

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – JUNE 4, 2013

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on June 4, 2013. Chairman Bamburak called the meeting to order at 7:35 p.m.

Those present:

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

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

Absent: Keith DosSantos, Zoning Hearing Board Member

APPEAL #13-1662 – JMH OUTDOOR SERVICES

Ms. Kirk stated she received a letter dated 5/31/13 from Edward Murphy indicating that he will be representing the property owners with respect to this Application. He is requesting that tonight's Hearing be continued to a date certain in July as the property owners have retained the services of a surveyor, and the updated survey to provide the information requested by the Board is not yet complete. The letter was marked as Exhibit A-4.

Mr. Gruen moved, Mr. Moffa seconded and it was unanimously carried to continue the matter to July 2, 2013.

APPEAL #13-1663 – GEORGE FOX III

Mr. Fox stated after speaking to his attorney, he would like to request a Continuance as he feels he needs to hire new counsel due to a conflict of interest. He stated he has interviewed one attorney and he would like to speak to two other attorneys.

Mr. Bamburak noted the number of Appeals already on the July 2 Agenda. Ms. Kirk advised the Board that the Sunflower Farms Appeal may not be completed at the next meeting on June 18, and there may be another Hearing needed for this matter in July. Mr. Fox stated continuing the matter to August would not be a problem as this would give him time to speak to other attorneys.

Mr. Gruen moved, Mr. Moffa seconded and it was unanimously carried to continue the matter to August 6, 2013.

Mr. Koopman left the meeting at this time.

APPEAL #13-1664 – MANOR CARE OF YARDLEY

The Application submitted along with the Addendum setting forth facts and background was collectively marked as Exhibit A-1. A Plan that was submitted 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. The property was posted with notice of tonight's Hearing, and a copy of that 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 the owners was collectively marked as Exhibit B-3.

The Board received a memorandum from the Director of Zoning, Inspection, & Planning dated 5/14/13 that set forth recommendations by the Planning Commission; and that memo was marked as Exhibit B-4.

Mr. Neil Stein, attorney, was present with Mr. John Davis, landscape architect. Mr. Stein stated they are requesting similar relief to what the Board heard about one year ago with regard to the Manor Care facility. He stated tonight's Application relates to the same property but a different facility. He stated in the forefront of the property along Oxford Valley Road is the Manor Care facility, and to the rear or the Stony Hill Road frontage is the Arden Courts facility which is essentially an Alzheimer's Treatment facility; and that is the subject matter of this evening's Application. He stated they are proposing a modest expansion of that building to allow for a net increase of twelve beds and some additional parking spaces on the property. He stated the relief will require a Special Exception because it is currently a use permitted by Special Exception, and therefore its expansion would likewise require a Special Exception. He stated they have also asked for Variances because there will be a slight increase in impervious coverage to accommodate some walkways and additional parking spaces. He stated they also have two existing parking aisles which will be extended, and therefore will require Variance relief from the buffer requirements. He stated they also need approval to expand an existing non-conforming structure, although there will be testimony that the expansion does not make the existing non-conformity any worse than it is today.

Mr. Stein stated Mr. Davis is a licensed landscape architect in the Commonwealth of Pennsylvania, and he has testified previously before the Zoning Hearing Board, the Planning Commission, and the Board of Supervisors. Mr. Stein stated Mr. Davis was responsible for the preparation of the Plan associated with this Application, and he is being offered as an expert in land planning and landscape architecture.

Mr. Davis was sworn in.

Exhibit A-3 was marked which is an aerial photo, and Mr. Davis noted on Exhibit A-3 an area outlined in yellow which is the subject parcel on which Manor Care operates two facilities. He stated the first facility is the skilled nursing facility which takes access from Oxford Valley Road. He stated to the rear of the site is the Arden Courts facility. Mr. Davis stated the skilled nursing facility is a 150 bed facility that has received Special Exception Approval for an additional twenty beds. He stated Arden Courts to the rear is currently a 52 bed facility, and they propose that it have a total of 64 beds. He stated the Arden Courts facility in the rear takes access from Stony Hill Road so the site has two road frontages – Oxford Valley Road and Stony Hill Road.

