

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – DECEMBER 1, 2009

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on December 1, 2009. Chairman Malinowski called the meeting to order at December 1, 2009.

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 #09-1520 – LIBERTY TOWERS, LLC

Mr. Toadvine stated he received a letter today from the Applicant's attorney dated 12/1/09, and this was marked as Exhibit B-3. Mr. Toadvine stated Mr. Lemanowicz has asked that the matter be continued to a special meeting night where this Applicant would be the only matter on the Agenda in the hopes that they could conclude their presentation in one evening. Mr. Toadvine stated they have also waived the time limits pursuant to the Municipalities Planning Code. They have determined that a meeting room is available on January 13, 2009. The meeting would start at 7:00 p.m.

Mr. Bamburak moved, and Mr. Smith seconded to continue the matter to 1/13/10 at 7:00 p.m.

Mr. Gruen asked why they wait until the last minute before asking for a continuance. He feels there should be an Ordinance that they are required to give at least five days notice for a request for a continuation. Mr. Toadvine was asked if other Townships have such an Ordinance, and Mr. Toadvine stated they do not.

Motion to grant continuance carried unanimously.

APPEAL #09-1525 – MATRIX LOWER MAKEFIELD LAND II, LP

Gregory Duffy, attorney, was present with Robert Oslenschlager, National Signs Services. Mr. Duffy stated they are present to discuss the proposed free-standing signs for CVS and PNC at the intersection of Oxford Valley Road, Big Oak Road, and Old Oxford Valley Road. He provided this evening two new Exhibits prepared in response to comments received at the last meeting. Exhibit A-4 - Signage Exhibit was dated last revised 11/17/09 and Exhibit A-5 – Signage Details was dated last revised 11/17/09.

Mr. Duffy stated when they first came before the Zoning Hearing Board, they requested two Variances, one to permit two free-standing signs where only one was permitted, and the other Variance request was to permit a flashing sign (electronic messaging unit). Mr. Duffy stated through their discussions with the Board of Supervisors, they have decided to drop the request for the electronic messaging unit at this time. He stated as a response to comments regarding traffic flow and safety from the Zoning Hearing Board at the initial meeting, they have introduced a third small free-standing sign so they are now exceeding the maximum 75 square foot area for free-standing signs; so in addition to the request for more than one free-standing sign, they are now also asking for a Variance to exceed the 75 square feet maximum permitted.

Mr. Toadvine asked if they want to amend their Application, and Mr. Duffy agreed.

Mr. Oslenschlager was sworn in. He showed Exhibit A-5 and stated they are proposing three free-standing signs which he marked as E, E-1, and E-2. He stated the sign marked as E they would like to amend and take off the electronic messaging unit, and it will look like the sign shown as E-1 except that CVS will have the top panel and PNC will have the lower panel on that sign. Signs E and E-1 will both be the same size. Mr. Oslenschlager stated they took into consideration the comments from the Zoning Hearing Board at the last Hearing with regard to traffic conditions and the potential for illegal turns. He noted Exhibit E-4 and showed the entrance on Oxford Valley Road where there is no-left turn in, and stated there was concern about illegal left turns at the red light. He stated they are proposing to have a “V” sign at the corner which is shown in Exhibit A-5 as sign E-2. He stated the sign will depict both CVS and PNC and have arrows directing in both directions to try and bring some of the traffic down along Old Oxford Valley Road, as well as to let the motorists know at the light that they can do down Oxford Valley Road and enter that way. They hope this will alleviate some of the problems with the illegal left turns.

Mr. Oslenschlager stated they have pushed the signs out to the property line because there is a stand of trees on Oxford Valley Road which will remain and block the view from Oxford Valley Road.

Mr. Oslenschlager stated they are now identifying CVS and PNC on all three signs.

Mr. Malinowski asked if there will be any illumination, and Mr. Oslenschlager stated they will be internally illuminated.

