

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – APRIL 5, 2011

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on April 5, 2011. Chairman Bamburak called the meeting to order at 7:00 p.m.

Those present:

Zoning Hearing Board:        Paul Bamburak, Chairman  
   Gregory J. Smith, Vice Chairman  
   Jerry Gruen, Secretary  
   Keith DosSantos, Member  
   Anthony Zamparelli, Member  
   Mark Moffa, Alternate Member (not voting)

Others:                             Robert Habgood, Code Enforcement Officer  
   James Majewski, Township Engineer  
   Barbara Kirk, Zoning Hearing Board Solicitor  
   Dan McLaughlin, Supervisor Liaison

APPEAL #10-1574 – REALEN HOMES, L.P.

Ms. Kirk stated she received a letter dated 3/30/11 from Mr. Murphy, representing the Applicant; and this was marked as Exhibit B-5. Ms. Kirk stated Mr. Murphy has indicated that he is still working with the next-door neighbors to try to resolve the issues with regard to the Variance being requested. She stated since this has taken longer than he anticipated, he is requesting that the matter be continued indefinitely subject to the Conditions that he will provide thirty-days' notice to Ms. Kirk of the date he would like the matter rescheduled, he is waiving any and all time constraints under the MPC, and he will provide additional notices to adjacent property owners by first-class mail when the new date is scheduled.

Mr. Gruen asked if the lights are operational, and Ms. Kirk stated she does not feel they are and everything is status quo and nothing is being done or changed. She stated Mr. Murphy is waiting for the neighbor to get back to him to try to resolve these issues. Mr. Gruen stated if the lights are not operational, he does not have a problem. Mr. Habgood stated the pillars are in but he is not certain whether or not the light fixtures on top of the pillars are working. Mr. Gruen stated if the lights are working he would object to the continuance since if the lights are working, there would be no reason for the Applicant to rush to resolve this. Mr. Habgood stated he does not know if the lights are working. Mr. Habgood stated the work was done without a Permit, and it was then found that they did not meet the height requirement so they applied to come before the Zoning

Hearing Board. Mr. Habgood stated the pillars were completed but he does not know if the fixtures were completed. He stated they were told they had to stop what they were doing if they were doing any more work.

Mr. Smith suggested that they grant a Continuance to the next meeting and ask that the Board be provided a report back by that time on whether the lights are operational.

Mr. Gruen moved, and Mr. DosSantos seconded to grant a Continuance to April 19.

Mr. Gruen asked that in the meantime, someone from the Building Department inspect the property to see if the pillars are operational. Mr. Bamburak stated he does not know that the Zoning Hearing Board has the authority to request this of the Building Department. Ms. Kirk agreed to handle this matter.

Motion carried unanimously.

#### APPEAL #11-1585 – BOB FRANKIEVICH AND CINDY SHAW

Mr. Bob Frankievich was present and was sworn in.

The Application submitted was marked as Exhibit A-1. Exhibit A-2 was marked which is the impervious surface breakdown chart. Exhibit A-3 is the Site Plan for the property. Notice of the Hearing was published in the Yardley News on 3/17/11, and Proof of Publication was marked as Exhibit B-1. The property was posted, and Proof of Posting was marked as Exhibit B-2. Notice of the Hearing was mailed to all property owners by letter dated 2/18/11, and this was marked as Exhibit B-3.

Mr. Frankievich stated he is requesting a Variance to the impervious surface limit of 18% in order to build an outdoor patio of flagstone and pavers. He stated the property was built in the 1930s, and they have no outdoor patio space. He stated they have a rear-facing garage so they cannot reduce the existing impervious surface. He stated similar homes built at the same time do have patios and some have free-standing garage structures which he does not have.

Mr. Frankievich stated the existing impervious surface slightly exceeds the permitted 18%, and they would like to go to 24.58%. Mr. Habgood and Mr. Majewski agreed with the calculations provided by the Applicant.

Mr. DosSantos asked when he purchased the home, and Mr. Frankievich stated it was nineteen years ago. Mr. DosSantos asked if they have added any impervious surface, and Mr. Frankievich stated they have not.

Mr. Gruen stated he assumes the patio will be at ground level, and Mr. Frankievich agreed. Mr. Gruen asked if they will be stepping from the house down to the patio. Mr. Frankievich stated they have a grade on the property so you would step out of the back part of the house down four steps to get to ground level, and the patio will be at essentially ground level; but because of the grade, it will slightly cut in by one or one-half of a step.

Mr. Gruen stated he is familiar with a number of the homes on Evergreen, and they have raised decks rather than patios. He asked Mr. Frankievich if he considered this rather than increasing the impervious surface with a patio. Mr. Frankievich stated he understood that this would also be a violation of the impervious surface. Mr. Habgood stated an open wood deck would not count as impervious surface as long as there is not a roof over it, and there is no weed barrier or compacted stone under the deck. Mr. Smith stated no Variance would then be needed.

