

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – NOVEMBER 1, 2011

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on November 1, 2011. Chairman Bamburak called the meeting to order at 7:15 p.m.

Those present:

Zoning Hearing Board:        Paul Bamburak, Chairman  
   Gregory J. Smith, Vice Chairman  
   Jerry Gruen, Secretary  
   Keith DosSantos, Member  
   Anthony Zamparelli, Member

Others:                             Robert Habgood, Code Enforcement Officer  
   James Majewski, Township Engineer  
   Barbara Kirk, Zoning Hearing Board Solicitor

Absent:                             Dan McLaughlin, Supervisor Liaison

APPEAL #11-1604 – JULIE AND WES SCHEIRING

Ms. Kirk stated Mr. Murphy, who has been retained by the Applicants, submitted a letter to her attention dated 10/14/11, requesting that the matter be carried to the next available Board meeting as his wife had surgery today so he would not be available. He asked that the matter be carried until the meeting of December 6.

Mr. Bamburak stated some of the residents had indicated that they had not known about the Continuance request. Ms. Kirk stated she had a discussion with Mr. Murphy after the last meeting, and he indicated in his letter that he took the liberty of providing copies of the request for continuance to the other Parties in the proceedings; and she assumed that the persons who requested Party status were notified. Residents in the audience indicated they were Parties and were not notified by Mr. Murphy. Ms. Kirk stated she will send Mr. Murphy another note about this and submit the addresses of the Parties that were provided to the Board at the first meeting. Ms. Kirk stated she also forwarded a copy of the request for continuance to the Township and asked the Township to make efforts to notify the Parties as well. Ms. Kirk stated Mr. Smith has advised that the postal service has had more frequent delays recently. Ms. Kirk stated possibly the Parties would be willing to provide phone numbers so Mr. Murphy's office could call them if they are going to request another continuance, and both Mr. Jones and Ms. Hoffman provided their phone numbers.

The letter from Mr. Murphy was marked as Exhibit A-10.

Mr. DosSantos moved, Mr. Smith seconded and it was unanimously carried to continue the matter to December 6, 2011.

APPEAL #11-1612 – WELLS FARGO BANK, N.A.

Ms. Kirk stated Mr. Murphy is also representing the Applicants with respect to the Wells Fargo Application. She stated he sent a letter dated 10/14/11 requesting this matter be carried until the Board's meeting of December 6 as he is not available this evening to family medical issues.

Mr. DosSantos moved, Mr. Smith seconded and it was unanimously carried to continue the matter to December 6, 2011.

The letter from Mr. Murphy was marked as Exhibit A-1.

APPEAL #11-1614 – TOLL PA XV, L.P.

Ms. Kirk stated Mr. Murphy submitted a letter dated 10/14/11 requesting a Continuance of this Application until the Board's meeting of December 5 as he was not available this evening due to personal family issues. The letter was marked as Exhibit A-1.

Mr. DosSantos moved, Mr. Smith seconded and it was unanimously carried to continue the matter to December 6, 2011.

APPEAL #11-1590 – DARIUSZ CZERNIAK

Ms. Kirk stated the Applicants dropped off a Sketch Site Plan for the property at 1173 Temple Drive which the Township clocked in today, November 1, at 9:11 a.m. This Plan was marked as Exhibit A-9. Ms. Kirk stated after receipt of the Plan Mr. Habgood reviewed the Plan and did some calculations with respect to the impervious surface coverage. Those calculations were hand written on a copy of the Site Plan and Mr. Habgood has provided that copy to the Board. This was marked as Exhibit B-6, and a copy of Exhibit B-6 was provided this evening to the Applicants.

Mr. Bamburak stated while the most recent Plan did have dimensions, it did not have the table of the numbers so Mr. Habgood did the numbers for them.

Mr. Bamburak stated the issue was a driveway extension which put them over the permitted impervious surface. Mr. Habgood stated work had been started without the necessary Permits from the Township. Mr. Habgood stated Exhibit A-9 does appear to show everything that is existing on the property. Mr. Bamburak asked what part of the driveway was added, but Mr. Habgood stated he does not know which part was added although he feels it was toward the back where the Jacuzzi is located.

