

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – AUGUST 1, 2017

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on August 1, 2017. Mr. Gruen called the meeting to order at 7:35 p.m.

Those present:

Zoning Hearing Board: Jerry Gruen, Chairman
Keith DosSantos, Secretary
Pamela Lee, Member
Matthew Connors, Alternate Member

Others: Jim Majewski, Director Planning & Zoning
Randall Flager, Zoning Hearing Board Solicitor

Absent: Anthony Zamparelli, ZHB Vice Chairman
James McCartney, ZHB Member
John Lewis, Supervisor Liaison

OTHER BUSINESS

Mr. Flager stated Mr. Don and Lorraine Marchand had been given a Variance in December, 2016 for a back yard fence. He stated this had expired a few months ago, and he spoke to the Township and solicitor have no objection to a six month Extension which the Marchands have requested. Mr. Flager stated they had some weather delays and needed to remove trees.

Ms. Lee moved, Mr. DosSantos seconded and it was unanimously carried to grant a six month Extension from today to Don and Lorraine Marchand.

APPEAL #17-1785 – LOWER MAKEFIELD INVESTOR LLC

Mr. Flager stated Mr. Majewski received a letter from Matthew McClure on behalf of Lower Makefield Investor LLC requesting a Continuance of the Hearing before the Zoning Hearing Board which was scheduled for Tuesday, August 15, 2017, and they asked to be re-scheduled to Tuesday, September 5, 2017.

Mr. Majewski stated the September 5 meeting is within the sixty days required to start the Hearing so this is not a problem.

Mr. DosSantos moved, Ms. Lee seconded and it was unanimously carried to grant the Extension requested.

APPEAL #17-1780 – GILBERTO BOSQUE

Mr. Gilberto Bosque and Ms. Debra Cefario were sworn in.

Mr. Bosque stated they are requesting a Variance as they are proposing to fence in their yard at 570 Heritage Oak Drive, and their house fronts Heritage Oak Drive on two sides. He stated Heacock Road is behind their property, and Heritage Oak Drive is to their side and their front. Mr. Bosque provided this evening a map he had sketched out.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plan was marked as Exhibit A-2. The four photos of the property were marked as Exhibit A-3. The Proof of Publication was marked as Exhibit B-1. The Proof of Posting was marked as Exhibit B-2. The Notice to the neighbors was marked as Exhibit B-3. The Google map of the house provided this evening was marked as Exhibit A-4.

Mr. Bosque stated their property is on the corner, and his property is considered to have two front yards onto Heritage Oak Drive. He stated they have two young children and they want to enclose their back yard inclusive of a portion of the secondary front yard for safety, security, and privacy. He stated they propose to have a 6' high privacy fence in accordance with Township standards. He stated they have a dense, mature tree line in the back, and they intend that to be toward their house so from Heacock Road, they will have the sidewalk, the grass, a mature tree line, and then the fence.

Mr. DosSantos asked how far in from the sidewalk is the fence proposed; and Mr. Bosque stated their property line is 34' from the edge of Heacock Road, and they propose it to be approximately 26' from that so it would be 50' from the edge of Heacock Road which is well within their property. Mr. Bosque stated there is an existing 20' Easement which they will stay away from, and they are not requesting a Variance for that and the Variance is not for location – just for height. Mr. Bosque stated in the back of the property the fence will be 6' in height which is in accordance with the requirements. He stated with regard to the second front yard, the neighborhood sign is also on their property, and they are proposing to have the 6' high privacy fence extend behind the sign well within their property line, and then continue with a 4' picket fence along the sides as shown on the Exhibit. He stated on the Exhibit the red is a 4' picket and the white is 6'.

Mr. Gruen asked what material they are going to use for the 4' picket fence, and Mr. Bosque stated they are proposing vinyl PVC. Mr. Gruen asked if there is a walkway that leads to a garden by the garage, and Mr. Bosque agreed. Mr. Gruen asked if they will have a gate there, and Mr. Bosque agreed. He stated they intend to fully enclose the back yard for safety of their children.

