

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – DECEMBER 16, 2008

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on December 16, 2008. Chairman Malinowski called the meeting to order at 7:35 p.m.

Those present:

Zoning Hearing Board:        David Malinowski, Chairman  
   Paul Bamburak, Vice Chairman  
   Gregory J. Smith, Secretary  
   Jerry Gruen, Member  
   Anthony Zamparelli, 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 #08-1497 – TED DAGGETT

Mr. Daggett was sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application was a set of Plans for Lot #21 dated 10/20/08, and this was marked as Exhibit A-2. Mr. Daggett stated he is present representing Mr. and Mrs. Loak Rampersaud who is requesting relief for a rear setback on an arterial road (Stony Hill Road); as well as relief for a side yard setback which is at 15' for an existing sidewalk.

Mr. Toadvine asked Mr. Daggett's relationship to the owners of the property, and Mr. Daggett stated he is the contractor that is proposing to install a patio in the rear of the property. The owners were not present this evening. Mr. Toadvine asked if there is an authorization signed by the owners in the file; and Mr. Habgood stated Mr. Daggett is the contractor who is doing the work for the homeowners, and he submitted the Building Permit Application which was denied because the patio was encroaching into the special setback.

Mr. Daggett stated he also has an engineered plan, and this was submitted this evening. This one-sheet plan dated 12/12/08 was marked as Exhibit A-3.

Mr. Daggett stated they would like to install a stone patio and sitting wall. The permitted setback is 120' and when they marked this out on the rear of the property after the Permit was rejected, the owners felt the patio would not be significant with such a large back yard. He stated they recognize the need to preserve the natural setting off the arterial road, but noted there is a large berm along the back of the property with mature trees so it is difficult to even see the back yard from the street.

Mr. Toadvine asked if the patio is above grade, and Mr. Daggett stated it varies from 6" to 1 foot above grade. Mr. Toadvine stated there is also a sidewalk which was previously installed that only has an 11.18' setback, and Mr. Daggett agreed. Mr. Daggett stated they are removing a portion of that sidewalk as they felt it was too close to the setback. Mr. Toadvine asked if the side yard setback is the same whether it is a structure, patio, or walkway, and Mr. Habgood stated sometimes a walkway can encroach into a side yard setback, but part of the walkway was within the five foot limit. It appears that if they are removing that part, this will no longer be the case. Mr. Habgood stated normally you cannot have any grading or anything within 5' of the property line. He stated a walkway would be permitted provided it was further than 5' from the property line. Mr. Toadvine asked how close is the area to be removed from the side yard, and Mr. Daggett stated it is approximately 5' at the farthest point. He stated this is a flat path at the top of where doors go into the basement.

Mr. Gruen asked about impervious surface, and Mr. Habgood stated for this property the developer did it by a certain square footage for each lot, and for this particular lot they would not be close to their permitted maximum.

Mr. Donaghy stated the Township is not participating in this matter. There was no one present to speak for or against this matter, and the Public Hearing portion was closed.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried that the relief requested in the way of setbacks be granted as requested in the Appeal

#### APPEAL #08-1498 – WILLIAM K. & CAROL L. JONES

Mr. William and Ms. Carol Jones were sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application was a set of Plans dated 8/2/06, and this was marked as Exhibit A-2.

Mr. Jones stated they want to elevate their home above the 500 year floodplain. He stated since any construction in the floodplain requires a Variance, elevating the home requires a Variance. He stated setbacks and side yards will be the same. He stated since the front and rear door will now be 10' above the ground, there will be stairways

constructed down the front and back of the property. He stated there will also be another stairway inside. He stated the only addition would be the decking and this is shown on the Plan. They have not been in the home since the third flood.

Mr. Donaghy stated the Township is not participating in this matter. There was no one present to speak for or against this matter.

Mr. Toadvine asked Mr. Majewski if this is some type of special flood construction. Mr. Majewski stated the walls of the basement will need to be constructed to withstand the forces generated by a flood. The Township helped secure a Grant to assist the Jones' in elevating their home and is in support of the project. Everything will be covered in the Permitting process.

Mr. Bamburak moved, Mr. Smith seconded and it was unanimously carried to allow construction in the floodplain to elevate the home.

#### APPEAL #08-1499 – JOSEPH T. JENNINGS

Russ Sacco, attorney, was present with Joseph Jennings and Curt Rittler, engineer, who were sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application is a set of Plans entitled Record Plan of Minor Subdivision – Jennings Tract - dated 8/15/08 and this was marked as Exhibit A-2. Mr. Sacco provided the Affidavit of Posting, and this was marked as Exhibit A-3.

