

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – APRIL 15, 2014

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on April 15, 2014. Chairman Bamburak called the meeting to order at 7:35 p.m.

Those present:

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

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

Absent: Keith DosSantos, Zoning Hearing Board Member
Kristin Tyler, Supervisor Liaison

APPEAL #13-1663 – GEORGE FOX III

Ms. Kirk stated this matter was continued from February 4 as Mr. Fox was in negotiations to purchase the adjacent property which would have an impact on the Zoning Application. She stated that since then Mr. Fox contacted her by phone and written letter dated yesterday indicating that he needs an additional postponement as the bank that is handling the Settlement Closing has requested an extension of the Settlement date due to paperwork not being completed on the seller's side. Ms. Kirk stated Mr. Fox sent her a copy of the Addendum to the Agreement of Sale where they have postponed Settlement from March 31, 2014 to June 30, 2014. A copy of Mr. Fox's letter along with a copy of the Addendum to the Agreement of Sale was marked as Exhibit A-10.

Ms. Kirk stated she has also been in touch with Mr. Fox's attorney, Steve Harris, to inform him of this request; and he is in agreement with the request. Ms. Kirk stated Mr. Fox indicated that he hopes that the Settlement will occur prior to June 30, 2014; but out of an abundance of caution, the Board may want to have this scheduled for the first meeting in July to make sure that the Settlement has occurred.

Mr. Bamburak stated he understands that someone is present to speak on this Application before the Board makes a Motion.

Mr. Tom Mier, 389 Twig Lane, was sworn in and stated next month celebrates the first year anniversary of this Application and approximately ten postponements; and he requested that it be Denied, and that Mr. Fox re-apply. Mr. Mier stated at the first few meetings quite a few people from the neighborhood showed up, but that number has been dwindling as notifications have not been received. He stated if they were to re-initialize the entire Application process when he does have everything completed, it would not waste so much of everyone's time.

Mr. Bamburak stated while he understands Mr. Mier's concern, they typically grant Continuances since just Denying it and making them come back would not serve anyone. He stated Mr. Mier's concerns about notification are proper.

Ms. Kirk stated the Applicant is asking for a Continuance, and for the Board to make a Denial would probably only lead to an Appeal up to Doylestown which would ultimately result in the matter coming back before the Board anyway and would create additional work. She also noted that the Applicant is waiving all of the time requirements under the law. Ms. Kirk stated if Mr. Fox acquires the adjacent property, that will probably have an impact on what he is asking for in the Zoning Application; and he will probably have to submit an Amended Zoning Application. She stated if there are additional Variances or changes to what he is requesting, new notices will probably have to be sent out. Mr. Mier stated this is what he is looking for.

Mr. Gruen moved to continue the matter to July 15, 2014.

Ms. Dawn Mier was sworn in and asked if there is anything the residents can do since the property is being used as if the Variance was already in place, and there are tucks everywhere and noise all the time. She stated that is part of their concern. She stated until the Variance is acted on, the business is being used as if it had been granted. Mr. Bamburak asked if the Use Variance was for retail nursery, and Ms. Kirk agreed. Ms. Kirk stated she feels the residents should lodge a complaint with the Township who can issue the appropriate violation notices. Mr. Bamburak stated the Zoning Hearing Board does not have enforcement powers.

Ms. Mier stated she wants to peacefully co-exist, but what is happening is not what they thought was going to happen with this property. Mr. Bamburak reiterated that a complaint would have to be lodged with the Zoning Officer as the Zoning Hearing Board can do nothing about this.

Mr. Moffa seconded the Motion, and the Motion carried unanimously.

APPEAL #13-1685 – JOHN S. TRACEY

Ms. Kirk stated this matter was continued from March 4 at the request of the Applicant and his attorney. She stated the Applicant met with the Township's Environmental Advisory Council, and has submitted a proposed Amended Plan that would address the issue of the bank erosion but would replace what has already been constructed at the property. Ms. Kirk stated she understands that the Amended Plan has been submitted to the EAC with no opposition, but the Township engineer has reviewed the Plan and pointed out some items that should be added to the Amended Plan; and as a result, the Applicant is requesting that this be continued until the Board's meeting of May 6 which would enable the Applicant to properly make all the necessary notations on the Plan and address the issues raised by the Township engineer.

