

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – MAY 2, 2017

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on May 2, 2017. Mr. Gruen called the meeting to order at 7:35 p.m.

Those present:

Zoning Hearing Board:                    Jerry Gruen, Chairman  
   Anthony Zamparelli, Vice Chairman  
   Keith DosSantos, Secretary  
   Pamela Lee, Member  
   James McCartney, Member

Others:    Jim Majewski, Director Planning & Zoning  
   Randall Flager, Zoning Hearing Board Solicitor  
   John Lewis, Supervisor Liaison

APPEAL #17-1776 – NEIL AND MICHELE MC KEON

Mr. Flager stated that Mr. Savona who represents the Applicant sent a letter to Mr. Majewski today requesting a Continuance to provide them the opportunity to review and revise the Application previously submitted and to provide them the opportunity to address some concerns raised by a neighboring property owner. They have waived any time requirements under the MPC. They requested a Continuance to June 6, 2017. This letter was marked as Exhibit A-4.

Mr. DosSantos moved, Mr. McCartney seconded and it was unanimously carried to Continue the matter to June 6, 2017 as requested by the Applicant.

APPEAL #17-1775 – STEVEN W. TAMBURO

Mr. Tamburo was 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. Tamburo stated he and his wife purchased the property on Plymouth Lane in January, 2016. He stated he works for the Township as a Police Officer. He stated the rear yard faces Highland Drive, and there is no privacy and no security; and because he works nights, he is concerned about someone parking on Highland and getting through his property. He stated since this a corner property, it is considered to have two front yards. He stated he is asking for a Variance to have a 6' fence to be installed along Highland and coming off his house on Plymouth along his property toward the back. Mr. Tamburo stated he did have a survey done, and there will be no intruding on neighbors' property.

Mr. DosSantos asked about the existing fence on his neighbor's property, and Mr. Tamburo stated that fence is toward the back of his house; and it does not interview with sight lines to the roadway. He stated there is a tree toward the end of the fence, and his fence would come along Highland Drive. He stated the tree is approximately 20' from the curb of the roadway, and the fence would come along Highland and go up to 25' from the curb where his neighbor's fence is, and then make a right-hand turn and connect to the neighbor's fence. Mr. DosSantos asked if it will be a contiguous fence with his neighbor's fence; and Mr. Tamburo agreed, and he does have permission from them. Mr. DosSantos asked if it will be the same style fence, and Mr. Tamburo agreed so that it matches theirs. Mr. Tamburo stated his fence would go to the 25' and there would be 10' to 15' to connect to theirs. Mr. Tamburo stated the biggest concern were the sight views coming out of his driveway, and there should be sufficient views. He stated he also did not want his neighbors to have difficult backing out of their driveway, and they will have sufficient sight along Highland.

Mr. DosSantos stated he assumes the remainder of the fencing on Plymouth and toward the other part of Mr. Tamburo's yard will be the same style fence, and Mr. Tamburo agreed. Mr. Tamburo added that his neighbor's fence is a wooden fence that they will match, and then his neighbor's has approximately 20' of chain link; and he will connect up to the chain link. He stated there are trees there so you cannot see it.

Mr. Gruen asked why he is not connecting to the neighbor's fence on the Highland side as he is moving it out further toward the road. Mr. Tamburo stated if he did that he would be cutting his property significantly as he has a corner property. He stated he would like to save as much of his property as he can without interfering with sight views. He stated he also wanted to make sure his neighbors could see coming out of their driveway. He stated giving them the 25' and connecting to their fence would give him more property and still allow them to see when they come out of their driveway.

Mr. Gruen stated the Zoning Ordinance does not allow for a 6' fence on the roadway, and there is a reason for that. He stated this would be a major change in this neighborhood as none of the corner lots have fences in the front yard, and the most they have is a fence that goes even with their house. Mr. Gruen stated it does not show on the Plan how far past the house he is coming toward Highland. Mr. Tamburo stated off his house along the driveway on the Highland side, they are putting an 8' gate so it is approximately 10' to 15'; and then it matches up with the 20' off the road so that he could retain as much property as he could. Mr. DosSantos stated he assumes this gate is to allow for lawnmowers, etc.; and Mr. Tamburo agreed as well as for construction vehicles if they wanted to do something in the future.

