

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

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on September 16, 2008. Chairman Malinowski called the meeting to order at 7:40 p.m.

Those present:

Zoning Hearing Board: David Malinowski, Chairman
Paul Bamburak, Vice Chairman
Gregory J. Smith, Secretary
Jerry Gruen, Member
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 #03-1235(A) – CARA MIA, LLC – REMAND

Mr. Maloney stated they are going to go into Executive Session at this time to discuss this matter and will reconvene shortly. The meeting was reconvened at 7:50 p.m.

Mr. Bamburak moved and Mr. Zamparelli seconded that the Applicant has established that the granting of the Variance will not be detrimental to the public welfare. Motion carried with Mr. Gruen and Mr. Malinowski opposed.

APPEAL #07-1434 – DAN MARRAZZO

Mr. Thomas J. Smith, III, attorney, was present with Mr. Michael Klimpl, attorney. Mr. Malinowski stated a proposed Order was going to be created, and Mr. Smith stated the Board has a copy of a proposed Order that has been agreed to by Sutphin Pines and the Marrazzo, but it has not been agreed to by Mr. Kundra, one of the other Parties; although Mr. Smith feels they are close to an agreement which is acceptable to all Parties. Mr. Donaghy stated the Township is participating in this matter, and he has not seen a copy of the proposed Order. Mr. Toadvine stated he only received it this evening. Mr. Klimpl apologized and agreed to provide a copy to Mr. Donaghy. He stated this was not ready until 4:00 p.m. this afternoon. Mr. Klimpl stated there was also an additional

piece that Sutphin Pines requested be prepared which is a site history which they feel strongly should be included. This document references and summarizes the two prior Zoning Hearing Board Decisions; and Sutphin feels this new document is important as in the future the prior Decisions may not be readily available to those reviewing the new Decision to be rendered by the Board. He stated this document will give background and Findings and rationale as to what the Board is deciding now. He stated one of the prior Decisions of the Board found that the landscaping business was not properly established and other items. Copies of these documents were provided by Mr. Klimpl this evening.

Mr. Malinowski asked how long they feel it will be until they can come to an Agreement on all items with all the Parties, and Mr. Smith stated possible they could meet with Mr. Kundra now, allow the Board to proceed with other matters, and then come back before the Board later in the evening. Mr. Donaghy stated he cannot review the document and provide an opinion this evening. Mr. Klimpl stated they did not get this until 4:00 p.m. today. Mr. Malinowski stated he feels they should continue the matter until a later date. Mr. Klimpl stated he feels they should take the rest of the testimony, and the Board could make a decision on the Variance Application; and if they wished to approve it, they could do so subject to Conditions in the proposed Order.

Mr. Smith stated he plans to call Mr. Mike Marrazzo and Mr. Dan Marrazzo who will briefly testify as the owner of the property. Mr. Donaghy stated the Township has no witnesses. Mr. Klimpl stated Mr. Queale would like to testify on behalf of the Sutphin Pines Association and will explain why the Stipulation would be a critical part of the Order.

Mr. Mike Marrazzo was sworn in and stated his business address is 1301 Yardley Road. He is employed by Marrazzo's Manor Lane Florist and Garden Center. He stated he is the Vice President. The property is owned by his father, Dan Marrazzo. Mr. Smith asked if there are other members of the Marrazzo family who are involved in the business, and Mr. Marrazzo stated his brother, Anthony, Mother, spouses, and their children also work for the business. Mr. Smith asked about the property at the time his father purchased it in 1984, and Mr. Marrazzo stated it has always been a garden center/nursery/retail shop.

Mr. Smith asked where the inventory and products for sale were displayed on the property prior to his father's acquisition; and Mr. Marrazzo stated it was inside the building and to the northwest side of the property in the retail/nursery space. Since purchasing the property in 1984, they have used the property basically in the same way with chemicals inside along with giftware and nursery stock and plant stock such as trees along with pottery outside. Mr. Smith asked which areas of the property have been used since they purchased the property for display of items for sale and storage of inventory, and Mr. Marrazzo stated this would be on the northwest side on the outside of the property which would be on the right side of the building looking at it from the front. They use all portions of the property, and there is no open space.

Mr. Smith asked if his father applied for a Building Permit in 1984 to improve the existing building, and Mr. Marrazzo stated he did. Exhibit A-9 was marked which is an Application for a Building Permit and on that Application the improvements listed are an entranceway, refrigeration area, stone revere out front along with a sign to enhance the building. They also stuccoed the old wooden structure and put in new windows.

Mr. Smith asked how many parking spaces were located on the property at the time A-9 was submitted, and Mr. Marrazzo stated there were thirty-five parking spaces. A Permit was issued for the improvements, and this was marked as Exhibit A-10. At the time this was issued they had thirty-five parking spaces on the property.

