

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – JULY 17, 2012

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on July 17, 2012. Chairman Bamburak called the meeting to order at 7:11 p.m.

Those present:

Zoning Hearing Board:        Paul Bamburak, Chairman  
   Jerry Gruen, Secretary  
   Keith DosSantos, Member  
   Anthony Zamparelli, Member  
   James McCartney, Alternate Member

Others:                                Robert Habgood, Code Enforcement Officer  
   Nathan Fox, Township Solicitor  
   Mark Eisold, Township Engineer  
   David Truelove, Township Solicitor (Aria only)  
   Barbara Kirk, Zoning Hearing Board Solicitor  
   Kristin Tyler, Supervisor

APPEAL #08-1481(A) – THE FRANKFORD HOSPITAL OF CITY OF PHILADELPHIA, INC. (REMAND)

Mr. Bamburak stated this matter has been a difficult case for the Zoning Hearing Board. He reminded everyone that the Board members are volunteers, and they do not get paid in any way for serving on the Zoning Hearing Board. He stated there has been a vacancy on the Board for three months which has been advertised on the Township TV Channel and Website, and no one has applied.

Ms. Kirk stated the Board met for approximately ten minutes in Executive Session as some of the Board members had questions about current case law and the legal basis for a Special Exception after reviewing the Briefs that had been submitted.

Mr. Smolow stated he understands that over the last few weeks, the Board has received a number of letters and correspondence from people in the community both for and against the Hospital's Special Exception; and he would like to make a Motion that the Board accept those letters into the Record. He stated there was some confusion at the last Hearing over whether that was going to be the last Hearing, and he feels it would be fair to those who wrote the letters to admit them into the Record.

Mr. VanLuvanee stated under the Municipalities Planning Code, the Board is prohibited from taking Ex parte notice of any Ex parte communications; and the letters that were received by the Board and not forwarded to counsel fall within the category of Ex parte communications. He requested that they not be made part of the Record.

Mr. Bamburak stated while he understands Mr. VanLuvanee's Objection, he feels they serve value and indicate going forward the public opposition. He stated he realizes the role public comment is supposed to play at the Zoning Hearing Board meetings, but he feels because of the body and duration it is important to admit the letters.

Mr. VanLuvanee stated he assumes that at some point Ms. Kirk will put together a list of whatever it is that will be included in the Record as he has not seen any of the Ex parte communications. Mr. Truelove stated he has not seen them either. Ms. Kirk stated she has been getting copies of letters that have been submitted to the Township, and she will collect all the letters she has received copies of and make copies for all the attorneys.

Mr. VanLuvanee stated his concern with respect to Mr. Smolow's Motion is that it may be that individual members of the Zoning Hearing Board received communications, and he is not sure whether Mr. Smolow's direction was for those as well or just related to communications received by the Township. Mr. Smolow stated he is just speaking of the letters that came through the Township. He stated he has not seen any of the letters either. Mr. Bamburak stated all the letters that he received came in a Township envelope or in the Board packet.

Mr. Gruen moved to reject Aria's request for Special Exception. Mr. DosSantos seconded. The Motion carried with Mr. Zamparelli opposed.

A short recess was taken at this time.

#### APPEAL #12-1635 – GREGORY AND MARY KAYE SARGENT

Mr. Bamburak stated this matter was continued from June 5, 2012.

Mr. Edward Murphy, attorney for the Applicants, stated at the conclusion of the Hearing when this matter was heard, the matter was continued to enable the Township engineer to go out and make a site inspection of the Applicant's property as well as the adjacent neighbor's property. Mr. Murphy stated he understands that the site inspection has been completed by the Township engineer. He stated he received a copy of the report prepared by the Township Engineer commenting on his site inspection. Mr. Murphy stated additionally his clients had commissioned their own independent engineering review of

the property as a result of comments made at the last Hearing regarding stormwater. Mr. Murphy stated both his client and their neighbor had installed tree lines along their common property line; and at the last meeting, the neighbors indicated that at times there was ponding water on their side of the line which they alleged was resulting from the additional impervious on the Sargent side.

Ms. Kirk asked Mr. Murphy if he is requesting that the Board accept a copy of Mr. Eisold's July 11, 2012 letter as an Exhibit; and Mr. Murphy stated he believes that a copy of Mr. Eisold's report should be included as part of the Record of these proceedings, and it could be marked as either the Applicant's or Township's Exhibit. Ms. Kirk stated the Township was only participating but not actively taking a position with respect to the Application so she recommended that since the Township is not an active Party to the proceedings, the letter should be marked as Exhibit A-11. Ms. Kirk stated this is a two-page letter dated July 11, 2012 directed to Nancy Frick, Director of Planning and Building, and included two photographs and a Plan of the subject property involved in this Application.

Mr. Eisold stated he did meet with the Sargents and their neighbors, the Cauleys, about the situation and looked at what had been constructed. He stated the pictures provided in his report show the before and after conditions. He stated he looked at the amount of area draining to the common property line before and after and also looked at the amount of impervious surface draining to the common property line. Mr. Eisold stated in both cases it indicated that there was less total area and less impervious area coming to the common property line between the residences which would indicate less run off.

Mr. Eisold stated when he met with the Cauleys it was after a day of fairly steady rain; and while he agrees that there were some low areas with some little puddles, looking at the impervious surface and the drainage area before and after the work was done, a lot of the water has been piped around to the opposite side of the house away from the Cauleys' property. He stated he has concluded that the run off after construction is less than it was before construction based on engineering calculations and accepted engineering practice.

