

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – JUNE 7, 2011

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

Those present:

Zoning Hearing Board:        Paul Bamburak, Chairman  
   Jerry Gruen, Secretary  
   Keith DosSantos, Member  
   James McCartney, Alternate Member  
   Mark Moffa, Alternate Member

Others:                             Robert Habgood, Code Enforcement Officer  
   James Majewski, Township Engineer  
   Barbara Kirk, Zoning Hearing Board Solicitor

Absent:                             Gregory J. Smith, Zoning Hearing Board Vice Chairman  
   Anthony Zamparelli, Zoning Hearing Board Member  
   Dan McLaughlin, Supervisor Liaison

APPEAL #11-1589 – JOE AND CHERYL COSTELLO

Mr. Bamburak stated he will recuse himself from this matter, since the Applicants are his neighbors. Ms. Kirk stated since Mr. Bamburak has recused himself from this matter, there will only be four members of the Board available to vote on this matter this evening. She stated if there were to be a split vote, the Application would be deemed Denied. She stated they could choose to proceed with the Hearing tonight knowing that there could be a split vote, or they could request that it be continued until the next available date. Mr. Costello asked how long it would take to re-apply if there were a split vote and the Application were denied; and Ms. Kirk stated they could file an Appeal if it is denied, but it would cost additional money to do so. Mr. Costello agreed to proceed this evening.

Mr. Joe Costello and Ms. Cheryl Costello were sworn in.

The Application submitted was marked as Exhibit A-1. Accompanying the Application was an eight-page Site Plan for the property, and this was marked as Exhibit A-2. A photograph of the property was marked as Exhibit A-3. 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, and the Proof of Posting was marked as Exhibit B-2. In accordance with the Zoning Ordinance, Notices were mailed to adjacent property owners, and the Proof of Mailing was marked as Exhibit B-3.

Mr. Costello stated they have lived in the home for fifteen years, and the back of the property is unusable as there is a deck with no access to the downstairs; and they must go down through the basement in order to access the outside. He also stated their model has the smallest kitchen of all the models in the development. He stated they are a growing family, and they need to expand their space. He stated they would like to expand the kitchen on an elevated addition out the back of the house. He stated they will enclose the existing deck, rebuild it, put a porch over it, construct steps down to a lower deck where there will be a hot tub, and steps going down so that they have access to the back yard through either the kitchen or the walk-out basement.

Mr. Costello stated they have done searches on their house, and they have the lowest valued home in the development as everyone else has done additions and upgrades, and they would like to beautify their home.

Ms. Kirk noted Exhibit B-2 showing the new one-story rear addition and deck, and she asked if the shaded area will be the new addition; and Mr. Costello agreed. He stated the only option is to expand out to the back since they cannot go out to the right or left. He added that the deck which existed when they purchased the home is already in the setback. He stated they will add approximately six feet additional off the back of the existing deck. Ms. Kirk stated the corner of the new addition closest to the property line would be a 39' setback, and Mr. Costello agreed. Ms. Kirk stated from the bottom of the deck stairs to the rear of the property it is 26', and under the Code there is a 50' rear yard setback requirement so they will be encroaching in those two areas into that setback; and Mr. Costello agreed and added this is what they are asking the Board to approve.

Mr. Costello stated behind their property there is a wooded area and wetlands. Mr. Gruen asked if they are encroaching into the wetlands, and Mr. Costello stated they are not.

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

Mr. DosSantos moved and Mr. Moffa seconded to approve the Variance as requested. Motion carried unanimously. Mr. Bamburak did not vote on this matter.

#### APPEAL #11-1590 – DARIUSZ CZERNIAK

Ms. Edyta Czerniak was sworn in.

The Application submitted was marked as Exhibit A-1. Ms. Kirk stated the Township sent a Notice of Violation to the property owner consisting of four pages dated 4/26/11, and this was marked as Exhibit A-2. An Application for a Lower Makefield Township

Road Occupancy Permit was marked as Exhibit A-3. Exhibit A-4 is a Site Plan for the property. Exhibit A-5 is an enlarged version of the proposed driveway expansion. Exhibit A-6 is a copy of the Tax Map for the property. Notice of tonight's Hearing was published in the Yardley News, and the Proof of Publication was marked as Exhibit B-1. The property had Notice posted on it, and Proof of Posting was marked as Exhibit B-2. Notices were mailed to adjacent property owners in accordance with the Code, and those mailings were marked as Exhibit B-3.

