

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – MAY 16, 2022

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on May 16, 2022. Mr. Solor called the meeting to order at 7:30 p.m.

Those present:

Zoning Hearing Board: Peter Solor, Vice Chair
Matthew Connors, Secretary
Judi Reiss, Member
Mike McVan, Member

Others: James Majewski, Community Development Director
Dan McLoone, Planner
Adam Flager, Zoning Hearing Board Solicitor
Fredric K. Weiss, Supervisor Liaison

Absent: James Dougherty, Zoning Hearing Board Member

APPEAL #21-1941 – CAMERON & OLGA JEAN TROILO
Tax Parcel #20-021-003
1674 EDGEWOOD ROAD, YARDLEY, PA 19067
(Continued from 4/19/21)

Mr. Flager stated Edward Murphy, attorney for the Applicants, requested additional time for the interested parties to further discuss the issues, and they have waived all applicable deadlines under the MPC.

Ms. Reiss moved, Mr. Connors seconded and it was unanimously carried to Continue the matter to June 21, 2022

APPEAL #22-1961 – CHRISTOPHER LEVINS
Tax Parcel #20-037-206
867 DUKES 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 Impervious Surface

Breakdown Calculations 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. Christopher Levins was sworn in.

Mr. Solor stated he understands that there are new Exhibits, and Mr. Levins stated an Exhibit related to the seepage bed above the driveway was e-mailed last week from the contractor. Mr. Levins stated it is 7 by 8 by 36". Mr. Solor stated the Board was not provided that. Mr. Majewski stated he had neglected to forward that to the Board. Mr. Majewski stated they asked the Applicant when they submitted the Application to provide the stormwater management calculations, and they did provide that and show it on the Plan; and this Plan was shown to the Board. Mr. Flager asked if this is the same Exhibit which was previously provided but with the addition of the graphic at the top corner, and Mr. Levins agreed. This was marked as Exhibit A-4.

Mr. Solor asked if they are mitigating it back to "pre-disturbance," and Mr. Levins agreed. Mr. Solor asked about the grading of the site related to the drainage, and Mr. Levins stated that is where the site drains to so it will absorb all of the drainage on the site.

Mr. Connors asked Mr. Majewski if he checked the calculations. Mr. Majewski stated based on what he sees from the size and configuration of the seepage bed, it looks like it will be adequate to address the drainage and any modifications that may be made would be minor in nature and would be reviewed by the Township engineer.

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

Mr. Connors moved, Ms. Reiss seconded and it was unanimously carried to approve the Appeal subject to review and approval by the Township engineer.

APPEAL #22-1962 – DANIEL MAGNO & DANIEL KARLBERG
Tax Parcel #20-011-013
215 MORRIS LANE, WASHINGTON CROSSING, PA 18977

Mr. Daniel Magno was sworn in.

Mr. Flager marked the Exhibits as follows: The Deed was marked as Exhibit A-1. The CV of Daniel Magno was marked as Exhibit A-2. The aerial photograph of the property was marked as Exhibit A-3. The 1923 Subdivision Plan was marked as Exhibit A-4. The Survey Plan was marked as Exhibit A-5. Photos of the existing property were marked as Exhibit A-6. The Bucks County Tax Record Summary was marked as Exhibit A-7. The Plot Plan was marked as Exhibit A-8. Architectural Renderings were marked as Exhibit A-9. A letter from the Bucks County Department of Health was marked as Exhibit A-10. The Application was marked as Exhibit A-11. The Impervious Surface Breakdown Calculation was marked as Exhibit A-12. 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. Zachary Sivertsen, attorney, stated Daniel Magno and Daniel Karlberg are the owners of the property. He noted Exhibit A-1 was the Deed to the property and he asked the Board to recognize the Standing of the Applicants in the Application, and Mr. Flager agreed.

Mr. Sivertsen stated they are proposing an addition onto the existing house that they own. He stated the existing property is a non-conforming Lot in terms of Lot area and Lot width. He stated the building that is on the property is a rather small Residential structure of approximately 863 square feet of gross floor area. It is currently a single-family, detached home which is a permitted use in the R-RP – Residential Resource Protection District. He stated the addition being proposed is approximately 845 square feet, and it would go onto the side of the house within all of the existing setbacks so that they are not increasing any of the existing non-conformity of the property in terms of building the addition. He stated the addition is proposed to have a fairly significant green roof of about 505 square feet.

