

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – NOVEMBER 17, 2020

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held remotely on November 17, 2020. Mr. Zamparelli called the meeting to order at 7:35 p.m.

Those present:

Zoning Hearing Board:                      Anthony Zamparelli, Chair/Temporary Secretary  
Pamela VanBlunk, Vice Chair  
Matthew Connors, Member  
Peter Solor, Member  
Michael Tritt, Member

Others:                                              James Majewski, Director Planning & Zoning  
Barbara Kirk, Township Solicitor  
Adam Flager, Zoning Hearing Board Solicitor  
John B. Lewis, Supervisor Liaison

APPEAL #20-1881 – CHALLENGE THE VALIDITY OF THE MIXED-USE OVERLAY ORDINANCE BY DARWIN DOBSON, LAWRENCE BORDA, & BRYAN MCNAMARA

Mr. Zamparelli stated he understands that they have requested a Continuance. Mr. Flager stated Ms. Kirk had pointed out that there was a Notice deficiency, and he spoke to the Applicant's attorney; and they are requesting a Continuance to the December 15 meeting which will give them time to post the property and re-advertise.

Ms. VanBlunk moved, Mr. Solor seconded and it was unanimously carried to Continue the matter to December 15, 2020.

APPEAL #20-1878 – NATALIE & BRIAN HOLMES  
Tax Parcel #20-046-151 – 718 CHESTNUT LANE, YARDLEY, PA 19067  
(continued from 11/2/20)

Mr. Flager noted that Ms. Natalie Holmes and Mr. Brian Holmes were sworn in at the last meeting. Mr. Flager stated this was a Notice issue, and it was realized that they were within the floodplain, and the Appeal had to be re-advertised for that additional Variance. The new publication Notice was marked as Exhibit B-4.

Mr. Zamparelli stated he read the Minutes when this was discussed previously.

Ms. Kirk stated the Township is participating reminding the Board that if they were inclined to grant the Variance, that the Decision should indicate that the Variance is subject to potential insurance issues as set forth in the Section of the Ordinance that Mr. Flager had highlighted at the last meeting. She stated it is important to make sure that they have information so that it does not effect the Township ratings.

Mr. Zamparelli asked if the Applicants understand that is possible, and Ms. Holmes stated they do understand that.

There was no one from the public wishing to speak to on this matter.

Mr. Zamparelli stated he understands the existing impervious was 20.4%, and they were going up to 25%. He asked if they are bringing it back to 20.4% or 18%. Mr. Flager stated he understands that they were going back to 20.4%.

Mr. Nathan Simcox, the pool contractor, stated the impervious surface is going to 25%. Mr. Zamparelli asked what will be the effective impervious surface with the mitigation they are proposing. Mr. Simcox stated Mr. Majewski had provided calculations at the last meeting of cubic feet necessary to retain the water, but he is not sure what number he gave a calculation on.

Mr. Majewski stated at the last meeting he discussed that they were going to mitigate the increase of impervious surface to what exists which is 20.4%. Mr. Zamparelli advised the contractor that they will have to submit this to the Township engineer for approval.

Mr. Simcox asked Mr. Majewski to provide the numbers again so he can put them on the Plan, and Mr. Majewski agreed to provide that information after the meeting.

Mr. Flager stated the language needed for the Variance comes from Section 200-59B1e 1 and 2 which he read as follows: “Whenever a Variance is granted the Zoning Hearing Board shall notify the Applicant in writing that

- 1) the granting of the Variance may result in increased premium rates for flood insurance and
- 2) such Variance may increase the risk to life and property.”

Mr. Flager stated 1 and 2 should be on the Decision. Mr. Zamparelli asked if that should be part of the Motion, and Mr. Flager agreed as well as on the written Decision to be mailed.

Mr. Solor stated there was a statement discussed previously that was needed to be included in the Motion about the Variance being contingent on compliance with appropriate FEMA regulations; and he asked Mr. Flager if that needs to be included, and Mr. Flager agreed. Ms. Kirk stated when the Ordinance provision was adopted by the Township it was the result of FEMA's directives as to floodplain and insurance coverage so that is referencing that Section of the Ordinance.