Mr. Bamburak stated it appears that they have already installed the driveway, and Ms. Czerniak agreed. Mr. Bamburak asked the relief they are seeking. Ms. Czerniak stated her cousin is present this evening to help her with her English. Mr. Zbigniew Mystkowski was sworn in. Ms. Kirk stated the Application was submitted by Dariusz Czerniak, and Ms. Czerniak stated she is his wife. Ms. Kirk stated there are no documents proving who owns the property, and she wanted to make sure that Ms. Czerniak puts on the Record that she is an authorized representative, and Ms. Czerniak agreed.

Mr. Mystkowski stated they needed an extension to the driveway, but they did not know they had to have a Permit for that. He stated they were very scared when they got the letter and had never been in this type of situation.

Mr. Bamburak stated he looked through the information that was provided for this Appeal for impervious surface. He stated on a given piece of property you are only allowed to cover so much with materials which water cannot soak through such as a house, driveway, stone paving, etc. He stated there are limits on what you can cover. He stated in order for the Board to grant a Variance to cover more, the Board needs to have measurements of the property, measurements of the buildings, and the driveway to see how much is covered and how much more will be covered so that the Board can make an informed decision whether or not to grant the request. He stated the packet includes a map that is very hard to read and there are no calculations. He stated there is a form that could be supplied by Mr. Habgood which they could either fill out themselves or have someone who knows how to do these calculations fill it out. He stated they need to add up all the areas of the house, driveway, etc. and compare that to how large the lot is which will result in the impervious surface ratio. He stated the Board needs to know this before they can make an informed decision.

Mr. Bamburak stated they could continue this matter to provide them time to give the Board these calculations as the Board cannot make a decision without the calculations.

Mr. Mystkowski asked what numbers they need. Ms. Kirk stated they would have to provide the size of the lot. She stated if it is 15,000 square feet or more, only 18% can be covered with impervious surface where water does not go through. She stated they also need to provide the square footage of any walkways, the house, patios, sheds, what the driveway was before they expanded it, and the measurement of the driveway in square feet with the addition. She stated currently the Board has no numbers. She stated if they are only allowed 18% and by what they did, they are going up to 30% this might have a different impact than if they are only going up to 20%. She stated without those numbers the Board cannot make a decision based on what they have provided. Ms. Kirk stated the Township has a chart to help the Applicants fill in the numbers.

Mr. Bamburak stated the Board does not typically want anyone to have to spend money on engineering services, but they do need to have those numbers. He stated if the Applicants are not comfortable doing this themselves, they may have to hire either an engineering or land surveying company to do this.

Ms. Kirk asked if the property owners expanded the driveway themselves, and Ms. Czerniak stated they did. Mr. Mystkowski stated he actually helped them. Mr. Bamburak asked Mr. Mystkowski if he is a contractor, and Mr. Mystkowski stated he is in that kind of business, and he could help them with the measurements.

Ms. Kirk stated Aria is scheduled for the next meeting on June 21, and there are five matters scheduled for July 5. Mr. Gruen stated the driveway has already been built so there is no time problem; and unless the Township is interested in resolving this as soon as possible, they could postpone it. It was noted that the Township is not participating in this matter.

Mr. Mystkowski stated he feels he can get the work done by July 5.

Mr. Stephen Yorks was sworn in. He stated he is the next-door neighbor, and the impervious surface is closest to him; and he has no problem with what they have done.

Mr. DosSantos moved, Mr. McCartney seconded to continue the matter to July 5, 2011 to allow the Applicant time to provide the impervious surface ratio information.

Mr. Habgood suggested that the Applicants provide this information to the Township a week before that date so that he could put it in the Board's packet for their review prior to the meeting on July 5.

Motion carried unanimously.

APPEAL #11-1591 – ANN M. FISHER

Ms. Ann Fisher and Mr. Jeffrey Fisher were sworn in. The Application submitted was marked as Exhibit A-1. Attached was a Site Plan for the property, and this 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. Notice was also posted at the property, and the Proof of Posting was marked as Exhibit B-2. In accordance with the Ordinance, mailings of tonight's Hearing were sent to the adjacent property owners, and the Proof of Mailing was marked as Exhibit B-3.

