

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – AUGUST 19, 2008

The regular meeting of the Zoning Haring Board of the Township of Lower Makefield was held in the Municipal Building on August 19, 2008. Chairman Malinowski called the meeting to order at 7:35 p.m. noting that any matter not concluded by 11:00 p.m. will be continued until a future meeting.

Those present:

Zoning Hearing Board: David Malinowski, Chairman
 Paul Bamburak, Vice Chairman
 Jerry Gruen, Member
 Anthony Zamparelli, Member
 Paul Kim, Alternate Member

Others: Robert Habgood, Code Enforcement Officer
 John Donaghy, Township Solicitor
 James Majewski, Township Engineer
 Allen Toadvine, Zoning Hearing Board Solicitor
 Matt Maloney, Supervisor Liaison

Absent: Gregory J. Smith, Zoning Hearing Board Secretary

APPEAL #08-1483 – T-MOBILE NORTHEAST LLC

Mr. Toadvine stated he received a letter dated 8/14/08 from the Applicant's attorney indicating they are requesting a continuance. He has also indicated this was discussed with the Township's solicitor who had no objection to the continuance. They are also waiving the time limits through 10/31/08 and have asked that the matter be continued until the meeting scheduled for 10/7/08. The letter was marked as Exhibit B-1.

Mr. Gruen moved and Mr. Bamburak seconded to continue the matter until 10/7/08. Mr. Gruen asked that T-Mobile be asked to float a balloon over the site of the proposed tower so that the neighbors can see where it is proposed to be located. Mr. Toadvine agreed to make this request.

Motion to continue carried unanimously.

Mr. Toadvine noted that this matter will not be re-advertised. He stated if there is another request for a continuance he will notify Mr. Habgood as soon as possible. Those present were advised they could leave their name and number this evening, so that they could be notified of the continuance. A gentleman asked for a copy of what is proposed, and

Mr. Toadvine noted the Application with an attached Plan is on file at the Township Building and they could look at it during business hours. Mr. Gruen made his Plan available this evening for those who wished to review it this evening.

APPEAL #08-1482 – JORGE & IVONNE LINARES

Mr. Jorge Linares was sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application is a one-sheet Plan dated 8/30/07 which was marked as Exhibit A-2.

Mr. Linares stated he would like to put up a fence in the rear of his property. He stated he has set up a playground area, and he would like to put up a fence in the rear from end to end to create a barrier between the playground area and the trees. He also noted the letter from the Water Company in which they indicated that they do not have a problem with a fence at this location. Mr. Linares stated it will be a six foot high white, PVC privacy fence.

Mr. Bamburak noted the letter from the PA Water Company and stated it should indicate that if the Water Company needs access to the area, the fence would have to be removed and reinstalled at the expense of the homeowner. Mr. Linares stated when they were at the property, the Water Company representatives did advise him that this would be his responsibility, and he would agree to such a condition of approval.

Mr. Toadvine stated it appears from the Plan that there is already a structure in the easement, and Mr. Linares stated he did obtain a Variance in December to put up a wall to hold in the playground chips, but he did not request the fence at that time.

Mr. Bamburak stated they would also ask that there be a 2: to 3” gap at the bottom of the fence so that it would not impede water flow, and this was agreeable to Mr. Linares.

Mr. Donaghy stated the Township is not opposed to this Application and were participating in the matter only to ensure that the conditions that have already been noted were part of any approval.

There was no public comment in favor or in opposition of the Application, and the Public Hearing portion was closed.

Mr. Bamburak moved, Mr. Gruen seconded and it was unanimously carried to approve the Variance to construct a fence in the easement subject to the condition that the fence be removed at the property owners’ cost and replaced at the property owners’ cost if necessary and that a 2” to 3” gap be left at the bottom of the fence so as not to impede water flow.

APPEAL #008-1484 – ANTON & SONS POOL, LLC

Mr. Lorenz Anton was sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application is a one-sheet Plan time-stamped by the Township 7/16/08 which was marked as Exhibit A-2.

Mr. Anton stated they are requesting a Variance so that they are able to install a patio around the pool proposed for 651 Friar Drive. The permitted impervious surface is 18%, and the proposed would be 19.9%. He stated they propose to dig a dry well pit and either incorporate water off the roof and/or water off the deck of the pool to effectively adhere to the 18% requirement.

Mr. Kim asked for more details of the dry well, and Mr. Anton stated normally they go 10' deep and it would be lined with paper and infused with two to three different types of stone which is covered with paper and then several feet of dirt so there would no be any risk of settling.

