

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – AUGUST 15, 2017

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on August 15, 2017. Mr. Gruen called the meeting to order at 7:30 p.m.

Those present:

Zoning Hearing Board: Jerry Gruen, Chairman
 Anthony Zamparelli, Vice Chairman
 Pamela Lee, Member
 James McCartney, Member
 Matthew Connors, Alternate Member
 Michael Tritt, Alternate Member (not voting)

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

Absent: Keith DosSantos, ZHB Secretary

APPEAL #17-1779 – LUIGI POMPILI

Ms. Lisa Pompili and Mr. Joseph Landman, contractor, were present and were sworn in.

Mr. Flager stated the advertisement was fine for the fence – it was Section 200-69A(14c) – but it has the wrong Section number for the impervious surface. He stated the ad indicated Section 200-25B instead of 200-27B; however, the advertisement does accurately state that a Variance is requested for the impervious surface where 18% is permitted in a project that has a 22.5% ratio. Mr. Flager stated he views this as a “typo” or de minimous mistake as the reason for the Variance was properly stated in the advertisement. Mr. Flager stated the Applicant also granted an Extension until this evening to hear this case.

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 impervious surface breakdown was marked as Exhibit A-3. The e-mail granting the Continuance was marked as Exhibit A-4. 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.

Ms. Pompili stated they have an existing fence that is broken, and they have trees in the line that are at least fifteen to twenty feet; and in bad winters they either fall into the street or into her yard. She stated they want to eliminate all of this and put a brand new fence up. Mr. Gruen asked if they want to remove the trees, and Ms. Pompili stated they want to remove the trees because they are falling at the house and into the street. She stated the fence was broken from Sandy.

Mr. Gruen asked what type of fence they are looking to do, and Mr. Landman stated it would be a 6' high solid PVC fence. He stated he also has pictures of the trees and her property where the existing fence is. He stated he feels the trees are probably 35' tall, and they are overgrown bushes which take a lot of weight with the snow.

The three black and white photographs presented this evening were marked as Exhibit A-5.

Mr. Zamparelli stated currently there is a chain link fence, and Ms. Pompili agreed. Mr. Zamparelli asked what is wrong with the chain link fence, and Ms. Pompili stated it is broken. She stated it is ripped on the sides and is an old fence – at least twenty years old. Mr. Zamparelli asked the height of the existing fence, and Mr. Landman stated it is 4' high. Mr. Zamparelli stated you do have to trim the trees, and Ms. Pompili stated they do although that gets expensive; however, they also had tree rot and some trees fell over, and there is constantly something in the trees that she is always spraying.

Mr. Gruen stated he is familiar with this house as he did some work there, and the fence is broken only in the back behind the shed where there is a little wire missing. Ms. Pompili stated it is along the bottom also, and Mr. Gruen agreed. Mr. Gruen stated he also observed that they have a shed on the corner of the property, and he asked if there is a Permit for that; and Ms. Pompili stated they did get a Permit for that. Mr. Gruen asked if they were allowed to put the shed right on the road like that. Mr. Gruen asked Mr. Majewski the setback required for sheds as he felt it was 8' or 10' from each property line, and Mr. Majewski stated it is 10'. Mr. Gruen stated this shed is right next to the fence. Mr. Zamparelli stated they may have gotten a Variance. Ms. Pompili stated they had a Variance for all that before when they had the addition put in. Mr. Gruen stated that is how they got to 22%, and Ms. Pompili agreed.

Mr. Gruen asked if this is a two-family home, and if there will be a rental. Ms. Pompili stated it is not a rental. She stated her in-laws that live there.

Mr. Majewski stated the Variance took them to 20%, and they are now proposing to increase that. He stated since they have a deck on the rear of the house, covering the deck would make the deck go from being classified as pervious to impervious; and that is the 2.6% increase.

Mr. Zamparelli stated this is a corner property so they are permitted to have a 3' high fence, and they want to go to 6'; and Ms. Pompili stated she agrees, like her surrounding neighbors have. Mr. Gruen stated they do not have 6' high fences in the front – he stated they have it on the side yard and the back yard; but no one in that neighborhood has a fence in the front yard on the corner. Mr. Landman stated right across the street they have one, and Mr. Gruen stated they are even with the house. Mr. Gruen stated Ms. Pompili is asking for the fence to be right where the chain link was; and Ms. Pompili agreed adding that is even with her house. Ms. Pompili stated it comes to where her garage is, which is her house, along the side, and along the back. She stated she is not bringing it to the street – she is staying where the existing fence is.

Mr. Zamparelli asked how far back the fence is from where it hits the garage from the corner. Mr. Landman stated from the property line to the fence now it is 12' from the sidewalk. Mr. Zamparelli asked the distance from the corner to where it hits the garage, and Mr. Gruen stated he feels it is 3' to 4'. Mr. Landman stated the picture shows the chain link is probably about 15' out from the house. Mr. Gruen stated they are not asking from the house, they are asking from the road. Ms. Pompili stated it is roughly 30' from Cinnabar. Mr. Gruen stated he is asking about Bluestone, and Ms. Pompili stated Bluestone is not her address. Mr. Gruen stated Bluestone is the front yard which is why they need a Variance. He stated they need a Variance to have a 6' fence on Bluestone. Mr. Landman stated the chain link is 12' off the sidewalk, and 22' from the curb of Bluestone. Mr. Gruen stated they need the Variance because Bluestone is considered a second front yard, and Mr. Majewski agreed. Ms. Pompili asked why that is considered a front yard when it is not her front yard, and she was advised it is because this is a corner lot.

Mr. Landman stated he prepared a “rough lay-out” of what he was proposing to do, and this was presented to the Board and marked as Exhibit A-6.

