

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

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on July 15, 2008. Chairman Malinowski called the meeting to order at 7:35 p.m. Mr. Malinowski noted that Comcast representatives will be available in the hall outside the meeting room to answer questions prior to the matter being heard this evening.

Those present:

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

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

APPEAL #06-1372 – PETER ORLOFF AND JOY GRACE

Mr. Peter Orloff and Ms. Joy Grace were present and were sworn in. Ms. Grace stated she has had discussions with representatives from the Bucks County Conservation District who will be meeting in July with the State representatives who oversee the Natural Resource Protection Area Plan that the State will be working on. Ms. Grace stated they will be sending a letter to Mr. Majewski. Ms. Grace stated they would like to request an extension until September 16, 2008. Mr. Toadvine asked if they feel this is sufficient time, and Mr. Majewski stated he feels it will be several months before they get the Plan to do the work. He stated he feels they would be able to start work in four to five months. Mr. Toadvine suggested that they extend the matter until the first meeting in November which will be Monday, November 3 and noted the Applicants would also have to waive any time limits that the Board is under in accordance with the Municipalities Planning Code. The Applicants agreed to waive the time limits.

July 15, 2008

Zoning Hearing Board – page 2 of 15

Ms. Grace stated they received a letter dated 5/29/07 from Mr. Fedorchak which they would like to have entered into the record. This was marked as Exhibit A-3.

Mr. Smith moved, Mr. Bamburak seconded and it was unanimously carried to continue the matter until November 3, 2008 subject to the Applicants waiving any time restrictions on the Board.

APPEAL #07-1434 – DAN MARRAZZO

Mr. Toadvine stated he received a letter dated 7/9/08 from Mr. Smith, attorney for the Applicant, requesting that the matter be continued until August 19, 2008. Mr. Smith indicated in the letter that all Parties are in agreement with the extension. The letter was marked as Exhibit B-9.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to continue the matter until 8/19/08.

APPEAL #08-1473 – DAVID AND JANET GOODWIN, JR.

Mr. Smith stated he is recusing himself from this matter.

Mr. Lee Rockafellow, attorney, was present with David Goodwin, Sr. and Barbara Goodwin who were sworn in. Mr. Goodwin stated they are the owners of the subject property. Mr. Goodwin stated they purchased the property in 1977 after Lower Makefield Township subdivided the property. He stated at the time they purchased the property the only stipulation was that if they were to further develop the property, they would have to pay for improvements on the entire frontage, not just his parcel. Mr. Rockafellow asked if this was the stipulation if he were to subdivide the property further, and Mr. Goodwin agreed. He stated if he did not subdivide the 2 ½ acres, he would not have to do these improvements. Mr. Goodwin stated he did have a Building Permit when he purchased the property.

Mr. Goodwin was shown the Settlement Sheet for the property dated 9/26/77, and this was marked as Exhibit A-3.

Mr. Rockafellow asked Mr. Goodwin his plans for the property, and Mr. Goodwin stated he and his wife wanted to build a house on the property. He stated they did not do so as they purchased his wife's parents home instead. That home is on Linden Avenue which is less than one half mile from the subject property. Mr. Goodwin stated his son is David Goodwin, Jr., and both he and his wife Janet were present this evening. Mr. Goodwin stated the intention is to transfer the property to them so that they can build a single-family home on the property.

Mr. Rockafellow stated because of the nature of some of the soils it was suggested that Mr. Goodwin have the soils tested for a wetlands delineation, and Mr. Goodwin agreed and stated this delineation was completed on the property and the property was sited with consideration given to the wetlands to have the minimum impact. It was noted this is shown on the Variance Plan which has already been marked as Exhibit A-2.

A letter from the Township dated 3/14/86 signed by Nancy Frick was shown to Mr. Goodwin who was asked by Mr. Rockafellow to read it into the record as follows: “Dear Resident, this letter is to notify the surrounding property owners of a proposed Major Subdivision located at Pine Grove, Big Oak, and Ferry Roads. The Planning Commission will consider this proposal at their meeting on 3/17/86 at the Municipal Building.” Mr. Rockafellow asked what is referenced in the letter under “Re,” and Mr. Goodwin stated it refers to “Mormon Church Major Subdivision, Tax Parcel #20-52-2”. Mr. Rockafellow asked if that Church has been built, and Mr. Goodwin stated it has.