Mr. Malinowski asked if they have shared these Plans with the Township engineer, and Mr. Anton stated they have not and were waiting until they received the Variance at which time they would then submit Plans to the Township. Mr. Majewski stated if it is properly designed, the dry well as described would lessen the effect of the impervious surface increase on the property. Mr. Toadvine stated he assumes that they are proposing something that would compensate for the 1.9% impervious surface increase. Mr. Anton stated in the past they have done this in other Townships.

Dr. Glenn and Ms. Linda Palsky, the homeowners, were present and were sworn in. Mr. Toadvine stated the Board asked the homeowners if they would be agreeable to a condition requiring some type of dry well to compensate for the impervious surface increase that would be subject to approval of the Township engineer; and they agreed to such a condition.

Mr. Kim asked if there is a hardship why they need a 3' wide concrete deck rather than using more natural materials. He noted if there were someone in a wheelchair that needed such a wide surface this could be considered a hardship; and the Palskys noted they do have such a hardship. Mr. Toadvine stated they are on a corner lot. Mr. Gruen asked Mr. Anton about using Trek-type materials rather than concrete, and Mr. Anton stated he felt that since it would be solid, it would still be impervious. Mr. Gruen stated it would not be solid if there were spaces in between provided there was not a weed barrier. Ms. Palsky stated she already has a Trek deck so they may not be over the permitted impervious surface. Mr. Anton stated they did consider the Trek deck as impervious. Mr. Gruen stated if there is cloth or a weed barrier underneath, it would be impervious. Mr. Toadvine stated it does not appear that it was included in the calculations.

Mr. Bamburak noted the paver deck which extends from the wood deck to the asphalt driveway, and asked if the small area that branches off just prior to the driveway could be removed. Dr. Palsky stated this is the area where they keep their trash cans.

Mr. Gruen asked if they have done any soil perc tests since if it solid clay, a dry well will not work. Mr. Majewski noted the soils in the area are noted to be undetermined.

Mr. Kim asked if they could reach a compromise on the 1.9% increase and bring it down to 1.3% or 1.2% and rather than having a 3' wide concrete deck, could they have a 2' wide concrete deck; and Ms. Palsky stated this would be satisfactory as well. Mr. Gruen asked if they could put in a Trek-type material rather than concrete; and Mr. Toadvine stated while this is possible, the area under the Trek deck would be mud. Mr. Gruen stated they could put stone under the Trek deck. It was noted that if they went to 2' it would take ways 150 square feet of impervious surface. Mr. Kim stated Mr. Majewski has advised that a 2' wide deck is not practical and they should have a 3' wide deck. Mr. Majewski stated if they only had a 2' wide decking around the pool, they will get a lot of mud around the outside of the pool and ultimately the mud washing off would be worse than the little bit of extra impervious surface.

After further review of the Plan, Mr. Anton stated they are going to have a cantilever deck so that the engineer made a mistake and they could subtract approximately 105 feet. It was agreed to amend the Application and request impervious surface to 19.5%. They would still provide the dry well.

Mr. Donaghy stated the Township is participating and would ask that if the Variance is granted that there be a condition that any proposed dry well or other attempt to deal with the stormwater management be subject to review and approval by the Township engineer; and that any dry well which is installed be at least 5' from the property line. This was acceptable to the Applicants.

There was no one present to speak in favor of the Application.

Mr. Edward Rubin was sworn in and stated he does not oppose the pool, but is concerned that there is an underground stream running down the back yards. He stated a pool was approved in the area ten to fifteen years ago, and the hydrostatic pressure built up and they had to rebuild their basement wall. Mr. Rubin stated he has had to remove his window well and concrete it up because of the underground stream. He is concerned what will happen if the pool goes in and there is an impact to the underground stream. He lives adjacent to the subject property.

Mr. Majewski stated he does not know if there is an underground stream, but does not think the entire area has water problems which is why he would recommend that they make the installation of some type of stormwater management system part of any

approval that may be granted. He stated he feels they could do soil logs or test pits in the area of the pool to see if there will be a problem with the construction of the pool.

Mr. Bamburak asked what will happen if they start to build the pool after the Variance is granted, and there is a problem. Mr. Anton stated the pool will be 8' so they will dig a 9' hole. Mr. Majewski stated if there is a problem, they will be able to see it in the test pit. Mr. Anton stated if it is too much of a problem, they will not build the pool. He stated once it is open, he would be willing to contact the Township to inspect it. Mr. Habgood stated while there is an inspection by the Building Inspector for a pool, a test pit would have to be inspected by the Township engineer. Mr. Majewski stated they could impose a Condition that the test pit be inspected by the Township engineer.

