

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – SEPTEMBER 3, 2013

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on September 3, 2013. Mr. Bamburak called the meeting to order at 7:30 p.m.

Those present:

Zoning Hearing Board: Paul Bamburak, Chairman
Jerry Gruen, Vice Chairman
Anthony Zamparelli, Secretary
Keith DosSantos, Member
Mark Moffa, Member

Others: Robert Habgood, Code Enforcement Officer
John Koopman, Township Solicitor (left meeting in progress)
Mark Eisold, Township Engineer
Barbara Kirk, Zoning Hearing Board Solicitor
Pete Stainthorpe, Supervisor Liaison

APPEAL #13-1663 – GEORGE FOX III

Ms. Kirk stated at the last Hearing this matter was continued until this evening at Mr. Fox's request. Mr. Fox has hired Steven Harris as Counsel who sent her a letter Friday indicating that he has been retained by Mr. Fox, and he is requesting additional time to prepare for the Hearing. He asked that the Hearing be postponed for a month and agreed that any time requirements are waived. The letter was marked as Exhibit A-4.

Mr. DosSantos moved, Mr. Gruen seconded and it was unanimously carried to continue the matter to October 15, 2013.

APPEAL #13-1676 – KARL W. AND CAROLYN FOERSTER

The Application submitted was marked as Exhibit A-1. A copy of the Deed verifying ownership of the property was marked as Exhibit A-2. A two-page Plan entitled "Pool Permit Plan" was marked as Exhibit A-3. Notice of tonight's Hearing was published in the Bucks County Advance, and a copy of the Publication Notice was marked as Exhibit B-1. Notice was posted at the property of tonight's Hearing, and a

copy of the Posting was marked as Exhibit B-2. Notice was mailed to adjacent property owners as required by the Ordinance, and a copy of the letter with the listing of addresses was marked as Exhibit B-3.

Mr. Edward Murphy, attorney, was present with Ms. Carolyn Foerster who was sworn in. Mr. Murphy stated he was not representing the Applicant at the time the Application was submitted, but he was subsequently retained by the Foersters. He stated once he had an opportunity to review the Application and discuss it with the Foersters, he felt it best that the matter be Continued to give them an opportunity to revise the Application to address the impervious issue which he appreciates from past experience is not insignificant. Mr. Murphy stated he understands that the impervious limit had already been exceeded by the time the Foersters purchased the property, and they also added some additional impervious thereafter which they will address as part of a Revised Application. Mr. Murphy stated he would like to return with a Revised Plan that shows the elimination of some existing impervious to offset an increase which should put it in a much better condition for the Board to consider.

Mr. Murphy stated they could be ready at either meeting in October, and it was agreed to continue the matter to October 15.

Mr. Murphy stated one of the Foersters' neighbors is present this evening, and he would like the opportunity to speak tonight so that he does not have to attend a subsequent meeting. Mr. DosSantos stated this would be fine provided he understands that the Plan that is before the Board this evening is not necessarily the Plan that the Board will vote on.

Mr. Arthur Hunt was sworn in and stated he is the neighbor on the west side and has no objections to anything they are doing. Mr. Murphy noted the Plan from the Pool company, and he stated Mr. Hunt's lot is the one closest to the pool where the proposed fence is located.

Mr. Gruen moved, Mr. Moffa seconded and it was unanimously carried to Continue the matter to October 15, 2013.

APPEAL #13-1677 – DAVID SMITH

The Application submitted was marked as Exhibit A-1. A six-page supplement provided was marked as Exhibit A-2. Notice of tonight's Hearing was published in the Bucks County Advance, and a copy of the Publication Notice was marked as Exhibit B-1. Notice of tonight's Hearing was posted at the property, and a copy of

that Posting was marked as Exhibit B-2. Notices were mailed to adjacent property owners as required by the Ordinance, and a copy of the letter with the listing of addresses was collectively marked as Exhibit B-3.

