

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – DECEMBER 4, 2007

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on December 4, 2007. Vice Chairman Malinowski called the meeting to order at 7:35 p.m.

Those present:

Zoning Hearing Board: David Malinowski, Vice Chairman
 Paul Bamburak, Secretary
 Jerry Gruen, Member
 Gregory Smith, Member
 Anthony Zamparelli, Member

Others: Robert Habgood, Code Enforcement Officer
 John Donaghy, Township Solicitor
 James Majewski, Township Engineer
 Allen Toadvine, Zoning Hearing Board Engineer
 Ron Smith, Supervisor Liaison (left meeting in progress)

APPEAL #06-1410 – NORMAN AND PATRICIA O'ROURKE

Mr. Toadvine noted he received a letter dated November 30, 2007 from Mr. Murphy requesting a continuance until January 15, 2008. Mr. Murphy agreed to waive any time constraints. The letter was marked as Exhibit B-5.

Mr. Bamburak moved, Mr. Smith seconded and it was unanimously carried to continue the matter until 1/15/08.

APPEAL #07-1429(A) – LUTHERAN CHURCH OF THE RESURRECTION

Edward Murphy, attorney, was present with Mr. Walt Reller, representing the Church, and Mr. John Biono, engineer.

Mr. Toadvine stated this will be the first evening of testimony. He noted that at a prior meeting of the Zoning Hearing Board, several neighbors asked for Party status. Mr. Murphy stated he was unaware of this. Mr. Murphy stated he assumes that when the Zoning Hearing Board accepted these, it was noted that those neighbors all lived in close proximity to the property which is the subject of the Application. Mr. Toadvine stated they did reserve the right for Mr. Murphy to question those individuals but he assumes they are in close proximity to the Church. Mr. Murphy stated he expects he will have no objection.

Mr. Toadvine stated this is an Amended Application. The Application submitted was marked as Exhibit A-1. Attached to the Application is a one-page Plan entitled “Variance Plan for Lutheran Church of the Resurrection Expansion,” dated 4/30/07, last revised 8/8/07; and this was marked as Exhibit A-2.

Mr. Murphy stated this Application is an Amended Application. The original Application which had been submitted earlier this year contemplated an expansion that was greater in size and scope and the accompanying relief greater than what the Amended Application now shows. Upon consideration of comments and opinions offered by the Township staff following submission of the original Application, the Applicant reconsidered, amended, and re-submitted the Application which is before the Board this evening. The Applicant requests one and possibly two items of relief. Mr. Murphy stated the first request is to increase the amount of impervious surface from 22.3% to 31.5%. The other issue for which relief may be required involves permission to continue the encroachment into the front yards of both Makefield and Sutphin Roads; however, the requested relief in the alternative in the event that the Board does not accept the view that given the fact that there are already encroachments into the respective front yards; and given the fact that the proposed encroachments do not exceed those existing encroachments, no relief should be required. He stated this is a legal question for the Board to determine. Mr. Murphy stated this is in the Application under paragraphs 5 and 6. He stated any other relief that had been previously requested has been withdrawn.

Mr. Walt Reller, representing the Church located at 1700 Makefield Road, was sworn in as was Mr. John Biona, engineer. Mr. Reller stated he has been a member of the Church for over ten years. He presently serves as Chairman of the Building Expansion Team. He stated three to four years ago an Ad Hoc Committee felt there was a need to expand the Church because of cramped space. This evolved into a Task Force named by the Congregational Council and they considered their mission, staffing, and the facility. He stated in mid-December, 2005, the Chairman of the Building Facility portion resigned, and Mr. Reller became the Chairman of the Building Expansion Team. He stated as part of his function as Chairman, he has evaluated the needs of the Church as it continues to grow.

Mr. Murphy noted the Variance Plan marked as Exhibit A-2 and asked if this represents the end result of the Building Expansion Team, and Mr. Reller agreed noting they worked with the engineer and architect on this. Mr. Murphy noted the Application identifies the owner of the property of slightly more than five acres as the Lutheran Church of the Resurrection, and Mr. Reller agreed. It was noted the property was acquired on two different dates in 1983. Mr. Murphy stated he understands that prior to the acquisition of the property by the Church, it was previously owned by the Synod of the Lutheran Church.

Mr. Toadvine stated he had Mr. Habgood pull and provide to the Board members the prior Decision of the Zoning Hearing Board in 1987. Mr. Murphy stated he had also attached this to his Application with the Findings of Facts; and was going to ask that they incorporate those Findings of Fact. Mr. Toadvine stated the Board will incorporate the previous Decision of 7/11/87.

Mr. Reller stated the property was acquired by the Eastern District Lutheran Church Missouri Synod in the 1950's. They built the original building in 1955 and services have been held there since 1956. In the late 1960s/early 1970s, there was a rift within the Missouri Synod and Resurrection as well as several other Parishes across the Country elected to part ways with Missouri and formed a new association of Lutheran Churches called the Evangelical Lutheran Church. This occurred at this Church in July, 1976. Prior to leaving, they had to solve all their indebtedness which means they had to pay all the mortgages that were held on the property which took until January of 1983. The property was purchased in two parts. The initial purchase was 2.65 acres at the corner of Sutphin and Makefield and sometime later there was an additional 2.4 acres purchased so there were two different mortgages. These mortgages were satisfied in 1983.

Mr. Murphy stated the property that has now been merged into a single parcel of slightly more than five acres was at one point two separate tax parcels; and Mr. Reller agreed. Mr. Murphy stated the 1987 Decision of the Zoning Hearing Board referenced required the merger of the two parcels, and Mr. Reller agreed. Mr. Murphy stated the relief granted in 1987 provided permission to construct an approximately 5,000 square foot Fellowship Hall, and the addition of thirty-two new parking spaces; and Mr. Reller agreed.