Mr. Davis stated the majority of the site to the south and west is constrained by existing environmental encumbrances – floodplains, wetlands, and a large undisturbed riparian area. He stated connecting both facilities is an internal loop road which has been improved over time to a non-standard width pursuant to the Ordinance, but it is at this point an asphalt drive that connects both facilities.

Mr. Davis showed where the parking is located for the skilled nursing facility. He showed on the plan where parking is located for Arden Courts as well as the location of a shed and dumpster enclosure adjacent to the parking area. Mr. Davis stated the Arden Courts facility has a vinyl fence that surrounds the majority of the facility and within that is an internal circulation for the residents of the facility.

Mr. Stein stated property is 17.4 acres, and is located in the R3M Zone; and Mr. Davis agreed.

A colored version of Exhibit A-2 (Site Plan) was marked as Exhibit A-4. Mr. Davis noted on Exhibit A-4 where the proposed additional are to take place stating that there is an addition proposed off of each wing of the building to be extended approximately 35'. Each addition is the same size.

Mr. Davis noted the location of the two non-conformities on the Plan adding there is one at each facility. He stated the prior Application highlighted that the rear of that facility falls within the required building setback, and the expansion of that facility expands that non-conformity. He stated with regard to Arden Courts, there are two

areas of non-conformity to the setback requirement. He showed the bump-out on each rear wing which is offset from the property line approximately, and the areas they propose to expand that facility are farther from the property line.

Mr. Stein asked the purpose of the four additions, and Mr. Davis stated each addition will provide four beds. He stated internally there will be a reduction in the beds so that the net increase after the expansion will be twelve beds.

With regard to the parking changes, Mr. Davis noted the existing parking and showed the additional parking planned for the skilled nursing facility. He stated shown in darker gray on the Plan, closer to Arden Courts, there is an increase of ten parking spaces which will bring the total parking to 188 spaces on the site as a whole which includes the ten new parking spaces proposed for Arden Courts.

Mr. Davis stated the Arden Courts additions will displace some things and they will need to adjust the internal circulation pattern which is within the enclosed fence. He stated each of the two rear wings will encroach upon some existing sidewalk and site amenities for the patients so they will need to be relocated. He also noted the dumpster area which will need to be relocated a few feet. They will also locate a new generator and a new transformer in the same enclosure as the dumpster, and he noted this location on the Plan. Mr. Davis stated they will also make some ADA improvements, and he noted on the Plan where those modifications will be made.

Exhibit A-5 was marked which is Contest Exhibit A which is a visual inventory of the skilled nursing facility and how it relates to Oxford Valley Road. He noted where they will have parking on the Plan along Oxford Valley Road, and he stated there is a considerable berm and topography changes that will reduce some of the visual impact of adding the parking along Oxford Valley Road in front of the skilled nursing facility. He stated because of the rising road and changing topography, the parking will be less visible.

Exhibit A-6 was marked which is Context Plan B, and Mr. Davis stated this was taken from a location east/southeast of the site entrance on Oxford Valley Road looking directly into the parking area. He stated along Oxford Valley Road you can see the berm that exists, street trees that are provided, and how the existing parking is sunken into the landscape.

Mr. Stein asked if they made an effort in terms of the planning and design to minimize to the greatest extent any intrusion on adjoining properties and the community as a whole, and Mr. Davis agreed.

Mr. Stein stated there is also going to be an increase in impervious coverage, and he asked Mr. Davis to discuss why this is required and how it will be handled with regard to stormwater management. Mr. Davis stated there will be an increase in parking to fit the Manor Care program and to satisfy their parking requirements, and they also match what the Zoning Ordinance requires with regard to the number of spaces required. Mr. Davis stated they also need to provide a sidewalk along the parking as required by the Subdivision and Land Development Ordinance. Mr. Davis stated they propose to manage the run off within the existing stormwater management basin which is large and conveniently located between both facilities. He stated they may also look at water quality Best Management Practices including rain gardens, a bio-swale, vegetative filter strips, and physical methods such as snouts, etc. to offset the water quality.

