

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – APRIL 3, 2012

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on April 3, 2012. Chairman Bamburak called the meeting to order at 7:00 p.m.

Those present:

Zoning Hearing Board: Paul Bamburak, Chairman
 Gregory J. Smith, Vice Chairman
 Jerry Gruen, Secretary
 Anthony Zamparelli, Member
 Mark Moffa, Alternate Member

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

APPEAL #12-1628 – JOSEPH MAXIAN

Ms. Kirk stated Mr. Maxian filed an Appeal, and the Record should be opened due to the time constraints. The Application submitted was marked as Exhibit A-1. The Building Permit rejection letter was marked as Exhibit A-2. Exhibit A-3 was marked which is a copy of a two-page Plan submitted by the Applicant. Exhibit A-4 was marked which is a copy of a letter from the Applicant indicating that he is not available this evening and is requesting that the matter be moved to a later date. This matter was published, and the Proof of Publication was marked as Exhibit B-1. The property was posted with Notice of the Hearing, and the Proof of Posting was marked as Exhibit B-2. Notices were mailed to adjacent property owners as required by Ordinance, and a copy of the letter with a listing of the residents was marked as Exhibit B-3.

Mr. Bamburak stated it would be appropriate to continue this matter to May 1, 2012 at which time they will expect Mr. Maxian to be present.

Mr. Gruen moved, Mr. Smith seconded and it was unanimously carried to continue the matter to May 1, 2012.

APPEAL #11-1604 AND #11-1604 (A) – JULE AND WES SCHEIRING

Ms. Kirk stated one of the Parties that sought Party Status at the time of the original Application, Pamela Zamel, had submitted prior letters to the Board indicating her unavailability as she teaches on Tuesday evenings at a local University. Ms. Kirk stated she spoke with her Monday evening, and Ms. Zamel indicated that she would be attending this evening's meeting but asked that this matter be postponed until about 7:30 p.m. when she arrives.

APPEAL #11-1621 AND APPEAL #11-1621(A) – JAMES AND TRACY FISH

Mr. Fish was present and was advised that he was still sworn.

Ms. Kirk stated the original Application submitted requested Variances from rear and side yard setbacks. She stated the Plan that was submitted by the Applicant at that time only dealt with those two issues. She stated an Amended Plan was later submitted which indicated a possible encroachment into a natural resource protected area as a result of the building itself being re-located. Ms. Kirk stated the Applicant was not aware if he needed additional Variances from that resource protected area, so the matter was continued until tonight's Hearing. Since then the Applicant has submitted an Amended Application and additional documents.

Ms. Kirk stated in light of that Amended Application, the Board should incorporate the original Exhibits that were previously entered and add the following Exhibits: Exhibit A-4 which is a copy of the Amended Application, Exhibit A-5 which is a copy of a two-page Plan, Exhibit B-4 which is Proof of Publication of the Amended Application as posted in the Yardley News, Exhibit B-5 which is the Proof of Posting of the property of tonight's Hearing, and Exhibit B-6 which is the letter sent to the adjacent property owners as a result of the Amendments along with a copy of the listing of those notified.

Ms. Kirk stated based on the Amended Application, they are seeking relief from Section 200-25 with respect to rear and side yard setbacks and are also seeking relief under Section 200-51b1 which is worded as to "woodland protection" as well as relief from Section 200-52 regarding site capacity; however, the Zoning Ordinance indicates that Section 200-51b deals with floodplains. She is therefore not sure if they are dealing with floodplains or woodlands. Mr. Fish stated he is assuming that it is woodlands although he stated he is assuming it is woodlands because the engineer did not indicate there was any problem with the floodplain. Ms. Kirk stated if this is the case, then the Section of the Code needs to be modified in that if he is seeking relief from the woodland protected area, it should be Section 200-51b6. Mr. Fish stated he may be wrong adding that it is encroaching on the resource protected area, and would not be touching any of the woodlands.

Ms. Kirk stated part of the problem they were not sure what the resource protected area dealt with whether it was protected for woodlands, for floodplain, or anything of that nature. Ms. Kirk asked Mr. Habgood and Mr. Eisold if they knew whether this was woodlands or floodplain. Mr. Habgood stated it is woodlands, and the Amended Application, Exhibit A-4 does have Section 200-51b6 and this is how it was advertised. Ms. Kirk stated the photocopy she had read “Subsection 1.” Mr. Habgood stated it was identified by the Applicant’s engineer as being woodlands.

Ms. Kirk stated they are therefore requesting Variances for rear and side yard setbacks, a Variance from Section 200-51b6 regarding disturbance in a woodland protected area, and a Variance from Section 200-52 regarding site capacity. Mr. Bamburak asked about the site capacity issue. Mr. Habgood stated he is not sure about this, but he feels the resources had to be identified during the Subdivision process; and any encroachment into them now requires 100% protection which is why he feels they included Site Capacity as they are now exceeding what is allowed for the site.

Ms. Kirk stated she suspects under the Section dealing with site capacity according to the Zoning Ordinance, 70% of the woodlands have to be protected. Mr. Fish stated it is only a 5’ Variance request, so he cannot imagine it would be 30%. Ms. Kirk stated part of the problem is that the engineer should probably be present with Mr. Fish with respect to this Application so that he could provide clarification. Mr. Fish stated he can explain why they are requesting the Variance. He stated several of his neighbors are also present who are in support of the Variance; and in fact, all of the neighbors have indicated support for this. He stated he feels this is good for the neighborhood and good for the environment even though it encroaches slightly into the protected area as they are planning on adding several trees to the lot. He stated the purpose for the request was so that they could rotate the house slightly to the northeast so that it would face the street as opposed to facing the neighbors. He stated building the house with the current setbacks would require it to face to the northeast which would face Lot #4, and they felt it would be better for themselves and the neighbors if the house was rotated slightly to face the cul-de-sac.

Mr. Zamparelli stated he recalls that they had previously asked Mr. Fish to make sure that the resource protected area was not a wetlands. Ms. Kirk stated the Amended Application submitted at the last Hearing had the house rotated in such a way that involved a small triangular area. Mr. Zamparelli stated they were concerned that if the Zoning Hearing Board approved the Variance as requested, Mr. Fish could be denied at a future time because they did not know what the resource protected area was. Mr. Zamparelli stated this is what Mr. Fish was to advise the Board. Mr. Zamparelli asked Mr. Fish if he has determined what the area was actually defined as, and Mr. Fish stated he does not know the actual answer but cannot imagine that it is wetlands.

Mr. Habgood stated he believes that it is just woodlands.

Mr. Bamburak asked Mr. Eisold if he has looked at the Plan; and Mr. Eisold stated he has reviewed the information, but has not been in the field to see it. He stated it does appear that it would be woodlands and not wetlands.

Mr. Bush asked for further clarification regarding the Variance for the site capacity. Mr. Eisold stated because they are encroaching into the resource protected area, they are required to also go against the site capacity calculations that were prepared for the whole Plan initially. He stated they are not in strict conformance with the site capacity calculations now that they encroach, and they therefore have to request that additional Variance to seek relief from the site capacity calculations.