Mr. Malinowski questioned the relevance, and Mr. Rockafellow stated the impervious surface from the Church and the parking which covers all around the Church and almost abuts the Goodwin property was built after the Goodwins purchased the property. He stated apparently it was not restricted in any way as to impervious surface and puts a tremendous amount of water onto the Goodwin property. Mr. Malinowski asked if they will be presenting testimony to show this, and Mr. Rockafellow stated the engineer who did the soil test will testify to this.

The letter signed by Ms. Frick dated 3/14/86 was marked as Exhibit A-4. Mr. Donaghy stated while he feels this is totally irrelevant to this Application, he will not object to the letter’s submission.

Upon questioning by Mr. Rockafellow, Mr. Goodwin stated since he purchased the property in 1977 there has not been development directly abutting his property, but there has been development in the surrounding area. Mr. Rockafellow asked if any of the lots near his property are close to two acres, and Mr. Goodwin stated there are not to his knowledge.

Mr. Rockafellow asked if Lower Makefield Township approved the subdivision of the lot, and Mr. Goodwin stated they did. Mr. Rockafellow asked if there were any restrictions unless he further subdivided the lot, and Mr. Goodwin stated there were not.

Mr. Donaghy stated the Township would like to participate in opposition. Mr. Donaghy stated Mr. Goodwin indicated that he had a Building Permit at the time of the subdivision, but did not act on it; and Mr. Goodwin agreed. Mr. Donaghy asked if he expended any funds on the property in reliance upon the Building Permit, and Mr. Goodwin stated he did have some clearing done within a year of buying the property.

Mr. Donaghy stated the Plan that has been submitted (Exhibit A-2) shows the location of the proposed house where there is an area noted as “Proposed Dwelling.” Mr. Goodwin stated this is the area where they intend to construct the home for which they are seeking the Variance. Mr. Donaghy asked if they considered locating a dwelling in any other location on the lot; and Mr. Goodwin stated originally they intended to put it in the middle of the property. Mr. Donaghy asked if they had considered possibly locating the home closer to Pine Grove Road in the “flagpole” area. Mr. Goodwin stated this narrow parcel is only 90’ wide, and they did not consider having a home at that location. Mr. Donaghy asked if they could construct a smaller home within that area, and Mr. Goodwin stated he would not be in favor of that. Mr. Donaghy stated the question is would it be possible to do so, and Mr. Goodwin stated he does not know if this would be possible as he does not know what the restrictions would be.

Mr. Rockafellow stated if a house was constructed at the location noted by Mr. Donaghy it would be a savings on the driveway length. Mr. Donaghy asked if this is something that is in evidence at this point, and it was noted it is not. Mr. Donaghy stated he would object unless it is placed in evidence by a witness that this location was considered. Mr. Rockafellow stated placing the home at the location suggested by Mr. Donaghy would require greater Variances than at the location currently being considered. Mr. Donaghy stated this would be a legal argument. Mr. Donaghy stated indicating that this location was considered would have to be introduced through testimony. Mr. Donaghy stated he feels they could argue that if a home were placed there, what Variances would be needed. Mr. Donaghy stated he would then argue that the Variances needed for that “flagpole” location would be substantially less and do much less damage to the health, safety, and welfare of the community than placing the home so close to the wetlands areas. Mr. Toadvine stated this is all for summary.

Mr. Gruen stated at the last meeting there was a lengthy discussion about whether or not the property was in the wetlands, and Mr. Rockafellow was going to present an engineer to testify to this which was why they were granted a Continuance.

