

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – JULY 5, 2011

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on July 5, 2011. Chairman Bamburak called the meeting to order at 7:00 p.m.

Those present:

Zoning Hearing Board: Paul Bamburak, Chairman
 Gregory J. Smith, Vice Chairman
 Jerry Gruen, Secretary
 Anthony Zamparelli, Member
 Mark Moffa, Alternate Member

Others: Robert Habgood, Code Enforcement Officer
 James Majewski, Township Engineer (joined meeting in
 progress)
 Barbara Kirk, Zoning Hearing Board Solicitor

Absent: Keith DosSantos, Zoning Hearing Board Member
 Dan McLaughlin, Supervisor Liaison

Appeal #11-1590 – DARIUSZ CZERNIAK

Mr. Kirk stated the Township received a letter from the Applicant dated 6/29/11 requesting a continuance since the Applicant is not available to attend this evening's meeting. Ms. Bamburak stated there are no time limitations since they have already opened the proceedings. Mr. Bamburak stated since the work has already been done, they would like to move this along. It was agreed to continue the matter to 8/2/11 as the next scheduled meeting is being held for Frankford Hospital.

Mr. Gruen moved, Mr. Smith seconded and it was unanimously carried to continue the matter to August 2, 2011.

The letter from the Applicant was marked as Exhibit A-7.

APPEAL #11-1594 – JAMES AND TAMMY SMITH

Mr. James Smith and Ms. Tammy Smith were sworn in. The Application submitted was marked as Exhibit A-1. A two-page Plan entitled “Pool Lay Out and Grading Plan” was marked as Exhibit A-2. The Hearing was published in the Yardley News, and the Proof of Publication was marked as Exhibit B-1. The property was posted with notice of tonight’s Hearing, and the Proof of Posting was marked as Exhibit B-2. Notices were mailed to the property owners in accordance with the Township’s Zoning Ordinance, and this package including a copy of the letter and the neighbors who were notified was marked as Exhibit B-3.

Mr. James Smith stated they made an Application for a pool and paver patio in the rear yard. He stated they had a surveyor come out, and they found out that they had a Conservation Easement. He stated they purchased the property seven years ago, and they were never told about this Conservation Easement. He stated the Easement takes up approximately 25% to 30% of the property. Mr. Smith stated they wanted to construct a fence around the perimeter of the property and add the paver patio to address the growing needs of their family. He stated they feel this will provide more safety for their children and will provide much more usable space. He stated the Easement would significantly prohibit usable space for their yard. He stated they feel it would also be easier to care for the property if they can install the fence as they have proposed around the perimeter.

Mr. Smith stated they have a retention basin on the side of their property. He stated they have discussed this plan with their adjacent neighbors, and no one was in opposition.

Mr. Smith stated if they are allowed to put the fence around the perimeter of the property, they would agree to grant access to the Township at any time and take down the fence at their own expense.

Mr. Smith stated they also have a copy of the Seller’s Disclosure, and they did not disclose the existence of this Easement.

Mr. Majewski joined the meeting at this time.

Mr. Smith stated they would also have the fence installed 2” to 3” above the ground so that it would allow for stormwater drainage.

Mr. Gruen asked if they have already installed the swimming pool, and Mr. Smith stated they have not since they wanted to take care of the fence issue first.

Mr. Smith stated along the back perimeter of the property and to the far right, there was previously a chain link fence; and there are metal posts still there.

Mr. Gruen asked how much landscaping and tree removal will be allowed in the Conservation area if the fence is permitted to be installed. Mr. and Mrs. Smith stated they are not removing anything in that area. Mr. Habgood stated if they wanted to do any tree removal in the future, they would need to submit a letter with a copy of the Site Plan to the Township for review. He stated this would be forwarded to the Township engineer to determine if what they are proposing is appropriate. Mr. Smith stated they are not proposing to do any clearing in the Conservation Easement.

