

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – JUNE 6, 2023

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on June 6, 2023. Mr. Dougherty called the meeting to order at 7:30 p.m.

Those present:

Zoning Hearing Board: James Dougherty, Vice Chair
Judi Reiss, Secretary
Matthew Connors, Member
Masood Sial, Alternate Member

Others: Dan McLoone, Planner
Barbara Kirk, Township Solicitor (left meeting in progress)
Adam Flager, Zoning Hearing Board Solicitor
James McCartney, Supervisor Liaison

Absent: Peter Solor, Zoning Hearing Board Chair
Mike McVan, Zoning Hearing Board Member

APPEAL #21-1906 – DECK
(REQUEST FOR 2-YEAR EXTENSION)

Mr. Dougherty stated they are requesting a two-year Extension of their Building Permits to commence at the end of the Commonwealth Court’s Appeal Decision.

Ms. Caroline Edwards, Attorney, stated she is the attorney for the Bausingers who are the legal owners of the property. She stated the Decks, who were the original Applicants, were Applicants under an Agreement of Sale, but when the matter was Appealed, they terminated the Agreement because they had a contingency in the Agreement for Zoning Approval. Ms. Edwards stated the Bausingers are moving forward on behalf of the Variances at this point.

Ms. Edwards stated the Bausingers own the properties which are the subject of the Application. She stated there are two lots – one is more of a “lane-lot type lot,” and one is a larger rectangular lot – located off of Woodland Drive. She stated the Bausingers had an Agreement of Sale for the property with the Decks, and the Decks submitted an Application for Variances to build a home on the property. The Zoning Hearing Board granted the Variances with Conditions on February 1, 2022.

Ms. Edwards stated at the Zoning Hearing Board Hearings, the neighbors, Scott and Katherine MacDonald, appeared as Parties and participated in the Hearings. She stated after the Variances were granted the MacDonalds Appealed that Decision to the Court of Common Pleas of Bucks County on March 10, 2022. Ms. Edwards stated under the Municipalities Planning Code, the Bausingers had a right to intervene as the legal owners of the property which they did within the time required; and they have been Parties to the Action since very shortly after the Appeal was filed, and they continue to be Parties.

Ms. Edwards stated the case proceeded through the Court of Common Pleas, and it is now before the Commonwealth Court of Pennsylvania following an Appeal by the MacDonalds of a Decision of the Bucks County Court in favor of the Zoning Hearing Board. Mr. Dougherty asked if the Court of Common Pleas affirmed the Zoning Hearing Board's Decision, and Ms. Edwards agreed they did.

Ms. Edwards stated the reason they are present this is evening is that Lower Makefield Township has a provision in its Zoning Ordinance, Section #200-105, that says that Variances expire if an Applicant fails to obtain a Building Permit within two years from the date of authorization. Ms. Edwards stated the date of authorization would be the date of the approval which was February 1, 2022. Ms. Edwards stated they are asking for an extension of that date from the Zoning Hearing Board as the Ordinance states, "unless otherwise permitted by the Zoning Hearing Board." She stated the Zoning Hearing Board has the authority to extend the date. She stated they are requesting an Extension so that the deadline would be two years from the date that all Appeals and all rights to Appeal have expired. She stated until there is a final decision on the Appeal, the expenses of obtaining a Building Permit could be lost because if the Appeal comes out against the Bausingers, the Variances would not be valid, and they could not proceed under the Plans that they had prepared.

Ms. Edwards stated in this particular case the Zoning Hearing Board imposed a number of Conditions on the grant of the Variances, and meeting those Conditions will require the Bausingers to incur significant costs. She stated they include the preparation of Revised Plans showing changes to the wetland mitigation and plant density which are required to be reviewed and approved by the Township engineer and a landscape architect. She stated they are also required to make other changes to show fencing and certain connections between roof gutters and downspouts. She stated a Conservation Easement Declaration of Restrictions has to be prepared and finalized before a Building Permit will be issued. She stated a Floodplain Survey also has to be completed

by a licensed surveyor, and Plans showing the floodplain line must be prepared. She stated stormwater management design also has to be reviewed and approved by the Township engineer to show that it accounts for and handles the 100-year storm. She stated these are all significant expenses that require consultants, engineers, and attorneys to get this work done.

Ms. Edward stated they do not see that there is any benefit to require the Bausingers to incur these costs while the Appeal is still pending. She stated the Bausingers have been actively engaged in the Appeal. She stated when the Record had not been sent to the Commonwealth Court, she filed the documentation to trigger the Court of Common Pleas to do that. She stated they feel that they have done everything they could to move the Appeal forward, even though the Bausingers are not the Appellants, and it is the MacDonalds who are the Appellants.

