

TOWNSHIP OF LOWER MAKEFIELD
PLANNING COMMISSION
MINUTES – NOVEMBER 14, 2011

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on November 14, 2011. Chairman Fried called the meeting to order at 7:35 p.m.

Those present:

Planning Commission: Mark Fried, Chairman
 Dean Dickson, Vice Chairman
 Tony Bush, Secretary
 John Pazdera, Member

Others: Nancy Frick, Director Zoning, Inspection & Planning
 John Koopman, Township Solicitor

Absent: Karen Friedman, Planning Commission Member
 Ron Smith, Supervisor Liaison

APPROVAL OF MINUTES

Mr. Dickson moved and Mr. Pazdera seconded to approve the Minutes of August 22, 2011 as written. Motion carried with Mr. Bush abstained.

ZHB APPEAL #11-1616 – MARTINA B. WARREN, 1499 OVERLOOK ROAD – APPLICATION TO THE ZHB FOR A SPECIAL EXCEPTION, SECTION 200-24B.(7) “BOARDING”

Ms. Warren stated she has lived in Bucks County almost her entire life. She reviewed the health history of her son, Derrick, who is in his 30s. She stated they have been involved with doctors and hospitals in eight states. She stated the diseases he carries are environmental in nature and not taught in medical school; and because of insurance and doctor complications, he ended up with brain injury. She reviewed the significant amount of medical expenses involved. She stated for the last two years, her son has been on Independent Waiver which means because of his brain injury and the catastrophic costs he needs 24/7 care given at home, and there is no hospital that he can go to for treatment.

She stated her son has four diseases that he has contracted from the environment. She reviewed meetings she has had with various individuals and agencies.

Ms. Warren stated since last year, her son has been under Independent Waiver under Vital Support, but they would not give her a letter. She stated Vital Support has moved three times and they initiated eight people in her home, and for three of those she is dealing with the State Attorney General regarding legal issues. Ms. Warren stated she is currently working with Attorney Generals of different states and Departments of Health.

Ms. Warren stated her son needs twenty-four hour care. She stated she was injured in a car accident. She stated her son is now going with a corporation that is located in Oxford Valley Mall. She stated the other persons were fired due to the fact that they did not do Federal or State background checks, and as a result some of the individuals did not care for her son. She stated the person that is owner of Interim Health Care of Lower Bucks County, Jim Turner, will be taking over on Monday, 11/21. She read from his letter confirming Interim Health Care of Lower Bucks County's participation in her son's care and support program. The letter states, "As you are aware this care requires that caregivers will frequent the home early in the morning and evening; and in the event twenty-four hour care is required, it will demand that caretakers will come and go, sometimes at awkward hours in the late evening or early morning."

Ms. Warren states the costs for her son's care has come close to one half million dollars some years. She reviewed various Boards and Commissions she has had to go before. She stated she has expended a lot of her money and is currently not working and has not worked for years. She stated she has done things for the Township and Harrisburg in her off times.

Mr. Fried stated he appreciates she has been through a great deal and her son has suffered a great deal, but the Planning Commission can only do certain things with regard to this case. He stated she has submitted a request to the Zoning Hearing Board concerning changes to the property. He stated he understands that her son needs twenty-four hour care, and it will be provided by Interim Health Care of Lower Bucks County. Mr. Fried stated Ms. Warren has noted "boarding" on the Application to the Zoning Hearing Board, and he would like to know exactly she wants the Zoning Hearing Board to do and what she feels the Zoning Hearing Board has to rule on. Mr. Fried stated the Planning Commission only advises the Zoning Hearing Board and does not make the final decision.

Ms. Warren stated since 1998 she has been the sole caretaker for her son, and she would like to get back to work although she needs a major surgery that she has put off for twelve years from getting hit. She stated she cannot leave her son. She stated she had back surgery in 2001, and she left him with someone; and when she came back from her surgery, her son could not walk and had contracted mold at his apartment. She stated he now has a fifth environmental illness.