Mr. Bamburak stated they should not take this to mean that the house is too big for the property; and Mr. Eisold stated he feels it is just that they are not meeting the resource protection of the original Plan and site capacity calculations, and now that they are Encroaching into it, they need to get a Variance. Mr. Koopman agreed and stated they have had this situation in the past. He stated as part of the Zoning Subdivision Plan there is a site capacity calculation which shows exactly what every resource is and it will delineate how many acres of woodlands are open space and protected, and you need a Variance from that. He stated technically any time you get a Variance from a natural resource protection provision that is part of a Subdivision, you probably need a Variance from the site capacity calculations as well. He stated he assumes they are deviating from the Section of the Ordinance that requires a certain percentage of woodlands to be protected and this translates into the site capacity calculations which also provide for what amount of woodlands are protected. He stated the site capacity calculation is really a calculation as to how many houses you can have on a development. He stated you factor in all the natural resources and other factors and come up with how many dwelling units they are entitled to on the tract of land. He stated this is only one house, so they are not impacting what is behind the site capacity calculations.

Ms. Kirk stated it is also dealing with the site capacity for woodland protection for the entire tract based on the Subdivision. She stated the mere encroachment of that small triangular piece by 4.94' may have disturbed the 70% overall woodland protection for the entire tract of land; and Mr. Koopman stated it probably does because the site capacity calculations have the number for the whole Subdivision, and even if there is a minor modification, technically you need relief.

Ms. Kirk stated the document marked as Exhibit A-5 includes the original Plan provided to the Board and attached to that is a second Plan that shows the triangular piece in the resource protected area. Ms. Kirk asked Mr. Fish if he is looking for Approval based on the second sheet, and Mr. Fish agreed. Ms. Kirk stated the rear yard requirement is 40', and under the original Application, he was requesting 26.9' for the rear yard. She asked if this has been eliminated since that encroachment is not on the new Plan. Mr. Fish stated the rear of the house has not changed regardless of how the house sits, and it is

still within the 40' setback. Ms. Kirk noted the first Plan and showed a corner piece of the house jutting into what appears to be the elongated section of the resource protected area. She stated the first Plan had a measurement of 26.9'. She stated because the house has been slightly rotated, there is a figure on the new plan of 39.63'. Ms. Kirk stated that would deal with the Variance for the rear yard setback since it is not a 40' setback.

Mr. Fish stated he sees a 15' requirement on that side and 40' is at the back of the house. Mr. Eisold stated the second Plan is confusing as they have a 15' dimension as well as the 40' dimension. Ms. Kirk stated they also have the dimension of 39.63' which appears to be measured from the property line and not the resource protection line. Ms. Kirk stated they are just dealing with the rear yard setback from the property line. Ms. Kirk asked if this would encompass the rear yard, and Mr. Eisold agreed.

Mr. Habgood stated the one Plan that was prepared by Pickering Corts & Summerson is showing the rear yard incorrectly versus the Approved Plan for the Boxwood Farms Subdivision. He stated the entire area in the back should be 40'; and there is an Ordinance that when there are natural resources on the property, all of the setbacks are measured to the natural resource line and not to the property line that may be behind it. He stated the rear yard is therefore shown incorrectly. Mr. Habgood stated he calculated as best he could scaling it, and it appears that they are actually requesting a rear yard setback of approximately 18' to the natural resource protection line from the edge of the house.

Ms. Kirk asked Mr. Fish if he would accept that as what he is requesting, and Mr. Fish stated while he understands what Mr. Habgood is saying, he does not know the Ordinance so he would accept it. He stated if he had to have 40' measured from the protected area, he is not sure the house he wants to build could be built no matter how it is turned. Ms. Kirk stated she wants to make sure that the Board has the correct dimensions in considering the Application since when he submits Building Permits, it would have to meet the requirements. Ms. Kirk stated the rear yard setback will be measured from the edge of the building to the resource protection line which Mr. Habgood has indicated is 18'.

Mr. Habgood stated the way the house is situated, they are actually encroaching the full 15' into the left side yard setback and then into the resource protected area so there would not be a left side yard setback, and it would be zero. Mr. Habgood stated from the front of the property, the left side yard setback would be where the home encroaches past all the way through into the resource protected line. Mr. Habgood stated he is actually asking for a zero setback on that left side. Ms. Kirk stated there is an encroachment of 4.94' into the resource protected area, and Mr. Habgood agreed.

Mr. Gruen asked if there is a Plan showing the original building envelope that was Approved, and Mr. Habgood provided a copy of this tonight. This was marked as Exhibit B-7. Ms. Kirk stated Exhibit B-7 is a copy of the original Subdivision Plan, and Mr. Habgood agreed that it is from the Approved Recorded Linens.

Mr. Gruen stated the Lot in question is Lot #5.

Ms. Kirk stated as a result of the resource protection area, the actual buildable area on Lot #5 is almost triangular in shape.

Mr. Moffa noted Exhibit A-4, and asked if the dotted line is the building envelope; and it was noted that this is correct. Mr. Moffa stated if the house was completely within the dotted area, he would not need any yard Variances, and Mr. Eisold agreed.

Mr. Smith asked if Lot #2 is built, and Mr. Habgood stated it is in the process of being built. It was noted that Lot #3 and #6 are built, but Lot #7 is not. Mr. Smith stated all of those are smaller net square footage buildable spaces.

Mr. Bamburak noted on the drawing the dotted line which is 40' from the resource protected area, but there is also another dotted line 15'; and he asked why there are two lines. Mr. Habgood stated according to the Approved Plan the setback to the resource protected area is 40'. He stated the Plan that was part of Exhibit A-5 that was developed by Pickering Corts & Summerson is showing the rear yard incorrectly; and they were showing that part of it as a side yard and not a rear yard.

A short recess was taken at this time so that the Board could review the documents and confer with Ms. Kirk regarding what is being requested.

When the meeting was reconvened, Ms. Kirk stated the Board met in Executive Session to deal with some of the issues as to the interpretation of the Zoning Ordinance Sections requested by the Applicant for Variance relief as set forth in the proposed Plan submitted by the Applicant comparing it to the Approved Subdivision Plan accepted by the Board and submitted by Mr. Habgood.

Mr. Bamburak advised Mr. Fish that the Board was discussing the map he submitted. He stated the last time Mr. Fish was hear they indicated that he would need to get them more information, but the Board has not been given all the information they need. He stated before they can grant a Variance they need to know the area of the encroachment into the resource protected area, and they are unable to scale it off the map that has been submitted. He stated Mr. Fish's engineer also had some questions as to whether on the back corner of the house where the bow window is whether it was a 40' setback from the resource protected area or the 15'; and it is the 40'. Mr. Bamburak stated based on that, the Board needs to know the dimensions to the corner of the house.

He stated Mr. Habgood tried to scale it and it came back as 18', but the Board needs to know an exact dimension on this. Mr. Bamburak stated he does not feel there would be a favorable outcome this evening if Mr. Fish asked the Board to make a Decision this evening with the lack of numbers. Mr. Bamburak suggested Mr. Fish request that the matter be continued and he suggested that he bring the engineer with him..

Mr. Bamburak stated some Board members are also concerned that while they understand that he wants to position the house a certain way so it looks aesthetically pleasing, there is already a building envelope where a house could be put; and those members need to have their concerns assuaged why this cannot be done and why what Mr. Fish is proposing would be better, and they would like more details.

