

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – APRIL 6, 2010

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on April 6, 2010. Chairman Malinowski called the meeting to order at 7:03 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  
   James Esposito, Township Solicitor  
   James Majewski, Township Engineer  
   Tom Kopil, Zoning Hearing Board Solicitor  
   Matt Maloney, Supervisor Liaison

APPEAL #10-1540 – DOGWOOD DRIVE LP

Mr. Edward Murphy, attorney was present with Mr. Gregory Glitzer, who was sworn in. The Application submitted was marked as Exhibit A-1. Accompanying the Application was a Plan time-stamped by the Township 1/13/10 which was marked as Exhibit A-2.

Mr. Murphy stated they are seeking to apply an Ordinance that was adopted after the date the Plan was submitted to the Township. He stated Exhibit A-2 shows a proposed five lot Subdivision Plan which is currently pending before the Township but has not received any level of approval. Mr. Murphy stated after the Plan was submitted as a Preliminary Plan, the Township adopted its Low Impact Development Ordinance (LID), and this Application seeks to apply the LID Ordinance to this Plan. He stated the Township has encouraged Applicants to apply, wherever they can, the provisions of LID. In this case the one area requirement that impacts the Plan is the front yard setback. He stated when the Plan was submitted, the Township had a minimum 40' front yard setback requirement under the existing Ordinances; however, under LID, the minimum front yard setback is 30', and this Application seeks to apply the 30' front yard dimension rather than the 40' dimension.

Mr. Glitzer stated he is employed by Gilmore Associates and is the Manager of their Land Development Design Department at their New Britain office. He stated they are engaged in the preparation of design and permitting of Subdivision and Land Development Plans. His office prepared Exhibit A-2 which is the Plan identified as the Zoning Permit Plan for Dogwood Drive dated 1/7/10. Mr. Glitzer stated the Plan marked as Exhibit A-2 is a Subdivision Plan pending before the Township, but it has not received any level of recommendation or approval from any of the Boards or Commissions in the Township.

Mr. Glitzer stated the site is a 14.7 acre, irregularly-shaped tract on the south side of Dogwood Drive near the intersection with Delaware Rim Drive. It is surrounded by Residential development and is nearly entirely wooded. He stated there is a tributary of Dyer's Creek that traverses the site. The Plan proposes five single-family detached dwellings in accordance with the R-2 special standards for a site that is 76% resource restricted. He stated the Zoning Ordinance allows for scaled dimensional and area standards dependent upon the amount of special resource restrictions on the site. He stated the percentage of their site subject to natural restrictions is 76%, and this puts them in a category that requires 12,500 square foot lots and certain setbacks. The site is currently vacant.

Mr. Glitzer stated the Low Impact Development Ordinance is a design concept that seeks to reduce the impact of development by limiting impervious surfaces and generally promoting more compact development including reduced setbacks, reduced cartway widths, and the use of bio-retention or dispersed stormwater management facilities treating the run off near the source rather than at the end of a pipe. He added the purpose is to reduce the footprint of any development project particularly on the natural resources of the site. He stated the Ordinance was adopted by the Township after the date that the Preliminary Subdivision Plans were submitted to the Township. At the time the Plans were submitted the required front yard setback for the R-2 District for this size lot were 40' front yard and a 40' rear yard. Subsequent to the adoption of the LID Ordinance for this size lot with the natural resource limitations, the requirement is 30' front yard and 45' rear yard. He stated the reason for this is to pull in all the impervious surfaces and make it a more compact development and lessen the "sprawl" of the project. He stated this pulls the houses as far forward as reasonably possible and still have a reasonable yard area. This then preserves more of the resources in the rear. The Applicant, if relief is granted, is prepared to follow the LID Ordinance not just with regard to the front setback but with the other benefits of the LID Ordinance as well including reduction in cartway, a stormwater management concept consistent with LID including a "green" street proposal with underground stormwater management within the right-of-way, and bio-retention areas.

Mr. Glitzer stated they are only seeking relief to permit the minimum front yard for the five lots to be 30' rather than 40'. They will maintain the minimum rear yard requirement under the LID Ordinance. They will be able to reduce the number of trees that need to be removed if they apply this reduced front yard standard. Mr. Glitzer stated they will also be able to reduce the length of the driveway and reduce grading and compaction of the existing ground.

