

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – AUGUST 7, 2012

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on August 7, 2012. Chairman Bamburak called the meeting to order at 7:05 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  
   Mark Eisold, Township Engineer  
   Barbara Kirk, Zoning Hearing Board Solicitor  
   Jeff Benedetto, Supervisor Liaison

APPEAL #12-1640 – NATALIA MARTYANOVA AND CHRIS MCCABE

Ms. Kirk stated she received an e-mail from the Applicant's attorney, Edward Murphy, early this morning who advised that one of the property owners was taken to the emergency room last night and remains in the hospital. As a result, they are asking that the matter be continued until the next Board meeting on August 21, 2012 to allow the property owner to be able to attend the meeting. Ms. Kirk stated Mr. Murphy is also working with the Township, who entered their appearance in this matter, to try to reduce the overall impervious surface ratio that was initially proposed; and they continue to work on bringing in a reduction.

Mr. DosSantos moved, Mr. Gruen seconded and it was unanimously carried to continue the matter to August 21, 2012.

APPEAL #12-1645 – MAUREEN HAYES & GUILLERMO DICLEMENTE

The Application submitted was marked as Exhibit A-1. The Applicants received a Notice from the Township rejecting their Permit Application, and this was marked as Exhibit A-2. A two-page Pool Permit Plan submitted 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 that 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 with the listing of those residents was collectively marked as Exhibit B-3.

Ms. Maureen Hayes and Mr. Guillermo DiClemente were sworn in. Ms. Hayes stated they feel it is consistent with the District. She stated they also did some research in the Log Books on previous Variance Applications, and there was Approval for two pools within the 100 year floodplain. She stated she has photos of the property if necessary.

Ms. Kirk stated there is also a proposed fence to be constructed around the pool, and she asked for a description of the height and type of fence proposed. Ms. Hayes stated it is required that the fence be 5' high around the perimeter of the pool. Mr. DosSantos asked they type of fence, and Ms. Hayes stated the fence will meet the Ordinance requirements.

Mr. Gruen stated Ms. Hayes indicated that they did research and found that the Board had approved two pool Variances, but it should be noted that each Variance has to stand on its own merit, and there is no precedent set on any Variance.

Mr. Zamparelli stated he understands that the only issue is that it is in the floodplain, and there are no issues with impervious surface or setbacks. Ms. Hayes agreed and stated only a portion is in the flood plain.

Mr. Gruen asked if they are removing any trees from the floodplain, and Ms. Hayes stated they are not. Mr. Eisold stated the concerns with the floodplain are items that could flow down so that the fence would actually be more of a concern than the pool.

Mr. Zamparelli asked if the fence as shown in required where it is shown, and Mr. Habgood stated there is a minimum setback of 10' from the water's edge so that they could fence in just the pool or their entire yard.

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

Mr. McCartney asked about the notation regarding the soil stockpile. Mr. Steven Fahs was sworn in and stated there will be a silt fence to protect the area, and they will only stockpile the dirt to be used to taper the grade. He stated it should be there less than two weeks.

Mr. Bamburak stated there is a 3 x 6 x 1 infiltration trench shown, and Mr. Fahs stated the Township engineer required this to account for the additional impervious surface for the walkway around the pool.

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

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

#### APPEAL #12-1646 – DIANE MARRAZZO, MARRAZZO'S NORTH RIVER

The Application submitted was marked as Exhibit A-1. A Plan submitted was marked as Exhibit A-2. Notice of tonight's Hearing was published in the Yardley News, and the Proof of Posting was marked as Exhibit B-1. The property itself was posted with Notice of tonight's Hearing, and this 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 with the list of owners was collectively marked as Exhibit B-3.

Ms. Dianne Marrazzo and Mr. Michael Ruibal, property owner, were sworn in.

Mr. Bamburak stated he will recuse himself from this matter since Marrazzo's does his landscaping, and he has become friendly with Mr. Marrazzo over the years. He noted that since only four members will be voting, a tie could result in the matter being turned down so they have the option to wait until there would be five voting members. The Applicant and homeowner agreed to proceed at this time.

Mr. Ruibal stated they are looking to install an E.P. Henry paver patio. Six photos of the property were provided and marked as Exhibit A-3. A drawing dated 2/12/12 was marked as Exhibit A-4 which shows more of the specs for the proposed patio.