Mr. Bamburak suggested that the matter be continued until May 1. Mr. Bamburak stated if the Board were to grant a Variance with numbers they do not have; and Mr. Fish submits the Building Plans, if the numbers are not the same, he will have to come back to the Zoning Hearing Board and do this all over again.

Ms. Kirk recommended that if the Board were inclined to continue the matter, that Mr. Fish take a copy of the Approved Subdivision Plan to his engineer as it clearly delineates the proposed tree lines, resource protected area, and the way the building envelope was approved by the Supervisors in order to calculate the exact measurements since the numbers of the Plan submitted for tonight's Hearing are a little confusing as to what is exactly being requested.

Mr. Fish stated he assumes the developer has another engineer since the first engineer did pass away several months ago. Ms. Kirk stated Mr. Fish as the property owner is not qualified to answer some of these specific questions so whoever is being used as the engineer for the building and development should be at the Zoning Hearing Board to answer these specific questions so that the Board is aware of exactly what relief is being requested, and how much is being requested in order to be able to make an informed decision about the Application.

Mr. Fish asked if the Board is able to say at this point whether there is a likelihood that this may not be approved at all because if there is, he feels his family would have to make a decision as to what they should do. Ms. Kirk stated Mr. Fish could request that the Board render a Decision this evening, and not continue the matter. Mr. Fish stated if the answer is going to be "no" and he has a better probability of getting a "yes" on May 1, he would agree to request a continuance.

Mr. Bamburak stated he feels Mr. Fish should come back with more information as the Board does not want to make a Decision without the complete information.

Mr. Gruen asked Mr. Fish if he is building the house himself or is the developer building it; and Mr. Fish stated the builder is going to build the house. Mr. Gruen suggested that he bring the builder to the meeting. Mr. Fish stated the builder is the individual who sold them the lot. Mr. Gruen suggested that Mr. Fish bring him. Mr. Fish stated he did ask him if he wanted to come tonight, and he indicated that Mr. Fish would be fine on his own. Mr. Bamburak stated they cannot give a Variance with numbers that are in flux.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to continue the matter to May 1, 2012.

APPEAL #11-1604 AND #11-1604(A) – JULIE AND WES SCHEIRING

It was noted that Pam Zumel was now present, and it was agreed to proceed with this Application at this time.

Mr. Edward Murphy, attorney, was present with Julie and Wes Scheiring.

Ms. Kirk stated this Application was first heard by the Board on 8/2/11 at which time several persons requested Party Status in opposition to the Application. Since August until today's Hearings, the Applicants have been meeting with the property owners trying to resolve some of the residents' concerns. An Amended Application has been submitted. Ms. Kirk stated Exhibits A-1 through A-10, Exhibits B-1 through B-3, and the other Exhibits that were submitted by the opposing residents that were previously submitted should be incorporated.

Ms. Kirk stated a letter was issued by Mr. Murphy, who is now representing the Applicants, dated 2/29/12 with an outline of relief requested by the Board, and this was marked as Exhibit A-11. Ms. Kirk stated Mr. Murphy also submitted a letter to the Township on 3/5/12 dealing with issues as to the driveway, and this was marked as Exhibit A-12. A letter directed to Mr. Murphy and received by the Township on 3/6/12 signed by John and Amy Hoffman, William and Carol Jones, Richard and Betty Scheier, Mike Tenaglia, and Pamela Zumel was marked as Exhibit A-13.

Ms. Kirk stated since the Applicants are seeking alternative relief from that which was originally filed, Notice of tonight's Hearing was published in the Yardley News, and the Proof of Publication was marked as Exhibit B-4. The property itself was posted with Notice of tonight's Hearing, and this was marked as Exhibit B-5. Notice of tonight's Hearing was also mailed to adjacent property owners, and a copy of that letter along with the listing of residents was marked as Exhibit B-6.

Ms. Kirk stated also submitted was a two-page grading Plan, and this was marked as Exhibit A-14.

Mr. Murphy stated Mr. and Mrs. Scheiring appeared before the Board last August, and there were five neighbor residents who requested and received Party Status by the Board. He stated all of them had various issues and concerns expressed as to the original Application which proposed the construction of a free-standing garage to the rear of the property which would access Robinson Place, the other street which bounds the property to the west. Mr. Murphy stated as a result of those concerns, the Scheirings obtained certain consultants to assist them in trying to address and/or alleviate the concerns expressed in August. Mr. Murphy stated ultimately a multiple number of Plans/scenarios were developed; and one in particular which they felt had some merit was the subject of a meeting in his office in January where the neighbors elected to get together with the Scheirings to see what was their reaction to the Plan. Mr. Murphy stated the Plan was not well received at that time, but what did occur as a result of that meeting were some ideas proposed by the neighbors as to how the needs of the Scheirings might be able to be addressed in an alternate way with less impact on the property owners. Mr. Murphy stated within two weeks, the Scheirings had responded to that and prepared a third Plan which was the subject of a meeting in late January among the neighbors. Mr. Murphy stated that Plan had more support, and it was on that basis that a further Plan continued to be developed based on those concepts which ultimately resulted in the submission of the Revised Plan which is before the Board this evening.

Mr. Murphy stated he appeared before the Zoning Hearing Board in February and provided an update on the progress they were making in discussing these issues with the neighbors. Mr. Murphy stated the Plan before the Board this evening seeks more relief than the Plan that was submitted and reviewed by the Zoning Hearing Board last August; however, the Plan today eliminates one of the biggest design the neighbor's had which was the free-standing garage located to the rear of the property with access on Robinson Place. Mr. Murphy stated since they submitted the Plan, there have been ongoing conversations between the Scheirings and the neighbors, and there has been a further refinement on the Plan that accompanied the Revised Application. Mr. Murphy stated the modification is reflected in a Plan that was provided this evening and marked as Exhibit A-15. He stated this is a single-sheet Grading Plan which bears the last revised date of 4/3/12. Mr. Murphy stated this Plan does not change the scope of the relief being sought but it eliminates a gravel driveway that extends out from the property to Robinson Place. He stated under the Revised Plan there will be no direct access via that driveway to Robinson Place, and the only access will take place from the existing access off River Road.

Mr. Koopman stated he understands that originally there was a height Variance requested for the garage, and this is no longer part of the Application; and Mr. Murphy agreed.

Ms. Kirk stated it appears that much of the Zoning relief originally requested has been modified as a result of the Final Revised Plan, and Mr. Murphy's outline of relief sets forth the eight specific Variances that would be applicable.

Mr. Murphy stated in addition to the Revised Plan, a Flood Impact Study has been submitted as this was an issue of some concern to the neighbors last August. He stated once they had finalized the location of the proposed improvements, their civil engineering expert, Mr. Genovesi, did prepare the Flood Impact Study. He stated they did provide a copy of this Study to the neighbors about ten days ago and also submitted it to the Township solicitor within that same time frame.

Ms. Kirk asked if they are going to submit the Wetlands Study as an Exhibit; and Mr. Murphy stated he will, and he was going to introduce it through Mr. Genovesi.