Ms. Edwards stated currently the deadline for obtaining the Building Permit is February 1, 2024, and we are already two-thirds of the way to that time period. She stated the case is not yet ready for a decision by the Commonwealth Court. She stated the MacDonalds' legal brief is due on July 12, and the Bausingers' brief and that of the Zoning Hearing Board will be due thirty days after the MacDonald brief is submitted. Ms. Edwards stated that after the briefs are filed with the Commonwealth Court, the Commonwealth Court will typically schedule oral argument; and after oral argument is held, they will make a decision at some point although there is no time requirement on the Commonwealth Court. Ms. Edwards stated she feels it is unlikely that the Commonwealth Court will come to a decision before the deadline. She stated even if they did, the amount of work that the Bausingers have to do to submit the Building Permit will take a lot of time as they will have to make arrangements with the consultants to get the work done, get it submitted for the Building Permit, and to allow time for the Building Permit to be issued. Ms. Edwards stated that she is asking that the Bausingers not be required to incur those costs until the Appeal has been decided so that they know that they have rights to those Variances.

Ms. Edward stated what they are requesting which is the time to be tied to the end of the Appeal period and expiration of any right of Appeal is consistent with how our Legislature has handled protection from Zoning changes for Subdivision Plans. She stated Subdivision Plans have five years of protection from the date of the Preliminary Plan approval; but the Statute says that if an Appeal is filed, then that time is extended for the duration of the Appeal, so they are asking for something consistent with that which they feels make sense in this case.

Mr. Dougherty asked Ms. Edwards how she arrived at two years as the amount of time they would require, and Ms. Edwards stated it is because two years is what the Ordinance requires. She added that it is two years from the date of approval, and they are indicating that they should not be penalized because an Appeal has been filed.

Mr. John Fenningham, attorney, was present. He stated on December 21, 2021 the Zoning Hearing Board members at that time described the conditions as a requirement for the Applicants to present additional evidence in support of the relief granted. He stated it was clear that they were to do so as part of the on-going Land Development process. He stated he had raised an Objection saying that his clients would not be able to participated directly in that on-going process, and he asked for the right of his clients to participate in the post-Hearing survey; and that was the fifth Condition of the December 21, 2021 transcript carried over into the Decision of the Zoning Hearing Board. He stated immediately after the December 21, 2021 Final Hearing before the Zoning Hearing Board, he pursued Mr. Murphy, who represented the Decks, in an effort to coordinate the immediate scheduling of the post-Hearing survey to satisfy Condition 5 of the Board's Decision.

Mr. Fenningham stated he believes that fifth Condition is dispositive in that the issue that was raised and presented before the Board by Mr. Geonnotti, the expert for the Decks, and by his client's expert, Mr. Vince Fiorvanti, who is a land surveyor and a civil engineer, presented the issue of whether the proposed Residential structure's location was in or not in the floodplain. Mr. Fenningham stated Mr. Fiorvanti's Exhibits and Testimony was that the structure was clearly planned to be in the floodplain, and Mr. Geonnotti disputed that. Mr. Fenningham stated from the transcript he understood that the fifth Condition was designed to address that very issue. He stated he sought to pursue that because if the structure is in the floodplain then the Decks (now the Bausingers) could not proceed because that area is protected under Ordinance. He added that the entire flag lot, which is where the structure is proposed to be constructed, is 100% protected area.

Mr. Fenningham stated as far as the Bausingers "not delaying things," he pursued that someone should conduct the survey immediately. He stated when he was advised that the Decks withdrew and Ms. Edwards entered her appearance, he immediately spoke to her to again coordinate someone conducting the post-Hearing survey for the reasons he mentioned. He stated he has been pursuing that for eighteen months.

Mr. Fenningham stated the Judge did Deny the Land Use Appeal by an Order dated October 3, 2022. Mr. Fenningham stated his clients then Appealed to the Commonwealth Court. He stated under the procedures, they then filed with the Trial Court, Judge Finley, a document that is described as “Matters Complained of on Appeal.” He stated as result of Judge Finley reading that document, he entered a Rule 1925A Memorandum Opinion. Mr. Fenningham stated that Memorandum Opinion is not binding on the Commonwealth Court, and it is advisory; however, Judge Finley expressly stated that when he Denied the MacDonalds’ Appeal, he assumed that the fifth Condition, the post-Hearing survey, would be done “in due time.” Mr. Fenningham stated when Judge Finley read the “matter of the errors,” he wrote a Memorandum Opinion dated December 18, 2022 in which he requested the Commonwealth Court to remand the Appeal back to him so that he could take appropriate action in the context of the fifth Condition – that is the post-Hearing survey. Mr. Fenningham stated he feels it is clear that Judge Finley would order the post-Hearing survey to be done because of its dispositive nature in the context of the Appeal. Mr. Fenningham stated Judge Finley told the Commonwealth Court that if they remanded the Case back to him, he would take appropriate action so that the Appeal might be resolved.