Mr. Gruen stated the chain link fence is in the middle of the trees, and Mr. Landman agreed. He stated this is why they need to remove the trees because they are growing through the chain link.

Ms. Lee asked if they would consider a fence lower than six feet. Mr. Landman stated all of her surrounding neighbors have a six-foot fence right on the corners. He stated some of them are four feet off the sidewalk, and some are ten feet off the sidewalk; and she is twelve feet off the sidewalk. Mr. Gruen stated he did not see that. Mr. Landman stated right across the street there is a six-foot high wooden fence fourteen feet from the sidewalk. Mr. Gruen stated across the street he recalls the fence came even with the house, and it is not on the road. He stated there was a large space between the road and the house. Mr. Landman stated it is the same layout as Ms. Pompili's house.

Mr. Zamparelli stated he would agree with Ms. Lee about reducing the height. He stated he is also still not sure what the Ordinance says about from the road edge and how far in they come in. Mr. Majewski stated they are proposing 22' from the curb line to the fence, and the Ordinance required it be 40' away which would cut off their yard.

Mr. Gruen asked the reason for the six-foot fence, and Ms. Pompili stated she has three dogs, and she would like privacy because they are on the corner. Mr. Gruen asked if they would consider a partial in front of their deck where he could see where they would like privacy, and the rest either a picket fence or a four-foot fence. Mr. Gruen stated according to the Township regulations, they do not have to give anything because there is no hardship. He stated there is no unique character to the lot, and it is a flat lot. He stated he did see the tall trees, but they could be cut. He stated she has nice privacy now with the trees.

Ms. Pompili stated trees are falling and some are broken in half. Mr. Gruen stated what she is trying to do is really drastic by removing all the trees and putting in a big, white, solid fence right on the road where it is really against the Ordinance, and they would like to see some compromise. He stated the deck is facing Bluestone which is the main road to the development so he can see putting a six foot fence to screen to screen the deck, but the rest of the yard the dog could do very well with a four-foot fence. Ms. Pompili stated she has large dogs. Mr. Gruen stated Ms. Pompili is asking them to give a permanent solution for a temporary problem.

Mr. Connors asked Ms. Pompili if she was going to re-plant, and Ms. Pompili stated she was not planning to as of right now.

Mr. Landman stated they could write down all the addresses of everyone who has a six-foot fence, some are four feet off the sidewalk and are all corner properties. Mr. Gruen stated he did not see any. Mr. Landman stated he saw about six driving through. Mr. Gruen stated he does not know if they were put there legally or not. He stated he has been on the

Board for eight to nine years, and he remembers they approved only three fences like this, two of which he recalls were specific hardships. Mr. Gruen stated every Variance has to stand on its own merit.

Mr. Zamparelli stated corner lots are a bit different; however, they have to be very careful with granting Variances on the fences especially six foot high ones because they would establish a precedent that it is okay. He stated it is really not in the Ordinance to let that happen unless there is an actual hardship. He stated they could lose the character of what the Ordinance has tried to establish on corner lots. Mr. Zamparelli stated a lot of what they have indicated they have seen may have been done without Permits. Mr. Zamparelli stated he does not see a hardship here, and he is very concerned about establishing a precedent for the Township; and every corner lot could be coming in asking for the same thing. He stated he would be in favor of a compromise. He stated he feels putting trees back would make it nice. He stated he has trees around his chain link fence; and he understands they cover it, but he keeps them trimmed, and if some are dead you take them out and re-plant.

Mr. Gruen read from Section 200-97(5) as follows: “The Variance, if authorized, would represent the minimum Variance which will afford relief and the least modification possible of the regulation and use.” Mr. Gruen stated he would therefore propose to put a six-foot fence in front of the deck; and the rest of it, even though they are allowed to have only three feet, because of the dog, he personally would go along with a four-foot fence. He stated they should not come to the corner because of a sight line possibility. He stated as long as the Township has the regulations, they cannot change them. He stated most Townships have this regulation, and Lower Makefield is not unique. He stated it is very rare that a Township does not have that regulation on a corner lot. He stated that is why corner lots are larger to begin with so they have more land to begin with, and Ms. Pompili’s lot is probably larger than her neighbor’s.

Ms. Pompili stated she is pretty sure that she paid more than her neighbor. She stated what she is not understanding is that she is not blocking the street, and they will be able to see more of the street than what her neighbor’s did whether it was legal or not. She stated she does not understand why it has to be a hardship since she is “bettering” her property, she is not blocking anybody, and not inconveniencing anybody else. She stated she is putting the fence exactly where it was before. Mr. Gruen stated she had a three-foot fence before. Ms. Pompili stated she is putting the fence in the exact same line. Mr. Gruen stated she is putting in a high fence. He added that if she wanted to put the same fence and replace it as it was before, he does not feel it would be a problem; however, she is putting a six-foot fence instead of a three-foot chain link, and that is the problem. He stated if

she wanted to put in a four or five-foot picket fence, the Board might approve it although that would not provide privacy. Mr. Gruen stated they are looking for a compromise.

Ms. Pompili asked how far she could go down with the six feet since Mr. Gruen indicated she could have six feet to cover the deck.

Ms. Lee noted that Mr. Gruen is only speaking for himself and not the entire Board. Ms. Lee stated Ms. Pompili is proposing twenty-feet off the curb. Ms. Lee asked Mr. Flager if the Board could, with the Applicant's permission, Table this and look at the property across the street that has a fence three feet off the curb.

Mr. Gruen stated while he recognizes that Ms. Lee asked this of the solicitor, the way the Board works is that in the past when they wanted to see something it is legal; however, they would have to call a meeting, and whoever wants to can attend but they cannot discuss the Application at that time, although they could observe.