Mr. Smith stated if they had waited to submit their Plans until after the adoption of the LID Ordinance, they would have been required to proceed as they are requesting; and Mr. Murphy agreed.

Mr. Gruen asked why they did not re-submit their Plans rather than having to go before the Zoning Hearing Board, and Mr. Murphy stated they had already paid thousands of dollars in Application Fees. He stated they have also had a number of reviews by a number of reviewing agencies even though no approvals have yet been given so it was not practical to withdraw it and start over.

Mr. Gruen asked about specific benefits to the Township . Mr. Glitzer stated the driveway will be 10' shorter. He stated the design standards under LID are what the Township has endorsed. He noted the EAC review letter of 7/14/09 which recognized the fact that the Applicant has proposed to follow LID even though they are not required to do so. Mr. Murphy stated the Applicant was requested by the Township to pursue this Application before the Zoning Hearing Board so that the Low Impact Development could be applied. Mr. Maloney stated there are also reductions in cartway widths which help reduce speeds traveled and plowing needs and other environmental benefits. Mr. Murphy stated they are also proposing the first “green” street which will eliminate the traditional drainage pattern associated with all streets, and they will create stormwater retention areas beneath the street and just have roadside swales which will further expand the Low Impact Development Ordinance. Mr. Gruen asked that Mr. Glitzer read portions of the EAC letter dated 7/14/09 and Mr. Glitzer did so indicating that they are in favor of what was proposed by the Applicant in conformance with the LID Ordinance.

Mr. Majewski stated the Township generally supports this as there is less impervious surface since there is less driveway which is a benefit to the Applicant and the future homeowners as they would have 10' less driveway to shovel and resurface in the future. He stated the homeowners would also have more of a usable rear yard. He stated the benefit to the Township is that it saves an additional 5' of clearing all the way around the entire perimeter of the project which is over one tenth of an acre of woods.

Mr. Esposito stated the Township is in favor and not participating in this matter.

Mr. Maloney stated bringing the houses closer to the street preserves green spaces in a more contiguous fashion.

Mr. Murphy moved the introduction of the Exhibits.

There was no public comment, and testimony was closed.

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

#### APPEAL #10-1544 – MCB ENTERPRISE LLC

Mr. Theo Rennenberg, homeowner, was present with Mr. Richard Coleman who were both sworn in.

The Application submitted was marked as Exhibit A-1. Attached to the Application was a one page Plan dated 5/2/69, time-stamped by the Township 2/22/10, and this was marked as Exhibit A-2.

Mr. Rennenberg stated he bought the house eight years ago; and when it was originally built over thirty-five years ago, there was a patio added for which there was no Permit. He stated since that time the patio has cracked and it is diverting water toward the front and back of the house. He would like to replace the patio with a patio of the exact same size so that it will move the water away from the house.

Mr. Smith asked the height above grade of the patio, and Mr. Coleman stated it is actually below the grade of the house and there are two steps coming down out of the house onto the patio. The house is sitting about 24" above grade, and the patio is at grade. The patio is now pitched toward the house.

Mr. Habgood stated for this lot and age of the development, 18% impervious surface is allowed, and they are at approximately 27%. Mr. Habgood stated they were already over the allowed impervious surface when the Ordinance was adopted in the late 1980's. He stated prior to the adoption of this Ordinance, the Township went by building coverage which they most likely met.

Mr. Smith asked Mr. Majewski the percentage of impervious surface without the patio, and Mr. Majewski stated his calculation of the impervious surface is 28% and without the patio it would be 24.4%. Mr. Malinowski noted the patio is shown on the Plan which was dated 1969.

Mr. Gruen asked if they have considered putting in a deck, and Mr. Rennenberg stated there were cost factors involved and concrete would last longer and would be easier to keep clean.

Mr. Smith stated this is an opportunity to reduce the impervious surface on the lot. He stated a wooden deck would not count as impervious surface even though they would not be able to get to 18%. Mr. Coleman stated the cost of a deck would be significantly higher than doing the concrete.

Mr. Bamburak asked Mr. Rennenberg knows if any of his neighbors have water problems from water running off of his property. Mr. Rennenberg stated none of his neighbors are present this evening. Mr. Bamburak stated the Board has not heard from any neighbors indicating they have a problem. Mr. Bamburak stated he does not feel they should punish the Applicant for requesting the Permit for a patio which is already there or force him to do something other than what he is requesting. Mr. Gruen stated he does not feel it is a punishment to ask them to observe the Zoning. Mr. Bamburak stated what the Applicant is requesting is not causing a problem.