Mr. Gruen stated CVS typically has their name on the building and asked if they will have it on the building at this location. Mr. Oslenschlager stated they will and they will comply with the Township's Sign Code. Mr. Gruen asked why they need the sign noted as E-1, the first sign on Oxford Valley Road. Mr. Oslenschlager stated this is the main entrance on Oxford Valley Road, and he feels the main entrance needs to be depicted with a sign that shows you can enter for both PNC and CVS. Mr. Gruen stated this would only be for those going east toward Middletown since there is no left turn. Mr. Oslenschlager agreed. Mr. Smith stated no one will come upon sign E-1 without having passed sign E-2 and there will be additional signage on the building. Mr. Gruen stated if there is no left turn, they will probably enter on Big Oak at the E-2 sign, and asked why they would go to the front if there is another entrance. Mr. Oslenschlager stated the other entrance is off Old Oxford Valley Road, and this is why they have proposed the E sign at the corner to try to bring traffic down there as they would rather see more traffic come in at Old Oxford Valley Road.

Mr. Donaghy asked about the locations of signs E-1 and E-2; and Mr. Oslenschlager stated sign E-1 will be at the entrance on Oxford Valley Road, E-2 is located at the corner of Big Oak and Oxford Valley Road, and E which will be the same size sign as E-1 will be at the corner of Big Oak and Old Oxford Valley. Mr. Donaghy asked the interior angle of sign E-2. Mr. Oslenschlager stated he would not know this until he has the production drawings, but they have it turned in such a way that they can get the maximum view from the corner so cars traveling will be able to see it. Mr. Donaghy stated there is a provision in the Ordinance that if the interior angle is greater than 45 degrees, you count more of the sign face than if it is less than 45 degrees. Mr. Oslenschlager stated it will not be more than 45 degrees, and they will adhere to the Code. Mr. Donaghy asked what will be the new proposed total signage area for the free-standing signs, and Mr. Oslenschlager stated the total of all three signs will be 101.88 square feet. He stated on the E-2 sign, they are counting both sign faces.

Mr. Donaghy asked if the Applicant is no longer requesting a Variance for any signs with electronic messaging, and Mr. Oslenschlager agreed. Mr. Donaghy asked if the Zoning Hearing Board were to grant a Variance, would the Applicant agree to a condition that there could be no electronic messaging on the sign including LED displays or any other form of moving or electronic messages, and Mr. Oslenschlager stated they would agree to this.

Mr. Gruen asked Mr. Habgood if they measure the pedestal or just the face of the sign, and Mr. Habgood stated the mounting bracket for a sign is not counted in the area of the sign, but it is counted in the height.

Mr. Smith asked if E-1 is double sided, and Mr. Oslenschlager stated they are all double sided; but only one side is counted because both sides are exactly the same. He stated this is according to the Township Code. He stated if the other side were not the same, they would have to double count it.

Mr. Gruen asked the total square footage for E-1, and it was noted it is 33.58 square feet. E-2 is 34.72 square feet.

Mr. Bamburak stated Mr. Oslenschlager indicated that the angle would not be greater than 45 degrees; but Mr. Oslenschlager stated it will be, and this is why they counted both sides of the sign.

There was no one from the public wishing to comment, and the Public Hearing portion was closed.

Mr. Donaghy stated the Township would not object to the Application provided there were a Condition on the grant of a Variance that there be no electronic displays or any other moving display on any of the signs now or hereafter, that the total square footage not exceed the amount that has been suggested, and that the locations be approximately as indicated on Exhibit A-4.

Mr. Smith moved, Mr. Zamparelli seconded and it was unanimously carried that the relief requested be granted with the following Conditions:

- 1) The signage be located as depicted on Exhibit A-4;
- 2) That the total square footage of the signage not exceed 102 square feet;
- 3) That none of the signage now or at any time in the future have any LED, video, electronic, flashing, moving, animated, or anything other than a static sign.

APPEAL #09-1533 – RICH AND JOAN KMIEC

Mr. Rich Kmiec was sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application was a one-sheet Plan entitled, “Grading Plan for Lot #3 Boxwood Farms” dated 5/20/09, last revised 9/3/09, and this was marked as Exhibit A-2. Mr. Toadvine noted this is an Appeal from the decision of the Zoning Officer. He stated this matter was before the Zoning Hearing and it was decided in January of this year with Variances granted based on a Plan which was incorporated into the Board’s

Decision. It was noted that the home be constructed in strict accordance with the Plans marked as Exhibit A-2. Mr. Toadvine stated they are present this evening because Exhibit A-2 differs from the Exhibit that was marked as A-2 this evening. A one sheet document provided by Mr. Kmiec this evening was marked as Exhibit A-3. This is a drawing of the property with a building setback line and two footprints of homes – one in red and one in blue which is the difference between the old A-2 which was approved, and the new A-2 which was submitted.