Ms. Lee stated while she is aware of that law, she wanted to know if they could Table this with the permission of the property owner, and have the property owner bring additional evidence in. Mr. Flager stated if the Board makes a Motion that is carried, with the permission of the Applicant, it can be done.

Mr. Gruen stated they would have to schedule a meeting. Ms. Lee stated she is not talking about a special meeting, and she is just talking about postponing it. Mr. Gruen stated he felt she wanted to look at the property, and Ms. Lee stated she did not. Mr. Gruen stated with the Applicant's permission they can postpone it. Mr. Gruen stated they have had occasions when the Board went out and looked at the property to form their own opinion.

Ms. Lee asked Ms. Pompili if she would be interested in Tabling a decision and come back to the next meeting and bring additional evidence such as pictures of the neighbor's fence across the street or pictures of the neighborhood which could be put into Evidence.

Ms. Pompili stated she does have a picture taken from her house of the house of 299 or 298 with the six-foot fence along the house along the sidewalk. Mr. Gruen stated that fence is even with the house; however, Ms. Pompili stated it is not.

The picture presented was marked as Exhibit A-7.

Mr. McCartney stated Mr. Lewis has photographs of that street on his computer that he could share with the Board. Ms. Lee stated they would not be able to mark that as Evidence which could go into the Record. Mr. McCartney asked Ms. Lee if she is asking Ms. Pompili to bring in pictures of her neighbor's fence that is non-compliant with the Ordinance; since if that is the case, he is not interested in seeing that since it will not sway his decision one way or another.

Ms. Pompili stated she is not trying to get her neighbors in trouble. She stated she wants privacy as her in-laws sit on the deck by themselves; and they get nervous because they can see people coming at them. She stated she has a thirteen-year old daughter who has friends come over to sun in the yard; and she is concerned about the open spot where people actually peek in. She stated she is asking for a corner that is exposed, and she has the trees there; and she is just leveling it off and blocking it so that nobody can actually look in her yard. She stated she has had the situation when she was putting on her addition that people were in her yard. She stated because it is three feet, it is accessible for everybody to get in. She stated she has had deer jump into her yard, and Mr. Gruen stated deer will also jump the six feet.

Ms. Lee stated she does not know if the neighbors are non-compliant as they have heard no evidence about that. Mr. Gruen stated that has no bearing on the case, and they have to rule on what is before them. Mr. Gruen stated he understands the concern about the deck, and he personally sees the hardship there. He asked Ms. Pompili if she would be willing to just do the six-foot fence the length of the deck so people cannot peek in. He stated they could extend it five or ten feet beyond the deck, and do a four fence the rest of the property. Mr. McCartney stated that would not change the angles or sight lines as people are walking up the sidewalk.

Mr. Gruen stated currently they do have privacy. Ms. Pompili stated even if they cut the trees, they are troublesome; and she has had poison ivy in them and a fungus in them. She stated she would like to put in a fence and put some of her gardening along it inside the fence.

Mr. Zamparelli asked if the Board would be satisfied with a five-foot fence, and Ms. Lee stated she would be in favor of this particularly since it is twenty-two feet from the curb. Ms. Pompili stated she would be in favor of five feet all the way around. Mr. Gruen stated he did not see that it was twenty-two feet from the road, and it was noted that the trees are adding a lot of bulk to where the fence line is actually located. Mr. Landman stated she is losing about fifteen feet of her property because of the width of the trees.

Mr. Gruen asked if the Township is taking a position on this matter. Mr. Lewis stated Mr. Majewski is looking into whether or not the other properties did or did not get Variances. Mr. Lewis stated the Township is not taking a position on this matter.

Mr. Lewis stated he can show a better rendering of the Google maps for the Board to look at if they wish. He stated with regard to the “Exhibit” question, he could screen shot the relevant images and send it to them so they could enter it as an Exhibit. Mr. Lewis showed the Board members Google maps’ view of their neighbors’ property including the fence structure at 1310 Bluestone Drive which would be the neighbor at their side yard. Ms. Pompili stated she was discussing the corner fences at Cinnabar. Mr. Lewis showed the fence across the street.

Mr. Majewski stated he was able to find a property directly across the street which is a corner lot where they do show the fence within the setback. He stated a Permit was issued; however, he does not see that a Variance was granted. Mr. Majewski stated there are two properties that show the fence within the front yard setback; but he does not see the evidence of Variance for those fences, although one does have a Permit. Mr. Majewski stated they should have had a Variance. He stated they are roughly twenty to thirty feet off the curb and sidewalk. Mr. Gruen stated they got a Permit and installed the fence illegally because they did not obtain a Variance. Mr. Majewski stated the Permit was issued wrongly. He stated they have a Permit so the fence is technically legal; however, the Permit was issued in error. Mr. Majewski stated for the other fence, he could not find a record of it although there are “records all over the place” so it is not easy to find.

Mr. Zamparelli asked if they would consider five feet, and Ms. Pompili stated she would be in favor of five feet all the way around. Mr. Landman stated he already has the materials which is one of the issues. Ms. Pompili asked if she left Bluestone at five feet, could she go six feet on the other sides. Mr. Landmark stated after the Forty-foot setback from the curb, she could reach six foot. Mr. Gruen stated it would only have to be five feet on the Bluestone side.

It was noted that there are two separate requests; however, Mr. Flager suggested that they break them down and vote on the fence first and then go on to the impervious.

Mr. Zamparelli moved and Ms. Lee seconded to approve the fence being constructed with the following Condition: that the fence side on Bluestone be restricted to five feet high and that there be at least a minimum of 2" to 3" clearance above the grass.

