

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – AUGUST 7, 2018

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on August 7, 2018. Mr. Gruen called the meeting to order at 8:05 p.m. and apologized for the delay.

Those present:

Zoning Hearing Board: Jerry Gruen, Chairman
 Anthony Zamparelli, Vice Chairman
 Keith DosSantos, Secretary
 James McCartney, Member (joined meeting in progress)
 Michael Tritt, Alternate Member

Others: Jim Majewski, Director Planning and Zoning
 Randall Flager, Zoning Hearing Board Solicitor
 John B. Lewis, Supervisor Liaison (joined meeting in progress)

Absent: Pamela Lee, Zoning Hearing Board Member

APPEAL #18-1800 MIKE DEMAIO

Mr. Mike Demaio, Mr. Brian Stover, designer of the building, and Mr. Vincent Guarna, attorney, were present. Mr. Demaio and Mr. Stover were sworn in.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. Site Plan was marked as Exhibit A-2a, A-2b, A-2c, A-2d, and A2-e. Mr. Flager stated A-2d and A2-e are photographs/artist's renderings, and the others are various Plans. The letter stating the reasons they are requesting the Variance was marked as Exhibit A-3. 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. There were no objections.

Mr. Flager stated there was a delay because of a misunderstanding with the Court Reporter. Mr. Flager stated prior to the meeting a number of people signed in to have Party status including:

Paul and Carol Visokey	481 Prince William Court
Robert and Elizabeth Schenck	480 Prince William Court
Louise and James Lawter	475 Prince William Court
Derek Cohen	482 Prince William Court

Mr. Flager stated all the above will be granted Party status along with the Applicant.

Mr. McCartney joined the meeting at this time.

Mr. Guarna stated Mr. Michael Demaio currently has a pool on the property, and he wants to build a cabana and storage area. He stated the problem he is having is that he cannot comply with the Zoning because at the back of his property there is a restricted area. He stated the Site Plan shows the restricted area, the pool, and the walkway. Mr. Guarna stated Mr. Demaio's property is closer to a rectangle than a square, and the pool had to be put on the side of the property.

Mr. Guarna stated Brian Stover will construct it, and he has some pictures of similar cabanas that he has put in. Mr. Guarna stated this will be an accessory structure, and Mr. Demaio is not adding onto his house; and the only place the cabana can be put is on the front of his property. Mr. Guarna stated they have a blow-up of a survey that was done, and he could show where the cabana is going to go. Mr. Flager stated Mr. Guarna is referring to Exhibit A-2c.

Mr. Guarna this shows the shape of the property which is closer to a rectangle than a square. He stated the pool was allowed to be put in to the right if you are facing the front of the property. He stated they could not build the accessory structure on the back because there is a 35' wide buffer/restricted area there. He is asking to put it on the front side of the property, and it would back up to the street.

Mr. Guarna referred to Exhibit A-2a which is a rendering of what he is describing. He stated it shows the pool and the proposed cabana/accessory structure where it would be in relationship to the driveway and to the street. Mr. Guarna stated Exhibits A-2d and A-2e are renderings by the landscaper to show it three dimensional, and he has also brought with him pictures of similar structures that he has built.

Mr. Gruen asked if they are what he would be building here or are these just structures that he has built. Mr. Stover stated it would be the same design although Mr. Demaio would be using stone versus vinyl siding. Mr. DosSantos stated it might actually be "nicer" than what the photographs are, and Mr. Stover stated it is definitely nicer. He stated size wise and height wise they would be the same. Mr. Stover stated there would be a back wall that is blocking the street which will be all stone.

Mr. Gruen asked the size of the cabana, and Mr. Stover stated it would be 22 by 14. Mr. Majewski stated the Plans we have show the size to be 20 by 12 and a half feet. Mr. DosSantos stated on A-2c it says 14 by 20. Mr. Majewski stated their actual floor plans are slightly smaller.

Mr. Guarna submitted two photographs and asked that they be marked. Mr. Flager marked the picture of the pool with the water in it as Exhibit A-4 and the other picture with the cabana was marked as Exhibit A-5. Mr. Guarna stated the cabana is in both pictures, and it is representative that it will be open on the one side and will have a storage area for supplies, etc. Mr. Stover stated it also shows the back being blocked which will be facing the road. Mr. DosSantos stated it does not show the back on the Exhibits, and they are both open in the front. Mr. Stover stated the front is open, but there is a wall in the back. Mr. DosSantos stated these photos do not show the view from the back, and Mr. Stover stated it is a view from the pool into the cabana.

Mr. Demaio stated the renderings that they did of the property represent the view from the street of his property and the pool. He stated throughout the construction process the reason that they decided that they wanted to apply for a separate Permit to get a pool cabana was for a couple reasons. He stated they wanted to provide privacy for his family from the rest of the neighborhood. He stated because of the shape of his property, they are in the side yard rather than behind so they have no way to have any privacy for the family when enjoying the pool. He stated he also has young children, and right in the middle they wanted to have an area for some shade for the kids while they were at the pool and also to have a place to store all the stuff that goes along with a pool such as the floats and the chemicals and anything that could potentially be dangerous to the children. He stated they wanted to have an area close by the pool to keep it “nice” and to keep it stored inside. Mr. DosSantos stated it would also keep it out of the neighbors’ view if it is inside, and Mr. Demaio agreed. Mr. Demaio stated the privacy was not only intended for his family but also for the neighbors to stop some of the noise created by the pool from the rest of the neighborhood.

Mr. Demaio stated the accessory structure is within the building envelope and he could have a breezeway from it all the way over to his house and it would be allowable within the Code; but because it is an accessory structure and it is not technically attached to the house is the reason that they are applying for the Variance. Mr. Demaio stated he understands the need for the Ordinance; and if he were going to line his front yard with “Rubbermaid sheds,” that is something that would take away from the look of the neighborhood.

Mr. Demaio stated Mr. Stover has fully designed this project, and they have been working on the property for a number of months; and they are hoping that the intended, end result is an improvement to the property.

Mr. Gruen asked Mr. Demaio if he purchased the property with the pool or did he build the pool, and Mr. Demaio stated they built the pool. He stated they started in late spring, and the pool was just finished up the first week in July. Mr. Gruen asked if they planned on a cabana when they first built the pool, and Mr. Demaio stated it came into play as the construction project progressed. He stated it is a large project, and they did not know if financially it would fit in with the family's plan; however, once they started working through it, they decided it was necessary. Mr. Demaio stated he knew that there were some concerns about the noise and the fact that the pool is in the side yard, and they are hoping that this would address his family's needs along with some of the neighbors' needs.