Mr. Gruen moved, Mr. Zamparelli seconded and it was unanimously carried to grant the Continuance until May 6, 2014.

Ms. Kirk noted she did get an e-mail from Mr. Toadvine, and this was marked as Exhibit A-8.

APPEAL #14-1692 – EWA SADOK

The Application submitted was marked as Exhibit A-1. A Site Plan was marked as Exhibit A-2. A impervious surface breakdown chart was marked as Exhibit A-3. 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 this was marked as Exhibit B-2. Notices were mailed to adjacent property owners as required by the Ordinance, and a copy of that letter with the list of addresses was marked as Exhibit B-3.

Ms. Kirk stated an Application had been previously before the Board filed by Ms. Sadok with respect to the property in May, 2012. At that time her Application sought Variances from a front yard setback and the setback with respect to special arterial roads. A Variance had also been requested but withdrawn with respect to the height of a fence in the front and the side yards. A Variance had also been requested to the impervious surface coverage of the property. Ms. Kirk stated after hearing Testimony the Board granted the Variances as requested noting that the request for the fence had been withdrawn. At that time the imperious surface had been improved to increase from the 18% maximum allowed rate to a total of 19.3%.

Ms. Ewa Sadok was sworn in.

Mr. Bamburak stated it appears that Ms. Sadok would like to make her driveway wider. Ms. Sadok agreed and stated the driveway is narrow, and she lives on a busy road. She stated there is not enough space in the driveway to turn the car around so they have to back onto the busy road. She stated her main concern is the safety.

Mr. Bamburak asked Ms. Sadok if she is planning to add everything shown in orange on the Plan provided, and Ms. Sadok agreed. Mr. Bamburak stated while he can understand the driveway, some of what is proposed to be added is in the back. Ms. Sadok stated on the original Plan, they did not include the back walkway she would like to add. She would like to have this walkway from the garage door to a future patio. Mr. Bamburak asked if there is stone now where she wants the walkway, and Ms. Sadok agreed. Mr. Bamburak asked if it is compacted stone, and Ms. Sadok stated it is not. She stated when the house was under construction this was there to prevent mud from going to the street.

Mr. Moffa stated that portion is not a safety issue, and Ms. Sadok agreed. Mr. Moffa stated there is also a proposed shed, and Ms. Sadok agreed and added they do not have a shed currently and it would be for storage.

Mr. Moffa asked the current impervious surface, and Ms. Kirk stated according to the paperwork provided for the Application it indicated 19.2%. She stated that two years ago the Board approved an increase to 19.3%; and with the modifications as requested now by the Applicant, it would increase to 21.7%. Mr. Moffa asked about the 19.9% referenced in the engineering survey, but no one knew what this referred to.

Mr. Bamburak stated there are two dry wells shown in the front yard, and he asked if the Zoning Hearing Board required this as part of the previous approval; and Mr. Habgood stated they were constructing a new home so they had to meet the Township's Stormwater Management requirements which is where the two dry wells in the front yard came from. Ms. Kirk stated the installation of the dry wells was not a Condition of the Zoning Hearing Board.

Mr. Gruen stated according to the drawing presented, what is shown in yellow is the existing driveway, and the request is to widen it so they can turn a car around; and Ms. Sadok agreed. Mr. Gruen stated he does not see how that will work and they could not turn around in the driveway even if it was widened. Ms. Sadok showed how she could do this on the Plan. Ms. Kirk stated the Applicant showed that she can do a turn around from the garage area to rear of the existing dwelling and go northwest backwards with the car into the section that is between the rear garage and front walkway hatched and highlighted in orange as the area for the turn around.

Ms. Kirk stated the section highlighted in orange in the southwest area of the Plan is not to be used for driveway but is to be used as a walkway area passed an existing wooden fence, and Ms. Sadok agreed.

Mr. Gruen asked who designed this extension and decided that this would work, and Ms. Sadok stated she did. Mr. Gruen stated he does not feel it will work, and Mr. Bamburak agreed. Ms. Sadok stated she does it now, and Mr. Gruen stated if she does this now, she does not really need the extension. He stated what he feels she really wants is to be able to park another care in the parking area and be able to back out, however Ms. Sadok disagreed. Mr. Gruen stated he does not see how it is going to work. Mr. Gruen stated they are being asked to increase impervious surface, and he does not see any hardship.

