

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – AUGUST 19, 2014

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on August 19, 2014. Chairman Bamburak called the meeting to order at 7:30 p.m.

Those present:

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

Others: Nancy Frick, Director Zoning, Inspection, & Planning  
Mark Eisold, Township Engineer  
Barbara Kirk, Zoning Hearing Board Solicitor  
Kristin Tyler, Supervisor Liaison

Absent: Keith DosSantos, Zoning Hearing Board Member

APPEAL #13-1663 – GEORGE FOX III

Ms. Kirk stated that Mr. Fox contacted her via e-mail last week when she was out of the office; and his attorney, Mr. Harris, contacted her on Monday. She stated Mr. Fox is trying to purchase the adjacent property; and if he is successful, it will resolve the issue of the five-acre requirement for the proposed use of the property. She stated the bank that he is purchasing the property from continues to postpone the settlement closing. Mr. Harris has requested by letter that the Hearing for tonight be continued until the last Hearing in September. They have another settlement tentatively scheduled for August 25; but in the event this is postponed, Mr. Harris is requesting the Board hear the Application at the end of September. Ms. Kirk stated that Mr. Harris also provided written confirmation that any time requirements as required under the Municipalities Planning Code are waived. Once this is resolved, they suspect that they will be meeting with Township representatives to modify and amend the Zoning Application and narrow the number of Variances requested.

The letter submitted by Mr. Harris dated 8/18/14 was marked as Exhibit A-11.

Mr. Gruen moved, Mr. Moffa seconded and it was unanimously carried to continue the matter to September 16, 2014.

APPEAL #14-1702 – DOUGLAS JUDGE

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

Mr. Douglas Judge was sworn in. Mr. Judge stated he submitted an Application for a Permit to erect a fence in the back yard, and it was Denied because there is a storm sewer easement on the back property line. He stated that extends 40' from the back property line towards the house so that in effect it would cut their back yard in half. He stated the storm sewer easement is for the run off of surface water toward a storm sewer grate at the northwest corner of the property so that the erection of the fence as planned would not go over the top of any storm sewer tunnels; and he hopes that it will not be deemed as an encumbrance to any rain run off.

Mr. Bamburak stated typically in these cases, the Board imposes a Condition that the fence would not come to within 2" of the ground so that it does not impede the flow of water; and the other Condition would be should the Township or any other entity need access to the easement, it would be the Applicant's requirement to remove the fence and replace it if he so wishes at his cost. This was acceptable to Mr. Douglas.

Mr. Bamburak asked Ms. Kirk if there is an issue as to the height of the fence. Ms. Kirk noted the location of the property and stated what they would consider the rear yard would front along Drew Road, and she asked Ms. Frick if there would be a reverse frontage issue as to the height of the proposed fence. Ms. Frick stated there would not. Ms. Frick noted a Decision on a prior Application which relates to this.

There was no one present to speak on this Application, and Testimony was closed.

Mr. Gruen moved, Mr. Zamparelli seconded and it was unanimously carried to Approve the request subject to the Condition that the fence be at least 2" from the ground; and if the Township or anyone needs to access the area, the fence would need to be removed and reinstalled at the Applicant's expense.

APPEAL #14-1703 – JOSEPH W. PRYOR

The Application submitted was marked as Exhibit A-1. The Building Permit Denial was marked as Exhibit A-2. The Site Plan was marked as Exhibit A-3. Notice of tonight's Hearing was published in the Bucks County Advance, and this was marked as Exhibit B-1. A copy of the Posting at the property of tonight's Hearing was marked as Exhibit B-2. Notice was mailed to property owners as required by Ordinance, and a copy of that letter with the list of addressees was marked as Exhibit B-3.

Mr. Joseph Pryor and Ms. Lesia Pryor were sworn in.

Mr. Bamburak stated it appears they need a Variance to install a generator, and Mr. Pryor agreed.

Ms. Kirk stated this property is located within a completely protected floodplain area which prohibits any disturbance of the floodplain. She stated for the concrete pad and the installation of the generator, the Applicant is seeking the Variance in order to disturb that resource-protected area.

Mr. Moffa asked if there is an impervious issue, and it was noted that there is not.

