

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – SEPTEMBER 6, 2011

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on September 6, 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  
Keith DosSantos, Member (joined meeting in progress)  
Anthony Zamparelli, Member  
James McCartney, Member (left meeting in progress)

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

Absent: Daniel McLaughlin, Supervisor Liaison

APPEAL #11-1600 – JOSEPH W. PRYOR

Ms. Kirk stated on Friday, Mr. Pryor contacted the Township attorney who then notified her that Mr. Pryor is requesting that this matter be continued as he is still trying to resolve some issues with the ATF regarding the firearms license; and until those issues are resolved, he is requesting that the matter be carried until the next Board meeting. Ms. Kirk stated the next Board meeting is scheduled for September 20; however, she will not be available due to a Conference, so that if the Board is inclined to carry this over to October 4, she would appreciate this.

Mr. Smith moved and Mr. Zamparelli seconded to continue the matter to October 4. Motion carried with Mr. Gruen abstaining as he is not participating in this matter.

APPEAL #11-1602 – SUSAN COHEN

Ms. Kirk stated the Board heard this matter on August 2 at which time there were some issues as to the specific calculations for impervious surface coverage. The Applicant had requested that the matter be continued pending her ability to get final numbers. Ms. Kirk stated the Applicant is still awaiting results from her surveying company and does not have all of the documents finalized. Ms. Cohen has submitted a letter today requesting that this matter be carried until the next Board meeting; and again Ms. Kirk asked that if the Board were inclined, that they carry it to the October 4 date.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to continue the matter to October 4, 2011.

APPEAL #1604 – JULIE AND WES SCHEIRING

Mr. Kirk stated since the last Hearing, the Applicants have retained Edward Murphy as their counsel to represent them in this matter. Mr. Murphy is working with the Applicants to obtain additional consultants to see if there is a way to resolve the issues raised by other residents. Accordingly, he has asked that this matter be carried until October 4, 2011.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to continue the matter until October 4, 2011.

Ms. Kirk stated she did speak to one of the residents, Amy Hoffman, who had last appeared at this Hearing; and she wanted the Board to be aware that if residents were not present this evening it is because they were aware of the Continuance request, and asked that notices be mailed to all those requesting Party status to let them know of the new Hearing date so that there is no confusion as to when they need to appear. It was agreed to ask Ms. Ellison from the Township Office to provide this notice.

Ms. Amy Hoffman was present and stated they are all very interested and want to see that this moves forward in a timely manner. Ms. Kirk reminded Ms. Hoffman as she explained to her on the telephone, this is the Applicants' Appeal, and they have requested a Continuance through their attorney. Ms. Kirk stated there are no time constraints because the Board has already opened the Hearing; and therefore the Applicant has one hundred days from the date of the first Hearing to present his case in full. She stated that at any time the Applicants can decide to withdraw or modify the Application. She stated the Board will move forward upon the Applicants' request. She stated at this point it is scheduled for October 4 as the next Hearing date, but she cannot predict what will happen between now and then. She stated Mr. Murphy has been hired to represent the Applicant, and if the residents have questions as to whether there will be an October 4 Hearing on

this matter, they could contact his office to make sure that there will not be another Continuance as the Zoning Hearing Board may not know until the day before the Hearing. Mr. Bamburak stated the residents could also call Mr. Habgood as oftentimes the Zoning Hearing Board does not get notice until the date of the meeting that it is going to be continued.

APPEAL #11-1605 – SCOTT W. AND LISA HARRAH

Ms. Kirk stated Mr. Murphy is representing the Applicants, and he is at another meeting at this time and anticipates being able to be here by approximately 8:15 p.m.

Mr. DosSantos joined the meeting at this time. Mr. McCartney left the meeting at this time.

APPEAL #11-1606 – PETER AND IRENE TARASOV

The Application submitted was marked as Exhibit A-1. Also included was an impervious surface breakdown chart, and this was marked as Exhibit A-2. The Site Plan submitted 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 should have been posted with Notice of tonight's Hearing, and that Posting was marked as Exhibit B-2. Notices were also mailed to adjacent property owners in accordance with the Zoning Ordinance, and a copy of that letter along with the list of property owners was marked as Exhibit B-3.