Ms. Warren stated the reason she put down “boarding” was because there will be twenty-four hour service in the future as she has to have surgery. Mr. Fried asked why she put in “boarding,” and Ms. Warren stated she did this because people are going to be staying over 24/7. Mr. Fried asked if these would be medical personnel, and Ms. Warren agreed. Mr. Fried stated he assumes this would be when nurses come in over a twenty-four hour period doing three eight-hour shifts, and Ms. Warren agreed. Mr. Fried asked if it will be the same person staying there the entire time or different people, and Ms. Warren stated it will be different people. Mr. Fried asked if they will all be medical personnel, and Ms. Warren stated it is considered home health care; however, they also get into the financial, political, health care, doctors, hospitals, etc. She stated she herself will also be out of commission for four to six weeks as she recuperates. She stated she may be at a hospital in the city, and there will be no one for her son. Mr. Fried stated he understands that it will just be caretakers that will be at her home, and Ms. Warren stated this is correct for the most part.

Mr. Dickson asked how many caretakers will be there at any given time, and Ms. Warren stated she has two people overlapping. Mr. Dickson asked over a twenty-four hour period how many caregivers would be there; and Ms. Warren stated there would technically be three with eight-hour shifts, although she does not know exactly how they will set it up. Mr. Dickson stated a boarding house is typically when you have separate bedrooms to rent out to different individuals, but she has indicated that she will have a caregiver/caregivers who during the daylight hours will be providing care to her son, and a caregiver will be sleeping over during the nighttime hours should her son require care during those hours, and Ms. Warren agreed. Mr. Dickson stated what he is hearing is that there may be overlap, but for the most part there will only be one person staying at the house giving care. Ms. Warren stated this is correct for her son; however, she stated in the past he has required and she is working toward IV infusion. Mr. Dickson stated therefore there may be some other medical people there, but they will not be staying over, and Ms. Warren stated this depends as she does not know what the protocol would be as some have stayed over in the past. Mr. Fried stated it would still be a medically-based procedure which is the reason why the person would be at the property, and Ms. Warren agreed.

Mr. Dickson asked Ms. Warren if she had an attorney review the Zoning Hearing Board Application, and Ms. Warren stated she has had multiple attorneys in multiple States review her son’s situation. Mr. Dickson asked if an attorney reviewed the Zoning Hearing Board Application, and Ms. Warren stated they did not.

Ms. Frick stated the Planning Commission should know that this started out with a written complaint that was received by the Township. She stated this house is listed on Craig's List advertising "boarding rooms," and she showed a copy of the listing which she read as follows: "Large rooms are now on the market for available rent in Lower Bucks County. Employable, non-smoking, working, sober, etc. Security needed. Close to libraries, recreation facilities, shopping, train, buses, etc. Furnished/unfurnished rooms have ceiling fans, air conditioning. Great for short-term contractors on assignment, short and long-term leases. No pets. Call for more information. Appointments are available. Rooms are first-come, first-served for the most part. Future rooms will also be made."

Mr. Dickson stated this is different than what Ms. Warren has indicated in her Application.

Mr. Koopman stated he understands that she is going to have caregivers to provide medical attention for herself and her son, and Ms. Warren agreed; but he asked if the Application is also to get approval to have boarders in her home. He stated boarders are different from medical caregivers. Ms. Warren stated she understands this. Mr. Koopman asked if she is applying to the Zoning Hearing Board for a Special Exception to allow boarders to live in her home also. Ms. Warren stated this is where she is because of her condition. She stated she may become paraplegic, and she may need to have additional people taking care of her as she did previously when her son could not walk.

Mr. Koopman stated there is a difference between caregivers and boarders. He stated boarders would pay her money, and he asked Ms. Warren if she intends to have people living in the house who would pay her money as boarders, and Ms. Warren stated this is also possible because of the economic situation with her son which has gotten catastrophically out of hand. Mr. Koopman stated when she filed an Application with the Zoning Hearing Board referencing the Section she did, it would appear that she is asking the Zoning Hearing Board to allow her to have boarders; and Ms. Warren stated this is correct. She stated she was going to drop this but decided not to. Mr. Koopman stated she is not present because of the caregiver situation, but is present because she wants the Zoning Hearing Board to approve having boarders in the future; and Ms. Warren stated this is also correct.

