacent to the subject property.

Mr. Rockafellow stated a certified engineer came out for wetlands, and flagged the lot as such so they could see where the areas of water, which basically dry up in the summer, are located so that they would not interfere with the drainage area if they built on the property. He stated they started the process approximately a year ago, and the proposal before the Board is what is now being proposed. He stated the lot is more than five times larger than the surrounding lots, and the house will be set back. It does not touch anywhere within 25' of the wet areas. He stated they are not wetlands.

Mr. Toadvine stated the Plans indicated that all the areas where there are flags are wetlands. Mr. Rockafellow stated this is what the engineer did after it was flagged by the environmental scientist. He stated this is standard procedure. Mr. Malinowski stated it indicates on the Plan that they are Federally-regulated wetlands, but Mr. Rockafellow stated they are not. He stated he will probably have to have the engineer come in and testify. Mr. Toadvine stated the only evidence before the Board is a Plan prepared by J. G. Parks Associates with a note on it (Number 7) stating: "The wetlands shown were delineated in the field by DelVal Soil and Environmental Consultants, and the flags were field located." Mr. Toadvine stated all the evidence the Board has before them are the Plan with the flags and the markings showing the Federally-regulated wetlands which comprises 55% to 70% of the site. Mr. Rockafellow stated he agrees that this is where the flags are set and it is the boundary of the wet area. Mr. Toadvine stated the Plan states they are Federally-regulated wetlands. Mr. Rockafellow stated he feels this will need a clarification. He stated Del Val told him that the United States law sets forth how they determine whether something is a wet area or wetlands. He stated there are certain plants they look for and this is how it is determined and this is what they are referring to and it is not a designated area of a wetland, and they did it based on the type of plants that were growing on the lot and from taking the test borings.

Mr. Toadvine asked if they would like to continue the matter to the next meeting so that the engineer can testify that they are not wetlands even though they were flagged as wetlands on the Plan. Mr. Rockafellow stated they would like a continuance. He stated this is not a designated wetlands area, and they were marked in accordance with the wetland standards as to the type of growth that is there. He stated it is a lower-lying area where there are certain kinds of plants that qualify it for that type of purpose; but it goes nowhere and it comes from nowhere. Mr. Rockafellow stated it is not a wetland per se.

Mr. Bamburak stated he does not feel they can proceed on this at this time.

Mr. Rockafellow stated he is not asking for a vote on the matter, and is only asking what questions they want answered. He asked if they want the soil person present.

Mr. Rockafellow stated the area where the dwelling is proposed including the access meets all of the requirements for setbacks. He stated the State, Corps of Engineers, and the Federal Government do not require any setback. He stated Lower Makefield had a setback of 25' and this house qualifies for that and this is why it was designed in this

way. He stated within the last year unknown to anybody else, Lower Makefield, for reasons that are not clear, increased the setback to 50' on wetlands which made this lot unusable. He stated this was a change in the Township Ordinance that makes it necessary for them to get a Variance. He stated originally this Plan was put forward with the belief that it would qualify without any Variances.

Mr. Malinowski stated currently it does not qualify because it is not 50'. Mr. Toadvine stated a front yard Variance is also required. Mr. Rockafellow stated they are proposing that the house be set back farther than any of the other houses on the road. He stated while it may require a Variance, it would not be a major Variance.

Mr. Malinowski asked if they would like to request a continuance so they can bring in the engineer, and Mr. Rockafellow stated he could but again stated this would qualify under the old Ordinance of a 25' setback. Mr. Malinowski stated while this is correct, the old Ordinance is not in effect. Mr. Rockafellow stated he understands the Ordinance was recently passed, and it makes the lot unusable.

Mr. Toadvine stated the Plan does not even maintain a 25' setback. Mr. Rockafellow stated he feels it does, and this is why it was designed as shown. Mr. Bamburak stated it appears that the front right corner of the house would be within the 25' buffer. After further review of the Plan, Mr. Rockafellow agreed that a small section of the right corner would be in the 25' buffer.

