

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

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on September 17, 2018. Mr. Gruen called the meeting to order at 7:30 p.m. Mr. Gruen announced that since there are only four Board members present this evening, and a tie vote would mean a rejection of the Application, they are giving a choice; and if they would prefer to have their Application postponed to the next meeting when hopefully they would have five members present, they would be afforded the opportunity to do that.

Those present:

Zoning Hearing Board:

Jerry Gruen, Chairman
Keith DosSantos, Secretary
Pamela Lee, Member
Matthew Connors, Alternate Member

Others:

James Majewski, Director Planning and Zoning
Adam Flager, Zoning Hearing Board Solicitor
Barbara Kirk, Township Solicitor (left meeting in progress)
John B. Lewis, Supervisor Liaison (left meeting in progress)

Absent:

Anthony Zamparelli, ZHB Vice Chairman
James McCartney, ZHB Member

APPEAL #18-1803 – CHRISTINE & MARK MALATY

Mr. Mark Malaty and Mr. Heath Machamer, HNT Engineering and Surveying, were sworn in.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plan was marked as Exhibit A-2. The July 19 letter from HNT was marked as Exhibit A-3. The August 22 letter from HNT was marked as Exhibit A-4. The FEMA Elevation Certificate which also includes the photographs was marked as Exhibit A-5. The Proof of Publication was marked as Exhibit B-1. The Proof of Posting was marked at Exhibit B-2. The Notice to the neighbors was marked as Exhibit B-3. Mr. Flager noted that HNT is High Northern Terrain Engineering and Surveying.

Mr. Machamer stated the Board has a copy of the Site Plan which was marked as Exhibit A-2. He stated the site is located at 667 Nancy Road, and they have an existing driveway, a dwelling, an existing patio, and a number of mature trees with some of the largest ones being 22" in diameter as far as their caliper size. He stated there are existing utilities connected in the front. He stated the Applicant would like to add an 8'4" wide by 22'4" long laundry room addition to the dwelling. He stated they are also looking to add an 8' by 12' shed. He stated the parcel itself is .41 acres, and the impervious area on the Lot is currently 18.9%. He stated what is permitted within this District is 13%; but he believes that going back through the history of the Zoning at the time the driveway was not originally counted. He stated now that the driveway is in with that Zoning, it does bring it up above the existing amount permitted. Mr. Machamer stated the proposed impervious coverage with the shed would then be up to a total of 20.3%.

Mr. Machamer stated they are requesting Variances from three different sections of the Zoning Ordinance. He noted the first is 200-14 which is the impervious surface requirements. He stated the next is 200-58.B for improvements in areas identified as floodplain. He stated the third section is 200-56.B.(1)(a) for elevation and flood proofing requirements.

Mr. Machamer stated Section 200-56.B.(1)(a) would require that the laundry room addition be elevated 18" minimum above the 100 year floodplain. He stated the existing finished floor of that dwelling is at elevation 31.5, and from the Elevation Certificate that they have prepared, the existing 100 year floodplain on the property is at elevation 32. He stated the existing floor of the home already sits 6" below the 100 year floodplain. Mr. Machamer stated for construction of the laundry room addition with the roof slope coming down, the reason they are looking to keep the laundry room area at the same foundation height is due to the fact that to continue the roof slope and get it to match into the dwelling for construction, that is where essentially they would propose the floor to be. He stated they do acknowledge that they would have to provide flood proofing requirements for that.

Mr. Machamer stated for the shed they did receive a number of comments this evening. He stated the first part in regard to the comment from the review engineer is with regard to the Elevation Certificate. Mr. Machamer stated they are recommending the following number of Conditions:

- 1) That the water supply would require a flexible connection and that is something that they would comply with.

Mr. DosSantos asked if this in connection with the laundry room, and Mr. Machamer agreed.

- 2) A floor drain for the area would be required, and they are committing that they can do that.
- 3) Gas and electric utilities shall be constructed in a flood proof manner and all utilities shall be shown at an elevation above elevation 33.5 which is the elevation 18" above the 100 year which they can do as well.
- 4) Any hazardous material shall be stored again at an elevation above 33.5 which they are committing to do as well.

Mr. Machamer stated Comment #2 was stricken as he talked to Mr. Majewski because essentially they are not within a floodway, and it is just a floodplain and they acknowledge that they do not need a Permit from DEP because it is not a floodway encroachment.

Mr. Machamer stated Section 200.54 was cited as a history of repairs to the building shall be provided to identify any repetitive loss items that should be addressed prior to issuance of the Permit. Mr. Machamer stated that is something the he and the builder would assist the Applicant with in assembling those items. Mr. Machamer stated Section 200-54D.3.D.4 states that a document by a certified professional engineer or architect shall be provided indicating that the shed is designed to withstand impact and uplift forces associated with the base flood. In addition the shed should be anchored which they can do. The shed shall not be inhabitable or modified for a different use in the future, and Mr. Machamer stated they commit to that requirement as well. There can be no storage of pollutants of hazardous materials, and Mr. Machamer stated they can comply with that.

Mr. Machamer stated they will provide flood openings in accordance with the Township Code and FEMA guidelines. Mr. Machamer stated the Section indicates having elevated utilities, but the shed is just proposed for storage and will not have any utility connections.

Mr. Machamer stated the next item is with regard to having a documented flood elevation, and he stated they can provide that and would add that as a sealed Certificate.

Mr. Machamer stated the next item in the engineer's review is to meet the Township's stormwater management requirements, and he stated they have shown a seepage bed. He stated by Ordinance it is designed just for the additional of the laundry room and the trench itself is 2' wide by 12' long and 3' deep. He stated the first recommendation by the engineer to consider is using planted tree credits because of the concern of it being in floodway and a 100 year storm event, it would actually be full plus potentially water over it within the floodplain. Mr. Machamer noted the Site Plan and stated there are quite a number of mature trees already on the property, and they feel that would be something that would overload the already well-vegetated lot with mature trees. Mr. Machamer stated the Township engineer had indicated that if the seepage trench is to remain, a clean out/observation port shall be provided; and Mr. Machamer stated they would commit to that. He stated they do not feel that this is a significant request in the fact that it is only looking to control the 8.4" by 22.4" laundry room addition for the additional stormwater so it is a very small trench in the scope of the overall project and size of the property.

Mr. Majewski stated the property is in the floodplain not the floodway, and Mr. Machamer agreed. Mr. Majewski stated Mr. Machamer had stated that the stormwater management was designed just to handle the laundry room addition; and he asked if it was not designed to also handle the additional impervious surface from the shed. Mr. Machamer stated they saw in the Township specs that they could place the shed on a stone bed surface with pervious patio blocks, and they would utilize that type of system to provide additional storage; however, if the Township would prefer, they could also add a separate stone bed for the shed itself.

Mr. Gruen stated he was going to ask if the seepage pit was only going to cover the addition by the garage. He stated would keep them at 19%, and they did not add anything to cover the shed. Mr. Machamer stated they did not add anything for the shed, but they could commit to adding something.

Mr. Gruen asked who suggested the remedies Mr. Machamer was referring to, and Mr. Majewski stated those were the recommendations of Andrew Pockl, the Township engineer.

Mr. DosSantos asked if the shed was included in the impervious surface calculations, and Mr. Machamer stated they did.

Mr. Gruen asked if they would consider, if it was approved by the Township engineer, raising the shed a little putting a bed of stone of a certain depth outside the perimeter of the shed surrounding it within one foot to catch the water that comes off the shed or they would enlarge the seepage pit. Mr. Machamer stated they would be open to either of those suggestions. He stated he feels the elevated stone bed with the shed and the perimeter as discussed would be the most feasible because there needs to be a bed created for the shed for placement anyway. Mr. Gruen stated he understands they are keeping the laundry room at the floor level of the garage because otherwise the roof would not match; and if they raise it, the headroom in the raised area would be approximately six and a half or seven feet. Mr. Machamer agreed adding that the other issue is that if they raise it, they also cannot keep the same pitch on the roof and they would have to go with a rubber-type roof which has a limited lifespan and is not as aesthetic. He stated they would prefer to keep it and work with the flood proofing requirements. Mr. Gruen asked if they are prepared to anchor the shed, and Mr. Machamer agreed.

