

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – OCTOBER 16, 2018

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on October 16, 2018. Mr. Gruen called the meeting to order at 7:35 p.m.

Those present:

Zoning Hearing Board: Jerry Gruen, Chairman
 Keith DosSantos, Secretary
 Pamela Lee, Member
 James McCartney, Member

Others: Jim Majewski, Director Planning & Zoning
 Adam Flager, Zoning Hearing Board Solicitor
 John B. Lewis, Supervisor Liaison

Absent: Anthony Zamparelli, ZHB Vice Chairman

APPEAL #18-1805 – DAN WILBY

Mr. Dan Wilby was present and was sworn in. Mr. Flager stated this is a Continuation of the September 4 meeting, and he reviewed the Exhibits which had been put into the Record.

Mr. Gruen asked for a review of the request. Mr. Wilby stated he is proposing to install a 40 by 50 pole barn which would be a storage building for his car, motorcycle, etc. He stated he was told he was only allowed 15', and he needs 21' which is why he is here for a Variance. Mr. Gruen asked if he needs the 21' because he wants to put the doors on the gable end; and Mr. Wilby stated the doors will not be on the gable end, and they will be on the long end. Mr. Gruen asked why he could not put them on the gable end, and Mr. Wilby stated the ceiling height will be 14'. Mr. Gruen stated there would no be enough of a pitch.

Mr. DosSantos stated they did discuss this extensively at the last meeting. He stated there was a concern expressed by a neighbor, and Mr. Wilby was going to talk to his neighbor to see if he could work out something with the neighbor and Mr. Majewski to try to get this resolved which is why this was Continued.

Mr. Gruen asked if they were able to work something out, and Mr. Wilby stated he believes so. Mr. Gruen asked if the neighbor is present this evening, and it was noted that he was. Mr. Gruen asked if there were any other neighbors present this evening who were interested in this Application, and no one present indicated they wished to speak on this matter.

Mr. Joseph Scialabba, Mr. Wilby's neighbor, was present; and he was reminded that he was still under Oath.

Mr. Wilby stated they agreed to put up some trees between the properties. He stated he has an estimate to put ten trees up along the 50' line. He stated the building is about 50' wide, so they will put ten trees up. Mr. Gruen asked what kind of trees they will put in; and Mr. Wilby stated they are green giants, and he has information available. Mr. Gruen stated he is familiar with that tree; and it is a suitable tree which grows very fast and is deer resistant.

Mr. Scialabba stated the barn was moved no less than seven additional feet away from the property line, and they are going to split the cost of installing the trees. This was agreeable to Mr. Scialabba and Mr. Wilby.

Mr. DosSantos moved and Mr. McCartney seconded that the relief requested be granted with the Stipulation that the Applicant along with the neighbor. Mr. Scialabba, split the cost for the planting of ten trees at an agreed upon area and that the structure be a minimum of 37' from the property line.

Mr. Gruen asked the size of the trees being installed, and Mr. Wilby stated they got an estimate for ten trees 10' to 12' high.

Mr. Gruen asked if Mr. Majewski is satisfied with this decision, and Mr. Majewski stated he is.

Motion carried unanimously.

APPEAL #18-1808 – RAYA CONSTABLE & RANDALL GRUBB

Ms. Raya Constable and Mr. Randall Grubb were present.

Mr. Gruen stated there are only four members present this evening, and a tie vote would be a denial. He asked if they would like to request a postponement until there are five members present. The Applicants indicated they wished to continue.

Ms. Constable stated they are here debating about a shed on their property, but they have a Permit for the shed; and she does not understand why they are talking about the shed in the first place.

Mr. Majewski stated the Permit was issued in error and should not have been issued for the location that it is currently in, and therefore it is in violation of the Zoning Ordinance.

Ms. Constable asked Mr. Majewski if he had not told her before that he did not even have a Permit for her shed, and Mr. Majewski stated he did not say that. He stated she does have a Permit for the shed. Ms. Constable stated Mr. Majewski told her before that he did not have one, and he asked her for her copy. Mr. Gruen stated Mr. Majewski was surprised that she had a Permit because she was not supposed to get a Permit. Mr. Gruen stated Mr. Majewski just took over for the Building Department a few months ago, and the Permit was issued by the former Building Department, which was an outside concern that handled the Building Department; and that is why the Township got rid of them and they got Mr. Majewski who now works for the Township, and the Township does not deal with outside people. Mr. Gruen stated they made a mistake, and they should not have issued a Building Permit.

Mr. Gruen stated he has a proposal, and he will ask the people in the audience and the Board if they will accept his proposal. Mr. Gruen stated he saw the property, and the shed is in the front; however, there is a little fence there now which is only about 30' to 40' wide. He stated his proposal would be if the Applicants would agree to buy a stockade-type fence or some other type of fence that matches the rest of the neighborhood. He stated a lot of the neighbors have the 6' fences in the front. He stated he was just told that the Township has changed the Ordinance and that fence is now allowed to be there. Mr. Gruen stated his proposal is that if they would cover the fence, not take the other one down, but put in the whole front that matches something similar to the neighbors.

Mr. Grubb stated he would agree to match what is in the back which is a white vinyl sandwich board type.

Mr. Gruen stated the shed should also be painted because it looks like it is unfinished. Mr. Grubb stated when he got the Violation to appear in Court he ceased construction so it is not done.