Mr. Koopman stated there was an additional Variance added, and they had requested relief from the surface of the driveway that was leading out to Robinson Place; and now that there is not going to be a driveway, they do not need to address this. Mr. Murphy agreed and stated under the latest Plan the gravel driveways will be eliminated; and the impervious surface, from which no relief was ever requested, has now been further decreased.

Ms. Kirk stated the Variances set out by Mr. Murphy in the Outline of Relief are shown in paragraph 6 of the outline and are A through H, and these are all the Variances being requested this evening; and Mr. Murphy agreed. Ms. Kirk stated none of these specify the interpretation as to the driveway access that has now been removed. Mr. Murphy stated that was a supplemental letter that he sent to Mr. Habgood when they tried to clarify whether or not gravel was within the definition of a hard surface. Ms. Kirk stated that had been marked as Exhibit A-12, and it appears that is no longer required; and Mr. Murphy agreed. Mr. Koopman stated that was included in the Public Notice as one of the Variances being requested, but they no longer need this.

Mr. Murphy asked Mr. Scheiring if he agrees with the summary he provided of the steps that have been taken since the initial meeting before the Board, and Mr. Scheiring agreed.

Mr. Scheiring was asked to describe the current Plan marked as Exhibit A-15 with the proposed improvements to the garage and the pool. Mr. Scheiring stated they are proposing to expand the existing garage to the north side of the property line and to the west side of the property line essentially doubling the length of it and opening it up 6'.

Mr. Murphy stated it would appear that the garage addition would be characterized as an L-shaped addition with the narrowest portion of the L facing River Road adjacent to the existing garage and then it would wrap around the existing garage, and Mr. Scheiring agreed. Mr. Murphy stated that garage addition triggers the need for a side yard Variance, and Mr. Scheiring agreed. Mr. Murphy stated on the Plan it is identified as a proposed Variance to provide for a 3'9" setback between the proposed garage addition and his neighbor to the immediate north, Mrs. Duffy; and Mr. Scheiring agreed. Mr. Murphy asked Mr. Scheiring if he has had a chance to review this Plan with Mrs. Duffy; and Mr. Scheiring stated they did review it with her, and she is present this evening.

Mr. Murphy asked Mr. Scheiring in addition to the proposed garage addition just described, what other improvements are proposed. Mr. Scheiring stated they are also proposing an in-ground pool to the rear of the property. Mr. Murphy stated this is depicted immediately off the back corner of the proposed expanded garage, and Mr. Scheiring agreed. Mr. Murphy asked if this is the same location of the pool as it was on the Plan presented to the Board last August, and Mr. Scheiring stated it is not. Mr. Scheiring stated because of the expansion to the garage, they turned it 90 degrees and made it perpendicular to the lot.

Mr. Murphy stated he had advised the Board that the proposed garage and the proposed access to Robinson Place that appeared on the original Application have now been eliminated, and Mr. Scheiring agreed. Mr. Murphy stated they do show to the rear of the lot what looks like a driveway and has in the middle "RCE", and he asked Mr. Scheiring to describe what this is. Mr. Scheiring stated this is denoted as a "rock construction entrance," and it is for construction vehicles to be able to clean their tires and to exit and enter the property without doing harm to Robinson Place. Mr. Scheiring stated to do both the pool and the garage expansion at the same time, they need this additional entrance in the rear as well as using the driveway to the property. Mr. Murphy stated this is a temporary entrance; and with the completion of the construction, that entrance will be eliminated and re-grassed/re-seeded. Mr. Scheiring agreed.

Mr. Murphy asked if there are any other improvements they are proposing, and Mr. Scheiring stated there are not.

Mr. Murphy stated the suggestion for the garage addition came from one of the neighbors, and Mr. Scheiring agreed.

Mr. Murphy stated the first relief for the garage addition as shown on Exhibit A-15 is relief from Section 200-63 to permit a further encroachment into the front yard setback. Mr. Murphy stated today the Plan indicates that the closest point of the garage to the ultimate right-of-way of River Road is 53.5', and Mr. Scheiring agreed. Mr. Murphy stated the proposed addition is identified as being 51.2' from that right-of-way, and

Mr. Scheiring agreed. Mr. Murphy stated even though it looks like the front of the new, expanded garage is along the same line as the existing garage, how would Mr. Scheiring explain the foot and half differential; and Mr. Scheiring stated those measurements are made perpendicular to the right-of-way so the proposed measurement is the top measurement on the lines indicating the ultimate right-of-way. Mr. Murphy stated you can see the angle of River Road and the right-of-way so it is a foot and a half closer because of the angle, and Mr. Scheiring agreed.

Mr. Murphy stated the second item of relief is highly technical and seeks relief to permit the expansion in an area that has no net base site area because the entire lot is devoted to natural resources areas, and Mr. Scheiring agreed. Mr. Murphy stated the site is located within the flood fringe of the Delaware River floodplain, and Mr. Scheiring agreed. Ms. Kirk asked if this is the whole property, and Mr. Murphy agreed.

Mr. Murphy stated the third item of relief is from Section 200-22 deals with the reduced side yard. Mr. Murphy stated the side yard today is non-conforming in that it is 10.3' in a District that requires 15'; and they are proposing, with Mrs. Duffy's consent, to shrink this to 3.9'.

Mr. Murphy stated the fourth item seeks relief from Section 200-51B.(1)(b) to allow disturbance (the construction of the garage addition and pool) within the floodplain resource area that Mr. Genovesi will speak to.

Mr. Murphy stated the fifth item is from Section 200-57E which seeks to permit a Residential use (the expansion of the garage and the pool) within the Floodplain District.

Mr. Murphy stated the sixth item relates to a Variance from Section 200-61C requiring that building setbacks be measured from the limit of the resource protection areas; and given the fact that the whole lot is classified as such, they need a Variance to do this.

Mr. Murphy stated Item #7 seeks permission to allow the non-conforming structure in the floodplain including the expansion of the garage which would reduce by 1 ½' the front yard setback from River Road for the reasons already described.

Mr. Murphy stated the last item is a Variance from Section 200-86B1 to recognize the proposed reduction in the front yard setback from 53.5' to 51.2' and to reduce the side yard setback from 10.3' to 3.9'.

Mr. Murphy stated even though there are those number of Variances, they are inter-related; and there are really only two principal issues – the front yard setback, a dimensional relief, and the side yard setback which is again a dimensional issue, and the balance of the issues deal with improvements in the floodplains.

Ms. Kirk asked that Mr. Scheiring testify as to what the proposed size of the original garage was going to be and what is now the size of the addition to the garage.

Mr. Scheiring stated he feels it was 48' by 35' on the original Plan, and the proposed addition is 55' by 26' but the difference is that there is an existing garage that would have remained as additional garage space if they had built the detached garage. Ms. Kirk stated this would include the existing attached garage area. Mr. Schering agreed and added the proposed addition is 876 square feet compared to the original plan for the detached garage of 2,100 square feet.

Mr. Koopman stated the Township would like to be a Party to the matter, but they are only present to moderate the proceedings and see if there are any issues that come up that need to be addressed. He stated he has not questions of the Applicant at this time.

Mr. Moffa asked what were some of the original concerns that prompted the change in the design. Mr. Scheiring stated they were concerned about the size of the garage, the location of the garage being so close to the rear property line at Robinson Place, the height of the garage, and the how the new structure would divert flood waters.