Mr. Stein stated there is not need to intrude further into the woodlands with an expansion to the size of the basin to accommodate the project; and Mr. Davis stated while it would not need to intrude into the woodlands, if it needs to be adjusted, it would be adjusted adjacent to the drive aisles.

Mr. Stein asked if this is the minimum Zoning relief required to accommodate the proposal, and Mr. Davis agreed and added he does not feel there would be any adverse impact to surrounding properties or public health, safety or welfare in general. He stated this will be an improvement to the property by virtue of providing additional parking for visitors and employees.

Mr. Zamparelli stated with regard to the basin, Mr. Davis did not seem certain that he would not need to expand the basin, and Mr. Davis stated they will not need to expand it south into the woodlands as there is ample opportunity to expand along the existing drive aisle to make any grading revisions needed in order to expand the basin if an expansion is necessary. He stated what they would look to do first would be to determine if the existing capacity and volume control can be met in the facility itself; and if not, they can adjust some of the structures to add capacity. Mr. Zamparelli stated he would not want them to go back to the woodlands. Mr. Davis stated they will be looking to provide the smallest disturbance as possible.

Mr. Gruen asked Mr. Davis how he determined the impervious surface and asked if the entire 17.5 acres was considered. Mr. Davis stated with the improvements proposed for the skilled nursing facility and Arden Courts, they completed a full survey of all the existing improvements and using that information they were able to calculate exactly the square footage and that number was used to determine the impervious surface. Mr. Gruen asked if they used the entire site area for the calculation, and Mr. Davis stated they did.

Mr. Gruen stated Mr. Davis indicated they “may” build some rain gardens, and asked what would determine that. He asked if they will consult with the Township engineer. Mr. Davis stated they will be looking to conform to the Township’s Subdivision and Land Development Ordinance and the Stormwater Ordinance; and through the Land Development process, they will work with the Township engineer and the County Conservation District to make sure all the appropriate methods are utilized.

Ms. Kirk stated she understands that because of the size of the additions under the current State Stormwater Management Plans, the developer would have to follow certain stormwater management regulations, and Mr. Eisold agreed.

Mr. Gruen stated Mr. Davis indicated that the internal road “almost conforms,” and he asked for further clarification. Mr. Davis the loop road that connects both facilities does not meet the Township’s standard for aisle width. He stated it is a road that has been improved over time, and with each paving it gets a little wider or less symmetrical. It is not to Township standard for a public road. Mr. Davis stated it is not a public road, and is for internal parking. He stated they will be looking to bring that into conformance with this project.

Mr. Moffa asked about the relief that was granted in 2012 for the skilled nursing facility, and he asked if that project has been completed yet. Mr. Stein stated that project is pending Land Development approval. He stated he feels that if the Zoning Hearing Board is willing to grant relief to this project tonight, this project and that project will merge together into one Land Development Plan.

Mr. Moffa stated in 2012 impervious surface to 27% was granted, and today they are asking for 30%. Mr. Stein stated when they met with the Planning Commission the Planning Commission asked if this could be reduced to 29%, and the developer agreed to do that. Mr. Moffa stated in the same memo from the Planning Commission they asked the Zoning Hearing Board to give consideration to the use of pervious paving, and Mr. Stein stated the Planning Commission asked the developer to investigate whether any areas would be better served by having porous paving rather than standard asphalt paving. Mr. Stein stated while there are maintenance issues associated with that, they will look into it during the Land Development process.

Ms. Kirk stated the Arden Courts facility currently has fifty-two beds, and they are proposing an additional twelve beds. Ms. Kirk stated Mr. Davis indicated that there would be three additions, but the Application indicates there will be four additions; and Mr. Stein stated there are four additions proposed for Arden Courts. Mr. Stein stated while each of the four additions will accommodate four additional beds which would be sixteen, there will be existing beds being eliminated within the existing facility which will result in a net gain of twelve beds.

There was no one from the audience wishing to speak about this Application, and the

Testimony was closed.

