

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – AUGUST 5, 2008

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on August 5, 2008. Chairman Malinowski called the meeting to order at 8:10 p.m.

Those present:

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

APPEAL #03-1235(A) – CARA MIA, LLC – REMAND

Mr. Toadvine noted the letter received from John Koopman. Mr. Toadvine stated this matter has been continued several times. No further testimony will be taken. The parties wish that the full Board that had heard the matter be present when a Decision is made, and since Mr. Zamparelli is not present this evening, it has been requested that the matter be continued until September 16 at which time the Board will make their Decision.

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

APPEAL #08-1481 – THE FRANKFORD HOSPITAL OF CITY OF PHILADELPHIA, INC.

Mr. Toadvine noted the letter received from John VanLuvanee dated 7/24/08. Mr. Toadvine stated the Applicant has filed an Amended Application so it will be re-advertised. There was previous discussion that this matter would be heard at a special meeting to be heard 8/26/08. The letter from Mr. VanLuvanee confirms this and waives the time limits to the Board. The letter was marked as Exhibit B-1.

Mr. Bamburak moved, Mr. Smith seconded and it was unanimously carried to continue the matter until 8/26/08.

APPEAL #08-1477 – MARK SZUL, SZUL’S LANDSCAPING

Mr. Mark Szul and Mr. Jay Junk were present and were sworn in. Mr. Toadvine stated this matter was continued from the last meeting. He stated it is an impervious surface request, and there is an existing deck which is proposed to be removed and replaced with EP Henry in the same footprint. The Township engineer had an opportunity to inspect the area under the existing deck to make a determination as to whether or not it was impervious or pervious. Mr. Majewski stated it has been determined that the material underneath the deck is impervious. Mr. Toadvine stated the proposed patio will go over the same footprint which means that there would be no net increase in impervious surface, and Mr. Majewski agreed.

Mr. Toadvine asked when the deck was constructed, and Mr. Junk stated it was constructed twenty-six years ago. Mr. DosSantos asked if there had been any modifications to the deck since it was initially constructed, and Mr. Junk stated there were not. Mr. Malinowski asked if there was a Permit taken out for the original deck, but Mr. Junk could not recall if a Permit was taken out or not.

Mr. Smith asked the permitted impervious surface for the property, and Mr. Habgood stated it is 18%. Mr. Toadvine stated the existing impervious surface is 27.13% because the existing deck is impervious. He added that when the Application was filed, it was proposed that the patio would increase the impervious coverage, but it has since been determined that the existing area is already impervious so there will be no change to the existing condition which is 27.13% impervious surface.

Mr. Malinowski asked if the Township is taking a position on this matter, and Mr. Donaghy stated they had participated at the last meeting and had hoped to have a reduction in the impervious surface, but at that point they did not realize that it was already at the level that exists so the Township has no further position.

Mr. Toadvine asked the permitted impervious surface twenty-six years ago for this lot, and Mr. Habgood stated he feels at that time they went by building coverage.

Mr. Gruen asked for a sketch of the proposed deck, and Mr. Szul presented an 8 ½” by 11” patio design Plan which was marked as Exhibit A-3. Exhibit A-2 was also noted.

There was no one in the public to speak at this time, and the Public Hearing portion was closed.

Mr. Bamburak moved, Mr. Smith seconded and it was unanimously carried to grant the Variance allowing impervious coverage of 27.13%.

APPEAL #06-1410(A) – AMENDED APPEAL OF NORMAN P./PATRICIA K. O’ROURKE

Mr. Edward Murphy, attorney, was present with Mr. Brian Focht, who was sworn in. The original Application submitted was marked as Exhibit A-1. The Amended Application before the Board this evening was dated-stamped by the Township 6/3/08 and was marked as Exhibit A-2. The Plan that accompanied the Amended Application is a single-sheet plan dated 5/30/08 and was marked as Exhibit A-3. A reduced copy of A-3 was provided to the Township this evening.