Mr. Bamburak stated building in the Scheiring back yard would result in a building being in the Robinson Place residents' front yards. Ms. Kirk stated some of the initial comments by the adjacent property owners were that the proposed detached garage was going to be of a size almost equivalent to the existing house on the property, and this has now been substantially reduced as a result of the addition.

Mrs. Marie Duffy was called and sworn in. Mr. Murphy stated he had indicated that Ms. Duffy was the next-door neighbor to Mr. and Mrs. Scheiring; and on Exhibit A-15 her home was shown as Tax Parcel #20-30-76; and she agreed. Ms. Duffy stated she has lived there for over forty years, and her address is 1425 River Road.

Mr. Murphy stated Mrs. Duffy heard Mr. Scheiring testify that he has reviewed with her the various Plans that he was proposing to build on the property, and Mrs. Duffy agreed. Mr. Murphy stated this includes the Plan that is in front of the Board this evening which shows the proposed garage addition, and Mrs. Duffy agreed. Mr. Murphy stated one of the items of relief they are seeking associated with the garage addition is to encroach within 3.9' of the property line that they share with Mrs. Duffy, and Mrs. Duffy agreed. Mr. Murphy asked Mrs. Duffy if she has expressed an opinion to the Scheirings about whether or not she has any objection to that Variance, and Mrs. Duffy stated she has no objection. Mr. Murphy asked that Mrs. Duffy describe to the Board why she is comfortable with what is being proposed, and Mrs. Duffy stated she hardly ever goes on that side. She stated her main driveway is off of Robinson Place, and she also has a circular drive out front. She stated she does not go over on that part unless she is visiting the neighbors.

Mr. John Genovesi was present and was sworn in. Mr. Genovesi stated he is a licensed civil engineer in the Commonwealth of Pennsylvania and has been since 1981. Mr. Genovesi stated he is self-employed and has been so for three years. He stated prior to that he worked eighteen years for J.G. Parks, a civil engineering firm in Upper Makefield, and prior to that he worked for Pickering Corts & Summerson and worked for Newtown for four years. Mr. Murphy stated one of the areas of practice he specializes in is representing both Municipalities and Applicants dealing with issues surrounding the floodplain, and Mr. Genovesi agreed. Mr. Murphy stated in that regard Mr. Genovesi was retained some months ago by Mr. and Mrs. Scheiring to evaluate the impact of their proposed improvements on the Delaware River floodplain and in particular the flood fringe area where their property is located, and Mr. Genovesi agreed. Mr. Murphy asked Mr. Genovesi to describe the steps he took to evaluate the impact and to prepare the Flood Impact Study that was marked as Exhibit A-16.

Mr. Genovesi stated the initial steps are to gather as much data as they can particularly topographic information. He stated they were provided with a Grading Plan of the Scheiring property. He stated he also had available to him the Grading Plans of two parcels for two of the residences that were constructed on Robinson Place when he worked for J. G. Parks. He stated they also had available, off of the Penn State Website, topography from the Delaware Valley Regional Planning Commission. Mr. Genovesi stated he also had available the original HEC 2 Study that was done by the Army Corps of Engineers to establish the floodplain on the Delaware River. Mr. Genovesi stated HEC stands for Hydrologic Engineering Center in California, and HEC 2 is the name of the software program that was developed by the Army Corps of Engineers.

Mr. Murphy stated at some point in the process Mr. Genovesi was provided with the Grading Plan marked as Exhibit A-15 that depicts the proposed improvements the Scheirings desire to construct on their property, and Mr. Genovesi agreed.

Mr. Genovesi stated they took the HEC model and input data which is transferred from the original program into a new program called HEC RAS (River Analysis System). He stated they change a few inputs for the bridges that are on the River, and they run that to make sure that the modifications made to the data do not change the floodplain elevation at this part of the River.

Mr. Murphy stated the goal of this exercise is to confirm what impact, if any, the proposed improved as depicted on Exhibit A-15 would have on adjacent and downstream property owners by creating in theory a rise in the flood waters, and Mr. Genovesi agreed. He stated it is also to check and see whether there is a change in the velocity. Mr. Genovesi stated they added to the model additional sections which are cross sections of the River, and those sections are X and Y coordinates of the grading of the parcels adjacent to the Scheiring property and on the Scheiring property itself. Mr. Genovesi the cross sections they add are edited to show the actual topography in that neighborhood.

He stated the software is then run again to make sure that the floodplain elevations are still the same. He stated they add in the dwellings in the neighborhood, and they run the program again to make sure that there is no change in the floodplain elevation of the 100 year base flood elevation; and finally they put the garage in to make sure there is no change in the base flood elevation or the velocity at the various cross sections. Exhibit A-17 was marked which is identified as “Composite Plan Portion of Floodplain Lower Makefield Township” dated 3/21/12, and this single sheet was prepared by Mr. Genovesi. Mr. Genovesi stated Exhibit A-17 showed the new cross sections and two of the original cross sections. He reviewed what is shown on the Exhibit including the roads, houses, the River and the Canal. He showed the Scheiring property as well as adjacent dwellings.

Mr. Gruen asked about the elevations of the land, and Mr. Genovesi stated the area is fairly flat. It was noted the elevations are shown on Exhibit A-15. Mr. Genovesi was asked to show the location of the existing driveway exiting onto River Road, and Mr. Genovesi showed it on the Plan.

Mr. Murphy asked Mr. Genovesi based on the information reflected on the Composite Plan and the other data he provided to the Program, did he draw a conclusion as to what impact, if any, the addition of the garage would have on flood levels or the velocity. Mr. Genovesi stated after doing the analysis, there was no rise in the base flood elevation as a result of the garage construction, and there was no increase in the velocity of the water post-garage construction. Mr. Murphy asked if it would be logical to assume that the property that would have the most impact would be Mrs. Duffy’s; and Mr. Genovesi stated he was most concerned about the Duffy property because the addition of the garage is very close to the property line. He stated he ran two cross sections – one at the south end of her house, and one at the property line to see if he could pick up any increase in the base flood elevation or an increase in the velocity of the water at that point; and there was no increase. Mr. Murphy asked would those impacts, to the extent that there were any, be more intenuated as you move downstream so that properties to the south or to the west on the opposite side of Robinson Place would be less impacted by the addition than Mrs. Duffy’s property; and Mr. Genovesi stated there is really no impact throughout the flood fringe. He stated the velocity of the water is about 1.9’ per second, and most of the water is in the main channel in the floodway. He stated the velocity in the floodway is almost 11’ per second. He stated the water level in the fringe is about 3’ deep so that throughout the fringe area although the water is still very powerful, the proposed garage addition does not have any effect at all because the floodplain is so broad and most of the water is in the floodway and there is no construction proposed in the floodway.

Mr. Murphy stated the floodway of the Delaware River is essentially contained to the east of River Road, and Mr. Genovesi. Mr. Murphy stated the other parcel owned by the Scheirings Tax Parcel #20-30-104 on the east side of River Road is in the floodway, and Mr. Genovesi agreed. Mr. Murphy stated it is the portion of the property to the west of River Road that would be in the flood fringe of the Delaware River floodplain, and Mr. Genovesi agreed. Mr. Murphy stated there is no construction proposed in the floodway on the east side of River Road, and Mr. Genovesi agreed.

