

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – SEPTEMBER 19, 2023

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on September 19, 2023. Mr. Solor 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
Matthew Connors, Member
Mike McVan, Member

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

Absent: James McCartney, Supervisor Liaison

APPEAL #Z-23-2032 – MURPHY/PEMBROKE
Tax Parcel #20-012-006-005
777 TOWNSHIP LINE ROAD, YARDLEY, PA 19067

Mr. Solor stated there are steps that need to occur with other Boards in the Township before it comes to the attention of the Zoning Hearing Board so it will need to be Continued.

Mr. Dougherty moved, Ms. Reiss seconded and it was unanimously carried to Continue the matter to October 3, 2023.

APPEAL #Z-23-2029 – KONYVES/WHITBY
Tax Parcel #20-037-061
968 QUEENS DRIVE, YARDLEY, PA 19067

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 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.

Mr. Eric Snee, KS Pools and Patio, was sworn in.

Mr. Snee stated they are putting in an in-ground swimming pool. He stated the front sheet on the Plan shows that the maximum impervious is 18%; and when they moved in before they did anything, they were already at 22%. He stated they want to go to 24%. He stated according to the calculation sheet, they will require an infiltration or seepage pit which is a trench for absorption. This has been added to the Plan, and it can be seen on the right where it states: "Proposed Infiltration Trench 6 by 3 by 26." He stated to the right are the calculations. Mr. Snee stated with everything they want to do they will be at 24.3%.

Mr. Snee stated Page 3 of the Plan has all of the specifications for the trench. He stated the trench will be put near the project, and they will be grading the yard so that the water will flow right to that trench. Mr. Snee stated they have also added two sight line pipes so that they can be inspected by the Township. He stated they were also told that they need a signed O & M Agreement, which the homeowner is willing to do. Mr. Snee stated they have "beefed up" the trench a little bit so that they could handle about 25.2% even though 24.3% would be the total impervious. Mr. Snee stated Page 3 shows exactly what is entailed and how it will be address. He stated there is 468 cubic feet of modified stone wrapped in a geo-textile with two sight line pipes so that it can be seen if the perforated pipe is doing its job. He stated he assumes the O & M Agreement includes the Township inspecting that.

Mr. Snee stated initially the Whitbys, the homeowners, were going to use trees, and there have been times in the past when he has been able to use trees in certain areas as a stormwater management tool; however, we were informed that because of the Variance the Township wanted a trench which is fine. He stated the customer is still going to add the trees for aesthetic purposes so that will offer additional stormwater management. Mr. Snee stated that he is confident that the drainage will be better after the pool goes in. He stated they will be covering the addition plus a little bit more.

Mr. Dougherty stated Mr. Snee had stated that they were going to grade the water to the seepage pit, and he asked if he is submitting a Grading Plan. Mr. Snee stated it is shown on Page 1, and there is also some terminology included on Page 3 as to how they have it graded to that area.

Mr. McLoone stated they also got a letter from Bucks County Conservation District that the E & S Plan was adequate.

Mr. Solor stated there has been discussion on other Applications in this neighborhood. He asked Mr. Snee if he is aware of any concerns by the neighbors, and Mr. Snee stated he has not heard any objections. Mr. Snee added that the drainage is not bad there now at any point.

Ms. Kirk stated the Township asked that she participate because at the time they reviewed the Application they did not see the stormwater management calculations that were provided. She asked Mr. Snee if he prepared the calculations; and Mr. Snee stated that he did not, and it was Ken Seeley, the PLS, who signed and sealed the Plans who did those. Mr. Snee stated Mr. Seeley was not available this evening due to another commitment. Mr. Snee added that Mr. Seeley had been the contact person with the Township, and he was initially told that we could use trees; however, it was then indicated that the trench was needed. Mr. Snee stated according to his conversation with Mr. Seeley today, he advised that he went over what was required as they needed 24.3%, and we are at about 25% according to the calculations. Mr. Snee noted Page 3 has the calculations that they provided.