Mr. Murphy stated the original Application was submitted a significant amount of time ago; and as a result of certain concerns expressed by the Township staff related to the scope of relief, time was spent in meeting with Township staff to look at the conditions of the site and the relief that was originally requested to see if there could not be a better marriage of the public policy objectives established by the Ordinance particularly with regard to natural resource protections as it related to this particular property. Mr. Murphy stated there is a series of natural resources on the site that coalesce to significantly inhibit the use of the property. He stated the feeling was that there was a potential solution that would preserve the public policy objections and still provide a measure of relief to the Applicant. He stated the Plan that has been presented this evening has achieved this balance.

Mr. Murphy stated the property is three acres in size in the R-1 Zone which requires a minimum lot of 34,000 square feet. Because of all of the natural resources on the site together with the required buffers, they are very much constrained in subdividing the lot without seeking some measure of relief. He stated they feel the relief being sought is the minimum relief that still provides a balance.

Mr. Smith stated there is an existing structure on the property which is a two-story frame dwelling with a pool, patio, and deck. Mr. Murphy agreed and stated this would be on proposed Lot #2 of the Subdivision. Mr. Smith asked why they need to subdivide the property, and Mr. Murphy stated because of the application of the Ordinances, they feel they are unduly restricted as to the development of the site. Mr. Smith stated what they are proposing will create another lot which will be smaller than the size required. Mr. Murphy stated they will provide testimony as to why this is the case.

Mr. Focht stated he is a licensed civil engineer in the Commonwealth of Pennsylvania and has been employed by VanCleeef Engineers for six years. He has been practicing engineering for twelve years. He stated he oversees ten employees and all of their Subdivision and Land Development projects. He is familiar with the property which is the subject of the Application and prepared Exhibit A-4.

Mr. Focht stated the property is approximately three acres located along Washington Crossing Road/Route 532 as it abuts the Newtown Township line bearing Tax Parcel #20-3-4. It is triangular in shape. Mr. Focht stated it has 350' of frontage on Washington Crossing Road. The majority of the surrounding land use is single-family residential. The rear of the property is vacant land, and currently there is an Application with the Township for a single-family residential development.

Mr. Focht stated the site slopes gently from Washington Crossing Road to the rear of the property and along the rear of the property there is an unnamed tributary to Core Creek which follows the boundary of the property. Associated with the tributary is floodplain and alluvial soils. A buffer associated with this is required by the Township. There is also a significant amount of woodlands on the site. In the site capacity calculations shown on exhibit A-3, it shows the different types of natural resources. Mr. Focht stated the table does not spell out the exact amount of those resources because there is some "double-dipping" involved since you do not subtract out the same area twice if they fall within two categories.

Mr. Focht stated the current Zoning is R-1, and in the R-1 Zoning District, the minimum lot size required for a new single-family home would be 34,000 square feet given the amount of amount of natural resource protected land on the site. Mr. Focht stated there is an existing two-story frame dwelling with associated driveway access off Washington Crossing Road. There is also a large parking area, pool, patio, and deck. The property is served by on-lot sewer and water.

Mr. Murphy asked the Zoning of the surrounding properties, and Mr. Focht stated the entire area surrounding the property in Lower Makefield Township is zoned R-1. In Newtown Township it is zoned CM which is Conservation Management.

Exhibit A-3 was noted, and Mr. Focht stated they are proposing a two-lot subdivision. The existing dwelling would be located on Lot #2. If the Subdivision Plan is approved Lot #2 would have a gross area of 82,000 square feet which is almost 1.9 acres. The net area would then be reduced based on subtracting out all of the natural resources for a 1.2 acre lot or 52,000 square feet. Mr. Focht stated they must subtract almost 6/10s of an acre from the gross acreage because the Ordinance intends to protect natural resources so that wherever there is protected land that is 100% protected, it must be subtracted out from the lot area. On proposed Lot #2, there would be about 6/10s of an acre of natural

resources that would be preserved but deducted from the calculations as required by the Ordinance. The natural resources on proposed Lot #2 are a combination of water course, water course buffer, alluvial soils, and woodlands.