Mr. Fenningham stated the Zoning Board Decision did not state a deadline for this fifth Condition to be fulfilled. He stated for that reason, he does not think the Zoning Hearing Board has jurisdiction at this point in time nor does the Trial Court have any more jurisdiction because of the Appeal to the Commonwealth Court. He stated he does not feel the Zoning Hearing Board can take action with regard to the Conditions imposed in 2022. He stated he feels the Case has to stay as is, and the matter proceed. He stated he would still want to work with the Bausingers to coordinate the survey to be done as soon as possible. Mr. Fenningham stated he does not feel a two-year Extension has any merit with regard to where the Case is now. He stated his concern is that the Commonwealth Court may react to Judge Finley’s Memorandum Opinion; and despite the Briefs and the time and effort and expense to both the Bausingers and his clients, the Case could be remanded by the Commonwealth Court back to the Judge Finley which would only result in Judge Finley presumably ordering the fifth Condition post-Hearing survey to be conducted. Mr. Fenningham stated if the Zoning Hearing Board were to change its Order, it would be adding a deadline and indicating that they have two more years. He stated he feels that the Board could take the request under advisement. He stated he and Ms. Edwards are still working to try to find a way to resolve this Appeal including the post-Hearing survey. He stated granting a two-year Extension

and allowing the Commonwealth Court to run its course and then wait for Judge Finley to possibly issue an Order is just delaying this even further. He stated his clients are the ones who want to have the post-Hearing survey conducted, and they have been consistent in that position.

Mr. Fenningham stated he does not take issue with the significant cost. He stated he does not feel they are asking for all of the Conditions to be fulfilled as they are not necessarily what is at issue, and the issue is the fifth Condition with regarding to the licensed surveying doing the grid work to confirm whether the structure is in the floodplain or not. Mr. Fenningham stated Mr. Connors has stated that if the results of the survey uphold Mr. Fiorvanti's Testimony, he would reverse his vote; and it would become a three/two vote to Deny the Variance relief. Mr. Fenningham stated that is in the Record, and that makes this Case somewhat unique.

Mr. Fenningham stated Ms. Edwards had noted the two-year rule and the language that "unless the Zoning Hearing Board extends it," and he stated that is not in the context of a Case on Appeal. He stated that is in the context typically of an Applicant who has not "advanced the ball," whether it is a one-year or a two-year validity period; and comes in with good cause and explains why they need more time. He stated in that context the Zoning Hearing Board has the ability to re-consider under the MPC and the Zoning Ordinance; however, he would argue not when there is a pending Appeal, and that Decision of the Board cannot be modified by the Zoning Hearing Board.

Mr. Fenningham stated he feels that the Zoning Hearing Board should either Deny this request or take it under advisement. He stated he and Ms. Edwards will try to come to some way to "advance the ball" in regard to the survey. He stated he feels we all agree that if the outcome of the survey is that the structure is in the floodplain, there would have to be a new Application and a new Plan. He stated if the structure is not in the floodplain according to the post-Hearing survey, there are still issues within the context of the other Conditions and the issues that his clients have raised on Appeal with regard to the adequacy of the stormwater management controls, the rain garden and the piping, and the flow of the surface water from above the Bausingers' flag lot downstream through the creek. He stated this case has significant factual background to suggest that this request should be denied, and the matter should proceed or the Board should take it under advisement, and they will move forward to see if they can come up with a practical way to resolve the survey and then the issues of the stormwater management controls.

Ms. Edwards stated they did not come tonight to re-litigate the Zoning Hearing Board Hearing, and she did not bring up the substantive issues because that is not relevant to the Zoning Hearing Board. She stated they are here on the issue of the provision of the Zoning Ordinance that limits the amount of time that a Variance remains valid and able to be used. She stated she assumes the Ordinance was put in place to avoid people getting a Variance and then ten years later coming back in when there have been changes in the Ordinance, etc. She stated that is not the case in this situation since the Appeal is completely outside of the control of the property owner, but they are being subjected to it.

Ms. Edwards stated she takes issue with what Mr. Fenningham said that the sole issue is the survey. She stated there are six Conditions which have to be met and the survey is just one of them. She stated there are also other Plans that have to be changed and other evaluations that need to be submitted to the Township engineer; and all of those together are a significant cost.

