

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – MAY 17, 2010

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on May 17, 2010. Vice Chairman Bamburak called the meeting to order at 7:10 p.m.

Those present:

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

Others: Robert Habgood, Code Enforcement Officer
 James Esposito, Township Solicitor
 James Majewski, Township Engineer
 Allen Toadvine, Zoning Hearing Board Solicitor

Absent: David Malinowski, Zoning Hearing Board Chairman
 Anthony Zamparelli, Zoning Hearing Board Member
 Matt Maloney, Supervisor Liaison

APPEAL #08-1483, #08-1483, #08-1483(B) – T-MOBILE NORTHEAST LLC

Mr. Toadvine stated this matter was continued to this evening for the purpose of allowing the Township to introduce any testimony if they so desired and to allow for additional public comment by residents. He stated Mr. Esposito has indicated that they do have brief testimony they wish to present. Mr. Toadvine stated he spoke to Mr. Goldberg earlier this evening and even though there are three different Appeal numbers, they were Amendments to the original Appeal; and it was indicated on the record that all three Appeals were consolidated under the one main number. Mr. Goldberg agreed.

Mr. James Majewski was called and sworn in. He stated he is a licensed professional engineer employed by Remington, Vernick, & Beach Engineers; and he is the Township's appointed engineer. Mr. Goldberg agreed to stipulate to Mr. Majewski's qualifications as an expert.

Mr. Esposito asked Mr. Majewski if he has reviewed the Plans, Ordinances, and all documents related to the Appeal; and Mr. Majewski stated he has. He stated the site is located in the R-2 Zoning District. The Plans marked as Exhibit A-2 were noted, and Mr. Esposito asked the proposed rear setback for the proposed transformer pad; and Mr. Majewski stated the Plans show a transformer pad located at 69' from the rear property line and added that the entire compound is approximately 73' from the property

line. He stated the R-2 District requires a 50' front yard setback and a 75' rear yard setback so the transformer pad and the compound would be within the 75' rear yard setback. Mr. Esposito stated they would be required to request a Variance for a rear yard setback which they have not done, and Mr. Majewski agreed. He stated the Plans that were submitted as Exhibit A-2 are incorrect, and they have the front and rear yard setbacks flipped, and they have 50' for the rear yard and 75' for the front yard.

Mr. Esposito asked if there are trees located on the proposed site, and Mr. Majewski stated there are. He stated. He stated the only part that does not have trees is the access lane to the water tower and the area that is fenced-in around the water tower.

Mr. Esposito asked Mr. Majewski if he has personally inspected the property, and Mr. Majewski stated he has on number of occasions.

Mr. Esposito asked Mr. Majewski the height of the trees on the property, and Mr. Majewski stated he estimates them to be between 50' to 75' tall. Mr. Esposito asked the distance between the trees and the proposed monopole, and Mr. Majewski stated the Plans do not show how far they intend to clear the trees in order to construct the monopole and compound. He stated the area where they are proposing to put the monopole and compound is wooded and does contain tall trees, and they would need to be cleared.

Mr. Esposito asked Mr. Majewski if he has any concerns about the structural integrity of the proposed monopole in relation to the trees in the area; and Mr. Majewski stated he is concerned that if they do not clear sufficient area around the compound, due to the size of the trees if they fell over, they could hit the pole and compromise its structural integrity and then not be able to withstand the hurricane winds required by Code.

Mr. Esposito asked about the existing water tank located on the proposed site, and Mr. Majewski stated this is an active water tank with a holding capacity of half a million gallons. Mr. Esposito stated the Applicant's engineer testified that if the monopole were to collapse, two-thirds of the height of the pole would fall over, and Mr. Majewski agreed that this was correct, and it would be sixty-six feet. Mr. Esposito asked how far away is the water tank that is located on the property, and Mr. Majewski stated he scaled off the Plan on Exhibit A-2, and it scales to be about forty-six feet away from the tower and would be within the falling distance of the tower.

Mr. Esposito asked if the proposed monopole could be relocated to a different portion of the site, and Mr. Majewski stated the Plans do not show topography or enough features to ascertain whether or not the pole could be moved to a suitable location; however, he

stated the Applicant's professional engineer testified that there were steep slopes in the area. Mr. Majewski stated from his visits to the site, he saw that the site does get steep right in the area where the proposed pole is located so it may not be possible to relocate it.

Mr. Goldberg had no questions at this time.

Testimony was closed at this time.

Mr. Toadvine stated Mr. Goldberg provided the Township with copies of Exhibit 16 which had not been available at the meeting on April 20, 2010.

Mr. Bamburak stated at the last meeting they agreed to leave this matter open for additional public comment.