Ms. Kirk stated this is a corner lot, and because it abuts two roadways, it requires that the building setback be at least 40' from each structure to the roadway. Ms. Kirk stated according to the Plan, the proposed patio circular area behind the shed will be approximately 39.5' from the street; however, this did not take into consideration the actual right-of-way; and she has asked the Township engineer to clarify the actual setback between the right-of-way of the road and the patio. Mr. Eisold stated from the right-of-way to the edge of the walkway, there is about 20'. He stated it is also 20' outside of the building setback. Ms. Kirk stated this is opposed to the 40' that would otherwise be required, and Mr. Eisold agreed.

Mr. Gruen noted the orange line one of the documents provided, and Mr. Ruibal stated this is the outline of where the patio is proposed. He stated Marrazzo's came out and spray painted this so they could see where it would be. He stated the sitting wall has

been spray painted as a double line. Mr. Gruen stated the whole yard is surrounded by a fence, and Mr. Ruibal agreed and stated the fence was approved by the Township and it comes off both corners of the house and encompasses the entire back yard.

Mr. Zamparelli asked about the shed, and Mr. Ruibal stated the shed was approved by the Zoning Hearing Board through a Variance.

Ms. Kirk stated the shed will remain, and Mr. Ruibal agreed.

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

Mr. Zamparelli moved, Mr. McCartney seconded and it was unanimously carried to approve the Variance to permit a special setback of 20' as set forth on the Plan. Mr. Bamburak did not vote on this matter.

#### APPEAL #12-1644 – BRIAN P. AND LOUISE D. MUPRHY

The Application submitted was marked as Exhibit A-1. A letter from Williams Gas Transco authorizing the Applicant to proceed and erect the fence was marked as Exhibit A-2. The Township issued a Notice of Violation dated 5/14/12 and a copy of the Notice letter was marked as Exhibit A-3. A site Plan/As-Built Plan for the property was marked as Exhibit A-4. Two photos of the exterior of the property were collectively marked as Exhibit A-5. 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 Posting was marked as Exhibit B-2. Notices were mailed to property owners as required by Ordinance, and a copy of the letter with a listing of the owners was marked as Exhibit B-3. Mr. Kirk stated she received a copy of a letter in opposition to this Application submitted by Mark and Denise Pierce of 1676 Delaware Rim Drive indicating that neither of them were available for tonight's Hearing, and they were submitting this letter in opposition to the Application, and this was marked as Exhibit B-4. A copy of the letter was provided to Mr. and Mrs. Murphy this evening.

Mr. Brian Murphy and Ms. Louise Murphy were sworn in.

Ms. Murphy stated when they moved into the property a few years ago they contacted Gilmore & Associates, who were the surveyors of the property for the builder; and she walked the lot with the representative from Gilmore and she asked him where the disturbable portion of the lot was and where the easements were. She stated they put flags on the property and indicated the area where the split rail fence was erected was in the disturbable area. Ms. Murphy stated they had erected a black aluminum fence in their rear yard for which the fence company told them to get Permits, which they did. She stated they were having issues with the slope of the land being a hazard, jagged rocks

down the hill, and hunters coming onto their property. She stated there is no place to put a “No Trespassing” sign. She stated people think that their property is Township-owned property so they often see people on this portion of their property snowboarding without helmets and any liability that would occur on the property would be hers. She stated they have had ATVs driving through there, and they feel this is a dangerous situation because of the slope of the land.

Ms. Murphy stated there is no way of indicating to anyone that this is private property since there are no trees or posts so there is nothing they could hang something on to indicate that it is their private property. She stated her husband had put a stick out with a sign, but when Williams came through and did their once a year mowing, they took out the posts. Ms. Murphy stated they felt a split rail fence would look nice and would reduce the risk to people going onto their property and sustaining an injury. She stated it is a 4’ high fence. She stated this is also a place where they could install a “No Trespassing” sign.

Mr. DosSantos noted one of the photographs which had been provided showing a fence, and he asked if this was the fence Ms. Murphy was discussing; and she agreed. She added that the fence seen in the distance is someone else’s split rail fence. Mr. DosSantos stated the split rail fence shown is 100’ long, and Ms. Murphy agreed.

Ms. Murphy stated when they contracted with County Line Fence to install the fence, the fence company did not indicate that a Permit was necessary since it was attached to their house; and they went ahead and erected the fence. Ms. Murphy stated the fence is for safety; and they did not get the type of fence that would block someone’s view. She stated the fence goes well with the Bucks County landscape.