Mr. Gruen asked the reason for the 30' setback. Mr. Demaio stated it is a restricted area. He stated he has read his Deed and the Title Report, and he stopped at the Township and inquired; but he does not know specifically and it just said that it is a restricted area and maybe it was put in there when the Subdivision was approved in the early 90s.

Mr. Gruen asked Mr. Majewski about this, and Mr. Majewski stated this was a restriction placed on the Lots within this development. He stated there are certain areas restricted from development, and that is under the jurisdiction of the Board of Supervisors. He stated from what he understands, it was not a Zoning issue; and it was just a restriction to buffer the neighborhood. Mr. Gruen stated even if the Zoning Hearing Board wanted to grant a Variance to built in the 30' restricted area, they cannot because that has to be approved by the Supervisors; and Mr. Majewski agreed. He stated if they were to put the cabana back in that area provided they were 10' off the property line, it would not be a Zoning issue; however, it would violate the Recorded Plan restriction.

Mr. DosSantos asked Mr. Demaio what is behind his home, and Mr. Demaio stated the back of his house backs up to another row of homes that are right on Pine Grove Road. He stated his house backs up to Pine Grove Road and the houses that are facing Pine Grove Road. Mr. DosSantos stated between Mr. Demaio's house and the Pine Grove Road houses there is the 30' restriction.

Mr. McCartney stated he assumes Mr. Demaio knew about the 30' restriction when he put the pool in this summer since he built it right at the 30' restriction; and Mr. Demaio agreed adding that due to the size and shape of the property he worked with Mr. Stover and his team to determine where they could place the pool to be within the allowable Codes.

Mr. Gruen stated in order for the Zoning Hearing Board to grant the Variance, the Applicant has to present the hardship. He stated the reason that there is a 30' restriction is not considered a hardship. Mr. Gruen stated Mr. Demaio put the pool there, and he created the hardship by not leaving space for a cabana. Mr. DosSantos stated regardless of where he put the pool, he still would not have been able to put the cabana in the back quarter of his lot. Mr. Gruen stated possibly he could have put it on the side. Mr. DosSantos stated he does not feel it is correct to say that he created the hardship; however, Mr. Gruen he did because he put the pool there. Mr. DosSantos stated because of the restriction, there was really no place else to put the pool; and because of the restriction and where his house is situated, the only place for the pool was in the side yard which is within the purview of the Zoning Code. Mr. Gruen stated he could have moved the pool to the right or left and created space for a cabana. Mr. Guarna stated he would still be here for a Variance in either of those situations.

Mr. Gruen asked if he considered putting the cabana on the right looking at the pool from the road. Mr. Gruen asked the required setback for the side yard at that location. Mr. Guarna noted Exhibit A-2c, and stated he feels he would still need a Variance because he would not be in the back third. Mr. DosSantos stated what that would not do, and he feels what the Applicant's plan is to shield the neighbors from the pool by putting the structure there. He stated if they were to put the cabana on the side, it would leave the pool exposed to the street so that is somewhat of a hardship because he does not have a back yard. Mr. DosSantos stated this is where the hardship comes in because he does not have a back yard to have the privacy you would like to have with a pool. Because of the shape and the oddity of the Lot, he does not have the privacy issue, and this accessory structure in the front "certainly fits that bill." Mr. DosSantos stated he feels it also does shield the pool and the pool "stuff" from the neighbors.

Mr. Zamparelli stated he feels the Lot has create the restriction since you cannot put anything back there so he does not feel Mr. Demaio created the hardship. He stated he put the pool in and now he wants to have a cabana. Mr. Zamparelli stated while he feels it looks great, he would like to know why there is opposition.

Mr. McCartney stated going up the driveway on the right hand side there seems to be an existing fence. Mr. Demaio stated as you come up his driveway to the right side there is a construction fence currently because the pool is there and they are in for a Variance. He stated the current scope of work which is Permitted through Lower Makefield Township allowed the pool and to continue with a Code-compliant fence straight across the front of the pool and be complete.

Mr. DosSantos asked if the structure he is proposing will be on pool side of that fence, and Mr. Demaio agreed. Mr. Demaio stated the fence will essentially tie into the sides of the pool cabana.

Mr. McCartney stated this is a new pool, and Mr. Demaio agreed. Mr. McCartney asked Mr. Demaio if he needed a Variance to get the pool, and Mr. Demaio stated he did not. Mr. McCartney asked why there is an established privacy issue if it is a new pool. He asked Mr. Demaio if they have been using the pool, and Mr. Demaio stated they have been using the pool since it is done. Mr. McCartney stated it does not have a permanent fence in front of it, and Mr. Demaio stated it has temporary construction fence. Mr. McCartney stated it is not the actual fence that is Code-compliant, and Mr. Demaio agreed. Mr. McCartney stated he does not know if there is a privacy issue established yet since they are not done the project. Mr. Demaio agreed they are not done the project. Mr. McCartney stated Mr. Demaio is saying that there will be a privacy issue, and he asked if that was unforeseen and did he not see this previously when they did the blueprints on the original pool. Mr. Stover stated they saw that there was going to be a privacy issue. Mr. McCartney asked if the fence being put in is a six foot stockade fence; and Mr. Stover stated when you pull up it is a five foot, black aluminum fence, and on the side and the rear going across the back it is a six foot privacy fence. He stated having the six foot privacy coming across the front from a design standpoint would look worse than what they are proposing.

Mr. Gruen asked if they considered for privacy doing what most people do and put in evergreen shrubbery, and Mr. Stover stated that is designed in there. Mr. Gruen stated he does not feel this is a hardship issue since Mr. Demaio built the pool and knew what he was building. He stated if he wanted the cabana, he should have planned for that ahead to see if he could somehow fit the pool with the cabana. He stated he is now coming in asking them to change the Zoning to allow him a building in the front, and he does not know how the neighbors feel about it.

Mr. Lewis joined the meeting at this time.

Mr. Gruen stated the Township has regulations. He stated the Zoning Hearing Board's job is to give the minimum amount of relief. He stated in this case he feels that he could put in greenery in the front for privacy or he could possibly fit the cabana to the left side of the pool which will be closer to the house

Mr. Guarna stated he feels other than the installation of landscaping they would still need a Variance because of the 30' buffer in the back. He stated he agrees with Mr. Stover that having the back closed in from the street would be the best option for privacy. Mr. Guarna stated if the cabana is put on the side, you would

still see all of the people bathing and everything going on in the cabana. Mr. Guarna stated while he agrees with Mr. Gruen that there are other locations, he feels what is being proposed is the best one.

