

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – APRIL 2, 2013

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on April 2, 2013. Chairman Bamburak called the meeting to order at 7:30 p.m.

Those present:

Zoning Hearing Board: Paul Bamburak, Chairman
 Jerry Gruen, Vice Chairman
 Keith DosSantos, Member
 Mark Moffa, Member
 James McCartney, Alternate Member
 Matt Connors, Alternate Member (not voting)

Others: Robert Habgood, Code Enforcement Officer
 Barbara Kirk, Zoning Hearing Board Solicitor
 Pete Stainthorpe, Supervisor Liaison

Absent: Anthony Zamparelli, Zoning Hearing Board Secretary

APPEAL # 13-1659 – ALICE J. BUSCHMAN

The Application submitted was marked as Exhibit A-1. A copy of a five-page Deed provided was marked as Exhibit A-2. A copy of the Township Stop Work Order was marked as Exhibit A-3. A copy of the Building Permit issued by the Township was marked as Exhibit A-4. A single-sheet Site Plan for the property was marked as Exhibit A-5. Notice of tonight's Hearing was published in the Bucks County Advance, and a copy of the publication notice was marked as Exhibit B-1. Notice was also posted at the property, and the Posting was marked as Exhibit B-2. Letters were mailed to property owners as required by the Ordinance, and a copy of the letter with the listing of the owners was collectively marked as Exhibit B-3.

Mr. Don Marshall, attorney was present. Ms. Alice J. Buschman, property owner, Mr. Joseph Zarko, builder, and Mr. Flavio Riva, architect were sworn in.

Mr. Marshall provided the Affidavit of Posting which was marked as Exhibit A-6.

Mr. Marshall stated the property is located at 1401 Westover Road, Tax Parcel #20-43-106. He stated it is a 24,000 square foot lot with one-story frame dwelling of 2,455 square feet with a pool and patio. It is in the R-2 District. He stated the house was

built prior to 1987 which is only relevant for those Sections of the Ordinance which apply. Mr. Marshall stated the property also has frontage on Warwick Road which operates as a driveway to Ms. Buschman's daughter's house which is in the rear. He stated this does become relevant because it is shown as a road on the Township maps so it therefore becomes a corner lot and it effects some of the setback requirements. Mr. Marshall stated the property is served by public sewer and water, and the Sections of the R-2 Ordinance apply as to the minimum lot size of 16,500 square feet.

Mr. Marshall stated the proposal that the Applicant had for the property was to reconstruct the existing residence on the existing foundation and using that footprint add a two-story bedroom addition, a one-story sunroom, a porch, and bringing the garage out two feet and putting a second story on that. He stated the square footage of the house as rebuilt would be 2,535 square feet. He stated they were also going to remove the existing pool.

Mr. Marshall stated the Deed marked as Exhibit A-2 shows when the Buschmans acquired the property.

Mr. Marshall stated they are making an Appeal to the issuance of the Stop Work Order and in the alternative a request for two Variances if the Board finds that there was not a non-conformity, one of which is a Variance to the front yard setback from Warwick Road requesting a Variance to allow a front yard setback of 27.7 feet rather than the 40 feet required which is a Variance to Section 200-61.A as that applies to Section 200-22 which are the R-2 District requirements. The other request is a Variance to Section 200-22 to allow a side yard on the side of the property of which the garage is located which would be the north side of the property of 9.5 feet rather than the 15 feet required by the Ordinance.

Mr. Marshall called Mr. Zarko who stated he is employed by Zarko Builders, and they build new homes, renovate older homes, and do additions. He entered into a Contract with the Buschmans to do work at the property located at 1401 Westover Road. He stated they were to build several additions – one out the back, and some out the front. He stated there was also an extension of the sunroom out back and demolition of the entire interior down to the studs and removal of a majority of the interior walls. They were also going to add a second floor above the garage and the main house. He stated there was also going to be a new roof and siding with everything new on the exterior and the interior. Mr. Marshall asked if the Contract was pursuant to Plans prepared by Mr. Riva, the architect; and Mr. Zarko agreed. Mr. Marshall asked if a full set of Building Plans prepared for the project, and Mr. Zarko agreed they were. Mr. Marshall asked Mr. Zarko if he applied for the Permit, and Mr. Zarko stated he did. Exhibit A-4 was noted which is the Building Permit that was applied for and issued on 2/1/13 and was pursuant to the Building Plans.

