

**TOWN OF WARREN**  
**Minutes of a Public Hearing and Special Meeting of the**  
**Zoning Board of Appeals**  
**held Wednesday, December 16, 2015, 7:30 pm**  
**in the Lower Level Meeting Room of the**  
**Warren Town Hall at 50 Cemetery Road**

Present were Chairperson Jon Garvey; Vice Chairperson Trisha Barry; George Githens, Bill Hopkins, Rick Valine and Alternate Ray Furse. Not in attendance were Nancy Florio, Peter Brodhead. Other Recording Secretary s present were Stacey Sefcik, Zoning Enforcement Officer; and Richelle Hodza, Recording Secretary

**1. CALL TO ORDER AND DESIGNATION OF ALTERNATES**

Chairman Garvey called the meeting to order at 7:31 p.m. No alternates were seated.

**2. PUBLIC HEARING**

Arthur Howland & Associates for DH Partners, LLC, 8 North Shore Road – Variance of Section 16.2.1 of the Town of Warren Zoning Regulations to Construct 2<sup>nd</sup> Story Addition 21.6’ from the Shoreline.

Ms. Sefcik read the notice of the hearing published in the Republican-American on December 9<sup>th</sup> and 14<sup>th</sup>. Mr. Paul Szymanski, PE of Arthur Howland & Associates introduced himself for the record and presented a photograph of the signage that had been placed at the subject property and submitted certified mailing receipts as proof that abutting neighbors had been noticed. Mr. Szymanski also read two email responses he had received; one, dated December 5<sup>th</sup> from neighbor Mr. Edgar Berner with no objections to the proposed application, a second dated December 9<sup>th</sup> from a neighbor to the west, Mr. Johnson, who likewise had no concerns. He stated that because of the unusual and possibly unique conditions of the property, as it is bounded by water on three sides, such that any attempt to comply with setback requirements would cross well over property lines and because, therefore, no area of the property conformed to current Zoning Regulations, hardship existed. Mr. Szymanski submitted an example of a condition at 108 North Shore Road, which was issued a variance by the Commission, despite there being about one acre of conforming land.

Mr. Szymanski added that the property owners had school-aged children, one son and one daughter, and only two bedrooms. This condition created a hardship because three bedrooms for a family of such composition would be appropriate.

After Mr. Szymanski’s presentation using visual aids including elevations, plans, and an aerial photograph, members asked Mr. Szymanski for more information about the proposed bedroom. He responded that the Torrington Area Health District had found the septic system sufficient to support the third bedroom, which included a bathroom with stall shower. Ms. Barry questioned whether the former application made in February 2015, which had been withdrawn, included a bathroom. Mr. Szymanski said it had. She then asked why the application had been withdrawn. Mr. Szymanski replied that the timing of construction had been a concern for the applicants. Ms. Sefcik added that the original application for the variance had also included a 3-season enclosure of the porch; which did not require any special exceptions or variances. That portion of the project was approve and completed.

Mr. Szymanski addressed an issue, which had been of interest to the commission, about other variances approved for the subject property. He stated that a conditional variance had been granted to the former owner, Mr. Robert Berne (not to be confused with present neighbor Mr. Berner) in August

2000 for renovations of the cottage and the addition of a garage. The single condition, the submission of a revised plan to the Warren Conservation Commission, was met.

Chairman Garvey raised the issue of hardship, stating that he did not see its demonstration in accordance with the Regulations. He stated that the property owners ought to have been well aware of the non-conformity and therefore limitations of the property before they bought it at the end of 2014. Mr. Szymanski countered that most home-buyers are more concerned with things like the working systems of the house than whether it conforms to zoning regulations. With regard to the hardship of insufficient bedrooms, Chairman Garvey stated that the owners, having bought the house while having a family of four, already with two school-aged children of the opposite sex, should have been aware that the house with two bedrooms may not have been desirable.