Mr. David Smith was sworn in. Mr. Bamburak stated it appears he is requesting a Variance for a fence in an easement. Mr. Smith agreed and stated he is requesting a Variance to the landscape buffer easement in the rear of the property. He stated as described in the supplementary pages, they are currently experiencing a hardship from the light and noise produced by the traffic at the T-intersection at Edgewood Road and Sumpter Drive. He stated the high beams are waking their eighteen-month-old twin boys at night. He stated they did consider a number of options and feel this request for a Variance is the last option. He stated they did consider the option of erecting a fence not on the buffer easement area; but due to angles involved which are described in his Application, and discussions with landscapers and fence installers, they feel that a reasonable solution would be to allow construction of the fence in the buffer easement area.

Mr. Bamburak asked Mr. Smith if his neighbors have fences; and Mr. Smith stated while his immediate neighbors do not have fences, as shown in Figure 5 on Page 10 there are relatively close by neighbors who do have fences. He stated this Figure also shows that his adjacent neighbors do not face the same noise and light pollution that he does.

Mr. Zamparelli asked Mr. Smith the distance of the intersection to the back of his home; and Mr. Smith stated the right-of-way for Edgewood Road is 80', and he tried to do a profile diagram as close to scale as possible on Figure 2 that shows the back of the house. He stated the first red line to the left would be his assessment of how the first floor light would be blocked if the fence were built in front of the buffer easement. He stated his sons' bedroom window is on the second floor; and due to the way that cars are turning onto Edgewood Road, building the fence within the Township height guidelines closer to the property line would block the light. Mr. Zamparelli asked the height of the fence, and Mr. Smith stated he is proposing a 7' fence which is the maximum allowed. Mr. Zamparelli asked the height of the neighbors' fences, and Mr. Smith stated he feels the fences shown in Figure 6 are 6' high. Mr. Smith stated he proposed to put up the same style fence that his neighbors have, and the specifications are shown in Figure 8, Page 11; but he is proposing that the fence would be 7' high. It would be white which is the same color as his neighbors. Mr. Smith stated the 7' high fence has an additional support beam going through the middle.

Mr. Bamburak asked if he is planning to bring the fence on the side property line, and Mr. Smith noted Figure 4, on Page 9. Mr. Smith stated there are two easements on the property, and he would like to have a Variance to build on the buffer easement in the rear of the property, but would not build on the utility easement on the west side of the property. He stated he would like to build 20' in so that it would go over the landscape buffer easement for structural purposes, but the majority of the fence would be in the rear of the property.

Ms. Kirk asked Mr. Habgood if this property is considered reverse frontage since the rear yard faces Edgewood Road, and Mr. Habgood stated a fence is allowed to go in a Special Setback.

Mr. Moffa noted the fences at 710 and 720 and asked how far off the sidewalk they are located, and Mr. Smith stated he would estimate that it is 3' to 4' from the sidewalk to the fence. Mr. Moffa asked if this is what he is proposing for his fence as well, and Mr. Smith agreed. Mr. Smith added that if his request is granted, to resolve any potential issues with his neighbors as to exactly where the fence would go, he would hire a professional surveyor to do a survey. He stated he feels the sidewalk is setback from his property line by 3' to 4'; and based on where the surveyor says the rear property line is, he would then go in at least 6".

Mr. Gruen asked if there is not a berm on the property, and Mr. Smith stated there is. Mr. Smith showed on Page 8 the view from Edgewood Road and stated that there are some trees in the back of the property. He stated they moved into the property in March, and he was hopeful that the deciduous trees and the bushes would block part or all of the light; however, this did not happen. He stated it is not a dense population of trees. He stated the berm is not the same height throughout the neighborhood; and in the back of his property, the berm actually disappears in the middle of the property.

Mr. DosSantos asked Mr. Smith if his fence will be in line with the fences existing at 710 and 720, and Mr. Smith stated that is his plan.

Mr. Bamburak stated typically the Board imposes a Condition that there be a gap underneath the fence so that it does not impede water flow and a Condition that if access is needed to the easement, the fence would be removed at the homeowners' expense.

There was no one present to speak to this Application, and Testimony was closed.

Mr. Moffa moved, Mr. DosSantos seconded and it was unanimously carried to approve the Variance with the Condition that there be a 2" gap at the bottom so as not to impede water, if the easement needs to be accessed, the fence would have to be removed at the homeowners' expense, and that a survey be required.

