

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – SEPTEMBER 4, 2018

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on September 4, 2018.  
Mr. Zamparelli called the meeting to order at 7:30 p.m.

Those present:

Zoning Hearing Board:      Anthony Zamparelli, Vice Chairman  
   Keith DosSantos, Secretary  
   Michael Tritt, Alternate Member

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

Absent:                                Jerry Gruen, Zoning Hearing Board Chairman  
   Pamela Lee, Zoning Hearing Board Member  
   James McCartney, Zoning Hearing Board Member

APPEAL #18-1805 – DAN WILBY, JR.

Mr. Dan Wilby was sworn in.

Mr. Flager marked the Exhibits as follows: The Application submitted was marked as Exhibit A-1. The Site Plans were collectively marked as Exhibit A-2. The letter attached to the Application stating the reasons for the requested Variance was marked as Exhibit A-4. The Proof of Publication was marked as Exhibit B-1. The Proof of Posting was marked as Exhibit B-2. The Notice to the neighbors was marked as Exhibit B-3.

Mr. Wilby stated he would like to put up a building for storage of his antique vehicle and for hobbies. He stated the building is taller than the 15' permitted. He stated the building has a 14' ceiling, and the roof with the pitch will be 22'. He stated he is asking for relief for that.

Mr. Zamparelli stated 22' seems high, and he asked if there is a lift for the garage, and Mr. Wilby stated he might do that at some point. He stated there will be a gantry for moving motors around, and a 14' ceiling would accommodate that.

Mr. DosSantos asked Mr. Wilby if he has photographs of the proposed building, and Mr. Wilby showed photos of a building that would be similar. The photos submitted were marked as Exhibit A-4. Mr. Zamparelli stated there is a cupola, and he asked if that is necessary; and Mr. Wilby stated it is not necessary. Mr. DosSantos stated in the photo it shows to garage doors, and he asked if that is what he anticipates; and Mr. Wilby stated it is. Mr. Wilby stated he proposes two bigger doors on the front and two entry doors, one on either side.

Mr. DosSantos stated in the Application he indicated that the intention for this building was for the antique building which he has now; and Mr. Wilby agreed that it is also for yard equipment. Mr. DosSantos stated the Application also indicated that at some point he wanted to get a boat, and Mr. Wilby agreed that he proposes that at some point in the future. Mr. DosSantos asked if the reason for the large size is because of equipment he is thinking of getting in the future, and Mr. Wilby agreed.

Mr. Zamparelli asked how high it would be without the cupola, and Mr. Wilby stated it would be 21' without the cupola. He stated he is asking for 22'.

Mr. DosSantos asked Mr. Majewski if the relief requested is only for the height Variance, and that he is good with impervious surface and location of the planned accessory building; and Mr. Majewski agreed.

Mr. Tritt stated he understands that this is only for Mr. Wilby's personal hobbies and not a Commercial operation or work for outside people, and Mr. Wilby agreed.

Mr. DosSantos stated he assumes Mr. Wilby will put in electric, and Mr. Wilby agreed. Mr. DosSantos asked if is anticipating any plumbing in the building, and Mr. Wilby stated "probably not." Mr. Wilby stated he has an electrical diagram if the Board needs to see that. Mr. DosSantos asked if there will be a second floor put in, and Mr. Wilby stated there will not. He stated the height about the ceiling height would just be the roof trusses.

Mr. DosSantos stated he is familiar with the Lot and stated he is pretty well protected by way of a tree line in the front off of Stony Hill Road, and Mr. Wilby agreed. Mr. DosSantos stated he understands from the Application that on the side and in the rear in the location where the building is anticipated to go, it is also well treed, and Mr. Wilby agreed.

Mr. Tritt asked if this is the flattest they could get the slope and still meet the Building Code, and Mr. Wilby stated he does not know as he did not look into that.

Mr. DosSantos asked Mr. Wilby if he knows if there is a way to reduce the 21'/22' and still keep the size of the building. Mr. Wilby stated they could go with a flat roof building; however, he does not feel that would be very attractive.

Mr. Zamparelli asked Mr. Wilby if he has spoken to his neighbor about his proposal, and Mr. Wilby stated he did speak to a neighbor right before the meeting this evening.

Mr. Zamparelli asked if the Township was participating in this Appeal, and Mr. Majewski stated they are not.

Mr. Joseph Scialabba, 365 Shade Tree Court, requested Party status on behalf of his father Steven Scialabba. Mr. Joseph Scialabba was sworn in.

Mr. DosSantos asked Mr. Scialabba where he lives in relation to the Applicant, and Mr. Scialabba stated he lives on the property line where the Applicant is placing the pole barn. Mr. DosSantos asked if that is to the rear, and Mr. Scialabba stated it is the side rear. Mr. Wilby stated it is to the right.

