

**Town of Warren
Zoning Board of Appeals
Regular Meeting – Minutes
Wednesday, August 26, 2015 - 7:30PM
Warren Town Hall – 50 Cemetery Road**

PRESENT: Chairman George Githens, Jon Garvey, Trisha Barry, Bill Hopkins, Rick Valine;
Alternate Ray Furse; Stacey Sefcik, Zoning Enforcement Officer.
EXCUSED: Alternates Nancy Florio and Peter Brodhead.

1. CALL TO ORDER & DESIGNATION OF ALTERNATES.

At Chairman George Githens's request, Vice-Chairman Jon Garvey chaired the meeting and called the regular meeting to order at 7:35PM. The proceedings were recorded digitally, and copies are available in the Land Use Office. Mr. Garvey introduced Ray Furse, a new alternate member of the Board.

2. ELECTION OF OFFICERS:

A. Chairman.

Mr. Githens explained that, at this time, he would prefer to no longer serve as Chairman of the ZBA. He would prefer to simply be a regular member.

MOTION Mr. Githens, second Ms. Barry, to nominate Jon Garvey to the position of Chairman of the Zoning Board of Appeals; unanimously approved.

B. Vice-Chairman.

Members of the Board asked if Mr. Githens would be interested in serving as Vice-Chairman, and Mr. Githens declined.

MOTION Mr. Garvey, second Mr. Hopkins, to nominate Trisha Barry to the position of Vice-Chairman of the Zoning Board of Appeals; unanimously approved.

3. PUBLIC HEARINGS:

A. Lake Waramaug, LLC, 387 Lake Road – Request for Variance of Sections 8.4B, 9.4.2, and 15.1A of the Town of Warren Zoning Regulations to Permit an Accessory Dwelling Unit More than 50 Feet from the Main Dwelling Unit and to Permit an Accessway to an Interior Lot That is Not Owned in Fee Simple by the Owner of the Interior Lot that is Located within Five Feet of the Side Property Line.

Ms. Sefcik reminded the Board that at the last regular meeting, there had been two questions for which the Board had wanted an opinion from the Planning and Zoning Commission. She explained that the P&Z had discussed the two items at their July regular meeting, and both Mr. Garvey and Mr. Valine had been present.

The first question pertained to Section 8.4A of the Zoning Regulations, which states that accessory apartments must be less than or equal to 900 square feet or 50% of the floor area of the main dwelling unit, whichever is less. The Board had wanted to know whether 900 square feet was only living area, or must it also include area such as decks. Mr. Garvey stated that the P&Z had said that only living area was to be included in the 900 square feet requirement.

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The second question pertained to Section 8.2 of the Zoning Regulations, which requires that either the main dwelling unit or the accessory apartment be occupied by the property owner. The Board had wanted to know if there was a definition or a specific numerical threshold to be met in order for the property to be considered "owner-occupied". The P&Z stated that their intent was for either unit to be owner-occupied and not have both units rented out simultaneously. When asked if there was a definition for the length of time a property owner must be present onsite, the P&Z declined to state one definitively, noting that there were many properties in Town which were second homes. It had been suggested at the P&Z meeting to have the ZEO take this issue up with the Commission's attorney, in order to ascertain whether there was a commonly accepted definition of the term. Ms. Sefcik had done this, and she was advised that, while this would potentially be a matter for review when and if a zoning permit was to be issued, the ZBA would best limit their review to the specific variances requested.

Ms. Barry noted that Mr. Hopkins had had a question at the site walk for the applicant's attorney, which she had written down for discussion at the next regular meeting. The question had been regarding the location of the existing driveway; Mr. Hopkins had asked why it had to be in its current location and could not be moved. Members noted that the existing driveway would be within five feet of the side property line for the proposed rear lot. Mr. Fisher stated that he believed the Zoning Regulations intend to prevent two curb cuts right next to each other off of a public road. However, the access to this property was currently off of a private road, so he did not believe there was a conflict in this specific situation. Mr. Garvey verified that the property owner had a pre-existing right of access to the property over the private road. Mr. Fisher responded affirmatively, stating that the property had had that right since the original inn had opened.

