

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – JANUARY 4, 2023

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on January 4, 2023. Mr. Flager called the meeting to order at 7:30 p.m.

Those present:

Zoning Hearing Board: Peter Solor, Chair
James Dougherty, Vice Chair
Judi Reiss, Secretary

Others: James Majewski, Community Development Director
Dan McLoone, Planner
Adam Flager, Zoning Hearing Board Solicitor

Absent: Matthew Connors, Zoning Hearing Board Member
Mike McVan, Zoning Hearing Board Member
James McCartney, Supervisor Liaison

REORGANIZATION OF THE BOARD

Election of Chair

Mr. Dougherty moved, Ms. Reiss seconded and it was unanimously carried to elect Peter Solor as Chair of the Zoning Hearing Board for 2023.

The meeting was turned over to Mr. Solor.

Election of Vice Chair

Ms. Reiss moved, Mr. Solor seconded and it was unanimously carried to elect James Dougherty as Vice Chair of the Zoning Hearing Board for 2023.

Election of Secretary

Mr. Dougherty moved, Mr. Solor seconded and it was unanimously carried to elect Judi Reiss as Secretary of the Zoning Hearing Board for 2023.

APPEAL #23-1989 – ELLEN & GEORGE RUSNAK
Tax Parcel #20-068-100
1264 BRIDLE ESTATES, YARDLEY, PA 19067

Ms. Ellen Rusnak was 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 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.

Ms. Rusnak stated they would like to fence their yard. Two sides are already fenced, and they want to fence the remaining sides. She stated the one fence that their neighbor has is in the Sewer Easement, and they were going to connect into that, and they need a Variance.

Mr. Solor stated what is shown on the Site Plan is the fence directly on top of the sewer pipe, and he asked if that is accurate. Mr. Majewski stated they would like to see the fence being a few feet off of the pipe so that the fence posts do not poke a hole in the pipe. He stated it would need to be 2' to 3' in from where the storm drain is. Ms. Rusnak stated the Easement goes on the back and the on the sides. She stated at the one part on the side, in order to connect into their neighbor's fence, they followed that same guideline when they put their fence in, and they put it just slightly off the pipe. She stated there would not be a post there, and they would just be connecting to their fence. Mr. Majewski stated they would need to make sure that the posts are properly set so that they do not impact the pipe.

Mr. Solor stated it looks like the pipe is only on the back side of the lot. Ms. Rusnak stated the Easement in between the two properties that goes out to the street has two drains – one on each corner in the back. She noted the two rectangular squares. Mr. Solor stated just at the back corner, the upper end of the drawing, is the only one where they are on top of the pipe. Mr. Majewski stated there is another one where it crosses, and they would just need to check where they set the posts.

Mr. Majewski stated in the rear they need to make sure that it is not directly on top of the pipe, and Ms. Rusnak agreed.

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

Mr. Dougherty moved and Ms. Reiss seconded to approve the Appeal subject to review by the Township engineer as to the exact location of the fence and the fence footers.

Mr. Solor asked that they include that if the Township needs access, the fence will be removed at the Applicant's expense.

Mr. Dougherty and Ms. Reiss agreed to the Amendment, and the Motion as amended carried unanimously.

APPEAL #23-1990 – JENNY ORNSTEEN JAMES
Tax Parcel #20-003-019-005
2195 TWINING ROAD, NEWTOWN, PA 18940

Ms. Jenny James and Mr. Stan James 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 Impervious Surface Breakdown Calculations and Stormwater Management Small Project Volume Control was 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.

Ms. James stated the property is in her and her daughter's name, and her daughter wants a garden shed; but because of the Zoning needing it to be built in the back corner of the property, that is the Drainage Easement so they cannot build on that. She stated her husband, Stan James, will be doing the building.

Mr. James stated the Zoning Ordinance says it has to be in the back one quarter, and the Drainage Easement is actually a little bit larger than the back one quarter, and they did not want to have to get a Variance to put it in the Drainage Easement, and would rather put it just outside of that Drainage Easement. He stated on the Plot Plan they have it located as far back as they can get it while still not within the Drainage Easement, and it is slightly outside of the back one quarter.

Mr. James stated the setback from the front property line is listed as 238'; however, they have made a more accurate measurement, and that should be 220'.

Mr. James stated on the Application for the Construction Permit, it stated it was going to be a skid foundation on crushed stone with ground anchors used at the four corners; however, they would like to change that to a pole building that will be poles set in concrete. Mr. Solor stated that is associated with the Permit and not the Variance so that will go to the Township Office.

