

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – FEBRUARY 7, 2023

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on February 7, 2023. Mr. Solor called the meeting to order at 7:45 p.m.

Those present:

Zoning Hearing Board: Peter Solor, Chair
Matthew Connors, Member
James Brand, Alternate Member

Others: James Majewski, Community Development Director
Dan McLoone, Planner
Barbara Kirk, Township Solicitor
Adam Flager, Zoning Hearing Board Solicitor
James McCartney, Supervisor Liaison

Absent: James Dougherty, Zoning Hearing Board Vice Chair
Judi Reiss, Zoning Hearing Board Secretary
Mike McVan, Zoning Hearing Board Member

APPEAL #23-1994 – JOSEPH SMITH
Tax Parcel #20-003-017
1511 LINDENHURST ROAD, YARDLEY, PA 19067

Ms. Kellie McGowan, attorney, was present with Mr. Heath Dumack, engineer, who was sworn in.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Minor Subdivision Plan was marked as Exhibit A-2. The Existing Features Plan was marked as Exhibit A-3. The Stormwater Plan was marked as Exhibit A-4. The aerial photograph of the property was 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.

Ms. McGowan stated the Application is for a Residential parcel located on Lindenhurst Road in the R-1 Residential Low-Density Zoning District, and the proposal is to subdivide the property into a second building lot for the

construction of a second single-family dwelling. She stated a single-family dwelling on the lot size as proposed is a permitted use within the R-1 Zoning District. She stated there are three requests for relief. She stated while this property is burdened by several natural resources, this is not an Application about the disturbance of natural resources.

Ms. McGowan stated the first request for relief is to place stormwater management facilities in a wetland buffer. She stated the Ordinance requires a 100' buffer from a wetlands, and they are proposing minimal improvements in the form of stormwater management; and they are not proposing any encroachment within any wetlands on the property.

Ms. McGowan stated the second request for relief is from the requirement not to disturb steep slopes over 25%. She stated what Mr. Dumack will explain is that there is an area of steep slopes on the property that are classified as steep slopes although they are manmade slopes in a location of existing improvements on the existing lot.

Ms. McGowan stated the third request for relief is from a dimensional requirement. She stated that requirement is that you take all setback measurements on a lot from the natural resources as opposed to how we are used to doing so from the lot line. She stated they are requesting to measure the building envelope and the setbacks from the lot lines in order to have a feasible building envelope on the lot to be created – Lot 2.

Mr. Dumack stated he is a licensed professional engineer and surveyor in the Commonwealth Pennsylvania and a licensed engineer in forty-four other States across the Country. Ms. Kirk stated the Township would not oppose Mr. Dumack being offered as an expert for engineering purposes as he has been in front of the Zoning Hearing Board numerous times. Ms. McGowan asked that he be so recognized.

Ms. McGowan stated Mr. Dumack was retained by the Applicant to prepare the Plan, and Mr. Dumack agreed. Ms. McGowan asked Mr. Dumack if he reviewed the Zoning Ordinance and Subdivision Ordinance applicable to this development, and Mr. Dumack stated he did. Ms. McGowan asked if other than the requests for relief this evening, did he confirm that this Plan will comply with the other requirements of the Zoning Ordinance; and Mr. Dumack agreed. Ms. McGowan asked Mr. Dumack if he agrees with the three requests for relief that she reviewed this evening, and Mr. Dumack stated he does.

Ms. McGowan asked Mr. Dumack to describe Exhibit A-5 which is the aerial of the property. Mr. Dumack stated the site is a highly-irregular shaped lot on the west side of Lindenhurst Road. He stated the original geometry included what is now a substantial portion of Lindenhurst Road; and the original acreage of the parcel was about six acres, and with taking out the right-of-way, they are at about 4.45 acres. Mr. Dumack stated bisecting the lot is an existing drainage feature/water course. He stated to the north end of the property is the existing single-family home along with a pool and elevated deck/patio. He stated there is a single driveway that services the home that comes in off of Lindenhurst Road.

Ms. McGowan asked Mr. Dumack if the water course he noted is the water course that she referenced at the beginning of the Hearing that is the subject of the setbacks, and Mr. Dumack agreed. Ms. McGowan asked if the property to the south of the water course usable property, and Mr. Dumack stated it is not. He added that if they were to take setbacks from that, there would not be anything buildable. He stated there is also an existing pond that is just off the property on the next-door neighbor's property, and that would also require a buffer from the top of the bank so the portion of the lot that is southerly is in essence unusable.