Mr. Marrazzo stated in 1985 they applied for a Permit to add to the existing building on the property. Exhibit A-11 was marked which is the Application for a Building Permit, and Mt. Marrazzo stated this was an addition to construct a greenhouse at the northeast part of the property. Exhibit A-2 was noted, and Mt. Marrazzo noted the location of where the greenhouse addition was located. It is a 37' by 73.5'. Mr. Smith asked how many parking spaces were located on the property when the Application for a Building Permit was submitted in 1985, and Mr. Marrazzo stated there were seventy-two parking spaces. Exhibit A-12 was marked which is the Permit issued for the greenhouse addition.

Mr. Smith asked if they have added any parking on site since the time of the greenhouse addition, and Mr. Marrazzo stated they have not added any more above the seventy-two. It was noted on Exhibit A-2 that they are proposing to have seventy-two parking spaces in connection with the Stipulation submitted to the Board.

Mr. Smith asked if they have had sufficient parking to accommodate the needs of their customers with the seventy-two parking spaces, and Mr. Marrazzo stated they have. He stated the busiest days are Mother's Day and Christmas, and this would be the only time that there would be any problems with parking. On normal days seventy-two is adequate.

Mr. Smith asked what did the area which is now the driveway and parking area of the site look like prior to his father's acquisition, and Mr. Marrazzo stated when they took over the property they had the same type of layout with the driveway going around the building, but there were two exits out the front onto Yardley-Road. The driveway was stone and gravel in the parking area. Mr. Smith asked if they ever received complaints from the neighbors about the area when it was stone/gravel, and Mr. Marrazzo stated some neighbors and many customers did complain about dust being stirred up and over the years and through their budget, they put blacktop down in the driving area to control the dust and keep the cars clean. As a result of this, the number of complaints dropped.

Exhibit A-2 was noted where it is labeled "outdoor tree plants and equipment display area," and Mr. Marrazzo stated at the time his father acquired the property in 1984 this area had four foot weeds and was a stone bed area. The weeds were growing through the

stone. Since acquiring the property, they cleaned up this area, tried to keep it weed free, and make it a comfortable area for people to shop. This area is still stone. The walkways are more handicap accessible with 4' wide blacktop which makes it easier to maneuver on foot or in a wheelchair. Prior to paving these areas, they were stone.

Mr. Smith asked if they monitor other garden center businesses in the area to see the products they offer and the inventory they display and keep in stock, and Mr. Marrazzo stated they do. Mr. Smith asked their main competitors, and Mr. Marrazzo stated their main competitors are Lowe's and Home Depot. Mr. Smith asked the type of business Home Depot and Lowe's engage in, and Mr. Marrazzo stated they are a garden center selling plant material, chemicals, and lawn equipment. Mr. Smith asked if they have a competitive advantage over Marrazzo's Manor Lane, and Mr. Marrazzo stated they are a price point competitor with a wide selection of goods. He stated the Home Depot and Lowe's were not in this area when they purchased the property in 1984 and since that time there has been a big impact on their business in terms of sales. He stated Marrazzo's try to draw in customers with their variety and the services they offer.

Mr. Smith asked if they make decisions on what to sell and display based on their competition, and Mr. Marrazzo stated they do. He stated Marrazzo's constructed a greenhouse addition in 2007 in response to their competitors and wanted to provide additional inside space and be able to provide a wider variety. In the greenhouse they display lawn mowers, parts, and indoor plants. Prior to the construction of the greenhouse addition the area was used to show lawn mowers and other equipment. By using the greenhouse they can store these items and others indoors and out of the weather. Mr. Smith asked if they ever used the area where the greenhouse is located for other types of displays, and Mr. Marrazzo stated it was used for seasonal displays and they would put up a tent for temporary sale space. The tent is no longer used.

Mr. Smith asked if they ever displayed lawn mowers and tractors anywhere else on the property, and Mr. Marrazzo stated they did have lawn mowers out along the curb line in the grass area in front of the property on Pine Grove Road. They no longer display them in this area, and they are now in the inside space. Mr. Smith asked if there was a reason these were removed from the frontage on Pine Grove Road, and Mr. Marrazzo stated they did so to get them under cover and as part of the Agreement with the neighbors. He stated he had received complaints from the neighbors about these products on Pine Grove Road and they did move them inside into the greenhouse addition. Mr. Smith asked if they are permitted to display lawn mowers outside of the greenhouse addition as part of the Stipulation which has been entered into, and Mr. Marrazzo stated they are not. Mr. Smith asked if they could not display these products elsewhere in the site or in the greenhouse addition, how would this effect their ability to compete with similar businesses, and Mr. Marrazzo stated they could not have 20% of what they have now as far as equipment sales or indoor plants.