Mr. Dickson stated this is not on the Application. He stated the Application only references boarders. He noted Page 3, #6 where it cites the Variance, Section #200-25B.(7) which says "boarders;" however, nowhere in the narrative does it say anything about requesting the Zoning Haring Board to allow boarders. He stated the Application and her testimony was solely about her need for her son to have caregivers.

Mr. Dickson stated he does not feel the Planning Commission can give an opinion on this since they are being asked to give an opinion on something that does not include all the information.

Mr. Fried stated after listening to the questions, he is concerned that the Application if it is only talking about medical personnel really is not a boarding issue. He advised Ms. Warren if she is looking apply for boarders who she wants to pay her rent, then this Application does not really reflect that, and it is not complete.

Ms. Warren stated she spoke to Mr. Habgood and she said in the future she may have to do that because of the catastrophic costs. She stated she is putting out \$40,000 some years for her son. Mr. Fried asked, setting aside the medical personnel, how many boarders is she intending to bring in and how many rooms would she be renting; and Ms. Warren stated it would only be two rooms.

Mr. Dickson stated he assumes that the neighbors present this evening are here because of the issue with boarders and not specific to the issue of her son. Mr. Dickson stated he feels there are two separate issues. Mr. Fried stated he feels that if this is for boarders, and the Application is only discussing medical personnel, it would be the responsibility of the Planning Commission to make a recommendation on the question of boarders.

Mr. Dickson stated the Application does not specifically say “boarders” other than the references to the Zoning Section itself. Mr. Koopman stated the bottom line is that the Application is not clear. He stated under Special Exception the Section does reference Section 200-24B.(7) which is a use permitted by Special Exception in the R-3 District for boarders. Mr. Koopman stated he is trying to clarify if the reason Ms. Warren is here is to get approval to have two boarders in the future, and Ms. Warren stated this is correct. Mr. Koopman stated this is then something that the Planning Commission can review, and it will then go to the Zoning Hearing Board. He stated it is true that the Application is far from clear, but there is a reference to that Section.

Ms. Frick stated they did speak to Ms. Warren numerous times trying to narrow this down especially with the information they had on file with regard to having boarders. Ms. Frick stated Ms. Warren has indicated that she does not currently have boarders at this time; but she would like to get boarders back, although this has nothing to do with her son’s medical condition.

Mr. Bush asked Ms. Warren if she has had boarders, and Ms. Warren stated she has. Ms. Warren stated she is on heavy-duty medication and cannot drive her son so she needs other people to help him get to his doctors, etc. She stated she has gone to eight States with him, and she currently has to return to Washington. She stated if she has surgery, she has been advised that she will not be driving. She stated in the 1980s she had student teachers who were teaching in the schools, and she did this because of her son’s medical

condition and she needed people to help. She stated her son has been to over forty hospitals, and it took her away from her family. She stated because of her back, she will not be able to drive; and her son should not be driving. She stated there are huge amounts of medical expenses, and she is dealing with Government officials on this.

Ms. Warren stated she has had things taken from her home by three out of eight employees of Vital Support which is why she had to switch as Vital Support did not do Federal and State background checks.

Mr. Dickson stated in reviewing the Application under Use of the Property, #3, it does not say that she intends to, for economic reasons, have people reside there; and it just talks about her son's disability. He stated under "Application" it talks about the workers, and nowhere in the narrative does it say anything her need to rent rooms for economic purposes. Mr. Dickson asked how many boarders she will have and how many cars they will have which are things the Planning Commission would need to know before they make a recommendation to the Zoning Hearing Board. He stated he feels the Application is incomplete and is contradictory.

Mr. Fried asked Mr. Koopman if this will still go to the Zoning Hearing Board if the Planning Commission does not make a recommendation; and it was noted it will still go before the Zoning Hearing Board, and is scheduled for December 6, 2011. Mr. Dickson stated he would therefore recommend that the Planning Commission not recommend approval of the Special Exception because of the contradictions. He stated the Application is for boarders not for medical exceptions.

Ms. Fried stated he feels the Application is a request for boarders even though there is no supportive information. He stated he does not know if the medical issues are in the purview of the Planning Commission, and is really extraneous information that does not relate to the basic Application.

