

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – DECEMBER 3, 2024

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on December 3, 2024. Mr. Solor called the meeting to order at 7:30 p.m.

Those present:

Zoning Hearing Board: Peter Solor, Chair  
James Dougherty, Vice Chair  
Mike McVan, Member  
Christian Schwartz, Member  
James Brand, Alternate Member

Others: Dan McLoone, Planner  
Adam Flager, Zoning Hearing Board Solicitor  
Daniel Grenier, Supervisor Liaison

Absent: Judi Reiss, Zoning Hearing Board Secretary

APPEAL #Z-24-23 – RUSK  
Tax Parcel #20-037-171  
904 GAINSWAY ROAD, YARDLEY, PA 19067  
(Continued from 11/19/24)

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 Impervious Surface Breakdown Calculation and Stormwater Management Small Project Volume Control were collectively marked as Exhibit A-3. The Revised Plans dated November 7 were marked as Exhibit A-4. The second Revised Plans also dated November 7 with the updated calculations were marked as Exhibit A-5. The Proof of Publication was marked as Exhibit B-1. The Proof of Posting was marked as Exhibit B-2. The Notice to the neighbors was marked as Exhibit B-3.

Mr. Ronald Rusk was sworn in.

Mr. Rusk stated he is the property owner of 904 Gainsway. He stated his son, is in attendance, and Mr. Richard Walker, their engineer/architect is also in attendance to help answer any dimensional questions. Mr. Solor stated it was indicated that the architect is not present. Mr. Rusk stated he would like to proceed even though his architect is not present at this time.

An aerial of the existing conditions was shown. Mr. Rusk stated the house is on the corner, and to the left of the main house is the driveway which is an extended/expanded driveway. He stated behind the house is the swimming pool with an apron around it. He stated to the left of that is a shed. He stated the shed and the expanded parking lot were all approved by Variance from the Zoning Hearing Board in 2003. He stated everything that is shown on the aerial was approved by the Zoning Board for 24.22% impervious.

Mr. Rusk stated they purchased the house a few years ago and discovered that the previous owners had added a lot of stone pavers in the grass area surrounding the swimming pool, but those pavers were not approved. He stated they are equal to 576 square feet, and they are in the process of removing those pavers because they were never approved by the Zoning Hearing Board and took them over 24.22%.

Mr. Rusk stated one of the reasons for the postponements was that he was not satisfied with how they were doing the stormwater or totally comfortable that they had all the calculations to be within a percent of where they needed to be; and he believes that the Plan now is 99.9% accurate.

Mr. Rusk stated to the rear behind the shed, there are two neighbors; and one of them, Mr. Montgomery, has reviewed the proposal with his Mr. Rusk's son. Mr. Rusk stated Mr. Montgomery has not seen the latest proposal, but the latest Plan is about 40% better as far as stormwater run-off compared to the Plan that Mr. Montgomery had reviewed; and he was very supportive and comfortable with the Plan.

Mr. Rusk stated to the right of the house is Mr. Horowitz' house, but they have not been able to connect with him. Mr. Rusk stated he believes that he has some concerns about stormwater, and he would like to hear what his concerns are if he is present or calls in. Mr. Rusk stated he does not believe any of his water flows onto Mr. Horowitz' property. He added that looking at the back right-hand corner where the fence/property line is, you can see Mr. Horowitz' shed, and that whole area drains back toward Mr. Montgomery's property, and he does not see how any of the Rusk property water can be getting onto Mr. Horowitz' property.

A copy of the Plan was shown. Mr. Rusk stated they are requesting an increase in impervious surface from 24.22% they currently have approved, and to go up to 27.35%. He stated his primary concern was to make sure that they could take care of all of the stormwater. He stated the Plan shows two dry wells, one toward the back right corner in the lower area, although that might be moved a little more back and to the right. He stated the Plan shows the size of that pit. He stated another pit is proposed in front of the addition by the driveway off to the left of the addition. Mr. Rusk stated those two pits will handle all of the stormwater run-off coming off the driveway which is pitched, and right now all the water runs in that direction. He stated they will collect all of the roof water coming off the addition and put it either into that pit or the pit in the back. He stated their effective run-off after they are done will be 18.9% which is a little under 5% under what the Zoning Hearing Board approved in 2003. Mr. Rusk stated they believe that they have mitigated all of their stormwater and actually brought it under where it is presently. He stated he feels they have mitigated any possible concerns that the Township would have as far as stormwater run-off which he knows is a big concern in the Township and is his concern as a homeowner. He stated he is asking for approval of the Township adding they are mitigating 200% of the stormwater run-off by putting it into the dry pits. He stated the pits and how they would work are subject to final calculations and approval by the Township.