Ms. Palsky stated while she is committed to having the pool, she has a significant investment in her property already and trusts Mr. Anton's judgment on whether or not a pool is feasible. She stated she also does not want to risk her relationship with the Rubins or cause any problems to their property.

The Public Hearing portion of the meeting was closed.

Mr. Bamburak moved and Mr. Zamparelli seconded to approve the Variance to allow impervious surface of 19.5% subject to the condition that the stormwater management plan be approved by the Township engineer, that the inspection pit be approved by the Township engineer, and that the stormwater dry well be at least 5' in from any property line.

Motion carried with Mr. Malinowski opposed.

A short recess was taken at this time. The meeting was reconvened at 8:25 p.m.

APPEAL #07-1434 – DAN MARRAZZO

Thomas Smith, attorney, was present with Paul Wojciechowski, engineer. Michael Klimpl, attorney, was present on behalf of the Sutphin Pines Condominium Association.

Mr. Toadvine stated this matter has been continued a number of times but the matter has not yet been opened. Mr. Smith stated an Amended Application was filed and he will amend it orally this evening. He stated the most recent amendment was by letter dated 2/18/08, but no actual Amended Application was filed.

Mr. Toadvine marked the Application dated 6/13/07 as Exhibit A-7. The Plan submitted initially was not marked since a new Plan will be presented this evening.

Mr. Smith stated because this is an Appeal from an Enforcement Notice, there are certain issues they feel which have been resolved to the satisfaction of the Township, and he would like to get this information on the record. Mr. Toadvine stated they can do this by Stipulation, and Mr. Smith agreed.

Mr. Smith stated Mr. Michael Klimpl will be entering his appearance on behalf of the Sutphin Pines Condominium Association, and he has discussed with him and the Township solicitor that the Applicants had previously consulted with Mr. Toadvine's partner, Mr. Marte with respect to a property in another Municipality. It was a brief discussion during which Mr. Marte asked that they consider acquiring some additional ground and then come back to him; and his clients were not charged for that consultation. He stated to the extent that there is a conflict represented by that conversation, his clients have agreed to waive that conflict. Mr. Toadvine stated he discussed this issue with his partner, who indicated it was a brief meeting and had nothing to do with the subject matter. They have no on-going representations, so he does not feel this would be a conflict. Mr. Malinowski agreed that the matter should proceed.

Mr. Smith noted Exhibit A-7 to which was attached a letter dated 5/14/07 from Nancy Frick of the Township and is the Enforcement Notice. This was marked as Exhibit A-8. Mr. Smith noted Item #3 which refers to a long trellis structure which was alleged to have encroached into the 80' setback from Sutphin Road, and the Application has relocated this structure so it is not longer within the setback. They have received Permits for the structure. With respect to Item #4 a 24.1' by 12' shed, the Applicant has relocated this outside of the setback. Mr. Smith stated there are ten structures listed on Page 2 which were alleged to have been constructed without Permits obtained from the Township, and the Applicant has obtained Permits since the issuance of the Enforcement Notice. The Township has inspected the structures and issued Building Permits and Certificates of Occupancy. Mr. Smith stated he had a discussion with Mr. Donaghy earlier today and it is his understanding that the Township is willing to stipulate that those items have been addressed and they are no longer seeking enforcement of those alleged violations, and Mr. Donaghy agreed. Mr. Smith stated they would therefore withdraw all references in the Application to relief related to those items in the Enforcement Notice.

Mr. Smith stated what is left are the Appeals from Items #1, #2, and #5 in Exhibit A-8. Mr. Smith stated Item 1 is the greenhouse addition which allegedly encroaches into the 100' setback from Yardley-Morrisville Road. Item #2 is an allegation that the impervious surface ratio exceeds the maximum permitted in the R-2 Zone, and Item #5 is the allegation that the use of the property and the site does not comply with a requirement in the 1972 Zoning Hearing Board order that states 92 parking spaces shall be required. He stated they are seeking relief from all of these items on the following basis: With respect to the greenhouse, there is a prior Zoning Hearing Board Decision from 1957 in which the Zoning Hearing Board found that the entire property was devoted to the non-

conforming use as a nursery/garden center. With respect to the greenhouse, their first basis for relief is the activity which now occurs within the greenhouse always occurred in the open and they have simply enclosed it with a roof and walls on the side, and the base was always impervious and it was always used for the display of retail goods to the general public. Alternatively, they believe that due to their non-conforming use status, they are entitled to natural expansion in order to compete with like uses in the area, and in the alternative, they would seek a Variance to allow the greenhouse structure to encroach within the 100' setback from Yardley-Morrisville Road.