The Board then discussed the requested variance of Section 15.1A and asked Mr. Fisher if there was a way to create an area for an accessway owned in fee simple, rather than an eased area. Mr. Githens reviewed the map of the proposed easement area, noting that there was a steep hill present; however, this was only a proposed paper accessway. Mr. Fisher concurred. Mr. Garvey stated that it was important to note that by granting the variance, the Board was in fact giving a property owner the right to use this area for the driveway if they so choose; perhaps the current owner might not want to use it, but a subsequent owner may wish to and would be able to do so. Mr. Garvey explained that any variance granted went with the property, not with the property owner. Mr. Fisher stated that even if there were some way to make this specific area a fee simple accessway, the same problem would still be there. The steep slope in this area did make it unsuitable for a driveway. Mr. Fisher said that Mr. Eaton's whole point in purchasing this property was to restore a beautiful building and keep the driveway and parking area more or less as it currently existed, and not making a bigger project than it already was. He stated that a lot of the parking was actually going to be eliminated because it is not necessary. Mr. Fisher said that, frankly, there was no feasible way to access the rear lot from the proposed easement area; the most desirable way was to continue using the existing driveway.

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Ms. Barry questioned whether the property owner could simply have restored the property and had a beautiful inn, rather than changing the use. Mr. Fisher said that he did not want to have an inn; he wanted to have a home. He said that, as he had explained previously, while Mr. Eaton does have another home on the lake, this property was primarily to be used as a location for his family and friends to gather. He said that the posting of the property on the VRBO website was unfortunate. Mr. Fisher stated that there had not been any incidents since, as far as he was aware. Mr. Hopkins verified that the use of the property was not commercial, and Mr. Fisher stated that it was not commercial at all. Mr. Garvey noted that the property was still being advertised on the VRBO website as of earlier that date. He said it still said the same information that it had previously, and the calendar was booking through November. Mr. Fisher stated that he had not seen the word "commercial" anywhere in that listing. He explained that Mr. Eaton did not want to have transients coming in to the property like an inn. A property manager was present full-time.

Ms. Barry returned to the question of the location of the driveway, and she asked if there was anywhere else the driveway could come in such that it would not be within five feet of the side property line. Mr. Fisher noted that the existing accessway crossed a stream over a small bridge to reach the bulk of the property; a new accessway with another bridge to cross the stream would require Inland Wetlands approval. Mr. Hopkins observed that this is a newly proposed property line. Mr. Valine concurred, stating that this is an owner-imposed situation. Mr. Fisher explained that this accessway to the property has long existed and it seemed logical to try to keep the driveway where it already was located so as to minimize any additional disturbance.

Mr. Hopkins questioned where the access was to the portion of the property located in Washington. Mr. Fisher stated that the accessway was steep, but it was located off of Route 45. The Board looked at the map to see where this frontage was located. Mr. Fisher said that the only building on the Washington property was the small cottage near the Town line. Mr. Githens questioned whether that cottage had its own well and septic system. Mr. Fisher said that map showed whether the septic system was located; he was not sure how the building accessed water. Mr. Hopkins questioned whether the proposed easement area would be used to access the cottage in Washington. Mr. Fisher stated the area was too steep, and he could not imagine anyone using it at all. Mr. Garvey stated that he had seen maintenance vehicles use the Washington accessway. Mr. Hopkins asked how much frontage was in Washington, and Mr. Fisher stated it was approximately 40 feet. Mr. Fisher referenced the Board's attorney's letter which explained that the Board had no jurisdiction over property located outside of Warren; therefore, the Washington portion of the property had no bearing on the application now before the Board. Mr. Hopkins agreed, but explained he just wanted to inquire about potential use of the Warren eased accessway by any future development of the Washington portion of the property.

Mr. Fisher stated that he wanted to address the issue of hardship. He said that, as of right now, this property is nonconforming. Ms. Sefcik had sent a letter to the property owner advising them that the property was nonconforming, and that action had to be taken to address this issue in order to make the property conforming with the Zoning Regulations. Mr. Fisher said that, without doing this split or tearing down buildings, the property will not receive Zoning Compliance, and the property owner will not be able to get a Certificate of Occupancy for the building.

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Mr. Fisher stated that he was not involved with this property when the change of use had been requested and granted by the Planning and Zoning Commission. He said that, honestly, someone should have thought ahead a bit more, because now there are many moving parts. Mr. Fisher said that he and the property owner's surveyor, Kurt Smith, had spent hours going over this property to find a way to make it conforming; in his opinion, this was the best way to achieve that. Otherwise, the applicant is left to take the position that all of the buildings are pre-existing nonconforming and it becomes more of a battle. Mr. Fisher said that he was trying to resolve the matter via the Zoning Regulations and requesting variances in order to become compliant.