Some members wanted clarification of the language of Section 17.3 of the Warren Zoning Regulations regarding the expansion of structures that conform to use, but not to yard setbacks or other zoning regulations. It was noted by Mr. Szymanski, then clarified by Ms. Sefcik, that a proposal for a text amendment had been submitted by the same applicant and is currently under consideration by the Planning and Zoning Commission, which agrees that the language of said section is unclear, notwithstanding the intent of the regulation. Ms. Sefcik had spoken to Attorney Willis, whose interpretation of the text, backed up by precedent, was that the restriction of bulk in the setback area appeared to be the intent of the regulation. A Public Hearing in the matter was scheduled for January 12, 2015.

Chairman Garvey stated that he was hesitant to act on the variance owing to the fact that a text amendment was under imminent consideration by the Planning and Zoning Commission. Mr. Szymanski stated that he was not certain that the Planning and Zoning Commission would be able to pass the proposed amendment to the text at its next meeting and requested that the application for the variance under the current language be considered presently, rather than be continued.

Mr. Szymanski then read a portion of C.G.S Section 8-6 regarding the warranting of a variance when a hardship is shown to differ in kind from those imposed on properties in general by regulations. Chairman Garvey again questioned whether the limitations presented by the applicants in fact met the test of hardship.

Mr. Szymanski stated that he was advocating for the reasonable use by his clients of their property. As such, he believed that the purpose of the setbacks in Section 16 of the regulations was to protect water quality by minimizing impervious surfaces. The applicant was increasing the footprint and therefore not increasing impervious surface area.

Ms. Sefcik read aloud and for the record Section 29.3.1C describing the conditions under which a variance may be granted by the Board, specifically, that the strict application of these regulations would deprive the property owner of all reasonable use of the property. Ms. Sefcik pointed out that two other buildings on the property contained bedrooms. Mr. Szymanski repeated that all of the neighbors were okay with the plans.

Mr. Furse requested confirmation that the new owners had purchased the house after the Zoning Regulations had been adopted May 2012. Mr. Szymanski confirmed that they had. Mr. Hopkins brought up the difference between volume ("bulk") versus area ("foot print") and Mr. Furse, the significance of increasing the non-conformity of an already non-conforming structure.

Mr. Githens asked about other abutting neighbors such as Mr. Mullins. Mr. Hopkins stated that he, too, owned property abutting the subject property, but felt he could act impartially on the application before the commission.

Additional questions were posed, including whether there was only one septic field serving the main house and outbuildings. Mr. Szymanski confirmed that there was only one field with a system of pumps. Mr. Valine inquired about the utilities. Mr. Szymanski stated that they were all underground.

Chairman Garvey wanted more information about the distance from the Mullin property and wanted to allow the Planning and Zoning Commission time to clarify the regulation. Mr. Szymanski interjected that the distance from the Mullin property appeared to allow 240 feet. Ms. Sefcik stated that the next meeting is January 27, 2015, which would be 42 days, so that the Board would be required to ask the applicant for permission for an extension of time, or a special meeting could be called. Ms. Sefcik reminded the Board that while it was bound to address the application before it, were additional information required, it could continue. She reiterated the specific variance being sought, that from Section 16.2.1.

Ms. Barry stated that she believed she had enough information and could proceed without a continuance. Other members agreed.

Chairman Garvey asked whether Board members who were also abutting neighbors of the subject property traditionally recused themselves from making a decision. Ms. Sefcik responded that while there was no specific rule, the Town's attorney did feel that it was prudent for such a person to recuse him- or herself. Mr. Hopkins recused himself at 8:36 p.m. and Chairman Garvey seated Mr. Furse for Mr. Hopkins.

Chairman Garvey opened the meeting to the public. No members of the public were present other than Mr. Hopkins who said he, as abutting property owner, had no problem with the variance sought.

Mr. Githens made a **MOTION** to close the public hearing at 8:41 p.m. Ms. Barry **SECONDED** the motion. All were in favor. Motion **CARRIED**.

### 3. **APPROVAL OF MINUTES**

Ms. Barry made a **MOTION** to approve the November 18, 2015 regular meeting minutes. Mr. Githens **SECONDED**. The minutes were **APPROVED**.

