

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – JULY 7, 2015

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on July 7, 2015. 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  
Keith DosSantos, Member (joined meeting in progress)  
James McCartney, Member

Others: Steve Ware, Keystone Municipal Services  
Mark Eisold, Township Engineer  
Barbara Kirk, Zoning Hearing Board Solicitor  
Jeff Benedetto, Supervisor Liaison

APPEAL #15-1728 – RICHARD DOYLE

Mr. Bamburak stated this matter was Continued from June 16. He stated Mr. Doyle came to the Township Office this morning to provide a signed letter indicating that he is withdrawing his Application for a Variance and intends to build the garage within the current guidelines as set by the Township. Ms. Kirk stated since the Application is withdrawn, there is nothing further for the Board to consider.

APPEAL #15-1731 - MAKEFIELD GLENN LLC

Mr. Edward Murphy, attorney, was present. Mr. Murphy stated the Zoning Hearing Board heard the initial presentation on June 16. He stated the Township solicitor was present to listen to the Testimony, and then report back to the Supervisors about the nature of the Testimony. The Board of Supervisors then considered what position, if any, they wanted to take; and following that meeting he heard from the Township solicitor that the Board of Supervisors was concerned about the scope of the project, although not necessarily about each individual item of relief. Their request was to consider some modifications to the Plan to address that concern. Mr. Murphy stated the Applicant has elected to look at the Plan and try to address those issues, and they are requesting that the matter be Continued tonight to give them an opportunity to re-evaluate the Plan and consider alternatives. They hope to be in a position to present a Plan to the Zoning Hearing Board at the next meeting of the Board on July 21 if that is agreeable. He asked that the matter be Continued to

July 21. Ms. Kirk stated initially Mr. Murphy indicated he did not feel he would be available on that date. Mr. Murphy stated he is going to try to work that out; and if it presents a problem, he will contact Ms. Kirk.

Mr. Bamburak stated they will not take public comment this evening since apparently the Plans will be changing.

Mr. Gruen moved, Mr. Zamparelli seconded and it was unanimously carried to Continue the matter to July 21, 2015.

Mr. DosSantos joined the meeting at this time.

#### APPEAL #15-1729 – PAUL & KIM PALMIERI

Mr. Bamburak stated this matter was Continued from June 2, and there were questions about whether parts of the project were in the floodplain. Ms. Kirk stated she received an e-mail from Ms. Saylor, the Township engineer, on June 3 indicating that she looked into the validity of the LOMA regarding the FEMA re-validated letters of Map Amendment for the property. Based on the information provided by the homeowners, the house is not in the floodplain so the requirements of the Township's Ordinance for the house is no longer applicable. She added that the only issue that arose was whether the proposed front porch, since it will be protruding from the house toward the floodplain, would fall within the floodplain itself.

Ms. Kirk stated Ms. Saylor indicated that the homeowners should submit an Elevation Certificate and a Plot Plan of the property; however, after talking with Mr. Eisold, he believes that those issues may be able to be addressed at tonight's Hearing.

The e-mail received from Ms. Saylor was marked as Exhibit B-5.

Mr. Bamburak asked if the Application needs to be Amended, and Ms. Kirk stated it does not since the Floodplain Ordinance would still apply with respect to the proposed since there is not a Elevation Certification at this point.

Mr. Palmieri presented the Elevation Certification this evening which was marked as Exhibit A-3.

Ms. Kirk stated the Applicants are requesting permission to construct a second story addition plus a front porch. They still need a Variance from the impervious surface requirements as the maximum permitted amount is 13%. Currently 18.8% impervious surface exists; and with the proposed porch, it will increase to 19.4%. Ms. Kirk stated they also need Variances regarding lot area, front yard, side yard, and rear yard setbacks, and a Variance to permit expansion of an existing non-conforming structure; and depending on Mr. Eisold's review, they may still need to meet the requirements of the Floodplain Ordinance which sets out certain conditions and requirements for something to be constructed in the floodplain.

Mr. Eisold stated based on the Flood Elevation Certificate provided, it shows the porch completely outside of the floodplain. Ms. Kirk stated in light of that the Floodplain Ordinance no longer is applicable.