APPEAL #13-1678 – THOMAS FOULDS

The Application submitted was marked as Exhibit A-1. A Conceptual Plan provided was marked as Exhibit A-2. A two-page Building Specifications Plan was marked as Exhibit A-3. Notice of tonight's Hearing was published in the Bucks County Advance, and the Proof of Publication was marked as Exhibit B-1. Notice was also posted at the property of tonight's Hearing, and a copy of the Posting was marked as Exhibit B-2. Notices were mailed to property owners as required by the Ordinance, and a copy of that letter with the list of addresses was marked as Exhibit B-3.

Mr. James Foulds was sworn in. He stated Thomas Foulds is his son who is deployed and could not be present this evening, and he is not sure when he will return. He stated he does have a Power of Attorney from him.

Mr. Koopman stated the Township would like to be a Party to these proceedings.

Mr. Foulds stated according to the Building Code, the peak cannot be higher than 12 for an outbuilding; however, Mr. Koopman stated 15' is permitted. Mr. Foulds stated the reason why they want to extend it is because he is in the process of buying a motor home, and he needs at least 14'6" to get the motor home into the building. He stated the peak would have to be higher than 15'. He stated his old barn on the property currently is 22'6".

Mr. DosSantos asked if he is asking for a height of 24', and Mr. Foulds stated he needs additional height so he can get his motor home in. He stated the door opening would have to be at least 14'6". Mr. Bamburak asked if the height of the new structure will be 21'4"; however, Mr. Foulds stated he is not sure what the A-frame will be. Mr. Gruen asked how they could grant a Variance if they do not know the height he wants. Mr. Koopman stated the Application requested 24'. Mr. Foulds stated he does not have that information in front of him. Mr. Bamburak stated the request is for 24', and Mr. Foulds agreed to go with 24'. Ms. Kirk stated this would be 24' to the peak of the A-frame.

Mr. Bamburak stated the proposal is to use the building to store the motor home, and Mr. Foulds stated it would be to store his motor home and his farm tractors. Mr. Gruen asked the size of the property, and Mr. Foulds stated it is 6.38 acres. Mr. Gruen stated the building is going to be almost 36' wide; however, Mr. Foulds stated he does not have the Plans since his son submitted them. Mr. Bamburak stated there is not an issue with the impervious. Mr. Foulds stated it is the height.

Mr. Koopman stated the size of the structure based on the plans would be 2,400 square feet. Mr. Koopman asked if the structure will have water and sewer, and Mr. Foulds stated it will not. He stated there will be electric and probably heat. Mr. Koopman asked if there will be rooms built into the structure, and Mr. Foulds stated he might end up putting a desk there. He stated he works on farm tractors so he may put in a small office with a workbench and heat it during the winter so he can work there. He stated most barns are not heated so he may portion a part off so he can heat it during the winter and work there. Mr. Koopman asked if the rest of the facility would be heated, and Mr. Foulds stated it would not.

Mr. Koopman stated one of the concerns is that originally Mr. James Foulds and his wife, Laura Foulds, wrote a letter to the Township requesting to use the structure for storage of overflow merchandise from an on-line motorcycle company and housing a management office for this company in the facility to conduct minor business transactions. At the time he was just inquiring whether that was permitted. Mr. Koopman stated Mr. Habgood had written back indicating that was not permitted in the R-1 District. Mr. Koopman asked if it is correct that he does not intend to conduct that on-line business in this facility, and Mr. Foulds stated he does not.

Mr. Koopman asked Mr. Foulds if he intends to have any Commercial activity going on in the facility, and Mr. Foulds stated he does not unless they call selling farm product a Commercial business. Mr. Koopman stated he is trying to find out exactly what Mr. Foulds intends to do with the building. Mr. Koopman stated the Application talks about storage repair of farm equipment and personal vehicles. Mr. Koopman stated he assumes the “personal vehicles” would be the recreational vehicle, and Mr. Foulds agreed. Mr. Koopman asked if there are going to be any other personal vehicles stored, and Mr. Foulds stated there will be eight motorcycles which belong to he and his sons. Mr. Koopman asked if the motorcycles are all registered to Mr. Foulds and/or his sons, and Mr. Foulds agreed. Mr. Koopman asked what they are used for, and Mr. Foulds stated they are used for pleasure and show.