Mr. Toadvine asked the amount of the encroachment; and Mr. Wojciechowski stated the existing building was 84.7' off the right-of-way, and the addition is 72.1' or 12.6' closer to the right-of-way.

Mr. Gruen stated he felt the greenhouse replaced an existing shed, and Mr. Toadvine stated they will discuss this when they have testimony as at this time, they are only trying to frame the issues. Mr. Smith stated this will be part of their position that they are enclosing a use that was already in that location, and they will have testimony from the Marrazzos as to the seasonal tents they had placed at this location and display of retail goods for sale to the public.

Mr. Smith stated with respect to the impervious surface and the parking, they allege that these are non-conforming characteristics of the property, and they have always been non-conforming and they have not made any changes to increase the extent of the non-conforming status. In the alternative, they are alleging that they are entitled to increase the non-conformity due to the doctrine of natural expansion; and in the alternative, they are requesting a Variance for impervious surface and parking.

Mr. Michael Klimpl stated he represents the Sutphin Pines Community Association who are the adjoining neighbors. He stated after many months of negotiation, Sutphin Pines and the Marrazzos have worked out a rather detailed Stipulation and Plan which both parties feel revolve many of the issues which are before the Board. He stated the Township has also reviewed the Stipulation and found it to be satisfactory. He stated the position of Sutphin Pines would be that they do not oppose, and in fact support, the Variance Applications on the condition that the terms of the Stipulation and Plan which will be testified to, will be part of the relief that the Zoning Hearing Board would impose on the property.

Mr. Donaghy stated he agrees with Mr. Smith's review that the only issues before the Board are the issues as to the greenhouse, the impervious surface and the parking.

Mr. Toadvine asked if the Stipulation has conditions attached to it, and Mr. Klimpl stated Mr. Smith will introduce this during the course of testimony but it is basically an agreement between Sutphin Pines and Marrazzos as to activities and structures in the

form of a written Stipulation and a Site Plan. It has been agreed to and signed off on by both Parties and reviewed by the Township. Mr. Klimpl requested Party Status on behalf of Sutphin Pines.

Mr. Toadvine asked if there was anyone in the audience requesting Party Status who is not represented by Mr. Klimpl, and Mr. Peter Kundra, 1312 Yardley Road asked for Party Status and stated he too has a Stipulation.

There was no one else present who requested Party Status. Mr. Toadvine asked if there was anyone else present whose issues have not been addressed by the Applicant prior to this evening, and no one so indicated.

Mr. Smith's letter dated 2/18/08 was noted which had been marked as Exhibit B-6. He stated the additional items in Exhibit B-6 were raised after they reviewed the Sutphin Pines Stipulation and Plan with Ms. Frick who suggested that they request an interpretation from the Zoning Hearing Board with regard to the applicability of these Sections; and in the alternative, he has requested relief. Sections noted were Section 200-78h2 which provides a parking area may not be closer than 25' from any lot line, and they will be presenting Plans to demonstrate that parking has always been located closer than 25' and it is intended to continue at those locations. He stated his legal position is that they are non-conforming. The second Section is 200-78h1 which provides that a driveway may be located no closer than 5' from the property line, and they have shown in the Stipulation Plan with Sutphin Pines that they are proposing to have the rear driveway within 1' of the Sutphin Pines property line; however the legal interpretation he is requesting is that this applies only to Residential, and they are a non-Residential use. These are therefore additional issues that the Board needs to address which were not in the Violation Notice, but issues the Zoning Officer raised during meetings held subsequent to the issuance of the Violation Notice.

Exhibit A-1, the 2008 Amended and re-stated Stipulation and Plan was marked. Mr. Smith stated this is signed by Sutphin Pines and the Marrazzos and has been reviewed by the Township and he feels all parties will stipulate to its admissibility.

Mr. Toadvine asked if the issues about the location of the parking and the driveway are still issues as far as the Township is concerned; and Mr. Donaghy stated his understanding is that if relief is granted by the Board and work is done on the site in compliance with the Stipulation, it will be necessary to allow for that parking to be closer than 25' and also for the driveway in the rear as noted by Mr. Smith. He stated although technically the Township has not determined that there is a violation as of this date, they do recognize that there will be a violation if relief is not granted so that in order for the Applicants to be in compliance with the Stipulation, they will need to have this relief.

Exhibit A-2 was marked which is part of the Stipulation and is a Plan dated 11/15/07, last revised 6/27/08. Mr. Smith stated the original Exhibit A-2 has a correction to Note #2 on the plan which he was not able to get onto the copies and Mr. Toadvine read it into the record as follows: “The seasonal tent may only be placed in the location shown on this Site Plan and the pre-typed portion of Note #2 has deleted in the third line the words, “at the same location.”