Ms. Barbara Kirk, Township solicitor, stated the Township is participating in these proceedings. She stated according to the Site Plan the laundry is going in the area that has been marked as a patio to be removed, and she asked if that is correct. Mr. Machamer agreed and stated there is a portion of the laundry room addition, 33 square feet of that, is patio; and that would be removed, and the laundry room addition is 186 square feet so there is a portion being removed, and it would be 153 square feet of new impervious with the addition area. Ms. Kirk stated she presumes that the patio area is depressed down from the main house, and Mr. Machamer agreed it is a step down. Ms. Kirk stated she assumes everything will be elevated to match the ground floor of the house at 31.5'; and Mr. Machamer agreed adding that they will match the top of the foundation with this construction and everything is then coming in at that same level.

Ms. Kirk asked if it is a two-story dwelling, and Mr. Machamer agreed.

Ms. Kirk asked if there are any laundry facilities in the existing house, and Mr. Malaty stated they do have a very small laundry room. Ms. Kirk stated this will be designed strictly to maintain a washer, dryer, and utility sinks; and Mr. Malaty stated it will also have a refrigerator.

Ms. Kirk stated Mr. Machamer had indicated that a Permit from DEP is not required because it is not within the floodway but rather is in the floodplain, and Mr. Machamer agreed. Ms. Kirk asked if with the design of the seepage trench were any soils tested, and Mr. Machamer stated no soil testing was done as part of this. He stated they worked within the provisions of the

Township Ordinance. He noted Appendix I of the Stormwater Management Ordinance has a simplified method for calculating the volumes, and they have that within the Site Plan. He stated the required control volume is based on that 153 square foot addition, and that comes out to 25.5 cubic feet; and the storage volume provided was 28.8 cubic feet so they have a little more than what the Ordinance provision requires.

Ms. Kirk asked Mr. Machamer how quickly he anticipates any water retained in the seepage trench would percolate during a heavy rain storm. Mr. Machamer stated based on the soils they looked at on site, they are dealing with a fine, sandy loam which typically has a decent infiltration rate. He stated even though they did not do any testing, which in this provision of the Township Ordinance is not required, they did look at the soils as being a sandy loam that has at least moderate infiltration potential. Ms. Kirk asked Mr. Machamer if he would agree that right now the impervious surface calculations far exceed what is permitted under the Ordinance presently at the property. Mr. Machamer agreed. Ms. Kirk asked if he would agree that if there was some sort of clay underneath the soils that he observed, that would significantly effect the percolation rate for the proposed seepage trench. Mr. Machamer stated if those conditions did exist, he would agree. Ms. Kirk asked if would not be more beneficial if the Applicant wants to preserve the integrity of the proposed structures to have more extensive soil testing done to insure that a seepage pit is the most appropriate to contain the water in the event of a flood. Mr. Machamer stated that would be the logical progression. Ms. Kirk asked if the Applicant would be willing to agree to install such type of seepage or stormwater drainage system that would be approved by the Township engineer instead of just installing a seepage trench. Mr. Machamer agreed adding that they had followed the guidance within the Township Ordinance. He stated with regard to the size of the system and the size of the laundry room addition, they are talking about 25 cubic feet of storage. He stated he feels that while they would be willing to do what Ms. Kirk has requested, it may be more than what is typical for something of this size. Ms. Kirk stated she would not disagree with Mr. Machamer; however, her concern is that in light of recent history with significant rain events that could lead to flooding that historically were not previously effected, those were her questions as to why it was just a seepage trench.

Ms. Kirk asked with regard to the Conditions as to the proposed shed withstanding impact and uplift forces, there is no issue with that being Certified by a duly-registered engineer or architect; and Mr. Machamer agreed, and stated he would actually do that design and Certification and provide that seal. Mr. Kirk asked Mr. Machamer if he is Certified to practice in Pennsylvania, and Mr. Machamer agreed.

Mr. Gruen asked Mr. Majewski if Mr. Machamer was correct when he stated with regard to the impervious surface that there was a Zoning change and that is why they are at 19% impervious surface when they added the driveway; and Mr. Majewski agreed adding that years ago there was a requirement just for building coverage, and they did not account for driveways or patios.

Mr. Majewski stated as the Board has seen in numerous Applications, there are a lot of properties that are already over what is allotted. Mr. Majewski stated these properties are also located in the RRP Resource Protection Zoning District, and this was originally in the R-2 area where 18% would have been allowed. Mr. Majewski stated they were re-mapped to by the RRP Zoning District sometime in the 1990s, and he believes that it was meant for new development to be restricted to a very low number; however, that is not the way it was written, and it was written that all development was restricted to a number that is even lower than the building coverage that was approved when the house was built.

Mr. DosSantos asked Mr. Malaty how long he has been in the property, and Mr. Malaty stated he has been there about ten years. Mr. DosSantos asked Mr. Malaty if he has added any impervious surface in that ten years or done any improvements to the property to effect the impervious surface, and Mr. Malaty stated he has not. Mr. DosSantos asked his water management and if he has flooding or drainage problems in the yard, and Mr. Malaty stated they have no issues.

Ms. Kirk stated if the Board was inclined to grant the Applicant's request the Township would ask that the Conditions as set forth in the e-mail by the Township engineer be made part of any Motion and further than under the Ordinance the Board has to notify the Applicant in writing that the Grant of the Variance may result in an increase in the premium of his flood insurance. She stated the Floodplain Ordinance was crafted in order to address the requirements of FEMA and the insurance providers with respect to all of the flooding that had occurred in that area; and in order to maintain a certain rating for the Township, if someone is building within a floodplain or a floodway, that could effect the Township's rating. She stated the Applicant needs to be aware of that adding it is under Section 200-59 of the Ordinance, and she provided Mr. Flager a copy of that provision.

Mr. Majewski stated the notification would also have to say that such Variances may increase the risk to life and property; and although this really does not necessarily do that, it is a requirement that the grant of the Variance advise the Applicant of that.

Mr. Flager stated it has to be in the Decision adding that in previous situations with this involved, the Decision has had that verbiage in it.

Mr. Gruen asked Mr. Majewski his recommendation as far as the shed, and he asked if it would be better to put it on stone with a gravel bed underneath it to catch its own water or just make him enlarge the seepage pit by a few feet to cover the shed so that they can maintain at least the 19% for the entire property for all the additions. Mr. Majewski stated either one would be acceptable.

Mr. DosSantos stated as long as they are going to excavate anyway for the shed, he would rather see the foundation of the shed; and Mr. Gruen stated he agrees. Mr. Gruen asked if they would be agreeable to that Condition, and Mr. Machamer stated they would agree. Mr. Gruen asked if they would agree to all the Conditions stated by the engineering firm, and Mr. Machamer agreed.

Mr. Flager asked if it was an e-mail that was sent or a formal review letter, and Mr. Machamer stated it was an e-mail that Mr. Majewski had provided to him this evening that came into the Township at 4:26 p.m. Mr. Flager marked as Exhibit A-6 the e-mail dated September 17 between Andrew Pockl and Jim Majewski. Mr. Gruen stated Item #2 should be crossed out since they are not in the floodway. Mr. Flager stated it will still be marked, but that would be in the Motion to comply with the Conditions but not Condition #2.

There was not one in the audience wishing to speak on this matter.

Mr. Gruen stated he felt Mr. Machamer indicated that he removed the square footage from the patio that they are removing and took it into account in the calculations; and Mr. Machamer stated it is correct that they removed the 33 square feet in the calculations.