Mr. Murphy stated the Plan marked as Exhibit A-2 contemplates two phase, and Mr. Reller agreed. It was noted that A-2 does show a phasing summary. Mr. Reller stated in Phase I they propose a 700 square foot footprint addition. The balance is a second flood addition over what is the existing office. The addition will consist of six classrooms, restrooms, an elevator shaft and the accompanying stair tower. Mr. Murphy asked the need for the Phase I expansion. Mr. Reller stated when they built the Fellowship Hall in 1987, they included six classrooms. They currently have every Sunday School class meeting as two different classes in the same classes: 1st and 2nd grade together, etc. He stated they also utilize the kitchen and Pastor's Office for adult education classes. He stated in the last two years, they have hired a second Pastor so they are one office short for their clergy. He stated because the Christian Education classes are so tight, they have seen young parents looking at the classrooms and indicating they feel they are overly congested for their children and the Church has seen this as a stagnating force in terms of the growth of their Christian Education program.

Mr. Murphy asked if permission were granted by the Township to implement Phase I, what would be their timeframe. Mr. Reller stated they would hope to occupy it by this September noting there is an immediate need. Phase II was noted which would expand the existing Sanctuary and Narthex which would really be a new Sanctuary and totally new Narthex as the existing Sanctuary would become a Chapel for smaller occasions. The new Sanctuary would be sized to seat approximately three hundred. They would also add a youth room which is the area shown as a separately crosshatched area. The portion to the front is a covered canopy so that there is covered access to the building.

Mr. Toadvine asked for a definition of “Narthex,” and Mr. Reller stated it is an entranceway which is a gathering place before going into the Sanctuary. They also propose some additional parking to the rear of the existing parking lot. Phase II would contemplate 7,800 square feet. There would be a total of approximately 8,500 square feet for both Phase I and Phase II, and the Phasing Summary breaks down the additional amount that each Phase would contribute to the impervious surface. Currently they have 22.3%, Phase I would increase it to 22.7%, and Phase II would take it to 31.5%. Mr. Reller stated they no longer plan to add the Family Life Center as was shown in the original proposal, and this has been eliminated in the Amended Plan.

Mr. Reller stated if Approval was granted, they would hope to do Phase II within a three to five year timeframe. He stated once they finish Phase II, there will be portions of overflow areas that exist that would be converted into meeting rooms or classrooms, and they feel this would reasonably accommodate their needs for the next twenty years.

Mr. Malinowski asked if the classes could still be held if they did not approve Phase I. Mr. Reller stated this would limit the ability for the Church to grow. He stated they made a decision that the Church needs to serve the people that are present and this was the impetus to call a second Pastor. Mr. Malinowski stated it seems the hardship would be that the Congregation could not grow if they could not add more classrooms. Mr. Reller stated at this point they have been at the 550 to 600 baptized members for some time. To continue to grow, they need more space and they are currently tight on space.

Mr. Smith stated with the space available now, it appears they can serve 550 to 600; and Mr. Reller stated potential members feel that the Church as it is now is too crowded. Mr. Reller stated the Church feels an expansion would allow them to serve more people.

Mr. Malinowski asked if they feel there is a need in the Lutheran community in the area which requires them to expand so that they can welcome more people in. Mr. Reller stated they feel the new ministries that have evolved over the past three years would attract not only from the Lutheran community but other communities as well as the un-Churched.

Mr. Gruen asked where the parishioners are from, and Mr. Reller stated 55.4% are from Lower Makefield, the rest are from other areas in Bucks County and New Jersey.

Mr. Donaghy stated the Township would like to participate although not necessarily in opposition. Mr. Donaghy stated Mr. Reller testified as to the uses of the various expansions on the site and asked if it is necessary to have facilities of this size to serve the existing congregation. Mr. Reller stated they are at the point that they are not adequately serving their current population. He stated they definitely need an expansion of the classrooms and the office area noted in Phase I. He stated the existing Sanctuary can seat 120 in the Sanctuary proper, and in the overflow area, they can add another 50. He stated there are several Services a year when they get close to 200 and they need to put chairs down the center aisle as well. Mr. Donaghy stated if they were proposing to expand the facilities based on the current number of Congregants it seems they would need Phase I. He asked what additional facilities would they need to serve the existing congregation in Phase II. Mr. Reller stated the Narthex/hallway space is far too tight for entry and exit by the nature of its design. He stated the Narthex needs significant expansion. He stated they have very low ceilings and it needs to be opened up. He stated as to the space in the Church, once you have passed about 80% of the seating capacity, it is so tight that it is uninviting to a stranger.

Mr. Murphy stated he assumes Mr. Reller feels the Phase II expansion is needed now, and Mr. Reller agreed that it needs to be expanded now for the existing congregants and to allow some room for growth.

Mr. Donaghy asked if it would be fair to say that they do not need the entire 7,800 square feet in order to serve the current congregation. Mr. Reller stated he would have to defer to the architect as to the design. Mr. Reller stated if they add no new member, they would probably not need as much, but they would still question its adequacy.

Mr. Donaghy asked if they have considered any changes to the proposed area of expansion so that it does not increase the impervious surface coverage so significantly. Mr. Murphy stated possibly the engineer can comment on this, and Mr. Reller stated he did not feel he would be able to answer the question.

Mr. Greg Smith stated they are serving the current 600 members now, and he is confused as to why they need the expansion if they are serving the current congregation with what they have. Mr. Reller stated Phase I would allow them to provide an office for the second clergy person and would allow more space in the classrooms they are currently using which are currently too tight. He stated they are serving two grades in each classroom, and the parents have indicated that they are not happy with it. Mr. Reller stated Phase II will serve the present congregations and allow for some degree of expansion.

