

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – SEPTEMBER 4, 2012

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on September 4, 2012. Chairman Bamburak called the meeting to order at 7:00 p.m.

Those present:

Zoning Hearing Board: Paul Bamburak, Chairman
 Jerry Gruen, Secretary
 Mark Moffa, Alternate

Others: Robert Habgood, Code Enforcement Officer
 John Koopman, Township Solicitor
 Mark Eisold, Township Engineer
 Barbara Kirk, Zoning Hearing Board Solicitor
 Jeff Benedetto, Supervisor Liaison

Absent: Keith DosSantos, Zoning Hearing Board Member
 Anthony Zamparelli, Zoning Hearing Board Member

APPEAL #10-1574 – REALEN HOMES, L.P.

Mr. Edward Murphy, attorney, was present and stated he communicated earlier today with Ms. Kirk indicating in consultation with his client and the neighbors that had expressed concerns about the Application, that they were very close to reaching an accommodation with all the Parties. He added he earlier felt that they might be ready to proceed this evening; however, he feels they will be ready to move forward at the meeting on October 2, and he hopes that at that time there will be unanimity, and the Application will be ready to proceed.

Mr. Gruen moved, Mr. Bamburak seconded and it was unanimously carried to continue the matter to October 2, 2012.

APPEAL #12-1640 – NATALIA MARTYANOVA AND CHRIS MCCABE

Mr. Edward Murphy, attorney, was present with Mr. Chris McCabe. Mr. Murphy stated he was not representing Mr. McCabe when he made his initial appearance before the Zoning Hearing Board; however, he was present with him at the Board appearance two weeks ago when they were advised that some of the Parties who had made their appearance at the original Hearing were unable to attend that meeting and had requested that the matter be Continued.

Mr. Murphy stated at the last Hearing he did introduce a Revised Plan prepared by Mr. McCabe that he believes responded to certain of the comments expressed at the original meeting by the neighbors and certain Board members. Mr. Murphy stated the Revised Plan had been marked previously as Exhibit A-4 and it shows a reduction in on-lot impervious surface from the originally-requested 24.9% down to 21.85%.

Mr. Bamburak stated they had originally requested 25.65% according to the original Plan that had been marked as Exhibit A-2. Mr. Murphy stated Exhibit A-4 shows a reduction in the impervious surface to 21.85%. He stated the existing impervious today is 19.4% so they are showing a proposed increase of slightly more than 2.3%.

Mr. Murphy stated Mr. McCabe achieved the reduction by following a suggestion made by one of the Board members to eliminate a portion of the walkway from the rear of the home to the pool and replacing that with Trex decking. Mr. Murphy stated the other more significant area of reduction was the elimination of the circular driveway as you enter the driveway from River Road.

Mr. McCabe, who was reminded that he had previously been sworn in, stated when he was previously before the Board, it was suggested that he eliminate the cement and put in the Trex; and this was done around the whole pool. He also stated that as you come into the driveway, there is a walkway up to the extension, but there was going to be a circular driveway around a large oak tree around the front of the property which took up a lot of impervious ground; and they removed this. This is what is shown on Exhibit A-4.

Mr. Murphy stated to the extent that the Township engineer would recommend some additional on-site stormwater management steps to be take such as a rain garden or some other similar type of approach, Mr. McCabe and his wife would be amenable to installing those additional facilities that would be recommended to further reduce the effective rate of the impervious. Mr. Bamburak stated this would be done by the Township engineer at the Building Permit stage; and Mr. Murphy agreed that this is how it has been done in the past before a Building Permit was issued, and they would accept this as an appropriate Condition.

Mr. Bamburak stated on the Plan where they are showing the impervious surface computation, there is no number shown for the coping. Mr. Moffa stated this was also omitted on the original Plan. Mr. McCabe stated he believes there is one foot around the pool as coping, and the Trex would come up to that one foot. Mr. Bamburak stated the coping does count, and they should consider a number to be included for the coping. Mr. McCabe stated the pool is 42' by 16' and is oval shaped. Mr. Gruen stated this would be approximately 116'. Mr. McCabe stated he feels that the coping was considered in the impervious surface. Mr. Bamburak stated if the Board were to grant a Variance for 21.85%, and after the coping is installed, it brought the impervious surface to a higher number, they would have to come back in for another Variance. Mr. Habgood stated if they included an additional 116 square feet, it would bring the impervious surface to 22.1%.

Mr. Gruen asked if the pool could not be put closer to the house, and Mr. McCabe stated they did consider this, but it did not fit without removing a number of trees.