Mr. Gruen stated in order to resolve this, he feels this is the Board's only option unless the other Board members want him to tear the building down. Mr. Gruen stated it is a thick, 6" concrete pad which is very expensive. Mr. Gruen stated he also does not know if they could put the shed anywhere else on the property.

Mr. DosSantos stated he is not inclined to have the property owner do that especially based on the fact that they were issued a permit by the Township whether it was done mistakenly or not. He stated he does not feel comfortable holding the property owners responsible for that. Mr. DosSantos stated he does feel the solution with the fence, if it is acceptable to the neighbors, would address the Applicants' concern with the dogs since they felt they needed a higher fence for the dogs.

Ms. Constable she would also plant a tree in front of the fence. Mr. Gruen stated he does not know if they could plant trees since there are already trees there. He stated the only thing they could put in front of it would be some shrubs that could take shade.

Mr. Majewski stated they did plant some smaller trees, although he does not know what type they are. Ms. Constable stated they are the same as the Applicant before them, and they are a fast-growing green tree. She stated they can grow up to 8'. Mr. Gruen stated he did not see any trees there. Mr. Majewski stated they are very small. Mr. Gruen stated his proposal is to cover the fence and disguise the wire fence with a fence that matches the neighborhood, and that will also pretty much cover the shed. Mr. Gruen stated he would leave the shed there if it is acceptable to the neighbors as that is the only shed that is in the front yard. Mr. Gruen stated if there were to make them move the shed, it will go to Court; and there will be "no winners here." He stated the Court might uphold the Permit and the C/O even though the Building Department issued it in error.

Ms. Constable stated there is no room in any other place, and Mr. Gruen stated he knows there is no room.

Mr. Gruen asked if his proposal is acceptable to the Applicants, and Ms. Constable and Mr. Grubb stated it is acceptable.

Mr. Gruen asked if his proposal is acceptable to the Board. Ms. Lee stated she is not inclined to make them move or tear down the shed given the fact that the Township issued the Permit.

Mr. McCartney asked when the fence Ordinance was changed. Mr. Majewski stated the Fence Ordinance Amendment was adopted at the last Board of Supervisors meeting and went into effect five days afterward. He stated this has come about from a number of Zoning Hearing Board Applications over the years with fences on corner lots where the side of the house is technically a front yard on a corner lot. He stated the fence therefore had to be set back 35' to 40' away from the road effectively cutting off about 25%

of someone's rear yard based on that determination. Mr. Majewski stated a number of people have received Variances for that, and he counted fifteen to twenty Variances that have been granted over the years to allow a fence closer to the sidewalk in that portion of the front yard that is actually to the side and the rear of the house.

Mr. Majewski stated he also found in the Township files a determination that was made in 1994 which was an agreement between the Zoning Officer and the Township solicitor that interpreted that the fence could go in the front yard. He stated that is why there are a number of fences, including in this neighborhood, that are closer to the sidewalk than where the setback is. Mr. Majewski stated he could not figure out how they issued so many Permits in error, and the answer is that it was because they were relying on guidance that they got from the Township solicitor. Mr. Majewski stated they therefore had conflicting enforcement of the Ordinance over the years, and sometimes people went for Variances, and sometimes Permit were issued; and the Ordinance Amendment codifies that and gives some extra protection to the neighborhoods in that the fence need to be set back a little bit away from the sidewalk. He stated every foot in height that you exceed the three feet, you need to push the fence three feet further away from the sidewalk. He stated if you have a three foot fence, it could be at the right-of-way line which is typically about one foot away from the sidewalk. He stated if you go to a four foot fence, it would be set back three feet. He stated if you have a five foot fence, it would be setback six feet, and if you have a six foot fence, it would be set back a minimum of nine feet from the right-of-way. Mr. Majewski stated this takes away the tunnel effect when you are walking through.

Mr. DosSantos asked how the Amendment to the Ordinance effect the current Application and their need for a Variance, and Mr. Majewski stated they would not need a Variance for the fence. Mr. Majewski stated they would need to amend their Permit since it is not shown in the location that they had previously shown it. Mr. DosSantos stated then the only thing before the Board would be the shed as the need for a Variance for the fence is moot, and Mr. Majewski agreed. Mr. DosSantos stated the neighbors should understand that the only thing before the Board is the shed, and the shed was built based upon a Permit that was given by the Township. He stated if the Applicants were Denied and they took it on Appeal, the Common Pleas Court may look favorably on the Applicants given the fact that they were given a Permit was already issued by the Township.

Mr. McCartney asked the Variance needed for the shed. Mr. Majewski stated the Ordinance requires that a shed be placed on the fourth of the Lot furthest removed from the road. He stated in this instance they have two road frontages which would place it in the far rear corner of the property right directly behind

the house. He added that it also requires that a shed be placed a minimum of 10' from the property line, and in this instance he believes that they are about 2' from the side/rear property line behind the house.

Mr. Gruen stated he understands that they are also considering reducing the setback for sheds in the Ordinance, and Mr. Majewski stated that is a topic for future discussion.

Mr. McCartney stated based on Mr. Gruen's recommendation, a 6' fence based on the new guidelines would cover that adequately; and Mr. Majewski agreed it would be compliant.