Mr. Kmiec stated they were before the Board in January of this year for a Variance; and when they came in for the Variance, they did so because they needed some additional footage to expand the building envelope which they had which is the black dotted line on the drawing. He stated they asked for an additional 14 feet, and this was approved by the Zoning Hearing Board. Once they acquired this additional footage, they were able to re-adjust the footprint of the house better. He stated the blue line which was the original drawing marked as A-2 was not really a completed Plan at that time because they could not fit the house within the building envelope which is why they appeared before the Zoning Hearing Board in January. He stated once they acquired the additional footage, the architect re-worked the Plans to lay out the house the way they wanted it. He stated he feels the architect did a good job and kept everything within the new building envelope.

Mr. Toadvine stated blue is the old A-2, and red is the new A-2, and Mr. Kmiec agreed.

Mr. Toadvine stated he feels Mr. Habgood in an abundance of caution was correct in that when he saw the Plan and saw that the footprint was different, felt that the Board should look at this to make sure that it conformed to their understanding of the original Order. He stated there is no request for a Variance. He stated if the Board believes that the footprint as shown tonight conforms with the spirit and intent of the Order that was entered in January of this year, they would sustain the Appeal.

Mr. Malinowski stated he feels the Order at the time permitting a rear yard setback of 31.5 feet and a front yard of 35 feet is being adhered to; and while he feels Mr. Habgood was correct, he feels what is proposed adheres to the intent of the Board although it is not the exact same Plan.

Mr. Gruen stated it was a 31.5 feet on a cantilevered window which would have made the setback 36' and this is what was approved. He stated now it seems he is putting in a foundation where originally there was not going to be a foundation, and they have lost 5' in the setback.

Mr. Smith stated at first he did not feel what is being discussed would not be a big issue, but he now recalls that they did not have a problem with a bay window encroaching; but what is happening now is there is a proposal for a patio/porch to encroach even more which was not contemplated before. He stated the right side of the building has been pushed back in that as well. He stated it is encroaching in the front and the back. He feels the architect is taking advantage of the small amount of encroachment that the Board felt the “bump-out” would cause and is now putting in a porch that goes right up to the edge of the 31.5 feet and bumping out the right side even further.

Mr. Toadvine stated the bay window is still cantilevered according to the Plan. Mr. Smith asked if the porch will be cantilevered as well, and Mr. Toadvine stated it will not. Mr. Malinowski asked if there is a foundation under the porch, and Mr. Kmiec stated there are footings.

Mr. Gruen stated he had proposed in January to move the building 5’ forward to reduce the front yard setback in order to accommodate more space in the back, and now they are asking for more.

Mr. Malinowski stated the Order specifically says, “Permit a rear yard setback of 31.5 feet,” Mr. Gruen asked that he read the rest of the Order, and Mr. Malinowski read as follows, “And now this 20th day of January, 2009, the Lower Makefield Zoning Hearing Board by a vote of four to zero, Mr. Smith abstaining, grants a Variance from Section 200-25B and 200-61C so as to permit a rear yard setback of 31.5’ and a front yard setback of 35’ conditioned and contingent on the Appellants constructing a home in strict accordance with the Plan marked as Exhibit A-2 and the bow window bump-out being cantilevered and not having a foundation.”

Mr. Bamburak stated the original Exhibit A-2 did not have the porch, and they agreed that he could have the little bit of setback for the bay window, but that was it. Mr. Gruen stated he feels they are taking advantage. Mr. Bamburak asked what the porch is constructed of and asked if it is a wooden deck or a concrete slab, and Mr. Kmiec stated it will be composite wood. Mr. Bamburak asked if it will be above grade, and Mr. Kmiec stated it will be a screened-in porch with a roof.

Mr. Gruen stated originally this lot was not approved for this size home. He stated this lot is part of a Subdivision where a smaller home was approved because of the wetlands.

He stated they came to the Zoning Hearing Board indicating this was the house they wanted and they could fit it in and would agree to put the bay window in on a cantilever; and the Board agreed to grant a Variance for the front in order to protect the setback in the back. He stated it was all on the basis of the cantilevered window which would give a total of 57' to the wetlands. He stated now they are asking for another 5.7' encroachment into the setback. Mr. Majewski stated it is not wetlands – it is woodlands.