Mr. Klimpl stated they have applied for three Variances dealing with setback, parking spaces, and impervious surface coverage, and Mr. Marrazzo agreed. Mr. Klimpl asked if they acknowledge that technically they were not conforming to those three items, and Mr. Marrazzo agreed. Mr. Klimpl asked if he has read and signed the Stipulation entered into evidence as A-2 and A-3, and Mr. Marrazzo agreed and has agreed to abide by those Stipulations one with respect to Sutphin Pines and the other with respect to Mr. Kundra. He would agree that if the Zoning Hearing Board were to grant the Variances requested, that the Stipulations would be part of any Order.

Mr. Gruen stated at the last meeting it seemed that there were agreements among all the Parties and asked where there are now differences. Mr. Smith stated they still have the Agreements that were submitted, but there are disagreements in the form of combining the two separate Stipulations into one Order. He stated there were some slight differences in the Sutphin Pines Stipulation and the Kundra Stipulation with respect to the dimensions of the individual storage bins. The Sutphin Pines Stipulation allows for one of the storage bins to be used for storage and sale of split firewood and the Kundra Stipulation does not provide for this. He stated there was also an issue with regard to the parking spaces; and it was agreed in the Kundra Stipulation that they would provide at least 70 spaces and in the Sutphin Pines Stipulation it stated they would provide seventy-two parking spaces, although he feels that Mr. Kundra is now in agreement with the Sutphin Pines Stipulation in this regard.

Mr. Gruen asked about the bins adding there were previously bins in the back, and Mr. Smith stated they have been removed. The ones remaining on the property are the ones in the front on the corner. Mr. Smith stated the idea is that they would like to continue to use one of the bids for storage of firewood, and this is not yet included in the Stipulation with Mr. Kundra.

Mr. Gruen stated it appears that they are asking for three Variances - for parking spaces, impervious surface, and setback. Mr. Smith stated at the conclusion of the last Hearing, Mr. Habgood advised that there may be an additional issue with respect to the height of the new building shown on Exhibit A-2 showing a maximum of 20' in height. Mr. Smith stated all Parties have agreed to this height, but the Zoning Ordinance in Section 200-69D14 states "residential accessory structures shall have a maximum height of 15'" and it references "residential accessory structures as those which are customarily incidental to uses permitted in certain Residential Zoning Districts including R-2." Mr. Smith stated he does not feel they fit this definition as this is not a use that is permitted in R-2 and is not a building which is customarily incidental to a Residential use. He stated he feels they fall under Section 200-69D12, which does not establish a maximum height for non-Residential accessory structures, and he feels they are subject to the General maximum height in the R-2 District which is 35'. He stated if the Board agrees with the interpretation of the Township, they would need a Variance to this and they would request that they be permitted to have a 20' high accessory structure. He

stated he would formally request to amend the Application and request an interpretation as to whether they are under D12 or D14; and if it is determined that they are under D14, they would request a Variance to allow a 20' building where a 15' would be allowed. Mr. Gruen asked the height of the main building, and while Mr. Smith did not know, he stated it is higher than 20' as it is a two-story building. Mr. Marrazzo stated there is an attic in this building.

Mr. Kundra stated in addition to the size of the bins there was some question about screening plants on Yardley Road and around the bins and the kinds of materials that could be stored in the bins. He stated there was an issue two to three years ago when there were pallets and the plastic was flapping which was unsightly. He stated his Agreement stipulates what kinds of materials would be stored there.

Mr. Toadvine asked if it is the purview of the Zoning Hearing Board as to what can be stored in the bins, and Mr. Smith stated it is not, but in an effort to resolve the problems in the neighborhood, they have agreed to include this as part of any Stipulation. The neighbors have also agreed to support the relief requested in exchange for approval of the Stipulation. Mr. Klimpl stated he feels the Zoning Hearing Board can improve reasonable conditions that are not within the four corners of the Zoning Ordinance but are otherwise reasonable.

Mr. Donaghy stated with regard to Mr. Smith's request to amend the Application with respect to the height of the building, the Township would have no objection to the Board considering this amendment to the Application; and they feel they should offer an interpretation or grant relief. He stated the Township believes the provisions in D-14 are applicable as opposed to D-12. He stated they feel it may be appropriate to grant a Variance so that they make sure that there are no other issues. He stated since the matter of the building is such that they would need this relief in conjunction with the other issues and given the fact that the Parties have agreed to the maximum height, it would not be adverse to the healthy and safety of the community.

