

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – NOVEMBER 19, 2013

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on November 19, 2013. Chairman Bamburak called the meeting to order at 7:40 p.m.

Those present:

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

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

Absent: Pete Stainthorpe, Supervisor Liaison

APPEAL #13-1663 – GEORGE FOX III

Mr. Bamburak stated this matter was Continued, and will be Continued again this evening as Mr. Fox's attorney broke his leg while out of the Country. Ms. Kirk noted the letter dated November 4, 2013 received from Mr. Fox's attorney, Mr. Harris, indicating that he broke his leg in Ireland; and he expects to be able to attend the Board's next meeting on December 3, 2013. He has asked for a Continuance to that date.

Mr. Gruen moved, Mr. DosSantos seconded and it was unanimously carried to Continue the matter to December 3, 2013.

APPEAL #13-1680 – WALTER AND GAIL BURGESS

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

Ms. Kirk stated immediately before the Board commenced their meeting, George A. and Donna M. McMillan provided a letter dated 11/18/13 relative to this Appeal. She stated they expressed their support for the Variances as requested by the Applicants, and indicate in the letter that they are familiar with the dimensions and limitations of the parcel. Ms. Kirk stated the letter indicates that they are not able to attend tonight's meeting, but have asked the Board to accept the letter in their absence. The letter was marked as Exhibit B-4.

Mr. Walter Burgess and Mr. Thomas Coolbaugh, surveyor, were present and were sworn in.

Mr. Bamburak stated it was marked on the Application that there was no previous Variance for this property, but he felt that they heard an Appeal for this property approximately one year ago. Mr. Habgood stated it was in 2011.

Mr. Burgess stated what they are proposing is almost identical to what was proposed in 2011. He stated they do have updated surveys and drawings. Ms. Kirk stated what has been provided is an updated Zoning Variance Plan which was marked as Exhibit A-3. Also provided was a Plan entitled, "Tree Replacement Berm Planting," and this was marked as Exhibit A-4.

Ms. Kirk asked them to enumerate what are the similarities of this Plan to the 2011 Approval and what has been changed.

Mr. Burgess stated the 2011 Plan called for an 18.36' rear yard setback, and this Plan calls for an 18 and a ½ foot setback. He stated the 2011 Plan called for a zero setback on the left side of the property which is all they can put and it is 26.6" off the property line. He stated the 2011 Plan requested and was Approved for infringement into the Resource Protection Area of 1,317 square feet, and they are requesting 1,314 square feet. Ms. Kirk stated Mr. Burgess indicated that the 2011 Plan called for a zero foot setback on the left side, and she asked what they are now asking for; and Mr. Burgess stated he believes that they are asking for the same thing.

Mr. Bamburak asked Mr. Habgood if he had a copy of the prior Decision, and Mr. Habgood provided this along with a copy of the Exhibit that was referenced in the Decision. This was provided this evening and marked as Exhibit B-5.

Mr. Eisold stated it appears that the net lot area is different on the two Plans. Mr. Bamburak stated the shape of the house has changed as well between the two Plans; and Mr. Burgess agreed and stated what he is proposing is a significantly smaller house as the prior Application was a two-story Colonial, and he is proposing a farmhouse type.

Mr. Bamburak asked Ms. Kirk if the Board is under any obligation to consider the previous Approval as he feels they should just consider this as a new Application, and Ms. Kirk agreed that the Board is to accept it as a new Application; however, she stated Mr. Eisold has raised the issue of the difference in net lot area. Ms. Kirk stated in 2011 the minimum net lot area calculation submitted was 13,500 square feet and today's Application sets forth a minimum net lot area of 18,310 square feet. Mr. Habgood stated on the prior Plan from 2011 labeled as Exhibit A-6, they showed what the Code required as the minimum net lot size. He stated the Plan that was just submitted labeled as Exhibit A-3 shows exactly what is the net lot size of square footage outside of the resource protected land on the lot.

Mr. Moffa stated while they have been referring to the prior Plan as being from 2011, it was actually dated 2012 when the case was heard. Mr. Bamburak agreed, and he stated that the Decision was rendered May 1, 2012.

Mr. Moffa asked if there is a way to tell what the vote was as he remembers that there was some contention. It was noted that this would be shown in the Minutes. Mr. Bamburak stated he feels the vote was three to two in favor, and there was some contention as the Lot was part of a legal Subdivision but they were not going to proceed with the lot as shown in the Subdivision.

Mr. Gruen stated he does not feel that there is a significant difference from the prior Plan since Mr. Burgess has discussed a few inches being changed and the fact that they are building a different type of house. Mr. Burgess stated the difference between what they are proposing to do and what was approved in 2012 is that the house type will be different as the previous Variance was based on a two-story, 5,200 square foot home. He stated one of the major differences for this new proposal is that the new home will have a first-floor master bedroom. Mr. Gruen asked if the footprint will be the same as that which was previously Approved, and Mr. Burgess stated it is smaller. Mr. Gruen asked why they then have to come before the Board, and it was noted the footprint is different although both were outside of the building envelope.

