

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – AUGUST 2, 2011

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on August 2, 2011. Chairman Bamburak called the meeting to order at 7:10 p.m.

Those present:

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

Others: Robert Habgood, Code Enforcement Officer
 David Truelove, Township Solicitor (joined and left
 meeting in progress)
 James Majewski, Township Engineer
 Barbara Kirk, Zoning Hearing Board Solicitor

Absent: Daniel McLaughlin, Supervisor Liaison

APPEAL #11-1590 – DARIUSZ CZERNIAK

Mr. Czerniak was not present at this time. It was noted the Township was not advised that Mr. Czerniak would not be attending this evening. Mr. Bamburak stated the Applicant had installed a driveway and had been asked to return to the Zoning Hearing Board with a more detailed plan. Ms. Kirk stated Mr. Czerniak had indicated that he would not be available at the last Hearing of the Board on July 5, and he had asked that the matter be continued. The Board had agreed to continue the matter until this evening. Mr. Habgood stated he had not heard from the Applicant that he would not be in attendance, and he had been sent a letter. Mr. DosSantos suggested that they consider this matter later on the Agenda to see if he arrives later this evening.

APPEAL #11-1599 – SHARON CZEBOTAR

Mr. Edward Murphy, attorney, was present. The Application submitted was marked as Exhibit A-1. Attached to the Application, marked as Exhibit A, which was marked today as Exhibit A-2 was a copy of the Zoning Hearing Board's Decision from July, 2004.

Notice of the Hearing was published in the Yardley News, and the Proof of Publication was marked as Exhibit B-1. The property was posted, and the Proof of Posting was marked as Exhibit B-2. Notices were mailed by the Township to adjacent property owners, and a copy of the Notice with the list of owners' names was marked as Exhibit B-3.

Mr. Murphy provided this evening the Township record of the proceeding for this property from July, 2004. He stated the Decision made reference to certain Plans and calculations that his client presented at that time and form the basis for some of the calculations in the Decision made by the Board. This four-page document was marked as Exhibit A-3.

Ms. Kirk noted that at the time of the July, 2004 Decision, she was sitting as Chairperson of the Zoning Hearing Board. She is now the Zoning Hearing Board Solicitor and no longer on the Board; and she asked if the Applicant had any concern as to her handling this matter. Mr. Murphy stated there are no concerns.

Ms. Sharon Czebotar was sworn in.

Mr. Murphy stated the property where Ms. Czebotar currently resides was the subject of a prior Application almost seven years ago, and Ms. Czebotar agreed. Mr. Murphy stated as part of that earlier Application, Ms. Czebotar sought and received a Special Exception to permit her to have a home occupation at the property where she would reside on the second floor and conduct her acupuncture business on the first floor, and Ms. Czebotar agreed. Mr. Murphy asked if she is familiar with the July, 2004 Decision of the Board which granted the relief together with a Variance from the requirement of installing a buffer, and Ms. Czebotar stated she is. Mr. Murphy stated in the intervening seven years between that Decision and this evening, Ms. Czebotar has resided at the property and conducted the business that is described in the Decision in accordance with the rules and Conditions outlined, and Ms. Czebotar agreed.

Mr. Murphy stated the purpose of the most recent Application is to seek a modification of one of the Conditions which is the requirement that Ms. Czebotar reside on the second floor of the dwelling. Mr. Murphy asked if, other than the proposed change to the Condition that she is seeking tonight, there has been change to the property itself; and Ms. Czebotar stated there has not. It was noted it is still the same size, and she has not added any additions; and the improvements depicted on the last page of Exhibit A-3 are the same as they were seven years ago.

Mr. Murphy asked Ms. Czebotar why she is seeking the modification of the Condition that she reside in the home. Ms. Czebotar stated she would like to have the opportunity to be able to utilize the whole building. She stated currently many of her patient records reside in storage in Willow Grove. She stated if a patient were to call at the last minute and she had not seen them in a year's time, she could not take them in until she had the opportunity to get their records. Ms. Czebotar stated she also has large pieces of equipment which she has pictures of. She stated many of these symphonic tools weigh over fifty pounds. She stated depending on the frequency she needs to utilize them, she needs to lift them up and move them in and out of rooms. She stated it has become more difficult to do this over the years. She stated she would like to be able to set up a room that has those tools already set up so that she could choose to place a client in one room versus another room. She stated the nature of her work requires that there be a very quiet, intimate, respectful place where people can heal, grieve, and grow. She stated the number of people that she will see will not change. She stated she would also like to be able to store herbs in the facility as opposed to having to go to the storage facility to obtain them.

Mr. Murphy noted Exhibit A-3, on the second page where it shows the floor plan of the first floor of the dwelling. He asked what portion of the first floor is currently used and where she would like to expand. Ms. Czebotar stated she is currently utilizing the parlor space, and she would like to have the opportunity to set up a second room in what is considered the family room. She would also like to use the kitchen area to store the herbs. She noted Page 3 which shows the second floor, and she would like to be able to store her needles there and some other tools that people have the opportunity to take home with them. She stated currently there is a several day layover because it requires driving to the storage facility to pick up items she may need as there is not room the way she is currently set up.

Mr. Murphy stated patients would not be permitted to go to the second floor, and Ms. Czebotar agreed this would not be allowed.

Mr. Murphy submitted Exhibits A-4 through A-8 which is a series of photographs taken by Ms. Czebotar. She stated these are symphonic gongs and are frequencies which are utilized to make physiological changes in scar tissue and help with scar pain. She stated these tools break down scar tissue. She stated these tools weigh on average 50 to 55 pounds, and it is getting increasingly difficult for her to lift them. She stated it would also be easier in terms of scheduling to fit people in when they need to come in.

Mr. Murphy stated in 2004 the Decision limited hours of operation to be 9:00 a.m. to 9:00 p.m. Monday through Friday and one Saturday morning a month, and Ms. Czebotar agreed. Mr. Murphy asked Ms. Czebotar if she would be willing to accept as a continuing Condition those same hours of operation, and Ms. Czebotar stated she would. Mr. Murphy stated in 2004, she also agreed that there would not be more than two employees at any one time, and Ms. Czebotar stated she would still accept this Condition as well.

Mr. Murphy stated Ms. Czebotar indicated earlier this evening that the number of patients would not increase from the number she is seeing presently even though the configuration of the first floor would change. Ms. Czebotar stated this is correct and is because of the amount of time she invests with each individual. She stated the nature of her work is extremely specialized and sensitive and requires her to invest a tremendous amount of time with the client. She stated it is impossible for her to see more people.

Mr. Murphy asked Ms. Czebotar if she had the opportunity to discuss the proposed modification with her immediately-surrounding neighbors, and Ms. Czebotar stated she has. Ms. Czebotar stated her neighbors were very supportive of her desire to make this modification and have been pleased since she moved into the building with the improvements she has made to the outside. She stated she has been an extremely quiet and good neighbor.

Mr. Murphy provided to the Board Exhibit A-9, and Ms. Czebotar stated this is a letter from her closest neighbor who is very appreciative of the improvements she has made to the external environment and is very much in support of what she is requesting to do. She stated they are confident that she will continue to conduct her practice as she has and continue to be a quiet and respectful neighbor.

Mr. Gruen stated the lot is one and a half acres, and he asked if she has considered enlarging the building so that she would not have to move, and Ms. Czebotar stated she has not considered this. Mr. Gruen stated he is concerned that if the Board approves this request, the property will become a Commercial property since she will not reside there. He is concerned that if she moves or sells the property, the Variance will go with the property, and it would forever stay Commercial property. Mr. Smith stated they could make the Variance run with the owner.