Mr. Zamparelli stated even without the patio it appears that the property was over the 18% impervious surface when it was built. Mr. Habgood stated this is an older development and originally impervious surface was calculated by building coverage and driveways and walkways were not initially included. He stated when the Impervious Surface Ordinance was adopted in the late 1980's, any hard surface had to be counted, and this is why the older developments are over what is currently permitted under the existing Ordinance.

Mr. Esposito stated the Township is not participating in this matter.

There was no public comment, and the testimony was closed.

Mr. Bamburak moved and Mr. Zamparelli seconded that the relief requested be granted to replace the patio with the existing dimensions. Motion carried with Mr. Bamburak, Mr. Malinowski, and Mr. Zamparelli in favor and Mr. Gruen and Mr. Smith opposed.

#### APPEAL #10-1545 – MANOJ G. PATEL

Mr. Manoj Patel was sworn in. The Application submitted was marked as Exhibit A-1. Accompanying this was a one-page Site Plan dated 12/2/93, time-stamped by the Township 1/26/10, and this was marked as Exhibit A-2.

Mr. Patel stated he installed a shed and needs a setback Variance. Mr. Habgood stated the property is reverse frontage so there is a special setback of 80' from the road for which he needs a Variance. They also need to maintain a minimum of 10' from the side property line, and he is requesting a 5' setback from the left side property line.

Mr. Esposito stated the Township is not participating.

Mr. Habgood stated the shed is existing, and he would have to apply for a Permit for the shed.

There was no public comment, and the testimony was closed.

Mr. Smith moved, Mr. Bamburak seconded and it was unanimously carried that the relief requested be granted.

#### APPEAL #10-1546 – FLAVIO & ANGELA RIVA

Mr. Flavio Riva was sworn in. The Application submitted was marked as Exhibit A-1. Attached was a Site Plan dated 3/1/10, time-stamped by the Township 3/2/10, and this was marked as Exhibit A-2.

Mr. Riva stated he would like to build a detached two-car garage on his property. He stated he needs a Variance for impervious surface and setback.

Mr. Esposito stated the Township is participating.

Mr. Bamburak noted the Plans call for a dry well. Mr. Riva stated he is an architect and is concerned about impervious surface in the neighborhood, and he does not want to exacerbate that. Mr. Bamburak stated he feels a Condition to approval could be attached that the dry well would provide mitigation equal to the amount required to bring the impervious surface down to an effective impervious surface of 24%. Mr. Riva stated he has not yet had the dry well engineered at this point. He stated he is also considering supplementing the dry well with rain gardens. Mr. Bamburak asked if he would be agreeable to a Condition that any proposal would have to be acceptable to the Township engineer, and Mr. Riva stated he would agree to this Condition.

Mr. Esposito asked the height of the proposed garage, and Mr. Riva stated they are not requesting a Variance for the height. Mr. Esposito asked if plumbing would be run to the garage and Mr. Riva stated it would not and he would agree to making this a condition of approval. Mr. Esposito asked if he would agree that the purpose would be for storage and they could not use this as an apartment, and Mr. Riva stated he would agree to this as a Condition. Mr. Bamburak suggested that they indicate that there can be no living space, and Mr. Riva agreed to this Condition.

Mr. Malinowski asked Mr. Majewski if he agreed with the impervious surface calculations that were submitted by the Applicant, and Mr. Majewski stated he did agree.

Mr. Dan Eggert was sworn in and stated he is the neighbor to the west of the property that would be the most effected by the garage. He stated he was concerned about how they would handle the additional run off; and he feels if they are going to have a dry well, it will be beneficial to himself and the neighborhood.

Mr. Smith asked Mr. Riva if he agrees to install mitigation which would equal an effective 24% impervious surface. Mr. Riva stated he is not sure that he can commit to 24% at this time, but would be willing to agree to keep the impervious surface where it is now and would try to get it to 24% depending on the cost to do so.