Mr. Rockafellow called Mr. Thomas Cordrey who was sworn in. Mr. Cordrey stated he is employed by DelVal Soils and is one of the principals of the company. He has a PhD in Horticulture, a minor in soils science, and a Masters. He stated he started doing wetlands delineations in 1985 in New Jersey and formed DelVal Soils in 1987. He is in charge of wetlands delineations, wetlands permitting, mitigation, and all aspects of wetlands issues as it relates to State, Federal, and local Government. He stated he was retained by Mr. Goodwin, visited the property, and made the delineations. Exhibit A-2 was noted on which there is an overlay showing the flagging done by Mr. Cordrey. Mr. Cordrey stated the plan shows the limits of a delineated wetlands. Mr. Cordrey stated when you do a wetlands delineation, you look for three basic factors to be considered as far as a wetlands – vegetation, soils, and hydrology. He stated in this case, the areas which are shown inside the flag point numbers which run from 1 to 41 are

marked on the Plan as Waters of the United States including Federally-regulated wetlands. Waters of the United States is the nomenclature required by the Army Corps of Engineers because of the Clean Water Act where they regulate all waters of the United States including associated wetlands. Mr. Goodwin asked if this designation relates to meeting the criteria of soil and vegetation, and Mr. Cordrey agreed. Mr. Goodwin asked if there is a water course that goes across the property, and Mr. Cordrey stated there is not.

Mr. Goodwin asked about the water on the property, and Mr. Cordrey stated it is an ephemeral wetlands. He stated when you take soil probes you go down 6” to 12” and you get a “hard pan,” which is a pan of clay so that all of the water that runs off of the Goodwin property, the Church property, and the subdivision that is located on the north side of the Goodwin property runs into the Goodwin property and it accumulates which makes it an ephemeral or intermittent wetlands. He stated if you were to visit the site today there would probably not be any water, but there would be standing water on the site in April, May, September, and October or at least the soil would be saturated within the top 6”.

Mr. Rockafellow asked if the Corps of Engineers designated the Goodwin property, and Mr. Cordrey stated he does not feel the Corps of Engineers or DEP has designated a wetlands on this property. He stated he delineated it because he was contracted by Mr. Goodwin to survey the property to see if there were wetlands present on the site, and the Plan shows his delineation.

Mr. Rockafellow noted the location of the proposed dwelling on Exhibit A-2, and Mr. Cordrey stated he has reviewed this. Mr. Rockafellow asked about the blue marking around the outer side. Mr. Toadvine noted A-2 shows no colorization, and Mr. Rockafellow stated it is a dash/dot line on the Plan which completely encircles the wetlands on the Plan and it is marked on the northern edge of the property as “wetlands buffer.” Mr. Cordrey stated this is the buffer the Township has enacted around the wetlands. Mr. Rockafellow asked if there a wetlands buffer required by the Corps of Engineers, and Mr. Cordrey stated there is not. Mr. Rockafellow asked if there is a wetlands buffer required by the Commonwealth of Pennsylvania; and Mr. Cordrey stated this is only required in cases where there is a wild trout stream or within reach of a wild trout stream, and this is not the case on the Goodwin property.

Mr. Rockafellow asked if the dotted line is the 25’ buffer which was in place when Mr. Cordrey did the delineation in July 2006, and Mr. Cordrey agreed. Mr. Rockafellow stated the Plan shows that a small section of the proposed house and driveway go into the buffer, and Mr. Cordrey agreed, adding that it does not go into the wetlands. Mr. Cordrey stated he does not feel this would have any adverse effect on the quality of the wetlands that are present as it is a “scrub/shrub” forested wetlands which is ephemeral in nature.

He stated the water that previously ran off that corner of the property and into the wetlands would continue to do so if the property were developed although it will now run off the top of the roof as opposed to running across the ground.

Mr. Malinowski stated they are showing a 25' buffer – not the 50' buffer that is currently in effect, and Mr. Cordrey agreed.

Mr. Rockafellow asked if the property would be usable in any manner if they had to adhere to the 50' buffer, and Mr. Cordrey stated it would not.

Mr. Malinowski asked if the house could not be located anywhere else on the property, and Mr. Cordrey stated if you put the 50' buffer around the wetlands, the only portion of the property that is available is the small “flag” lot which is the portion which extends out to Pine Grove Road as all the rest of the property is either encompassed by wetlands or the buffer. Mr. Malinowski stated it appears that the portion of the property being noted as available by Mr. Cordrey is the same portion that was being referenced by Mr. Donaghy. Mr. Cordrey stated if they located the house at this location, they would be very close to Pine Grove Road and would be in a very narrow section. He stated the 50' buffer has a very restricting value on any usable part of the property.