Mr. Gruen asked about the setbacks. Ms. Kirk stated the front yard setback requirement is 50', 48.8 is existing, and they are proposing 45' because of the new front porch. Ms. Kirk stated the Ordinance requires a 25' side yard setback on each side, and they are proposing 11'4" with 15' existing. For the rear yard 125' is required, but the way the property is constructed, there is a 70' existing rear yard existing. She stated the only significant changes are the impervious surface and the front yard setback; but the additional dimensions are required because of the fact that the Application has been submitted to construct a front porch.

Mr. Gruen asked again about the impervious surface, and Ms. Kirk stated the impervious surface would go to 19.4%. She stated the permitted amount is 13%, but the property has an existing impervious surface of 18.8%.

Mr. DosSantos asked the Applicants how long they have owned the property, and Mr. Palmieri stated they have owned it for almost thirteen years. Mr. DosSantos asked if they have added any impervious surface during that thirteen year period; and Mr. Palmieri stated they have not, and the property was non-conforming when they purchased it.

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

Mr. Gruen stated they are going from 13% to 19%; however, it was noted that they are going from 18% to 19%. Mr. Gruen stated the allowable is 13%. He asked the Applicants if they would be agreeable to collecting some of the stormwater so as to effectively reduce the impervious surface by putting in a dry well or some other means.

Ms. Kirk stated she is not sure this would be feasible because the property is so close to the floodplain. Mr. Eisold stated they might not have a lot of percolation in their soil, but having a dry well would provide some storage in the 40% voids of the stone so that it would hold back the water and reduce it slowly.

Mr. Palmieri stated they are only adding .6%, and when they bought the house it was as it is now currently.

Mr. Eisold asked Mr. Ware when the 13% was set; and Mr. Ware stated this is one of those lots that existed prior to the RRP, and it had been previously Zoned R-2. He stated this is why it falls into the non-conforming uses, and it allow them to still do something because they were already maxed out when it became RRP.

Mr. Gruen asked if they have had any water issues, and Mr. Palmieri stated they have not.

Testimony was closed.

Mr. McCartney moved, Mr. DosSantos seconded and it was unanimously carried to grant the Variance as requested for impervious surface, lot area, front, side and rear yard setbacks, and expansion of a non-conforming structure.

#### APPEAL #15-1733 – MARK & RANDI SNYDER

The Application submitted was marked as Exhibit A-1. An impervious surface break-down chart provided was marked as Exhibit A-2. The Site Plan provided 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 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 list of addressees was collectively marked as Exhibit B-3.

Mr. Mark Snyder and Ms. Randi Snyder were sworn in.

Ms. Kirk stated the Application cites Section 200-23B for the property which she understands is in the RRP Zoning District. She stated if the property is in the RRP Zoning District, impervious surface is covered under Section 200-14. Mr. Ware stated this is a similar lot to the one just discussed, and it was an R-2 lot. Ms. Kirk agreed but added it is now RRP so Section 200-14 would be applicable and the Applicants would need to ask for an additional Variance to expand a non-conforming structure. Mr. Ware stated that would be under 200-86(3)(d), and this was put in to cover that transition between R-2 and RRP because of all of the non-conformance that came in at that point in time.

Ms. Kirk explained to Mr. and Mrs. Snyder that the property was previously Zoned R-2, and the maximum impervious surface coverage would be up to 18%. Because the property was then re-zoned to RRP (Residential Resource Protected), the maximum impervious coverage is only 13%. In order to make sure they are referencing the correct Code Sections, Ms. Kirk asked the Applicants to verbally amend the Application to request a Variance for impervious coverage under Section 200-14 and a Variance under Section 200-86(3)(d). Ms. Kirk stated that last Code Section indicates that the property had been “non-conforming” under today’s Zoning regulations and, they are asking to expand that non-conformity.

Mr. Snyder requested that the Application be amended as Ms. Kirk suggested.

Mr. Bamburak stated in Section 8 of the Application it indicates they want to expand the garage, but on the map it shows “shed proposal;” and he asked what they are proposing. Mr. Snyder stated it is a shed proposal, and they are not expanding the garage.