Mr. Landmark stated they will come off the house to Bluestone five foot down toward the shed, and go back to the forty foot setback and take it back up to six foot.

Mr. Flager asked if there was anyone present wishing to speak on this Application, and there was no one present wishing to do so.

Motion carried with Mr. Gruen opposed.

Mr. Gruen asked that they discuss the roof over the deck.

Mr. Joseph Jones was sworn in. Mr. Jones stated he is a family friend and he built their addition in 2007 which was a two-story in-law suite/recreation room with a deck on the side. He stated Mr. Pompili's mother and father spend a lot of time at the house and cannot use the deck because it faces the sun 90% of the day; and it is very hot. He stated he proposed that they put a roof over it. He stated he understands that there is an impervious surface issue, and he is approximately 1.5% over the allowed amount; however, they put a water retention system in the property, and they have a 20' by 15' by 12' deep water retention in the center of the yard that the Township required them to do. He stated it has 6" rain leaders all corners of the house, and the water from this roof will be accepted into that water retention. He stated he feels the impervious issue will be solved with that.

Mr. Zamparelli asked if there is evidence that they installed this, and Mr. Jones stated they installed it, and the Township had them do a perc test and it works very well. Mr. Gruen asked if it was inspected by the Township, and Mr. Jones stated it was; and Mr. Majewski agreed.

Mr. Zamparelli asked if the dry well is large enough to handle the additional run off, and Mr. Majewski stated it will. Mr. Zamparelli stated they will put drain leaders into it, and Mr. Jones stated they have a large inlet that received one of the gutters; and he has one capped off where they will put it into. He stated they did not need the extra downspout in that area so they still have one available.

Mr. Gruen asked what kind of roof they are proposing, and Mr. Jones stated it will be structurally framed with a three-dimensional shingle. He added it will be a truss system, and they will lay it over top of lvl beams as shown in the architect's drawings.

Mr. Zamparelli stated in order to get the Permit, he is going to have to show the rain leaders going into the dry well; and Mr. Jones stated he will.

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

Mr. McCartney stated the impervious will be going from 19.9 to 22.5, and Mr. Majewski agreed. Mr. Majewski the effective impervious surface will be 18% with the dry well as installed.

Mr. Zamparelli moved and Mr. Connors seconded to grant the request for a roof over the existing deck with the restriction that all rain leaders enter the existing dry well and that the effective impervious surface not exceed 18%.

Mr. Gruen asked Mr. Majewski at what point do they have to show proof that the system is working, and Mr. Majewski stated they could check it at the next rainfall. Mr. Majewski stated they do have the previous Permit which outlines exactly what they did. He stated he was the Township engineer at that time, and his staff went out and inspected it to make sure it was installed in accordance with the Plans.

Motion carried unanimously.

Mr. Majewski advised the Applicant that they will need to amend the Permit to show that the roof leaders will be piped into the system and also amend the fence Permit to show exactly where it is going to be five feet versus where it is going to be six feet.

APPEAL #17-1784 – JOANNA CRONQUIST AND PATRICK BOYCE

Ms. Joanne Cronquist and Mr. Patrick Boyce 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 explanation for the Variance was marked as Exhibit A-3. Photos of the Applicant's dog were marked as Exhibit A-4. Photos of the fence were marked as Exhibit A-5. Photos of the yard from Cornell Drive were marked as Exhibit A-6. 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.

Ms. Cronquist stated they are requesting a Variance so that they can built a six-foot fence. She stated they have a corner property on the corner of University Drive and Cornell. She stated they want to fence in their back yard in a way that anyone would want to do and would reasonably expect to do upon purchasing their home. She stated they currently live in Philadelphia, and are looking forward to living here although they have not moved in yet because they need to get the fence built for their dog. She stated they have a very large dog who could easily clear a five-foot fence. She stated the Section is 200-69.A14c that they are asking for as the maximum permitted height is three feet in the front yard, and they would like to build a six-foot fence with a twenty-foot setback from the curb on the side of their property on Cornell. Mr. Boyce stated he feels in portions the setback is closer to twenty-five feet. Ms. Cronquist stated she believes that they measured that from the sidewalk and not from the road itself.

Mr. Zamparelli noted they just heard the last Appeal, and the Applicants agreed.

Mr. Gruen stated he is familiar with this property, and there is currently a fence there. Ms. Cronquist agreed that this was put in by the last owner, but it is very rickety and it is approximately three and half to four feet high. Mr. Boyce stated he believes that it is closer to three feet high. Mr. Gruen stated it is legal so it would be three feet high. Mr. Gruen stated they are trying to bring the fence from the back of house which is legal and move it forward to the edge of the driveway. Ms. Cronquist stated there is currently a fence along the edge of the driveway. Mr. Gruen stated if you drive up to the house, the fence now is at the back of the house, and they want to move it forward so that it at the end of the blacktop. He stated there is a sidewalk behind the fence. Ms. Cronquist stated there is currently a fence at the end of the blacktop. Mr. Gruen stated on the drawing it shows that the fence is at the back of the house. He stated if you are facing the house from University, looking up the driveway, there is a fence which is in line with the back of the house; and Ms. Cronquist agreed. Mr. Gruen stated they want to move it forward so it will be behind the blacktop. Ms. Cronquist stated she believes it will be moved forward a few feet. Mr. Gruen stated if they do that in the winter, they might lose the fence when the plow comes and pushes the snow against it. Ms. Cronquist stated that had been mentioned to them.

Mr. Gruen stated on the side of Cornell, he would propose in the way of compromise to allow the six-foot fence, where they have a pin up the hill, and run the fence from there parallel to the house which would include the air conditioner unit. He stated there is no hardship. Ms. Cronquist disagreed. Mr. Gruen stated the hardship is with the dog which is a self-inflicted hardship.

