

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – APRIL 15, 2008

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on April 15, 2008. Chairman Malinowski called the meeting to order at 7:40 p.m.

Those present:

Zoning Hearing Board: David Malinowski, Chairman
Paul Bamburak, Vice Chairman
Gregory J. Smith, Secretary
Jerry Gruen, Member
Keith DosSantos, Alternate

Others: Robert Habgood, Code Enforcement Officer
John Donaghy, Township Solicitor
James Majewski, Township Engineer
Matt Maloney, Supervisor Liaison

Absent: Anthony Zamparelli, ZHB Member

APPEAL #06-1372 – PETER ORLOFF AND JOY GRACE

Mr. Toadvine stated the Township received a letter from Peter Orloff and Joy Grace dated 4/14/08 requesting a 90 day continuance on their Appeal and waiving applicable time limits. The letter was marked as Exhibit B-7.

Mr. Smith moved, Mr. Bamburak seconded and it was unanimously carried to grant the request for extension until 7/15/08.

APPEAL #08-1465 – T-MOBILE NORTHEAST LLC

Mr. Toadvine stated the Township received a letter from the Applicant's attorney, Eric Goldberg, dated 4/7/08 requesting that the matter be continued until May 20, 2008 and waiving any time limits set forth in the Municipalities Planning Code. No position on the application for extension was taken by the Township. The letter was marked as Exhibit B-2.

Mr. Smith moved, Mr. DosSantos seconded and it was unanimously carried to grant the extension until 5/20/08.

APPEAL #08-1467 – MICHAEL AND KATHLEEN SANWALD

Michael and Kathleen Sanwald were present and were sworn in. The Application submitted was marked as Exhibit A-1. Accompanying the Application was a one sheet Plan entitled “As-Built Plan for Lot #8 dated 11/22/96, and this was marked as Exhibit A-2.

Mr. Sanwald stated they are requesting a Variance to an easement they have on one side of their property where they would like to erect a fence on their boundary as well as on other areas of their property where the easement does not present a problem. The fence is for privacy. There is no fence currently.

Mr. Malinowski asked the height of the proposed fence, and Mr. Sanwald stated the fence will be six feet high. Mr. Bamburak stated the Plans indicate the fence will be five feet. Mr. Sanwald stated the five foot fence is for a section of the property that one would consider the front of the property, and he believes there are restrictions as to height there. He added that along that front part of the property, he believes that the restrictions are three feet, and they would like to go five feet in that one area of the property. The rest of the property that would not be considered the front, they would like to go six feet. Mr. Bamburak asked why they need a fence in the front yard, and Mr. Sanwald stated they need it for privacy and also to maintain their property by preventing leaves, etc. from blowing onto their property which they must continually clean up. Mr. Bamburak stated a three foot fence would stop leaves. He stated he would be concerned with a five foot fence in the front. Mr. Sanwald stated the reason they wanted to go higher than three feet in this area is because there is tall grass which grow six to seven feet high on the adjacent property, and it sheds in the winter and would blow over top of a three foot fence. He feels a five foot fence would stop this. Mr. Toadvine stated they are only permitted to have a three foot fence in this area. Mr. Sanwald stated they would prefer not to be restricted to three feet.

Mr. Smith asked if there is fencing on any adjacent property, and Mr. Sanwald stated here is not.

Mr. Gruen asked what type of fence they propose to erect, and Mr. Sanwald stated they intend to erect a six foot tall solid PVC fence around the back and up the side of the property but at the point where they go into the front of the property, they would drop down to five feet with a solid PVC fence.

Mr. DosSantos asked if there is any proposal to have lattice around the top of the fence, and Mr. Sanwald stated they do not intend to do this where it would be six feet high, but they would accept a four foot fence with a one foot lattice where they propose the five foot high fence.