Ms. Kirk stated this is not a Variance request. She stated it is a modification of a prior Decision to allow a previously-approved Special Exception for home occupation to be expanded; and she feels they could limit it strictly to the ownership of the Applicant and the operation of an acupuncture office. Mr. Murphy stated if the Board were to approve the modification, Ms. Czebotar would not use it as a residence; and the second floor would be used for patient record storage. He stated he feels Ms. Czebotar would be

willing to accept that if in the future she would sell the property, any future use other than the identical use that Ms. Czebotar has would have to come back to the Zoning Hearing Board. Mr. DosSantos asked if she would do this through a restriction in the Agreement of Sale; and Mr. Murphy stated she would have to since the Zoning Hearing Board Decision would run with the property, and the buyer would have to be aware of that. Mr. Bamburak stated a future owner could turn it back into a residence, and Ms. Kirk and Mr. Murphy agreed.

Mr. Gruen stated he does not want it to become Commercial in the future since it is a Residential neighborhood. Mr. Murphy stated they are sensitive to this issue. He stated they all understand that the character of that road in this area is changing anyway, and ultimately at some point it may become Office. Mr. Gruen stated this would be a decision for the Township.

Ms. Kirk stated she understands that Ms. Czebotar would be willing to agree to an additional Condition that if the Board were to grant the expansion of the acupuncture office as requested, it would terminate upon change of ownership from Ms. Czebotar to another party unless a new owner would agree to the same Conditions and use.

Ms. Kirk stated Ms. Czebotar indicated she would see no additional clients, and Ms. Czebotar agreed. Ms. Kirk stated in 2004 Ms. Czebotar estimated that she sees 20 to 25 clients per week, and she asked if this would remain the same; and Ms. Czebotar stated this is correct.

Mr. Gruen asked if she would get an additional acupuncturist, and Ms. Czebotar stated she would not since her work is very specialized and she uses a number of different modalities.

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

Mr. Gruen moved, Mr. DosSantos seconded and it was unanimously carried to approve the request for an expansion of the professional offices at the property at 616 Washington Crossing Road as requested subject to the following Conditions:

- 1) That the hours of operation will remain the same as in the prior Decision of July, 2004;
- 2) That the property owner have no more than two employees at the property as in the prior July, 2004 Decision;
- 3) That the number of clients will not increase from 20 to 25 clients per week;

- 4) That the grant of the expansion of the offices will terminate automatically upon the change of ownership or lease of the property from the Applicant to another third party unless the new owner/leaser seeks Zoning Hearing Board Approval.

Mr. Truelove joined the meeting at this time.

APPEAL #11-1600 – JOSEPH W. PRYOR

Mr. Joseph W. Pryor and Ms. Lesia Pryor were sworn in.

The Application submitted was marked as Exhibit A-1. A letter from the Director of the Zoning Department dated 6/6/11 denying the proposed use was marked as Exhibit A-2. Notice of this evening's Hearing was published in the Yardley News, and Proof of Publication was marked as Exhibit B-1. Notice of the Hearing was posted at the property, and the Proof of Posting was marked as Exhibit B-2. Notices were mailed to adjacent property owners, and a copy of that letter along with the list of those residents was marked as Exhibit B-3.

Mr. Gruen stated because of his very strong conviction about this matter, he does not feel he would be able to render an effective and fair Decision and would like to be recused. Mr. Bamburak stated since they would now have only four members hearing this matter, if there were to be a tie, the Applicant would lose. He stated the Applicant could ask that the matter be continued until they can have an Alternate Board member present or could have the matter heard this evening. Ms. Pryor asked if there is a tie would they have the option of continuing it at that time; and Mr. Bamburak stated they would not, and they would have to file again. Ms. Kirk stated they could also file an Appeal to Doylestown.

Ms. Kirk stated Mr. Truelove is present on behalf of the Township. Mr. Truelove stated they are participating at this time but are not sure whether or not they plan to oppose.

Mr. Pryor agreed to request a continuance until they can get a fifth Board member.

Ms. Kirk stated August 16 was the date set aside for another matter which will probably need to be continued. She suggested that the Zoning Hearing Board either continue this to August 16 or the following meeting on September 6. Mr. Pryor stated he would prefer the August date since they have already been delayed getting back to ATF.

Mr. DosSantos asked if they are on a timeline with the ATF, and Mr. Pryor stated while there is not a specific date, ATF was not happy waiting until tonight already.

Mr. DosSantos moved, Mr. Smith seconded and it was unanimously carried to continue the matter to August 16, 2011.

Mr. Habgood was asked to insure that one of the Alternates would be available for that meeting.

Mr. Truelove left the meeting at this time.

APPEAL #11-1601 – MICHAEL AND MAUREEN PETROSKY

Mr. Michael Petrosky and Ms. Maureen Petrosky were present and were sworn in.

The Application submitted was marked as Exhibit A-1. With the Application was a document entitled, “Project and Zoning Plan,” and this was marked as Exhibit A-2. There was also a letter from adjacent property owners dated 7/10/11, and this was marked as Exhibit A-3. Notice of this evening’s Hearing was published in the Yardley News, and the Proof of Publication was marked as Exhibit B-1. The property was also posted, and the Proof of Posting was marked as Exhibit B-2. Notices were mailed to adjacent property owners as required by the Ordinance, and a copy of the letter and the list of those residents was marked as Exhibit B-3.

Mr. Petrosky stated they are requesting a Variance for impervious surface so that they can install a small kitchen addition on the back of the house. He stated they have been in the house over a year, and the kitchen is a very small, awkward kitchen. He stated they would like to expand it to accommodate their family. He stated currently they have one of the smallest houses in the neighborhood with the lowest listed property value, and they are trying to improve it to neighborhood standards.

Mr. Habgood stated the numbers he calculated for impervious surface were close to what the Applicants submitted.

Mr. Zamparelli stated they are proposing to increase the impervious surface from 20.8% to 21.8%, and Mr. Petrosky agreed. The permitted amount is 18%. Mr. Habgood stated this is an older development, and it was previously calculated on building coverage. He added that their property is also unique in that they have a rear entrance garage so that they have a larger driveway than some others in the area.

Ms. Kirk stated the proposed kitchen addition is 210 square feet, and it will be a one story-addition; and Mr. Petrosky agreed. Ms. Kirk stated the calculations for the impervious surface coverage have been provided on the Plans, and Mr. Petrosky agreed.

Mr. Gruen stated on the Plan they have shown a “rain-detention” pit, and he asked if this is existing or proposed. Mr. Petrosky stated it is proposed if it is required although they would prefer using rain barrels to mitigate some of the stormwater run off. Mr. Gruen stated his problem with rain barrels is that they are only used in the summer, and if they are not emptied they freeze in the winter. He stated he would prefer the crushed-stone method. He also noted another method where water could be stored underground and still used for gardening.

Ms. Kirk stated Lower Makefield has recently been involved in passing a Stormwater Ordinance being imposed by DEP for the entire State, and that Ordinance is very specific with respect to stormwater drainage issues for any properties that have increased impervious surface. She stated she does not feel it is within the realm of the Zoning Hearing Board to decide at this point what type of stormwater mitigation facilities should be installed since that State Ordinance which is being passed by many Townships will control. She suggested that the Board leave this matter up to the Township, and the Township engineer will work this out directly with the Applicant at the time of the submission of the Building Permit.

Mr. Smith asked the Applicant if they would be agreeable to installing some kind of mitigating device or system that would be to the satisfaction of the Township engineer to offset the 1%, and Mr. Petrosky stated they would. Mr. Majewski stated based on the size of the addition and the amount of impervious surface, the amount would be negligible; and he added that he feels a rain barrel would be a perfect fit for this situation. Mr. Gruen asked to go on record that he is opposed to rain barrels for this purpose.