Mr. Gruen asked Mr. Eisold if he has made any recommendations; and Mr. Eisold stated his job was to look at the run off, and he has concluded that there is less water after the work was done than there was before the project was done. Mr. DosSantos stated it appears that whatever remedial measures were taken during construction seem to have helped; and Mr. Eisold stated from an engineering standpoint, they have addressed the concerns. Mr. Gruen asked if there is anything that can be done about the standing water, and Mr. Eisold stated there was a low spot where they had holly trees; however, looking at the grass in the area, it did not appear that there was standing water for any appreciable time.

Mr. DosSantos asked Mr. Eisold if having looked at the property, does it appear that anything that was done by way of improvements by the Sargents that is causing this standing water; and Mr. Eisold stated he does not believe so. He stated the holly area is between the driveways, and most of the improvements that were done by the Sargents are more toward the rear of the property, and the water would not be getting to the area where the low spot was.

Mr. Gruen noted the Sargents installed their holly trees on a slight berm, and he asked if this could be causing water to stay on the Cauley property; and Mr. Eisold stated if it is, it is water that is generated from the Cauley's property and the berm is actually preventing the water coming off the Sargents driveway from getting onto the Cauley property. Mr. Gruen asked if there is room for some additional planting of water-loving plants; and Mr. Eisold stated this may be possible although a lot of additional trees have already been planted on the Sargent property as part of this project. He stated part of the Township's Stormwater Management Ordinance allows you to take credit for trees, and the Sargents went above and beyond anything that would be required for that.

Mr. Murphy stated his engineering Witness will provide a copy of his report and Testimony to further elucidate some of the comments made by Mr. Eisold.

Mr. William R. McNaney, Van Cleef Engineering, was sworn in. The CV for Mr. McNaney was provided and was marked as Exhibit A-12. Mr. McNaney stated he has been employed as a Project Manager at Van Cleef since 2005. Mr. Bamburak agreed to accept the Witness.

Mr. McNaney stated he has heard Mr. Eisold's comments and has had a chance to review Mr. Eisold's report dated July 11 which was marked as Exhibit A-11. Mr. McNaney agreed that he was commissioned by Mr. and Mrs. Sargent to make a site inspection of their property and to prepare his own report commenting on what he observed with regard to stormwater impacts on the property. Exhibit A-13 was marked which is a copy of the Stormwater Mitigation Analysis Report prepared for TMP #20-7-41-37, dated July 7, 2012 prepared by Mr. McNaney.

Mr. McNaney stated when he made his site inspection, he observed the improvements that were installed by the Sargents and also took careful note as to where the drainage was directed from the improvements. He stated he agrees with Mr. Eisold that the drainage was re-directed away from the Cauley property line. Mr. Murphy asked Mr. McNaney if he was aware that at the time of the original Subdivision Plan Approval, the impervious surface for each lot was slightly less than the 21% that would be otherwise allowable in this Zoning District, and Mr. McNaney agreed. Mr. Murphy stated subsequent to that Approval, thirteen months ago the Board of Supervisors authorized an increase of 332 square feet of impervious to bring the impervious level on the Lot up to the allowable 21%, and Mr. McNaney agreed. Mr. Murphy stated since that time the Sargents added an additional amount of square footage to increase that on-lot

impervious surface ratio to 22.56%, and Mr. McNaney agreed. Mr. Murphy stated Mr. McNaney's impervious surface Summary Chart in the Report identifies each of those additional square footage areas and the relative impervious related to each of them, and Mr. McNaney agreed. Mr. Murphy stated the Summary Chart shows that there was an additional 789 square feet of impervious for which on-lot stormwater management facilities needed to be provided in order to properly address the additional impervious, and Mr. McNaney agreed.

Mr. Murphy asked Mr. McNaney what he did to analyze whether or not the steps the Sargents took last summer as part of the additional construction was adequate in order to address the additional impervious. Mr. McNaney stated he performed calculations to quantify the required mitigation given the amount of stormwater volume that was required to be provided for. Mr. Murphy asked what guide he used in order to undertake the calculations, and Mr. McNaney stated he followed the Lower Makefield Township/ Neshaminy Creek Watershed Stormwater Ordinance. Mr. Murphy stated that Ordinance is a stand-alone Ordinance in the Township which the Township adopted separately, and is not part of the Zoning or Subdivision and Land Development Ordinance; and Mr. McNaney agreed. Mr. Murphy stated in that Ordinance is spells out the methodology for calculating the amount of volume generated or associated with impervious so that you know how big to size stormwater facilities, and Mr. McNaney agreed. Mr. Murphy stated in Mr. McNaney's Report there is a Water Quality Volume Calculation which is the volume calculation just referred to by Mr. McNaney, and Mr. McNaney agreed. Mr. Murphy stated this is provided in the Appendix of the Neshaminy Creek Watershed Stormwater Ordinance that was adopted May 18, 2011 by the Township, and Mr. McNaney agreed.

Mr. Murphy asked Mr. McNaney to review what his calculations concluded. Mr. McNaney stated per the Ordinance the required volume of stormwater management required was 132 cubic feet. He stated there is also a Section in the Ordinance that allows for a calculation noted by Mr. Eisold and part of the credit would be for the trees that were planted. He stated as part of his site visit, he counted the trees that were planted by the Sargents; and by tallying up the trees and utilizing volume credits in the Ordinance, he calculated that the provided stormwater management was 216 cubic feet and the required was only 132 cubic feet. Mr. Murphy stated what was actually provided by the Sargents was not quite double their obligation to account for the additional impervious on the lot, and Mr. McNaney agreed. Mr. Murphy asked what would be the effective impervious surface ratio on the Lot, acknowledging those calculations; and Mr. McNaney stated it would be 18.1% based on what was provided by the Sargents which is below the 21%.