Ms. Kirk asked if the Board were inclined to grant the Variance request, would the Applicants agree to the Conditions that there would be at least a 2” clearance between the bottom of the fence and the ground and that the property owners would be solely responsible for removal and replacement of the fence if someone needed to access the Conservation Easement, and Mr. Smith agreed.

Mr. Habgood stated there is a small area of wetlands on the Site Plan, and the Applicant is not proposing to put the fence in this area. Ms. Kirk asked if they would agree to this as another Condition, and Mr. Smith agreed.

There was no one present in the audience to speak to this matter, and the testimony was closed.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried that the Variance be granted with the condition that the wetlands shown on the map not be fenced in, that there be a 2” gap between the bottom of the fence and grade, and if access is needed to the easement by the easement owner at any time, the fence is to be removed and replaced at the property owners’ expense.

APPEAL #11-1595 – BARBARA SPIVACK

Mr. Howard Spivack and Ms. Barbara Spivack were present and were sworn in. Ms. Kirk stated the Application submitted along with a letter from the Palmer Farm Homeowners Association and information drawn from the Board of Assessments information Website was marked as Exhibit A-1. The letter from the Zoning Officer Disallowing the Permit request was marked as Exhibit A-2. The Plan submitted with the Application was marked as Exhibit A-3. A single-sheet showing the specifications for the proposed deck was marked as Exhibit A-4. Tonight’s Hearing was published in the Yardley News, and the Proof of Publication was marked as Exhibit B-1. The property was posted with notice of tonight’s Hearing, and the Proof of Posting was marked as Exhibit B-2. Notices were mailed by the Board to adjacent property owners in accordance with the Ordinance, and the proof of mailing was marked as Exhibit B-3.

Mr. Spivack stated when they moved into Palmer Farm they wanted to install a deck to increase the living area. He showed photos of where they want to install the deck. He stated there is an easement that wraps completely around their property cutting off every accessible area around the house. He stated he does not feel it would impose any hardship to the Township if they were to install a deck. He stated they would make sure that it would be a “screw-down” deck which could be removed if need be, and they would remove it at their own cost. Mr. Spivack stated they did speak to their neighbors, and they did not object.

Mr. Bamburak asked Mr. Majewski to comment on this Easement, and Mr. Majewski stated it is a 30’ wide sanitary sewer easement of which approximately 20’ is on the Spivack property, and 10’ is on the adjacent lot. Mr. Majewski stated the proposed deck will not impact the sanitary sewer pipe. Mr. Majewski stated he does agree they should include the Condition noted by Mr. Spivack that if necessary, the property owner would remove the deck at their expense.

Ms. Kirk asked the size of the proposed deck, and Mr. Spivack stated it is 12’ by 18’. Ms. Kirk asked if it will be enclosed, and Mr. Spivack stated there will be a railing, but there will not be a roof or windows. Ms. Kirk asked how far the deck will be from the side yard property line noting they are showing 13’. She asked if this is accurate. She stated they are requesting a side yard Variance as the required setback is 25’. She stated by adding the deck to the house, they are not going to be able to maintain the 25’ setback, and they are showing there will be 13’ from the edge of the deck to the property line; and Mr. Spivack stated this sounds accurate. Ms. Kirk asked who drew the Plans, and Mr. Spivack stated their contractor did. Ms. Kirk asked if they measured how far the deck would be from the property line, and Mr. Spivack agreed that they did. Ms. Kirk stated they only need one Variance for the deck to encroach into the side yard setback.

Mr. Habgood stated these are considered attached homes called “Z Lots,” and they take the requirements for an attached home. He stated the end unit is required to have a 25’ setback from the side property line. He stated there is a Reciprocal Use Easement between the homes to make them considered to be attached. He stated the Sewer Easement is in the setback. Ms. Kirk stated the Variance should be granted to the side yard setback.

Mr. Gruen asked if there is a Homeowners’ Association, and Mr. Spivack agreed there is. Mr. Gruen asked if the Homeowners’ Association approved their Plans; and it was noted they did, and a copy of this was included in the Application provided to the Zoning Hearing Board members.