Mr. Malinowski asked if they could add another Service to serve the Congregation, and Mr. Reller stated they already have three services. He stated they did try a Saturday night service; but within the Lutheran community, this was not successful.

Mr. Gruen asked the purpose of the Youth Room, and Mr. Reller stated this is for the Senior High age. He stated they would use this as a meeting room as opposed to meeting in the other classrooms. Mr. Gruen asked how often they meet, and Mr. Reller stated he believes they meet twice a month but was unsure. Mr. Gruen asked if it could also be used as a classroom, and Mr. Reller stated it could. He stated all the rooms are used as multi-purpose rooms. Mr. Gruen asked why they need the classrooms and the Youth room. Mr. Reller stated the Youth tend to decorate their space in a way that would be different for young children or adults.

Mr. Smith asked if they have considered other locations for their expansion. He stated a good portion of the Congregation seems to be from outside Lower Makefield Township, and he feels there are parcels of land in other locations that would draw the congregants to it, and they could build a new building that would not increase impervious surface in whatever location those choose to build and then re-locate to that location. Mr. Reller stated they have not looked into re-locating the Congregation. He stated within the Lutheran Church, the people who come from New Jersey have to pass at least three other Lutheran Churches to come to this particular Church. He stated they are happy in the community and the people in the community are happy at this location. Mr. Smith stated he feels they are probably not happy since that have indicated they are cramped and are therefore requesting a considerable Variance to the impervious surface requirements in order to serve the congregation. Mr. Reller stated they enjoy the community, and it has been a good environment for the fifty years that they have been here. They do need additional space and if they were to re-locate, they feel they would lose the community and many of the congregants would not move to a new facility. He cannot speculate as to who would move with them. Mr. Smith asked if they have considered how the proposed changes of the expansion would change the community. Mr. Reller stated within the community of faith, they are pretty much all in favor and see the need to grow. Within the community of Lower Makefield, the Church's concern is what the impact will have on the neighbors. He stated Mr. Biona has explained to him the approaches he has used to insure that they do not cause any additional damage. He stated they have proposed additional buffer plantings to provide additional privacy.

Mr. John Biono stated he is a licensed engineer in the State of Pennsylvania since 1995 and employed by Gilmore and Associates. He stated he prepared Exhibit A-2. He concurs with Mr. Reller's testimony as it relates to the description of the proposed Phase I and II expansion. Mr. Biono stated he prepared the impervious surface calculations. Mr. Murphy asked how they would address the increase in impervious surface from 22.3% to 31.5%. He added they understand that this is typically a Land Development issue, and to the extent that any approvals would be granted, they recognized that they

will have to go through this process; but because storm water is of interest to the neighbors, he feels Mr. Biono should comment on this. Mr. Murphy stated Mr. Biono has met with some of the neighbors immediately abutting the property to discuss their issues and can comment on the type of stormwater management controls they would use.

Mr. Biono stated there is currently a basin at the southeast corner of the site in the lawn area which was installed in 1987 following the last Zoning Hearing Board approval. The basin is outlined on Exhibit A-2. Currently it handles stormwater, and there is room to expand it by lengthening and raising the berm. He stated they would also provide infiltration which is the soaking of rainwater into the ground which recharges the water table. He stated Township Ordinance requires varying degrees of infiltration; and as part of the land Development process, the stormwater management system will include a basin and infiltration facility. He has done on-site testing, and infiltration is possible. They have also identified an easement for stormwater which goes toward Friar Drive. The outlet pipe from the existing detention basin goes southeast through the easement, and there is a 6” storm sewer pipe leaving the basin which connects to an existing inlet in the rear yards of three adjacent properties. This inlet was placed there approximately twenty-five years ago when the subdivision adjoining the Church was constructed. The water then flows south toward Friar Drive and then goes to the detention basin in the development.

Mr. Biono stated post-construction if they were to proceed with expansion of the basin, the outlet pipe would need to be replaced as the existing 6” diameter pipe is small for today’s standards. They would replace this with a larger diameter pipe and the outlet structure would have an orifice-controlled plate which could be a 3” to 4” diameter hole in the basin discharging to the larger pipe which is the current standard.

Mr. Biono stated while the Application has been pending, they have met with adjacent neighbors to discuss their concerns. He stated they met in mid-October at the Church itself, and there were approximately twelve residents in attendance when they introduced the project to them and heard their concerns. He stated one of the concerns the Church was not aware of were the neighbors’ concerns with stormwater and flooding in the southeast corner off of the Church property in the vicinity of the existing inlet which had been installed approximately twenty years ago. He stated it appears that this inlet and the pipe draining it are of insufficient capacity for the area, and the soils in that area do not infiltrate as well as the soils on the Church site. In November they also met with two of the neighbors – the Potters on Milton Drive and the Brooksteins on Friar Drive. He stated they both discussed flooding which has occurred in their rear yards. They both, at their own expense, did re-grading and installed their own storm sewer facilities to help drain their properties. Mr. Biono stated he understands their concerns and noted the Ordinance is such that the Church’s construction requires that they cannot make the situation worse. They cannot allow any more water to leave the site post-construction than it does currently. Mr. Biono stated the one inlet in the rear yard has a very large

drainage area which is what he feels is the problem as it is the drainage area for several rear lots as well as several front yards.

Mr. Murphy asked if he feels there is any other way to lay out the proposed parking expansion and Mr. Biono stated they reviewed several configurations and this seemed to be the best situation which achieved the required parking and provided a safe flow of traffic around the site. The Makefield Road exit lane will remain as it is at 13' and they propose minor alterations to the Sutphin entrance lane which will be widened to provide space to make this an entrance and exit lane.

