

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – OCTOBER 15, 2024

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on October 15, 2024. Mr. Solor called the meeting to order and noted there are only four members present this evening so it will require three votes in favor in order for an Appeal to be approved.

Those present:

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

Others: James Majewski, Community Development Director
Dan McLoone, Planner
Adam Flager, Zoning Hearing Board Solicitor
Daniel Grenier, Supervisor Liaison (joined meeting in progress)

Absent: Matthew Connors, Zoning Hearing Board Member

APPEAL #Z-24-13 – MILLER/FARRELL
Tax Parcel #20-052-052
208 W. FERRY ROAD, YARDLEY, PA 19067

Mr. Dougherty moved, Ms. Reiss seconded and it was unanimously carried to Continue the matter to November 19, 2024.

APPEAL #Z-24-26 – BOHN/BOTTI
Tax Parcel #20-035-006-008
1120 CAMBRIDGE COURT, 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.

Ms. Kelly Botti and Mr. Rob Wagner were sworn in.

Mr. Wagner stated the small addition they are proposing consists of a small kitchen addition and a covered deck shown in the cross-hatched area on the Site Plan. These are approximately 530 square feet. He stated the Lot is an irregular shape, and the way the house is positioned on the Lot makes it difficult to increase the footprint of the house in any direction. He stated the kitchen addition on the right side reduces the rear yard setback from the required 45' to 40.9". On the left side of the proposed addition, which is the covered deck, that reduces the 15' side yard setback to 12.7. He stated another dimension being shown is where the new deck step will come down, and that is the 33.6 dimension; and there is a little bit of an extra uncovered section of the deck that encroaches to 40' from the rear property line; however, those areas do not have a roof over them, and it will be a regular deck and not an impervious coverage for that part of the deck.

Mr. Wagner stated they will still be well under the impervious coverage limit for the Lot, and they are just asked for the Setback Variances.

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

Mr. Dougherty stated they are clearly constrained by the Lot, but he wanted to make sure that there were no neighbors who had a problem with what was proposed.

An aerial of the property was shown. Mr. Solor asked if they spoke to the immediate adjacent neighbors. Ms. Botti stated she was unable to communicate with the neighbors in the rear. She stated she has erected a tree line between their property and that neighbor. Ms. Botti stated the neighbors on the side are in support of what they are proposing. The property to the left is a detention basin. Mr. Majewski stated that is the Homeowners' Association basin, and Mr. McLoone stated the HOA was notified.

Ms. Reiss stated there is a large setback, and she asked the history of that.

Mr. Majewski stated it was the setback that the Township had come up with in years past. He stated he believes the rear yard was 40' years ago, but the front setback was greater; and it was decided to move the houses a little closer to the road so that there would be less driveway and less impervious created and more of a usable rear yard area so at some point in time the Ordinance changed from a 40' rear yard setback to a 45' rear setback, and that was well before this lot was created.

Mr. Dougherty moved, Ms. Reiss seconded and it was unanimously carried to approve the Appeal as written.

APPEAL #Z-24-27 – WOLFGANG/SUBER
Tax Parcel #20-039-015
1910 WOODLAND DRIVE, 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. Eric Suber and Mr. Brian Wolfgang were sworn in.

Mr. Wolfgang stated they are proposing to add a 20' by 24' garage to the front of the house. They are looking for relief on the front yard setback of 5'. He stated it comes out to about .8 in impervious. He stated a majority of the new garage is going to cover a portion of the existing driveway. He stated currently the house sits on the property at 55', but if you measure it, it is 65' from the current road because he believes that road is in the Plans for the Township to be widened at some point. He stated the house was built in the 60's, but that has never happened so there is an actual extra 10' of yard in the front; although it is not owned by the homeowners.

Ms. Reiss asked about the impervious surface. Mr. Solor stated 18 is allowed, and they are going to 20.9. He stated they were at 20.1. Ms. Reiss stated they are not on the water. Mr. Solor stated the creek is off of the aerial to the left, and we have heard concerns in the past. Ms. Reiss stated they drain down toward that creek.

Mr. Dougherty asked if the proposed stormwater management will take it back to 18%, and Mr. McLoone stated they were proposing trees which will take it back to 20.1%. Mr. McLoone stated if the Board wanted them to do something more structural like a trench, an approximately 2' by 4' by 20' trench would bring it roughly back to the 18%. Mr. Dougherty stated while the Board encourages trees, they are not in favor of them as a means of stormwater management. Mr. Wolfgang asked if there would be a preference as to where that would have to be located. He stated ideally if it were to be put on the right side of the driveway, they would be able to take a portion of the existing house roof and half of the new garage and pipe that in directly.

