

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – MAY 2, 2023

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on May 2, 2023. Mr. Solor called the meeting to order at 7:35 p.m.

Those present:

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

Others: Dan McLoone, Planner
Adam Flager, Zoning Hearing Board Solicitor
James McCartney, Supervisor Liaison

APPEAL #23-1999 – CELLCO PARTNERSHIP, DBA VERIZON WIRELESS
Tax Parcel #20-034-008
375 STONY HILL ROAD, YARDLEY, PA 19067
(Continued from 4/4/23)

Mr. Solor stated this is for the cell tower at 375 Stony Hill Road, and due to the level of engagement of various Parties and the fact that the Township Board of Supervisors now has to get Conflict Counsel, all of the attorneys in the discussion have agreed that the first date that they all had available that they could attend would be August 1, 2023.

Mr. Dougherty moved and Mr. Connors seconded to Continue the Appeal to August 1, 2023. Motion carried. Ms. Reiss did not participate in the vote.

APPEAL #23-1997 – ANDREW & JACKIE KUSH/TERRA FLORA DESIGN ASSOC.
Tax Parcel #20-040-002-001 and #20-038-074
3 ALTON ROAD, YARDLEY, PA 19067

Ms. Jackie Kush and Mr. John Brunnet, Landscape Designer, 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 Calculation and Stormwater Management Small Project Volume Control was collectively 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. Brunnet stated they are looking to install a concrete swimming pool; and in order to do that along with the pool deck, it will put them over on the impervious surface allowance. He stated the property is at 22.9% impervious, and they are looking to add 425 square feet of net impervious which takes them to about 23.8%, so it is a little less than 1% that they are proposing to add. He stated for stormwater remediation, based on the Township's calculation sheet, they are proposing collecting stormwater run-off from the back section of the roof and constructing a groundwater infiltration pit to accept that run-off, and store it, and re-charge the groundwater.

Mr. Connors asked if the area within the fence is all concrete around the pool or is it just the blue stone patio, and Mr. Brunnet stated it is just the blue stone patio at the far end of the pool where the steps enter and the blue stone stepping stones that connect the existing terrace to the pool. Mr. Brunnet stated inside the fence it is grass at the moment, and there will be some trees and shrubs installed in a limited fashion so it will be turf and landscaping inside the fence. He added it is just the part that is the blue stone patio that is the actual pool deck.

Mr. Connors asked if the garden area was permeable or impermeable. Mr. Brunnet stated it is boxwood hedging, some cobblestone curbing, and a center area with lawn in it. It stated it was an old, formal rose garden which is 99 ½% permeable.

Mr. Dougherty stated it looks like part of the existing dwelling that is outlined in purple marker with the rain leader going to the infiltration pit is the only part of the existing dwelling that is actually being directed into the infiltration pit, and Mr. Brunnet agreed. Mr. Dougherty asked if it is possible to direct more of the roof run-off into an infiltration pit, and Mr. Brunnet stated he feels that is possible. Mr. Brunnet stated they chose the area based on the way the rain leaders are set up and what section of the roof feeds that rain leader and what they can easily capture and direct to an infiltration pit. Mr. Dougherty stated he is not suggesting that they need to do that, but he was curious and wanted to understand what was presented. Mr. Brunnet stated the roof surface area exceeds the blue stone area, and they are capturing more than they are adding.

Mr. McLoone stated he and Mr. Majewski verified the calculations.

Mr. Brunnet stated they are mitigating slightly more as the roof area is about 500 square feet, and he went a little beyond the 425 mark. He stated there are also existing trees that they are preserving. He stated in general he went a little bit above what is being added to make sure that they are doing the right thing.

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

Mr. Connors moved, Mr. McVan seconded and it was unanimously carried to approve the Appeal as submitted subject to review and approval by the Township engineer.

APPEAL #Z-23-2-2002 – VILIUS ZAVISTAUSKAS
Tax Parcel #20-028-030
208A MORRIS LANE, WASHINGTON CROSSING, PA 18977

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.

Mr. Vilius Zavistauskas was sworn in.

Mr. Zavistauskas stated they want to have an addition onto the house because the house is too small for the family, and it only has two bedrooms. He stated the addition will be in front of their enclosed porch. The addition is 414 square feet.