Ms. McGowan asked Mr. Dumack to discuss the access to the property, and Mr. Dumack stated it is on the western side of Lindenhurst Road on the northern side of the existing water course. He stated there are brick monument columns/posts on either side of the driveway.

Ms. McGowan asked Mr. Dumack to describe the topography. Mr. Dumack stated the low point on the entire parcel and the region is the water course that bisects the property. He stated the higher end of the site is where the existing house and pool are to the north. He stated to the south the water flows toward the water course in the center of the northern half of the lot. Ms. McGowan asked if that topography impacts the developability and how the property can be developed, and Mr. Dumack stated it does. He added that the water course itself has an impact on everything. He stated the positive nature is that we know exactly where all the water is going toward; and what they have done is through a series of Sketch Plans, evolved to where they have gotten the most efficient means to manage the stormwater run-off in proposing a French drain design that runs parallel to the water course just uphill from it within the wetland/water course buffer.

Ms. McGowan asked if in connection with the project, will they also be improving the stormwater condition on the existing lot; and Mr. Dumack agreed. He added that based on the Township's Stormwater Ordinance, they will be putting in stormwater controls for the existing home lot where currently there are none.

Ms. McGowan noted Exhibit A-2, the Minor Subdivision Plan. She asked that Mr. Dumack point out the location of the proposed Subdivision line. Mr. Dumack stated the demarcation point for the two lots would be north of the existing driveway and runs basically west, changes course once, and then ends perpendicular to the rear property line. He stated two-thirds of the lot, if not more, would be Lot 2 with the smaller piece being Lot 1 which is the existing home.

Ms. McGowan stated as proposed the location of the Subdivision line results in two conforming lots with respect to area and other dimensional requirements, and Mr. Dumack agreed.

Ms. McGowan noted the wetlands buffer, adding that on Exhibit A-2 the line delineates the 100' wetland buffer. She asked Mr. Dumack what the Applicant is proposing within the buffer area; and Mr. Dumack stated it is the proposed ballast pit which is an underground system and associated grading to direct the run-off from portions of the upslope areas into the stormwater system. He stated the ballast pit is an underground system so realistically nothing aside from some slight grading and a couple of yard drains/inlets would be visible from the surface.

Ms. McGowan asked if the construction of that facility have any impact on the actual physical wetlands on the property, and Mr. Dumack stated it will not. Ms. McGowan asked the approximate distance from the wetlands of the proposed facility, and Mr. Dumack stated it is in excess of 100'. He added the water course is not a wetland, but the term is "wetland buffer." He stated it is approximately 60' from the western corner of the ballast pit to the top of bank of the existing drainage feature/stream.

Ms. McGowan asked if there are any other requests for relief associated with the resources on the proposed lot, and Mr. Dumack stated there are not.

Ms. McGowan stated the Applicant has also requested a Variance from the steep slope disturbance requirement. Ms. McGowan noted Exhibit A-3 which is the Existing Features Plan, and she asked Mr. Dumack to show where the steep slopes are located. Mr. Dumack noted the existing home, pool, patio/deck area where there are dark shaded areas between the

home and the pool directly adjacent to the southern side of the pool and the northern side of the house; and those are the steep slopes in excess of 25%. He stated those were created by the construction of the pool, patio, and deck. Ms. McGowan stated that disturbance is to facilitate an addition to the existing house, and Mr. Dumack agreed. Mr. Dumack stated that home is aged and in need of improvement. He stated the addition and the work that will be performed on that house will bring it up to more of a current finish as opposed to what it was originally.

Ms. McGowan asked Mr. Dumack if he is familiar with Lower Makefield Township and this neighborhood, and Mr. Dumack stated he is. Ms. McGowan asked if this proposed plan including the addition an improvement to the property and the neighborhood, and Mr. Dumack agreed.

Ms. McGowan stated the last request for relief is the dimensional request, and she asked Mr. Dumack what would be the impact if they were requires to measure the setbacks and take the building envelope from the resources. Mr. Dumack stated there would not be a building lot.

Ms. McGowan stated Lot 2 would impact two-thirds of the property, and Mr. Dumack agreed.

Ms. McGowan asked Mr. Dumack if he prepared multiple sketches for this Plan, and Mr. Dumack stated he did. Ms. McGowan asked if after going through that process was it his determination that this proposed sketch is the sketch that resulted in the minimum request for relief, and Mr. Dumack agreed. He added that they went through about six configurations before they determined that this was the best and least invasive option.