Mr. Gruen noted the location of the sidewalk, and Mr. Sanwald stated they would take the fence to a point which is approximately three feet off of the sidewalk. Mr. Gruen asked who would maintain the grass which is between the sidewalk and the fence, and Mr. Sanwald stated since it is on the boundary, it would be either themselves or their neighbor. Mr. Gruen asked if the sidewalk is on the Applicant's property or Township property, and Mr. Habgood stated it appears the sidewalk is in the public right-of-way. Mr. Gruen stated normally the Township owns about fifteen to twenty feet of right-of-way from the center line to the property line, so he feels three feet off the sidewalk would still be on public property. Mr. Majewski stated the sidewalk is typically one foot from the right-of-way line so that the sidewalk is wholly within the right-of-way line of Lower Makefield Township, and the property starts one foot behind the sidewalk.

Mr. Malinowski asked who is the owner of the easement, and Mr. Habgood stated he assumes it is owned by Lower Makefield Township as it appears to be a stormwater management easement and appears to be piping. Mr. Sanwald stated he believes that it is a concrete storm sewer that runs underneath the boundary. Mr. Toadvine asked if there are any inlets on the easement, and Mr. Sanwald stated there are not in the easement area, and stated they are in the street.

Mr. Gruen stated the Application indicated it was to be a privacy fence. He stated the property is different in that it has two or three fronts, and their back yard is really a frontage as well. He stated they indicated they did try plantings, but this was not successful; and he asked how they tried to achieve privacy with plantings. Mr. Sanwald stated seven to eight years ago a landscape contractor planted a number of evergreen trees, burning bushes, and other bushes which they had hoped would present a natural buffer and provide natural privacy; and even though the landscaping has grown substantially, it does not provide them the privacy they would expect and they feel they are on display when they are in the back yard.

Mr. Bamburak stated he recognizes the need to screen the rear yard, but still as an issue with the need for a five foot privacy fence in the front yard. Mrs. Sanwald stated the next door neighbor has two dogs which have come onto their property, and they feel this fence would help this situation. Mr. Bamburak asked if the dogs could jump a three foot fence, and Mr. Sanwald stated they probably could not as they are small dogs.

Mr. DosSantos asked what street is considered their front yard, and Mr. Sanwald stated the front yard is Bancroft. He stated they are proposing the five foot fence on the easement that runs up to Bancroft and at whatever point the Township feels they are no longer in the front of the home is where they would switch to a six foot fence. He stated Schindler Road is the back of their home, and this is where they would have the six foot high fence as well as along the boundary with the neighbors up to the point which the Township considers the front of the home; and at this point, they would drop down to a five foot fence. They intend to have a gate put in the back where the six foot fence is

located. He stated they are only looking for the fence to go down the boundary line and not looking for it to come out at a 90 degree angle. They will not enclose the front yard, but want the fence to follow the boundary between the two properties.

Mr. Gruen stated he does not see the need for a privacy fence in the front yard. Mr. Sanwald stated the area that would be bounded by the six foot tall fence would be for privacy but where they dropped it to five feet is not necessarily for privacy as it is to make the property look more taken care of because of the sheddings coming onto their property. He stated the neighbors have very tall reed-style grass that goes up the side of their property which makes a mess when it sheds in the fall. The winds are blowing this razor-sharp grass onto their property.

Mr. Sanwald stated a number of their neighbors are present this evening, and they also have a letter from another neighbor who was unable to attend indicating that they do not have an issue with the proposed fence. He stated that neighbor is directly across the street from them on Bancroft.

Mr. Toadvine stated if the Board grants a Variance, they will require that any fence located in the easement be subject to the condition that the Applicants bear the burden of removing the fence at their own expense if the easement holder ever has to access the easement. Mr. Majewski stated there is a slight swale they will want to see maintained. Mr. Sanwald stated the swales do carry the water down on their side of the property from back to front, and he does not feel the fence will impede the flow of water in any way. Mr. Toadvine stated typically one of the other requirements is that they maintain a minimum distance of 2” between the ground and the bottom of the fence. Mr. Sanwald stated they would agree to these two conditions.

Mr. Donaghy stated that the Township is participating, not necessary to oppose the Application, but to request the conditions which Mr. Toadvine has already enunciated. He stated the Township would not be in favor of a fence in the front to be higher than 3 feet.

Mr. DosSantos asked the color of the fence, and Mr. Sanwald stated they feel that it will be a light clay or tan.

