

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – APRIL 18, 2023

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on April 18, 2023. Mr. Solor called the meeting to order at 7:30 p.m. He stated there are four members present, and a majority is needed for approval of an Appeal so three would need to be in favor in order for approval.

Those present:

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

Others: Dan McLoone, Planner
Adam Flager, Zoning Hearing Board Solicitor

Absent: Matthew Connors, Zoning Hearing Board Member
Mike McVan, Zoning Hearing Board Member
James McCartney, Supervisor Liaison

APPEAL #23-2001 – RAY WERTH
Tax Parcel #20-075-019
290 ELBOW LANE, YARDLEY, PA 19067

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plans were collectively marked as Exhibit A-2. The March 1, 2023 letter from the Applicant's engineer, Jeffrey Simmons, describing the project and 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. Jeffrey Simmons was sworn in. He stated they are seeking Variance relief and acknowledgement of proposed impervious surface mitigation regarding a Residential addition project in Yardley Crest. The addition consists of a one-story rear addition and an adjacent rear exterior wooden deck with a roof covering over a portion of the deck. He stated the proposal represents an overage in the allowable impervious surface for this property. He stated all other Zoning aspects of the project meet the Code by-right those being the setbacks, building coverage, and everything else as well.

Mr. Brand stated he and Mr. Simmons have a working relationship as he is an architect who he works with in Philadelphia. It was agreed that Mr. Brand would recuse himself and not vote on this matter although he would still be able to ask questions as a Township resident. Mr. Flager stated if Mr. Brand were to recuse himself, the matter could still be heard as there are three other members present who could vote on this matter.

Mr. Brand was asked to stay at the meeting as there is another item that needs to be considered following this Appeal which he could participate in.

Mr. Simmons stated they are looking for approval of the Variance and acknowledgement of the proposed impervious mitigation techniques seen on Z100. He stated the property is subject to an impervious surface maximum that was built into the original Subdivision Plan in a Covenant. He stated it is Note 12 on the original Subdivision Record Plan of Yardley Crest. Within that Covenant, each Lot is afforded 4,195 square feet impervious coverage for the developer with another 129 square feet set aside for the property owner which leaves 4,324 square feet; and that represents 22.4% taken from the overall size of the property.

Mr. Simmons stated they have proposed mitigation efforts in terms of a combination of dry wells and additional tree plantings, and that has been broken out on Z100 in terms of the Lower Makefield Township Impervious Surface Calculations for Projects less than 5,000 square feet of impervious surface. He stated these measures include some existing measurers and existing vegetation cover as well as six new pre-fabricated dry wells, and eight new evergreen trees calculated on the Plan. Mr. Simmons stated his clients advised him tonight that he is actually planning on planting eighteen new trees. Mr. Simmons stated with that in mind the impervious surface overage as it stands proposed is 4,912 would require 98 cubic feet of mitigation. He stated his calculations illustrate that they are in excess of that volume control.

Mr. Simmons stated in addition to the Zoning criteria being met by right, he believes that this addition and rear deck would not infringe on any of the neighbors or any of their sight lines.

Mr. Solor stated he noticed that the exterior deck is projected into the setback, and asked if that requires a Variance; and Mr. McLoone stated there are no Variances required for any setback issues.

Ms. Reiss stated while they all like trees and understand how they take away water, the problem is that you cannot guarantee that they are going to grow or how long they will be there as they could be impacted by storms or could die. She stated the Board does not usually consider trees as part of mitigation. Mr. Solor stated there is also no guarantee that the next owner of the property will maintain the tree canopy. He stated unless there is a minimal change in impervious coverage, the Board looks for permanent systems that can be maintained such as French drains, dry wells, etc. He stated the new dry wells proposed only cover 20 cubic feet, and he believes the Board would be looking for a dry well provision that would cover the increased impervious.

Mr. McLoone stated the existing impervious of 4,417 plus 282 for the addition and 213 for the rear deck gives the 4,912 for proposed impervious so they technically would not need to remove 73 square feet from the walkway. He stated if the Board were inclined to look for something more structural, a trench facility that is 3 by 6 by 12 would give them 86 cubic feet which would cover the required control volume for the 495 square foot increase.

Mr. Flager stated they still plant trees in addition to the permanent structure as trees will also help as well as provide privacy, shade, and the other benefits of trees.

Mr. Simmons asked if the existing trees on the site do not count, and Mr. Dougherty stated it would be the same rationale. Mr. Simmons stated they have established mid-growth trees on the site. Ms. Reiss stated the next owner may decide they do not like the trees or a storm could damage them.

Mr. Brand stated there was a previous case involving the wetlands where there was something related to trees, although he assumes that was not specific to the impervious surface. Mr. Solor stated in that case, it was the wetland buffer setback; and a fully-vegetated setback per the Ordinance can be narrower than an un-vegetated setback. He stated by vegetating it, it allowed them to move the wetland buffer closer, but it was not an impervious surface situation.