Mr. Smith stated he would like to submit an offer of proof and have Mr. Daniel Marrazzo sworn in and he could testify that if he were called upon to testify, he would agree to what Mr. Smith has offered. Mr. Daniel Marrazzo was sworn in. Mr. Smith stated he would submit an offer of proof that if questioned and called to testify, Mr. Marrazzo would testify that he is the owner of the property which is the subject of the Application, that he has reviewed the Stipulations and Plans entered into as Exhibits A-1, A-2, and A-3. As owner of the property, he has agreed to those Stipulations and would agree to the Condition on any approval granted by the Board that he as a landowner would comply with those Stipulations. He would also testify that his son, Michael Marrazzo, is the Vice President of Marrazzo's Manor Lane Garden Center and is authorized to enter into the same Stipulations and agree to the same Conditions that he has agreed to. Mr. Daniel Marrazzo agreed that if he were asked these questions, he would answer them substantially as has been summarized.

Mr. Gruen stated he saw that in the Agreement they have agreed to remove the seasonal tent on October 1, and he asked what will happen with the merchandise in the tent and asked if they should keep it until the end of October to accommodate the Halloween holiday. Mr. Smith stated he agrees that it would be better to leave the tent there, but this is an item which has been discussed at length with the neighboring property owners, and he feels this is what they need to do for the purposes of these proceedings. Mr. Gruen stated he feels it would be better to have the merchandise indoors as opposed to bales of hay, etc. outside. He feels that the Zoning Hearing Board can override some of the provisions in the Stipulation.

Mr. Toadvine stated he feels the Board needs to understand that this is what the residents and the Applicant have agreed to in exchange for which the residents would not have an opposition to the Board granting the Variances. He stated if the Board decides to change some of the terms it may result in a situation where one of those requesting Party status may change their mind. Mr. Smith agreed.

Mr. William Queale, Jr. was sworn in. He stated he resides at 39 Sutphin Pines and is a resident in the Sutphin Pines Community and a member of the Association. He stated he has been delegated to represent the Association with regard to this matter and the Stipulation. He stated the Sutphin Pines Board has approved of the Stipulation and he himself is familiar with Exhibit A-1. Mr. Klimpl asked Sutphin Pines' interest in the specifics of the Stipulation as to the requirements imposed on the property.

Mr. Queale stated they were aware of the request for Variances and the number of complaints over the years; and with cooperation of counsel and the Marrasso's, they met over a number of sessions to review the various concerns. The Stipulation reflects the agreements they came to. He stated their request of the Zoning Hearing Board is that the wording of the Stipulation be incorporated in the Board's Order so that the Township would enforce the same items that the citizens have agreed to. He stated the Stipulation indicated that there can be no expansion of the use, principal accessory buildings or structures without coming to the Zoning Hearing Board or unless the Ordinance is amended and they are in compliance with the Ordinance. He stated they have also carefully required the removal of the landscaping business and it is not permitted to return. Mr. Queale stated there were previously large river stones in some of the bins in the rear, and they would be delivered by front-end loaders and dropped which would create nuisance noises as far as the residents were concerned. He stated the type of materials permitted in the remaining five bins was carefully selected with respect to the business and the nuisance concerns. Mr. Queale stated there are also operational times for loading and unloading. He stated there are also operational time restrictions with respect to the Mother's Day refrigeration trailer because of the noise generated and the proximity of residences in Sutphin Pines. He stated they also clarified that there could be no outdoor displays in any street right-of-way or in any parking space, and there can be no encroachment beyond the property line and not consuming any of the parking spaces

that have been determined as necessary. He stated there is also a requirement that pallets stored in the rear yard cannot be higher than two pallets high as opposed to eight or nine feet. Mr. Queale stated in the Stipulation there are also specific restrictions as to dumpsters, limited amount of fuel storage, repairs need to be done indoors, and provisions as to what the rear yard can be used for.

Mr. Queale stated during the discussions with Marrazzos and working out the Stipulation there was also a complaint by the Sutphin Pines residents regarding the expansion of the business off site in the form of tractor-trailers which would park on Sutphin Road, and in some instances over the years they have sat there and idled which caused exhaust fumes to drift into the windows of the homes. He stated a joint letter from Sutphin Pines and Mr. Marrazzo was sent to the Board of Supervisors to request a “No Parking” Zone on the north and south side of Sutphin Road for that portion that runs from Moon Drive on the north and the Sutphin Pines driveways on the south all the way out to Yardley Road. He stated this would give an enforcement back up with respect to the local Police.

Mr. Queale noted Exhibit A-2 and stated a number of items on site were agreed to and they feel that they have been able to improve the relationship of uses of Sutphin Pines and what happens on the Marrazzo site. They hope they have also assisted Marrazzo’s in creating a more efficient operation. He stated along the property line, they will construct a wooden guardrail which will be along the property line at the west and south side of the property. He stated adjacent to that 14 feet wide will be a paved blacktop road which will relocate the driveway which runs through the central part of their property and shift it up around the perimeter of the site. He stated the guardrail will define the property, and the 14’ is an easy visual for anyone to see where the pavement ends, and nothing can go beyond that as far as storage, parking, trees, etc. He stated they are relocating the storage bins to the northeast corner, agreed to go from twelve bins to five bins, and agreement was reached as to what could be stored in the bins. He stated this location is equidistant between the closest house on Sutphin Pines and the closest house across Yardley Road. Mr. Queale stated there are also screening requirements with regard to the bins. He stated the existing plantings around the bins will be extended 80 feet from the right-of-way and the parking lot will be screened along the front to provide better aesthetics in the Residential Zone.