Ms. Kirk stated based on the Application submitted, the driveway was extended by approximately 300 square feet. Mr. Bamburak stated it appears that 28.8% is the existing impervious surface. Mr. Habgood stated 18% is allowed.

Ms. Kirk stated the Applicant submitted documentation indicating the driveway was extended by 300 feet; however, there was nothing on file with the Township indicating what the impervious surface was at the property prior to the Applicants extending the driveway.

Mr. Bamburak asked what the impervious surface would be if they took out the 300 square feet from the driveway. Mr. Habgood stated if they were to remove the 300 square feet, it would drop down to 27%. Mr. Bamburak asked how they got this far over the 18% permitted. Mr. Smith asked if there was a Permit issued for the patio, and Mr. Habgood stated there is no Permit on file for the patio. Mr. Smith asked if there is a Permit for the Jacuzzi, and Mr. Habgood stated there is not.

Mr. Gruen asked the Applicants if they have added any impervious surface other than the driveway extension. The gentleman present indicated he was Mr. Czerniak, and it was noted that he had previously been sworn in. Mr. Czerniak stated he did not do any other work other than the driveway. Mr. Gruen asked when he purchased the home, and Mr. Czerniak stated he purchased it about eight years ago. Mr. Gruen asked if all the other impervious surface was there. Mr. Czerniak stated they did some other stuff. Mr. Bamburak asked if he built the patio, and Mr. Czerniak stated there was an old, brick patio, and he removed the stuff and added pavers. Mr. DosSantos asked if he rebuilt it at the same dimensions, and Mr. Czerniak stated it was pretty much the same.

Mr. Bamburak asked if the Jacuzzi was there or did he install it, and Mr. Czerniak stated it is just sitting there, and it is not connected. Mr. Bamburak stated he assumes it would not be a problem if it had to be removed, and Mr. Czerniak agreed. Mr. Bamburak stated at this point there is no Permit for the Jacuzzi; and this is something that could be removed because the calculations are not close to what is permitted, and there are no Permits for these additions. Mr. Bamburak asked Mr. Czerniak if the shed was there when he bought the house, and Mr. Czerniak stated he added the shed. Mr. Bamburak stated a shed needs to have a Permit.

Mr. Bamburak asked if they only added 300 square feet to the driveway, and Mr. Czerniak agreed. Mr. Bamburak noted the map provided and identified the driveway to the right of the Jacuzzi where there is a square part of the driveway, and this is what the Applicant identified has been added. Mr. Bamburak stated it appears to be 18' by 20' and is based on Exhibit B-6. Mr. Bamburak asked if this is just stone, or has it been paved; and Mr. Czerniak stated it is pavers.

Mr. Smith stated even though it is not before the Board, he is concerned that they installed a shed without a Permit. He asked Mr. Habgood if the shed conforms, and Mr. Habgood stated it does not conform for setbacks. Mr. Bamburak stated the shed is too close to the property line and should be 10' in from both the rear and the side and according to the map it is 8' and 4' so that does not comply. He stated at this point, this is not before the Board as the only thing before the Board is an Application to grant an impervious surface area of 28.8%. Mr. Smith stated they would have to come back for another Variance for the shed. Mr. Czerniak stated if he had to move the shed, it would be in the middle of his yard.

Mr. Bamburak stated a number of things have been added to the property which has brought them to this impervious surface amount.

Mr. Smith asked Mr. Czerniak if the planter wall in front of the house was there when they bought the house, and Mr. Czerniak stated they added those.

Mr. Zamparelli asked if he had Permits for any of these, and it was noted he did not. Mr. Zamparelli stated he is exceeding the permitted impervious surface by over 10%.

Mr. Czerniak stated the sidewalk in front of the house was there. Mr. Bamburak asked what the impervious would be including the house, the driveway before the addition, and the sidewalk, and Mr. Habgood stated it would be 20.9%.