Exhibit A-7 was marked which is a full set of the Building Plans.

Mr. Zarko stated they received Plumbing, Mechanical, Electrical, and Building Permits, and he then started to work on the property. Mr. Marshall stated the Building Permit recognized the existing non-conformity, and Mr. Zarko agreed. Mr. Marshall stated this would be the side yard to the garage of 9.5 feet and the setback from Warwick Road which were depicted on the Plan; and the Permit was issued indicating that there was not to be further encroachments, and Mr. Zarko agreed.

Mr. Marshall asked if there was a Demolition Plan, and Mr. Zarko stated there was, and it was part of the Building Plan. Mr. Zarko stated the Demolition Plan depicted the walls that he was going to remove, the bathrooms, the kitchen, and all the windows and doors being removed from the house and leaving partial walls standing which are the ones shown in dark black on the Plan. He stated they were going to be cut open on the first floor Plan and they were going to install new windows and doors.

Mr. Marshall asked what kind of demolition was done to the outside, and Mr. Zarko stated it was being stripped down to the studs. Mr. Zarko stated essentially the house was going to be rebuilt except for the foundation and sub floors that were staying in place.

Mr. Marshall asked that Mr. Zarko tell the Board what transpired that gave rise to the Stop Work Order. Mr. Zarko stated they proceeded with the demolition and after all the demolition was done, they were going to dig the footings and do the foundation work. He stated he hired a demolition company to come in and do the demolition with equipment to take off the roof and some of the walls. He stated they also had manpower on site for clean up, etc. Mr. Zarko stated as they were doing the demolition of the walls, they found deterioration of all the sub flooring so they took all the walls down to the sub floor because there was rot, and you could put your foot through the plywood. Mr. Marshall stated originally when the project was conceived, the sub floor was going to remain, and Mr. Zarko agreed. He stated he was just going to build the walls as shown on the Plan. Mr. Marshall stated when he got to this point, Mr. Zarko made a determination that the sub floor was not serviceable, and Mr. Zarko agreed that it was not safe. Mr. Zarko stated he spoke to Mr. Riva about this; and Mr. Zarko then made the decision to take all the walls down, and they proceeded to dig for the foundation work. Mr. Zarko stated he called for the first inspection from the Township to do inspections of the footings; and when the inspector came out, this is when the Stop Work Order was issued.

Mr. Marshall noted the Exhibit which is the Stop Work Order, and he stated it appears that it is a Stop Work Order because the building was not being done according to the Approved Plan, and Mr. Zarko agreed. Mr. Marshall asked if he has changed the Plans in any way or moved any of the foundation walls, and Mr. Zarko stated he has not. He stated he only encountered a field condition that he needed to change in order to make the house safe.

Mr. Zarko was asked to read Note #9 from the Demolition Plan which he did as follows, “During demolition the intent is to preserve all existing framing which is structurally sound. The contractor shall be responsible for repair and/or replacement of all disturbed areas with materials identical to the existing conditions unless otherwise specified.” Mr. Marshall asked Mr. Zarko if he is replacing in accordance with this Note, and Mr. Zarko stated he is. Mr. Marshall asked if the removal that exceeds what was shown on the Plan is due to the field conditions encountered, and Mr. Zarko stated it is. Mr. Marshall asked if the Contract with the owner provide that he would try to preserve the walls, and Mr. Zarko stated it does. Mr. Marshall stated this is therefore something that he just encountered and had to do, and Mr. Zarko agreed.