Mr. Bosque stated the Variance is requested for a portion of the 6' fence and a portion of the 4' fence above the allowed 3'. Mr. Gruen stated most picket fences are 42" and he asked if there is a reason they wanted the 48", and Mr. Bosque stated it was for the safety of their children.

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

Mr. DosSantos asked if they would agree to keep a gap of 1" to 2" below the fence in order to allow for water flow, and Mr. Bosque agreed to do so. Mr. Gruen stated it would not be necessary under the picket fence, but it would be necessary under the solid fence.

Mr. DosSantos moved, Ms. Lee seconded and it was unanimously carried to grant the Variances as requested.

APPEAL #17-1781 – AURLIZ, LLC

Mr. Edward Murphy, attorney, was present with Mr. Eric Clase, the project civil engineer.

Mr. Gruen noted there are only four Zoning Hearing Board members present this evening, and the Applicant has the option of postponing this until they have a fifth member; however, Mr. Murphy stated they would like to proceed.

Mr. Flager marked the Exhibits as follow: The Application was marked as Exhibit A-1. The Site Plan was marked as A-2. The outline of the relief requested was marked as Exhibit A-3. The Proof of Publication was marked as Exhibit B-1. The Proof of Posting was marked as Exhibit B-2. The Notice to the neighbors was marked as Exhibit B-3.

Mr. Murphy stated with the Board's permission he would like to provide a summary of the Application if there was no one in the audience that has an interest in this Application other than the Applicants who are present this evening. Mr. Murphy after providing the summary, the Applicant's engineer could confirm the accuracy of his presentation.

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

Mr. Murphy stated the property in question has been the subject of scrutiny over a number of years, and it is part of the original Bellemead project from the late 1970s/early 1980s which subsequently became part of the Matrix project. He stated the Matrix project was the subject of a great deal of discussion and ultimately resulted in the execution of a Settlement Agreement between the Township and other stakeholders as well as Matrix to provide for a comprehensive development scheme for the entire property. Mr. Murphy stated the Settlement Agreement also eliminated the big box Retail which was the subject of much discussion and spawned litigation that gave rise to the Settlement Agreement.

Mr. Murphy stated other than this particular parcel, the balance of the Matrix site has been developed for age-qualified Residential products. Mr. Murphy stated this particular property was part of the Settlement Agreement and contemplated three pad sites, only one of which to date has been developed for Lower Bucks Pediatrics. Mr. Murphy stated there are two remaining pad sites which are part of the Application, and a Land Development is in the process of being reviewed by the Township.

Mr. Murphy stated the Application involves two dimensional Variances, one for 1' and the other for 5', and it involves a proposed setback from the edge of an abandoned road right-of-way which was previously known as Old Oxford Valley Road. Mr. Murphy stated some time ago Old Oxford Valley Road was abandoned.

Mr. Murphy stated as part of the negotiations with Bellemead who he represented in the 1980s, there was an interest that Bellemead or subsequently Matrix would acquire that old abandoned road right-of-way; but the Township did not feel comfortable doing that because today, as there was then, there are various utilities owned and maintained by the Township in the bed of Old Oxford Valley Road. Mr. Murphy stated because it is still a road right-of-way, albeit abandoned, all the setback measurements have to be taken from the edge of Old Oxford Valley Road.

Mr. Murphy stated on the farthest pad site to the east there is a proposed Dunkin' Donuts with a drive through. He stated it is that particular pad site that is related to the Application this evening; and what they are seeking is a 1' Variance to permit in one corner a setback of 39' from the edge of the road right-of-way instead of 40', and in another case 5' so they would have a 35' side yard instead of a 40'. He stated the Application indicates that there are wetlands, and he showed the location of these wetlands on the Plan to the north. He stated these wetlands further constrict the site; and they could have sought relief from the wetlands and moved the building slightly so that the side yard Variance would not be required. He stated

because of the impact of the wetlands, everyone felt they should respect the wetland buffers; and as a result the compromise was to encroach slightly into the area adjacent to Old Oxford Valley Road, abandoned road right-of-way.