Ms. Edwards stated that she does not agree that the Zoning Hearing Board does not have the authority to consider a request for an Extension. She stated there are times when Applicants come in and request a change of Conditions at a later date due to a change of circumstances; and even though the Board has previously ruled on it, the Board has the authority to consider something like that. Ms. Edwards stated what is being requested is specifically something that the Zoning Hearing Board has to consider since there is no other Board to go to request an Extension. She stated she believes that this has happened before as it has happened in other Municipalities where she has done business, and they have considered requests of this type.

Ms. Edwards stated they would like a decision as soon as possible because if it is Denied, they need to move forward right away to get the Plans done; and holding this off would delay their ability to make decisions. She stated she believes that if they got to February 2 and they did not have an Extension and were not able to get a Building Permit, that the MacDonalds would say that the case was moot because the Variances had expired; and they would like to avoid that situation.

Ms. Reiss stated they do not know what the Commonwealth Court will decide or when they will make a decision. She stated there are several Conditions and not just one.

Mr. Flager stated our local Ordinance permits the Zoning Hearing Board to grant an Extension, and this has been done in the past. He stated the Bausingers' reply brief as well as the Zoning Hearing Board's reply brief would be presumably be due sometime in August, oral argument could be scheduled sometime in the fall, and it could then take some time before there is a Decision.

Mr. Connors stated he sees no reason not to grant the Extension to allow them to have time as they go through the Appeal process.

Mr. Dougherty stated he agrees, and he does not feel the Zoning Hearing Board has the jurisdiction to go against our own Ordinance. He stated Judge Finley could have ordered the survey to be done, and he did not.

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

Mr. Connors moved, Ms. Reiss seconded and it was unanimously carried to grant an Extension for two years from the expiration of all Appeals and any time period to Appeal.

APPEAL #Z-23-2006 – SHERRY NUNEZ
Tax Parcel #20-037-001-001
2009 WOODLAND DRIVE, YARDLEY, PA 19067

Ms. Sherry Nunez and Mr. Rigo Nunez were sworn in.

Mr. Dougherty stated at the last Hearing the Applicants opted to proceed with a Continuance to re-visit what they had initially proposed.

Mr. Nunez stated the pergola that they wanted to install was 2' from their property line, and it was suggested that 4' would be okay. He stated they called the manufacturer of the pergola to look at where they wanted the pergola to be set in, and they could get it to 4' from the property line; but that is the furthest away from the property line that they could get it. Mr. Dougherty asked if that is because of the steps, and Mr. Nunez agreed. He added that there is also a side gate with a door; and if you move it any further, it would be in the middle of the door.

Mr. Flager stated there was also the issue of the wires overhead. Mr. Connors stated you cannot be within 10' of a 15 KVA line, and it is running down the property line between these two houses. Mr. Connors stated it is a safety issue. He stated this is a three-quarter acre lot, and he does not understand why we are looking at a Variance for something that is right up against the property line when there is a "huge back yard." He stated he does not see a hardship.

Ms. Nunez showed where the power line is, and she stated from the top of the roof of the pergola to the power line is 11'. Mr. Connors stated he is a civil engineer, and on every project that he has worked on, they have had to maintain a 10' horizontal separation between the line and the building. Mr. Dougherty asked Mr. Connors if he is referring to the "fall line," and Mr. Connors agreed.

Mr. Dougherty stated he does not recall that the Zoning Hearing Board had indicated that if they moved it to 4' they would approve it. He stated he recalls that they wanted more information on the wire issue and were also looking for what would be the most that they could move the pergola. Mr. Nunez stated he agrees that is was just a number that was discussed.

Mr. Nunez showed on the Plan the location of the power line that he understands he must be 10' away from. He also showed another power line that goes across and it seems that he could not put the pergola anywhere. Mr. Dougherty stated he feels it could be put it between the pool and the house although he is aware that it would impact their view. Mr. Nunez stated there are huge windows, and the poles would be where the windows are which would not be pleasing aesthetically. He noted the location of the large windows.

Ms. Nunez stated with regard to the power lines, she asked if the Zoning Hearing Board has the authority to approve a Variance that it would be less than 10'. Mr. Connors stated he does not feel the power line is the issue. He stated they have 190' from the edge of the pool to the rear of the property, and they are trying to "jam everything down the side setback." He stated he does not see where the hardship is in this project.

Mr. Nunez stated where they have it proposed it is an outdoor living space. He stated in the event that it rains, the pergola has louvres that automatically close. He stated they also want to put a television on the side of the house

where the pergola is so that they can watch television outside. He stated if they were to set it all the way in the back, for entertainment purposes, if they were cooking, they would have to bring the food all the way out there.

