

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – OCTOBER 17, 2017

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on October 17, 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
 Adam Flager, Zoning Hearing Board Solicitor
 Barbara Kirk, Township Solicitor
 Maryellen Saylor, Township Engineer
 John B. Lewis, Supervisor Liaison

Absent: Anthony Zamparelli, ZHB Vice Chairman
 James McCartney, ZHB Member

APPEAL #17-1789 – DANIEL BORNSTEIN

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 outline of relief requested was marked as Exhibit A-3 which has attached Exhibits to it being the Deed, FEMA Elevation Certificate, and the Elevation rendering. 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 September 28, 2017 review letter from Ms. Saylor was marked as Exhibit B-4.

Mr. Edward Murphy, attorney, was present. Ms. Kristin Holmes, Project engineer, and Mr. John Wolstenholme, Project architect, were sworn in.

Mr. Murphy stated this Application involves the property owned by Mr. Bornstein located on River Road. He stated the issue is limited to one specific portion of a proposed addition to the rear of Mr. Bornstein's home. Mr. Murphy stated Mr. Bornstein is also available this evening to provide Testimony if necessary.

Mr. Murphy stated he knows that there are several residents in the audience, and he believes that they are in support of the Application. Mr. Murphy stated they may be able to advance the matter by providing Offers of Proof and/or summarizing some of the Testimony.

Ms. Kirk stated she is present on behalf of the Township which is participating, and they would have no objection to an Offer of Proof with individual Testimony to answer questions if needed.

Mr. Gruen asked if there was anyone in the audience who is not in support of the project, and no one indicated that they were not in support. The Board members had no objection to Mr. Murphy's proposal.

Mr. Murphy stated the Application involves a property located in the floodplain of the Delaware River. He stated as with most properties located on River Road, Mr. Bornstein owns two parcels – one on the east side of River Road and one on the west side. Mr. Murphy stated the home is constructed on the west side. Mr. Murphy stated elevation information was included in the packet that accompanied the Application. He stated this home was built in 1920 and has some other later additions.

Mr. Murphy marked as Exhibit A-4 a group of photographs. He noted a photo in the upper center which shows the original stone portion of the home and the rear of the home at the bottom image in the middle of the Exhibit. He stated that section of the home was built in 1920. He stated they had introduced a Flood Certification as part of the Application, and it identifies the lowest elevation of the home today is 34'2". He stated this amount matches the flood elevation that Lower Makefield Township has identified as its flood elevation minimum. He stated the FEMA mapping that was adopted mid-March, 2015 has a Base Flood Elevation that is a foot and a half below what the Township has identified as its minimum flood elevation of 34' 2".

Mr. Murphy stated Mr. Bornstein would like to construct an addition to the rear of the home that has several different elements to it and several different elevations.

Mr. Gruen asked where they measure the elevation from – floor level or the top of the footings, and Ms. Holmes stated it is the floor elevation.

Mr. Wolstenholme stated the existing home was built in the 1920s at a flood elevation of 34.2. He showed on the photograph an addition on the right hand side of the home looking from River Road, and this addition was put on sometime before the 1970s, and that flood elevation was built at 34.9. He showed the picture of the rear of the home where the addition will be

built which was proposed to be there to help enhance the aesthetic at the rear of the home. He stated the house is just above 2,200 square feet, and the size of the sitting room is not overly large; and they are trying to expand some of that area to house some of Mr. Bornstein's heirlooms. Mr. Wolstenholme showed where there will be a connection between the new library and the existing sitting room. He stated they needed to drop that elevation down two steps approximately 14". He stated they provided pictures of two of the heirlooms – one being a breakfront that will be going into the library. He stated the height of that breakfront is nine foot two and a half inches and the ceiling height in the sitting room is only seven foot nine and a half inches so that delta different would not enable the breakfront or proper space around the other heirloom which is a statue. Mr. Wolstenholme stated the statue weighs 2,200 pounds, and the existing structure would not take that weight. He stated the addition they have designed is able to withstand the weight of the statue and the height of the breakfront. He stated this was the minimum height they could step down from the existing sitting room; and if they had not stepped it down, the ceiling height of the proposed addition would have interrupted the windows on the second floor where there is a bedroom and a bathroom.