Ms. Reiss stated that would be ideal. Mr. Dougherty stated that could be included in a Motion, and it would be subject to the Township engineer's approval.

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

Ms. Reiss moved, Mr. Dougherty seconded and it was unanimously carried to approve the Appeal with the Condition of a trench to be constructed to bring the impervious back to 18% subject to the Township engineer's approval.

APPEAL #Z-24-28 – THOMPSON
Tax Parcel #20-022-019
8 SCAMMELL DRIVE, YARDLEY, PA 19067

No one was present at this time representing this Appeal.

APPEAL #Z-24-29 – BOHN
Tax Parcel #20-042-102
14 OAKDALE BLVD, YARDLEY, PA 19067

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plans were 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. Steven Bohn and Ms. Kristin Holmes were sworn in.

Ms. Holmes stated the Application is for a swimming pool and pool decking to the rear of an existing single-family home. The property is non-conforming to Lot area as it is undersized. The request is for an impervious coverage Variance. They are proposing with the pool decking an impervious coverage of 34.3% where 29% maximum is permitted. Ms. Holmes stated the Lot size is just under 11,000 square feet so it is undersized. She stated they are providing a proposed stormwater underground infiltration trench immediately abutting the pool decking area to capture all of the new impervious that is being proposed. She stated it is compliant as it relates to pool setbacks.

Mr. Majewski stated they have made the trench a little bit larger than what would be required to capture the entire increase from the existing 26.9% up to what they are proposing.

Mr. Solor stated frequently when they see that amount of decking relative to the pool size, it raises a flag; but looking at the dimensions, it does not look like the coping is actually that large relative to the space. Mr. Bohn stated it is actually a pretty small pool. Ms. Holmes stated it is consistent with the neighborhood, and there are other pools in the neighborhood with similar sized lots.

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

Mr. Dougherty moved, Ms. Reiss seconded and it was unanimously carried to approve the Appeal as written.

APPEAL #Z-24-30 – MEGINNISS/JMAC INVESTMENTS LLC
Tax Parcel #20-040-129
2010 YARDLEY-MORRISVILLE ROAD, YARDLEY, PA 19067

Mr. Flager marked the Exhibits as follows: The Application was marked as Exhibit A-1. The Site Plans were 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. James McCafferty was sworn in.

Mr. Mike Meginniss, attorney from Begley Carlin, was present. He stated JMAC Investments LLC are the owners of 2010 Yardley-Morrisville Road in the Township. He stated the site is a little over one quarter acre in the R-2 District. He stated his client purchased the property approximately a year ago. The Lot was unimproved and was created via Deed going back to 1923.

He stated his client began construction of a single-family home last fall and was able to meet all of the Performance Standards associated with the Lot despite the fact that it was non-conforming in a number of respects. He stated a home was constructed which is approximately 2,100 square feet of finished living space, and it has all the requisite improvement as can be seen on the Plan including a driveway and associated stormwater management facilities including a seepage pit to the rear of the property.

Mr. Meginniss stated he feels it can be seen that his client took a lot of effort to make sure that the home was designed correctly and it has very nice finishes.

Mr. Meginniss stated an As-Built Plan was done and it was found that the south boundary is within the side yard setback of .68'. He stated because of the way the Lot was created, and because it is governed by Section 200-22 of the Code of Ordinances, there is a requirement for each side yard setback to be a minimum of 10' and an aggregate of 26'. The Lot width is 60'. He stated if they were to max build a home, theoretically you could have a 34' wide home and be compliant with the requirements. He stated someone might feel that someone purchased the Lot indicating they could meet the requirements, construct a home, and then come to the Zoning Hearing Board afterwards seeking forgiveness rather than permission in advance if they were to build a 35' wide house. He stated their width is approximately 28', and they did not max build this. He stated this is not a scenario where they are in both setbacks, and this was a very small but clearly an error which has generated the Application this evening.

Mr. Meginniss stated his client got under Agreement to sell the property, there was a Closing scheduled, and the perspective home purchasers sold the house they were living in. This issue was flagged which necessitated an Application to the Zoning Hearing Board to secure a Variance of .68' from the south side yard setback. The Closing has been temporarily put on hold, and they are present for this single Variance. Mr. Meginniss stated he feels that this is a legally de minimus Variance. They are requesting confirmation that the house which is otherwise constructed and finished can remain in its current location to permit a 9.32' side yard setback instead of the 10' side yard setback which is otherwise required by Ordinance. Mr. Meginniss stated he feels it is apparent that this was an innocent mistake.

Mr. Meginniss asked Mr. McCafferty if he is a Principal of JMAC Investments, the Record owner of the property; and Mr. McCafferty agreed. Mr. McCafferty stated he would adopt the summary provided by Mr. Meginniss as his own Testimony.