Mr. Murphy asked Mr. McNaney to review his Report Summary, and Mr. McNaney stated he indicated that there was additional impervious surface area of 457 square feet constructed on the property in addition to the 332 square feet previously approved by the Township for a total of 789 square feet. He stated he also indicated that this has been mitigated not only for the 789 square feet but above and beyond that as well.

Mr. McNaney stated while he was at the site he also noted that the stone pavers that were placed around the pool have a 6” gap between them even though the impervious calculations consider them as if they are all put together. He stated this allows some opportunities for more infiltration than if they were put together. Mr. Murphy stated he did not assume for purpose of his Report that the 6” gap existed, and Mr. McNaney agreed. Mr. McNaney stated he conservatively calculated it as if they were all together. Mr. McNaney stated he also noted that most of the impervious surface drains to landscaped beds which are raised which detains the water. He also noted the roof downspouts were directed away from the common property line with the Cauleys, and that run off is diverted into a pipe, going away from the property line toward existing stormwater structures.

Mr. Murphy stated the last section of Mr. McNaney’s Report is entitled, “An Analysis of the Drainage Adjacent to the Western Property Line;” and Mr. Murphy stated this is the shared property line with the Cauleys, and Mr. McNaney agreed. Mr. Murphy stated Mr. McNaney prepared a pre and post construction analysis of the run off coefficient. Mr. McNaney stated a run off coefficient is the percentage of water than run offs of a certain surface. He stated more water runs off impervious surface than lawn. Mr. Murphy stated it appears that the comparison between the run off coefficient before the before the pool was constructed and after the pool was constructed appears to be consistent with Mr. Eisold’s observations that there appears to be less water along the western boundary line after the pool was construction than there was before; and Mr. McNaney agreed.

Mr. Murphy asked why the numbers 0.39 and 0.36 are relevant. Mr. McNaney stated he took the area that was previously lawn and applied the lawn coefficient and took that same area after construction and applied the appropriate coefficient; and in some cases it went up to .9 and in other cases such as the pool surface which retains water and other areas which take the water and divert it away from the common property line so effectively the ratio run off is decreased.

Mr. Murphy stated in the Report there is an excerpt of the Stormwater Management Ordinance that refers to non-structural BMPs, tree planting, and preservation; and Mr. McNaney agreed. Mr. Murphy asked if this is part of the Stormwater Ordinance to which Mr. McNaney referred when he did the calculations and provided the appropriate credits for the landscaping provided by the Sargents last summer, and Mr. McNaney agreed this is what he utilized in calculating what was provided in the way of stormwater management.

Mr. Murphy marked as Exhibit A-14 a copy of the Appendix to the Neshaminy Creek Watershed Stormwater Management Ordinance upon which Mr. McNaney relied in preparing the calculations.

Mr. Gruen asked Mr. McNaney when he takes the trees in account when determining impervious surface, what rain event is considered. Mr. McNaney stated the Ordinance has a volume-based requirement. He stated you calculate a required volume based on impervious, and then you get credit for the planted trees. He stated in addition he did some qualitative observations such as the berms that were in place around the impervious which also helps to capture the rainwater. Mr. Gruen stated if there is a heavy downpour will the water stay on the property; and Mr. McNaney stated by virtue of the second calculation whereby the water is diverted away from the common property line, the ratio of run off is handled.

Mr. DosSantos asked about the discharge from the downspouts, and Mr. Murphy stated it is on the eastern side of the property. Mr. Gruen stated he assumes that it is large enough to handle the volume of water; and Mr. McNaney stated while he does not have a size on this, it appears so and there is a very large trench grate. Mr. Gruen asked about the pipe, and Mr. McNaney stated it appeared large enough to handle the amount of water adding it is only a roof top area. Mr. DosSantos asked Mr. Eisold if he had an opportunity to look at this area and feels it is sufficient; and Mr. Eisold stated he does feel it is sufficient.

Mr. Murphy asked Mr. Eisold if he has any comments about Mr. McNaney's Report; and Mr. Eisold stated he agrees with the Report.

Mr. Bamburak stated it appears that the neighbors were complaining that there is a problem as a result of the construction, but it appears that it is not the fault of the Sargents because they have actually done more than they had to do and it is better after construction than it was before construction. Mr. Murphy stated he is not convinced that there is a problem, although he would defer to the engineers who made the site inspection. He stated Mr. Eisold indicated that he saw, following a day of rain, that there were some small pockets of standing water that apparently dissipated relatively quickly. He also stated he feels that the Reports confirm this. He stated it may be that the plants on the Cauley side were planted too low and could have been raised up to avoid a problem. He stated what the Sargents have done went well beyond what the Township engineer required last summer as part of the pool construction, and they can accommodate the other 456 square feet of impervious that was not originally accounted for in the original calculations.

Mr. Murphy stated Mr. Bamburak had indicated at the conclusion of the last Hearing that they should focus their attention not on the east side where they had discussed the installation of a rain garden as a discharge point, if the Board felt this was appropriate, but to focus their attention on the west side which gave rise to the request for the Township engineer to make an inspection. Mr. Murphy stated he now feels the two engineer reports are suggesting that there is nothing else they can do to try to alleviate the perceived condition that exists.

Mr. Gruen stated he recalls that the walkway was supposed to be removed as part of the original Condition of the Variance; and Mr. Murphy stated that was a Condition of the issuance of the Building Permit, and it was originally intended to be removed but was not. Mr. Gruen stated at this point the Applicant is asking to keep it as is, and Mr. Murphy agreed that they would like to maintain the walkway from the driveway to the rear of the home.