Mr. Peter Tarasov was sworn in and stated they need a shed because of their children's safety and lack of storage space in their garage. He stated their children are into everything, and they need to protect them. He stated they have a pool, and the garage is not the right place to store dangerous chemicals because all of these are at the children's hand level and this presents a problem. He noted they also have gasoline, paint thinner, and wood finish products in the garage; and while they have attempted to put up a shelf to address this, they have run out of room. He stated they also have large shop tools in the garage.

Mr. Bamburak stated while they understand the need for more storage, they would like to know if Mr. Habgood had an opportunity to confirm the calculations submitted by the Applicant. Mr. Habgood stated if he includes the crushed stone that is shown on the Site Plan, he gets 24.3% proposed impervious surface. This crushed stone is between the rear of the home and the pool according to the Site Plan. He stated if this is not included it would be 22.8%. Mr. Gruen asked if there is any material under the crushed stone, and Mr. Tarasov stated the crushed stone has nothing under it. The permitted impervious

surface is 18%. Mr. Bamburak asked how they got above the permitted impervious surface, and Mr. Habgood stated there was a Permit for the pool, and at the time the pool was put in there was a patio at the back. He stated the walkway from the patio to the pool deck was not shown.

Mr. Tarasov stated they did not know at the time when they bought the home that they were already over the allowable 18%. He stated he felt that prior to installing the shed, they were at 20.6%, and the shed adds 270 square feet additional which is an additional 1.2%. He stated they are prepared to put gutters on the shed and have them drain down to a rain barrel. He stated they took pictures of the area around the shed the day after Irene, and there was no standing water around the shed. He presented the pictures this evening. He stated they would still be willing to install the gutters on the shed and collect the water in a rain barrel. Mr. Smith stated while the water may not be standing around the shed, it may mean that it ran off onto the neighbor's property.

Mr. Smith asked Mr. Habgood if crushed stone is considered impervious surface; and Mr. Habgood stated the Township does consider gravel or stone to be impervious but it depends on the type, and to get clarification they sometimes send out the Township engineer to get a determination if what is existing would be considered impervious surface or not. Mr. Smith asked if the Township engineer has done this, and Mr. Majewski stated he has not.

Ms. Kirk asked who installed the shed, and Mr. Tarasov stated he had it installed by contractor. Mr. Zamparelli stated currently there are no gutters or downspouts on the shed, and Mr. Tarasov agreed. Mr. Zamparelli stated behind the house there are paver stones, and Mr. Tarasov stated this is a paver patio that was already there.

Mr. Zamparelli asked where the gutters go from the house, and Mr. Tarasov stated they do not go into a collection system.

Mr. Smith asked if they got a Building Permit for the shed, and Mr. Tarasov stated he did not. Mr. Smith asked if a Building Permit is required for a shed, and Mr. Habgood stated it is required. Mr. Tarasov stated this was a pre-fabricated structure, and he did not know that he needed a Permit. He stated once they found out one was required, they filed for the Permit and then proceeded through the Variance process.

Mr. Zamparelli stated the shed is 22' by 12' which he feels is a big shed and currently there is no collection system. Mr. Zamparelli stated it is possible that the water may be running onto the neighbor's yards, and the Township is always concerned about water run off. Mr. Tarasov stated at other points in his own yard, he has not seen any standing water; but he is not sure what is happening at his neighbors' properties.

Mr. Gruen asked Mr. Tarasov if his back yard is fairly flat, and Mr. Tarasov stated it drops off to the neighbor's property on the shed side. Mr. Gruen asked how much crushed stone is under the shed, and Mr. Tarasov stated it is probably 6" to 8".