Mr. Meginniss asked Mr. McCafferty to describe to the Board how they arrived in this position. Mr. McCafferty stated the Plan called for a 28' wide home, and there was "wiggle room" because there was a 34' wide building envelope; however, because of the nature of the parcel there was a swale on which some stormwater might run down, and so in effort to keep the home away from that area of the parcel as much as parcel, the plan was to build the home up against the 10' side yard setback on the other side away from the swale to leave as much of that as possible. Mr. Meginniss stated it is the southern back right corner that is encroaching, and Mr. McCafferty agreed. The location was shown on the Plan.

Mr. McCafferty stated they wanted to leave as much of the swale undisturbed as possible. Mr. McCafferty stated through a surveying error, the rear pin was set 8" too far into the side yard setback.

Mr. Solor asked if what has been indicated is accurate with regard to the dimension in that if this were 8" over, there would be no Variance request, and Mr. McLoone agreed.

Ms. Reiss stated she has a problem with builders who "want to say I am sorry rather than ask permission first," however she understands when a surveyor makes a mistake. She stated also appreciates keeping the swale. She stated she would like to know how the neighbors feel and what can be done to try to satisfy everyone.

Mr. Dougherty stated the house is built and the issue is less than 1'. He stated he understands the house is 28' wide and not 34' wide, and there are topography constraints on the other side of the Lot. He asked if Mr. McCafferty is in litigation with the individual who did the survey. Mr. McCafferty stated they may be depending on how this evening goes. Mr. Dougherty stated he assumes that individual is a third party and not someone employed by Mr. McCafferty; and Mr. McCafferty stated that individual is not employed by him.

Mr. Dougherty asked the reaction of the neighbors. Mr. McCafferty stated he has heard through the general contractor that there is a neighbor who is unhappy, but he has not met the neighbors.

Mr. Meginniss stated part of the reason why he did the summary at the beginning about when the Lot was created was because there was a question about whether the Lot was buildable in the first place. Mr. Dougherty stated this was a by-right build, and Mr. Meginniss agreed.

Mr. Solor stated the Township has indicated that they are participating in this matter.

Mr. Majewski stated they did want to know if a surveyor had staked out the building itself, and that has been addressed. He stated the Township is disappointed that they could have gone the other direction if this had been done correctly since there was room.

Mr. Grenier had joined the meeting by this time and asked if the surveyor was professionally licensed in Pennsylvania, and Mr. McCafferty stated the stake out was handled through the general contractor so he is not sure who did the stake out work. Mr. Majewski stated he does not know if it was a licensed surveyor who laid it out.

Mr. Solor noted the property immediately to the south which looks like they are relatively close to the property line, and he asked their offset from the property line. Mr. Majewski stated he believes they are 16' from the property line.

Mr. Grenier stated it was indicated that they wanted to keep the home as far away from the swale as possible, and he asked if they ultimately has to re-locate any section of that swale during construction or has it remained in place at the same location as pre-construction. Mr. McCafferty stated he feels that the swale was manipulated to accommodate the home. He stated Joe Jones was the engineer, and it was designed so that it would operate the same way; but he believes the swale is not as wide as it once was.

Mr. Grenier stated he would like to know what the swale was servicing and if it was part of an Easement. He stated if dimensions were changed, he would want to make sure that it was still operating the same way.

Mr. McCafferty stated there was no Easement tied to the swale, and he believes that there was a disconnected storm outlet that went underneath Yardley-Morrisville Road. Mr. Solor stated it is shown on the Plan in the upper left.

Mr. Majewski stated the swale starts on the adjoining Lot to the north and then passes through this Lot. He stated the original swale would have clipped the back corner of the house so they pushed it out to be not where the building is. He stated once you get past the house, the swale disappears, and it is flat yard for several hundred feet before it gets picked up by a storm drain well down stream.

Ms. Reiss asked if the swale was disrupted for the corner of the house, why did they not just re-direct as they did for the corner for the whole house; and then they would not have this issue. Mr. McCafferty stated they did not intentionally move the house 8" too far. He stated they moved the home to the right of the parcel as much as possible still meeting the side yard setback; however, the 8" mistake was the wrong way. Mr. Meginniss stated the intention was for a 22' setback to the Plan north and a 10' setback to the Plan south, and what happened was a 22.7' setback to the Plan north and a 9.3' setback to the Plan south.

Mr. Solor stated looking at the As-Built Survey it can be seen that the one corner of the house is approximately 10' and the other one was off.

Mr. Meginniss stated no one wanted this to happen – not the neighbors, the Board, or the Applicant as there as additional costs and delay of Settlement; and they wish it would have been avoided.