Mr. Dougherty asked Mr. McLoone if he has checked the calculations for the stormwater management, and does it mitigate it back to an effective 18.9%; and Mr. McLoone stated it does.

Mr. Dougherty stated it was indicated that there was an approval for 24.22% in 2003, and Mr. Rusk agreed that approval was from the Zoning Hearing Board. Mr. Rusk added that there was also an approval in the 1970's from the Zoning Hearing Board, but he was unable to determine what that was for. Mr. Dougherty stated it was approved for 24.22%, but what is existing is actually a little less that is existing as it is 23.42%. Mr. Dougherty asked what was the effective in 2003 whether it was 24.22% or did they install some form of stormwater mitigation to mitigate back to 18%. Mr. Rusk stated he did not own the house then. Mr. Dougherty asked Mr. McLoone if there is anything in our files, and Mr. McLoone stated there is not. Mr. Rusk stated there is nothing on the Plan or the notes to indicate that there was any mitigation in 2003. Mr. McLoone stated mitigation might not have been a requirement at that time.

Mr. Dougherty asked Mr. Rusk if he would be willing to mitigate back to 18%, and Mr. Rusk agreed to do that. Mr. McLoone asked Mr. Rusk to include the dimensions on the Plan as it only speaks to the control volume on the Plan.

Mr. Brand asked when the pavers will be removed, and Mr. Rusk stated they will have them off in the next week or two. Mr. Dougherty stated if an approval is granted, that could be made a Condition of the Variance.

Mr. Solor asked for details of the proposed addition. Mr. Rusk stated it will be a single-story addition. He stated in the future, he and his wife could move in with his son at some point; and this would provide more room. He stated the addition is proposed to have a fireplace and would be a media/game room and would open up to the pool.

An aerial was marked as Exhibit A-6.

Mr. Solor stated there is an existing deck shown, and he asked if that is over impervious or pervious, and is that included in the calculations. Mr. Rusk stated it is impervious and that was part of the Variance that was granted, and it is part of the impervious calculations.

Mr. Dougherty stated multiple Plans have been submitted, and the Appeal includes language that no longer corresponds with the Plan submitted that the Board is basing its decision on. He asked Mr. Flager how that effects the Decision. Mr. Flager stated the relief being requested has decreased; and as long as the provisions are the same and it is lesser, relief that is not a problem. He added that if there was an increase or they needed an additional Variance, we would need to re-advertise. Mr. McLoone stated he believes that it was advertised for 32%.

Dr. Steve Horowitz, 900 Gainsway, was sworn in.

Dr. Horowitz stated he owns the adjoining property. He stated he met his neighbors, John and Abby and their children, but he did not know that Mr. Rusk, Sr. owned or is part owner of the property; and Mr. Rusk, Sr. never approached him about the Variance.

Dr. Horowitz stated hearing that they want to take it back to 18% is great. He stated he has owned his property since 1999; and when the remnants of Hurricane Floyd hit, water came off the property. He stated no elevations are shown on the Plan so it is hard to see unless you are there. He stated water

runs from the rear of the property. He stated his own property slants back, and there is a natural swale that runs from the rear of the properties across Mr. Montgomery's property and another property and feeds Lake Silver that is at the end of the development. He stated over the years from time to time, poor pool management has resulted in water being pumped into the yard and getting into either Mr. Montgomery's yard or his yard. He stated when he and his neighbors heard about the Variance were most concerned about the stormwater management; and now after seeing the current Plan and hearing that it will go to 18%, that is good news.

