

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – MAY 7, 2013

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on May 7, 2013. Chairman Bamburak called the meeting to order at 7:30 p.m.

Those present:

Zoning Hearing Board: Paul Bamburak, Chairman
 Jerry Gruen, Vice Chairman
 Anthony Zamparelli, Secretary
 Keith DosSantos, Member
 Mark Moffa, Member

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

APPEAL #13-1660 – MARGARET BRUNO

The Application submitted was marked as Exhibit A-1. A Plan submitted entitled, “Zoning Variance Plan,” was marked as Exhibit A-2. Notice of tonight’s Hearing was published in the Bucks County Advance, and Proof of Publication was marked as Exhibit A-3. Notices were mailed to adjacent property owners as required by the Ordinance, and a copy of that letter along with the listing of addresses was collectively marked as Exhibit B-3. Ms. Kirk stated the Board also received copies of two prior Decisions from the Code Enforcement Officer. The first Decision was #97-961 relative to the property owned at the time by Warren McClintock which was marked as Exhibit B-4. A prior Decision from 1996 – Appeal #96-936 – for the property owned by Joseph Gervasio was marked as Exhibit B-5.

Mr. Edward Murphy, attorney, was present with Ms. Margaret Bruno and engineer, Justin Geonnotti, who were sworn in. Mr. Murphy presented a Revised Plan which was marked as Exhibit A-3. He stated the difference from the Plan that accompanied the Application is with one respect only, and that is in the calculations of the net buildable site area and the resulting density. He stated the original Plan that accompanied the Application did not include the area of the paper street known as Linden Avenue located in front of a portion of this property that is to be subdivided. He stated Linden Avenue was never opened; and because of that in terms of the calculations, the Applicant is entitled to include in the calculations the half width of Linden Avenue that immediately abuts her property. Mr. Murphy stated because of this the lot got slightly bigger and the calculations for density got slightly better. He stated they have highlighted on Exhibit A-3 in gray the area of Linden Avenue that has been included.

Mr. Murphy stated in anticipation of tonight's Application Ms. Bruno approached various neighbors in the surrounding area about whether or not they had any issues with what she was proposing. Mr. Murphy marked as Exhibit A-4 the results of that survey and it included the signatures of fifteen of the neighbors indicating that they have no objection to what is being proposed. Mr. Murphy stated that one of the couples that signed Exhibit A-4 are the Gervasios who were the Applicants for the prior Zoning Hearing Board Decision of 1996.

Mr. Geonnotti stated he is a Licensed Civil Engineer in the Commonwealth of Pennsylvania and is employed by Gilmore Associates which is a Civil Engineering firm.

Mr. Geonnotti stated he is familiar with the property that is the subject of tonight's Application, and he prepared the Plan which was marked as Exhibit A-3.

Mr. Geonnotti stated the property is "L" shaped and has 100' of frontage on Yardley-Morrisville Road which is a public road. It maintains 185' of frontage on Linden Avenue which is a paper street. The parcel is 45,000 square feet. It was originally three separate lots each measuring 15,000 square feet when purchased from the Arborlea Subdivision.

Mr. Murphy stated the Brunos purchased the property in 1966, and Mr. Geonnotti agreed.

Mr. Murphy stated Mr. Geonnotti indicated that it was three lots, and one of the lots is the lot that fronts on Yardley-Morrisville Road that measured 100' in width by 150' in depth, and Mr. Geonnotti agreed and stated on that lot is a dwelling shown on the Plan where Ms. Bruno lives which is served by public sewer and public water. Mr. Murphy stated off to the right of that lot it is labeled as "Lot No. 1," and Mr. Geonnotti agreed.

Mr. Murphy stated the rearmost portion of the lot is the wider portion of the L-shaped lot that fronts on Linden Avenue, which was originally two additional lots of the Arborlea Extension Subdivision, and Mr. Geonnotti. Mr. Murphy asked if there are any improvements on that section, and Mr. Geonnotti stated at this time there is a tennis court but no building structures.

Mr. Murphy stated this Application does not presume to reestablish three lots, but proposes to combine the two vacant lots that front on Linden Avenue into a single lot.