Ms. Fisher stated they have a high energy dog which requires a lot of exercise, and they need to put a fence on their property. She stated she has a sewer easement on three sides of the property, and she would request a Variance for the fence within the easement. Mr. Fisher stated they recognize that there will be a requirement that the fence would have to be removed and replaced if the easement had to be accessed.

Mr. Bamburak stated this is typically a Condition that they request if a Variance were to be granted. Mr. Bamburak stated the fence would also have to be constructed so that there is a 2" gap at the bottom to prevent any obstruction of water flow. Mr. and Mrs. Fisher agreed to these Conditions.

Mr. Gruen questioned the location of the fence indicating he felt it appeared to be crossing over the property line; and Mr. Fisher stated it is not, and they have had the property surveyed; and they are not over their property line.

Mr. Gruen asked about the height of the fence, and Ms. Fisher stated it will be 5' high and will be black aluminum.

Mr. Habgood stated they will be encroaching on the sewer easement on the left side of the property as well. Ms. Kirk stated she feels they could grant the Variance as set forth on the Site Plan submitted as Exhibit A-2.

Mr. Douglas Oberreit, 1084 Glen Oak Drive, was sworn in and stated he is the adjacent property owner to the left, and this sewer easement goes between their properties. He stated the Fishers did discuss this with them, and he is in support of it.

Mr. Gruen moved, Mr. McCartney seconded and it was unanimously carried to grant the Variance as set forth on the Site Plan marked as Exhibit A-2 with the Condition that they leave a 2" gap at the bottom of the fence and should anyone need access to the easement, the owner would bear all expenses of removing and replacing the fence.

APPEAL #11-1592 – ROBERT AND ERICA VAN VARICK

Mr. Robert VanVarick was sworn in. The Application submitted was marked as Exhibit A-1. The Site Plan provided 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, and the Proof of Posting was marked as Exhibit B-2. In accordance with the Ordinance, Notices were mailed to adjacent property owners, and this Proof of Mailing was marked as Exhibit B-3.

Mr. VanVarick stated they moved into the house last October. He stated they have a dog and two small children, and they want to have a fence. He stated when they had the lot surveyed in preparation for getting Permits, they were advised of a storm sewer easement on left side of the lot. He stated they would like to run the fence off of the corner leaving the storm area open but 8' back from the jog back to the property line.

Mr. Bamburak reminded the Applicant of the Conditions previously discussed which are typically applied to these types of Variances, and Mr. VanVarick agreed to the Conditions.

Mr. David Goldstein was sworn in and stated he has no problem with the request but asked if there is damage done to the storm sewer, would he have any liability.

Mr. VanVarick advised that they do share this easement. Mr. Goldstein asked if the Township would hold them liable if there was any damage. Ms. Kirk asked who owns the easement. She stated if it was owned by the Township and there was damage, the Township may seek reimbursement from either of the two neighbors; but if this is an easement based on a Record Plan for the benefit of the two neighbors, the liability issue would be dealt with between the two neighbors.

Mr. Joe Godwin was sworn in and stated he is the neighbor behind Mr. VanVarick, and he stated he believes the drain is shared by the adjoining properties but he is not sure who owns the easement.

Mr. Majewski stated he believes that it is a Township easement.

Mr. Bamburak stated he feels that provided the contractor calls PA-1 Call, it would be up to the contractor to follow the instructions. Mr. Habgood stated normally for the installation of a fence the post holes are usually only three feet deep although he is not sure how deep the pipe is in the easement.

Mr. VanVarick stated it is a split rail fence.

Ms. Kirk asked if this is a stormwater pipe or a swale easement, and Mr. Majewski stated he believes that it is a stormwater pipe. He stated there are storm drains at the road and there is a storm drain in the back corner. He stated the fence contractor should verify the location of the pipe and the depth to make sure that there is not a problem.

Testimony was closed.

Mr. DosSantos moved, Mr. Gruen seconded and it was unanimously carried to grant the Variance subject to the Condition that should the fence need to be replaced or removed that it be done at the homeowners' cost and that there be a 2" gap at the bottom.

