

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – NOVEMBER 16, 2010

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on November 16, 2010. Chairman Malinowski called the meeting to order at 7:05 p.m.

Those present:

Zoning Hearing Board:        David Malinowski, Chairman  
   Paul Bamburak, Vice Chairman  
   Jerry Gruen, Member  
   Keith DosSantos, Alternate Member  
   Paul Kim, Alternate Member

Others:                                Robert Habgood, Code Enforcement Officer  
   James Esposito, Township Solicitor  
   Allen Toadvine, Zoning Hearing Board Solicitor  
   Matt Maloney, Supervisor Liaison (joined meeting in  
   progress)

Absent:                                Gregory J. Smith, Zoning Hearing Board Secretary  
   Anthony Zamparelli, Zoning Hearing Board Member

APPEAL #10-1573 – KEITH & LINDA BEAUCHAMP

Mr. Keith Beauchamp and Ms. Linda Beauchamp were sworn in. The Application submitted was marked as Exhibit A-1. Accompanying the Application was a one-sheet drawing entitled, “Addition and Alterations to Residence,” Sheet A-1 dated 5/19/10, and this was marked as Exhibit A-2.

Mr. Beauchamp stated they would like to put an addition onto the house. He stated his parents are aging, and they plan on having them move in with them, and they would like to convert one of the rooms on the first floor into a bedroom; and because they are taking away some living space for this, they would like to increase the living space.

Mr. Toadvine asked about the impervious surface, and Mr. Habgood stated he calculated the proposed impervious surface will be 22%. Mr. Beauchamp stated they are adding 200 square feet for the additional living space. Mr. Habgood stated the Applicant is also proposing a patio of 16’ by 20’. Ms. Beauchamp stated they are putting the addition over a portion of the existing patio so the patio will be moved over. Mr. Toadvine stated the net effect is 200 square feet additional impervious surface including the patio.

Mr. Habgood stated with the relocation of the patio and the addition, he calculated 22%. Mr. Habgood stated the existing impervious surface is 18.7%.

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

There was no one in the audience wishing to speak on this matter, and the testimony was closed.

Mr. Bamburak moved, Mr. Gruen seconded and it was unanimously carried to grant the Variance to allow an impervious surface area of 22%.

#### APPEAL #10-1574 – REALEN HOMES, L.P.

Mr. Edward Murphy, attorney, was present with Mr. Eric Clase, engineer, who was sworn in. The Application submitted was marked as Exhibit A-1. Accompanying the Application was a one-sheet drawing entitled “Preliminary Plan Grading Permit Plan” dated 8/4/10, last revised 9/22/10; and this was marked as Exhibit A-2.

Mr. Murphy stated they are present to seek authorization to complete construction of two piers that flank either side of the existing driveway. He marked as Exhibit A-3 a photo which was provided to the Board. Mr. Clase stated this photo was taken from within Lot #15, facing Lot #16 about 10’ into the lot at the end of the flag. He stated it was taken of the two monuments facing the house. Mr. Murphy stated at the back there appears to be a house, and Mr. Clase stated this is a home on Dyers Lane. Mr. Murphy stated the piers that are shown are taken from the perspective of the lot looking back out to the public street, and Mr. Clase agreed. Mr. Murphy asked how far back into the lot from the public street are the piers, and Mr. Clase stated they are approximately 240’ from the road. The piers are 6’ high and approximately 18” to 24” square. Mr. Murphy stated they flank either side of the driveway which is located within the stem of the flag lot, and Mr. Clase agreed.

Mr. Murphy stated based on the interpretation that has historically been provided by the Township Zoning Office, the stem is considered part of the front lot, and Mr. Clase agreed. Mr. Murphy stated it is not part of the minimum front yard because it is so far back from the street, and Mr. Clase agreed. Mr. Murphy stated the Ordinance in question from which relief is sought prohibits structures in the front yard. Mr. Toadvine stated they are also requesting relief from the height.