Mr. Gruen asked if they are going to raise the platform or put it at ground level, and Mr. Pryor stated they will raise it approximately one foot. He stated their air conditioner is at ground level on that side, and there has never been an issue.

Mr. Eisold stated Ordinance 396 is the new Floodplain Ordinance which was recently adopted on July 16, 2014. He stated there a number of issues in the Ordinance that speak directly to this situation. He noted one Section which states, "All utilities such as sewer, gas, electric, water, sewer systems, etc. should be located and constructed to minimize or eliminate flood damage." He stated there is also another Section which states, "All utilities – gas lines, electrical, telephone systems shall be located elevated where possible and constructed to minimize the chance of impairment during a flood." He stated the Ordinance speaks to raising this up to minimize the damage and for their own good as well so that it does not get destroyed.

Ms. Kirk asked if the Floodplain Ordinance was adopted as an Amendment to the Zoning Ordinance, and Mr. Eisold stated it is amending the provisions of the Codified Zoning Ordinance of Lower Makefield Township.

Mr. Bamburak stated Mr. Pryor has indicated he proposes to put this one foot in the air, and Mr. Pryor agreed. Mr. Pryor stated as noted earlier, the air conditioner is at ground level, and they have never had any issues. Mr. Bamburak asked if it will be on a concrete pad, and Mr. Pryor stated it is called a GenPad which is a pre-manufactured concrete, steel-reinforced pad designed specifically for the generator. He stated there is no excavation so there is no additional damage to the floodplain. The pad is 3" thick and is steel reinforced. Mr. Bamburak stated he felt that Mr. Pryor indicated he was going to put it 12" in the air, and Mr. Pryor stated the area they are speaking of is an elevated landscaped bed so it would be about 12" off grade.

Ms. Kirk asked Mr. Pryor if he was aware when he came in for the Application that there was this new Floodplain Ordinance, and Mr. Pryor stated he was not. He stated when they decided to go with the generator he contacted the Township and asked if there were any provisions for putting in a stand-by generator; and the woman he spoke to indicated a Permit was required, and if there were specific questions he could address those to "Frank," the Building Inspector. Mr. Pryor stated he did come up to the Township Building and met with Frank, and they went over all the specifics of what was required to put the generator in as far as the Electrical Code and the Plumbing Code. Mr. Pryor stated it was recommended that he contact "Brian," the Electrical Inspector; and Mr. Pryor found Brian to be very helpful as well. Mr. Pryor stated at no time did anyone indicate there was an issue with setting it on the ground.

Ms. Kirk stated in light of the information that Mr. Eisold has just provided and the Plan as to where and how to install the generator, it might be advisable to get a copy of the newly-adopted Ordinance; and Mr. Pryor stated he now has it. Ms. Kirk stated based on what he intends to do as to the location, he may need to amend the Application if he needs to request a Variance from some of the other requirements as to the location of the utility line, power supply, etc. Mr. Pryor stated everything would be above-ground and attached to the house, and there is no issue with any underground utilities. Mr. Eisold stated there is a Section under Equipment that indicates, "Water heaters, furnaces, air-conditioning, ventilating units, and other electrical, mechanical, or utility equipment or apparatus shall not be located below the regulatory flood elevation." Mr. Eisold stated based on the flood elevation, they would be required to raise this about 5' off the ground.

Mr. Pryor stated technically it would have to be raised 7' which means that the top of the generator would be 9 ½' above grade so it would be up to the roof. Mr. Eisold stated based on his calculations, it would be 5'. Mr. Pryor stated to put a generator that has a smaller footprint than an air conditioning unit that high in the air would put a hardship on them. He stated they would have to do extensive excavation, pour a concrete slab, get a custom-built metal fabricated system to be

able to put the elevated generator on, and it would make any kind of repairs or service a “nightmare.” Mr. Pryor stated he is concerned about having something four hundred and sixty-one pounds that high in the air that a tree could hit and knock down.