There was discussion on the encroachments on Makefield and Sutphin Roads. Mr. Biono noted the existing encroachments on A-2 which encroaches into the 100 foot setbacks on Makefield and Sutphin Roads. On Makefield Road the existing structure is 55.5 feet from the right-of way where it should be 100 feet and on Sutphin Road it is 37.5 feet from the right-of-way where it should be 100 feet. As noted in paragraphs 5 and 6 of the Application, the proposed Phase II expansion will not encroach any further into these areas. Exhibit A-2 shows that the proposed encroachment will be 92' from the right-of-way on Makefield Road and the new encroachment on Sutphin Road would be 60' from the right-of-way. Current encroachments are well in excess of these proposed encroachments.

Mr. Murphy asked if the neighbors they met with expressed any concerns other than the storm water issues already noted by Mr. Biono; and Mr. Biono stated the bulk of their concerns were with regard to stormwater, although there were discussions regarding parking and lay-out. Mr. Murphy asked about the existing and proposed buffering. Mr. Biono noted the existing buffering which includes trees and some stockade fencing which is on an adjacent property. Since this is a non-Residential use adjacent to a Residential use, the Ordinance requires a 25' wide buffer for any expansion. He stated while they have not detailed this on Exhibit A-2, they envision extensive buffering; and this will be incorporated at the Land Development stage when Plans will be subsequently submitted to the Township.

Mr. Biono provided a color rendering of A-2 to the Board, and this was marked as Exhibit A-3. The pale yellow is the existing building. The orange is the new building footprint proposed for Phase I which is the 700 square foot expansion, with the remainder of the Phase I expansion occurring on top of the existing structure. The brown identifies the Phase II building expansion. The light gray is existing asphalt/sidewalk and dark gray is the new asphalt/sidewalk. A small portion of yellow at the bottom of the site is an existing storage shed which will remain. Green is lawn area and dark green along the border is the existing tree canopy. Interspersed are some light green colors which indicate the buffering. They have also incorporated an aerial photograph in the background so they can see the proximity of the existing homes and the nature of the trees in the areas. He noted the location of the existing storm sewer easement which were previously discussed on Exhibit A-3.

Mr. Greg Smith stated they testified about the 25' buffer required, and he asked where this would be located. Mr. Biono stated it would be required along all common property lines between non-Residential use and Residential use. It was noted that Exhibit A-3 is not drawn to scale. He stated they have not yet designed this buffer because they are not yet at the Land Development stage. Mr. Smith stated the existing driveway is entirely in the 25' buffer, and Mr. Biono agreed. Mr. Murphy stated they do have the opportunity to supplement the buffer between the common property line and the driveway edge and it has been depicted by Mr. Biono. Mr. Toadvine stated they will comply with the 25' buffer on either side of the driveway, and Mr. Murphy stated they will try to provide a more attractive visual screen than exists today, and this will be shown on the Land Development Plan when they get to that point. Mr. Biono stated the expansion of the parking in Phase II will have a full 25' wide buffer.

Mr. Donaghy noted the configuration of the Phase II building expansion. Mr. Biono stated he worked on this with the Church's architect. He stated they have more detail on the Phase I expansion; but at this point Phase II is a schematic although they are comfortable with the envelope.

Mr. Donaghy noted the expansion of the parking area and asked if they considered using pervious paving, and Mr. Biono stated he has discussed this with Mr. Majewski. They would be concerned with using pervious paving on the driving aisles, but they would not have a problem with this in the parking on the perimeter. They do not intend to re-pave the existing parking lot. He stated use of the pervious paving would help with infiltration. Mr. Donaghy asked if they have done any calculations to show the impact on the impervious surface if they use pervious paving, and Mr. Biono stated it would still be considered impervious by the Township. Mr. Majewski stated for the purposes of stormwater management, it would provide significant benefit and reduce the effective impervious surface substantially below what they are requesting. Mr. Donaghy stated the effect would be the same as reducing impervious surface, and Mr. Majewski agreed. Mr. Murphy stated the Applicant is prepared to do this.

Mr. Gruen asked if they considered the traffic effect the expansion will cause on Makefield, Sutphin, and Big Oak Roads with additional cars coming to the property if the Church's membership expands. Mr. Biono stated one of the reasons for maintaining the exit driveway is to maintain traffic patterns. A traffic study is not required at this stage; although if it is required at Land Development stage, they will do so. They have discussed the access with Mr. Majewski, and they felt it was best to maintain the same traffic patterns. He stated they are proposing changes to the Sutphin access to allow for entrance and exit at this location. Mr. Gruen stated he is concerned that in addition to the services held on Sunday, they also hold various other events which will impact the neighborhood by bringing in a large number of cars. He stated they also make use of outdoor PA systems.

Mr. Donaghy stated the Township has no witnesses to present but the Township would like to see any impervious surface increases kept to the minimum; and to the extent that any Variances are granted, that they have Conditions placed such that pervious paving be placed in the parking area. He stated the Applicant did acknowledge that the Plans must go through Land Development, and a number of issues will be discussed at that point.

A short recess was taken at this time. The meeting was reconvened at 9:05 p.m.

Mr. Malinowski asked if anyone present wishes to speak in favor of the proposal.