Mr. Kmiec stated this is not exactly what was said, and stated when he came before the Board in January he indicated that they could not lay out the house in the original footprint; and to get the size rooms they needed in the house and to get a master bedroom on the first floor, they needed the additional width of the building envelope of 14'. He stated he recalls that the Board indicated that the Zoning had been changed in the front setback, and they could get 5' automatically there, and asked if he would agree to take 9' in the back, and he indicated that this would be fine provided he could re-arrange the floor plan to accommodate what they were trying to do. He stated he was under the impression that once the Variance was granted, he had 31' across the whole back of the property, and Mr. Malinowski stated this was his intent as well; and he would not have approved a Variance that said if he did not have bow window, he could not have a house. Mr. Kmiec stated the only thing that was discussed at any length at the last meeting was cantilevering the bay window, and he indicated that they could do this. He stated as can be seen in the drawing, everything is inside the new footprint of the building envelope.

Mr. Toadvine stated he felt that the reason for cantilevering the bow window was to increase the pervious surface and it did not have anything to do with the setback. Mr. Kmiec stated they have adhered to the setbacks.

Mr. Donaghy stated the Township is not participating except to the extent of acknowledging that Mr. Habgood did act in accordance with the terms of the earlier Decision of the Zoning Hearing Board.

Mr. Toadvine stated the issue before the Board this evening is Mr. Habgood's decision; and if the Board agrees that his decision was wrong, and that footprint can be constructed on this lot, the Board would vote to sustain the Appeal. Mr. Bamburak asked Mr. Habgood if he felt that the "bump-out" for the bow window was the only thing that should be allowed within the setback. Mr. Habgood stated he interpreted the ruling by the Zoning Hearing Board on the prior Decision that the Applicant had to build a house that was in compliance with what was shown on Exhibit A-2, and what the Applicant had submitted for the Permit for construction did not match what was shown on Exhibit A-2. He stated the house did not match what was shown on prior Exhibit A-2, and it was not just because of the porch although that was part of it.

Mr. Kmiec stated when he came for the Variance in January, he did not realize at any time during the meeting that the Sketch had to be exactly that way. He stated when the Decision was granted, and it indicated it was to be in compliance with A-2, they had only talked about cantilevering the windows; and that is what he felt he had to do.

Mr. Malinowski stated he felt strict compliance with A-2 meant that he had to stay within the setback, and this was his intent. Mr. Kmiec stated this is what he felt; and that if they stayed within the building envelope, they were in compliance.

Mr. Smith stated the question before the Board is whether Mr. Habgood's decision was correct; and in his opinion, Mr. Habgood's decision was correct. He stated it is not before the Board whether Mr. Kmiec should be allowed to build it the way he is proposing it now. He stated if the question is whether he should be able to build it the way he is proposing, he might agree; but this is not the question before the Board this evening.

Mr. Toadvine asked if they could say that Mr. Habgood was correct in his interpretation; however, the Board would find that the house as proposed is in accordance with the spirit and intent of the original Variance. Mr. Toadvine asked if this would be sufficient to issue a Building Permit, and Mr. Habgood agreed it would.

Mr. Smith moved and Mr. Zamparelli seconded that the Appeal be denied based on the finding of the Board that Mr. Habgood's interpretation was accurate; however, the Board still believes that the new Plan conforms and meets the spirit and intent of the original Variance. Motion did not carry as Mr. Bamburak, Mr. Gruen, and Mr. Smith were opposed.

A short recess was taken at this time. The meeting was reconvened at 8:45 p.m.

Mr. Gruen stated he recalls that this lot was part of a Subdivision, and the small building envelope was granted because they submitted a Plan for smaller houses because of all the difficulties on this lot. Mr. Habgood stated it is part of a Subdivision called Boxwood Farms, and at the time it went through Planning there were different Ordinances in effect at that time for the setbacks; and if it were to go through Planning now, they could use the current setbacks. Mr. Gruen stated when the Applicant came before the Zoning Hearing Board the last time, the Board granted a larger footprint for the house than was originally approved, and now he is asking for an even larger footprint. Mr. Majewski stated the way the building envelope was approved during the Planning process contemplated more of an elongated house so that it would be wider than deeper in depth; and the house Mr. Kmiec is showing is a little more compact from side to side, but a little more stretched out front to back. He stated it is essentially the same size building that could be fit under the original Plan.