Mr. Queale stated they support the seventy-two parking spaces and specifically have agreed to the idea that the spaces can be 9’ by 18’ rather than 10’ by 20’. There will be doubled lines between each space. Mr. Queale stated there can be no displays in the parking spaces, and they have removed and agreed to keep out all items out of the streets rights-of-way. He stated they have no problem with the proposed front yard setback for the addition.

Mr. Queale stated there were a number of lighting issues and a number of changes were made by the Marrazzo to eliminate the nuisances that the residents were subject to; and

the Agreement states that if other lighting comes on site and creates a nuisance, they will resolve it. Mr. Queale stated with respect to the new building proposed in the rear yard, there is a specific provision for lighting such that it cannot shine more than half-way up the fence so it does not impact the townhouses.

Mr. Queale stated there are also provisions for overnight truck parking and limits on size and provisions for where they can park.

Mr. Malinowski noted that the Zoning Hearing Board has been provided a copy of what Mr. Queale is summarizing.

Mr. Queale stated the last item is with respect to the new accessory building, adding the residents proposed this new building and felt it could take the place of all the outbuildings and sheds which were scattered all over. They feel the new building will clean up the appearance of the site. The Stipulation indicates that cannot add back these small outbuildings and sheds.

Mr. Queale stated he disagrees with the attorneys that Exhibits A-4 and A-5 speak for themselves and he feels it is important that a summary of those prior Decisions be included in the Board's Order. He stated they have already included a summary of Exhibits A-1, A-2, and A-3 and by adding a summary of Exhibits A-4 and A-5 it would be consistent with incorporating all of the other backup documents. He stated his concern is that A-4 is 51 years old and A-5 is 36 years old; and he feels it would be helpful for anyone reading the Order to state that the Board went back to their old records and is agreeing that this is a non-conforming use that is entitled to continue, and that a landscaping business is not permitted on the site. He stated this is why Mr. Klimpl provided the separate piece of information with Sutphin Pines' request that it be included with any Order.

Mr. Klimpl noted Sutphin 1 which is the proposed Decision and Order that has been agreed to by Sutphin Pines and Marrazzo's. Sutphin 2 was noted which is a document called "Sutphin Pines Community Association suggested additions to proposed Decision and Order." Mr. Klimpl stated Sutphin 2 is the document that Mr. Queale has testified to as providing the background references, etc. Copies of these were provided to the Board this evening.

Mr. Smith stated he has no objection to these being submitted into evidence, but with respect to Sutphin 2 and Mr. Queale's testimony regarding the prior Zoning Decisions entered into evidence as Exhibits A-4 and A-5, he agrees that the prior Decisions are important to the current Application before the Zoning Hearing Board which is why he submitted them; however, he feels the Board should make its own interpretation as to those Decisions. He also moved for admission of Exhibits A-1 through A-12.

Mr. Toadvine asked if Sutphin I and Sutphin II have been agreed to by the Applicant, and Mr. Klimpl stated Sutphin I has been agreed to by the Applicant. Sutphin II is additional language that Sutphin would offer for the Board's consideration. This has not been accepted by the Marrazzo's. Mr. Klimpl stated these are both proposed Drafts. Mr. Toadvine asked Mr. Kundra's position on Sutphin I and Sutphin II, and Mr. Kundra stated he does not have an issue with them. Mr. Toadvine stated Sutphin I is a nine-page document entitled "Zoning Hearing Board Decision and Order," and Sutphin II is a two-page document entitled "In Re Application/Appeal #07-1434."

Mr. Donaghy asked Mr. Queale if the proposed Sutphin II were not incorporated in the Order of the Zoning Hearing Board, would this adversely impact the position of the Sutphin Pine's Homeowners' Association, and Mr. Queale stated it would not. He stated the main reason he suggested it be there was for convenience and as an assurance on the public record that the Zoning Hearing Board reviewed and concurs with the past Decisions and carries them forward. Mr. Donaghy asked if a re-statement of those prior Decisions might or might not be an accurate re-statement and could effect future interpretations. Mr. Queale stated he can only testify that what he wrote is extremely accurate, but he would not know what Mr. Toadvine would do to it. Mr. Donaghy stated while he recognizes that Mr. Queale feels it is accurate, it is not an exact restatement of the Decisions. Mr. Queale agreed there are not a series of quotes. Mr. Donaghy stated any interpretation would be different to some extent from the actual document itself, and Mr. Queale agreed that this is a possibility and he would leave this to Mr. Toadvine or Mr. Donaghy to read Sutphin II to see if he mischaracterized anything. Mr. Donaghy stated he is not saying it is not a good summary of the previous Orders, but he is concerned that if Sutphin II is adopted as part of the current Order, it might be determined to be a re-statement or re-interpretation of the earlier Decisions which he feels have to stand as is. Mr. Queale stated he feels they could add a statement indicating the it is a summary and they could refer to the real documents.