#### APPEAL #11-1593 – THOMAS AND ANNE COSTA

Mr. Thomas Costa and Ms. Anne Costa were present and were sworn in. The Application submitted was marked as Exhibit A-1. The property owners also submitted a letter to the Zoning Officer dated 5/4/11, and this was marked as Exhibit A-2. The Township issued a Notice of Disapproval for a Building Permit dated 4/29/11, and this Notice along with the accompanying documents were marked as Exhibit A-3. The Site Plan submitted was marked as Exhibit A-4. 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, and the Proof of Posting was marked as Exhibit B-2. In accordance with the Ordinance, Notices were mailed to adjacent property owners, and that was collectively marked as Exhibit B-3.

Ms. Costa stated their lot is a flag lot, and she does have pictures. She stated they have an existing fence which is twenty years old, and is falling down and falling apart. She stated they wanted to replace it with a PVC fence. She stated when they applied for the Permit, they found they needed to have two Variances. She stated they need a Variance to the 3' height limit in the front yard. She stated this separates their property from their front neighbor who is on the street. She stated her property is the flag lot, and they are behind the lot on the street. She stated they would like to have a 6' high fence for privacy and security. She stated they have been in their home for eleven years, and the fence has been there for twenty years. She stated it would be the back yard fence for the home in front of them. Ms. Costa stated the other Variance is for the back yard. She stated on the Site Plan there is a 25' buffer easement shown. She stated they back up to Yardley-Langhorne Road, and they would like the fence to continue along the Road.

Mr. Bamburak stated he understands that they are trying to replace the 6' stockade fence with a 6' PVC fence, and Ms. Costa agreed. She stated it will be exactly the same footprint.

Mr. Gruen noted there was a Building Permit approved for the fence in 1990. Mr. Habgood stated the Permit that was approved was for a 6' fence in the rear in the property but not to encroach into the easement and for a 3' fence in the front yard. He stated it appears that the prior owners, when they installed the fence, installed it incorrectly in the rear yard and they encroached into the easement; and rather than a 3' fence in the front yard, installed a 6' fence. Mr. Habgood stated the Township did not know about this until the current owners submitted a Permit to replace what was existing and found these discrepancies.

Mr. Dave Goldman, 954 Hunt Drive, was sworn in, and stated his property backs up to the Costa's front yard, and he stated they have discussed this with him, and he is in support of it.

Mr. Bamburak advised Mr. and Mrs. Costa about the Conditions discussed earlier with regard to fence, and Mr. and Mrs. Costa agreed to these Conditions.

Testimony was closed.

Mr. Gruen moved, Mr. McCartney seconded and it was unanimously carried to grant the Variance as requested subject to the Condition that there be a 2" clearance from the bottom of the fence to the ground within the easement area, and that in the event the fence in the easement would need to be removed, it would be removed and/or replaced subject to the homeowners' sole cost.

#### OTHER BUSINESS

##### Appeal #10-1563 – Wesley Gardner Extension

Ms. Kirk stated a Variance was granted on 9/7/10, and it took time to secure a contractor. They are asking for an extension until September, 2011.

Mr. Bamburak moved, Mr. DosSantos seconded and it was unanimously carried to grant an Extension until 9/7/11.

##### Appeal #09-1531 – Patricia F. Donnelly Extension

Ms. Kirk stated this was granted in November, 2009; and after the Variance was granted, the property owner became seriously ill and was not able to move forward. Ms. Kirk stated she is now in a position to move forward and has hired a contractor, but the Variance time frame has expired. She is asking for an Extension of the Variance which the Board can grant retroactive to the date of the expiration and an additional six months

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from today's date. Mr. Habgood stated the Township did make an error in this Application and the Applicant was not notified with the Decision that there was a six-month time limit. He stated the Applicant had no idea that the time limit for the Variance had run out.

Mr. DosSantos moved, Mr. Gruen seconded and it was unanimously carried to grant an Extension through 12/31/11.

Appeal #10-1579 – LEROY AND THERESA ALEXANDER

Ms. Kirk stated this was granted in January, and they had to hire a new contractor; and rather than allowing the Variance to expire, they are asking for an additional six months in order to secure the Building Permit.

Mr. Gruen moved, Mr. DosSantos seconded and it was unanimously carried to grant an Extension until 12/31/11.

There being no further business, Mr. DosSantos moved, Mr. Gruen seconded and it was unanimously carried to adjourn the meeting at 7:50 p.m.

Respectfully Submitted,

Jerry Gruen, Secretary