Mr. Bamburak stated he read the article in the newspaper about the new law that DEP passed and stated in the past the Zoning Hearing Board did approve Applications based on the Condition that they do stormwater mitigation; and he asked if the Board can still do this. Ms. Kirk stated while they can, she is not sure exactly what the Township Ordinance will contain as to the appropriate stormwater mitigation methods to be used; and she would not want the Board to make a Condition that it be a certain facility or mitigation factor when the Ordinance will control and govern. Mr. Gruen stated the Ordinance is more stringent than what the Board has imposed in the past, and Ms. Kirk agreed. She stated she does not feel it would be appropriate for the Zoning Hearing Board to impose a specific system as part of the Application when the Ordinance, which is much more rigid, will control. Mr. Gruen asked if they could indicate they do not like a certain method if there is a choice adding he is not in favor of rain barrels; and Ms. Kirk stated she does not feel the Board’s imposition is going to apply in that at the time of the submission of Building Permits, Applicants will have to provide certain stormwater management designs that need to be reviewed by the Township in accordance with the current Ordinance. She stated the Board’s Decision

might actually present a conflict which would be more confusing than just letting the Township enforce the Ordinance. Ms. Kirk stated this new Ordinance does set forth certain requirements and regulations to the point of even submission of engineered Plans, etc. depending upon the increased amount of impervious surface.

Mr. Majewski stated for most of the Applications that have come in front of the Zoning Hearing Board for small additions, the Ordinance does give flexibility and does not require full-fledged engineering Plans. He stated one of the Appendices to the Ordinance has a more simplified method of stormwater management where it lays out what a homeowner can do for a situation such as this one and lays out the methodology for calculation that most homeowners can do, and he could provide assistance with this. Ms. Kirk stated this will all be part of the Building Permit process.

There was no one present in the audience to speak to this Application, and the Testimony was closed.

Mr. DosSantos moved, Mr. Gruen seconded and it was unanimously carried to approve the Variance subject to any stormwater management required.

APPEAL #11-1602 – SUSAN COHEN

Ms. Susan Cohen and Mr. Steven Cohen were sworn in.

The Application submitted was marked as Exhibit A-1. Included with the Application was a two-page Sketch Plan of the proposed rear patio, and this was marked as Exhibit A-2. Notice of tonight's Hearing was published in the Yardley News, and the Proof of Publication was marked as Exhibit B-1. The property was posted with Notice of tonight's Hearing, and the Proof of Posting was marked as Exhibit B-2. Notices were mailed by the Township to adjacent property owners, and a copy of that letter along with the list of owners was marked as Exhibit B-3.

Ms. Cohen stated they would like to put a patio in their rear yard for family entertainment. She stated this will bring them over the allowable impervious surface.

Mr. Bamburak stated they did not provide any impervious surface calculations to the Board. Ms. Cohen stated the lot size is 20,567 square feet. The house is 2,175, driveway 848, walkway in the front 150, and shed and stoop at the front door 120. She stated the current impervious surface is 16%, and they are requesting 20.8% impervious surface. She stated the proposed patio would be 950 square feet.

Mr. Habgood stated the calculations were not submitted with the Application, but he did check the site Plan that was submitted and he calculated they would have 22% impervious surface for what is being proposed. Ms. Cohen stated the Site Plan that is on record with the Township was what was originally submitted by the builder in the 1970s, but what they had sketched for the house is not what the house actually looks like. She stated they have shown one big rectangle, and their house is not one big rectangle.

Mr. Bamburak stated it is difficult for the Board to make a decision with the information that the Applicant has provided. He stated they did not receive the calculations, and Mr. Habgood has indicated that they would be at 22%. Mr. Gruen stated they cannot make an educated decision without knowing the numbers. Mr. Bamburak stated the Application indicates that the Applicant needs to supply enough information for the Board to make a reasonable decision.

Mr. Habgood stated he worked off the drawing that was submitted with the Zoning Hearing Board Application. He stated he also looked up the Recorded Linens for the Development, and lot size was listed at 20,392 square feet. He stated per Ordinance, they are allowed a maximum of 18% impervious surface. He stated he calculated the dwelling at 2,174, the shed at 80, and the walkway including the front landing at 185. He stated the driveway was 1,026 adding that this was the hardest to try to calculate.

Mr. Gruen stated the Applicant has claimed that the drawing for the house that Mr. Habgood used is different from what was actually built. Mr. Habgood stated he used what the Applicant supplied on their Zoning Hearing Board Application. He stated for existing impervious surface, he came up with 17%. He stated off their drawing he calculated the proposed patio to be 987. He stated this would put them at 22% or 4,452 square feet.

Mr. Habgood stated the driveway is the biggest question. Ms. Cohen stated they do have a very odd shaped driveway.

Ms. Kirk stated this is a large difference from the calculations that the Applicant indicated. She stated the Applicant is indicating the proposed impervious surface would be 20.8%, and Mr. Habgood is indicating it would be 22%.

Mr. Bamburak stated impervious surface and stormwater runoff are important issues, and if the Board does not have reliable numbers, there is a chance the Board would not be in favor of this. He stated while he recognizes engineers can be expensive, and he does not want them to spend a lot of money, they would like to have something better than what was provided particularly with regard to the driveway and the numbers presented. He stated the difference between 18% and 22% is a big difference, and some Board members are not in favor of that.

Ms. Cohen stated she feels they would have to hire a surveyor since they did go out with a tape measure a number of times doing the best they could do, and these are the numbers they came up with.

Ms. Kirk asked if they were proposing to install the patio themselves or were they going hire a contractor, and Ms. Cohen stated they were going to use a contractor. Ms. Kirk suggested that they speak to the contractor about doing the measurements since generally contractors in the Township would be familiar with the Township's requirements for Building Permits and impervious surface and they would be able to refine the numbers. Mr. Bamburak stated they would not need a sealed, surveyor's plan.

Mr. Cohen asked if they came back with accurate numbers showing 20.8% would this be in line with what is approved for Variances, and Mr. Bamburak stated while it would be better than 22%, they would first need to see the numbers.

Mr. Bamburak asked if they would like to continue the matter to August 16, but Ms. Cohen stated they will be on vacation. It was agreed to continue the matter to September 6.

Mr. DosSantos moved and Mr. Smith seconded to continue the matter to September 6.

Mr. Cohen stated the impervious was based on a paver-type construction; and he asked if a good portion of that impervious surface as currently allotted on the Exhibits became a deck with raised crushed stone, would this change the situation. Mr. Habgood stated this would depend on the type of stone underneath the deck. He stated if it is stone that could be compacted, that part of the deck would still be impervious. Mr. Cohen asked what would it be considered if they complied with whatever stone the Township needed.

Mr. Majewski stated smooth, rounded stones that allow water to penetrate into the ground would be acceptable and would not count against them. Mr. Bamburak stated they could not any plastic over it. Ms. Kirk stated a deck is not counted toward impervious coverage just by the mere way the deck is constructed. Mr. Cohen asked about height, and Ms. Kirk stated they would need to discuss this with the Township to get these specifics as there would be building requirements with respect to footers, etc.

Motion carried unanimously.

APPEAL #11-1603 – JOSEPH M. AND CINDY A. PFENDER

Mr. Edward Murphy, attorney, was present.

The Application submitted was marked as Exhibit A-1. The Plan submitted entitled, “Zoning Variance Plan,” was marked as Exhibit A-2. Notice of tonight’s Hearing was published in the Yardley News, and the Proof of Publication was marked as Exhibit B-1. The property was posted with Notice of tonight’s Hearing, and the Proof of Posting was marked as Exhibit B-2. Notices were mailed to adjacent property owners in accordance with the Ordinance, and a copy of that letter with the list of those residents was marked as Exhibit B-3.

Mr. Murphy stated the Pfenders own a property that fronts on Yardley-Newtown Road that is not part of the Subdivision which entirely surrounds them. He stated it was a lot that had an existing home on it, the earliest portion of which is over 200 years old. He stated it was expanded previously in 2000 after the Pfenders purchased the property. Mr. Murphy stated under the Ordinance, lots that were created before a certain date are subject to one grouping of impervious and lots established after a certain date are entitled to a different level of impervious. He stated because of the age of this particular lot when it was created, the maximum impervious surface limitation in the R-2 District where they are is 18%. He stated had the lot been created later, they would be permitted to have 21%. Mr. Murphy noted the upper left hand corner of the Plan marked as Exhibit A-2 shows that the existing impervious surface is 18.5%. He stated they met with the Township staff about this before submitted the Application, and found that when the Pfenders installed their pool a number of years ago, the Pool Contractor who made the Application utilized impervious numbers based on calculations and the size of the lot that were not in conformance with the way the Township normally calculates them. He stated the Permit that was issued for the pool showed with the pool being constructed, that the total impervious surface on the lot was 12% when in reality it was more than that. Mr. Murphy stated no one discovered this until this spring when the Pfenders were getting ready to propose the Application that is before the Zoning Hearing Board, and the engineer who prepared the Plan provided calculations in accordance with the Township regulations and came up with the fact that they were at 18.5% existing.