Ms. Cronquist stated she disagrees with Mr. Gruen. She stated when they decided to move to Lower Makefield they looked at a lot of home; and similar to the last Applicant, they observed that there are many, many corner properties that, whether legal or not, have similarly placed fences which she feels most people would consider what they are asking for to be reasonable as it would mean that they are fencing in their back yard. She stated while she knows that the Township considers the portion on Cornell to be a front yard, that is just a “peculiar Zoning thing;” the average person would feel Cornell would be a side yard, and would therefore expect that you could fence in your back yard the way any other homeowner could do.

Ms. Cronquist stated their front yard is extremely steep, and they are up on a hill and cannot use any portion of that at all so they really want to use the full amount of their back yard. She stated she does agility with her dog, and she needs a large space; and she thought that was what they were getting when they bought this house. She stated when they turned in the Permit, they did not think that it would be an issue because what they wanted seemed reasonable. She stated they are moving here because they love the character of the neighborhood, and love the trees, natural quality, the sidewalk, and the walkability. She stated they are not looking to change that character, and their fence will be in keeping with the character.

Mr. Gruen stated what is proposed would be a big change to the character of the neighborhood since they will be the only corner property that will have this. He stated the house across the street will be looking at “the Berlin Wall” which is what they are proposing. Ms. Cronquist disagreed. Mr. Gruen stated he knows that she feels the Township laws “are stupid,” but the Zoning Ordinances are there.

Ms. Cronquist stated she does not feel the laws are “stupid” but she feels that reasonable people would expect that you could fence in your back yard. Mr. Gruen stated this is the Township’s Zoning Ordinance, and it is not unusual in this respect. Mr. Gruen stated there is no hardship, and their yard is big enough. He stated what they are proposing it to move the fence practically down the hill. Ms. Cronquist stated it is actually at the top of the hill.

Mr. Gruen stated he is trying to propose a compromise because of their dog. He asked the age of the dog, and Ms. Cronquist stated he is probably three. Mr. Gruen stated he hopes the dog lives to sixteen. He stated they are asking for a permanent solution for a temporary problem because they have the dog right now. Ms. Cronquist stated the dog is not a temporary problem. Mr. Gruen stated the dog is not going to live forever, and this will be a permanent Variance that goes with the house forever.

Ms. Cronquist stated she can tell that Mr. Gruen does not have a dog because saying to a dog lover that their dog is a temporary problem is extremely offensive. Mr. Gruen stated he has had dogs, and if they are lucky he will live past sixteen. Ms. Cronquist stated she is offended by Mr. Gruen's statement. Mr. Boyce stated they would get another dog. Ms. Cronquist stated they do not have children, and therefore they have dogs; and they will continue to have dogs so it is not a temporary problem. Mr. Gruen stated it is a temporary problem that this dog can jump six feet, and that is not a hardship. Ms. Cronquist stated it is a hardship.

Mr. Gruen stated it is not a hardship under the Ordinance. Ms. Lee stated legally speaking she does not feel it is a hardship, and she asked Mr. Flager to speak to this. Mr. Flager stated when you buy property, you have to check the Zoning to see what you are or what you are not allowed to do. He stated the fact that they own a dog is not a legal hardship. He stated it has to do with the land being unusable. He stated they have to show that the hardship is not self made, and that the hardship is with the land not because it would be better for their dog. He stated this would not qualify them for a Variance, although that is not to say that the Board could not grant relief.

Ms. Lee asked what the Variance is for. Mr. Majewski stated in order to comply with the Ordinance they would have to move the fence thirty feet toward the house from where they are proposing it which would cut off approximately 20% of their rear yard. Ms. Lee asked if that would still be behind the current four-foot picket fence seen on the diagram, and Mr. Majewski stated it would be a few feet in front of that toward Cornell.

Mr. Gruen asked about the fence by the driveway, since he felt the six-foot fence was supposed to be in the back corner of the house; and Mr. Majewski stated that is incorrect. He stated it is the front yard so it cannot be in front of the front setback. Mr. Gruen stated they are proposing in the middle, and Mr. Majewski stated that is beyond the front setback so six feet is fine.

Mr. Gruen stated he saw the property and he thought it would give them a fairly nice big yard if they put the fence thirty-three feet from the road which would fall slightly beyond the picket fence which is there now. There was discussion as to the slope of the side yard, and Mr. Gruen stated it starts sloping where they propose the fence. He stated where they propose the fence it drops about seven to eight feet.

Mr. McCartney noted the area where the existing four-foot high picket fence is out to Cornell, and he asked if that is a gradual slope and then a drop off; and Ms. Cronquist stated they are proposing to place the fence where the yard is still level, and then it drops off pretty significantly. Mr. Boyce stated the fence would not be on the slope, and it would be at the top.

Mr. Gruen stated he is proposing to put the fence where they have the second pin from the road which is in between where the Applicants want it and where the picket fence is now. He stated this will still give them a pretty big yard, and it will move the fence a little bit further back.

Ms. Cronquist stated their plan is to plant a climbing vine or shrub on the other side of the fence. She stated the fence will not be white vinyl, and it will be gray which they feel is more in line with the natural theme of the neighborhood. She stated she feels it is important to have the solid privacy fence because their dog will chase cats; and they cannot control if cats wander onto their property, although they could try to keep cats out so that their dog will not cause any harm to neighboring cats. She stated her dog could easily clear a five-foot fence, and this is why they are requesting the six-foot fence. She stated it is also an issue in terms of privacy for our deck since it is facing Cornell.