Mr. Donaghy stated Mr. Cordrey was asked if there was any delineation done on the site by the Township, Commonwealth, or the Federal Government; and he asked if there is any need to have the delineation done by any Governmental agency. Mr. Cordrey stated if you want to encroach into the wetlands, you are required to obtain appropriate Permits. Mr. Donaghy asked who would do the delineation, and Mr. Cordrey stated probably someone like himself. He stated while the Corps would do the delineation, it would probably take a year and a half. Mr. Donaghy stated there is no need to have the Corps do the delineation, and Mr. Cordrey stated while they do not usually have the Corps do the delineation, they do have them come out and check it if there are questions raised about its accuracy. Mr. Donaghy stated the question was is it necessary to have the Corps do the delineation, and Mr. Cordrey stated it is not.

Mr. Donaghy stated Mr. Cordrey testified that as shown on A-2, the buffer is shown as only 25', and Mr. Cordrey agreed. Mr. Donaghy stated under the current Ordinance, the buffer is 50'; and Mr. Cordrey agreed and added this extends it much further into the area where the proposed dwelling is shown. Mr. Cordrey stated there would be no place to locate a dwelling except if they could fit a structure in the “flagpole” location.

Mr. Donaghy stated Mr. Cordrey discussed the effect on the wetlands if the dwelling were constructed at the location shown on the Plan, and asked if he indicated the only difference would be water would be flowing off the roof as opposed to going on the ground; and Mr. Cordrey agreed. Mr. Donaghy asked if water flowing off the roof would not create greater flows and the possibility of greater damage to the wetlands than if it

were to remain as open space; and Mr. Cordrey stated he is not sure about greater flows since there is a 25' buffer, and there are various types of structures which could be put on the downspouts which dissipate the energy as it comes down. He stated looking at this from a hydrological standpoint, by having the impervious surface, the wetlands would have more water than they did before which would not have an adverse impact on the wetlands. Mr. Donaghy asked if impervious surface is created on a lot, is it not required under Township Ordinances to provide stormwater controls, and Mr. Cordrey stated this would be a question for the engineer.

Mr. Donaghy stated Mr. Cordrey indicated that the 50' buffer from the wetlands area would extend into the flagpole portion, and Mr. Cordrey stated it would extend to the point where the flagpole portion is, but not into the flagpole portion itself.

Mr. Donaghy asked if the wetlands delineation as shown on A-2 is correct, and Mr. Cordrey agreed that it is correct.

Mr. Donaghy stated there was discussion about water flowing from the Church parcel, but looking at Exhibit A-2 it would appear that the topography is lower on the Church parcel than it is on the Goodwin property. Mr. Cordrey stated the contour lines stop at the parking lot so he feels the parking lot could be higher than what is shown on the Plan. He noted flag points 19 and 20 and stated this is an area where the water flows in from the Church property and collects on the Goodwin site. Mr. Donaghy stated otherwise, the topo lines as shown on the Plan indicate that the Church would appear to be lower than the topographical lines on the Goodwin property, and Mr. Cordrey agreed.

Mr. Donaghy asked if there are any wetlands in the cleared area near Pine Grove Road, and Mr. Cordrey stated in his opinion, the limits of the wetlands are as shown on the Plan.

Mr. Donaghy asked if buffers are normally provided along wetlands areas; and Mr. Cordrey stated there are several Townships which have enacted buffers. Mr. Donaghy asked if this is to protect water quality and to protect the wetlands; and Mr. Cordrey agreed. He stated the size of the buffer is directly related to the level of impurities and the amount of water and how long it needs to be retained within the buffer before it goes into the wetlands. He stated if there is a large amount of water with high levels of impurities such as coming off a shopping center parking lot, you would want to hold the water for a long period of time within a buffer so that many of the impurities can be settled out or absorbed by plant material before it is released into the water.

Mr. Donaghy asked if these are legitimate reasons for a Municipality to provide a buffer around a wetlands; and Mr. Cordrey stated in general buffers are a good thing to have, but when you look at it in relation to the width of the buffer, this can vary dramatically depending on the factors he has listed. Mr. Donaghy stated this would be something that would be up to the Municipality to determine when they adopt an Ordinance.