Mr. Bamburak stated at this point Ms. Kirk is only suggesting that if there is a need for another Variance so that he would not have to elevate it, they should consider it now. Ms. Kirk stated the problem is that neither she or the Board received a copy of the new Ordinance so they are not aware of what is being discussed. She stated her suggestion would help Mr. Pryor save additional time and cost since if the Board only hears the Application based solely on what has been requested for the installation of a generator within an area that is 100% protected floodplain and gives an Approval only on that request, when Mr. Pryor goes to submit a Building Permit, he might find that he needs to submit another Application to the Zoning Hearing Board to address some of the requirements under the new Ordinance. She stated she is trying to spare Mr. Pryor that “aggravation” in making a recommendation that the matter get continued so that he can double check to see what those additional requirements are and possibly request additional Variances.

Mr. Pryor stated if you read the Ordinance it states that the Zoning Hearing Board has the ability to grant relief; however, Mr. Moffa noted that Mr. Pryor has not requested that relief in his Application. Mr. Moffa stated Ms. Kirk has indicated that he could go through this process and then find out at the Building Permit stage, he will need to address these new provisions; and he would then have to come back again to the Zoning Hearing Board and they are trying to save Mr. Pryor from having to go through another Application. Mr. Moffa stated if Mr. Pryor would amend the Application to ask for additional relief to cover the exceptions from the Ordinance, everything could be taken care of at one time.

Mr. Bamburak asked if he could not amend it now, and Ms. Kirk stated neither she nor the Board has seen the new Ordinance so they have no idea the specifics required under the new Ordinance. Mr. Pryor asked if they could not review it this evening. It was suggested that the Board take a recess so that they can copy and review the new Ordinance.

Mr. Gruen asked how long Mr. Pryor has lived in the home, and Mr. Pryor stated he has lived there since 1985. Mr. Gruen asked if he ever had a flood there, and Mr. Pryor stated the only flooding issue they ever had was a result of storm drainage that the Township has since corrected. Mr. Pryor stated one time they had water that came from the drain at the base of the street, up the driveway, and into the garage. He stated Mr. Majewski, the Township engineer at that time, was tasked by the Board of Supervisors to look into the issue; and it was found out that the

problem was due to the fact that there were no back flow preventers on the storm drain termination points. Mr. Pryor stated the Township installed back flow preventers, and there have not been any further issues. Mr. Pryor stated he has a basement, and it has never taken on water from the perimeter of the house. He stated there is no sump pump in the basement, and it is bone dry and not damp.

Mr. Moffa asked the purpose of the new Ordinance; and Ms. Tyler stated as part of the Township Application for a Community Rating that will allow lower insurance rates, they were required to do several things one of which was the adoption of this Ordinance which the Township has no flexibility over.

Mr. Moffa asked Mr. Eisold “engineering-wise” the reason for the Ordinance needed to be written this way, and Mr. Eisold stated it limits the liability for the flood insurance. He stated it makes people make good decisions so that there are not higher losses. He stated FEMA is requiring this, and are willing to let people pay less insurance if they limit their liability. He stated for some houses, FEMA has been paying much more than the value of the houses when there are two to three floods; and they are paying \$300,000 on a \$100,000 house. He stated FEMA is trying to limit their liability by making people do things safely.

Mr. Moffa asked why it would be considered safer to have the generator 5’ in the air; and Mr. Eisold stated it is to get it out of there so that it does not float away, and it would have to be paid for by their flood insurance. Mr. Pryor stated the generator would not be covered under flood insurance; and if it would take on water and be damaged, that would be on him. Mr. Moffa asked if there is an issue electrically if it were to get wet, and Mr. Eisold stated he does not feel it would be good for it if it were submerged under water. Mr. Pryor stated the generator itself about midway up the back has an air intake for the engine. He stated the electrical connections are all the way at the top of the generator. He stated if the water were to come up, once it hit the halfway point, and water went into the intake, the engine would cease and electricity stops when the engine stops running. He stated there is no way for anyone to get shocked or electrocuted. He stated they also checked with the manufacturer of the GenPad, and he has statements from them indicating that there are no buoyancy issues whatsoever either with the GenPad which is 189 pounds or the generator which weighs 451 pounds. He stated the generator is securely bolted to the GenPad which would be almost 650 pounds combined weight. He stated these units are designed to operate in the most adverse of weather conditions.

Mr. Moffa asked if Mr. Pryor could submit that information, and Mr. Pryor agreed to submit this as an Exhibit.

A short recess was taken to give the Board and Ms. Kirk the opportunity to review the new Ordinance.