Mr. Frankievich stated they would prefer to have a stone patio rather than a deck since the egress from the house on the rear side is actually off to the side so they would have to extend off the paved driveway surface and come around and open another opening in what is already a small room. Mr. Bamburak stated there is no walkway between the house and the patio, and they are just going to use the existing steps and walk down the driveway, and Mr. Frankievich agreed.

Mr. Gruen stated to get a Variance, you are supposed to show a hardship; and he does not see what the hardship is. He stated he does not feel there is a hardship because he could put in a deck. Mr. Bamburak stated they have in the past granted coping around pools which he also does not feel is a hardship.

Mr. Zamparelli asked Mr. Frankievich if he would be interested in installing a system that would collect the water from the downspouts which would then make the impervious surface effectively less. He stated this could be a dry well or other design that would reduce the effective impervious surface. Mr. Frankievich stated they had not looked into this.

Ms. Kirk asked about the flow of storm water on the property currently; and Mr. Frankievich stated there are downspouts out onto the paved surface of the garage, and on the other side the downspout is routed between the two properties. Ms. Kirk asked where water runs to, and Mr. Frankievich stated it flows down the drive into his back yard; and there is a large yard space. There are no swales.

Ms. Kirk asked Mr. Frankievich if he has discussed the proposed patios with his neighbors; and Mr. Frankievich stated he has talked to some of them, and they had no problem. Ms. Kirk asked if anyone voiced any concerns that if the patio were installed, water would flow onto their property; and Mr. Frankievich stated they have not.

Mr. Majewski stated the increase in impervious surface is not very large on this property, and there is a large area of at least 50' or more behind where the patio is proposed so that the water would have a lot of time to run off and soak into the ground. Mr. Majewski stated they could have an underground stormwater system or a rain barrel. He does not feel there are any issues of standing water or flooding basements in this area.

Mr. Majewski was asked to describe a rain barrel; and Mr. Majewski stated a rain barrel is a fifty-five gallon barrel into which you can route one of your roof leaders, and it will fill with water in a heavy rainfall with an overflow mechanism, and you can then use this water for plants etc. He stated these cost approximately \$100 to \$250.

Mr. Bamburak asked Mr. Frankievich if he would consider installing one or two rain barrels so that the increase in impervious surface might be more palatable to some of the Zoning Hearing Board members; and Mr. Frankievich stated Gasper is the contractor, and while they did not suggest this, he could ask them to look into this.

It was noted that the Township was not participating in this matter.

Mr. Gruen stated he would prefer to see a dry well installed as he has some concerns with rain barrels.

Ms. Kirk stated Mr. Majewski has indicated that there is no problem with stormwater flow in this area, and the Applicant himself has not done any modifications to the property in almost twenty years by adding any increased impervious surface. She stated at the time the property was initially built, the Code would have allowed probably up to 25% of impervious surface coverage; but for modifications over the years, it has reduced the amount of coverage. Ms. Kirk also noted that he is putting in flagstone which will probably not be concreted together, and Mr. Frankievich agreed. Ms. Kirk stated there will therefore be gaps in between the flagstone as well for some drainage of the water. Ms. Kirk stated she does not feel that it would behoove the Board to impose a Condition for a single property owner to place a stormwater drainage facility of any nature when there is no one present in opposition to the Application, and the Township engineer has indicated that there is not an issue of flooding or lack of percolation in the area.

Mr. Gruen stated the issue is that it is against the Zoning, and the Zoning calls for 18%. Mr. Bamburak stated this is why they have Variances. Mr. Smith stated he feels impervious surface is a big issue in the Township, but there is no one present opposed to this. Mr. Gruen stated he does not feel people are aware of what this is; and Mr. Smith stated they did receive notice from the Township, and the property was posted. Mr. Gruen stated it is not just this property that is adding impervious surface; and when you look at the entire Township, they are giving up the entire impervious surfaces. He stated they are supposed to give this away in the case of a hardship, and he does not see that there is a hardship since he could put in a deck the same as everyone else in that neighborhood.

Mr. Majewski stated he feels that at the times these lots were constructed, they did not have an impervious coverage requirement for the lot; and instead they had a building coverage requirement of approximately 15%. He stated later when the Township imposed the impervious surface requirements, as evidenced by the number of houses that come in for Variances, they probably set the numbers a little bit low.

Mr. Habgood stated this Applicant's lot size is just over 15,000 square feet; and if the lot size were exactly 15,000 square feet, he would be permitted 24% so the request would only be for less than 1%. Mr. Gruen stated this is a good point.

Mr. Bamburak stated he does not agree that the Board gives away all the impervious surface.

Mr. Moffa stated he shares Mr. Gruen's concern, and he does not feel the neighbors would realize a problem until it was too late. He stated in his area surrounding property owners have installed patios without permission, and it did increase the amount of water on his property. He stated possibly they could give something back off of the driveway.

Mr. Gruen stated there are EP Henry type patios which are pervious, and they leave spaces between the stones. He stated he could also work with the Township engineer to install a dry well which would not have to be large.