Mr. Cordrey stated he feels Municipalities should understand that an arbitrary number is relative in relation to the problem. He stated 300' may not be enough for a shopping center, and 25' may be more than enough for a single-family dwelling and a driveway particularly if the driveway were made out of porous material. Mr. Donaghy stated this would be a determination of the Municipality, and Mr. Cordrey agreed.

Mr. Toadvine asked if they have a Plan that shows the wetlands buffer at 50', and Mr. Cordrey stated he does not. He stated the engineer prepared the Plan that has been presented with the 25' buffer. Mr. Cordrey stated he extrapolated it to a 50' buffer and told the client that they could not build anything without encroaching as even with the 25' buffer, there is some minor encroachment with the driveway and a portion of the proposed structure.

Mr. Sam Johnson and Ms. Doreen Johnson were sworn in. Ms. Johnson stated she is concerned that it has been indicated that there is only water on the property a few times a year, and this is not true. She stated whenever it rains there is standing water which stays there for four to five days. She is also concerned about mosquitoes. She is concerned that if a home is built, the water will come onto her property. She stated the driveway from Pine Grove Road back to where the home will be built, would be at least 150' which is also a lot more impervious surface which will impact her property with water.

Mr. Rockafellow asked if they own the other part of the subdivision, and Ms. Johnson agreed. Mr. Johnson stated they purchased it 27 years ago. Mr. Rockafellow asked if there was standing water on their property at that time, and Ms. Johnson stated she only indicated that there is standing water on the property now. Mr. Rockafellow asked if their child ran four-wheelers through the property. Mr. Malinowski stated this is not relevant. Mr. Rockafellow stated they have personal motivation. Mr. Rockafellow stated there was a comment made about standing water, but they have not seen anything. Ms. Johnson stated she has pictures. Mr. Toadvine stated the soil scientist has delineated the wetlands.

Ms. Diana Latzko, 1214 Pine Grove Road, was sworn in and stated her property adjoins the north side of the subject property. She stated on May 20, Mr. Goodwin indicated that the Goodwin property was five times the size of any of the adjoining lots which is incorrect. She stated her property and the property at 1218 Pine Grove Road are 1.3 acres and the Goodwin property is 2.2 acres. Ms. Latzko stated Mr. Rockafellow also stated that the area is dry in the summer, and she stated according to the Environmental Protection Agency's Website, a wetlands is not always wet year round and in fact many of the most important wetlands are seasonally dry transition zones. She stated that during most of the summer there is standing water on the subject property. She stated the Zoning Ordinance for the natural resource protection requirements states that the buffer is to minimize the disruption of the hydrology and permitting any encroachment into the wetlands and buffer with added impervious surface will greatly increase the amount of

water collecting on her property. Ms. Latzko stated she has pictures to show the saturation of a section of her rear yard which is directly next to the site. She noted the picture was taken on May 20, 2008 when 0.44” of rain fell within a twelve hour period, and there is still quite a bit of standing water seen in the photo.

Ms. Latzko noted the Ordinance which relates to the protection of the wetlands buffer states, “no filling, grading, clearing, or development is permitted,” and she stated to build the home, they would first have to clear a specified area which is home to many trees, shrubs, and plant life. She stated if the Variances were approved, some of the woodlands would have to be removed eliminating the tree line between the properties. She stated she has photos of this as well. She stated her home is set back the furthest from Pine Grove Road, and the proposed Goodwin home would be in her rear yard eliminating her privacy. She states since Pine Grove Road is a very busy road, her rear yard is the only quiet, private place she has to enjoy the natural surroundings.

Ms. Latzko stated she is also concerned that clearing would damage other trees which would cause more erosion. She is concerned about water coming into her basement as heavy rains result in her sump pump continually running. She stated wetlands are increasingly under threat in the United States. She stated the area is home to a significant amount of wildlife and she questions the impact if the Variances are granted. She stated as the Goodwins have a young child, they may eventually clear an area for their child to play and is also concerned about further clearing by future owners of the property. She noted a prior similar case Appeal #03-1235 in 2004 which was denied by the Zoning Hearing Board.