Mr. Solor moved, Mr. Tritt seconded and it was unanimously carried to approve the Appeal given that the increased impervious surface will be mitigated back to existing impervious coverage utilizing sub-surface drainage features and contingent on compliance with appropriate FEMA regulations.

APPEAL #20-1880 – KENNETH P. KORETSKY, JR.  
Tax Parcel #20-034-050-001 – 560 MILL ROAD, YARDLEY, PA 19067  
(continued from 11/2/20)

Mr. Zamparelli stated this is a Continuance from the last meeting.

Mr. Flager stated everyone was sworn in previously. He stated Amended Site Plans were received which were marked as Exhibit A-6. The new Proof of Publication was marked as Exhibit B-4.

Mr. Zamparelli stated the amended drawing shows the elimination of some of the driveway going into the five-car garage, and the driveway circle was reduced from 20' to 16'.

The Amended Plans were shown.

Mr. Heath Dumack stated the majority of the circle is actually 12' cartway with 16' being only the area that is directly in front of the house. He stated they reduced everything down from 16' or 20' in width down to 12'.

Mr. Zamparelli stated he does see the reductions. He stated he assumes the cars will come out and go through the portico to get out. He stated they also moved the fence back, and they reduced the height to 5'; but they should discuss the fence further. Mr. Zamparelli noted the slope issues, and he asked Ms. Kirk if she has issues with the slope. Ms. Kirk stated to the extent that the Applicant can construct with the minimal amount of disturbance would be preferred. She added that the larger issue was the amount of impervious surface coverage that was originally requested. She stated she has only been directed to participate, and not necessarily oppose the Application. She stated she is looking to make sure that we have the minimal relief necessary. She stated she understands what the Applicant has stated about the steep slopes being the result of construction and other work on the property; however, the Township's position is that the disturbance should be minimal as opposed to zero in some areas.

Mr. Zamparelli asked if the Amended Plans accomplishes what Ms. Kirk is discussing. Ms. Kirk stated it does not. Mr. Majewski noted the Exhibit and stated the limit of disturbance is the black, dotted line that goes around the property. He stated at the roadway it shows it going into the roadway along the south side of the property, the north side of the property, and it cuts into the property a little bit around an area of woods. He stated most of the site is disturbed as shown on the Plan.

Mr. Zamparelli stated this is an issue, and the proposed house is big. He asked if they are changing the slopes. Mr. Connors asked the engineer to describe the changes.

Mr. Dumack stated at the last meeting they reviewed the overall site and the fact that a large percentage of the property is considered steep slopes by the definitions in the Zoning Ordinance. He stated there are areas of Class I, Class II, and Class III slopes throughout. He stated the most critical are Class III slopes, which are those that are greater than 25%. He stated there are three zones of Class III steep slopes, the largest of which is along the westerly property line common with Mill Road and between the southerly property line and the existing driveway. Mr. Dumack stated that area was manmade/created with the addition of the bike and walking path that was installed in the last twenty years.

Mr. Dumack stated there are two other areas of Class III slopes – one of which is toward the rear of the existing driveway and the other area is adjacent to the existing pool. He stated both of those location where created when they dug for the pool since they did not truck the material off and just piled it up adjacent to it which is why they have those steep slopes. He stated this is also true at the driveway area when they cut the driveway in. He stated the driveway is an even slope all the way back; however, on either side there are steeper slopes.

Mr. Dumack stated they are not trying to say that manmade steep slopes are not steep slopes; however, there are mitigating circumstances in that some of these steeper slopes have been created over time. Mr. Dumack stated they heard the discussion by the Board previously that the proposed impervious surface was in excess. He stated at that time they had approximately 9,300 square feet of driveway, and they reduced that to 6,900 square feet of paved driveway so they have taken it down by almost one third.

Mr. Dumack stated the final Variance has to do with the fence that was along Mill Road. He stated instead of the fence being directly adjacent to the property line, they have offset it approximately 10' back. He stated they also changed it from a 6' fence to a 5' fence in order to try to come a little bit more into compliance given the feedback they received from the Zoning Hearing Board at the last meeting.