Mr. Smith asked Mr. Majewski what kind of mitigating measures would be required to bring the effective impervious surface down to the pre-shed construction level. Mr. Majewski stated they could install rain barrels to partially mitigate it, and they could have an underground seepage bed 2' to 3' down wrapped with a filter fabric so that dirt cannot get into the bed, and the bed would be filled with clean stone so that there is no compaction between the stone for storage underneath. They would then run the leaders down to this, and this would allow the water to percolate into the ground and not run off onto the neighbor's property. Mr. Smith asked what this might cost. Mr. Bamburak asked what volume would be required, and Mr. Majewski stated this would depend on what level they would be required to take it down to. He stated if they were going back to where they were before they installed the shed, it would be approximately 40 cubic feet of storage which would be 4' by 10' and 2.5' deep.

Mr. Smith asked Mr. Tarasov if he would consider installing such a mitigation device that would absorb the additional rainfall so that there would be an effective impervious surface that would be more acceptable to the Board. Mr. Tarasov stated he would be interested in knowing how much this would cost. Mr. Smith asked if he would like to request a Continuance and work with Mr. Majewski as to what the Township might expect and come back to the Board with ideas he would be able to work with that would be more acceptable to the Board. Mr. DosSantos stated he would also like to have an idea about the amount of crushed stone existing on the property and whether or not it is impervious or pervious, and Mr. Majewski agreed to look into this.

Mr. Gruen stated the shed seems to be quite a bit forward, and he asked Mr. Habgood if there is a distance from the front yard setback that the shed must be located. Mr. Habgood stated the Ordinance indicates that it must be in the fourth of the lot that is furthest removed from the abutting street; and in the rear of the property it does meet that requirement. However, Mr. Habgood stated the Applicant is also requesting a second Variance which is for the 10' setback. Mr. Tarasov stated he would be willing to bring the shed forward 2' so that it would be 10' from the property line, and they would still be 10' from the water's edge of the pool. Mr. Smith stated this would then remove one of the Variance requests.

Mr. Bamburak stated it is only a 1.3% impervious surface increase, and Ms. Kirk stated this would not be accurate if they include the crushed stone. Mr. Bamburak stated the increase would only be 1.3% over what it currently is, and Ms. Kirk agreed.

Mr. Dean Petruccelli, 849 Princess Drive, was sworn in and stated he has lived at this address for thirteen years. He stated the reason he is present is because his neighbor put in a large building close to his house and his property line. He stated the building is 25' by 12'. He stated there is a 6' privacy fence dividing their properties; and because of the height of the building, they can see 6' of the building over the fence. He stated he previously lived in Hamilton, New Jersey where the houses were very close together, and he moved to Lower Makefield for more open space. He stated now that this building is up he feels like he is back in Hamilton; and when he lies in his hammock or is in his yard, he has to look at this large building. He stated most of his windows have a clear view of this building; and when winter comes and all the leaves have fallen, all the back windows will have a clear view of this building.

Mr. Petruccelli stated he is also concerned about more water in his yard and around his foundation. He stated he has photos which show that he is getting more run off; and the photos which were taken were from an August rain storm. He seems with the building up, he is now getting more water run off. He stated he is also concerned about this structure having a negative effect on future homebuyers and feels this building could make it harder to sell his home in the future. He stated he understands that before you put up a large building, you should get the proper Permits from the Township first. He stated he would like to have the whole building moved to the right of the property where the swing set is so that it is totally away from his property. He stated it is currently in the center of his property line now. He stated he has advised Mr. Tarasov that he does not mind it being on the property, but he would want it moved as far as possible from his property to the location where they have their swing set.

Mr. Gruen asked the height of the building, and Mr. Tarasov stated it is 11' high. Mr. Habgood stated he did go out to take pictures of the structure, but he did not measure the height of the building.

Mr. Tarasov stated the issue was raised about more water run off, and he would be willing to install the mitigation but added that August has been the wettest month on record and prior to Irene they had 13" of rain in August which is a record and Irene brought 6" additional.

Mr. Bamburak stated it appears that the Board has some concerns, and he asked Mr. Tarasov if he would like to request a Continuance so that he can consider this further and work with the Township to come up with a more concrete plan on remediation issues; and Mr. Tarasov agreed to continue the matter.