Mr. Murphy stated the total square footage of the addition is 764 square feet, and Mr. Wolstenholme agreed adding it is approximately 30% of the overall size of the house. Mr. Murphy stated of that 764 square feet the library addition, which is the only portion of the addition that would be stepped down below the 34.2' elevation, is 368 square feet; and Mr. Wolstenholme agreed. Mr. Wolstenholme added they were trying to minimize the relief that they needed to seek. He stated they wanted to keep the height as low as they could and keep the architecture in line so they kept the roof pitch to a minimum of 212 with a metal roof so that the peak of the roof would not come up too high. He stated every design effort was put in to try to minimize the relief needed.

Mr. Wolstenholme stated Mr. Bornstein also has a large historic book collection as well and the room needed to be of size to handle the book collection.

Mr. Murphy stated he feels Mr. Bornstein could give the Board more information about the heirlooms he has referenced as they have real significance to Mr. Bornstein and his family which is why he is going to these great lengths.

Mr. Daniel Bornstein was sworn in.

Mr. Murphy stated Mr. Bornstein's consultants have devoted a great deal of time and attention to designing the addition, and Mr. Bornstein agreed. Mr. Murphy stated at the time he did this, Mr. Bornstein was mindful of the location of his home in the Delaware River floodplain; and Mr. Bornstein agreed. Mr. Murphy stated he was aware of the fact that he would have to pay particular attention to the addition, flood heights, flood elevations, etc.; and Mr. Bornstein agreed.

Mr. Murphy asked Mr. Bornstein to explain the design of the library and why he chose to accommodate it to enable him to utilize these pieces that up until now he has been unable to. Mr. Bornstein stated his home is very special to him and "like a member of his family." He stated he also loves his family heirlooms. He stated his parents have passed away, but he continues to feel a connection to them because of the heirlooms that they left to him. He stated his parents collected art their entire lives including paintings, antique furniture, statuary, and antique books; and he cherishes them now as they did. He stated the statue was his Father's "pride and joy," and it was his most beloved piece of artwork. He stated his Father was a lawyer, and he did some legal work for the Masons in Patterson, New Jersey. He stated they were unable to afford his legal bills, and they offered him this marble statue which he gladly accepted and displayed proudly for decades. He stated it was his Father's most prized personal possession, and now it is his most prized personal possession. Mr. Bornstein stated unfortunately his house cannot currently accommodate it as it is too big for the rooms in his home as well as far too heavy. He stated he feels if he were to put it in any room of his home it would immediately fall through the floor into the basement below. He stated he recognized that if he wanted to keep it, the only way he could do so was to build an addition and reinforcing the floor so that the floor could accommodate the weight of the statue.

Mr. Bornstein stated the breakfront is also very important to him as he remember when he and his Mother bought it and how happy and proud they were. He stated they got it at an auction and when they had the winning bid, they were "beaming." He stated they displayed it in their home for many years. He stated it is far too big for any room in his house now, and it is too high.

Mr. Murphy asked where it is now, and Mr. Bornstein stated both of these items are in storage as are his Father's books. He stated they have been in storage for years, and he pays hundreds of dollars in storage fees every month to store these items as well as other items that he wants to display in his home such as a sideboard, a dining table, and a display cabinet. He stated he spends this money in storage fees because he cannot part with these items as they mean so much to him. He stated he desperately wants to see them again, display them, and enjoy them. He stated this home which he already adores will be perfect if he can display them, and it will allow him to

celebrate his parents in a special way that he is not able to do right now as he will have all the things that were so special to all of them as he was growing up surrounding him every day.

Mr. Murphy asked Mr. Bronstein if he has talked to any of his neighbors about his plans; and Mr. Bronstein stated several of his neighbors reached out to him after they got letters informing them of the Application for a Variance, and he told them about it. He stated several of his neighbors are here tonight, and several of his neighbors have written letters in support of the Application. Mr. Murphy provided three letters in support. The letter from the resident at 76 Black Rock Road was marked as Exhibit A-5. The letter from the resident at 72 Black Rock Road was marked as Exhibit A-6. The letter from the resident at 761 River Road was marked as Exhibit A-7. Mr. Murphy stated Mr. Bronstein's property is at the corner of Black Rock and River Road.