Ms. Kirk asked if Mr. Seeley prepared the Plans as well, and Mr. Snee stated he did in conjunction with KS Pools and Patio. Mr. Kirk asked if the size of the pool is to be 385 square feet, and Mr. Snee stated that is the total of the pool and the decking that will be put down. He stated it is everything that is considered impervious by LMT. Ms. Kirk asked Mr. Snee how much decking is being installed. Mr. Snee stated the pool is 200 square feet, and the decking is around 181 square feet including the equipment pad. He stated he rounded up and has it at 386 square feet total impervious surface being added to what is existing.

Ms. Kirk stated according to the stormwater calculations, it appears that the proposed seepage pit is about three times greater than what is otherwise required; and Mr. Snee stated while it may not be three times greater, it is certainly greater than what is required. Mr. Snee stated the homeowners were

thinking that if they wanted to do something in the future, they should provide for the impervious now. Ms. Kirk asked Mr. Snee if based on his conversations with Mr. Seeley, the proposed seepage pit will not only eliminate the net effect of the increased impervious surface as a result of the pool and decking, but it will also decrease some of the existing net effect; and Mr. Snee agreed. Mr. Snee stated the impervious limit is 18%, and they are 22% so not only will it alleviate that but it will also address what they are adding plus a little over and above. He added that with the grading and how they take everything to the trench it will “clean up everything in the back yard area.” He stated the homeowners have not had any problems with drainage anyway, and he feels what is being proposed is more than adequate.

Ms. Kirk stated the Township is concerned about the effect of increasing impervious given the recent floods that have occurred. Ms. Kirk asked what the net percentage would be as a result of the seepage pit being installed. Mr. Snee stated he would have to reach out to Mr. Seeley to get that number. He added the seepage pit is 468 cubic which he feels is adequate.

Mr. Solor asked Mr. Majewski if this mitigates the effective area to be less than 18% as currently designed. Mr. Majewski stated based on the calculations provided which were verified, the proposed seepage bed will reduce the impervious surface back to 18.2%.

Mr. Robert Bowden, 960 Queens Drive was sworn in and stated he is the next-door neighbor. Mr. Bowden stated he is concerned about the “equivalency calculation,” and he asked if that holds at any level of rainfall where there could be 8” or 9” of rain in an hour or two. He stated he feels this infiltration pit would overflow and become irrelevant at that point. He stated given the increasing frequency of extreme-weather events in our area, he is concerned about the impact on his property which is slightly downhill from 968 Queens Drive. He stated it is his property that would be effected by an inadequate infiltration pit.

Mr. Solor stated they are doing way more than what is called for in the Township Ordinance. He stated if this was something that was “being built new and it was less than this, they would not have to provide this level of overage to support it.” He stated they are exceeding the standards for the Township.

Mr. Majewski stated there are no stormwater management facilities in the Township that are designed to handle a rain fall like we had a few months ago. He stated 6" to 7" of rain in about one on to two hours is equivalent to what was previously referred to as the thousand-year storm. He added that once it rains that heavily, only so much water can be absorbed in the ground, so it all runs off in the grass. He stated with regard to this property, the water will be directed to drain into the underground seepage bed which is basically a large pit, filled with stone, with piping, and it helps infiltrate the water into the ground. When it is no longer able to handle the rainfall if there were a very intense storm, the water will just flow off like it would if it were grass or pavement.

Mr. Bowden stated he is happy that his neighbors are improving their property in this way and can enjoy their pool, but he wants to make sure that his objection is heard; and if there is a future event of this type, it is his property that will be affected. He stated he wants to be on the Record of objecting to exceeding the impervious surface by more than one third of what is allowable recognizing that it is being mitigated. He stated he is questioning the mitigation capacity in the event of the type of storms that we seem to be increasingly subject to.

Mr. Solor stated if this were all grass, and there was a 9" rain storm, there would quite likely be more run-off with that, than you would with this trench. Mr. Bowden stated that is comforting to know.