Mr. Smith presented Exhibit A-3, the Stipulation with Mr. Kundra and his wife.

Mr. Toadvine asked if the Township has had the opportunity to review the Stipulations - Exhibit A-1 and Exhibit A-3; and Mr. Donaghy stated they have and are satisfied with the terms of the Stipulations recognizing that the Township is not a Party to them. He stated they have reviewed them and had discussions with the various Parties and is satisfied with the terms. Mr. Toadvine stated he and the Board have not had the opportunity to review these Stipulations and he asked if there are any Stipulations contained in either A-1 or A-3 which may be contrary to the Zoning Ordinance. Mr. Donaghy stated his understanding is there are not except to the extent with the two items already noted.

Mr. Smith stated prior to the issuance of the Enforcement Notice, there were communications from the residents with the Township; and a lot of the issues which the neighbors objected to were issues other than those the Township raised in the Enforcement Notice and were non-Zoning issues or issues which the Township had not determined to be in violation of the Zoning Ordinance such as location of outdoor mulch, storage of materials, location and lay out of the accessory structures on the property, the circulation of the traffic through the property particularly at the rear, and issues related to the types of trucks and traffic that came to the property. Mr. Smith stated the Sutphin Pines Association felt that the operation of the property was becoming more of a landscaping operation, and the Applicants have agreed to limit the number of storage bins on the property and limit the types of deliveries that will take place. Delivery for all landscaping jobs will be done at locations off site, and this site will generally be for retail sale of bulk items. Mr. Smith stated the Stipulation also addresses exterior lighting. They will also testify as to the maximum number of parking spaces they can fit on the site, and the Sutphin Pines property owners have indicated that they are satisfied with that level of parking provided the Stipulation is entered into any Order that the Board may grant as a Condition of the Order.

Mr. Toadvine asked if Mr. Klimpl has reviewed the Stipulation with the Kunderas, and Mr. Klimpl stated he has not.

Mr. Peter Kundra was sworn in and stated he has reviewed the Stipulation with Sutphin Pines. Mr. Toadvine asked Mr. Klimpl if he feels he needs to review the Stipulation with Mr. Kundra to determine if there are any conflicts with that Stipulation and the Sutphin Pines Stipulation. Mr. Klimpl stated he could review it, but he would not want to delay

the proceedings. Mr. Toadvine asked Mr. Smith if, to his knowledge, there is anything in either Stipulation that would in any way be contrary to the other Parties, and Mr. Smith stated there is not. He stated Mr. Kundra was concerned generally with the mulch storage bins located at the corner of Sutphin Road and Yardley-Morrisville Road and screening, buffering, and berming has been installed at that location to minimize the effect of those bins on his property across the street.

Mr. Smith noted the two prior Decisions of the Zoning Hearing Board which establish the history of the property as a non-conforming use which has been used continually since 1767 as a nursery; and the non-conforming use at the corner of the property as a nursery/greenhouse selling landscaping materials, gifts, and other accessory uses and has been officially recognized as a non-conforming use since at least 1957. Exhibit A-4 was marked which is a Decision and Order of the Zoning Hearing Board dated 7/30/57.

The second Zoning Decision was marked as Exhibit A-5 dated 10/12/72, an Appeal of the Zoning Officer's Denial of a Permit to add a one and half story structure to the existing structure at the time located on the corner of the property which is now the Marrazzo site. The Board found that the non-conforming use of the property for a garden center with the sale of landscaping and garden tools, ornaments, and gifts, was a use which occurred on the entirety of the property, and they found that the addition of the one and a half story structure would be the enclosure of a non-conforming use and they did not need a Variance. In the 1972 Decision there was a denial of a Permit to allow expansion of the structures on the property as well as improvements related to the operation of a landscaping business which was engaged in site development and road construction. In 1972 the Board confirmed the history of the site as a non-conforming use, nursery, and garden center and permitted the construction of additions to the property subject to certain Conditions. The additions which were authorized were subsequently constructed pursuant to Permits issued by the Township.

Mr. Smith stated he had hoped to have his clients present this evening to testify regarding their use of the property as a non-conforming use and the condition of the property when they purchased it and their knowledge of the property prior to that purchase, but due to personal issues, they are unable to attend this evening. He stated Paul Wojciechowski is present to testify as to his knowledge of the property over the last twenty-five to thirty years. At the conclusion of that testimony, he will be requesting a Continuance so that his clients can be present at a meeting in the future to testify.