Mr. Connors asked what they propose in terms of landscaping. Ms. Cronquist stated they have a landscaper who is coming up with drawings right now. She stated they would be open to any kind of climbing vine that would disguise the fence or any kind of bush. Mr. Boyce stated there currently is a bush there so it will be disguised, but they plan on doing more plantings to make it more natural. Ms. Cronquist stated they plan on doing it on the other side of the fence rather than inside the fence so they can make sure the yard can dry out.

Mr. Gruen stated currently they have four or five large junipers, and Ms. Cronquist agreed. Mr. Gruen stated this is just an eight to ten-foot section, and the rest of the fence would be exposed. Mr. Boyce stated they do want to extend the plantings beyond the current bushes, and they would be on the exterior side of the fence. Ms. Cronquist stated their property, except for the part that would be fenced, is quite steep so they are worried about erosion; and they want to do something that is going to hold the soil so they have a landscaper working on what they can do to help with that problem.

Ms. Evelyne Patterson was sworn in. She stated they are the next-door neighbors who share the fence. She stated they are at University Drive and Albright. She stated Cornell and Albright are parallel. She stated she and her husband were confused about the wording in the letter because it talked about a front yard, and they wanted to know if there was going to be something on University. She stated after hearing the discussion, they seemed to be talking about the Cornell side.

Mr. Majewski showed Ms. Patterson the diagram of the property.

Ms. Lee stated the side yard facing Cornell is technically a front yard, and it is considered a second front yard which is where the confusion may lie since corner properties are considered to have two front yards one of which is actually the home's side yard; but because it fronts a street, under the Ordinance law, it is considered a front yard.

Ms. Patterson stated her home is 1291 University Drive, and she assumes they would also have two front yards; and Mr. Gruen stated they would also be a corner lot and would have two front yards. Mr. Gruen stated according to the Zoning Ordinance the problem for the Applicants is on Cornell as it is considered a second front yard, and they cannot have a six-foot fence there as only a three-foot fence is permitted. He stated the people who would be most effected would be those who live directly across Cornell looking at the fence. Ms. Lee stated it would also be people walking in the neighborhood.

Ms. Patterson stated she does not have a problem with the Application.

Ms. Catherine Morrison was sworn in. She stated she is the neighbor who will be impacted by this as she is across the street on University and Cornell on the corner property. She stated she takes exception to this being deemed for a dog. She stated she is on her fourth and fifth retriever on her property, and she has an invisible fence as do a lot of her neighbors. She stated she did have a fence which her dogs were jumping on and over, and she took it down because it served no purpose. She stated you cannot prohibit wildlife from coming into your property. She stated she does not want to come out her property and look at the "Great Wall of China." She stated she feels it will distract from the integrity and charm of the neighborhood of Sandy Run II. Ms. Morrison stated with regard to the statement made about the deck, she knew the previous owners and the deck sits in the back of the property; and it does not have real exposure to Cornell. She stated there were a lot of privacy bushes that were on the property which were taken down so they did have privacy at one point with the natural greenery; but the homeowners who purchased it took them down. She stated the previous owners had an immaculate property, and the fence is not rickety or old.

Ms. Cronquist stated she has seen Ms. Morrison out with her dogs; and to the point about electric fences, she has seen her dogs out in the street on several occasions so she does not feel the electric fence is doing the job of containment that she feels it is. Ms. Morrison stated she did have a problem with her puppy's collar, but she has lived there for fourteen years and she is on her fourth and fifth golden retriever on the property. She stated she does not want to come out and look at the fence, and she does not feel it is an aesthetic thing for the area. Ms. Cronquist stated they will be planting bushes. She stated the reason they took the bushes down was because they wanted to place the fence and then replant. Ms. Morrison stated she

understands the lay out. She stated she has driven through the entire neighborhood there is not a single corner property that has this intent of a fence that they are seeking a Variance for.

Mr. Flager asked Ms. Morrison if she is requesting Party Status, and Ms. Morrison agreed. She noted that her address is 1267 University Drive.

Ms. Marlene Barlow, 1296 University Drive, was sworn in. She stated she was also confused by the letter when it discussed the front yard, and she felt a “compound” was coming which was offensive. She was shown by the Board what is proposed. Ms. Barlow thanked the Board for the explanation. She stated although it is not relevant to the situation, Ms. Morrison is a very responsible dog owner; and when her dog stepped of the electric fence, she immediately rectified that. Ms. Barlow stated she does not have an opinion on the Variance at this time.

Mr. Gruen asked Ms. Barlow how she has lived in the neighborhood, and Ms. Barlow stated she has lived there twenty-seven years. Mr. Gruen asked her how many corner lots have fences in the neighborhood, and she stated she does not recall any.

Ms. Cronquist stated the reason they are moving to the neighborhood is because they like the character of the neighborhood, and they have no intention of doing anything that would be detrimental to that; and they will plant something nice there so that you would not even see the fence. She stated it is extremely important that they have as much room for their dog as possible. She stated she does not feel electronic fences do an adequate job of containing dogs in many situations, and they do not prevent other dogs from running into your yard. Mr. Gruen stated very rarely do you get a dog running into a yard here, and they do not have loose cats and loose dogs running around although that is immaterial. Ms. Cronquist stated she feels there are probably loose cats everywhere.

Ms. Barlow asked about the composition of the fence, and Mr. Boyce stated it will be gray vinyl.

Ms. Cronquist stated when they were looking at homes, they saw many similar fences and similar analogous compositions on corner lots throughout Lower Makefield; and when she initially talked to Mr. Majewski, he did mention that were about thirty to forty corner homes that had received similar Variances. Mr. Majewski agreed, and he added that when he was looking into this earlier this evening, he did not that there were ten Variances for corner lots in the last ten years.