Ms. Marci Whitby, homeowner, 968 Queens Drive, was sworn in. She stated they are excited to improve their property, but they wanted to make sure that they went above and beyond by not only doing the pit but also additional trees to give piece of mind and so that it would not affect anyone else.

Mr. Solor moved, Mr. Connors seconded and it was unanimously carried to approve the Appeal subject to stormwater mitigation to an effective impervious area of 18.2% with the means subject to approval of the Township engineer. They are going from 24.3% back down to 18.2%.

APPEAL #Z-23-2030 – MICHAEL MONTGOMERY
Tax Parcel #20-049-245
249 FORREST 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 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. Michael Montgomery was sworn in. He stated they would like to build a 6' high aluminum fence around their back yard. He stated their son has two large dogs, and they would like to fence in the yard for the dogs to be able to run. He stated there is a creek in the back of their house, Big Oak Road to the left, and Forrest Road in the front. He stated it would not be safe to let the dogs loose now.

Mr. Montgomery stated since the request is for the fence to be in the Sewer Easement, he spoke to the Township of Falls Authority Operations Manager, John Ryba, who stated they had no objection.

Mr. Dougherty stated he assumes that Mr. Ryba advised him that if they need to access the Sewer Easement it would be Mr. Montgomery's responsibility to take the fence down and put it back up and to incur those expenses; and Mr. Montgomery stated he did, and they are fine with that.

Mr. Solor asked Mr. Montgomery if he knows where the Sewer line is relative to his property line. Mr. Montgomery stated he has asked several people that, but no one seems to know. He stated there is a manhole on Forrest Road, and there is a manhole on his neighbor's property, and there is a line between them; and he assumes that here are sewer lines that connect to that. He stated there is an outlet in their garage, but where all of the lines are connected, no one seems to know. He stated he even asked the Township of Falls Authority, but they do not even have a map of it. Mr. Solor asked if we have a map of it, and Mr. Majewski stated the sewer line appears to be approximately on the property line. He stated prior to installing the fence, the Township of Falls Sewer Authority will mark out the line to make sure that when the posts are installed, they do not interfere with it. Mr. Majewski stated he does not believe that based on what they have shown on the Plan that the proposed fence will interfere with it.

Mr. Solor stated in the past we have had fence Applications where fences are facing road frontage, and there is a height restriction. Mr. Majewski stated the Ordinance was amended last year so that you are allowed to have a fence in the secondary front yard, (side yard which would technically be a front yard) provided that it is set back 3' for every foot in height you go above the

allowable 3'. He stated in this case with a 6' fence, it would need to be 9' off of the right-of-way line. He stated the Plan clearly shows it is well beyond that so it is compliant with our Ordinance as amended last year.

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 the Sewer Authority marking out the exact location of the sanitary sewer and in addition the homeowner will enter into an Agreement with the Sewer Authority, and if they need to move the fence, it will be their financial responsibility.

Mr. Flager stated he does not believe that they have to enter into an Agreement, but they need to have that understanding and approval by the Board would have that agreement.

The Motion was not voted on.

Mr. Dougherty moved, Ms. Reiss seconded and it was unanimously carried to approve the Appeal subject to an Agreement between the Applicant and our Board that the Applicant will manage any financial cost associated with removing the fence and/or putting it up at the demand of the Seer Authority and also subject to the Sewer Authority identifying the exact location of the Sewer pipe.

APPEAL #Z-23-2031 – VICTOR FIORI
Tax Parcel #20-020-113-004
0 DOLINGTON ROAD, YARDLEY, PA 19067

Mr. Victor Fiori, 1299 Prospect Farm Drive, 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. Fiori stated they are proposing the construction of a 40 by 80 pole barn. He stated the Variance is for the proposed building height as they are looking to get a height of about 26' for the roof peak height. He stated they are also requesting a Variance for the location of the building on the parcel. He stated it is considered a Residential accessory structure, and would not be able to be located in the rear quarter of the lot due to the parcel's shape.