Dr. Horowitz stated the 2003 Variance came about when the second owners added the shed, and they also wanted to add additional patio; however, they were denied the additional patio. He stated at that time dry wells and trenches were not dug. Dr. Horowitz stated he just saw the Google arial as he has not been into the rear of the property since 2008 when the property was sold, and none of the pavers or the fire pit area existed at that time. He stated in 1999 there was a row of swamp maples that were probably planted as a result of the original pool to mitigate any water that accumulated to the rear of the property. He stated the elevation drops off from his own property at the line to the paver area and then it rises three feet. He stated he would like a guarantee that the homeowners/residents do not come back and add more impervious surface.

Dr. Horowitz stated he knows that swimming pools are not considered to be impervious even though six months of the year they are covered, and the water sheds like it does on concrete.

Dr. Horowitz stated he is in favor of the idea of the pits; but since he does not know the capacity, he does know what will happen if they overflow. Mr. Solor stated they are designed for a certain amount of volume based on a design rainstorm. He stated water that would run off would be intercepted first in the pits. He stated in a very heavy rainstorm, water will still run off, but that would be the case without the pits as well because the ground gets saturated.

Mr. Solor stated this will be a better situation for Dr. Horowitz.

Dr. Horowitz stated he had looked at the previous Plans that had been submitted and was concerned about the impact. He stated he did discuss this with the Township engineer. He stated he knows the property very well. Dr. Horowitz stated a previous owner also changed the fencing to

accommodate a dog, and he has discussed with John that when his property was surveyed in 2008, they noted that the subject property's fence was 2' over the line, and he has asked each neighbor as they moved in that when the fence needs to be replaced to make sure that it is put in the right place.

Dr. Horowitz stated he is in favor of the 18%, and is in favor of the addition. He stated he did not know that Mr. Rusk owned the property, and they are very approachable. He again noted that the elevations have not been noted on the Plan, and where they are talking about built the one pit on the north side rear yard may have an impact in that area where the swamp maples were previously.

Mr. Dougherty asked Mr. McLoone to speak to how the Township would work with the Rusk family in terms of making sure that the dry wells are installed in an appropriate area.

Mr. Rusk stated that he spends most of his time in Florida and is seldom in Pennsylvania; and the last time he was in Pennsylvania he had hoped to meet with Dr. Horowitz but his wife was hospitalized and he had to get her back to Florida so that she could be treated by her doctor. He stated in the winter, the pool cover is under the top of the pool and water goes through the pool cover; and with a hurricane it might overflow, but 500 or 1,000 storms only happen every 500 or 1,000 years. He stated the only thing he had available was the topo from the house "early on," and he did not realize that water goes to the property line next to the fence.

Dr. Horowitz stated when there is a heavy rain the water saturates the east side of the property. He stated the owner previous to Mr. Rusk moved some shrubs, and there is also a line of arborvitae, and there is water that sheds to the side because of all of this impervious surface. He added he was not aware of all the additional impervious surface, and was only aware of the original cement that was poured around the pool. He stated the water not only sheds to the rear, it also sheds to the side.

Mr. Rusk stated he has no problem meeting with Dr. Horowitz and the Zoning Officer; and if they have to change the topo, they will do so. He stated Mr. Montgomery spoke to his son and indicated that he had no concerns with any stormwater and that was when he was just looking at the old Plans.

Mr. Solor stated when the Board makes these Motions typically they say it is subject to the approval of the Township engineer, and part of that is insuring that some of the water will be intercepted; although it is not meant to capture all of the water. Mr. Solor stated if he needs more, the engineer would most likely recommend connecting another rain leader from the house. He stated it will still take water coming from an impervious area and putting it into the detention system. Dr. Horowitz stated he likes what he is hearing, adding that the rules for granting a Variance indicate that it should not have a negative effect on neighboring properties. Mr. Solor stated there are a lot of water run-off issues in the Township because of the clay soils, and the Board hears a lot about that.

Dr. Horowitz asked if the construction plans have elevations on them.

Mr. McLoone stated they have filed a Building Permit yet; but when they do, it will get a Zoning review, a Building review from the third party inspectors, and Mr. Majewski will do the engineering review. He stated there will have to be a survey that has topography on it, and it will need to show the spot grades, elevations, and how it is tied into the dry well.