Mr. Murphy stated the addition that is contemplated includes a proposed two-car garage. He stated in an effort to minimize the impervious, the Pfenders have highlighted four different areas on the property where they are proposing to eliminate existing impervious surface. He stated they are the gravel parking area in front of the existing home which would be slightly less than 400 square feet, a shed to the rear to be removed which is 129 square feet, a portion of the slate walk that leads out to the pool area of 215 square feet, and some existing blacktop along the common boundary to the property immediately to the west to the right of the proposed driveway to be removed. He stated these areas total approximately 852 square feet of impervious surface to be removed.

Mr. Gruen asked about the porch on the left side, and Mr. Murphy stated this will be removed and replaced by part of the addition.

Mr. Murphy stated while the addition is not large, a corner of the proposed garage does encroach two feet into the minimum side yard setback of 15’.

Mr. Murphy stated the net proposed impervious surface increase would go from 18.5% to 20.2%, and this is reflected in the upper left-hand corner of the Plan. He stated they are well aware and sensitive to the fact that Mr. Majewski, as part of the Building Permit Application, will expect that rain gardens or other forms of stormwater management will be provided; and they are amenable to this as a Condition of Approval.

Mr. Murphy provided an older excerpt of the Subdivision Plan that surrounds this property, and he marked this as Exhibit A-3. He stated this property is an out parcel. He marked in yellow on Exhibit A-3, the location of the lot. He stated all of the other homes front on Yale Drive so there is no house that is really close to the proposed addition.

Mr. Murphy marked as Exhibit A-4 an aerial photograph that shows the mature shrubbery that surrounds the property.

Mr. Joseph M. Pfender and Ms. Cindy A. Pfender were sworn in.

Mr. Murphy asked Mr. and Mrs. Pfender if they would agree with the summary he has provided as to the Application, and they indicated they agreed with the summary.

Mr. Murphy asked if they spoke to their neighbors about the Application, and Mr. Pfender stated they did speak to the immediate neighbor to the west who had no objection and asked if there was something they could do to help the process along. He stated he also spoke to their new neighbors immediately across 332, and they had no objection. He stated he attempted to contact the neighbor in the rear of the property but was unsuccessful as she travels quite a bit. He stated because her property is fairly far removed from their property, they do not really see much of her. He stated they do not have many neighbors.

Mr. DosSantos stated the impervious surface being requested of 20.2% is the net figure after the removal of some existing impervious surface discussed. Mr. Murphy agreed and stated the calculations are correct as they worked with the staff on these numbers. Mr. Habgood agreed.

Ms. Kirk stated the addition to the house will be 1,375 square feet; and Mr. Murphy stated this is correct and includes the garage. Mr. Murphy stated this is the total impervious surface of the footprint.

Mr. Gruen asked if the gravel area that is proposed to be removed was included in the existing impervious surface, and Mr. Murphy agreed.

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

Mr. Zamparelli moved, Mr. Gruen seconded and it was unanimously carried to grant the Variance to increase impervious surface to 20.2% and grant the Variance for the side yard setback as set forth on the Plans.

APPEAL #11-1604 – JULIE AND WES SCHEIRING

Ms. Julie Scheiring and Mr. Wes Scheiring were present and were sworn in.

The Application submitted was marked as Exhibit A-1. The Plan submitted entitled, “Zoning Permit Plan,” was marked as Exhibit A-2. Another Plan submitted showing the specifications and elevations for the proposed construction was marked as Exhibit A-3. Notice of tonight’s Hearing was published in the Yardley News, and the Proof of Publication was marked as Exhibit B-1. Notice was posted at the property, and the Proof of Posting was marked as Exhibit B-2. Notices were mailed by the Township to adjacent property owners as required by Ordinance, and this was marked as Exhibit B-3.

Ms. Kirk stated she has reviewed the Application and understands that there is a request for increase of impervious surface coverage, a Variance to permit disturbance in a floodplain which would otherwise be 100% protected, and a Variance with respect to the height of the proposed detached garage. Ms. Kirk stated according to her review, the property is in the RRP District, and the Applicant cited Section 200-23B as the Section for impervious surface. She asked Mr. Habgood if it should not be Section 200-14; and Mr. Habgood stated Section 200-23 is correct because the lot was existing when the RRP Zone was created. He stated since it is non-conforming, it falls within Section 200-23.

Mr. Scheiring apologized for not submitting a breakdown of the impervious, and stated the topographical surveyor added those calculations to the bottom right-hand side of the Site Survey. Mr. Bamburak stated as long as they are shown on the Plan, this is fine.

Mr. Scheiring stated he has some photographs and an excerpt from the Lower Makefield Township Code. The three photographs of the property were marked as Exhibit A-4, and the excerpt from the Township Code was marked as Exhibit A-5.

Mr. Scheiring stated they would like to build an in-ground pool in the 100 year floodplain as they would like to improve the quality of life for themselves, friends, and family. He stated his wife has degeneration of both knee cartilages, and the only type of low-impact exercise she can do is swimming. He stated they are proposing to install a salt-water pool because salt-water pools naturally balance the pool water without the use of harsh chemicals that can have negative effects on the surrounding environment. He stated there is a representative from the pool company present this evening to answer any questions regarding the pool construction.

Ms. Kirk stated according to the calculations for impervious surface on the Zoning Permit Plan, it shows that the existing impervious surface is 11.8%, and the proposed would be 16.6%. Ms. Kirk stated if the property is non-conforming and subject to Section 200-23B, why are they present requesting a Variance for impervious surface. Mr. Habgood stated this would depend on the Board's interpretation of what they are going to use with regard to the square footage of the lot. He stated this lot has a River Road address, but also has a Tax Parcel across the street that is incorporated with it. He stated if they combine both of the areas outside of the right-of-way, they would be under the 18% impervious surface, and not need a Variance. He stated if they only include the lot where the home is located and where all the improvements will be done, they would come up to 22%, and they would then need a Variance for impervious surface. He stated it would be up to the Board's interpretation how they would handle this.

Mr. Gruen asked the previous practice. He stated he had looked to buy in this area and was told that the total land is included and not just the home site. Mr. Habgood stated this is how it is calculated at the Township; and they consider that if the road were not there, it would all be one lot. Mr. Gruen asked why they are then before the Board, and Mr. Habgood stated they still need a Variance for disturbance to the floodplain and for the height of the proposed accessory structure.

Mr. DosSantos asked if the Board agrees that the impervious surface is not a "non-issue." Ms. Kirk stated it would be best for the Board to make a ruling as to the calculation of the lot size dealing with the impervious surface calculations.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried that they bifurcate the issues so that the first issue before the Board is the total lot size for the purposes of impervious surface calculation.

Mr. Gruen moved, Mr. DosSantos seconded and it was unanimously carried that based on past precedence in the Township, the lot size was calculated using both parcels with the exception of the right-of-way and to accept the calculations submitted for the total impervious surface.

Mr. Bamburak stated they will therefore not be considering the impervious surface Variance by virtue of the fact that the lot is large enough since they are considering both parcels.

Mr. Bamburak asked that they discuss the disturbance to the floodplain. Mr. Scheiring stated they are asking for a Variance to build a detached garage in the 100 year floodplain. He stated he is concerned with safety, and their property is located on the apex of a curve in River Road which severely limits the sight distance when backing out of their driveway. Mr. Scheiring noted Exhibit A-5 Chapter 178 of the Lower Makefield Code breaks down the minimum required sight distances at speed limits. He stated on forty mile per hour River Road, the sight distance for a vehicle leaving a driveway is 324. He stated that anyone who lives in River Road could attest that more than 50% of the drivers go above the speed the limit so that at five miles per hour over the speed limit, the sight distance would jump to 390 feet, and at fifty miles per hour, the sight distance is 461 feet. Mr. Scheiring stated the minimum required sight distances directly relate to the distance needed for a vehicle to stop safely, taking into account reaction time, grade, and friction. He stated he has taken two pictures from his vehicle measured at ten feet from the pavement, northbound and southbound, and these are shown in Exhibit A-4.