Mr. Zamparelli asked how far back the fence would be on the Plymouth Lane side, and Mr. Gruen stated it appears that it would be approximately 40' to 45' from Plymouth Lane. Mr. Gruen stated he does not have an issue with that corner.

Ms. Lee asked if he would consider moving the fence back on Highland Drive to meet the neighbor's fence so that it would be 40' back from Highland Drive. Mr. Tamburo stated he would do this if he had to get this approved; however, he would rather not as he would be giving up so much of his property. He stated he felt giving his neighbors at least 25' it would not be an issue with the sight views. He stated putting the fence as suggested by Ms. Lee would cut his property in half in a weird angle. Ms. Less asked how far from the house would that be if they went back 15' as they would be almost to the back of the house. Mr. McCartney explained the dimensions on the Plan to Ms. Lee. Mr. DosSantos stated he would also not have a spot for the gate, and the gate would have to front on the Highland side; and Mr. Tamburo stated he would rather not do that, and he would rather have it along his driveway. Mr. DosSantos stated from an aesthetic standpoint as well, it would be better facing the driveway than the street; and Mr. Tamburo agreed.

Mr. Gruen asked if he would consider putting greenery in front of the fence such as shrubs to mask the fence. Mr. Tamburo stated he would have to make sure that they would not block the sight views. Mr. Gruen stated he is talking about in front of the fence facing the road, and Mr. McCartney showed on the Plan how Mr. Gruen's proposal would negatively impact the sight lines for the neighbors. Mr. Gruen stated he was suggested that the fence be put in even with the house and then putting in greenery.

Mr. Majewski stated if the fence were even with the house, they would not need a Variance but they would lose 25% of their back yard. Mr. DosSantos stated he feels that would be a hardship. Mr. Gruen stated he does not feel that is a hardship, and that is the rule. Mr. DosSantos stated he feels the hardship is that he has two

front yards. Mr. Gruen stated it is not a hardship according to the Zoning. He stated every street in the Township has four lots with this same condition so that is not a hardship, and it is not unique. Mr. Tamburo stated when sitting out back, they do not have any privacy, and he would like to save as much property as possible.

Mr. DosSantos asked Mr. Tamburo if he has spoken to the neighbors about the fence, and Mr. Tamburo stated he has. Mr. DosSantos stated there is no one present in the audience this evening to opposed.

Mr. Gruen stated this is the Ordinance for a reason; and if the Supervisors want to change the Zoning they can do that. Mr. Gruen stated he would like to give Mr. Tamburo some sort of compromise. Ms. Lee agreed that there are reasons that there are Zoning laws, and the Zoning Hearing Board did not create the law. Mr. Gruen stated the Zoning Hearing Board is supposed to carry out the law. Mr. DosSantos stated the reason the Applicant is here is because there is a law in effect, and he is asking for a Variance from that law; and that is the function of the Zoning Hearing Board. Mr. Gruen stated he stated the Zoning Hearing Board is supposed to give relief when there is a hardship. Mr. Zamparelli stated he feels the corner lot is the hardship. Ms. Lee asked why there would be a Variance since there are many who have corner lots. Mr. DosSantos stated every person with a corner lot is not before the Board, and this Applicant is asking for a Variance specific to this lot. He stated there are characteristics with this lot such as the way the road curves and the position of the house; and all of those items are factored into the Application that is before the Zoning Hearing Board. He stated he is trying to put in a fence, and there are certain circumstances with regard to this lot where he is not able to put in higher than a 3' fence. He stated he feels this hardship follows this particular lot.

Ms. Lee stated what she is hearing is that Mr. DosSantos disagrees with the Zoning Ordinance. Mr. DosSantos stated that is incorrect, and he is saying in the merits of this Application, he is asking for a Variance from the Zoning Ordinance. He stated he agrees with the Applicant that his Application has merit.

Mr. Gruen asked what is so unique about this Application versus every other corner lot in the Township; and Mr. DosSantos stated his position has been consistent, and he noted a similar Application two weeks ago. He stated he feels the lot itself is a hardship, and he is asking relief from that. Mr. Gruen stated according to the Zoning book, this is not a hardship; and it was created by the Township. Mr. Gruen stated a hardship would be if the lot were narrow in the front and wide in the back. Mr. Gruen stated every corner lot in the Township would be a hardship. Mr. DosSantos stated that may be true.

Ms. Lee stated then the Zoning law should be changed.

