

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – APRIL 19, 2022

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on April 19, 2022. Mr. Solor called the meeting to order at 7:35 p.m.

Those present:

Zoning Hearing Board: Peter Solor, Vice Chair
Matthew Connors, Secretary
James Dougherty, Member
Judi Reiss, Member
Mike McVan, Alternate Member

Others: James Majewski, Community Development Director
Barbara Kirk, Township Solicitor (left meeting in progress)
Adam Flager, Zoning Hearing Board Solicitor
Fredric K. Weiss, Supervisor Liaison

Absent: Anthony Zamparelli, Zoning Hearing Board Chair

APPEAL #21-1941 – CAMERON & OLGA JEAN TROILO
Tax Parcel #20-021-003
1674 EDGEWOOD ROAD, YARDLEY, PA 19067
(Continued from 12/7/21)

Mr. Flager stated a request for a Continuance to Monday, May 16 was received from Edward Murphy, attorney for the Applicants. Mr. Flager stated they are trying to address some of the issues with the Township.

Ms. Reiss moved, Mr. Dougherty seconded and it was unanimously carried to Continue Appeal #21-1941 to May 16, 2022.

APPEAL #22-1957 – CELLCO PARTNERSHIP
TAX PARCEL #20-034-001
499 STONY HILL ROAD, YARDLEY, PA 19067

Mr. Flager stated a Continuance has been requested so that the Applicant can try to work with the Township to see if they can address some of the concerns raised by the Township.

Ms. Kirk stated the Township is opposing the Application; and after talking to the Applicant's counsel, they are going to try to set up a meeting with the Township Administration; and they are therefore asking for a Continuance until June 21 to give time for that meeting to be coordinated.

Mr. Dougherty moved, Mr. Connors seconded and it was unanimously carried to Continue the matter until June 21, 2022.

Mr. Majewski stated the Township will be posting on Facebook and the Township Website when this matter comes back before the Township.

APPEAL #22-1955 – ERIC & KIMBERLY CHERNIKOVICH
Tax Parcel #20-024-091
1505 FOX HOLLOW DRIVE, YARDLEY, PA 19067

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 Impervious Surface Breakdown Calculations and Stormwater Management worksheets were marked as Exhibit A-3. 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. Eric Chernikovich and Ms. Kimberly Chernikovich were sworn in.

Mr. Chernikovich stated they are requesting a Variance to raise their impervious level to 24.5% as a result of putting in an in-ground pool. He stated it is a single-dwelling house with a mostly open back yard and front yard. He stated the pool they are proposing is 780 square feet on the surface area. They will do decking on three sides with thin decking on two sides, more substantial decking on one side, and no decking on the fourth side.

Mr. Chernikovich stated they do not feel that putting the pool in will drastically change the character of the neighborhood. He stated in the Application they noted that there are eleven pools within 1,000' of where they are trying to put their pool. He added that he did some research and looked at the other eleven sites; and if they were the twelfth side, they would be the second largest lot of all the twelve pools in the neighborhood. He stated with regard to the square footage of the house, they would be the second smallest house on that list. He stated he does not know all the other impervious surfaces, but he does know that they are all two-stories.

Mr. Chernikovich stated they are going to put in a seepage pit that would take all of the rainwater off the back of the house which is the largest portion of the roof and take that water directly into the ground.

Mr. Solor asked Mr. Majewski if the calculations for the seepage pit accurate for the increase in the impervious area, and Mr. Majewski stated they are.

Mr. Dougherty asked if they will be mitigating back to 21.7% or are they at 24.5% after the seepage pit. Mr. Chernikovich stated before the seepage pit they are at 24.5%. Mr. Majewski stated what is proposed will manage the run-off from all of the additional impervious surface so that they will be back slightly below what is currently existing.

There was no one from the public wishing to speak on this matter. The Township is not participating in this matter.

Mr. Connors moved, Ms. Reiss seconded and it was unanimously carried to approve the Appeal as submitted mitigation the proposed impervious surface of 24.5% back to 21.7% subject to review and approval by the Township engineer.