Ms. Kirk asked if the property is located within the floodplain, and Mr. Scheiring stated it is. Ms. Kirk asked how much of the property is located in the floodplain, and Mr. Scheiring stated it is entirely within the floodplain. Ms. Kirk stated he could not build a structure on the property unless he disturbs the floodplain, and Mr. Scheiring agreed. Ms. Kirk stated this is something that was created through no doing by the Applicants, and this would establish one of the Variance requirements that the unique physical characteristics of the property are such that a floodplain exists over which the Applicants had no control.

Ms. Kirk asked that they move onto the issue as to why they are proposing the detached garage to be 28' as opposed to 15' which is the maximum height allowed.

Mr. Scheiring stated he was trying to show a hardship for the need for the garage. Ms. Kirk stated the hardship would be the result of the unique physical characteristics of the property which is totally located within the floodplain, and this presents enough of a hardship for a Variance.

Mr. Scheiring stated they are asking for a Variance to increase the height of the accessory structure from 15' to 28'. He stated they are very flood conscious, and they would like to have the second floor for utilities and storage of anything that is not mobile. He stated they do not want anything on the first floor that could not be moved in the event of a flood. Ms. Kirk asked if the second floor is going to be used primarily for personal

storage, and Mr. Scheiring agreed as well as for utilities for the garage. He stated the electric panel would be on the second floor. Ms. Kirk asked if utilities would include only electricity or would they also have plumbing, and Mr. Scheiring stated it would only be electricity.

Ms. Kirk asked if there is a possibility that the second floor would ever be converted to any type of livable space, and Mr. Scheiring stated it would not. Ms. Kirk asked if the Board were inclined to grant the request, would the Applicants be willing to accept a Condition that the second floor of the garage could not be used at any time for any type of livable space as an apartment, room, or any type of residential area for anybody; and Mr. Scheiring agreed that they would accept this Condition.

Mr. Gruen stated he assumes the garage would have an 8' ceiling, and Mr. Scheiring stated it would be a 12' ceiling since both he and his wife have company-owned work trucks and a trailer that require larger than standard garage doors which requires a taller ceiling. Mr. Gruen asked about the headroom on the second floor, and Mr. Scheiring stated that would be 8'. Mr. Habgood stated the allowed height for an accessory structure is 15'. Mr. Gruen asked why they would need 8' on the second floor if they only need it for the electric panel and storage.

Mr. Smith stated they are proposing a 40' by 48' building. Mr. Scheiring stated with the size of their home the only available storage they have is in the basement; and in the event of a flood, everything they would have in the basement would be wiped out. He stated the basement is currently full, and they would like to move everything from the basement so that they can safeguard their valuables. Mr. Smith stated the proposed garage has a larger footprint than their home. Mrs. Scheiring stated they have two trucks, an SUV, a trailer, and a boat; and they would like to be able to put them out of sight. She stated currently you can see all of their stuff when you drive on River Road, and they would like to put them out of sight.

Mr. Gruen stated while he understands this, he does not understand the height. He stated in case of a flood, they would not have time to move the stuff in their basement to the attic. Mr. Scheiring stated they have in the past. Mr. Gruen asked what they are storing in their basement that they would like to keep in the garage. Mrs. Scheiring stated last April they had sufficient notice that if they had the proposed garage, they would have been able to move their washer and dryer and put it onto higher ground. Mr. Scheiring stated it is his intention not to keep anything in the basement.

Mr. Scheiring stated prior to this evening's meeting, he tried to meet with some of his neighbors; and some of them met with him and some did not. He stated he was able to get some people to sign an approval for what he is proposing, and he showed this to the Board this evening.

Ms. Kirk stated Mr. Scheiring also provided her with a document marked as Exhibit A-6 which is an e-mail message from TLC Surveying responding to Mrs. Scheiring regarding a question of the grading of the property and the water runoff to the other side of Robinson Place.

Mr. Habgood noted that the impervious calculations also include the removal of about 630 square feet of existing driveway, and if this is included it does put them over the 18% so the Board should make sure that they still plan to remove this.

Mr. William Jones, 1411 River Road, was sworn in and stated he is two lots down River from the property. He stated he would like to be a Party to the proceedings.

Ms. Kirk stated as a Party to the proceedings this means he is entitled to a copy of the Board's Decision; and if he is not satisfied with the Board's Decision, he has the right to file an Appeal through the Court of Common Pleas in Doylestown. She stated he will have a limitation as to how quickly that Appeal must be filed. She stated the Appeal process is governed by the Pennsylvania Rules of Civil Procedure and the Pennsylvania Municipalities Planning Code. She suggested that he consult with legal counsel of his choice if he has any questions.

Mr. Jones stated he is concerned about the salt water pool since every home north of Lot 66 and north of Lot 76 has well water. He stated he does not know what concentration of salt water they are talking about and is concerned about leakage into the groundwater and filters that may need to be back washed. He asked if this back wash would be salt water or fresh water and where this would go. Mr. Scheiring stated the pool company representative is present, and he could answer these questions.

Mr. Jones stated there is a deck on the Plan for the pool which is elevated but it does not indicate how high the deck would be.

Mr. Jones stated he objects to the size of the garage, the height of the garage, and the position of the garage in the floodway. He stated this particular lot has a street in the front and a street in the back so by putting the garage 15' from the rear line, it will be right on Robinson Place in the front yard of the homes on the other side of Robinson Place. Mr. Jones asked if, because the lot has a road in the front and back of their home, does this mean it is considered a front setback or a corner lot. He feels putting the garage 15' is too close to Robinson Place and to the front yards of the homes across the street.

Mr. Habgood stated in this situation Robinson Place is considered a private street and is not a Township street; and for an accessory structure, they only have to meet the 10' minimum setback from the property line.

Mr. Jones stated while this is correct that Robinson Place is a private street, based on the Township's Zoning definition a "street" is a public street, road or highway which is legally opened by the Township or officially platted by the Township or a private street, road, or a private street, road, or way over which owners or tenants have right-of-way. Mr. Jones stated it is a street, and by the Zoning requirements, it is a street although it is private. Mr. Jones stated on the other side of that street are more homes and this garage will be in their front yard.

Mr. Jones stated if you look at the buildings along River Road and Robinson Place, they are in a line; and this structure will be out of line, and he is concerned about flood waters. Mr. Jones stated flood waters have currents, and currents cause whirlpools and turbulence; and he is concerned about what will happen when a building of this size which is bigger than the house itself is put at this location. He stated he does not know what it will do to the currents. He stated he knows what happens when the floodwaters flow past the house, and it causes currents and whirlpools.

Mr. Jones stated the proposed garage is 1,920 square feet and the house is 1,122 square feet. He stated he feels an accessory structure should be the size of the house or smaller. He stated he questions the need for a 12' ceiling to store motor vehicles.

Mr. Jones stated the Plans show four garage doors on the building and only one faces Robinson Place and the driveway; but the other three garage doors face the yard, and he questions how they will get in and out of those garage doors. He stated if they are going to drive across the grass continually, they will compact the soil; and they might as well install blacktop since it will become impervious.

Mr. Jones stated he also objects to the impervious surface calculations as everyone in the neighborhood is concerned with impervious surface. He stated eleven years ago many of the residents from the Robinson Place and N. River Road area approached the Township Sewer Authority and asked them about extending public sewers in the neighborhood because there were certain times of the year when it was difficult to flush the toilet and laundry was out of the question because of high ground water. He stated a low-pressure, ejector sewer system was selected; and one of the reasons it was selected, was because it reduced the width and depth of the digging that had to be done. He stated it is only approximately three to 3' to 3 ½' down, and it is only a 2" line.