Mr. Sivertsen stated the relief that they are requesting is related to the impervious coverage on the property. He stated they are permitted to have an impervious coverage of 13%, and they are proposing an impervious coverage of 14.18% so they are going over the Zoning requirement by about 1.18%. He stated they take the position that that is a de minimus amount of variation. He stated they also feel that if you take into consideration that they are putting in a 505 square foot green roof area on the property, that more than accommodates the approximately 160 square feet of extra impervious that is being proposed.

Mr. Sivertsen stated he believes that the Applicants are entitled to the relief being requested because there is an argument to be made under the Zoning Ordinance, Section 200-86 Subsection 2 which relates to non-conforming Uses and Lots which says that where there is an existing non-conforming Lot in terms of width and area, you are allowed to use the Zoning requirements in effect when the Lot was created. Mr. Sivertsen stated they have evidence that shows that the Lot was created around 1923/1924, and the existing structure dates back to about 1948. He stated to the best of his knowledge that pre-dates Zoning in the Township which if there were no Zoning Ordinance, there would be no Zoning requirements to be applied.

Mr. Sivertsen stated the second argument is that the green roof area that is being proposed is actually not impervious surface. He stated the definition of impervious surface under the Zoning Ordinance is surfaces which do not absorb water; and since the green roof absorbs water, their argument is that it is not impervious surface, and they are under the requirement at that point.

Mr. Sivertsen the next argument is de minimus relief in that the amount of deviation they are going from what is required is less than 10% which has traditionally been recognized by the courts as being sufficient to warrant de minimus relief; and they feel that by the inclusion of the green roof, they are effectively mitigating any potential negative impact that could be caused by the relief, and that they are satisfying the public policy concern of the Zoning Ordinance.

Mr. Sivertsen stated they also believe that they are entitled to a Variance as the unnecessary hardship relates to the non-conforming Lot with the non-conforming building which is extremely small, and the addition is needed for reasonable use of the property as a Residential property. He stated they feel that the square footage being added is bringing it up to the base level of the size of a reasonable Residential dwelling at this time. He stated this hardship was not created by the Applicant as they have obviously not owned the property since 1923 and did not build the property in 1948. Mr. Sivertsen stated they do not feel that there is any detrimental impact that will be caused on the neighborhood or the area, and they have several letters of support from neighbors that will be introduced. He stated they feel that the 864 square foot addition is the minimum that will be required to allow for this building to have a reasonable use.

Mr. Sivertsen stated Mr. Magno, the owner of the property, is an architect. Mr. Magno stated he has a Bachelor's Degree from Penn State and a Master's in architecture from Harvard University Graduate School of Design. He stated his firm focuses mainly on Residential projects; and they all have a sustainable component, and most of them get Certification from a National Green Building organization like LEED or Enterprise Green Communities. Mr. Sivertsen noted Exhibit A-2 which is Mr. Magno's CV. Mr. Sivertsen offered Mr. Magno as an expert in the area of architecture, and they were no objection by the Board.

Mr. Magno stated he has resided at the property for almost six years. Mr. Sivertsen stated Mr. Magno prepared the design for the project, and Mr. Magno agreed. Mr. Sivertsen asked if he performed a review of all pertinent and applicable Township Ordinances that would apply to the project, and Mr. Magno stated he did. Mr. Sivertsen noted the aerial provided as an Exhibit, and he asked Mr. Magno to the different street frontages. Mr. Magno stated the property abuts onto Morris Lane which is a private lane and is mostly unpaved. He stated behind the property is the Delaware Canal towpath.

Mr. Sivertsen asked what qualities of the property are presently non-conforming. Mr. Magno stated the Lot area is non-conforming, and side yard, rear yard, and the setback from the Delaware Canal center line are non-conforming. Mr. Sivertsen stated the minimum Lot size in the R-RP District is three acres, and Mr. Magno agreed. Mr. Sivertsen stated the property is approximately 3/10ths of an acre, and Mr. Magno agreed. Mr. Sivertsen stated the required Lot width is 250', and Mr. Magno agreed. Mr. Sivertsen stated the existing condition is only 120', and Mr. Magno agreed.