Mr. Zamparelli stated Mr. Dumack indicated that a pool was put in, and they did not remove the spoils which created the slope. He asked if there was a Permit for the pool. Mr. Dumack stated he does not know. He stated if one was issued, it was before his client's time. He added that the house has been vacant for several years. Mr. Majewski stated there is no record of a Permit for that pool. Mr. Zamparelli stated he assumes that is what happened with the driveway as well. He stated it has still been that way for some time.

Mr. Connors stated Township Zoning does not make a differentiation between a manmade slope or a naturally-occurring slope. He stated the Board is reviewing the Variance based upon what is there. He stated while it is a man-made slope, there is logic that it could be adjusted based upon what the Applicant is providing. He stated he has always felt with regard to this Application that they are trying to put too much in. He stated for the Board to evaluate the Variance based on what the slopes are is very difficult.

Mr. Zamparelli asked if they should ask the Applicant to change the slopes, and he also asked what are their other mitigation efforts to reduce the impervious surface in addition to the slope issue.

Mr. Bryce McGuigan, attorney for the Applicant, stated they have made some revisions to the Plan after hearing the concerns of the Zoning Hearing Board. He stated with respect to the slope issue, no matter what they were to plan on the site in terms of the residence, the fact that the slopes are almost everywhere on the site makes it very difficult to plan and construct on this site. He stated with regard to the placement of the home, they tried to place it in the area that is the least impacted by the slopes. He showed on the Plan the back corner of the property where the slopes are not as severe, and they tried to center their construction in that area.

Mr. McGuigan stated the existing house is faced sideways to the street, and if they center that there is no way to avoid the slopes. He stated in keeping with that the one Variance they are requesting is to calculate the setbacks from the Lot lines compared to the protected resources. He added that Lower Makefield Township considers slopes to be a protected resource; an if they were not able to get any relief from that, they could not build anything on the property.

Mr. Zamparelli stated the proposed house seems to be quite large, and he asked if that is the reason they could not build. Mr. McGuigan stated that even if they were to reduce the size of the house, they would still be before the Zoning Hearing Board requesting the same Variances because of the location of the slopes as they are throughout the property. Mr. McGuigan stated as Mr. Dumack noted it appears that a prior owner did not get rid of some of the materials for the pool, the driveway, as well as when the street was cut in. He stated now they are trying to deal with that. He stated no matter the size of the construction, unless they were to put in something very small, they would run into issues.

Mr. Dumack stated even if they were to remove the entire left side of the house where the garage and car courtyard are in the back, all of the grades would still have to be disturbed in order to put enough stormwater management in to control the site. He stated in order to properly develop the site and protect downstream conditions, they have to design two underground storm storage ballast pits of substantial enough size to handle 80,000 square feet of property. He stated those footprints are substantial in size ad cause to some extent a big portion of the re-grading even if the house were to be half the size of what they are showing.

Mr. Zamparelli stated his concern is about re-grading and changing the topography of the land. He asked if their mitigation efforts will offset the problems that exist with the slopes.

Mr. Connors stated the design as presented is more of a large grading project than anything else. He stated if there was some care taken to look at existing slopes and reduce the imperious surface to the 18% max, they would get to a level that would be the minimum Variance required. He stated he agrees that the site is difficult because of the grading, but they are maxing out the site without regard for existing landforms or the Township Zoning; and they are putting in what they want.

Mr. Zamparelli asked if they need the Applicant to change the slopes in a special way. Mr. Connors stated that is up to the engineer and the owner; however, from the Board's perspective, he feels the Board is supposed to look at what is presented and allow a Variance of what would be the minimum required to build on the Lot. He stated at this point, they are seeking Variances for several items. He stated if they could get to a point where it is 18% impervious which is allowed, they would not need a Variance for that. He stated the Board would then look at what the applicant sees as the minimum buildable, and from that perspective the Board can then look at the slopes and what should be saved considering what is manmade versus what is a natural feature. He stated that would go into the layout of the site as well. He stated there are many ways to look at saving areas. He stated there is a significant amount of grading in the front. He stated he is not going to argue that Mill Road is probably a manmade issue, and he feels that is a variable that he would consider looking at. He stated he feel this way about the pool as well; however when you look at the northern part of the site which is mostly natural, they are putting in a large driveway and a three-car garage, and there is a significant amount of grading in the back yard. He stated these are areas that they could look into.