Mr. DosSantos asked if the impervious depicted in Exhibit A-8 includes the walkway in the calculations done by the engineers, and Mr. Murphy stated it does. Mr. DosSantos asked the location of the walkway, and Mr. Murphy stated it is on the western side although not along the boundary. Mr. DosSantos asked if it is felt that there is any detrimental effect on the western property line by virtue of having this extra square footage, and Mr. Murphy stated this is part of the 456 square feet. Mr. Eisold stated he does not feel it is detrimental. He stated there were other areas from the addition that now go to the eastern side that more than make up for that amount; and there is even a portion of the existing roof over the garage that used to flow toward the Cauley's that now goes into the under drain system and goes out the other side of the property which is quite a large area. Mr. DosSantos stated they have therefore accommodated for any additional impervious show on A-8.

Mr. Murphy stated the smallest portion of the 456 square feet is from this walkway and also included the steppers where the lounges were and the little bit wider pool decking than was originally contemplated. He stated it is a combination of these areas that makes up the total 456 square feet.

Mr. DosSantos noted the engineer testified that with regard to the steppers, the entire area was calculated; but there is actually a 6" gap between. Mr. Murphy stated in the photograph it is seen that there are gaps between the steppers where in theory water could go through; however, Mr. McNaney presumed that there was no gap and assumed all of the area was impervious just to be on the safe side. Mr. DosSantos stated this is therefore a more conservative estimate, and Mr. Murphy agreed.

Mr. Bamburak stated the walkway was supposed to be removed; and Mr. Murphy stated in retrospect, it does serve a function and enables people to walk from the driveway to the back of the house. Mr. Zamparelli agreed that they have mitigated it. Mr. DosSantos asked if they could put in some type of gapping on the walkway similar to what they have with the steppers. Mr. Bamburak stated he does not feel it will help and will just destroy the walkway. Mr. Gruen stated it would have been better if they had come before the Zoning Hearing Board before this.

Mr. Bamburak asked what happened when Mr. Eisold met with the Cauleys, and he asked if they understood the analysis. Mr. Eisold stated from his initial observations it appeared that there was less water getting to the Cauley side, and he did mention this to them. He stated Mr. Benedetto was also present, and they tried many times to try to explain this to the Cauleys, but the Cauleys did not seem to really want to understand the engineering side.

Mr. McCartney asked what is around the pool, and it was noted it is bluestone. Mr. McCartney asked if there is stone between, and it was noted there is lawn in between.

Mr. Bamburak asked if the Cauleys would like to speak. They were reminded that they had been previously sworn in. Mr. Cauley stated there have been a lot of engineering reports, but he has a line of trees that will probably die as a result of the remediation that was performed by the Sargents. He stated unless someone is doing a more comprehensive study, his trees are going to die. He stated he installed the beds before the Sargents installed a line of trees.

Mr. Cauley stated he was reading the Ordinance and he noticed Paragraph 200-97 which refers to “hardship.” Mr. Bamburak stated the Board understands this provision. Mr. Cauley stated he followed the Ordinances, submitted his Permits, and “played by the rules.” He stated they have decided to do something beyond the rules and put in additional impervious materials and not remove the walkway which was a Condition for getting the Permit. He stated now they are showing a remediation for getting caught. He stated the Sargents have not demonstrated any hardship. He stated there is no hardship. He stated with regard to the bluestone steppers, they could have put their patio furniture on grass. He stated there are also pervious options with regard to a walkway which were available to them, and they did not do any of these things. He stated he has a negative impression of this process since he is someone who follows rules. He stated there was a violation, and to approve this is to reward them for something that they should not be rewarded for.

Mrs. Cauley stated she too follows the rules and does not break rules and then come in and ask for permission to get her way with her walkway and her impervious for whatever she wants to do. She stated she is concerned with what will come next if this is approved. Mrs. Cauley stated she had the impression that Mr. Eisold did not even want to walk the property until she suggested it. She stated with regard to the berm in the back, she showed Mr. Eisold the Sanchez property and advised him that the water off their tree plantings which are about two feet high are pouring into the Sanchez property; and Mr. Eisold stated this was not true, and the berm was directed to the Cauley's property. Mrs. Cauley stated this is the berm that runs along the whole back of the Sargent's property where they planted the trees. Mrs. Cauley also stated she does not know how water could go up hill and would not come down to her property when the Sargents planted their trees up high. She stated water runs downhill so that if the Sargent trees are planted above the Cauley driveway, the water is obviously coming down to them.

Mr. Bamburak asked Mr. Eisold if he could tell the condition of the Cauley trees, and Mr. Eisold stated they do not appear to be stressed at this time; but they are in a low area. He stated the holly trees on the Cauley side were planted flush or low to the ground, and the water as ponding around. He stated it seemed like a localized low point as the driveway went up, there was a low point, and then the driveway went up again. He stated right around the trees, the area was definitely lower, and the water could not flow out.

Mr. Bamburak asked Mr. Cauley when the trees were planted, and Mr. Cauley stated they were planted in September. Mr. Cauley stated they were not at a low point. He stated there was a build up. He stated you can see the build up in the berm where the Sargents made a berm and put their trees on it, and this is what is causing the Cauley trees to be damaged. He asked who will pay his bill to raise this up now. Mr. Bamburak stated this is not a matter for the Zoning Hearing Board.

Mr. Gruen asked how far apart the Cauley trees are planted from the Sargent trees, and Mr. Cauley stated there is about four feet from trunk to trunk. Mr. Gruen asked Mr. Cauley what he would like to see done. Mr. Cauley stated he would like them to follow the rules. Mr. Gruen stated the rules have already been broken. Mr. Bamburak stated they understand the Cauley's position. He stated the Sargents have done remediation. Mrs. Cauley stated she feels they should rip up the walkway and put down wood slats. She stated she would like to see them rip up something because she does not feel they should be rewarded for breaking rules. She stated she also feels they knew what they were doing.