Mr. Gruen moved, Mr. Zamparelli seconded and it was unanimously carried to approve the Variances requested with impervious surface to be 29%.

APPEAL #13-1365 – BOB GRIFFIN

The Application submitted was marked as Exhibit A-1. A Plan submitted was marked as Exhibit A-2. The impervious surface chart provided was marked as Exhibit A-3. Notice of tonight's Hearing was published in the Bucks County Advance, and the Proof of Posting was marked as Exhibit B-1. Notice was posted at the property, and a copy of the Posting was marked as Exhibit B-2. Notices were mailed to other 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. Bob Griffin was sworn in. He stated they were seeking relief for a roof over one end of the constructed deck. He stated when they applied for the Permit, it was brought to their attention that the existing shed structure which was within 10' of the water's edge of the pool. He stated they are now only seeking relief for the existing shed and are waiving the roof over the deck.

Ms. Kirk stated they are withdrawing the request for the roof over the deck, and Mr. Griffin agreed. Ms. Kirk stated the issue with respect to the roof over the deck would have had an effect on the impervious surface ratio. She stated at the present time the property has an existing impervious surface of 20.3% coverage, and the proposed coverage would have increased to 21.1% had the deck been covered; however, he is now withdrawing this.

Ms. Kirk stated with regard to the shed structure one of the Sections of the Ordinance indicates that any structure must be located at least 10' feet from a pool, and the existing shed is 5' from the pool. Mr. Bamburak asked if they had a Permit when the shed was installed, and Mr. Griffin stated the shed was there before the home was purchased in 1988.

Mr. Gruen stated the "shed" they are talking about is actually a cabana. He stated there is also a shed on the side of the house close to Michael Road and there is no problem with that shed.

Mr. Moffa stated the shed in question is 10' from the property line but 5' from the water's edge, and Mr. Griffin agreed. Ms. Kirk stated 10' is required from the water's edge under the Ordinance.

Mr. Bamburak asked if there is any electric in that shed, and Mr. Griffin stated there is.

Mr. Gruen asked how long the pool has been there, and Mr. Griffin stated it was there when the house was purchased.

Mr. Moffa stated he assumes that the 10' from water's edge is required for safety reasons. Mr. Habgood stated this is a requirement in the Township Zoning Ordinance and has been there for quite a long time.

Mr. Bamburak asked if the shed could be moved or is it permanently mounted, and Mr. Griffin stated it could not be moved.

Mr. Bamburak stated he assumes the biggest concern is electrical safety.

Mr. Gruen asked how far away the pool equipment has to be from the pool, and Mr. Habgood stated there is nothing in the Zoning Ordinance regarding this although there could be a requirement in the Building Code. Mr. Zamparelli stated pool equipment must be 5' away from the pool.

Mr. Moffa asked on which side of the shed is the ingress, and Mr. Griffin stated the door is facing the pool.

Ms. Kirk stated the Ordinance indicates, "A pool must be located at least 10' from the rear or side property line and 10' from any portion of the building." She stated technically because of where the pool is located in relation to the shed, this is the issue and not the reverse.

Mr. Moffa stated he presumes they would state that they have not have any problems with the close proximity of the door to the water, and Mr. Griffin stated they have not. He stated it has been this way since it was purchased in 1988. Mr. Moffa asked if the doors swing out, and Mr. Griffin stated they slide.

Ms. Julie Swan, the homeowner, was sworn in and stated when they moved into the property in 1998, the pool was there and the gazebo was there which was in the same exact footprint where the shed is that is there now. She stated it was a roofed gazebo. She stated they have never altered the footprint. She stated it was wood at one point and then Trex. She stated the shed has two double sliders with screens and you walk into that same footprint. She stated they have a number of sofas and chairs and a TV. She stated the pool equipment is outside of the shed. She stated the shed was a roofed gazebo in 1988. She stated they did change the floor from wood to Trex, but it was always closed in. Ms. Swan stated there was also a roof on the deck when they bought the house.

