

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – DECEMBER 6, 2022

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on December 6, 2022. Mr. Solor called the meeting to order at 7:30 p.m.

Those present:

Zoning Hearing Board: Peter Solor, Chair
Judi Reiss, Secretary
James Dougherty, Member

Others: James Majewski, Community Development Director
Barbara Kirk, Township Solicitor
Adam Flager, Zoning Hearing Board Solicitor

Absents: Matthew Connors, Zoning Hearing Board Vice Chair
Mike McVan, Zoning Hearing Board Member
Fredric K. Weiss, Supervisor Liaison

APPEAL #22-1986 – MEGAN & KYLE DOUGHERTY
Tax Parcel #20-061-024
610 GRINDAN DRIVE, YARDLEY, PA 19067

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. Rob McCubbin, Anthony-Sylvan Pools, Ms. Megan Dougherty, and Mr. Kyle Dougherty were sworn in.

Mr. McCubbin stated a pool was designed to fit their back yard. He added their yard has an odd slope toward the back so there is not a lot of the yard is not very usable because of the sloped area. He stated the property is 16,813 square feet, and currently it is over the allowable impervious surface area which is 28%. He stated they are currently at 29.5% without the construction of the swimming pool and the swimming pool patio. He stated the 29.5% impervious consists of the house itself, the front driveway, front walk, a rear paver patio, and a covered porch out front. He stated there is also a shed and “a couple other things” that

are being removed. Mr. McCubbin stated they are looking to build a pool and add an additional 1,094 square feet of impervious surface to the property which would bring them from the current 29.5% to 35.6% or a total of 5,989 square feet.

Mr. McCubbin stated working with the engineer, they developed a stormwater management plan which will mitigate everything that is over the 28% so effectively by building the stormwater management systems, they will bring the property back to the 28% limit by mitigating the stormwater run-off for what they are creating plus what is existing that is already over.

There was no one from the public wishing to speak on this matter.

Mr. Solor stated there is an existing fairly large patio in the back yard. He stated he understands the need for pool coping and access around the pool, but he asked why they need the large extension in paving they are looking for on the south side of the pool. Ms. Dougherty stated that would be so that they would be able to put out a few lounge chairs. Mr. Solor stated the existing patio area is practically contiguous. Ms. Dougherty stated any pool she has been too has that larger patio area. Mr. Solor stated there is already a large paved area; and while they are mitigating the stormwater, they are still increasing the impervious area.

Ms. Reiss asked why they did not “bump the pool or take away some of what they already have.” She stated she does understand wanting to put out lounge chairs, but with the existing large area they could either move the pool toward it or find a way to break it up so it is not that large an area. Ms. Dougherty stated they have three children and “for moving around the area,” if they were to remove any impervious surface, they would want to move it from somewhere else. She stated they have the paver extension on the driveway; and if it is a concern and they need to remove some impervious surface, she would prefer to remove it there. Mr. McCubbin stated that would remove about 180 square feet of impervious surface. He stated it is an 18 by 10 paver extension off the back side of the driveway that could be given up so that they could still have the lounge area around the pool which would be more useful.

Ms. Dougherty asked what is the concern that they need to take more impervious surface away since they are doing stormwater management. Mr. Solor stated stormwater management helps, but during high-intensity events, the stormwater management only takes so much; and the more that is paved in the Township, the more it goes downstream. He stated they appreciate that they are proposing stormwater management and mitigating

it back to 28%, but there is still a lot of pavement that they are looking for. Mr. Majewski stated removing the 180 square feet would bring the impervious surface down to 34.6%.

Mr. Dougherty stated while it is not a huge reduction, looking at it from an equivalency standpoint, the part they are talking about seems to be similar in size and scale, and that might be a good solution to satisfy the Board's concerns.

Ms. Dougherty stated they would agree to that.

Mr. Dougherty moved and Ms. Reiss seconded to approve the Appeal increasing the impervious surface from the existing 29.3% to 34.66%, and mitigating it back to 28%. The Applicants need to work out an agreement with the Township where they will remove the paver extension of the driveway as part of this approval.

Mr. Solor asked Mr. Majewski if there is any reason to include anything else associated with the "removals" or is that being dealt with separately. Mr. Majewski stated that is being dealt with separately, and they have already contacted the property owner about the things that are on the property.