Mr. Koopman stated the Application also refers to storage and repair of farm equipment, and he asked whose equipment this is; and Mr. Foulds stated it is his. Mr. Koopman asked what farm equipment he would be storing there, and Mr. Foulds listed a number of pieces of equipment he currently owns as well as two pieces of equipment he is in the process of acquiring one of which may be another tractor. Mr. Koopman asked what the farm equipment is used for, and Mr. Foulds stated currently he uses it at a Church and to maintain his field. Mr. Koopman stated most of Mr. Foulds property in the rear is wooded, and Mr. Foulds stated he has over 1 ½ acres in the front that is tillable; and he is hoping with the deer management program that he can go back to tilling it.

Mr. Koopman stated he assumes that not all of the farm equipment is used for farming purposes, and asked if some of it is a collection; and Mr. Foulds agreed. Mr. Koopman stated that equipment which is not collectibles, would be used for farming or maintaining the property; and Mr. Foulds agreed. Mr. Koopman asked Mr. Foulds if he would be repairing any farm equipment other than his own, and Mr. Foulds stated he would not. Mr. Koopman asked if there would be any farm equipment stored on the premises that is not owned by Mr. Foulds, his wife, or his son; and Mr. Foulds stated not that he knows of at this point. He stated he is running out of space. Mr. Koopman stated a Commercial use would not be permitted, and Mr. Foulds stated this would not be a Commercial use. Mr. Koopman stated if he was repairing someone else's tractors, that would be considered a Commercial use. Mr. Foulds stated he understands he is not permitted to do that on the property.

Mr. Koopman stated he understands that Mr. Foulds' son is currently deployed, but asked if his residence is with Mr. Foulds. Mr. Foulds stated he has a house in New Jersey, but they are in the process now of turning over the Deed to him and this will end up being his son's property. Mr. Koopman stated even though his son lives in New Jersey, he stores motorcycles and other personal vehicles at this property, and Mr. Foulds agreed.

Ms. Kirk asked Mr. Foulds if he transfers Title of the property to his son, will he and his wife continue to live at the property; and Mr. Foulds stated they will at the present time. Mr. Koopman stated the plans to transfer Title to his son are not immediate plans, and Mr. Foulds agreed that it will happen in the future. Mr. Koopman stated his current intention is to continue to reside at the property with his wife, and Mr. Foulds agreed. Mr. Foulds stated there will be no business. Mr. Koopman stated there will be no vehicles belonging to anyone other than Mr. Foulds or his son, and Mr. Foulds agreed.

Mr. DosSantos asked Mr. Foulds if he will be able to fit an RV in a building of this size with all the other farm equipment, motor cycles, and lawn mowers; and Mr. Foulds stated they will. He stated before his son was deployed they were looking at a 40' by 60' building, and he was trying to convince his son to go smaller with a shed and a lean to and it would not be impervious surface inside the shed and it would just be stone so that they would not have to worry about impervious surface in the future. Mr. Gruen stated if there is a roof it would still be impervious surface. Mr. Koopman asked if the floor would be concrete, and Mr. Foulds agreed.

Mr. Bamburak asked Mr. Foulds about his comment regarding selling produce, and Mr. Foulds stated he used to sell produce but there was a problem with the deer. He stated with the deer management program, it has cut down the deer problem quite a bit; and he would like to go back to it. He stated he also needs to see the Code Enforcement Officer about putting a fence around this acre. Mr. Koopman stated the sale of farm produce is permitted under certain circumstances as an accessory to a farm use, and he should discuss this with Mr. Habgood. He stated since there is five acres, farm use is permitted on the site under the Ordinance.