Mr. DosSantos moved and Ms. Lee seconded to grant the relief requested subject to the Conditions discussed during the Hearing as follows:

- 1) Those marked in Exhibit A-6 except for #2 which is not applicable;
- 2) Working with and getting approval from the Township engineer as discussed today;
- 3) Conditions in Section 200-59 about possible increase in flood insurance rates as well as the potential increased risk to life and property;

- 4) The shed be placed on an appropriate bed of a size to capture the stormwater from the shed.

Motion carried with Mr. Connors opposed.

Ms. Kirk left the meeting at this time.

APPEAL #18-1806 – ROBIN & BILL PEARSON

Ms. Robin Pearson and Mr. Rob McCubbin, Anthony Sylvan Pools, were sworn in. Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plan was marked as Exhibit A-2. The letter from the Pearsons outlining their reasons for the requested relief 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.

Mr. McCubbin stated they are asking for relief from the impervious surface. He stated the property is located in the R-2 Zoning District which carries an 18% maximum. He stated the Pearsons would like to build a pool; and when the survey work was done, they discovered they were already over the permitted impervious limit. He stated the total existing impervious before anything is constructed is 19.7%. Mr. McCubbin stated what they are proposing is a swimming pool with 600 square feet of concrete decking, 140 square foot of pool coping, a small boulder waterfall, and a 24 square foot equipment pad which totals 764 additional square feet which will put them at 23.2%. Mr. McCubbin stated they are proposing a stormwater management plan which is an infiltration trench that will be able to handle what they are proposing, the 764 square feet, plus the additional 1.7% that they are already over the 18% so effectively they are bringing everything back down to 18% with the stormwater management plan. Mr. McCubbin stated the stormwater management is on the downside of the property behind the swimming pool which will account for all 5.2% that they are over or 1,138 square feet of impervious area.

Mr. Gruen asked what is the seepage plan they are proposing. Mr. McCubbin stated it is an infiltration trench that is 3' wide, 3' deep, by 53' long filled with landscape fabric, crushed stone, and three inspection risers across the length of the trench – one in the middle and two on either end. Mr. Gruen asked if they did any soil testing, and Mr. McCubbin stated they did not do any soils tests as they went with the simplified method. Mr. Gruen stated there is an overflow pipe, and he asked where that would lead to; and Mr. McCubbin stated it will overflow into the grass area.

Mr. Gruen asked Mr. Majewski if he feels what they have proposed is sufficient, and Mr. Majewski stated they are proposing to take care of the impervious surface that they are adding plus the additional 1.7% which they are already over so their effective impervious surface based on the size of the seepage bed they will install is 18%.

Mr. DosSantos asked Mr. Majewski if the size of the seepage bed as proposed from a calculation standpoint will bring it down effectively to 18%, and Mr. Majewski agreed. Mr. DosSantos asked Mr. Majewski if he has any concern with the proposed location of the seepage bed on the property, and Mr. Majewski stated he does not adding that area of the lawn is fairly flat and should not create any problems.

Mr. Gruen stated Ms. Pearson has been in the house twenty-seven years, and he asked when the big patio in the back was added. Ms. Pearson stated possibly eight years ago. Mr. Gruen asked if there was a Building Permit issued for that, and Mr. Majewski stated he does not believe so. Mr. Gruen asked Ms. Pearson if she has considered removing a section of that patio in order to reduce the impervious surface, and Ms. Pearson stated she did not think about that. Mr. DosSantos stated they are planning on bringing the effective impervious surface down to the allowed 18%. Mr. Gruen stated he is happy with what they are proposing.

Mr. Gruen asked Mr. Majewski if he is familiar with the soil conditions there and asked if it is heavy clay, and Mr. Majewski stated he is not familiar with the soil conditions. Mr. Gruen stated they are putting in a seepage pit and a lot of the soils in the Township are such heavy clay that the seepage pit will “not do the job.” Mr. DosSantos stated they are putting in a pool, and in reality the pool will soak up a lot of water. Mr. Gruen asked if there is a requirement to have a soil test; and Mr. Majewski stated a soils test comes into play when you are adding more than 1,000 square feet of impervious surface, and in this case they are adding approximately 800 square feet.

There was no one present in the audience wishing to speak on this matter, and Mr. Gruen closed the discussion.

Ms. Lee moved, Mr. Connors seconded and it was unanimously carried to grant the Variance allowing 23.2% impervious surface with an effective rate of 18% through the proposed infiltration trench as testified to and subject to Township engineering approval.

APPEAL #18-1807 – PHILLIP D & LAURA E COOPER

Mr. Phillip Cooper, and Mr. Joe Blackburn, attorney, were present.

Mr. Blackburn stated the property is located at 1214 Linden Avenue. He stated the property is approximately 22,500 square feet and it is located in the R-2 Zoning District. He stated it is presently approved with a single-family detached dwelling unit in which Mr. and Mrs. Cooper have resided at as their primary residence for twenty-eight years.

Mr. Cooper was sworn in.

Mr. Flager marked that Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plan was marked as Exhibit A-2. Exhibit A-3 is the August 20 letter from Ed Murphy enclosing the Application. Exhibit A-4 is the attached letter outlining the reasons for the request. Exhibit B-1 is the Proof of Publication. Exhibit B-2 is the Proof of Posting. Exhibit B-3 is the Notice to the neighbors.

Mr. Blackburn stated on Plan, Exhibit A-2, the property is a dual-frontage lot in that it has frontage on Maple Avenue as well as Linden. He stated the property is an existing non-conforming with respect to the front yard setback on Maple Avenue in that it maintains a 34 and ½ foot setback where a 40 foot setback is otherwise required. Mr. Blackburn stated the Applicant is proposing an expansion to the home in the form of an additional garage bay as they currently have one single-car garage. He stated above that additional garage bay as shown on Exhibit A-2, the Applicant proposed to provide above that second-story space that will be utilized as a home office for the Applicant exclusively and it will be strictly office space.

Mr. Blackburn stated in order to accommodate that level of expansion, the Applicant is seeking relief in the form of a Variance from the impervious surface coverage limits. He stated they are in the R-2 District where an 18% maximum is permitted. He stated they are proposing an increase in the amount of 528 square feet, and a large portion of the expansion is over what is existing impervious which would be 19.2% impervious surface where 18% is permitted.

Mr. Blackburn stated Mr. Cooper has had the opportunity to speak at length with his neighbors to the east and to the south, and they have letters from those neighbors indicating their acknowledgement of the relief being requested and their support of the Application; and he submitted these to the Board to be marked as Exhibits A-5 and A-6.

Mr. Blackburn asked Mr. Cooper if he agrees that what Mr. Blackburn has indicated is accurate, and Mr. Cooper agreed.

Mr. Cooper stated with regard to the garage, at this time it is actually a carport currently so they are not adding new impervious surface with the additional bay.

Mr. Gruen asked where the increased impervious surface comes from, and Mr. Blackburn noted the dark black line on Exhibit A-2 which is the new building line and that extends east for a little bit from the existing bay and paved area and south a little bit from the existing paved area which is the hatched marked area. Mr. Gruen stated they are enlarging the footprint, and Mr. Cooper agreed. Mr. Blackburn stated to the rear of the car bay in order to accommodate the second-story home office, they would be covering the existing impervious patio.

Mr. Blackburn stated they would be amenable to a Condition that required installation of a rain garden or some sort of stormwater management facility capable of accommodating the increased impervious in order to bring the effective impervious back to the 18% to the satisfaction of either Mr. Majewski or the Remington Vernick. Mr. Gruen stated he would not be in favor of a rain barrel.

Mr. Flager marked the letter from J. Michael Chaykowsky in support as Exhibit A-5 and another letter from Abigail Halloran and William Baldwin in support as Exhibit A-6.

Mr. Majewski stated the stormwater management that would be required would be for the entire additional impervious surface that is being added to the property. He stated the entire net increase will be required to have stormwater management. He added if it were to be an infiltration that was proposed, the approximately size would be 2' by 4' by 28' if they chose to use that method.