Ms. Reiss asked if it is in the floodplain, and Mr. McLoone stated it is not in the FEMA-regulated floodplain. Ms. Reiss asked the impervious surface allowed for this lot, and Mr. Zavistauskas stated it is 13%, and he has 19%. Mr. McLoone stated the property is Zoned RRP (Resource-Protected), and the maximum allowable is 13%. Ms. Reiss stated they need to go to 19%, and they are at 17.2% now.

Mr. Flager asked if Lipman Lane is a paper street, and Mr. Zavistauskas stated it is. Mr. Flager asked Mr. Zavistauskas if he knows anything about the Easement that is or is not there in that area. Mr. Zavistauskas stated it is already extinguished and he has paperwork from the previous owner. Mr. Flager asked what the Easement was for, and he asked if it was an Access Easement for the neighbors. Mr. Zavistauskas stated the previous owner had the Township agree because they have a second parcel which is 20-028-030 which he also owns. He stated the last line, 2' to 3' feet from the right side is dedicated to access for all neighbors, and it is a gravel walkway. Mr. Flager asked if the gravel walkway is still there, and Mr. Zavistauskas stated it is. Mr. Flager asked if that is Lipman Lane, or is that a different area; and Mr. Zavistauskas stated it is a different area, and that was "between the Township and the previous owner." Mr. Solor asked if that is what is labeled "Lot 2 which says Declaration of Easement," and Mr. Zavistauskas stated it is the "last portion between zero and three zero."

Mr. Flager stated he believes that there is a mistake on the Plans as far as the parcel numbers, and he believes the one on the right is really 031, and Mr. McLoone agreed. Mr. Zavistauskas stated he believes that 031 is on the right side.

Mr. Connors stated 03 is the former lot 16 through 20 and 031 is the former lot through 21 through "something." Mr. Connors asked Mr. Zavistauskas is building on both of these lots, and Mr. Zavistauskas stated he is building on the first lot and Lipman Lane. Mr. Connors stated Lipman Lane was extinguished so it should become part of Lot 31, and Mr. Zavistauskas agreed. Mr. Connors stated Mr. Zavistauskas is treating both of these lots as one lot. He stated that would give 22,000 square feet and not the approximately 10,000. Mr. Connors stated if you look at this as two lots being treated as one, there is no reason for an impervious Variance. He asked if there is anything about building on two lots. Mr. Solor stated they are separate Tax Parcels, and he asked if they have been merged into one lot. Mr. Zavistauskas stated they have not, and he still pays separate taxes on them. Mr. Solor stated that means that they are building within the setback of the line. Mr. Connors stated it is common ownership, and he asked Mr. Flager if the Board should treat this as two separate lots or as one. Mr. Flager stated if they formally go through the process of having it made into one lot, the lot size would be bigger. He stated he believes the reason they need the Variance is because technically they are legally two lots although in practice it is one big lot.

Mr. Solor asked if there would not be a setback problem if it is two separate lots because of where they are putting on the addition relative to the division between the two lots. Mr. McLoone stated he is not sure about the setback issue, and he noticed this today in terms of the placement of the addition. Mr. Solor stated they are encroached into the setback already, and they are further encroaching into it.

Mr. Connors stated generally he does not have a problem with the project, but he wants to make sure that we are giving him the correct Variance so that he does not have to come back if there is an issue.

Mr. Flager stated if the lots were combined, he believes they would eliminate both issues. He stated there would be sufficient room so there would not be a setback issue, and they would be good on the impervious. Mr. Solor asked if the two lots were combined what would the net impervious be after the addition, and Mr. Connors stated it would be approximately 9%.

Mr. Dougherty stated Lot #20-028-031 has Lot 1 and 2 on it and also has Lot 21 and the 133' wide parcel, and that is subordinate to the main lot which is #20-028-030; and because of the setback where the house was built, it appears that the house was built right on the property line. He stated the driveway for the house and the enclosed porch for the house are on the second parcel. He stated if these homeowners decided to sell off #20-28-031, it would significantly harm the remainder; and they would no longer have a driveway or an enclosed front porch. He stated these two lots as assembled need each other, and one cannot perform as a commodity without the other. Mr. Flager stated that is why it was indicated that they are legally separate, but in fact it is just one lot.