Mr. Gruen asked Mr. Czerniak would be willing to install a mitigation system to collect the water. Mr. Czerniak stated the patio pretty much drains because there are seams of 1/2" between the pieces. Mr. Bamburak stated the patio is still considered to be impervious surface according to the Township Ordinance. Mr. Gruen stated there are mitigation systems such as a dry well which could be put in to collect the water. Mr. Bamburak stated Ms. Kirk has advised that the Zoning Hearing Board is now somewhat limited as to what they can require in this regard, and Ms. Kirk agreed.

Mr. Gruen asked if the Township is participating in this matter, and Ms. Kirk stated the Township filed Notices of Violation to the property owners; and they were told to answer the complaint or proceed to file for relief before the Zoning Hearing Board. She stated the last Notice of Violation was involving the 300 square feet of additional impervious surface to the driveway.

Mr. Bamburak stated at this point the Board could grant a Variance to allow 28.8% impervious surface or deny it. Ms. Kirk stated if they deny the Application, the property owner will have to remove the 300 additional square feet.

Mr. Bamburak called for a short recess to review a legal question with Ms. Kirk. When the meeting was reconvened, Mr. Bamburak asked if there was anyone wishing to speak to this Application, and there was no comment at this time. Testimony was closed.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to deny the Application.

#### APPEAL #11-1606 – PETER AND IRENE TARASOV

Ms. Irene Tarasov was present and was sworn in. Mr. Bamburak stated they previously had testimony, and they were waiting for Mr. Gruen to be present in order for the Board to take a vote on this matter.

Ms. Kirk stated Mr. Tarasov had contacted Mr. Majewski and come up with a proposed stormwater management plan that was acceptable to the Township. Mr. Majewski agreed; and added they looked at several options including an underground system. He stated another method that is acceptable according to the Township's Stormwater Management Ordinance is to plant trees to mitigate the effect of the stormwater; and based on the calculations, five to six trees would need to be planted.

Ms. Kirk stated since there has been continuing conversation with the Township engineer, she asked Ms. Tarasov if she would be willing to accept a Condition that she would have a stormwater management system constructed on the property that would be subject to the approval of the Township engineer if the Board were inclined to grant the Application. Ms. Tarasov stated they would agree to the installation of the trees.

Ms. Kirk stated the Application was to seek Variance relief for the impervious surface. She stated 18% is allowed, and 20.6% is the current amount; however, the proposed amount would increase to 24.3% with the crushed stone that was shown on the Plan. Ms. Kirk stated there was also a request for a Variance from the property line setback; and instead of 10', it would be reduced to 8'. However, Ms. Kirk stated she believes that the shed has since been moved so it is now in compliance. Ms. Tarasov stated they were waiting to have the shed moved pending the Board's decision. She stated they will comply with moving the shed so that it is 10' from the property setback. She stated they have already contacted the shed company who will move the shed. Ms. Kirk stated that part of the Application would therefore be withdrawn, and Ms. Tarasov agreed.

Mr. Bamburak stated the Application indicates that it is 21.9% impervious surface existing, and Ms. Kirk stated there was a question at one of the meetings whether that calculation of 21.9% included the crushed stone shown on the Plan. She stated it did not, and adding in the crushed stone brought the impervious surface to 24.3%. Mr. DosSantos stated Mr. Majewski subsequently went to the property and determined that the crushed stone was pervious so that it is 21.9%.

There was no public comment, and the Testimony was closed.

Mr. Smith moved and Mr. Gruen seconded that the relief requested be granted in the way of impervious surface of 21.9% subject to installation of a stormwater management system of trees that meets the approval of the Township engineer. In addition the shed in question should be moved to comply with the setback requirements of the Township.

Mr. Bamburak stated their neighbor was concerned about the view, and Mr. Bamburak asked if the trees would be put in such a way so that the neighbor does not have to look at the shed; and Ms. Tarasov stated they will, and they have had discussions with him and they have come to an understanding with no hard feelings.

Motion carried unanimously.