Mr. Murphy marked as Exhibit A-4 a single-sheet plan prepared by VanCleeef dated 8/4/08. This was presented to the Board this evening. Mr. Focht stated the intent of this Exhibit is to outline the total amount of natural resource protected land that exists on the site. Mr. Focht stated they took the site capacity calculations and color-coded them on this Exhibit. Mr. Focht noted Lot #2, and stated the green area would be all woodlands that need to be protected; the orange hatch is the water course buffer, and the blue hatch is the actual water course, both of which are 100% protected. The dark blue is alluvial soils. Mr. Focht stated within the orange hatch are additional alluvial soils, additional woodlands, and floodplain within the buffer; however, the buffer is the most-restricted line so that entire area needs to be 100% protected. Mr. Murphy asked how wide the wetland buffer needs to be, and Mr. Focht stated 50' is what they are showing on the Plan. Mr. Murphy stated it appears the wetlands buffer is irregular in width, and Mr. Focht stated they are following the top of the bank of the water course. Mr. Murphy stated all of the calculations as well as the location of the resources including the wetland buffer and its width have been reviewed and approved by the Township engineer in prior meetings as contrasted with the original Application where there were some disagreements as to the location of the wetland buffer, its width, and how it was measured, and Mr. Focht agreed. Mr. Murphy stated Exhibit A-3 and Exhibit A-4 represent the interpretations as directed by the Township engineer, and Mr. Focht agreed.

Mr. Focht noted Lot #1 and stated this lot contains the water course, water course buffer, and woodlands. He stated there are some additional woodlands, alluvial soils, and floodplain within that buffer. He stated the net area resulting on Lot #1 is significantly impacted.

Mr. Murphy stated one of the areas of relief requested is to permit a utility crossing through the wetlands buffer, and Mr. Focht stated this is correct and is shown at the rear of Lot #2 where they are proposing to access the proposed sewer force main extension for Brookshire Estates which is southwest of the O'Rourke site. The Brookshire Estates development runs along the common boundary line with the O'Rourke site. Exhibit A-3 shows where the proposed sewer connection will occur between a wooded area and is located there to minimize the impact to the environmentally-protected area. If the O'Rourke Subdivision is approved, both lots will then be served by public sewer and the existing on-lot system for Lot #2 will be decommissioned. Mr. Murphy asked if any other Permits are required to make this utility crossing as shown on Exhibit A-3; and Mr. Focht stated a GP5 Permit is required from DEP, and the Permit has been issued. Exhibit A-5 was marked which is a copy of correspondence from DEP received 5/10/06 addressed to the Applicant acknowledging the issuance of the GP5. Mr. Murphy asked

what would be required given that the Permit is now two years old, and Mr. Focht stated they would re-submit to get an updated Permit as part of the Land Development process.

Mr. Murphy stated the existing home is served by an on-lot well, and Mr. Focht agreed. He stated there is existing public water on Washington Crossing Road, and they are proposing that the existing lot and the new home will be connected to public water.

Mr. Murphy stated they are also requesting a Variance from Section 200-16 to permit two dwellings to be located on this property. Mr. Focht stated the site capacity calculations require that they take all the natural resource protection lands and subtract them out of the total tract area to come up with a net buildable area. They then take a percentage of the resource protected lands to come up with the density and minimum lot area and multiply the density times that area for a net result of allowed buildable lots. Exhibit A-4 was noted which shows the site capacity calculations table. Mr. Focht stated the total tract area is 2.916 and they needed to subtract out the right-of-way of Washington Crossing Road which is .079 acres, then subtract out the floodplains, wetlands, and water course buffers which are 100% protected, and then of the woodlands which are outside of the buffers, they are required to protect 70%. He stated they come up with total resource protected lands of 1.089 acres which is divided by the net lot area of 2.837 which yields 38.4% of the tract being resource protected lands. He stated based on the sliding scale in the Zoning Ordinance, this allow for a 34,000 minimum lot size and 1.07 dwelling units per acre density. He stated you then take the net site area and subtract out the resource protected lands to get 1.748 net buildable site which is multiplied by the density which yields 1.87 units permitted. The Variance being sought is to allow .13 of the total minimum two lots which is slightly more than 1/10<sup>th</sup> of a unit. Mr. Focht stated Lower Makefield does not permit you to round up no matter how close you are unlike other Townships where this is permitted.