Mr. Gruen stated he can achieve the privacy with shrubbery. Mr. Gruen also asked what he will do around the equipment since it is just “stuck out there on the side.” Mr. DosSantos stated he does not feel that is the issue; however, Mr. Gruen disagreed. Mr. Stover stated they have designed plant material to hide that. Mr. Gruen stated they have claimed that they will put the chemicals in the cabana, and he asked if there is a reason why they could not put all the chemicals next to the equipment; and he asked if they are enclosing the equipment or leaving it wide open. Mr. Guarna stated Mr. Stover was indicating that they would have shrubbery in front of the equipment. He stated they cannot enclose it as it would then be an accessory structure. Mr. Guarna stated Mr. Demaio had also indicated that you cannot just leave these chemicals laying around. Mr. Gruen stated he could see them asking for a small structure to enclose the equipment to protect the view of the neighbors from the equipment and keep the chemicals in there, and they could create the privacy with shrubbery or possibly put the cabana to the left side of the pool without a Variance.

Mr. DosSantos stated where the pool equipment is located is right next to where he is proposing the accessory structure, and it seems Mr. Gruen would be okay with putting the accessory structure there albeit a different size. Mr. Gruen stated it would be a small structure. Mr. DosSantos stated the issue is still the same as it is still in the front area. Mr. DosSantos stated the privacy was only one concern Mr. Demaio had, and some of the other issues were that he wanted to have a structure for his children and also a portion of it for storage of pool floats, etc. which could impact the neighbors. Mr. DosSantos stated he is a pool owner, and it is a very real issue. Mr. Gruen stated this is why he suggested that if he asked for a small structure to enclose the equipment, he could keep everything in there instead of a 22 by 14 structure which is very different than a 6 by 8 or 6 by 6 structure he would need for the equipment.

Mr. Gruen stated the other option is to put the structure on the side, and it will fit in there without a Variance.

Mr. McCartney noted the area on the Plan which Mr. Gruen is discussing on the left upper side, and he stated it appears that there would be space there for the structure which would be within the building envelope and also inside the 30' setback. Mr. McCartney asked if there was a reason the Applicant did not feel that was an adequate space for the cabana. Mr. DosSantos stated it would back into his patio, and aesthetically he does not feel it would work in the back yard.

Mr. Demaio stated it “messes” the flow of traffic, and to put that there would block the whole back yard view from the pool. He stated the accessory structure was not only for him but they also really wanted to provide a buffer between the pool and the rest of the neighborhood and it to tie it into the whole landscape design that Mr. Stover was working out for him. Mr. Demaio stated originally they had talked about putting the pool structure behind the pool, but then you would be shifting the pool itself even closer to the front of the neighborhood which is what they were trying to avoid. He stated the design intent was to have it centered at the pool so the children could get out and have some shade, have storage available, and also back it up to the pool equipment and put full screen shrubbery in front of the pool equipment to also block that and fence in the pool equipment view from the rest of the neighborhood.

Mr. Flager asked if any of the Parties had questions for the Witness.
Mr. Flager asked if the Applicant had rested their case, and Mr. Guarna agreed.

Mr. Paul Visokey was sworn in and stated he lives at 481 Prince William Court, and he is next door to the Applicant on the right as you face the property. Mr. Visokey stated he has photos he would like to submit.

Mr. Flager stated at this time it is appropriate to ask questions, but everyone will have the opportunity to speak.

Mr. Derek Cohen, 482 Prince William Court, was sworn in, and he described where his home is in relation to the Applicant’s property. Mr. Cohen stated his question for the Applicant is that he previously represented to a number of the neighbors that the intention for the cabana was to put up TVs, a bar, and those sorts of structures; and he asked if that is still true.

Mr. Demaio stated possibly it is in the future. He stated that he had found out that there was some concern in the neighborhood so he invited the neighbors to explain the project and get a better idea rather than just getting the Zoning letter. He stated he explained that it would not just be a shed in front of the pool, and the design intent was a structure and possibly in the future they would put a TV up there or a bar area. He stated he was trying to alleviate some concerns of his neighbors by having them into his home and explain that it would not just be a shed in front of the pool and that it would be part of the outdoor living.

Mr. Cohen stated that was not exactly how it transpired because the Zoning letter came out and then he and Mr. Demaio had a conversation at the Township Offices once he had received the letter he had suggested to Mr. Demaio that he should tell the neighbors what was going on. Mr. Demaio agreed. Mr. Cohen stated it was not that Mr. Demaio wanted to do it before the neighbors got the letter and it happened afterwards. Mr. Demaio stated when he saw Mr. Cohen at the Township was when he found out that there was concerns from the neighbors, and he previously did not know that the neighbors were that concerned with what was going on in his property. Mr. Flager advised Mr. Demaio that he only has to answer yes or no

Mr. Cohen stated that as part of the presentation this evening when they were talking about putting “floaty toys and shade” he neglected to tell the Board what he has set up already with a propane tank is an outdoor kitchen, a bar, and televisions; and Mr. Demaio agreed.

Mr. Cohen stated Mr. Demaio also neglected to tell the Board as part of this that while he knew that there was a restricted area in the back as part of the Subdivision Plan, he in fact removed all of the trees from the restricted area. Mr. Guarna objected to the relevance of this. Mr. Gruen asked Mr. Demaio if he got a Permit to remove the trees. Mr. Flager asked if there is a violation. Mr. Cohen stated there is a clear violation, and he can advise the Board of exactly what is going on. Mr. Cohen stated what occurred here is that the Applicant recently moved into the neighborhood. Mr. Cohen stated the Subdivision Plan requires that there is a 30’ restricted area of trees. He stated the area is called The Sanctuary. He stated as Mr. Majewski has correctly pointed out that cannot be granted a Variance or a Permit as it is part of the Subdivision Plan. Mr. Cohen stated what the Applicant did in order to be able to even come in and apply for the pool was remove all of the trees. Mr. Cohen stated development is not allowed and development includes the removal of vegetation, and Mr. Demaio did that. Mr. Cohen stated with regard to the privacy Mr. Demaio has been asked about, Mr. Demaio put that up and he built that into the restricted area. Mr. Cohen stated the pool fence that he has put up, Mr. Demaio built that into the restricted area. Mr. Cohen stated he “snuck” this pool into an area that may be unique for a pool, is not unique to the subdivision which is what the law requires. Mr. Cohen stated what the law requires is that it be somewhat unique.