Ms. Lee asked what method they were proposing, and Mr. Blackburn stated they have not gone through design yet and they could probably accommodate either a trench or a rain garden if they are going for the full 528.

Mr. Gruen asked what he means when he refers to a rain garden, and he asked if it would be a "real" rain garden or just a trench with some plants. Mr. Blackburn stated the latter is probably the most accurate adding it is a trench with plants that are recognized as capable of soaking up water. He noted the soils are somewhat compromised in the area and the plants that would be planted there are plants that

are specifically for the purposing of maintaining that water. Mr. Gruen stated when you use the term “rain garden” which is loosely used, it really means a trench underground filled with stone and then additional soil on top of it and then you put the plants in. He stated it is not just a depression in the soil and “stick some water-loving plants.” Mr. Blackburn stated whatever they propose would need to be subject to approval of the Township engineer.

Ms. Less asked Mr. Majewski if he prefers one over the other, and Mr. Majewski stated he has no preference.

Mr. Gruen stated a rain garden if done properly is very attractive versus just a trench full of stones. Mr. Gruen asked Mr. Connors if he has a preference; and Mr. Connors stated as long as they serve their purpose and are maintained, he has no preference.

There was no one in the audience wishing to speak on this Application, and Mr. Gruen closed the Hearing.

Ms. DosSantos moved and Ms. Lee seconded to grant the relief as requested with the appropriate stormwater management to be approved by the Township engineer. The additional 528 square foot increase proposed that stormwater management be utilized to encompass that total increase in square footage and bring the effective impervious surface to the allowed 18%.

Mr. Blackburn stated the 528 would bring it below the 18%.

Mr. DosSantos stated he appreciates the clarification and they would Condition the approval on encompassing the entire 528 square feet, and the part referencing the 18% would not be part of the Motion.

APPEAL #18-1808 – RAYA CONSTABLE & RANDALL J GRUBB

Ms. Raya Constable and Mr. Randall Grubb were sworn in.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plan was marked as Exhibit A-2. The 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. Grubb stated they are requesting a Variance for the location of the shed and the fact that the location of his fence is within the special setback.

Mr. Gruen stated he is asking for a fence that is higher than permitted in the setback, and Mr. Grubb agreed. Mr. Gruen stated they are asking for a 6' fence instead of a 3' fence which is allowed; and Mr. Grubb stated they are due to the Huskies. Mr. Gruen asked if currently there is a 4' high vinyl existing fence in the front, and Mr. Grubb stated that is not correct. He stated there is a 6' high fence. He stated there was a 4' high post and rail fence in the back, and he replaced that a few years back. He stated there is no vinyl fence in the front.

Mr. DosSantos stated there are a lot of notations on the Site Plan from Mr. Habgood dated in 2014, and Mr. DosSantos asked if there were prior approvals for some of these issues that seem to be depicted on the Plan. Mr. Majewski stated in 2015, the property owner applied for a Permit for a shed. He stated the Board had been provided a copy of the Sketch where it shows "Zoning Approved" which was initialed by Steve Ware. He stated the depiction of the shed on the Plan did not label where the shed was going, and there were no dimensions. Mr. Majewski stated that based on the scale of it, it appears to have been construction in accordance with where they had submitted the Permit for; however, that Permit should not have been issued. He stated the Permit should have required that they have dimensions to the property and the right-of-way which would have shown that they needed a Variance to do what they did. Mr. DosSantos stated they got the Permit, but they were not requested to get a Variance for it by the Permit office; and Mr. Majewski agreed.

Mr. Gruen asked what is the problem with the shed now, and Mr. Majewski stated it does not comply with the Zoning Ordinance; and in addition they constructed a 6' high vinyl-coated metal fence along the front of the property, and that was done without a Permit. Mr. Majewski stated he believes that they did have a Permit to have the fence in a location closer to the house, but instead they placed the fence closer to the right-of-way of Bluestone Drive.

Mr. Gruen asked what is the violation with the shed, and Mr. Majewski stated it is in the wrong area of the Lot. Mr. Majewski stated the Ordinance requires that an accessory structure be located in the fourth of the Lot furthest removed from the road, and in this case this is about in the front third of the Lot closest to the road; and it would have had to have been pushed back into the area behind the house.

Mr. DosSantos asked if this is a corner Lot, and Mr. Majewski agreed.

Mr. Gruen asked what is the size of the shed, and Mr. Grubb stated it is 10' by 15'. He stated it is roughly 10' high. Mr. Grubb stated he called the Township numerous times to have the inspections regarding the "form" and where it was located. He stated also with regard to the rebar, the stone, and everything. He stated the last time he contacted the Township they said just finish the shed, call them, and

they would come and review. Mr. Gruen asked if they came, and Mr. Grubb stated he “believed so.” He stated he never had any contact that there was any issue. He stated he thinks they would have contacted him if there was an issue.

Mr. Gruen stated Mr. Grubb mentioned “rebar,” and he asked if he installed a concrete floor; and Mr. Grubb agreed. Mr. Gruen stated the shed would not be moveable at this point, and Mr. Grubb stated it is not. He stated it was stone, rebar, and concrete.

Mr. DosSantos stated it indicates that the Zoning was approved on 7/10/15; and it looks like the location shown looks like the same location he has which was Permitted and he assumes inspected. Mr. Grubb stated once he formed it up he put the stone down and called, and put the rebar and some mesh and called and they said to finish building the shed and call them, and that they would contact him if there were any issues; and he was not contacted. Mr. DosSantos asked Mr. Majewski if there is any indicated that there was contact from the Applicant or from the Township; and Mr. Majewski stated there is a notation in the file that a final inspection of the shed was done in 2016 and it passed.

Mr. DosSantos stated the shed was inspected and passed, and he is now being required to seek a Zoning Variance on the same shed; and Mr. Majewski agreed.

Mr. Gruen stated that is unfortunate; and even though he does not agree with it, there is a case law in a neighboring town where someone built a garage and had all the Permits and Approvals; and the Township then discovered that the sewer line is next to his garage. Mr. Gruen stated when they went to fix it, the homeowner went to Court, and he had to tear down the garage. Mr. DosSantos stated that was a different issue.

Mr. Gruen asked Mr. Majewski if he has seen the shed location, and Mr. Majewski stated he has. Mr. Gruen asked if he received any complaints about the shed, and Mr. Majewski stated they have from people in the neighborhood. Mr. DosSantos asked if it was because of the location, and Mr. Majewski agreed.

Ms. Constable stated they have a Permit and it says very clearly the size of 10 by 15 and she was talking to the person from the Township and there were only two places possible to put the shed. She stated they cannot put it against another place because it is a “waterfall.” She stated her house does not have a garage, and she feels it is the only one that is a townhouse where they converted the garage to a room and she does not have any space like that at all. She stated she talked to someone from the Township and he saw exactly before they put in everything. She stated he saw the measurements and the stone and the

metal pieces, and he approved. She stated he said that when you go for concrete you have to call him and he will come and check. She stated there is no other place on the property to add a shed.

Mr. DosSantos stated they understand the issue is that it was approved and Permitted.

Mr. DosSantos stated there is also an issue with the fence, and they are seeking a Variance for a fence. Mr. Grubb agreed and stated the fence is evidently too high. Ms. Constable stated they did not think the shed was an issue because they have Permits. Mr. DosSantos stated Mr. Majewski indicated that there was a prior Permit issued for the fence but in a different location and at a different height. Mr. Majewski stated he feels they had the fence a little further back at the setback line, and it would be roughly in line with where the shed is. Ms. Constable stated it had to be behind because of where the shed is right there. She stated it is a very small place. She stated they also have a bus stop, and there are a lot of people who come from everywhere.

Ms. Lee asked if the 6' high vinyl fence there now, and Ms. Constable stated there is no vinyl. Mr. Grubb stated the fence that is in discussion is a vinyl-coated metal fence that you can see through. Ms. Lee asked if they are looking to replace the fence that is existing; and Mr. Grubb stated he is not, and "there came an issue," and he is looking for a Variance for the location of the fence. Ms. Lee stated the fence is there, and now he needs a Variance for the fence that is there. Mr. Gruen stated he wants to keep the fence where it is, and that he is here for a Variance; and Mr. Majewski agreed.