Mr. Zamparelli asked what would stop someone from just going around the fence, and Mr. Murphy stated it was meant to be a deterrent. Mr. Murphy stated there have been a number of times when he has had to confront people on his property, and they felt the fence was the best way to address this. Mr. DosSantos stated he understands that it was their intention to delineate this as being private property as opposed to Township property. Mr. Murphy agreed adding that there have been hunters coming in and they do not realize that it is private property.

There was a question about another fence seen in one of the photos that is in the distance, and Ms. Murphy stated that is another split rail fence that was put across the easement by another homeowner in another neighborhood off of Mt. Eyre.

There was discussion about various photographs that had been provided; and since there was some confusion, all photos that were attached to the Plan were collectively marked as Exhibit A-5.

Mr. McCartney asked about the grade coming off the back side of the fence, and Mr. Murphy stated he feels it could be 45. He stated down in this area is where there are animal dens/holes and jagged rock. He noted there is also water that runs into the area as well which freezes over.

Mr. Gruen asked about the yellow vertical posts seen in the photographs, and it was noted that this is to delineate the gas pipe line.

Mr. DosSantos noted the blacktop area on a photograph in front of the fence, and Ms. Murphy stated this is Delaware Rim Drive.

Mr. Zamparelli asked about the neighbors' objection; and Mr. Murphy stated he was just made aware of this letter this evening, and according to the letter, they are objecting because they feel it will block their view. Mr. Zamparelli asked if Mr. Murphy spoke to that neighbor about their objection, and Ms. Murphy stated he did not know who opposed it. Ms. Murphy stated they have other neighbors who are in favor of the fence.

Mr. Bamburak asked how long the fence has been up, and Mr. Murphy stated it has been up since April. Mr. Murphy was asked if it has been a deterrent, and Mr. Murphy stated they have not seen anyone in there since they put up the fence. Mr. Murphy added he had been met with some hostility in the past when asking people to get off of his property.

Ms. Kirk asked where the neighbors live who wrote the letter in opposition, and Mr. Murphy stated they are across the street.

Mr. Bamburak asked about the type of "No Trespassing" sign they are anticipating installing, and Mr. Murphy stated if they put up something it would be something tasteful.

Mr. Gruen stated possibly they could put in some plantings to break up the view, and Mr. Murphy stated this was part of their plan although they are hesitant to do this unless they find out this is permitted. Mr. Bamburak asked if they can put in shrubbery, and Mr. Habgood stated he feels they would need to get approval from the gas pipeline easement owner and then provide a letter from the gas pipeline owner to the Township indicating their approval. Mr. Habgood stated he does not feel they would allow anything that would have roots to be planted in this area. Mr. Murphy stated they have been able to cooperate with them before. Mr. Habgood stated there is a Section in the SALDO that indicates you cannot "put, place, plant, or set anything within an easement." Mr. Bamburak stated the Zoning Hearing Board cannot do anything about items included in SALDO. Mr. Habgood stated he understands this, and usually when residents want to do work in the easement, they provide information to the Township on what they want to do so it can be reviewed. He stated once the Murphys have the approval of the gas

pipeline owner, they could send a letter to the Township indicating what they want to do and the fact that they have approval from the gas pipeline owner, and it would then be reviewed by the appropriate Department.

Mr. Gruen stated in the neighbors' letter, they refer to the Community Association By-Laws; and he asked if the Community Association By-Laws supersede the Township Zoning. Mr. Bamburak asked Mr. Murphy if there is a Community Association, and Mr. Murphy stated they do but they did not get anything from them indicated that this was an issue. Ms. Kirk asked if they have something from the Association indicating that they have no problem with the construction of the fence, and the Murphys indicated they do not but they are aware of it.

Ms. Kirk stated there are people in opposition to the Application; and if there is a Community Association, it may behoove the Applicants to ask for a Continuance and go to the Association to get a letter from them that the fence is not violating any restrictions or community requirements. She stated even if the Zoning Hearing Board grants the Approval, they may still be subject to a private action by other property owners if they feel it is violating the Community Association By-Laws. She stated they could provide the letter to the Zoning Hearing Board indicating that it does not violate any By-Laws. Mr. Bamburak stated the Zoning Hearing Board could also give their decision and the Community Association would be a separate thing, and Ms. Kirk agreed.