Mr. Scialabba stated the issue they have specifically is that the pole barn is anticipated to be placed on the steep slope, and it is being placed in a location which is the closest it could be placed along the property line to his dwelling.

Mr. Zamparelli stated Mr. Scialabba is saying that Mr. Wilby is placing the building at the setback line. Mr. Scialabba stated it is at the setback line; but the setback line becomes "ineffectual" with the higher height of the building. Mr. Scialabba stated there is also the issue of the slope. He stated Mr. Wilby had been asked if the area is "sparsely treed in that area." Mr. Scialabba stated the Applicant's property is on the "complete other side" where both the adjoining properties are heavily wooded away from the main dwelling in those areas, but the septic tank has been placed in that location.

Mr. Scialabba stated the previous owner of Mr. Wilby's property, in violation of Township Ordinance, removed most of the foliage and trees from the steep slope; and it was never remediated. Mr. Scialabba stated additional "aggravation" of that slope would "cause a nuisance." Mr. Scialabba stated since that property owner removed the foliage and vegetation, he has not been able to grow grass on the steep hill adjoining the property line.

Mr. Zamparelli asked Mr. Scialabba if he is saying that they changed the actual slope of the property; and Mr. Scialabba stated he does not know if they changed the slope of the property, but they removed foliage in violation of Section 200-51. Mr. DosSantos stated Mr. Scialabba is not saying that it was this Applicant that did this, rather it was the Applicant's predecessor; and Mr. Scialabba agreed.

Mr. DosSantos asked Mr. Wilby how long he has owned the property, and Mr. Wilby stated they moved in December, 2017.

Mr. Scialabba stated the Plans stated that the total impervious surface ratio is 19.6%, and in Zoning area R3-M the limit is .17 so he is confused about the comment made by the "Township Inspector" that they are in compliance. Mr. Majewski stated he will have to check this.

Mr. Scialabba stated they are also concerned about the large size of the accessory building which is 50 by 40, adding it comes close to the size of the actual main dwelling and looks and has the size and utility of a Commercial use.

Mr. Zamparelli asked Mr. Majewski if it is located in the right section of the yard by Ordinance for this size building; and Mr. Majewski stated the Ordinance does not contemplate the size of accessory structures, but what it does require is that the building be located in the fourth of the Lot furthest removed from the road. He stated this proposed building does meet that requirement. Mr. Majewski stated the minimum setback is 10', and they are approximately 30' away from the property line with where they have the proposed building. Mr. DosSantos stated they could actually go closer to the property line, and Mr. Majewski stated they could "in theory." Mr. Majewski stated there is a slope that is shown on the Plan as Mr. Scialabba mentioned. Mr. Scialabba asked if they were in violation of the slope percentage; and Mr. Majewski stated he believes they are okay with the slope percentage, but he will look into this.

Mr. Zamparelli asked if there is something that can be done with the "slope situation;" and Mr. Wilby stated he did not know, and he would have to find out. Mr. DosSantos asked Mr. Zamparelli if he is talking about the removal of the foliage by the prior property owner, and Mr. Zamparelli asked if the previous property owner changed the slope. Mr. Majewski stated he did not know. Mr. Majewski stated he knows that the proposed plan contemplates tying the roof leaders from the garage into the underground stormwater management that was required when they reconstructed the house. Mr. Majewski stated there was an existing house on the property closer to the road; and the demolished that house and the driveway and constructed a new modular home setback a little bit away from where the prior home was.

Mr. Zamparelli asked Mr. Scialabba if he was concerned about water, and Mr. Scialabba stated he is concerned about increased flow. He stated he has a large majority of the slope gets deeper as it approaches his house, and it begins on the Applicant's property. Mr. Scialabba stated with the removal of all the foliage and trees they have seen an increase, and water runs against their house; and they cannot grow grass on the hill as he mentioned previously. He stated they are concerned about all the impervious area now on the slope and probably further removal of the ground cover foliage. He stated they are also concerned about the detriment if this Variance were granted to the property value of his property because they are lower from the Applicant's property, and they would be looking up at a 22' sheet metal wall. He stated he feels there seems to be much more suitable places that it could be place.

Mr. DosSantos asked Mr. Scialabba asked if he contacted the Township about the prior owners' removal of the foliage, and Mr. Scialabba stated did contact Nancy Frick. Mr. DosSantos asked if anything was done; and Mr. Scialabba stated Ms. Frick told them that she issued an Order or statement to the owner to not remove any more foliage without approval; however, Mr. Scialabba stated he assumed that there would be enforcement and remedial steps would be taken, but he does not know if that was ever followed through on.