Mr. Jones stated the installation of the public sewers has solved the laundry and flushing problem, but it did nothing for the groundwater problem. He stated the neighborhood is extremely flat and there is probably no more than three inches difference across six to seven lots. Mr. Jones stated the Plans submitted show no new grade levels except for around the pool so stormwater will continue to invade the neighborhood and neighborhood stormwater will continue to invade the Applicant's property.

Mr. Jones stated the Board has already passed on the impervious ratio being included as far as both lots, but the Township Zoning regulations state that impervious ratio is the total area of all impervious surfaces within a lot divided by the gross lot area. He stated the Township's definition of a "lot" is a parcel of land set aside from other parcels in one ownership and not divided by a street. He stated he objects to them using the other parcel, and he feels the square footage for the parcel should be 30,338 square feet. He stated if they use that figure, they are up to 21.6% impervious surface. He stated the definition of a "lot" is in the Township Zoning definitions, and he objects to the Board changing this and allowing the other lot to be used.

Mr. Jones noted Section 200-97 with regard to the Appeals process. He stated he feels the Appeals process is "bending the rules a little bit" because of some circumstance. He stated 15' going to 28' is not bending it, it is breaking it; and he feels this is also true for the impervious surface calculation. He stated if the impervious surface calculation is 18, and they are at 22, they are over the rule. He stated it will only be under the rule if the Board allows both lots to be considered which is against the Township definition.

Mr. Dominic DiCesare, General Manager of Blue Haven Pools, was present and was sworn in. Mr. DiCesare stated they use a commercial grade cartridge filter on the pools they build. He stated it is a non backwashing filter and there is no discharge of pool water onto the property. He stated at the end of the season, the filter is opened up, the elements are taken out and hosed off. He stated the salt is kept between 27 to 3200 parts per million, and the salt content is less salt than you have in a human tear. He stated the salt is the same salt that is used on home water filtering systems. He stated there is no leaching of salt from the pool structure into the ground.

Mr. DiCesare stated the filters will be three to four feet above grade on a wooden platform.

Mr. Gruen stated in case of a flood, the pool water will go into the River and the neighborhood. Mr. DiCesare stated this is the same as any other pool or mechanical device that people may have in their garages or sheds such as lawnmowers, gas, etc. Mr. Gruen asked what would be the effect of the salt from the pool onto the vegetation, the River, etc. Mr. DiCesare based on the gallonage of water that is in the pool and the amount of water that would be consuming the whole area, it would be a very minute of salt. He stated it would have no effect.

Mr. DosSantos asked if having a salt water pool eliminate the use of chlorine and other Chemicals, and Mr. DiCesare agreed. He stated the salt is the sanitizer. Mr. DosSantos asked if this is a safer alternative in a floodplain area, and Mr. DiCesare agreed since there are no chemicals and no chlorine stored on the property.

Mr. Richard Scheier, 1441 Robinson Place, was sworn in; and he asked to have Party status. Mr. Scheier presented a Plan showing where he lives in relation to the Applicant's property. This Tax Map was marked as Exhibit RS-1. He also presented two pages of photographs, and these were marked as Exhibit RS-2.

Mr. Scheier stated he is concerned about the grading from the house to Robinson Place. He stated he partially behind the Applicant's lot; and he stated he knows they have water when it rains, and it is hard to drain off. He stated he approached Mr. Scheiring once when Mr. Scheiring was looking for a drain in his rear yard to drain the water out. Mr. Scheier noted the pictures from the '05 flood which partially show Mr. Scheiring's back yard, the lot next to him taken from Mr. Scheier's front porch; and there was four feet of water. Mr. Scheier stated they do get notification to move things before a flood, and he moves them from the cellar to the second floor as he does not have a garage.

Mr. Scheier stated he is against the 40' by 48' building being in his front yard. He feels if water comes up, it will push the water to his house more so than it does now.

Mr. Scheier stated there are not doing any more grading except for around the pool. He stated he understands they are going to have a dry well, but he did not see this on the Plan. Mr. Bamburak stated there was no testimony about a dry well, and he asked Mr. Scheiring if there is going to be a dry well. Mr. Scheier stated he was advised that There was going to be a 15' by 15' by 3 ½' dry well. Mr. Scheier stated even though it has been dry lately, he would be able to dig in his own back yard and hit water at 4'. Mr. Scheier stated this is not only a floodplain, it is a wetland. He stated he is against this huge building. He also asked how they will get vehicles into the building from the three overhead doors that are facing toward the Applicant's house unless they drive over the land. Mr. Scheier stated there is also no walkway from the house to the garage shown on the Plan.

Mr. Scheier stated the residents petitioned the Township to have sewers put in, and Mr. Scheiring's sewer line runs from the road, and will run underneath his footings of the proposed building as shown on the Plan. Mr. Scheier stated the sewer line was put in 3 ½' down, and he asked how far down they will put the footings. He stated when the house was built next to Mr. Scheiring, they used 5' footings and had 6, 20 ton vehicles with ballast stone to put the footings in because of the conditions of the ground.

A short recess was taken at this time.

When the meeting was reconvened, Mr. Scheier stated he spoke to Mr. Scheiring one day who advised him that he would like to restore cars. Mr. Scheier stated he is concerned that he will be restoring vehicles in this 40' by 48' by 28' building and there will be oils, paints, etc. which may be spilling. Mr. Scheier stated he is concerned because he has a well.

Ms. Pamela Zamel, 1435 Robinson Place was sworn in and stated she would like have Party status. Ms. Zamel stated she is concerned with disruption of the floodplain since it is a very sensitive area. She stated her property is diagonal from the back of the subject property. She stated in the rainy season she is saturated, and there is tremendous water. She stated her landscapers cannot start their professional service until mid-May because their lawnmowers will sink in her rear yard. Ms. Zamel stated she cannot understand how the building of this large garage and in-ground pool will not impact her property, and she feels she would need to have an impartial land surveyor to do an impact study to convince her this would not be the case because the land is so tenuous. She stated the Township is doing re-Zoning for the floodplain, and here they are in the heart of the floodplain and talking about all of this construction.

Ms. Zamel stated she is also concerned about aesthetics with regard to property value. She stated this is a huge structure and it is in a lot of the front lots, and she feels it will cause problems for her in the future trying to sell her home. She stated Robinson Place is a very quaint neighborhood which is why she chose it, and all of the structures are about the same sizes with garages under or adjacent to their homes. She stated there is nothing like what is being proposed and it is really disproportionate to what currently exists.

Mr. Mike Tenaglia, 1409 Robinson Place, was sworn in and stated he is two houses below the subject property on the opposite side of the street. Mr. Tenaglia stated he is concerned with the fact of the flooding issues, the water run off, etc. He stated in a normal 2" to 3" rain, Mr. Scheiring's property is known as the "Robinson Place lake," because of how it is completely under water in a 2" to 3" rain. Mr. Tenaglia stated before the Scheiring's bought the property, they were going to address this with the people who had owned it but they were in and out of town a lot. Mr. Tenaglia stated he and Ms. Zamel get the "dump off" from this property currently; and if they put a structure like the one proposed on the property, he is concerned where the water will go and how much more will come back his way. Mr. Tenaglia stated the neighbor next to him was unable to attend the meeting this evening, and he gets the total "dump off." Mr. Tenaglia stated at any given time you can see the trace of the water between his property and Ms. Zamel's even during the summer.

Mr. Tenaglia stated the Scheiring property is located where Robinson Place comes in and makes a left so it is right on the middle of all the properties on the opposite side of the street. He stated it is a huge focal point. He stated he bought his home because of the river and canal view and the “woody-type” setting. He stated to put a commercial-type structure of this nature in a quaint neighborhood is terrible and unfair to the neighbors to have to deal with this. He stated it will be like a major billboard in front of the Robinson Place homes.

Mr. Tenaglia asked to have Party status.