There was no one present in the audience to speak to this matter, and the testimony was closed.

Mr. Gruen moved, Mr. Moffa seconded and it was unanimously carried to grant the Variance for the side yard setback with the Condition that if work needs to be done on the sewer line, the deck would be removed at the sole expense of the homeowner.

APPEAL #11-1596 – SANDRA AHMAD

Mr. Scott Fegley, attorney, was present with Ms. Sandra Ahmad. Mr. Fegley stated Ms. Ahmad is requesting a Variance for impervious surface ratio. The Application submitted was marked as Exhibit A-1. A Plan submitted with the Application was marked as Exhibit A-2. The impervious surface calculation chart was marked as Exhibit A-3. Tonight's Hearing was published in the Yardley News, and the Proof of Publication was marked as Exhibit B-1. Notice was posted at the property of tonight's Hearing, and the Proof of Publication was marked as Exhibit B-2. Notices were mailed to adjacent property owners in accordance with the Ordinance, and the Proof of Mailing was marked as Exhibit B-3.

Mr. Fegley presented this evening photos of the property. Three sheets totally eighteen color photographs of the exterior of the property were collectively marked as Exhibit A-4.

Mr. Fegley stated Ms. Ahmad is the original owner of the property; and when the Plans were developed for the development, the original impervious surface permitted was 15%. He stated in the early 1980's, this addition was put on without a Permit. Mr. Fegley stated Ms. Ahmad was not aware that the Permit had not been issued as she had left this to her husband and the contractor. He stated Ms. Ahmad has early family photos dating back to the 1980s showing this addition, and these could be presented as proof of construction. Mr. Fegley stated the Township increased the impervious surface for this area to 18%; but with the addition, the impervious surface of the property is approximately 23%. He stated he agrees that this is a sizable increase; however, it has been existing for approximately twenty years, and there have been no complaints from neighbors, water run off issues, or issues of any kind associated with the impervious surface.

Mr. Fegley stated the lack of a Permit came to light when Ms. Ahmad made an effort to sell her home. Mr. Fegley stated since there have been no water run off issues, to have her be required to take up sidewalks, driveways, etc. would be "over-kill" in trying to address this issue. Mr. Fegley stated Ms. Ahmad has spoken to her neighbors and Notice was provided to the neighbors, and no one is present to object. He asked that the Variance be given in recognition of what has existed for over twenty years.

Mr. Bamburak asked how this came to light when Ms. Ahmad was trying to sell the house. Ms. Ahmad stated the house was put up for sale; and she had to fill out a three-page report, and one of the questions was if they had any additions. When she indicated there was a patio, they asked if there was a Permit; and she indicated she did since she assumed she had a Permit. She stated she was in her home for thirty-one years. She stated she is trying to sell her home as she lives in Texas, and they lost the sale because of this. She stated the buyer backed out when they found out there was not a Permit. She stated she now has another buyer, and she needs the permission.

Mr. Gruen stated he does not see the swimming pool on the survey, and Mr. Fegley stated there is no swimming pool; and what he is seeing in the neighbor's swimming pool.

Mr. Gruen asked if Mr. Habgood agrees with the impervious surface calculations. Mr. Habgood stated he calculated 23.5%.

Ms. Kirk asked who completed the impervious surface calculations that were provided with the Application; and Ms. Ahmad stated she hired a private person who worked for a survey company, and he did this privately.

Mr. Moffa asked when the porch was added, and Ms. Ahmad stated it was before 1985.

There was no one present in the audience to comment on the Application, and the testimony was closed.

Mr. Zamparelli moved and Mr. Gruen seconded to grant the Variance for an increase in impervious surface to 23.5% which is the existing impervious surface.

Mr. Majewski stated he agrees with Mr. Habgood's calculations.

Mr. Gruen moved to amend the Motion with the Condition that the porch will never be enclosed. Ms. Kirk stated it is already enclosed. Mr. Gruen stated he does not want it to be enclosed with windows and walls. He stated he would not want them to make a family room out of it. Mr. Fegley stated this would still not impact the impervious surface so he questions the need for this Condition. Mr. Gruen stated this could then become year-round living space versus just a patio.