Mr. DosSantos stated Mr. Tarasov's neighbor had a concern about the location, and he asked Mr. Tarasov if he would consider moving it to a different location in the yard; and Mr. Tarasov stated this is possible. Mr. Zamparelli stated he should keep in mind that he did install as pretty big building without a Permit and without consulting with his neighbor. Mr. Tarasov stated he did have a conversation with the neighbor to his right and with Mr. Petruccelli and told them they were considering putting up a shed and advised them of the approximate location. Mr. Zamparelli asked if he advised them of the size. Mr. Petruccelli stated he did indicate that they were going to install a shed, but he did not expect that it would be this high. He stated it was not built on the property, but rather a giant crane came out and "plopped" it right by his fence; and he was shocked since he felt he was installing a shed that would hold his lawn mower.

Mr. DosSantos stated if the crushed stone is counted as impervious. The calculations would have to be re-done. Mr. Majewski stated he will examine the crushed stone and let them know his opinion.

Ms. Kirk stated the Board's job is to grant Variances upon a proof of hardship which means that the configuration of the property is such that they have no choice but to increase impervious surface. She stated the mitigating circumstance is that whatever he installs, he should do it in such a way to reduce the amount of a Variance that they are requesting to the absolute minimum possible. She stated if there is anything that can be done such as the installation of a seepage bed to bring it closer to the 18% permitted under the Code, this is what he may want to. Mr. DosSantos stated he may also want to consider putting in some kind of remediation for the home to alleviate some of the water that is coming off the property. Mr. Smith stated the closer they can get to the allowed 18%, the better it would be. Mr. Bamburak stated they could also consider removing the crushed stone if it is deemed to be impervious by Mr. Majewski.

Nineteen photos submitted of the property by Mr. Tarasov were marked as Exhibit A-4. Eight photos submitted by Mr. Petruccelli were marked as Exhibit P-1.

Mr. Tarasov stated with regard to the aesthetics and the view from Mr. Petruccelli's house, they had a conversation prior to the meeting; and Mr. Tarasov did offer to put in a row of tall screening trees along the back of the property so that Mr. Petruccelli would not have to look at the shed, but that offer was rejected. Mr. Bamburak stated the Board will consider what he is willing to do as well as the Testimony of the neighbors as Variances are supposed to minimally effect the neighbors.

Mr. Petruccelli stated the water is a big issue, but he moved to the Township to have open space and his yard is now closed in; and Mr. Tarasov has installed a huge structure. He stated usually shed are put in the corner, but this was placed right in the middle of his property. He stated his main concern is the aesthetics. Mr. Gruen suggested that the two neighbors meet and discuss this matter further. Mr. Smith stated aesthetics are not an

issue before the Zoning Hearing Board; and provided the impervious surface is within Code and the building is within Code, he would not need any Variance, and he could put the building where it is located. Mr. Petrucelli asked if height is not an issue, and Mr. Smith stated height is an issue, and there is a 15' height limit.

Mr. Smith moved, Mr. DosSantos seconded and it was unanimously carried to continue the matter to October 4, 2011.

#### APPEAL #11-1607 – GREG KAY, KAY HOME IMPROVEMENT

Mr. Greg Kay, and homeowners Mr. Ronald Beede and Ms. Patricia Beede were present and were sworn in.

Mr. Gruen asked to be recused from this matter since he is familiar with the Applicants. Mr. Bamburak stated if they move ahead with only four members, and there is a tie, they would lose the Appeal so that the Applicants could request a Continuance. Mr. Kay agreed to proceed.

The Application submitted was marked as Exhibit A-1. Included was an impervious surface breakdown chart, and this was marked as Exhibit A-2. The Site Plan was marked as Exhibit A-3. Notice of tonight's Hearing was published in the Yardley News, and 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 all adjacent property owners in accordance with the Ordinance, and a copy of the letter along with the list of property owners was marked as Exhibit B-3.

Mr. Kay stated he applied for the Application for Mr. and Mrs. Beede. He stated the property is in the Queens Grant Section, and in the 1980s the Township's rules for impervious surface changed from when the home was originally built. He stated the current requirements for the property is 24%, and the existing home constructed by the builder is at 27.24% which is 3.24% more than what is currently permitted. He stated the current residents would like to add an addition for the caretaking of their ninety-two year old mother, and the proposed addition of 312 square feet will add an additional 2.08%. Mr. Kay stated they are requesting relief from the 24% to 29.23% impervious surface; however, only 2.8% is for the proposed construction. Mr. Kay stated the request is consistent with Variances that have already been given to other homes in the neighborhood.