Ms. Barbara Spencer, 302 Cinnabar Lane, was sworn in. She stated she is a fifteen year resident of Lower Makefield and has been a member of the Church for this time period. Ms. Spencer stated she has seen a lot of growth in the community. She stated she has served the Church as Sunday School Superintendent, and the space they have now is very inadequate. She stated it is a multi-purpose area, and there are no defined classrooms. She stated there are screens which get pulled, and the area is very noisy. She stated the Youth have no space to call their own, and the small area they have now is part of the multi-purpose area with a screen that gets pulled over. She stated it is important for their faith development to feel a part of the Congregation and that they are valued; so this area is very important. She stated the Church serves the community in many ways. She stated they make quilts for Lutheran World Relief and do not have a space to easily store their materials. She stated the extra space that would be classrooms would give them an opportunity to grow that type of ministry. The Congregation has also served the community in terms of flood relief working with several other congregations in re-building an elderly couple's home after the most recent flood. She stated she is an environmentalist and would like to see the Township change their rules so that they would count the porous surface, and they would get credit for some of this. She stated while they would like to grow, they would like to do so responsibly. She stated the existing space is not adequate and they are not currently being served and what they are asking for is necessary. She stated they would also like to pull up an underground oil storage tank that could potentially lead to environmental problems. She feels what they are proposing is very necessary. She stated she feels a strong community involves strong Churches; and while there may be some additional traffic, she feels traffic involving people coming to and from Worship is a positive for a community. She stated just as she has chosen to stay in the community for her family, she would like her "faith family" to stay in the community as well. She stated Lower Makefield Township is where most of the Congregation lives. She stated they are close to Falls Township and New Jersey and if there are people coming from outside of Lower Makefield to the Church it speaks to how strong the Congregation is and they would like to stay at the present location and be part of the community. She asked that the Board consider this when they make their decision.

Mr. Malinowski asked if anyone wished to speak in opposition.

Mr. Curtis Panzer, 687 Friar Drive, was sworn in. It was noted he is a Party to the Application. Mr. Panzer stated he and his wife are opposed to the Application. He stated in the existing condition, the rainfall brings a substantial run off from the Church property. He stated he is an attorney, licensed in Pennsylvania for twenty years. For thirty years he has also been a licensed professional engineer in Pennsylvania. He stated he did meet with the Church in October; and at that meeting he asked if there were plans for dealing with the water run off, and it was explained by Mr. Biono that they had some ideas; but had no plans, and as a cost savings measure, they chose not to proceed with Development Plans. Mr. Biono stated as part of the process, it is not required at this stage for the Zoning Variance. He did not want to spend the Church's money for a design that may not be required if they do not get the Variance. He stated they would have to do this as part of the Land Development process. Mr. Biono stated at this point they have ideas as to how they would handle stormwater.

Mr. Panzer stated at the meeting in October some of the neighbors indicated that in general in the neighborhood, Church membership has been decreasing. He stated the neighbors had asked if the Church had conducted any surveys dealing with projections as to the needs in the area for expanded Church membership. Mr. Reller agreed that no specific studies were done, but he did note at the meeting that when you increase the size of staff, you generally see an increase in membership because they are serving them better.

Mr. Panzer stated he understands that they did not engage any experts to mesh the hoped for increase in membership with the Plans. Mr. Panzer asked if they have an environmental impact statement, and Mr. Reller stated they do not at this point in time. Mr. Biono stated this is not required at this point in the process.

Mr. Panzer stated he feels a Variance cannot be granted as a matter of law. He noted Chapter 200.98 – Special Exemption Applications which he read from the Ordinance. Mr. Toadvine stated this is a Variance Application and not a Special Exception Application. Mr. Panzer stated he recognizes this; however it states “any subsequent amendments or additions shall be subject to review and public hearing by the Zoning Hearing Board as a Special Exception.” He stated he feels what is proposed are additions and amendments to the original Plan; and as such, they must be treated as a Special Exception. He stated for this reason, they cannot proceed to give them a Variance for a right they do not have. He stated if they are one foot outside what has been approved for a Special Exception Use, they do not have the right to use the piece of property as a place of worship.

Mr. Panzer also noted Chapter 200.97 as it relates to the Variance. He stated the Board does have latitude for setting requirements for what they will hear; however, the Church must not be misled by this, and stated the Board cannot grant a Variance Application unless it is able to make five Findings of Fact that are in favor of the Applicant and each must be supported by substantial evidence. He stated while some may think that an Application for a Variance submitted by a Church should be treated more leniently, under the present set of circumstances, the opposite is true. He stated under Pennsylvania law where the underlying use is by way of Special Exception, Applications for Variance must be reviewed with heightened scrutiny as they have already been given a Special Exception to use a piece of property for which there is no right of use.

Mr. Panzer stated the issue of hardship must also be considered. He stated even maintaining the current membership would not qualify for hardship. He stated no evidence has been presented that the land could not be used for another purpose such as land development or homes; although he stated he would not want that either. He stated the Board does not have the substantial evidence they need in order to make a Finding in favor of the Applicants. He stated there is no burden for the residents to prove the case, and the burden is on the Applicant.

Mr. Panzer stated they must consider if there are unique physical circumstances or conditions including regulations, etc; and that the unnecessary hardship is due to the conditions and circumstances. He stated the “hardship” is due to the provisions of the Chapter in the Ordinance which requires a maximum of 17% impervious surface; and currently they are at more than 22% and want to go to nearly twice what is permitted. He stated this has nothing to do with the land, but has to do with the fact that the Church wishes to increase the use of the land that which was anticipated by the Code.

Mr. Panzer stated they must also consider if there is no possibility of the property being developed in conformance with the Ordinance; but noted the property is in fact currently being used and he feels it is being used at more than 100% as they have already surpassed the 17% impervious surface. He stated while they could argue it is crowded, this does not constitute hardship as it is currently being used.

Mr. Panzer stated they must also consider if hardship has been created by the Applicant; and in this case, he feels it has been created by the Applicant. He stated in the 1950’s there was a provision that if there was a piece of land on which a Church had been built and the rules had changed so that they are a non-conforming property, there would be a right to expand that use; but he feels that was exhausted in 1987 when they asked for the Special Use Exception.

Mr. Panzer stated they must also consider if the Variance would alter the character of the neighborhood or substantially and permanently impair the appropriate use or development of the adjacent properties. He stated the Variance if granted would increase

the substantial water issue as well as noise and air pollution, and reduce property values. He stated the water issue has been agreed to by everyone.