Mr. Dougherty asked if there have been situations like this in the past in the Township. Mr. Majewski stated there was a similar situation approximately five years ago when there was an addition built which was supposed to have a 15' setback and was not executed corrected and were over by about 6", and they came before the Board to get a Variance. Mr. Dougherty asked how it was resolved, and Mr. Majewski stated a Variance was granted by the Zoning Hearing Board. Mr. Dougherty asked if the Township assesses fines in a situation like this, and Mr. Majewski stated it does not.

Ms. Julie Pulvers-Zito, 2008 Yardley-Morrisville Road, was sworn in. She stated she lives next to the subject house. She stated the first sale of her Lot of was in 1951 which included an additional 20' of land that was part of the Lot of the 2010 Yardley Road. According to the Deed dated 1951, 2008 Yardley Road and the additional 20' of land from 2010 Yardley Road was purchased from the Westover Corporation. She stated 2010 Yardley Road with the dimensions of 60' by 190' was established in 1951. She stated the purchase of the additional 20' of Lot #4 was clearly to prevent a residence from being constructed in accordance with Building Codes of that time. She stated this was also confirmed by current neighboring residents who resided in Westover at the time of the purchase.

Mr. Dougherty asked Ms. Zito is she is stating things she knows to be fact, and Ms. Zito stated it is in the Deed. Mr. Dougherty asked if it states in the Deed that this other Lot cannot be developed. Ms. Zito stated she does not know that it says it cannot be developed. Mr. Dougherty stated that is the language she used so that part would be hearsay.

Ms. Zito stated even though everyone thinks this is a very minimal mistake that was made, she is the house that is being impacted by this. She stated there is noise pollution from the large raised air conditioning units on the side of the house that is in between them. She stated the house is already less than 10' from her property line which makes the units less than 4' from the line. She stated the noise from the units makes her deck and sunroom impossible to use during the months that she should be enjoying them with her family.

Ms. Zito asked with regard to the lawn maintenance and rear yard access with such a narrow width and extremely deep decline how will the homeowners be able to properly maintain the yard and also not encroach on her property. She stated there is no access on the other side of the yard to the back yard either as there is a large wall of boulders.

Ms. Zito stated she is also concerned about the drainage. She stated there was a drainage pit created on the side of the house, and the rainfall from the gutters does not flow into the drain. She stated when there is rain, it creates a very muddy and flooded area not only on the Applicant's property but also on hers as well now. She stated prior to the house being built, there was never flooding or muddy areas in that location so close to her home. Ms. Zito stated with these new conditions her property could potentially now be damaged.

Ms. Zito stated she also has an issue with the placement of their propane tanks. She stated like the air conditioning units, they are on that side of the house where the Setback Variance is being requested. She stated they are balancing on cement blocks that are not enclosed or secured. She stated this is the same area that becomes flooded and muddy during rain. She stated she is concerned that this poses a safety concern because they are very close to her home. She stated the mud could slowly move the concrete blocks and a propane tank could potentially move.

Ms. Zito stated she is concerned that this house was built with not having the proper surveys done; and now that the house is built, she assumes that the Variance will be given since they could not move the house at this point.

Mr. Solor stated he believes that most of the issues being raised are not related to the Variance but are potentially Code Enforcement issues; and Mr. McLoone agreed they are not related to the Variance being heard tonight other than the setback.

Mr. Dougherty asked Mr. McCafferty if they could work with the neighbor and move the A/C condensers and propane tanks, or put up a fence on that side and mitigate stormwater. Mr. McLoone suggested landscaping as well on that side. Mr. McCafferty stated he would be happy to work out a solution to try to help alleviate some of those concerns. He stated if there is a concern with the propane tanks moving or falling over, they could pour a concrete slab. He stated they could also install a fence or arborvitaes down the property line.

Ms. Zito stated she would be in favor of all of that since their privacy has been taken away and they cannot enjoy part of their house now.

Mr. Dougherty stated they did a by-right development, but an engineer “messed a pin up.” He stated he is trying to find a way to help out the developer and also alleviate the issues which are a nuisance to Ms. Zito.

Ms. Reiss stated she understands the noise pollution, and she would like to work something out that would mitigate the noise as much as possible and provide privacy.

Mr. Majewski stated he has talked to Ms. Zito about her concern with the propane tanks; and in a floodplain, they will anchor propane tanks to the ground, and he asked if there is a way to anchor them to the foundation of the house so that it will not move or if they could pour a slab so that it is a more solid base than the way it is currently situated. Mr. McCafferty stated he would commit to pouring a concrete slab and having them attached in some way to the slab. He stated he does not know that they could be attached to the home. Mr. Dougherty stated he could also use a cage which would be a cost effective way to do this.