Mr. Solor stated additionally for the construction phase, it will have erosion and sediment control details as to how during construction they will limit run-off. Mr. McLoone stated they can also show Dr. Horowitz the Plans if he likes.

Mr. Dougherty moved, Mr. Schwartz seconded and it was unanimously carried to approve the Appeal wherein there is an existing 23.42% impervious surface, proposed would be 27.35%, and it will have an effective impervious surface of 18%. In order to mitigate it back to 18% there will be two dry wells installed subject to our Township engineer's approval. The homeowner agrees to remove all of the stepping stones/pavers that were installed illegally.

APPEAL #Z-24-35 – MOSENDZ

Tax Parcel #20-046-145

56 BLACK ROCK ROAD, YARDLEY, PA 1907

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 Lighted Fence photograph 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.

Mr. Aleksandr Mosendz was sworn in.

Mr. Mosendz provided a photograph to the Zoning Hearing Board. The Daytime Fence photo was marked as Exhibit A-4.

Mr. Dougherty asked if the fence has already been installed, and Mr. Mosendz stated it is.

Mr. Mosendz stated they are looking for a Variance for a 6' front fence where a 3' fence is allowed. He stated there are concerns for animals on the property mainly the poodle who is about 4' high. He stated the homeowner has requested a 6' fence to go around the property and match the neighbors on the left as well. He stated the fence is see-through, and you are able to see into the property.

Mr. Solor asked the status relative to the right-of-way lines. He asked if this is an Easement for Township purposes or State right-of-way. Mr. Solor stated he is referring to the right-of-way behind the fence, and he asked the restrictions in that Zone; however, Mr. McLoone was unsure. Mr. Solor stated there could be rights that other Agencies have. Mr. Mosendz stated he was also not sure what that is. He stated they matched the neighbor on the left-hand side, and that fence goes from the Applicant's property line all the way to the end of the street and turns into it as does the neighbor. Mr. McLoone stated both of the fences to the left and to the right are permitted.

Mr. Schwartz stated he had asked questions via e-mail when he received the information. He stated the fence to the left is a side yard which has a different Ordinance than a front yard. Mr. McLoone stated the maximum height for a side yard is 6'. Mr. Schwartz stated it was just indicated that there is a fence to the right that they match up with. Mr. Mosendz stated they removed it. He added that it was there originally from the previous homeowners, and they constructed a new fence. Mr. Schwartz stated there is no front fence on the neighboring property, and Mr. Mosendz agreed.

Mr. Solor noted that two photos were submitted this evening, and Mr. Flager stated they will still be marked as Exhibit A-4 – one looking toward the property to the right and one looking toward the left where you can see the



neighbor's property with the fence, which the Applicant's fence lines up with. and the house number which is 56. The two photos were collectively marked as Exhibit A-4.

Mr. Schwartz stated the Plan is dated April 1, and he sees a lot of proposed buildings, but it seems that they are all built; and Mr. Mosendz agreed. Mr. McLoone stated they have a Building Permit for everything shown on the Plan besides the fence which they do not have a Permit for.

Mr. Dougherty asked why no Permit was pulled for the fence; and Mr. Mosendz stated they originally thought it was included within that in the description, and then Mr. McLoone and Mr. Majewski came out to the property and indicated that they would need a Variance for the Zoning and then apply for the building afterwards.

Mr. Dougherty asked Mr. Flager if improvements can legally be built inside of an ultimate right-of-way. He added that he knows that driveways are so he assumes a fence could as well. Mr. Flager stated he feels that would be an engineering question. Mr. McLoone stated if it is past the pin cap, he feels that would be a monument for a marker for the property. Mr. Solor stated they have this separate ultimate right-of-way designation line on it, and he asked what legal rights belong to whom within that area.

Mr. Mosendz stated when he originally spoke to the engineer when they were doing the water calculations and drawing out the property line, it was indicated that the legal right-of-way is what is enforceable right now, and the ultimate right-of-way is if they were ever to want to expand the roads or if there is an emergency situation where they would have to encroach on the property line, they have ultimate right-of-way to use that property for whatever would need to be used. He stated now the legal right-of-way is where the property is, but if in fifty years they need to increase it to a two-lane road on either end, this property and the property adjacent to it and across from it would have to apply for that.