APPEAL #22-1956 – UNIVERSAL BUILDING & CONSTRUCTION

Tax Parcel #20-003-020

1273 LINDENHURST ROAD, YARDLEY, PA 19067

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 Addendum that outlines the requested relief was marked as Exhibit A-3. The Deed was marked as Exhibit A-4. 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. Heath Dumack was sworn in.

Ms. Kellie McGowan, attorney, was present. She stated the Applicant purchased the property in December, 2021 and intends to maintain the existing single-family dwelling and subdivide the property into two additional building lots for two additional single-family dwellings. Ms. McGowan stated the Plan was submitted with the Application, and the property is generally located at the T-intersection with Quarry Road and Hillside Lane. She stated the requests for relief that they are seeking are minimal. She stated Mr. Dumack, who prepared the Plans, is going to Testify to the compliance of this Plan with all of the dimensional requirements of the Zoning Ordinance for the R-1 Zoning District with the exception of a

de minimus Variance from the density requirement, and Mr. Dumack will review that calculation and some of the circumstances of this property that lead to a net reduction in the gross lot area that effect that calculation.

Ms. McGowan stated the second Variance that they are requesting is the measurement of setback, and that is where the Ordinance would otherwise require measurement of setback from any Resource Protected areas of the property. She stated they are requesting that that measurement be taken from the property line, and Mr. Dumack will review the resources that are on the property and what applicability those setbacks from those lines would do to the developability of the property; and would essentially eliminate any development potential. Ms. McGowan stated there is an increased 80' front yard under the Ordinance from Lindenhurst; and Mr. Dumack will review what that does when added to the remaining requirements.

Mr. Heath Dumack, stated he is President of Dumack Engineering, Richboro, PA. Ms. McGowan asked Mr. Dumack if he has viewed the property, performed a property survey, and identified all of the unique features of the property; and Mr. Dumack agreed. Mr. Dumack stated he has been out to the property several times, and they did the original boundary and topographic survey of the site as well as the Zoning evaluation and breakdown for Zoning relief.

Ms. McGowan noted that the property is improved presently with a single-family dwelling, and Mr. Dumack agreed. Ms. McGowan stated that property dates back to around 1730, and she asked Mr. Dumack to describe the Applicant's intention with respect to the preservation of the existing dwelling. Mr. Dumack stated the Applicant's intent is to save and restore both the original structure of the residence and the post and beam barn to the rear of the existing house. Ms. McGowan noted those structures will be located on what is shown as Lot 1 on the proposed Plan, and Mr. Dumack agreed.

Sheet 1 of 3 of the Plans was shown, and Mr. Dumack noted Lot #1 is the lot to the far right of the Plans that has the existing improvements. Mr. Dumack stated the driveway almost lines up with the intersection and the traffic light, and the existing Colonial home is shown along with the existing post and beam barn structure to the rear. Ms. McGowan stated the existing dwelling and barn are currently dimensionally non-conforming with respect to front and rear yard setbacks, and Mr. Dumack agreed. Ms. McGowan asked if this Lot will otherwise require with the other dimensional requirements of the Zoning Ordinance, and Mr. Dumack agreed.

Ms. McGowan asked Mr. Dumack to discuss the dimensional aspects of the Lot, the application of the right-of-way, and his calculations with respect to the Lot area. Mr. Dumack stated the site is on the westerly side of Lindenhurst Road almost at the intersection of Lindenhurst and Quarry. The site is in the R-1 Zoning District and has approximately 520' of frontage along Lindenhurst Road, and then runs back approximately 300'. The rear property line is slightly irregular as you get toward the northwest corner. The property abuts several Residential properties in the rear as well as on the right side. Mr. Dumack stated it is also Residential across the street, and he believes that there is a detention/retention basin to the south of the property which is owned by the Township.

