

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – FEBRUARY 21, 2023

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on February 21, 2023. Mr. Solor called the meeting to order at 7:30 p.m. He noted that since there are only four Board members present, it would require three votes in favor for a Variance to be approved and a tie would be a denial.

Those present:

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

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

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

APPEAL #23-1995 – 1566, LLC

Tax Parcels #20-018-001, #20-018-001-002, #20-018-002, #20-016-027
1566 NEWTOWN-YARDLEY ROAD, 1472 NEWTOWN-YARDLEY ROAD,
1069 CREAMERY ROAD, BUCK CREEK DRIVE, YARDLEY, PA 19067

Mr. Mark Havers, engineer, was sworn in.

Mr. Flager marked the Exhibits as follows: The Deed was marked as Exhibit A-1. The Preliminary Subdivision Plan Approval letter from Hill Wallack dated July 21, 2022 was marked as Exhibit A-2. The CV of Mark Havers was marked as Exhibit A-3. The Aerial Photo Plan last revised December 28, 2022 was marked as Exhibit A. The Existing Features Plan last revised November 11, 2022 was marked as Exhibit A-5. The Record Plan last revised November 11, 2022 was marked as Exhibit A-6. The Existing Features Notes last revised December 28, 2022 was marked as Exhibit A-7. The Application was marked as Exhibit A-8. 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. Julie VonSpreckelsen, attorney, was present. She stated the Applicant is 1566 LLC, legal owner of the properties. She stated the properties are located in the R-1 Residential Low-Density District, and the total site is about 21 ½ acres. She stated the property consists of four Tax Parcels which are four contiguous parcels with three single-family dwellings on the property along with other Residential structures. She stated there are also significant areas of natural resources which include wetlands, wetlands buffers, woodlands, and steep slopes.

Ms. VonSpreckelsen stated what is proposed is the Subdivision of the property into six single-family dwelling lots plus an existing seventh lot with a single-family dwelling to remain. Ms. VonSpreckelsen stated two of the existing single-family residences will be demolished.

Ms. VonSpreckelsen stated they are requesting Variances, or in the alternative de minimus Variances, from Sections #200-51.B(4)(b) and (d) Natural Resource Protection requirements wetlands or Waters of the Commonwealth to permit a minor disturbance of 3.2% of the wetlands on proposed Lots #2, #3, #5, and #6 and disturbance of 3.2% of the wetland buffer areas on proposed Lots #2, #3, #4, #5, and #6 which is in order to install two sanitary sewer force mains necessary to provide public sewer service to Lots #5 and #6. Ms. VonSpreckelsen stated the doctrine for de minimus Variance states that were there is a minor deviation from the dimensional requirements of the Zoning Ordinance and rigid compliance of the Ordinance is not necessary in order to protect public policy concerns, you can grant a de minimus Variance, which is much less standard of proof than a traditional Variance. She stated that is being requested in the alternative to a regular Variance.

Ms. VonSpreckelsen stated Mr. Flager had read the tabs in the Exhibit booklet which had been provided which are Exhibits A-1 to A-7. She noted in Tab #2, the Preliminary Subdivision Plan approval letter dated July 21, 2022 from the Township solicitor, Hill Wallack, is included as an Exhibit; and this Plan has already received Preliminary approval. She noted Page #2 of that letter where it is recognized that the Variances that they are seeking are required, and the approval was granted subject to those Variance requests.

Mr. Havers stated he is the project engineer with Pickering, Corts & Summerson, and he is a professional Civil engineer licensed in the State of Pennsylvania for over twenty years. He reviewed his educational and professional background.

Mr. Havers stated he has Testified previously as an expert in Civil engineering including before the Lower Makefield Township where he was accepted as an expert. His CV was noted as Exhibit A-3. Ms. VonSpreckelsen offered Mr. Havers as an expert in Civil engineering, and there was no objection.

Ms. VonSpreckelsen asked Mr. Havers what was the scope of his engagement with regard to this project, and Mr. Havers stated it was to prepare Subdivision Plans for the parcel. Ms. VonSpreckelsen asked if he reviewed the Township Ordinances in preparing the Plans; and Mr. Havers stated he did, and part of the review identified the items of relief being requested tonight. He stated he has been to the site multiple times including one time with Township staff and the Township Planning Commission to review the Subdivision Plans.