Mr. Gruen stated when Mr. Kmiec came to the Zoning Hearing Board originally, he stated that he wanted a bedroom downstairs, and this is why the Board approved it; but now he has added a porch and enlarged the house; and he asked what would be the hardship. Mr. Kmiec stated he did not add a porch as there was a porch on back of the garage, and he has just moved the porch. He stated the Plan when they came for the Variance was not complete because they could not lay out the house the way they wanted to in the building envelope that they had at the time. He stated the original Exhibit A-2 was not a completed Plan because they knew that they could not complete it at that time because of the size of the building envelope, and this is why they came for the Variance. He stated once they acquired the variance from the Board, they then finished the Plans the way they wanted to finish them since they had the space to do it. Mr. Gruen stated they have gone deeper and enlarged the house. Mr. Malinowski stated the house is still within the setback. Mr. Kmiec stated the Board granted a footprint based on what was requested, and they have adhered to the footprint inside the building envelope.

Mr. Bamburak stated the only thing the Sketch Plan showed bumping off the back of the house was the one bay window, and the bay window was to be cantilevered. He stated now the garage extends part way into the depth of that bay window so now the cantilever of the bay window is not going to be the same and now only half that bay window is cantilevered. He stated the porch is also bumping out the back, and they did not expect to see this. He stated the way the Decision was worded was that this was “to be in strict compliance with Exhibit A-2,” and the reason they did this was because the only thing they thought would be coming out the back would be the cantilevered bay window, and there are now more things coming out the back of the house.

Mr. Kmiec stated everything is still within the building envelope. Mr. Kmiec stated on the original Plan a good portion of the blue line was outside of the original building envelope. Mr. Bamburak stated the current Plan is not what their intent was, and all they intended to have come out the back of the house was the bay window. Mr. Malinowski disagreed. Mr. Kmiec stated while he is not saying this was not in the Board’s mind, it was never expressed to him at the meeting that nothing could be changed.

Mr. Gruen stated he specifically asked about this at the first Hearing, and he questioned why they needed a bay window if they were coming in for a bedroom; but he decided if he wanted a bay window and it would be cantilevered, he would approve it. He stated they specifically indicated that the only thing that would be in the back would be the bay window cantilevered without footers. Mr. Malinowski stated it appears that there are a number of different interpretations. He stated this is not what is before the Zoning Hearing Board this evening.

Mr. Smith moved and Mr. Gruen seconded that the Appeal that the Zoning Officer incorrectly interpreted the Board's Decision is denied, and that the Zoning Officer did in fact correctly interpret the Board's Decision in the Variance granted on 1/20/09.

Mr. Bamburak stated he feels they can vote to find that Mr. Habgood was correct, but feels they can also in the same Motion allow the house to be built as per the new Plan.

Mr. Smith agreed to amend that the Board agrees that the building can go forward as per the most recently submitted form Exhibit A-3 provided it is in strict accordance with Exhibit A-3.

Mr. Gruen asked for clarification on the porch and asked if it would be on piers or footers, and Mr. Kmiec stated it has not been designed but it will be level with the first floor of the house. Mr. Smith stated it appears that the porch sticks out further than the bay window. When reviewing the Plans, Mr. Gruen stated it appears that the bay window will be on piers and not cantilevered. He stated he is concerned with approving this since they do not have any blueprints and they are not telling what they are voting on.

Mr. Malinowski stated he is not required to provide blueprints. Mr. Gruen stated he is asking for a Variance; and before he can vote, he wants to know what he is going to build.

Motion carried with Mr. Gruen opposed.

APPEAL #09-1534 – ROBERT TILGHMAN

Mr. Matthew Piotrowski, architect, and Ms. Linda Mayer were present and were sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application was a two-sheet drawing dated 10/27/09, and this was marked as Exhibit A-2.

Mr. Malinowski asked if the Applicant is present, and Mr. Piotrowski stated the Application, Robert Tilghman, is the general contractor, and Ms. Mayer is the homeowner.