Mr. Cohen stated none of the neighbors want to be in this situation where they have to have something “awkward” going forward with their neighbor. He stated what is being presented to the Board is a “complete fiction and disingenuous” as to what is actually occurring there. Mr. Cohen stated he has brought some pictures to show the Board what is going on. Mr. Cohen stated what you have is a place where no one would ever think to put a pool as it is in the side yard and is literally feet from the Visokey’s house. Mr. Cohen stated an experienced builder

applied and got this, and they put it in. He stated as Mr. McCartney asked, they have been using the pool illegally as the Permit says explicitly that it is not to be filled with water until there is a fence up. Mr. Cohen stated there is a chicken wire fence, and they have been using the pool all summer. Mr. Cohen stated they have been living with the “blight” and the safety hazards that come along with all of that; and now Mr. Demaio wants to come in, having created this issue and having just put the pool in weeks ago, and say “that it just dawned on him” that now he needs the Variance for the cabana and that he is doing it for the sake of the neighborhood, and he neglects to tell the Board what he really wants to do which is to build a pool bar. Mr. Cohen stated he has already put a propane tank in and he has already set the stage for that. He has told all the neighbors that is what he is going to do, and now he comes here and tells a different story. Mr. Cohen stated there is no question he has been the one to cause the hardship if there is a hardship which Mr. Cohen does not feel there is one.

Mr. Cohen stated Mr. Demaio built the pool, and he would have never been able to put it in had he not illegally removed all the shrubbery which gave him the ability to do that. Mr. Cohen stated now that he has put the pool in, he is now trying to “boot strap” on the pool essentially a structure big enough for a two-car garage on the cul-de-sac. Mr. Cohen stated he “blew open a hole” in their neighborhood directly onto Pine Grove, and now the people on Pine Grove who have been there have to look at this directly into this area. Mr. Cohen stated Mr. Demaio’s remedy to this was to put up, illegally, this privacy fence. Mr. Cohen stated Mr. Demaio is now coming here and “pretending” that this was an afterthought for a structure that is being done for the good of the community, and he is not even mentioning that the real intent is to put a television and pool bar which is “incredible.” Mr. Cohen stated he would like to put some pictures into the Record.

Mr. DosSantos asked if the Pool was Permitted, and Mr. Majewski stated it was. Mr. DosSantos asked if the Pool was inspected and what the Applicant did was what was Permitted; and Mr. Majewski stated he is not sure of the status of the inspection, but they are looking into some of the issues that Mr. Cohen did raise.

Mr. Cohen stated he really feels let down by the Township on this because he second the trees came down and Mr. Demaio indicated he was going to have a pool, a number of the neighbors contacted the Township. He stated a number of the neighbors came in and asked how was it possible that Mr. Demaio was able to do this; and they were told that “they know it seems crazy, but it is a strange thing in the Ordinance.” Mr. Cohen asked the Township representatives if they came out and looked at it to see what is actually happening, and they did not get any satisfaction. Mr. Cohen stated he is not an expert in Zoning law, and in ten minutes he could determine that it was a restricted are; and they cleared it.

He stated anyone could pull into their block and see which house is now not like the others. Mr. Cohen stated this is why Zoning Boards exists and why the neighbors should be able to come to the Zoning Officer and not have to put in this position where now the pool is in and they are “stuck with it.”

Mr. Flager asked Mr. Cohen if he went to the Township to complain about the trees being taken down; and Mr. Cohen stated he asked if that was permissible as part of this, and he was told that they had a Permit. Mr. Cohen stated he was not educated enough to ask the right question. He stated he asked if there was a problem with that, and he was told that they had a Permit. Mr. Flager asked what kind of trees he took down, and Mr. Cohen stated he took down “giant, mature trees.”

Mr. McCartney asked Mr. Majewski if he has an “open and closed Permit” for a privacy fence in the rear for this Applicant. Mr. Majewski stated as part of the Pool Permit, there is a Permit for the fence. Mr. Gruen stated there is a fence in the back of the 30’ setback, the restricted area, there is a 6’ or 7’ plastic vinyl fence the whole length of the property; and the only place where you can see the houses across is on his property where all the trees were taken down.

Mr. Zamparelli asked if the trees were allowed to be taken down, and Mr. Majewski stated that is something that they need to look into. Mr. Zamparelli stated the trees would be his main concern as they are in a restricted area, and that would be major for him. He stated there is also now a fence in there, and he asked if that is allowed. Mr. Majewski stated he would have to look into it.

Mr. McCartney asked Mr. Demaio if he pulled a Permit to put the fence up, and Mr. Demaio stated he did not because he did not know that he needed to pull a Permit to put a fence up behind as his neighbors had fences. He stated when they moved into the property, the area that Mr. Cohen is addressing had trees back there but there was also an old tree house that was up and was in a bad state. He stated when he started to clean up the property, he found there was piles of sticks that had been collected there throughout the years that had fallen in the yard that were put there. He stated when they started cleaning it out and removed the piles of sticks, they also took about two dump trailers worth of cinderblocks, and he even found old car parts back there, and things that were a danger to his children. Mr. Demaio stated they did take some trees down back there, but they have since planted eight new trees, although they may not be mature. He stated the project does have a full landscape design.

Mr. McCartney asked Mr. Demaio if he is in construction, and Mr. Demaio stated he is. Mr. McCartney asked if he did not know that he needed a fence Permit.

Mr. Zamparelli stated taking trees down is major to him and putting a fence up seems that he is saying “I am going to do it.” Mr. Zamparelli stated he is in construction too, and there was no way he did not know that he needed a Permit.

Mr. Tritt asked Mr. Demaio if he is familiar with reading Plans and understanding the zone of non-disturbance, and Mr. Demaio stated he is. Mr. Tritt asked why he disturbed the area and put a fence in there if he knew that it was part of his Deed. Mr. Demaio stated he did not know that it was a restricted area and he did not read into the Deed that it was a restricted area. Mr. Tritt asked if he is in construction, and Mr. Demaio stated he is.

Mr. Guarna stated what Mr. Demaio explained to him was that when he bought the property approximately a year and a half ago, he started to clean up the property, and then he went for the Pool Application. Mr. Guarna stated despite what Mr. Cohen said, Mr. Demaio is in compliance with the Pool. Mr. Guarna stated if Mr. Cohen is not happy with the pool, that is a different story from Mr. Cohen not being happy with the trees.

Mr. Tritt stated he does not have an issue with the pool as Mr. Demaio went through the legal channels; however, he is himself owns a construction company, and you pull a Permit for everything. Mr. Tritt asked if he did not indicate on the Site Plan when he put the Pool Application in, that there was an area of non-disturbance; and Mr. Demaio stated he did. Mr. Tritt asked if he knew it was there, why did he put a fence in. Mr. Demaio stated the fence was there before. Mr. Tritt asked Mr. Demaio if he installed the fence, and Mr. Demaio stated he had somebody install the fence. Mr. Tritt stated Mr. Demaio installed the fence without a Permit and he is in construction and knows how to read Plans and Site plans, and Mr. Demaio agreed.