Mr. Gruen stated he indicated it was vinyl-coated, and he asked if it is a chain link fence that is covered with vinyl; and Mr. Grubb stated it is very similar but it is more rectangular. He stated it is green.

Ms. Lee asked if they brought pictures. Ms. Constable stated she does on her phone but it is almost impossible to see because it blends into the grass.

Mr. Gruen asked why the fence is at the location it is, and Mr. Grubb stated it was because they have two dogs that require running even if they walk them two or three times.

Mr. DosSantos stated that it appears that there was a Permit granted for a fence, and he asked if they made an Application for a fence. Mr. Grubb stated they did pull a Permit. Mr. DosSantos stated they pulled a Permit for a fence at a certain location, but the fence was built in a different location; and Mr. Grubb agreed. Mr. Grubb stated the one side which he believes is the south side, they moved it toward the right-of-way line maybe 10'. Mr. DosSantos stated that is significant. Mr. DosSantos asked if there was confusion as to where the fence was when they were granted the Permit. Mr. Grubb stated there were people walking through the yard, and there is a misunderstanding that behind their property is an easement; and it is not. He stated he constantly had traffic through their yard. He stated the neighbor had set his fence back off the property line for roughly 4' to 5', and people feel that there is an easement for them to walk to their properties. Mr. DosSantos stated his question was that he was Permitted at a certain location, but he knowingly built significantly far from that location.

Ms. Constable stated they put in the shed, and they cannot put the fence in the same place because the shed was right there. She stated they put it a couple more feet – maybe about five feet – behind the shed. She stated it a very small “block” because they have dogs, and they did not have the dogs before so they did not need a fence.

Mr. Gruen asked if they could have attached the fence to the back of the shed, and Ms. Constable stated they could not.

Mr. DosSantos asked Ms. Constable if she has photographs that might be helpful.

Mr. Gruen asked Mr. Majewski if he has inspected the property; and Mr. Majewski stated while he has not inspected he, he has seen the fence.

Ms. Lee asked if the Permits were taken out at the same time; however, Mr. Majewski stated he does not recall.

Mr. DosSantos stated Mr. Majewski had indicated there were complaints from the neighbors about the shed, and he asked if there were also some concerns about the fence; and Mr. Majewski agreed. Mr. Gruen asked the nature of the complaints, but then stated he will ask the neighbors who are present.

Ms. Constable showed pictures of the fence and the shed.

Ms. Lee asked if the issue is just the right side of the fence as you are looking at the map which is the Bluestone side which is not in compliance, and Mr. Majewski agreed. Ms. Lee asked if it is the fact that it is too high and too close to Bluestone. Mr. Majewski stated it is a corner lot, and since it is a front yard, you are only allowed to have a 3' high fence in that area. He stated if it was a 3' high fence along that portion parallel to Bluestone it would be acceptable; however, because they are going up higher, then it becomes a problem.

Mr. DosSantos asked if it is also too close to the right-of-way, and Mr. Majewski stated one issue is the fence height in the area to the south of the shed toward Bluestone Drive is too high for what is required by the Ordinance. He stated the fence could be up 1' behind the sidewalk if it was only 3' high; but since they have gone with a 6' high fence it needs to be pushed back toward the house.

Mr. Majewski stated the second issue is the shed, and the shed is too close to Bluestone Drive; and according to the Ordinance, it would have to be roughly located directly in the rear of the house right in the middle of the back yard directly behind the house. Mr. Grubb stated there was an issue with that because the soil has no drainage, and it congregates back in that corner. He stated if he were to build it there, it would fall over.

Mr. Connors stated if the fence were 6' high, it would have to be further back than the setback, and Mr. Majewski agreed it would have to be at the setback.

Mr. Gruen stated he feels that this is an aesthetic issue.

Mr. DosSantos asked if they had the dogs at the time they erected the fence, and Mr. Grubb stated they did. Mr. DosSantos stated he understands that they feel the height of the fence is needed because of the type of the dogs. Mr. Grubb agreed and stated it is because of the energy level. He stated he changed it because he was afraid of the sight triangle, and once it was erected it is very hard to see.

Mr. Gruen showed other Zoning Hearing Board members where the fence would have to be at the setback line.

Mr. Grubb stated he did not know the setback due to the properties around him are much closer to the right-of-way than the fence he erected, and that is the only reason why he did not know there was an issue.

Ms. Deborah Waters, 389 Tall Meadow Lane, was sworn in. Ms. Waters stated she is a original owner for over thirty years. She stated her back yard backs up to the Applicants and diagonal. Ms. Waters stated these issues started in 2015 when a vinyl fence was put up and it was not put to the property lines. She stated the neighbor that is directly behind the Applicants had his property surveyed to find out that the vinyl fence from 311 Tall Meadow Lane was on his property as well as hers. She stated the fence had to be changed position wise. Ms. Waters stated their vinyl fence is now directly on their property line, and the neighbor at 391 who is directly behind them has had a fence up for many years and was built not to the property line so there is a gap between the two fences.

Ms. Waters stated the second issue that came about was that a Permit was submitted to replace a sliding door in the back. Mr. Gruen stated the Board is not ruling on that, and the would just want to hear about the shed and the fence.

Ms. Waters stated the shed was done in 2017 – not 2016 which is what she heard. Ms. Waters stated she filed a complaint form in September, 2017; and on the complaint form she wrote homeowner has installed a large shed on the side of the yard and no Permit was posted in the window or at least not that could be seen due to the condition of the front of the house. Ms. Waters stated she wanted to confirm that the Permit had been issued by the Township, and if there were limitations as to the size of the shed and placement on the property based on the size of the property. Ms. Waters stated she also filed a Record Information Right-To-Know Request on the same day 9/26/17 regarding the shed.

Mr. Gruen asked if there was a prior shed on the property, and Ms. Waters stated there was not.

Ms. Waters stated she filed this on September 26, 2017, and on October 10, 2017 she stated to have communication response from Joe Janicelli from the Township and she believes Mr. Majewski has all those e-mails. Ms. Waters stated she has also spoken to Mr. Majewski in person with regard to the e-mail correspondence going back and forth, and he did review the case. Ms. Waters stated on November 8 she was told that the front yard setback for the property is 30' per the Recorded Plan. She read a message she received from Mr. Majewski which stated that "He measured the location of the shed and it is approximately 20' from the right-of-way on Bluestone Drive. He consulted with the Township solicitor and the property owner will be notified that the location of the shed is in violation of the Zoning Ordinance." Ms. Waters stated that was November 8. She stated she waited a month and saw no action being taken, and on December 6 she sent Mr. Majewski an e-mail saying that it had been a month since the last correspondence, and nothing has been done with regard to the shed; but she heard nothing after December 6.

She stated on April 30, 2018 she re-opened the conversation with Mr. Majewski and advised that she had stopped in the Office to speak with him regarding the shed and the situation, and that since it had been winter and no action had taken place, she had let it go. She stated the weekend prior to April 30 an additional wire fencing was added to the property, and she asked Mr. Majewski if there was a Permit that was still open for that.

Ms. Waters stated that while she understands they are only discussing the shed and the fence, in the same e-mail she did mention that the property was a “disgrace,” with debris everywhere – all over the yard. She stated it is an end Lot and people are coming into the development, and this is what they see – with boxes and trash all over the front porch and all along the side; and this is no way to keep a property.

Ms. Waters stated after April 30 she started to have conversations with Michael Kirk who she was told took over for “Joe;” and Mr. Kirk told her on May 1 through an e-mail that there would be a violation letter sent to the homeowners to state that there were in violation of the Lower Makefield Township Zoning Ordinance. Ms. Waters stated there have been multiple correspondences following up, and the next correspondence she had from the Township from Mike was June 28 which stated: “She has not complied with what we told her she needed to do, therefore I have to move forward with the legal process and bring her to Court which can take some time.”