Mr. Smith asked the requirements for an individual to enclose the patio. Mr. Habgood stated if the Variance were granted, they would have to submit a Building Permit Application to alter it. He stated from the Site Plan submitted, it does appear that they would meet the current setback requirement for the rear yard. Mr. Smith stated this would then be dealt with at the Building Permit stage. Mr. Gruen stated since they are getting so much impervious surface, he does not feel they should automatically approve it as living space. Mr. Zamparelli stated it already has a roof on it. Mr. Smith stated while

he is not in favor of things being built without obtaining a Permit, this property owner is selling the property and moving out; and while someone may do something without a Permit, it would not be this Applicant. Mr. Gruen stated currently it is only a summer-type living situation. Mr. Bamburak stated he feels that if someone wanted to enclose this and have a bedroom, it is not an impervious surface issue; and it would be a Building Permit issue.

There was no second to the Amendment.

Motion as originally made carried unanimously.

APPEAL #11-1597 – BRIAN AND KAREN GALLAGHER

Mr. Brian Gallagher, Ms. Karen Gallagher, Mr. Jeffrey Skinner, and Mr. Gregory Kay were present and were sworn in.

The Application submitted was marked as Exhibit A-1. A single-sheet 8 ½” by 11” Site Plan was marked as Exhibit A-2. A more extensive Plan of Addition was submitted and was marked as Exhibit A-3. Tonight’s Hearing was published in the Yardley News, and the Proof of Publication was marked as Exhibit B-1. The property was posted, and the Proof of Posting was marked as Exhibit B-2. Notices were mailed to adjacent property owners in accordance with the Ordinance, and the Proof of Mailings was marked as Exhibit B-3.

Mr. Gallagher stated Mr. Skinner is the engineer who surveyed the property and put together the Plans that are before the Board. He stated Mr. Kay is the contractor who would construct the addition. Mr. Gallagher stated they are requesting a Variance for impervious surface and an adjustment to the rear setback requirements. Mr. Gallagher stated they want to remove an existing deck which did not count as impervious surface but does have a much larger footprint than the addition they are proposing to construct. He stated the deck has a non-functioning hot tub as well as a heating unit that is as old as the home. He stated he would like to remove the deck for both the “eyesore” factor as well as the fact that it is a safety hazard as they have three small children who are not allowed on the deck because it is unsafe. He stated the heating unit taps into the oil tank, and he wants to remove this because of concerns that it could leak given its age.

Mr. Gallagher stated the addition they wish to build would be an extension of the kitchen and would be 11’ by 14’. He stated this would help improve their quality of life for the family. He stated his wife’s parents spend a significant amount of time at the home as they help with care of the children, and they live with them part-time. He stated the larger kitchen would help in this area.

Mr. Bamburak noted the request for the rear yard setback. Mr. Smith asked about the orientation of the room, and he asked if there was a way to turn the room 90 degrees in order to reduce the requested setback. Mr. Gallagher stated this would move it away from the kitchen into the laundry room as well as increase the cost. Mr. Kay stated this orientation would also impact other areas of the home such as windows and egress from the basement.

Mr. Gruen asked what is behind their home, and Mr. Gallagher stated they back up to a conservation area. He stated it is a downward slope so run off is not a problem. He also stated they have one existing fifty gallon dry well in the back; and on the Plans, they have speced out two additional dry wells to help reduce the impervious space. Mr. Gruen asked if they will tie in the gutters, and Mr. Gallagher stated they will. Mr. Gruen asked the size of the dry wells, and Mr. Gallagher stated they would be fifty gallons each. They will dig and fill it up with gravel.