Mr. Murphy stated Mr. Geonnotti has shown a proposed dwelling on those combined lots that fronts on Linden Avenue.

Mr. Murphy stated they are seeking two elements of relief. He stated there is an Ordinance provision that states that a lot has to front on a public street, and Linden Avenue has never been opened even though it was laid out on the Plan of the Arborlea Extension Subdivision. He stated it was never created as a street or maintained by the Township, and Mr. Geonnotti agreed.

Mr. Murphy stated they are also requesting relief with regard to the density calculations.

Mr. Murphy stated on Exhibit A-3, Mr. Geonnotti has identified the lot area calculations and the natural resource protection and site capacity calculations. Mr. Murphy stated the Zoning District is R-2, and Mr. Geonnotti stated the minimum lot area permitted is 12,500 square feet. Mr. Murphy asked what would be the lot area of Ms. Bruno's lot where her home is if the Subdivision were pursued, and Mr. Geonnotti stated there is a gross lot area of 14,537 square feet. Mr. Murphy stated this would be a conforming lot, and Mr. Geonnotti agreed. Mr. Murphy stated they have proposed what has been identified as Lot #2 which shows a gross lot area of 34,625 square feet which is almost three times as large as the 12,500 square foot lot minimum required in the R-2 District, and Mr. Geonnotti agreed.

Mr. Murphy asked why they still need to ask for relief when they have a nearly 35,000 square foot lot in a District that permits lots of 12,500 square feet. Mr. Geonnotti stated on the Revised Plan they have added in the additional area from Linden Avenue. He stated they stated with a gross lot area as shown on the Deed of 45,000 square feet. He stated they then added in the additional area to center line of Linden Avenue and subtracted the ultimate right-of-way from Yardley-Morrisville which is a public street. They therefore have a base lot area of 1.129 acres. Mr. Murphy stated these Lot Line calculations are shown on Exhibit A-3.

Mr. Murphy stated the Ordinance identifies various natural resources including floodplain, wetlands, steep slopes, and woodlands; and when you encounter those resources on a lot, the Ordinance dictates how much you are allowed to include and how much you must exclude. Mr. Geonnotti stated the only natural resource they encounter on the property is woodlands, and the Ordinance has a requirement that 70% of the woodlands must be protected. He stated there was a total of .882 acres of woodlands, and 70% of that is .617 acres. He stated following through the natural resource calculations and site capacity calculations, you take the base lot area minus natural resource protection requirement and you are left with a net buildable site area of .512 acres which is 54% of the base site area which is required to be protected. He stated this is the hardship as to why they cannot meet the density required to have two lots.

Mr. Murphy stated the Ordinance also makes other assumptions as to what actually gets disturbed, and on Exhibit A-3, Mr. Geonnotti has shown a proposed dwelling as well as a dotted rectangle which in theory is the building envelope. Mr. Geonnotti stated it is the net buildable site area for the lot. Mr. Murphy asked Mr. Geonnotti how he arrived at the dimensions of the dotted rectangle; and Mr. Geonnotti stated in the R-2 District you need to create a net buildable lot area that is greater than 12,500 square feet. He stated they know the setbacks and all yards need to exclude natural resources; so even though they are not disturbing all the woodlands in the net buildable site area, hypothetically you need to indicate that they are being disturbed for the purpose of the calculations. Mr. Murphy stated the Ordinance indicates that with regard to all the area within the dotted rectangle that goes well beyond the limits of the proposed dwelling, it must be presumed that all the trees within that area will be removed even though that is not what is going to happen in this case; and Mr. Geonnotti agreed.

Mr. Murphy asked about the quality of the woods, and Mr. Geonnotti stated it is very poor as it is scattered trees and no specimen trees. Mr. Murphy stated the maximum density they would be entitled to would be 1.382 in the District that would suggest that you would be able to get more than double that because of the exclusion of the woodlands as defined in the Ordinance.

Mr. Murphy stated he asked Mr. Geonnotti to prepare a Plan that would show the relationship, if the proposal is approved, of Lot #1 and Lot #2 to the other areas in the neighborhood; and this Plan was marked as Exhibit A-5. Mr. Murphy showed the location of the subject property on Exhibit A-5 and the other Lots in the Arborlea Subdivision that surround it. Mr. Murphy stated what is being proposed by Ms. Bruno is entirely consistent with the Lot sizes of those Lots that surround it for quite some distance.