Mr. Zamparelli stated he agrees with Mr. Connors. He stated he does not feel that the Plan seems complete, and he is not sure that what they are showing on Page 2 is appropriate. Mr. Zamparelli asked who would be reviewing this. Mr. Majewski stated it would be reviewed by the Township engineer, who he feels would have some issues with the design as it is currently presented.

Mr. Solor stated the impervious issue is separate from the slopes issue. He stated there has to be some disturbance of slopes to do the work. He stated he feels that given Mill Road, that it probably should be re-graded

to make it flatter because of the safety issue, otherwise the driveway will be cutting right through it, and they will be shortening the sight lines. He stated he does agree with Mr. Connors that they could be more judicious on the rest of the site and should try to reduce the impervious surface to 18% so that they would not need that Variance.

Mr. Zamparelli stated they would still have the situation with the slopes.

Mr. Connors stated he feels the slopes are an issue; however, they do not have a Plan that they can evaluate as to what is going on with the slopes and what should be a Variance or not.

Mr. Zamparelli asked if the Applicant's engineer has submitted a slope plan that could be looked at by the Township to see if it will work.

Mr. Dumack noted Sheet 3 of the Plan set. He stated that shows not only the existing contours and topography but the proposed as well. He stated they are not re-aligning major watersheds, and they are utilizing to the best of their ability the existing site to direct the storm-water from the additional impervious into underground seepage beds. He stated as proposed the water still goes in the same direction that it goes now. He stated the whole north side will slope down, and the slopes are still there. He stated it is still directing water into the drainage feature and ultimately a culvert that crosses Mill Road. Mr. Dumack stated from his perspective he believes that they have mitigated the slopes successfully based on the need to control their stormwater management.

Ms. Kirk asked Mr. Dumack if the existing stone house were rehabilitated and additions were added better than what is there, would that not reduce the amount of disturbance of steep slopes on the property. Mr. Dumack stated he does not believe so because they would be putting in additional building expansion. He stated the driveway would have to be widened since as it is it is only about 8' wide. He stated additions would also probably eliminate the existing pool which at this point they are not sure whether it was Permitted or not. He stated additions would go into the steep slope areas along the side of the house. He stated if they did not do additions, they would be talking about a separate garage building which would probably impact the northern steep slopes along the drainage feature; and they would still have to re-grade a portion of the side to allow for stormwater management controls to be installed.



Mr. McGuigan asked Mr. Dumack if potentially rehabilitating the existing stone structure of the house is feasible. Mr. Dumack stated there are a number of additions that are already on the building, the majority of which are in a state of semi-collapse now. He stated there is water damage and mold throughout the building. He stated a tree hit the building at the roof line. He stated at best he feels they are looking at three stone walls which he feels would have to be re-built.

Mr. Connors asked if they could tear down the building and re-build in the same general area, and Mr. Dumack stated to some extent that is what they are doing. Mr. Connors stated he feels that is debatable. Mr. Connors stated if they were to maintain the approximate disturbed areas, that would limit the amount of disturbance on the site significantly.

Mr. Zamparelli stated he would agree with Mr. Connors; and while he knows what they want, it seems that they are adding a lot to this Lot.

Mr. Connors stated the Lot size and what the Ordinances allow would allow them to put a large property close to the character of the neighborhood.

Mr. McGuigan asked Mr. Dumack the size of the Lot, and Mr. Dumack stated it is slightly less than 80,000 square feet which is slightly less than two acres. Mr. McGuigan stated previously they were asking for 25 ½% impervious, and now they are requesting 21.74%. Mr. McGuigan asked Mr. Dumack if he feels they are “over-filling” this nearly two acre Lot; and Mr. Dumack stated for the house footprint, proposed improvements, and impervious surface, he feels they are fine. He stated while they are asking for some Zoning relief, they have pared down the impervious relief to 21.74%. He stated at the last Zoning Hearing Board meeting there was a home that was requesting to get a Pool Variance, and they had 25% impervious surface proposed as part of that Pool Plan.

Mr. Connors stated this project is not that project. He stated this is a two-acre project which is proposing 14,000 to 15,000 of impervious which is the size of the entire Lot that Mr. Dumack was referring to. He stated there is a big difference between a two-acre Lot and a third-acre Lot where you have 200 square feet being added because someone wants a patio or a pool on an existing-built Lot that they are trying to work around. Mr. Connors stated he feels the Applicant’s Lot is a “perfect Lot;” and if they take out the slope issues, you have a square Lot with a lot of frontage, and there is very little irregularity.