Mr. Sacco stated he represents Mr. Jennings, the owner of 2 McKinley Avenue. The Applicant is proposing to subdivide the property (Tax Parcel #20-31-4) into two lots. The first lot shown as Lot #1 on the Plan has the existing house which will remain. Lot #2, the proposed future lot, will be the future home of Mr. Jennings if he receives the Variances and Subdivision Approval.

Mr. Rittler was called and stated he is with Rittler Engineering and is a professional engineer. He has been retained by Mr. Jennings and prepared the Plans which had been marked as Exhibit A-2. Mr. Rittler stated the property is located at the intersection of McKinley and Taylorsville Roads. The lot has gross acreage of approximately 9.6 acres; but when you subtract out the natural resources, the net total acreage is 4.2 acres. Mr. Rittler stated his client has indicated he would like to subdivide the property into two lots with access to the new lot coming off McKinley Road which is what creates the lane from Lot #2 out to McKinley. They propose to take ingress and egress to the new lot off of McKinley. Lot #1 is intended to remain a residence.

Mr. Sacco stated one of the reasons they are present for a Variance is because of the net acreage and the minimum lot size requirements; and he asked Mr. Rittler to explain why the lot gets reduced significantly. Mr. Rittler stated of the existing features on the site, four qualify as protected natural resources. He stated the two of most import are the woodlands and floodplain soils. He stated the entire tract is essentially covered with floodplain soils which are protected at about a 50% protection ratio; and the woodlands cover about  $\frac{3}{4}$  of the tract, and they are protected at 70% protection ratio. He stated the Ordinance requires them to calculate net lot area based on using the gross lot area and subtracting out the required protected natural resources; and when they do this, they take out about 5 to 5.2 acres.

Mr. Sacco asked Mr. Rittler to explain to the Board why he elected to break the lots up as proposed. Mr. Rittler stated the tract would tend to be broken up front and back looking at McKinley Road as the frontage so that the existing dwelling to remain on Lot #1 would be somewhat centered within one of the lots, and the second lot would have to gain access off McKinley and would have to do so by way of a lane. He stated there was not enough frontage on McKinley with the existing dwelling to divide the frontage up into two lots with the required lot width. He stated they had to gain their lot width for Lot #2 measuring it adjacent to Taylorsville Road even though they will not access that road.

Mr. Sacco stated they show on Page 2 the detail for netting out the resource protected land. Mr. Sacco stated they show in the Application the density based on the total site and also show the density based on Lot #1 and Lot #2. Mr. Rittler stated with respect to the total site, the dwelling units per acre would be .476 and the maximum permitted density is .333. With respect to Lot #1, they have shown the density, and based on net lot area it would be .704 which is in excess of the .333. With respect to Lot #2, they have shown the density as .382 versus the .333.

Mr. Sacco asked, because of the abundance of resource protected land on the site, is it possible to subdivide the land and construct a single-family dwelling on Lot #2 without asking for relief, and Mr. Ritter stated it is not. Mr. Sacco asked if there is any way to configure the lots whereby they would be able to come into compliance, and Mr. Rittler stated there is not as the full extent of the protected natural resources precludes that.

Mr. Sacco asked Mr. Rittler if he is familiar with the surrounding properties, and Mr. Rittler stated he is. Mr. Sacco asked if granting this Variance and constructing a home on 2.8 net acres would be consistent with the surrounding properties, and Mr. Rittler stated it will actually be well in excess of most of the surrounding properties.

Mr. Sacco asked if maintaining the current dwelling on 1.4 net acres would be consistent with the surrounding properties, and Mr. Rittler stated it would.

Mr. Toadvine asked if the property was re-zoned at some point since it appears that the lots in the area are half acres in size and this lot is zoned R-RP; but Mr. Sacco stated he was not sure. He stated his client purchased the home in 2007 and he assumes it was re-zoned as there are a number of non-conforming lots and most of the lots in the area are quite small.

Mr. Toadvine asked why they would not take access off of Taylorsville Road, and Mr. Rittler stated the Ordinance would point them away from this by its requirement that they take access off of the road of lowest classification which would be McKinley. He also stated he feels that taking access off of Taylorsville if McKinley were available, would be discouraged by the Board. Mr. Gruen stated Taylorsville Road is very busy.