Mr. Bamburak stated the Board understands that she wants to make the driveway bigger so she can turn around, but the Board does not see if this is done how it will really help.

Mr. Zamparelli asked Ms. Sadok if she is now backing into where the orange is, and Ms. Sadok agreed. Mr. Zamparelli stated she understands that she wants to make this paving, and Ms. Sadok agreed.

Ms. Kirk stated she is also proposing to not only widen the driveway but to also add 300 square feet for a rear walkway, 168 square, and widening the front walkway. Ms. Kirk stated the Board may be inclined to grant a Variance to widen the driveway but eliminate those additional areas of the impervious surface being requested. Mr. Moffa stated he was thinking along those lines as well, and he stated he would be inclined to grant the Applicant the benefit of the doubt on the driveway turn around even though some of the Board do not see how this would work; but with regard to the front walkway, back walkway, and shed, there is no hardship so it is difficult to make a case to go over the impervious surface for the second time in two years for the same property just because she would like to have these things.

Mr. Bamburak stated he does not have a problem with the shed, but would not be in favor of the back of the driveway for walking around. Mr. Gruen asked why she needs the shed, and Ms. Sadok stated it is for storage of her lawn mower.

Ms. Kirk noted the copy of the original Plan that showed that certain walkways were being removed to help eliminate some of the increase of the impervious surface that was previously requested.

Mr. Habgood stated for the prior Zoning Hearing Board Application that was submitted in 2012, the impervious surface was based on the area that did not include the ultimate right-of-way; and it was based on a square footage of 26,760 square feet. He stated on the current Application, the impervious surface breakdown sheet shows 30,000 square feet; and he feels the Board needs to be consistent as to what they are using for the square footage of the property.

Mr. Habgood stated if they remove the ultimate right-of-way area and go back to what was used for the square footage in the prior Appeal, this increases the requested impervious surface up to anywhere from 23% to 24.4% because there are also some discrepancies shown on the Site Plan for the increase in impervious surface and also as to the proposed increase on the impervious surface breakdown sheet. Mr. Habgood stated the existing impervious surface is correct of 19.3%. Mr. Moffa asked if this included the right-of-way, and Mr. Habgood stated it is excluding the right-of-way.

Ms. Kirk stated at the time of the original Application the Board granted impervious surface based on square footage without the right-of-way; but for today's purposes the Application included the ultimate right-of-way which skews the numbers for the impervious, and Mr. Habgood agreed.

Mr. Zamparelli stated he is okay with the turn around and the shed, but not in favor of the extra things requested.

There was no one present in the audience to speak to this Application.

Mr. Bamburak stated the Board is leaning toward granting the driveway and the shed. He stated the Board is not in favor of the back walkway. Ms. Kirk stated as part of the prior Application, the rear concrete walkway was the area to be removed; and now she wants to bring it back in.

Mr. Bamburak stated it has also been noted that there was a mistake in the calculations since the previous number of 19.2% which was allowed was based on a smaller lot and did not include the right-of-way. He stated when the calculations were done for the new proposed impervious, they included the extra land which should not have been included and makes what she is asking for seem not as bad as it really is. Mr. Bamburak stated he is not sure how they could make a Motion this even on a certain amount of the improvements without having the correct numbers. Mr. Habgood stated what is shown on the Site Plan Exhibit for the driveway also includes the additional walkway that they want to do in the front so he is not sure how much of that is the driveway. Mr. Moffa stated they need the 650 broken down. Mr. Bamburak stated they need the dimensions, as there are no dimensions.

Ms. Saylor asked if anything is proposed to mitigate additional stormwater for the impervious. She stated the Plans show two dry wells in the front, and Mr. Bamburak stated that was part of the standard Stormwater Management Plan and had nothing to do with the previous Variance. Mr. Habgood agreed and added they were installed with the re-construction of the new home as part of that Permit Application. Mr. Bamburak stated many times when people increase the impervious surface areas, they have to have a plan to mitigate such as putting in another one of the dry wells. Mr. Bamburak stated this would really require a professional to do the calculations and choose the spot where it would go. He asked Ms. Sadok if she has an engineer or contractor working with her, and she stated she does not. Mr. Bamburak stated she may need a contractor or engineer who can help her with this as it gets complicated.

