

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – MARCH 19, 2024

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on March 19, 2024. Mr. Solor called the meeting to order at 7:34 p.m.

Those present:

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

Others: James Majewski, Community Development Director  
Dan McLoone, Planner  
Barbara Kirk, Township Solicitor  
Daniel Grenier, Supervisor Liaison

Absent: Mike McVan, Zoning Hearing Board Member

APPEAL #Z-24-6 – KONYVES/WHITESIDE  
Tax Parcel #20-055-194  
927 PIPER LANE, YARDLEY, PA 19067

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The three-sheet Site Plan was marked as Exhibit A-2. The Impervious Surface Breakdown Calculations and Stormwater Management Small Project Volume Control Sheets were collectively 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. Eric Snee, KS Pools and Patios, was sworn in.

Mr. Snee stated the Plan submitted shows that they are already at 23.3% total impervious and the breakdown has been shown for the existing dwelling, the driveway, walks, and patios. He stated with the pool and anything classified as impervious, they will take that up to 25.8%. He noted the proposed infiltration trench proposed will be 3 by 6 by 33. He stated according to their engineer who prepared the Plan that is more than adequate to accommodate the increase as far as the impervious surface and drainage percentages.

Mr. Snee stated they bought the house and did not realize some of the rules for a corner lot. He stated on Olsen Avenue there is a setback, and what they would like to do is push the surface of the water of the pool back 32' from the road, and 25' from the property line. He stated currently there are two large trees, one that is 44' and the other 45', that are almost on the road; and they impede the vision. He stated they are planning on removing the two trees which will improve the vision. He stated the area of 31' to the road to the water's edge is very flat, and they would not have to "worry about the pool sliding." He stated there will be a very stable, 6' white vinyl privacy fence between there blocking the pool from the road. He stated with regard to the sight line it is less of an impediment than the trees are that are being removed. He stated if it was not a corner lot, there would be a 10' setback, and they would not be here. He stated they feel this is the best way so that they can preserve their yard because they have children in High School who are soccer players, and they want to keep some of the yard over to the right. He noted the location where the very large infiltration trench is proposed with two sight tubes, and everything will be graded that way. He stated he feels this yard will be drier after the pool goes in than it is currently, and the view coming down Olsen Avenue in either direction will be better with the two trees gone. He stated the fence will provide a good level of safety.

Ms. Kirk stated she was directed by the Township to participate in this matter. She stated Mr. Snee indicated that the location of the proposed pool in what would be called the front yard is the best location according to the way the property has been developed. Mr. Snee stated it is according to the way the property has been developed and according to the desires of the homeowners. He stated the pool could be put in the back and take up the entire yard; but they have two children who are athletes, and they wanted to preserve some yard. He stated all the way to the right they do not have sufficient space because of the way that the property angles in. He stated in order to meet the wishes of the customer, he would say that what is proposed is the best place to put it and still be able to adhere to drainage rules and keep it in a safe enough position not to impede upon any sight or vision of any vehicle especially with the two large trees that are hanging over the road being removed.

Ms. Kirk asked how is the elevation in the rear of the property as far as grading compared to the front of the property where the driveway goes out to Piper Lane. Mr. Snee stated the property is relatively flat except for the driveway that comes off of Piper Lane which is a steep uphill. He stated the house is

at the highest elevation of the property. He stated going from the back of the patio straight back to the rear of the property, the elevation is a slope; but it is a very controlled slope. He stated through grading and the seepage pit, it will be better than it is right now. He stated water is running to the area where they decided to put the infiltration trench and they will do grading and some berm work to steer everything internally. He stated they are not trying to “dismiss anything out of the property,” and they are trying to capture it all and bring it all to the seepage pit including some downspouts. He stated that is why it is so large, and it is almost 30% more than the Table requires. He stated it is costing them almost five figures to do that, but it was recommended by his company and the engineer because it the right thing to do and so that they satisfy any Variance requirements.

Ms. Kirk asked if the size of the proposed drainage pit is sufficient to offset the increased 459 square feet of impervious surface. Mr. Snee stated he believes that it is, and they went almost up to 700 according to the Table. He stated while it could be smaller, they went a little bit over to more than satisfy the need. Ms. Kirk asked if the size of the stormwater facility will be sufficient to produce a net effect of 18% impervious surface coverage at the property. Mr. Snee stated it will take it down to 17%. Mr. McLoone stated 231 cubic feet would take it to just below 18%, and 238 cubic feet is proposed.