Ms. Lee stated they already have a fence there, and Mr. Gruen is only talking about changing the type of fence. Mr. Gruen stated he is not saying "changing." He stated they have a wire fence that is aesthetically not appealing to the neighbors, and he agrees as he feels it is an "ugly fence." He stated what he is recommending that they buy a few sections of stockade fence and attach it to the wire fence so it disguises it. He stated they would not have to remove the wire fence, and just attach the stockade fence to the existing fence, and then it would not be seen from the road. Ms. Lee asked about the shed. Mr. Gruen stated if he does what he proposes to the fence, he would be in favor of approving the shed where it is. Ms. Lee stated the Variance for the fence is moot, and Mr. Gruen agreed. Mr. DosSantos stated what is proposed is only a compromise to get the neighbors to agree to the shed, and Mr. Gruen agreed.

Mr. DosSantos stated his concern is that they do need neighbor approval, and Mr. Gruen agreed. Mr. DosSantos stated they are putting a Condition on the Applicant who does not really need a Condition for the fence. He stated they are trying to garner a compromise; but they are putting a Condition to the fence that the Applicant does not have to abide by anyway, and they are harming the Applicant by adding costs onto something that they do not need to do. Mr. Gruen stated the Board does not have to approve the shed the way it is. He stated the neighbors are not at fault that the Township made a mistake, and he is trying to help the neighbors out by disguising the shed as well as helping the Applicant out so that they do not have to remove the shed. Mr. Gruen advised the Applicants that their fence is legal, and they do not have to do anything with the fence; but he is proposing that they compromise a little bit by covering the fence in order for them to approve the shed which will also help the neighbors. He stated neither the Applicants nor the neighbors are at fault. He stated another option is that the Board reject it and let the Courts sort it out, but then it will just cost everyone money; and at the end it will come out the same as it is now.

Mr. McCartney asked Mr. Flager if they can make the Applicant do something that does not require a Variance in order to make either the neighbors or the Board “whole.” Mr. Flager stated Mr. Gruen has asked the Applicant if they would agree to it, and a lot of times the Board makes suggestions for similar types of compromises so that it makes everyone happy. He stated if the Applicant is willing to do this, there should not be a problem.

Mr. McCartney stated at this point, the only thing they should be hearing from the audience should be their opposition to the shed and it would have nothing to do with the fence since the fence is legal. Mr. McCartney stated if the neighbors want to speak, they should discuss only the shed but keep in mind that the Township has already issued a Permit and approved the shed. He stated the Applicants are not required to put a fence in or change the fence and they can leave it exactly as it is; and the only thing the Board is going to rule on is whether or not they get a Variance for the shed again.

Ms. Karen Springer, 385 Tall Meadow, asked for a further explanation as to the new Ordinance for the fencing and asked what are the parameters since it was noted that it can now go into the front yard. She asked if you could effectively fence in their whole yard if you are on the corner.

Mr. Majewski stated the Ordinance states that the maximum permitted height of any fence or wall in a front yard shall be 3'. For a corner lot, the height of the fence in the front yard located to the rear and side of the house, not the entire yard, may be increased to 7' provided the setback from the right-of-way line by a distance of 3' for each foot in height that the fence exceeds 3'. Mr. Majewski stated it could not be that the entire front yard is fenced in with a high fence, and it is only that part of the corner lot that is to the side and the rear of the house; and it would be only one side of the road, and in this case it would be the one on Bluestone which would be similar to the other houses in the neighborhood that have the fence that is taller basically in their side yard.

Ms. Lee stated the Zoning Hearing Board is bound by the Ordinance that the Board of Supervisors passed.

Ms. Springer stated when this fence went up, that Ordinance was not in place; and Mr. Gruen agreed and added they “got lucky.” Mr. Gruen stated the fact is that quite a few of the neighbors in this neighborhood have a fence which is 6' high. Ms. Springer stated at the last meeting Mr. Gruen clearly stated that precedence was not set here, and Mr. Gruen agreed. Ms. Springer stated they therefore cannot look at what has been done before, and they should look at what is being done now. She stated they put up a fence in violation of the Ordinance in place when the fence was put up. She stated now in between the

meetings, the Ordinance has changed. Mr. Gruen stated they could make them take the fence down, and next week they could put it back up. Mr. Gruen stated he is not happy with the Ordinance personally, and he does not feel fences should be in the side yard, but that is the rule; and they have to abide by what the Township wants.

Ms. Jenny Katz Schumeyer, 321 Tall Meadow Lane, asked if they do not agree to a fence the neighbors could go to a Court. Mr. Gruen stated while the fence is legal, they could go to Court regardless of what is decided by the Zoning Hearing Board. Ms. Schumeyer stated Mr. Gruen mentioned that the property is “a disgrace.” Mr. DosSantos stated they are not here to talk about that. Ms. Schumeyer stated the neighbors are just trying to cover it up. Mr. DosSantos stated they are not here to talk about how someone keeps up their yard. He stated there was a fence and a shed Application, and the fence has been mooted out; and so they are here to talk about a shed and not whether they keep boxes in their front yard. Ms. Schumeyer stated the neighbors are trying to cover it up; and Mr. Gruen stated that is what they are doing, and they are “making them put up a fence.” Mr. Gruen stated if the property stays unsightly, they can file a complaint with the Township about that; however, that is not what the Zoning Hearing Board is here for.