Ms. Judy Curlee, 551 River Road, was sworn in. Mr. Murphy asked her location in relation to the property. Ms. Curlee objected to this, and Mr. Bamburak stated there is a legal reason for this and she should have standing. Ms. Curlee stated she lives in the Township. Mr. Murphy asked where her residence is in relation to the subject property,

and Ms. Curlee stated it is within four miles. Mr. Bamburak stated Ms. Curlee has no standing to comment on this case. Ms. Curlee stated she knows that they like rules to be followed.

Mrs. Cauley stated if everyone in the development went up to 22.56%, the stormwater management system is not designed to accommodate this at the present time. Mr. Bamburak stated this is not the matter before the Board this evening. Mrs. Cauley stated she feels this should be a consideration. Mrs. Cauley asked if she would be able to go to 22.56%; and Mr. Bamburak stated she would have to make an Application, and the Board would hear her case accordingly.

A short recess was taken at this time.

Mr. Murphy moved the Exhibits entered tonight – Exhibit A-11 through Exhibit A-14.

There being no further comments, Testimony was closed.

Mr. DosSantos moved, Mr. Gruen seconded and it was unanimously carried to approve the relief requested.

#### APPEAL #12-1639 – CHRISTINE STOECKEL

The Application submitted was marked as Exhibit A-1. A three-page Plan was marked as Exhibit A-2. The matter was published in the Yardley News, and 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 residents as required by the Ordinance, and a copy of the letter with a listing of the residents was collectively marked as Exhibit B-3.

Mr. Scott Fegley, attorney, was present representing the Applicant. He presented fifteen photographs which were collectively marked as Exhibit A-3.

Mr. Fegley stated this is an Application for a fence within a sewer easement. He stated at one point in time there was a common fence between the two homeowners. On Page 1 of the photographs there is a picture of the old solid, wooden fence that separated the two properties. He stated you can also see landscaping on the Stoeckel side of the fence. He stated the neighbors chose to put in a new fence. He stated the new fence installed is shown on Page 1 of the photographs. He stated they had a survey of the property, and the surveyor determined that the old fence which had been there prior to both the homeowners purchasing their properties, had been put two feet into their property; and they decided to put the new fence right along the property line and take out all of the

vegetation that was on the Stoeckel property. He stated the Township learned about the new fence and advised his client that they were no longer in compliance with regard to having a pool fully enclosed by a fence, and they were required to install a fence that would comply with this requirement.

Mr. Fegley stated in order to comply and install the fence, and putting it right where the neighbor's fence is, it would not comply with the requirement that it be ten feet from the water line. He stated there is no place that they could put the fence that would comply with the Township Ordinances as to how far back from the property line and how far from the water's edge, they need to be.

Mr. DosSantos noted Page 1 of the photographs and noted the top left picture which he assumes is the "before" and the right hand is the "after," and Mr. Fegley agreed. Mr. DosSantos asked if the old wooden fence was beyond the 10' from the water's edge; and Mr. Fegley stated while he is not sure of the measurement, it was two feet further into the neighbor's property and further away from the water line. When the neighbors put in the new fence, they put it right on the edge of the property line, two feet further in, and removed all of the existing vegetation and landscaping.

Mr. Gruen asked if the alternative is to have them remove the pool. Mr. Habgood stated they are requesting a Variance to put the fence in the easement which would meet the setback requirement as well.

Mr. Fegley stated his client understands that if the Township were to need access to do work on the sewer, it would be at his client's expense to remove and replace the fence at their own expense.

Mr. Zamparelli asked the problem with using the existing fence, and Mr. Fegley stated this is the neighbor's fence; and the Township no longer allows a common fence to comply with the pool enclosure Ordinance unless they were to get some kind of written document from the neighbor that they would let the fence comply, and the neighbor does not want to do this since their insurance would then be effected. He stated now they will have to have two fences even though they are right next to each other.

Mr. McCartney asked if the neighbor got a Variance for the fence; and Mr. Habgood stated they did not since it appears that the existing fence along the neighboring property was a non-conforming fence, and all they were doing was replacing it. He added that the neighbor agreed on the Permit for the replacement that if the Township ever had to get in there to do work within the easement, that it would be at their cost to remove and replace their part of their fence.

Ms. Kirk asked if this is a stormwater drainage easement or a sewer easement; and Mr. Habgood stated he believes that it is a storm water easement taking the water from the street into the detention basin in the rear of the property. Ms. Kirk stated generally the Board when approving this type of Application has always indicated that the fence be at least 2” from the ground to the bottom of the fence, and she asked if this will still allow the Applicant to comply with the fence requirements around an existing pool; and Mr. Habgood stated it would.

Ms. Tamara Stergion, 355 Sherwood Drive, was sworn in and stated they live next door to the property. She stated she is the neighbor that previously had the shared fence. She stated she and her husband went about everything the correct way and had the land surveyed.

Ms. Stergion asked how many inches or feet will the new fence be placed from her recently-surveyed property line because although Mr. Fegley indicated that they took back all of their property, they really did not; and there is a section in the back of their yard where they had railroad ties built up with a big tree on top, and they did not want to tear that out so they were trying to be nice and left one foot in the back that is their property. She also stated that in the front of the property line, because there was a tree there, they did take out part of a shrub, but they did not take down the tree. Mr. Fegley stated the fence will be placed according to the Plan on the Stoeckel property.

Ms. Stergion asked the detail regarding the construction of the corners of the fence to insure that there is not a gap for the children to get into the pool as currently there is a big gap in the back of the property where her new fence is and then a gap with their old fence. She stated she is concerned that neighborhood children could “sneak” through and get in their pool right now. Mr. Fegley stated this is because the old fence was taken down. He stated when the new fence is installed, it will fully enclose the pool.