Ms. McGowan stated they are showing maintaining the single driveway, and this will be a shared-driveway scenario; and Mr. Dumack agreed. Ms. McGowan asked if it is Mr. Dumack's understanding that the Applicant will be preparing a Shared-Driveway Agreement to the satisfaction of the Township, and Mr. Dumack agreed.

Ms. McGowan asked Mr. Dumack if it is his understanding that the existing dwelling is currently used as a rental, and Mr. Dumack agreed. Ms. McGowan asked if it is also his understanding that in connection with this development that use will be discontinued, and Mr. Dumack agreed that is his understanding from the owner. Ms. McGowan stated these will be two, single-family for-sale lots, and Mr. Dumack agreed.

Ms. McGowan asked Mr. Dumack if there is anything about the Plan that he has prepared that will cause any adverse impact either on the property or to adjacent properties, and Mr. Dumack stated there is not. Ms. McGowan asked Mr. Dumack if all of his opinions this evening were given as an expert in Civil Engineering, and Mr. Dumack agreed.

Mr. Solor stated they skipped a step about accepting Mr. Dumack's credentials, but they are accepting them.

Ms. Kirk asked if there is a clear delineation on any of the three Plans that that were admitted as Exhibits as to the actual showing of the water course that bisects the property. Mr. Dumack stated both the Existing Features Plan and the Preliminary PCSM Plan which is his Sheet #3. Ms. Kirk asked Mr. Dumack to show where he shows the water course on the Existing Features Plan, and Mr. Dumack showed that location on the Plan. Mr. Majewski stated it is depicted by a long line with three dots followed by another long line. Ms. McGowan asked if there is a culvert on Lindenhurst, and Mr. Dumack agreed and noted the location and where it crosses Lindenhurst Road. He stated there is an end wall/concrete structure. Mr. Dumack stated the shading is the steep slope breakdown, and they incorporated that into the Plan. Ms. Kirk stated Mr. Dumack called that a water course, and she asked if it is a stream or a creek. Mr. Dumack stated drainage feature would be the most accurate answer. Ms. Kirk asked if that was created as a result of any sort of construction or has it been on the property as a natural feature; and Mr. Dumack stated the drainage feature itself is a natural feature, and the culvert crossing Lindenhurst is manmade.

Mr. Kirk noted the Minor Subdivision Plan, and she asked if the bulk of the water course will appear on Lot 2; and Mr. Dumack stated it will take both Lot 2 and Lot 1. Ms. Kirk asked if it will be equalized between the two lots, and Mr. Dumack agreed.

Ms. Kirk stated the Applicant is asking for relief from the disturbance into the wetland buffer for the installation of the proposed stormwater ballast pit, and Mr. Dumack agreed. Ms. Kirk stated that shows on Lot 2; and Mr. Dumack stated there is one on Lot 1 and one on Lot 2, but the disturbance of the wetland buffer is only on Lot 2. Mr. Dumack stated Lot 1 has its own stand-alone system. Ms. Kirk stated the stand-alone system on Lot 1 is not within a wetland buffer, and Mr. Dumack agreed.

Ms. Kirk stated the wetland buffer for Lot 2 is to be 100' as delineated on the Minor Subdivision Plan, and Mr. Dumack agreed. Ms. Kirk stated the only construction will be the stone dry well which has been listed at 10' by 180' by 2', and Mr. Dumack agreed. Ms. Kirk asked if the Applicant would be willing to enter into a Declaration of Restrictions to be Recorded against the new Lot 2 that would prohibit any further development or construction within that wetland buffer, and Ms. McGowan agreed.

Ms. Kirk stated Mr. Dumack also stated that the steep slopes is the area between the existing house and pool, and Mr. Dumack agreed and that is what they are asking relief from. Ms. Kirk stated that would be disturbed as a result of the new proposed addition to be constructed onto the existing house, and Mr. Dumack agreed. Ms. Kirk stated other than that proposed addition, there is a little section that comes off the proposed addition and has a notation next to it that says "window well." Ms. Kirk asked if that is part of the proposed addition, and Mr. Dumack agreed. Ms. Kirk stated the proposed addition runs from the back of the house toward the pool area along to the side of the house facing Lindenhurst, and Mr. Dumack agreed. Ms. Kirk asked how large is the proposed addition, and Mr. Dumack stated he total square footage is just shy of 2,900 square feet. Mr. Majewski stated the Plan shows 2,887 square feet. Ms. Kirk asked what the proposed addition it to be utilized for. Mr. Dumack stated they are looking to expand the usability, and he understands from speaking with the owner is that it will give them an expanded master bedroom and associated amenities. Ms. Kirk stated it will be an extension of the living space for the house, and Mr. Dumack agreed. Ms. Kirk stated it is not intended to be a garage area or storage facility, and Mr. Dumack stated it is not adding the garage is on the other side of the house.