When the meeting was reconvened, a copy of the Ordinance was marked as Exhibit B-4. Ms. Kirk stated she feels Section 4.04B should be reviewed with the Applicant. She asked Mr. Pryor if there were going to be any utilities other than electrical service to the generator, and Mr. Pryor stated there will be natural gas and electric. Ms. Kirk stated noted Page 11 of the Ordinance states “all utilities to be located and constructed to minimize or eliminate flood damage.” She stated the unit is designed such that the electrical connection will be at the top of the unit, and Mr. Pryor agreed. Ms. Kirk asked where the natural connection will be; and Mr. Pryor stated the natural gas meter where it enters the house is on the same side, and the piping would come off the meter along the side of the house. He stated it is already there. Ms. Kirk asked the elevation, and Mr. Pryor stated PECO has the gas meter in approximately 24” above ground. He stated this was the first issue they had to address since they never realized that their gas line was undersized. He stated it was a half inch, and they were informed after the fact that it had to be one inch.

Mr. Zamparelli asked if there is a basement, and Mr. Pryor agreed. Mr. Zamparelli asked how they will prevent water from going into the conduit into the basement, and Mr. Pryor stated nothing goes into the basement. He stated the way the generator connects is the transfer switch mounts to the left of the meter box which is under a patio. He stated the conduits would all be sealed and would go up.

Ms. Kirk stated they have already addressed #4 and he has provided a sheet of the specs as to the buoyancy ratio dealing with the situation of preventing flotation, collapse, or lateral movement. The Specs were marked as Exhibit A-4.

Ms. Kirk stated building materials will be flood resistant, and the unit is designed specifically for outdoor use; and Mr. Pryor agreed this is true for the transfer switch and the generator.

Mr. Eisold noted the top of Page 23 D which indicates, “elevated where possible.” Ms. Kirk stated this has been addressed in that the gas line would be 24” above ground as the connection from the house to the unit and the electrical connection is at the top of the unit. It will be connected by a separate panel on the outside of the house, and Mr. Pryor agreed.

Ms. Kirk asked the height of the generator, and Mr. Pryor stated it is 29’ high.

Mr. Moffa stated he is not sure that they have satisfied B4. He stated he is satisfied with the floatation, but the anchoring is also supposed to be to prevent lateral movement. He added that float waters can move a care, so he feels they could move a generator. Mr. Pryor stated the generator is anchored to the GenPad; however, Mr. Moffa stated the pad is not anchored. Mr. Pryor stated they have indicated that anchoring is not a requirement because of the fact that there is no buoyancy issues although he stated he assumes they could put in bollards there. Mr. Moffa stated the generator company is stating this, but that is not dealing with the Township Ordinance. Mr. Pryor stated he feels putting in bollards would prevent a shift. Mr. Zamparelli asked if the equipment would be adaptable to provide for this since it is prefabricated. Mr. Pryor discussed some ways that this could be done. Mr. Eisold stated they could do a case-in-place and install rebar into the ground and pour concrete for less money than the cost of the 3" pad; and this would have more anchoring stability. Mr. Gruen stated if they require anchoring he will have to determine how to do it, and he may be able to adopt the pad or pour a small slab. Mr. Zamparelli stated he feels the inspector will have to determine this.

Mr. Bamburak stated if this is included as a Condition, he will have to make sure that the pad is protected in some way from lateral movement.

Ms. Frick asked if this would have to be approved by Mr. Eisold's office as to the anchoring, and Mr. Eisold stated this would be up to the Township whether it would be his office or the Building Inspector.

There was no one present to speak to the Application, and Testimony was closed.

Mr. Gruen moved, Mr. Moffa seconded and it was unanimously carried that the Application as submitted be approved subject to the Condition that the pad and proposed generator be secured to prevent lateral movement in a form acceptable to the Township engineer.

Mr. Pryor asked that they put something on the Township Website about this since people who live in the area are not aware of these restrictions. Ms. Tyler state this is already on the Website with a suggestion that those with questions contact Ms. Saylor at the Township engineer's office.

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There being no further business, Mr. Moffa moved, Mr. Gruen seconded and it was unanimously carried to adjourn the meeting at 8:15 p.m.

Respectfully Submitted,

Anthony Zamparelli, Secretary