Mr. Murphy stated there is a white-sided home on the left side of Exhibit A-3, and he asked Mr. Clase if it is his understanding based on conversations with the Applicant that those property owners have no objection to the location of the piers as shown on Exhibit A-3, and Mr. Clase stated that homeowner is present this evening.

Mr. Murphy asked who is the owner of the landscaping shown on Exhibit A-3, and Mr. Clase stated it is part of the neighboring property; but it is possible that some of the landscaping may be on Lot #15 and some could be on Lot #16. He stated there is a substantial amount of landscaping existing. Mr. Murphy asked if there is any opportunity to further supplement the landscaping on either side of the piers as shown on Exhibit A-3; and Mr. Clase stated he discussed this with the landscape professionals at his office and the way the landscaping is presently spread out it is to allow for growth, and if they were to install more landscaping, it would be at the detriment of the existing landscaping.

Mr. Gruen asked if the 6' includes the lamps on top, and it was noted that it does not. Mr. Malinowski asked why they need the piers, and Mr. Murphy stated it is because of the length of the driveway going back; and because it is such a long driveway, it provides additional lighting along the driveway. Mr. Malinowski asked if the only way this can be accomplished is with six foot tall monuments with lights on top; and Mr. Murphy stated there could be other solutions, but this is what the homeowner wanted. Mr. Murphy stated it is an architectural feature and provides some practical use as it provides lighting. Mr. Gruen stated he feels it is for aesthetic reasons. He asked how far the monuments are from the road, and Mr. Murphy stated they are 240'. Mr. Gruen asked if these types of monuments are not usually within 10' to 15' of the road as opposed to half way up the driveway; and Mr. Murphy stated they monuments are located closer to where cars get near to the house and garage adjacent to this house, and this is why they felt it was appropriate.

Mr. DosSantos asked if the entire length of the driveway for the sole use of this homeowner, and Mr. Murphy agreed adding it is not a shared driveway.

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

Ms. Carol Murphy was sworn in and stated she is the owner of the home in the picture with the white siding. She stated when she purchased her home she was told that Orleans would put up monuments and the house would be surveyed so that they would know what their property line was, and this has not happened. She stated these monuments being discussed were put up, and she felt they were on her property. She stated they are very large and are only a few feet from her back yard. She stated when they have them lit, they are lit all the time. She stated they also have had lights going up like a runway, and it is right outside her bedroom. She stated they have also added gravel so besides the large parking lot, they are parking along the side a few feet from her home. She stated

she felt she was buying a nice, expensive house with a wooded back yard; and Orleans never told her that they were going to allow the two houses back there with a very large parking lot. She stated she wants to be a good neighbor but this is not what she wants to see from her very expensive house. She stated the landscaping is not adequate and she does not want to look at six vehicles, quads, four-wheel drive vehicles, etc.

Mr. Maloney joined the meeting at this time.

Mr. Kim asked if there is a way they can automatically turn the lights on only when a car approaches, but Mr. Murphy stated he does not know.

Ms. Murphy stated they also had pole lights going up the side, and she understands that they are going to put those back up too. Mr. Malinowski stated the Board can only address what is before them this evening. Mr. Gruen stated he does feel it is important for the Board to know what other lighting they have on the property as even if they have no say on that lighting it could impact their decision on this lighting being proposed.

Mr. Murphy stated they could continue the matter so that they can meet with Ms. Murphy to see if they can address some of the other issues she has raised this evening of which he was not aware, and they could come back and possibly make some adjustments. This was acceptable to the Zoning Hearing Board. It was noted the Board will not meet again until December 21.

Mr. Bamburak moved, Mr. DosSantos seconded and it was unanimously carried to continue the matter until December 21.

#### APPEAL #10-1575 – ANNE F. HOLDERRIED AND KATHLEEN A. WECK

Mr. Murphy, attorney, was present. The Application submitted was marked as Exhibit A-1. Accompanying the Application was a Plot Plan entitled “Zoning Variance Plan for 1628 Thistlewood Drive,” dated 10/5/10; and this was marked as Exhibit A-2.