Ms. Kirk asked if the property owner is willing to enter into a Declaration of Restrictions indicating that if approved, this proposed addition will be the only additional construction within the steep slope area, and Ms. McGowan agreed.

Ms. Kirk stated Mr. Dumack stated that the existing driveway will be shared between both properties, and there will be an Easement Agreement between the property owners for access to the shared driveway; and Mr. Dumack agreed. Ms. Kirk stated that will be Recorded at the Court House, and Ms. McGowan agreed.

Ms. Kirk stated Mr. Dumack had indicated that to the best of his knowledge the current house on what will be known as Lot 1 is rented at the present time, and Mr. Dumack stated that is what he has been told. Ms. Kirk stated if approved, the two proposed houses are going to be marketed as single-family residential homes, and Mr. Dumack agreed that is his understanding.

Mr. Solor stated it looks like on the Grading Plan, they are building up the grade for the second home into the buffer zone too; and Mr. Dumack stated to some extent that is correct, and it is intended to guarantee that the water coming off the site goes to the ballast pit.

Mr. Connors stated on Lot 1 one of the shaded areas appears to be manmade for the patio/pool area, and Mr. Dumack agreed. Mr. Connors noted the one to the northwest, and he asked if that is part of that; and Mr. Dumack stated he is not sure what that was, and it may have been a shed where the grade was built up on that at some point. He stated he just documented what was there.

Mr. Connors noted the stream on Lot 2, and he asked if that is naturally formed or trenched in that straight line manner; and Mr. Dumack stated he feels that was naturally formed.

Mr. Brand asked if it is common to have a shared driveway as he feels that is fairly uncommon especially for newer construction. He asked if there was any way to have two independent driveways. Mr. Dumack stated Lindenhurst is a PennDOT road, and they have to abide by their opinion. He stated generally speaking PennDOT does not like to see multiple driveways in close proximity to each other. He stated the shared driveway tends to be the better approach when interacting with PennDOT; however, if when they get into the HOP and driveway process and PennDOT requires a second driveway, we would have to re-visit that.

Ms. Patricia Bearce, 1551 Wexford Court, was sworn in, and stated she lives in the neighborhood behind this property. She stated she is not in favor of this. She stated she feels they are trying to put a lot on a property that cannot support what they want to do. She stated the existing home is over 3,000 square feet, and they want to add a 2,800 square foot addition to that. She added that the current home is being rented as an Airbnb, and as a neighbor she has concerns about what they are going to do with these properties. She stated the current property in addition to the pool also has a pool house with a kitchen and a bathroom. She stated she understands that they never got approvals

prior to building the pool house until that got brought up by another neighbor. She stated this house is advertised for ten people and pets, and when you live behind that, it is a concern; and now they want to add 2,800 square feet onto that property as well. She asked what the size of the lot will be and will they meet the impervious surface standards for Lot 1 when they have a 6,000 square foot house, a pool house, a pool, and all of the patio areas. Mr. Solor stated if they are not exceeding the impervious coverage limit, it is not a Zoning Hearing issue. Mr. Majewski stated currently as the lot is configured, they are in compliance with the Ordinance for impervious surface. He stated there are some limitations that they get to with setbacks such that he cannot envision that they will go much larger than the footprint shown on the Plan. He stated they have a septic system, the 100' buffer, and the shared drive. He stated what is shown on the Plan is probably the maximum build out they could have on the lot.

Ms. Bearce stated there are existing sheds, and she does not know if they are getting removed or what lot they will be on. She stated there are two metal structures on the property, and she does not know if those were factored in. Mr. Majewski stated they were taken into consideration as part of their calculations.

Ms. Bearce stated they are proposing to build another home and a pool. She stated there are wetlands, and they are asking for a lot of Variances to be able to do this project. She stated she does not feel Lot 2 is really a usable lot, and that is why they need to get all of these approvals because it should not really be built on. She stated they are disturbing wetlands, and she just received information from the Township about World Wetlands Day and the reason why wetlands are so important to reduce flooding, protect wildlife habitat, store and recharge groundwater, and improve water quality. She stated she feels they are asking for things that should not be done.