Mr. Majewski stated he believes that there is a hardship here, and he stated this type of Variance has been granted in the Township on at least thirty occasions for corner lots precisely because you lose a quarter of your back each and every one of these Applications. He stated he has discussed with the Board of Supervisors about changing this since it is something that is routinely granted because he feels it is a defect in the Ordinance; and he feels it should be changed as they are being penalized because the Township approved corner lots in this configuration.

Mr. Gruen stated corner lots are generally larger than the average lot so he is not really losing that much more. Mr. DosSantos stated they paid for a larger lot. Mr. Gruen stated when you go through this neighborhood there is possibly one other fence in the front, and he doubts that they got a Variance for it; and it was probably put in illegally so this fence will change the character of the neighborhood. He stated now everyone will come in and want to put a fence in the front yard.

Mr. DosSantos stated the Applicant has just testified that he spoke to his neighbors, and the neighbors do not have a problem as to the character of the neighborhood does. He stated this was advertised and notices were sent to thirty to forty people, and there is no one present to speak about it. Mr. Gruen stated he sees that they are not here; however the job of the Zoning Hearing Board is to look for the interest of the Township and the Zoning. Mr. Gruen stated just because the neighbors are not here that does mean that they approve. He stated he himself would not go against his neighbor's wish in public; and while he would not like the fence, he would not say it or try to stop it. He stated just because the neighbors are not here is not a reason to approve it. He stated the neighbors could have come in support. Mr. Gruen stated the property is going to change hands over the years, and by approving this Variance, it will go with the property forever; and neighbors will change. Mr. Gruen stated currently there is one fence in the front in this neighborhood. Mr. Gruen stated as the Zoning stands, he would like to see a compromise such as lowering the fence, putting in a picket fence, or putting a 6' gate along the garage and bring the fence back there.

Mr. DosSantos stated while he agrees compromise is good, asking for a compromise is in direct contradiction to what Mr. Gruen's earlier argument was that it should not be granted at all; and Mr. Gruen stated he agrees that it should not be granted.

Mr. DosSantos asked if he brought the fence contiguous at 25' across would this provide sufficient space to put in a gate. Mr. Tamburo stated if it were a 6' gate, there would have to be a piece on each side. Mr. Tamburo stated there is a large tree along his driveway. Mr. Tamburo showed a suggestion for a change to his request on the Plan; however, he stated he wants to make sure that there are good sight distances as well for himself and his neighbor.

Mr. DosSantos stated it appears Mr. Tamburo is willing to take 5' off the original Application. Mr. Gruen asked if he could lower the fence a little, and he asked if he could put in a 4' fence in the front. Mr. Tamburo stated he would prefer the 6' fence for privacy and security, and he added he would then be having his 4' fence connect to his neighbor's 6' fence.

Ms. Lee drew a proposal on the Plan what she would suggest to appease the Chairman. She stated the gate would be "cattycorner." She stated he could still have the 6' fence but it would be back more and not encroach so much. She stated it would go up to the neighbor's fence. Mr. Tamburo stated that fence is approximately 40' to 45' off the roadway. He showed on the Plan what he would propose. Ms. Lee stated it would be more of an angle, and Mr. Tamburo agreed adding that it would give him a sight view. Ms. Lee stated they could attach her drawing as an Exhibit. Ms. Lee reviewed with the rest of the Board what she is proposing. Ms. Lee stated this way the Applicant could still get the 8' gate, but it would come right up from the house.

Mr. DosSantos advised Mr. Tamburo if he were inclined to approve the Variance, they would want to make sure there is a 2" gap between the ground level and the bottom of the fence to allow for water run off, and Mr. Tamburo stated this would be acceptable.

Testimony was closed.

Mr. DosSantos moved, and Mr. McCartney seconded to grant the Variance subject to the following Conditions:

- 1) The fence requested along the Highland Drive side be no closer than 25' to the curb line with a section of the fence, whether or not there is a gate, coming off the rear corner of the house at an approximately 45 degree angle along the driveway side of the fence to connect to the neighbor's contiguous fence along the common property line;
- 2) The fence along Plymouth Lane is granted as requested;
- 3) All fencing installed shall be done with a 2" clearance along the bottom.

There was discussion whether the drawing discussed by Ms. Lee and the Board be attached to the Motion. Mr. Flager stated they could attached it but it would not be 100% precise although it would give a good idea. Mr. Gruen stated they would

be attaching this Exhibit which is a Site Plan; and on the Site Plan, they are going to mark 25' from the curb. Mr. Majewski suggested that they use the aerial photo which is a little bit clearer; however, Mr. Gruen stated you cannot see it.