Mr. Clase was sworn in and stated he is a licensed civil engineer in the State of Pennsylvania and has been licensed for seventeen year. Mr. Gruen stated they accept Mr. Clase.

Mr. Murphy asked Mr. Clase if he agrees with the summary he provided, and Mr. Clase stated it was all accurate. Mr. Clase reiterated that the hardship was the configuration of the wetlands and the wetlands buffer which is why they are asking for the Variance from the setback.

Mr. Gruen asked Mr. Majewski if the Township has any plans for that abandoned road, and Mr. Majewski stated they do not. Mr. Majewski stated he felt it was going to be abandoned, but it has not yet been done yet. Mr. Gruen stated it is probably because of the utilities, and Mr. Murphy agreed. Mr. Gruen commended the Applicants for going for the Variance requested versus the wetlands Variance. Mr. Murphy stated with regard to the road, there has been some thought that the Township may entertain construction of a walking trail within the limits of the abandoned road right-of-way to permit residents of Regency to walk over to the Retail.

There was no one in the audience wishing to make comment.

Mr. DosSantos moved, Mr. Gruen seconded and it was unanimously carried to grant the two side yard Variances as requested.

APPEAL #17-1782 – DOUGLAS SCE

Mr. Douglas Sce and Ms. Beverly Sce were present and were sworn in.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plan was marked as Exhibit A-2. The letter from Mr. Sce was marked as Exhibit A-3. The Proof of Publication was marked as Exhibit B-1. The Proof of Posting was marked as Exhibit B-2. The letter to the neighbors was marked as Exhibit B-3.

Mr. Flager stated in the interest of full disclosure, he has used Mr. Sce's Internet company.

Mr. Sce stated people are walking through his property all day and all evening including wheeling baby carriages, ride bikes, and come through on skateboards. He stated if he sees them, he asks them to please not continue to do this; however, they disregard this and have done so for many years. He stated people also walk their dogs through his property. He stated people walk through his property when he is having dinner on his deck. Mr. Sce stated his is the only property that does not have a fence so it is the way for people to avoid walking out of the development to go across to McCaffrey's or the medical building. Mr. Sce stated they feel that they should be able to have their privacy.

Mr. Majewski stated when they did the development they put a buffer easement behind the property; and because they called it an "easement," a fence is not allowed within an easement. Mr. Gruen stated they are requesting a Variance to put the fence in the easement. Mr. Majewski stated as the Ordinance is written right now, they need a Variance until such time that the Ordinance is changed to make sense.

Ms. Lee stated there are two neighbors that have fences so she assumes they received Variances. Mr. Majewski stated the house on the left as you are facing it from the road does not have a buffer easement; and while the one on the right has a fence, he is not sure that they received a Variance or not.

Mr. Gruen stated if they give approval for the fence if at any time the Township or a utility needs to access the easement it would be at Mr. Sce's responsibility to remove the fence and at their option whether they want to put it back. Mr. Majewski stated in this instance the Township would not go back to put extra vegetation into the buffer, and the buffer was to the benefit of the homeowner; and if all the trees were to die, the Township would not go in to replace trees. Mr. Gruen asked if there are any sewer lines or utility lines; and Mr. Majewski stated there are not, and this was just a poorly-worded Recorded Plan.

Testimony was closed.

Mr. Gruen moved, Mr. Connors seconded and it was unanimously carried to approve the Application as stated.

APPEAL #17-1783 – MR. AND MRS. PICKER

Mr. Gruen advised the Applicants that there are only four Zoning Hearing Board members present this evening, and they could postpone this until there are five members present. The Applicants agreed to proceed this evening.