Mr. Bamburak asked if he would like to request a continuance so that he can discuss this with his engineer and try to develop a plan so he would know the cost rather than have the Zoning Hearing Board provide a specific impervious surface this evening. Mr. Riva agreed to a continuance. Mr. Riva stated a perc test may be required to establish what the ground can handle. Mr. Riva agreed to continue the matter to May 17 and agreed to waive the time limits.

Mr. Bamburak moved, Mr. Smith seconded and it was unanimously carried to continue the matter to Monday, May 17, 2010.

#### APPEAL #10-1547 – WINDSOR AT TOWNSHIP LP

Mr. Edward Murphy was present. The Application along with various attachments was collectively marked as Exhibit A-1.

Mr. Murphy stated in January, 2007 the Zoning Hearing Board granted the former owner of this property a Special Exception. The property is located at 777 Township Line Road and is a multi-story office building. Mr. Murphy stated the Special Exception which was granted in 2007 permitted the owner to devote a maximum of 30,000 square feet of the total 116,000 square feet for medical uses at the northern end of the building. He stated since that relief was granted, the former owner of the property has leased out 28,358 square feet of the northern end for medical uses principally to the University of Pennsylvania. He stated this leaves about 1,640 square feet still to lease in the northern end of the building.

Mr. Murphy stated because of the large presence of the University of Pennsylvania, other uses that have synergy with Penn uses have periodically inquired about being able to locate at this location. He stated most recently a physical therapist has expressed serious interest; and the Application in part involves the request to devote space in the southern end of the building to that use on the first floor. In addition there has been interest expressed regarding a small amount of space (1,449 square feet) on the second floor for a medical use. Mr. Murphy stated the current owners are requesting that these two areas in the southern portion of the building be capable of being used for medical uses. Mr. Murphy stated in the Ordinance a physical therapist is considered to be a medical use. He stated there was also interest on the second floor for a dentist, and this is also considered a medical use.

Mr. Murphy stated since a medical use requires greater parking ratio than a general office use, they had a parking count conducted by PCS to count the number of available spaces over the course of a given week both in the morning and in the afternoon. Exhibit A-2 was marked which is the memo addressed to Mr. Murphy from PCS regarding these parking counts. This was distributed this evening. It was noted this was also included in the Board's packet. Mr. Murphy stated the parking count shows that in late February/early March when the counts were conducted, there were never fewer than 136 spaces still available in the overall parking area. He stated the counts were taken at different times of the morning and the afternoon. He stated the building other than these spaces is now fully leased.

Mr. Murphy stated he has also had discussions with the Township engineer who expressed more concern with uses being in the northern end of the building rather than the southern end. Mr. Majewski stated they had lengthy discussions about this when they received the previous Special Exception for medical offices since they wanted to put a drop off area on the north side of the building, and the Planning Commission had concerns with circulation to get to that part of the building. He stated medical offices being in the south/east side works better with the existing entrances and handicapped parking spaces that are available.

Mr. Murphy stated since they have submitted their Application the space that was proposed to be used by the physical therapist on the first floor has changed slightly. They would still be at this end of the building but would be down the hallway as opposed to the originally-proposed location. Mr. Murphy stated the space would be about 100' square feet less. Total space needed between the two proposed medical uses would be 5,129 square feet.

Mr. Majewski stated the parking would not be affected by this increase.

Mr. Gruen stated his only concern is with future medical uses which could possibly involve a medical waste facility. He stated he would not have a problem with a professional medical service. Mr. Smith suggested that they make it a Condition that it be a medical use for the treatment of patients, and this was acceptable to Mr. Murphy.

Mr. Esposito stated the Township is participating. He asked if they would need any special vehicles to have to access the building, and Mr. Murphy stated there would be nothing that could not be accommodated by the handicapped spaces already existing. Mr. Esposito asked Mr. Murphy if they would agree to a Condition that they not request any additional changes to the parking lot area, and Mr. Murphy agreed.

There was no public comment, and the testimony was closed.

Mr. Smith moved, Mr. Gruen seconded, and it was unanimously carried to approve the relief requested in the way of an additional occupancy of 5,200 square feet in the southernmost portion of the building provided that the space is devoted to the treatment of patients.

There being no further business, Mr. Bamburak moved, Mr. Smith seconded and it was unanimously carried to adjourn the meeting at 8:15 p.m.

Respectfully Submitted,

Gregory J. Smith, Secretary