

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – JULY 17, 2018

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on July 17, 2018. Mr. Gruen called the meeting to order.

Those present:

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

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

APPEAL #18-1799 – RICHARD DOYLE

Mr. Scott Fegley, attorney, was present and stated they are requesting a Variance from the 15' setback for the property at 872 Queens Drive. He stated this came about because of his client's adherence to all of the requirements of the Permitting process. Mr. Fegley stated his client obtained a Plot Plan from the Township, and built according to the Plot Plan. Mr. Fegley stated no survey was ever requested or required as part of the Permitting process. He stated he passed all Township inspections, and the project was completed. Mr. Fegley stated a neighbor had their own survey done, and it was determined that the building as constructed was 1 ½" in violation of the 15' setback. He stated they are present to request a Variance as there would be a hardship if the building would have to be modified to correct the 1 ½" over the 15' setback.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1, the Site Plan attached was marked as Exhibit A-2, the garage spec plans were marked as Exhibit A-3, and the reasons the Applicant gave on the separate pages answering questions #6, #7, and #8 about the reasons for the request was marked as Exhibit A-4. Exhibit B-1 is the Proof of Publication. Exhibit B-2 is the Proof of Posting. Exhibit B-3 is the Notice to Neighbors.

Mr. Richard Doyle was sworn in and stated he lives at 872 Queens Drive. Mr. Fegley asked Mr. Doyle the dimensions of the garage he constructed on his property, and Mr. Doyle stated they were 32 by 37. Mr. Fegley stated he had described for the Zoning Hearing Board the Permitting process that Mr. Doyle went

through for the Permit to build the garage, and Mr. Doyle stated he had submitted a Plan which required approval from the Engineer's Department. Mr. Doyle stated the engineer asked for clearer Plans which he provided. Mr. Doyle stated he had provided the Plot Plan which he had received from the Zoning Office to designate where on his property the garage was going to go. Mr. Doyle stated he also submitted an Impervious Surface Plan, a Bucks County Conservation Plan, and numerous other Plans. He stated after submitting the Plans, they were reviewed, and he was given permission to build the garage.

Mr. Fegley asked if a survey was ever requested or required during the process, and Mr. Doyle stated it was not.

Mr. Fegley asked if there were Township inspections during the building process, and Mr. Doyle stated he believes there were a total of seven. Mr. Doyle stated the initial inspection was when the footers were dug by the concrete contractor to verify the depth and the location of the footings where the concrete was going to be poured to set in stone the location of the building. He stated after the footings were poured, there was an inspection to verify that those footings were poured in the approved location. Mr. Doyle stated there were then framing, electrical, and drywall inspections, and then the finish. Mr. Fegley asked if they passed all inspections, and Mr. Doyle stated they did.

Mr. Fegley asked what would be the hardship now of complying with the 15' setback. Mr. Doyle stated he cannot see any feasible way of moving the garage an inch and a half. Mr. Fegley asked if it still complies with the minimum combined distance of 26' from the neighbors' property; and Mr. Doyle stated it does, and the distance between his property is now 14' 10 ½" and his neighbor has 12'.

Mr. Zamparelli asked how he determined where to start from if he did not have a survey. Mr. Doyle stated he checked with the Township on existing Plot Plans of all the neighbors – the distance between his house and the neighbor on the opposite side is 30'. He stated there is no Variance request for the distance between those two houses to be any less than the 15' set by the Township; and they divided that up and pulled measurements. He stated they actually pulled that measurement in 4" so that they would be safe from any variation through construction, and that was verified by the inspector. Mr. Doyle stated the garage is 26' 8" because they found that the 27" would have literally been on the line so when the inspector came out they verified that, and they pulled that measurement by 4" to be on the safe side.

Mr. Zamparelli stated he still does not understand how they knew where to start. Mr. Doyle stated the distance between the neighbor's house to the right and his house is 30', and there were no Variance requests at the time of building on either of the houses to break that 15' requirement. Mr. Gruen stated the houses are not

set exactly the way the Plot Plans show since if there is 30' one of the houses has to be closer to the property line than the other one, because Mr. Doyle divided the 30' in half, and it did not come out right. Mr. Doyle stated his home is 15' on his Plot Plan, and he verified that with the Township. He stated his neighbor's house on the opposite side, not the 12' neighbor – but the other neighbor on the other side also has 15' on his Plot Plan. Mr. Doyle stated he verified that by measurement and divided that by two and found that center line and then pulled his measurement from his property at the 105' frontage that he has. He stated that matched the 27' on his Plot Plan that he had from the physical house – not the garage.