Mr. Murphy stated other than the two items of relief requested, there are no other Zoning issues that have been identified that would inhibit the ability of Ms. Bruno from subdividing the property; and Mr. Geonnotti agreed. Mr. Murphy stated even if relief is granted by the Board this evening, Ms. Bruno understands that she will have to proceed through the formal Subdivision review process.

Ms. Bruno agreed with the statements made this evening by Mr. Murphy and Mr. Geonnotti.

Mr. Zamparelli asked if they will replace any trees taken down, and Mr. Geonnotti stated they will follow the Township guidelines with regard to the tree replacement

Mr. Gruen asked about the status of Linden Avenue since there are homes there and people travel on it. Mr. Murphy stated as part of the Subdivision process, the Township will need to approve Linden Avenue in front of the Lot just as it has for the other

Applications that preceded it. He stated Linden Avenue will be improved in accordance with the recommendations of the Township engineer. He stated it is being extended as the new Lots come along. Mr. Gruen asked who is responsible for maintenance and services on the road, and Mr. Murphy stated it is a private road so the homeowners are responsible for it. Mr. Gruen asked if it is accessible for emergency vehicles, and Mr. Murphy stated it is.

Ms. Kirk stated when they go through Subdivision they will have to comply with the requirements under the Subdivision and Land Development Ordinance issued by the Township and work with the Township engineer to meet those requirements, and this would include a tree study and tree replacement, improvements to Linden Avenue, etc.; and Mr. Geonnotti agreed.

Mr. Koopman stated the Township has no formal position on this matter.

There was no one present in the audience wishing to comment on the Application, and the Testimony was closed.

Mr. Zamparelli moved, Mr. Gruen seconded and it was unanimously carried to grant the relief as requested.

APPEAL #13-1661 – MICHAEL FABIANO

The Application submitted was marked as Exhibit A-1. Included were four photographs of the property, two of which have measurements included; and the four photos were collectively marked as Exhibit A-2. A Site Plan was marked as Exhibit A-3. Notice of tonight's Hearing was published in the Bucks County Advance, and a copy of that publication was marked as Exhibit B-1. Notice of tonight's Hearing was posted at the property, and a copy of that Notice was marked as Exhibit B-2. Notices were mailed to property owners as required by the Ordinance, and a copy of the letter with the listing of the owners was collectively marked as Exhibit B-3.

Mr. Michael Fabiano was sworn in. Mr. Fabiano stated he is requesting a Variance to extend the rear part of his fence approximately 6' on the right-of-way that faces Washington Crossing Road. He stated the rest of the fence on the sides will be within his property line. Mr. Fabiano stated he moved into the home in mid-December, and there was a large landscaped elevated berm in the rear of the yard that the builder put in before he moved in. He stated his property line cuts right across the center on a downward slope through the berm which makes it difficult to get a fence through as there is so much landscaping, and he would like to move a portion of the fence 6' back on top of the berm where it would be level. He stated it will still be approximately 38' to 40' from Washington Crossing Road, and there will also be bushes and trees on the outer part of the fence toward Washington Crossing Road. He stated Washington Crossing Road is a very busy, high-traffic road, and this will provide privacy and help with noise. He stated on the left side of his property there is a gas station so this will help with privacy as well.

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Mr. Gruen asked about the height of the fence, and Mr. Fabiano stated it will be 6' high and will be either a white or almond vinyl fence.

Ms. Kirk stated the proposal is for the fence to be constructed within a right-of-way. She stated the Condition that would normally be imposed would be that the fence would be constructed at the owner's sole cost and expense; and to the extent that the owner of the right-of-way may need access, the removal of the fence would be at the owner's cost and expense. Mr. Fabiano agreed to this Condition.

Ms. Sharon Czebotar was sworn in. She stated she is the owner of the property on the other side which is an acupuncture center. She stated she would like to make sure that patients will be able to see when they are pulling onto the highway. She stated she would also want to make sure that fence is pushed back as far from the property line where her driveway is so that her patients are not backing into the fence. She stated Mr. Fabiano has assured her that he will take her concerns into consideration.