Mr. Sacco stated the second set of Variances being requested “piggy-back” on the first set of Variances. Mr. Sacco stated the Zoning Ordinance requires the minimum net lot area of 3.0 acres so with respect to Lot #1, the Applicant is unable to meet this requirement. Mr. Rittler agreed and stated he is within .220 of meeting the requirement for Lot #1. This is caused by the resource-protected land that is required to be netted out. Mr. Rittler stated the location of the lot line between Lot #1 and Lot #2 is to a certain extent determined not on the basis of the requirement, but on the basis of what seems to be the most appropriate way to subdivide the ground. He stated changing the location of the lot line between Lots 1 and 2 would alter the net lot areas of Lots 1 and 2 since whatever one gained, the other would lose. He stated nothing would be gained by changing the location of the lot line. He stated no matter how they set the line, they would not be able to meet the minimum net area for both lots. Mr. Toadvine stated if they changed it, they could meet the requirements for one of the Lots. He stated they could increase Lot #2; and Mr. Rittler stated theoretically this is possible, but to do so would drop the Lot #1 net acreage well below one acre.

Mr. Gruen stated they could move the building envelope forward and include the house and they would maintain the same amount of net acreage; but Mr. Rittler stated they would not as the net lot acreage is not based on the building envelope but is based on the allowable disturbance of the protected natural resources.

Mr. Smith asked if there is any way to change the Subdivision Plan so that they would only need a Variance for one of the lots as opposed to both of the lots. Mr. Gruen asked how much they would lose on Lot #1 if they moved the back line between the two lots 25 feet forward which would net about 8,000 to 10,000 square feet which might be enough to cover. Mr. Rittler stated if he has calculated this correctly, they cannot do it this way. He stated with a 70% protection ratio on the woodlands, for 2/10<sup>th</sup> of an acre of net usable ground on Lot #2, they would have to decrease Lot #1 by about an acre gross; and if they decrease Lot #1 by an acre gross, the net acreage will fall below one acre. He stated it was a balancing act, and they felt it was best to minimize the Variance.

Mr. Smith stated he feels they would minimize the Variance by moving Lot #1 to a 2.7 gross, and they would only need a Variance for Lot #2 which would be only one Variance for the front lot. Mr. Toadvine stated this would make the lots disproportionate in size. He stated the real problem is the Applicant has to create this flag which is 80' wide which is causing a lot of the problems, and he feels it would make more sense to grant a Variance for the flag and pick up the additional space. Mr. Rittler stated while this is a possibility, the other issue they run into is if they reduce Lot #1 in size, they are increasing the density for Lot #1 so they are actually increasing the first Variance they need which is the maximum density which for Lot #1 now is .704. If Lot #1 is reduced significantly the density for Lot #1 significantly increases. He stated the Applicant was trying to keep it consistent with the neighborhood and not create two lots that were very disproportionate as Lot #1 would be 2.5 acres and Lot #2 would be 7 acres.

Mr. Gruen asked if the Applicant would be agreeable to reducing the leg of the entrance to 50' instead of 80'. Mr. Gruen stated he is very familiar with the lot and feels at some point the front house will probably be removed or changed.

Mr. Toadvine asked Mr. Majewski if he feels the configuration proposed is the best for this Subdivision, and Mr. Majewski stated it is one possible configuration. He stated if the Board wishes to make Lot #2 to be three acres net lot area, they could consider the suggestion Mr. Gruen had about reducing the size of the leg, since that portion of the property is not encumbered by resources. If they reduced it in size by approximately 25' to 30', they would pick up the twelve hundredths of an acre in net lot area on Lot #2, although that would make Lot #1 smaller. He stated a flag lot is allowed so they would not need a Variance for this. Mr. Gruen stated this would depend on whether this was acceptable to the Applicant. After further review, Mr. Majewski stated reducing the lane would actually make it smaller.

Mr. Toadvine stated he assumes the engineer put a lot of time into the Plan and they must feel that what is shown is the most aesthetically-pleasing Plan; and they would need Variances either way. Mr. Toadvine stated Mr. Gruen seems to be concerned with the location of the existing home on Lot #1; and Mr. Toadvine asked the Applicant if they would be agreeable to a Condition that if that house were ever demolished and a new home were constructed, that the new home would conform with the front yard setback. This was acceptable to Mr. Jennings. Mr. Toadvine asked if the Applicant would also agree to a Condition that there would be no further subdivision, and Mr. Jennings agreed.

Mr. Rittler stated the third Variance relates to a provision of the Zoning Ordinance that requires that groupings of structures be kept a certain distance off of the frontage road; and in this case, the Applicant would like to construct three separate and distinct structures – one main dwelling and two accessory structures. He stated they would be in violation of that limitation. He stated the reason they are placed in the locations shown is because of drainage concerns, and they are trying to avoid changing the drainage patterns

on the site so they are keeping the buildings a little bit further forward than the Ordinance would permit so that they are not draining back toward the Canal. He stated they have significant problems trying to provide stormwater management if they are draining back to the Canal so they have established the proposed buildings in such a way so that they are not changing any of the drainage patterns going back to the Canal and this requires them to push the buildings forward. He stated given the total distance between Taylorsville Road and the proposed structures which is in excess of 400', they believed that requesting a Variance was the appropriate solution to balancing the Ordinance requirements. Mr. Sacco stated the way the Ordinance reads, it divides the lot in fourths so the Ordinance would require that it be in the third fourth from Taylorsville Road, and this would move it closer to the Canal.