Mr. Dumack stated he feels it is a “beautiful Lot,” and it backs up to Township open space; and anyone would want to live here. Mr. Connors stated they are saying that they cannot build on the Lot because they need a Variance, which he feels is a problem.

Mr. McGuigan stated he believes Mr. Connors pointed out well that if it were not for the slopes, this would be perfect; but that is part of the issue, in that most of the Variances they are requesting are for slopes. Mr. McGuigan stated if it were not for the slopes, he believes that they would only be requesting Variances for the impervious and the fence. He stated he feels Mr. Dumack discussed well that while they are disturbing some of the slopes, they are trying to better the current condition of the Lot as they are trying to control the grading and stormwater run-off. He stated as shown on the Plan they propose stormwater management; and if necessary, they will line the property line with arborvitae which should help as well. He stated they will do what they need to do to better the Lot in order to control these issues.

Mr. Zamparelli stated he does not feel the impervious issue is a “big deal,” but the slope issue is. He stated he is not sure what is the right way to deal with the slopes, and he asked if the Township would be looking at that to see if what the Applicant is proposing is the right way to do it. Mr. Majewski stated once a Variance is granted for the slope disturbance that would indicate that the Applicant can do what they are proposing provided they meet the proper grading standards. Mr. Zamparelli asked if that is possible, and Mr. Majewski stated completely re-grading the entire Lot is always possible.

Mr. McGuigan stated they would be more than happy to Condition any potential approval on the approval of the Township engineer of the plan for the Lot and the grading.

Ms. VanBlunk stated she wishes that they would have had the Township engineer present at this meeting to give the Board more input. She stated the other issue she has, which was not yet discussed, is the fence.

Ms. VanBlunk stated it seems that they have cut out a lot of the impervious surface from the Plan the Board saw at the last meeting, and she feels that was a significant effort; and she feels that they could bring the effective rate back to 18%. Mr. Zamparelli agreed. He stated his issue is with the changes to the slopes and how that will affect the area around them. Ms. VanBlunk stated is her concern as well. She asked if they could request the Township engineer to be present or to do a review of the proposed Plans. Mr. Flager asked if they are asking specifically about stormwater and where it would be

going since he feels Mr. Dumack could clarify where the seepage beds would be on the property. Mr. Flager added that he does not know if there are current calculations as far as what the effective impervious would be whether it would be 18% or lower.

Mr. Zamparelli asked how do they know whatever changes they make to the slopes will affect the impervious surface seepage beds. Mr. Connors stated there is almost 3% over what is the permitted impervious surface, and that additional impervious surface increases the size of the detention system that they would put on site, and it also increases the footprint of what is being put on site. Mr. Connors stated with regard to the slopes, the Plan shows what they want to build; and that is what the Board is being asked to approve.

Mr. Solor stated as was stated earlier, the stormwater flows toward Mill Road; and the stormwater management system has to be on that side of the property, and the water will still go the same direction it does now. Mr. Connors stated while he feels it could be adjusted, he agrees that it does need to be on the downhill side of the slope. He added that does impact where it is being graded. Mr. Solor asked how the infiltration system has been sized on the Plan that has been presented. Mr. Dumack stated they used on-site retention without considering infiltration in the sizing of the two pits so it was done on a worst-case scenario. He stated even though they know that they can get some infiltration, they considered how large the underground system would have to be if they had zero infiltration in order to create a net zero increase in stormwater flows off site. He stated the pits shown on the Plan comply with that.

Mr. Dumack stated he has just realized that when they offset the fence back 10', he did not think that it would impact the ballast pits, but it did. He stated the ballast pits shown on Sheet 3 will have to be moved back approximately 10' in order to stay out of the fence line. He stated with regard to the pit that runs northeast aligned with the northern property line, the water flows in that direction anyway to get to the drainage feature, and that is the natural location to put that ballast pit in. Mr. Dumack stated he would not want to put those pits on the far east side which is the most level portion of the site since it is also the highest portion of the site. He stated water flows downhill, and whatever is done, they will still be putting in underground basins on the downslope side of the property parallel to Mill Road and parallel to some extent to the drainage feature along the north.