Mr. Gruen stated Mr. Foulds indicated he was going to have a heated room in the shed, and Mr. Foulds stated it would be like an office. Mr. Gruen asked the purpose of an office there. Mr. Foulds stated it is not an office. He stated in a normal garage of 24' by 24' people heat the whole area so they can work and paint. He stated from November through March, if it is not heated in any way, you cannot do any painting. He stated he wants to enclose a small area. Mr. Gruen stated it would be a room for repair, and Mr. Foulds agreed. Mr. Gruen asked if he proposes to paint his tractors in this repair shop, and Mr. Foulds agreed. He added it is not for commercial use. Mr. Bamburak stated it is a workshop/hobby shop where he would be spraying with spray cans, and Mr. Foulds agreed. Mr. Gruen stated you do not use spray paint on tractors, and Mr. Foulds stated he does on his farm equipment. Mr. Gruen asked if there is an Ordinance in the Township about spray painting automobiles or equipment, and Mr. Bamburak stated Mr. Foulds is not proposing a body shop. Mr. Gruen stated he is proposing painting equipment in the garage. Mr. Bamburak stated he paints items in his own garage; however, Mr. Gruen stated that is something else since Mr. Foulds is painting tractors. Mr. Koopman stated in the Zoning Ordinance as well as in other Codes, there are performance standards that discuss noxious noise, vibration, odor, etc. and you would have to be in compliance with this no matter what Zone you are in. He stated if he would come in with a request for a Permit for a paint booth, there would be issues with that.

Mr. Bamburak stated for a paint booth he would need a separate Permit, and Mr. Koopman stated that would be under the Building Code and would probably not be permitted in a Residential District. Mr. Foulds stated he is not going to have a paint booth. He stated this is for hobby purposes. He stated tractors and other farm equipment all need a coat of paint once in a while. He stated most of the time it is better to paint during the winter when you are not using the equipment.

Mr. Moffa stated Mr. Foulds indicated that he has eight lawnmowers, and Mr. Foulds agreed and stated he spray paints those as well. Mr. Moffa stated there is no commercial activity with the eight lawn mowers, and Mr. Foulds agreed. Mr. Bamburak stated collecting lawn mowers and farm equipment is an acceptable hobby. Mr. Foulds stated he does go to a lot of the different shows. He stated his problem is that he does not have a place to go and take them apart and make them show-worthy. He stated he is aware that people in Lower Makefield have garages with a number of cars in them which they antique.

Mr. Zamparelli stated this is strictly a hobby for no commercial gain, and Mr. Foulds is looking for space to paint things and he will not be putting equipment out on the front lawn for sale. Mr. Koopman stated he is not in the business of selling used lawn mowers to the public, and Mr. Foulds agreed. Mr. Zamparelli stated he is a collector, and Mr. Foulds agreed.

Mr. DosSantos asked if this structure will be 100' off Big Oak Road, and Mr. Foulds agreed. Mr. Koopman asked how close it is to the neighboring property, and Mr. Foulds stated the Township owns the ground all around him. Mr. Foulds stated from one edge of the building to the property line it would be at least 75'. He stated his house sits 6' off the property line. He stated his old gray barn sits right on the edge of the road. Mr. Gruen stated this is the property by the Five Mile Woods with the barn right on the road, and Mr. Foulds agreed.

There was no one present wishing to speak on this Application, and the Testimony was closed.

Mr. DosSantos moved, Mr. Zamparelli seconded and it was unanimously carried to approve the Variance as requested for a maximum height of the structure of 24' with the Condition that there be no Commercial use of the property.

Mr. Koopman left the meeting at this time.

A short recess was taken at this time.

APPEAL #13-1679 – MICHAEL O'NEILL

The Application submitted was marked as Exhibit A-1. A two-page Plan entitled "Proposed Dwelling Plan" was marked as Exhibit A-2. Notice of tonight's Hearing was published in the Bucks County Advance, and a copy of that Proof of Publication was marked as Exhibit B-1. Notice was also posted at the property, and a copy of that Proof of Posting was marked as Exhibit B-2. Notices were mailed to adjacent property owners as required by Ordinance, and a copy of the letter with the listing of addresses was marked as Exhibit B-3.

Mr. Edward Murphy, attorney, was present with Mr. Michael O'Neill, Mr. James Ceglia, engineer, and Mr. Len Colletti, builder/contractor who were sworn in.