Mr. Koopman stated the Township is participating in this matter. Mr. Koopman stated they have shown an area to the front of the pool which looks like a wall. He asked Mr. McCabe if they propose to have a fence on top of the wall, and Mr. McCabe agreed. Mr. Koopman asked the combined height of the fence and the wall since there are requirements as to minimum and maximum height. Mr. McCabe stated the wall is a retaining wall because the land goes up. He stated he is not sure whether it will now be needed, but the pool representative asked him to put it in because as they disturb the ground it may effect it. Mr. Koopman stated he assumes the height to the top of the wall would be flush with the ground and the fence would be on top of it, and Mr. McCabe agreed. Mr. Koopman stated he understands the fence height would be 5' to 7', and Mr. McCabe agreed. Mr. McCabe stated the ground slopes up about 2' in the back so the retaining wall would be right at the point where it starts to rise. Mr. Koopman asked Mr. McCabe about the height of the retaining wall, and Mr. McCabe stated it would be to make it flush with the ground in the back which he would estimate to be about 2'. Mr. Koopman stated on top of that there will be a fence that is between 5' and 7', and Mr. McCabe agreed. Mr. Habgood stated the maximum height allowed would be 7' so if it is a 2' high wall, they would only be allowed to have a 5' fence. Mr. Koopman stated this would depend where they measure from because on one side of the wall they are at grade level, and on one side you are 2' down; and Mr. McCabe agreed.

Mr. Moffa asked if the outside of the fence is at grade, and Mr. McCabe stated the outside closer to the home is level, and then it slopes up and goes to a back area where the pool would be; and this is where the retaining wall separates the two areas.

Mr. Koopman asked if the fence will be on top of the wall, and Mr. McCabe stated it will be on top of the wall. Mr. Koopman stated he understands Mr. McCabe indicated that as you go back toward the pool, the ground goes up; so he assumes that as you go back toward the pool, you will have a wall and the base of the wall will be a couple of feet up and the top of the wall will be flush with the ground level where the pool is, and Mr. McCabe agreed. Mr. Koopman stated the fence on top is going to be between 5' and 7', and he questions how the Township will interpret this.

Ms. Kirk stated she would suggest that the Applicant submit the Permit Application to comply with the Ordinance. Mr. Koopman advised the Applicant that this is something they are going to need to address. Mr. Murphy stated he and Mr. Habgood have discussed this issue on an unrelated Application that the Zoning Hearing Board will be hearing in one month. Mr. Murphy stated they need to consider the definition of the term "fence" in the Ordinance. Mr. Koopman stated with regard to the Application being considered this evening, he is concerned that they may need to come back to the Zoning

Hearing Board and request another Variance because they have a 2' wall and a 7' fence. Mr. Murphy stated he does not feel this will be an issue. Mr. Koopman stated since he is not asking for relief on this, they will have to comply with the Ordinance.

Mr. Gruen stated it should not be possible to climb on the 2' section and then get over the fence so that children cannot get in. He stated if they have a 2' knee wall and a 4' fence, it will be a shelf which he does not feel would meet the Code. Mr. Koopman stated he feels the fence would have to be 5' to 7' on top of the wall; however, the Zoning Department may then feel that this is too high. Mr. McCabe stated if this became a problem, they would put the fence in front of the wall.

Mr. Bamburak asked the height requirement for a fence around a pool, and Mr. Habgood stated it is a minimum of 5' high with spacing no greater than 2". Mr. Bamburak asked the total maximum height permitted for a fence, and Mr. Habgood stated in the rear yard it is 7'. Mr. Bamburak stated if there were a 2' wall with a 5' fence, this would meet the requirement.

Mr. Bamburak stated he assumes there will be backfill behind the wall, and Mr. Koopman stated this would raise the concern that they are putting fill in the floodplain.

Mr. McCabe presented a picture which was marked as Exhibit A-5 which is a photograph depicting the rear yard.

Mr. Bamburak stated he now understands that this particular feature already exists and is 2' high, and Mr. McCabe agreed. Mr. Bamburak asked Mr. McCabe if he wants to build the wall into this or in front of it. Mr. McCabe stated when the pool is put in, they do not want the dirt to move forward. Mr. Bamburak stated they would need to build the wall a little in front of it or excavate and build behind it. He stated they may also have to bring in fill dirt to make a level spot, and this would present another question. Mr. McCabe stated he feels they would cut into it rather than bringing fill in. He stated there is also dirt from the pool that will get moved around. Mr. Koopman stated the Township engineer will have to look at the Plan to determine whether there is mitigation needed, and this will be another issue he will have to look at. He stated he assumes the Applicant is taking the position that they are not going to be filling in the floodplain since they did not ask for a Variance for this. Ms. Kirk agreed.