Mr. Murphy stated this involves property owners who a number of years ago bought a lot in the Farmview Subdivision. He stated the property in question as shown on Exhibit A-2 is a corner lot bounded to the rear by Mt. Eyre Road and on two sides by Thistlewood Drive. He stated as a corner lot as defined in Lower Makefield, this property has two front yards. He stated at the time that the Farmview Subdivision was approved and the Plan recorded, the front yard setback was 75’. In the intervening number of years since, the Township unilaterally amended the R-1 regulations to reduce the front yard setback from 75’ to 50’.

Mr. Murphy stated the Applicants wish to construct an addition of approximately 1,000 square feet as shown on Exhibit A-2; and if the front yard setback is 50', they do not need relief as the closest point of the addition would be 54' from the ultimate right-of-way of Thistlewood Drive. He stated the Township Zoning Department has determined, based on past practice, that notwithstanding the change in the Ordinance, because the Plan as Recorded shows a 75' front yard dimension, the Applicants must appear before the Zoning Hearing Board and seek a Variance. He stated they are requesting permission to build the addition and maintain a 54.41' setback on one side adjacent to Thistlewood Drive.

Mr. Murphy marked as Exhibit A-3 a copy of the proposed elevation of the addition as designed and stated his clients have discussed the situation with their neighbors none of who have any objection. He stated they have also discussed it with the Farmview Homeowners' Association who has also given their blessing to the addition.

Mr. Habgood stated when Ordinance was changed it was when the Township was working to produce a low impact housing development, and they reduced the front yard setbacks and increased the rear yard setbacks. He stated the position of the Zoning Department is that since this development was built under the requirements of R-1 at the time, the setbacks have to meet that requirement.

Mr. Toadvine stated it appears that the easiest way to proceed would be to grant a Variance.

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

There was no one present in the audience to speak about this matter, and the testimony was closed.

Mr. Bamburak moved, Mr. Gruen seconded and it was unanimously carried to grant the Variance for the front yard setback as requested.

#### APPEAL #10-1576 – MARK SZUL, SZUL'S LANDSCAPING, LLC

The Application submitted was marked as Exhibit A-1. Accompanying the Application were several drawings, the first of which is entitled "Patio and Walkway Plan," dated 10/5/10, and this was marked as Exhibit A-2. Exhibit A-3 was marked which is entitled "Patio and Walkway Plan," dated 10/5/10 and it has more detail than Exhibit A-2.

Michele Tomori, Szul's Landscaping, was sworn in. Ms. Tomori stated the Applicant has an existing patio which was on the property when they purchased it. She stated the existing impervious surface is 26.76%, and the Zone allows for 18%. She stated they are proposing to take out the existing patio and sidewalk which are in poor condition. She stated they wish to increase the impervious coverage to 5,865 square feet which is 28.16%.

Mr. Habgood stated his calculations match what have been discussed.

Mr. Toadvine asked how they got to 26.76%, and Mr. Habgood stated it appears there was a patio constructed without a permit. Ms. Tomori stated they have owned the property for five years, and the patio was there when they purchased it.

Mr. DosSantos asked if they have added any other impervious surface to the property. Michael and Catherine Farabaugh, the owners of the property, were sworn in and stated they have not added any other impervious surface.

Mr. DosSantos stated they are looking to add another 292 square feet onto the existing patio, and Ms. Farabaugh agreed.

Mr. Gruen asked why they need a larger patio, and Ms. Tomori stated the way the patio is configured, it will not allow for other than a small table; and if you push the chairs back, you fall off the patio. Mr. Kim asked the size of the existing patio, and Ms. Tomori stated it is 13' by 16'.