Motion carried unanimously.

APPEAL #22-1987 – STEVE & LISA MULLAGHY
Tax Parcel #20-042-107
24 OAKDALE BOULEVARD, YARDLEY, PA 19067

Mr. Steve Mullaghy and Ms. Lisa Mullaghy 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. Mullaghy stated they would like to put a four-season room on the south side of their house. It will be 20' by 16'.

Mr. Solor asked what were their plans for mitigation for the increase in impervious surface. Mr. Mullaghy stated it would be rain barrels and a soaker hose to distribute water throughout the yard. Mr. Solor asked Mr. Majewski if there

were calculations for any of this; and Mr. Majewski stated they did not provide calculations, and that is something that will need to be provided. Mr. Majewski stated he knows that the Zoning Hearing Board typically likes to have something more permanent as a mitigation measure, and typically an infiltration trench is what is often done for a property. He stated this is where they dig a trench in the ground 3' deep, and 3' wide by a certain length. He stated that is wrapped in fabric and fill it with stone, and maybe tie a roof leader from the addition into it so that the water runs off into that. He stated it will be buried underground, and the water seeps in.

The Applicants stated they would have no issue doing that.

Mr. Solor asked the Applicants if they have talked to their neighbors, and they stated they did talk to the neighbors on all sides.

There was no one from the public wishing to speak on this matter.

Mr. Dougherty moved, Ms. Reis seconded and it was unanimously carried to approve the Appeal subject to a submission of a stormwater management plan in the form of an infiltration bed pending Township approval mitigating the impervious surface taking it from 27.1% up to 30% but mitigating it back to 29% which is allowable.

APPEAL #22-1988 – GREG & MARYANN DOYLE
Tax Parcel #20-072-018
1499 BROOKFIELD ROAD, YARDLEY, PA 19067

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 Patio and Pool Plans were collectively marked as Exhibit A-3. The Impervious Surface Calculations and Stormwater Management Small Project Volume Control were collectively marked as Exhibit A-4. Site photos of the trees that were planted were collectively marked as Exhibit A-5. 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. Greg Doyle and Ms. Maryann Doyle were sworn in.

Ms. Doyle stated they are proposing to put in a pool and will be adding 1,494 square feet of impervious surface which will put them over their limit. She stated they have three different proposals to mitigate for that. She stated one is an infiltration pit which their contractor said might be a little difficult because of the floodplain they are in as they have a flood zone in the back. She stated another proposal is that they planted 21 “green giants” in 2020, and she thinks that they need 46 in order to meet the mitigation limit, so they could plant either another 21 trees or they could plant all 46 trees for the impervious surface.

Ms. Doyle stated they would also like to push the pool back to the 10’ limit of the property. Mr. Solor stated the Application says rear setback to 1 ½’, and Ms. Doyle agreed that is from the property line. Mr. Majewski stated the one Plan shows 2 ½’ to the decking, and to the actual pool would be more like 3 ½’. Mr. Doyle stated it was their understanding was that you are allowed to build within 10’, and they were looking to build “all the way back.” He stated there is a large open area in the back behind where the pool is going to be so they were hoping to use “the space of their property in full.”

Mr. Dougherty asked if they are just proposing planting of trees for the storm-water management. Ms. Doyle stated that would be preferable. She stated they did planted 21 trees. Mr. Dougherty stated while it is good to plant trees, trees sometimes die or get removed. Mr. Doyle stated she had heard that was an option, and Ms. Doyle stated that was an option on the Impervious Surface Application. Mr. Dougherty stated the Board usually reserves that for people who are within 1%. Ms. Doyle stated they would do the infiltration pit. Mr. Flager stated they can still plant trees, and Ms. Doyle stated they will still plant the trees. Ms. Reiss stated they are encouraged to plant the trees, but they are not a permanent option.

Mr. Flager asked Mr. Majewski if there is any issue with putting in a trench as the Applicant suggested because of the floodplain in the back, and Mr. Majewski stated the stream is quite a bit away from where the pool is. He added that on the one Site Plan, it showed the floodplain was on the property, it is not really as that was based on old mapping with inaccurate information. He stated it is very close to the property line, and they could put the infiltration trench on the side of the pool so that it not where there would be a water table problem.