Mr. DosSantos asked if there is a reference to that whether it is for the fence, the shed, both or something else; and Mr. Waters stated all of this was with regard to the documentation that she had started on September 26, 2017.

Mr. Gruen stated the Township threatened the Applicant with a lawsuit, and he asked why they is this matter before the Zoning Hearing Board; and he added it should have gone to Court to decide whether the Township was wrong in issuing the Permit. Mr. Gruen stated Mr. Grubb stated that he had a C/O and “the lady said that there was no shed there when he had the C/O.” Mr. Majewski stated as far as the enforcement process, when the Township issues a Violation Notice, the avenue of Appeal for the Applicant is to either go to Court and fight it or to file a Zoning Hearing Board Application. He stated once you file the Zoning Hearing Board Application, that stays all the legal proceedings because you are taking the avenue of the Zoning Appeal process to legitimize what you have done with the shed and the fence.

Mr. DosSantos stated if the Variance is granted there is no Court case, and Mr. Majewski agreed. Mr. Majewski stated if the Variance is not granted, they will either be required to remove the shed and the fence or they would

have to go to Court. Mr. Majewski stated with regard to the shed not being installed, Ms. Waters is correct; and somehow they inspected the shed before it was built. Mr. Gruen asked how that is possible. Mr. Majewski stated he feels that what was inspected was the concrete pad for the shed.

Mr. Flager stated the chronology of the events is not as critical as Ms. Waters' feelings about the Application itself. He stated they are aware of the fact that they have gotten here through some "mishap," and it is confusing. Mr. Flager stated he understands that the chronology of the events is a little convoluted, but the Board traditionally likes to hear whether the residents are opposed or not. Mr. Flager stated they can request Party Status which gives certain rights. He stated they can formally object to it and state the reasons for that which is what the Board would like to focus on more so than on a "drawn-out chronology" as to how they got here.

Mr. Gruen stated at the end of the Hearing, they would offer Party status to anyone who wants it. Mr. Gruen stated Party status means that any neighbor who wants to challenge the Board's decision later on or if they do not conclude this tonight, they would be notified for the next Hearing; and once the Board makes a Decision, they would be entitled to all records so that they can take it to Court. Mr. Flager stated they would have the ability if they do not like the Decision, to Appeal the Decision. He stated they would be Party to any litigation that ensues as a result. Mr. DosSantos stated that Appeal would be at their own cost.

Ms. Waters stated she did want to mention that Mr. Mike Kirk told her that there was a Court date on August 2. Mr. Gruen stated Mr. Majewski explained that by them coming here to the Zoning Hearing Board that Court date is moot right now until the Board makes their Decision. Ms. Lee stated it is stayed. Mr. Gruen stated it will not be acted on until the Zoning Hearing Board makes their decision.

Mr. DosSantos stated the Application was not filed until August 20, and he asked Mr. Majewski what happened with the Court date on August 2 and the Court should have proceeded. Mr. Majewski stated he did not recall. Mr. DosSantos asked Ms. Waters if she knows whether a Hearing was held, and Ms. Waters stated according to Mike it was.

Mr. Grubb stated it was withdrawn. Ms. Lee asked who withdrew it. Ms. Waters stated a thirty-day Extension was granted. Mr. Gruen asked Mr. Majewski if the Township withdrew or was an Extension granted because they expected it to come to the Zoning Hearing Board; however, Mr. Majewski stated he did not know.

Mr. DosSantos stated the Applicant was going to advise what happened at the Hearing, and he would like to hear about that. Mr. Grubb stated it was withdrawn, and he was given thirty days to pull a permit for the relocation of the fence. He stated with regard to the property at 391 who built his fence off the property line, Mr. Grubb stated he maintained that for many years; and when he put his fence up, he got a letter from the Township that he was going to be fined because he did not mow that grass, but it was not his grass. Mr. Grubb stated he advised the property owner at 391 who told him to move his fence, but he advised that property owner he did not know that he had built his fence off the property line, and that he had cut that grass for years.

Ms. Constable stated when they built the shed, they had Permits; and if Ms. Waters did not see it, "it is her problem." Ms. Constable stated now she makes a "big deal" because she and a couple of the neighbors because they always use their Lot, and they even knocked down her fence and she has three small children. Ms. Constable stated these people are walking all over her property, and she told them there was no easement there; but they do not care. She stated with regard to the trash they say she has, Mr. Grubb works in construction and everyday he gets lots of boxes dropped off on the front of the house. She states somebody from the Township asked her to take a picture, and she told them they were more than welcome to do it because they would see that it is not trash like they are "hoarders" but it is bringing material for his work. She stated that also happened because they did not have a shed. She stated this property did not have a shed at all. She stated the property was "nice and clean" for so many years, and they just made a "big deal" because they cannot walk behind; and that is really the issue here.

Ms. Lee advised the residents that what they are looking for is just whether or not they object or are in support.

Ms. Karen Springer, 385 Tall Meadow, was sworn in and stated she does object; but she also has a question. Ms. Springer asked if there is a regulation about the size of a shed that is allowed in proportion to the size of the property it is on. Mr. Gruen stated he does not believe so and there is only a height limitation. Ms. Springer asked if they could have a shed that is effectively the size of the back yard, and

Mr. DosSantos stated they could not as there are other issues with impervious surface coverage. Ms. Springer stated it is a very large shed, and numerous times it was stated that there was more room needed for dogs which was an "after thought of getting the dogs;" and if the shed were not so big, there would have been more room for the dogs. Ms. Springer stated she feels they are making the problem worse. She stated there may have been a problem with the original Permit for the shed regardless of what that way, and now they are adding on the fence on top of that.

Ms. Springer stated this is the house that you see when you drive into the neighborhood; and you are looking at a wire fence which is the only wire fence in the neighborhood. Ms. Springer stated she just paid to have her property surveyed and paid to get a Permit for their fence; and they had to submit a pile of paperwork of what kind of fence they were putting up and did it fit in with the neighborhood and all of those things, and this fence does not. Ms. Spring stated she is not sure why she went through everything and paid out money and paid for the survey when she could have just put up a fence anywhere they wanted. She stated it seems that some of the rules apply to some and not to others.

Mr. DosSantos stated the reason the Applicants are here is because they did not comply so the rules are complying although it is taking a circuitous route.

Ms. Jenny Schumeyer, 321 Tall Meadow Lane, was sworn in. She stated she objects because it is unsightly and these individuals did whatever they wanted to do. Ms. Schumeyer stated it is easier to ask for forgiveness than permission, and she thinks that is where we are now. Ms. Schumeyer stated she is also concerned that if this is approved, now they will be setting a precedent for Lower Makefield; and she can do whatever she wants on her property and come back and say I'm sorry I did not know. She stated she very much objects.

Mr. Gruen stated they do not set precedence at the Zoning Hearing Board, and every Application has to stand on its own merit.

Mr. Richard Schumeyer, 321 Tall Meadow Lane, was sworn in. He stated he also objects for all the reasons that his wife elicited. He stated he has pictures of the property as it exists now showing the fence and the shed; and these were shown to the Board from Mr. Schumeyer's phone.

Mr. Harvey Hurd, 354 Tall Meadow Lane, was sworn in. He stated Tall Meadow Lane is a u-shaped street which starts and ends at Bluestone; and he is at the back of the "u." He stated he looks down between the two rows of houses. Mr. Hurd stated he has heard more than once from a number of neighbors about what an "eyesore" the fence and the shed are. He stated they are totally out of synch with the whole rest of the neighborhood, and it is the first thing you see when you drive into the neighborhood.

Mr. Bruce Wigod, 315 Tall Meadow Lane, was sworn in and stated he objects for all the reasons previously stated. Ms. Lee asked if he objects to both the shed and the fence, and Mr. Wigod stated he objects to both. Mr. Gruen asked if it is because of aesthetic values and does not match the neighborhood, and Mr. Wigod stated it does not match the neighborhood and it is an eyesore.