Mr. Solor stated one of the drawings showed a map of the resource restrictions where they cannot build on the property due to steep slopes. Mr. Solor stated that is one of the reasons that it cannot be in the back corner.

Mr. Dougherty asked the intended use of the pole barn, and Mr. Fiori stated he would be using it for storing vehicles and equipment. He stated we have a few antique vehicles that we would like to store there including an antique military truck which is about 11' tall. He stated we would also like to get additional head room in case we ever decide to get a motor home. Mr. Dougherty stated it appears that this pole barn will "semi back up to your house" on Prospect Farm Drive. He asked about the vacant lot, and he asked if something was torn down on it since he saw existing macadam on an aerial map. Mr. Fiori stated currently there is a tennis court, and it is shown on the drawing; and it is much larger than the proposed size of the pole; and they will actually be reducing the impervious surface. He stated the existing tennis court is 125 by 60.

Mr. Fiori stated the parcel is owned by his Grandmother, and she also owns the adjoining lot to the right.

Mr. Victor Fiori, 140 Dolington Road, was sworn in. Mr. Fiori stated he has resided at that location since August, 1969. He stated he was a member of the Lower Makefield Township "Advisory Council" for over six years, has served in the United States Military, and has been cleaning up flood debris from this property his entire life.

Mr. Solor asked the long-term access to the property since it looks like it is landlocked, and he asked if there is an Easement associated with access to it. Mr. Fiori, 140 Dolington Road, stated there is a Recorded Legal Easement that was done with DeLuca Enterprises and his father in approximately 2003. He stated it was from the previous owner of the once Metz Tract, Charles and Marie Metz; and DeLuca property bought their property for a Subdivision Prospect Manor, and a Legal Easement was negotiated. Mr. Dougherty asked if that Easement is across one of the Prospect Farms properties, and Mr. Fiori agreed adding that it adjoins right next to Lower Makefield Township's open space property.

Mr. Dougherty asked about the resource restrictions and asked if there is any other reasonable location for this pole barn. Mr. Connors stated the northern portion cannot be built on. He noted a portion of the property that would be left. Mr. Dougherty asked if there would be "more freedom in that section,"

flexibility to build and not as close to the rear property lines of the Prospect Farm houses. He stated he understands it would not bother the Applicant since he will be using the pole barn, but there is a neighbor to his left.

Mr. Fiori, the Applicant, stated that the property owner, Fidelity Commercial Builders, is owned by the property owner, Esther Fiori. He stated the three houses 1297 Prospect Farm Drive, 110 Dolington Road, and 112 Dolington as well as 122 Dolington are all owned by the Esther Fiori, his Grandmother, who owns Fidelity Commercial Builders. Mr. Connors stated that “Fidelity is Vince, Victor and Susan, and it is all in the family.”

Mr. Connors stated it looks like he is putting the pole barn up where the tennis court is in its entirety; and Mr. Fiori, the Applicant, agreed. He added that the benefit is removing the impervious surface that is there. Mr. Connors stated that if the pole barn is put up where the tennis court is, there is no added impervious, and they are actually reducing it. Mr. Connors stated it appears that it could be put anywhere on the lot “as easily as you are sticking it where it is right now.

Mr. Fiori from 140 Dolington Road stated the tennis court now has easy access to the driveway to bring vehicles on and off, and anywhere else you would have to make a new driveway to access it, which would make more impervious surface to get to it; and Mr. Connors agreed.

Ms. Kirk stated she was asked to participate on behalf of the Township. She asked Mr. Fiori, the Applicant, if the property is owned by his Grandmother; and Mr. Fiori agreed. Ms. Kirk asked if she is aware of this Application tonight, and Mr. Fiori stated she is. Ms. Kirk asked if she issued a letter of authority for him to proceed with the Application, and Mr. Fiori stated she did not. Ms. Kirk asked Mr. Fiori if the Board were inclined to grant the relief would he agree to submit a letter of permission from his Grandmother, and Mr. Fiori agreed. Ms. Kirk stated that way it is documented that someone who does not own the land is proceeding with the requested relief.