Mr. DosSantos stated he feels they have a good understanding of what they are discussing. After further discussion Mr. Flager stated it will be marked as Exhibit A-3 – a Revised Site Plan, but it was not to be included in the Decision. Mr. Flager stated the Motion is clear that it cannot be less than 25'.

Motion carried with Mr. Gruen opposed.

#### OTHER BUSINESS

##### Appeal # 16-1763 – Artis Senior Living

Mr. Flager stated he has a request from Mr. Murphy regarding Appeal #16-1763, Artis Senior Living, for a six month Extension. Mr. Flager read the letter into the Record. Mr. Flager stated this is not an unreasonable request.

Mr. DosSantos moved and Mr. Gruen seconded to grant the six-month Extension as requested. Motion carried with Mr. McCartney opposed.

##### Cancel May 15, 2017 Meeting

Mr. McCartney moved, Ms. Lee seconded and it was unanimously carried to cancel the May 15, 2017 meeting as there are no Applications for that meeting.

##### Discussion of Proposed Changes to the Zoning Ordinance

Mr. Majewski stated there has been discussion about Applications such as the one entertained tonight and the request for Extension for an additional six month, and the Zoning Hearing Board may want to consider suggestions to the Board of Supervisors to change the Ordinance so a lot of the day-to-day Variances that are routinely granted are legitimized. Mr. DosSantos asked if there is something the Zoning Hearing Board could review showing Variances that are routinely granted aside from the corner lot issue they discussed this evening. Ms. Lee stated she would also like to know for how long they have been routinely granted. Mr. Gruen

stated he has been on the Zoning Hearing Board for approximately eight years, and he feels this was only the second Variance for a fence at a corner lot that has come before the Board.

Mr. Gruen stated they do routinely get requests for increases to the impervious surface, and they give relief. Mr. Zamparelli stated they always mitigate so they are not just giving relief. Mr. Gruen stated they are giving relief with mitigation. He stated the Supervisors should look at updating the Zoning so that if 19% impervious surface is allowed, and you want to increase it by 6%, you would have to mitigate it 9%. He stated for every percent you increase, you should reduce by mitigation one and a half percent. He stated they routinely do this, but it is not in the Zoning; and the Zoning Hearing Board has taken it on themselves to give that relief.

Mr. Gruen stated he also feels people may put in their sheds legally, if they are given relief on a smaller tool shed such as 8' by 10' with a normal height to be 3' or 4' from the property line instead of 10' from the end of the property and the side yard. Mr. Zamparelli stated he agrees with Mr. Gruen with regard to sheds.

Mr. Gruen stated the other relief they constantly give is fences in the right-of-way, and he feels it should be up to the Zoning Officer to provide the Conditions; and if they agree to remove the fence if access is needed, they should do that and not have to come before the Zoning Hearing Board. This was acceptable to Mr. DosSantos and Mr. Zamparelli. Mr. Majewski stated he feels Mr. Gruen was referring to fences in easements and not right-of-ways, and Mr. Gruen agreed.

Mr. Zamparelli stated he takes exception to Mr. Gruen's comment that the Zoning Hearing Board grants every impervious surface Variance, and he added they always ask for some mitigation. Mr. Gruen stated he feels the Zoning should be updated to reflect that, and they would not have to come to the Zoning Hearing Board. Mr. Zamparelli stated he disagrees, and he feels that they should still have to come before the Zoning Hearing Board for impervious surface Variances so that the Zoning Hearing Board can see what they are doing as to mitigation. Mr. Zamparelli stated he does feel they should change the Ordinance as it relates to impervious surface for older homes where the percentage was changed years after they were constructed and does not permit them to add anything without a Variance; and Mr. Majewski agreed. He noted a recent request when the Applicant needed a Variance for a patio which was nothing extraordinary; however, they needed a Variance because the Zoning had changed Zone.

May 2, 2017

Zoning Hearing Board – page 9 of 9

Mr. Majewski asked that the Board members consider this and send him any suggestions to be compiled, and they will discuss this with the Planning Commission. He stated he can also provide the data requested by the Zoning Hearing Board.

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

Respectfully Submitted,

Keith DosSantos, Secretary