Ms. Bearce stated she has concerns that while they are saying they will sell the houses, if they do not there could be a lot of Airbnb rentals there. She stated if there are Zoning and wetlands protection in the Township, we should be following them; and they should not be hiring an attorney to fight and go against what the rules are for the Township. She stated she does not feel we would have these regulations if there was not a purpose for them. Mr. Solor stated the purpose of the Zoning Hearing Board is to consider Variance requests. Ms. Bearce stated if they are going to approve all the Variances, she questions why we have the regulations in the first place.

Ms. Kirk stated they are not asking to build in the wetlands, and Ms. Bearce stated she understands that they are asking to build in the buffer which is also important and there is a reason why we have them.

Ms. Bearce stated she is a Township resident who can look into this property and hear the music from the Airbnb. Ms. Kirk stated if there is a disturbance when it is being used as an Airbnb, Ms. Bearce should file a complaint with the Township who will go out and investigate it as there are certain regulations that have to be followed for an Airbnb. She added it is not a use that we can prohibit, but if there is disturbance, the Township should be notified.

Ms. McGowan stated the Applicant will agree that if they are granted relief, the property will not be used as an Airbnb. Ms. Kirk asked if that will be included in a Declaration of Restrictions, and Ms. McGowan agreed.

Mr. Connors stated there does appear to be a shed on the back property line, and Mr. Dumack stated there is one directly adjacent to the Township Preservation property. Mr. Connors asked if it can be moved, and Ms. McGowan agreed they would move it out of the buffer.

Mr. Connors stated he agrees with Mr. Dumack that the lot is oddly shaped. He asked if they would be willing to Deed Restricting the remaining wetland buffer on both sides of the “u-shape,” and Mr. Dumack agreed. Ms. Kirk stated that was what she was referring to that the whole wetland buffer would be restricted.

Mr. Solor stated the Township does have reduced wetland buffer if it is fully vegetated. He stated a solution he would like to see is that they would agree to vegetate the 50' from the wetland; and in the long run, they would no longer have the buffer issue. He stated that planting would have to be part of the Plan. Mr. Majewski stated as part of the Subdivision process, they would be required to replace the trees that are removed that are over a certain caliper. He stated it appears that they will have to replant thirty to forty trees which would probably fill in half of the area that Mr. Solor has mentioned. Mr. Dumack stated the property owner is amenable to doing the vegetative reduced buffer. Ms. McGowan asked Mr. Majewski if the replacement trees could go in that location, and Mr. Majewski agreed.

Ms. Kirk asked Mr. Majewski what he would suggest would be a calculation of the planting of vegetation in the buffer area. She asked if the Township would allow it to be whatever the Applicant would deem appropriate. Mr. Majewski stated we have Ordinances that outline how to restore buffers whether through trees, shrubs, grasses, or a combination of those. He stated the Zoning Hearing Board could include in the Motion that they have to restore the 50' buffer in accordance with the Township's Subdivision and Land Development Ordinance guidance.

Mr. Brand stated he agrees with the idea that planting in the buffer seems like a suitable solution.

Mr. Connors moved to approve the Appeal per the Plans submitted subject to replanting the 50' buffer to comply with the Township Subdivision and Land Development Ordinances, Deed Restricting the wetland buffer, Deed Restricting the steep slopes, no use of either Lot 1 or Lot 2 for Airbnb, removal of the rear shed on Lot 2 so that it conforms with Township rules and regulations.

Mr. Solor asked Mr. Majewski if he is satisfied with the infiltration as designed, and Mr. Majewski stated he is. Mr. Majewski stated this will have to go through the Subdivision process so it will be reviewed and approved by the Township engineer. He stated there may be a few minor modifications to minimize the impact shown on the Plan.

Mr. Flager asked if there needs to be something about the Agreement for the shared driveway, and Ms. Kirk stated that would probably be covered during Land Development and Subdivision. Mr. Solor stated the Minor Subdivision Plan already indicates that it will be a Shared Easement.

Mr. Solor seconded and the Motion carried unanimously.

There being no further business, Mr. Connors moved, Mr. Brand seconded and it was unanimously carried to adjourn the meeting at 8:40 p.m.

Respectfully Submitted,

Peter Solor, Chair