Ms. Kirk asked Mr. Dumack if he designed the underground ballast pits assuming zero infiltration, how does he know that the pits will be effective to reduce the stormwater run-off. Mr. Dumack stated when they size the pits, they start with the worst-case scenario. He stated they take into account all of the proposed impervious surface and determine what the worst-case volume would be without taking into account outflows from the basin. He stated outflows would either be an outfall structure with a timed-release mechanism designed into it or, in this instance, infiltration down into the aquifer and the seasonal high water table. He stated there are still a number of steps that he has to do to do that design; however, a good rule of thumb is to take the impervious surface, determine the worst-case volume, and apply that to the proposed ballast pits to justify the sizing.

Ms. Kirk asked Mr. Dumack if he has done any soil testing or infiltration testing to see what is the rate of infiltration, and Mr. Dumack stated he has not. Ms. Kirk asked, assuming that the soil on the property is clay and there is no infiltration of surface water into the underground ballast pit due to the type of soil, how effective would the proposed ballast pits be to work as stormwater management. Mr. Dumack stated currently they have them configured as a series of ballast pits with piping, stone, and void volume. He stated normally that testing is done after this phase of the project. He stated they would call the Township engineer to come out to witness the tests to make sure that they are at the right elevation and the right location. He stated the Township engineer would verify, as Mr. Dumack would, what the rates are. Mr. Dumack stated if infiltration is not reasonable, they would then go to something similar to a rain garden and/or a surface basin with an outfall structure. He stated this site would require a NPDES Permit since they are in excess of one acre of disturbance; and as per the DEP Best Management Practices, they would be required at a minimum to maintain the two-year storm event on the site and not allow it to go down into the watershed below.

Ms. Kirk stated her concern is that if they go through this Zoning Hearing Board phase first and subsequently conduct the infiltration tests and then determine that the two proposed seepage pits are not sufficient to manage the stormwater run-off, the Applicant would run the risk that they will have to re-design the pits or some other stormwater facility which may then be effected by the location of the proposed fence or driveway. Mr. Dumack stated in anything of this nature of work there is always the chance that they will have to do a re-configuration which might require them to come back to the Zoning Hearing Board. Ms. Kirk asked if would not make more

sense to run the infiltration tests and the stormwater calculations first before coming to the Zoning Hearing Board asking for six Variances at this point where there is a possibility that those Variances may not be applicable depending upon the actual infiltration rate and stormwater calculations. Mr. Dumack stated it was his understanding that part of the Variances are to ask for the bare minimum. He stated if they find that there is no infiltration on site, they would have to ask for additional relief.

Ms. Kirk stated her concern is the fact that the construction of a house is not going to be considered Land Development under the Ordinance, and she asked what would stop the Applicant from directing Mr. Dumack to proceed toward the construction of the house even if he knows that the stormwater management facilities as proposed will not be effective. Mr. Dumack stated he personally would not put his business or his reputation on the line for a single-family home.

Mr. Zamparelli stated they recognize Mr. Dumack has experience; however, mistakes can happen. He stated he has the same concerns that Ms. Kirk is expressing about putting “the cart before the horse.” He asked if they do not get infiltration, would that change the direction, topography or the elevation of the slopes. He stated they may then have to come back to the Zoning Hearing Board. Mr. Dumack stated if there was an issue with infiltration, the first thing he would do would be to call Mr. Pockl, the Township engineer, and talk to him about what he would want to see and how they should proceed based on stormwater.

Ms. VanBlunk stated she feels the Zoning Hearing Board wants this information before they grant the Variances. Mr. Zamparelli agreed.

Mr. McGuigan stated he had mentioned previously the potential for a Conditional Approval; however, if the Board would prefer to have the information up front, they would listen to the Board’s concern as they did at the last Hearing. He stated they would be willing to request another Continuance so that they could do the soil tests to see whether the proposed solution is feasible; and if it is not, they will submit a re-designed Plan. Mr. McGuigan stated also during that time, they could have discussions with the Township engineer regarding some of the slope issues which would give the Board more information when they review this project hopefully at their next meeting. Mr. Zamparelli stated he feels that is what should be done, and Ms. VanBlunk agreed. She added that there are too many questions at this point.