Mr. Patrick Priore was sworn in and stated one of the Applicant's experts had indicated that there would be no view of the tower by adjacent property owners, and he stated this is not correct. He stated this would back up to his property, and he would be able to see the tower quite clearly. He showed a picture of the existing water tower from his back porch. Mr. Priore stated another of their experts stated in November, 2008 that this location for the proposed tower was not the best location, but was the only one they had. Mr. Priore stated he assumes that their experts are paid by T-Mobile, and he assumes that none of them live in the Township, and Mr. Bamburak stated there is no way that the Zoning Hearing Board would know this.

Mr. Priore stated he is State certified as an Emergency Management Coordinator and is involved in law enforcement. He stated the Applicants indicated that they were helping law enforcement, and he has never had a problem with his cell phone. He stated there are five tenants of emergency management – prevention, mitigation, preparedness, response, and recovery. He stated the Variances being requested would fall under prevention in emergency management. He stated he just learned this evening that the existing water tower has capacity for 500,000 gallons of water, and he questions if it is wise to put a monopole next to a water tower as the pole could collapse onto the water tower and there could be 500,000 gallons of water coming down onto residences. He stated since there is power to the monopole, this could be charged water coming down on the residences. Mr. Priore showed a picture of a cell tower which did fall down in New York State, and fell down onto the Fire Chief's truck which was crushed.

Mr. Priore stated when he was away from home in August, he received a phone call that there were people in his trees getting a balloon out of the tree; and he had not been advised that anyone would be going onto his property. He stated since he was not asked if people could go onto his property, he feels all the data that was shown to the Board for the last two years was obtained illegally.

Mr. Frank Brill, 7 Williams Lane, was sworn in, and stated he chose to live in Lower Makefield with his family because he felt it would be a safe place to raise his children. He stated he never felt that they would have a cell tower looming over his property.

He stated he feels the people employed by T-Mobile would take the same position he is taking; and if a competitor were to come into their Township requesting to build a cell tower in their back yard, he does not feel they would want it either. Mr. Brill stated these facilities belong in a Commercial or Industrial Zone, and the Township has provided areas where these facilities can be built in the Township. Mr. Brill stated he feels that T-Mobile did not get in early enough to take advantage, and now they are indicating that they are being hurt by this. He stated he does not feel they need to have this cell tower in his neighborhood. He stated T-Mobile has indicated that some people using their service may have some dropped calls; and he feels if this is the case, those customers could switch to another provider. He stated he does not feel everyone is guaranteed perfect service at all times, under all circumstances, and certainly not to the point where they have to put one of these “monstrosities” in a residential neighborhood. Mr. Brill stated he has never heard anyone from his neighborhood complaining about their wireless service. He questions if the slight inconvenience for their customers outweighs the quality of life of the residents living on Williams Lane. He stated he feels what they are proposing was the “path of least resistance,” since there were relatively few homeowners in this area compared with trying to press this issue with the Pennsbury School District or the Archdiocese of Philadelphia to put a tower on their property. He stated the PAWC never contacted the residents about this proposal and just accepted the offering of T-Mobile.

Ms. Rebecca Schwindeman, 479 Jenny Drive, was sworn in. Mr. Bamburak asked if she is an adjoining resident; and Ms. Schwindeman stated she is not, but her child does attend the nearby Middle School where they are proposing to place this cell tower. It was noted that they are not proposing to put the cell tower on the School District property, and it is proposed to be some distance away from the School. Mr. Bamburak stated while normally they accept testimony from those residing in close proximity to the site under discussion, they would allow her to speak on this matter. Ms. Schwindeman stated she understood that the tower would be within 1500’ of the Middle School. She stated she is opposed to the proposed tower as it is out of the Overlay District and would not benefit the Township. She stated there is no gap in coverage, and she does not feel it should be close to the Schools.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried that the relief requested in Appeal #08-1483 as consolidated be denied.

Mr. Toadvine stated there is a thirty day Appeal period from the date of the Board's decision.

APPEAL #10-1546 – FLAVIO & ANGELA RIVA

Mr. Bamburak stated this matter was continued from a previous meeting so that Mr. Riva could discuss this with his engineer to consider the stormwater management system proposed. Mr. Riva stated they had previously discussed the proposed dry well. He stated Mr. Majewski did provide him with a design for a dry well that would accommodate the extra impervious surface on his property. Mr. Riva stated while he has no issues with following through with the design proposed by Mr. Majewski, he did prepare an alternative Plan which he would like to discuss with the Board. Exhibit A-3 was marked which is a one-page Plan entitled "Proposed Site Plan" dated 3/1/10, revised 5/17/10, with an attached 8 ½" by 11" sheet of the dry well calculations.

Mr. Riva stated with respect to the adjacent garage, he has on this revision proposed to push the proposed garage back 4' to try to keep it more in line with the other structure. He stated he then proposes to increase the size of the dry well to make up the additional impervious coverage. He showed on the Plan how the driveway exists today; and with minimal modifications to the driveway, he can push the garage back to the end of the driveway which would facilitate entering into it, particularly for the right-hand door.