Ms. Barry asked if the applicant is able to have use of the property without the requested variances. Mr. Fisher explained that, legally, the property owner is required to have a Certificate of Occupancy (CO) in order to make use of the property; right now, the property owner did not have one. Mr. Hopkins questioned how the property owner could rent rooms without having a CO. Mr. Fisher stated that, up until now, people have been very understanding and have not come around to shut anything down; he surmised that this is because people understand that this is a difficult, unique situation. Mr. Githens questioned how the property owner was able to obtain property insurance and liability insurance without a CO. Mr. Fisher stated that he believed that, in Connecticut, a CO was not required before getting insurance; however, he had not been involved in that process for this property.

Mr. Githens questioned when the applicant purchased this property. Mr. Fisher said it was approximately a year and a half ago. Mr. Githens then asked when this issue first started, and Mr. Fisher said that it started last spring, when he went to the Planning and Zoning Commission meeting. Mr. Valine questioned if that was when the Change of Use had been approved. Ms. Sefcik stated that the Change of Use had been approved at the January 2014 Planning and Zoning Commission meeting, and she believed Mr. Fisher had attended the March 2014 meeting to first discuss this issue. Mr. Fisher stated that he believed the occupancy issue was discussed at that time, and the Planning and Zoning Commission had stated that as long as the property owners were "weekenders", that was not an issue as far as the P&Z was concerned. Mr. Githens questioned whether Mr. Eaton was occupying the property now; Mr. Fisher said that Mr. Eaton was not occupying it that very night, but he and his family come up to the house almost every weekend.

Mr. Garvey opened the floor to public comment; no one present expressed a desire to speak.

Mr. Valine questioned whether any other options had been explored. He said that, knowing this was an existing property and the owner decided to change the use without having apparently done any research, it appears this was all owner-initiated and now does not comply. Mr. Valine said that he understood the intent of the applicant's request, but he questioned whether any other options had been explored to make the property conform to a residential zone. Mr. Fisher explained that, even if all the cabin/cottages were gone, the property would still not conform because there are two large residences on the same property. The only way to make this property legal is to allow the right-of-way that would permit the lot to be divided.

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Mr. Fisher stated that another alternative would, of course, be to tear one of the larger buildings down; however, he believed that would be foolish. He said that the proposed right-of-way made more sense than fee simple ownership, as there would not be enough land on the front lot if the accessway were owned by the rear lot. The second variance would allow the existing driveway located within five feet of the property line to be permitted to access the rear lot. The third variance would be to permit the existing cottage on the rear lot to be conforming even though it is located more than 50 feet from the house on the proposed rear lot.

Mr. Fisher said that he had been planning to use the Washington land in order to meet the requirements of Section 8.5 in order to obtain a special exception for the cabin/cottage on the front lot. However, he had just seen the letter from Caleb Hamel, the Board's attorney, today. He said that he did disagree with the first part of the letter; in his opinion a Town line is not a boundary line. While some towns do have setbacks from Town boundary lines, Warren was not one of them. As such, it was simply a line on a piece of paper and there was no reason at all why the applicant's property in Washington could not be used to meet the requirements of the special exception requirement in Section 8.5 of the Zoning Regulations. He said that he concurred with the second portion of the letter, where it stated that a variance would be justified in order to keep a cabin as the accessory apartment on the front lot and recommended a condition that the deed to reflect the land must be conveyed together. Given the information in Mr. Hamel's letter, Mr. Fisher stated that he would have to request a variance in order to permit the cabin/cottage on the front lot to be used as an accessory apartment.

Ms. Sefcik explained that she had contacted the attorney as a result of the discussion with the P&Z about the issue of what constitutes "owner-occupied". This led into a discussion about the special exception application currently before the P&Z for the use of the cabin on the proposed front lot as an accessory apartment when it was more than 50 feet from the main dwelling unit. The regulations for the special exception require a minimum of 4 acres of land to apply for this special exception; however, it was the Board's attorney's opinion that acreage in Washington could not be used to meet this Warren requirement. Ms. Sefcik explained she had advised Mr. Fisher over the phone of this as soon as she had heard from the Board's attorney; however, the actual letter had not been received until earlier that evening.

Ms. Barry asked what would be needed to comply with the zoning regulations if all the cottages were removed, and only the two full-size houses remained. Mr. Fisher said that they would still need a variance in order to divide the land, since two full-size residences are not permitted on one lot. The easement was still needed to get to the rear lot.

Mr. Githens asked some locational questions regarding the map submitted with the application. Mr. Valine questioned whether there were any other ways to access the Washington portion of the lot, other than the small accessway located off of Route 45. Mr. Fisher said that there were not. Mr. Valine asked if there were any other easements or rights of access to that lot. Mr. Fisher said that there were walking trails through the lot.

