

CITY OF BURTON
BUILDING BOARD OF APPEALS AUTHORITY
OCTOBER 14, 1998, 3:00 P.M., COUNCIL CHAMBERS

The Meeting was called to order by Auldin Nelson, Chairman, at 3:10 P.M.

MEMBERS PRESENT: Wm. Berry; A. Nelson, B. Carpenter and B. Hall.

MEMBERS ABSENT: T. Hu

OTHERS PRESENT: R. Stewart, DPW Building Inspector; D. Moore, Attorney for Wm. McCullough, Complainant and C. Ladd, Deputy City Clerk.

PURPOSE OF THE MEETING: Appeal of CABO Code for Stop Work Order and Violation Notice.
Approve existing work which connects the alleged residential to the commercial building.

PRESENTATION:

Attorney Dave Moore, gave a brief presentation stating Mr. McCullough bought the property in the 1950's on S. Saginaw Street. At that time it was an old gas station and he remodeled it. Behind this building is what the City keeps calling a house. Mr. McCullough lives in the house alone and continues to update it. He isn't doing any harm and is only trying to improve the property. He applied for a building permit to replace the stairwell on the residential property. The City maintained he cannot connect the residential unit to the commercial building on E. McLean and S. Saginaw Street. Mr. McCullough tore down the stairwell and was doing the footings when the Building Inspector came down and was issued a stop work order. He was doing it with steel beams.

Randy Stewart explained that the project was started in March 27, 1995. Mr. McCullough pulled a building permit to put a staircase on the back of his house. On August 15, 1996, a stop work order was issued by Ken Wright, the other DPW Building Inspector. I then returned on August 19th. A violation notice was issued for failure to obtain proper permits. We referred to the 1993 BOCA Codes. Anything done in our City that is done residentially, is done under the CABO Code. The stop work order talks about CABO, but when you go back to the ticket he received that sent him to Court, it talks about the BOCA Code. We stopped him under CABO because the permit that he pulled was not what he was doing. The ticket that was issued because he was in violation of the 1993 CABO Code. He was adding residential property to commercial property. It's not that we won't allow it, it's because he hasn't done the proper things that is necessary to get approval for it. There are zoning and planning requirements that must be fulfilled. Just dealing with, structurally under the building code, separation things we have to deal with along with barrier free items required and there are no architectural drawings on this project.

Mr. Nelson noted that when adding to commercial property, you must have plans designed by a registered architect.

Mr. McCullough said under the State Statute 33920.12, there are extensions to the architectural drawings required for that and I proceeded under that basis.

Mr. Nelson stated when connecting residential property to commercial property, more stringent rules apply. He then explained the procedure for this type of addition and stated that he must comply with better quality codes when doing this type of construction.

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Attorney Moore said the City kept insisting that the residential so-called structure was on residential property and zoned residential. Mr. McCullough kept insisting that it was all zoned commercial. Sometime in 1977, Burton sent a crew out and surveyed and now they agreed everything is zoned commercial.

Mr. Carpenter asked why there was a problem in obtaining architectural drawings as required. An architect would research the BOCA ordinance and would make recommendations as to what need to be done and would make certain all rules and laws are enforced.

Attorney Moore said he would have recommended to Mr. McCullough that he do it, but he thinks he doesn't have to. He commented that Mr. Stewart told Mr. McCullough that he would have to do more than that to get approval.

Mr. Carpenter said the problem is, Mr. McCullough didn't comply in getting the proper permits.

Attorney Moore stated another complication was that what he was replacing, the two buildings had already been attached. He applied to replace the existing stairwell, which is already attached. He thinks he is in compliance.

Mr. Berry questioned whether this would be a non-conforming use. He asked if the ordinance prohibits from putting on an addition to non-conforming use. There are two different building types. I am hearing it was connected before, right?

Mr. Stewart stated there was a canopy from the west side of the house to the building and was torn down. It was tied to the wall on both sides.

Mr. Berry commented that he is doing this with a steel structure, but in his observation of the property, the lower level steel joice is corrupt. The outer steel joice is upside down.

Mr. McCullough said the joice you see upside down is a working platform and is not attached. It will come down when the upper part of the staircase is done. He presented pictures of the structure to the Board members.

Mr. Berry said he understands there are two important factors. One is the non-conforming use and the other is there are two different types of construction. You are living in the house and hooking an R4 into a mercantile. Important factors are barrier free, fire separation, two different building types and a commercial building, even though it was hooked before with a temporary attachment. According to the laws of the BOCA Code, which you have to fall under, Section 1, any additions, alterations, new constructions shall be provided by a registered professional designer, which is an architect or engineer.

Mr. Nelson said it seems it would be a good to go through the proper steps and get the correct building permits. What you are doing is a good deal more than a stairway.

Mr. Berry said you are working with two Codes and the governing code is the BOCA Code.

Attorney Moore said Mr. McCullough is precluded from going into Court under the BOCA Code. The Judge ruled he can't bring it in here. The City is taking the position that the connection of these two buildings is immaterial in Court. If I look through the CABO Code and that's what they want to do, they haven't followed the CABO Code.