Mr. Marshall noted the Site Plan, Exhibit A-5 and asked about Warwick Road. Mr. Zarko stated he believes that it is a private road which leads back to Ms. Buschman’s daughter’s house which is in the rear of the Buschman property. Mr. Marshall asked if it services anything other than that, and Mr. Zarko stated it does not. Mr. Marshall stated the Plan depicts that the existing foundation which is to be reconstructed was 27.7’ off of Warwick Road, and this was on the Plan that was approved by the Township; and Mr. Zarko agreed. Mr. Marshall noted the 9.5’ existing side yard, and he asked what is this to; and Mr. Zarko stated it is the adjacent house on the side of the garage which was the existing garage. He will be using that foundation. He stated he is extending the garage by 4’, but not further encroaching on the 9.5’. Mr. Marshall stated the Building Permit that was marked as Exhibit A-4 specifically indicates that they will not encroach any closer than the 9.5’, and Mr. Zarko agreed. Mr. Marshall stated the garage has to be at the current location because of the existing driveway that abuts it, and Mr. Zarko agreed.

Mr. Marshall asked if there is anything other than the removal of the sub floor that is different than previously proposed on the Building Plans, and Mr. Zarko stated there is not.

Mr. Marshall asked about the existing condition of the property. Mr. Zarko stated when they received the Stop Work Order, he fenced the property, and put plastic over the sub floor, and it is just sitting there. Mr. Marshall stated it has been in this condition since February 20, and Mr. Zarko agreed. Mr. Marshall stated the project has now been delayed by more than a month, and he assumes that the owners would like him to get back to work; and Mr. Zarko agreed.

Mr. McCartney stated the new structure to be built is 2,535 square feet, and the existing structure was 2,455 square feet; and Mr. Zarko agreed. Mr. McCartney asked how it will be made smaller if they are adding a second floor. Mr. Bamburak stated 2,455 is the existing dwelling footprint, and adding a second floor does not increase the footprint.

Ms. Kirk asked when the Stop Work Order was issued by the Township what was the basis for the Stop Work Order, and Mr. Marshall stated they have no idea which is why they are Appealing it. Mr. Zarko stated he was told that it was because he was not building to the approved Plans due to the removal of the rest of the walls that were standing. He stated the floor joists are still there, and the plywood is on the floor joists. He stated he needs to put new plywood on the floor joists, and then continue with the wall. He stated the only thing that varied from the actual Plan was that instead of taking down 90% of the two by fours, he took the remaining of the two by fours down so it was all of the walls. Mr. Bamburak stated the Demolition Plan says the intent was to preserve most of the walls, and most of the walls have not been preserved so technically by manner of semantics, this is the violation.

Mr. Habgood stated a Permit was submitted in November, 2012 for this address, and in that Permit they mentioned that they were going to demo the existing structure; and they were advised that if they were going to demo the entire structure, they would need to meet all current Zoning and Building Codes and they were advised of what that would involve for a new home. He stated they re-designed the Plan and re-submitted it indicating that they were going to just do renovations and additions, and they were not going to be doing a demo. He stated that submission when through the review process, and they were given the Permit which was marked as Exhibit A-3. Ms. Kirk asked when the Building Plans were reviewed, and Mr. Habgood stated it was when it was re-submitted for the additions and renovations and not a full demolition; and this was in January, 2013. Mr. Habgood stated when the Building Inspector went out to do the inspection, he saw that the entire house had been demolished, and this is when the Stop Work Order was issued because now they would have to meet the current Building and Zoning requirements for a new home. Mr. Bamburak stated once demolition occurred, that pushed it to a different type of review since it was no longer just a renovation and it was new construction.

Mr. Marshall asked what Ordinance they are referencing in this regard, and Mr. Habgood stated it would be the Zoning Ordinance and the Sections addressed for the Variances. Mr. Marshall asked what Section of the Zoning Ordinance makes the distinction between taking the wall down and not taking the wall down. Ms. Kirk stated it is shown on the Stop Work Order. Mr. Bamburak stated it appears to be a matter of semantics.

Mr. Zarko stated with the first Plan, they were raising the foundation up out of the ground and adding on to it so there was foundation work, and they were not leaving any framing. He stated they wanted a better basement, but they decided not to do that and instead to keep the foundation; however, he could not build on top of rotting sub flooring.

Mr. Bamburak stated they are still requesting Variances to the dimensions.

Mr. Marshall asked Mr. Zarko if he is demolishing any of the foundation, and Mr. Zarko stated he is not.