Mr. Bamburak stated this is a Building Code issue, and the fence will have to be continuous. Ms. Stergion stated it looked to her that on the Plans that were submitted, it was just a stockade fence on that side and not enclosing the whole pool.

Ms. Kirk stated what the Applicant is requesting is permission under the Zoning Ordinance to allow a fence to be constructed over an existing stormwater easement. She stated once the Board renders its decision on the Application, the Applicant will have to submit a Building Permit Application to the Township with the specifics as to location of the fence, height of the fence, and how it is going to be around the pool area in order to comply with the Township’s Ordinance. She stated if the Applicant does not meet the requirements of the Building Ordinances imposed by the Township, no Permit will be issued; and Ms. Stoeckel will have to either rectify or submit a Revised Plan. Ms. Kirk stated what they are considering tonight is specifically dealing with the fact that the fence will be located over an existing easement.

Ms. Stergion asked if there is a certain amount of time that they need to comply with regard to having a fence around their pool. She stated she would like it on the record that this is a liability as the back of their property is the Township property. Ms. Kirk stated the Township must be aware of this since the Township is the one that notified Ms. Stoeckel that the fence in its present condition no longer complies with the requirement of having the pool enclosed as the Township requires. Ms. Stergion asked the timeframe that the Township puts on having an “unsafe pool, and a climbable fence.” Ms. Kirk stated procedurally the Township issues a Notice of Violation and gives the property owner thirty days to submit an Application to the Zoning Hearing Board, and this is what has happened this evening. She stated once the Zoning Hearing Board renders its Decision, there is a thirty-day Appeal period for someone to file an Appeal to Doylestown. She stated once that thirty-day Appeal period has expired, Ms. Stoeckel will then be able to submit all the Building Permit Applications to the Township for approval of the Plan to have the fence installed. She stated these time constraints are imposed by the law.

Ms. Stergion stated she and her husband are in favor of granting the Variance to have the fence in the easement. She stated she hopes that in the ninety-day period nothing bad happens to any young children or animals in her neighborhood.

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

Mr. Zamparelli moved, Mr. DosSantos seconded and it was unanimously carried to allow the Applicant to build the fence to encroach into the easement with the Condition that they remove the fence if requested by the Township to work on the sewer and that it be 2” above the surface.

#### APPEAL #12-1640 – NATALIA MARTYANOVA AND CHRIS MC CABE

The Application submitted was marked as Exhibit A-1. A one-sheet 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 also posted with Notice of tonight’s Hearing, and that Posting was marked as Exhibit B-2. Notices were mailed to residents as required by the Ordinance, and a copy of that letter with a listing of the residents was marked as Exhibit B-3.

Ms. Kirk stated the Township will be taking a position on this matter, and Mr. Fox stated the Township is seeking Party status.

Mr. Chris McCabe was sworn in and stated his Application is for a pool in the back yard of his home; and when they picked up the Application for the Permit they found out that it will bring them over the impervious and also that their fence goes into an area that is a 100 year flood zone, and they are not allowed to have a fence there. He stated there is already an old fence there. He stated they would like to have a new fence around the pool and it would be a couple inches off the ground and they would meet the other requirements for the fence. He stated their impervious surface will be over 25% with the addition on the front of the home and the cement that goes around the pool itself.

Ms. Kirk stated based on her review of the Application they are also proposing to construct a 600 square foot addition to the house, and Mr. McCabe agreed.

Mr. Bamburak stated there is also a proposed circular driveway; and Mr. McCabe agreed although it is not circular through the whole thing, but just so you can get to the back of the property.

Mr. Bamburak stated they are sensitive about construction in the floodplain, and they are asking for a substantial increase in the impervious area. He asked if he has discussed this with any of his professionals, and Mr. McCabe stated he did not too long ago. He stated he is a little bit above the flood as he is at approximately 30'. He stated he does not know where it turns into a flood zone. He stated he has pictures that show that back where the fence and the pool area would be there is another 2' of elevation. He stated he does not feel that the flood zone would go to where the fence would be.

Mr. Bamburak stated 25.65% is a large number. He stated he assumes a professional drew the map, and Mr. McCabe stated they were from the pool.

Ms. Kirk stated asked if he is aware that the Application shows that he currently has 19.4% impervious surface coverage on the property, and Mr. McCabe stated this is how they bought the house. He stated there is a porch currently, so he is not taking that much impervious. He stated most of the impervious is the driveway and not actual living space and they just have a large driveway that wraps around the house. Mr. Bamburak stated when they do the calculation, they have to consider all of the impervious surface including the house, driveway, etc. Mr. McCabe stated while it is a large home, every room is very small and they are a growing family and they cannot all be in one room.

Mr. Zamparelli asked if he is doing anything to try to effectively reduce the impervious surface, and Mr. McCabe stated he would be open to suggestions. Mr. Zamparelli stated this is not really the Board's job; and Mr. Bamburak stated this is why he asked him if he had discussions about this with his professionals. Mr. Bamburak stated going to 25.65% from 19.4% in the floodplain will be difficult as people are very sensitive about the floodplain. He stated since there is an existing driveway with the turnaround, there are probably things that can be done to remove part of that driveway which would provide some credit.

Mr. McCabe stated his elevation is approximately 30' and his home did not require flood insurance as he is at a high part on River Road.