Ms. Kirk stated this was designated as being 3 ¾ acres with a present use as pasture or recreation. She asked if there are any other structures on the parcel besides the tennis court. Mr. Fiori stated there is a small shed up against the property line, and that has been there longer than he has been alive. Ms. Kirk asked if that shed will be removed, and Mr. Fiori stated it will not currently.

Ms. Kirk stated Mr. Fiori had indicated that the pole barn would be used to store personal vehicles. Ms. Kirk asked if it will be two stories, and Mr. Fiori stated it will not. She asked if there will be a second floor of any type, and Mr. Fiori stated there will not. Ms. Kirk asked if Mr. Fiori would agree to a Condition imposed by the Board that at no point could there be a second story built inside the pole barn. Mr. Fiori, 140 Dolington Road, stated they have no intentions of making a second floor. Ms. Kirk asked if the Applicant would agree to a Condition that no second floor could be built, and Mr. Fiori, the Applicant, agreed. Ms. Kirk asked if he would further agree to a Condition that this pole barn could only be used for personal storage and not Commercially rented to someone else for storage, and Mr. Fiori agreed.

Ms. Kirk asked the existing impervious surface coverage for this property, and Mr. Fiori, the Applicant, stated that the existing impervious surface is 7.77%. He stated with the proposed building it would come down to 5.26%.

Ms. Kirk asked if there is any issue with stormwater drainage on this property; and Mr. Fiori, the Applicant, stated that besides the recent flood, there is not. Ms. Kirk stated there is no concern that the pole barn will impede or create more stormwater to flow onto an adjacent property owner's lot, and Mr. Fiori stated there is not.

Ms. Reiss asked the Ordinance on the normal height of a pole barn, and Mr. Fiori stated he believes that it is 15. Ms. Reiss asked what they are asking for, and Mr. McLoone stated they are asking for 26'7". Ms. Reiss stated that is almost double. Mr. Fiori, 140 Dolington Road, stated with a pole barn there is a roof pitch, and it was recommended by a lot of people that going with the "6 12" which would raise it up to that height would make it look more like a barn and would fit in with that area. He stated if you go "4 12" it starts getting the industrial look. He stated that would bring it down 3', but it would look more industrial. Ms. Reiss stated her concern was whether it fit in with the Residential neighborhood. Mr. Fiori stated in Prospect Farm there are barns from years ago, and their property has some buildings on a separate tract so there are a lot of buildings there.

Mr. Solor asked if they have talked to the neighbors who back up to this property although he recognizes that they are a substantial distance away. Mr. Fiori, the Applicant stated they did not because they are not in the line of sight of the proposed building. He stated there is a row of evergreens

which were shown on the Plan. Mr. Majewski added that Mr. Fiori's Grandmother owns the first two lots along Dolington, and Mr. Fiori agreed she owns 110 and 112 Dolington.

There was no one from the public wishing to speak at this time.

Mr. Connors moved, Mr. Dougherty seconded and it was unanimously carried to approve the Plan as submitted subject to the Applicant providing a letter from the owner stating that they agree with the project, a restriction that the barn will not be used as Commercial or Residential, and that there not be a second floor.

OTHER BUSINESS

Mr. Solor stated the next meeting of the Board is October 3 with a number of Appeals to be heard that evening.

Mr. Solor stated the meeting after that which is October 17 will be the Cellco Application. Ms. Reiss asked if they feel there will be another Continuance, and Mr. Flager stated that is to be determined. Mr. McVan and Mr. Dougherty advised that they are not available to attend the meeting on October 17. Mr. Solor noted that Ms. Reiss has already been recused. He added that once we do start having the Cellco meetings, everyone including the Alternates should try to make as many meetings as possible so that there is continuity when it gets to the time to make a decision. He stated "we do not need three different people at four different meetings and no overlaps."

There being no further business, Ms. Reiss moved, Mr. Connors seconded and it was unanimously carried to adjourn the meeting at 8:20 p.m.

Respectfully Submitted,

Judi Reiss, Secretary