Mr. Marshall stated the Variance because of the existing non-conformity is probably not as critical as the Stop Work Order which has delayed the project for months.

Mr. Bamburak stated there will still be some building issues they may have to address, but that is not the concern of the Zoning Hearing Board.

Mr. Zarko stated they have been provided with four pages of requirements including soil testing. He stated the owners are trying to renovate the house, and the only thing they are doing different is a few extra studs on the first floor and they are turning it into a full development. Mr. Bamburak asked if it is now considered Land Development; and Mr. Habgood stated it is not Land Development, but it is construction of a new home on an existing lot. He stated some of the things that are required for a new home Permit include a Site Plan, soil analysis, and a report from a design professional that the existing foundation can handle the new home. He stated the Plan they would have to submit would not match the Plan that was submitted when they issued the Permit.

Mr. DosSantos asked if the fact that the foundation itself is not being disturbed have any effect; and Mr. Habgood stated this was reviewed as an addition/renovation for an existing home versus being viewed as new construction. He stated since the home has been demolished, it is now considered new construction. Mr. DosSantos asked if it is new construction even though the sub floor and foundation are intact, and Mr. Habgood stated they have to submit information to make sure that the foundation can support the new construction. Mr. Bamburak stated possibly the engineer should update the Plans to update this accordingly, and they will probably have to upgrade the Plans since the project has gotten bigger.

Mr. Marshall stated this Appeal is an Appeal of the issuance of the Stop Order, and this is within the Zoning Hearing Board's purview. He stated Permits were issued pursuant to the Plan which contemplated the field condition, and it says during demolition the intent is to preserve all existing framing which is structurally sound. He stated if they were to build on something that was not structurally sound, they would not get an Occupancy Permit. He asked at what point should they stop a project and say you have to start over again. Mr. Marshall stated in fairness to the existing resident, he would ask that the Zoning Hearing Board find that stopping the project is inequitable. He stated they had to take down studs to put in plywood underneath.

Mr. Bamburak stated they are going to have to re-build that walls, and he asked if it shows in the Plans whether they will have two by fours or three by sixes; and Mr. Zarko stated they are two by four walls. He stated this is also allowable for new construction. Mr. Bamburak asked why he put this in there if he was not going to remove the walls. Mr. Zarko stated he has to replace the sub floor; however, Mr. Bamburak stated he was not planning to take the studs down but in the drawing package it was already detailed of what he would have done if he had to take them down. Mr. Zarko stated it was that the walls they were replacing would be two by four walls. He stated it shows that the existing walls were two by four and what they were putting in to match them were two by four walls.

Mr. DosSantos asked what was the difference between the amount of walls they were going to leave up versus the 100% of walls that they took down. Mr. Zarko stated they anticipated taking down 90% of the walls. He stated the Plan shows almost all of the walls are gone plus all the windows and doors were coming out. He stated what was left had to be reframed to fit the new windows and doors.

Mr. McCartney asked Mr. Zarko if he was the original contractor who applied for the Permit in November, and Mr. Zarko stated he was. Mr. McCartney stated he therefore knew what the requirements would be if it were new construction, and Mr. Zarko stated this would be the case if the foundation were removed. Mr. McCartney stated he then came back with a different Plan indicating it would not be new construction, but that 90% of the walls would come down. Mr. McCartney stated he then made a determination that 100% of the walls had to come down. Mr. Zarko stated he feels bad for the homeowners because they are behind and they cannot move in when they were supposed to move in. He stated he felt he was doing the right thing because he would not build over rot.

Mr. DosSantos stated the original Plan was to take out the foundation. Mr. Zarko stated it was knocking off the top block and raising them several feet but the homeowners did not want to go through all of this so they had Mr. Riva draw new drawings. He stated the original was going to be an expanded rancher because they are elderly and wanted first-floor living. They gave this up and put the bedrooms back upstairs so they would not have to go through everything.