Ms. Kirk asked the proposed square footage under the new Plan, and Mr. Burgess stated it will be approximately 3,400 square feet with a master bedroom on the first floor.

Mr. Zamparelli stated one of the problems that was previously discussed was the encroachment into the natural resource land even though it was a minimal amount, and they will still have an encroachment. He stated it also appears that the driveway has been moved over. Mr. Bamburak stated the concern discussed with the prior Application was that they were not within the building envelope. Mr. Zamparelli stated he also recalls that the neighbors were in favor of the proposal because it was an odd lot. Mr. Bamburak stated some of the Board considered that there was virtue to the argument that it would look better for the neighborhood. Mr. Bamburak stated while the numbers are now a little different, the kind of Variance is the same as the previously-approved Variance. Mr. Bamburak stated all of this was discussed at length under the previous Application.

Mr. Gruen asked if there is any greater or lesser encroachment into the resource protected area, and Ms. Kirk stated the rear yard setback is being increased by .14' and the encroachment into the resource protected area is being reduced by 3 square feet.

Mr. DosSantos asked if the house is still angled in such a way to make the neighbors happy, and Mr. Burgess stated they want to get the position of the house so it is relative to the cul-de-sac and also provides more buffering between the new house and the house to the left. He stated they may have to remove two small trees.

Mr. Burgess stated by installing the berm in the back and additional trees as shown on the Plan, it will provide additional visual buffering to the house to the rear and the house on the left side. Mr. DosSantos stated Exhibit A-4 shows the berm and proposed trees in the rear of the property.

Mr. Eisold stated it seems that the initial Plan showed the driveway in the front and now they are taking it to the side. He stated while Mr. Burgess has indicated he would be putting trees in this area, it does not appear that there is room to put trees in this location. Mr. Burgess stated there are trees there now between his and the adjacent property. Mr. Bamburak stated they already have a letter from that property owner indicating that they did not have an issue with the Plan.

Mr. Burgess was asked if he showed them a copy of the Plan so that they are familiar with where the driveway will be; and Mr. Burgess stated he personally has not done this but Mr. Marrazzo did. Ms. Kirk stated in their letter to the Board the neighbor indicated that “they were familiar with the dimensions and limitations of the parcel

along with the improvements being proposed and minimal incursion into the adjoining buffer woodland.” Mr. DosSantos stated he feels they were also in favor of the prior Application.

Mr. Bamburak stated he recalls during the last Application that it was felt that building the new home in the building envelope would have made the house situated strangely to the neighbor’s property, and they indicated they would have preferred the Variance proposal even if it put the house out of the prescribed building envelope. Mr. Bamburak stated he recalls that some of the Board members had a philosophical issue with building the home outside of the approved building envelope. Mr. Moffa stated they were also concerned with the resource protection area although it is minimal.

Ms. Diane Gill, 354 Emerald Drive, was sworn in and stated she purchased her home on August 30, 2013; and it is behind this proposed home. She stated one of the reasons they purchased this home was because of the natural resources, and she and some of her neighbors who were unable to attend are concerned about the variance for the natural resource encroachment. Ms. Gill was shown the Plan showing the minimal disturbance proposed.

Mr. Richard Kmiec, 396 Collins Grant, was sworn in and stated his home is across the street from this property. Mr. Kmiec stated he feels what they are proposing will fit within the community, and he feels it is necessary to move the house so that it is at a good location and will make a great improvement to the aesthetics of the neighborhood. He stated the wooded area they are concerned about is mostly scrub trees. He stated the additional trees proposed will enhance the area.

Mr. William Voss was sworn in and stated he lives in the lot next to the proposed building, and the woods is between them. He stated he has no objection to the house the way it is proposed to be angled which he feels is perfect.

A photo was presented which is an existing home in the neighborhood and is a rough idea of what the house may look like. This was marked as Exhibit A-5.

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

Mr. DosSantos moved and Mr. Zamparelli seconded that the Variances requested in the Application be approved. Motion carried with Mr. Bamburak, Mr. DosSantos, and Mr. Zamparelli in favor and Mr. Gruen and Mr. Moffa opposed.

APPEAL #13-1681 – WENDY DESANTIS

Mr. James Majewski, engineer, was sworn in. The Application submitted was marked as Exhibit A-1. An impervious surface break down was marked as Exhibit A-2. A Zoning Permit Plan submitted was marked as Exhibit A-3. A two-page Elevation Plan of the proposed dwelling was marked as Exhibit A-4. Notice of tonight's Hearing was published in the Bucks County Advance, and a copy of the publication was marked as Exhibit B-1. The property was posted with notice of tonight's Hearing, and a copy of that posting was marked as Exhibit B-2. Notices were mailed to adjacent property owners as required by the Ordinance, and a copy of that letter and the listing of residents was marked as Exhibit B-3.