Mr. DosSantos asked Mr. Wilby if there is any spot on his property where he could place the building further away; and Mr. Wilby stated he would put the building wherever it works better for the neighbor, however, he added one problem is that he has the septic system on the left hand side of the property in the back.

Mr. Zamparelli stated Mr. Scialabba does not want to look at the building and the other concern is water; however, Mr. Zamparelli added that Mr. Wilby does have stormwater management which will probably alleviate all of the water, and it will probably be even better than it was before. Mr. Wilby stated he would be willing to put more foliage in. Mr. Zamparelli stated that Mr. Wilby could add foliage so that Mr. Scialabba would not see the building. Mr. Scialabba stated he would not be in favor of it without moving the building further away.

Mr. Tritt stated in the packet there were two photos showing two angles, and he assumes one was going toward the neighbor and the other was going to the Lot behind. Mr. Wilby stated the second photo is standing toward the house facing the rear right hand side. He stated the third photo is facing toward the neighbors' house on the right hand side of the property. Mr. Tritt stated it seems that there is "pretty good" foliage going through there currently, and there are 20' to 30' trees.

Mr. Scialabba asked if those trees are staying; and Mr. Wilby stated they are, and he added that if they need to put in more, they can put in more. Mr. Scialabba stated it does grow heavily with vines and trees; however, most of the leaves come off of the trees as they are mostly deciduous.

Mr. Tritt stated it appears that the way the building is oriented is that the peak is perpendicular to the roadway. Mr. Tritt stated the sloping part would be facing the neighbors' property. Mr. Tritt asked what color the roof will be; however, Mr. Wilby stated he has not decided that yet, but he would go with any color. Mr. Tritt asked if they could make it a green metal roof so that it would blend in. Mr. Tritt stated if it were a green roof and a neutral color on the outside, a lot of it would "die off" into the vegetation. Mr. Scialabba stated that would work for three to four months out of the year perhaps although he doubts it. He stated during the year when the foliage is off the trees, they would be able to see it.

Mr. DosSantos stated Mr. Wilby indicated that the septic is on the other corner of the property, and Mr. Wilby agreed it is on the left hand side. Mr. DosSantos asked how much room there is between where he is proposing it to be, and Mr. Wilby stated he could talk to the engineer and move it as close as allowed. Mr. DosSantos stated he would not want him to disrupt his septic system; but if he could move it closer to the septic system, it would bring it further from the neighbors' property.

Mr. Tritt stated they could slide it over toward the septic system and rotate it so that the garage doors were facing the house, they would not have any traffic over the septic system. He stated they would not want to slide the driveway over the septic system, and they would want to rotate it around so that the driveway would come around in the front of it. Mr. Wilby stated the excavator told him that he had put the septic in where you could put stone over it and be able to get through it.

Mr. DosSantos asked Mr. Scialabba if the Applicant were to move the proposed accessory structure further from his property would this be acceptable, and Mr. Scialabba stated moving it further away would be better and preferable some additional foliage which he would be happy to help with.

Mr. Zamparelli asked if anything could be done with the part of the structure that Mr. Scialabba does so that it would look more attractive; and Mr. Wilby stated he would put in some windows or "whatever." Mr. Scialabba stated their current view is a heavily wooded area; but with removal of most of the woodland in the winter, most of the spring, and most of the fall, they can see directly into the neighbors' back yard. He stated they were willing to "cope with that" because after speaking to Ms. Frick it was made clear that there was going

to be excessive removal of foliage. He stated they also have the run off problem. He stated “dressing up” the structure to look like a dwelling that is close to the property line does not alleviate their concern.

Mr. Zamparelli stated Mr. Scialabba had stated the wooded foliage was removed, but it could be put back.

Mr. DosSantos stated Mr. Wilby purchased the property with the foliage already gone, and that was done by the prior owner; and he feels it would be a “magnanimous gesture” to put some foliage back in there. Mr. DosSantos asked Mr. Scialabba what had been removed. Mr. Scialabba stated it was a continuation of a preserved wooded area straight through to the house on Stony Hill Road. He stated he feels the previous owner intended to subdivide, and in anticipation of that one day he cut down most of the wooded area.

Mr. Zamparelli asked Mr. Scialabba if he was there when they removed all the foliage, and Mr. Scialabba stated he was which is why he reported it. Mr. Zamparelli asked what did the Township say about it when they reported it. Mr. Scialabba stated he reported it to Nancy Frick who told them that she instructed them not to remove it, and she would send Code Enforcement and they may pursue remedial remedies. Mr. Zamparelli asked Mr. Scialabba if he followed up on any of that, and Mr. Scialabba stated he did not. Mr. Zamparelli stated he assumes they did not because they “were not really looking at anything then;” and Mr. Scialabba agreed.