Ms. Deborah Waters, 389 Tall Meadow Lane, stated initially Mr. Gruen stated that they should put up a fence up against the wire fence. Mr. Gruen stated it is not another fence, it would be panels to cover the existing fence. He stated it will not be an additional fence a few inches away from the existing fence, it would be “like a curtain on a window.” He stated it would be something to cover up the wire fence such as panels, a stockade fence, or a fence that matches the other fences in the neighborhood. Mr. DosSantos stated Mr. Grubb stated he would tie it in with his vinyl fence in the rear. Ms. Waters asked if that means he will put another fence up against it or is going to put “zip ties” against the wire fence. Mr. Gruen stated his suggestion was that they would not “zip tie” it, but attach it to the existing fence unless he wants to change the entire fence and just put up a vinyl fence in front which he could also do.

Ms. Waters stated Mr. Gruen is saying that if they chose not to put up a fence and just put up the panels, then the next step for the neighbors is to go to Court. Mr. Gruen stated he did not say that; however, he added they can always go to Court. Mr. Gruen stated on the fence there is nothing for them to go to Court on since it complies with the Ordinance. Ms. Waters stated she felt the Ordinance was based on the height of the fence. Mr. Gruen stated the height is 6’ and the new Ordinance says that they can go up to 7’. Ms. Waters stated in this case, the higher the better.

Mr. Gruen stated he does not know what the Court would rule because they put it in before the Ordinance changed; and the Court could make them take down the fence but the Applicants could apply again, and then put up the fence again.

Mr. DosSantos asked Ms. Waters if she would be satisfied if the Applicant agreed to put up a fence that matches in with the rear vinyl fence, and Ms. Waters she would be satisfied with that if there was a continuation of the existing white vinyl fence – not panels. Mr. DosSantos asked if she would be satisfied if they agreed to tie into the rear vinyl fence, and she would be satisfied as far as the shed and the fence; and Ms. Waters stated only to the same footprint that it currently is.

Mr. McCartney asked if the Applicant is okay with this, and Mr. Grubb stated he would need time to get the funds together.

Mr. DosSantos asked if Ms. Waters is speaking on behalf of the rest of the neighbors.

Ms. Waters asked what would be the timeline since this has been going on since 2015. Mr. Gruen stated they would have to wait thirty days by law, but on the fence they do not have to and as soon as he gets a Building Permit he could do it. Ms. Waters stated winter is coming. Mr. DosSantos stated he does not feel he could do the fence in the winter time. Ms. Waters asked if they could get it done by the end of November. Mr. Gruen stated as long as the ground is not frozen; and in this area, they could probably do it almost into January or February.

Mr. Gruen asked Mr. Majewski if they would have to apply for a new Building Permit, and Mr. Majewski stated they would be required to submit for a Permit for the fence; and they could get the Permit within a week, and they could start work whenever they were able to get the funds together. Mr. Majewski asked Mr. Grubb when that might be whether it would be a month or two from now so that the neighbors would have a reasonable expectation of when this would be done. Mr. Grubb stated he did not know since now they are getting into the winter time and the holiday season. He stated the financial burden is the issue. He stated he has no problem with doing what they ask, but the new Ordinance says that he does not have to do anything; and while he is willing to do it, he needs to be given time. Mr. DosSantos asked Mr. Majewski if there is a time from the issuance of the Permit for them to do it. Mr. Majewski stated from the time that a Permit is issued you have six months in which to start the work. Mr. DosSantos stated if he got a Permit within the next thirty days, he would have six months from then; and Mr. Grubb stated he understands that in the spring it would have to be up, and that should be feasible. Mr. DosSantos stated if they put a Stipulation on to grant the Variance that they would apply for and obtain a Permit for the fence

within thirty days from today, then by virtue of the Permit, they would have six months to complete the fence. Mr. Grubb asked if they are talking about the entire green vinyl coming down and putting up the white. Mr. DosSantos stated he does not know that they would have to take the green vinyl down. Mr. Grubb stated he would have to do that since they stated that they wanted it in the same footprint. Mr. Gruen stated that is why he suggested that they just hang panels on it which would look the same and nobody would know the difference. Mr. Gruen stated he does not understand why they want Mr. Grubb to have to make him take down the old fence; and he could put the panels right over the green fence, and it would be the exact same panels. He stated it is not plywood – it is the exact same fence except he does not have to put the posts in, and he could do it either with a white vinyl or a wooden stockade fence which is also part of what is in the neighborhood. Ms. Constable stated they could do what Mr. Gruen is suggesting much faster.

Mr. McCartney asked if it makes sense from a financial standpoint to amend this Application to include that fence or apply for a separate Fence Permit because that is going to be an additional cost. Mr. Majewski stated the fence will be a Permit, and the fee is \$50. He added that the fence would have nothing to do with the Zoning Hearing Board. Mr. McCartney asked if they could include amending this existing Application to include the installation of that fence.

Mr. Gruen asked if they ever put in an Application for a fence prior; and Mr. Majewski stated they did actually have a prior Application for a fence, and they could work with that Permit and not charge them the extra \$50. Mr. Gruen stated it is really just the timeline, and it would be less costly if they just hang stockade panels over the front rather than changing to a vinyl fence. Mr. Majewski stated if they do choose to go that route instead of actually securing it with posts, they will need to maintain the fence in suitable condition that it does not fall down.