Mr. William Munz, Mr. Chris Munz, Mr. Eric Picker, and Ms. Lisa Picker were present and were sworn in.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plan was marked as Exhibit A-2. The Proof of Publication was marked as Exhibit B-1. The Proof of Posting was marked as Exhibit B-2. The Notice to the neighbors was marked as Exhibit B-3.

Mr. Gruen asked how they got to 36% impervious surface when 18% is permitted. Ms. Picker stated it was there when they purchased the home five years ago, and they have not added anything. Mr. Majewski stated as with almost every house in this neighborhood, they are all over the 18% from the start. He stated he has a Site Plan for this property from 1978 showing this property was at approximately 28% to 30%; adding that is less than what is at the property now of 35%, so something was added since 1978 by a prior homeowner. Mr. Majewski stated when they did the lots originally, they did it by building coverage, and they did not count driveways, walkways, screened porches, etc. He stated the only thing that was not existing in 1978 is the concrete pad shown behind the proposed addition and a little bit of the extra walkway.

Ms. Picker stated the concrete pad that is there now is where the hot tub was, and it was noted they are going to remove the pad as part of the proposal.

Mr. Chris Munz stated they want to put on an in-law suite for their mother who is in failing health and cannot do steps. He stated they tried to find a way to work within the house, but they could not do; and by going out, they are using part of the house along with the addition. He stated because of the need for wheelchair access, they needed to have it bigger than it normally be. He stated they agreed to take out the pad, and he believes they will be under what is currently there as it relates to impervious surface.

Mr. Majewski stated on the Application, the proposed impervious surface tabulation showed the impervious surface at 37.67%; however, they included the deck which is not impervious, and they also included a contingency which he does not believe is needed. He stated if you remove those amounts, the actual impervious surface ratio that they will have should the Variance for the addition be granted would be 33.8% so they will actually be reducing the amount of impervious surface area.

Mr. Gruen asked for further information on the lay out of the addition, and he asked if there is going to be a kitchen and a separate entrance. Mr. Munz stated the Board should have been provided a copy of the Building Plans; however, the Board member indicated they did not get this. Mr. Munz provided a copy of the Plan this evening, and this was marked Exhibit A-3; and the Plan was reviewed by the Board.

Mr. Gruen asked if they considered any mitigation for the impervious, and Mr. Munz stated they could although they did not do so as yet.

Mr. DosSantos asked the amount of the impervious surface for the original Site Plan in 1978, and Mr. Majewski stated there was no impervious surface calculated at that time. He stated there was information submitted as part of a Pool Permit Application proposed, and Ms. Picker stated that was years before they bought the property. Mr. Majewski stated he could do a calculation.

Mr. Gruen asked if they are removing the entire concrete pad and the walk to the pad, and Mr. Munz agreed. Mr. Gruen stated it appears the grade slopes toward the house, and Mr. Munz agreed it does slightly.

Mr. DosSantos asked if they have any issues with flooding in the back yard, and Ms. Picker stated they do not. Mr. DosSantos asked if their neighbors have any issues, and Ms. Picker stated she is not aware of any flooding although they have had a heavy stream of water going down their driveway in a heavy rain.

Ms. Lee stated based upon the Plan, the impervious surface is actually going to decrease; and Mr. Majewski agreed. Mr. Majewski stated he would estimate that they are going to have 300 square feet more with this addition over what was shown on the Plan in 1978.

Mr. Gruen stated there is a yard drain shown on the blueprint, and Ms. Picker stated there is a drain and she assumes it goes to the street. Mr. Gruen asked Mr. Majewski if it is legal to put a drain from the back yard to the storm sewer; and Mr. Majewski stated he is not sure when this was built and whether or not it was legitimate, adding he is not aware of any issues with it.

Ms. Lee stated they are also looking for a setback Variance, and Mr. Munz agreed.