Mr. Moffa stated he wants to understand exactly the difference between what was supposed to be there when the Inspector came out and what was actually there. He stated he understands from AO.3 of the Plan that the walls that are not dotted were supposed to be there when the Inspector arrived, and Mr. Zarko agreed. Mr. Moffa stated when the Inspector arrived, none of the walls were there; and Mr. Zarko agreed. Mr. Moffa stated this included the garage area, and Mr. Zarko agreed. Mr. Moffa stated Mr. Zarko has indicated that about 90% of the walls were to be removed, although he feels looking at the Plan it seems that 50% were to be removed. Mr. Zarko stated they need to count the interior walls. Mr. Zarko stated if they were to open this up to new

construction, the windows would cut into what is existing partially to install the new windows since they are not in the same location. He stated this is where you get to a point where you have a handful of studs left. Mr. Zarko stated he was told by other people that once you touch the foundation is when it is considered new home construction.

Mr. Zarko stated he knows the Inspector and he showed him the rot and the Inspector said that while he did not doubt that there was rot, he still had to shut him down. Mr. Zarko told him he could not build on it, and the Inspector agreed but said now they had to consider it a new home. Mr. Zarko stated the rot is still there so he could show it to everybody. Mr. Bamburak stated he feels that he did the right thing by taking this down, but the question is how much more work they will have to go through with the Permit.

Mr. Bamburak asked if he has a copy of the requirement he would have to meet, and Mr. Zarko stated he has only one copy. Mr. Habgood asked the date on this, and Mr. Zarko stated it is 11/14; and Mr. Habgood stated he has copies of this for the Board. Exhibit A-8 was marked which was from the original submission. Mr. Zarko stated he is now being told that he has to go back and comply with these requirements and re-submit as a new home.

Mr. Marshall stated he would like to know what Ordinance makes this applicable. Ms. Kirk stated it indicates it is Section 160-118.1. Mr. Zarko stated he feels this is what gives the Building Inspector the right to issue the Stop Work Order, but it does not cite what was violated.

Mr. Bamburak stated A-8 indicates that the Applicant shall provide Res Check for the project, and he asked what this means. Mr. Riva stated it describes energy efficiency of the home. Mr. Bamburak asked about CNV foundation, and Mr. Zarko stated this is the cinderblock walls, and they want them to be filled solid with concrete. Mr. Bamburak stated in terms of the soils study, he feels the weight of the house will be basically the same, and Mr. Zarko agreed. Mr. Bamburak stated Item #6 indicates the Applicant shall conform with House Bill 377, and Mr. Zarko stated this is a sprinkler system. Mr. Habgood stated it is a State requirement that any new residential construction either has to have a residential sprinkler system or the prospective buyer can sign an intent letter indicating that they do not want it in their dwelling. Ms. Kirk stated this is for new construction.

Mr. Bamburak stated some of the items listed seem that they are simple to do, and Mr. Zarko stated there are some things that are not a problem and some he has done already including providing all the specs for everything they were doing as a renovation. He asked if the Res Check is something that could be done, and Mr. Riva stated this is.

Mr. Moffa asked if there are certain requirements on the list Mr. Zarko is particularly concerned about, and he asked what ones would be a problem. Mr. Zarko stated #2 the silt soil is a problem since they are not touching the soil or the foundation, and this would cost the homeowner money to get an engineer to do a soil report. He stated the house is not going to change weight wise. He stated the Res Check was not required, and he does not know the cost involved for this. Mr. Zarko stated with regard to the existing foundation, if he has to pour the walls solid, it would cost \$5,000 to do that. He stated they are also not okay with the sprinkler system. He stated with regard to the HVAC drawings, he gave them specifications for the new heater, but now they want them to draw the actual ductwork as though it were a new home. Mr. Zarko stated you would not have to do this for a renovation. He stated he could show them ductwork with a single line diagram. He stated normally you are allowed to draw it on the Plan, but they want it sealed by an engineer which will cost the homeowners more money. He stated for a renovation, the contractor can do it. Mr. Zarko noted some other items which he has already provided or could be easily provided. Mr. Zarko stated they are requesting catalog cut sheets for all faucets and toilets, and this was not previously required even though they were replacing every toilet originally. He stated if they have to start all over it is going to take another month or two to get this together and they could be shut down for four to five months. He stated the request for location of pipe clean outs is not a problem nor is a gas riser diagram. He stated they want a second means of egress in the basement if it is considered a new home. He stated the basement is not going to be finished at this point, but they would make them put in an egress window so that there would be an escape route out of the basement. Mr. Habgood stated it is a requirement for a new home that if there is a basement, there needs to be a second means of egress.