Ms. Kirk asked if he would like to discuss this further with the person who drew the Plan to see if they can reduce some of the coverage by possibly eliminating some of the proposed walkway from the existing walk back to the pool. She stated they may also be able to modify the driveway to further reduce the impervious surface. Mr. DosSantos stated they are looking for a reduction in the total number and they could either reduce some of what they have proposed or eliminate some of the existing impervious surface. He stated they are looking for him to get to a total number below what he has asked for. Ms. Kirk stated currently he is requesting over a 6% increase from what is existing which is a huge jump. She stated she feels there are a variety of things that he could eliminate, and one of the mechanisms might be taking up walkways, and putting in wooden decks since they do not count toward impervious surface coverage. Mr. Bamburak stated while he understands a concrete pool deck and coping may be more attractive, in cases like this where there is so much impervious a wooden deck rather than concrete coping would not count toward the impervious surface. Mr. Bamburak stated he feels he may need to have an engineer help him with this Plan. Mr. McCabe stated he is willing to do whatever it takes. Mr. DosSantos stated there are also stormwater management issues they could do to help reduce the effective impervious ratio and an engineer could help with this.

Mr. Bamburak suggested that he contact the pool company to see if they have an engineer. Ms. Kirk stated the individual who did the calculations from the pool company could contact the Township to discuss what could be done. Mr. Bamburak stated the Board can only comment on what has been presented to them. He stated the Township is participating as well so the Township must have concerns with the proposal. Mr. Fox stated he would concur with the suggestions made by the Board.

Mr. DosSantos asked Mr. McCabe how much time he needs, and Mr. McCabe stated he feels he could be ready by next month. It was agreed to continue the matter to August 7, and Mr. Bamburak stated if they are not ready by then, they should send a letter requesting a further continuance.

Mr. Bamburak asked if there was anyone present wishing to speak on this matter.

Mr. Tom Gallagher was sworn in. He asked if neighbors who were not present this evening will be notified of the upcoming meeting; and Ms. Kirk stated they will not as this will be the notice to residents. She stated they could check the Township Website or the Agenda that is posted for the next meeting which will show this Application is being continued from today's date.

Mr. Kenneth Brandt, 571 River Road, asked to be named a Party.

Ms. Judy Curlee, 551 River Road, was sworn in and asked to be named a Party.

Mr. Bamburak asked if those interested could call Mr. Habgood to see if the matter gets continued, and Mr. Habgood stated they could call the Township to see if there is a further continuance after August 7. Mr. Bamburak stated sometimes they get a letter in advance of the meeting requesting a continuance if the professionals are unable to get the paperwork completed. Mr. Bamburak suggested that those interested call Mr. Habgood on the morning of August 7 to see if there was a letter received by the Township requesting a Continuance since the Board would grant the request if they receive such a letter.

Mr. Tom Gallagher, 601 River Road, asked to be a Party.

Ms. Kirk stated Party status provides written notification of Decisions and as a Party to the Application those with Party status have the right to file an Appeal to Doylestown if not satisfied with the Board's Decision.

Mr. Gruen moved, Mr. McCartney seconded and it was unanimously carried to grant a Continuance to August 7, 2012.

#### APPEAL #12-1641 – MICHAEL WAGNER

Mr. Michael Wagner was sworn in.

The Application submitted was marked as Exhibit A-1. The Zoning Plan submitted was marked as Exhibit A-2. An Elevation Plan consisting of one sheet 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. The property itself was posted with Notice of tonight's Hearing, and the Proof of Posting was marked as Exhibit B-2. Notices were mailed to property owners as required by the Ordinance, and a copy of that letter and the listing of residents was marked as Exhibit B-3.

Ms. Kirk stated the Township is also participating in this matter. Mr. Fox stated the Township would like to seek Party Status on this matter.

Mr. Wagner stated he is proposing to replace his existing garage and is requesting a height Variance and to have the garage closer to the street. He stated he has an odd shaped corner lot which is at the intersection of Pine Grove and Norway. He stated the current setback sets the property up for a long narrow position of any potential building.

He stated the current structure is a one-car detached old barn garage from the turn of the Century. He stated he is a recent transplant to Bucks County, and he purchased this home approximately one year ago. He stated the location of the existing garage cuts off any good use and enjoyment off the back of the property. He stated there is an old barbecue and patio that will be removed as well. He stated if he places the garage further back, it will violate the setback from his neighbor who is adjacent to Pine Grove and would also increase the impervious because he would have to lengthen the driveway. He stated he has a dog and would like to open up the back area as grass. He stated this is why he wants it to come a little bit closer to the road.

Mr. Wagner stated he would like to increase the height from the maximum of 15' to 19'2" so that he can get extra storage space. He stated he has vehicles he would like to get off of the driveway and have a higher ceiling and have the cars stacked and still have storage space above that. He was asked if he proposed to have a lift, and Mr. Wagner stated he does intend to put in a lift. Mr. Wagner stated part of his Plan also includes a staircase to get to the attic.

Mr. Bamburak stated while he understands that he intends to have electric in the garage one of the items on the Plan includes a "future powder room," and the Township is sensitive to this as they feel he may let a family move in. Mr. Wagner stated there will be no living quarters whatsoever. He stated in the storage area, there would be only 4' to 5' of headroom.

Mr. Wagner was asked if the garage will be heated, and Mr. Wagner stated it will. He stated he is a hobbyist so he will be working on the cars and doing woodworking. He stated the lower portion will be heated, but not the attic portion. Mr. Bamburak asked if he intends to do any painting of the cars, and Mr. Wagner stated he does not; and it would only be basic oil changes, etc. Mr. Wagner stated the garage is proposed to be 27' by 30' and the architect drew up plans for a 15' peak and aesthetically this looks flat.

Mr. Wagner stated he discussed this plan with his five nearest neighbors, and they were all in support of this since he is making improvements to the house.

Mr. Bamburak stated what is permitted with regard to height is 15', and he is requesting 20' 2 and 1/8". Mr. Wagner stated from the garage floor level it is 19' 2".