Ms. Kirk stated she was asked to participate as the Township is concerned about the increase in impervious surface. She stated currently they have 27% impervious surface coverage at the property, and Ms. Doyle agreed. Ms. Kirk stated they are looking to increase it by almost 10% up to 36%, and Ms. Doyle agreed. Ms. Kirk stated a large portion of that is going to be a section that is a paver walkway from what appears to be the driveway to the pool coping, and Ms. Doyle agreed. Ms. Kirk asked if that section is absolutely necessary or could that be eliminated to try to reduce some of the impervious surface coverage. She stated she understands that it is so people coming in from the driveway can walk to the pool, but they also have a connection of their rear deck. Mr. Doyle asked if it would be possible to do the steps from the deck to the pool and eliminate the section from the “bump out” to the driveway. Ms. Kirk stated looking at the Plan, it appears that there are going to be pavers up to where the steps are for the deck; however, on the photograph sketch, there are none so it is confusing. Mr. Doyle agreed they are not on the photograph. Ms. Kirk stated the Plan is accurate, and they are going to have pavers coming off of the deck steps to the pool area. Ms. Kirk asked if the side “squiggly” section can be eliminated to help reduce some of the impervious, and Mr. Doyle stated if that makes it work, they are willing to do that. Ms. Kirk stated the Township’s position is that if you are coming in for a Variance, the relief should be the minimal necessary for reasonable use of the property; and a 10% increase in impervious is pretty significant.

Ms. Kirk stated according to the Plan, the box in red in the rear says 1.5’, and that is the point from the paver section of the coping to the rear property line; and Mr. Doyle agreed. Ms. Kirk asked if there is any way to orient the pool area to be parallel to the house itself so that they create more of a rear yard property setback. She stated the other corner appears to have at least what looks like several feet of a rear yard setback, and she asked if there is a way to turn the configuration of the pool to be parallel to the rear deck area so that there is a larger rear yard setback all the way around.

Mr. Solor stated there is another option that would reduce the amount of impervious which would also eliminate or reduce the setback request if they were to move the whole “thing” toward the deck. He stated they could move “that 10’ there or take it up to the deck,” and they would be reducing the amount of impervious for the walkway and reducing the amount of deck they have next to the pool.

Mr. Doyle stated they “are both a little crazy with symmetry,” and he stated he knows his wife will want it to be symmetrical with the house. He feels they would prefer to pull it back and keep the symmetry.

Ms. Kirk stated the Township’s concern was that the one corner will only have a rear yard setback of 1 ½’. She stated Mr. Doyle had stated that the property behind them was vacant land, and Mr. Doyle agreed that it is Township property. Ms. Kirk stated part of the problem is that people tend to not respect the property lines when it is Township-owned land; and if this were granted, it would be easy for a new homeowner to encroach further into the Township land. She stated in order to maintain a distance to protect that property line, the Township is asking for a larger rear yard setback. She stated if moving it forward can accomplish that, that would be better. Mr. Doyle asked if there is a dimension that they want to hold; and Ms. Kirk stated she would defer to the Zoning Hearing Board for their ultimate decision, but the more they can provide as a setback, the happier the Township will be.

Mr. Dougherty stated he understands that the Township would like it moved back, and he would be satisfied with 5’. Ms. Reiss stated she has heard about encroachment more than once; and there is a tendency when houses are sold by developers that the developers show the potential homeowners the open land and let them believe that it is the homeowners. She stated when the “farm people come in and fence it, people are having heart attacks in Mr. Majewski’s office.” She stated it has been a problem with encroachment. She stated she would be okay with 5’. She stated the Applicants are fortunate to be in a neighborhood that has a larger impervious surface permitted area. She stated if they would “tuck it back in,” it would solve almost all of the problems.

Ms. Kirk stated she does not feel that the Township would have a problem if the Board were inclined to require a Condition that there be a 5’ rear yard setback maintained so that they can configure the pool and coping area as they want with the increase in impervious surface eliminating that section from the driveway to the coping area as shown on the Plan, and whatever other Conditions the Zoning Hearing Board feels appropriate.

