

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – MAY 15, 2023

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on May 15, 2023. Mr. Solor called the meeting to order at 7:30 p.m.

Those present:

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

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

Absent: James McCartney, Supervisor Liaison

APPEAL #23-2004 – ADR INVESTMENTS, LLC
Tax Parcel #20-034-020-001
READING AVENUE, YARDLEY, PA 19067

APPEAL #23-2005 – ADR INVESTMENTS, LLC.
Tax Parcel #20-012-018
HEACOCK ROAD, YARDLEY, PA 19067

Mr. Flager stated these two Appeals have the same Applicant, same attorney, and the same engineer. He stated he spoke with the Applicant's attorney, Mike Meginnis from Begley, Carlin today; and they just submitted Revised Plans, and as a result they want a Continuance so that the Board will have more time to review the Plans. Mr. Flager stated he believes it may lessen the requested relief, and it does change some of the calculations. The Township is participating in this matter. The attorneys discussed their availability and the first time they are available is July 18, 2023.

Mr. Dougherty moved and Mr. Connors seconded to Continue Appeal #23-2004 and Appeal #23-2005 to July 18, 2023.

Mr. Larry Borda, 508 Heritage Oak Drive, asked when they asked for the delay, and Mr. Flager stated they requested it today as they submitted Revised Plans which were just received this afternoon. Mr. Flager stated they wanted to give the Board and the public additional time to review that.

Mr. Majewski stated the Revised Plans will be posted shortly.

Mr. Borda stated the new Hearing date is “right in the middle of vacations.” Mr. Borda asked how he can get his comments on Record in terms of his position if he cannot be present personally. Mr. Dougherty stated he can log into Zoom or call in. Mr. Majewski advised Mr. Borda that if he needs any instructions on how to do that, he could e-mail him and he will assist Mr. Borda.

Motion to Continue carried unanimously.

APPEAL #Z-23-2006 – SHERRY NUNEZ
Tax Parcel #20-037-001-001
2009 WOODLAND DRIVE, YARDLEY, PA 19067

Mr. Rigo Nunez and Ms. Sherry Nunez were sworn in.

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The nine-page set of Plans was marked as Exhibit A-2. The Impervious Surface 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.

Ms. Nunez stated they want to install a pergola structure and they need a Variance for the setback requirement. She stated 15' is required from the side property line, and they want it to be only 2'.

Mr. Dougherty asked if they are installing a new patio or is there an existing patio there, and Ms. Nunez stated they would be installing a patio underneath the structure. Mr. Dougherty asked why they are pushing it so close to the fence and not adhering to the Ordinance. Ms. Nunez stated she wants it to be beside her house when you come out. She stated there is a large, mid-Century window; and if it were at 15', it would completely block that window and block all of the natural light coming into the property.

Mr. Connors asked why it could not be put on the other side of the pool, and Ms. Nunez stated she would then have to walk out in the rain to get to it on the other side of the pool. She stated there are also power lines there. She stated she does not know if there would be enough space to put the structure and have it far enough away from the power lines. She stated the power lines come across the back side of her property in the center. Mr. Nunez stated there is also another window on that side as well. Ms. Nunez stated that is also where her generator and pool equipment is located. Mr. Nunez stated there is a big window there which is from the dining room, and the pergola would block that window if it were put there.

Mr. Connors stated this is a large property with a lot of other space where this could be put which would not require a Variance. He stated he does not see a reason to put it so close other than they do not want it to block a window.

Mr. Nunez stated the pergola will have an automatic feature, and when it rains, the louvers close. He stated when they come out the back of their house, they will therefore not get wet if it is at the location they are proposing; and they would not want to have to walk in the rain to get to the pergola.

Mr. Dougherty stated he agrees with Mr. Connors, and he is not concerned about the rain issue just described. He stated he understands that there is a window, and if the pergola were there, it would infringe on the view; but he is having a hard time agreeing to have the pergola right on the property line when it could be moved over. He asked if there is room for compromise. Ms. Nunez stated it is an open structure and not enclosed, and she asked what is the difference if it is 10' or 15'. Mr. Dougherty stated the setbacks requirements are in the Code so that properties are not on top of each other. He stated there are situations where people have been grandfathered and there are sheds up against property lines, although there are also situations where they are illegal. He stated if the Zoning Hearing Board approves it, it is due to a hardship because it was the only place where the structure could be located. He stated in this case, he does not know that having the window being blocked by the pergola qualifies as a hardship.

Ms. Reiss stated she saw the note from the neighbor that they do not care. She stated if there was nowhere else to put it, she could see it; however, this is a large property, and she feels it would be possible to take it off the property line a few more feet.

Mr. Dougherty stated he does not feel it would need to be moved 15' of the property line, but he feels a compromise would be better; and that is what he was asking for.

Mr. Nunez stated where they are trying to put it, if they could move it over they would do that, but there are also steps there. He stated they would have to move it up and then move it to the left, but that would be in the pool. He stated he believes that you need 15' from the top of the pergola to the pool.

Mr. Dougherty stated the steps could be taken out and reconstructed to come into the pergola. Mr. Dougherty stated if it were moved over, the steps would come into the pergola. Mr. Dougherty stated he is trying to work with the Applicants but not set precedent so that everyone will be coming in and asking for the same thing.