Mr. Koopman stated in Mr. Genovesi's Floodplain Impact Study, in the last paragraph of the Conclusion he indicated that there should be certain design treatments of the foundation walls and also the lower level area should be wet-proofed, and Mr. Koopman asked if this is something that the Applicant would agree to as a Condition of the Grant of any Variance; and Mr. Murphy agreed. Mr. Koopman read from the Study related to these design treatments. Mr. Koopman asked if there would be openings, and Mr. Genovesi stated there would be vents so that the water would come in and go out. Mr. Genovesi added that the Lower Makefield Building Department is familiar with those vents. Mr. Koopman stated they are required under the Township Floodplain Ordinance anyway, and Mr. Genovesi agreed. Ms. Kirk stated if this were to be imposed as a Condition by the Board, would it be safe to say that they would flood proof the foundation and walls of the proposed garage as required by the Township Ordinances and subject to the approval of the Township engineer; and Mr. Genovesi agreed.

Mr. Gruen asked why they have all these Ordinances as far as no further building in the floodplain and not expanding any buildings in the floodplain. He stated every house does not have an effect on its own, but when you combine it, it does. Ms. Kirk suggested that the Board adjourn to Executive Session to deal with that question.

Mr. Moffa asked if the deck around the pool generates additional impervious surface, and it was noted. Mr. Moffa asked if this was taken into account in the Study; and Mr. Genovesi stated it was, and when they input the new cross sections, they used the proposed Grading Plan. Mr. Moffa asked about the impervious surface of the deck, and

Mr. Genovesi stated the impervious would not be taken into account as to an impact with regard to the increase in the base flood elevation or the velocity because it is not an obstruction to the floodwaters.

Ms. Kirk stated in the original Application they requested a Variance for increased impervious surface which is now no longer applicable, and Mr. Murphy agreed. Mr. Murphy stated the impervious surface ratio that was requested was more than 18% otherwise permitted, the Revised Application that was considered in January was slightly below, and the current Plan shows a proposed impervious of 14.82% and is significantly below the 18% permitted.

Ms. Pamela Zumel, 1435 Robinson Place, was sworn in. Ms. Kirk stated Ms. Zumel had requested Party Status which was approved by the Board at the original Hearing in August, 2011. Ms. Zumel showed on the plan where her home is in relation to the Scheiring's. Ms. Kirk stated it appears she is on the left side of the Plan, the second lot from the bottom. Mr. Murphy stated it is the property Mr. Genovesi commented that he had specific topo from his prior employer.

Ms. Zumel stated with regard to the expansion of the existing garage, she would like to go on record that ideally she would like all Ordinances to be upheld and this natural resource to remain protected from any construction of this magnitude. She stated she does acknowledge that the latest Plan submitted by the Scheirings with the garage addition being an expansion of the existing structure does seem to pose the least amount of threat to her property given the fact that it is in alignment with the house that is currently there and that it is an expansion of what already exists so it is probably the least obtrusive to the environment as well.

Ms. Zumel stated regarding the construction of an in-ground swimming pool, she has serious concerns adding an in-ground, concrete swimming pool in a floodplain. She stated it is not just a flood plain, it is a floodplain with a documented history of severe flooding. She stated aside from the disruption for environmental and preservation reasons, she also has safety concerns for her home and her property in the event of River flooding with high velocity and high pressure waters. She stated she does appreciate the Flood Study; however, she stated it just speaks about change in velocity, and it does not necessarily say too much about the velocity that could happen in River flooding as far as she is concerned. She stated she is diagonal and downstream from the Scheirings.

Ms. Zumel stated should the Board decide to grant the request for the Variance it is her sincere hope that stipulations and safeguards will be implemented to provide assurances that pool or other related obstructions will not be subject to breaking up and floating down to her home during hazardous flood waters. She stated she is also concerned about excess water a swimming pool of this size is going to introduce to the floodplain. She stated the very function of the floodplain is to provide storage capacity for excess waters until downstream water courses can accept it during storms. She stated the introduction and drainage of gallons of water each season to an area of land that has an extremely high water table is disconcerting to her for obvious reasons.

Ms. Zumel stated she did have something to say about the gravel parking lot and driveway, but that is no longer applicable.

Ms. Zumel stated the last concern she has is regarding her understanding that there has been some changes in mandatory flood insurance for people in the flood plain. She stated she understands that FEMA will start taking over the insurance plans, and more so than ever before the onus is going to be on the Township to start really managing the

floodplains in their jurisdiction because residents' insurability is going to depend upon it. She stated her understanding when she read the National Flood Insurance Program was that FEMA could technically deny residents in the floodplain insurance if they do not feel that the floodplain has been clearly, deliberately, and carefully managed by the Township. She stated this effects her because this past September they had a flash flood situation.

Ms. Zumel stated she has photos from the flood which she showed to the Board. She asked that they be entered as Exhibits. Two photos were collectively marked as Exhibit PZ-2 as Exhibit PZ-1 was an earlier letter that Ms. Zumel previously submitted to the Board. Ms. Zumel showed on the photo a picture of her home and the flood water from September as well as the Scheirings' home. Ms. Zumel stated her home is elevated, and she still sustained \$1,800 in damage. Ms. Zumel stated this was supposedly not a major flood considering what has happened in this area historically. Ms. Zumel stated she did have insurance coverage so she was okay; but she does not know about the future, so this is a concern for her.

Mr. John Hoffman, 1439 Robinson Place, was sworn in. Ms. Kirk stated Mr. Hoffman sought and obtained Party Status at the initial Hearing in August, 2011. Mr. Hoffman noted the location of his home on the Plan; and he stated he is directly behind the Scheirings across Robinson Place.

Mr. Hoffman stated the area in question is in a floodplain, and the way the land is angled water flows from the front which is River Road to the back which is the Canal area. He stated water not absorbed by the Scheiring property will flow back toward the Canal and toward his property and his neighbors' properties. Mr. Hoffman stated last September they experienced a flash flood; and after overnight thunderstorms, the River jumped its banks twenty-four hours earlier than expected, and they had three feet of water outside of their home. Mr. Hoffman stated they were all caught off guard, and some of his neighbors suffered serious damage to their homes. He stated he had a car totaled due to water damage. Mr. Hoffman stated in addition to the water damage, the velocity of water is of concern, and the objects in the flood way present safety hazards that can inflict property damage. Mr. Hoffman stated in addition to the flooding issues, they are concerned about the character of the neighborhood. He stated he has a small child, and safety around his home is a concern. He stated today their neighborhood is a perfect blend of good neighbors and beautiful setting, and they want to keep the character of the neighborhood in tact.

Mr. Hoffman stated the Scheirings' first proposal was quite alarming to all of them; and the second proposal, which the Board did not see, did little to calm their concerns. He stated the third proposal, which is currently before the Board, is in their opinion the best option that the Scheirings have proposed thus far. He stated they are still concerned

about the impervious surfaces and the precedent of approving the Variances will set. He stated flooding is not only a single homeowner issue, but it is a Township, County, State, and Federal issue. He stated all of them living in the floodplain pay for flood insurance, and it is an item that has increased in cost every year. Mr. Hoffman stated he believes the Township has a mandate from FEMA to responsibly manage its floodplain, and the Township's action in the floodplain will impact all residents and could possibly effect their flood insurance rates.