Mr. Habgood stated a Permit was submitted by the Applicant to construct a deck in addition to an expansion of the existing wood deck and that new deck was proposed to have a roof structure over it. When the Township reviewed the Permit it was found that they would be increasing impervious surface over what was permitted and that the shed shown on the Site Plan had no Permit and that it was encroaching on the minimum setback from the structure to the water's edge of the Pool. He stated they will need a Permit even though it is existing and since there is electric there, and there has been no inspection of the electric, there will be a Permit required for the electric as well. He stated they will also need a Variance for the increase in impervious surface since they are already over the requirement as well as the setback from the water's edge. Mr. Habgood stated they are over the permitted impervious surface since there was no Permit issued for the shed so the Township had no record of that additional increase in impervious surface. Mr. Habgood stated the permitted impervious is 18%, and they have 20.3% including the shed. Mr. Bamburak stated that would be the amount with the new roof which they had originally requested, and Mr. Habgood agreed. Mr. Bamburak asked Ms. Swan if she would still be interested in having the roof over the deck, and Ms. Swan stated they have decided they do not want this.

Mr. Rick Yeager was sworn in. He stated the reason for the 10' requirement from the water's edge is so that someone will not dive off the building into the pool.

Ms. Carol Alling was sworn in. She stated she is a neighboring property and what they have is a cabana and not a shed or gazebo and it is a hard-sided building. She stated the problem with the impervious surface is not simply the 2% or 10% difference. She stated the property drains to the Michael Road side of the property and approximately 6' back from the drive at Michael Road is a storm drain which is on the Swan property. She stated they have built a 6' fence to protect themselves from having to look at the storm drain and no one is maintaining the 5' strip along the back of their property where the fence protects them from looking at it. She stated they have then "kicked out" the fence to accommodate the back of the cabana so the fence runs 5' short to protect them from looking at the storm drain, goes out, and then goes behind the cabana. She stated as a neighbor she is looking at the "mess" that exists in this unclaimed area of the property that no one is taking care of. Ms. Alling stated she has pictures of the condition to show the Board.

Ms. Alling showed on the map where her home is located. Mr. Moffa stated Ms. Alling's property is Tax Map Parcel #20-047-151 which is across the street diagonally from the Applicant's property. Ms. Alling stated she is concerned that she has to drive up to her house and look at this mess that nobody wants to take care of. She stated it is not causing flooding on her property, but she has to drive by and look at it.

Mr. Griffin was asked to draw on the Plan the location of the fence. Ms. Kirk noted that Mr. Griffin has drawn a solid line across the top of the Plan for a solid fence around the rear of the property. Mr. Griffin stated it is a swale. Ms. Alling stated there is a grate there. She also stated the line that has been drawn is running straight across the property but the fence is not straight and it jogs out. Ms. Swan stated that was the original line of the fence, and they just followed it. She stated when they replaced the fence they followed the exact line that was there, and if it was incorrect, they did not know it.

Ms. Swan stated she spoke to Mr. Montini who lives behind here, and he had come to them indicating that he wanted to take down a number of trees that were back there, and that is when they put the fence in. Ms. Swan stated Mr. Montini told them that he would be more than happy to clean up the whole area. She stated his grown daughter passed away, and they have not done it yet. She stated he apologized, and she told him that it was not a problem. Ms. Swan stated while she agrees with Ms. Alling that it is an eyesore, it is not something they realized was theirs in any way since Mr. Montini came to them indicating he wanted to take the trees down and handle it. She stated they followed the pattern that had previously been there, and they made no alterations as to how the fence juts or moves. She stated they only replaced the vinyl fence that had been damaged by Hurricane Sandy. She stated they replaced it with a white vinyl fence.

Ms. Alling stated they had to maintain the jog of the fence to accommodate the shed.

Mr. Gruen asked who owns the drain/swale. Mr. Habgood stated he is not sure that there is an easement or who owns it. Mr. Gruen asked if there was a Building Permit for the fence, but Mr. Habgood did not know although he stated a Permit is required for the erection of a fence.