Mr. Dougherty asked about Ms. Zito’s comment regarding rear yard access, and Mr. Majewski stated there is 9’ between the house and the property line so there is enough room to maintain everything. Mr. Dougherty asked if the topography is an issue, and Mr. Majewski stated he feels they could access it with a lawn mower.

Mr. Majewski stated with regard to the noise from the central air conditioner, he is not sure that there is anything that can be done to mitigate that. Mr. Dougherty asked if there are heat pumps or furnaces, and Mr. McCafferty stated there are heat pumps in the finished basement. Mr. Dougherty stated re-running a line set would be problematic. Mr. Majewski stated the suggestion of a fence and/or landscaping would help deaden the noise a little bit. Mr. McCafferty stated they would be happy to either or both since they want the neighbors to be happy. Mr. Solor stated he feels they may be space constrained with doing landscaping with the equipment on that side, and he feels that they would have to go with a solid fence of some sort. Mr. McCafferty agreed adding that the more that is put in that space, the less accessible the rear yard would become. Mr. McCafferty stated he would leave the decision to the neighbor whether they wanted a fence or arborvitae.

Mr. Majewski stated there was concern expressed with the swale and how it is flowing through, and they have been waiting for it to rain since they did the grading to see how it is working. He stated they would not grant a Final Certificate of Occupancy until they are satisfied with how the water flows and that it is not backing up onto the neighbor's property.

Mr. Dougherty asked Ms. Zito if she feels that the Board is trying to have the developer work with her; and Ms. Zito stated she does feel like she is being heard. Ms. Zito stated she did not feel like she was being heard at all when the house was being built. Mr. Dougherty stated he feels that Ms. Zito understands that a legitimate mistake was made by a third party. Ms. Zito stated she understands that they cannot move the house, but she would like there to be some kind of resolution.

Ms. Desiree Holtzworth was sworn in. Ms. Holtzworth stated with regard to "legal writing" it does say in 1951 Deed that there be no frontage of less than 75' to build a residence. Mr. Dougherty asked whose Deed that is on, and Ms. Holtzworth stated it is on the Deed that sold 20' from 2010.

Mr. Dougherty asked what parcel's Deed, and Ms. Holtzworth stated it is Ms. Zito's Deed, and part of that Deed includes the 20'.

Ms. Holtzworth asked that the Board consider the Variance request with a full understanding of the project and not just about the setback which is the issue on the Agenda. She stated she cannot say if the issues have been a matter of ignorance or deliberate disregard for order and quality. She stated the fact that this residence was allowed to be constructed without a single Variance to begin with is questionable at best. She stated she attended a previous Zoning meeting to raise concerns of the validity of the designation of non-conforming lot and concerns regarding the volume of stormwater that would be displaced.

Ms. Holtzworth stated the approved Building Plans stated that since the Lot existed prior to 1947, it did not conform to current Zoning requirements; and she provided the Township with Deeds showing this Lot was formed in its current 60' wide configuration in 1951. She stated she brought this to the attention of Mr. Majewski and subsequently the Township Manager, and had a meeting with the two of them; and the Manager referred all opinion to Mr. Majewski. She stated she was left with the impression that the Township

was more concerned with a potential lawsuit from the owners and builders than the validity of the details that she had provided. She stated the argument that she was given was that since the parcel number did not change when the Lot was formed that it did not matter that the Lot had changed at all. She stated Building Lots and Tax Parcels are not the same as a parcel is an identification for taxation purposes and a Lot number is recognized for Subdivision Building purposes.

Ms. Holtzworth stated prior to construction she voiced her concern about the amount of stormwater that passes through the swale that encompassed the majority of the entire 60' width. She stated there is a storm drainage pipe that runs under Yardley-Morrisville Road directing water into what was previously that swale. She stated she provided video and photo of the amount of water during heavy rain. She stated she also asked for information as to how much stormwater that drainage pipe was designed to accommodate according to Township plans, but that information to date has not been provided to her.

Ms. Holtzworth stated since the first day of groundbreaking her Lot has flooded with every rainfall. She stated she has expressed her concerns about the property damage that continues to occur at her property, and all of those concerns have been dismissed. She stated the Township advised her that it would be the builder's responsibility and the builder advised her that it would be the Township's responsibility to remediate this issue. She stated to date her basement sustains water damage with every rainfall. She stated when she purchased her home she invested a large sum of money installing sump pumps and drainage around the perimeter of her basement, and since that work was completed in 2017 she has never had water in her basement.

She stated Mr. Majewski has advised her that he does not understand why the house being built has created this issue; but since removing the large swale for stormwater her property sees damage with every rainfall. She stated she has asked numerous times what recourse she has, but she has never received a direct answer. She stated she has been told on numerous occasions that the water will continue to flow as it always has, but to date that is not the case. She stated she was also told that additional grading would be required which has also not been done.