There was no one present to speak in opposition to the proposal.

Mr. Michael Carr, 1102 Bancroft Lane, was sworn in and stated his property is diagonally across from the house adjacent to Mr. Sanwald which has the reeds. Mr. Carr stated he does not feel what the Applicant is proposing will be unattractive. He stated the Applicants do have five to six foot tall grasses running the full length of the adjacent property. Mr. Carr stated he has some of these grasses on his own property and he is sorry he put them in because he is constantly having to clean them up and they do make a mess. He feels the Applicants have made a reasonable request.

Mr. Sanwald presented to the Board this evening a letter dated 4/14/08 from Cynthia Lynes.

There was further discussion on the lattice previously discussed, and Mr. Sanwald stated they are proposing that the one foot lattice be on the top of the five foot fence that runs in the front of the home, and they do not plan to have a lattice on top of the six foot fence.

The public hearing portion of the testimony was closed.

Mr. Smith moved and Mr. Gruen seconded that the Variance requested be granted as to the request to build a fence within the easement but denied as to the request for a Variance to the height restriction with the following Conditions: that the fence within the easement have a two inch gap to the ground and that the Appellant, upon request of the easement holder, remove the fence and bear any expenses associated therewith in the event that the easement has to be accessed. Motion carried with Mr. DosSantos opposed.

Mr. Toadvine stated if the Applicants are dissatisfied with the result, they have thirty days to appeal to the Court of Common Pleas in Bucks County.

Appeal #08-1468 – KRYSTOF KANIA

Mr. Krystof Kania and Mr. Vladimir Kulynych were present and were sworn in. The Application submitted was marked as Exhibit A-1. Accompanying the Application was a one-sheet drawing of the property with the improvements on the property sketched in. This was marked as being received by the Township on 3/10/08, and was marked as Exhibit A-2.

Mr. Kulynych stated they decided to build a shed in the rear of the property, but they did it without a Permit, and it was reported to the Township. He stated they were not aware of all the regulations, and they violated the Zoning because of the location of the shed which they put in the corner too close to the street. They would like to leave it where it is currently located because it is easy to access at that location.

Mr. Toadvine stated the issue is not because it is too close to the street, but because it is not located in the farthest removed fourth of the lot from the street since this is a corner lot. He stated the only spot where a shed is permitted to be located is the opposite side of the rear property. This relates to paragraph 200-69(14)(a). Mr. Toadvine stated if this were not a corner lot, it would be permitted to be on either side of the property. All setbacks are okay.

Mr. Bamburak stated he understands there is a fence enclosing the back of the property, and Mr. Kulynych stated this is correct. Mr. Bamburak asked if the peak of the shed is visible from the road, and Mr. Kulynych stated it is visible as the fence is 6' high and the shed is 12' high. He stated they located the shed across from the gate so it is easy to access.

Mr. Toadvine stated assuming the Variance is granted, when they come in for the Building Permit, they will have to satisfy the Zoning Officer that the impervious surface coverage at the site is at or below the maximum permitted of 18%. He stated he feels there is an issue with this. Mr. Gruen stated if they approve this Variance, and there is an issue with impervious surface, they will have to come back on this matter, and Mr. Toadvine agreed. Mr. Kulynych stated he feels they have a lot more space, and he does not feel this will be a problem.

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

Mr. Norm Shore, 705 Briarwood Court, stated he lives next to Mr. Kania. He stated he does not have a problem with them having a shed in the back yard at this location. He stated there is a 6' foot fence and a large pine tree that blocks a large portion of the visibility of the shed as you drive by. He stated they are very good neighbors and maintain their house very well. He stated the fence they have around the property was there before the Kania's purchased the property.

There was no one present to speak in opposition to the proposal. Mr. Malinowski stated the Board received a letter dated 3/27/08 from Joe Grohovsky in opposition. He read the letter into the record which indicated that Mr. Grohovsky feels one of the attractions of Lower Makefield is the open space which the current Zoning creates, and he is opposed to changes from the regulations especially since no reasons were given for this specific request. He expects the Township to enforce existing regulations.

