

**Town of Warren
Zoning Board of Appeals
Special Meeting – Minutes
Thursday, April 9, 2015 - 7:30PM
Warren Town Hall – 50 Cemetery Road**

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

1. CALL TO ORDER & DESIGNATION OF ALTERNATES.

At the request of Chairman George Githens, Vice-Chairman Jon Garvey presided and called the regular meeting to order at 7:30PM. The proceedings were recorded digitally, and copies are available in the Land Use Office. Alternate Nancy Florio was seated for the vacant regular member seat.

2. PUBLIC HEARINGS CONTINUED:

A. Arthur Howland & Associates for DH Partners, LLC, 8 North Shore Road – Variance of Section 16.2.1 to Permit 2nd Story Addition and Conversion of Existing Screened Porch to Living Space within 50 Feet of the Shoreline.

Ms. Sefcik explained that since the public hearing on February 25th, she had received correspondence from the applicant's attorney which stated the opinion that neither the second story addition nor the conversion of the screen porch to living space required a variance of the Zoning Regulations. She had then consulted with the Town's land use attorney, Mark Branse, and had received his opinion on these matters. In Mr. Branse's opinion, due to the definition of a building in the Zoning Regulations, a variance would not be required for the conversion of the existing screened porch to living space; only a zoning permit would be necessary. However, in his opinion the language of the Zoning Regulations as well as long-established practice in the Town of Warren made it clear that a second-story addition located within a setback area would in fact require a variance. Ms. Sefcik distributed copies of the letters to Board members.

Ms. Sefcik explained that the applicant had subsequently submitted a letter to the Land Use Office earlier in the day which stated their desire to withdraw the entire application currently before the Zoning Board of Appeals. Ms. Sefcik explained that, based on this new information, the applicant was interested in proceeding with a zoning permit for the conversion of the screened porch area. The plans for the proposed second story addition would be postponed while the applicant and his engineer explored other options.

The Board then agreed to close the public hearing in the matter of **Arthur Howland & Associates for DH Partners, LLC, 8 North Shore Road – Variance of Section 16.2.1 to Permit 2nd Story Addition and Conversion of Existing Screened Porch to Living Space within 50 Feet of the Shoreline** as the applicant had withdrawn their application.

3. PUBLIC HEARINGS:

A. John & Ashley Dietrich, applicants; Tuscan Sixty-Six, LLC, owners; 66 Town Hill Road – Variance of Section 6.6 of the Zoning Regulations to Construct 9-Foot High Deer Fence within the Front Yard Setback.

Ms. Sefcik informed the Board that proof of notice to abutting neighbors, as well as proof of the posting of required signage, had already been submitted and was present in the file. She then read into the record the legal notice for this matter.

ZBA Minutes Special Meeting 040915

John Dietrich then addressed the Board, explaining that he wished to construct a 9-foot high deer fence in two areas of the property. The first would be around an existing garden area that they wished to enlarge. The fence would be 70 feet in length along the road, and 140 feet long going back into the property. The second fenced area would enclose a proposed orchard area adjacent to the conservation restriction area managed by the Warren Land Trust. The fence would be 200 feet long along the road, and 140 feet long going back along the property. The required front yard setback is 30 feet; Mr. Dietrich stated that they would wish to have the fence enclose this entire 30-foot setback area, so it would be located at the start of their property, approximately 15-20 feet in from the road. He stated that the fence would not in any way encroach on Town land; in any case, he would want to have it far enough back so as to eliminate damage from snowplowing.

Mr. Dietrich explained that the land on this property had historically been farmed along the roadside, with rocks having been cleared from this area and evidence of deteriorating fencing. He noted that there were several other farms nearby, including horse farms, tree farms, pumpkin farms, and small orchards; therefore, farming-related fencing would be in character with the neighborhood. Due to issues with deer eating and damaging crops, a fence tall enough to keep out deer was necessary to protect both the garden and the proposed orchard. While a fence six feet in height would be permitted in the setback without a variance, it would not be tall enough to prevent deer from accessing these two areas of the property.

The Board reviewed pictures of the proposed fencing submitted by the applicant, as well as maps and sketches showing the location of the proposed fencing. Mr. Dietrich explained that the proposed fencing would be built with locust posts and thin steel wire. Mr. Githens questioned whether there would be any electrical component to the fencing, and Mr. Dietrich stated that nothing was planned at this time, but they might consider installing one strand in the future within the fenced area.

Mr. Garvey asked if any correspondence had been received regarding this application. Ms. Sefcik read into the record emails received on March 19 and 20, 2015 from Peter Smith, owner of 65 Town Hill Road, which is located directly opposite the subject property. Mr. Smith stated that the applicants had reviewed their plans with him, and he had no objection to the requested variance. She also read into the record an email received on March 26, 2015 from Marion Smith, owner of 83 Town Hill Road, also located across the street from the subject property. Ms. Smith stated that she had no issues with the proposed fencing. Ms. Sefcik then read into the record a letter dated March 18, 2015 from Tim and Carla Angevine, owners of 100 Town Hill Road, which also expressed support for the fencing project.

Mr. Garvey then opened the floor to public comment; however, no one present in the audience expressed a desire to speak.