Ms. Kirk asked if the property owners are in agreement that the proposed stormwater facility will be constructed as shown on the Plan, and Mr. Snee agreed. He added that they have already signed a Change Order showing that it was added to the project once we got all of the information. He stated they want to be able to keep the other side where they have the soccer field. He stated he feels they “have gone over and above to make it happen,” and he believes that not only their back yard, but the adjoining back yards in the rear will be drier because they are absorbing a lot of the water and are changing the grading to steer everything that way and it is not just running straight off with the natural grade as it is right now.

Ms. Kirk noted on Sheet #3 there is a notation that the property owner will sign an Operations and Maintenance Agreement for the stormwater facilities, and she asked if the owners are in agreement that will be a Condition of approval if the Board is inclined to grant this; and Mr. Snee agreed. Mr. Snee added that it was explained to them. He stated that is the standard today especially for a pit this large.

Ms. Kirk asked if the owner would agree to a Condition that there be a Recording of a Declaration of Restriction based on the Note placed on Sheet #3 which states that drainage of the pool and backwash water disposal will meet the requirements of the Department of Health and that water shall not be emptied onto public roads or adjoining land or into the public sanitary sewer system. Ms. Kirk stated this Declaration of Restriction would be Recorded and will show up against the property in perpetuity, and Mr. Snee agreed. Mr. Snee stated they are the construction and maintenance company, and they would never recommend draining onto anyone's premises; and they have a service with a 14" flexible PVC pipe that sucks all the water out of the pool and also puts water in. Ms. Kirk stated the owners would agree that this will be reduced to a written document to be Recorded against the property, and Mr. Snee agreed.

Ms. Reiss stated she noticed that only two neighbors were given notification, and she asked if they are adjoining lots or across the street. Mr. Snee stated there are only two adjoining neighbors, one to the rear, and one to the right. He stated he does not know who did the notification, although he did get a schedule that this was part of the announcement of the Variance.

Mr. Solor stated he believes that the question was directed internally to a Township employee. Mr. McLoone stated it was sent to the two adjoining neighbors. Ms. Reiss stated she is concerned that the people who live across the street will look out their front door, and they have not been notified. She stated she feels it would be remiss of us not to make sure that people who walk out their front door are notified, and she feels they should have been notified; and she feels that is a problem.

Mr. Greg Whiteside was sworn in.

Mr. Whiteside stated the neighbors across the street on Olsen are the Hopsen family, and they are aware of the Plans; and they have discussed the Plan with them, and they are supportive. Mr. McLoone stated the property was posted on both sides as well.

Ms. Reiss stated she knows the property as she goes by the property almost daily and is concerned. She stated she is also concerned about cutting down mature trees. Mr. Whiteside stated the rear neighbor who has young children is very happy to see the pine tree gone as he is concerned that the pine tree could potentially fall on his children as it is an enormous tree.

Mr. Snee stated he feels that if there is a rule about fencing, etc. for sight line and vision, he feels the trees would fall under that. He stated the tree hangs over half way into the road. He stated he feels it would improve the sight lines. He stated it will improve anyone's vision who drives that way, and it will also probably preserve the sidewalk which will eventually get lifted up.

Ms. Reiss asked if there will be plantings in front of the fence. She stated the fence will be in the front yard, and anyone who has a home across the street will see the fence when they look out their front door. Mr. Snee stated he and Mr. Whiteside discussed this, and they could plant a Green Giant Arborvitae up against the fence. He stated they also plan on "dressing that up." He stated usually they are landscaping on both sides of any fence that they do. He stated there will not be a gate on that side.

Mr. Grenier noted the "primary drawing," and he stated it is a construction drawing versus a "final conditions drawing." He asked what is the base drawing they are working off of since it looks like a hand-drawn sketch over top of an old survey. Mr. Snee stated while he does not know if it is an old survey, the engineer still draws them by hand but he can convert them to AutoCAD if that is required. He stated there is a "Built-As Plan at the end," so that whoever does the final inspection would be looking at something that is a little bit more technical than the overhead. He asked if that is what Mr. Grenier is referring to. Mr. Grenier stated he wants to understand what the base drawing is and where it comes from. Mr. Snee stated it was a survey that was obtained from the Township, and then they sent out the surveyor to the property to make sure that nothing had changed, the elevations were still the same, etc. versus a survey where they actually staked the property as there was no need for that in this case. He stated they wanted to make sure that nothing was put in or taken away, the drainage, and if any impervious was added. He stated this is a survey but it is verified by the professional land surveyor.