Ms. VanBlunk stated she would still like to discuss the fence this evening.

Mr. Zamparelli stated he still does not understand the need for the five foot high wrought iron fence in the front yard with the brick columns. Mr. McGuigan stated aesthetics play into this; however, because they have to have the house a little bit further back on the property due to the nature of the property, there is not that much of a back yard. Mr. McGuigan stated his client has children, and he would like there to be a place for them to play. He stated they would be using the front yard more than at a typical home. He stated they are also planning on getting a dog, and they want the fence to be a little higher so that the dog cannot jump over the fence. He stated originally they had proposed it at 6'; however, they heard the comments from the Zoning Hearing Board at the last meeting, and they reduced it to 5'. Mr. McGuigan stated they are also proposing 18 by 18 square for the piers. He stated what they are proposing is similar to Regency at Yardley, and part of that fencing has these in the front. He stated they will mirror the stone work that will be on the home itself. He stated the stone part is for aesthetics since if you have a long wrought iron fence, that does "not look great;" and they are trying to make the area look good. He stated there are rear yard fences across the street which are vinyl or stockade, and they did not want that at this property. He stated what they are proposing will not create any obstructions, and there will be landscaping in front of the fence and behind it as well. He stated they are lowering the height, and they are willing to bring it back 10' as well so that it is brought back off the bike path and the road. He stated it also provides additional room for the landscaping. He stated they do not want the property to look like an eyesore which it currently is, and they want to make it look better. He stated they would Condition any fence approval on it being something that is not a vinyl or stockade fence.

Mr. Zamparelli asked why it could not be 3' high which is what is permitted in the front yard. Mr. McGuigan stated the fence would be along the entire length of the property for security reasons as he has children and they are going to get a dog. He stated a 3' fence would not "do anything for the dog." He stated originally they asked for 6', and they were trying to pare it down as well as moving it off the perimeter. He stated they were trying to find something that would bridge the concerns a little. He stated the fences across the street, recognizing that they are rear yard fences, are right up against the property line and very close to the roadway. He stated what they are proposing has been set back, and there is the distance from the road to the bike path, the bike path to the property line, and then the property line to the fence so it will be set back further.

Mr. Zamparelli stated they are comparing this to fences that are in the rear yard, and Mr. McGuigan agreed. Mr. McGuigan stated he understands that those fences are in the rear yards, and the Zoning situation is different. He stated he was just noting that on Mill Road there is a whole length of stockade fencing, and what they are proposing will be a different type of fence and will be set back off the property line. He stated they feel this will look better and will hopefully make Mill Road look better too.

Mr. Connors stated if they wanted to have a bigger back yard, they could move the whole system up a bit and provide a bigger back yard and reduce the impervious as well. Mr. McGuigan stated as Mr. Dumack explained, with the grading of the property, the flattest and highest part is in the back, and they were trying to keep it the construction there. He stated he understands that the front yard fence is an issue. He stated they may be able to pull it back a bit more. He stated if they were to have it 30' from the property line, they would not need a Variance, but they are trying to pick up some square footage to make the property useful.

Mr. Zamparelli asked at what point is the fence allowed to be increased in height if it is moved back. Mr. McGuigan stated he believes the front yard setback is 30'. Mr. Majewski stated the Plans show that the front yard setback is 35' although he felt it was more than that. Mr. Zamparelli stated the fence would have to be 35' back in order for it to be able to be more than 3' high.

Mr. Connors stated he believes the Board has only allowed Variances for front yard fences to be higher if they are corner Lots and double-frontage Lots so that they could have privacy in the back yard while dealing with multiple front yards. He stated this Lot has one large front yard. Mr. Connors stated according to Page 1 of the submitted package, the front yard setback is 35' under Section 200-22. Mr. Majewski stated he has confirmed that is correct.

Mr. Majewski stated he has also confirmed that there was a Permit for the pool that was constructed in the back yard in 2007.

Ms. VanBlunk stated she is not inclined to vote in favor of the front yard fence. Mr. Solar and Mr. Zamparelli agreed. Mr. Zamparelli stated he understands the indicated there would be a dog and concerns with security; however, he stated he does not have a fence in the front of his house and he has a dog. Ms. VanBlunk stated she can only think of one property with a front yard fence, and it is an eight-acre property located on Roelofs Road.