Mr. Murphy stated it appears that of the total 1.24 acres of natural resources that are on the site, 1.1 are being preserved so it is slightly over 1/10<sup>th</sup> of an acre that is allowed to be disturbed by Ordinance, and Mr. Focht agreed. Mr. Focht stated they are actually disturbing less because based on the location of the house and driveway for Lot #1, they will be located in the clear area where there are no natural resource protected areas. The only disturbance to any of the natural resource protected areas on the tract will be for a driveway out to Washington Crossing Road. Mr. Murphy stated as part of the discussions with the Township they tried to site the home at a location that represented the least amount of disturbance, and Mr. Focht agreed. He stated the driveway will be meandered as much as possible to avoid as many trees as possible. Mr. Focht stated there is one tree which is leaning which will have to come out for safety reasons, and this is in the area where the drive will be located as shown on the Exhibit A-3.

Mr. Murphy stated the other relief requested deals with the minimum lot area. Mr. Focht stated on Lot #1 the way it is shown on Exhibit A-3, there is nearly one acre of land being proposed. They are required to subtract out the natural resource protected lands that exist on the lot which will then result in 24,454 square feet or slightly more than ½ acre. He stated there is slightly less of half an acre of natural resource protected lands shown on Lot #1. However, in terms of gross size, they exceed the minimum lot size that would otherwise be required.

Mr. Focht stated over the past months that they have been in discussions with the Township staff, they looked at a number of alternatives to lay out the tract; and the building and driveway did not impact the water course buffer, alluvial soils, and floodplain; and the only impact would be a minimum amount of woodland disturbance for the driveway. Mr. Toadvine stated they do not require a Variance for woodlands, and Mr. Murphy agreed. Mr. Focht stated they feel they have come up with the best location to minimize the disturbance which he feels is the intent of the Ordinance. The only natural resource that they are disturbing is the woodlands, and they are within what they are permitted to disturb.

Mr. DosSantos asked how much of the woods will be disturbed, and Mr. Focht stated they show the entire area on A-3 which is hatched as potentially could be removed and still meet the Ordinance. He stated they will have to field locate the driveway in order to determine exactly how much of the woods will be disturbed. Mr. Murphy stated they have had discussions with the Township staff and to the extent that the Township is interested in establishing a more formal Conservation Easement to provide for additional protections in certain areas, the Applicant would be willing to enter into such an Easement. Mr. Toadvine asked if the Applicant would be agreeable to a Condition that there be minimal disturbance of the woodlands and field locating the driveway in accordance with the Township engineer's recommendation, and Mr. Murphy agreed that this would be acceptable.

Mr. Malinowski asked why the Applicant needs to subdivide the property, and Mr. Murphy stated they feel they are entitled to do so legally and the Applicants bought the property with the expectation that someday they would be able to do so; and when they were ready to do so were surprised with the confluence of all the natural resource regulations which essentially confiscated their right to do so. Mr. Smith stated they are not entitled to do so which is why they are before the Zoning Hearing Board. He added they already have a home on the property and are now asking the Board to grant Variances, with no financial hardship existing, which would essentially create a lot below the size permitted for that Zoning and encroachment into the woodlands, although the amount is allowed. He stated he does not feel there is any entitlement, and he has not heard any hardship. Mr. Murphy stated he feels the application of the Ordinance as applied to this property with the natural resources which are existing, is confiscatory; and the standard to seek relief is not to prove financial hardship. He stated he feels this is a

deminimus request for a Variance; and under the relaxed standard for dimensional Variances, he feels this is the ideal circumstance where relief needs to be granted to recognize all of the site specific conditions which are peculiar to this property and would cause this Applicant to expect to be able to do something with the property that most people, if they had a three acre property in a District that permits 34,000 square foot lots would feel should not be a problem.

Mr. DosSantos asked if there is a proposal for the dwelling itself to be put on Lot #1, and Mr. Focht stated they are only showing a box which would have to fit within the building setback lines that are left after they measure the setbacks from the buffer. They feel it will be an adequate size for a substantial home at this location.

Mr. Toadvine stated they are requesting a Variance to permit a utility crossing, and asked what this will involve physically. Mr. Focht stated it will be an underground utility and will be a temporary disturbance with two sanitary laterals most likely in the same trench not more than ten to fifteen feet wide. This will be for the width of the buffer on both sides of the stream.