Mr. Bamburak stated if they are going to build the wall into the hill, they should not have a problem; however, if they are going to build the wall in front of it, they will have to come before the Zoning Hearing Board again.

Mr. Bamburak asked if the wall has to be included in the impervious surface, and after review it was determined that the wall was not included in the impervious surface.

A short recess was taken at this time to allow Mr. Murphy time to confer with his client.

When the meeting was reconvened, Mr. Murphy stated they realize that they do not have all of the answers to the questions being raised by the Board and the consultants. He stated rather than proceed with some degree of uncertainty, they would like to make sure that whatever scope of relief is required is properly asked for; and they would like to ask that the matter be continued so that they can consult with Mr. McCabe's pool contractor and get answers to the questions about the extent of coping around the pool, whether or not the wall was included in the calculations, and whether or not the wall is needed. He stated they will also verify the height of the fence given the grade changes in the back surrounding the pool. Mr. Murphy asked that between now and October 2, they would like to be authorized to consult with Mr. Eisold and Mr. Habgood about measurements, and other items. Mr. Murphy stated if Mr. Eisold has any recommendations about stormwater management, possibly he can discuss them with the Applicant before October 2 so that they can be presented to the Board at that meeting.

Ms. Judy Curlee, 551 River Road, was reminded that she was still sworn in from the prior meeting when she was present. Ms. Curlee stated she would like to re-state her opposition and added she feels this proposed increase from what the Township permits to what is being amended on an on-going fashion dramatically compromises the spirit of any kind of Zoning restrictions. She stated it also risks flooding in the floodplain. She stated her greater concern is that the owner of this property will continue to be not as clear of the restrictions as has happened over the past two years during the construction project. She stated there have been problems with things going on on the County-owned land, and she particularly noted a swimming pool. She stated she wants the family to have a pool if it fits the restrictions that everyone in the neighborhood has. She stated these pools effect her financially if her flood insurance changes as well as aesthetically, although she is primarily concerned financially. She stated the scope of the increase is too great. She stated it was from 17% up to 25% although now they are hearing that it would be upwards of 21.7%. She stated she feels the vagueness speaks to an ongoing problem, and the Board should hear her ongoing concerns. She stated if this does go through they should carefully oversee the construction or it could tax the efforts of the Township's very effective Enforcement Officer. Ms. Curlee stated they need to make sure that the fencing goes right for the safety of the children in the area. She stated teenagers do "pool hop."

Mr. Bamburak asked Ms. Curlee about the statement she made about putting a pool on County property. Ms. Curlee stated there is fifty-five acres of County-owned land that abuts the property at 611 River Road, and some of that property has been used for recreational purposes by that family. Mr. Bamburak stated the Plan shows that the pool will be on their own property. Ms. Curlee stated her comment speaks to attitudes about Zoning and use of land. She stated she wants them to go by the restrictions if they get the pool and try to stay within the perimeter of the property they own.

Ms. Curlee stated with regard to trees, there is a birch tree in the front yard; and the branches have fallen. Mr. Bamburak stated that does not have anything to do with the Zoning Hearing Board. Ms. Curlee stated Mr. McCabe was noting the beautiful trees in the back, but they should also stay within keeping of a beautiful section of River Road.

Mr. Murphy asked where Ms. Curlee lives in relation to the McCabe property. Ms. Curlee stated she lives at 551 River Road. After review of the tax map, it was noted that Ms. Curlee's property is off the map and she is six properties south of the subject property which is more than 1000 feet away. Ms. Curlee stated she paid to live in a beautiful neighborhood and is concerned about safety, aesthetic integrity, and that the financial reputation be upheld particularly with regard to flood insurance. Ms. Kirk asked Ms. Curlee if she lives more than 1,000 feet away from the property; however, Ms. Curlee stated she does not know. She stated she does have a major frontage.

Mr. Murphy presented a tax map excerpt which was marked as Exhibit A-7 with Mr. McCabe's property identified. Mr. Murphy stated Ms. Curlee indicated that her property was off the bottom of the page.

Ms. Curlee stated her children and their friends play in the yards back there where they go into the corn fields and it is close enough to be in her neighborhood. She stated all the Township residents and her pool fit the impervious.

Mr. Leonard Schronk, 621 River Road, was sworn in. Mr. Schronk asked if he could get information about Zoning Variances granted in the RRP Zone for impervious surface over the years. Mr. Habgood stated there is a Request for Information Form he could submit to review the Zoning Hearing Board Log Book which has all this information.