Mr. Majewski made available a digital ortho photo from the Delaware Valley Regional Planning Commission from 2005 which was marked as Exhibit A-5. The Goodwin property was highlighted in yellow. Ms. Latzko’s home was marked with an “L.” Mr. Rockafellow marked a circle where the Goodwin house is proposed to be built. Mr. Malinowski questioned the relevance of this Exhibit, and Mr. Rockafellow stated Mr. Latzko’s home is not where she indicated as it is back further, and the map itself and the delineation does not come anywhere close to her property so that if she has water on her property it has nothing to do with the Goodwin property.

Mr. Gruen asked if they can look at the photographs Ms. Latzko referenced, and these were presented by Ms. Latzko as evidence. She stated there are explanations on the back of some of the photos. The photos were marked L-1 through L-7 - photos of the property at 1215 Pine Grove Road taken between May 20, 2008 and today.

Mr. Rockafellow asked when the photo was taken showing the standing water, and Ms. Latzko stated it was taken on 5/20/08 and it did rain that day as she previously noted. L-3 and L-5 were taken today. She stated she took the photos and feels they represent the condition of the property on the dates in question.

Mr. William Spedding, 1218 Pine Grove Road, was sworn in and stated he lives next to Ms. Latzko. He stated he also has pictures of his rear yard showing what happens when it rains. He stated he looked at the size of the proposed home which he feels is approximately 65' feet long and at least 25' to 30' wide, and the roof will be more than 2,000 square feet of impervious surface. He stated the driveway is approximately 16' off the property line from Ms. Latzko's property.

Mr. Toadvine stated impervious surface is not an issue in this case since if the house and driveway were built as proposed it would be 6.55%, and 18% is permitted. Mr. Spedding asked where the water will go. He stated if it is 16' off the property line, he questions where all the water will go. He stated he feels it will follow the lay of the land. Mr. Spedding stated his property is downhill. He stated when the Church was constructed, it resulted in more water running downhill and coming into his rear yard. He stated it appears from the Plans that the proposed home will be built up which will put it more at an incline so that the water will end up in his yard. He stated to take a two-acre lot and put a house 16' off the adjoining property will cause problems.

Mr. Spedding's house was marked with an "S" on Exhibit A-5.

Mr. Majewski was sworn in and stated he is employed by CMX and represents Lower Makefield Township as the Township engineer. Mr. Rockafellow agreed to stipulate to Mr. Majewski's qualifications.

Mr. Majewski stated he is familiar with Exhibit A-2. Mr. Donaghy stated Mr. Cordrey had indicated that the wetlands had been delineated on the Plan, and Mr. Majewski agreed. Mr. Donaghy stated if the Township's 50' buffer were applied, it would encroach into the area where the proposed home is to be constructed, and Mr. Majewski agreed. Mr. Majewski stated the house as situated on A-2 shows the house approximately 20' from the wetlands at its closest point and the cleared area being 1' to 2' from the limits of the wetlands. The cleared area is a further encroachment into the buffer so between the cleared area and some of the wetlands area at Flag 29 and 31 it would only be a 2' buffer.

Mr. Donaghy asked the purpose of having a buffer around a wetlands area, and Mr. Majewski stated one of the reasons is to reduce the likelihood of encroachment by homeowners and future homeowners as well as to provide for water quality by allowing the water to be filtered before it enters the wetland. He stated although a 50' buffer is required, the Township Ordinance does allow for buffer averaging so that you can reduce the buffer if it meets site specific requirements for the property. He stated a buffer is also useful for wildlife and to reduce erosion into the wetlands which can cause siltation.

Mr. Donaghy stated under the provisions of the Township Ordinance as it exists today, would it be possible for an Applicant to encroach into this buffer area with buildings, clearing, or grading at the location shown on the Plan without relief from the Zoning Hearing Board, and Mr. Majewski stated they would need Variance relief.