Mr. Zamparelli asked Mr. Wilby what he could do to help Mr. Scialabba “out in any way that may work out together;” and Mr. Wilby stated as he noted, he would work with them with whatever they have to do to make them happy.

Mr. Flager stated the only Variance requested is the height; and if this was a 15’ high accessory use building, they would not be present. Mr. Flager stated Mr. Scialabba would still be looking it, and it is a question of whether the increased height of about 7’ is objectionable. Mr. Flager stated it seems the Applicant wants to work with Mr. Scialabba.

Mr. Scialabba stated he is still not sure about the impervious surface area; and Mr. Zamparelli stated according to the engineer, it appears not to be an issue. Mr. Majewski stated he does need to take a further look at that. He stated this Plan was previously reviewed by the prior Zoning Officer and the prior engineer, and they had raised no issue with the impervious surface. He stated the underlying number is 18% so it is possible that unless the Applicant brings that number down by sliding the building over and reducing the pavement, it is possible that a Variance may be needed for that.

Mr. DosSantos asked if that would require the Applicant to come back in, and Mr. Majewski stated it would. He stated it would have to be re-advertised, and he would have to come back in. Mr. Majewski stated he will have to check as there may be a reason why they were okay with the 19.6% on the prior Plan that was reviewed by the Zoning Officer and the prior engineer. Mr. DosSantos stated that is not part of the Application today, and the Application today is strictly for the height Variance and not for the impervious. Mr. Scialabba stated he did want to raise it. Mr. Scialabba stated he is not sure if it would be appropriate to have an Continuance so that they could continue to discuss it.

Mr. Flager he understood that they had enough stormwater management to offset any overage that goes over the 18%; however, since that is not part of the Application, they would still need to do that. Mr. Flager stated even if the Board were to grant Approval tonight, they could still not build without getting additional Zoning relief. Mr. Majewski stated possibly they may not be able to build it in the configuration it is in; however, based on the discussion of sliding the building over, that may reduce the impervious surface and make that issue go away.

Mr. DosSantos stated he would not want to see the Applicant have to spend money again to come back to the Zoning Hearing Board and a brief Continuance may be a good idea. Mr. DosSantos asked Mr. Wilby if he had plans to build this immediately or could they delay it until they could get it back on the schedule so that Mr. Wilby could discuss it with the neighbor and the Township as to some of the issues. Mr. DosSantos stated he could then Amend the Application in front of the Zoning Hearing Board to include any impervious issues should they arise. Mr. Wilby stated he would be agreeable to that. Mr. DosSantos stated that may make the most economic sense to Mr. Wilby, and Mr. Wilby stated that would “make sense.”

Mr. Flager stated there would have to be a re-advertisement if he is requesting additional Zoning relief, and they will have to determine how long to Continue this since they would have to advertise it recognizing that this evening they do not even know if they will need that. He stated he assumes Mr. Majewski will need some time to determine this with the Applicant especially if they are moving the building, driveway, etc.

Mr. DosSantos asked Mr. Majewski if one month would be realistic for a Continuance in order to address the issues, and Mr. Majewski stated he feels for the advertising it would have to be Continued to the second meeting in October if in fact he needs Zoning relief which he is not sure of at this time as the Plan was previously reviewed and approved, except for the height, by the Zoning Officer and engineer. Mr. Flager stated if it turns out that the impervious surface relief is not needed, they could grant a Continuance for a certain period of time to the second meeting in October; and if it turns out that he does not need impervious surface relief and he only needs

the requested relief that he is here for tonight, the Board could move it up to an earlier meeting. He stated this would still give the Applicant, the neighbor, and the Township time to see if they can resolve some of the issues so that when they do come back it is “smooth sailing.”

Mr. Zamparelli stated the Township can determine if they need relief for impervious surface, and this would also give time for Mr. Wilby to talk to his neighbor as well.

Mr. DosSantos stated Mr. Wilby should also talk to whoever put the Plan together to see where they could fit this in consistent with the existing yard, the septic, the house, etc. Mr. Wilby stated he would agree to this.

Mr. Tritt stated he understands that Mr. Wilby was not planning on taking down any trees, and Mr. Wilby stated he was not.

Mr. DosSantos moved, Mr. Tritt seconded and it was unanimously carried to Continue the Appeal to October 16, 2018.

There being no further business, Mr. DosSantos moved, Mr. Tritt seconded and it was unanimously carried to adjourn the meeting at 8:10 p.m.

Respectfully Submitted,

Keith DosSantos, Secretary