Mr. Gruen moved, Mr. Moffa seconded and it was unanimously carried to continue the matter to October 2, 2012.

APPEAL #12-1648 – THOMAS AND ARLEEN SANTAPAU

Mr. Thomas Santapau, Ms. Arleen Santapau, and Mr. Michael Note, Note Bros. Contractors, were sworn in.

The Application submitted was marked as Exhibit A-1. With the Application was a Survey Plan, and this was marked as Exhibit A-2. The Site Plan was marked as Exhibit A-3. Three pages of specifications for the addition were marked as Exhibit A-4. Notice of tonight's Hearing was published in the Bucks County Advance, and the Proof of Publication was marked as Exhibit B-1. The property itself was posted with Notice of the Hearing, and that Posting was marked as Exhibit B-2. Notices were mailed to adjacent property owners are required by the Ordinance, and this was marked as Exhibit B-3.

Mr. Bamburak stated he understands that they would like to build a sunroom which will take them over the impervious ratio by 795 square feet, and Mr. Santapau agreed.

Mr. Santapau stated he does have some signatures from his neighbors on either side and across the street which he presented this evening. These were marked as Exhibit A-5.

Mr. Koopman stated the Township is participating in this matter and would like Party Status.

Mr. Bamburak stated the information provided indicated that the existing impervious surface is over by 631 square feet, and they want to add another 795 additional; and Mr. Santapau agreed. Mr. Santapau stated the lot is a unique shape and is bordered by the retention basin as well as the neighbor's house that is on a curve. He stated this has cut off a little bit of a section of the existing lot dating back to 1962. He stated the retention basin is behind the 25' section. He stated the 125' section is a house that is on the corner.

Mr. Bamburak stated they like to have percentages, and he does not see the existing and proposed impervious surfaces. Ms. Kirk stated she came up with 21.31% existing, and the proposed would be 25.47%. Mr. Koopman stated he came up with similar calculations.

Mr. Santapau stated he has a front walkway of 177 square feet which is basically regular bricks set in sand on top of a gravel bed, and he would consider this to be somewhat pervious as the water runs right in; and there is no run off. Mr. Bamburak stated the Township still considers this to be impervious.

Mr. Habgood stated he calculated the existing impervious surface to be 21.3% and the proposed to be 25.2%.

Mr. Bamburak asked Mr. Santapau if they are planning any stormwater mitigation, and Mr. Santapau stated they are open to advice. He stated the retention basin is behind them so that they do not see too much trouble with stormwater. He stated there are also two storm drains in front of the house in the street, and he does clear leaves from them.

Ms. Kirk asked how the stormwater flows on the property, and Mr. Santapau from the back yard he does not notice any flow. He stated there is some runoff from the driveway that runs to the street because of the elevation. Ms. Kirk asked about the elevation of the rear yard; and Mr. Santapau stated the house sits above the ground, but the ground is somewhat flat, and he has not seen any significant run off. Mr. Eisold stated sometimes they require trees and a rain garden for volume control and to mitigate and cut back the impervious surface area at the Building Permit stage.

Mr. Moffa asked about the patio, and Mr. Santapau stated it will be slightly above ground level. He added he would like to have a little bit of a foundation as there are a number of groundhogs and rabbits so they did not want to put it at a level that would be conducive to their burrowing underneath. He stated they were going to build a foundation around the perimeter of the addition and the patio. He stated they will have the traditional cinderblock foundation, and the materials inside would be a concrete pad with a fieldstone appearance on top.

Mr. Benedetto asked if he spoke to the DelRio family on Countess Drive. Mr. Santapau stated they did; and while they did not sign the paper as they were not there tonight, they did not have a problem. He listed the number of other neighbors they have discussed the project with. He stated Mr. McLaughlin, one of the Township Supervisors, is also in their neighborhood; and he did not indicate he had any significant concerns.

There was no one present in the audience to speak about this Application.

Mr. Gruen asked if they considered using something other than concrete for the patio that would be pervious so that they would reduce the impervious surface since they are making a significant request. Mr. Santapau stated he is open to suggestions with regard to materials. He stated they did put together a cistern and drainage system which would include some drains in the patio leading to gravel bed and drainage pipes that would feed out into the yard. He stated while this would be an additional cost, if necessary, they would be willing to discuss this with the Township.

The Proposed Stormwater Remediation Plan presented this evening was marked as Exhibit A-6.

It was noted there is currently no patio in the rear of the property.