Ms. Kirk stated in reviewing the proposed Plan and the Zoning relief being sought, she understands that two of the three Variances requested deal with existing non-conformities based upon the current structure on the property; however, it appears that the current building does not meet the requirements of minimum lot area and minimum lot width under Section 200-13 of the Code. She asked if there should be an amendment to the Application to address those two matters as well.

Mr. Majewski stated this is an existing non-conforming lot, and he would like to include the amendments suggested by Ms. Kirk so that this is documented on the record. Mr. Habgood agreed that based on the current configuration of the lot and the property under the Code, lot width should be 250' at the front building line and the minimum net lot area for a single-family home is three acres and neither of those dimensions are currently existing.

The Board agreed to accept an amendment to the Application for additional Variance relief from minimum lot area and minimum width in light of the current features of the property.

Mr. Majewski stated the property is located in the northern end of the Township on Robinson Place between Robinson Place and the Delaware Canal. He stated the entire property is located within the 100 year flood plain. He stated the property owner proposes to elevate the house to be out of the 100 year floodplain. He stated that the Township applied to PEMA and received a Grant to assist the homeowner in elevating the house. He stated the house will be elevated approximately nine feet from where it currently exists. He stated there will be no change to the footprint of the house. He stated the only disturbance within the 100 year floodplain is to re-do the footings of the house to support the walls that will need to be constructed to elevate the home and also to build stairs to access the elevated home down to the floodplain. He stated those stairs will come down onto existing impervious surface, and there is no proposed change to the impervious surface of the lot.

Mr. Majewski stated this house existed prior to the adoption of the Flood Plain Maps in 1978, and the homeowner has not created the hardship for this lot. He stated they have been flooded four times in the last ten years, and the only way to get the house out of the floodplain is to elevate. He stated there are a number of other houses in the neighborhood that have been elevated including the house on the left.

Mr. Gruen asked the permitted impervious surface for the lot; and it was noted it is 13%, and the existing is 26.6%. Mr. Gruen stated the Plan shows that there are four sheds on the property, and he asked if they are all necessary. He asked if there is a way they could reduce some of the impervious surface by removing any of the sheds.

Ms. Wendy Desantis was sworn in and stated all of the structures are in use and have permanent cement footings underneath and are not temporary. Mr. Bamburak stated he feels Mr. Gruen was asking if any of them could be removed whether they are temporary or permanent. Ms. Desantis stated she does not feel this is an option given the size of the house and her personal needs for storage.

Mr. DosSantos asked if the sheds were on the property when she acquired the property in 2004, and Ms. Desantis stated they were on the property when she acquired it.

Mr. Zamparelli asked how much of a reduction in impervious surface would there be if they took away one of the sheds since he does not feel they would get back anything significant if they took one shed away.

Mr. Gruen stated in addition to the sheds there is a carport and a concrete area by the driveway. Mr. Gruen stated he is looking to see if there is a way they could reduce some of the impervious. Ms. Desantis stated she does not know what the cost would be to remove a structure and the cement footings, and this would be a hardship to her as a single mother of three college students.

Ms. Kirk asked if the proposed elevation will have any effect on the current impervious surface coverage. She asked if the house being elevated will only be sitting on the footers or will there be a concrete pad at ground level that will cover the same amount of area that the house would have if it had remained on the ground.

Mr. Majewski stated there is currently a slab; and once the house is elevated, that slab will remain so there will be no change to the footprint or the impervious surface. Mr. Majewski stated with regard to the driveway although it may look large

on paper, this is a large-scale drawing and 1" equal 20'. He stated the way the driveway bends through the trees, they need the area to back in and out; and it is very difficult to get out of the driveway other than to do a "k-turn."

Mr. Zamparelli asked if other when the River floods over, when there is a regular rain, does the property flood; and Ms. Desantis stated it does not.

Mr. Eisold asked if the flow restrictions are less after the new construction than currently, and Mr. Majewski stated they are. He stated all homes that are elevated need to have the lower level installed with flood vents that allow water to get into the lower level and equalize the pressure so there is not the pressure of the water pushing onto the walls. He stated in theory there should be less flooding after the house is elevated than there is now. He stated he believes that there are nine flap valves that will be installed.

Mr. Moffa noted the side yard encroachment with the stairs, and he asked what is on the side of the property at that location; and Mr. Majewski stated the neighbor on that side has a fence, and that house is further up toward the road.

Mr. Gruen asked if all the improvements on the property were done before Ms. Desantis purchased the property, and Ms. Desantis stated they were.

There was no one present in the audience, and Testimony was closed.

Mr. DosSantos moved, Mr. Moffa seconded and it was unanimously carried to grant the relief as requested with the amendments as to minimum lot area and minimum lot width.

There being no further business, Mr. DosSantos moved, Mr. Moffa seconded and it was unanimously carried to adjourn the meeting at 8:20 p.m.

Respectfully Submitted,

Anthony Zamparelli, Secretary