He stated on the original Plan he had tried to eliminate some of the driveway, but he would now like to keep the larger driveway, and offset that with a larger dry well. He stated he is concerned that by pulling it forward, aesthetically it would look awkward near the other garage. He stated while his neighbor is not present this evening, that neighbor did indicate that he wanted to see it as aligned as possible.

Mr. Toadvine stated by moving the garage, it will require an additional Variance. Mr. Riva stated he had requested a Variance for the side yard. Mr. Toadvine stated he will also need an additional Variance for the rear yard, and Mr. Riva agreed to request an Amendment to his Application to include a request for a rear yard setback Variance as well of 6' in lieu of the required 10'.

Mr. Riva stated he has discussed Mr. Majewski's proposal for the dry well with his contractor; and for a minimal cost increase, he can enlarge the dry well. Mr. Bamburak stated the minimum would be whatever Mr. Majewski requires.

Mr. Majewski stated according to his calculations there is a slight discrepancy. He stated he was previously requesting 4,629 square feet of impervious surface; and now that they are pushing the garage back 4' since it is a 24' garage, this would be 96 square feet additional impervious surface. Mr. Riva stated in his original Plan he was removing a portion of the asphalt driveway, which he is not in this revised scheme. He stated if he moves the garage back, he is eliminating the need to remove some of the driveway.

Mr. Majewski stated there still seems to be a problem with the numbers. Mr. Riva stated he revised the Table on the Site Plan to reflect the proposed new conditions. He is now asking for 32.4% impervious surface. The existing is 28.6%, and the permitted is 24%. Mr. Majewski stated he still feels there is a discrepancy in the calculations. He stated currently they have the proposed garage over some existing impervious surface; and based on all of the new impervious, the number was 4,629 square feet. He stated if they move it back four feet they would be uncovering four feet of impervious surface over a width of 24' for the garage. Mr. Riva noted on the Plan a portion that is not under the garage. He stated the original driveway included the shaded portion; but in the revised scheme, he did not alter the driveway at all and just pushed the garage back. Mr. Majewski stated he now understands that Mr. Riva is proposing to push the garage back and also taking a piece of driveway that was going to be removed as you face the garage to the right 254 square feet and keeping this. Mr. Gruen stated he will be increasing the impervious surface, and Mr. Majewski stated he feels it will be 32.5%, and he will need to enlarge the dry well as it was previously designed. Mr. Riva agreed.

Mr. Gruen asked Mr. Riva why he needs such a huge driveway. Mr. Riva stated the driveway is existing, and he is not altering it. Mr. Gruen asked if he could remove a section. Mr. Bamburak stated he feels the Zoning Hearing Board will decide on the amount of impervious surface he can have, and Mr. Riva will need to work within that. Mr. Riva showed on the Plan how they currently park cars on the property.

Mr. Majewski stated based on Mr. Riva's new proposal, the dry well will need to be 4' deep, 6' wide, and 11' long as shown on the Plan Mr. Riva has presented. This will reduce the effective impervious surface to 24%.

Mr. Esposito stated the Township is participating in this matter and would appreciate the Condition that they get this to an effective impervious surface of 24%. He stated the Township would also request a Condition that Mr. Riva enter into a Stormwater Operation and Maintenance Agreement with the Township. Mr. Riva agreed to these Conditions, and Mr. Toadvine stated all future homeowners would be required to abide by those terms as well.

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

Mr. Smith moved, Mr. Bamburak seconded and it was unanimously carried to grant a Variance for a side yard setback of 4' as shown on Exhibit A-3 for the proposed two-car garage, a Variance for a rear yard setback of 6' for that same garage, and a Variance for a maximum impervious surface on the property of 32.5% with the Condition that this be mitigated to an effective impervious surface of 24% to be accomplished through a stormwater management system built to the satisfaction of the Township engineer. Also conditioned on the property owner entering into a Stormwater Operation and Maintenance Agreement with the Township for the stormwater management system.

APPEAL #10-1551 – MICHAEL AND MARIA RUIBAL

Michael and Maria Ruibal were present and were sworn in. The Application submitted was marked as Exhibit A-1. Attached was an 8 ½" by 11 Tax Map copy for #20-57-203 time stamped by the Township on 4/12/10, and this was marked as Exhibit A-2.

Ms. Ruibal distributed photos of the property this evening, and Mr. Toadvine marked as Exhibit A-3 a three-page packet from the Applicant with pictures and comments.

Mr. Ruibal stated they understand that the Ordinance requires that a shed needs to be constructed in the farthest corner of the property away from the street, 10' from any of the property lines. He stated they live on the corner of Victory and Countess Drive so it only gives them one option as to where the shed could be placed and be in compliance. He stated they would like to install a 12' by 8' shed. He stated pictures 1 and 2 of Exhibit A-3 show that there is a significant grade on the hill, and to put the shed at that location would require a significant amount of construction in order to level this off and could possibly effect the natural drainage and slope of the yard.