Ms. McGowan asked Mr. Dumack how he calculated the Lot area. Mr. Dumack stated the overall property based on the survey is 3.32 acres. He stated you have to take the ultimate right-of-way area out of the total area. He stated the right-of-way is .47 acres which then comes out to approximately 2.5 acres for the base site area. He stated you then evaluate the resource-restricted grounds, and on this site there are some woodlands and some steep slopes. He stated when you take out those restricted resources, you have approximately 1.01 acres of resource-protected ground; and when that is taken out of the base site area, you are left with 1.83 acres of what the Ordinance considers the net buildable site area.

Ms. McGowan asked if that net site area is significantly reduced from the gross area of over three acres of the property, and Mr. Dumack agreed it would be almost 1.5 acres. Ms. McGowan stated but for the deduction of both of those resource areas and the ultimate right-of-way, the density would be well in compliance with the requirements of the Zoning Ordinance; and Mr. Dumack agreed.

Sheet 2 of the Plan set was shown which shows the subject property and the steep slope areas and the wooded areas. Mr. Dumack stated the steep slope areas are shaded, and the drip lines are shown for the trees on the property. Ms. McGowan asked Mr. Dumack if he proposed the improvements in such a way to minimize any impact on the resources that are shown on Sheet 2, and Mr. Dumack stated he did. Mr. Dumack stated they did a number of different lay-outs until they came up with something that would minimize the impact for both the steep slopes and the woods. Mr. Dumack noted Sheet 3 of the Plans which shows the Preliminary Grading Plan which they did for each of the two new building lots, and it can be seen that they did their best to avoid and circumvent the resources, and a majority of the trees are still protected and they even tried to go around the steep slope with the driveways.

Ms. McGowan asked what Class are the steep slopes; and Mr. Dumack stated they are predominantly Class 1 and Class 2 steep slopes, with the majority being Class 1. He stated they are 8% to 15% steep slopes for Class 1 steep slopes. He stated the 15% steep slope is 1 ½' in 100. He stated 8% is substantially less than that. Ms. McGowan asked if the proposed Plan maintains the Resource Protection requirements of the Ordinance, and Mr. Dumack agreed.

Ms. McGowan asked if they were to measure setbacks from the limits of the steep slopes and the trees, what would happen to the resulting building envelopes on each of the lots, and Mr. Dumack stated you would not have a building envelope on either lot because the resources are predominant through both lots and they would therefore be unbuildable. Ms. McGowan asked Mr. Dumack if he feels that this property is suitable for development for three Residential dwellings given his experience and other work in Lower Makefield, and Mr. Dumack agreed. Ms. McGowan asked Mr. Dumack if he believes that the property is of such a nature that the Subdivision will not have any adverse impact on the resources of the property, and Mr. Dumack stated it will not.

Ms. McGowan stated the Applicant understands that in the event that the Zoning Hearing Board is inclined to grant the relief they are seeking, that a Land Development process will be required, and Mr. Dumack agreed that the Applicant is aware of that. Ms. McGowan stated they are already looking at a Preliminary Grading Plans in connection with that Land Development process, and the requirements such as stormwater management and the other Subdivision requirements are going to be reviewed by the Township engineer for approval, and Mr. Dumack agreed.

Ms. McGowan asked Mr. Dumack if his calculations for the Plan were done on a conservative basis, and Mr. Dumack stated they were. He stated they know that Municipalities take steep slopes and woodlands very seriously especially Lower Makefield so he took care to be conservative in his approach for both woodlands and steep slopes. Ms. McGowan asked if there are areas of trees on the property that may not count as woodlands but were considered to be such for these purposes, and Mr. Dumack agreed.

Ms. McGowan stated Mr. Dumack also performed a Zoning review and confirmed that but for the relief requested, this Plan is otherwise compliant with the Zoning Ordinance, and Mr. Dumack agreed.

Ms. McGowan asked Mr. Dumack if he formed an opinion based on his knowledge of the Township as to the consistency of this Plan with the Residential uses in the neighborhood; and Mr. Dumack stated he did, and he believes that this is suitable and meets the characteristics of both the R-1 Zoning District surrounding the site and the Residential District across the street which he believes is R-8 according to the Zoning map. He stated the Residential characteristics of the neighborhood would be met with this Plan.