Mr. Hoffman stated they also recognize that everyone has a tremendous amount invested in their home, and for most of them it is the single largest investment. He stated he feels it is important that people be allowed, within reason, to improve their homes as long as the improvements do not adversely impact their neighbors. Mr. Hoffman stated as the Board has seen by their regular attendance at these meetings and as evidence of their suggestions to the Scheirings, they are a cooperative group interested in preserving all of their neighbors' rights to enjoy their homes. Mr. Hoffman stated to that end, they believe that the latest proposal from the Scheirings to enlarge the existing garage attached to their home will have a lesser negative impact on the neighbors than the prior proposal based on the professional opinion of the Flood Survey performed by the Scheirings.

Mr. Hoffman stated the pool adds to the impervious surfaces and creates some water management concerns, but they will rely on the information presented by the pool professional who spoke at the August 2, 2011 meeting.

Mr. Hoffman stated in the last few days the Scheirings have eliminated the proposal for a parking lot in the back of their property leading to Robinson Place. He stated this feature was something they were adamantly against for all the reasons previously stated by the neighbors. He stated they are glad to see it removed. Mr. Hoffman stated they have been informed that a temporary construction entrance on Robinson Place will be required; and if that is the case, they request that the Board require that the Scheirings back yard, Robinson Place Road, and any encroachments onto the Robinson Place neighbors' properties be repaired, re-seeded, or whatever needs to be done to return it to its current condition.

Mr. Hoffman stated the current Ordinance states the floodplain should not be disturbed in any manner; however, if the Zoning Hearing Board determines that the enlargement of the garage and installation of the pool warrant an Ordinance Variance, they will not object.

Ms. Kirk asked if he is still in opposition to the Application as presented, and Mr. Hoffman stated he is not as of tonight.

Mr. William Jones, 1411 River Road, was present and sworn in. He stated he is two houses down River from the Scheirings. Ms. Kirk stated Mr. Jones was already made a Party to the Application. Mr. Jones showed the location of his home on the Plan in relation to the Scheiring property.

Mr. Jones stated he was opposed to the original building because of the size and the placement. He stated where it is now, he does not feel it will effect the River flow any more than the house already does; and he does not see it as causing any additional problems as far as River currents.

Mr. Jones stated the in-ground pool might actually be an advantage because their above-ground pool collapsed. He stated it will also be even with the ground so it will not provide any obstruction to the flow of the River.

Mr. Jones stated he is no longer opposed to the Plan as it stands tonight.

A short recess was taken at this time in order for a Board member's legal question to be clarified.

Once the meeting was reconvened, Mr. Murphy moved the additional Exhibits into the Record, and Ms. Kirk stated they will be admitted.

Testimony was closed.

Mr. Smith moved and Mr. Zamparelli seconded that the relief requested under the Amended Application set forth in the outline of relief proposed by Mr. Murphy, attorney, with the Condition that the Applicant have the foundations and walls of the proposed garage flood proofed in compliance with all applicable Township Ordinances and subject to approval of the Township engineer.

Mr. Gruen moved to Amend the Motion to include a Condition that the driveway access along Robinson Place marked as RCE on the Final Amended Plan shall be removed within a timeframe set by the Township engineer pending inspections during the construction process. The Amendment was accepted by Mr. Smith and Mr. Zamparelli and the Motion carried with Mr. Moffa opposed.

APPEAL #12-1626 – GREGORY AND KAREN GAGLIARDI

Mr. Gregory Gagliardi and Ms. Karen Gagliardi were present and were sworn in.

The Application submitted was marked as Exhibit A-1. A two-page Plan submitted was marked as Exhibit A-2. Notice of the Hearing was published in the Yardley News, and the Proof of Publication was marked as Exhibit B-1. The property was also posted with notice of tonight's Hearing, and the Proof of Posting was marked as Exhibit B-2. Notices were mailed to adjacent property owners as required by the Township Ordinance, and a copy of that letter along with the list of residents was marked as Exhibit B-3.

Mr. Gagliardi stated he is applying for a Variance for a pre-existing structure that he is taking ownership of. He stated the shed was there when he bought the house, and it encroaches on a special setback. He stated they had a deck replaced with pavers, and the contractor assured him it would not be a problem. Mr. Gagliardi stated he was unaware that pavers were impervious. Mr. Gagliardi stated the property is unique in that it has three collector roads surrounding it which prevents him from utilizing it with the special setback. He stated the one side yard has absolutely no use at all.

Ms. Kirk asked what is the collector road, and Mr. Gagliardi stated it is Oxford Valley Road.

Mr. Bamburak asked if they just purchased the property; and Mr. Gagliardi stated they have been there twenty years; and the shed has been there all this time. He stated there was a hot tub on the site, and there was not a fence; and this is when the Township requested a Fence Permit. He stated when they went to get the Fence Permit, the Township came out and saw that there was a shed that was encroaching on the setback. Mr. Bamburak stated the shed, hot tub, and patio are there currently; and Mr. Gagliardi agreed. Mr. Bamburak stated Mr. Gagliardi's contractor did the construction of the patio and the hot tub without a Permit, and Mr. Gagliardi stated this is correct. He stated there was previously a deck that was with the house, and they took this down and replaced it with pavers and put the hot tub in; and the contractor felt they did not need a Building Permit for this, but they subsequently found out that they needed it. Mr. Bamburak asked the name of the contractor, and Mr. Gagliardi stated it is Marrasso.

Mr. Bamburak stated he is having difficult reading the map, and the rest of the Board members agreed they too were having difficulty. Mr. Bamburak stated when they grant setbacks, they need dimensions. He noted for the shed, they need to know the dimension as to where it is at. He stated they will need a more detailed map before they can act on it. He stated when they grant a Variance, it must have numbers as part of it because the Code Enforcement Officer has to have something he can measure to make sure there is compliance. Mr. Bamburak stated he does not necessarily have to hire a surveyor, and suggested that he get a steel tape and a full sheet of graph paper so that they can see dimensions.

Mr. Gruen asked if Mr. Marrasso provided the map, and Mr. Gagliardi stated the Township provided the map. Mr. Bamburak stated this is not a map for construction purposes. He stated they will need to know the outer dimensions of the property, where the house, patio, and hot tub are located dimensioned in from the side of the property as well as where the shed is in location to the sides of the property. Mr. Gagliardi stated he feels he will have to hire someone as he does not know where the end of the property line is. Mr. Bamburak stated he may be able to find a steel stake, although if the property were purchased twenty years ago, they may be covered. Mr. Gruen stated sometimes there are concrete monuments.

Mr. Bamburak stated until they have numbers, they cannot act on this; and he suggested that the matter be continued until May 1, 2012.