Mr. John Hoffman, 1439 Robinson Place, was sworn in and asked to have Party status along with his wife, Amy, who could not attend the meeting this evening. Mr. Hoffman submitted five photographs which were marked as Exhibit JH-1.

Mr. Hoffman stated he took the photographs from his front stoop into the Applicant’s rear yard, and he noted where the proposed building would be constructed per the stakes put into the ground by the Applicant. Mr. Hoffman stated at the front corner it would be 14’ from Robinson Place. Mr. Hoffman stated the next photo shows the back corner and front corner and shows from the edge of the road how close the front corner will be. Mr. Hoffman stated the next photo is the opposite side from Mr. Scheier’s lot which shows that the structure would be 16’ from the road. Mr. Hoffman showed the picture taken from the next door neighbor (Lot #74), and Mr. Hoffman noted the stake of the back corner is actually not as far back as the newest house on the block that was built several years ago. He stated this proposed structure is actually much closer to the road than any other structure on the road. Mr. Hoffman stated the final picture is a picture down the road of the houses, and he noted Lots #66 (Mr. Hoffman’s home), #67, and #68; and he stated it shows how far back they are from the road which he estimates to be at least 30’ minimum as opposed to the proposed structure at 14’.

Mr. Hoffman stated with regard to the impervious surface, according to the Plans provided by the Applicant, the impervious surface had a percentage of 18% and then a square footage. He asked if impervious surface is only based on percentage or is it based on a maximum square footage also. Mr. Habgood stated depending on the location of the property, it is based on the gross lot size outside of the right-of-way.

Mr. Bamburak stated it is anything that covers the ground that is impervious including sidewalks, driveways, sheds, etc; and this all adds up to a certain square footage, and you divide that into the total square footage of the lot not including the right-of-way, and you will come up with the percentage. Mr. Bamburak stated they are comfortable that this has been calculated properly. Mr. Hoffman stated according to the survey provided by the Applicant, the maximum square footage for 18% is 5,480 square feet; and the Applicant is asking for 6,551 square feet. He stated he is confused that the square footage seems to require a Variance, but the percentages do not. Ms. Kirk stated this question would have to go to the Applicant’s engineer or whoever calculated the Plan.

Mr. Scheiring stated this was a typo based on the single-lot calculations of impervious surface of impervious surface as opposed to the combined-lot calculations.

Mr. Bamburak stated he is indicating that the 5,480 was not based on the smaller lot, but on the two lots which the Board has already voted on. Mr. Seheiring stated the 5,480 was based on the lot the house is on, and the River side lot was not added into that so it was a typo.

Mr. Hoffman stated he does not understand the R-2 versus the RRP issue. Mr. Habgood stated because this lot was existing when the RRP was created, any lots that were existing when the RRP was created are non-conforming and fall back to the R-2 requirements for impervious surface and setback.

Mr. Hoffman stated he is also concerned with the points raised by the other neighbors about allowing the structures to be built on an area that is known even after moderate rain to have standing water and to have a dry well that will collect 2” of rain and anything over this will spill into the existing area off the structure per the Plans and the Application of the Applicant. Mr. Hoffman stated refusing the Variance will not impose any undue hardship on the Applicant. He stated the Applicant currently has a one-car garage attached to this house. He stated the Applicant currently parks all of these vehicles in the driveway without impacting the impervious surfaces of the plot.

Mr. Hoffman stated the Applicant also currently has an above-ground pool.

Mr. Hoffman reiterated what a prior speaker indicated and stated there is no walkway shown to the proposed building, and he asked how this would be done. He noted the proposed location of the new structure and stated they will have to walk across standing water or a very muddy area, walk all the way around, or build a walk which, if built with stone, will be another impervious surface. Mr. Hoffman stated he does not understand the three garage bays since they are facing towards the house on the back side where there is no driveway. He stated there is only one single-bay faced toward the driveway from Robinson Place.

Mr. Hoffman stated he assumes that the Applicant actually has access to the road since he has never seen any proof. He stated when the Road was built, the construction of the road was paid for by people within the neighborhood; and the owners of the house when the road was built did not participate in this. Ms. Kirk stated she has not researched the development of this area and could not provide an answer to this question.

Mr. Hoffman noted Section 200-51B(1)(b) which refers to three other Sections of the Ordinance including Section 200-58. Mr. Hoffman stated such a large structure such as this commercial-capacity building proposed will create increased velocities during flooding, and this very large structure will impede the flow. He stated he is very

concerned that these increased velocities will increase damage to the other properties and threaten public safety. Mr. Hoffman stated rushing water hitting a very large concrete building will create very strong current.

Mr. Hoffman stated he is also concerned about the increase of vehicles on Robinson Place. He stated Robinson Place on the south side of the road has six houses that have approximately two cars each for a total of twelve cars. He stated this single structure from this single property will add six cars on this very small road. Mr. Hoffman stated this is a one-lane road. Mr. Hoffman stated his six year old son plays in the road, and he is concerned for his safety by increasing the traffic by 50% on the road. Mr. Hoffman stated he is also concerned about the contaminations of oils and chemicals; and even though they do not know how this building will be used, it is a very large, commercial structure capable of holding six autos. Mr. Hoffman stated he himself stores a quart of oil for one car in his garage, if he had six autos, he would have to store six times all the fluids; and he is concerned about this during flooding.

Mr. Hoffman stated as noted by earlier speakers, there is no compatibility of the proposed large, two-story garage with this small, residential neighborhood. Mr. Hoffman showed on one of the photographs showing the Applicant's lot and the lots across the street, and he stated it will be completely out of character with the neighborhood. Mr. Hoffman noted Section 200-69.A(14)(1) and stated the commercial-grade garage is completely out of essential character of the neighborhood and disproportionate to the existing building. He stated no one in the neighborhood has a garage that can hold more than two cars, and the proposed garage can hold six cars. He stated all buildings of the neighborhood are set back from the road more than 30', and this proposed building will be set back from the road by 14'. Mr. Hoffman stated a mammoth building of this size so close to the road will adversely impact the value of the neighboring properties. He stated as a neighboring property owner, his house is his largest asset; and he is concerned about this.

Mr. Hoffman noted Section 200-69.A(14)(a) states in part, "A residential accessory building shall be furthest removed from abutting streets." Mr. Hoffman stated in this situation, the Applicant's lot has a road in front and in back; and as a result a building of any size should be located at the center of the property, and he would recommend bordering the fence that the Applicant proposes to put up around the pool. He stated if this were done, they would have to build a larger driveway to the building and therefore increase the impervious surfaces.

Mr. Hoffman questioned the need for the second floor. He stated the Applicant has explained that the second floor is for storage of property especially during flooding; and as a person within the flood zone, Mr. Hoffman stated he can relate to that. However, he stated there is no second floor today so there is no undue hardship made on the Applicant by not approving the second floor of the structure. He stated most people in the neighborhood when they are concerned about their valuables on their first floor, rent a U-haul which they load and drive it to the Park & Ride off of I-95. He stated this is much less expensive than building a building, and it does not impose any hardships on the neighbors.

Mr. Hoffman stated another contributing factor to the height Variance is the proposed 12' ceilings on the first floor and the general size of the building. Mr. Hoffman stated he drove back from vacation to attend this meeting as he was advised it could not be postponed. He stated while on vacation he had discussed this matter with his brother-in-law who has thirty years of experience in the construction industry, and he believes that a two-car garage 24' by 24' with a 9' ceiling would not require a height Variance based off a standard 6" of rise pitch for every 12" of run. Mr. Hoffman stated even a three-car garage with a 9' ceiling, 24' by 36' would not require a height Variance; however, he has been advised that 9' would be the minimum you could have because of the size of the garage door.

Mr. Hoffman stated putting the building in the floodplain in a location known to have standing water after moderate rainfall is a bad idea. He stated it will create undue hardship and substantial damage to the neighbors during heavy rain and flooding. He noted the Applicant's home on the Plan and stated the water flows back to the back of the houses to the Canal and then flows down. Mr. Hoffman stated each of the neighbors have areas between their homes where water flows. He stated if they build this structure and take away pervious surfaces, more rain water will now flood and come toward the neighbors' properties. Mr. Hoffman stated he is particularly concerned because he has one of two properties with a basement, and he is concerned about suddenly having water in his basement.