Ms. Constable stated she sees one neighbor in the back of the room, and he tried to send everybody over to her house to take a picture. She stated lots of people do not even know their house is there because when you drive in the green fence is really kind of blending into the grass in the first place and lots of people really like it. She stated if they go for a Permit for a vinyl fence, it will look much worse. Mr. DosSantos stated they are going to look at that when they see the pictures.

Mr. Joe Macecevic, 313 Tall Meadow Lane, was sworn in, and stated he lives next door to the Applicants. He stated he agrees with everything that was said tonight. He stated he does not know what can be said about “a person’s hygiene, personal property.” He stated he had an incident with the Applicants about three years ago and he came out of his house and he saw leaves on the ground and somebody had come over to his property and cut the branches off because they were “dirtying” her driveway. Mr. Macecevic stated she came over the cut them down, put them in a bundle, and threw them away; and he feels that is wrong. He stated this is just one incident. He stated she yells at his Grandsons when they come. He stated the fence has been an argument for a long time. He stated with the shed he does not know what specs they used or the Permits that they got. He stated now they put a fence up after they got the dogs. He stated he objects to it all.

The pictures provided by Mr. Richard Schumeyer, 321 Tall Meadow Lane, were shown on the monitor. Mr. Schumeyer stated these are current photographs. Photo #1 was marked as S-1 and Mr. Schumeyer stated it shows the front of the Applicants’ house and shows the “stuff” that usually sits there which is construction materials, tools, etc. He stated sometimes it is even more crowded. Ms. Lee stated they would like to see the shed and the fence. A photo was shown from the sidewalk on Bluestone which shows the back of the shed and the “stuff” that is stored there. He stated you can also see the metal, vinyl-covered fence. A photo was shown of the side yard looking from Bluestone. This was marked as S-3. Mr. Schumeyer stated you can see the vinyl fence and the playground for the dogs. He stated he was standing on Bluestone when he took this photo. It was noted that the shed is to the right. A photo was marked Exhibit S-4, and Mr. Schumeyer stated this is looking from Bluestone toward the corner of the shed.

Mr. DosSantos stated the fence shown comes to a right angle, and Mr. Schumeyer agreed. Mr. DosSantos stated the photo is looking from Bluestone and it shows the corner of the fence that heads toward the house and toward the rear property line. He showed the Bluestone side and the Tall Meadow side.

Mr. Gruen noted a wood fence on the right on a photo, and Mr. Schumeyer stated he believes that is the fence owned by the property owner on the other side. Mr. Majewski stated that would be the neighbor toward the west or in the drawing the Board has it would be to the top of the page. Mr. Gruen asked if that fence is legal since it looks like it is over 3'. Mr. Majewski stated he would have to check to see whether or not a Variance was obtained for it.

Ms. Lee stated the neighbor's fence in the back does not seem to be as far out as the Applicant's fence; and Mr. Schumeyer stated from what he heard this evening as Testimony, that fence is set back from the property line or runs very close to the property line. Ms. Lee stated the property owner that applied for a Variance, their current fence is 13' back from the edge of Bluestone; and she asked Mr. Majewski how far is the fence owned by the neighbor behind them from the right-of-way. Mr. Majewski stated it is greater than 13' but it is less than 25'; and he stated he looks like it is about 5' back from where the fence on the Applicants' property is.

Mr. DosSantos asked if they know what the address is for the property that has the wooden fence, and it was noted that it is 391 Tall Meadow.

Mr. Gruen asked if there is a white vinyl fence past the shed adding it looks like it is the Applicants' fence but it is a different type of fence. Ms. Constable stated that happened a couple years before they had the dogs, and she was not sure but then she did want to put all vinyl fence on the front because everybody would just see a "big white line." Mr. DosSantos asked if it is her fence, and Ms. Constable agreed.

A photo was shown, and Mr. Schumeyer stated it is from the corner of Tall Meadow and Bluestone looking down. Mr. DosSantos asked if as you are coming down Bluestone in that photograph, the subject property would be on the left; and Mr. Schumeyer agreed. Mr. DosSantos stated he does not see a fence in that photograph, and Mr. Schumeyer agreed.

Mr. Flager noted that five photographs were marked as Exhibit S-1 through S-5. Mr. Flager asked that the photographs be e-mailed to himself and Mr. Majewski. Mr. DosSantos asked that they then be sent out in the packet to the Board.

Ms. Miriam Centafont Kornacki, 324 Tall Meadow Lane, was sworn in and stated her property is across and over on Tall Meadow. Ms. Kornacki stated she objects for all the reasons stated by everyone. She stated she is also concerned because it is on a very busy corner with a lot of traffic including cut-through traffic from

Stony Hill that cuts through and comes to Bluestone onto Oakview and goes out onto Big Oak to go to the Shop Rite Shopping Center. She stated this is also a bus stop corner; and in order to pull up to the stop and see left, it is very difficult already because of the shrubbery. She stated not knowing what type of fence is going to go up and if it is tall to hide “whatever,” it would also prohibit a sight line at the corner which is her concern. She stated if it is a low fence, it defeats the purpose for their dogs; but if it is a low fence coming around the front and going around the side, “what is the point” as they already have a tall one.

Mr. DosSantos asked if the fence that is existing now creating any sight line issues since it is a relatively transparent fence. Ms. Kornacki stated it is not a sight line with the open fence the way it is. Mr. DosSantos stated her concern is that if they put some other type of fence it will create a problem, and Ms. Kornacki agreed as well as because of the shrubbery that is there. She stated if they put the fence tall enough for their concern with the dogs and bring it around and cut it over in front of the shed, it would not really block the front of the house; but she does not know where it would go. She stated if they wanted to enclose the whole front yard, it would only be able to 3’ on the front; and she asked where it would become 3’ versus “15.” She stated she really did not know what exactly what they are going to put up so she wanted to express her concern. She stated she is primarily concerned about everything everyone said plus it is a bus stop plus it is high traffic and you have to pull forward. She stated now although the fence is not an issue, the shrubbery and all is difficult to see; and you have to pull forward.

Mr. Gruen stated he would suggest that there be a Continuance to a later date because the Board has a lot of questions to ask of the Township, and they need a lot more information. He stated they are running out of time as there is another Applicant. He stated if it is acceptable to the Applicant, they will have another Hearing.

Mr. DosSantos asked if they have additional things they would like to submit. Mr. Grubb stated he has pictures of numerous properties that are in the vicinity of his house that have the same issue. He stated he would like to ask Mr. Majewski if there were Variances applied for these properties.

Mr. Flager stated he would like to formally ask those residents present this evening if they want Party Status. He asked those who spoke to come forward and state on the Record if they are requesting Party Status. He stated Party Status would give them certain legal rights and standings. He stated they would be notified about the Decision; and if they do not like the Decision, it would give them the opportunity to Appeal the Decision to the Court of

Common Pleas in Doylestown, and they would be a Party to that Appeal. He stated he believes that everyone has formally already stated that they oppose it so he really just needs them to state if they want Party Status. He stated you do not have to have it, but you can have it. Mr. DosSantos stated they all would not need it; and if they have a tight knit group, one representative of the group could do it.

Ms. Waters requested Party Status. Ms. Springer requested Party Status. Mr. Richard Schumeyer and Ms. Jenny Schumeyer requested Party Status. Mr. Harvey Hurd did not request Party Status. Mr. Bruce Wigod requested Party Status. Mr. Joe Macecevic requested Party Status. Ms. Centafont-Kornacki requested Party Status.

Mr. Gruen stated they will be notified when they will have the next Hearing. Mr. Flager stated they do not send out another notification, and Mr. Gruen stated in the past they had notified “Party Status people” about a Continuance because that could go on two to three Hearings and they should be notified when it is on the Agenda. Mr. Flager stated that is fine if the Township wants to send that out. Mr. DosSantos stated he feels the Township should handle it however they normally handle it. Mr. Flager stated under the Ordinance, the Township is not required to re-advertise a Continued Hearing, and Mr. Gruen agreed.