Mr. Kim asked if they could keep the size of the patio at 13' by 16' and change the architectural lay out, and Ms. Tomori stated she did not feel they could. Mr. Kim stated rather than surrounding the bump out, they could reconfigure the patio so that they could use all of the 13' by 16' versus completing surrounding it; and they could have it on one side and put landscaping on the other side. Ms. Tomori stated they need more than 13' by 16' to make it function with a table, six chairs, and a barbeque.

The Board noted it made it difficult to tell what is existing with the drawing that has been presented. Ms. Tomori stated what is shown in yellow is what is proposed. She was asked to shown the existing patio and she drew a picture for the Board.

Mr. Toadvine stated on Exhibit A-2 the area in yellow is for the most part the existing patio, and the only thing they are proposing is to bump out a portion of the existing patio and fill in.

Mr. Kim showed an area on the plan where they could build a walkway, install plants, and still reduce the impervious surface. Mr. Kim stated the 18% is the maximum permitted; and while they purchased the house with the existing patio which resulted in 26.7% which is a big increase, they are now asking to increase this. He stated the Board wants to reduce the impervious space, but still meet the homeowners' needs. He stated he would be willing to work with their existing impervious surface of 26.76%.

Mr. Malinowski stated there has not been a problem over the years with the existing impervious surface, and they are only requesting a minimal amount of additional impervious surface. Mr. Gruen stated he is concerned that people come in every month to increase impervious surface; and this property already has an 8% increase over the allowable percentage, and he feels this is a large Variance.

Mr. Bamburak suggested that they look into seepage beds if they proceed with the increased impervious surface. Mr. Gruen asked if they would work with the Township engineer on a dry well system.

Mr. Toadvine asked if this property was ever Zoned where it was permitted more than 18%, and Mr. Habgood stated at the time the property was built it was probably allowed 15% building coverage which means that driveways, walkways, and patios would not be included. He stated when the current impervious surface Ordinance was adopted in the late 1980's, the Township changed building coverage for Residential to total impervious surface; and it was increased from 15% to 18% depending on lot size.

Mr. Kim stated if there is no current flooding problem for this property or the neighboring properties, this is something to consider.

Mr. Toadvine asked if they would like time to discuss alternatives including an on-lot stormwater management system. Ms. Tomori stated all the downspouts from the house are currently piped away so it would just be whatever rain fell on the patio itself.

There was discussion on different alternatives that could be considered with regard to installation of the new walkway, patio, and area for storage for trash cans. Mr. Toadvine stated the Board is not suggesting that they go below the existing 26.76%, but are suggesting that they move some of the impervious from the right side to the left side. Mr. DosSantos stated he feels by doing this they will be able to increase their usable space more than has been proposed on the diagram. Mr. DosSantos stated they could put a pervious surface under the trash cans such as gravel.

Mr. Malinowski asked what number the Board would be comfortable with, and Mr. Kim, Mr. Gruen, and Mr. DosSantos stated they would be comfortable with the existing amount of impervious surface. Mr. Habgood stated they would still need a Variance to rebuild since there was no prior Permit for the existing patio. He suggested

that the Board round this up to 27%, and a majority of the Board was agreeable to this. This was also acceptable to the Applicant, and they agreed to amend their Application to request 27%.

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

There was no one present to speak on this matter, and the testimony was closed.

Mr. Kim moved and Mr. DosSantos seconded to grant a Variance for impervious surface of 27%. Motion carried with Mr. Malinowski opposed.

A short recess was taken at this time.

#### APPEAL #10-1577 – BENJAMIN BATTISTE

Mr. Benjamin Battiste was sworn in. The Application submitted was marked as Exhibit A-1. Exhibit A-2 was marked and is a series of drawings consisting of three pages entitled “Site Plan, Lot #2” dated 10/10/10, time-stamped by the Township 10/19/10.