Mr. Sivertsen asked Mr. Magno if he directed him to perform a review of the property records for the property, and Mr. Magno agreed. Mr. Sivertsen noted Tab 4 in the Exhibit Booklet which is the Subdivision Plan. He stated he highlighted in red a Lot in the rear portion, and Mr. Sivertsen asked if that is Mr. Magno's property; and Mr. Magno agreed. Mr. Sivertsen asked the date of the Plan, and Mr. Magno stated it is 1923.

Mr. Sivertsen asked Mr. Magno to describe the character of the neighborhood; and Mr. Magno stated it is Residential, filled with mature trees, and feels very rural as most of the streets are not paved. Mr. Magno stated there are relatively small Lots and modest sized houses. Mr. Sivertsen asked Mr. Magno to compare his house to the other nearby properties, and Mr. Magno stated his house is significantly smaller. He stated his house is only one bedroom where most of

them are three bedrooms. He stated his house does not have a basement and a lot of the homes have finished basements. He stated he believes that some of the homes are around 1,300 square feet, and his home is only 863 square feet.

Mr. Sivertsen asked Mr. Magno where he currently parks, and Mr. Magno stated he parks on Morris Lane as there is no driveway existing. Mr. Sivertsen asked if it is a paved area that is off the side of the road, and Mr. Magno agreed.

Mr. Sivertsen noted the Plot Plan (Tab 5), and he noted the parking area that Mr. Magno indicated where he currently parks. Mr. Sivertsen stated that is off the property line in the right-of-way of Morris Lane, and Mr. Magno agreed. Mr. Sivertsen stated that existed when Mr. Magno purchased the property, and Mr. Magno agreed.

Mr. Sivertsen asked Mr. Magno if he performed a review of County Tax records, and Mr. Magno stated he did to see the size of the neighboring houses.

Mr. Sivertsen noted Tab 7, and he asked if that is a summary of the County Tax records for his property, and Mr. Magno agreed. Mr. Sivertsen noted Page 2 of the summary, and he asked what year it indicates that the current structure was built, and Mr. Magno stated it is 1948. Mr. Sivertsen asked if it indicates any year where the property was significantly remodeled, and Mr. Magno stated it does not. Mr. Sivertsen asked Mr. Magno if he believes that, based on his expertise as an architect, if the building has been significantly modified since it was originally constructed. Mr. Magno stated he does not believe that it has been significantly modified although there may have been a porch on the back that was enclosed to make the kitchen. Mr. Sivertsen asked if it is basically within the existing footprint of what was constructed in 1948, and Mr. Magno agreed.

Mr. Sivertsen noted Tab 8 the Plot Plan prepared by Mr. Magno for the project. Mr. Sivertsen asked the existing non-conformities in terms of setback, and he asked the required and existing side yard setback. Mr. Magno stated the required is 25', and the existing is 1.4'. Mr. Magno stated the required rear yard setback is 125', and the existing is 17.17'. Mr. Magno stated the Delaware Division of the Pennsylvania Canal setback is the setback from the center line of the Canal; and the required is 150', and the existing is 63'.

Mr. Sivertsen asked the required number of parking spaces for the property; and Mr. Magno stated two parking spaces are required, but no new space are proposed, and it will just be the existing street parking.

Mr. Sivertsen asked Mr. Magno if he is proposing to increase any of the non-conforming setbacks, and Mr. Magno stated he is not.

Mr. Sivertsen asked Mr. Magno to describe what he has designed for the new addition. Mr. Magno stated there is a small sunroom that connects to the main house, and the ground floor will be a studio/home office/guest room. He stated there is also a second bathroom, laundry room, and a walk-in closet. He stated the second floor will have another sitting room. He stated the house is designed so that it could function as a three-bedroom house although they are not intending to use all three of the rooms as bedrooms. He stated when the project is done, it will be a three bedroom, two bathroom house with a laundry room. Mr. Sivertsen asked if there is currently a laundry room; and Mr. Magno stated there is not, and they have to use a laundromat or use a laundry service. Mr. Sivertsen stated the addition will be two stories, and Mr. Magno agreed.