Mr. Malinowski stated the Board will make a decision on how they wish to handle this when they get to that point. Mr. Donaghy stated he wants to make it clear that it is not part of the agreed-upon Order at this point although the Board is free to decide if they wish to incorporate it.

Ms. Cynthia Osofsky, 1308 Yardley Road, was sworn in and stated this process has been going on with the neighborhood and the Marrazzos for some time; and the Marrazzos have made a tremendous move forward in trying to be a cooperative neighbor. She stated this past spring and summer there was a huge difference in the property compared to prior years. She offered her support in moving forward provided Mr. Marrazzo keeps making the property looking the way it has been.

There being no further comments, the Public Hearing portion was closed.

A short recess was taken at this time. The meeting was reconvened at 9:10 p.m.

Mr. Malinowski stated he understands that the Parties have come to an agreement to continue discussing this matter. It has also been agreed to continue the matter to November 3, and the Applicant will waive the time constraints; and Mr. Smith agreed. Mr. Klimpl also agreed. Mr. Toadvine stated they will attempt to circulate a more specific proposed Order that all Parties have agreed to and he will then be in a position to review this with the Board. Mr. Malinowski asked that all members of the Board be provided a copy so that they are in a position to render a Decision on Monday, November 3. Mr. Donaghy will also be provided a copy for his review.

Mr. Kundra asked that this be done in a timely fashion so that he too has an opportunity to review it in a reasonable time prior to the meeting. Mr. Toadvine stated he hopes that this will all be done within the next thirty days so that there is sufficient time prior to November 3 for everyone to be able to review it.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to continue the matter to November 3, 2008.

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

Mr. Toadvine asked if David or Janet Goodwin were present this evening, and there was no response. Mr. Toadvine asked if Lee Rockafellow was present this evening, and there was no response. Mr. Toadvine stated a letter was sent to the Township by Mr. Rockafellow on August 21, 2008. Mr. Toadvine stated he was also sent a letter from Mr. Rockafellow dated 8/21/08, and this was marked as D-1. Mr. Toadvine stated in this letter Mr. Rockafellow indicated that he sent a letter to Nancy Frick, the same date. He also indicates that “he is not sure which deadline he will meet and requests an additional continuance if necessary so that the issues in this rather unusual matter can be addressed appropriately.” Mr. Toadvine stated he wrote to Mr. Rockafellow on 8/25/08, and this letter was marked as Exhibit D-2. In that he advised Mr. Rockafellow that if he wanted the matter continued and needed additional time, he would need to send a letter requesting that it be continued from the 9/16/08 Hearing to a date certain, and the letter should also contain language similar to the recent Continuance he had requested in writing waiving the time limits. There was no response to that letter from Mr. Rockafellow. He stated he did receive a response dated 8/28/08 from Joanne P. Frey, Secretary to Lee D. Rockafellow, and this was marked as Exhibit D-3. He stated in this letter Ms. Frey indicates that Mr. Rockafellow is on vacation, will be returning to the office on September 8, is aware of Mr. Toadvine’s 8/25/08 letter, and has contacted the builder and surveyor. Mr. Toadvine stated the letter does not request that the matter be continued nor waives any time limits.

Mr. Toadvine stated he has gone through the file and found that the matter was opened on 5/20/08, was continued to 6/17/08, and further continued to 7/15/08. From the June 17, 2008 to the July 15, 2008 continuance it was 28 days and time limits were waived during that period. There was a Hearing on 7/15 and at the conclusion of the Hearing, Mr. Rockafellow again requested that the matter be continued until this evening's meeting, but no time limits were waived. He stated the period of time from the date the matter was opened to this evening is 119 days. Considering the 28 day period that time limits were waived, this means that 91 days have ticked on the 100 day clock. He stated if the Board does not conclude the matter within 100 days absent waivers of the time limits, it would be deemed approved. He stated the next meeting will not occur within the next nine days. He stated he feels the Board needs to act on the matter this evening since there is not a request for continuance or a waiver of the time limits.

Mr. Bamburak moved and Mr. Gruen seconded to deny. Motion carried with Mr. Smith abstaining.

