

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – OCTOBER 7, 2008

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on October 7, 2008. Chairman Malinowski called the meeting to order at 7:30 p.m.

Those present:

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

Others:                         Robert Habgood, Code Enforcement Officer  
                                      John Donaghy, Township Solicitor  
                                      James Majewski, Township Engineer  
                                      Allen Toadvine, Zoning Hearing Board Solicitor  
                                      Matt Maloney, Supervisor Liaison

Absent:                         Gregory J. Smith, Zoning Hearing Board Solicitor

APPREAL #08-1483 AND #08-1483(A) – T-MOBILE NORTHEAST LLC

Mr. Toadvine stated Mr. Eric Goldberg, attorney for the Applicant, presented him with a letter dated 10/7/08 in reference to this evening's meeting, and this letter was marked as Exhibit B-2. Mr. Toadvine stated they are requesting that the matter be continued, and they are waiving the time limits through 12/15/08.

Mr. Goldberg stated he contacted Mr. Toadvine this afternoon about a request for Continuance because they believe they potentially need some dimensional relief that was not applied or advertised for. He stated they are having their engineer go out and look into this. The Applicants will file an Amended Application which will need to be re-advertised.

Mr. Toadvine suggested that they continue the matter to November 18 which would be sufficient time for them to file the Amended Application and for the Township to advertise the Amendment.

Mr. Bamburak moved, Mr. Gruen seconded and it was unanimously carried to continue the matter to November 18, 2008.

Mr. Toadvine stated there was discussion about the Applicants floating a balloon at the site on October 21, from 9 a.m. to Noon which will indicate the location and height of the proposed tower, and Mr. Goldberg agreed. Mr. Toadvine stated if this changes, Mr. Goldberg will contact him, and he will contact the Township.

Mr. John Matthews, 10 Williams Lane, asked if the balloon could be floated on a weekend when the residents would not be at work; however, Mr. Toadvine stated the Board had already requested this and were advised that the company that does this does not work on the weekends. Mr. Matthews questioned why the Applicants just found out this afternoon that they had to apply for something else. He asked how long they can keep continuing this. Mr. Toadvine stated they have determined that they need to file an Amended Application. Mr. Matthews stated he wants to make sure that the Applicants are not trying to wear out the residents.

#### APPEAL #08-1488 – SHEILA SCOTT

Ms. Shelia Scott, and Ms. Lisa Leydon, landscape architect, were sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application was a one-sheet Plan dated 4/9/07, last revised 7/23/07, and this was marked as Exhibit A-2.

Ms. Scott stated they are interested in building a retaining wall along the side of the driveway which apparently is in Township property. She stated they need the wall because there is a water problem. She stated the house is situated on a grade and the entire road is actually situated on a grade. She stated they have a problem when it rains with water coming down the driveway which moves earth and continues on and runs down to the Canal. They have built swales on either side of the house to divert the water, but the water coming down the road goes to the front of the house and is quite severe to the point that it is disturbing the ground. She stated they plan to build a low retaining wall to try to divert some of the water.

Ms. Leydon stated they had intended to have the engineer present, but he had a family emergency. She stated she is a landscaped architect and was hired to build the outside walls, patios, steps, and install the landscaping for the Scott property. She noted a measuring mistake on the plan and stated the right-of-way does appear to be unequal but only by about 2 ½' to 3' as opposed to 10' as she had written. She stated the Scott property at 2308 Stackhouse Drive is situated on a hillside and they are requesting a Variance to build a 1' to 3' tall wall that is 39'2" long with a fieldstone face. She stated it will extend 5' into the 50' right-of-way.

She noted Attachment B which was provided in the packet, and Mr. Toadvine stated this color photograph will be marked as Exhibit A-3. Ms. Leydon noted on Exhibit A-3 the grade change for the house across the street to Stackhouse Road is 12'8" and the grade change from Stackhouse Road to the driveway is 3'1" at the entrance of the drive and continues down to about 6'2" as the driveway proceeds to the corner of the house. She stated there is an approximate 5' grade change from the top portion of the property running down Stackhouse Drive to the entrance of the driveway.

Ms. Leydon stated there was a 60' long non-conforming railroad tie wall built in the right-of-way to hold back the slope between the driveway and Stackhouse Road. She stated this was rotted and had been removed, and they would like to replace it with a shorter in length block and fieldstone-faced wall to hold back the soil and water run off from the hillside, the road, and the neighbor's property. She stated there is only a 14'5" space between the existing front steps and the existing right-of-way line, and this has proven to be too tight to allow for an adequate turning radius for a car to exit and enter the property, and would create an even bigger problem if there were snow or ice. She stated building a retaining wall with the front face at 3'9" and the back edge of the wall being at 5' into the right-of-way allows for a safer drive through this space.

Ms. Leydon provided additional photos to the Board this evening, and this packet of seven photos was marked as Exhibit A-4. Ms. Leydon stated the first photo shows the drop between the house across the street and the drop coming down the street. The second photo shows the area where they would like to have the retaining wall. The third sheet shows the difference in grade change from the house across the street and the water run-off that would come straight down the hill and shows the opening of the driveway coming out of the garage, trying to make the left-hand turn. The last sheet shows walls which were built in the back, and they would build the same type of wall which would be a block wall which is stone faced. The wall would run from 1' to 3' tall and would be 39'2" long. It will not be as long as the railroad tie wall that they removed which was much longer.