Mr. Murphy asked Mr. Bronstein if he has talked to any of his neighbors who did not support his Application; and Mr. Bronstein stated he only heard from the three the sent letters, and they all enthusiastically supported the Application. Mr. Bronstein stated he would like to take the opportunity to tell them how touched he was about their expressions of support.

Mr. Murphy asked Mr. Bronstein if he has experienced any flooding at his home, and Mr. Bronstein stated he has not. Mr. Murphy asked if he had an opportunity to whom he bought the home a number of years ago who had lived there for about than forty years about whether he had experienced any flooding in his home, and Mr. Bronstein stated he represented to all perspective buyers in all the advertising literature that the home had not flooded during his ownership. Mr. Bronstein stated his home inspector did not find any evidence of water damage, and the home still has its original hardwood floors which corroborates the account of no flooding..

Mr. Murphy stated in Ms. Saylor's review letter of September 28, she highlighted a Section of the Ordinance from which they did not ask for relief which was Section 200-56.C.(1). He stated that Section would prohibit the placement of fill in the floodplain. Mr. Murphy stated given the nature of the relief that they did seek which was to build an addition in the floodplain, the fact that they did not specifically call out the Section that contemplates adding fill does not change the general character and nature of the relief they are seeking. He stated he discussed this with Mr. Flager and Mr. Majewski, and they agreed that it would be appropriate to Amend the Application this evening to include that other Section of relief so that there would be no issue. Mr. Murphy asked to Amend the Application to include that additional Section of requested relief. He stated he is asking to permit the use of fill as part of the construction of the addition in the floodplain.

Ms. Saylor stated it is understood that if you are going to put on an addition, there will be fill involved; but they would need a Variance from the Section they cited.

Ms. Saylor asked if there will be a basement under the addition, and Mr. Wolstenholme stated there will be a minor crawlspace.

Ms. Saylor asked if they will provide the vents to allow the flood waters to go under as required, and Mr. Wolstenholme stated they will.

Ms. Kirk asked Mr. Murphy to go through Ms. Saylor's letter and clarify the compliance with other Sections that were cited by Ms. Saylor.

Mr. Murphy stated Ms. Holmes has discussed the letter with Ms. Saylor, and they are going to provide an updated Plan as well to address the comments in the 9/28/17 letter.

Ms. Saylor stated with regard to the project in general, her main comment is with regard to the floor elevation of the library. She stated currently the existing floor elevation is 34.2 and 34.9 which meet the standard of a foot and a half above the floodplain elevation; however, by introducing the library at 33.75 they need a Variance. She stated because the Township had the standard of a foot and a half above the floodplain in the Zoning Ordinance, they received points toward the CRS Rating; and this gives the residents who own properties in the floodplain a discount for their flood insurance every year. She stated her concern is that by allowing this, she was told by FEMA that if they do not uphold the standard when they come and do an elevation certificate audit which they do every couple years, this property will be flagged as not meeting the requirement, and when they do the re-assessment for the Township, the Township could lose some points toward the Rating.

Mr. Gruen asked if this is true even though it is only going to be a small section of the project. Mr. Murphy stated he feels what Ms. Saylor has indicated is speculative. He stated his experience is that is not always the case. Ms. Saylor stated she did ask FEMA what were the repercussions if the Township allows this, and she was told that it would be flagged, and the Township could possibly lose some of the points. Mr. Gruen stated while he understands this concerns, he feels this is such a minor Variance; and overall, they would try to hold it for the entire Township. He stated he feels this is a case of a hardship, and it is just a small section.

Ms. Lee asked for further explanation of the FEMA point system, and she would like to know where the Township is now and if there are any other properties in Lower Makefield that would effect the point system. Ms. Saylor stated it is for new construction or substantial improvement. Ms. Lee stated she is trying to quantify the potential risk. Mr. Murphy stated that he has advised Mr. Bornstein that because this one section that will not comply, it may impact his own flood insurance; however, he is not in the position to comment on what, if anything, it might do to the Township's eligibility in that program although antidotally he has been told it does not impact. Mr. Gruen stated he feels it will depend on how they uphold the rest of the new construction in the Township; and if they give Variances easily to drop the elevation, he feels it will effect the Township. He stated they have not given any until now. Mr. DosSantos stated he feels there must be a scale on a percentage basis, and this is only 300 square feet in the overall Township; and he feels if there is any effect, it would be negligible.