Mr. Connors stated they could put it behind the pool, and they would not need a Variance as they have a three-quarter acre lot. Ms. Nunez stated they have power lines that cut them in half.

Mr. Dougherty asked Mr. Flager if the Zoning Hearing Board has the jurisdiction to grant a Variance inside the Easement area. Mr. Flager stated the Board does not have that jurisdiction; and the problem would be that even if the Board granted it, the Township could still deny the Permit because of the issue with the wire. He stated what they are here for is the setback from the property line, and he feels the other issue is more germane to getting a Building Permit. He stated if they are not able to get a Permit, he does not feel the Board is inclined to grant relief that can never be actualized.

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

Mr. Dougherty stated he does not feel that there is a legitimate hardship case.

Mr. Connors moved, Ms. Reis seconded and it was unanimously carried to Deny the Appeal.

APPEAL #Z-23-2007 – NATHAN SIMCOX/HYDROSCAPE
Tax Parcel #20-047-095-001
73 GLEN DRIVE, YARDLEY, PA 19067

Mr. Nathan Simcox was sworn in.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Plans were 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. Simcox stated they are looking to install a fiberglass pool and pool decking. He stated the allowable is 13% of impervious coverage, and they are at 15.5% according to the As-Built. He stated they are looking to be at 18.8% and

remediated with stormwater management. Mr. Dougherty asked what they are proposing for stormwater management remediation. Mr. Simcox stated it is an infiltration trench. Mr. McLoone stated they reviewed the numbers, and they are going to mitigate it back to the existing 15.5%.

Mr. Connors asked if the project is only the pool and the surrounding deck, and Mr. Simcox stated it is. He added that they have an existing fence, and he does not “think there is much added onto the project.” Mr. Connors asked if it is concrete decking around it, and Mr. Simcox agreed.

Ms. Kirk stated the Township is participating in this matter. Ms. Kirk stated based on the Plan it appears that the existing driveway is 1,630 square feet; and Mr. Simcox stated while he did not personally measure it, he believes that what is shown on the Plan is accurate. Ms. Kirk stated the driveway runs along the side property line to the house, and Mr. Simcox agreed. Ms. Kirk stated the pool deck is proposed to be 800 square feet, and Mr. Simcox agreed. Ms. Kirk asked how wide will the decking be around the pool, and Mr. Simcox stated 4' is the typical surround. Ms. Kirk stated there have been other Applications where the coping was 3', and she asked if that is a possibility; and Mr. Simcox stated he has been doing 4' surrounds. Ms. Kirk stated there is a walkway from the back of the house to the pool that will be connected to the deck, and she asked how large is that area. Mr. Simcox stated it will all be compensated in the 800 square feet. He stated the pool will be 520 square foot around at 4' and from that 800 the rest of that area would be relative to 280 square feet.

Ms. Kirk stated the reason she is asking is because typically the Variance request is supposed to represent the minimum relief necessary, and she asked if there is any way to reduce the size of the deck coping to bring the impervious surface coverage down since the property already exceeds what is otherwise allowed under the Zoning regulations. Mr. Simcox stated while they could do a 3' surround, the functionality for a pool is important. He stated the compensation of stormwater management with the infiltration trench creates a non run-off effect of the new impervious space. Ms. Kirk stated the infiltration is to go back to the 15.5% that already exists at the property, and Mr. Simcox agreed.

Ms. Kirk stated what is being proposed from what is permitted is a large increase. Mr. Simcox stated it is 5%, and he feels that is standard in a lot of approvals he has been involved with in Lower Makefield and they have gone to 24% over 18%.

Ms. Kirk asked if the Board were inclined to grant the request could the infiltration pit be designed to bring it back to 13% impervious surface; and Mr. Simcox stated he would agree to that, and they could change the size of the trench.

Mr. McLoone stated he spoke with Mr. Majewski who stated that when the house was built the lots were originally R-2, and they did not have impervious back then; and he believes the house was built with the intention of being able to handle 18%. Ms. Kirk stated the Township's concern is that over the course of time with more and more construction within the Township, we have greater stormwater run-off; and to the extent that they can create a pit to handle the stormwater flow back to 13%, it would be more beneficial to the property. Ms. McLoone agreed.

Ms. Carolyn Abramson, 701 River Road, was sworn in. She stated her question is with regard to the "re-design of the floodplain on her abutting property." She stated her property is between the River and 73 Glen Drive. She stated with the "re-doing of the floodplain," the back part of her property is in a floodplain as is the property behind hers. She stated as her property is higher, she is not necessarily concerned with run-off that flows from her property off the back of her property, but the concern is that now with the impervious surface, that it could potentially come back to her property. She stated she understands that they are discussing pulling it back to 13% impervious with the storm infiltration bed, but her concern is specific to the percentages that are proposed.