Mr. Dickson stated he does not feel there is anything in the Zoning Ordinance that indicates she cannot have medical people come to help her son; but he feels the issue is the renting of rooms, and this is not addressed in the Application. Mr. Fried stated the Application does reference the Section in the Zoning Ordinance regarding boarding.

Mr. Koopman stated the Planning Commission could indicate that if the Application is considered to be an Application for boarders, they do not feel they have sufficient information to make a recommendation on this to the Zoning Hearing Board. He stated there is nothing else other than the reference to the Section on boarders that the Applicant meets the conditions for boarding. He stated in the Ordinance there are conditions for

boarding, but there is nothing in the Application that addresses that. Mr. Koopman stated the Planning Commission could indicate that the Applicant has not established that the conditions for boarding are met; and based on that, they would recommend Denial. Mr. Fried stated the Applicant could amend this when she gets to the Zoning Hearing Board.

Mr. Koopman stated he feels it would be in Ms. Warren's interest to consult with an attorney who is familiar with the Ordinance provisions and what she needs to establish to make a case for boarders. He stated the Planning Commission has indicated that the Application talks about medical caregivers; but in order to get approval for boarding, she must establish that she meets certain specific and general criteria, and there is nothing in the Application that addresses those issues at all. He stated absent the establishment that the conditions have been met, he does not feel the Planning Commission can recommend approval.

Ms. Frick stated it is possible that the Planning Commission may not have another opportunity to review this as the Zoning Hearing Board may choose to move on.

Mr. Fried stated he feels the Applicant has a responsibility to establish that they have met the criteria under the Zoning rules, and if they have not, the Planning Commission would have to recommend against the approval because the requirements have not been met; and Mr. Koopman agreed. Mr. Koopman stated the Applicant does have the burden of establishing that they meet all the criteria.

Ms. Warren stated she does not have any supporters for her son. She stated he could end up wandering. She stated she is on heavy medication, and she could provide documentation on this. Mr. Fried stated the issue is not medical personnel as this is a separate issue that does not require the Planning Commission to rule on. He stated the concern is that the Application specifically references the Section discussing boarding which is separate from medical personnel; and there are certain rules and requirements that must be met to be allowed to have boarders. He stated this is what they are going to rule on, and the medical personnel issue is not an issue for the Planning Commission to deal with.

Mr. Dickson recommended to Ms. Warren that she have her Application reviewed by an attorney who could advise her as to the best way to approach this.

Ms. Karen Merrigan, 1482 Overlook Road, stated she has lived there for seventeen years; and the families that are present this evening live in close proximity to the Applicant's address, and they have been dealing with landlord/tenant issues on this property for at least ten years. She stated over the last two years there has been increasing irresponsibility on the homeowners' part. She stated the home was initially rented to individual families; and at one point there was more than one family living there. She stated over the last two years, the home was rented on a weekly and monthly basis which is evidenced in the material provided this evening from Craig's List ads and other on-line advertisements.

Ms. Merrigan stated they are requesting that the Planning Commission review all of the file material contained in the Application for Exception file as well as the Township File 20-63-242 which includes the complaint the neighbors initially filed in June/July of this year when the landlord/tenant issues become more of a concern. Ms. Merrigan stated there are complaints dating back to 1993 in that file for issues that have come out of this residence. Ms. Merrigan stated they are also asking that there be a review of any Permits requested or granted for the property since the on-line ads show that there are several basement bedrooms which have been constructed and are available for \$150 a week or \$500 a month.

Ms. Merrigan stated Ms. Warren's responses in her Application for Special Exception are vague, and she does not give a proposed use for the property which is a concern to the neighbors.

Ms. Merrigan asked that the Planning Commission also review the Lower Makefield Township Police Incident Reports that relate to frequent incidents at this address related to landlord/tenant issues. She stated as far as the neighbors are aware there have been no inspections of any construction that occurred in the basement, and they are not sure that the construction conforms to Zoning, Fire, or the Construction Codes. Ms. Merrigan stated there were at one point three mailboxes on the property, and there are currently two. She stated the homeowners have not been responsible landlords or neighbors, and the granting of a Special Exception would alter the essential character of the neighborhood and could eventually impact public welfare.