Ms. VonSpreckelsen asked Mr. Havers to describe the existing property conditions. Mr. Havers stated the property contains four parcels, one of which has frontage on Yardley-Newtown Road/332, two have frontage on Creamery Road, and to the rear Buck Creek Drive dead-ends into the property. He stated the parcel has three existing homes on it, and two of those homes will be removed with this project. He stated there is an existing channel/drainage way that bisects the property. He stated Lot D as shown in the Exhibit has an existing house that will remain and that Lot will be expanded and become larger. He stated the proposed Subdivision is mostly on Lots A and B as shown. He stated all four parcels as well as the surrounding parcels are Zoned R-1 – Low-Density Residential.

Ms. VonSpreckelsen asked if there are developmental constraints unique to this property. Mr. Havers stated with the various natural resource restrictions, the bisecting of the property by the stream corridor and the channel, as well as the large pond on Parcel D which is part of the stream that comes through all limit where you can do any development. He stated they laid out the Subdivision to place the homes in areas where there are open areas within the wooded areas, and they are also using the location of two of the existing homes to place homes in those areas as well.

Ms. VonSpreckelsen stated there are wetlands and wetlands buffers on the property, and Mr. Havers agreed. He stated along the stream corridor/drainage way, there are wetlands and a Township wetlands buffer on either side. Ms. VonSpreckelsen stated there are also woodlands and steep slopes on the property, and Mr. Havers agreed. He referred to the aerial and stated a majority of the lot is wooded, and Lot D and Lot C the wooded lots are well maintained. He stated Lot A to the north is a wooded parcel with a lot of heavy, thick underbrush.

Ms. VonSpreckelsen stated the property is located within the sanitary sewer district, and Mr. Havers stated it is District 3 in the Township. Ms. VonSpreckelsen stated there are no public sewer connections within close proximity to the property; and Mr. Havers stated there is a public sewer that dead-ends on Buck Creek Drive, and that is where they are proposing to connect. He stated the next closest public sewer is approximately 1,000' away down Yardley-Newtown Road toward Yardley across Buck Creek on the other side of the stream.

Ms. VonSpreckelsen stated the properties are irregularly-shaped; and Mr. Havers agreed adding that they were fit in amongst different areas in the woodlands.

Ms. VonSpreckelsen noted Exhibit A-6, the Record Plan, and she asked Mr. Havers to describe the proposed Subdivision. Mr. Havers noted on the Plan the roads surrounding the property and the location of the existing homes on the property. He noted the wooded area. He stated they are proposing four lots to be serviced off of Bucks Creek Drive, one lot fronting on Newtown-Yardley Road and one fronting on Creamery Road. He noted the hatched area which is part of the existing house that will remain. Ms. VonSpreckelsen asked if the proposed subdivided lots meet all of the bulk area and dimensional requirements of the Zoning Ordinance, and Mr. Havers stated that they do. Ms. VonSpreckelsen stated the only Variances required are to permit the minor disturbances to the wetlands and the wetland buffers for the installation of the sewer main, and Mr. Havers agreed.

Ms. VonSpreckelsen noted the Subdivision Plan approval letter that was received from the Township, and she asked Mr. Havers to confirm that the project has received Preliminary Plan approval; and Mr. Havers agreed it has. Ms. VonSpreckelsen stated it was subject to obtaining the Variances that are being requested, and Mr. Havers agreed.

Ms. VonSpreckelsen asked Mr. Havers to refer to the Record Plan to discuss the Variances that have been requested. Mr. Havers noted the location of the existing wetlands which follow the drainage way and bisects the property and carries run-off from an adjacent property in a culvert under Creamery Road and conveys it down to the ponds and the stream. He stated that two sanitary sewer laterals/force mains are connecting Lots #5 and #6 over to the

main that is in Bucks Creek Extension into Bucks Creek Drive. He stated there are two disturbed areas – the two wetland areas and the buffer areas on both of those two lots for separate connections.

Ms. VonSpreckelsen asked the total area of the wetlands on the property, and Mr. Havers stated it is approximately .176 acres. She asked the percentage of the square foot of the area of the wetlands disturbance, and Mr. Havers stated it is approximately 260 square feet or 3.2% of the existing wetlands area. Ms. VonSpreckelsen asked the total area of wetland buffers areas on the property, and Mr. Havers stated it is approximately 153,000 square feet or 3.5 acres. She asked the percentage in square footage of the wetland buffers disturbance area, and Mr. Havers stated it is 3.2% or approximately 4,800 square feet. She asked if these calculations are included on the Existing Features Notes shown in A-7 of the Exhibit booklet, and Mr. Havers agreed. Ms. VonSpreckelsen asked if that was included with the Subdivision Plan submission, and Mr. Havers agreed.