Ms. McGowan asked Mr. Dumack if it is his understanding that the Applicant is willing to agree with the Township during the Land Development process to permanently conserve/preserve those areas of resources on the property, and Mr. Dumack agreed.

Mr. Dougherty asked if they will conserve the entirety of the Resource Protected area, and he asked for further clarification. Mr. Dumack stated depending on the Class of steep slopes, you are allowed to disturb a percentage of them. He stated there are no Class 3 steep slopes on site, but they will preserve the rest of the Resources that are not being disturbed. Ms. McGowan stated the discussion she had with her client and Ms. Kirk on behalf of the Township prior to this meeting, was that the Applicant would be willing to put an Easement over the slopes and wooded areas in order to insure that it is consistent with the Ordinance, and that they are not further disturbed in the future. Mr. Dougherty asked if they know what Land Trust would be the Trustee over the Conservation Easement. Ms. McGowan stated normally this would be done in the form of a Restrictive Covenant, and the Township would be the enforcement agency for it and the Township would hold it.

Ms. Reiss stated she would be in favor of restricting anything from more disturbance, and she feels it is “responsible Subdivision.”

Mr. Connors asked Mr. Dumack if he foresees any changes on Lot #1 or would it be kept as it is, and Mr. Dumack stated it is his understanding that the owner is planning on restoring; but it would not be something that HARB would restrict. Mr. Connors stated he is more concerned with the site. He stated he presumes that the majority of the steep slopes on the site are manmade, and Mr. Dumack agreed. Mr. Connors asked if there is any intent to go in and modify any of that work, and Mr. Dumack stated at this point there is not. Mr. Dumack added that the owner has talked about potentially putting a pool in at some point; however, at this point that is just a discussion.

Ms. Kirk stated the Township is not Opposing the Application but wishes to participate, and the Township would like a Declaration of Restrictions to be Recorded with the Township as the enforcer of that restriction. She asked if the Applicant would be agreeable to that as a Condition of approval by the Zoning Hearing Board, and Ms. McGowan agreed.

Ms. Kirk stated the second issue is the preservation of the existing house and rear post and beam barn, and she asked if that would be accepted as a Condition of an approval by the Zoning Hearing Board that those structures will not be demolished as part of the Subdivision but intend to be restored. Ms. McGowan stated she can confirm that with regard to the dwelling. Ms. McGowan asked Mr. Dumack if he knows of any plans with respect to the rear barn adding that she knows that was the structure that was in worse shape. Mr. Dumack stated he thought that the developer/owner wanted to keep the barn and use it. He stated there was a second floor office that was in the structure originally, and they were talking about utilizing that. Mr. Dumack stated he does not know the date of that barn, but would estimate it to be late 1800's/early 1900's; and it does not date back to the original farmstead building in the front. Ms. Kirk stated she believes that the Township would accept a Condition that the main house built around 1730 would be preserved and not demolished, and Ms. McGowan stated that is agreeable.

Ms. Kirk stated she understands how Mr. Dumack arrived at his net buildable area after reducing the overall gross acreage by the ultimate right-of-way and the Resource Protected areas. She stated based on that calculation, she asked Mr. Dumack what did he calculate the density to be for each of the Lots. Mr. Dumack stated he believes he was at 1.67. Ms. Kirk stated the Application Addendum indicates a maximum density of 1.63, the Plan shows a maximum of 1.97, and Mr. Majewski calculated it at 2.6 dwelling units per acre. Mr. Dumack stated he would use Mr. Majewski's number as he trusts that is the most accurate and familiar with the Ordinance. Mr. Dumack stated their Plans had 1.97, but he believes the right wording is that they are looking for two buildings; and based on Mr. Majewski's calculation, that would be the most conservative answer. Ms. Kirk stated Mr. Dumack would agree to that calculation as being the number for the Variance that they are requesting, and Mr. Dumack agreed.