Ms. Betsy Eingorn, 2183 Twining Road, was sworn in. She stated she has been there thirty-five years, and the dry bed, which was what it was supposed to be, has increased significantly; and the run-off not only from the farm next door, but the houses behind them have made it so that all of the rain is coming down and making it bigger every year, and they are losing the ground in between. She stated she does not have a problem with them putting a shed in, but she wants them to know that they may want to move it a little bit further away from where the creek is because every year, it is collapsing into itself.

There was discussion about which way the shed was facing and the length.

Ms. Eingorn stated the creek belongs to the James' property, but it is collapsing, and the further they put it closer to their house, the less chance they will have of losing the shed. Mr. James stated they are trying to comply as much as they can with the Ordinance that wants it in the back one quarter, and they are asking for the least Variance possible. Mr. Solor stated they are going to pull it towards the house.

Ms. Eingorn stated she is just saying that the creek is sinking in on itself, and they have not been able to fix it at all unless they get an engineer. She stated the chances of losing it are greater, and they may want to move it a little bit closer to their house so that we do not have to deal with it in the creek.

Mr. James stated they have looked at this carefully to make sure that they are not anywhere near close to having it collapse into the creek. Mr. Majewski stated it appears that they will be about 50' away from the stream.

Ms. Eingorn stated no one really knows where the property begins and ends anymore because "Tom" is saying that it is further into their property than they actually thought when they all bought these properties.

There was further discussion about where the shed will be facing.

Ms. Reiss moved, Mr. Dougherty seconded and it was unanimously carried to approve the Appeal as presented.

APPEAL #23-1991 – MANFRED MCDEVITT
Tax Parcel #20-042-310
335 SHERWOOD DRIVE, YARDLEY, PA 19067

Mr. Manfred McDevitt was 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 Impervious Surface Calculation was 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. McDevitt stated he needs a Variance so he can put his shed 4' from the property line instead of 10'. He stated this is on the side of his back yard to the neighbor on the side. He stated initially he thought he would need another Variance because in the back of his yard where the back neighbor is, there is a 25' Drainage Easement where there is a pipe. He stated if he wanted to put the shed within 25' of that Easement, he would need a Variance for that; however, he decided not to do that. He stated he brought the shed past 25' so he will not need to go in that Drainage Easement, and he does not need a Variance for that. He stated he figured out the impervious surface, and there is not a problem with that either. He stated initially he thought he would need three Variances, but he just needs the one as he does not need the impervious surface Variance and he is bringing it up 25' so it will not be in the Drainage Easement. He stated all that is left is the 10', and he wants to get the Variance to take that down to 4'.

Mr. Dougherty asked Mr. Majewski if they checked the impervious numbers to see if the Applicant's assertion about the impervious ratio is correct; and Mr. Majewski stated they actually helped with the calculations, and they are accurate.

Mr. Dougherty noted the neighboring house is owned by the Haubens, and he asked if Mr. McDevitt discussed this with them, and if they were comfortable with him coming inside the 10'. Mr. McDevitt stated he did speak to them, and they thought it was fine because they have a fence. Mr. Dougherty stated when you are moving inside the setbacks, which are there for a reason, it is the often the next-door neighbor who would have a problem with it, and that holds weight with him.

Mr. McDevitt stated while he knows that this is an Ordinance right now, he has talked to several people in the Township who have indicated that the 10' rule may be getting changed some time in the near future. He stated if there is a 10' rule from the property line, and you want to put a shed in, it could be almost going out into the middle of your yard. He stated he knows that if it changes, that would not be applicable to him now.

Mr. Dougherty asked what the Board feels is the “lesser of two evils,” granting a 4' setback Variance or allowing the applicant to build inside the Drainage Easement area. Mr. Solor stated he feels the bigger issue would be in the Drainage Easement.

Mr. Solor asked Mr. McDevitt why he could not set it 10' from the property line and not have a Variance at all. Mr. McDevitt stated he did not want his shed more into the center of the back yard. Mr. Dougherty stated he understands that.

Mr. Majewski stated when he spoke to the Applicant they discussed the two issues, and it would be right in the middle of the back yard where the patio is, versus 4'.

Ms. Reiss stated her concern was for the neighbor. She asked what type of Easement it is, and it was noted it is a Storm Drainage Easement. Ms. Reiss stated she would not want to see anything in the Storm Drainage Easement given the weather. She added that the neighbor was notified. Mr. Dougherty stated he agrees with Ms. Reiss.