Mr. Gruen stated every case has to stand on its own merit, and he does not know why those were granted. He stated he does know why the last one was granted since people were going day and night through the Applicant's property to go shopping which is a hardship. Mr. Majewski stated that was for a buffer easement Variance. Mr. Gruen noted another Variance to the front yard which was on Edgewood and it showed that the lights were shining into the children's bedroom.

Mr. Gruen stated in this case, he feels this property is large enough; and he feels they could come to a compromise where they move the fence further back, and it would be nice if they put some shrubs in front of the fence. He stated in this neighborhood there is no fence on any corner lot that he is aware of. Ms. Cronquist stated that is not accurate, and there are fences. Mr. Gruen stated this will change the character of the neighborhood on this street and for the neighbor.

Mr. McCartney stated the requirement for the distance from the curb to the fence is forty feet, and Mr. Majewski stated the curb is typically ten feet off the right-of-way approximately so this would need to be fifty feet from the road. Ms. Cronquist stated that would be in the middle of their back yard. Mr. McCartney stated currently they are 43.2' from the right corner to the sidewalk. Mr. Majewski stated the Ordinance would require it to be fifty feet from the curb which would be a few feet from the front corner of the house and then running parallel with Cornell Drive and be about four feet in front of the existing four-foot picket fence so that would cut off that whole area of the yard. Ms. Cronquist stated it would be about 25% of the back yard, and Mr. Gruen agreed. He stated that is why he is proposing to give some relief.

Mr. Majewski stated Mr. Gruen has been referring to a "pin," and he asked Mr. Gruen if he knows where the pin is distance-wise so that it can be described. Mr. Gruen stated it is approximately thirty-three feet from the road; or if you do parallel to the road, it would be about eight to nine feet from the air conditioning unit from the back of the house. Mr. Connors asked what road he is referring to, and Mr. Gruen stated it would be Cornell. Mr. Gruen showed on a Plan the surveyor pin, or it may be a stake in the ground. Mr. Gruen stated if it is agreeable to the Board, as a compromise, it would put the fence a little further back from the road. He stated this would result in a big lot for the dog.

Mr. Connors asked the Applicants if they would be willing to go with a reduced setback on that side yard which would be not the complete setback that would be required under the Code as well as provide landscaping in front of the fence. Ms. Cronquist stated they are definitely doing landscaping in front of the fence.

Mr. Gruen showed on the diagram what he is proposing to the Applicants and other Board members, and he showed the location of the pin he was referring to.

Mr. Gruen stated what he is proposing is that they have the fence at a location he showed on the diagram which is approximately thirty-three feet from another point he showed on the diagram. Ms. Lee asked if the fence would still be six-foot high, and Mr. Gruen agreed. Ms. Cronquist stated that would still be a lot of unusable yard, and she does not feel that would significant change the view for anyone.

Mr. Gruen was asked about the survey markers, and Mr. Gruen showed on the diagram where there is one at the bottom of the property and another way about half way up somewhere although he did not know exactly where it was.

Mr. Connors asked if a twenty-foot setback instead of the full forty-foot setback would be approximately what Mr. Gruen is proposing, and Mr. Gruen stated he is proposing a thirty-three foot setback. Mr. Connors stated there is a forty-foot setback for the front yard; and if they were to split the setback, that would be a twenty-foot setback with a Variance of twenty feet, or are they discussing a thirty-foot setback with a Variance of ten feet. Mr. Gruen stated he is talking about a thirty-foot setback.

Mr. McCartney stated it would be ten feet off the front right corner parallel to the road and straight back.

Mr. Boyce stated the forty-three feet is from the corner of the house to the sidewalk so if you add the sidewalk plus the grass area it is probably another ten feet.

Ms. Cronquist asked what is the total setback from the road that they are requesting. Mr. Connors asked if she is referring to the curb line or the back of the sidewalk on the road, and Ms. Cronquist stated she is referring to the curb line on the road. Mr. Majewski stated he feels it would be approximately nine or ten feet from the curb line to the property line although he is not exactly sure for this development. Mr. Majewski stated from what Mr. Gruen has described as a counter proposal, it would then be forty-three feet from the curb; and this would be approximately ten feet from the corner of the house and then running parallel with the curb line on Cornell.

Mr. Connors stated as another option would be if they did a twenty-foot setback which would be thirty-feet from the curb at full height with landscaping in front of the fence. Ms. Cronquist stated this would be twenty feet back from the curb, and Mr. Connors stated he is recommending thirty feet from the curb.

Mr. Majewski stated that would ten feet further back from what the Applicants are proposing, and it would be thirteen feet in front of what Mr. Gruen had previously proposed. Mr. McCartney asked what this would be off the corner of the house as that is his starting point. Ms. Cronquist stated she feels it is helpful to think of it from the curb as that is something that everyone can agree to. Mr. Gruen stated it is easier to think of it from the house.

Mr. Connors stated he is concerned about the neighbor who does not want to see a big, white or gray fence; and he feels the landscaping would help that situation. Ms. Cronquist agreed adding the landscaping is what they want as well because they do not want to look at a fence either, but they do need to contain their dog.

Mr. McCartney stated he believes that Option 1 puts them ten feet off the corner and Option 2 puts them twenty-three feet off the corner. Ms. Lee stated that would be the front corner.

Mr. Majewski stated what Mr. Connors has proposed would put the fence twenty-three feet from the front corner of the house which is ten feet further back from what the Applicants had requested a Variance for.

Ms. Lee stated she feels that is a little far at six foot, and she is disinclined to vote in favor of twenty-three feet from the house at six feet.