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

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

APPEAL #08—1469 – RICK ALBUCK

Mr. Rick Albuck was sworn in. The Application submitted was marked as Exhibit A-1. Attached to Application was a one-sheet Plan of the subject property received by the Township 3/17/08 depicting the proposed location of the shed, and this was marked as Exhibit A-2.

Mr. Albuck stated he applied for a shed in September of last year after constructing a swimming pool. He stated there was a lot of equipment that needed to be stored, and he also felt it would be a good idea to get some items out of his garage which could be a danger to his children. He stated Mr. Habgood denied the Application for a shed because it was within 100' of the right-of-way. Mr. Habgood stated this is a reverse frontage property and backs up to a Collector Road so it has a special setback. Mr. Albuck stated he is requesting a Variance to place the shed within the 100' setback. It will be 36' from the right-of-way. He stated he already has a fence and the shed will be five to six feet inside the fence. There are some existing trees, and he does not feel what he has proposed will be an eyesore.

Mr. Gruen asked the type of shed proposed, and Mr. Albuck stated it is a wood shed which will be on a six foot bed of crushed stone with four anchors. It is called a Quaker shed. He stated aside from the 100' setback requirements, the rest of the Permit was approved.

Mr. Gruen asked how high the roof will be, and Mr. Toadvine stated it can be up to 15' high according to the Ordinance. It was noted the fence is 6' high.

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. Gruen seconded and it was unanimously carried that the relief requested be granted.

Mr. Albuck stated Mr. Habgood has been great through this process. He asked how often the Zoning Code is reviewed, and Mr. Malinowski stated this would be a question for the Board of Supervisors. Mr. Toadvine stated it is looked at fairly regularly. Mr. Maloney stated certain parts of it do get more scrutiny than others. He stated there is a group of citizens whose job it is to review Ordinances, and if Mr. Albuck feels there are sections which need attention, he could send an e-mail to Mr. Maloney with a copy for the other Supervisors. Mr. Maloney stated it should be kept in mind that some Ordinances are written more broadly to allow for flexibility.

APPEAL #08-1470 – MIKE AND JUDITH BERGER

Mike and Judith Berger were sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application was a one-sheet Plan entitled "Project for Michael and Judith Berger, time stamped by the Township 3/17/08; and this was marked as Exhibit A-2.

Mr. Toadvine stated earlier this evening there was an Application for a fence in an easement and the requirements were that the Applicants would be responsible for removing the fence if the easement had to be accessed, and they may require that the fence be located at least 2” above grade if there is an issue with drainage. He asked if the Applicants would be agreeable to these requirements if the Board were to grant the Variance, and the Applicants indicated they would agree to these conditions.

Mr. Berger stated they are planning to install a pool in their rear yard and they want to run a five foot fence down the sides of the yard to enclose the pool and attach it to the neighbor’s fence in the rear. He stated their neighbor has given them permission to attach their fence to his fence which is already in the easement and for which they received approval by the Township a number of years ago.

Mr. Toadvine stated on A-2, the fence to be constructed is highlighted in green, and the fence highlighted in yellow is the neighbor’s fence.

Mr. Majewski stated this is a stormwater management easement. It was noted there is one inlet, but the fence will not interfere with the inlet.

Mr. Donaghy stated the Township is participating not necessarily in opposition, but to request that any Variance granted include the Conditions noted by Mr. Toadvine and already agreed to by the Applicants.

Mr. Berger stated the fence that runs along the back is his neighbor’s property, and he is assuming that he will not be required to put another fence in this location, and Mr. Toadvine stated assuming the neighbor is giving permission for them to tie into this, this would be permissible.

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

Mr. DosSantos moved, Mr. Bamburak seconded and it was unanimously carried to approve the fence in the easement provided conditions that were placed on the record earlier be followed.

OTHER BUSINESS

Appeal #07-1442 – Craig & Page Peters – Approve Extension

Mr. Malinowski stated they are requesting a sixty-day extension which would take them to 6/14/08. Mr. Toadvine stated he would suggest that they grant an Extension through 7/1/08.

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Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to grant an Extension to 7/1/08.

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

Respectfully Submitted,

Gregory J. Smith, Secretary