Ms. Kirk asked Mr. Dumack to clarify how much under the Ordinance the steep slopes will be disturbed. Mr. Dumack stated according to the Resource Protection Ordinances, the Class 1 steep slopes are allowed to be protected at either .5 or .6 and the Class 2 steep slopes it would be .7. He stated looking

at the chart, they are allowed to disturb 0.14 acres of Class 1 steep slopes, and 0.022 of the Class 2 steep slopes. Ms. Kirk asked how much of the woodlands will be disturbed; and Mr. Dumack stated you are allowed to disturb 20%, and they are looking at approximately .2 acres of disturbance.

Ms. Kirk stated there will have to be clarity in the Declaration of Restrictions as to the remainder of the resources that are not being disturbed. She stated the amount of Resource Protected areas per the Declaration of Restrictions would be subject to Township approval, and Ms. McGowan agreed. Ms. McGowan stated once they get through the design phase including the stormwater management, there is a chance that the location of the improvements as shown on the Building Plan will get moved a bit in order to satisfy the Township engineer and the Township in common. She stated they can commit to not exceeding and no relief has been requested for those resource protection ratios; and when the Final Plan is confirmed, they will have a Plan attached to the Declaration that will specifically identify those areas that are permitted to be disturbed and those areas that will be protected.

Mr. McVan asked if the impervious surface includes the proposed swimming pool, and Mr. Dumack stated it is.

Ms. Jean Shotwell, 1239 Fountain Road, was sworn in and stated she lives behind the property being discussed. She asked how far they will be from her back yard line. Mr. Dumack stated the rear yard setback for this District is 70'. Ms. Shotwell stated they are on the downside slope of the subject property, and they get a lot of water from there, and she wants to make sure that this will not affect the water coming down into her property. Mr. Dumack stated they have done preliminary stormwater management designs, and that was part of the conceptual Grading Plan that was submitted as part of this Application on Sheet #3. He stated they have underground seepage beds designed for both Lots #2 and #3. He stated this will have to go before the Township as a Land Development, and the Township engineer will be reviewing this, and the Applicant will be required to meet all of the standards of the Stormwater Ordinance for the Township which will require restriction on downstream conditions and flows.

Mr. Kevin Roberts, 2040 Wyngate, was sworn in and stated his property backs up to the proposed construction area. He stated the slope from his back yard down to the house is dramatic, and his concern is water coming down. He stated he has lived here for thirty-three years and never had problems with water in the back. He asked what assurances there are if after this is approved there is water

that they are not expecting. Mr. McGowan stated Mr. Dumack already provided information on the water. She added that Mr. Roberts' property is behind the rear of Lot #2; and as Mr. Dumack previously testified, the development will be subject to the requirements of the Township's Stormwater Management Ordinance which does restrict the direction of any drainage off-site and restricts the post-construction as compared to the existing status of the lot as it stands right now. Ms. McGowan stated there is a conceptual stormwater management system located on Lot #2 generally in the middle of the lot where the water will be directed, and it will not be directed to the rear of the property; and that will be subject to review by the Township engineer during the Land Development process.

Mr. Roberts stated he asked why type of noise abatement there will be in the back of the property, and asked if there will be trees. Ms. McGowan stated as noted earlier, there is a 70' rear yard setback, and there is existing vegetation in between what will be Lot #2 and Mr. Roberts' lot.

Ms. McGowan stated the Plan does not provide for fencing although that could be discussed with the Township if it would be permitted within the Restriction that was previously discussed if that is something the Township, adjacent neighbors, and the new property owners would be looking for. Ms. McGowan stated the pools that are being shown are conceptual in order to show the Township that the impervious surface and building coverage requirements can be met and will be met both by the initial development by the developer and future improvements including the pool that a property owner may put on that lot. Ms. McGowan stated Mr. Dumack prepared the Plan conservatively in order to show the extent of development, but it does not mean that a future property will come in and put a pool in that exact location.