Mr. Toadvine asked if the Township has a position on the five outstanding issues. Mr. Donaghy stated they are not opposing the Application provided that the Stipulations are executed and that any relief is granted with a Condition that they will be in compliance with the Stipulations. He stated the Township feels the appropriate relief to be granted would be by way of Variance, which they feels is appropriate for each of the outstanding issues.

Mr. Toadvine asked Mr. Klimpl about his clients' position, and Mr. Klimpl stated their position is reflected in the Stipulation that landscaping is not permitted on the site and the Stipulation indicates that no landscaping will take place on the site. He stated he recognizes that the Applicant feels they have to go on an alternative basis, but he agrees with the Township that it would be cleanest if the Board acted on the Variances requested. He stated they are not opposed to the requested Variances.

Mr. Gruen asked the difference between landscaping and a nursery business. Mr. Klimpl stated they spent a significant amount of time considering this and part of this depends on the type of materials and whether it is large trucks coming in taking off heavy stone as opposed to a retail use involving mulch, smaller stone, etc. He stated they laid out in the Stipulation what they could and could not do at the property. Mr. Gruen asked if they were trying to gear the business more to retail as opposed to wholesale, and Mr. Klimpl agreed. He stated the Stipulation is very detailed.

Mr. Toadvine asked Mr. Kundra if he is opposed to requested relief, and Mr. Kundra stated he is not and he generally agrees with Sutphin Pines and provided the spirit of the Stipulation is achieved, he does not have any opposition. He stated he wants to make sure the stormwater does not create a problem for his property, and this is part of the Stipulation. He asked if any violation occurs in the future, that it be corrected immediately.

Mr. Smith stated they do have a number of alternative bases for relief.

Mr. Paul Wojciechowski was called and sworn in. He stated he is employed by All-County Inc. and has been employed there for thirty-two years at various capacities. He reviewed his educational background. Mr. Toadvine asked if all Parties would stipulate to Mr. Wojciechowski's qualifications as an expert, and all agreed. Mr. Wojciechowski stated he is licensed in New Jersey as a land planner and surveyor and a land surveyor in Pennsylvania..

Mr. Wojciechowski stated he is familiar with the property that is the subject of the Application. He stated thirty years ago the owner of the property at that time, Mr. Washburn, was a friend of his. He stated at that time he had a number of maintenance issues, and except for the building footprint most of the site was covered with stone and seemed to be a "free-for-all" with regard to parking around the site. Mr. Wojciechowski stated approximately twenty-two years ago, he marked the common property line with Sutphin Pines since Rock Hill Builders felt that the nursery was encroaching on the Sutphin Pines property. The survey indicated that it was, and the nursery had to move some things off the Sutphin Pines property. He was also hired by the Marrazzos approximately sixteen years ago to do a Land Development on the site, but they never went through with it. He surveyed the property in connection with that Plan sixteen years ago. At the request of the Marrazzos, after receipt of the Enforcement

Notice, he also prepared the Site Plan depicting existing features on the property. This Site Plan dated 11/15/07, last revised 3/17/08 was marked as Exhibit A-6.

Mr. Wojciechowski stated Exhibit A-6 depicts the existing features including the driveways, greenhouses, mulch fence, bituminous paver walks, sheds, gatehouse, trailer, and ponds. He stated he calculated the impervious surface existing on the site and this is shown on the Plan in Note #2. He stated all the buildings are impervious as are the bituminous driveways and walks, and an area of compacted stone which accepts vehicle traffic. He stated based on his knowledge of the property he has seen changes to the area of the property devoted to impervious surface and added while he does not clearly remember the site prior to Mr. Marrazzo's ownership, going back to Washburn's ownership, he feels there is more green area currently than there was in the late 1970s. Mr. Wojciechowski stated the maximum permitted impervious surface for properties in the R-2 Zone is 18%. Mr. Smith asked whether the impervious surface at this property was ever 18% or less, and Mr. Wojciechowski stated it was not that he had ever seen. He stated 18% of this site would be 18,000 square feet. The site plan shows that 44,400 square feet is devoted to parking and driveway impervious surface so that in order to comply with the Zoning Ordinance limits as to impervious surface, the site could only have impervious surface equal to about half of the driveway and parking areas.

Mr. Smith asked if there were parking spaces laid out on the property when he first surveyed the property for the Marrazzos, and Mr. Wojciechowski stated areas were provided, but they were not striped. He did design a parking lay out for the property to be placed on the Existing Conditions Plan Stipulation Plan, and he was able to establish thirty-eight spaces with the existing conditions on the site. Mr. Smith asked if it is possible to provide anymore parking on the property than what he has shown, and Mr. Wojciechowski stated there are parking areas in the back where the employees could park which is a stoned area but is not striped. He stated to provide any more striped parking would take away show area, trees, stock areas, etc. It would also require relocating some of the accessory structures that are presently located on the site.