Ms. Tarasov asked about the timing for the planting of the trees, and Mr. Habgood stated the Permit will include relocating of the shed and the planting of the trees to be in compliance with the stormwater management system. He stated once the Permit is issued, it is good for six months. Ms. Kirk suggested she discuss this with Mr. Habgood if there are any other questions.

#### APPEAL #11-1611 – MICHAEL MASTERSON

Mr. Michael Masterson was present with Ms. Linda Keyes, homeowner, and Ms. Cindy Kura, a neighbor; and they were sworn in.

The Application submitted was marked as Exhibit A-1. Included with the Application was a Plot Plan for the property which was marked as Exhibit A-2. Notice of tonight's Hearing was published in the Yardley News, and the Proof of Publication was marked as Exhibit B-1. The property was posted with Notice of tonight's Hearing, and the Posting Notice dated 10/13/11 was marked as Exhibit B-2. Notice was mailed to adjacent property owners in accordance with the Township's Ordinance, and a copy of that letter with a listing of the property owners was marked as Exhibit B-3.

Mr. Bamburak stated the request is to add a deck, and Mr. Masterson stated he wants to add a deck and a patio. Mr. Masterson stated the existing deck is 9' in length and 14' in width, and they are proposing to build a deck that is 12' in length and 22' in width. He stated the patio will go underneath the deck. He stated the existing patio is approximately 198 square feet, and the new patio would be 500 square feet.

Mr. Bamburak stated he is unable to read the Plan that has been submitted. He stated there are also no calculations as to impervious surface; and he cannot make a decision with what has been submitted.

Ms. Kirk stated it is not an impervious surface issue, and the Application that was submitted was with regard to the rear yard setback. She stated 25' is required; but from what has been submitted she is unable to tell where the rear yard is, and what the setbacks will be. Mr. Bamburak stated there should still be a calculation for impervious so they can check to see if it is right.

Mr. Masterson stated he felt the impervious calculation was submitted with the Permit. Ms. Kirk stated there is nothing with regard to impervious surface in the paperwork that the Zoning Hearing Board received. Mr. Bamburak stated if the Board were to approve this as it is, and the Applicant then submits the Permit and finds that they are over in impervious surface, they would have to come back before the Zoning Hearing Board and pay another fee.

Mr. Habgood stated he did the calculations based on Exhibit A-2, and if the patio is 500 square feet, it would be under what is allowed for the property for impervious surface. He stated he feels it is only a setback issue, but he is not sure what the setback will be based on what has been submitted.

Mr. Bamburak stated the Zoning Hearing Board will need a better map in order to make a decision.

Mr. Masterson stated he has a drawing that was prepared for the Permit, and he presented this to the Board this evening. After review, Mr. Bamburak stated it is still not sufficient for their purposes since it does not show the property lines.

Mr. Habgood stated they need to know what the length of the patio would be coming out from the rear of the house. Mr. Habgood stated the deck will be about 15' from the rear property line. Mr. Masterson stated the patio will be 20' in length and a width of 18'. Mr. Bamburak stated they should come back at the next available meeting with a drawing that the Board can read. He stated there is room on the Agenda for the meeting to be held on December 6, 2011.

Mr. DosSantos asked if the deck is off a different level of the house with a patio underneath, and Mr. Masterson agreed. Mr. Masterson stated there are nine homes that have the raised deck with a walk-out basement on Flint Court. He stated he is looking to replace the existing deck but go the length of the house. The existing deck is a raised deck off the back of the house, and the patio is underneath. Mr. Zamparelli stated the patio will extend off the back of the house by 20' which goes beyond the deck, and Mr. Masterson agreed.

Mr. Majewski stated the survey shows 28' from the rear of the units to the property line.

Mr. Masterson asked what the map should show. Ms. Kirk stated they should take a measurement as to where the edge of the patio will be in relation to the rear property line. She stated they need to know the measurement from the back of the house to the rear property line that exists and what it will be when the deck and patio are installed. She stated under the Ordinance they are supposed to have a 25' setback. Mr. Masterson stated the existing deck and patio are already encroaching. Ms. Kirk stated if they were only replacing exactly what was there, they would have an existing non-conforming structure that would get approved; however, since they are proposing to increase the size of the patio and deck, the Board needs to see what the new measurements will be as to how much of an encroachment there will be into the rear yard setback.