Mr. Zamparelli asked if he is still even with the physical house, and Mr. Doyle agreed that he is still square with his house.

Mr. McCartney asked Mr. Majewski what is the requirement from the Township to have a survey done prior to putting up a garage. Mr. Majewski stated they require that sufficient information be provided in order to ascertain that whatever is being constructed complies with the Zoning Ordinance. Mr. McCartney stated the Applicant went through that process and received approvals. Mr. Majewski stated they did go through that process although if he had reviewed it, he would have requested additional information. He stated at the time Mr. Doyle submitted his information, the Township accepted it.

Mr. Gruen asked how it was determined that it was wrong. Mr. Doyle stated his neighbor was having a fence put in and by Township requirements a survey is required for a fence to be installed, and the survey denoted that the garage was 1 ½" over the 15' setback.

Ms. Lee asked if an 1 ½" is within a surveyor's margin error, and Mr. Majewski stated "possibly;" however, the neighbor has a survey and Mr. Doyle does not so absent any further proof, they have to rely on the survey from the neighbor. Mr. Gruen stated there is a certain amount of error allowed on a survey, and he asked if Mr. Majewski could not have just approved it so that Mr. Doyle would not have had to come before the Zoning Hearing Board. Mr. Gruen stated he feels it is an "awful" expense to make Mr. Doyle come here for 1 ½". Ms. Lee stated she feels this is on the Township, and she asked if the Township is here defending their Permit approval since the Township approved his Permit.

Mr. Gruen asked if the Township is challenging this, and Mr. Majewski stated they are not.

Mr. Zamparelli asked if the 1 ½" is detrimental to the fence erection by the neighbor, and Mr. Doyle stated it was not. Mr. Doyle also stated the nearest monument is three properties away. Mr. Doyle stated his neighbor's new fence has already been installed.

Mr. Doyle stated there is not an impervious surface problem as he returned 25' of impervious surface in the construction of the garage.

Mr. DosSantos asked Mr. Doyle if he was aware of the 15' requirement; and Mr. Doyle stated he was, and this is why they subtracted 4" when the concrete worker poured the foundation. Mr. Doyle added this was verified by the inspector who came out, and Mr. Doyle had explained to him why they had pulled that measurement and why the 27' was no longer 27' but was 26' 8". Mr. Doyle stated after all of this happened, the Township came out to verify that the 1 ½" he is requesting is what he is off; and they verified it based off of the garage's location to the now-survey mark. He stated he had asked for 5 because of the variation due to how far the monument is away of potential future surveys going in a different direction; however, he would be willing to accept that the Township says that the location is fine where it is.

Mr. Chris Myer was sworn in and stated he lives at 880 Queens, which is next door to the Applicant. He stated he had a survey completed at the request of the Zoning and Code Enforcement Department to replace a fence that was already on his property. He stated when the survey was completed, they measured and it looked like it was a little bit closer than the 15' and it was actually 3 ½" at the mark that the surveyor did. He stated at that point he was concerned about potential property line disputes which is when he brought it to the attention of the Zoning Department. He stated the construction was determined not to be square to his property line so it might be 1 ½" at one point, it was 3 ½" at another, and it could be probably not more than 5" in another area. He stated he is not here to dispute any of this, but he was concerned about potential property line disputes if and when he would sell the home. He stated it turns out he really did not actually need a survey done to get his fence replaced so he spent \$600 unnecessarily. He stated the reason he is present is to request that moving forward if anyone is going to build a permanent structure on the setback of a property line, that the Township require a survey; and it should not be the responsibility of the homeowner to do that.

Ms. Lee stated that would not be in the Zoning Hearing Boards' authority.
Mr. Myer stated he is just suggesting this, and he wanted it on the Record.