Ms. Holtzworth stated she has witnessed questionable practices during the entire process including the back patio and deck area. She stated the approved Building Plans call for a 3 by 8 concrete slab outside of the basement doors, but the builders poured at 12 by 20 area of concrete outside.

She stated the Township was not aware of this until she pointed it out, and they had no approval to change the Plans prior to pouring the concrete. She stated the deck was constructed on top of the concrete slab with no footings underneath. She stated this is dangerous in any scenario but more concerning given that this land is basically a swamp with the amount of water it accumulates. She stated this is an example of disregard for Code and safety and asking for forgiveness later.

Ms. Holtzworth stated the misplacement of the foundation is another example as measures were not taken to do this thoroughly and professionally. She stated she understands that foundation location is common practice prior to building, and she asked why this was not done. She asked if this was another thing the Township failed to insure or is this the responsibility of the builders.

Ms. Holtzworth stated she had requested a copy of the As-Built Survey numerous times. She stated she questioned the height of the residence in accordance with the approved Building Plans, but that information has not been made available. She stated not only was the Survey not provided, but Mr. Majewski has advised that he is waiting for a Revised As-Built Survey. She stated there have been no changes to the setback or the grading issues so she does not understand why there needs to be a revision. She stated she feels she has the right to see both Surveys.

Ms. Holtzworth stated Mr. Majewski has indicated that a Temporary Certificate of Occupancy has been requested. She stated with the concerns she has, it does not seem like a reasonable accommodation.

Mr. Dougherty stated a lot of what Ms. Holtzworth is raising is Code Enforcement, and is outside the governance of what the Zoning Hearing Board does. Ms. Holtzworth stated she has not felt heard at all, and the unfortunate reality is that this is the only chance where she has the opportunity to speak about any of this. Mr. Dougherty stated this is why the Board allowed her to speak, and her comments will be in the Minutes.

Ms. Holtzworth stated she appreciates that. She added that her concerns deal with the other side of the house and are not really related to the setback; however, everything that came up previous to this was stormwater management. She stated her land and house flood every time it rains, and she has videos and pictures of it; but nobody cares. Mr. Dougherty stated he feels that is odd since her property is uphill, and he questions how a house that is built downhill could create her flooding situation, although he admits he is not an

engineer. Ms. Holtzworth stated the stormwater exiting out of Yardley-Morrisville Road is not downhill from her house. She stated her basement is underground so that is not downhill. She stated the water table does not care what is uphill or downhill. She stated when you increase the water table, it makes everything wet.

Mr. Flager asked Ms. Holtzworth her address, and Ms. Holtzworth stated she is at 2012 Yardley-Morrisville Road.

Ms. Reiss stated in this area there are a lot of underground aquifers including one on her property so that when she built they had to make some changes and raise the basement up. She stated the last few times it rained, it had shifted; and they had been told that it is a shifting underground aquifer and did not stay in the same place because of the type of soil and other issues. Ms. Reiss stated there is a lot of that in this area when you are near a River and there are canals.

Mr. Solor stated the storm drainage underneath Yardley-Morrisville Road is an existing situation not related to this development. He stated he agrees with Ms. Reiss, and there is a property uphill from his that has a wetland on it.

Ms. Holtzworth stated it is immediately related since while the pipe is on her Lot, all of the water flowed through the Applicant's Lot. She stated they took away where it used to go for the past seventy years.

Mr. Dougherty stated the Township engineer is waiting for a rainfall prior to issuing the CO so they will be looking at that part of the Lot. Ms. Holtzworth asked about her request for how much water that swale was supposed to be able to accommodate in the first place. She stated there is a pipe that exists under Yardley-Morrisville Road, and there should be documentation as to what it is supposed to do. She stated she does not feel permission would be given to put a pipe underneath a road to drain stormwater with no plan for how much and where it goes.

Mr. Majewski stated Yardley-Morrisville Road is a PennDOT road, and we found no information from PennDOT on this pipe. He stated there is no Easement. He apologized to Ms. Holtzworth for not giving her the information on how much water the pipe can handle or how much water the swale can handle. He stated he will provide that to her. He stated he did provide Ms. Holtzworth the As-Built on October 3; however, Ms. Holtzworth disagreed. Mr. Majewski stated it was e-mailed, and he could e-mail it again. Ms. Holtzworth asked that when he e-mails it, he also forward her the original e-mail so she can see

when it was actually sent. Mr. Majewski stated he can give her a copy this evening; however, Ms. Holtzworth stated she would also like to see the original e-mail so she can see when it was actually sent.

Ms. Holtzworth stated while the request is only 8", they are "choosing to shove something in a tiny spot," and they only have 10'. She stated no one set a pin in the back corner; and while there was a wooden spike, no surveyor actually set any pins. She stated according to the Building Plans, there is actually supposed to be pins set for the property corners, and those have never been placed either.