Mr. Gruen asked the Applicants if they have a preference. Mr. Gruen asked what would be the fastest way he could modify the fence, and Mr. Grubb stated he will look into it tomorrow. Mr. Grubb stated he will do it as soon as can financially get it done. Ms. Constable stated a couple of months. Mr. Gruen suggested that they put a ninety-day on it. Ms. Lee stated they are agreeing to something they have not investigated, and they do not know what is feasible financially for them to do. Mr. Grubb stated he does not know what it would cost and tomorrow he could call some of his suppliers. Mr. DosSantos stated he would like to give them the six months and have them apply within thirty days which would give them six months to get it started. Mr. Gruen asked if six months would be more suitable.

Ms. Lee stated this is solely to appease the neighbors; and she feels if there were a Motion to just grant the Variance, she would be inclined to grant it because it was the Township that issued the Permit and went out and inspected the shed. She stated she understands and respects the neighbors concerns; however, they are not here about the fence. She stated what the Board is trying to do is trying to appease the neighbors to make everyone happy so that there is no Appeal of the Zoning Hearing Board's Decision. Ms. Lee stated she feels the Applicants are willing to try to do something to appease their neighbors, but they also have to recognize that this could be a financial hardship. She stated she has priced fencing, and fencing is expensive. Ms. Lee stated she would be inclined to just grant the Variance. She stated she would be very hesitant to put on a ninety-day mandatory requirement to make them change their fence that is really under the Code and is a legal fence. Mr. Gruen stated they have already amended it to six months. Ms. Lee stated if they are willing to do that, she would vote for it.

Mr. Grubb asked if it would be the entire green side, and Mr. Gruen stated it would just be the front that you can see from Bluestone. Mr. Gruen stated for the other fence, they have the right to do whatever they want. He stated the only reason he is asking the Applicants to do this is so that the Board can approve the shed. Mr. Gruen stated he understands that there was a mistake made, but the neighbors did not make the mistake. He stated while he agrees with Ms. Lee's comments, he also understands the neighbors that just because the Township made a mistake does not mean that the neighbors have to live with it. He stated they are trying to come to some kind of a compromise.

Mr. Gruen was asked to repeat the beginning of what he said and was asked if he indicated that the fence would not be contiguous and indicated that the side panel would not have to be replaced and it was going to be a white fence, green fence, white fence. Mr. McCartney stated none of it has to be replaced. Mr. Gruen stated he would cover the part that is facing Bluestone, and it would be covered with a different type of fence; and he could either replace it or cover it up so it will match the other neighbors' fences.

Ms. Miriam Centafont-Kornacki, 324 Tall Meadow Lane, stated she is across and opposite the front of the Applicants' house. She stated she is for compromise and would like to get this resolved; however, she feels there is confusion with the fact that a Permit was issued for the shed, but they did not build what was Permitted. She asked where would the shed have been under the Permit. Mr. Majewski stated they actually did install the shed in the location shown in the Permit, unfortunately when the Permit was done there were no dimensions to the right-of-way of Bluestone Road nor were there dimensions to the side property line. Mr. Majewski stated where they installed the shed looks like where they had planned to put it; however, that should not have been permitted by the Township, and they should

have had to come for a Variance immediately with the location that they have. He stated unfortunately the Township issued a Permit without dimensions on the Plan. He stated they did install it roughly in the location that was shown on the Plan. He stated the Township inspected it and signed off on it, and then later they discovered that a Permit was issued in error and the shed is not in the location that complies with the Zoning Ordinance.

Ms. Kornacki asked where it should be since she feels that is part of what is the neighborhood's concern is that this "giant" shed appeared which everyone took notice of, and now there is a question of the fence. She stated in this process it was realized that there is a problem with the shed and the Permit, and in the meantime the Ordinance has changed so that now they can put up whatever fence they want. Ms. Kornacki stated their primary concern from the beginning is that they were also going to add to a fence to a shed that they all questioned as to whether or not that was actually a valid Permit. She stated they could not understand how that could be permitted because it is so large at its location. She stated if in fact they need to compromise on the fence because of the she, she would like to know about impervious surface and run off. She stated there is a lot of water run off concern in the neighborhood; and if the fence is put up, she asked if that will impact the run off. She stated she is also concerned that if the stockade fence is going to go up against the shed, is that really just adding to impervious surface.

Mr. Gruen stated he was going to make them aware of the fact that the fence should be a minimum of 2" above the ground so that water can pass underneath. He also stated that a vertical fence does not add to the impervious surface. Mr. Gruen stated the higher fence will help hide the shed if it is raised 2" above the ground. Mr. Gruen stated it should be made clear that the Applicants are not before the Board for the fence anymore, and at this point they are compromising in order for the Board to approve the shed. He stated the shed should not have been built in that location no matter the size of the shed.

Mr. DosSantos stated that is not because the Applicant did anything wrong because they applied for and they were granted the Permit by the Township, and it is not because the Applicant built something against the Permit. Ms. Kornacki stated she understands that they did it according to the Permit they received; however, it came to light that they should not have done that, but at the same time the neighborhood thought that this did not look right. Mr. Gruen agreed that they should not have been allowed to build the shed there.