Mr. Murphy stated Mr. and Mrs. O'Neill are casualties of Hurricane Sandy almost one year ago. He stated their neighbor's tree fell through the O'Neill's roof the night of the storm, and the O'Neills have been displaced since that time, and they are now in their third home; and they are hoping that this is the last one before they can move back into their house.

Mr. Murphy stated after the insurance issues were concluded, they retained Mr. Colletti to go in and repair the home. Mr. Colletti went to the Township and obtained Building Permits to do the work; however, when Mr. Colletti started to dismantle the interior of the home, the house having been built in the 1960's, he uncovered a lot of issues but for the storm damage they would probably not have discovered such as mold in the walls, structural damaged, etc. Rather than proceed with the Building Permit as issued, Mr. Colletti discussed the matter with the O'Neills and consulted with a structural engineer whose report indicated that the value of the remediation to the structural damage that was uncovered and the mold in the walls far exceeded the value of the home so a decision was made to construct a new home in the same location as the present home.

Mr. Murphy noted Exhibit A-2, and stated the property is oddly shaped. It is a flag lot with only a minimum amount of frontage on Shelly Lane and the property widens up in the back. He stated to the northeast of the property is the Canal. Mr. Murphy stated because of the topography, there is really only one location where the home can be built. He stated on Exhibit A-2 it can be seen that there is an existing condition, and to the left is what is proposed. Mr. Murphy stated there are multiple non-conformities that exist today which would be continued to some

degree by virtue of the construction of the new home. He stated the biggest non-conformity that would be reduced would be a significant reduction in the impervious surface because the amount of blacktop will be significantly reduced because the garages will no longer be located in the area where they are currently. He stated currently the garages are located in the back of the home so they need a lot more paving to get to the rear of the home where the garages are now located. Under the new plan, the garage location is in the front of the home, and this is why there is over a 5% reduction in the impervious surface area. He stated in all other respects the house is comparable in size to that which is existing, and the other existing non-conformities that they have outlined will be retained or modestly reduced.

Mr. Murphy stated the only true area of relief that they are seeking is a height Variance as they are proposing to go from the allowable 35' to 36.5' for an increase of 1.5'. Mr. Colletti stated the peak is lower than 35'; but due to the proximity of the chimney, it must be 2' above the peak.

Mr. Murphy asked Mr. Colletti to explain for the Board what he uncovered when he started to do the work pursuant to the Building Permit. Mr. Colletti stated once they started to take down the walls, they found the wood was rotting out and there were other problems as well which resulted in the need for them to build a new home even though it would be more expensive.

Mr. Murphy marked as Exhibit A-2 a Plan Mr. Ceglia prepared showing the topographic conditions on the property that gave rise to the need to keep the home located at shown. Mr. Ceglia showed the property and the location of the Canal along with the steep slopes with an average slope of 26%. He stated the building envelope was confined to where it is now, and this is why they wanted to use the same building envelope. Mr. Colletti stated they will have a new foundation and everything that is existing will be removed, but the new home will be built in the same location.

A rendering was marked as Exhibit A-4.

Mr. David Risilin, 1600 Westover, was sworn in, and stated he is upslope from the O'Neills. He stated he is on the corner of Shelly and Westover, and he supports the project and added the Plan is essentially the same as what is there now. He stated even if the home were 40' high, it would have no visual impact on him because of the steep slopes and the trees.

A short recess was taken at this time in order for Mr. Gruen to ask Ms. Kirk a legal question.

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After the meeting was reconvened, Mr. Bamburak stated there are stone walls at the front of the property that seem to go over into the neighbor's property. Mr. Murphy stated they were unaware of this until recently, and they will address this issue with the neighbors.

Testimony was closed.

Mr. Gruen moved, Mr. DosSantos seconded and it was unanimously carried to approve the Variance as requested.

CANCEL SEPTEMBER 17 MEETING

Due to lack of Agenda items, Mr. Gruen moved, Mr. Moffa seconded and it was unanimously carried to cancel the September 17, 2013 meeting.

There being no further business, Mr. DosSantos moved,, Mr. Gruen seconded and it was unanimously carried to adjourn the meeting at 8:35 p.m.

Respectfully Submitted,

Anthony Zamparelli, Secretary