Mr. Smith asked the distance from the front of the existing greenhouse and retail center from the legal right-of-way of Yardley Morrisville Road. Mr. Wojciechowski stated prior to the addition, the distance was 84.7' and after the greenhouse addition was constructed it brought the setback down to 72.1' for a 12.6' distance. The existing greenhouse and retail center encroaches 15.3' into the 100' setback.

Mr. Smith asked Mr. Wojciechowski if he has reviewed the surrounding area to determine their setback from Yardley-Morrisville Road, and Mr. Wojciechowski stated he had aerial maps which show the area of Yardley-Morrisville Road around the Marrazzos property and the setbacks are approximately 50' feet. Mr. Smith asked if the location of the existing greenhouse with the addition seem uncharacteristic with regard to setback in relation to Yardley-Morrisville Road, and Mr. Wojciechowski stated it does not as Marrazzos seems to be set back another 20' feet compared to other properties.

Mr. Smith asked if there are any physical characteristics of the lot which he feels make it difficult to comply with the special setback provisions in the Zoning Ordinance, and Mr. Wojciechowski stated it is a corner lot so that half of the lot has road frontage with special setback; and if they were not arterial roads, they would have a 40' front yard requirement.

Mr. Toadvine asked how many parking spaces are currently on the property, and Mr. Wojciechowski stated there are thirty-eight in the front and there could be another fifteen in the rear although they are not marked. Mr. Toadvine stated they are requesting a Variance from the required 98 spaces and asked what they are proposing. Mr. Smith noted Exhibit A-2 showing the revised lay out, and the number of parking spaces shown totals seventy-two.

Mr. Toadvine asked about impervious surface, and Mr. Smith stated the proposed impervious surface is 62.72% as shown on Exhibit A-2 while the existing condition is 64.24%.

Mr. Toadvine noted the 1967 and 1971 Decisions of the Zoning Hearing Board and asked if there are files associated with these, and Mr. Habgood agreed. Mr. Toadvine asked if anyone checked the files to see if there was a record of the existing impervious surface at the time those Applications were made. Mr. Habgood stated impervious surface was handled differently at those times. Mr. Smith stated he has reviewed the Township files for the Marrazzo property; and he recalls a letter from the Township solicitor, Mr. Truelove, indicated that there are no records of those proceedings other than the Decision, and that there are no transcripts of the Hearings.

Mr. Smith noted Exhibit A-2 prepared by Mr. Wojciechowski, and asked for a description of the changes proposed from the existing features. Mr. Wojciechowski stated they are proposing additional parking and a one way road along the rear portion of the nursery. They are also moving some sheds away from the property line and will eliminate five out-buildings currently on the property. They also moved the mulch bins from the rear of the nursery along Sutphin Pines to the front corner of the nursery and will provide buffering along both roadways. He stated there was a trellis in the front yard of Sutphin Road which was removed. A new building is also proposed and shown on the Plan, and it is intended that a number of the existing accessory structures will be removed and replaced by the new building to be located behind the existing greenhouse/retail center. Mr. Wojciechowski stated this one building will serve all the purposes of the sheds scattered in the rear of the property. The Notes on the Plan reflect that the accessory structures once removed will not return to the property.

Mr. Toadvine asked when the greenhouse addition was constructed, and Mr. Wojciechowski stated he feels it was within the last two years. Mr. Toadvine stated he assumes no Permit was issued for the greenhouse addition, and Mr. Smith stated no

Permit was issued; and in the Enforcement Notice, the Permit Application was denied due to the setback issue.

Mr. Gruen asked if they considered removing any of the old driveway in the back of the property since it is no longer in use in order to reduce the impervious surface.

Mr. Wojciechowski stated this is noted to be removed on the Plan.

Mr. Gruen asked about the seasonal tent noting it is not being shown as impervious surface. He asked if it was possible to remove that as a floor and just use a pervious surface. Mr. Smith stated it is seasonal, it is lumped within the shed/dumpster calculation, and the area underneath it is asphalt. Mr. Gruen asked if they could remove the asphalt and use some other substance as a floor which would be pervious.

Mr. Wojciechowski stated he feels if they removed the asphalt, they would need stone there since they have stock there and people would be walking in this area. Mr. Gruen stated he feels the Marrazzos should answer this.

Mr. Kim stated this space will not be able to meet the 18% impervious surface requirement and he asked if it is subject to 18% since it is a commercial business.