Mr. Bamburak stated the existing impervious surface is 22.2%, and they are requesting to increase this to 23.1%. Mr. Moffa asked how they got to the 22.2% since 18% is allowed. Mr. Bamburak asked if a previous Variance was granted; and Mr. Habgood stated this is one of the older developments in the Township, and impervious surface as that time related to building coverage. He stated what is shown on the Plan is probably what existed when the home was built. Mr. Bamburak asked Mr. Habgood if he agrees with the calculations; and Mr. Habgood stated he feels it should be 23.6% since he does not feel they include the stepping stones as part of the impervious calculations, and these are approximately 93 square feet.

Mr. Moffa asked the location of the existing well and the new wells, and these were noted on the Plan. The existing dry well is on the back left facing the house by the end of the deck, and the two additional dry wells would be at the downspouts on both sides of the garage.

Mr. Bamburak asked if they have done calculations on the effect of the two additional dry wells in terms of effective impervious surface, but Mr. Skinner stated he did not do that calculation. He stated based on the existing conditions and how the existing dry well functions, they assume that it would take some of the initial stormwater from the roof. He stated there will also be overflow should the well be filled up, and the rain would drain out as it does now.

Mr. Majewski stated he feels what is proposed will be sufficient to mitigate any additional stormwater run off from the increased impervious surface.

Mr. Gruen asked if this would bring them back to 18%, but Mr. Majewski stated while it would not bring them back to 18%, he feels every lot in this development is over the impervious surface requirement. He stated this is why the memo was forwarded by the Zoning Hearing Board to the Planning Commission to address this matter.

There was no one present in the audience to speak to this Application, and the testimony was closed.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to grant the Variance to increase impervious surface to 23.6% and approve the rear yard setback as requested to 41.73'.

APPEAL #11-1598 – FREDERICK R. AND LOIS C. CHILDS

Mr. Frederick Childs and Ms. Lois Childs were present with Mr. Bill Coyle of Anthony/Sylvan Pools and were sworn in.

The Application submitted was marked as Exhibit A-1. The Plan submitted was marked as Exhibit A-2. Notice of the Hearing was published in the Yardley News, and the Proof of Publication was marked as Exhibit B-1. The property was posted for tonight's Hearing, and that Proof of Posting was marked as Exhibit B-2. Notices were mailed to the adjacent property owners in accordance with the Ordinance, and Proof of Mailing was marked as Exhibit B-3.

Mr. Childs stated Mr. Coyle who represents Anthony/Sylvan Pools is the contractor and also provided the professional engineer's survey and Plan that was submitted for the pool installation. Mr. Childs stated they are asking for relief from collector road setback and for impervious surface greater than 18%. Mr. Childs stated they feel these requests are moderate, reasonable, and minimal Variance requests to provide the appropriate relief for this improvement. He stated with regard to the collector road setback, the encroachment is minimal. He stated the above-ground spa which is the small circle just below the 60' setback line and also a small portion of the pool itself which is a bench would encroach into the 60' setback. He stated this represents roughly 2% of the entire area of the encroachment, and roughly 21' out of the 120' length across the back yard at that point. He stated this is about 8' in depth into the setback area. He stated this will not effect the character of the neighborhood or any of the other properties or neighbors. He stated by retaining the 60' setback, it would be a disadvantage in comparison to other lots in the neighborhood.

Mr. Childs stated if they pushed the pool toward the house, they would encroach on the other requirement which says that the pool has to be at least ten feet from the building. He stated the design that has been submitted is a standard design by the Pool Company, is aesthetically pleasing, and has additional features that make it more interesting than just a simple rectangular pool. Mr. Childs stated if they were to push it closer to the house, they would be concerned about access to the rear of the building for maintenance and repairs if needed, and it would make it closer to the entrances from the house and could potentially raise questions about impacting the foundation walls and causing cracks or seepage.

Mr. Bamburak noted currently they have 15.9%, and they are requesting an increase to 20%. Mr. Childs stated the engineer indicated that it will be slightly less than 20%. He stated currently the property is under 16%, and they have not added any impervious surface since they have owned the property over the last fourteen years. He stated the only increase since it was built to their knowledge was the garden shed that was approved before they purchased the property. Mr. Childs stated there has been no standing water or flooding on the property or the adjacent properties to their knowledge. Mr. Childs stated they do not have a wet basement, and they are not significantly altering the drainage flow for surface water. Mr. Bamburak stated 18% impervious surface is allowed.