Mr. Piotrowski stated they are looking for a Variance for impervious surface. He stated the project is to re-construct a new structure on the rear of the house. He stated there is no change in impervious surface as the existing house is non-conforming and was non-conforming when the Mayers purchased the house two years ago; and they did not realize it was non-conforming. He stated the structure that is there is an enclosed porch, raised off the ground with a concrete floor and concrete foundation with a masonry knee wall around the lower part of the structure. He stated their proposal is to take the existing

footprint and convert it from a porch to living space with heating and cooling. He noted Page Z-2 which shows the elevations of what they would like to construct. He stated they feel this is an enhancement to the house versus the porch that exists as it has a roof that is not sloped properly to drain water, and they will change the roof line. He stated they feel there is a hardship in that the Mayers did not know that the house was non-conforming when they purchased it. He stated he also feels this is a de minimis Variance in that they are not changing any of the impervious surface. He stated the impervious surface is currently over what is permitted. He stated there are no water issues on the property, and they are not adding to any potential water issues.

Mr. Smith asked the permitted impervious surface, and it was noted 18% is permitted, and they are at 30%. Mr. Habgood stated he had trouble doing the calculations since the Site Plan submitted was not to scale; but his calculations came to 32.4%. Mr. Smith asked the square footage, and Mr. Habgood stated it is 6,028. Mr. Smith asked how many square feet they would have to remove to get to 18%, and it was noted it would be over 3,000 square feet. Mr. Smith asked the square footage of the driveway, and Mr. Habgood stated he calculated this to be 2,962 square feet.

Mr. Gruen asked when the porch was built, and Mr. Habgood stated there is no record of a Permit being issued for the existing porch. He stated the Permit for the new home construction shows the small patio that is on the rear of the house, but it does not show the porch so they have no idea when the porch was built. Mr. Gruen stated he assumes that when you purchase a home in this community, the attorneys would check with the Building Department that everything is legal, but it was noted that this is incorrect. Mr. Habgood stated the way the home was originally built, it was a rear entrance garage which is why there is a lot of driveway.

Mr. Gruen stated he recognizes this is a hardship since the new homeowners did not know about this and there is not a requirement in the Township to check on this, but he added half of the property is paved in the back and they have a huge parking area. He asked if there is a way they could remove some of this driveway. Ms. Mayer stated when they first bought the house, they realized it was too big and they do not need this; but they were not planning on removing it at the current time, since they are putting their money into the house. She stated eventually they do want to remove some of it. Mr. Gruen stated removal of blacktop is not that costly and it would be miniscule compared to the cost of their total project. Mr. Piotrowski stated this is incorrect as the foundations for the porch are there, and they do not have to dig for footings so the cost is not as expensive as a traditional addition. He stated to remove blacktop would require grading, seeding, and bringing in fill so that the cost of removing the blacktop could be 50% to 75% of the cost of the proposed project. Mr. Gruen stated they would not be removing 3,000 square feet of blacktop. Mr. Gruen stated he does not feel it would be as expensive to remove blacktop as Mr. Piotrowski is indicating. Mr. Gruen stated they have a huge amount of blacktop; and Mr. Piotrowski stated while he agrees, he feels there

is a hardship as the Mayers bought the house this way. He stated they have indicated that they would like to remove it at some time, but making that a Condition would be an undue burden on the cost of the project.

Mr. Malinowski asked if they have added any impervious since they purchased the home in 2007, and Ms. Mayer stated they have not, and are just now trying to improve the house. Mr. Malinowski stated it appears they bought the house in good faith and did not know that there was too much impervious surface or that the porch had been built without a Building Permit; and they now want to do some renovations. Ms. Mayer stated she feels they are being punished for what the previous owners did illegally, and she is trying to do it the legal way.

Mr. Smith stated the Township does have a problem with run off and impervious surface, and as a result the Board is sensitive to these issues. Mr. Smith stated the driveway is 41.6" wide by 55' long, and this is only what is behind the garage and does not include what is coming up to the garage. He stated possibly they could take half of that drive in the back out. Mr. Gruen stated they would need room for turn around. Mr. Majewski stated typically for a side entry garage, the minimum from the side of the garage out to the edge of the driveway would be 25' with 30' to 35' being preferable. He stated around the back, they would need 40' total.

Mr. Malinowski stated the porch and driveway have been existing like this for some time.

Mr. Gruen stated this area has no drainage. Mr. Piotrowski stated this property is one of the lowest properties there so they are getting the neighboring properties' water, and they have no standing water in the back yard now.

Mr. Zamparelli asked if there will be additional water coming down the rain spouts, and Mr. Piotrowski stated it is the same amount of roof square footage.