Ms. Kirk stated Ms. Czebotar's property is Tax Map Parcel #20-3-11 according to the listing of the property owners and it shows a mailing address of 616 Washington Crossing Road. Ms. Kirk stated when the Permit is reviewed by the Township there would be consideration given that the proposed fence is not obstructing any clear sight triangles, and Mr. Habgood stated the Board could make it a Condition that the Permit Application be reviewed by the Township engineer to make sure that there would not be problems with the sight triangle; and Mr. Fabiano agreed to that Condition. Mr. Fabiano stated he does not feel the fence will impede the line of sight.

Mr. Gruen stated it seems like the fence is right on Washington Crossing Road, and he asked Mr. Habgood if he is permitted to put a 6' fence on the road since he felt the maximum on the front was 3' or 4' feet; and Mr. Habgood stated this fence is going in the resident's rear yard.

Mr. Fabiano stated his property line runs next to Ms. Czebotar's driveway, and he agreed that he would stay 5' to 6' off her driveway so there should not be a problem with people backing up from Ms. Czebotar's driveway.

Mr. Moffa asked if any of the photographs provided show Ms. Czebotar's property, and Mr. Fabiano stated one photo taken from the left of his property and Ms. Czebotar's property is on the right. Ms. Kirk stated Ms. Czebotar's driveway access is along the curve of Washington Crossing Road. Ms. Czebotar stated Mr. Fabiano has indicated that he will do the best he can.

Exhibit A-4 was marked which are two additional photos of the property one showing the ultimate right-of-way property line and other blue line showing the proposed fence line.

Mr. Eisold stated Washington Crossing Road is a State road, and he does not feel the Plan shows where the State ultimate right-of-way line is. He feels this should be confirmed as he should not be going into the State right-of-way. Ms. Kirk stated this is why she suggested to the Board the Condition that the construction of the fence would be at Mr. Fabiano's sole cost and expense; and to the extent that the owner of the ultimate right-of-way area requires removal of the fence, it would be at Mr. Fabiano's expense.

Mr. Bamburak asked Mr. Eisold if he had any comment regarding the sight triangle, and Mr. Eisold stated this would have to be checked in the field. He stated it appears that there is plenty of space especially given that the trees are already in the sight triangle, and he suspects that if it is okay today, the fence will encroach less than the trees are encroaching now. Ms. Kirk stated she would suggest an additional Condition if the Board were inclined to grant the Application that the Building Permit for the fence be reviewed and approved by the Township engineer to assure no sight obstructions from the location of the fence; and if there is a requirement for the fence being relocated to avoid any obstruction of the clear sight triangle, Mr. Fabiano would be responsible to do that.

There was no one else in the audience wishing to comment on the Application, and the Testimony was closed.

Mr. Zamparelli moved, Mr. DosSantos seconded and it was unanimously carried to approve the request subject to the following Conditions:

- 1) Construction of the fence would be at Mr. Fabiano's sole cost and expense and to the extent that the owner of the ultimate right-of-way area requires removal of the fence, it would be at Mr. Fabiano's expense
- 2) The Building Permit for the fence be reviewed and approved by the Township engineer to assure no sight obstructions from the

location of the fence; and if there is a requirement for the fence being relocated to avoid any obstruction of the clear sight triangle, Mr. Fabiano would be responsible to do that.

APPEAL #13-1662 – JHM OUTDOOR SERVICES

The Application submitted was marked as Exhibit A-1. An impervious surface breakdown chart was marked as Exhibit A-2. A Site Plan was marked as Exhibit A-3. Notice of tonight's Hearing was published in the Bucks County Advance and this was marked as Exhibit B-1. Notice of the Hearing was posted at the property, and a copy of that Notice was marked as Exhibit B-2. Notices were mailed to property owners as required by the Ordinance, and a copy of the letter with the listing of owners was collectively marked as Exhibit B-3.

Mr. Mark Haworth, JHM Outdoor Services, was present with Mr. Bill Lin, property owner; and they were sworn in.