Mr. Dougherty asked where the addition is going, and Mr. Connors stated it is coming off the front porch. Mr. Dougherty asked if they are okay with the setbacks since between the patio which is 10' and the 18' addition that is 28', and he asked what is the setback from the property line from the end of 28-031. Mr. Connors stated the front and rear setbacks are not an issue because they are not extending into either one of them. Mr. Dougherty asked about the side yard setback. Mr. Connors stated he is already on the second lot. It was noted that the driveway is in the side yard. Mr. Connors stated he feels the Board needs guidance if we are to consider this as one lot.

Mr. Solor stated if it were treated as two lots, they both front on the street so technically it would be possible to demolish the one house and build two separate houses if it is not formally converted into one property. Mr. Dougherty stated the addition is on the second lot; and once the addition is built, these two lots are basically performing as one assembled lot. Ms. Reiss stated if it were one lot we would not have all of the issues we are looking at.

Mr. Dougherty asked the nature of the new addition since they will have to ingress/egress through the enclosed patio to get to the addition. He asked if it is an enclosed living area; and Mr. Zavistauskas stated it is, and is currently an office. Mr. Dougherty stated on the drawing it is shown as “enclosed patio” but it is going to be an enclosed porch, and Mr. Zavistauskas agreed.

Mr. Solor asked what would the total impervious area be if it were all combined and what is the full lot size of the two lots combined. Mr. McLoone stated if they were to combine parcel 30 and parcel 31 it would be .41 acres which is 17,859 square feet although he is not sure that you would include the land in between. Mr. Connors stated you would include Lipman Lane because it has been extinguished. Mr. Flager stated he and Mr. McLoone were discussing the fact that the GIS does not have that Easement, but if it was a paper street they may not have been including that so that it looks like one square lot and one narrower, rectangular lot on the GIS site. He stated this is why you get the 17,000 figure and not 22,000. Mr. Solor stated if they are including that impervious area going into that paper lot, it is further complicating this.

Mr. Connors stated if the Easement has been extinguished, legally it reverts to the prior ownership, which he assumes is the other lot. He stated if you look at ownership of both of these, you are looking at 22,233 square feet. Mr. McLoone stated if you were to use the total square footage of the lots in question, the existing impervious surface would be 13.7%, and the proposed would be 15.5% which would still require a Variance.

Mr. Connors asked if the Board could grant approval subject to the two lots remaining under the same ownership. Mr. Solor asked how we would respond to the paper road issue. Mr. Flager stated it was discussed earlier with Mr. McLoone and Mr. Pockl that the Board could approve it subject to the ownership of the paper road being resolved to the satisfaction of the Township. Mr. Flager stated if the properties were to be combined that would be possible as well. Mr. Solor stated the assumption on the paper road would mean the calculation would be what Mr. McLoone just provided which would be approval of bringing the impervious surface up to 15.5% to the total of 22,233 square feet.

Mr. Solor asked if they have provided mitigation. Mr. McLoone stated they were proposing trees. Ms. Reiss stated the problem with trees is that they can die or the next owner may decide to take them down, so trees are not considered as mitigation. Mr. Solor stated a seepage bed could be installed below grade which would be covered with grass, etc. He stated the Board tends to look for this because it is more permanent. Mr. Flager advised Mr. Zavistauskas' contractor/engineer could handle this.

Mr. Dougherty asked what is behind the property, and it was noted it is the Canal.

Mr. McLoone stated a seepage bed 3' deep by 6' wide and 10' in length would suffice and give about 72 total run-off volume control where 69 cubic feet needs to be mitigated.

Mr. Dougherty asked how Lipman Lane would factor into a Motion, and Mr. Solor stated we would have to make the Motion conditioned that the paper road, Lipman Lane, is part of this property since that directly impacts everything. Mr. Dougherty asked if we are going to require evidence of that. Mr. Connors stated if it has been extinguished, it has been Recorded. He added that we would require that either the Deed is provided to the Township or a licensed surveyor in Pennsylvania confirms that it has been extinguished. Mr. Flager stated the Township engineer could confirm that.

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

Mr. Solor asked the Applicants if they understand what is going to be required, and Mr. Zavistauskas agreed.

Mr. Connors moved , Mr. Dougherty seconded and it was unanimously carried to approve the Plan as submitted subject to mitigation of the 15.5% back to 13.7% subject to review and approval of the Township engineer and subject to the Applicant providing proof to the Township engineer that the Lipman Lane Easement has been extinguished and ownership of Lots #20-028-030 and #20-028-031 inclusive of the former Lipman Lane remain under the Applicant's ownership.