Ms. Kirk asked that Mr. Zarko go through the items to indicate what he is willing and not willing to do and Mr. Zarko noted the following:

- #1 – Okay
- #2 – Not Okay
- #3 – Not Okay
- #4 – Not Okay
- #5 – Does Not Apply
- #6 – Not Okay
- #7 – He would do the HVAC drawings but if they have to have an engineer sign or seal them it would not be okay
- #8 – Not Okay
- #9 A – Okay
- #9B – Not Okay
- #9C – Not Okay
- #9D – Not Okay
- #9E – Okay
- #10 – Okay

- #11 – Not Okay
- #12 – Okay
- #13 – Okay
- #14 – Okay
- #15 – Not Applicable
- #16 – Not Applicable
- #17 – Not Okay
- #18 – Not Okay
- #19 – Not Applicable

There was further discussion about Item #9C – catalog cuts for all fixtures, faucets, etc. and Mr. Habgood stated this is a requirement for new construction so that they know the appliances and fixtures that are going into the dwelling. Mr. Riva stated the reason for this would be to show that they meet the current water use consumption requirements. Mr. Zarko stated they do not really know what they will be using yet which makes it difficult. Mr. Bamburak stated under the Plumbing Permit, they would have to comply with the water consumption requirements.

Mr. Bamburak stated it appears that they will be making an effort to supply a lot of the information that has been requested.

Ms. Kirk asked if the items that Mr. Zarko has indicated that are “not okay,” what would be the anticipated additional costs, and Mr. Zarko stated he would anticipate that the soil report would cost about \$15,000 and the concrete would be at least \$5,000.

Mr. Zarko stated he is also concerned with the additional time of six to eight weeks by the time this is all done and the two to four weeks for Approval since he will have to re-submit.

Mr. Riva stated this is probably not the last time that a house in the Township will be dismantled, and he feels there should be something in the Zoning Ordinance that better defines when it is considered new construction as it does not currently seem to be clear.

Mr. Marshall stated there is nothing that defines what has happened here that has turned it into a new house, and they have all asked this question of the Township and have not received an answer.

Ms. Kirk asked what made them decide that it should be Appealed to the Zoning Hearing Board and not to the Township’s Building Code Appeals Board; and Mr. Marshall stated he wanted to get it to the Zoning Hearing Board and they were told they needed Variances for the Zoning issues. He stated he does not know that this is a Code’s Appeal because no one told them what Code they violated. He stated it is a Stop Work Order

which is like a Township enforcement action, and this is Appealed to the Zoning Hearing Board. Ms. Kirk asked the ramifications to the Applicant if the Zoning Hearing Board were to determine that the Stop Work Order should be upheld and alternatively grant the Variances. Mr. Marshall stated they would like to know what is the basis of the Stop Work Order. He stated he feels the Township needs to prove that there was a violation. Mr. Zarko stated he wants to know if he did something so that he does not do it again. He stated he has worked in the Township for seven to eight years, and has done four to five complete renovations like this; and this is the first time that he has had a Stop Work Order. He stated in the past he did take 100% of the walls down, and the last one was only two years ago.

Mr. Marshall Moved his Exhibits.

A recess was taken at this time.

When the meeting was reconvened, Ms. Kirk stated the Board had a legal question as to the Board's authority to hear Appeals of Stop Work Orders and the relationship of that type of issuance with respect to the Zoning Code.

Mr. DosSantos moved and Mr. Gruen seconded that there was not a significant deviation from the Building Permit issued on 2/1/13 to justify the Stop Work Order that was issued on 2/20/13 and moved to overturn the Stop Work Order dated 2/20/13. Motion carried with Mr. Moffa opposed.

Mr. Bamburak stated he would advise the contractor to work with the Township and provide those items he is able to provide.

OTHER BUSINESS

The Board discussed some matters regarding Zoning Hearing Board procedures.

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

Respectfully Submitted,

Paul Bamburak, Chairman