Mr. Roberts stated while Ms. McGowan referred to vegetation in the back, he feels it is a "bunch of overgrown bushes and shrubs;" and he asked if that will be cleaned up and asked what that will look at from his back yard into the building area. Ms. McGowan stated there had been a discussion about the definition of "woodlands" and what they are proposing to preserve, and they are preserving to maintain those areas. She stated when they go through Land Development, they will identify more specifically those areas. She stated nothing is proposed to be cleared based upon their representations to the Township; and while they will clean up the property, they are trying to maintain the property in its current condition with the vegetation.

Mr. Roberts asked if this is approved, how long will construction last. He stated there is no fence between his yard and the construction area, and he would not want anyone going through his back yard or finding a way into the building site; and he wants to make sure “younger kids are not going to be out there playing in the evenings.” Mr. Dumack stated normally they put up both silt fence and construction fence for tree protection; and that tree protection fence could be used for “child restrictions.” He stated the owner of the property lives down the street and has multiple properties in Lower Makefield so it is not an absentee owner situation. Mr. Dumack stated he has been in the existing farmhouse starting to clean up the property already.

Mr. Dumack stated as to the timeline, from approval to completion of construction it could realistically take approximately nine months to a year for each home. Mr. Roberts asked if that means it could be a total up to three years of build or is he building all three concurrently. Mr. Dumack stated that would be up to the owner, but he believes it would probably be around two years. Mr. Roberts asked that something be done to keep down the noise during the construction and also after the construction is done. He stated since he this is up against the back of his property, he would like to be involved, if possible, in this. Mr. Solor stated while these are valid concerns, this is outside the boundaries of what is being asked of the Zoning Hearing Board. Mr. Solor stated they are just asking for Variances from the Zoning restrictions, and if there are more detailed questions regarding construction, this is not the place to raise those.

Mr. Connors moved to approve the Appeal as submitted subject to the main house on Lot #1 being preserved and the remaining resource protection areas be Deed Restricted to the Township of Lower Makefield.

Ms. Reiss asked about the barn, adding that she does not know the condition of it, so she does not know if it is reasonably salvageable or not. Ms. McGowan suggested wording that would get the content through while not conditioning something on maintaining a structure that may not be maintainable.

Mr. Connors agreed to amend the Motion that the Applicant would use best efforts to maintain the integrity of the existing barn. Mr. Dougherty seconded and the Motion carried unanimously.

Ms. Kirk left the meeting at this time.

APPEAL #22-1958 – ANDREW SCHEURER
Tax Parcel #20-055-025
1525 DERBYSHIRE ROAD, YARDLEY, PA 19067

Mr. Flager marked the Exhibits as follows: The Application was marked at Exhibit A-1. The Site Plan was marked as Exhibit A-2. 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. Andrew Scheurer and Ms. Juliet Scheurer were sworn in.

Mr. Scheurer stated this is identical to what they put in and was approved just over two years ago. He stated due to the pandemic they did not do the construction project which was to add an expanded kitchen and dining room onto the rear of their property. Ms. Scheurer stated the approval expired, and they re-submitted the same Application. Mr. Scheurer stated the Plan has not changed and is identical to what it was when it was approved two years ago.

Mr. Solor asked about mitigation for stormwater. Mr. Majewski stated the prior Application from February, 2020 the Applicant had testified that the seepage bed would mitigate all of the stormwater proposed plus additional. He stated they are proposing a 3' deep by 7' wide by 10' long stone seepage bed that will take care of all of the impervious surface plus an additional 0.5% so effectively it will be below the 30% that is permitted for this property. Mr. Dougherty stated he assumes Mr. and Ms. Scheurer would continue to do that, and they agreed.

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

Mr. Dougherty moved, Mr. Connors seconded to approve the Appeal subject to stormwater management mitigation back to 30% or less pending Township approval.

There being no further business, Ms. Reiss moved, Mr. McVan seconded and it was unanimously carried to adjourn the meeting at 8:40 p.m.

Respectfully Submitted,

Matthew Connors, Secretary