Mr. McGuigan stated they are trying to address some of the issues, and he raised some practical concerns. He stated they are trying to fence in the property in its entirety. He stated the property fronts on Mill Road which has traffic on the road and a path, and that is why they wanted a fence. He stated if the Board is disinclined to grant that relief he understands. He stated the fence does have ancillary benefits. He stated while this property is not eight acres, it is a decent-sized property at two acres, and they were hoping to be able to reach a middle point.

Mr. Solor stated that if they can get the impervious surface down to 18% they would not need a Variance. He stated pulling the house toward the street would reduce the amount of driveway, reduce the amount of area they are disturbing, and it would increase the size of the back yard.

Mr. McGuigan stated his client has owned the site for some time, and they have gone through numerous Sketches to find the best location for the home itself. Mr. Dumack stated one of the reasons the fence was proposed to be in the front instead of like most other homes having it bisect the house at some point was because the portico/drive-through carport poses a unique challenge. He stated while it is not a hardship in order to properly fence in the back yard because of the pool, if you are fencing to the property lines, you would also have to fence or gate the portico in order to secure the back yard.

Mr. Tritt stated he does not believe that is true as the retaining wall at the back is 7' to 8' high. Mr. Dumack asked if the Lower Makefield Zoning Ordinance allows for a retaining wall instead of a fence around a pool. Mr. Tritt asked the height of the retaining wall above the pavement, and Mr. Dumack stated it varies in height. Mr. Dumack stated his question was whether a retaining wall is a reasonable substitute for a fence for a pool. He added he does not believe he has ever seen a retaining wall used in that manner. Mr. Connors stated that would not comply with State Codes. Mr. Tritt stated they could put a fence on top of the retaining wall.

Mr. Majewski stated it requires a barrier so that people cannot get into the pool. He stated if the pool were below the retaining wall that would be acceptable; however, they need a safety fence above the retaining wall.

Mr. Zamparelli stated he feels that it is clear that the Board has concerns.



Mr. Dumack noted the aerial photo being shown, and toward the bottom you can see the neighbor to the south of the Applicant's property, and the that house is set back in a similar lay-out away from Mill Road; and while you cannot see the whole driveway, that house has a looped driveway with two entrances cut onto Mill Road. Mr. Dumack stated what they are proposing is not really that different from what is next to them. Mr. Zamparelli asked if there is a fence in front of that property, and Mr. Dumack stated he was not referring to the fence. He stated the location of that house is set back from the street and it is not up on the 35' front yard setback. He stated while that property has no pool in the back yard, there is a substantial driveway looping to service that house. He stated he feels their proposed house position is appropriate based on the next door neighbor. Mr. Zamparelli stated it actually looks like the proposed house would be a little further back, and Mr. Connors agreed.

Mr. Dumack stated what the Applicant is proposing is a larger house. He stated the homes to the west are smaller, but the Applicant's parcel is three times the size of those Lots.

There was no one from the public wishing to speak on this matter.

Mr. McGuigan stated due to the number and type of questions that the Board has, he feels it would be best to have a Continuance so that they can do the soil testing and confirm that their stormwater management plans are feasible in their current design. He stated they would also communicate with the Township engineer regarding some of the grading issues on the property. He stated they also hear the concerns of the Board with regard to the fence, and they will see if there is something they can do about that as well.

Mr. Dumack was asked how much time he would need, and Mr. Dumack stated that would depend on the weather because of the need to do the perc test. He stated he would not want to be locked into two weeks and then have to advise the Board that they were not able to do the infiltration testing.

Ms. VanBlunk moved and Mr. Connors seconded to grant a Continuance to January 5, 2021.

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Mr. Tritt stated at the last meeting the Board brought up Item #10 with regard to the approximate cost of the work proposed, and they had it listed at \$400,000. He stated he did not feel that was an appropriate amount, and he asked if they are going to revise that estimate.

Mr. McGuigan stated they will provide a revised estimate.

Motion carried unanimously.

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

Respectfully Submitted,

Anthony Zamparelli, Temporary Secretary