Mr. Carpenter explained when attaching two buildings, you must go under the BOCA Code. There is no wiggle room and this will eliminate the need for this Board to be here. Mr. McCullough needs to get a set of architectural plans and the architect will review the ordinances, codes, etc. and this will eliminate the problems brought before this board.

Mr. Nelson said the Building Inspector cannot issue a building permit without these plans.

Mr. Moore said he thinks Mr. McCullough is entitled to replace the existing stairwell and the existing was connected.

Mr. Hall said you are entitled to replace a like structure. What we have here is an intent for a permit for a stairway.

Mr. Berry asked Mr. Stewart if the DPW would accept sealed documents and issue a permit if all documents meet the BOCA Code.

Mr. Stewart replied yes. However, the first procedure would be a site plan review from the Planning Commission and then obtain a variance from the Zoning Board of Appeals. He would then get the proper permits issued. He said Mr. McCullough's permit was issued under CABO Code and he is not doing what the permit said under this Code. That is the reason for the ticket. He pulled a permit to build a stairway, not an addition.

Mr. Carpenter explained that the reason this Board meets is to make a determination of all the gray areas. We are not making decisions regarding laws. We go by interpretation of what the Code tells us to do. This project was started off on the wrong foot. The points regarding ordinance violation code is something we all have to do, and this is part of the process. It gives us a clear and proper picture of what you are attempting to do.

Attorney Moore said Mr. McCullough will never get through the Zoning Board of Appeals for his variance. My contention is that Burton put this property under CABO and conceded in 1997 that the property is all commercial.

Mr. Carpenter noted that once the attachment was made and both structures were tied together, you have to go under the BOCA Code.

Attorney Moore said under the CABO Code, it's Burton's prerogative to require a set of plans and Burton didn't require the plans.

Mr. Berry read from the BOCA Code, Section 1.14.0 and 1.14.1.

Mr. McCullough said the inspector watched the footings being dug and never gave a stop work order, then came back and issued one. He said he read the codes and has followed them.

Attorney Moore asked if Mr. McCullough had sealed plans, would the Board approval this.

Mr. Carpenter said it is up to the architect/engineer to see that all ordinance requirements are met and all codes are met, even if something has to be torn down. Once the architect has done his job, he presents it to the City. From there it will go to the building department for code review and then the permit is issued by the building department. It is a step by step procedure.

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Mr. Carpenter asked who designed and sized the foundation.

Attorney Moore replied it was Mr. McCullough.

Mr. Berry said this is something that should never have come about. A good foundation builds a good home. Had you started out with the proper procedure and went through all the specifics, such as site plan review and variance requests, with the proper drawings, you wouldn't have been in Court.

Mr. McCullough said he would not get permission to do this. The Planning Commission they have their set up, they feel I bad mouth them too much. I am not going to agree with that sort of thing. I hope you are impartial. I have a feeling Mr. Stewart has you guys against me. You are going to insist I get an architectural drawing, but the State Statute says I don't have to because I have an acceptance here.

Mr. Nelson explained that this Board doesn't meet on a regular basis. We only meet when something such as this comes up and are asked to meet.

Attorney Moore said he hoped there would be a way out of this so it could be built up.

Mr. Carpenter said you still can by hiring an architect, there are a lot of them out there who could help.

Mr. McCullough said the fees for an architect exceed the cost of the project.

Mr. Berry explained the educational background for an architect. There are several good architects out there and possibly you need an engineer. There are several good engineers out there and some may work by the hour.

Attorney Moore said he is going to recommend that Mr. McCullough get a professional, but he is uncertain whether he can convince Mr. McCullough to do it. It seems that Burton would like a way out of this also. If not, he is prepared to go through a jury trial. If he is found guilty, what are they going to do, crime him? Will they go to Circuit Court and make him tear this thing down.

Mr. Hall said he thinks if he hires an architect and lets you walk him through the proper procedures, he shouldn't have a problem. However, we can't allow just anyone to do what they want to do.

Mr. McCullough said he has gotten a permit and has followed the zoning code, BOCA Code, CABO Code and as far as he is concerned, the construction hasn't hurt nor harmed the health nor welfare of the public and that's the way it's going to be.

Mr. Nelson explained that it is part of the Board's job to review the Code and it is revised every two or three years. It is part of the Building Department's job to help a home owner to get something built. He does what he can, but he can't write the Code or bend the Code.

Mr. McCullough discussed previous problems he has encountered with the City regarding materials in his yard.

Mr. Carpenter said the purpose of this Board is to make a determination of this Code and that is the extent of their responsibility. They don't make a determination of the zoning, just the BOCA/CABO Code.

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AUDIENCE PARTICIPATION: None.

COUNCIL ACTION:

Moved by Carpenter, seconded by Berry to deny the request for the stop work order and violation notice and approval of the existing work, connecting the residential to the commercial structure. Motion carried 4-0.

Meeting Adjourned at 3:55 P.M.

Cheryl M. Ladd, CMC/AAE
Deputy City Clerk

CML