Mr. Guarna stated he agrees that Mr. Demaio did it without a Permit, but at that time he did not know about the restriction. Mr. Guarna stated when he went to get the Pool put in and had the survey done, he learned about the restriction. Mr. Flager stated legally that is not an excuse, and Mr. Guarna agreed. Mr. Flager stated when Mr. Demaio bought the property he had a Plan, and he is an “intelligent person and spend a lot of money and bought a property in a nice area.” Mr. Guarna stated he agrees with all of that, but the implication is he got this pool and then took everything down. Mr. Guarna stated it did not happen that way. He stated he put the fence up and then he got the survey because he wanted to put the pool up, and then he found out the restriction. Mr. Guarna stated he is not saying it was right.

Mr. DosSantos asked Mr. Demaio if his fence is contiguous with his neighbors and is there a fence line across the back. Mr. Demaio stated the fence line is continuous across the back of the neighbors behind him that are on Pine Grove Road.

Mr. Gruen stated he is asking if the fence is continuous with his side neighbors across the whole back or just on his property, and Mr. Demaio stated it is only on his property.

Mr. Cohen stated Mr. Demaio did not get the Permit until the trees were removed because he needed to get the setback. Mr. Cohen stated this was a wooded area; and the reason he did not apply for the Permit first was because he had to clear the area. Mr. Cohen presented pictures showing this.

Mr. Flager marked as Exhibit C-1 the Subdivision Plan and Exhibit C-2 a Google map. Exhibit C-3 is a photograph that depicts the view from Mr. Cohen's driveway taken approximately ten days ago. Exhibit C-4 was a picture taken of the pool.

Mr. McCartney stated Exhibit C-3 looks like a picture of the cul-de-sac looking directly at the neighbor's existing pool with no fence in front of the pool and then clear all the way back to the fence that Mr. Demaio put up which is a tan and white fence, and Mr. Cohen agreed. Mr. Cohen stated that picture was taken from his own driveway so what has been cleared out is what was clearly marked as a restricted area as noted on the Subdivision Plan as entirely wood and restricts development. Mr. Cohen stated under the Lower Makefield rules, development includes the removal of vegetation. He stated Mr. Demaio opened all of this up and then applied for the pool Permit. Mr. Cohen stated he feel the whole project has the feel of doing something first and then seeking "forgiveness." Mr. Cohen stated he is now coming in and presenting this and leaving out the "punch line," that what he really wants to build is a pool bar with televisions yet presenting it as some sort of "prophylactic measure" for the betterment of the rest of them on the cul-de-sac; and he feels that is disingenuous.

Mr. Tritt noted Exhibit C-3 and pointed to a tree and asked Mr. Cohen if that is representative of the trees that were taken out. Mr. Cohen stated it is. He stated this neighborhood is called the Sanctuary because there are giant, old trees. Mr. Tritt asked Mr. Cohen approximately how many trees of that size and caliper were taken out, and Mr. Cohen stated he believes it was at least six giant trees.

Mr. Tritt asked Mr. Demaio why he is not going for a Variance right now for the privacy fence and if he has put in a Permit Application for the privacy fence, and Mr. Demaio stated he did not. Mr. Tritt stated that will also require a Variance because he is building it in a non-disturbed Zone per the Deed restriction. Mr. Tritt advised Mr. Demaio that he may want to think about re-packaging his Application. Mr. Cohen stated he would defer to the solicitor, but it was his understanding that is not within the purview of the Zoning Board to grant a Variance because it is a Subdivision Planning issue, and the Mr. Demaio could not apply for that the same way he could not apply to the Zoning Board to

remove the trees. Mr. Cohen stated what can be done is that the Township can seek remedial action to make Mr. Demaio put the trees back in the place they were. Mr. Cohen stated with regard to the pool, if the issue is privacy, no one will object to Mr. Demaio putting up trees in front of the pool if the pool is going to remain.

Mr. McCartney stated it was noted that there are existing propane tanks; and Mr. Cohen stated they are in the right corner next to the fence, and he estimates it to be approximately 4' to 6'. Mr. DosSantos asked if that is the pool heater, and Mr. Demaio stated the propane tank is for the pool heater. He stated they have all electric at the house, and they did not want to run electric lines out. Mr. McCartney asked if there is any plan to run propane to the cabana for a kitchen, and Mr. Demaio stated there is not. He stated there is no kitchen at all. He stated there is also no plumbing, and it is just electric.

Mr. Gruen asked if there is a restriction of putting a fence in the back yard as Mr. Cohen stated, and Mr. Majewski stated that is something he will have to look into for the Subdivision Development. Mr. Gruen stated if there is a restriction, the Zoning Hearing Board cannot provide a Variance for that. Mr. Gruen stated he needs a 5' fence around his pool, and he asked if the fence would go on the coping on the edge of the pool. Mr. Majewski stated he will have to look into that; however, Mr. Demaio would have to get permission to have the fence in its current location if there is a restriction.

Mr. McCartney asked Mr. Lewis if the Board of Supervisors can change a Subdivision Plan after the fact. Mr. Lewis stated while this would have to go to the solicitor, his assumption is "no," since it is a Deed restriction. Mr. Gruen stated if there is Deed restriction, it stays forever. Mr. Tritt stated that fence will have to come out.

Mr. Gruen stated they are "straying," as he is applying for a cabana. Mr. Gruen stated whether the fence is legal or not the Township will have to rule on that and demand remedy. Mr. Gruen stated his concern is whether they should approve the cabana or not. Mr. Gruen stated the Zoning Hearing Board cannot rule on the fence.

Mr. Cohen stated to make sure that the Record is clear, there are two issues with two different fences. He stated one is the privacy fence that they are talking about now that was put up without a Permit, and the other is the black fence that is part of the pool and the Variance. Mr. DosSantos stated the Application they have before them is strictly for an accessory structure; and while he understands what Mr. Cohen is saying, the Zoning Hearing Board cannot rule on that. He stated they do see it in the photograph, and he appreciates what Mr. Cohen is saying; however, it is not something that is part of what they are doing here. Mr. McCartney stated

that would be Code Enforcement. Mr. Cohen stated it was his understanding that part of what the Zoning Hearing Board needs to be considering is the character so that is why he was pointing it out.