Mr. Gruen asked why they need such a large shed since it is 14’ by 20’. Mr. Snyder stated they have lived in the County for ten years, and their previous home had a two-story barn so he accumulated a lot of tools, etc. He stated they wanted to live closer to the River near the Canal, and found a home but it only had one garage. He stated on the second visit to the house they were told by the homeowner that there was 18% impervious surface, but they could go up to 24%; and they also indicated that there were no setback requirements so that they could expand the garage. Mr. Snyder stated they then purchased the house, but when they applied for a Permit to expand the garage they found out about the impervious surface. Mr. Snyder stated he had the property surveyed and re-measured everything to confirm that it was in fact at 24% impervious surface. He stated currently a lot of his belongings are at the homes of friends throughout Greater Bucks County. He stated they felt the easiest thing to do was to get a large shed. He stated it will be upgraded so that it does not look like a shed, and it will have nice finishes as he does not want it to detract from the neighborhood.

Mr. Snyder stated they have done some things to decrease the amount of impervious surface. He stated the prior owner had a pad for an oil tank, and he has put the oil tank in the basement so he could remove that pad. He stated there were also stones and blocks everywhere, and he pulled them out and reduced additional impervious surface by approximately 135 square feet. He stated he also removed an overhang that had been put on the house which was precariously hung. Mr. Snyder stated he has a utility trailer that he wants to put in the shed, and he wants to keep things outside of the sight of his neighbors.

Mr. Snyder stated they are only asking for 2%. He stated they are not in a Flood Zone, and he has not had flooding issues on the property. He stated there is no sump pump in the house, and he has not seen any areas in the basement to indicate that there has ever been a water issue. Mr. Snyder stated he has spoken to all his neighbors, and they all indicated they were okay with what they were proposing. He stated they also indicated that they do not have water issues either.

Mr. Gruen asked if they would be willing to put gutters on the shed and put the water into a dry well. Mr. Snyder asked about rain barrels; however, Mr. Gruen stated he personally does not believe in the rain barrels because in the winter they freeze or they are empty and the water just runs. He stated he would prefer a dry well.

Mr. DosSantos asked Mr. Eisold his opinion about whether rain barrels are sufficient to mitigate some of the run off. Mr. Eisold stated if he were to install two or three, it would help. He agreed that they will freeze in the winter, but when things are frozen the run off is not typically an issue. He stated a dry well would do the same thing, but rain barrels would be an acceptable method. Mr. Bamburak asked Mr. Eisold if he could estimate the size of the dry well needed, and Mr. Eisold estimated it would be a 2' deep by 4' by 6' stone area; and Mr. Snyder stated this would be acceptable.

Mr. Bamburak asked Mr. Snyder if the Board were inclined to grant the Variance request with the Condition that they install a dry well of a size acceptable to the Township engineer, would he be willing to do this; and Mr. Snyder agreed.

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

Mr. DosSantos asked if the existing impervious surface shown of 24% is after he had done some of the removal of impervious surface noted, and Mr. Snyder agreed.

Mr. Gruen stated Mr. Snyder also indicated in the Application that he is going to put woodworking tools in the shed, and Mr. Snyder stated this would just be for storage and it would not be a shop. Mr. DosSantos asked Mr. Snyder if he plans on having electricity in the shed, and Mr. Snyder stated he does not.

Testimony was closed.

Mr. Gruen moved, Mr. Zamparelli seconded and it was unanimously carried to grant the Variance as requested with the Condition that a dry well be constructed subject to the Township engineer's approval.

APPEAL #15-1734 – THOMAS J. MACK CONSTRUCTION

The Application submitted was marked as Exhibit A-1. Calculations regarding impervious surface were provided, and this was marked as Exhibit A-2. A Site Plan provided as to existing conditions was marked as Exhibit A-3. A Site Plan provided regarding the proposed addition was marked as Exhibit A-4. A separate sheet provided listing all the dimensional calculations was marked as Exhibit A-5. Notice of tonight's Hearing was published in the Bucks County Advance, and the Proof of Publication was marked as Exhibit B-1. Notice was also posted at the property of tonight's Hearing, and the Proof of 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 marked as Exhibit B-3.

Mr. Thomas Mack was present with homeowners Mike Donahue and Lori Donahue and all were sworn in.