Mr. Panzer stated they must also consider if the Variance would represent a minimum Variance that will afford relief and the least modification of the regulations. He stated no evidence has been submitted that this would be the minimum required. Mr. Panzer stated the Variance must be denied for all of the reasons he has cited.

Mr. Gregory Smith asked if Mr. Panzer would be willing to submit a written brief. Mr. Toadvine stated he does not feel the Board will be making a Decision this evening. If he would be willing to do so, the Board would like Mr. Panzer's Brief submitted prior to the next meeting on this matter which will be January 15, 2008.

Ms. Andrea Scherer, 1631 Makefield Road, was sworn in. Mr. Toadvine asked the location of her property, and she stated she is across the street and three properties down from the Church. She noted the location of her home on the Plan. Ms. Scherer stated she understands one Phase was dropped. She stated she is concerned that they are going from 22.7% to 31.5% impervious surface while in the original Plan with three Phases it was going to go to 44%. She is concerned that in the future it may then be easier to go from 31.5% to 44% than it would be to go now from 22.7% to 44%. She stated they indicated Phase I and II would satisfy the Church's needs for the next twenty years, but she feels this is only an opinion; and in the next few years, they may want to implement Phase III. Ms. Scherer stated she is also concerned with setting the precedent for the encroachment. She stated there is another right-of-way on the opposite side of Makefield Road. She stated her home is over two hundred years old and has been grandfathered in. She asked if she could build on the right-of-way as well if she could demonstrate a need. She stated she does not feel they should set precedents for these kinds of Variances and encroachments that go against the existing Ordinance. Ms. Scherer also stated her primary concerns are with noise from the various events in this Residential neighborhood. She is also concerned with traffic and the potential for a traffic light at Sutphin and Makefield Road. She stated Makefield Road is a busy street and there are two Schools on the street. She stated she feels this expansion will decrease the property values. She stated she is a Real Estate Agent and was showing a house in the area when the Church was holding an outdoor event, and she did not sell the house.

Mr. John Walchli, 691 Friar Drive, was sworn in and stated during the later part of October, there was a rain storm and he took pictures of the area. He stated in some instances it was 13.5" deep. The pictures were provided to the Board this evening. These were marked as Exhibit N-1 through N-11, which are photos taken by Mr. Walchli in the latter part of October on 691 Friar Drive toward 699 Friar Drive and 695 Friar Drive. Mr. Toadvine stated the Board and the Applicant are aware that there is a flooding issue.

Ms. JoAnn Walchli, 691 Friar Drive, was sworn in and stated she attended the Church meeting and raised several questions about the need for this expansion. She stated two Churches on Big Oak Road have closed due to poor attendance. At the meeting she had asked how many people are in attendance at their Church, and they indicated that between the two services, they have a total of 200. She stated every Sunday since June she has gone out her back yard and counted the cars, and there are between fifteen and twenty-two cars every Sunday at each service. She stated she has lived there for twenty-five years and seen very little change in the number attending. She stated she has many concerns that there are Churches closing and other people are forcing Churches to close and are luring members back and forth. She stated she does not feel there will be an expansion in residences in the immediate area.

Mr. Brent Brookstein, 699 Friar Drive, was sworn in. Mr. Brookstein stated with regard to the water issue, in 1987 they sent a Certified letter to Mr. Dillon, the then Township Manager; and he met with Mr. Dillon who was well aware of the water issue at the time and advised that there was nothing the Township could do and if Mr. Brookstein wanted to do something about the water in his rear yard, he would have to cut down the forty trees in his yard and put in sewers. He stated this was when the additional drainage ditch was put in on the Church property in 1987. He stated the location of the berm and the ditch is lower than the Friar Drive inlet and there is a 6" incline. He stated when it rains all the water comes through his yard. He stated with an increase in impervious surface, even if they add a wider pipe, he does not feel it will help his situation.

Mr. Kozak, 1633 Makefield Road, was sworn in and stated he bought his house three years ago, and one of the reasons they purchased it was because it was a mature community that would not grow. He stated the proposed expansion would change the landscape of the community. He asked the growth of the Congregation from 1987 until today. Mr. Reller stated there were 408 baptized members in 1986, and it is currently 528. Mr. Kozak questioned the justification for the fairly extensive building if there has not been significant growth.

Ms. Robin Potter, 415 S. Milton Drive, was sworn in. She stated she lives adjacent to Mr. and Mrs. Brookstein, and the easement goes through her property. She agreed that there was a serious water property at the Brookstein property which they corrected at their own expense, although she questions how long this will remain corrected if there is more water. She stated she works as an engineer in land development and water resources. She stated she does not feel the pipe that the easement drains into that goes to Friar can handle any more water. She stated there is not enough of an incline on the pipe. She stated there has been a request to fix this for a long time, and she is concerned about more water coming into this pipe. She feels this should be looked at before they approve the project. Mr. Malinowski asked if they have brought this issue to the attention of the Board of Supervisors. Ms. Potter stated she moved into her home four years ago, and it is her understanding that the Brooksteins have brought this to the attention of the Township.

Mr. Frank Ehrenfeld, member of the Church, was sworn in. He stated comments were made about two Churches on Big Oak Road which “closed,” and he stated that the one Church was the Church of Latter Day Saints which moved to Pine Grove Road, and the facility was then purchased by Korean Church. Mr. Malinowski stated he does not feel that this will have anything to do with the Board’s decision; and he feels the Board can draw its own conclusions from the testimony it has heard. Mr. Ehrenfeld stated there was also a comment that there were fifteen to twenty-two cars in the parking lot on Sunday, and this is incorrect. He also stated with regard to membership every several years they have to purge the rolls. He stated the number of 528 is an accurate number. He feels this expansion will be an opportunity to help rectify some of the water situations in the area. Mr. Gruen asked what constitutes a “member” of the Church, and Mr. Ehrenfeld stated the definition is someone who has contributed financially to the Church as well as communed.