Mr. Gruen asked Ms. Swan how high the bottom of the fence is from the ground, and Ms. Swan stated there is an open area underneath which she felt was about 2". Mr. Bamburak asked if it is high enough for water to go underneath, and Ms. Swan agreed it is. Mr. Zamparelli asked if they got a Permit when they put the fence up, and Ms. Swan stated they did not know that they needed one.

Mr. Moffa stated Mr. Griffin indicated that there is a swale at the back side of the property, but Ms. Alling indicated there is a grate on the Michael Road side of the property. Ms. Swan stated there is a drain along the fence but she does not know what it is.

A short recess was taken at this time.

When the meeting was reconvened, there was no further comment from those in the Audience and Testimony was closed.

Mr. Gruen moved , Mr. Zamparelli seconded and it was unanimously carried to approve the request for Variance for 5' setback for the cabana and impervious surface of 20.3% which is the current ratio.

Mr. Bamburak stated with regard to the questions about maintenance, this is not something that the Zoning Hearing Board has control over; and he would suggest that they address this with the Township.

APPEAL #13-1666 – JANET ROSE

The Application submitted was marked as Exhibit A-1. Notice of a Zoning Disapproval was issued by the Township and was marked as Exhibit A-2. An impervious surface chart was provided, and this was marked as Exhibit A-3. A Plan for the property was 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. Notice was also posted at the property, and a copy of the 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 owners was collectively marked as Exhibit B-3.

Ms. Janet Rose and Mr. Rick Yeager were sworn in. Mr. Yeager stated they are looking for relief from the requirement of 18% impervious surface coverage to the amount of 27.5% for mostly an existing non-conforming situation. He stated there is also a second issue which was brought up during the Permit process of an existing shed which is adjacent to the property line, and they are seeking relief for the setback of the shed to the property line.

Ms. Kirk noted the impervious surface coverage breakdown and stated when she reviewed the Application it appeared that there was going to be an addition of a sunroom added to the property, and Mr. Yeager agreed. He stated it will be a three season aluminum enclosure which will be installed over an existing deck area joining the house and an existing screen room off the back of the house. Ms. Kirk asked the existing impervious surface coverage on the property not included the proposed sunroom; however, Mr. Yeager stated he would have to calculate this. He stated the sunroom will add a total of 173 square feet. Ms. Kirk stated she calculated the numbers and came out to 26% existing impervious surface. Mr. Eisold stated he feels it is 26.3%.

Mr. Habgood stated he feels that the lot size they are showing on Exhibit A-3 is incorrect, and it should be 20,907 square feet which would result in existing impervious surface of 19.4%. Mr. Habgood stated Exhibit A-4 does not show two of the other side property lines adding this is a corner lot. He stated the left side property line is actually 170' when you look at the property from Sylvan Terrace. He stated he knows this because he checked the Tax Map. He stated the rear property line is 124.01'.

Mr. Bamburak asked who did the calculations, and Mr. Yeager stated it was someone from his office.

Mr. Bamburak noted that there are only four Board members present this evening; and in the case of a tie, the Applicant would lose. He stated they have the option to proceed or come back another night; however, Mr. Yeager asked that they proceed.

Ms. Kirk stated the current impervious coverage is therefore 19.3% and with the addition of 173 square feet, the impervious coverage would be 20.1% which is significantly less than 27.5%.

With regard to the shed, Ms. Kirk stated the requirement is that it should be no less than ten feet from a side or rear lot line; and it is on the line.

Mr. Gruen stated the shed is on an existing asphalt surface, and Ms. Rose stated the pad was there when she bought the house. She stated the prior owner had their camper on that pad. She stated she needed to put in a shed for her lawn mower. She does park her truck on the rest of the asphalt.

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

Mr. Gruen moved, Mr. Zamparelli seconded and it was unanimously carried to grant the Variances as requested with impervious surface to 20.1% and the shed to remain where it is at setback of 0' from the property line.

There being no further business, Mr. Moffa moved, Mr. Gruen seconded and it was unanimously carried to adjourn the meeting at 8:50 p.m.

Respectfully Submitted,

Anthony Zamparelli, Secretary