Mr. Dougherty asked if Ms. Holtzworth is asking that the house be taken down, and Ms. Holtzworth "in a perfect world, yes." She stated she agrees that is not reasonable and does not have any expectation that will be happening, but she would like the water issues taken care of. She stated while they are indicating that they will hold off on a CO until there is a heavy rainfall, she would like that to be actually adhered to. Mr. Dougherty stated while he is not fighting on behalf of the Applicant, they could have legally built a 34' house which would have cut deeply into the swale; and their engineering would have re-engineered the swale like it did but it would have been more re-engineering. He stated the part of this Applicant's property that effects Ms. Holtzworth's property has been least disturbed; and because they moved it further, Ms. Holtzworth actually has less disturbance so this is actually a benefit for Ms. Holtzworth.

Ms. Holtzworth asked if the answer is that she now has to deal with a flooded basement. Mr. Dougherty stated that is Code Enforcement and the Township staff present and the Township Supervisors can comment better on Code Enforcement than the Zoning Hearing Board can. He added this is hard to document, and he asked if there is documented evidence that Ms. Holtzworth's basement was not flooding before this property was built. He stated the Zoning Hearing Board has no governance over that issue. He stated he understands that Ms. Holtzworth wants to be heard, and that is why there has been this discussion. He stated he feels the attention of Mr. Majewski and Mr. McLoone, and he advised Ms. Holtzworth to continue to work with the Code Enforcement Department to make sure that the stormwater is running appropriately.

Mr. Meginniss stated they can continue to work on the Plan north although it is more complicated in terms of the concerns addressed than are the fixes suggested for the Plan south. He stated they would commit to working with Mr. Majewski's office and Remington Vernick and are confident that the

stormwater facilities installed will work. He stated if there is any remedial action required to be taken, that will be taken immediately until the Township is satisfied and that this Lot is functioning appropriately. He stated he is not saying that this will fix all of the stormwater concerns, but they will be responsive to the Township to make sure that this Lot and the stormwater design function as intended on the Plan.

Mr. Dougherty asked how we should safeguard for that, and he asked if we should add Closing Escrow money, and Mr. McCafferty stated he would be happy to do that.

Ms. Holtzworth stated with regard to proof, while she has nothing to prove about her basement, she has a lot of documentation about that Lot before ground broke of the way water accumulated and flowed and a lot of documentation afterwards that the water does not leave anymore.

Mr. Meginniss stated they have a legal obligation not to create additional stormwater run-off as a result of this development, but that does not mean that they will necessarily fix all of the broader stormwater issues. He stated there was an area on the site to the Plan north that needed to be flattened, and that work was completed in the last week; and the Township has been waiting for a rainfall. Ms. Holtzworth stated there has been no grading since prior to the As-Built Survey. She stated she is home and this area is right outside her window, and no grading has been done. Mr. Meginniss stated Mr. McCafferty has indicated that the grading occurred within the last week to week and a half.

Mr. McCafferty stated in the original As-Built there was a high spot, and that was addressed. He stated the first version of the As-Built that was submitted to Mr. Majewski's office had a comment from Mr. Majewski that there was a high spot within the swale; and that was addressed. Ms. Holtzman asked when it was addressed, and Mr. McCafferty stated he believes it was addressed longer than a week ago. Mr. Majewski stated he believes it was done about one month ago. He added that they had also inadvertently put some boulders as an embankment for the swale on Ms. Holtzworth's property, and they moved those back. Mr. Majewski stated the grades on paper appear that it may work, but he wants to see it with a good rain just to verify that is in fact the case. He stated if it is off, it is not off by much, and it would be off maybe by a couple of inches.

Mr. Meginniss stated typically as part of a development, at the end of the process they would have a Financial Security Agreement; and there would be a cost estimate provided so that the Township has financial security to make sure the builder is building what they said they were going to build. He stated at the end of the process if the homes as designed, basins, or underground facilities are not functioning as intended, the Township has financial security that they will not release until remedial action is taken to make sure that everything is flowing as intended. He stated in this instance it was suggested and Mr. McCafferty has indicated that he is agreeable to confirm with the Township that even though it is only a single-family Lot that has been constructed, there will be a hold-back/financial security which will be posted in an amount that the Township is comfortable with to insure that the stormwater facilities are functioning as intended.

Mr. Dougherty stated he would also suggest Ms. Holtzworth contact PennDOT as Mr. Majewski indicated that they do not have an Easement for the pipe on her property. Ms. Holtzworth stated she has contacted them. Mr. Dougherty stated it might involve hiring an attorney.