Mr. Grenier asked if the elevations are from the original survey, and Mr. Snee stated we went out and shot those with a digital transit. He stated it is possible that the original survey could contain some elevations that are the exact same especially by the street; however, in the back yard, they verified that. He stated there is a patio coming off the back of the house, and that elevation has not moved at all. He stated what they really verified was what the slope was going to the neighboring properties because that had a lot more to do with drainage control and stormwater management.

Mr. Grenier asked if he is confirming that the elevations shown are correct, and Mr. Snee agreed.

Mr. Grenier asked when they did the stormwater design for the infiltration trench were they able to verify relative to the volumes that they are creating from the new impervious, how much of the new run-off will be going to the new infiltration trench that is being designed. He asked if there is any that will not be going to the infiltration trench because of the topography.

Mr. Snee stated only in the front yard because that is not changing at all. He stated from the back everything is being graded in that direction. He stated looking at the drawing to the left side of the pool, the landscaping that they plan to do would be something with a rock garden around it; and anything pitched from the pool going to the street would be caught there. He stated everything else in the back yard is all graded toward the trench. He stated on the right side where there is a neighbor, that is all being back-graded toward the trench.

Mr. Snee stated that neighbor will see a big improvement on any run-off if there was any coming from this property right now. He stated as much as possible through grading to go to the infiltration trench will be going there. He stated that is why he is confident, along with the fact that it is a little bit bigger than it needs to be and with the grading, that it will “do its job.”

Mr. Snee stated there are two sight line tubes so that if there is any type of maintenance operation needed, those will make it easy not only for the Township, but also the homeowner and his company as the managing company, to take a look there after a storm to make sure that it is doing its job.

Mr. Grenier asked what is the total area of the limit of disturbance for the project. Mr. Solor stated it is shown as 3950 square feet disturbance.

Mr. Grenier asked if there is a drawing to show what it will look like when everything is complete. He stated what they are looking at is a construction drawing. Mr. Grenier stated pools require fences around them, and he would like to know if there are any other features that will be installed that may have to come before the Zoning Hearing Board at some point. Mr. Snee stated there is nothing that is not on the Plan and it is showing the proposed fence. He asked Mr. Grenier if he is talking about an AutoCAD showing the home with the pool. He stated you will not see the seepage pit because it is underground.

Mr. Grenier stated what he is seeing is a construction entrance from Olsen Avenue, the concrete wash-outs, stockpiles, tree protection, etc. He stated he assumes the construction entrance will be removed; and Mr. Snee agreed adding that they would repair anything and it would be restored. Mr. Snee stated while he could show this, he has never been asked for that although he does not have a problem providing that. He stated everything would be completely restored, and the fence would be installed. He stated they also plan to landscape both sides of the fence so that it looks “dressed up” for the people across the street. He stated they would restore any grass that was damaged. He stated all dirt and the silt fence would be removed. He stated they need to meet the customer’s expectation. He stated there is nothing being added that is not shown on the Plan right now.

Mr. Grenier asked Mr. Snee to show on the drawing where the new fence will be as it is “not clear to everybody at the dais.” Mr. Snee noted the dotted line on the Plan. He stated it is tying in to the two sides of the house. He stated looking at the corner of the house going straight up from the pool there is a dotted line going to the left. He stated the rest of the fence would be in the same place as the existing fence. He stated all they are doing is adding the fence where it says “122,” and there is already a fence from the original property. He stated that will be replaced, and they are tying it into the side. He stated the grass, etc. will be restored to the way it was before they started the job.

Mr. Grenier asked the setback of the fence from the property line. Mr. Snee stated it shows on the Plan that to the street it is 25’ so to the property line it would be “twenty something.” He stated the pool is only 25’, and there is 3’ of decking so that is 22’. He stated the fence could be anywhere from 22’ to 20’ from the street. He stated he believes that it is probably 22’.

