

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – JUNE 19, 2018

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on June 19, 2018. Mr. Gruen called the meeting to order at 7:40 p.m.

Those present:

Zoning Hearing Board: Jerry Gruen, Chairman  
Anthony Zamparelli, Vice Chairman  
Pamela Lee, Member  
Matthew Connors, Alternate Member

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

Absent: Keith DosSantos, ZHB Secretary  
James McCartney, ZHB Member  
Michael Tritt, ZHB Alternate Member

APPEAL #18-1798 – JAMES PETROFF

Mr. James Petroff was sworn in.

Mr. Flager marked the Exhibits as follow: The Application was marked as Exhibit A-1. The two-sheet Site Plan was marked as Exhibit A-2. The impervious surface break down was marked as Exhibit A-3. Exhibit A-4 was the April 16 review letter from the Township engineer, Remington, Vernick. Exhibit A-5 was the Applicant's response to that review letter. Exhibit A-6 was the June 8 review letter from Remington Vernick. Exhibit B-1 was the Proof of Publication. Exhibit B-2 was the Proof of Posting. Exhibit B-3 was the Notice to the neighbors.

Mr. Petroff noted the response letter from Remington & Vernick dated June 8, and added he has a set of eleven copies of Revised Plans addressing the nine concerns listed in that June 8 letter. He presented the Plans to the Board this evening.

Mr. Petroff stated on the June 8 letter Items #1 and #2 are comments that were on the previous engineer's letter which he has addressed, and Items #3 through #9 are the changes that have been made on this Plan. Mr. Majewski asked if the first sheet was changed as he does not see a Revision date. Mr. Petroff stated the first sheet was changed; and it addresses the footer for the retention wall, the type of fabric, and the inlets that will go into the BMPs.

There was some confusion as to what was being presented to the Board this evening. It was noted the third Plan that was presented this evening is the latest Revision and this Plan has three pages.

Mr. Zamparelli asked if they are still requested relief for impervious surface, and Mr. Petroff agreed they are. He stated the changes related to impervious surface were addressed on the second Plan.

Mr. Flager stated there were two two-sheet Plans in the packet that were slightly different.

Mr. Gruen stated the Board now has three sets of Plans, and he asked Mr. Petroff to explain each Plan. Mr. Petroff stated the original Plans were submitted to Mr. Majewski. Mr. Gruen stated it is difficult to determine which set that is since they are all dated the same. Mr. Majewski stated Mr. Petroff stated they revised the Plan twice, but they did not differentiate by adding a Revision date which is the standard practice. Mr. Majewski stated they now have three sets of Plans all with the same date.

Mr. Petroff was shown a Plan, and he indicated that was the first Plan. Mr. Petroff identified the second Plan submitted, and the third Plan which was provided this evening. The second Plan submitted was marked as Exhibit A-7, and the Revised Plan that was submitted this evening was marked as Exhibit A-8.

Ms. Lee asked if they should just look at Exhibit A-8, and Mr. Petroff stated he assumes that they would look at that one. Mr. Gruen stated he wishes that they had been provided Exhibit A-8 before this evening so that they would have an opportunity to study it. Mr. Gruen asked that Mr. Majewski review this carefully. Mr. Majewski stated they had the Township engineer look at the original Plan that was submitted, and the engineer had reviewed that. He stated the Applicant then revised the Plan, and then there is the June 8 letter with the subsequent comments from the Township engineer. The Applicant again revised the Plans, and that is the Plan that he submitted this evening which is a response to the engineer's comments. Mr. Majewski stated the Plans have been reviewed by the Township engineer; and with the exceptions of comments that may not have been fully addresses, the Applicant has attempted to address the comments in the June 8 letter.

Mr. Gruen suggested that they hear from the Applicant this evening and then send this Revised Plan back to the engineering firm for review and get a final decision. He stated he is having a difficult time reading the new Plans. Mr. Connors asked if there is a letter from the engineer. Mr. Gruen stated while there is a letter from the

engineer listing what he is asking for; however, he personally cannot tell if the Revised Plans received this evening if the Applicant has answered what the Township engineer was asking for. Mr. Connors stated there is not a letter from the Township engineer verifying the Plans received tonight, and Mr. Gruen agreed.