Mr. Piotrowski stated in the Municipalities Planning Code, he believes that you have to prove a hardship; and he feels that they are proving a hardship. Mr. Smith stated they are living in the home, so he does not feel there is a hardship. Mr. Malinowski stated the hardship is that they cannot do anything with the house because it is non-conforming.

Mr. Bamburak stated sometimes the Board requires that some impervious be taken out, but in those cases there is often excavation associated with the project so it would not impact the project that much. He stated in this case, there is no excavation taking place.

There was no public comment at this time, and the Public Hearing portion was closed.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to grant the Variance to permit the existing impervious surface.

APPEAL #09-1535 – KELLY AND BRIAN SWEENEY

Ms. Kelly Sweeney and Mr. Brian Sweeney were sworn in. The Application submitted was marked as Exhibit A-1. Accompanying the Application was a set of Plans totaling six pages dated 3/26/09, and these were marked as Exhibit A-2.

Mr. Sweeney stated they need a Variance to elevate the house above the 500 year floodplain and to add a screened-in porch and deck off the back.

Mr. Smith asked how much water they got at the last flood, and Mr. Sweeney stated during the most recent one, they had four feet inside the first floor of the house.

There was discussion on the amount of impervious surface. Mr. Sweeney stated the proposed screened-in porch will be 20' by 12' so this would be additional impervious surface. Mr. Majewski stated this would be 240 square feet. Mr. Sweeney stated there is a sidewalk in the back of the house that will be removed. They will be removing 429 square feet, but adding some impervious surface so it will be a loss of 208 square feet. Mr. Bamburak stated he feels what is being removed would only be 130 feet. After further review, Mr. Majewski stated he feels 3,900 square feet of impervious surface would cover what is proposed.

Mr. Frank Stillitano, 193 River Road, was sworn in and stated his was the first home in the program to be elevated, and it is near completion of his project. He stated he wants to lend whole-hearted support to the proposed project.

Mr. Bamburak stated on the Plans it states the lot size is 7,131 square feet with 19.3% impervious surface, and this does not equal any of the calculations. Mr. Sweeney stated he agrees. He stated there was an original survey done, and he had never questioned the calculations; but when he was trying to do the calculations for impervious surface, he realized that the figures on the Plan were incorrect, and he feels it is closer to 29,000 square feet. Ms. Sweeney stated they cannot find the original surveyor.

Mr. Gruen asked if they are scheduled to be elevated soon, and Mr. Sweeney stated they cannot be scheduled to be elevated until the Variance is approved. He stated once they get the approval, the Township puts it out to bid. Mr. Gruen stated he is concerned that there are a lot of numbers being shown. Mr. Majewski stated this is why he suggested that they approve a maximum square footage of 3,900. Mr. Smith stated they could word the Decision that it not exceed 3,900 square feet.

Mr. Bamburak stated Page 3 of the Application indicates they are requesting relief for front and back setbacks. Mr. Habgood stated this is for the new wood deck and stairs that have to be constructed for them to gain access to the house when it is raised.

Mr. Bamburak stated they have not indicated anything specific in terms of numbers. Mr. Habgood stated he does not feel they need a Variance for the front yard setback as they have the existing front porch on the house, and they are not encroaching any further from that to the street. He stated it appears that they will need a rear yard setback Variance for the rear deck to be constructed. There was discussion on specifically how much of a rear yard Variance is required. Mr. Habgood stated he feels the steps of the rear deck will go past the garage slightly. He stated he feels it would be 53' to the rear of the property.

Mr. Gruen stated he feels it is very difficult to vote on this when they do not have specifics, and he asked if they could have someone lay out what they want and then come back with real numbers. He stated he does not want to approve something and then find that they need another Variance.

Mr. Bamburak stated they cannot read the drawing, and he feels they should be able to reject Plans if they cannot read the drawings. He stated he feels the Task Force that was to be looking into these matters should have considered this.

There was no public comment, and testimony was closed at this time.

Mr. Smith moved, Mr. Bamburak seconded and it was unanimously carried that the relief requested be granted in the way of the elevation of the existing structure to be above the 500 year flood mark, that the impervious surface be no more than 3,900 square feet, and that a rear setback of 52' is permitted for the steps only.

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

Respectfully Submitted,

Gregory J. Smith, Secretary