Mr. Fox asked Mr. Wagner how he would access the garage, and Mr. Wagner stated they would come in from Norway. Mr. Fox asked the width of the proposed driveway and asked if it would be a two vehicle width or a one vehicle width; and Mr. Wagner stated while he has not yet made that decision it will either be two vehicle width the entire way down or will "bottleneck" into one, although he will probably keep it at two. He stated it will be closer to the street. It will be a two-bay garage door.

Mr. Fox asked about the Variance for the side yard setback, and asked if there was any thought toward moving it closer to the house to comply with the setback or is that not possible with the current lay out of the property. He stated it is currently 15.5 and 15 is required, and he is requesting a 10' side yard setback. He stated he does not have a typical two side setback and a front and rear because it is a corner lot. His understanding is that it would not be considered a side yard setback.

Mr. Habgood stated this is considered an accessory structure and they are allowed to have a minimum of a 10' setback from the side yard property line. He stated because it is a corner lot, the one Variance is from the requirement to have the accessory structure closest to the abutting street since normally accessory structures need to be located in the fourth of the lot furthest removed.

Ms. Kirk stated on the Plan marked as Zoning Plan, it has a stone patio to be removed, and Mr. Wagner stated this is behind the current garage and this will be removed along with the barbecue. Ms. Kirk asked if it would be possible to shift the garage over to that area of the lot; and Mr. Wagner stated while it could be, this is what he is trying to avoid so that he can pull it closer to Norway so he can open up the back yard and a less long driveway.

Mr. Fox stated Mr. Wagner indicated the space above the garage would be used only for storage, and he asked Mr. Wagner if he would be agreeable to this as a Condition of the Variance; and Mr. Wagner agreed.

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

Mr. DosSantos moved, Mr. Gruen seconded and it was unanimously carried that the Application be granted for accessory structure setback and that the height Variance be granted with the stipulation that the Applicant not used the attic portion for anything other than storage.

A short recess was taken at this time.

APPEAL #12-1642 – DAVID R. YARNALL

Mr. David R. Yarnall and Mr. Keith Freiband were present and were sworn in.

The Application submitted was marked as Exhibit A-1. The Applicant received Notice of Disapproval from the Township, and this was marked as Exhibit A-2. The Plan submitted with the Application 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. The property itself was posted, and the Proof of Posting was marked as Exhibit B-2. Notices were mailed to property owners as required by the Ordinance, and a copy of the letter along with the listing of residents was marked as Exhibit B-3.

Mr. Bamburak stated he understands there was an existing patio that he wants to replace with a concrete slab. Mr. Yarnall stated it will be the same size.

Mr. Habgood stated he did check the impervious surface and got a different value than what was shown on Exhibit A-3. Mr. Habgood stated he calculated a total impervious surface of 22.5%.

Mr. Gruen asked when the home was purchased, and Mr. Yarnall stated it was purchased six years ago. Mr. Gruen asked if he has added any impervious, and he noted he has not. The patio was existed. He noted the patio is part of the reason they get water in the basement.

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

Mr. Zamparelli moved, Mr. DosSantos seconded and it was unanimously carried that the Appeal be granted for impervious surface coverage to remain as it is.

APPEAL #12-1643 – RAMON VANDERPOOL

Mr. Ramon Vanderpool was present and was sworn in.

The Application submitted was marked as Exhibit A-1. An impervious surface breakdown chart was marked as Exhibit A-2. A Plan of Lot 125 was marked as Exhibit A-3. 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 with Notice of the Hearing, and the Proof of Posting was marked as Exhibit B-2. Notices were mailed to property owners as required by Ordinance, and a copy of the letter with the listing of owners was collectively marked as Exhibit B-3.

Mr. Vanderpool stated he purchased the home around December but lives in the Dominican Republic and had to go back there to take care of family. He stated when he came back, he noticed the existing patio was inclined to the home and some of the pavers were in disarray. He stated he and his friend decided to remove the pavers, level the ground, and put them back. He stated he has pictures of what it looked like when he purchased the home and what it looks like now. Mr. Vanderpool stated originally the patio was 30' by 27', and now it is 23' by 20'.

Mr. Habgood stated the Township received notification that work had been done at the property without a Permit to re-construct the patio; and when Mr. Vanderpool submitted the Permit Application, it was found that it was exceeding the allowable impervious surface for the property. Mr. Habgood stated by the time the Township was involved, it appeared that the project had been finished already by the Applicant. Mr. Gruen asked if they were able to determine if it was the same square footage as it was before, and Mr. Habgood stated there was no prior Permit for even the existing patio before Mr. Vanderpool purchased the house. Mr. Gruen asked if they could tell if it had been enlarged; and Mr. Habgood stated they could not because by the time the Township was notified, it was already in place.

Mr. Bamburak stated he assumes Mr. Vanderpool was not aware he needed a Permit for this kind of work; and Mr. Vanderpool the prior owners had been living there since 1978, and when he purchased the home he took it for granted that whatever was there was legal.

Gregory Frank was sworn in and stated he lives next door. He stated he agrees that he saw it being re-built, and it is smaller than it was before. He stated Mr. Vanderpool is correct that this was here before he moved in and water did pool on the patio so he understands why he wanted to level it. Mr. Frank stated he has not had any problems in his own yard when the existing patio was there, and he is not having any problems now. He stated he feels this should be approved by the Board.

There was no one else wishing to speak to this matter, and Testimony was closed.

Mr. Gruen moved, Mr. McCartney seconded and it was unanimously carried to approve as submitted.

There being no further business, the meeting was adjourned at 9:21 p.m.

Respectfully Submitted,

Jerry Gruen, Secretary