Mr. Gruen asked Mr. Grubb when he poured the concrete pad; however, Mr. Grubb stated he did not remember. Mr. Gruen stated the pad was there for quite awhile. Mr. Gruen asked when he put up the shed on the pad. Mr. Grubb stated he formed it out, put the modified down, put Rebar down, and called the Township to inspect it. He stated he poured the concrete and it sat and everyone had plenty of time to see it was there before he built it. Mr. Gruen asked when he built the shed on the pad. Mr. Gruen asked if it was a couple of months ago; however, Ms. Constable stated it was years ago. Mr. Gruen stated it was testified at the last Hearing that the shed was erected only recently within the last few months; however, Ms. Constable stated that is incorrect.

Mr. DosSantos asked the point of Mr. Gruen's question because they were Permitted for the shed. Mr. Gruen stated his point is that the "guy" issued the C/O before the shed was built. He stated he issued the C/O after Mr. Grubb poured the concrete and not when he built the shed. Mr. Grubb stated they called the inspector to check for the Rebar, and he came out and told him to finish the shed; and when it is completed 100%, Mr. Grubb should call the Township, and the inspector would drive by and if there were any issues he would contact Mr. Grubb but if he did not contact him that meant everything was okay and the C/O would be accepted. Mr. Gruen asked Mr. Grubb when he got the C/O, and Mr. Grubb stated he never got a C/O, but he does not know if he was supposed to get a C/O.

Mr. McCartney asked Mr. Majewski if the Township issues C/Os for sheds, and Mr. Majewski stated they do not issue a C/O rather they issue a Final Inspection. He stated the Final Inspection the Township did was apparently when Mr. Grubb did the pad and not when they installed the shed. Mr. DosSantos stated again this is a Township issue. Mr. Majewski agreed it was an issue with the Department which they have since straightened out.

Mr. McCartney asked when that Final was issued, and Mr. Majewski stated he believes it was over a year ago. Ms. Constable stated it was more than a year ago. Mr. McCartney asked Ms. Waters if she was saying that it was built just recently, and Ms. Waters stated there is documentation that was sent to the Township on September 26, 2017 that the shed was put up. She stated maybe the cement plot was put down, but the neighbors did not know what was going to go on that cement plot. She stated the shed was erected 9/26/17, and Mr. McCartney stated that was therefore about a year ago. Ms. Waters stated it was on a 2015 Permit.

Mr. Gruen stated the only reason he raised this point was if there is a lawsuit from the Township to the previous company that supplied the inspections, he wants them to know on Record that the "guy" just issued a Permit without even inspecting it. He issued a finished inspection prior to inspecting it. Mr. Gruen stated it really has no bearing on what the Board's decision is here tonight.

Mr. McCartney moved and Ms. Lee seconded to approve the Variance for the shed.

Mr. DosSantos stated that would include the fact that they have discussed that they no longer need the Variance for the fence, and Mr. McCartney agreed. Mr. Gruen stated they are not including in the Motion that they have to cover the fence, and Mr. McCartney stated he is not including that.

Motion carried with Mr. Gruen opposed.

APPEAL #18-1810 – J & J LANDSCAPE SERVICES INC.

Mr. Joseph Laurence of J & J Landscape Services, Inc. was sworn in.

Mr. Laurence stated he is present representing “Meryl and Bill,” and they are trying to replace a patio in their back yard. He stated it is currently 12 by 18 and approximately 216 square feet. He stated they want to move it over and make it a little bit bigger to make it more usable. He stated it would bring them up over the impervious surface requirements, and brings them from 21.96% to 22.5%. He stated because it goes over, they are required to ask for a Variance. He stated they have a big yard, and there is plenty of room for run off. He stated he believes that other properties have been allowed up to 24% that he has had Permits with the Board in the past.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site plan was marked as Exhibit A-2. Exhibit A-3 is the impervious surface breakdown. The Proof of Publication was marked as Exhibit B-1. The Proof of Posting was marked as Exhibit B-2. The Notice to the neighbors was marked as Exhibit B-3.

Mr. Gruen asked Mr. Majewski the allowable impervious surface, and Mr. Majewski stated it is 18%. Mr. Majewski stated the impervious surface calculation showed that the existing is at 21.3%, and they are proposing 22.5% which is 230 square feet of additional impervious surface. Mr. Gruen asked how they got to 21.3%. Mr. Majewski stated these Lots were approved quite some time ago prior to the enactment of the impervious surface limits. He stated at that time the Ordinance only required a building coverage maximum of 15%, and it did not have an impervious surface requirement. Mr. Majewski stated as has been seen on a number of properties, many are already over with the existing.

Mr. DosSantos asked when they purchased the property as it is not in the Application.

Ms. Meryl Reis, 1145 Quarry Commons Drive, was sworn in, and stated the property was purchased in 1999.

Mr. DosSantos asked if she has added to the impervious surface since she purchased the property in 1999; and Ms. Reis stated she did add a shed in the back corner of the house but it is not impervious and it is raised up and there is no cement floor and it is raised up from the ground. Mr. DosSantos asked if that was done with a Permit, and Ms. Reis stated it was not.

Mr. Gruen asked if that was added to the calculations because that is impervious, and Mr. Laurence stated they did include it. Mr. McCartney stated under “Patios, Sheds, and Miscellaneous” they have 296, and he asked if that includes just the existing patio. Mr. Laurence stated he feels the shed should have been included in that since it is just a small shed. Ms. Reis stated it is 8 by 8. Mr. McCartney stated he felt the existing patio was 296. Mr. McCartney asked the dimensions of the existing patio, and Mr. Laurence stated it is 12 by 18. Mr. McCartney stated that would be approximately 216 so it seems the shed has been included.