There was no one present to speak to this Application.

Mr. Gruen moved, Mr. Smith seconded and it was unanimously carried to continue the matter to December 6, 2011.

#### APPEAL #11-1613 – MAURICE AND VIVIANE MALEH

Mr. Maurice Maleh and Ms. Viviane Maleh were present and were sworn in. The Application submitted was marked as Exhibit A-1. Attached was a Plan entitled "Zoning Variance Plan," and this was marked as Exhibit A-2. A Tax Map of the location of the property was marked as Exhibit A-3. Notice of tonight's Hearing was published in the Yardley News, and Proof of Publication was marked as Exhibit B-1. The property was posted with Notice of the Hearing, and the Posting was marked as Exhibit B-2. Notices were mailed to adjacent property owners as required by the Ordinance, and a copy of the letter along with the listing of the owners was marked as Exhibit B-3.

Mr. Bamburak stated they are requesting Variances for a front and rear yard setback.

Ms. Maleh stated they want to have a home with a master bedroom downstairs as it is getting more difficult for them to climb up and down stairs. She stated they have been residents of Lower Makefield for twenty-two years, and they would like to stay in the Township. She stated the Plan shows that they will have a 35' front yard setback, and 40' is required. Ms. Maleh stated the back of the house will be 30.9' to the protected area, and there is 26 additional feet to the property line. Mr. Bamburak asked what is in the resource protected area; and Ms. Maleh stated it is trees and shrubs, and she does have photographs. Mr. Majewski agreed it is combination of trees and shrubs. The Board reviewed the pictures presented by Ms. Maleh. Mr. Bamburak asked if they are proposing to remove any of the trees, and Ms. Maleh stated they are not.

It was noted that this is new construction, and it is currently vacant land.

Mr. Gruen asked if it would not make more sense to keep the 40' front yard setback and give an extra 5' in the rear since there is so much room in the back and they are not touching the resource protected area. He stated they would therefore conform in the front. Mr. Majewski stated it would make more sense to keep the houses closer to the road as this would shorten the driveway, there would be less impervious surface, and it gives more of a usable rear yard. He stated at the worst point in the house as proposed, they would have 30.9' of completely clear space behind their house. He stated by making the setback 40' in the front, they would reduce that clear space down to 25' and push the house closer to the trees.

Mr. and Mrs. Richard Kmick stated they are the next door neighbors, and they have no problem with what is proposed.

Testimony was closed at this time.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried that the relief requested be granted.

#### OTHER BUSINESS

Mr. Bamburak asked for an update with regard to the Aria matter. Ms. Kirk stated they had the Hearing on the Motion to compel responses to the subpoenas on Friday. She explained to Judge Fritsch that at this point the Hearings had been suspended pending his decision and asked that he render a decision in time for the Zoning Hearing Board to proceed with the Hearing as scheduled on November 15, and she was assured that he would be rendering a decision shortly. She stated although she has not received anything as of today, she expects to have something by the end of the week. Ms. Kirk stated all counsel know to be ready to proceed with the Hearing on November 15.

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Mr. DosSantos asked if the Judge grants the decision on the discovery process would they be able to have the documents in time for the meeting on November 15. Ms. Kirk stated she understands that a great deal of the documents that are being requested are actually posted on the Website for the Delaware River Joint Toll Bridge Commission. She stated she understands that Mr. Smolow is intending to put forth two Witnesses before his engineer, and the Township has one Witness. She stated they could cover those Witnesses first on November 15 and then finish with Mr. Smolow's traffic engineer at the December meeting. She was told they anticipate that everything will be finished in December.

Mr. Bamburak stated he has a business trip pending and will miss one of the meetings in December.

There being no further business, Mr. DosSantos moved, Mr. Smith seconded and it was unanimously carried to adjourn the meeting at 8:30 p.m.

Respectfully Submitted,

Jerry Gruen, Secretary