Mr. Donaghy asked Mr. Majewski if he has reviewed that portion of the Plan referred to as the “flagpole,” and Mr. Majewski stated he has. He stated it would be possible to construct a residence within this area, although a Variance would be required from the arterial road setback. He stated the adjacent property owned by the Johnsons as well as a number of properties on Pine Grove Road in the vicinity of the Goodwin property all currently encroach within the arterial road setback. Mr. Donaghy stated if a Variance were granted from the arterial road setback and a home was constructed at that location, would it encroach into any of the environmentally-protected areas, and Mr. Majewski stated it would not and it would not encroach into any of the buffer areas. Mr. Donaghy asked if a home could be constructed which would be reasonably similar in size to the other homes in the area, and Mr. Majewski agreed.

Mr. Rockafellow noted Flags 29 and 321 where Mr. Majewski indicated it encroaches, and Mr. Rockafellow stated it appears that at Flag 31 a small section of the front part of the house is 20’ from the line; and Mr. Majewski agreed. Mr. Rockafellow stated at Flag 31, the encroachment is the driveway, and Mr. Majewski stated the driveway and the clearing to allow for the driveway and grading would encroach. He stated at that point the driveway is located approximately five feet from the wetlands boundary.

Mr. Rockafellow asked if it would make any difference if the driveway were not macadam or stone, and Mr. Majewski stated stone would be generally better than pavement but it still tends to shed off water and it would disturb the buffer in order to be constructed. Mr. Rockafellow stated if the driveway were moved further to the left it would only encroach not the 25’ buffer and asked if this small section of the house would impact the wetlands in any way given the size of the property. Mr. Majewski stated that part of the house and the clearing associated with it now and in the future would impact on the buffer. He stated the house itself is proposed to be located only twenty feet from the wetlands boundary, and the clearing limit that is shown on the Plan is only five to ten feet away from the house which as a practical matter typically does not work because as you try to build the house you disturb the root zones of the trees in the area and any tree located that close to the house would most likely die and have to be cut down in the future. He stated in the long run probably all the trees between the house and the buffer would eventually die from disturbance from constructing the house.

Mr. Rockafellow noted the flagpole area and asked except for the setback from Pine Grove Road, does Mr. Majewski feel a house comparable in size to those in the area could be built without any substantial additional Variances, and Mr. Majewski agreed.

Mr. Toadvine asked Mr. Rockafellow if he has discussed with his client the possibility of relocating the home into the flagpole area. He added if he would like to discuss this with his client, he would suggest that he ask that the matter be continued. Mr. Rockafellow stated he would like to discuss this with his client. It was agreed to continue the matter to 9/16/08 and the Applicants agreed to waive the time limits for the Board to make a decision.

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

A short recess was taken at this time. The meeting was reconvened at 9:30 p.m.

APPEAL #08-1480 – COMCAST OF LEVITTOWN, INC.

Jeffrey Garton, attorney, was present representing Comcast. Mr. Toadvine stated he understand the Applicant is going to open testimony this evening, and there has been a request to have this matter specially listed for a night when only Comcast would be on the Agenda so that the Board could hopefully dispose of the matter within one evening rather than continue it over several meetings. He stated in discussions with the attorneys, it appears that August 20 is a date that is acceptable, and the Township meeting room is available that evening. He stated once the record is opened, and the Applicant commences testimony, they will not have to re-advertise if the Board decides to specially list the meeting for August 20.

Mr. Garton submitted Exhibit C-1 the affidavit of posting. Attached is a listing of Tax Parcel Numbers, street addresses, and picture numbers. Exhibit C-2 is an affidavit of posting as well. He also presented the CD which has copies of all the photographs confirming notices contained in C-1 and C-2. The Application submitted was marked as Exhibit A-1.

Mr. Bernard Goldberg, 1304 University Drive, was sworn in. Mr. Goldberg stated he participated in the prior cable discussion that took place for over two years and Mr. Garton represented the Township at that time through all the negotiations, discussions, and client/attorney privileged information. He does not understand how Mr. Garton can now represent the cable company with information he had since the very first Hearing.

Mr. Toadvine asked Mr. Garton if he feels he has any conflict in this matter, and Mr. Garton stated he has Exhibit C-3 which is a Consent Order entered 6/13/96 and the Board can review this and will see that the Agreement and Court Orders relate to a project that was concluded long before the proceedings before the Board today commenced. He stated he does not feel he has a conflict, and he has not been the Township solicitor for over two years. He provided Exhibit C-3 to the Board.