Mr. Bamburak stated he understands that the Community Association is maintaining a pumping station, but asked if they know if they need Association approval for painting their house, etc., and Mr. Murphy stated this is not required to his knowledge.

Mr. Kevin Richelson, 1680 Delaware Rim Drive, was sworn in. Mr. Richelson stated he is one of the original homeowners on Delaware Rim, and the Association was set up when Orleans was in control. He stated they then hired another company and they turned over part control to the homeowners, although the Association is still somewhat involved and they do have once a year meetings. He stated the real purpose of the Association is because there is a pumping station, the roads have not yet been dedicated, and there is also a basin and some common areas where there is mowing. He stated there are no restrictions in the Homeowners Association as far as what can be done on their individual houses. He stated most of the dues go for legal and administrative fees and insurance.

Mr. McCartney stated his concern is that while Mr. Richelson has indicated this, the other property owners who are opposing this Application are saying something different about the By-Laws.

Mr. Richelson stated he put in an E P Henry patio and retaining wall, and they did not need approval from the Association.

Mr. Zamparelli stated he agrees with Mr. McCartney that there are inconsistencies.

Mr. McCartney stated the question is whether or not it matters to the Zoning Hearing Board whether the By-Laws say they can put the fence up or not; and Ms. Kirk stated it does not since the Application is on the basis that the Zoning states that a fence cannot be constructed over an easement and the fence cannot be more than 3' in height when it constitutes a front yard, and because this is a property that abuts two streets, that side will be considered a front yard.

Mr. Bamburak if the Zoning Hearing Board were to grant the Variance, the issue of the By-Laws would be a Civil matter between the Community Association if there was an entity there to do that; and Ms. Kirk stated it would be a private contractual matter.

Mr. Richelson stated he also has the right-of-way going through his property and a lot of people cut across his property because it is an incline on his property that goes to the Golf Course. He stated they have also seen hunters in the Murphy's back yard, and they have had to call the Police a number of times. Mr. Richelson stated when the fence went up, the neighbors were discussing it and thought that the Township put it up. He stated there is a steep drop off, and he feels it is much safer having the fence there. He stated it is also very aesthetic and improves the property.

There was no one else to speak to this matter. A short recess was taken at this time for the Board to discuss a legal issue with their Solicitor. When the meeting was reconvened, Testimony was closed.

Mr. Gruen moved, Mr. McCartney seconded and it was unanimously carried to approve the Variance and leave the fence as is at 4' high as shown in the picture subject to the Applicant getting a Building Permit from the Township. Should the fence need to be removed, it would be at the owners' expense.

#### APPEAL #12-1647 – MARGARET MANDELL

The Application submitted was marked as Exhibit A-1. A Plan submitted 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. Notice was also posted at the property, and that Posting was marked as Exhibit B-2. Notices were mailed to adjacent residents as required by the Ordinance, and a copy of the letter along with the listing of residents was collectively marked as Exhibit B-3.

Mr. James Mandell and Ms. Margaret Mandell were sworn in.

Five color photographs of the exterior of the property were presented this evening and were marked collectively as Exhibit A-3.

Ms. Mandell stated when they moved into their home twenty-three years ago, they put in a cedar picket fence; and it is starting to fall apart. She stated they never put anything in the easement and over the years their neighbors have installed landscaping etc. in the easement and they would like to have the additional area and put the new fence 20' back. She stated there is a retention basin behind their home. They would like to install the same type of fence they have now.

Mr. Bamburak stated it is important that the fence not restrict the water flow; and they normally impose a Condition that the fence be at least 2" from the ground, but since it is a picket fence which water can flow through this should not be a problem. He also stated that if the Township needs to access the area, the homeowners would have to remove and replace the fence at their own expense; and the Applicants agreed. Ms. Mandell stated she also has a gate.

Mr. Gruen stated he is concerned that the Applicant or a further homeowner may decide to install a solid fence and they would then need the 2" at the bottom of the fence.

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

Mr. DosSantos moved, Mr. McCartney seconded and it was unanimously carried to approve the Variance as requested subject to the following:

- 1) The property owners will be wholly responsible for removal of the fence subject to the easement owners' access
- 2) If the fence is going to be a solid fence and not a picket/slatted fence it must be installed at least 2" above ground.

There being no further business Mr. DosSantos moved, Mr. Gruen seconded and it was unanimously carried to adjourn the meeting at 8:15 p.m.

Respectfully Submitted,

Jerry Gruen, Secretary