Mr. Petroff stated he wants to install a swimming pool in his back yard. He stated the Plans show the layout for the pool and where the pool will be located. He stated the Plans also address the erosion and how they will handle the fill from everything that will come from the trenches and the swimming pool. He stated the topsoil will be left on site, and he will use it to finish the grading around the pool. He stated the clay that is coming out of the hole will be hauled away by those installing the pool.

Mr. Petroff stated the swimming pool will add the 3' coping around the outside perimeter of the pool. He stated in order to compensate for the impervious ground cover for that, he will be taking out his sidewalks that go around his house and approximately 10' of his driveway so that he can get under the impervious ground cover for that part of the project.

Mr. Petroff stated as the heavy equipment goes in and out, they will ruin his driveway; and he wants to redo his driveway. He stated he would like to modify his driveway and put in a circular driveway. He stated one of the reasons he wants to do this is because he is at the corner of Big Oak Road and Marlboro Drive and currently there are people who try to make a left-hand turn into Marlboro and people going around those people go around them off the road onto his front lawn. He stated when he tries to get into his driveway, there are people coming from all directions. He stated he wants to have something safer than sitting in the middle of Big Oak Road and doing K-turns. Mr. Gruen asked if this will then involve a second entrance onto Big Oak Road, and Mr. Petroff agreed. Mr. Gruen stated he believes Mr. Petroff would need permission from the County to do this. Mr. Petroff stated he will need permission from the State because it is a State road so he needs permission from PennDOT. Mr. Petroff stated he needs approval from the Zoning Hearing Board in order to go to the State; and he needs to meet all of Lower Makefield Ordinances and Zoning specifications, and once he has that, PennDOT will give him a Highway Opening Permit in order to do this if they okay it. Mr. Majewski agreed that this is correct. Mr. Gruen stated he needs to get permission from the Zoning Hearing Board first, and then PennDOT will talk to him. Mr. Majewski stated for a Highway Occupancy Permit, PennDOT requires that the Township is okay with it. Mr. Zamparelli asked if the Township is okay with it; and Mr. Majewski stated the Township is not because Mr. Petroff does not have a Variance yet. Until Mr. Petroff gets the Variance, the Township cannot tell PennDOT that this is okay so Mr. Petroff is correct in his procedure.

Mr. Gruen stated Mr. Petroff has indicated that he is taking away a piece from the driveway and then adding a driveway, and he asked the net increase to the impervious surface. Mr. Petroff stated the net increase is 939 square feet. Mr. Zamparelli stated he will then be at 24.6% impervious surface. He asked Mr. Petroff what he is doing to bring the impervious surface down to an effective 16.72% which he had originally. There was discussion on the amount of the original impervious surface. Mr. Petroff stated he is looking to abate the amount of ground cover he has by taking the storm drains for all the stormwater coming off the roof and putting it into the infiltration pits on the sides of his property.

Mr. Zamparelli asked Mr. Majewski if he checked the figures for an effective impervious surface back to the 16.72% he is showing on the impervious surface breakdown sheet. Mr. Gruen stated he feels it shows the existing impervious surface of 17.86%. Mr. Flager stated in Mr. Petroff's response letter there is a different impervious surface breakdown which is different from the impervious surface breakdown that was previously provided. He stated the response letter states it is 17.86% while the original had 16.72%. Mr. Gruen asked what is the correct sheet. Mr. Petroff stated when it was first submitted, he noticed that the engineer had made a mistake; and the impervious coverage that he has presently was more than what the engineer had stated the first time so he changed it. Mr. Petroff stated the engineer had neglected to take out for the impervious ground cover the amount of square footage he is alleviating from his sidewalk and driveway that he is pulling out which is 504 square feet. He stated when you remove the 504 square feet, he goes down to 939 square feet.

Mr. Gruen asked which is the correct sheet for the impervious surface, and Mr. Petroff stated the sheet that has "James and Charlotte Petroff" on the top. Mr. Gruen stated at the top it says, "existing impervious surface," and Mr. Gruen stated as he understands it now, Mr. Petroff took out of the existing impervious surface the part that he is going to remove. Mr. Petroff stated he has not taken it out yet.