Ms. Kirk stated the request also asks for an increase in impervious surface from 18% to 20.4%, but there is nothing documented to indicate what is the current percentage of impervious and the additional amount is based on the hot tub installation and the pavers put down where the deck was. She stated they need to measure all the sidewalks and the building to come up with an area and convert it to the impervious surface; and then you would add the area of the paver patio section and the area where the hot tub is installed, to come up with the new number of what the impervious surface would be. Mr. Gagliardi stated the Township gave him a form with an estimate, and Mr. Bamburak stated they have to measure the house, driveways, sidewalks; and this is the beginning guideline. He stated if there are a number of sidewalks, they all have to be added. Mr. Gagliardi stated whoever came out to the property from the Township were the ones who gave him the 20%. Mr. Bamburak stated there is still nothing shown to the Board so it is incumbent on the Applicant to provide the information the Board needs.

Mr. Gagliardi stated as he understands it, he will need a survey of the property that determines exactly what the impervious surface is and measurements from the shed to the side of the property as well as the deck. Mr. Bamburak stated they will need an As-Built Site Plan that shows all the structures including the driveways, sidewalk, retaining walls, etc. Mr. Bamburak stated impervious would be anything which would effect the flow of water. Mr. Gagliardi asked if he has to have a surveyor do this, and it was noted he does not. Ms. Kirk stated she feels Mr. Habgood would be willing to work with him if he has any questions. Mr. Bamburak suggested that once Mr. Gagliardi had a drawing he should show it to Mr. Habgood to see if he feels that this would be acceptable to the Board before coming back to the Board.

Mr. Gruen moved, Mr. Smith seconded and it was unanimously carried to continue the matter to May 1, 2012.

APPEAL #12-1627 – SUZANNE ROQUE-MUELLER AND KEVIN MUELLER

Mr. Kevin Mueller was present and affirmed to tell the truth.

The Application submitted was marked as Exhibit A-1. A four-page letter issued by the Township's Code Enforcement Officer dated 2/9/12 was marked as Exhibit A-2. The Applicant provided an impervious surface breakdown calculation sheet, and this was marked as Exhibit A-3. A single-sheet Plan was marked as Exhibit A-4. Tonight's Hearing was published in the Yardley News, and the Proof of Publication was marked as Exhibit B-1. The property was posted, and the Proof of Posting was marked as Exhibit B-2. Notices were mailed to all property owners as required by the Ordinance, and a copy of that letter along with the listing of the residents was marked as Exhibit B-3.

Mr. Mueller stated he moved to the property from Florida and wanted to have a location to put yard equipment and cans for gasoline to get them out of the house. He stated they purchased a shed and had it placed on the property. He stated the property is unique in that it backs up to a nature preserve in the back yard. He stated there is a River there full of wildlife. He stated he did not want to place the shed in the back corners of the lot to block the views of his neighbors as they look into the nature preserve. He stated this forced him to bring it up to the side yard. He stated he believes that there is 35' from the side of the house to the side of the yard. He stated the neighbor had a large shade tree, so he positioned the shed behind that shade tree closer to the property line to preserve some of his own yards so his children can play in the yard. Mr. Mueller stated he is present today to ask for a Variance for the shed to be located closer to the property line and to increase the impervious surface he believes somewhere between .6 or .8% from nineteen something to 22.

Mr. Smith asked if the shed is already in place, and Mr. Mueller stated it is.

Mr. Bamburak asked how close it is to the property line, and Mr. Mueller stated he believes it is approximately 1 1/2' to 2' although he is really not sure. He stated he does have pictures.

Mr. Bamburak stated this is similar to the previous Application given the lack of dimensions so they will have to agree on a number; and Mr. Mueller stated he would say it is 1 1/2'. Ms. Kirk stated if this is approved and if it turns out that the shed is closer than 1 1/2' he is going to have to move it. She stated in the alternative, Mr. Mueller could do what the last Applicant did and get exact measurements as to the line of the shed to the property line so he is accurate. Mr. Mueller stated he does not feel anyone looking at the property could determine where the property line is unless he had an official surveyor come out. Ms. Kirk stated he could look for concrete monuments to make a determination. Mr. Mueller stated there is a telephone pole and a

telephone junction box there and he was using that as an estimated area of where the property line is. Mr. Eisold stated the Plan he is looking at shows iron pins set into the line, and if he had a metal detector, he may be able to find them.

Ms. Kirk stated if the Board were to approve the Application, and Mr. Mueller's estimate was wrong, he would have to come back with another Application paying another Application fee or would have to move the shed which he could have done without having to come before the Board.

Mr. Bamburak advised Mr. Mueller that he has indicated that he did not know where the property line so he would not know that it is 1 ½' from the property line; and Mr. Mueller stated he was just estimating from the location of the telephone pole and the telephone junction box.

Mr. Smith stated he is also asking for a Variance from impervious surface. Mr. Smith asked the permitted amount, and Mr. Habgood stated it is 18%. Mr. Mueller stated the Board approved a Permit to build a sunroom on the house in 2005 which resulted in 19.6% impervious surface. Mr. Bamburak asked if a previous Variance were granted, and Mr. Mueller stated he does not believe that there was a previous Variance; but the house that was built there before had a concrete deck in the back, and when they built the sunroom, they removed the concrete deck and added the sunroom and added a deck that was pervious so the Board granted it because there was no net increase.

Mr. Habgood stated the original home when constructed had a patio on the back. He stated in the late 1990s, early 2000s an owner came in for a Permit to construct in place of that. That was approved by the Township at that time through the Building Permit process since there was no net increase. He stated it appears that the property is non-conforming in that it already has a higher amount of impervious surface than what the Code allows. Mr. Habgood stated at the time the house was built, they based it on building coverage and not total impervious which is how it go to the 19.8%. Mr. Bamburak stated Mr. Mueller is now requesting to increase the impervious surface by .8%; and Mr. Mueller stated it is an increase of 140 square feet.

Mr. Bamburak stated the issue that remains is the location of the shed as it relates to the side yard. Mr. Mueller stated he does have pictures which would provide a visual. Mr. Gruen stated they could still not tell what the measurement would be.

Ms. Kirk stated based on the Plan he has the entire width of the property on the Plan, and Mr. Mueller stated he believes that his property is 150' wide. Ms. Kirk stated he knows what the rear line is along the house, and she suggested that he measure from the rear line of the house over to where the shed is located and then deduct, and Mr. Mueller agreed that he could do this. Ms. Kirk stated the actual measurements indicate that there is 21.5' from the opposite side to the side of the property, and then measure it the other way so it can be calculated.

Mr. Bamburak also noted that there is a bump out on the back of the house which is 35.34' from the property line; and he could measure from that bump out 33' to the back of the shed, and they could establish is from that. Mr. Habgood stated he does not feel this would be a problem if they measure it in this way; and he stated a lot of residents do this in order to determine the setback.

Mr. Mueller agreed to take the measurements and come back to the Board.

Mr. Gruen moved, Mr. Smith seconded and it was unanimously carried to continue the matter to May 1, 2012.

OTHER BUSINESS

Cancel April 17, 2012 Meeting

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to cancel the meeting scheduled for April 17, 2012 due to lack of Agenda.

Resignation of Gregory J. Smith

Mr. Smith stated this evening will be his last time serving on the Board since he has accepted a job out of State. He stated it has been a pleasure serving on the Zoning Hearing Board.

There being no further business, Mr. Moffa moved, Mr. Gruen seconded and it was unanimously carried to adjourn the meeting at 9:30 p.m.

Respectfully Submitted,

Jerry Gruen, Secretary