Mr. Cohen stated he is opposed to this because he does not feel it meets any of the criteria for a Variance, and having looked at what the law is, there is nothing unique about this property within this Subdivision and they are all oddly-shaped Lots. Mr. Cohen stated Mr. Demaio knew what he was doing with the pool when he put it in; and if there is a hardship, Mr. Demaio created it. Mr. Cohen stated the reason why there is such a requirement that he needs a Variance is because it is unsightly and problematic to have structures like this in the front of a house. Mr. Cohen stated he hopes that the Board can appreciate how close this is to the cul-de-sac. Mr. Cohen stated he seems to now be “back-tracking away from the outdoor kitchen and all the things the neighbors had heard about.” Mr. Cohen stated regardless what it is they already have a problem, and this will invite a bigger problem because they will have noise and it is unsightly to have essentially what is the size of a two-car garage sitting on the end of their cul-de-sac. Mr. Cohen stated the character of the neighborhood has already been severely impacted by the Applicant’s behavior in getting this, and doing this now will only make matters worse. Mr. Cohen stated he feels there is no legal basis, and he opposes it based on the aesthetics, changing the essential nature of their community, and because it will make worse the noise problems that are inherent with having a pool. He stated there is a reason that people do not put pools in their front yard, and this is essentially in his front yard.

Mr. DosSantos asked Mr. Cohen if it would alleviate his concern with the aesthetics if the structure were landscaped between the street view and the back of the structure. Mr. Cohen stated he does not believe so because essentially he wants to put a two-car garage there as it will be 20’ wide. Mr. Cohen stated he does not know what kind of “jungle” he would need to cover that up from the aesthetic point of view. Mr. Cohen stated he does not feel that would deal with the aesthetics and it will not deal with the other problem since whatever else happens, they are not going to be able to bind them to promise not to put a kitchen up, or the bar, or the TV that they were discussing that they were going to do. Mr. Cohen stated he feels that once Mr. Demaio gets this, he will do it; and they have already seen that there is a problem with him following the regulations. Mr. Cohen stated there was an issue with going into restricted areas, and there is a pool that is operating right now in direct “contravention” of its Permit which says that there should be no water in it. Mr. Cohen stated to have any faith that any of this is going to work out well for the rest of the community he believes would be misplaced. Mr. Cohen stated he strongly urges the Zoning Board to reject this Application.

Mr. Flager asked if there is anyone else who wishes to speak, they are also free to say that they agree or disagree with Mr. Cohen and adopt his Testimony as you are own as well and then have additional Testimony.

Mr. Paul Visokey stated he totally agrees with Mr. Cohen's Testimony. Mr. Visokey stated he also has photos that add to what Mr. Cohen has provided which will give a better picture of the conditions Mr. Demaio has created.

Mr. Flager marked as Exhibit V-1 a photo of the pool from Mr. Visokey's front yard. Mr. Flager also marked Exhibits V-2, V-3, V-4, and V-5.

Mr. Visokey stated if you look at Mr. Demaio's property, the pool could have been toward Mr. Demaio's house but instated he put it as close to Mr. Visokey's house as he physically could put it to give himself more side yard and destroy the look of the neighborhood.

Mr. Visokey requested that the Zoning Hearing Board not approve this Variance. He stated the enjoyment of his property and the peace and quiet of the entire neighborhood has already been negatively effected by the pool. Mr. Visokey stated it is within a few feet of his driveway and his bedroom now overlooks the pool. Mr. Visokey stated as they were coming to the meeting tonight, there was a pool party already going on. Mr. Visokey stated in one of the pictures he presented, there are towels hanging on the fence; and they have been using the pool since the day it opened with the chicken wire fence supposedly protecting the property from any of the children in the neighborhood or anyone coming up their cul-de-sac "deciding to take a swim."

Mr. Zamparelli stated that fence does have to stay up during the construction although that is not the final product. Mr. Demaio stated it is still under construction which is why the fence is there. Mr. Visokey stated it has been six weeks.

Mr. Visokey stated when he purchased his property in 2003, he was told of the restricted area; and he has a wooded lot behind his home, and he not been able to take out any of that vegetation because it is restricted. Mr. Visokey stated when Mr. Demaio moved in and started taking the trees out, Mr. Demaio's wife advised him that they were taking the trees out so they can put a pool in. He stated that was their intention, and it was not to clean up the property although they may have found some things there. Mr. Visokey stated he lived next door to the previous owner for many years, and they were not of the nature to put "junk" back there so why he cannot prove that Mr. Demaio did not find all of that stuff he discussed, he does question it.

Mr. Visokey stated one of the pictures shows the pump in the front corner next to his property. Mr. Visokey stated when they were putting the pump in, he asked the pool contractor why they were putting it there and wouldn't he want to put the pump behind the pool, but they advised him that area was restricted. Mr. Visokey stated he took out the trees, but he could not put a pump in there. Mr. Visokey stated the pump does make a noise, and he can hear it running at night when he has his windows open. He stated if the pump were to have been put back in the corner where he has the privacy fence, it would not be a problem; however, Mr. Demaio chose to put the pool where he did and created the necessary conditions that he is here tonight for.

Mr. Visokey noted the location of the propane tank next to his property. He also noted that one of the drawings has a sketch of what looks to be an outdoor kitchen so even though Mr. Demaio is claiming that the propane tank is not for that purpose, he put it on the drawing. Mr. Visokey stated Mr. Demaio has been talking about that kitchen and the outdoor entertainment that he intends. Mr. Visokey stated that outdoor entertainment, that he is having already tonight, is next to his property; and it is very disruptive and destroys the peacefulness of our neighborhood.

Mr. DosSantos stated it is a Permitted pool, and the enjoyment of the pool does create some issues. Mr. Visokey stated he agrees particularly in the daytime. Mr. DosSantos asked that Mr. Visokey focus on the accessory structure.

Mr. Visokey stated the accessory structure is equivalent to having a public pool with a concession stand. He stated that is what it looks like even if they try to disguise it with shrubbery. He stated it is a "monstrosity" sticking out toward the front of the property. Mr. Visokey stated he has argued that he needs to have privacy, and plenty of trees, shrubs, and other things could be placed there without having a building.

Mr. Visokey stated the structure is very large being 22' wide; and Mr. Visokey stated he had a pool at his previous home, and they kept the pool supplies in the garage. He stated you have a can of chlorine and some other implements, and it does not need a big structure 22' wide.

Mr. Gruen asked Mr. Demaio the type of water uses, and Mr. Demaio stated it is salt water. Mr. Visokey stated they do not need chlorine in that case. Mr. Stover stated you still need to shock it.