Ms. Merrigan stated the neighbors are asking that the Planning Commission take a position on this Application since as Lower Makefield Township residents the Planning Commission members understand that the granting of this Application to permit boarders could set a troubling precedent for other neighborhoods in the area. She stated they all have sympathy for Ms. Warren and her son's medical conditions. She stated her son is on the property mowing the lawn, raking the leaves, and shoveling the snow. She stated whether he needs twenty-four hour care is not for them to decide, and they are not opposed to people coming in and caring for him; however, they are concerned that even

as they speak today, there are two individuals living in the home that they are aware of, and according to Ms. Warren's own testimony, they are not twenty-four hour caregivers, and they are not sure who they are.

Ms. Merrigan stated this address is the bus stop for most of the Schools in the area, and they are concerned about the safety of their children because it has lent itself to transient boarders. She stated they have provided pictures in the packet of construction vehicles, parking issues, and other general safety issues. She stated there has also been an issue with adequate and consistent sanitation removal. Ms. Merrigan stated in her Application Ms. Warren makes no mention of any exchange of money for the rooms that are rented for profit. Ms. Merrigan stated they would ask that even if they are going to consider permitting boarders for medical reasons, there be reasonable conditions and safeguards attached to the Special Exception as they are concerned that a year from now the medical professionals may no longer be needed, and Ms. Warren will then again bring in transient tenants.

Ms. Merrigan stated Ms. Warren has been instructed about how she should go about making a proper Application, and the neighbors would like to know how they make a proper opposition. Mr. Koopman stated they should attend the Zoning Hearing Board and make their position clear to them. He stated they also have the right to engage counsel to get advice, and he would recommend that they consider this as counsel could give them guidance as to how to oppose an Application. He stated what they are talking about is not caregivers, and they are talking about boarders. He stated the Ordinance allows boarding as a Special Exception in the R-3 if you meet certain conditions; and those conditions are specific to boarding under Section 200-69 and General Special Exception provisions in Section 200-98. He noted boarding is not allowed as a right without a Special Exception.

Mr. Doug Behan, 1491 Overlook Road, stated he lives next door to the Applicant. He stated there have been numerous problems over the years, at least five in the last eleven months. He stated the property is often in disrepair, and it has been used as a boarding house with lots of people living there with different, transient people there all the time so this has been an established business. He stated there have been intoxicated people and people urinating on the lawn so that the neighbors finally filed a complaint. He stated while the activity has slowed down, there is now an assertion that there is a need for boarders for medical reasons which is a quick change of characterization as to why people need to be in this house which they feel is highly suspect. He stated the neighbors are concerned that if the Special Exception is approved it will be a "cover" to go back to the business and allow people who are not healthcare professionals but are asserted to be health care professionals to start live in the house and generate revenue again. He stated they are concerned about what kind of people are coming to the home in this neighborhood which is filled with children and with the bus stop on the corner of this house. He stated they are very concerned about the safety of the community.

Mr. Behan stated he understands that this family has a lot of hardship and they feel bad that they have to oppose this, but it has been a business and trying to resume this business would not be in the best interest of the community.

Ms. Lise Deguire, 1491 Overlook Road, stated she is a clinical psychologist. She stated she does not believe that there has been a single tenant living in the home that has been a licensed, medical professional. She noted the multiple copies of the ad which were provided to the Planning Commission and stated there is no mention that they are looking for medical professionals. Ms. Deguire stated she believes the house is zoned as having an unfinished basement, and yet the ads mention that there are two basement rooms that have been built.

Mr. Fried asked Ms. Warren if she has had boarders in the past that have paid her, and Ms. Warren stated she has. Mr. Fried asked if there are any boarders there now, and Ms. Warren stated there are not although she does have a cousin there who has had his background checked. Mr. Fried asked if there was construction done in the basement, and Ms. Warren stated this was done in the 1980s and 1990s when her children were home. She stated when her son was sick, it was considered his apartment. Mr. Fried asked how many bedrooms are in the house now, and Ms. Warren stated she converted the living room to her son's bedroom so he would have first-floor space, there are four bedrooms upstairs, and the basement has three although they are not used right now. Mr. Fried asked how many bathrooms are in the house, and Ms. Warren stated there are two on the second floor and a powder room on the first.