A short recess was taken at this time. The meeting was reconvened at 9:55 p.m.

Mr. Greg Smith stated he feels important issues have been raised; and based on some things they have heard, he does not feel it would be appropriate to close Testimony in this case; and it would be more appropriate to continue the matter until the meeting on January 15, 2008.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to continue the matter until January 15, 2008 so the Board can deal with those issues at that time.

Mr. Malinowski noted the Board has a curfew of 11:00 p.m. and any matter that is not completed by that time, will be held over until January.

APPEAL #07-1450 – K.S. GREENDAY

Mr. Jorge Linares, 626 Deerbrook Drive, was sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application was a one-page Plan dated 8/30/07, and this was marked as Exhibit A-2.

Mr. Linares stated he contracted K.S. Greenday during the summer to build a patio in the rear yard; and since the patio took a lot of the area where the swing set was located, they prepared an area in the rear yard to move the swing set and to build a wall in order to hold in the playground chips for the swing set. The contractor was also asked to submit and acquire any Permits necessary. Mr. Linares stated they acquire the Permits; and when the Inspector came out he noted to the contractor that the Permit he had requested only covered the patio and not the swing set wall to hold in the chips. They then re-plotted the Plan, and submitted a Permit to the Township. It was noted to the contractor that some of the wall was encroaching in the 16’ easement, and they also needed a Variance if they wanted to place the swing set in the easement area.

Mr. Gruen asked the height of the wall, and Mr. Linares stated it is approximately one foot high. It is an e.p. Henry type wall. He stated they originally contracted that it be a wood timber or plastic border, but the contractor suggested that both of those options would be as expensive as using the same material they were using for the patio, so they decided to use the e.p. Henry. He stated he is not sure of the exact height, but it was built high enough to hold at least 8” to 9” of playground chips.

Mr. Greg Smith asked about the easement, and Mr. Toadvine stated it is an underground water easement. Mr. Habgood stated he believes it is owned by Pennsylvania-American Water Company. Mr. Toadvine asked if they have contacted PA-American about this project. Mr. Linares stated the contractor told them they should start with the Township. Mr. Toadvine stated the Zoning Hearing Board cannot grant Mr. Linares the right to build on the Water Company’s easement without their permission. He stated the Zoning Hearing Board could grant the Variance subject to a Condition that the Applicant obtain written permission of the easement holder to allow this construction or the Board could continue the matter to allow the Applicant time to contact PA-American, waiting to see if they will grant permission. Mr. Linares stated he would be willing to contact the Water Company.

Mr. Donaghy stated the Township would like to participate and is concerned with what was stated by Mr. Toadvine that because the easement is held by Pennsylvania-American, they would recommend that any Variance granted be subject to Pennsylvania-American’s approval and any conditions they might add.

Ms. Margo Olivieri, 743 Mill Road, was sworn in. She stated she lives behind this property. Ms. Olivieri stated she feels this retaining wall is on her property. She stated at her property line, she has ten feet going back of woods, trees, brush, etc.; and this has now come right into her property. She stated many of their trees, bushes, and brush were removed. She stated when she purchased her home eleven years ago they were surrounded by woods, and since they recognized that at some point homes would be built, they were very sure to extend beyond their property ten to twelve feet of additional land containing trees, brush, etc. so they could maintain their privacy. She stated the wall is right on their property. Mr. Toadvine asked if she had a survey done after the wall was constructed, and Ms. Olivieri stated they did not. Ms. Olivieri stated when the contractor was there cutting away the brush and trees, her husband tried to talk to the contractor and ask him to stop so there could be discussion as to how to proceed, but he continued to clear the land.

Mr. Toadvine stated Exhibit A-2 is a surveyed Plan which clearly shows the wall on the Applicant’s property by at least 8’. Ms. Olivieri was shown the Plan and stated when the woods were cleared for development, an engineer told her that he saw her property line ended 10’ to 12’ beyond her property, and he did not plow away any of the trees or bushes that were at that juncture. Mr. Toadvine showed Ms. Olivieri the Plan and stated iron pins were set which show that the swing set and wall are on Mr. Linares’ property.

Mr. Malinowski stated if she still feels the wall is on her property, she would have to get her property surveyed and obtain Council and with this as a Civil matter.

The Public Hearing portion was closed.

Mr. Smith moved, Mr. Bamburak seconded and it was unanimously carried that the relief requested for an encroachment into the water easement be granted subject to approval of the easement holder in the way of the retaining wall and any Conditions the easement holder may impose thereon.

Mr. Ron Smith left the meeting at this time.

APPEAL #07-1451 – STEPHEN AND PATRICIA MUNTER

Mr. Stephen and Ms. Patricia Munter was sworn in. The Application filed was marked as Exhibit A-1. Attached is a one-page Plan dated 1/11/80, and this was marked as Exhibit A-2.

Ms. Munter stated they applied for a Variance to construct a paver patio and walkway. She stated there is an existing patio which needs to be replaced along with the steps as the existing patio and steps are cracked and uneven. She stated the steps go up to the patio from the driveway which seem not to have been professionally installed and are not the proper depth or height. She stated they are concerned about visitors falling. She stated the existing patio is too narrow to be used as a patio, and they do not have a walkway to the front door and only have lawn up to the front door.