Ms. Reiss asked with regard to Ms. Zito's earlier comments about noise, are there are any Codes on noise. Mr. Majewski stated while there are Codes on noise, he does not believe that a standard air conditioner violates that provision. He stated he appreciates the Applicant's willingness to put up a fence or some other noise measure to help mitigate that a little bit.

Mr. McVan asked is there is a rule as to how far the air conditions can be according to the line, and Mr. Majewski stated the general rule is that we want things to be at least 5' off the property line.

Ms. Holtzworth stated huge pits were built and a lot of things were done that do not work that well. She stated there was discussion about planting arborvitae on the other side, and she asked if planting arborvitae on her side would that root structure accommodate some of the extra water. Mr. McCafferty stated while he could contact Jones Engineering, he does not believe planting arborvitae in the swale would help. Mr. Solor stated it would obstruct the water flow more than anything else. Ms. Reiss trees do not mitigate that much, and they are not a permanent solution. Ms. Holtzworth stated she does not feel that their permanent solutions are that effective, and she was hoping to help it some other way.

There was discussion about what should be included in a Motion.

Mr. Dougherty asked Ms. Zito what height and texture fence would make sense to her. Ms. Zito stated she understands that a fence makes sense in the middle of the houses, and she asked if there is a way to do a fence/trees. Mr. Solor stated they would be limited by the space and the need to get access to the mechanical equipment. Mr. Dougherty asked about trees on Ms. Zito's property, and Ms. Zito stated they have already thought about that. Mr. McCafferty stated he would be willing to provide the trees and the installation on Ms. Zito's property if she wanted that. She stated she understands there will also be a fence between the houses because of the limited space.

Mr. Solor stated he would suggest a 6' high solid fence since that would fall within what is acceptable for the Township Codes. Mr. McLoone stated the max height for a Residential rear and side yard fence is 7', but it could be 6'. Ms. Zito stated she would be in favor of the 6' fence and arborvitaes planted on her side. Ms. Zito stated that would give both properties privacy, and it would block the noise. Mr. Dougherty asked if the fence should run the distance of the Applicant's house, and Ms. Zito agreed.

Mr. Majewski recommended language to be included in the Motion with regard to the escrow.

Ms. Holtzworth asked if they are also saying that a CO will not be granted until there is a heavy rainfall. The Board noted that is not an issue for the Zoning Hearing Board. Mr. Majewski stated he was talking about a Final Certificate of Occupancy, and we could grant a Temporary Certificate of Occupancy to allow the homeowner to move in; but the project would not be closed out until we have sufficient rainfall to show that it either works or they need to do some additional work.

Mr. Dougherty asked what a reasonable escrow would be, and Mr. Flager stated that would probably need to be determined by the Township engineer. Mr. Meginniss stated he feels they would agree to whatever RVE and Mr. Majewski's office feels is reasonable.

Mr. McVan stated he feels that the fence and the trees are a good solution. Mr. Dougherty asked Mr. McCafferty if it would make more sense to move to move the air conditions somewhere else away from the neighbor who may prefer that instead of the fence and the arborvitaes. Mr. McCafferty stated he would be willing to give the neighbor that option. Ms. Zito stated it is not just the air conditioners, it is also the propane tanks which are massive.

Mr. Dougherty moved, Ms. Reiss seconded and it was unanimously carried to approve the Appeal based on the fact that they need a Variance for a 9.35' setback where 10' is required with the following Condition: A fence needs to be installed 6' in height to run the length of the house on the subject parcel. The developer has agreed to plant arborvitaes along the fence on the Pulvers-Zito property line. In addition the propane tanks need to be affixed to a to-be poured pad of cement, and they must be either affixed to the house or to that pad of cement. The developer will enter into a Security Agreement with the Township whereupon sale of the property an amount to be approved by the Township will be escrowed and will not be released until the Township engineer approves the water flow in the swale on the north side of this property.

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There was still no one present representing this Appeal. Mr. McLoone stated the Applicant confirmed that they did receive the call-in information, and he also e-mailed the Applicant about one hour ago. He stated it was submitted on September 5. Mr. Flager stated we have fulfilled our obligation as we are having the Hearing, but the Applicant is not here so it can be Continued.

Ms. Reiss moved, Mr. Dougherty seconded and it was unanimously carried to Continue the matter to November 19, 2024.

CANCEL NOVEMBER 4 MEETING

As nothing is scheduled for November 4, Mr. Dougherty moved, Ms. Reiss seconded and it was unanimously carried to cancel the meeting of November 4, 2024.

There being no further business, Mr. Dougherty moved, Ms. Reiss seconded and it was unanimously carried to adjourn the meeting at 9:00 p.m.

Respectfully Submitted,

Judi Reiss, Secretary