Ms. VonSpreckelsen asked Mr. Havers to explain why these Variances are necessary. Mr. Havers stated the Variances are to cross the stream/drainage way and associated wetland buffer to provide public sewer to the two homes that are on the opposite side of the existing public sewer. He stated there are two separate crossings because DEP only allows that each home has to have its own separate service. He stated there will be a small one and a quarter inch force main line with small pump stations on the lots, and the crossing is to provide the public sewer and convey it under the stream and over to the existing public sewer. Ms. VonSpreckelsen asked if this is the minimum disturbance in order to install the sanitary sewer mains, and Mr. Havers agreed. She asked if there was any way to avoid this disturbance, and Mr. Havers stated there is not. He stated the alternative way would be to the east down Newtown-Yardley Road, and they would have to cross a larger stream and likely have more impacts to the wetlands, the stream, and any associated buffers.

Ms. VonSpreckelsen asked Mr. Havers if he feels that this is a minor deviation of the Zoning Ordinance requirements, and Mr. Havers agreed. She stated the Township is aware of the Zoning relief required, and Mr. Havers agreed. She asked if DEP approval is required for this disturbance; and Mr. Havers agreed a General Permit will be required for a utility crossing of a wetlands. He added that assuming approval is granted for the Variances, shortly thereafter the Application for the General Permit will be submitted to DEP for review and approval. Ms. VonSpreckelsen asked if DEP routinely grant these types of Permits to allow these crossings, and Mr. Havers stated they do.

Ms. VonSpreckelsen asked if it is commonplace to locate utility lines and mains within natural resource areas. Mr. Havers stated it is attempted to be avoided; but because of where existing utilities are, it is often not possible, any they often run through wetlands, across streams, and across natural resource areas.

Ms. VonSpreckelsen stated this is the minimum disturbance required in order to install these mains, and Mr. Havers agreed. She stated there is not reasonable alternative, and Mr. Havers agreed. Ms. VonSpreckelsen asked if these Variances are granted will it in any way alter the essential character of the neighborhood or be detrimental to the public welfare, and Mr. Havers stated it will not. He added it will actually be beneficial. He stated the two existing homes are on existing on-lot systems, and there are no known Permits for those so it is likely that it is a very old system adjacent to the stream. He stated those will now be removed so the potential for pollution entering the stream will be removed. Ms. VonSpreckelsen asked if these are the minimum Variances that will afford relief, and Mr. Havers agreed.

Mr. Dougherty stated it was indicated that if they tried to bring the public sewer to Lots #5 and #6 through Yardley-Newtown Road, there would be a greater disturbance to the wetlands; and Mr. Havers agreed adding that to do so, they would have to cross a larger stream, and they would need relief from crossing that stream channel. He stated there would also be a buffer as well.

Ms. Reiss asked the dates of the structures to be demolished, and Mr. Havers stated he believes that they are from the 1950s although he is not positive.

Mr. Connors asked with regard to the pump stations, are they putting in two ejectors, one for each home; and Mr. Havers agreed.

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

Mr. Dougherty moved, Mr. Connors seconded and it was unanimously carried to approve the Appeal as presented.

Mr. Dougherty commended Mr. Havers on the Subdivision Plan.

Ms. Jacqueline Wagner, 1063 Buck Creek Circle, stated she wanted to speak to 1566 LLC. Mr. Solor stated it has already passed, but she could make a comment. Mr. Solor stated they asked for public comment earlier, and there was none. Ms. Wagner apologized for being late. Ms. Wagner was sworn in.

She stated she feels the Variance for the sanitary sewer sounds very well thought out and is a sound plan. She stated her concern is that this area of Lower Makefield Township had a problem with rainwater run-off, and she asked how this development will exacerbate the run-off problem, and what are they going to do about it. She stated she understands that sanitary sewer is not for run-off. Mr. Solor stated you would not want storm run-off being piped away as that would just increase the rate which water goes to the river and creates flooding problems.

Mr. Majewski stated as required for all Subdivisions and Land Developments, stormwater management needs to be provided for all of the proposed run-off that will be created by the new roads, houses, and driveways. He stated they are required to reduce the run-off to be theoretically less than what currently exists on the property. He stated on each Lot they have a stormwater management system, and they also have a system a little bit larger for some of the run-off. He stated theoretically the water will be less going to the ponds and streams in the area after development compared to before.