Mr. Majewski stated his original calculation by his surveyor was incorrect, and Mr. Petroff corrected that to correctly note that the existing impervious surface is 17.86%. Mr. Majewski stated he then did the proposed impervious surface including all of the additional impervious surface he is adding for the pad, the walk, the coping, and the driveway addition; and he then subtracted from that the amount of the driveway that is being removed for that section he had referenced earlier. Mr. Majewski stated 23.2% is the number that he is currently requesting relief for. Mr. Majewski stated by virtue of adding in the seepage beds on the site, he is bringing the impervious surface, from a stormwater management perspective, down to what is existing. He stated the stormwater management system is handling all of

the increased impervious surface. Mr. Majewski stated the latest engineer's review letter has a number of items that are more administrative in nature, and there are no real issues with the stormwater management design.

Mr. Gruen stated he received an e-mail from Mr. Majewski's assistance stating that the engineer indicated the Board should require a perc test. Mr. Majewski stated that is Comment #1 on the engineer's letter. Mr. Gruen stated if the Board approves the Variance, they will be subject to the perc test, and Mr. Majewski agreed they are required to do that by the Township's Stormwater Management Ordinance.

Mr. Petroff stated he spoke to the Township engineer about that in length; and according to DEP or whoever makes the rules for this, if the total amount over the allowable impervious ground cover is less than 1,000 square feet, he does not have to have the perc test. Mr. Petroff stated what the engineer advised he did have to have, which is shown on the Revised Plan, are the types of soils that are in the ground.

Mr. Gruen asked the allowable impervious surface, and Mr. Majewski stated it is 18%.

Mr. Majewski stated Mr. Petroff is correct that when you are below 1,000 square feet of proposed impervious surface, a perc test is not required. Mr. Gruen stated the Zoning Hearing Board could require it, and Mr. Majewski agreed.

Mr. Gruen asked Mr. Petroff if his home is in the section that still has septic, and Mr. Petroff stated he has public water and sewer.

Mr. Petroff stated there is another reason why he wants to put the driveway in which is because his wife is disabled, and he has been upgrading his home with an elevator and widening doors. He stated if he needs to accommodate a wheelchair, he would like to come back to the Board for a temporary ramp up to the front door if it is necessary in the future. Mr. Gruen stated he may not need a Variance for that. Mr. Petroff stated he wants to have a level place to land which is why he also wants the proposed driveway.

Mr. Gruen asked if the pool will be used as a therapy pool for his wife; and Mr. Petroff stated it is for the both of them to help keep them in shape.

There was further discussion about the second opening to Big Oak Road. Mr. Zamparelli stated he has no issue with it. Mr. Petroff stated the third page of the final Revised Plan. Mr. Gruen asked how the extra opening will relieve the problem of people driving onto his lawn. Mr. Petroff stated the Plan shows that he is putting in a row of Belgian block curbing, and people

tend not to go over a curb when they are going around someone. Mr. Gruen asked if he could not just do that now; and Mr. Petroff stated while he could drivers coming onto his front lawn is not the main problem, and if he has to get into his driveway and he does not have a clear way to do a K-turn in the middle of Big Oak he pulls over in front of his driveway no matter which way he is facing, and waits for traffic to go past. He stated then from the easement on the road, he is making a K-turn after the traffic has cleared; and he would like to be able to pull right into his driveway. Mr. Gruen asked if his driveway is large enough to turn around, and Mr. Petroff stated it is not now. He showed on the left side of the Plans it shows that he does not really have the room. He stated he has two large vehicles. Mr. Gruen stated in order to leave his property, he currently has to back out onto Big Oak Road; and Mr. Petroff stated currently he backs into his driveway.

Mr. Zamparelli stated even if the Zoning Hearing Board approves the driveway, it still needs to be approved by PennDOT. Mr. Majewski agreed. He also added that stretch of Big Oak Road is straight and fairly flat, and there are no obstructions to sight distance that he is aware of. Mr. Majewski stated PennDOT will review this and require information such as what Mr. Petroff has provided on Page 3 of the Plan.