Mr. McLoone stated he just received a message from Mr. Majewski that they can be within the ultimate right-of-way.

Mr. Dougherty stated he does not see the road being expanded anyway. Mr. Solor stated if the Board felt strongly about it, it could be dealt with in the Decision that removal would be at the cost of the homeowner.

Mr. Dougherty stated the house is beautiful, and he does like the fence; but he would like to hear public comment.

Mr. McLoone stated Mr. Majewski has advised that PennDOT only uses the legal right-of-way, and it would be rare that they would condemn the additional right-of-way. Mr. Flager stated he dealt with this recently, and you get it surveyed and PennDOT pays you for that portion of the property that they are condemning and taking. He stated if there are improvements, that is part of the negotiation. He stated in this area he does not know that they would take it. Mr. Mosendz stated he looked on Google, and there were only a couple of incidences where that happened, and it was at market price. He noted a situation where that was stopped by the homeowners. He stated he does not feel a small road like this in Yardley would need that. Mr. Dougherty stated it seems that they are fine legally anyway.

Mr. Flager asked when the neighbors had their fence installed. Mr. McLoone stated 700 Ardsley Court received a Variance in 1990 to put in a pool and deck, and the Permit called for a self-closing fence to meet the Pool Code. He stated due to it being a corner lot, the fence is on the side of the property and is 6' tall where 7' is the maximum allowed on side yards. He stated they filed another Permit in 2008 to replace a portion of the fence and the Permit verified that it is 6'.

Ms. Mary Brodowski, 66 Black Rock Road, was sworn in.

Ms. Brodowski stated the house is beautiful. She stated she lives in the back on a large piece of property. She stated she thought the fence could not go past the front of the house. Mr. Solor stated it can go in front of the house, but the height limit is 3' when it is next to the street. Mr. McLoone stated what they have is 6' high. Mr. McLoone stated the 6' is permitted on the side and in the back as 7' is the max.

Ms. Brodowski asked if this will set a precedence so that everyone on Black Rock Road would be able to have a 6' fence and request a Variance.

Mr. McLoone stated that would not be ideal, and they conveyed that to the homeowner and the contractor. He stated anyone who would need to get a Permit for a fence, it would need to be 3' in the front and maximum 7' in the rear and the sides of the home. Ms. Brodowski stated from here to the end of the River there is not a fence in the front of a house. Mr. Solor stated there is a low stone wall that is acting like a fence in front of one of the other properties. Ms. Brodowski stated this will change the look of our

Town. Mr. Solor stated it does stand out driving down the street. He asked if it would be possible to replace the louvered section panels with something that is a lower height as a compromise. He stated they could keep the 6' pillars, but cutting the louvers down to 3' to address the concern about the visual impact.

Mr. Mosendz reiterated the homeowners concern about their tall dog running free in the yard, as the dog could easily jump over a 3' fence. Mr. Dougherty stated other people with dogs overcome that by cutting the fence short of the front. He stated where the house would end the fence would anchor into the front corners of each side of the house, and there could then be a 6' to 7' fence in the back yard. He stated that is where the dogs would be contained. He stated it is unusual to have a 6' fence in the front yard. He stated while he does love the fence, there are no other fences on the road other than in the side yard and the wall that was referenced so this is out of character. Mr. Solor stated there are other ways to deal with pets, and lots of other people install electric fences.

Mr. Dougherty stated when he was reviewing the Application prior to the meeting, he did not know that it was already installed; and while he came in with an open mind, he questioned why they would need a 6' fence when the regulation is for a 3' fence. He stated felt there would need to be a good reason to approve a fence higher than 3'.