Ms. Laura Hink-Zoda, 1550 Yardley-Newtown Road, was sworn in and asked if there was any available hook-ups that the residents would be able to access with the new sewer system being put in. Mr. Solor stated as the engineer stated, what the State requires is one connection per house utilizing the force main. Mr. Connors asked Ms. Zoda if she was asking if she could connect in, and she agreed they would like to know if that is a possibility. Mr. Connors stated the Applicant is just tying in their systems, and he does not believe there is any extension going on. He stated they are not connecting to Newtown-Yardley Road.

APPEAL #23-1996 – HYDROSCAPE POOLS/ROTH-CROSS

Tax Parcel #20-055-067

1517 ESTHER LANE, 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. Nathan Simcox, Hydroscape Pools, was sworn in. He stated they are looking to increase the impervious from 22% to 26% with stormwater management/infiltration implemented to mitigate the stormwater run-off. He stated they will install a fiberglass pool.

Mr. Majewski stated the calculations have been provided on the Plan. He stated he has verified the calculations, and the system is designed not only to handle the run-off for the full increase from 22.8% to 26%, but also an additional approximately 2 ½%.

Mr. Simcox stated he hopes that there will be a change for this process when it comes to the impervious and possibly not needing a Variance and incorporating stormwater management into the Permitting of the project through the Building Permit so that a Variance would not have to be obtained “within a certain reason of a certain percentage of overage” which would be good for him and “maybe other people if that makes sense.”

Mr. Flager asked what is the effective percentage that this takes it down to, and Mr. Majewski stated it is 20.3%. Ms. Reiss asked that amount allowed, and Mr. Majewski stated it is 24%. Mr. Flager stated currently they are at 22.8%.

Mr. Simcox stated the idea of when people get pools and want to add to their impervious, increasing the “size of the box” and overcompensating for the amount of run-off, if everyone did that, it would probably have a “plus effect to the situation as opposed to just nullifying it.” Mr. Majewski stated that is why we have the stormwater management requirements with the hope that it will not only resolves localized stormwater issues but cumulatively it would have a greater impact throughout the community.

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.

OTHER BUSINESS

Cancel March 7, 2023 Meeting

Mr. Majewski stated there are no Appeals scheduled for the next meeting.

Mr. Connors moved, Mr. Dougherty seconded and it was unanimously carried to cancel the March 7, 2023 meeting.

Discussion of Upcoming Appeal

Mr. Solor stated there is an Appeal that will be coming before the Board probably in April which will require the Zoning Hearing Board solicitor and one of the Board members to recuse themselves. Mr. Flager stated he had recommended to Mr. Solor that the Board obtain Conflict Counsel for the Application which will be filed for a cell phone tower that would be placed on the property of Congregation Beth El of which he and Ms. Reiss are members. He stated he had recommended Russ Sacco who has an office in Yardley Borough, and is a very good lawyer who he has dealt with in Bristol Township and other places throughout Bucks County, to handle that specific Appeal. Ms. Reiss stated she would have to recuse herself as she is a member and former Board member of Congregation Beth El.

Mr. Solor asked Mr. Majewski to deal with any Township paperwork that would need to be dealt with in this regard. Mr. Majewski stated he feels we would only need the rate sheet, but he will confirm that. Mr. Flager stated he has already spoken with Mr. Sacco about this since he wanted to make sure that he would be able to do this. Mr. Flager stated he is not sure that there will be other Applications on that Agenda, but he could handle those and Mr. Sacco would handle the one Appeal, although ideally it would be just that Application that night.

Mr. Connors stated we would need to make sure that an Alternate is available if Ms. Reiss is not going to participate in this Appeal. Mr. Solor asked that everyone make an effort to be present at the Township by 7:20 p.m. or if they are logging in remotely to log in at 7:20 p.m. He stated those not planning to attend should send an e-mail to everyone or at a minimum to himself and Mr. Majewski. Mr. Majewski stated Ms. Reamer should be copied as well since she will usually reach out to one of the Alternates to see who is available if a member cannot attend. It was noted that there are five members on the Board, and there are two Alternates.

Mr. Majewski stated if something comes up at the last minute, he should be notified so that he can contact an Alternate to see if they can log on at the last minute.

It was agreed that Mr. Sacco could be appointed as counsel for that Application at the next meeting on March 21, 2022.

February 21, 2023

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There being no further business, Mr. Connors moved, Mr. Dougherty seconded and it was unanimously carried to adjourn the meeting at 8:20 p.m.

Respectfully Submitted,

Judi Reiss, Secretary