Mr. Kay stated they have placed the proposed addition of 15' deep by 20' on the back of the home, and they have turned it lengthwise in order to minimize the impact on the rear property line setback. He stated they are also requesting relief from the 45' rear setback to a 36' setback. He stated the size of the room has been determined for the nature of the care considering the equipment that is needed. He stated they have discussed other options for taking space in the home without success. He stated both Mr. and Mrs. Beede have mobility issues which ruled out a prior plan for doing a second floor on the home. He stated they are currently in a ranch home. Mr. Kay stated the only way to create space with the mobility issues of the owners is to build additionally out on the first-floor level.

Mr. Smith stated there is a deck on the drawing, and he asked what kind of deck this is; and Mr. Kay stated it is a wood deck that does not impact impervious surface, and there is nothing underneath it. Mr. Smith stated on the right side of the house there is a rectangle drawn, and Mr. Beede stated this is a brick patio. Mr. Kay stated this was included in the calculations for impervious. Mr. Smith asked the size of the brick patio, and Mr. Bamburak stated it states 152 square feet for patio and miscellaneous. Mr. Beede stated it is a 10' by 10' paver patio.

Mr. Habgood stated the lot size as shown on Exhibit A-2 is incorrect. He stated per the Recorded Linen, the size of this lot is 16,584 square feet. He stated this would then lower the impervious surface. He stated he calculated it to be 26.7% proposed. The permitted amount is 18%. Mr. Habgood stated he calculated the existing to be 24.9%.

Mr. Bamburak asked if he calculated the numbers in the Application, and Mr. Kay stated he did based on geometry principles. Mr. Kay stated they took the supplied Plot Plan from the Township, and scaled it and with an irregular shape like this, you turn it into four triangles and use the scale rule and multiply it out.

Mr. Kay stated one thing they had done in the past that the Board had approved was to put in a 4' by 4' dry sump for a 150' square foot addition. He stated this is a 300 square foot addition so they are willing to install two 4' by 4' by 4' dry sumps and patch the leaders directly into those which should basically nullify the complete construction of the project. Mr. Smith asked Mr. Majewski if he would agree with this proposal, and Mr. Majewski stated he would.

Mr. Ron Kutsmedea, 941 Weber Drive, was sworn in and stated he wants to know what side of the house will be used for access when they do the construction; and Ms. Kirk stated this is not something that the Board would address, but would be part of the Building Permit process. She asked if Mr. Kay would like to answer this, and Mr. Kay stated it would be on the right side from the front, and it would not be on Mr. Kutsmedea's side.

There was no one else to speak on this matter, and Testimony was closed.

Mr. Smith moved and Mr. DosSantos seconded to grant the relief requested to permit a 300 square foot addition for increased impervious surface of 1.8%, and a rear yard setback of 36' with the Condition that two 4 by 4 by 4 dry sumps be installed and maintained to mitigate any run off as a result of the addition. Motion carried with Mr. Bamburak, Mr. DosSantos, Mr. Smith and Mr. Zamparelli in favor. Mr. Gruen did not vote on this matter.

#### APPEAL #11-1608 – ROBERT FRANKIEVICH AND CYNTHIA SHAW

Mr. Robert Frankievich, Ms. Cynthia Shaw, and Mr. John Schweizer, Gasper Landscaping, were present and were sworn in.

The Application submitted was marked as Exhibit A-1. Also included was a Site Plan which was marked as Exhibit A-2. Ms. Kirk stated there was a statement prepared by Gasper Landscape Design regarding the proposed stormwater system, and this was marked as Exhibit A-3. A Plan for the proposed patio was marked as Exhibit A-4. Notice of 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 subject property, and this will be marked as Exhibit B-2. The adjacent property owners were mailed notice of tonight's Hearing in accordance with the Zoning Ordinance, and a copy of the letter along with a list of the property owners was marked as Exhibit B-3. The Board's Decision of 5/16/11 regarding this property was marked as Exhibit B-4. Ms. Kirk stated as she reads the Application, there is not any substantial change from the earlier Zoning request for a 470 foot paver patio, the difference being there is now a proposed mitigation system being presented.