Mr. Toadvine noted Exhibit A-2 and asked the Applicant to show the location he is describing on that Plan, and Mr. Ruibal stated looking at the Plan with Countess at the bottom of the page, this location would be in the upper left hand corner of the property.

Mr. Ruibal stated they are requesting a Variance in order to be able to put the shed on the side of the house closest to Victory Drive. He stated on Page 2 of Exhibit A-3, the shed as proposed would be located behind the trees and a 6' foot fence. He stated Picture 3 shows that the ground is much flatter in that part of the property, and they feel aesthetically, because of the height of the trees and the fence, it would be better and will be further away from their adjacent neighbors and be masked by the trees and the fence. He stated pictures 4 and 5 show different angles of what it would look like if you were driving down the road.

Mr. Toadvine asked the height of the proposed shed, and after review of a brochure provided, it was noted that the shed will have 7' high walls, and be no higher than 10' high.

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

Mr. Bamburak asked Mr. Ruibal if he would agree to a Condition that they would limit the height of the shed to 10', and Mr. Ruibal agreed. Mr. Habgood recommended that they permit it to be no higher than 11'.

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

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried that the relief requested be granted with the Condition that the shed be no higher than 11'.

APPEAL #10-1552 – STEVEN M. ULRICH

Mr. Steven Ulrich and Ms. Angela Ulrich were present and were sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application was an 8 ½" by 14" sheet depicting the property with improvements, time stamped by the Township 4/16/10, and this was marked as Exhibit A-2. Exhibit A-3 was marked which is the impervious surface breakdown calculation submitted by the Applicant, time stamped by the Township 4/16/10.

Mr. Ulrich stated they are asking for a 1% impervious surface Variance in order to accommodate a second driveway. He stated their children have special needs and they need to be able to accommodate parking off the road for the therapists that come to their home.

Mr. Toadvine stated the calculation on Exhibit A-3 indicates 18.7%, not 18%, and he asked Mr. Majewski if he agrees with the calculations. Mr. Majewski stated an old aerial photo of the site shows a shed in the rear yard, and he asked if that shed is still there. Mr. Ulrich stated it was removed. Mr. Majewski stated in this case 18.7% would be correct. The existing is 15.7%, and 18% is allowed.

Mr. Gruen asked if they will need to get permission for this second access to the road; and Mr. Majewski stated they would be required to get a Highway Occupancy Permit from PennDOT for the additional driveway, and due to the size of the driveway, will need a Permit from the Bucks County Conservation District for disturbance of earth. Mr. Bamburak stated he assumes that even if the Zoning Hearing Board approves the Variance request, they will have to get these additional Permits before they can get their Building Permit; and Mr. Majewski agreed.

Mr. Esposito stated the Township is participating in this matter. Mr. Esposito noted an aerial photo of the property, and stated it appears that the existing driveway could be expanded rather than installing a new driveway; and he asked if they considered this as an option. Mr. Ulrich stated while they did consider this, for aesthetic reasons they would prefer what they have proposed. Ms. Ulrich noted that there are two separate entrances, and they recently built an addition to accommodate her parents at their home. She stated her parents live in one part of the house, and they live in the other. She stated if they were to expand the original driveway, it would require all the therapy traffic for the children to come through her parents' portion; and to give her parents privacy, they wanted the driveway to come to the other entrance and not her parents' entrance.

Mr. Esposito asked if they have plans in the future to rent the portion where Ms. Ulrich's parents are living, and Mr. and Ms. Ulrich stated they do not. Mr. Esposito asked if they would be agreeable to a Condition that only immediate family could live in that portion, and Ms. Ulrich agreed.

Mr. Esposito stated the Township would also request a Condition that there be a minimum yard side yard setback of five feet for the driveway for the other property. Mr. Habgood stated while there is no Variance required for this, the Code requires that the driveway be at least a minimum of 5' away from the property line; and they want to make sure that the Applicant complies with this. They would be required to comply with this when they apply for their Building Permit, and he wanted to make sure the Applicants were aware of this.

Mr. Toadvine asked if they would be able to rent the other unit; and Mr. Habgood stated while this is in the Residential District, this structure from the beginning has always had a second cooking facility, and this is why the Township is requisitioning a Condition that it would not be rented to anyone outside of the immediate family.

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

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried that the Appeal be granted in the way of a Variance to impervious surface to a maximum of 19% with the Condition that the in-law suite be used only by immediate members of the family and not as a rental unit.

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There being no further business, Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to adjourn the meeting at 8:55 p.m.

Respectfully Submitted,

Gregory J. Smith, Secretary