Mr. Dougherty advised Ms. Abramson that if the Board is going to vote on this, it would be that they are to remediate it back to the 13% so that she would be in a better position than she is now because at present they have 15.5% impervious.

Mr. McLoone stated the home is not in the 100-year floodplain.

Mr. Connors moved, Ms. Reiss seconded and it was unanimously carried to approve the Appeal for a maximum impervious surface of 18.8% being remediated back to 13% subject to the review and approval by the Township engineer.

Ms. Kirk left the meeting at this time.

APPEAL #Z-23-2008 – MARK HAVERS
Tax Parcel #20-034-132-001
1155 BIG OAK ROAD, YARDLEY, PA 19067

Mr. Lukasz Kaniewski and Ms. Irena Kaniewski were sworn in. Mr. Kaniewski stated they are the residents at 1155 Big Oak Road.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Plans were marked as Exhibit A-2. The Impervious Calculation was marked as Exhibit A-3. The Proof of Publication was marked as Exhibit B-2. The Notice to the neighbors was marked as Exhibit B-3.

Mr. Kaniewski stated they are looking to get their back yard finished to make it safe for their children. He stated they are located on Big Oak Road which is a very busy road. He stated they are looking to fence in the property and finish it off in the back with a patio and potentially a pool and a cabana sitting area and also a shed for storing equipment. He stated they want to make sure it is safe for the children so that they do not run out into the front where the road is always bush and dangerous.

Ms. Kaniewski stated they currently have four children, three of theirs, and they are sponsoring a family Ukraine, a mother and her child, and she is also pregnant with her fourth child so there will be five children soon. She stated it is a busy household, and they would love to have an area in the back yard where the children can play and be locked in, and she could watch them from the sitting area.

Mr. Connors asked if the driveway is included in the impervious calculations. Mr. McLoone stated it was, and it is 1,900 square feet. Mr. Connors stated he understands that the only thing being added is the proposed pool in the back yard, the cabana, and the shed.

Mr. Connors asked if they are providing mitigation; and Mr. Kaniewski stated they probably could, and he would have to discuss this with Mr. Havers as to how to incorporate it. Mr. Kaniewski stated they have a rain garden in the front, which he understands was built larger than originally proposed. Mr. McLoone stated he spoke to Mr. Havers who indicated that one of the stormwater management techniques they could do would be a seepage pit which would involve digging a hole and putting in rocks. Mr. Kaniewski stated that is what they currently have in the front. Mr. McLoone stated that only mitigates the existing impervious. Mr. Connors stated it looks like it was sized for the

house and the driveway. Mr. McLoone stated they will have to create another one for the additional impervious being proposed. Mr. Kaniewski asked if it would go in the corner in the back, and Mr. McLoone stated that would be acceptable provided it is 10' off the property line.

Mr. Dougherty stated it appears there is plenty of room, and this is standard operating procedure anytime new improvements are being added which increase the impervious.

Mr. McLoone stated they need 472 cubic feet of required control volume, and a seepage pit that was 4' deep by 8' wide by 38' long would be able to account for that increase. Mr. McLoone stated it does not have to be that specific dimension but it is a place to start. He stated he could provide a copy of what he has discussed to Mr. Kaniewski and his engineer. Mr. Connors asked if that gets them back to the 21%, and Mr. McLoone stated he believes that it would get them back to 20.9%.

Ms. Sandra Guzikowski, 1205 Big Oak Road, was sworn in. She asked where the proposed drainage pit would feasibly be put. Mr. Dougherty stated Mr. McLoone provided a dimension, but it could be a different dimension that would add up to the required volume. Ms. Guzikowski showed the location of her property. Mr. Dougherty stated the Township engineer will work with Mr. Havers, the engineer for the Applicant, to determine the best location; but it will be within Code which means it can be no closer than 10' to the property line. He added it is an underground seepage bed.

Ms. Guzikowski asked who would be responsible for it if it were to fail, and asked if it would be the Township for permitting it. Mr. Connors stated the owners would be responsible for the system. Ms. Guzikowski stated she was present when this lot with the house and the house next to it was one lot in 2007. She stated the owner of the property, Prime Properties, came in to get a Subdivision so that two houses could be built. She stated at that time, there was an awareness that stormwater was going to be an issue there. She stated they were told that if they were building houses of the size proposed, they would be strict "with that limit." She stated at that time Nancy Frick indicated they should make sure that subsequent owners are aware of that limit so that they do not come "asking for things that are going to be difficult to provide for Variances." Ms. Guzikowski stated this is substantially more impervious surface, and she asked what has changed since that time. Mr. Dougherty stated he does not know what that time was or if anything has changed. Ms. Guzikowski stated

in 2007, the Township, Nancy Frick, specifically asked that they put into Disclosure Agreements that this is to be built to that impervious surface limit; and that if they are asking for something more, “you are probably not going to get it.” Ms. Guzikowski stated the reason why is the stormwater.