Mr. Doyle asked if they are looking for the impervious from the driveway to the back of the house be eliminated or the driveway all the way to the pool. Ms. Kirk stated she was asking that they eliminate from the driveway all the way to the pool, some of which would be automatically eliminated if they are moving it forward anyway. Mr. Doyle showed on the Plan the piece that he

understands they want eliminated, and Ms. Kirk agreed. Ms. Kirk added they also need to make sure there is a 5' rear yard setback from the edge of the property line to the pool area.

Mr. Solor stated they are offering two options – one is pull it back 10' and reduce the pavements where they intersect the building or the deck, and the other is pull it back 5' and remove the access that goes to the driveway. He stated they will probably phrase a Motion as a net increase to the impervious so that rather than it be 36.2%, it would be 35% "or something like that" which would be what they are limited in. He stated they would "have different geometries listed out here and still have a little bit of flexibility with the geometry," but we would be setting a lower impervious coverage so they would have to work that out. Mr. Solor stated the setback would be the limit on the back side depending on which way they want to go.

There was no one from the public wishing to speak on this matter.

Mr. Majewski stated he would estimate the area of the area of the sidewalk leading from the driveway to be 200 square feet which would bring it down to 35%.

Mr. Doyle stated he understands that they need to be 5' off the property line and have 35% impervious surface.

Ms. Kirk stated they are looking for as much as can be accomplished to eliminate the Variance relief which would satisfy the Township.

Mr. Solor stated they would also be looking for stormwater mitigation with an infiltration trench to the satisfaction of the Township.

Mr. Dougherty moved to approve the Appeal subject to an agreement that the rear yard setback will be a minimum of 5', subject to revising the Plan wherein the Revised Plan shows the proposed impervious walkway from the driveway to the proposed pool surround being removed, and having stormwater management in the form of a seepage bed wherein we take the current "stormwater" at 27.4 where it is going up to 35, and it gets mitigated back to 32.

Mr. Flager stated he feels they could state there is to be a maximum impervious of 35%, and they configure it any way they want.

There was no Second to the Motion.

Mr. Dougherty moved to approve the Appeal with a maximum rear yard setback of 5' and the impervious surface mitigated from 35 back to 32.

Mr. Majewski stated with regard to stormwater management, they always have to do stormwater management for all of the increase in impervious surface. He stated if they are under, the Board should say for an impervious surface of 35% subject to stormwater management per the review of the Township engineer. He stated if the Board wants to have them take it down below where they are in a case where they are over, then you would say mitigate it back to "whatever."

There was no Second to the Motion.

Mr. Solor moved and Ms. Reiss seconded to approve the Appeal subject to a minimum 5' rear setback, an increase in the impervious area to a maximum of 25%, and mitigation back to 27.4% utilizing infiltration to the satisfaction of the Township.

Ms. Doyle stated she understands that it was stated that the infiltration pit could go on the side of the pool. Mr. Majewski stated the Applicant's engineer could figure out what the best location would be. Mr. Solor stated if there coping were wider on the back side, they could maybe have done it underneath that, but that is not available. Mr. Doyle stated he understands that the maximum impervious surface is 35, mitigated back to 27.4%.

Ms. Solor stated that is a Township development requirement. Mr. Majewski stated there is then flexibility there as to what to remove. Mr. Doyle stated if there are other things that they can remove, they could remove those. Mr. Solor stated if they want to trim back their driveway, that is something they have asked for before.

Motion carried unanimously.

OTHER BUSINESS

Mr. Majewski stated there are no Applications for the next meeting.

December 6, 2022

Zoning Hearing Board – page 10 of 10

Mr. Dougherty moved, Ms. Reiss seconded and it was unanimously carried to cancel the meeting of December 20, 2022.

Mr. Majewski stated the Board of Supervisors needs to Reorganize on Tuesday, January 3, 2023 by State law so the Zoning Hearing Board meeting will be moved to Wednesday, January 4, 2023 at 7:30 p.m.

There being no further business, Mr. Dougherty moved, Ms. Reiss seconded and it was unanimously carried to adjourn the meeting at 8:15 p.m.

Respectfully Submitted,

Judi Reiss, Secretary