Mr. Fisher said that the whole point of the application was to keep the property as it currently exists and not have to put in whole new driveways or lose any buildings. The appearance of the property would not change at all.

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Mr. Hopkins noted that there is a difference between zoning codes and building codes for commercial versus residential use. He questioned how building codes are being met when the property is listed as residential but rooms are being rented. Mr. Fisher stated that they were not renting by the room, but the whole building. He said that he had looked into the Building Code; if this were an inn, exit lighting, an external fire escape, and possibly a sprinkler system would be required. Mr. Valine questioned whether this was required if a building was pre-existing. Mr. Fisher stated that, if the property owner spends more than 40% of the value of the property in renovations, the property must be brought up to code. State Fire Code was briefly discussed. Mr. Fisher stated that there are frequently conflicts between State Fire Code and local regulations; however, local Fire Marshals cannot vary the State Fire Code. Only the State can do that.

The Board then discussed whether to close or continue the public hearing. Mr. Fisher stated that he was not aware until that night that he would need to file another variance application for the cottage on the proposed front lot. He questioned whether he could amend his existing variance application. Ms. Sefcik stated that this was now adding on a new, different variance request, she believed it would require an entirely new application with legal noticing and notice to abutters. Mr. Fisher stated that, if it helped, he was willing to submit authorization to continue this matter to a subsequent meeting at which time the new variance could also be heard. Ms. Sefcik then calculated how much time remained for continuances to the current application; September 23rd would be the 56th day of continuance time. The Board discussed whether it would be advisable to hold a special meeting on September 16th; in this way, the Board could ensure more time was available if it were needed. Mr. Fisher then submitted a handwritten letter authorizing extension of the public hearing to the September 16th special meeting date.

MOTION Mr. Garvey, second Mr. Githens, to continue the public hearing in the matter of **Lake Waramaug, LLC, 387 Lake Road – Request for Variance of Sections 8.4B, 9.4.2, and 15.1A of the Town of Warren Zoning Regulations to Permit an Accessory Dwelling Unit More than 50 Feet from the Main Dwelling Unit and to Permit an Accessway to an Interior Lot That is Not Owned in Fee Simple by the Owner of the Interior Lot that is Located within Five Feet of the Side Property Line** to a special meeting to be held Wednesday, September 16, 2015 at 7:30PM at Town Hall, 50 Cemetery Road; unanimously approved.

Mr. Hopkins asked if it would be possible to have the Board's attorney attend the next meeting. Several members concurred.

4. APPROVAL OF MINUTES.

A. June 24, 2015 regular meeting.

MOTION Mr. Garvey, second Mr. Valine, to approve the minutes of the June 24, 2015 regular meeting as written; unanimously approved.

B. July 1, 2015 special site walk meeting.

MOTION Mr. Garvey, second Mr. Githens, to approve the minutes of the July 1, 2015 special site walk meeting as written; unanimously approved.

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5. OLD BUSINESS:

- A. Lake Waramaug, LLC, 387 Lake Road – Request for Variance of Sections 8.4B, 9.4.2, and 15.1A of the Town of Warren Zoning Regulations to Permit an Accessory Dwelling Unit More than 50 Feet from the Main Dwelling Unit and to Permit an Accessway to an Interior Lot That is Not Owned in Fee Simple by the Owner of the Interior Lot that is Located within Five Feet of the Side Property Line.**

This matter was tabled to the September 16, 2015 special meeting.

6. NEW BUSINESS:

No business was discussed.

7. OTHER BUSINESS PROPER TO COME BEFORE THE BOARD.

- A. Question Regarding Procedure for Applying for Change of Use.**

Mr. Furse questioned what the procedure was for changing the use of a property and whether it was incumbent on the applicant to understand what might later be required in order to be able to receive a Certificate of Occupancy. Mr. Valine also requested clarification on this point.

Ms. Sefcik explained that a zoning permit was required for a change of use. Mr. Garvey and Ms. Barry questioned whether the applicant is advised at that time that they may have to do certain things in order to ensure the property is compliant with the zoning regulations. Ms. Sefcik stated that, if she received such an application request, she would advise the property owner if there were any issues that could inhibit the ability to issue approval.

MOTION Mr. Garvey, second Mr. Githens, to adjourn at 8:40PM; unanimously approved.

Respectfully submitted,

**Stacey M. Sefcik
Zoning Enforcement Officer**