Mr. Rockafellow stated they could bring in a representative from DelVal to describe what the land actually is. He stated this was a lot that was accepted by Lower Makefield in a Subdivision as a single building lot and is five times larger than any of the lots surrounding it. He stated the Church in the area has an impervious surface fifteen feet away from the edge of it. He stated new homes were built on the back side of the lot and the earth-moving built up the area. He stated they are looking for a way to build a home on this large lot.

Mr. Malinowski stated the evidence that the Board has before them shows that the lot encroaches on wetlands.

Mr. Rockafellow stated he would like to request a continuance and ask the Del Val representative to come in. Mr. Toadvine asked if they could be ready by June 3, and Mr. Rockafellow stated he did not know. Mr. Toadvine suggested that they continue the matter to June 3; and if they are unable to proceed at that time, they could contact the Township requesting that the matter be moved to June 17 if necessary. He stated Mr. Rockafellow would have to confirm this in writing.

Mr. Bamburak moved, Mr. Gruen seconded and it was unanimously carried to continue the matter to June 3, 2008.

APPEAL #08-1474 – JOYCE AND ROBERT DALEY

Ms. Joyce Daley was sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application was an 8 ½” by 11” drawing for Lot 343A time stamped as received by Lower Makefield Township 4/14/08 and this was marked as Exhibit A-2.

Ms. Daley stated she is requesting a Variance for impervious surface to permit a shed in her rear yard. The shed is 12’ by 16’. Mr. Malinowski asked if it is on pilings or a concrete surface, and Ms. Daley stated it sits on top of several inches of gravel. She presented a photo of the foundation for the shed, and this was marked as Exhibit A-3. The shed is existing.

Mr. Toadvine asked if there are impervious surface calculations with the Application, and Mr. Habgood stated none was submitted. Mr. Habgood stated he did calculations which showed that the existing impervious was 19.8%, and with the addition of the shed it would bring them to 21%. For this property 18% is permitted, but it was noted this home was in existence before the current impervious surface requirements were in effect. Mr. Habgood stated the Township received a complaint that a shed was installed without a Permit.

Ms. Daley stated the shed was installed in January, 2008, but had been purchased and paid for prior to that. She stated when she found out about the impervious surface calculations, she tried to stop delivery of the shed, but the vendor stated she would not be able to refuse acceptance of the shed. The cost was \$2,000.

Mr. Toadvine showed the pictures to Mr. Majewski and asked if it appears that the construction of the shed allows water to drain underneath or is it totally impervious; and Mr. Majewski stated some water could get underneath the sides, but not a significant amount.

Mr. Smith asked if anything could be done to abate some of the impervious surface effects such as a collection device. Mr. Gruen stated possibly they could dig a trench and fill it with gravel and drain the gutters into this pit, so that it would reduce the water run off. Mr. Majewski stated this would reduce the impact of the additional impervious surface.

Mr. Gruen asked if there is a picture of the shed, and Ms. Daley showed a photo. Mr. Gruen asked if it would be possible to cut off 2’ to 4’ from one end of the shed, but after looking at the pictures, Mr. Gruen agreed it would not be possible.

Mr. Habgood stated the shed is inside the fence on the property. He stated it is required to be a minimum of 10’ off the property, and it appears that it does meet this setback. Mr. Smith asked Mr. Habgood if he has personally inspected the property and the shed,

and Mr. Habgood stated he saw it over the fence. A Building Permit has not yet been issued so it has not been inspected by the Building Department.

Mr. Zamparelli asked if there are water concerns in the area of the shed, and Ms. Daley stated no more or less than anywhere else on her street.

Mr. Bamburak asked if there are other areas of impervious surface which could be reduced such as the driveway or patios they are not using. Ms. Daley stated she does not feel they could do this. She stated she was advised that when the homes were built impervious surface requirements were different than what they are now. She stated she has had discussions with her neighbors on all sides, and none indicated they had a problem with her shed.

There was no one present to speak in favor or opposition this evening.

Ms. Carlton stated the Township is not taking a position on this matter.

The Public Hearing portion was closed.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried that the relief requested be granted.

There being no further business, Mr. Bamburak moved, Mr. Gruen seconded and it was unanimously carried to adjourn the meeting at 8:15 p.m.

Respectfully Submitted,

Gregory J. Smith, Secretary