Mr. Toadvine asked if there is an issue with the fence, and Mr. Habgood stated there is not. Mr. Toadvine asked the reason for the reference to the non-conforming Section of existing structures in the Application; and Mr. Habgood stated this relates to the location where they are proposing to put the patio and walkway since if it is considered a side yard, it would be an encroachment into the side yard of more than 15' but if it is considered a rear yard, it could be an increase to the existing non-conforming so he recommended that they put both down, and let the Board decide. Mr. Toadvine asked about the accuracy of the calculations for impervious surface, and Mr. Habgood stated he got 17,204 square feet for the property size with impervious surface of 20.6% proposed. Ms. Munter was asked if she agreed with the professionals and would agree to amend her Application to request 20.6% impervious surface as opposed to 21.8%; and Ms. Munter agreed.

Mr. Smith stated there was a letter included with the Appeal dated 11/15/07. Mr. Gruen stated this is from one of the neighbors who lives on 8 S. Homestead. Ms. Munter stated they live across Wrightsfield. Mr. Toadvine noted the letter was in support of the

Application. Mr. Habgood stated the letter was not included with the Application, but came in separately and he included it in the Board's packet.

Mr. Donaghy stated the Township is not participating in this matter.

There was no public comment, and the Public Hearing portion was closed.

Mr. Smith moved, Mr. Bamburak seconded and it was unanimously carried that the relief requested in the way of an increase of impervious surface to 20.6% be granted. The Board also approves a change to the existing non-conforming structure in the way of a decrease to the setback where the proposed patio will be constructed to 9 feet.

Appeal #07-1452 – RON AND BARBARA YETMAN

Mr. Ron Yetman and Mr. Robert Hauss were present and sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application was a one-page drawing dated 10/7/07, and this was marked as Exhibit A-2.

Mr. Yetman stated they do not currently have a garage and would like to build an approximately 576 square foot two-car garage in their rear yard. They are requesting a Variance for impervious surface. He stated they purchased the house four and a half years ago; and at the time, the previous owners had a Variance approved for a garage in the rear yard. When they purchased the home, they were not able to work on it, and now they have decided they want to build it.

Mr. Toadvine asked about the previous approval, and Mr. Habgood stated the previous Zoning Hearing Board Appeal was #01-1106 for an increase in impervious surface to 25.5%. He stated he has copies of the Findings of Facts. No height Variance was requested.

Mr. Yetman stated they are looking for a two-car garage with some space for storage across the top. It was noted that in the Findings of Fact for the previous approval they proposed an attached garage of an additional 500 square feet.

Mr. Gruen stated the existing driveway seems large enough by scale to access the two-car garage. Mr. Yetman stated currently they are coming in 4' off of the end of the existing driveway. He stated if need be, they could come in another 4'. Mr. Robert Hauss stated he is the builder. He stated currently they propose to put the garage where they are taking 4' of the existing blacktop to help with the impervious, and they are also cutting out the radius section. This 4' was included in the calculations.

Mr. Gruen stated on the drawing it states 23.3% and in the Application it states 24.1%. Mr. Hauss stated they are asking for 23.3%. Mr. Majewski stated he has an issue with the existing impervious surface as the lot area listed in the Application does not appear to be correct. He stated this was Lot #12 and part of Lot #10 in a previous subdivision; and it appears that the area shown on the Plan is just for Lot #12 from the original Record Plan and does not include the entire property. He stated he feels the actual square footage of the lot is approximately 20,000 square feet. He also disagrees with the existing driveway calculation, and he gets a number which is approximately 700 square feet higher. He stated he feels there needs to be clarification of the numbers. He stated he feels they should check their calculations and come back.

Mr. Hauss stated the information came off the original Application for the first Variance, and they used Mr. Feinberg's calculations which were approved by the prior Zoning Hearing Board. Mr. Smith asked if anyone has surveyed the property since then, and Mr. Hauss stated they did not. Mr. Smith asked if he measured it, and Mr. Hauss stated he did not. Mr. Smith stated possibly there was a mistake on the first Application. Mr. Hauss stated they were under the impression that the lot was 15,575 square feet so if it is 20,000 square feet this would be a plus for them. Mr. Bamburak stated it seems as if they need a survey if they do not know the size of their property. Mr. Hauss stated what they submitted was what they got off of the Tax Parcel Maps from the Township.

Mr. Toadvine stated there is also the issue of the height requirement for the garage since it is 6" higher. Mr. Toadvine stated he feels the Board needs to have more concrete information on the actual impervious surface and what is proposed; and does not feel the Board would be able to make a decision at this time. Mr. Smith stated they may find after taking measurements of the property that they are within Ordinance requirements. Mr. Majewski stated if they check the Deed to the property, it may have sufficient information to make a determination. He stated if the Applicant sends him the Deed, he would be willing to calculate the area of the lot for them.

There were some members of the public present expressing concern with an increase to the impervious surface because of water issues.

Mr. Donaghy stated the Township does intend to participate in this matter. He stated in reviewing the previous Zoning Hearing Board Decision it does indicate that they felt at that time that the impervious surface was 21%; and although relief was granted for a garage, it was never constructed. Mr. Donaghy noted the Plans recently submitted, and asked if they have shown all the impervious surface on the site; and Mr. Hauss stated nothing has changed on the property but agreed that it does not show a front walkway although it was taken into consideration. Mr. Donaghy stated any Plan submitted will have to show all the impervious surface. He stated the Township is also concerned with stormwater drainage and what the Application will do to deal with this. Mr. Smith stated everything should be shown on the Plan including sheds, stepping stones, etc.

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Mr. Smith moved, Mr. Bamburak seconded and it was unanimously carried to continue this matter until 1/15/07.

OTHER BUSINESS

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to cancel the meeting of 12/18/07.

There being no further business, Mr. Smith moved, Mr. Bamburak seconded and it was unanimously carried to adjourn the meeting at 10:35 p.m.

Respectfully Submitted,

Paul Bamburak, Secretary