Mr. Bamburak stated they could vote on this matter tonight or Mr. Frankievich could request a continuance to review his Plans and consider installing a dry well to address some of the Board members' concerns.

Ms. Kirk stated alternatively because the existing driveway is so large, he could consider carving out 470 square feet of the driveway and this could then be substituted by having the flagstone patio installed. Mr. Frankievich stated they did look at this, and it is quite tight getting the cars around this rear-facing garage. He also stated the construction is sand-based with flagstones, and it is not cemented and this has similar openings to what a deck might have so with regard to impervious surface, so it would not be 100% impervious. Mr. Gruen disagreed.

Mr. Frankievich stated he would like to have a Decision this evening.

Mr. Bamburak moved and Mr. DosSantos seconded that the Variance be approved to increase impervious surface to 24.58%. Motion did not carry as Mr. Gruen, Mr. Smith, and Mr. Zamparelli were opposed.

Ms. Kirk stated Mr. Frankievich has the right to re-file for another Variance Application. He stated he could also file an Appeal of tonight's Decision in Doylestown. He stated he could also try to modify the proposed Plan and submit a new Application to the Township either shaving off 470 square feet or installing some sort of stormwater drainage facility. Mr. Bamburak asked if he would have to file a new Appeal; and Ms. Kirk agreed and stated there would be a new filing fee, publication, etc.

Mr. Gruen moved and Mr. Zamparelli seconded to deny the Appeal. Motion carried with Mr. Bamburak and Mr. DosSantos opposed.

Ms. Kirk stated under the Municipalities Planning Code when an Application is Denied, the Board has to issue formal Findings of Fact and Conclusions of Law, and these are to be issued within forty-five days of tonight's Hearing. She stated when he has those documents, he then has a thirty-day Appeal period to file an Appeal with Doylestown if this is how he wishes to proceed.

#### OTHER BUSINESS

Appeal #09-1529 – Erin Development Co. – Request for Extension

Appeal #10-1540 – Dogwood Drive, L.P. – Request for Extension

Appeal #10-1559 – Cameron C. and Olga Jean Troilo – Request for Extension

Appeal #10-1565 – Cameron C. and Olga Jean Troilo – Request for Extension

Ms. Kirk stated these matters were brought to the Board for Variance requests related to Land Development. She stated Appeal #09-1529 is for the Ferri Tract, and there was a Decision approving a Variance request for encroachment into the wetlands buffer. She stated under the Zoning Ordinance they have six months for the life of the Variance to submit the Application for Building Permits. She stated that because this is tied up with Land Development, the Applicant cannot meet the six month requirement; and they are requesting that the Variance previously approved be extended until 3/15/12.

She stated the matter dealing with Dogwood Drive is a similar circumstance where the Board approved a request for Variance with respect to the minimum front and rear yard setbacks for the proposed residential lots. She stated because this is subject to Land Development, the Applicant cannot submit Building Permits within the six months; and they are asking for an extension of the Variance until 3/15/12.

Ms. Kirk stated the last two matters concerning Cameron and Olga Troilo are Applicants seeking Variance under two different filings requesting Variance with respect to front porches that are not at least 120 square feet in area, Variance with respect to adjacent in-fill buildings to be larger than 10% of the historic structures on the site, and a Variance with respect to the amount of green space as well as a Variance for a temporary sign. She stated this is property being developed at the intersection of Stony Hill and Yardley-Langhorne Roads, and the Applicant is requesting that the Variances be extended until 3/15/12 because they are subject to Land Development Approval, and they are still in this process.

Mr. Smith moved, Mr. Zamparelli seconded and it was unanimously carried to approve the requests for Extension for Appeal #09-1529, Appeal #10-1540, Appeal #10-1559, and Appeal #10-1565 be granted.

Mr. Bamburak advised Mr. McLaughlin that this comes up frequently with Land Development, and Ms. Kirk will be drafting a letter on behalf of the Zoning Hearing Board asking the Board of Supervisors to consider amending the Zoning Ordinance so that there are different time limits on the Variances so that they are not wasting time. Mr. Gruen asked the procedure to amend this; and Ms. Kirk stated if the Supervisors are inclined to do this, they would have their solicitor draft an Ordinance amending that provision of the Zoning Code. She stated this would be subject to review by the Bucks County Planning Commission as well as the Township Planning Commission. She stated the Supervisors will then consider this at one of their public meetings with respect to this Zoning change, and they could then adopt the amendment. Mr. Gruen asked if this is a costly procedure, and Ms. Kirk stated the public hearing would be one of the Agenda items at a regular Board of Supervisors' meeting. Mr. Bamburak stated Mr. Gruen had previously questioned the cost of these Extensions, so they are trying to address this. Mr. Gruen stated while he agrees with this, he does not want to spend a lot of money. Ms. Kirk noted there would be costs for the solicitor to draft the Amendment, and there would be costs to advertise the Hearing.

April 5, 2011

Zoning Hearing Board – page 8 of 8

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to adjourn the meeting at 7:35 p.m.

Respectfully Submitted,

Jerry Gruen, Secretary