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

Ms. Reiss asked Mr. Majewski's opinion, and Mr. Majewski stated the next-door neighbor does have a fence. He added that part of the problem with accessory structures being close to the line is that it is “right in the neighbor's property;” however, if the neighbor does have a 5' high fence, it is not quite as impactful. He stated he feels the neighbor would have been present or called the Office if they had a problem. He stated at one time the Ordinance only had a 3' setback.

Mr. Dougherty moved, Ms. Reiss seconded and it was unanimously carried to approve the Appeal as presented.

APPEAL #23-1992 – SUSAN DLUGOSZ
Tax Parcel #20-057-164
1138 GAREY DRIVE, YARDLEY, PA 19067

Ms. Susan Dlugosz was sworn in.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plans were marked as Exhibit A-2. The Impervious Surface Breakdown Calculation and Stormwater Management was 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.

Ms. Dlugosz stated she is requesting a Variance for an in-ground concrete pool with decking around the pool. She stated she is over the impervious surface, and it is going from 28% to 29.9%. She stated they have “minimalized” the decking and there is just enough to go around so that they can walk around the deck. She stated there are several properties in their neighborhood which have similar pools and sizes, including her neighbors on both sides. She stated they have not been to a public pool since COVID, and she is looking to have this for her children – a teenager and an eleven-year-old.

Mr. Dougherty asked Mr. Majewski if the impervious surface allowed in this District is 28%, and Mr. Majewski agreed. Mr. Dougherty stated he understands that the actual pool area is not included in the impervious, and Mr. Majewski agreed. Mr. Dougherty asked about the setbacks for the pool surround versus the property line, and Mr. Majewski stated they all comply with the Ordinances.

Mr. Solor asked if the proposed mitigation on this mitigates to everything they are supposed to mitigate back to the 24.9%, and Mr. Majewski agreed.

Ms. Reiss stated she knows that there is a large retention area in this area.

Mr. Solor stated the design as shown and the excavation that is required is going to likely result in the loss of the trees along the edge of the property. Ms. Dlugosz asked Mr. Solor if he is referring to the ones across the back of the fence, and Mr. Solor agreed that he was referring to the large trees that are there adding that the roots are going to be compromised by the excavation. Ms. Dlugosz stated they wanted to remove them anyway.

Mr. Solor stated the way this is laid out and the system for collecting the water to the infiltration systems does not look like it is effectively capturing the area to be mitigated. He stated he feels they will need to pick up more of the downspouts from the house in order to get more water to the infiltration area.

Mr. Matt Landis, the pool contractor, was sworn in. He stated he worked with some of the Township officials for the Permitting. He stated the Township engineer sent a letter asking for some changes to be made with regard to the storm management that was originally designed, and he asked that they pick up a couple more downspouts and add some drain inlets which has been done on the plan. Mr. Majewski stated it seems that based on the Township engineer's, Andrew Pockl, comments, they added additional items. Mr. Majewski showed where this is reflected on the plan. He noted the location of a number of storm drains which pick up water as well as the downspouts being piped in. Mr. Majewski stated they had the Township engineer review this prior to the meeting.

Mr. Solor stated he only sees one downspout tied in. He stated there may be some confusion over the downspout on the southwest corner of the house since although there is a line there, it is a dimensional line and not a connection to the drain. He added that the inlet in the swale is only 9" by 9" which will be rather restrictive of flow assuming it has a grate on the top of it. Mr. Majewski stated we could have the Applicant and the engineer look at this and upgrade it a little more to make sure that it captures the water adequately. Mr. Landis stated that would not be a problem. He stated the system was designed to take into account the full new impervious coverage.

Mr. Solor stated the question is not whether it can handle the impervious coverage as Mr. Majewski has looked at it, and it looks like they have the infiltration capacity; but the issue is getting the water to the spot to be infiltrated that is the question.

Mr. Majewski stated if they make a larger yard drain and go with a 12 by 12 drain, they will be able to pick up water better. He stated having a roof leader tied in would be even more effective. Mr. Landis stated he agrees that would collect more water.

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

January 4, 2023

Zoning Hearing Board – page 9 of 9

Ms. Reiss moved, Mr. Dougherty seconded and it was unanimously carried to approve the Appeal subject to the Township engineer reviewing the water infiltration system and collection.

Mr. Majewski stated they will relay the Board's comments to the Township engineer.

There being no further business, Mr. Dougherty moved, Ms. Reiss seconded and it was unanimously carried to adjourn the meeting at 8:10 p.m.

Respectfully Submitted,

Judi Reiss, Secretary