Mr. Visokey stated when the pool was going in, he did not see any way he could drain the pool if he needed to. Mr. DosSantos stated while he recognizes that is a concern, it is not a concern for this Application.

Mr. Visokey stated he read the rules for a Variance under Article 23 Zoning Board Appeals Chapter 200-97 which states, “The Variance, if authorized, will not alter the essential character of the neighborhood district in which the property is located nor substantially or permanently impair the appropriate use or development of the adjacent property, nor be detrimental to the public welfare.” Mr. Visokey stated it is exactly that.

Mr. Visokey stated the previous Chapter, paragraph A3, stipulates that the Variance should not be granted when the hardship was created by the person asking for the Variance; and that is exactly the situation here. Mr. Visokey stated he put the pool in this place, and now he has to get a Variance because he chose to put it there. Mr. Visokey asked that the Variance be denied and that the Demaios be required to put up a natural barrier of trees and dense shrubbery separately the pool from his property and the street to at least partly mitigate the damage that they have already caused to the Sanctuary.

Mr. Flager reminded everyone that the Application before the Board is for a cabana, and they are not the Township – they are the Zoning Hearing Board. He stated the Decision of the Board will be whether to grant this or not grant it; and if it is granted, with what Conditions, if they should so choose. Mr. Flager stated some of these other issues are relevant because they to the credibility of the Applicant so from that standpoint he is letting them continue; however, they should keep their focus.

Mr. Gruen stated should the Board rule in favor of the cabana, then they can put requests or demands that he put in a certain amount of shrubbery in front or wherever; but until they rule in favor of the cabana, that would be left to the Township.

There was a question as to what the Exhibits were which were previously marked as Exhibits V-2 through V-5, and Mr. Flager stated they are photographs. Mr. Gruen stated they are photographs from the point of view of the neighbor.

Ms. Elizabeth Schenck, 480 Prince William Court, was sworn in. She stated she is directly across the street. She stated she has pictures of the three homes so the Board can get a feel for what their homes look like. Ms. Schenck stated they are original owners, and they have been in their home for twenty-three years. She stated the Demaios moved in a year ago July. Ms. Schenck stated they are the nineteenth family to move in, and she has seen the development of their street and the character of their street grow.

Mr. Flager marked the Exhibits as follows: Exhibit S-1 is a photograph of Ms. Schenck's home. Exhibit S-2 is the Visokey's home and Exhibit S-3 is the Cohen's home.

Ms. Schenck stated you can see behind their homes all the trees that they have. She stated it is a woods. She stated between the Demaios and the people down the street that are next to Pine Grove Road, it is not the full woods like she has behind their homes, but it was a thick tree line. She stated it was a woods which is why it was called the Sanctuary. Ms. Schenck stated she feels the character of the street has been changed and putting up this cabana will really change it. She stated she is directly across the street; and while she understands construction this is all she has looked at and all she can see when she looks out of her house is a giant fence where she used to see trees. She stated she has lived her twenty-three years. Ms. Schenck stated while Mr. Demaio's property value may go up, the rest of them will go down because no one will spend \$600,00 to \$700,000 to buy their homes and look at this giant pool with a cabana that is 20' wide. Ms. Schenck stated while it may be built out of beautiful stone, it will still be a 20' stone wall. She stated when she pulls out of her driveway that is exactly what they would see which she does not think is fair. Ms. Schenck stated their street was private and serene, and it is a Sanctuary which is what it is called. She stated there are only eight homes, and five of them back to the woods and three of them back up to Pine Grove Road. She stated it is a well-manicured street and everyone takes great pride in their home, and they all help and know each other. She stated five of the property owners are present this evening. Ms. Schenck stated this property has "blown a big hole" in their streets with the trees, the privacy, and the quietness.

Ms. Schenck stated Mr. Demaio did invite all of them to his home but it was after he wanted to do this. She stated when all the trees were coming down, the neighbors had no idea what was going on; and then all of the sudden a pool was being built. Ms. Schenck stated besides the visuals which they have constantly with a pool there is extra noise; and she understands this for during the day at a pool, but she is concerned about him building the cabana which is so close to the street. Ms. Schenck stated Mr. Demaio did say that he was going to put in TVs. She stated even if it is for the children to watch movies at night, when she goes out at 8:00 p.m. or 9:00 p.m. to walk her dog she does not want to hear a movie. She stated she also has to hear pool pumps in the morning.

Ms. Schenck stated this has had a negative impact on the neighbors, and she does not feel this was considered when Mr. Demaio did this. She stated the pool looks very awkward and does not belong there.

Mr. Flager stated while they recognize Ms. Schenck is against this, the pool is there; and the Application before the Board this evening is for the cabana. He stated he understands that Ms. Schenck is against the cabana, and Ms. Schenck agreed. Ms. Schenck stated she does not believe this “giant structure” will enhance her property at all, and it will negatively impact her home.

Mr. James Lawter, 475 Prince William Court, was sworn in. He stated he and his wife are in agreement with the other people who objected to the approval of the cabana.

Mr. Flager asked if there is anyone present who is in favor of the Application, and there was no one who indicated that they were in favor.

Mr. DosSantos asked Mr. Demaio after hearing what his neighbors had to say, would he consider shrinking the size of the cabana; and Mr. Demaio stated he would “within reason.” He stated it does not seem like much is going to satisfy everyone’s needs, but he is open to compromise. He stated they are already in the process of planting trees all around, and there is a fully-designed landscape package that goes along with this.

Mr. McCartney stated Mr. Demaio had indicated that his biggest concern was to put something up to create privacy between the neighbors and the pool, and it seems like the cabana will cause more issues than not having it there. Mr. McCartney stated it seems that putting the cabana within the suggested area within the building envelope to the left might be a disadvantage to Mr. Demaio from a view standpoint however, it would alleviate “a bigger issue.” Mr. Stover stated he does not feel it would be good because all the noise would come out to him if they point it that way. Mr. McCartney stated now they know how the neighbors feel. Mr. Stover also noted the impact of the sun. Mr. McCartney asked how long Mr. Stover has been doing pool design, and Mr. Stover stated he has been doing it for sixteen years and has designed about 115 swimming pools a year. Mr. McCartney asked if he just realized now that this would happen if they put the cabana at this spot, and Mr. Stover stated he had designed it inside the building envelope. Mr. McCartney stated the building envelope also carries another 15’ to the left of the current location which would give it ample space to be on the right hand side, and Mr. Stover stated while he agrees he takes “a bit of what the homeowner wants to do” and design according to what they see and what he sees.