Mr. Mack stated the property is at 23 Upton Lane, the lot size is 14,722 square feet, and it is presently Zoned R-2. He stated the Applicants purchased the property in September, 1998. They are requesting to expand the second floor with a master bath and an additional bedroom. He stated they are seeking relief from Section 200-22 which is the lot area and yard requirements for the dwelling with a minimum side yard of 15'. He stated they are asking to reduce that side yard to 11' 6" which is a 3'6" encroachment into the setback. He stated the property is a corner lot so it has two front facing setbacks which limits the expansion. Mr. Mack stated the aggregate distance for the setback from the adjacent property is 60' 1", and the proposed addition would reduce that aggregate to 46' 6".

Mr. Bamburak stated the maximum impervious is 24% so there is no problem.

Ms. Kirk stated she assumes the placement for everything is because it is a corner lot with two front yards, and Mr. Mack agreed. Mr. Mack stated the many of the houses that are not on a corner have a 30' aggregate so granting this will still allow the property to probably have one of the larger aggregates in the Subdivision.

Mr. Gruen stated Mr. Mack indicated that the side yard would be 11' 6", but the survey shows 11' 7", and Mr. Mack agreed that is correct, and it is 11' 7".

Ms. Marian Babick was sworn in and stated since they have all the other land on the other side, she would like to know why they cannot do the extension on the other side rather than on her side. She stated she lives next door at 21 Upton.

Mr. Bamburak stated this addition will be moving toward her house, and Ms. Babick agreed. She stated they have all the other land on the other side. She stated she feels what they are proposing is disproportionate. She stated if this does go through she would like to see it staked out as she is sure a survey has to be done. She stated she would like to stakes in the ground so she can see visually what it will look like.

Mr. Bamburak stated the Zoning Hearing Board cannot force the Applicant to pay for a survey; and if Ms. Babick is concerned that they are encroaching on her property, the onus is hers to retain a surveyor. Ms. Babick stated she does not want this addition put up unless they are willing to do the survey so she can see the stakes in the ground.

Ms. Babick stated there is an air conditioner there now against the wall, and she asked if that will be encroaching out further onto her property. Mr. Donahue stated they are going to put the air conditioner out back. Mr. Bamburak advised Ms. Babick that it will not be closer to her home where she is concerned about the noise; however, Ms. Babick stated it is not a matter of the noise, it is the aesthetics of the whole thing. Mr. Bamburak stated the Zoning Hearing Board does not have control over aesthetics either, and they are limited in their Charter what they can do.

Ms. Babick asked if they are able to have them change the addition to the other side, and Mr. Gruen asked Mr. Mack to explain why they cannot do that. Mr. Mack stated the garage is on the left hand side; and to add another garage, they would have to put it on the other side which would result in a garage on both sides of the house plus a driveway, and they would then have to ask for relief from impervious surface. He stated the bedrooms that they are trying to expand are on the side of the house where they have proposed the addition so it would be impractical to go on the other end.

Mr. DosSantos stated the addition is proposed at the location shown by necessity of the design of the house, and Mr. Mack agreed.

Mr. Bamburak stated if Ms. Babick is concerned about aesthetics, a house with a garage on each side would look "hideous."

Mr. Zamparelli stated it would be good for the Applicants to show Ms. Babick the design, and Ms. Babick stated she has seen it.

Mr. Gruen asked how sure they are of the markers at the corners of the property. Mr. Mack stated he used the survey which was acceptable to the Township as an As-Built. Mr. Gruen stated possibly the two neighbors would like to get together to have a survey done on that side to make sure that they are using the correct line.

Ms. Donahue stated they will not be building on the adjacent property, and there will still be 11' 6" feet on their own property; however, Mr. Gruen stated they are not sure it is 11' 6", and it could be only five feet. He stated he is only suggesting that they get together and get a survey done of this one line.

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

Mr. DosSantos moved, Mr. Gruen seconded and it was unanimously carried to grant the relief as requested.

#### OTHER BUSINESS

Ms. Kirk stated they had the Conference with the Judge last week on Sunflower Farms. The issue is whether or not Amy Bentz still has the authority to move forward with her Appeal since the Agreement of Sale lapsed. The Township and the Applicant will be arguing that limited issue at this point in front of the Court.

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

Respectfully Submitted,

Anthony Zamparelli, Secretary