Mr. Frankievich stated they are now requesting 446 square feet of additional impervious surface and are back with an improved design that has a mitigation system using an Aqua Block storage system to account for the full square footage at 2" per hour rainfall. He stated since the prior Application, they have had discussions with the Township engineer and a member of the Board whether this would be an adequate mitigation Plan, and they believe that they have one which that the Board can approve. He stated the property has no outdoor patio space. He stated it has a rear-facing garage which prohibits reduction of the impervious surface.

Mr. Schweizer stated the Aqua Block system is manufactured by Aquascapes, and he provided cut sheet on the Aqua Blocks which are used in place of clean stone. He stated this maintains space inside the seepage beds. He stated each one of the Aqua Blocks is 26" by 16" by 17.5" in height, and each one handles 32 gallons of water. He stated they would excavate the area approximately 2' in depth, line the area with a filter fabric to prevent the soil from being able to encroach in that area, then stack the Aqua Blocks as a network below it and have some clean stone underneath of that as well. You then put a layer of fabric on top to keep silt out, and it is then capped with soil and lawn. He stated he used the calculations that were provided to him by the Township in order to quantify the size of the system needed in order to negate the entire square footage they are adding to the property. He stated the entire square footage would be 446 square feet which would be 74 cubic feet that would need to be collected, and he has proposed a storage area that would be capable of collecting 77.4 cubic feet or 594 gallons of water. He stated at 2" of rainfall per hour, this amount of space that would be required would be approximately 74 cubic feet and he increased this slightly.

Ms. Kirk asked the dimensions of the drainage area, and Mr. Schweizer stated it would be 30" in depth, and 6.5' by 6'. Mr. Bamburak asked Mr. Majewski if the Township would accept this method; and Mr. Majewski stated they would. Mr. Bamburak noted there is a clean out, and he asked if this would be subject to the Maintenance Agreement for stormwater management, and Mr. Majewski stated this would not fall into that category as being required. Mr. Gasper stated they use the Aqua Block system frequently.

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

Exhibit A-5 was marked which are the specs for the Aqua Blocks.

Testimony was closed.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried that the relief requested be granted as requested with the Condition that the Aqua Block system described in the Application will be used.

Mr. Majewski left the meeting at this time.

APPEAL #11-1609 – DAVE AND DIANNE HENN

Ms. Dianne Henn was present and was sworn in. The Application submitted was marked as Exhibit A-1. The Site Plan submitted was marked as Exhibit A-2. A letter dated 8/16/11 with a Revised Site Plan 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 of tonight's Hearing, and the Proof of Posting was marked as Exhibit B-2. Notices were mailed to property owners in accordance with the Ordinance, and a copy of the letter with the list of property owners was marked as Exhibit B-3.

Ms. Henn stated they have a reverse frontage lot, and their back yard is along Big Oak Road. Ms. Kirk stated Ms. Henn did some research and determined that according to the Record Plan, there is a buffer easement, and she is asking that the fence be permitted to be installed within the buffer easement.

Ms. Kirk stated there were two Sections cited of the Zoning Ordinance, one of which was 69A.(14)(c) which deals with construction of a fence in an easement area. She stated the second was 200-73C.(3) and (7) regarding reverse frontage buffers, and that really is not applicable; and Mr. Habgood agreed adding that 200-69A.(14)(c) specifically mentions fences within easements, and this is typically what residents request Variances from. Ms. Kirk asked Ms. Henn if she would agree to withdraw the Variance request dealing with reverse frontage buffers, and Ms. Henn agreed.

Ms. Henn stated the fence they are proposing is a vinyl fence for privacy and as a sound barrier. She stated she would be open to other fencing if this is not acceptable. She stated she was looking to install a solid fence which would be tan or sand rather than white which would be more bold. She stated there would also be plantings.