Ms. Lee asked Mr. Majewski his opinion; and Mr. Majewski stated FEMA is "peculiar" sometimes in their way of doing things. He asked Ms. Saylor how much over the threshold the Township is for the Rating, and Ms. Saylor stated they are more than 300 points over. Mr. Majewski stated because of that even if they decided to take away every point, they would still maintain the discount; and Ms. Saylor stated they would unless something else were to take away from it. Mr. Gruen stated they would have to try to keep it in line, and Ms. Saylor will be there to remind them.

Mr. Majewski stated he agrees with Mr. DosSantos that he doubts for one Variance for this minor portion of a house, they would take away every point. He stated the Township is also looking to gain additional points to get a higher rating.

Ms. Holmes stated with regard to Ms. Saylor's September 28 review letter she spoke to Ms. Saylor today; and she noted Comment #1 under Zoning Comments, and that is not applicable for this project because it is not a Land Development Application. Ms. Holmes stated this also applies to Comment #5 as this property is not within the floodway area, rather it is in the floodplain so Comment #5 does not need to be addressed with regard to the analysis that is mentioned.

As the Zoning Hearing Board had not received the Boucher & James September 28 review letter a short recess was taken so that copies could be provided to the Board.

Mr. Gruen asked if there is anyone in the audience who wishes to speak in support or against the project; however, no one wished to speak at this time.

Ms. Holmes stated they will comply with Items #2, #3, and #4 under the Zoning Comments. Ms. Holmes stated the remainder of the letter is a “Will Comply” other than comment #8 which is the additional item of relief that they requested tonight from Section 200-56.C.(1). Ms. Kirk stated she presumes Item #6 is the basis being, and Ms. Holmes stated that is a Variance which was already part of the Application. Mr. Murphy stated a Revised Plan will be submitted incorporating all of the Comments.

Mr. Gruen stated with regard to the Building Permit, they are going to have to go through all of the regular floodplain regulations, and Mr. Majewski stated they will have to comply with all appropriate regulations.

Mr. Murphy Moved his additional Exhibits.

Ms. Saylor stated it was indicated that the house had a basement, and Mr. Bornstein stated it is a full unfinished basement.

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

Mr. DosSantos moved, Mr. Gruen seconded and it was unanimously carried that the relief requested as Amended be granted.

CANCEL NOVEMBER 6, 2017 MEETING

Mr. Majewski stated there are no Applications for the next meeting. Mr. DosSantos moved, Mr. Connors seconded and it was unanimously carried to cancel the November 6, 2017 meeting.

OTHER BUSINESS

Mr. DosSantos stated the Board is still missing the newer Sections of the Zoning Ordinance including the floodplain regulations. Mr. Majewski stated he understood that they received a copy but that they did not receive the updates. Ms. Kirk stated when she was the Zoning Hearing Board solicitor, the Ordinance was Amended with the floodplain requirements, and it was a stand-alone Ordinance that was always referenced because that has not yet been codified into the existing Code. Ms. Saylor stated she believes that it had, and it is on-line. Mr. DosSantos stated part of tonight’s Application involved one of the Sections which is not part of what the Board was provided although it is on-line. Mr. Majewski asked when they received their Zoning Ordinance books, and Mr. DosSantos stated theirs

October 17, 2017

Zoning Hearing Board – page 9 of 9

are dated 2012. Ms. Lee stated she has been on the Board for six months, and that is when she was provided her book; however, Mr. Gruen stated it is still dated 2012. Mr. Majewski asked if there were any Supplements put in it, and the Board indicated there were not. Mr. Majewski asked to get those Supplements out to the Zoning Hearing Board.

There being no further business, the meeting was adjourned at 8:25 p.m.

Respectfully Submitted,

Keith DosSantos, Secretary