Mr. McCartney asked Mr. Myer who required him to get a survey, and Mr. Myer stated it was the Code Enforcement Department. He stated when he asked them about the Permitting process, he was told that he had to have his property surveyed which he did. He stated he was then told that he did not need it. Mr. McCartney asked Mr. Majewski to clarify this for the Board adding Mr. Myer was told that he needed a survey when he was putting in a fence, but the Applicant who put in a garage was told he did not need a survey. Mr. Majewski stated in either case, you need sufficient information in order to ascertain the location of a property

whether it is for an addition or setting property corners. He stated if there is an accurate survey that shows definitive ties to property lines that the fence contractor can establish that would be sufficient, or they would have to have their property marked as Mr. Myer did in order to accurately put the fence on the property. He added it is required to be on the property, and there is no setback requirement although it cannot be on the property line or you need permission from both property owners.

Mr. Zamparelli asked if Mr. Myer's concern is valid about selling the property.

Mr. Gruen stated they are not going to make Mr. Doyle move the garage; and if Mr. Doyle is willing to accept the survey as it is, the Zoning Hearing Board could approve the garage. Ms. Lee asked why he would need to accept Mr. Myer's survey for the Board to approve the Variance request. Mr. McCartney stated it seems that there is a discrepancy since Mr. Doyle said 1 ½" and Mr. Myer said 3". Mr. Gruen stated he said it was between 1 ½" and 5" as it is not square. Mr. Gruen stated if they approve the garage someone later could do a new survey and say the survey was wrong which is why he said Mr. Doyle could accept the survey.

Mr. DosSantos stated Mr. Fegley and the Applicant crafted the request to allow for the 5" so it is not about accepting the survey, rather it is about approving the Variance as requested which is the 5" which would cover everything.

Mr. DosSantos asked Mr. Fegley the actual request, and Mr. Fegley stated it is 5".

Mr. DosSantos moved, Ms. Lee seconded and it was unanimously carried that the Application for a Variance of the setback be granted as requested to provide for a 5" variance along the property line.

Mr. Gruen asked Mr. Majewski if he could resolve situations like this in the future. Mr. Majewski stated he was advised by the Township solicitor that this matter should go in front of the Zoning Hearing Board.

Mr. DosSantos asked about Mr. Myer's suggestion regarding a survey requirement. He asked if this would be at the homeowners' expense or the Township, and Mr. Majewski stated it would be at the homeowners' expense. Mr. Majewski stated unfortunately Mr. Doyle had gone off proposed house locations, and he had made the assumption that the 30' would have been split equally; and based on the survey it was off by a few inches. Mr. Majewski stated unless you are 50' feet away from a property line, he requires a survey drawing. Mr. DosSantos stated he understands that this situation was under a "prior regime." Mr. Doyle stated if he had been told to have a survey, due to the fact that he was encroaching on the property line, he feels that would not have been unreasonable for the Township to ask.

OTHER BUSINESS

Discussion of Erin Development Co. Appeal #17-1792

Mr. Majewski stated the Board granted Erin Development a Continuance until this meeting even though they had originally requested the Continuance until August 21. Mr. Majewski stated the Township did meet with the developer and reviewed some of their Variance requests and looked at possible alternatives to possibly eliminate several of the Variances. Mr. Majewski stated that will eventually be discussed by the Board of Supervisors so they may be amending the Application and coming back. Mr. Majewski stated hopefully that will be squared away prior to August 21 either withdrawing their Application or amending it.

Mr. Gruen stated they are still requesting a Continuance until August 21, and Mr. Majewski agreed. Mr. Gruen stated he feels that should be the last Extension the Zoning Hearing Board gives them. He stated they should give them the Extension and tell them that is the last one, and they have to come in or the Zoning Hearing Board will turn them down.

Mr. DosSantos asked if there is active development adding the last time they discussed it there was active motion back and forth between the Parties. Mr. Majewski stated it took some time to line up a meeting with Township officials and the developer, and the meeting was held toward the end of June. There is still discussion that needs to take place.

The Board went into Executive Session.

The meeting was resumed and Mr. McCartney moved, Mr. Zamparelli seconded and it was unanimously carried to grant the Continuance to August 21, 2018.

There being no further business, Mr. Zamparelli moved, Mr. McCartney seconded and it was unanimously carried to adjourn the meeting.

Respectfully Submitted,

Keith DosSantos, Secretary