Mr. Flager asked Mr. McLoone if there is a Deed Restriction, that would be one thing; however, if there is no Deed Restriction, and it was just something that was said, that would have no legal effect. Mr. Flager stated he is not aware of any Deed Restrictions, and he does not know if the Applicants are aware if there is a Deed Restriction.

Ms. Guzikowski stated as this property was being built, they were clearly encountering more water than they expected; and as soon as they dug the basement, they were pumping water out seven days a week into her field. She stated she went to Mr. Majewski a few times about this. She stated she also recalls the rain garden in the front being built, and it did not handle what was being built on the property; and when it rained for the first time, it filled up “like a swimming pool and it stayed full.” She stated they had to come back and nearly double the size of it. She stated she is concerned that what they are proposing for this drainage pit could also fail. She stated if there is a stormwater problem and it affects her or any other neighbor, she would like to know who is responsible. Mr. Dougherty stated he understands her concern. He stated the engineering of the stormwater management seepage bed is based on very good science, and it should not fail. He stated since he has been on the Board he is unaware of anyone coming back and indicating there were problems and their yards were flooding. He stated he feels they have had an overall positive effect since they have been mitigating stormwater management back further than where it had started. He agreed there are no guarantees.

Ms. Guzikowski asked if the property owner will be responsible if there is an impact on neighbors, and Mr. Dougherty stated they are. Mr. Connors stated if it fails per the Code, the property owner would be responsible. Mr. Flager stated the Zoning Hearing Board will make the decision; however, as it relates to the specifications of the seepage bed or any type of mitigation effort, it goes to the Township engineer or the Township staff to approve it and make sure that the calculations are correct and that they comply with the Conditions the Zoning Hearing Board implements. He stated it is on the Township to make

sure that the specifications match what the Zoning Hearing Board does and make sure that it is constructed and implemented properly so that it does actually work. Mr. Flager stated from his experience with a lot of Municipalities, there were a lot of things that were done fifteen to twenty years ago that would not be done now. He stated the Township is pretty good about making sure these things are right because it effect the Township as a whole.

Ms. Guzikowski stated she was concerned that when there was discussion about how to mitigate this, a calculation was given right away, which she feels is “very last minute.” Mr. Dougherty stated the approval will be contingent upon the Township engineer working in conjunction with the Applicant’s engineer coming up with an approved Plan together.

Mr. Dougherty stated Mr. McLoone was just giving some raw numbers as to what the numbers would be to offset the cubic volume. Mr. Connors stated the engineer needs to put together a design and submit Plans to the Township, and the Township engineer will review them to make sure they are comfortable with it or may make other recommendations. He stated that is outside of the Zoning Hearing Board’s jurisdiction.

Mr. Flager stated if the Zoning Hearing Board were to approve this back down to the 21%, it would be up to the engineer for the Applicant to work with the Township engineer to come up with the specific plan which must comply with the Conditions of the Zoning Hearing Board. He stated there could be a number of different configurations as to what the seepage pit could be, and the Zoning Hearing Board does not tell them what the specifications have to be including the size and where it should go as long as it mitigates the amount required.

Ms. Guzikowski asked what type of fence they are proposing and how close it will be to her fence. Mr. Kaniewski stated the fence will be in the front “locking off Big Oak Road, and the fence will be to the neighbor.” He advised Ms. Guzikowski, “I will be keeping your fence as my fence.” Mr. McLoone stated a fence will need to be installed to enclose the pool. He added it needs to be at least 4’ high with self-latching, closing doors.

Mr. Connors stated he understands that they just moved into the house a couple of months ago, and Mr. Kaniewski stated they moved in February of last year. Mr. Connors asked if it was custom built or did he buy it from the builder after it was built. Mr. Kaniewski stated they are renting it. He added that his family has a building company, Mar Mar, which built this house; and he is renting it from them. Mr. Dougherty asked Mr. Flager if that has any bearing on the Zoning Hearing Board being able to render a Decision.