Mr. Gruen asked if she would agree to have the fence installed 2" above grade so that water could flow through, and Ms. Henn stated she would agree to this. Mr. Gruen stated should the Township need to access the easement, she would have to remove and reinstall the fence at her expense; however, it was noted by Mr. Smith that this is not required in this case since it is not a drainage easement.

There was no one present in the audience to discuss this matter.

Mr. Habgood stated the reason why two Site Plans were submitted was because when the Applicant first dropped the first one off, he was not sure whether they were going to have the fence just along the back or also coming down the side. Mr. Habgood stated the Applicants considered this further and decided they also wanted it to come down the side which is why the second Site Plan was submitted.

Mr. Gruen asked the height of the fence, and Ms. Henn stated she was going to put it at 5' in case they ever wanted a pool in the future. Mr. Habgood stated in the rear yard you can have a maximum height of 9', but the minimal height for a pool is 5' with spacing no greater than 2". Ms. Kirk stated Ms. Henn is not requesting a Variance for the height of the proposed fence, and Mr. Habgood agreed.

Testimony was closed.

Mr. Zamparelli moved, Mr. Smith seconded and it was unanimously carried to grant the Variance to install a fence in the buffer easement with the Condition that there be a minimum 2" clearance between the grade and the bottom of the fence.

A short recess was taken at this time.

#### APPEAL #11-1605 – SCOTT W. AND LISA HARRAH

Mr. Edward Murphy, attorney was present with Mr. Scott Harrah and Mr. Paul Wojciechowski, engineer, who were sworn in.

The Application submitted was marked as Exhibit A-1. Also submitted was a Zoning Variance Plan, and this was marked as Exhibit A-2. Notice of the meeting was published in the Yardley News, and the Proof of Publication was marked as Exhibit B-1. Notice was posted at the subject property, and that Posting was marked as Exhibit B-2. Notices were mailed to the adjacent property owners in accordance with the Ordinance, and a copy of that letter with the list of property owners was marked as Exhibit B-3.

Mr. Murphy stated Mr. and Mrs. Harrah purchased the property in 1998. The property is Lot #21 of Makefield Brook. He stated pursuant to various Notes on the Recorded Subdivision Plan which were highlighted in the Application, there is an area to the rear of this lot as well as other lots in that Subdivision that is identified as being within the 100 year floodplain; and there is an easement established on the Recorded Subdivision Plan. He stated what the Note on the Plan says is that you cannot build anything within that easement without the prior approval of the Board of Supervisors. Mr. Murphy stated Mr. and Mrs. Harrah purchased the property in 1998, and at the time the house was already constructed as well as certain other improvements that are shown on Exhibit A-2. Included within those improvements were sections of a stone wall that intrude into the area defined on the Recorded Subdivision Plan as the easement. Mr. Murphy stated there is also a portion of an existing paver patio that is within that same area.

Mr. Murphy marked a Plan as Exhibit A-3. Mr. Murphy stated Mr. Wojciechowski has been qualified previously before the Zoning Hearing Board. Mr. Wojciechowski agreed with the testimony already provided by Mr. Murphy. Mr. Wojciechowski stated he prepared Exhibit A-3 which is a blow up of a portion of Exhibit A-2 which depicts the encroachment into the 100 year floodplain easement; and the areas in red are what he has highlighted as being the encroachments. Mr. Wojciechowski stated the encroachments are part of a paver patio and a wall, and the square footage of the encroachment is approximately 170 square feet and is an area of 13 by 13. He stated the purple line is the 100 year floodplain easement line running through the paver patio.

Mr. Murphy asked Mr. Wojciechowski when the encroachment depicted on Exhibit A-3 was discovered; and Mr. Wojciechowski stated they were asked to do an As-Built survey in preparation for an addition Mr. Harrah wanted to have put on his house, and during that survey they found that a portion of the paver patio and stone wall were encroaching into the easement. Mr. Murphy stated Exhibits A-2 and A-3 depict the proposed addition, and Mr. Wojciechowski stated it is the hatched area in back of the house. Mr. Murphy stated there is an existing deck to be removed and to be replaced with a proposed wooden deck, and Mr. Wojciechowski agreed. Mr. Murphy stated once Mr. Wojciechowski prepared the As-Built survey and submitted it, it was flagged as being an issue although it is not an issue for the proposed addition or wooden deck; and Mr. Wojciechowski agreed.