Mr. Gruen stated the pool itself does not count as impervious surface. He asked the width of the deck around the pool. Mr. Childs stated the total is 725 square feet additional. He stated he feels the width is approximately 3' from the edge of the coping. Mr. Coyle stated it actually disappears after the spa bump out, and becomes a natural area with a planting bed, and the deck then picks up again as you head toward the deep end of the pool. He stated they are cutting out the deck where it is not completely necessary for vegetation to frame the project for privacy and to keep the impervious surface area down. Mr. Moffa noted the one larger area on the other side of the spa, and Mr. Coyle stated this is a place to put a table and chairs. He stated there is no existing patio coming out the sliding glass doors at the back of the house so a small pad will be placed there so you can gain your footing and head to the pool.

Mr. Smith asked the grade at the bottom of the sliding doors, and Mr. Coyle stated the ground floor elevation is 98.262 and the bottom of the sliding glass doors is actually the first floor elevation of 100. He stated the pool will be one foot below this. Mr. Coyle then amended this and stated there is a sill elevation of the sliding glass doors of 99.4, and the top of the coping is 99. so there is a .4 difference. He stated there is a step-down family room.

Mr. Smith asked if the stone construction entrance is temporary or will remain, and Mr. Coyle stated this would be temporary if required.

Mr. Zamparelli asked Mr. Habgood if the calculations are accurate with regard to the impervious, and Mr. Habgood stated he calculated 20.2%.

Mr. Majewski stated he did not have any concerns.

Ms. Kirk stated the actual setback from the collector road from the furthestmost point of the pool and spa to the road will be 51.8', and Mr. Coyle agreed. Mr. Habgood stated all setbacks are measured to the water's edge. Mr. Coyle stated from the collector road to the water's edge it would be 50.8', and this is noted on the Plan. After further review, he amended this and stated it would be 52.8'.

There was no one present in the audience to comment, and the testimony was closed.

Mr. Smith moved, Mr. Zamparelli seconded and it was unanimously carried to grant the Variance for relief requested in the way of an increase of allowable impervious surface to 20.2% and rear yard setback of 52'.

OTHER BUSINESS

Ms. Kirk stated she received a request from Mr. Smolow representing the Residents Against Frankford Relocation, asking for confirmation that the Board will set aside the meeting dates of August 16 and September 20 as potential Hearing dates for this Remand Hearing. She stated an issue arose at the last Hearing with respect to documents not provided in response to Subpoenas that Mr. Smolow requested. Rather than move forward, the Zoning Hearing Board at the last Hearing, stopped the proceedings, and directed Mr. Smolow to file for the appropriate relief through Doylestown. Ms. Kirk stated Mr. Smolow suspects that he will not have an Order from the Court by the July 19th date, and this is why he wanted to clarify that the Board will reserve the two dates – one in August and one in September. Mr. Bamburak stated they already have both those dates set aside for Frankford.

Mr. Bamburak asked if Mr. Smolow has proceeded as directed, and Ms. Kirk stated she has no other information or documents from Mr. Smolow other than this request. Ms. Kirk stated she it could take three to four weeks to have a Hearing at Doylestown.

Ms. Kirk stated they did advise those in the audience at the last Hearing that they should contact the Township or check the Website to see if the matter is still listed for July 19.

July 5, 2011

Zoning Hearing Board – page 12 of 12

Mr. Habgood stated he understands there was a question as to whether or not a certain property owner received notification at the prior meeting. Ms. Kirk stated this was Ms. Wright from Lindenhurst Road. Mr. Habgood stated her address was notified but the County has it listed as John Wright as the owner of the property. They have since added Ruth Wright as well to make sure there is no question.

There being no further business, Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to adjourn the meeting at 8:00 p.m.

Respectfully Submitted,

Jerry Gruen, Secretary