Mr. Toadvine asked if this would be the only Variance needed for the two accessory structures, and Mr. Rittler agreed. Mr. Gruen asked about the height of the roof as they are only allowed 15, and with a building of that size, he does not feel could have a 15' roof. Mr. Sacco stated he does not believe the garage will exceed 15' in height, and they have not asked for that relief. Mr. Gruen noted the large building opposite the house which seems like a large building to have only a 15' roof. Mr. Toadvine stated they can change the size of the building, and they are not giving them a Variance to build a structure as shown on the Plan; but are saying they can locate two accessory structures in the location depicted on the Plan. Mr. Toadvine asked if they intend to build a detached garage this large, and Mr. Rittler stated at this point this is as close as they have gotten to identifying what the client would like to build, and they have not yet exactly defined proportions of the buildings or their dimensions.

Mr. Malinowski asked the need for the two buildings, and Mr. Jennings stated one would be to hold machinery to take care of the property and cars and the other larger building is for storage and personal art projects. He does not anticipate that either building would be higher than 15'. Mr. Malinowski asked if they will have power and heat, and Mr. Jennings stated they will. Mr. Toadvine asked if these would be living areas, and Mr. Jennings stated they will not. He intends to use it as storage for art projects and a place to make the projects. He does not intend to have an apartment there. He is an artist by trade.

Mr. Smith stated the reason for the placement of the accessory buildings where they are shown on the Plan is to alleviate any kind of stormwater run off issues that might come about as a result of building it where the Ordinance would permit, and Mr. Rittler agreed.

Mr. Donaghy stated the Township is participating; and while not in opposition, there were some items they wanted to clarify, some of which have already been discussed. He stated one of the items was to make sure that the accessory structures do not exceed 15' in height and also that they would not be used as a living area and would otherwise comply with Ordinance requirements. He stated the Township is not opposed to the Variances provided these Conditions are part of any relief granted.

Mr. Donaghy asked Mr. Rittler if it is his understanding that even with the grant of the Variance, they would still have to go through the Subdivision process and clarify the limits of disturbance and site capacity calculations on the Subdivision Plans, and Mr. Rittler agreed. Mr. Donaghy stated that any Variances will not effect the requirements to do so, and Mr. Rittler agreed. Mr. Donaghy also stated that any of the Variances granted will be subject to verification of the setbacks from the resource protection effected areas, and Mr. Rittler agreed.

There was no one to speak against or in favor of the matter, and the Public Hearing portion was closed.

Mr. Smith moved and Mr. Gruen seconded that the relief requested be approved under the following Conditions:

- 1) No further subdivision of either proposed Lot #1 or Lot #2 take place at any time in the future;
- 2) That if the existing stucco and frame house shown on the Plan on Lot #1 is ever demolished, that any new construction be placed within the setbacks established by Township Ordinance;
- 3) That the accessory structures not exceed 15' in height and otherwise conform to applicable Township Ordinances;
- 4) No living area be established in the accessory structures and no water or sewer connections be placed in the accessory structures.

These Conditions were acceptable to the Applicant.

Mr. Toadvine asked Mr. Sacco if they would agree to an additional Condition as follows:

- 5) Applicant agrees to formalize the Condition regarding “no further Subdivision” so that the lots be Deed restricted and that they would Submit them to the Township for review.

This was acceptable to the Applicant.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to approve the Amendment.

Mr. Gruen stated he agrees that they should not permit a bathroom in the accessory structure, but if he is an artist, he feels he might want water.

Mr. Gruen moved to amend the Motion that the Applicant would be allowed to bring a water line into the accessory building but no sewer or bathroom facilities. Mr. Bamburak seconded the motion to amend and the Motion to amend carried with Mr. Bamburak, Mr. Gruen, and Mr. Zamparelli in favor and Mr. Malinowski and Mr. Smith opposed.

Motion as amended carried unanimously.

#### OTHER BUSINESS

Mr. Smith moved, Mr. Zamparelli seconded and it was unanimously carried to approve the list of Board Meeting dates for 2009 as provided by Ms. Ellison in her memo dated 12/9/08.

Mr. Zamparelli moved, Mr. Smith seconded and it was unanimously carried to adjourn the meeting at 8:30 p.m.

Respectfully Submitted,

Gregory J. Smith, Secretary