APPEAL #Z-23-3-2003 – THOMAS PHILPOTT
Tax Parcel #20-042-099
8 OAKDALE BLVD, YARDLEY, PA 19067

Mr. Thomas Philpott 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 Calculations and Stormwater Management Small Project Volume Control was collectively 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. Philpott stated he is looking to construct a small 8' by 12' shed in the back corner of their property. He stated they are looking to put it within the "2' and 7' that can be seen in the top corner" to avoid impacting any trees or plants that they have on the property.

Mr. McLoone stated what is shown is a plot plan that someone has used in the past for Permits, and this was provided to the resident as a courtesy so that they would not have to hire a surveyor, and they just transposed the new shed construction in the top right.

Mr. Dougherty asked what is the minimum side setback and minimum rear setback for a shed, and Mr. McLoone stated it is 10'. Mr. McLoone stated what is proposed is 2' from the rear and 7' from the side yard. Mr. Dougherty asked Mr. Philpott why he feels it is important not to adhere to the 10 and 10. Mr. Philpott stated that would take them to where they have plantings. He stated he feels what they are proposing is the most appropriate place and it aligns with what they have seen from their neighbors and where their sheds are.

Mr. Dougherty asked if he has had discussions with his two adjacent neighbors, and Mr. Philpott stated he has with the neighbor on the right side but not with the neighbor on the back side.

An aerial photo was shown.

Mr. Solor stated the new deck is shown as larger than the existing deck, and he asked if it is considered impervious. Mr. McLoone stated the deck is not considered impervious as long as water can pass through the deck. There is not a roof proposed over the deck.

Mr. Dougherty asked why he could not put the shed in the other corner of the yard and adhere to the 10' by 10'. Mr. Philpott stated while it is difficult to see it on the aerial, but they have a large garden bed and the paw paw trees in that rear corner that they would not want to take out.

Mr. Connors stated it seems that the neighbors also have sheds in the back corner and there is a gazebo/pavilion. Mr. Philpott noted the sheds in the area.

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

Mr. Dougherty stated although there are trees that have been planted, he feels there is room for the shed on the other side, although he agrees that there are other sheds that are not in conformance where Mr. Philpott wants to put his shed.

Mr. Connors stated he does see a large tree which would screen Lot 142. He stated it also seems that Lot 012 has a fence between the two properties around the swimming pool which ideally would screen the shed. Mr. Connors asked Mr. Philpott if there is a fence between his property and Lot 142, and Mr. Philpott stated there is a wood fence which is probably 7' to 8' high. Mr. Connors stated this is a standard shed that is probably not that big, and it would primarily be screened from the other properties which he feels would mitigate any issues with the view. Mr. Connors stated he is not putting it exactly on the property line so there is the ability to get behind it if any type of maintenance needs to be done without going onto someone else's property.

Ms. Reiss stated it is not even 3', and she asked how they would get a lawn-mower or weed cutters back there. Mr. Philpott stated he believes that he would be able to get behind there with a weed whacker. He stated there are other structures around there, and they have not noticed any significant growth. Ms. Reiss asked if he would consider making it 3', and Mr. Philpott agreed.

Mr. McVan stated he understands that the rule is 10', but he understands that given the lay-out of his yard, what he is proposing makes sense. He stated even if it is 2', nothing will grow there that a weed whacker would not be able to handle.

Mr. Solor stated the neighbors were notified by the Township and there is no public comment, but he stated it is good if people "asking for stuff like this" check with their neighbors ahead of time and provide a sense that they are okay which makes the decision-making process easier for the Board.

Ms. Reiss moved, Mr. McVan seconded and it was unanimously carried to approve the Appeal with the provision that it be 3' instead of 2' and subject to the approval of the Township engineer.

OTHER BUSINESS

Mr. Solor asked that those turning in resignation letters do so by July 31 so that the Township can publicize for more members.

Mr. Flager noted that the next meeting of the Board will be held on Monday, May 15 as Tuesday, May 16 is Primary Day.

There being no further business, Ms. Reiss moved, Mr. Dougherty seconded and it was unanimously carried to adjourn the meeting at 8:30 p.m.

Respectfully Submitted,

Judi Reiss, Secretary