Mr. Gruen stated he feels it is currently a dangerous situation since Big Oak Road is a busy road; and Mr. Petroff backing into his driveway is dangerous, and backing out would be even worse. Mr. Gruen stated he does not have a problem with what Mr. Petroff is proposing unless PennDOT has a problem. Other Board members agreed.

Ms. Lee stated the Board could make a Motion subject to final approval by the Township engineer and PennDOT.

Mr. Gruen expressed with the soils due to the amount of clay. Mr. Majewski stated a perc test is not required because it is under 1,000 square feet. He also noted that the soils in that area according to the soils study are not so much clay, and the material percs somewhat. He stated they are moderate soils. Mr. Gruen asked Mr. Majewski if he is comfortable not having a perc test, and Mr. Majewski agreed.

Ms. Lee moved and Mr. Zamparelli seconded to grant the Variance according to the Plan marked as Exhibit A-8 with impervious surface of 23.2% conditioned on installation of an infiltration system to bring it to an effective impervious surface of 17.86% and allow the proposed second driveway entrance subject to final approval by the Township engineer to address outstanding issues.

Mr. Connors asked if Mr. Petroff will have to come back to the Zoning Hearing Board if PennDOT requires changes to the Plan. Mr. Majewski stated if the change were to require additional impervious surface, he would have to come back; however, if it reduces the impervious surface, he would not. Mr. Connors asked what would happen if they changed the location of the driveway opening. Mr. Majewski stated that would be up to the Zoning Hearing Board; and if they want it in this location and no other, it could be made a Condition, but if they do not care if the second driveway is at a different distance provided it does not increase the impervious surface, the Zoning Hearing Board would not have to be concerned with that, and Mr. Petroff would not have to come back to the Zoning Hearing Board.

Mr. Gruen stated he would leave it up to PennDOT as they are looking at it from a safety issue, and he would only have to come back if there was an increase in the impervious surface. Mr. Majewski stated there is not much room for Mr. Petroff to alter the distance since currently it is 5' from the property line which is the Township minimum so he would not be able to move it closer to the property line without a Variance which would require Mr. Petroff coming back to the Zoning Hearing Board. Mr. Majewski stated he feels PennDOT would probably want the greatest possible separation between the driveways so he doubts PennDOT would want them moved closer together. He feels the location will substantially not change per PennDOT's review.

Motion carried unanimously.

#### APPEAL #17-1792 – ERIN DEVELOPMENT APPROVAL OF CONTINUANCE

Mr. Flager stated an e-mail was sent to his office from Ed Murphy on behalf of Erin Development requesting a Continuance until August 21, 2018. Mr. Flager stated they have been working with the Township for some time and have requested a number of Continuances in order to consider all the issues.

Mr. Zamparelli moved and Ms. Lee seconded to grant the Continuance until August 21, 2018.

Mr. Lewis asked if the developer is current with all Fees due to the Township, and Mr. Majewski stated they are not. Mr. Lewis asked how much they owe the Township, and Mr. Majewski stated it is "quite a lot of money." He stated for this Application he believes they owe \$11,000, and for another Application it is substantially higher; and they are scheduling a meeting to sit down and resolve that issue and get the Township's bills paid. Mr. Zamparelli asked if they can base the Continuance on that.

Mr. Gruen asked Mr. Flager if they could put in the Motion that they will not hear the matter until they pay everything they owe. Mr. Connors stated they could not grant the Continuance. Mr. Gruen asked if they do not grant the Continuance will they automatically get what they want. Ms. Lee stated they could deny it. Mr. Flager stated if it was Denied, they would presumably Appeal. Mr. Flager asked Mr. Majewski if there is a meeting coming up to resolve a number of issues, one of them being the money owed to the Township; and Mr. Majewski stated he anticipates that part of that part of that money will be paid tomorrow, and the remainder of the money will be paid upon satisfactory agreement from the meeting. He stated there is a meeting on this specific Application tomorrow.

Mr. Flager stated they could agree to a Continuance for a lesser period of time. Mr. Gruen stated they could grant the Continuance until the next Zoning Hearing Board meeting; and if they have not paid by then, the Board could deny the Continuance.