Mr. Majewski stated at this time there are no Agenda items set for October 2 and he suggested that they Continue this until October 16.

Mr. DosSantos stated there are questions they need to address with the Township. Ms. Lee stated she believes she is unavailable on October 16. Mr. Gruen stated in the past another member was able to read the Minutes and participate.

Mr. Gruen noted it is not a pressing issue since the fence and the shed are already there, and if they wanted to postpone it until November they could. Ms. Lee stated she can attend on October 2. Mr. Flager asked Mr. Connors if he could be present on October 2, and he agreed he could. Mr. Flager stated if an Alternate is sitting, the Alternate should continue through the end. Mr. Gruen agreed that they Continue it to October 2. Mr. Majewski stated he will not be available on October 2. Mr. Gruen asked if Mr. Kirk could attend; however, Mr. Majewski stated he did not know. Mr. Majewski stated currently there are no Applications that they have for October 2.

It was agreed to Continue the matter to October 16. Mr. Grubb stated they would be available on October 16.

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

Mr. Lewis left the meeting at this time.

APPEAL #18-1809 – MIKE & KAREN BURKE

Mr. Mike Burke, Ms. Karen Burke, and Mr. Joe Tretter, contractor, were sworn in.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plan was marked as Exhibit A-2. The 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.

Ms. Burke stated they moved into their house two years ago. She stated all they are looking to do is put in a covered porch over their existing patio in their back yard.

Mr. Gruen asked what is the Variance for, and Ms. Burke stated it is a 45' setback. Mr. Tretter stated they have a 45' setback right now, and the concrete that is already there is 35'. He stated they just want to cover their existing concrete. Mr. Gruen stated they are required 45', but the concrete will leave them only 35' of setback in the back yard; and Mr. Tretter agreed adding it is already existing. He stated they just want to cover 16' by 14' of the patio. Ms. Burke stated she wants to be able to sit outside when it rains. Mr. Gruen asked if they are going to enclose it with screens or windows, and Mr. Tretter stated they are not and it is just a roof.

Mr. Majewski stated a patio does not have a setback as a building does typically; but since they are covering it with a roof, it is considered part of the house and it is therefore required to comply with the rear yard setback which is 45'. He stated where they are locating it over the existing patio, it will reduce the rear yard setback from the structure to the property line to 35'.

Mr. Gruen asked the Applicant if they intend to ever enclosing it, making it part of the house; and Ms. Tretter stated not at this time. Mr. Gruen asked if they would agree if the Board approves it, not to enclose it and make it part of the house and just to keep it as a patio, and Ms. Burke agreed. Mr. Tretter asked what would be the difference if they enclosed it, and Mr. Gruen stated it would make it more of a living space and they could turn it into a sunroom versus a patio. Mr. Tretter stated that is what the Variance is for to cover the patio. Mr. Burke stated they have no plans to enclose it right now.

Ms. Burke stated she could not say “ever in her life she wouldn’t” but at this point she could say “no.” Mr. DosSantos stated what the Chairman asked was if they would agree to have that as a Condition; and if it was a Condition it would mean that they could not enclose it. Ms. Lee stated they would have to come back for another Variance.

Mr. Gruen asked Mr. Majewski if there is a difference between putting in just a roof or if they wanted to make it into a Florida room or three-season room; and Mr. Majewski stated from a Zoning perspective there is no difference, and once you put the roof on, there is no difference between that and building a full addition with walls.

Ms. Joy Grace, Sandy Run Road, was sworn in. She stated she would like to know about any more water since she just flooded again the Sunday before Memorial Day. She stated they have had five floods so water is an issue. She stated they cannot qualify for any FEMA because they are not in the floodplain.

Mr. Gruen stated it is already impervious surface and by putting a roof on, he does not see that there will be an increase. Mr. Majewski agreed that there will be no difference.

Mr. Connors stated that it states that there is five additional feet beyond the existing patio and it also identifies a 40’ setback and not a 45’ setback. Mr. Tretter stated they are not adding anything and everything they are covering is existing.

Ms. Grace stated they have been jackhammering in the area. Mr. Tretter stated they are taking out some of the older stuff.

Ms. Grace asked where the water will go since the water from that street goes into her yard and it does not go into the storm drains. She stated when the bridge was put in and all the different things they did for the house across the street, the water does not go into those drains; and it comes right into her yard. Mr. Gruen stated he believes Ms. Grace’s issue is really with the Township and that is why he asked whether this would add any water run off. Mr. Majewski asked if they are within the impervious surface ratio, and Mr. Majewski stated they are not adding any impervious surface. Mr. Gruen asked what is their impervious surface ratio now.

Ms. Burke stated they were not directed to do that, and they were only directed to for this was the setback. Mr. Majewski stated he had not calculated the impervious surface. Mr. Gruen stated he would like to make sure that they are not approving something that is over the impervious surface ratio. Ms. Lee stated they are not changing the impervious surface; and Mr. Gruen stated

while he knows they are not, he is concerned that they are over, and the Board is approving it. Mr. Gruen added that he does not know that they had a Building Permit for the patio. Mr. DosSantos stated not approving it will not change the impervious surface ratio. Mr. Gruen stated they might ask for them to remedy it.

Mr. Gruen asked Mr. Majewski if there was a Permit for the concrete patio in the files, and Mr. Majewski stated the only Permits they have are from when the house was built forty years ago. Mr. Gruen asked who added the patio. Ms. Burke stated it was there when they purchased the house. Mr. Gruen asked the size of the Lot. Mr. Tretter stated the Lot is roughly 98' in the front 109' feet in the back, 146' on one side, and 116' on the other side. He stated the house is roughly 53' by 24'. He stated he has an original Plot Plan.

Mr. Flager stated it is a 12,500 square foot lot so it appears that they have 10% impervious surface, and he does not believe that impervious is an issue.

Mr. Gruen stated he felt that generally when they have an Application, they always state the impervious surface ratio; and Mr. Majewski stated they do not if it is not germane to the subject.

Ms. Grace stated she is not opposed to the Application.

Mr. Connors moved, Ms. Lee seconded and it was unanimously carried to grant the Variance as requested for 35' setback.

CANCEL OCTOBER 2 MEETING

Mr. DosSantos moved, Mr. Connors seconded and it was unanimously carried to cancel the October 2, 2018 meeting.

OTHER BUSINESS

Mr. Majewski stated he met with Mr. Wilby and they went through some issues, and he will be removing some impervious surface from his property so that will no longer be an issue; and he is also going to try to talk to his neighbor to work out some of the issues with buffering and possibly moving his accessory building.

Mr. DosSantos asked if they get an engineer to come to the meetings since they are putting the onus on Mr. Majewski to answer some of these questions.

Mr. Gruen stated he has requested having an engineer a number of times.

Mr. Majewski stated for this evening's meeting the engineer was supposed to be here; however he believes that there was a miscommunication and he felt that since he had provided the letter for the floodplain Variance he felt he did not have to attend. Mr. Gruen stated in the future if there is anything to do with floodplains or something serious about impervious surface, he would like to have an engineer to provide their opinion. Mr. Majewski stated anytime there is an impervious surface issue that is beyond the norm of what is typically given, that is when the Township participates; and most of the ones that have been done over the last year have been run of the mill, and it is up to the Board to decide. He stated that to the level that there is an over riding public concern, that is when they get the engineer involved as they did with the floodplain Application this evening.

Mr. DosSantos stated with regard to the item that was Continued this evening, the Board wants to know from the Township about some of these issues including what happened with the Violation proceeding and the Permits. He asked that Mr. Flager reach out to the Township solicitor. Mr. DosSantos stated there a lot of questions with regard to the Permit.

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

Respectfully Submitted,

Keith DosSantos, Secretary