Mr. Malinowski explained to interested residents present that since the Applicants did not request a waiver of the time limit and did not attend this evening's Hearing, the Board had no more information than they had previously and the Board denied the Appeal and the Goodwins cannot construct the house on that piece of property. Mr. Malinowski stated if the Board had not done anything this evening, they would have been able to do whatever they wanted on the property. Mr. Bamburak stated they do have the right to re-Appeal.

APPEAL #08-1485 – LEONARD AND TAMMY HERMAN

Mr. Leonard Herman was sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application was a one-sheet drawing for Tax Parcel #20-40-70 received by the Township 8/4/08, and this was marked as Exhibit A-2. Mr. Toadvine stated the drawing marked as Exhibit A-2 indicates that this is a corner lot with the property fronting on E. School Lane and Makefield Road so that they have two front yards. They are proposing an addition which will increase into the front yard setback on E. School Lane. Mr. Herman stated this addition will be a kitchen addition.

Mr. Habgood stated the existing structure has a 33' setback and the proposed addition would have a 27' setback in lieu of the required 40'. Mr. Herman stated it will be a one-story addition.

Mr. Zamparelli asked what is across the street from the property, and Mr. Herman stated it is the parking lot of the Makefield Elementary School.

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

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to grant the Variance in the way of a 27' setback.

APPEAL #08-1486 – JOSEPH SCISLY & SHARON A. CROSS

Mr. Joseph Scisly, Ms. Sharon Cross, and Mr. Matthew Piotrowski, architect, were sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application were two sheets dated 7/31/08 which were marked as Exhibit A-2. Mr. Toadvine stated they are looking for is a setback Variance and permission to build in the floodplain.

Mr. Piotrowski stated currently there is a Cape Cod style house on the property which has been abandoned for approximately one year. It is in run-down condition and is presently non-conforming in that it sits closer to the road than the existing Zoning allows. He stated there is a building setback line shown on the Plan which runs through the back half of the house. He stated the Plans as proposed would be to construct a second floor on the existing house, turn the existing garage into living space, construct a new garage in the rear, and construct a new front porch. The front porch requires two Variances – one a dimensional Variance for the front yard setback as well as a natural resource Variance because they would be building within the 100 year floodplain. To the rear of the house, the proposed garage requires a natural resource Variance for building within the 100 year floodplain. It does not require a dimensional Variance. Mr. Piotrowski stated they feel that they have a hardship in that the existing structure is non-conforming and in order to put any type of addition in the front of the house, they would have to obtain a Variance. He stated they also believe that the Variances are minimal in nature in that no one walking or riding along River Road would be able to tell that the front porch is non-conforming as it is very similar to the houses on either side of the property in terms of setback and they are non-conforming as well.

Mr. Piotrowski stated they would be taking the existing garage and turning it into living space, and raising the floor to just above the 100 year floodplain. The present first floor of the house is at 35.24', and the floodplain according to Tri-State engineers is at 35'. He stated he was advised by the Township engineer that it is actually 35.2'. He stated either way, he does not feel it changes the magnitude of the Variance. Mr. Piotrowski stated the front porch would be at 34.615' and the reason they have it lower than the house is so that when you come out of the house, you would step down into the porch so that the wind could not blow dirt and leaves into the house. He stated the proposed garage is at 33.24' and they need to have it at this point because if they raised the garage, they would have to change the topography of the land to be able to get the cars into the

garage. They feel what they have proposed will be an enhancement to the neighborhood compared to the run-down structure which is there now. Mr. Piotrowski stated while the front porch and rear garage are proposed to be constructed in the 100 year floodplain, neither would be living space.

Mr. Majewski stated based on their review of the FEMA flood maps, the flood elevation is 35.2'.

Mr. Donaghy stated the Township would like to participate although they are not in opposition and are only requesting that conditions be placed on any Variance granted. He asked if other than the requested relief, is it their intention that the proposed construction would comply with all other Township Building Codes and Ordinance requirements, and Mr. Piotrowski agreed. Mr. Donaghy asked if it would be possible to raise the floor level of the new living area above the 35.2', and Mr. Piotrowski stated he does not believe this would be possible because they are not building a second floor over that portion. He stated the existing structure of the garage ceiling is already in place, and he feels there would be a headroom issue if they followed Mr. Donaghy's suggestion. He stated he could look into this again. Mr. Donaghy asked if they would agree to raise this floor level above the 35.2' if it is possible, and Mr. Piotrowski stated he feels it would also compromise the floor plan of what they are trying to accomplish inside. Ms. Cross stated their goal was to have an open floor plain inside of the home, and having to raise that one portion would deter from their original plan. She stated they did raise the floor by approximately 3'. Mr. Piotrowski stated they are proposing to raise it from 33.08' to 35.24' which is over 2 feet. Mr. Smith asked how they raised the floor 2', and Mr. Piotrowski stated they will do it with wood and create a crawl space. Mr. Smith asked if they could not raise it 2.5' or 3', and Mr. Piotrowski stated the problem is the garage already has a roof structure, so the higher they raise the floor there would be a reduction between the floor and the existing ceiling. The perimeter walls are also not going to be taken down. Mr. Donaghy stated recognizing that the roof height would stay where it is, if the floor could be raised above 35.24' even with the existing ceiling, it was noted it would create a situation where there would be a step down. Mr. Piotrowski stated the existing house does have a full basement.