Mr. Murphy stated the purpose of tonight's Application is to seek to obtain approval after the fact to retain those portions of the stone wall and paver patio that are highlighted in red on Exhibit A-3.

Mr. Harrah agreed with the statements made by Mr. Murphy and Mr. Wojciechowski, and added that the portions of the paver patio and stone wall depicted in red on Exhibit A-3 were there when he purchased the home in 1998.

Mr. Murphy stated there is no evidence in the Township files that anyone sought a Permit for those two elements, and they are seeking to legitimize that which was already there.

Mr. Harrah stated he has discussed this matter with his neighbors on either side, and they were shown the Plan and proposed addition and indicated they had no objection.

Mr. Murphy stated while Mr. Majewski was present earlier in the evening, he has left the meeting; however, he did advise Mr. Murphy approximately one week ago that there are new proposed floodplain regulations that are about to be adopted, and if and when those

new regulations are adopted, the limit of the floodplain is going to be further removed from the back of the house on this lot than it shows on the Recorded Subdivision Plan, and Mr. Majewski had indicated to him that it would assist his client's position and not make it the same or worse.

Ms. Kirk stated since the Record Plan indicates that anything within that area must be approved by the Board of Supervisors, if the Zoning Hearing Board were inclined to grant the Variance, she assumes they will seek approval from the Board of Supervisors. Mr. Smith stated he was provided an "Outline of Relief Requested and Reasons Justifying Grant Thereof," and asked if under Number 4 it states "Board of Supervisors" or does it say "without written Township approval?" Mr. Murphy stated it states "without written Township approval." Ms. Kirk stated she feels it would be Board of Supervisors approval that is required if it is required on the Plan itself. Mr. Murphy stated Item #15 on the Recorded Plans says, "No fill or structure shall be placed within the floodplain easement without written Township approval," and Note #19 says, "No structure or plantings other than grass shall be placed within easements without the written approval of Lower Makefield Township." Mr. Murphy asked if "Township" means Board of Supervisors or the Zoning Hearing Board. He stated since it is a Zoning issue because you are not supposed to be building in the floodplain, they assumed that it was the Zoning Hearing Board. Ms. Kirk stated this was a Subdivision that was only approved by the Supervisors and may have been a requirement as part of the Approval. Mr. Murphy stated he does not feel that if there is a Zoning regulation that says, "you should not build in the floodplain," that the Board of Supervisors has the authority to grant the approval and only the Zoning Hearing Board has the authority to grant Zoning relief. He feels that the Zoning Hearing Board has the authority to do that, and would constitute "written approval of the Township." Mr. Bamburak stated the Board of Supervisors review all the Variances and pass them onto the Zoning Hearing Board. Mr. Murphy stated he feels it is properly before the Zoning Hearing Board.

There was no one present to comment on this matter. Mr. Habgood stated there is no impervious surface issue.

Testimony was closed.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to grant the relief as requested.

OTHER BUSINESS

Mr. Habgood stated the Board had asked that he contact Orloff/Grace who were scheduled to come back before the Zoning Hearing Board at the next meeting. Mr. Habgood stated the Township sent them a letter and Mr. Habgood stated he spoke to Mr. Orloff on August 30 and today, September 6; and they indicated that it would not be a problem moving their Appeal to the following meeting to be held October 4. Mr. Habgood asked that they provide him with written confirmation; but to date, he has not received anything.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to continue the Orloff/Grace matter to October 4, 2011.

Mr. Habgood stated he will send them a letter advising them of the Continuance.

CANCEL SEPTEMBER 20, 2011 MEETING

Mr. Smith moved, Mr. Zamparelli seconded and it was unanimously carried to cancel the September 20, 2011 meeting.

There being no further business Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to adjourn the meeting at 8:45 p.m.

Respectfully Submitted,

Jerry Gruen, Secretary