Mr. Toadvine stated this is a previous non-conforming use, and the Applicant's attorney has indicated that the property has been used since the 1700's as a nursery so the use pre-dates Zoning. Mr. Donaghy stated he does not feel the Zoning Ordinance had any impervious surface requirements until twenty to thirty years ago. Mr. Kim stated he does not feel the 18% is applicable and is not germane.

Mr. Donaghy asked about the area of the building expansion in the front yard and Mr. Wojciechowski stated the encroachment is approximately 28' into the 100' setback which is an additional 12.6' beyond what had been existing. Mr. Donaghy noted the proposed impervious surface and asked if they considered the possibility that the pond would not constitute impervious surface, and Mr. Wojciechowski stated he recently learned this from the Zoning Officer so this means 393 square feet could come off of the impervious surface. Mr. Toadvine stated they could re-calculate the impervious surface for the next meeting.

Mr. Majewski stated he only looked at the Plans tonight and will have to review the calculations prior to the next meeting.

Mr. Gruen stated while the property will not be able to have only 18% impervious surface, he feels impervious surface has a cumulative effect throughout the Township and he feels they should consider reductions to the impervious surface for this property.

Mr. Bamburak stated they only indicated that this pre-dates Zoning. Mr. Gruen stated while he recognizes this, he feels that if they can remove some of the impervious surface, it will help.

Mr. Klimpl and Mr. Kundra had no questions for Mr. Wojciechowski. There were no questions from anyone in the audience at this time.

Mr. Smith stated while Mr. Wojciechowski's testimony is at an end, he feels he should probably be present at the next Hearing in case there are additional questions of him at that time.

Mr. Toadvine stated the two Stipulations have conditions to be imposed and it may be beneficial by the next meeting, if Mr. Smith were to craft a proposed Order for the Zoning Hearing Board to vote on and circulate it to make sure that it meets with all Parties approval. He stated if the Board were inclined to vote in favor and as part of the Order incorporated the Stipulations, it may be difficult for someone in the future to understand the Order. Mr. Smith agreed to prepare a Draft and circulate it prior to the next meeting. Mr. Klimpl stated his concern is that this may result in re-working what they have already done. Mr. Toadvine stated his concern is that another Board twenty years in the future may not be able to decipher what was actually meant. Mr. Klimpl stated the Sutphin Pines Stipulation refers extensively to the Plan, and Mr. Toadvine stated the Plan would have to be incorporated and it would be referred to in the Order as an Exhibit. Mr. Donaghy stated he would suggest that the Plan actually be attached to any Final Order.

Mr. Kim asked why they are requesting a Continuance apart from the re-calculation of the impervious space since they have the Stipulations and the Board understands what Variances they are requesting. Mr. Smith stated prior to this evening, he was not sure who else would request Party Status. He stated the Parties who have entered their appearance have all agreed to the Stipulation, but he could not be certain of this prior to this evening if that was going to be the case. Mr. Toadvine stated it is important that a Record is being made. Mr. Smith stated he also feels there are additional facts which are relevant to the relief they are requesting so that in the event that there is an Appeal, he would like to have a Record to present to the Court of Common Pleas. He stated he would be willing to summarize testimony in the form of an offer of proof and have his witnesses sworn in and testify that if they were called to testify, it would be substantially in accordance with his summary to expedite the proceedings; although he has not discussed this with Mr. Donaghy. He stated he did discuss this with Mr. Klimpl, and he is not opposed. Mr. Smith stated he still feels they need to come back at another Hearing. Mr. Donaghy stated he would not be opposed to Mr. Smith's attempt to expedite matters but noted it would still require coming back to another meeting as the witnesses are not present this evening. Mr. Bamburak stated the Board also needs time to review what has been submitted.

It was agreed to continue the matter to 9/16/08.

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Mr. Bamburak moved, Mr. Gruen seconded and it was unanimously carried to continue the matter to 9/16/08.

Mr. Tom Geery, Sutphin Pines, stated he is concerned that for a number of years the Marrazzos have ignored coming in for Permits and applying for Variance and they have now gotten this matter resolved. He asked what punishment or fines will be put on the Marrazzos . Mr. Malinowski stated this is not within the purview of the Zoning Hearing Board as their purview is to decide on the Zoning issue before the Board. Mr. Toadvine stated the Township can seek fines but only if the Enforcement Notice is ignored; and in this case, an Appeal was filed. Mr. Geery stated it appears that they can do whatever they want at any time and get away with it as long as they get the Variance after the fact.

Mr. Kim stated the local individuals would have the same rights as the Applicants.

There being no further business, the meeting was adjourned at 9:50 p.m.

Respectfully Submitted,

David Malinowski, Chairman