Mr. Gruen stated he does not believe that Ms. Cronquist is willing to compromise on anything at this point. Ms. Cronquist stated she would prefer that Mr. Gruen not speak for her. Mr. Gruen asked Ms. Cronquist what she would be willing to compromise on, and Ms. Cronquist stated what she has presented is what they wanted.

Mr. McCartney moved and Mr. Zamparelli seconded to decline the request for Variance.

Ms. Cronquist stated she is trying to understand the compromise which has been proposed. Mr. McCartney stated it was ten feet off the corner of the front of the house and then going back. He stated there was another option to go twenty-three feet. Mr. Boyce asked if they could go with seventeen so that they are in the middle.

Mr. Connors asked if the Applicants would like to request a Continuance to consider this further and come back to the Board. He stated he feels at this point there Variance request would not be approved.

Mr. Flager asked if the Applicants if they would like to take some time this evening to consider this further. Ms. Cronquist asked what a Continuance means. Mr. Gruen stated they could recess the Hearing at this point so that they can consider this further. A recess was taken at this time during which the Applicants were shown on paper what the Board is proposing.

The meeting was reconvened, and Mr. Flager asked the Applicants what they are proposing. Ms. Cronquist stated they would like to propose a compromise that would be fifteen feet from the front corner.

Mr. Flager stated since Ms. Morrison has Party Status, she should be permitted to see what is proposed and comment if she wishes. Ms. Morrison was shown the diagram.

Mr. Majewski stated in relation to the curb line, they would be thirty-eight feet from the curb line. Mr. Zamparelli asked how from back from the proposed this would be, and Mr. Majewski stated it would be eighteen feet further back from what they proposed in their Application.

Ms. Cronquist stated they were talking about it in terms of the front corner of the house, and they are now saying they would make it fifteen from the front corner. Mr. McCartney asked how this relates to the slope, and Mr. Boyce stated it would not impact the slope and Ms. Cronquist stated it would be before the top of the ridge. Mr. Connors stated landscaping should be included.

Ms. Morrison stated she would like a guarantee that the new owners do not do any type of training of dogs of anything like that on the property as a business. Mr. Gruen stated they are not allowed to do that by law as it is not Zoned for that.

Ms. Morrison asked if they could have it be a five foot or four foot fence on the side; and Mr. Gruen stated they have claimed that the dog might jump over the fence, and this is why they are going with a six foot fence. Mr. Zamparelli stated they plan on installing shrubbery. Mr. Gruen stated they have discussed shrubs or climbing vines, and asked if they could be more specific. Ms. Cronquist stated they would consider anything and they have hired a landscaper who is giving them drawings for this. Mr. Zamparelli stated the neighbor does not want to look at the fence so the shrubs would have to cover the fence; and Ms. Cronquist stated while she does not feel that they would cover them initially, but they would grow; and the Board agreed.

Mr. McCartney withdrew his Motion.

Mr. Flager stated Ms. Morrison can still take whatever position she wishes, and the Board can consider her position before they make their Decision. Mr. Flager stated the proposal is to move the fence back from where they initially wanted to have the fence, and in addition to heavily landscape it using a landscape architect to help them make it less intrusive. Ms. Morrison stated while she understands what they are saying, she does back to the neighborhood itself; and in Sandy Run II there are not fences where you do not have a visual “see-through” in the neighborhood on a corner property. She stated anyone who has a corner property that does have a fence you can see into the back yard. She stated she is opposed to the fact that they will not have a visual sight, and she does not feel this will give any added value aesthetic wise to the neighborhood.

Mr. Zamparelli stated if they had a row of trees there, you would not be able to see through there either, and Ms. Morrisville stated you can see in there. Mr. Zamparelli stated he has a row of trees in his back yard, and you cannot see through. Mr. Gruen stated some rows of trees you can see through and some you cannot. He stated if they put in flowering shrubs and evergreens of some sort, it would cover up the fence, and they would see portions of the fence unless they demand that they put in a row of arborvitae; and they will then be here in fifteen years telling them the trees are too big, and they have to remove them. Mr. Gruen stated Ms. Morrison is still standing on her opposition to the fence there unless it is within the setback, and Ms. Morrison agreed.

Mr. Gruen suggested that they go back to his original proposal of ten feet off the corner of the house with shrubs that would be no further apart than five or six feet in front of the fence of evergreens and allow the six foot fence. Mr. Zamparelli asked if that was not what the Applicants just asked for, and Mr. McCartney stated they asked for fifteen. Mr. Gruen stated with his suggestion the fence would be a little further back for the neighbor.

Mr. Boyce stated the fifteen was already more significantly closer than the ten than the other proposed twenty-three which was already reduced from the original drawing. Mr. Gruen stated the five feet for the dog will not make a difference; however, it will make a difference for the character of the neighborhood and make a difference for the neighbor. He stated being they are new neighbors in the area, if the Board is inclined, they should accept this. He stated the Board can also vote this down.

No one else in the audience wished to speak, and Testimony was closed.

Mr. Gruen moved, Mr. Connors seconded and it was unanimously carried to allow a six-foot high fence on Cornell which will start at ten feet from the front corner of the property of the house on Cornell and go parallel to the back of the property. In addition in front of the fence the homeowners will plant a row of evergreens and flowering shrubs of their choice no further than five feet apart lengthwise. There are to be some deciduous and non-deciduous trees.

The Applicants were advised that there is a thirty-day Appeal period. Mr. Gruen stated the Applicants could Appeal their Decision or Ms. Morrison could Appeal their Decision to the Court of Common Pleas.

There being no further business, Mr. McCartney moved, Ms. Less seconded and it was unanimously carried to adjourn the meeting at 9:20 p.m.

Respectfully Submitted,

Jerry Gruen, Chairman