Mr. Dougherty asked what they are looking to bring this back to in terms of impervious. He stated usually we deal with percentages. He stated they are proposing 25.4%, and he asked if we are looking to get it back to 22.8%. Mr. Solor stated we do use percentages. Mr. McLoone stated the way this was written they have a numerical number and not a percentage; however, the issue at hand is the 495 square foot increase. He stated if the 495 were

taken out of the 4,912 proposed, it would bring it back to the existing impervious that is 4,417. Mr. Dougherty asked what is needed to be done to get there without the trees being calculated. Mr. McLoone stated that would be the trench he described of 3' deep, 6' wide, and 12' in length, and that would give them 86 cubic feet of control volume which is larger than 83 cubic feet which would be required for the 495 square foot increase. He added it would not have to be that specific dimension. Mr. Solor stated normally we do not give a specific dimension, and we usually just indicate that they need to mitigate it back to the Township engineer's satisfaction. Mr. Dougherty stated we will be asking the Applicant to install a seepage bed that meets the specs of the Township engineer and take the impervious surface back to the current 22.8%.

Mr. Simmons stated the existing impervious rate based on the Record Plan is 22.4% of the site, and they are asking for 25.4% so it is an increase of 3.0%. Mr. Simmons stated he understands that Mr. Werth will be installing the trees anyway for privacy.

Mr. Ray Werth was sworn in. He asked what is a seepage bed, and will there be a trench in his back yard. Mr. McLoone stated a hole would be dug and stone placed in the trench that will collect water. It is wrapped in fabric and backfill put over it so it is not seen. Mr. Dougherty grass or flowers can be put on top.

Mr. Werth asked the dimensions which were noted for the trench, and Mr. McLoone stated it was 3' deep, 6' wide, and 12' in length. Mr. Solor stated that could be modified as it is the volume that matters. It stated it could be in a couple of locations or they could use the dry wells that were discussed. He stated they just need to meet the volume needed for mitigation. Mr. McLoone stated the seepage bed is one instrument that could be used and they would need a handful of dry wells if those are used. He stated he understands from Mr. Majewski that the costs would be similar. Mr. Solor stated the Decision would be worded such that the Applicant would have flexibility in their choice subject to the Township engineer's approval. Mr. Dougherty stated they could do one or the other or a combination of both. He stated Mr. Simmons should be able to guide Mr. Werth from a cost standpoint. Mr. Simmons stated the issue with the pre-fab drywells is that they are not that big so to overcome this amount of volume, they would need numerous drywells. Ms. Reiss stated the seepage bed will not be seen.

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

Mr. Dougherty moved and Ms. Reiss seconded to approve the Variance mitigating the 25.4% impervious surface back to the existing 22.8% subject to a Stormwater Management Plan approved by the Township engineer.

Motion carried with Mr. Dougherty, Ms. Reiss, and Mr. Solor in favor. Mr. Brand did not participate in the vote.

OTHER BUSINESS

Mr. Solor stated the Board needs to appoint a different Conflict Counsel for the Cell Tower Appeal. Mr. Solor stated Russ Sacco can no longer perform as Conflict Counsel since one of his clients has asked for representation as a Party, and we are looking at a new Conflict Counsel for that Appeal since Mr. Flager had to recuse himself.

Mr. Flager stated Ken Fetterman is the Zoning Board Solicitor in Bristol Township and is competent in this field. Mr. Dougherty stated he assumes the Party Status list was provided to Mr. Fetterman, and Mr. Flager stated he was provided the Meeting Minutes with the Party Status List as well as the YouTube link from the meeting when that Appeal was last discussed.

Mr. Solor stated we have not yet rules on Party Status for a lot of the Applicants, and that will be up for discussion at the next meeting.

Mr. Solor stated Mr. Fetterman's proposal was forwarded to the Board, and he believes his rates are commensurate with what the market is for this. He also has experience with Zoning Hearing Boards and is amenable to our schedule.

Mr. Flager stated if Mr. Fetterman is appointed tonight, he will be able to prepare for the meeting in two weeks.

Mr. Dougherty moved to approve changing the Zoning Hearing Board solicitor to Ken Fetterman for the Verizon matter.

It was noted that Ms. Reiss will not be participating in this Motion as she has recused herself from this Appeal.

Mr. Brand seconded and the Motion carried with Mr. Brand, Mr. Dougherty, and Mr. Solor in favor. Ms. Reiss did not participate in the vote.

Mr. Solor stated the upcoming meetings are May 2 and May 15. He stated there are two meetings in June, but only one in July because the first Tuesday in July is July 4th. Mr. Solor stated it would be good if everyone shows up to every meeting so that there is consistency since it will be the same topic across multiple meetings. Mr. Flager stated the May 15 meeting is a Monday not a Tuesday because May 16 is Primary Day.

Ms. Reiss stated she received a letter, and she wants to let the Parties know that she has recused herself from the issue.

There being no further business, Ms. Reiss moved, Mr. Dougherty seconded and it was unanimously carried to adjourn the meeting at 8:00 p.m.

Respectfully Submitted,

Judi Reiss, Secretary