Ms. Sefcik informed the Board that the application had already been reviewed by the Inland Wetlands Commission and had been determined to be a permitted use as of right under Section 4.1A of the Inland Wetlands Regulations. Additionally, as a conservation restriction was present on the property, the applicants were required to provide notice to the holders of the restriction about their proposal. A letter dated February 25, 2015 had been received from the Warren Land Trust stating that the proposed fencing project "is an appropriate use of the land to further the agriculture use permitted in the conservation easement."

Hearing no further questions or comments regarding this application:

ZBA Minutes Special Meeting 040915

MOTION Mr. Garvey, second Ms. Florio, to close the public hearing in the matter of **John & Ashley Dietrich, applicants; Tuscany Sixty-Six, LLC, owners; 66 Town Hill Road – Variance of Section 6.6 of the Zoning Regulations to Construct 9-Foot High Deer Fence within the Front Yard Setback**; unanimously approved.

The Board agreed to amend the agenda to discuss item 6A first and then return to the agenda as written.

6. NEW BUSINESS:

A. John & Ashley Dietrich, applicants; Tuscany Sixty-Six, LLC, owners; 66 Town Hill Road – Variance of Section 6.6 of the Zoning Regulations to Construct 9-Foot High Deer Fence within the Front Yard Setback.

In answer to a question about the regulation requirements, Ms. Sefcik explained that the regulations stated that a fence located between the property line and the minimum setback area was to be no higher than 6 feet. Therefore, a fence six feet or lower within the setback area was permitted without need of any zoning approval. If the applicant wished to have a fence higher than 6 feet outside the setback area, this would have required only a zoning permit, since anything constructed, erected, or assembled that has a fixed location on the ground and has any dimension exceeding 6 feet is considered a structure. However, since the proposed fence was greater than 6 feet high and was to be located within the setback area, a variance would therefore be required.

Mr. Garvey stated that he did not have any issue with the proposed fencing. Members noted that the property had a history of use for farming at the front of the property near the road, and the topography elsewhere on the site was not deemed suitable for farming use. Members expressed doubt that it was the intention of the Zoning Regulations to prevent farmers from taking steps necessary to protect their crops, and this relief would enable the applicants to make reasonable use of the property for farming. Letters of support from three abutting neighbors appeared to indicate that the requested relief would not adversely affect surrounding properties or harm the public welfare.

MOTION Mr. Garvey, second Mr. Githens, to grant the requested 30-foot variance in the matter of **John & Ashley Dietrich, applicants; Tuscany Sixty-Six, LLC, owners; 66 Town Hill Road – Variance of Section 6.6 of the Zoning Regulations to Construct 9-Foot High Deer Fence within the Front Yard Setback** to permit the construction of a 9-foot high deer fence to enclose a 70-foot long x 140-foot deep area and a 200-foot long x 140-foot deep area as depicted on sketches submitted by the applicant, with the condition that the fencing should in no way encroach on Town land along Town Hill Road. The Board finds a hardship as this section of the property has long been used for agriculture, and the topography elsewhere on the site is not suitable to the farming proposed.

The motion was unanimously approved.

4. APPROVAL OF MINUTES.

A. June 25, 2014 regular meeting.

MOTION Mr. Garvey, second Ms. Florio, to approve the minutes of the June 25, 2014 regular meeting as written; unanimously approved.

B. February 25, 2015 regular meeting.

The Board agreed to table discussion of this matter to the next regular meeting.

ZBA Minutes Special Meeting 040915

5. OLD BUSINESS.

A. Arthur Howland & Associates for DH Partners, LLC, 8 North Shore Road – Variance of Section 16.2.1 to Permit 2nd Story Addition and Conversion of Existing Screened Porch to Living Space within 50 Feet of the Shoreline.

No discussion was necessary as this application has been withdrawn.

7. Discussion Regarding Possible Increase of Fees for Variance Applications to the Zoning Board of Appeals.

Ms. Sefcik explained that the current fee for variance applications before the ZBA was \$90.00; however, this was not adequately covering associated costs. Since all public hearings required two legal notices to be published prior to the hearing, and one notice to be published regarding the decision, it was not unusual for just advertising costs to reach \$225 per application. Certified mailings were also required, which could totaled on average \$7-14 per application. Additionally, \$60 in fees are required to be collected on every land use application as a result of Public Act 92-235, \$58 of which goes to the State. Because of this, the current application fee was not anywhere near sufficient to cover costs associated with ZBA applications.

Ms. Sefcik explained that the Town's land use attorney had stated that no authority existed in the Statutes for Zoning Commissions and ZBAs to set their fees through text amendment. He recommended addressing this through a Town Ordinance and had provided sample text. As the Planning & Zoning Commission was going to be reviewing their fees related to public hearings, and it made sense to address ZBA-related application fees as well. Ms. Sefcik said that the ordinance, once prepared, would be put to a vote at a Town Meeting. Members of the Board concurred with this plan.

MOTION Ms. Florio, second Mr. Garvey, to adjourn the meeting at 8:15PM; unanimously approved.

Respectfully submitted,

**Stacey M. Sefcik
Zoning Enforcement Officer**