Mr. Brand asked if there are any pictures of what the fence looks like; and Mr. Solor stated in the packet there is a picture of what it looks like at night, and it does show the full height. Mr. Solor stated he was suggesting a compromise of just removing the louvered sections and not replacing the full structure. Mr. Mosendz stated they may have to do that if that is what they would be able to get approval for. Mr. Dougherty asked if that is possible given the way the fence is fabricated. Mr. Mosendz stated the center pillars connect to a metal rod and have a connectors on the ends for the wood to be replaced eventually since even though it is pressure-treated wood, the lifespan is fifteen years. Mr. Dougherty asked if taking out the horizontal louvers will damage the integrity of the pillars, and Mr. Mosendz stated the pillars themselves cannot really be adjusted, but he can adjust between the pillars. Mr. Mosendz stated it may compromise the stability of the pillars not having the additional 3' at the top. Mr. Solor stated the pillars are in concrete and if they were to cut the louvered section down by 3' it would lessen the sight line impact.

Mr. Mosendz stated he could speak to the homeowners and the designer about that if that is what the Board will approve.

Mr. Dougherty stated while what is being discussed would be a compromise, he still has an aesthetic concerns about that; and he would like to see a rendering of what that would look like before they do the work and it then looks worse than what is there now.

Mr. Brand stated he is concerned about setting a precedent that we are allowing this since it is already built is and not wanting to harm the Applicant.

Mr. Solor stated the Applicant has the option of requesting a Continuance and re-visiting it with his client. Mr. Dougherty stated he would not vote in favor of this as presented tonight, and he believes at least one to two other members feel the same. He stated he would be in favor of a Continuance adding that they would not have to re-advertise. He stated the Minutes would also be available so that they could be reviewed with the homeowners. He stated the Board would also agree to a recess to give Mr. Mosendz time to call the homeowners. Mr. McLoone stated if they would like a Continuance, the next meeting is January 7, 2025.

A short recess was taken at this time. When the meeting was reconvened, Mr. Mosendz stated he spoke to the homeowners, and they would like to request a Continuance and hear comments from the Board.

Mr. Solor suggested that they also cut the pillars down and put a cap on them as that would be an aesthetic solution, and that may be more than 3' and the designer could consider that to make it look good.

Mr. Dougherty stated while he does like the way the fence looks now, he cannot vote in favor of it. Mr. Flager stated depending on what is decided, would dictate the relief, if any, is needed. He stated if it is cut to 3', they would not need a Variance. Mr. Solor stated they may decide to come back and request 4' which would be less than it is now.

Mr. Schwartz stated he understands that from the edges of the house out to the side property line and back can all be 6', but everything from there forward, sides and front must be 3'. Mr. McLoone stated past the front of the house

only 3' is permitted. Mr. Dougherty stated on the one side of the property there is an existing 6' fence, and they might have a compromise to connect to that.

Mr. Grenier stated he has had residents contact him with concerns about this fence relative to the height and they indicated that it looked higher than 6', and he asked if there was an As-Built measurement put on it to make sure that we have the right measurements. Mr. Solor stated the photo shows it in line with the adjacent 6' fence. Mr. McLoone stated Mr. Majewski did do a site visit to measure the cabana in the back, but he is not sure he measured the fence.

Mr. Grenier asked if Mr. Majewski looked at any issues with sight lines since that is a big part of the reason that fences are smaller in the front yard.

Mr. Solor stated the house is in the middle of the block and it is a straight section of Black Rock Road. Mr. Grenier asked if there are any intersections nearby, and Mr. Solor stated there are not.

Mr. Dougherty moved, Mr. Schwartz seconded and it was unanimously carried to Continue the Appeal to January 7, 2025.

Mr. Mosendz stated it was indicated that the reason for the law was based on aesthetics; and Mr. Solor stated it is a combination of what Township Boards and Supervisors have passed over the course of decades, and there could be a variety of rationales behind it. Mr. Mosendz asked if there is a list he could get of the reasoning behind the Law, and Mr. McLoone agreed to look into this for Mr. Mosendz.

#### OTHER BUSINESS

Matters to be heard on January 7, 2025 were discussed. Mr. Solor stated the Board also needs to consider Board Re-Organization.

#### CANCEL 12/17/24 MEETING

Mr. Solor moved, Mr. Schwartz seconded and it was unanimously carried to cancel the December 17, 2024 meeting.

December 3, 2024

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There being no further business, Mr. Dougherty moved, Mr. Schwartz seconded and it was unanimously carried to adjourn the meeting at 8:46 p.m.

Respectfully Submitted,

Peter Solor, Chair