Mr. Donaghy asked if it will be waterproof when they raise the floor, and Mr. Piotrowski stated it is currently wood, and they are proposing to leave it wood. He stated they are raising the floor within the structure and are not tearing down any perimeter walls. Mr. Donaghy asked if they will put flood vents in the new garage, and Mr. Piotrowski stated they would agree to this as a Condition of Approval.

Mr. Toadvine asked if there are not certain requirements as far as the Building Code with regard to flood proofing for anyone building or re-building in the floodplain, and Mr. Majewski stated this is correct, and this should be made a Condition of any approval granted. Mr. Donaghy stated Mr. Majewski had specifically indicated that flood vents would be an important aspect, and Mr. Majewski agreed that flood vents would be an

important attribute for the garage in addition to complying with the Codes. He stated while he feels they may be required in the Codes, in the event they are not, he feels they should be made a Condition of any Approval. Mr. Piotrowski stated they would be building with the 2006 International Residential Code (IRC) and this will require them to put flood vents in the new area.

There was no one present to speak in favor of in opposition to the Appeal, and the Public Hearing portion was closed.

Mr. Smith moved, Mr. Bamburak seconded and it was unanimously carried that the relief requested be granted with the Condition that the new floor height be raised to 35.24', that the construction be in accordance with all applicable Codes, and that in the event that those Codes do not require flood vents, that those flood vents be included in the final construction of the garage.

APPEAL #08-1487 – DAVID LEGG

Mr. David Legg was sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application was a one-sheet drawing for Lot #40 Final As-Built Heather Ridge dated 4/8/93, last revised 4/16/93, and this was marked as Exhibit A-2.

Mr. Legg stated he wants to build a fence. He stated he recently moved to the area and his wife suffers from Lupus which results in weakness. He stated they also have two pets and as he travels frequently, it is a problem for his wife to care for the pets outdoors if he is not present. He would like to construct the fence to keep the dogs within his property. He stated he would like to build the fence within 5" to 6" of the property line so that he can take advantage of the full property which they purchased. He is proposing to construct a 48" aluminum fence, and he presented a picture of the fence.

Mr. Gruen stated they would be required to have the fence a few inches above the ground, and he is concerned that the smaller dog could get under the fence. The picture of the fence was again shown, and it was noted that it is not a privacy fence and water could pass through but the smaller dog could not get through. The proposed height of the fence is 4'. Mr. Gruen asked if they have considered an invisible fence, and Mr. Legg stated while he would be in favor of this, his wife was not comfortable with shocking the dogs.

Mr. Toadvine stated there are two easements, and he asked if they are aware of who owns these easements. Mr. Majewski stated the easement on the side is a sanitary sewer easement and the easement along the rear is a storm sewer easement. There are two inlets in the rear of the property. Mr. Majewski stated there is also an easement on the other side which is a storm sewer easement. Mr. Malinowski asked if in the event that

work had to be done in the easements, would Mr. Legg agree to a Condition that he would remove and replace the fence at his own cost and expense, and Mr. Legg agreed. Mr. Legg asked if this often occurs, and it was noted that this does not normally happen.

Mr. Donaghy stated the Township is participating but are not opposed to the Application. They would hope that any Variance granted would include a Condition regarding removal and replacement of the fence at the expense of the landowner if necessary. He stated he understands from the Township engineer that the proposed fence allows water to flow through so there is no need for the usual requirement of a 2” gap at the bottom, but it was also suggested that the Applicant be asked if he would have an objection that if in the future a solid wood fence were installed at the location proposed for this fence, that there be a minimum of 2” from the surface of the ground so water could flow through, and Mr. Legg agreed this would be acceptable.

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

Mr. Bamburak moved, Mr. Smith seconded and it was unanimously carried to grant the Variance as requested subject to the Condition that if the easement area ever needs to be accessed by the easement owner, the fence will be removed and installed at the sole expense of the property owner; and that if a solid fence is ever installed in the future, that it be constructed with a minimum 2” space between the bottom of the fence and the ground.

There being no further business, Mr. Zamparelli moved, Mr. Gruen seconded and it was unanimously carried to adjourn the meeting at 10:00 p.m.

Respectfully Submitted,

Gregory J. Smith, Secretary