Mr. Hoffman stated it will also be out of character with the surrounding community.

Mr. Bamburak asked that Mr. Hoffman and other speakers confine themselves to providing any new information as the Board has already heard that the neighbors are concerned with the size of the building, concerned that it is proposed to be too close to the road, and concerned that it will be in the floodplain.

Mr. Bamburak asked Mr. Scheiring why he has proposed three of the garage doors to be facing the yard with no driveway. Mr. Scheiring stated he is a car enthusiast, and he has classic and antique cars he would like to store there that are small enough to be maneuvered inside. He stated the doors were also for ventilation and flood issues so there is not an impact on the building from the floodwater. Mr. Bamburak stated he previously indicated that he would be parking the work vehicles, boat etc. inside the building. Mr. Scheiring stated this is also true. He stated they would be able to pull straight through and back straight out. Mr. Bamburak asked why they have the three doors, and Mr. Scheiring stated this is for ventilation and the flood controls and to “jockey” things around in the garage that he could not do from the single-door in the rear. He stated he could change this and do three doors in the rear if this is an issue. Mr. Bamburak stated with regard to flood controls, he could talk to some professionals as there are vents which could be used; and Mr. Scheiring stated these are there as well as the doors.

A short recess was taken at this time to provide the Board the opportunity to discuss a legal matter with Ms. Kirk.

When the meeting was reconvened, Mr. Bamburak stated the neighbors have testified that they have concerns and have raised a number of good points, and this has raised concerns by members of the Board. Mr. Bamburak stated he feels it would be in the Applicants’ best interest if they would request a continuance, possibly hire an attorney, and have further discussions with the neighbors, and some other professionals with regard to design. Mr. Bamburak stated they could either request a continuance to a meeting in the future and try to work out some of issues or they could choose to have the vote by the Board this evening although he could not guarantee what the vote would be.

Mr. Scheiring stated they would like to hire an attorney, and he asked for a continuance to August 16. Mr. Bamburak asked if he feels this is sufficient time to meet with the neighbors and speak to an attorney. Mr. Scheiring stated he did try to discuss this with his neighbors, and some of them would not speak to him. Ms. Kirk suggested that if he does consult with an attorney that he present the information he has now, but added the attorney make require additional time to make suggestions; and rather than rush for two weeks, she suggested that they carry this to the September 6 meeting which would provide ample attorney for the attorney to review the matter. Mrs. Scheiring stated she has spoken to an attorney already but he has not seen the drawings. The Applicants agreed to continue the matter to September 6.

Mr. DosSantos moved, Mr. Gruen seconded and it was unanimously carried to continue the matter to September 6, 2011.

Ms. Kirk stated there will not be another notice sent out to the residents, and this is the notice that the next time this matter will be heard will be on September 6. She stated those who have requested Party status are still a Party to the Application; and even if they cannot attend the meeting on September 6, they will still receive a copy of the Board's Decision if one is rendered that night.

Mr. Gruen asked if the Applicants' attorney would request a postponement, is there a way the residents can find out prior to the meeting that a postponement was requested. Ms. Kirk suggested that the Applicant be provided a copy of the list of those who requested Party status, and this list could be provided to their attorney who would know what to do if their attorney is going to ask for a continuance.

APPEAL #11-1590 – DARIUSZ CZERNIAK (continued discussion)

It was noted that this matter was deferred from earlier in the evening as the Applicant was not present at that time. The Application was still not present. Ms. Kirk stated the Applicant had installed a driveway that was extended without securing the appropriate Permits. She stated based on what the Applicant had presented at the initial Hearing on June 7, the driveway was extended by 300 square feet; however, the Applicant did not provide any calculations as to impervious surface coverage, and the Board was not able to determine the increase in impervious surface that the Applicant was seeking. Ms. Kirk stated the Board had suggested that there be a Continuance until July 5 so that the Applicant could get the calculations and have them submitted to the Township prior to the Board meeting so that there could be review of the calculations. Ms. Kirk stated based on the information provided to the Board there was no way of determining the amount of the impervious surface coverage that is being requested.

Mr. Gruen asked if the Township had a position, and Ms. Kirk stated the Township did not enter its appearance one way or the other with respect to the Application. She stated this matter had been brought to the Township's attention, and the Applicant had received the Notice of Violation for having the driveway extended without securing the appropriate Permit.

Mr. Smith stated he had previously asked for an Extension by a letter.

Ms. Kirk stated the Board does have the option to deny the request this evening. Mr. Bamburak stated he assumes he would then have to go to Court. Mr. Habgood stated he would have to discuss this with the Township Zoning Officer to see what the next step would be adding that they had already been to District Court on this.

Mr. Smith moved and Mr. Bamburak seconded to deny the Appeal.

Mr. Gruen asked if there is a way that they could give him a ten-day notice to show up at the Township. Ms. Kirk stated the Board does not have the authority to make a notice provision requiring the Applicant to appear at the Township. She stated what is before the Board is an Application seeking a Variance for increased impervious surface coverage. She stated the Board has no information to make a Decision on the Application, and the Applicant was aware of the Hearing as notice was provided by the Township, and the Applicant opted not to appear. Mr. Gruen stated he is hesitating because it seemed that the Applicant had difficulty understanding English.

Mr. Habgood stated after further review of the file, it appears that the Applicant was not sent a letter advising that the Appeal was continued to this evening. It was noted that the Applicant had requested and the Board had agreed to continue the matter until this evening, but the Township did not send them a letter advising them that it was continued.

Mr. Smith withdrew his Motion.

Mr. Gruen stated they should be sent a letter indicated that the matter will be heard on August 16, and if he does not attend, they will vote against him. Other Board members were not in favor of indicated that they would vote against him if he did not show up and they should just advise him of the date.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to grant a Continuance until August 16 and to provide the Appellant proper notice.

OTHER BUSINESS – ARIA DISCUSSION

Ms. Kirk stated August 16 was set aside for the Aria meeting pending a decision by the Common Pleas Court on the issue of the subpoenas. Ms. Kirk stated the documentation was filed, and the Court scheduled a Hearing for August 22 to hear the matter, but the Township solicitor indicated he would be out of town and not available, so that Hearing is being continued. Ms. Kirk stated since there is no decision with respect to the documents requested under the subpoena, and a Hearing is not going to be held until the August 16 date, she would recommend that the Board continue this matter and cancel it for August 16. She stated she has spoken to all counsel, and while the Applicant's attorney is opposed to the Continuance, he understands the situation. All other counsel are in agreement with the Continuance. Ms. Kirk stated the next date they would normally schedule this would be September 20 but Mr. Smolow is on vacation that week, and the Board may want to consider having the Hearing on the fourth Tuesday of September which would be September 27.

Mr. DosSantos stated he is concerned about the Applicants having to wait additional time if the delay is due to Mr. Smolow not requesting the documents in a timely manner. Ms. Kirk stated based on the paperwork that was provided to her in the Pennsylvania Department of Transportation's answer, Mr. Smolow did request certain documents under the Pennsylvania Right-To-Know Law, was denied those documents, and an Appeal was taken to the Office of Open Records. She stated the Office of Open Records determined that the documents requested were not public records, and Mr. Smolow never filed an Appeal of that Determination; however, he is proceeding with his Petition through Doylestown. She stated she does not feel it would be wise for the Board to proceed without getting a Decision in that respect. She stated this Hearing should be in August. She stated they have asked for it to be rescheduled to alternate dates the last week of August.

Mr. Gruen moved and Mr. DosSantos seconded to continue the Aria Hospital Remand Hearing from August 16 to September 27, 2011. Motion carried. Mr. Smith did not participate in the vote.

There being no further business, Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to adjourn the meeting at 9:45 p.m.

Respectfully Submitted,

Jerry Gruen, Secretary