Mr. Fried noted the Craig's List ads which have been presented, and he asked Ms. Warren if she placed these ads. Ms. Warren stated she did or someone else did on her behalf. She stated they are not there now, but they were in the past.

Mr. Fried asked if there have been Police at the house in the past eleven months, and Ms. Warren stated there have been. Mr. Fried asked if she or the neighbors called them, and Ms. Warren stated she does not know who called the last time, and she described the latest incident which occurred.

Ms. Frick asked for further clarification on the number of bathrooms in the home, and asked if there are any bathrooms in the basement; and Ms. Warren stated there was a bathroom installed in the basement when her son was living in the basement; and it is still there. Mr. Dickson asked if they installed this themselves, and Ms. Warren stated it was installed when she was married. Mr. Dickson asked if she applied for a Permit for this, and Ms. Warren stated her ex-husband was there and was taking care of some of the construction.

Mr. Dickson noted the correspondence that was provided to the Planning Commission, and Ms. Warren's letter dated 7/25/11 to Mr. Habgood discusses the medical issues; but he followed that up with two letters specific to boarders at the home. Mr. Dickson stated Mr. Habgood made a specific recommendation in his letter of 9/27/11 after a number of conversations with Ms. Warren, and he asked that she have an attorney or someone assist her complete the paperwork. Mr. Dickson stated he assumes that she did not do this, and Ms. Warren stated she completed it herself, and she brought the paperwork to him explaining the situation. She stated she also went to Senator Santarsiero's office. Mr. Dickson stated there are letters from September and October, and Mr. Habgood did ask Ms. Warren to get some help in completing the paperwork and she had advised him that she was unable to because of medical conditions. Ms. Warren stated she was late, but she did go to Mr. Santarsiero's office to get some help.

Mr. Bush stated the Application to the Zoning Hearing Board is dated 10/2/11, but looking at other materials that were provided by the neighbors it appears that Ms. Warren was still running ads for renting rooms as recently as November 3 months after receiving the Cease and Desist letter from the Township. Ms. Warren stated she did not do this, but it might have been her son that has the brain injury. She stated she stopped the process because she was dealing with Vital Support and there were people there seven days a week, seventy-seven hours a week, eleven hours a day; and she is currently with Government Waivers.

Ms. Warren stated if she were such a neglectful mother, she would not have put the day care in Pennsbury School District with Mr. Nuzzolo. She stated she has been in eight States with her son. She stated in 1986 she worked with Realen Engineering for all sixty-seven homes in Yardley Oaks. She stated the two mailboxes were approved because of her circumstances of getting mail at her home when she was taking care of her son even though she rented it out. She stated the neighbors are correct about some of the renters in the full-house capacity. She stated one was working for Waste Management, and there were no complaints; and after that, it was a matter of each individual renter, and when she found that they were not complying, she had to request them to leave. She stated recently there were some people there to do her landscaping. She stated she also worked with former Township Manager, Mr. Dillon, on all of Yardley Oaks; and she has documents to show this. She stated her neighbors to her left would have been under water today. She stated she took a punch list for sixty-seven homes, and the Township kept the Escrow Funds with the Vice President of Realen and it was not given back until the punch list was completed or the neighbors decided not to go along with Realen Engineering. Ms. Warren stated she is now back in her home, and she wants to comply.

Ms. Frick asked who approved the two mailboxes, and Ms. Warren stated it was approved by Lower Makefield in 2000, and she has a letter of approval due to the fact that she traveled and sometimes her mail would come there. She stated her son was in his own apartment.

Mr. Dickson moved, Mr. Fried seconded and it was unanimously carried to recommend to the Zoning Hearing Board that the Application for Special Exception be denied. The documents provided by the neighbors are attached. The Applicant did not provide any supporting evidence as it relates to Section 200-98 and 200-69A3 a through e. The Planning Commission noted that the house has been used as a boarding house for a number of years and after the Application was submitted, the Applicant continued to seek boarders and notices were provided showing this after the Township issued the Cease and Desist dated September 12, 2011.

There being no further business, Mr. Pazdera moved, Mr. Dickson seconded and it was unanimously carried to adjourn the meeting at 8:35 p.m.

Respectfully Submitted,

Tony Bush, Secretary