Mr. Solor asked Mr. Majewski to explain how the fence setback works for the secondary front yard. Mr. Majewski stated from the curb to the right-of-way line is 10’. He stated they are saying that it is 22’ from that curb line to where the fence is. He stated from the right-of-way line or property line to their fence is 12’. He stated our Ordinance requires that for every foot above the 3’ that you are going up, you have to be set back by 3’. He stated if they have a 6’ fence, they would have to be 9’ off that right-of-way line; and they comply because there are going to be at about 12’ or 13’. Mr. Solor stated they are in compliance, and that did not need to be part of their Application.

Ms. Reiss asked how high Mr. Majewski was assuming the fence was going to be. Mr. Solor stated he said 6', and at 6' they are in compliance. Ms. Reiss asked if that is a high enough fence per our regulations, and Mr. Majewski agreed.

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

Ms. Reiss moved to accept the Appeal with the provision that we can see a Plan for whatever landscaping is going to be around the fence on the outside and with the approval of the Township engineer.

Ms. Kirk asked that a Condition added that a Declaration of Restrictions be Recorded regarding the pool drainage and water flow as shown on Note #3 of Page #3, and Ms. Reiss agreed to this Condition being added.

Mr. Dougherty asked Ms. Reiss who she is proposing to approve the landscaping plan. Ms. Reiss stated she feels that we need a description of some type as this does not look like a Final Plan. She stated she feels we normally see some idea of something in front of the fence.

Mr. Schwartz stated there is no Ordinance that says they have to show that to the Zoning Hearing Board, and he does not feel that is something that the Zoning Hearing Board should entertain; and Mr. Dougherty agreed.

Ms. Reiss stated her big concern is that no one who lives across the street from this was notified; and while that is a problem for her, if it is not in the Ordinance, there is no reason to object.

Mr. Dougherty stated he knows that we only see that the two houses adjacent are contiguous on the map. He asked if someone stated that the people across the street were notified. Mr. Whiteside stated they are good friends with the Hopsons across the street, and they regularly have them over and entertain with them. He stated they are well aware of the Plans. He stated to address Ms. Reiss' concern, their property is well maintained, and they love their gardens; and they have every intention of putting up greenery both outside the fence and inside near the pool. He stated they will make sure that the Hopson family will be looking at something nice from across the street.

Mr. Dougherty stated it seems that only two people were notified, and Mr. Majewski agreed.



Ms. Reiss stated her concern is that it is a front yard, but looking at the lot she understands the issues. She stated this is not a neighborhood where everyone's houses are fenced in on four sides, and mostly, it is the two sides and the back. She stated it is a different property from most of what it surrounds it. She stated they are looking at four houses "that will be looking dead at it and three of them looking at it pretty regularly," and that was a concern. She stated she does not want to hear backlash of why they were not notified. Mr. Solor stated that has been an issue with some other developments with fencing in the "side/front yard or back/front yard scenarios."

Mr. Majewski stated they are proposing the fence with sufficient room between the fence and the sidewalk to add landscaping, and he believes that the Applicant's representative had stated that they plan to install Arborvitaes in front of the fence. Mr. Snee stated it would be something along those lines to be determined, but it would be "green and beautiful." He stated if you look at the property, you will see that they take their property very seriously as to the gardens and how important that is. He stated if they want them to provide a plan as to what they propose to do, they could do that. Mr. Majewski stated the Motion could be approved as submitted subject to the Declaration of Covenants that Ms. Kirk had mentioned and also subject to providing landscaping in front of the fence subject to the approval of the Township engineer.

Mr. Grenier stated the Township maintains the Native Plant Ordinance, and he asked that they make an effort to be in compliance with that; and Mr. Snee agreed. Mr. Solor stated that could be made part of the Condition, and Ms. Reiss stated she feels that they should make the attempt. Mr. Solor stated he feels that the Condition should be that they be in compliance with the Ordinance.

Ms. Reiss moved, Mr. Dougherty seconded and it was unanimously carried to accept the Appeal as shown with the Declaration of Restrictions, a signed O & M Agreement for the seepage bed to be approved by the Township engineer, and a Plan for landscaping in front of the fence in compliance with the Native Plant Ordinance and subject to approval of the Township engineer.

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There being no further business, Mr. Schwartz moved, Ms. Reiss seconded and it was unanimously carried to adjourn the meeting at 8:15 p.m.

Respectfully Submitted,

Judi Reiss, Secretary