Ms. Kirk stated the Applicant could request a Continuance to re-work the numbers, and the 650 square feet listed for the driveway and the front walkway may go down to 500 square feet; and this may then not require any additional stormwater management facilities. She stated she understood that it had to be 1,000 square feet or more; however, Ms. Saylor stated the County has allowed the Township to change their Ordinances to that, but she is not sure that Lower Makefield has made that change. Ms. Saylor stated 500 square feet is a small amount, and you can get credit for extra trees on the lot; and she may not even have to do anything if she has enough trees. Mr. Gruen stated he disagrees with the impact of the trees when there is a 2" to 3" rain event. Ms. Saylor stated for the Stormwater Management Ordinance they just require you to take care of the first inch of run off for every new square foot of impervious surface for the small projects. She stated the trees are assigned a certain amount of water that they will absorb depending on if they are deciduous or evergreen in order to help with the 1". Ms. Kirk stated it could be such an insignificant increase that it may not make a difference.

Mr. Bamburak advised Ms. Sadok that the Board is recommending that she re-do the Plan showing just the shed and what she could live with on the driveway and show the numbers that will add. He asked if she could have this by May 6, and Ms. Sadok agreed she could.

Mr. Moffa stated with regard to the shed, the dimensions from the property line are not clear on the Plan. He stated he assumes she is not requesting any special setback, and he asked if the shed would be at least 10' from the property line on both sides; and Ms. Sadok stated it will.

Mr. Gruen asked that she also show the dimensions of the driveway including the width for the next meeting.

Ms. Sadok asked if she can do this on her own or does she have to hire an engineer, and Mr. Bamburak stated she can do it on her own but they want to see the numbers.

Mr. Zamparelli moved, Mr. Gruen seconded and it was unanimously carried to continue the matter to May 6, 2014.

APPEAL #14-1693 – SCOTT & CAROLYN ROTH

The Application submitted was marked as Exhibit A-1. The Site Plan provided was marked as Exhibit A-2. Notice of tonight's Hearing was published in the Bucks County Advance, and a copy of that Proof of Publication was marked as Exhibit B-1. Notice of tonight's Hearing was also posted at the property, and 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 list of addresses was marked as Exhibit B-3.

Mr. Scott Roth and Mr. Vincent Fiorvanti, engineer, were sworn in.

Mr. Bamburak stated it appears that they want to install a pool that will be close to I-95. Mr. Fiorvanti stated the Variance they are seeking is from Section 200-63A the 120 foot special setback along arterial and collector roads, I-95 being the arterial road. He stated the 120' setback to the pool house is the issue. He stated they feel that there are unique features on this lot, and he does have an aerial exhibit.

Mr. Bamburak asked if there are any impervious surface issues, and Mr. Fiorvanti stated there are not. He stated the owners are permitted to have 19%, the existing is 11", and they are proposing to go to 13.7%.

Mr. Gruen stated it shows the edge of the pool will be 91.6 from the property line and the pool house is 100'. He asked if the pool is considered a structure; and Mr. Habgood stated under Section 270 for swimming pools it allows exceptions, and they can encroach within certain distances from arterial and collector roads.

Mr. Habgood stated the actual maximum allowable impervious surface for this property is 18% not 19%; but they are still below this.

Ms. Saylor stated she does not see any stormwater management, and Mr. Fiorvanti stated they did submit a Permit Plan before they found out about the pool house would count as a structure. He stated they did get a review letter from the Township engineer and the stormwater management issue had come up.

April 15, 2014

Zoning Hearing Board – page 9 of 9

He showed a Plan which shows an infiltration trench, and he showed how the water will run. He stated if they are successful in obtaining the Variance, he will address the stormwater issue in a revised submittal.

There was no one present in the audience to speak on this matter.

Mr. Habgood stated this is an accessory structure, and they need to meet the height limits which is 15'; and Mr. Fiorvanti stated they are aware of this.

Testimony was closed.

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

There being no further business, Mr. Moffa moved, Mr. Connors seconded and it was unanimously carried to adjourn the meeting.

Respectfully Submitted,

Anthony Zamparelli, Secretary