Mr. Sivertsen asked Mr. Magno asked about the septic system on the property; and Mr. Magno stated there is an existing septic tank, and they received a letter from the County stating that it was originally designed to serve a three-bedroom house. Mr. Sivertsen stated that letter was marked as Exhibit A-10. Mr. Sivertsen asked Mr. Magno the approximate location of the existing septic system shown on the Plot Plan marked as Exhibit A-8, and Mr. Magno stated it is in the front yard in the vicinity of where on the Plan there is a dimension that says 56.4'. Mr. Sivertsen stated it is between Morris Lane and the front of the property more toward the northern property line, and Mr. Magno agreed. Mr. Sivertsen stated the proposed addition is not near the septic field, and Mr. Magno agreed.

Mr. Sivertsen asked the existing impervious coverage on the property, and Mr. Magno stated it is 9%. Mr. Sivertsen asked the proposed impervious surface, and Mr. Magno stated it is 14.18%. Mr. Sivertsen asked what that is over what is permitted, and Mr. Magno stated it is 1.18% over. Mr. Majewski stated the allowable is 13% so they are exceeding it by 1.18%.

Mr. Sivertsen stated he had indicated earlier that Mr. Magno is proposing to install a green roof, and he asked Mr. Magno to describe what he is proposing. Mr. Magno stated it is a 6" thick green roof which has 6" of growing media with a ¾" drainage layer. He stated the green roof company that designed it says that it will retain between 50% to 75% of the annual rainfall that falls on it. It can retain 1" of rainfall or .6 gallons per square feet for a single rain event.

He stated it will have a combination of sedums and perennials as plantings. Mr. Sivertsen asked he approximate square footage of the green roof, and Mr. Magno stated it is approximately 500 square feet.

Mr. Sivertsen showed Exhibit A-9, and he asked Mr. Magno if these are renderings of approximately what he intends to build, and Mr. Magno agreed.

Mr. Sivertsen asked if the 500 square feet of green roof being proposed were not considered impervious surface, would they be below the maximum permitted impervious surface for the property, and Mr. Magno agreed. Mr. Sivertsen asked if the green roof is intended to help mitigate storm-water run-off that is being created by the existing building; and Mr. Magno agreed adding that there is about 105 square feet of roof area on the existing building that will now be filtered through the green roof instead of emptying out onto lawn.

Mr. Sivertsen asked Mr. Magno if he feels that what is being proposed in terms of the size and design of the addition will fit in with the neighboring properties and the character of the community, and Mr. Magno agreed.

Mr. Sivertsen asked Mr. Magno if he feels that the 860 square foot addition proposed is the minimum additional living space he needs to stay in the property and bring it up to a more modern, Residential standard; and Mr. Magno agreed especially given that the house does not have a basement.

Mr. Sivertsen asked Mr. Magno if he feels that in terms of the amount of Variances being requested, the size of the building is the minimum that he needs to achieve the reasonable use; and Mr. Magno agreed.

Mr. Connors asked if the Township has a method for evaluating green roofs as pervious for stormwater mechanisms. Mr. Majewski stated it is a recognized method of doing stormwater management. He stated the Applicant would need to provide the calculations from the manufacturer and the details of exactly how it is being built. He stated the Township engineer would then evaluate it to insure that it meets all the requirements of the Stormwater Management Ordinance to handle all of the increased run-off from the proposed work.

Mr. Solor asked the Applicant if they did a calculation sheet for the Township standard, and Mr. Magno stated he did not have enough information to do a calculation based on the Township's standard, and this is what the green roof company told him it would handle. Mr. Majewski stated looking at it, it looks

like it “should be in the ballpark” of what would be needed; and if they need to add anything additional, that would be under the review of the Township engineer. Mr. Connors asked Mr. Magno if he would be open to doing a little bit more if that was needed, and Mr. Magno agreed. Mr. Connors stated he feels that the green roof is a very nice design; but drainage in the Township is an issue so if they need to do a little bit more on the surface either a pit or an additional green roof depending on what the vision for the property is, he asked Mr. Magno if he is open to that. Mr. Magno agreed. Mr. Magno stated there are existing trees which they intend to retain, and in submitting the information to the Township engineer, they could include some of the other methods into the calculation. Mr. Solor stated the Board likes trees to stay, but they would not consider them as a mitigating factor since the next owner could cut them down. Mr. Majewski stated he would trust the manufacturer which indicates that this would handle it; and any tweaks that may need to be made would be minor.