Mr. McCartney asked Mr. Stover if he was aware of the 30’ setback, and Mr. Stover stated he was and he actually made Mr. Demaio aware that there was a 30’ setback because Mr. Demaio wanted to put the cabana on the other side, and he advised him that he could not because of the 30’ restricted area.

Mr. McCartney asked when they put the edge of the pool right at the 30' restriction mark, how were they going to put an adequate fence around that area. Mr. Stover stated the Township requires a survey prior to approval, and this is what they designed originally. He stated he did not design a cabana originally. He stated the Permit process "takes a bit," and Mr. Demaio then mentioned that he wanted a cabana as he had "just finished up a big project," and he asked that he put pricing together and design potentially where it could go; and with his experience within the building envelope is where any accessory structure could go. Mr. Stover stated with the Township Ordinance, which he had never seen anything like this other than corner lots, etc., he was shocked that they had to go for the Variance. Mr. McCartney asked Mr. Stover if he knew about the 30' setback when he installed the pool, and Mr. Stover stated he did which is why it is right on the line. Mr. McCartney stated putting it right on the line does not give them an opportunity to put in a fence around it, and he asked if there is not supposed to be a safety fence around the pool. Mr. Stover stated the fence was approved, and it was put in the Permit Application per the survey done by TLC. Mr. McCartney asked about the fence that Mr. Demaio took down and replaced with the vinyl fence, and Mr. Stover stated he does not know anything about that because he did not do the fence. Mr. Stover stated he is doing the black fence, he put the fence in the Permit Plan. Mr. McCartney stated when you look at a restricted area and put a pool right up against a restricted area, he assumes his sixteen years of experience would cause him to question where he was going to put a rear fence on it.

Mr. Stover stated the rear fence was already there. Mr. McCartney stated the existing fence was already there, and Mr. Stover just replaced the existing fence; and Mr. Stover stated when he showed up, there was an existing fence.

Mr. Demaio stated the privacy fence in the back of the property was already there, and they showed it on the survey and applied for the Permit adding the necessary 5' safety fence which Lower Makefield requires to surround the pool.

Mr. Gruen asked Mr. Demaio if he installed the privacy fence, and Mr. Demaio stated he did. Mr. Gruen stated when Mr. Demaio is saying the fence was already there, he means it was there when he went for the Pool permit, but it was not there prior to Mr. Demaio owning the property; and Mr. Demaio agreed.

Mr. Gruen stated it would be a "big service" to the neighbors if Mr. Demaio were to ask for a Variance to put a small building in for the equipment to cut down on the noise from the pump. Mr. Gruen stated the Zoning Hearing Board cannot require that, and he does not know what the rules are on equipment for pools and whether they have to be closed or not. Mr. Stover stated it would need an exhaust for the heater.

Mr. Cohen stated there is a privacy fence which is what the Applicant put in. He stated the only existing part of the pool fence is now if you are facing the pool to the left; and what Mr. Demaio has done with that is taken that and run that also into the restricted area. He stated he runs that from the front to the back. Mr. Gruen stated that is not an issue for the Zoning Hearing Board, and that is for the Building Department. Mr. Cohen stated to the extent that the Zoning Hearing Board is seeking to find other areas and compromise, he wants the Record to be clear on the issue of the fence. He stated he also wants the Record to be clear that from the neighbors' perspective, there is no other place to put a cabana that would be acceptable.

Mr. McCartney stated based on Mr. Cohen's recommendation, he would suggest that Mr. Majewski revisit the property to make sure all Applications and Permits are in place including the fence. Mr. Majewski stated they are looking into this already.

Ms. Schenck stated she would like to give the Board evidence which is the letter which the neighbors had received when Mr. Demaio invited them to his house. She stated they were invited to come to the Demaio's house to understand what was going on, and he put a letter out; and she feels that it has a "tone" to it that the Board may find interesting to read about the cabana.

Mr. Flager marked this as Exhibit S-6.

Mr. Guarna stated his understanding is that the neighbors are not happy with the pool in the side yard, but that is permitted. Mr. Guarna stated he knows that there are a lot of issues and things were not handled right with regard to the trees. He stated they have seen pictures, and he reminded the Board that they are in the middle of a construction project so he is sure they are not "pretty." Mr. Guarna stated he feels the Board can tell from the scope of the money and time that Mr. Demaio is spending on this project that he wants to keep this essentially "a nice neighborhood," and he is trying to improve his property, and he will continue. He did take out some trees, but he said that he has planted some other trees. Mr. Guarna stated Mr. Demaio explained to him that the major tree that was on the property stayed there, but there were some other smaller trees that were taken out. Mr. Guarna asked that the Board consider that this is the most logical and best place for this accessory structure. He stated if Mr. Demaio were to put a walkway and a garage on the front of the property and it was in the building envelope and fit in with the impervious surface, the neighbors would not be happy because it would be on the front of the property, but that is the building envelope. Mr. Guarna stated when they bought in this neighborhood, they had the right to look at Mr. Demaio's property and see that he could build sideways and go out to that area.

Mr. Guarna stated everything Mr. Demaio has done with regard to the pool is aesthetically that he is trying to do right; and they are asking that for this Variance and asking for where it makes the most sense. Mr. Guarna stated if he had put the structure on the other side of the pool, the pool would be closer to the street; and the neighbors would still have the same complaint as to why the pool so close to the street. Mr. Guarna stated these are the confines of his Lot, and that is why they are asking for the Variance.

Mr. Guarna stated Mr. Demaio does not want to build a walkway or a garage, and he is not looking to “build construction equipment.” Mr. Guarna stated this fits in with the essential look of the neighborhood. He stated Mr. Demaio is allowed to have a pool, and he wants to do it right.

Testimony was closed.

Mr. Zamparelli moved and Mr. Tritt seconded that the Appeal be Denied. Motion carried with Mr. DosSantos opposed to the Denial of the Variance.

Mr. DosSantos stated he understands the neighbors’ concerns recognizing that this is a small community of seven or eight homes; however, Mr. Demaio has a property that they all have which is somewhat unique, and Counsel’s argument was cogent in the sense that there is a certain building envelope, and the hardship is created by that 30’ buffer in the back. Mr. DosSantos stated the pool was properly Permitted, and he understands Mr. Demaio’s right for a pool with young children. He stated he feels the hardship created and the reason for the Variance is through the Lot which is why he agrees with the Application and opposed the Motion.

Mr. Gruen stated Mr. Demaio had a Permit for a pool, and there is no law that says you have to have a cabana.

There being no further business, Mr. Zamparelli moved, Mr. McCartney seconded and it was unanimously carried to adjourn the meeting at 9:40 p.m.

Respectfully Submitted,

Keith DosSantos, Secretary