Mr. Malinowski asked who installed the railroad tie wall, and Ms. Leydon stated she feels it was built over 30 years ago. The front of the proposed wall will extend 3' into the right-of-way. Ms. Leydon stated they are trying to provide enough room to turn their car in front of their house. She stated they are trying to give them enough maneuverability coming down the hill particularly in the winter if the hill is icy to be able to make the turn by pushing the driveway into the hillside somewhat where it had been with the old retaining wall. She stated they cannot the old retaining wall was non-conforming as the homeowner at that time had not obtained a Permit.

Mr. Gruen stated if they are allowed to do this any work that may need to be done in the right-of-way in the future could involve removal of the wall and would have to be done at the expense of the homeowner. Ms. Scott stated the wall would actually be three to four feet on the slope from the road so that even if the Township were doing work along the road even if it encroached 2' to 3' it should not be a problem; and it would be highly unlikely that they would go all the way down the grade. Mr. Gruen stated there is always a possibility. Mr. Gruen asked if she considered starting the wall on her property and as you come toward the driveway put the last 15' of the wall curving out so that there is a turning radius to get into the garage without putting the entire wall in the right-of-way. Ms. Leydon stated this is the reason that they made the wall shorter. She stated the area that needs to be totally retained is the area that is closer to the garage as you come down the hill as this is the area that has the most severe drop. Mr. Gruen asked about the possibility of the wall curving toward the property so that only the last 15' would be in the right-of-way so that it would be an "s" shaped wall. Ms. Leydon stated they made it straight because the blocks are straight. She stated it is a cinderblock wall that is stone-faced. Mr. Gruen stated he assumed it was an ep Henry type, and Ms. Leydon stated it is not. She stated it is a cinderblock wall with a poured footer, rebar coming through and poured filling in the cinderblock, and they would then face the front side with stone. Mr. Gruen stated he feels what he has suggested could still be done, and Ms. Leydon stated while this may be possible, they would prefer to do it the way they have designed it.

Mr. Toadvine stated was discussion among the Board, the Township engineer, and the Applicant about the location of the wall and the Applicant has agreed to amend the Plan such that the proposed wall would be located 13'6" from the edge of the macadam of Stackhouse Drive rather than the 12'5" as shown on the Plan and this would be the closest that the wall would be to Stackhouse Drive. Mr. Scott agreed to this change.

Mr. Donaghy stated the Township is participating and would like to see the wall moved back from the roadway, and he feels it would be acceptable as now proposed and would also like a Condition that if there is ever a widening of the road, that the Applicant be required to remove any encroaching area at their own expense; and the Applicant agreed to this Condition.

There was no one present to speak in favor or in opposition of the Application. The Public Hearing portion was closed.

Mr. Gruen moved, Mr. Zamparelli seconded and it was unanimously carried to approve the Appeal with the provision that the setback of the wall will be no less than 13 1/2 ' from the macadam of the roadside, and should the Township have to do any work in the right-of-way the Applicant would remove the wall at their expense.

APPEAL #08-1489 – MARDI J. AND DAVID J. SCHLEINKOFER

Mr. David Schleinkofer and Ms. Mardi Schleinkofer were present and were sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application was a one-sheet Plan for the pool dated 8/21/08, and this was marked as Exhibit A-2.

Mr. Malinowski stated it is possible that with a four-member Board there could be a tie vote; and in the event of a tie, they could lose their Appeal. He stated they could proceed or have the matter continued to a future meeting. Mr. Schleinkofer agreed to proceed.

Mr. Schleinkofer stated they would like to install a pool in their yard, but they found out that they are in the 100 year floodplain. He stated since they have been in the home, the water has never come over the creek which is in the rear. He stated they have proposed the pool to be as close to the house as possible. He stated they propose a black, iron fence so that it would not block the view and water could flow over the pool and would not damage any property.

Mr. Malinowski asked how far they are encroaching into the floodplain. Mr. Toadvine stated it appears that the entire rear yard is in the floodplain.

Mr. Gruen stated the plan shows 35% impervious surface and since they are in the R-2 District he feels it is 18%. He stated it also shows that the lot is 13,000 square feet and it appears that the lot is more than half an acre and would be 29,000 square feet.

Mr. Habgood stated he feels the engineer only did the net and did not include for the lot size the area of the 100 year floodplain so they did not do a gross. He stated they are taking the impervious surface from Paragraph A because of this. He stated Paragraph A in R-2 for the lot size would allow 35%. Mr. Habgood stated he did calculations based on the gross, and the gross lot is about 29,200 square feet so they would be allowed 18% and what they are showing would be impervious surface of 12.5%. He stated their surveyor did not include the natural resources. It was agreed that there is no issue with impervious surface.

Mr. Donaghy stated the Township is participating and their only position is that they proceed with the metal fence with the 2” opening and would like this to be a Condition of any approval. This was acceptable to the Applicants.

Mr. Gruen asked if there is any possibility that the Township will have to do work in this floodplain, and Mr. Toadvine stated they would need a Variance.

There was no public comment for or against the Application, and the Public Hearing portion was closed.

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Mr. Zamparelli moved and Mr. Gruen seconded to approve the Appeal with the condition that a metal fence with 2” gaps be built around the pool. Motion carried with Mr. Malinowski opposed.

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

Respectfully Submitted,

David Malinowski, Chairman