Mr. Nunez stated he feels they would have to go back and take measurements to see what would make sense. Ms. Nunez asked what they would want rather than 2'. Ms. Reiss asked the width of the steps, and Mr. Nunez stated he believes they are 4' wide. Mr. Solor stated there is 8' spacing in the pergola, so the maximum it could be shifted would be 8'. He added that it would be 8' plus the 2' so it would be 10' off the property line and the steps would be "in the first bay."

Mr. McVan asked if they could not put the pergola behind the pool. Mr. Connors stated there is 190' from the back of the pool to the back property line. He stated there is a lot of space on this property. Mr. Nunez stated future plans are for a pool house back there. Ms. Nunez stated if she was going to build back there she would want the pool house with the pergola attached to the side of it. Mr. Connors stated that sounds like a great project.

Ms. Nunez stated it is frustrating because the Board is saying that they have a lot of property, and people with a small property without an option would be approved; but because she has a larger property, she cannot put it where she wants it. Mr. Connors stated the Code is for the entire Township, and every property they look at, they look at the individual factors that effect that specific property. He stated if they have a small lot and they indicate there are space issue which result in a hardship, that is very different from someone with a large people who does not have a hardship but wants to do what they want. He stated the Board has to look at each individual project as it stands on its own.

Mr. Majewski stated since they are not sure exactly where the steps are and how much they could move the pergola, it might make sense to take some more measurements to see if it could be moved over so that they can address some of the concerns raised. He stated they could come back at the next meeting. Mr. Solor stated they could approve a Continuance as was done with the other two Appeals. Mr. Dougherty stated that would not cost any additional money for advertising. Mr. Nunez asked if the next meeting would not be until July, and it was noted the next meeting would be June 6.

Ms. Nunez asked if there would be a new cost, and Mr. Solor stated it would not if it was done as a Continuance. Mr. Dougherty stated unless they can definitely decide on a compromise tonight, he feels that the Continuance makes the most sense. Mr. Dougherty stated the could also vote on this tonight.

Ms. Nancy Powers, 31 Edgewood Road, was sworn in, and she stated she wrote the letter to the Township in support of this. She stated she is on the side where they are proposing to put the pergola, and they also have a pool and a fence. She stated there is also a fence on the Nunez property, and there is a very wide area between the two fences. She stated since they are not moving the fence, there is a very large space from her property even if it were to touch the fence. She stated there are also trees dividing the properties, and she cannot see into their property and they cannot see into hers. Ms. Powers stated she does not feel anyone would notice it, and she has no issue with where they are proposing to put it.

Mr. Flager marked the e-mail that Ms. Powers had submitted as Exhibit A-4.

Ms. Nunez stated she had submitted pictures and the trees can be seen between the two properties.

An aerial of the subject property and Ms. Powers' property was shown.

Ms. Powers stated she understands that the Board is looking for a compromise, but even if it is only 2' from the property line, the space between the two properties is significantly wide.

Mr. Dougherty stated from the street looking back, you would see the structure right on the property line. Mr. Nunez stated he does not feel you would see it from the street as there are a lot of trees and bushes.

Mr. Solor asked where the power line is relative to the property line, and Mr. Nunez stated it is at the property line. Mr. Solor stated the pergola will be 2' from the power line; however, Ms. Nunez stated it would not be from the roof line because the power line is high up. Mr. Connors asked if it is Residential-grade power. Mr. Solor stated it is a power line that serves multiple houses in the area. He stated it is a back-up line for the one that is on Edgewood Road. Mr. Connors stated more than likely that requires a 10' setback from the line. Mr. Nunez stated if the power line requires a 10' setback, if they put the pergola behind the pool, the power line cuts the property almost in half, and it would be even closer than 10' at that location.

Mr. Solor noted the 8' shift that he mentioned earlier would put them 10' from the property line.

Mr. Nunez noted the location of the power lines on the aerial. He noted the location of his fence and the wooded area that is behind his home which they own although they do not use it. He noted a location where the power line would be closer to the pergola if it were moved from where they want to put it. Mr. Solor stated the 10' separation from the power line is not a Code requirement and that is a safety and utility easement requirement, and the Board could not relax that.

Mr. Majewski stated he feels it would be a good idea to get more exact dimensions and see how many feet it is from the house to the power line. He stated they could also look at the steps and maybe make an adjustment that will work. Mr. Flager stated once they have the measurements, they can work with Mr. Majewski. Mr. Nunez stated Mr. Majewski has been very helpful through this process. Mr. Majewski stated or one of his staff members could also come out to the property to make sure that all of the requirements for Code are met.

Mr. Solor asked if they would need a Continuance to a meeting beyond June 6, and Mr. Nunez stated June 6 would be fine.

Mr. Paul Radziewicz, 29 Edgewood Road, was sworn in, and stated he lives across from the property and has no issues with them building the structure where they have proposed. Ms. Susan Radziewicz stated she does not have any concerns either.

Mr. Connors moved, Ms. Reiss seconded and it was unanimously carried to Continue this to June 6.

May 15, 2023

Zoning Hearing Board – page 7 of 7

Mr. McVan and Mr. Solor indicated that they will not be able to attend the meeting on June 6 so the three remaining Board members were encouraged to attend and that the Alternates be contacted.

There being no further business, Mr. Connors moved, Mr. McVan seconded and it was unanimously carried to adjourn the meeting at 8:05 p.m.

Respectfully Submitted,

Judi Reiss, Secretary