Mr. Flager stated he thought that the Applicant was the owner. Mr. McLoone stated that the owner is listed as Mar Mar Builders on the BOA. Mr. Flager stated the previous Application had Mr. Simcox who was the Applicant and not the owner. Mr. Dougherty stated in this case the Applicant was the engineer, and Mr. Kaniewski stated he was not able to come this evening because his daughter was graduating. Mr. Flager stated a lot of times there are contractors who are the Applicants on behalf of the owners.

Mr. Sial asked Mr. McLoone if the size of the rain garden at 8 by 12 by 30 is the minimum requirement, and Mr. McLoone stated he believes that is what was approved at the Land Development process in order for it to be approved. Mr. Sial asked if the size could be increased to take care of Ms. Guzikowski's concern. Mr. Dougherty asked Mr. Sial if he is talking about the rain garden or the proposed seepage bed, and Mr. Sial stated he is talking about the rain garden. Mr. Dougherty stated there is a rain garden in the front of the house, and what the Board is discussed is a proposed seepage bed. Mr. Sial stated the seepage bed would be in the back, and Mr. Dougherty agreed. Mr. Sial stated that is the one he is talking about. He asked if they can increase that size because they have a lot of room in the back. Mr. Dougherty stated while they could, generally we are comfortable getting back to full remediation.

Ms. Reiss moved and Mr. Dougherty seconded to grant the Appeal as long as the remediation takes it from 29.6% back to 20.9% pending approval of the Township engineer. Motion carried with Mr. Dougherty, Ms. Reiss, and Mr. Sial in favor. Mr. Connors stated he is Abstaining because he is concerned that it was just built, and we are already doing Variances on it. He stated he is concerned that it was built in February, and they are already seeking Variances for it.

APPEAL #Z-23-2009 – ALLEN DEPUY
Tax Parcel #20-020-115
114 DOLINGTON ROAD, YARDLEY, PA 19067

Mr. Allen Depuy was sworn in.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Plans were marked as Exhibit A-2. The Impervious Surface 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. Depuy stated he is looking to build an outdoor space. He stated they have an existing deck, and they are looking to add a patio as a landing so that there is a space for their pets to help with not tracking in mud as well to further enhance the aesthetics of the property. He stated he knows that in speaking with Mr. McLoone previously, when he bought the property approximately nine to ten years ago, it may have been a non-conforming lot at that time. He stated he believes the calculation was 22.7%, and this takes it up about 1.7%. He stated he is open to different types of mitigation although he would prefer trees. He stated there is a neighboring fence behind him; and if you have been along that road, you may have seen it, and he would like to block that fence.

Ms. Reiss stated while she is in favor of trees; and while Mr. Depuy is the property holder now, they cannot be guaranteed that the trees will survive or that a subsequent property owner decides they do not want the trees. She stated while she hopes he will still put in the trees which will mitigate, it takes a long time before the tree is big enough so he will have to do other mitigation.

Mr. Connors asked the type of patio being proposed, and Mr. Depuy stated he believes he submitted for a concrete patio. Mr. Connors stated if they were to do a pervious patio they would not have to put in as big of a detention system. Mr. Dougherty stated that would be the Applicant's choice. Mr. Dougherty stated with a concrete patio and the seepage bed, it would probably be less expensive than putting in pervious pavers. Mr. Connors stated cost does not play a part in the discussion, and this would just be a way to do get away from doing the seepage bed. He added he does not have a problem with the project provided they do mitigation. Mr. Depuy asked if they were to do a paver patio, that would reduce the mitigation, and Mr. Connors stated it might although Mr. Depuy would have to discuss this with Mr. McLoone.

Mr. Connors discussed projects that he has done in the past with blocks with a 1" separation with stone underneath, which compensated for the run-off by getting absorbed underneath the patio. He stated it is a shallow system and when it rains, it is pulled into the voids in the rocks and it slowly dissipates back into the soil; and they did not have to worry about groundwater because it was such a shallow system. He stated some of the products available have nice finishes.

Mr. McLoone stated EP Henry has pervious pavers, and a lot of the newer Subdivisions off of Dobry Road have used these. Mr. Dougherty stated the Motion can be worded such that Mr. Depuy would not have to make a decision this evening.

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

Mr. Connors moved to approve the Appeal for impervious surface of 24.4% mitigating it back to 18% with review and approval by the Township engineer.

There was discussion about taking it back to what is existing at 22.7%.

Mr. Connors moved, Ms. Reiss seconded and it was unanimously carried to approve the Appeal for proposed impervious surface ratio of 24.4% with mitigation back to 22.7% subject to review and approval by the Township engineer.

There being no further business, Ms. Reiss moved, Mr. Connors, and it was unanimously carried to adjourn the meeting at 9:15 p.m.

Respectfully Submitted,

Judi Reiss, Secretary