Mr. Toadvine stated this is an Appeal from the determination of the Zoning Officer dated 9/30/10, and also an Application for a Variance. He stated the Township solicitor has indicated that he has spoken to the Applicant, and they will stipulate that the determination of the Zoning Officer dated 9/30/10 was in fact correct, and it was in the floodplain. Mr. Battiste agreed and stated he is withdrawing the Appeal of the Zoning Officer and is asking for a Variance.

Mr. Esposito stated the Township is not opposing the Variance.

Mr. Battiste stated he is requesting a Variance to build a retaining wall in a natural resource protection area and also a 100 year floodplain . He stated he is doing this to prevent erosion to his property and to create a safer barrier between the lake and his yard including the ledge which is very shaky and eroded underneath about 2 ½ feet at one point. He stated he actually fell into the lake because it gave out.

Mr. Toadvine stated the retaining wall already exists, and Mr. Battiste agreed. He stated he put in an Application for a Permit in early August. He stated he was not aware of all the Codes, and it was rejected for a few reasons which he has been addressing ever since. He stated he was planning to re-submit the Permit once he got it all together. He stated the lake was being drained to do some dam repairs, and this provided an ideal time to put in the retaining wall where it would not disturb anything in the lake. He stated it was completely built on his property, and not in the lake.

Mr. Toadvine stated the existing wall is depicted in blue on page 2 of Exhibit A-2, and Mr. Battiste stated the one in blue he highlighted are existing walls that were there before he put in the retaining wall on his property. He stated all of those properties had railroad tie retaining walls. He stated his is attached to the end of the railroad ties on the property to the right and goes straight across. He stated he is Lot #2, and he extended it. He stated he extended the pre-existing wall to cover Lot #2. There was no wall there, but his neighboring property to the right had a wall. Mr. Kim asked if he has already done the work, and Mr. Battiste stated he has. He stated the existing walls are wood railroad ties, and he used concrete.

Mr. Habgood stated he also needs a Variance for doing work along the pond shoreline as well as the Variance for disturbance of the 100 year floodplain. He stated he did ask for this in his Application.

Mr. Toadvine asked if there are any other Governmental approvals necessary other than from the Township such as Federal or State Permits; however, Mr. Habgood was not aware of this and stated Mr. Majewski may be able to answer this. Mr. Toadvine stated if the Zoning Hearing Board grants the Variance, the Applicant should be advised that this does not relieve him of the obligation to obtain whatever other Permits are required by the Federal or State Government, and Mr. Battiste agreed.

Mr. Esposito stated the Township is no longer participating in this matter.

Mr. DosSantos asked Mr. Battiste if he had any photographs, and Mr. Battiste stated he submitted at least eighteen photographs; and it was noted these were in the Application. He showed the original photographs this evening.

Ms. Patty O'Toole was sworn in and stated she is in favor of the wall noting her property is also eroding, and she would like to have it done on her property as well. She asked how the Township is involved in this if it is a private lake. She stated they pay to have the work done on the lake. Mr. Malinowski suggested she meet with Mr. Habgood following the meeting. Ms. O'Toole stated she feels what has been done looks nice and it is safe for the children.

Mr. DosSantos asked how much of the wall can be seen, and Mr. Battiste stated when the lake is filled you can see 17' from the opposing shoreline.

Mr. David Smith was sworn in and stated he lives across the lake from this property and he is in favor of it.

There being no further comments, the testimony was closed.

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Mr. Bamburak moved, Mr. DosSantos seconded and it was unanimously carried to grant the Variance as requested subject to the Condition that the Applicant receive any other Governmental agency approvals that might be required.

#### OTHER BUSINESS

Mr. Bamburak acknowledged that this evening is Mr. Malinowski's last meeting after ten years service to the Township.

Mr. Bamburak moved, Mr. DosSantos seconded and it was unanimously carried to cancel the meeting of December 7, 2010.

There being no further business, Mr. DosSantos moved, Mr. Gruen seconded and it was unanimously carried to adjourn the meeting at 8:10 p.m.

Respectfully Submitted,

David Malinowski, Chairman