Mr. Gruen asked if the Board wants any mitigation since they are well over the impervious surface, and the Board tries to bring them to the permitted impervious surface. Mr. Gruen asked the Applicant if they have considered any mitigation like a seepage pit. Mr. McCartney stated this would be a dry well so that they would drop the effective impervious surface. Mr. Laurence asked if this would be like a French drain, and Ms. Reis stated she does have French drains already in the basement. It was noted that what they are discussing would be in the yard.

Mr. Gruen stated it appears that they are putting plantings by the patio, and he asked if they could put a couple of feet of stone underneath to catch the water from the patio which will be sloping away from the house; and the water would then drain into that bed and be held underneath. Mr. Gruen stated Mr. Majewski could advise approximately what they would need as to the size of the trench to bring them a little bit more in compliance to the impervious surface if it is acceptable to the Applicant.

Ms. Reis stated she believes that a lot of other properties have a .28 impervious surface, and she asked why she is being penalized. Mr. Gruen stated the rules have changed since the house was built, and currently they are only allowed 18%; however they are not going to penalize her for that because previously they did not count the driveways and walkways as part of the impervious surface. Mr. Gruen stated the Township has a “big problem” with impervious surface, and they are raising the Township insurance from FEMA for wetlands and floods. He stated it is cumulative, and everybody that comes before them they are asking them to mitigate. He stated the cost is not that much, and if they mitigate it a little bit, it will help.

Mr. McCartney stated it could also save future water issues in her back yard and in their neighbors' back yard so that their neighbors do not come to the Township and state that when they put in this patio, they are now getting water in their yard.

Mr. McCartney stated the Applicants do not have to do it if they do not agree.

Ms. Reis stated she does not know what this would involve. Mr. Laurence stated what they are requesting is outside the patio near where the downspouts go, they would dig a hole with the dimensions being given to him by the Township. Mr. Laurence stated it could be 2' wide and 2' deep, and they would line it with fabric and put in stone and cover it with grass again so that the water would have a pit to hold it. Mr. Gruen stated you would not see it.

Mr. Majewski stated this is required for all new impervious surface whether or not a Variance is required. He stated they would require that for the 230 square feet that is being added that at a minimum, they would do that; and if the Zoning Hearing Board would like them to capture more of that water, they can request that too.

Mr. Gruen asked where it would bring them if they just did the width of the patio and not go past the patio. Mr. Majewski asked the width of the patio, and Mr. Laurence stated the width of the patio is 17' and it is 23' long. Mr. Gruen stated 23' is the width. Mr. Majewski stated that would bring them down to approximately 20%. Mr. Laurence asked how wide and deep they would require the pit to be, and Mr. Majewski stated it would be 2' deep and 2' wide. Mr. Gruen stated this will not bring them down to 18%, but it would reduce the 1.2% they are asking for plus a little extra. Mr. Majewski stated he feels this is acceptable, and he would send the calculations to the landscaper.

Ms. Reis asked about the cost. Mr. McCartney asked that they give the Applicant an opportunity to speak to the contractor about the cost for this. The Applicants were provided the opportunity to speak privately.

Mr. McCartney asked under the new Ordinance is someone were to come in an apply for a 300 square foot patio, would they have to mitigate that; and Mr. Majewski agreed. Mr. McCartney asked what would be the point of the Applicant coming in for a Variance. Mr. Majewski stated what is being considered is an Ordinance Amendment that eventually will be going to the Board of Supervisors to allow an extra 3%. He stated this Application would still have to get a Variance because they are going from 18% permitted to over 21%. Mr. Majewski stated it is possible that people will decide to shrink their patio, etc. and not have to go to the Zoning Hearing Board.

Mr. DosSantos stated it is going to be 3% over what is allowable not over what is existing. The Zoning Hearing Board was in favor of this Amendment.

Mr. William Spitz was sworn in. He stated he is Ms. Reis' husband.

Mr. Spitz asked if this pit they are asking them to do is a normal requirement even if you are not otherwise exceeding the impervious surface. Mr. McCartney stated Mr. Majewski just explained that they updated the Ordinance; and anytime you apply for any type of impervious surface, you have to mitigate whatever you add. Mr. Gruen stated up to 3% above the allowable, which in the Applicants' case is 18%, they would have to mitigate. Mr. McCartney stated that is not correct. Mr. Spitz stated if they were 3% below the amount would they have to do it. Mr. Majewski stated whenever you add impervious surface, whether you are 10% below what is required or 10% over, the extra impervious surface you add needs to be controlled in some fashion such as a seepage. Mr. Majewski stated if they were at 15%, and this took them up to 18% so that they did not need to come to the Zoning Hearing Board, his office would still have required that they provide a seepage bed or some other method of stormwater management. Mr. Majewski stated what is being proposed here is to go a little bit beyond what they require and make the pit just a little bit larger so that rather than being 10' long it would be 17' long.

Mr. DosSantos stated the Applicants are coming to the Board asking for a Variance, and the Board is giving them a suggestion with the implication that their Variance might be granted with that Condition of approval. Mr. DosSantos stated it is a way to mitigate the additional square footage that is being put on plus a little bit of what they are over.