Mr. Toadvine decided to re-mark the Application filed in this matter as C-4 so that there is consistency.

Mr. Sandra Goldberg stated all the people came to the meeting this evening; and if they are not going to be heard, she asked that they at least provide their names. Mr. Toadvine stated the Board will only take testimony until 11:00 p.m. so they will not be able to complete this matter this evening. He stated an issue has been raised about a conflict which the Board needs to consider first.

A short recess was taken at this time to discuss the legal issue raised by Mr. Goldberg. The meeting was reconvened at 9:40 p.m.

Mr. Toadvine stated the Board has determined that Mr. Garton does not have a conflict, and the matter can proceed. Mr. Garton stated they would request that the matter be specially listed for August 20 and stated they will also try to reduce the extent of the relief requested between now and the next Hearing. It was agreed to start that meeting at 7:00 p.m.

Mr. Toadvine stated if there are any members of the audience who are interested in the Application, they should come forward and provide their name, address, and phone number so that if anything occurs between now and August 20, they can be notified. It was noted that there will be no additional advertising as tonight's meeting will be the notice of the new date.

Mr. Goldberg stated he objects to the fact that they will not provide another notice. Mr. Toadvine stated it is not required once the meeting is open as they have given notice this evening. A number of people objected. Mr. Goldberg stated he feels the Board should vote on this.

Mr. Bamburak moved, Mr. Zamparelli seconded and it was unanimously carried to continue the matter to August 20, 2008 starting at 7:00 p.m.

Mr. Maloney stated the Township, at their expense, will send out notices about the next meeting and advertise it on the Township Cable Channel.

Those present were given the opportunity to provide their name, address, and phone number in order to receive notification.

OTHER BUSINESS

Appeal #08-1437 – Dale Pinchot – Request for Extension

Mr. Toadvine stated a request has been received from Dale Pinchot for a four month extension. Mr. Donaghy stated he understands that the Applicants have received all the necessary approvals needed to proceed, and have chosen not to start. He stated the Township would not object to an extension but feel four months is too long and would suggest one month. He stated part of what they are doing does affect the property and the stormwater in the area. Mr. Smith stated they also have piles of dirt in the yard. Ms. Frick stated this is their second request for an extension. Mr. Majewski stated they have received a Permit from the Township subject to certain conditions. They have also received the Permit from the Bucks County Conservation District and the waiver from the DEP. The condition that the Township has for the Permit to be officially approved is that they enter into a Stormwater Operation and Maintenance Agreement for the pipe since they are installing the pipe, it will be their responsibility to own and maintain it.

He stated they also need a pre-construction meeting with the Bucks County Conservation District. He stated all of this can happen within a few weeks. Ms. Frick stated the Grading Permit is waiting for the Agreement noted by Mr. Majewski. The Variance was granted in August, 2007. Mr. Majewski stated it took the Applicants six months to get to the Zoning Hearing Board because they delayed it. Mr. Donaghy stated the Township would like them to start.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to grant a two month extension.

Cancel September 2, 2008 Meeting

Mr. Bamburak moved, Mr. Smith seconded and it was unanimously carried to cancel the 9/2/08 meeting.

Frankford Hospital Appeal

Mr. Toadvine stated the Township has asked for a continuance from the scheduled 8/5/08 meeting. It was suggested that the Frankford Hospital Application be heard on a special night, August 26, starting at 7:00 p.m. He stated the Township solicitor does not know the Board of Supervisors' position on this matter. Mr. Toadvine suggested that the matter be left on the Agenda for August 5, but tentatively schedule a special meeting for August 26.

July 15, 2008

Zoning Hearing Board – page 15 of 15

Mr. Smith moved, Mr. Bamburak seconded and it was unanimously carried to tentatively schedule Frankford Hospital to be heard August 26, 2008 at 7:00 p.m.

July 15, 2008

Zoning Hearing Board – page 26 of 26

There being no further business, Mr. Smith moved, Mr. Zamparelli seconded and it was unanimously carried to adjourn the meeting at 9:50 p.m.

Respectfully Submitted,

Gregory J. Smith, Secretary