Mr. McVan asked how the green roof would work in the winter. Mr. Magno stated it absorbs less water; and while it absorbs between 70% and 90% of rainfall during the summer, in the winter it is between 25% and 40%. Mr. McVan stated he likes the idea but we do get a lot of snow and ice.

Mr. Majewski stated functionally it is almost like the lawn on the ground, and in the winter there is less absorption of the snow and rain because it hardens a little bit so this is a similar concept.

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

Mr. Connors moved, Ms. Reiss seconded and it was unanimously carried to approve the Appeal as submitted subject review and approval by the Township engineer of the stormwater management system.

APPEAL #22-1963 – CHETAN & ANJALI SAVKUR
Tax Parcel #20-042-342
708 WYNNEWOOD 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 Impervious Surface Breakdown Calculation and Stormwater Management Control Sheet were

collectively marked as Exhibit A-3. The Reason for the Requested Relief was marked as Exhibit A-4. The Proof of Publication was marked as Exhibit B-1. The Proof of Posting was marked as Exhibit B-2. The Notice to the neighbors was marked as Exhibit B-3.

Ms. Anjali Savkur and Mr. Tom Wheeler, builder, were sworn in.

Ms. Savkur stated they are building an in-law addition on their house for her elderly parents to move in with them as it is getting too much for them to live on their own. She stated the Variance request they are here for is to extend the driveway about 10' or so in length to make it up to the door to their in-law apartment so that it will not be such an effort for her Mom who has significant health issues to make it in and out of the house. She stated her Dad has to take her to dialysis three times a week so she has to get out of the house, get into the car, and then get back into the house at the end of her dialysis treatment which is fatiguing for her. Ms. Savkur stated the extension puts them a little bit above the impervious surface allowance for the property.

Ms. Savkur stated the other request was to allow them to put a cook top in their in-law addition because they have some medical issues and are both on specialized diets; and it would be inconvenient for them to have to share a kitchen space with the rest of the family due to the timings and the different foods that they eat.

Ms. Savkur stated Mr. Wheeler is their builder and could answer any technical questions.

Mr. Solor noted the request for the cook top, and he asked Mr. Majewski the rationale about the restriction. Mr. Majewski stated a family unit as defined functions as one unit, and therefore one kitchen should be sufficient. He stated a second kitchen might lend itself more to a rental property and boarders which is a separate Zoning category for which other relief is needed. Mr. Majewski stated when this has come up in the past for other Applications, typically a Condition would be put on that the property not be used in the future as any type of rental unit.

Ms. Savkur stated she is not sure it makes a difference, but this is not a range and it would not have an oven; and it is just a cooktop so that they can prepare a meal, heat up water for tea, etc.

Mr. Solor asked if the impervious calculations were correct, and Mr. Majewski agreed.

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

Mr. McVan asked if the effective rate would go back to 18% with the stormwater management; and Mr. Majewski stated they are required to capture all of the runoff, and he believes it will go back to the 14.8% that they are now.

Ms. Reiss moved, Mr. Connors seconded and it was unanimously carried to approve the Appeal with the Stipulation that the second kitchen is not used in the future as a rental and the stormwater management is mitigated according to the Township engineer.

OTHER BUSINESS

It was agreed to hold the Reorganization as the next meeting as Mr. Zamparelli will no longer be on the Board.

Mr. Majewski introduced Mr. Dan McLoone, the new Township Planner. Mr. McLoone stated he is looking forward to working with the Board.

There was discussion about upcoming meetings and Mr. Solor asked if there was a need to schedule any Special Meetings, and Mr. Majewski stated there is not at this time.

There being no further business, Mr. Connors moved, Ms. Reiss seconded and it was unanimously carried to adjourn the meeting at 8:22 p.m.

Respectfully Submitted,

Matthew Connors, Secretary