Mr. McCartney stated they had an existing patio, and they are adding 200 square feet; and he asked if they would have to mitigate the additional 200 square feet or mitigate the entire patio. Mr. Majewski stated they just need to mitigate any additional that they are adding so it would be the 230 square feet.

Ms. Reis asked if the pit could just be the added length of the patio since they are asking them to do the whole length. Mr. Gruen stated it would just be the width of the patio which is 23' feet which is what he would call the width because it is the wide area.

Mr. McCartney stated that exponentially adds to the hardship as far as finances, and he would not "push that;" and if they say that they would only do what they are required to do under the Ordinance, he would probably be in favor of that.

Ms. Reiss asked if she could do it half the length, and Mr. McCartney stated it would be whatever it would be to mitigate the new impervious. Ms. Lee asked what those calculations would be. Mr. Majewski stated a 23' long pit, 2' side by 2' deep would bring the effective impervious surface down to 20%. He stated if they brought it just back to the existing, the pit would need to be 10' long so it would be 10' by 2' by 2' which would capture the run off from the additional impervious surface that they are proposing. Mr. Gruen stated he would propose that overall the hardship is not that great on the project. He stated a 20' trench is an additional "not even" thirty minute "digging time," and the amount of stone is a few tons which is not much.

Mr. Gruen asked if this would be acceptable, and Ms. Reis agreed.

Mr. Majewski stated if they are inclined to grant the Variance, the Motion could be to have an effective impervious surface area of 20%. He stated this would make it a "nice round number" for future record keeping. Mr. Gruen asked why they have to put the percentage and why could they not put that they will mitigate it by putting in a 23' trench and whatever the percentage comes out to be, it comes out to be. He stated this way the trench would catch the entire water and the water would not fall on each end or on one end it would be wet, and the other end the water will go into the trench. He asked if they have to put a percentage; and Mr. Majewski stated while they do not, it is easier for the Township record keeping. Ms. Lee stated it may also be easier for the property owner.

Ms. Lee moved, Mr. DosSantos seconded and it was unanimously carried to grant the Variance with the Condition that the property owner will bring down the effective impervious surface to 20% by installing a seepage pit.

APPEAL #18-1811 – REBECCA CECCHINE

Ms. Rebecca Cecchine and Mr. John Cecchine were sworn in.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plan was marked as Exhibit A-2. The photo of the fence at 7 Manor, which the Applicant marked as Exhibit A, was marked as Exhibit A-3. The photo of the fence at 11 Manor, which the Applicant marked as Exhibit B, was marked as Exhibit A-4. The photo of the proposed site, which the Applicant marked as Exhibit C, was marked as Exhibit A-5. Mr. Flager stated although not necessary for this Application, the Applicants included an impervious surface breakdown, and this was marked as Exhibit A-6. The Proof of Publication was marked as Exhibit B-1. The Proof of Posting was marked as Proof of Posting. Exhibit B-3 was the Notice to the neighbors.

Mr. Gruen stated they do not have an impervious surface problem. He asked if they are asking to put the shed closer to the fence. Ms. Cecchine stated she is okay with it being 10' from the back; but if it were 10' out, she would have to take a tree down.

Mr. McCartney referred to the picture, and he asked if it would be at the back corner where the shed is on the other side of the fence; and Mr. Cecchine agreed.

Mr. Gruen stated the Township is in the process of changing the Ordinance, and Mr. Majewski stated that will be the topic of a future discussion. Ms. Lee asked how far in the future, and Mr. Majewski stated it would be the next couple of months. He stated in the 1950s it was required that an accessory structure was only required to be 3' off the property line. He stated similar to the Fence Amendment that they made where as you increase the height of the fence you set it back further, some Ordinance actually have it for buildings; and the larger the building or the taller the building, the further you have it set back. He stated that is what he is leaning toward as he crafts the guidelines.

Mr. Gruen asked how large the shed will be, and Mr. Cecchine stated it is 10' by 10'. Mr. Gruen stated they would like to put it approximately 2' from the fence, and Ms. Cecchine agreed. Mr. Gruen asked if there is any way they could make it 3'; however, Mr. Cecchine stated they would have to take off a limb of the tree to do that. Mr. Gruen stated the only reason he is suggesting 3' is that when they would have to paint or maintain the shed, it would be difficult if they do not leave enough room. Ms. Cecchine stated it will be vinyl siding, and Mr. Gruen stated even vinyl needs to be cleaned. Mr. DosSantos asked if they will be able to get back there to maintain the yard behind the shed with that small and narrow a space. Mr. Cecchine stated there is no real vegetation directly behind there. Ms. Cecchine stated there is one hosta. Mr. Cecchine stated there is a tree right by the fence.

Mr. McCartney moved, Mr. DosSantos seconded and it was unanimously carried to grant the Variance as requested.

OTHER BUSINESS

Mr. Majewski stated the next meeting of the Zoning Hearing Board will be held on Monday, November 5 due to the Election. Mr. DosSantos stated he already notified the Township that he is not available to attend that meeting.

October 16, 2018

Zoning Hearing Board – page 20 of 20

There being no further business, Mr. DosSantos moved, Mr. McCartney seconded and it was unanimously carried to adjourn the meeting at 9:00 p.m.

Respectfully Submitted,

Keith DosSantos, Secretary