Mr. Connors stated Mr. Majewski indicated that there is one they owe \$11,000 and another that they owe more. He asked if those are two separate projects he is referring to, and Mr. Majewski stated they are two separate projects. Mr. Gruen asked at what stage is the other project, and Mr. Majewski stated it is the project across the street from Charles Boehm called Freeman's Farm. He stated it is coming toward Dedication, and he requested that they resolve all of the issues and pay their back bills. He stated they are setting up a meeting to go over their dispute on a certain number of those bills.

Ms. Lee stated if they are scheduled to make a payment tomorrow in good faith the Zoning Hearing Board should continue it to July 17. Mr. Gruen stated at that time if Mr. Majewski is satisfied that they made a good effort or paid their bills, the Zoning Hearing Board will grant them the rest of the Continuance. Mr. Connors asked if the developer is making an effort, and Mr. Gruen stated they are meeting tomorrow. Mr. Majewski stated he advised them in a telephone call a week ago that he expected payment prior to the meeting.

Mr. Gruen asked Mr. Flager what would happen if the Zoning Hearing Board denied their extension, and Mr. Flager stated they would then Appeal the Denial. Mr. Flager stated the Board would be denying it more on a technicality of not wanting the Continuance request, and it would then go up to Doylestown. Mr. Gruen stated he feels the best option is to postpone this to the next meeting. Mr. Flager stated they have requested a number of Continuances already. He added that from his interactions with Mr. Murphy he understands that they wanted to resolve certain issues so that when they come before the Zoning Hearing Board, those issues would be resolved, and it would be a much smoother process.

Mr. Gruen asked Mr. Lewis why they have not paid and at what stage they are at on their project. Mr. Majewski stated the Board of Supervisors voted to oppose the Application for the Variances, and the Applicant would like to have an informal meeting with some of the new Supervisors to explain why they are asking for the Variances to see if the Board of Supervisors might change their mind on the opposition to the Variances. Mr. Majewski stated there has been trouble trying to set up that meeting due to conflicting schedules of some of the Supervisors recognizing that only two could be at any meeting because of the Sunshine Act.

Mr. Majewski stated they finally have a meeting set up. Mr. Majewski stated the previous Extension was only until tonight's meeting; and he therefore requested the Applicant to extend that time, and they gave that Extension in order for the Township to act.

Mr. Zamparelli moved to amend the time for the Continuance to July 17, 2018.

Mr. Connors stated his concern is that this is the seventh Continuance, and it does not sound like they are making progress. Mr. Majewski stated he is not certain that this is the seventh Continuance; however, the Board of Supervisors voted to oppose their Variances, and the developer's contention is that some of the changes that were made to the Plan were at the direction of prior Boards of Supervisors to move things around which created some of the Variances. Mr. Majewski stated the Applicant wants to discuss the reason why the Plan changes resulted in the Variances hoping that the Board of Supervisors would then possibly change their opposition to some or all of the Variance requests.

Ms. Lee asked what is the money they owe the Township for. Mr. Majewski stated as a separate path, they have also submitted Subdivision and Land Development Plans to the Township, and the Township engineers – both the prior one and the current one – have reviewed the Plans that they submitted for compliance with the Subdivision and Land Development Ordinances and Stormwater Management Ordinances, and that is the bill that remains outstanding.

Mr. Gruen asked if the Township can tell the Applicant that they are not going to review any of the Applications until they pay the bills. Mr. Majewski stated there are some options – one of which is to if they do not ultimately pay the bills

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not grant an Extension and act upon the Plan either positively or negatively.

Mr. Gruen asked if they have a CO on the development on Big Oak, and

Mr. Majewski stated that is a different project.

Mr. Connors seconded the Motion as amended, and the Motion carried unanimously.

#### CANCEL JULY 3, 2018 MEETING

Mr. Connors moved, Ms. Lee seconded and it was unanimously carried to cancel the meeting of July 3, 2018 as there are no Applications scheduled.

There being no further business, Ms. Lee moved, Mr. Zamparelli seconded and it was unanimously carried to adjourn the meeting at 8:30 p.m.

Respectfully Submitted,

Jerry Gruen, Chairman