Mr. Haworth stated they are looking for a Variance for impervious space for a paver patio and a 10' setback of the pool off the property. He stated there was a third one listed for the side right-of-way of 40' but they are within 40' on this.

Mr. Haworth stated they are adding 400' square feet. Mr. Bamburak asked how they could determine the setbacks since there are no dimensions shown. He stated the patio has been shown with some "xs" but there are no dimensions. He stated the Board would have a hard time making a decision with the map that has been presented with no

dimensions. He stated he would like the Applicant to come back with a map showing dimensions as the Board would not be able to make a decision without the dimensions being shown on the drawing. Mr. Bamburak stated the Board would have room on the Agenda of June 4, 2013 and asked if the Applicants would like to come back at that time, and they agreed.

Mr. Gruen moved, Mr. Moffa seconded and it was unanimously carried to continue the matter to June 4, 2013.

APPEAL #13-1663 – GEORGE FOX, III

The Application submitted was marked as Exhibit A-1. A site Plan was marked as Exhibit A-2. Notice of tonight's Hearing was published in the Bucks County Advance, and the Proof of Publication was marked as Exhibit B-1. Notice was also posted at the property of the Hearing for tonight, and a copy of that Notice was marked as Exhibit B-2. Notices were mailed to other property owners as required by the Ordinance, and a copy of that letter along with the listing of owners was marked as Exhibit B-3.

Mr. George Fox was sworn in. He stated he is asking for approval to have a nursery/ horticulture greenhouse and retail business on the property he purchased a few months ago. He stated he found out that he did not have the proper acreage and there is impervious ground on the property that is excessive, but he bought it this way. He stated he did have TLC do the calculations.

Mr. Bamburak stated there is a minimum net lot area required of five acres, and he asked him what he is trying to do. Mr. Fox stated he wants to have retail sales, and he would like to plant trees and sell them as well as shrubbery. He stated he would also like to put in a couple ponds on the property. He stated this would be a five-year Plan, and would not be done immediately. He stated three months ago he bought the property and he has done a lot of cleaning and planting on the property.

Ms. Kirk stated Mr. Koopman is present on behalf of the Township in opposition of the Application. She stated she understands that the property was used as a residential facility before Mr. Fox purchased it. Mr. Fox is seeking to do a nursery/horticultural/greenhouse use on the property but does not comply with the requirements for dimensions for that use at the property.

Mr. Koopman stated the Township would like to be a Party to the proceedings and is opposed to it based on what they know at the current time. He stated in the R-3M Zoning District a nursery/horticultural use is permitted, but only if you have a minimum of five acres. He stated you also need to have 100' buffers from every property line, and what is contemplated with the five acre parcel and the 100 foot buffers is that your use will primarily be a nursery use which is the planting of trees. He stated if that is the primary use, there is an incidental use that is permitted which is retail sales of the nursery stock that is actually planted and grown. He stated the use of a retail sale garden center is not permitted at all, and that would require a Use Variance; and there is no Application for a Use Variance. Mr. Koopman stated based on Mr. Fox's Testimony it is not really clear

what he wants to do; but the only use that would be permitted would be a nursery use where you are actually growing nursery stock, and this is only permitted with five acres and 100' setbacks from the property line.

Mr. Koopman stated the request is for a Variance to allow this type of nursery facility on approximately 3.5 acres and a Variance is also being requested from the 100' buffer.

Mr. Koopman stated it is the Township's understanding that immediately adjacent to this property is Congregation Beth El on one side and a newly constructed single-family detached dwelling. He stated there is concern about the variance being requested from the buffer requirement since there will be nursery activity including tractors and other facilities used to take care of the nursery stock. He stated it is not clear from the Application what kind of buffer there would be. He stated the property is 269' wide for the most part and to have 100' buffers from every property line it would not be feasible to operate a full-scale nursery on this parcel which is why the Township is opposed to the Application.

Mr. Bamburak asked Mr. Fox if he plans to bring in nursery stock to sell or was he only planning to sell what is grown on the property, and Mr. Fox stated he plans to bring in small plantings especially in the water garden area. Mr. Bamburak asked if he would bring them in potted and they would be sold in pots, and Mr. Fox agreed. Mr. Koopman stated this would be a garden center use which would not be permitted without a Use Variance.