Mr. Gruen asked if they would consider adding a dry well to mitigate some of the impervious, and Mr. Munz agreed. Mr. Majewski suggested that the Board approve it, if they are so inclined, subject to providing stormwater management for the addition to the satisfaction of the Township engineer. Mr. Gruen stated he would like to put a number on it. Ms. Lee stated they are already decreasing it from what it is now, and it does not appear that anyone is having any problems and no one has come in to object to the proposal. Mr. Gruen stated he recognizes that years ago they did calculate impervious surface; however, there is a problem in the Township, and if there is an opportunity to reduce the impervious surface, he feels they should take it. He feels they should reduce it by a couple of points.

Mr. Gruen stated he would propose to reduce it to bring down the impervious surface to approximately 28% instead of 32% or 33%, and he would not want to overburden them to require them to bring it down to 18%. Mr. Munz asked if they should take out part of the driveway; and Mr. Gruen stated while they could, he does not feel they would have to do that. Mr. Munz questioned how much they would have to remove as they are already pushing the in-law suite into the house.

Mr. Majewski stated the approximate impervious surface in 1978 was approximately 33%.

Mr. Gruen stated the Zoning was changed because there is a problem with flooding and impervious surface in the Township. He stated it should not take much to bring it down, and they could reduce the driveway or install a dry well. Mr. Munz asked Mr. Gruen if he is saying they should do the dry well and leave the percentage where it is or bring the percentage down. Mr. Gruen stated by doing the dry well, they will bring the percentage of impervious surface down. Mr. Munz stated he has not done a lot of dry wells, and Mr. Gruen stated the engineer could figure out what they need. Mr. Munz stated he thought Mr. Gruen was saying they had to make the addition smaller or take out the driveway. Mr. Gruen stated he was stating they should install a dry well to mitigate it to 28% which is not a huge amount.

Mr. Majewski stated Mr. Gruen is requesting that they account for double the amount of the addition even though they are reducing the amount of the impervious surface by 1,000 square feet which he feels is too high. Ms. Lee stated she agrees, and she would vote for it as presented since they are making improvement to their home and they are reducing the impervious surface from where it was when they purchased the home.

Mr. DosSantos asked Mr. Majewski what size dry well would be needed as he would not be opposed to a dry well but not to the amount that Mr. Gruen is recommending. Mr. Gruen stated it would not be that big, and what he is suggesting would be 10' to 15' long, 3' wide, and 3' deep. Mr. Majewski stated a dry well of that size would be reasonable; however, he feels a dry well based on the percentage that Mr. Gruen recommended would be three to four times that size. Mr. Munz stated he did not have a problem with the size of the dry well. Mr. Majewski stated it may be more appropriate to give the size of the dry well as opposed to setting a percentage. Mr. Gruen stated he would agree to that and that the size of the dry well should be 15' long, 3' wide, and 3' deep and that be attached to the Motion conditioned on the approval by the Township engineer. There was discussion whether they should put it in a spot where it catches the ground water or that it be tied to the downspouts.

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

Mr. Connors stated he would prefer that the motion reflect 33% rather than telling them to install a dry well of a specific size.

Ms. Lee asked the percentage they are at now as shown on the Plan; and Mr. Majewski stated with the eliminate of the patio hard surfaces and the proposed addition, they are at 33.8%.

Mr. Munz stated they would prefer to take up some of the driveway rather than having to install the dry well. Mr. Gruen stated that would be their option although if the Motion includes the dry well, they would be tied to the dry well. He stated if the Motion has a percentage, they could mitigate it by reducing the driveway subject to the Township engineer. Mr. Gruen asked how much he feels he can remove from the driveway. Mr. Munz asked if they need to get it to 33%, and Ms. Lee stated she would be satisfied with them getting to 33%.

It was agreed that there was no problem with the setback as requested.

Ms. Lee moved and Mr. Connors seconded to grant the Variances as requested provided the impervious surface is brought down to an effective 33%. Motion carried with Mr. Gruen opposed.

There being no further business, Mr. DosSantos moved, Ms. Lee seconded and it was unanimously carried to adjourn the meeting at 8:25 p.m.

Respectfully Submitted,

Keith DosSantos, Secretary