Mr. Gruen asked about the status of Brookshire Estates, and Mr. Murphy stated it has been approved, and there are easements provided on the plan as requested by the Township who anticipated a potential future interconnection and required the developer of Brookshire to provide easements for that purpose.

Mr. Gruen asked if they considered changing the lot line along the utility easement in the front of Lot #1 whereby they would increase Lot #1 by 1,000 square feet and would then have two more equal lots – one of 34,000 square feet and the other of 42,000 square feet. Mr. Focht stated the woodlands in the gray hatch would not count 100% toward that area, and the impervious surface calculations on Lot #2 would be compromised.

Mr. DosSantos asked if the size of Lot #1 is a direct reflection on the amount of impervious surface on Lot #2, and Mr. Focht stated it is not exactly; noting they did strike a line to be perpendicular and try not to create irregularly-shaped lots. He stated at one point they did have the entire back strip going to Lot #1 but this seemed odd that the whole rear of Lot #2 would be part of Lot #1 and would not meet the intent of the Ordinance.

Mr. Toadvine stated Mr. Gruen indicated that they were disturbing wetlands, but it was noted that this is only temporarily to install the utility lines. Mr. Murphy stated they are not disturbing the wetlands on the Applicant's property; rather it is the wetlands on the Brookshire Estates property. The area they are disturbing on the Applicant's property is the wetlands buffer. He stated they are required to restore the buffer to its original condition.

Mr. Bamburak asked if Brookshire Estates will be coming before the Zoning Hearing Board requesting disturbance to the wetlands, and Mr. Toadvine stated he feels that this was already granted. Mr. Murphy stated all of this was contemplated at the time Brookshire was developed so that this connection could be made; and it is part of the Township's 537 Plan. Mr. Focht described the sewer system to be installed.

Mr. Gruen noted that the Application indicated Lot #2 would have an on-lot water system and not connect, although it was testified this evening that they will convert to public water; and Mr. Murphy stated Lot #2 will connect to public water.

Mr. Donaghy stated while the Township is participating, they are not opposed to the Application.

There was no one in the public to make public comment, and the Public Comment portion of the Hearing was closed.

Mr. Smith moved and Mr. Gruen seconded that the relief requested be denied. Motion did not carry as Mr. Gruen and Mr. Smith voted in favor of denial, and Mr. Bamburak, Mr. DosSantos, and Mr. Malinowski were opposed.

A short recess was taken at this time. The meeting was reconvened at 9:15 p.m.

Mr. DosSantos moved, and Mr. Bamburak seconded that the request be granted with the stipulation that both Lots #1 and #2 be connected to public water and public sewer, with regard to the driveway on Lot #1 that all efforts be made for a minimal impact on the protected woodlands area, restoration of the wetlands as required in the rear of Lot #2 where sewer lines will be installed, and during the Land Development approval process, the Applicant cooperate fully with the Township to devise a satisfactory means to impose Conservation Easements for the rest of the protected lands on both Lots #1 and #2.

Motion carried with Mr. Bamburak, Mr. DosSantos, and Mr. Malinowski in favor and Mr. Gruen and Mr. Smith opposed.

## OTHER BUSINESS

### Appeal #04-1254(A) – John C. McGinn Request for Extension

Mr. Habgood stated this was a subdivision for a property at the intersection of Lindenhurst and Woodside Roads for eight single-family dwellings. He stated they are asking for an extension of one year to be able to complete the Land Development process. He stated the Development Agreement has been signed and they have posted financial security for the public and private improvements, the Final Plan has been

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Recorded, and one lot has been conveyed to a third Party; but no Permits have been submitted. Mr. Habgood added they indicated that they would be agreeable to a six-month extension.

Mr. Smith moved, Mr. Bamburak seconded and it was unanimously carried to grant a six-month Extension.

Appeal #06-1399 – Ronald H. White Request for Extension

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to grant a six-month Extension.

There being no further business, Mr. Smith moved, Mr. DosSantos seconded and it was unanimously carried to adjourn the meeting at 9:30 p.m.

Respectfully Submitted,

Gregory J. Smith, Secretary