Mr. Koopman stated the nursery/horticultural/greenhouse use is permitted with the required five acres and 100' buffers from every property line. He stated nursery use includes the “growing of trees, ornamental shrubs, flowers, and plants with or without retail sales or greenhouses.” He stated this is in Section 200-68.25. Mr. Habgood provided a copy of this Section, and it was marked as Exhibit T-1.

Mr. Koopman stated the description of the use states in 25.E, “the use does not include a retail garden center where the principal use is the retail sale of plants, shrubs, garden equipment, and supplies.” Mr. Koopman stated a retail garden center is only permitted in the Commercial District and not in a Residential District.

Mr. Koopman stated what has been provided to the Board may not include everything, but it is the Use Regulation Section of the Ordinance which defines principal uses.

Mr. Koopman stated the problem with this property is with a smaller lot size and the required buffers, it is not feasible to meet the Ordinance requirements for a full-scale nursery. He stated it seems that what Mr. Fox really wants would more closely be described as a retail garden center where he is going to bring in items and sell them. He stated what he is proposing would be more of a retail garden center than a nursery business which contemplates trees being grown from small plants to larger trees which are then dug up and sold. He stated while retail sales are permitted for that, the principal use is the actual growing of nursery stock.

Mr. Bamburak asked Mr. Fox if he was aware that the Township was going to oppose this matter, and Mr. Fox stated he was not. Mr. Bamburak asked Mr. Fox if he feels he should retain an attorney, and Mr. Fox stated he does have an attorney. Mr. Bamburak stated it seems that this matter is going to be more complicated than Mr. Fox may have originally thought, and he may want to wait until he can have his attorney with him.

Mr. Bamburak stated it appears that there will be a Continuance on this matter; and he understands that there are residents present, and he would prefer that they wait until they hear all of Mr. Fox's plans since they may want to change their comments once they hear all the plans.

Mr. Leonard McMullen, 394 Twig Lane, was sworn in and asked to have Party Status. He stated his property is to the rear left corner of Mr. Fox's property. Mr. McMullen stated he is not sure when this matter will be Continued to, and he does a large amount of International travel. Ms. Kirk stated Party Status means he would have the right to cross examine any of the Applicant's Witnesses during Testimony and Witnesses offered by the Township. Ms. Kirk stated he would also be entitled to receive a copy of the written Decision issued by the Board when it is concluded, and as a Party he would have the right if not satisfied with the Board's Decision to Appeal to the Court of Common Pleas in Bucks County. Mr. Bamburak stated it appears they will have room on the June 4 Agenda. Ms. Kirk stated if the Board is going to Continue the matter to June 4, she would recommend that Mr. Fox get Mr. McMullen's mailing information in the event

Mr. Fox's attorney is not available on June 4 and wishes to have it moved back to a different date so that Mr. McMullen can be notified and consents as well to the Continuance as well as the Township to avoid any conflicts.

Mr. Moffa asked Mr. McMullen to show his property on the map, and he did so.

Mr. DosSantos moved and Mr. Zamparelli seconded to Continue the matter to June 4.

Mr. Anthony Mannarino, 405 Stony Hill Road was sworn in and requested Party Status. He showed where his property is located on the plan identified as Tax Map Parcel #20-034-008-001. He stated his is the new house that was referred to. Ms. Kirk stated Mr. Mannarino has identified his home as the new single-family home adjacent to Mr. Fox's property.

Mr. Tom Mier, 389 Twig Lane, was sworn in and stated his property and Mr. Fox's property abut an open space area. He requested Party Status. He identified his property on the Plan as Tax Map #20-069-035. Mr. Mier stated the current use of the property is Residential.

Motion to Continue carried unanimously.

Ms. Kirk asked the name of Mr. Fox's attorney, and Mr. Fox stated it is Allen Toadvine.

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There being no further business, Mr. DosSantos moved, Mr. Gruen seconded and it was unanimously carried to adjourn the meeting at 8:40 p.m.

Respectfully Submitted,

Anthony Zamparelli, Secretary