Ms. Kirk asked why the patio could not be constructed to accommodate the new kitchen area and the new four-season room; and rather than doing concrete for the rest of the patio, do wood decking. Mr. Santapau stated they did consider wood decking but as noted earlier there are issues with rabbits and groundhogs that live in the rear yards, and they felt the wood deck would be an enticement for burrowing animals.

Mr. Moffa stated sometimes the engineer is able to look at the proposed stormwater plan and come up with an offset, and he is not sure he would be able to do this tonight.

Mr. Bamburak reminded the Board of the changes in the law regarding what they can require of the Applicants. Mr. Koopman stated he feels that they could grant a Variance conditioned upon the Township engineer at the Building Permit stage reviewing the Application and determining what mitigation, if any, is appropriate.

Ms. Kirk asked Mr. and Mrs. Santapau if the Board were inclined to grant the Variance would they agree to a condition to install stormwater mitigation as recommended by the Township engineer at the time of the Building Permit process, and the Applicants agreed.

Ms. Kirk noted that they are already over the permitted impervious surface which was not of their doing, and Mr. Santapau agreed. Ms. Kirk stated everything that is there now was existing at the time of their purchase of the property, and Mr. Santapau agreed.

Mr. Koopman stated the house was built in the early 1960s, and Mr. Santapau agreed adding they have lived there almost ten years. Mr. Koopman asked if he constructed any additions on the property since they have moved in, and Mr. Santapau stated he has not. Mr. Koopman stated Mr. Santapau had indicated that along the rear frontage it is 125.3', and asked if this is where the DelRio family lives, and Mr. Santapau agreed.

Mr. Koopman asked Mr. Santapau if any water flows from his property onto the DelRio property during a heavy rain, and Mrs. Santapau stated it does not because the DelRio property is higher than theirs. Mr. Santapau stated there is also a berm there, and there is also a drain in the ground as well. He stated there is a storm drain that runs beneath the neighbors' and his property line. Mr. Koopman asked Mr. Santapau if this drains the rear of his property; and Mr. Santapau stated it is a drain from the basin to the roadway, and there is no feeding of that in between the houses.

Mr. Koopman asked about the neighbor on Lot #3, and Mr. Santapau stated his water does not flow to that Lot either.

Mr. Koopman stated if approved, the Township would like the Variance Conditioned as noted by Ms. Kirk.

Mr. Gruen noted the shed in the area, and he asked about the setback which appears to be 4'. Mr. Habgood stated the setback required for an accessory structure to the side yard is 10'. Mr. Bamburak stated this is not part of this Application.

Mr. Gruen stated he still has a problem with the large amount of impervious surface; and while they have indicated that they are concerned about groundhogs, there are ways to keep them out. Mr. Gruen stated the problem is that there is a cumulative effect, and they are already over even though it was not their fault. Mr. Moffa stated if everyone got 4% more there will be a problem.

Mr. Moffa stated he does not understand why they cannot include Exhibit A-6 as part of the Plan; and Ms. Kirk stated while it has been submitted by the Applicant, there is no independent determination as to whether or not it will be sufficient to address the stormwater issues. She suggested that the Condition be that the Applicants comply with the recommendations of the Township engineer for stormwater mitigation at the time of the Building Permit which would effectively keep the impervious surface ratio at the current rate of 21.3%. Ms. Kirk stated this would mean that if they are adding 4% of additional coverage, the Township engineer can advise what needs to be installed so that it is as if they only had 21.3% impervious surface coverage. Mr. Eisold stated he feels that they could do this. Mr. Santapau stated they would agree to do this and are very interested in working with the engineer and the Zoning Haring Board to come to an accommodation that will allow them to proceed.

Mr. Santapau stated the contractor wanted the Board to know that the footprint for the patio is shown as squared off; however, it will actually be less than this because it will be rounded. Mr. Bamburak stated the Board has to vote on what was provided to them on the Plan. Mr. Gruen stated they can always go less. Ms. Kirk stated at the time of the Building Permit if it is less, this would effect how the engineer makes a recommendation for the stormwater management facilities.

Testimony was closed.

Mr. Moffa moved, Mr. Gruen seconded and it was unanimously carried to approve the Variance for increased impervious surface of 25.2% subject to the Condition that the Applicant will comply with any recommendations by the Township engineer for installation or construction of stormwater management facilities at the time of Building Permit review in order to provide an effective impervious surface ratio rate of 21.3% which is the existing coverage now.

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OTHER BUSINESS

Mr. Gruen moved, Mr. Moffa seconded and it was unanimously carried to cancel the meeting of September 18, 2012.

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

Respectfully Submitted,

Jerry Gruen, Secretary