Mr. Githens made a **MOTION** to accept the minutes of the September 16, 2015 special meeting with the following correction to page 5 of 6 pages: Mr. Githens (*not* Mr. Garvey) stated that his reason for opposing the denial of the variance was because he did not like to see a "perfectly good" building torn down. The motion was **SECONDED** by Ms. Barry. The corrected minutes were **APPROVED**.

It was noted that the October minutes still needed to be accepted and should be placed on the agenda for the January 2016 meeting.

### 4. **OLD BUSINESS**

No business.

### 5. **NEW BUSINESS**

Arthur Howland & Associates for DH Partners, LLC, 8 North Shore Road – Variance of Section 16.2.1 of the Town of Warren Zoning Regulations to Construct 2<sup>nd</sup> Story Addition 21.6' from the Shoreline.

Chairman Garvey stated that he had not seen the applicants' demonstration of a hardship as defined by the regulations. When purchasing the home, the applicants should have known the limitations of the property and that the main house had only two bedrooms for their family of four. Ms. Barry stated that a hardship may exist owing to the non-conformity. Mr. Githens tended to agree with Ms. Barry, since the footprint was not being increased, the abutters had no objections, and there had been no voices of concern about an adverse environmental impact on the lake. Mr. Valine said that he understood Mr. Garvey's desire to have the applicant demonstrate hardship, noting the difficulty in defining "a hardship." He wondered whether adding "more non-conformity" to an already non-conforming structure was acceptable but concluded that the non-conformity of the subject property did seem unique. Mr. Furse did not see a hardship, wondering whether a unique hardship can be "discovered" over the course of time. On the other hand, Mr. Furse stated that the overlapping setbacks identified on all sides of the property were unique and the existing restrictions of the variance ensure that the addition will be contained. The intent of the regulations seemed to him specific; thus, he concluded that the addition of a second story bedroom and bathroom was rather innocuous. Chairman Garvey asked whether anyone else would like to comment. Hearing none, he made a **MOTION TO DENY** the variance because he did not see a unique hardship. Mr. Furse **SECONDED** the motion. Chairman Garvey asked for a vote. No members were in favor of the motion; four members were opposed; the motion to deny the application for the variance **FAILED**.

Mr. Githens made a **MOTION TO APPROVE** the variance; Mr. Valine **SECONDED** the motion, Mr. Valine, Mr. Furse, Ms. Barry, and Mr. Githens were in favor of the motion, while Chairman Garvey was opposed. The motion **CARRIED**.

6. Discussion Regarding Public Hearing and Decision-Making Procedures

A discussion among members of the Board about public hearings, executive sessions, the Freedom of Information Act (FOIA), and procedures for making decisions was led by Ms. Sefcik who had handed out and called attention to an article written by the Town's Attorney Mark K. Branse called *Public Hearing Procedures* (2015). She explained that executive sessions were reserved for purely administrative matters (*e.g.*, pending litigation, specific employees, etc.) and that the Board's work regarding applications must be available to the public. She referred the Board to a Connecticut Freedom of Information Commission wallet-sized publication called "Highlights of the Connecticut Freedom of Information Act: 1975-2010 35 Years of Open Government." Various members asked for clarifications, which Ms. Sefcik provided. She emphasized that the Board's charge is to discuss the application objectively and with an open mind, tying deliberations to those specific Regulations that govern the matter under consideration.

Chairman Garvey brought up the issue of whether or not a Chairperson him- or herself can or should make a motion at a Board Meeting. *Roberts Rules of Order* were discussed. It was generally held that while such Rules were useful, certain of them were unduly cumbersome for a small board such as Warren's ZBA. A number of members related their experiences on other boards, most of which encouraged motions by voting board members, not by the Chairperson. The members agreed that, while it was neither impossible nor specifically improper for the Chair to make a motion, it was preferable that he or she "call for," "invite," or "entertain" a motion. Chairman Garvey thanked the Board.

At 9:23 p.m., Ms. Barry made a **MOTION** to adjourn the meeting until January 27, 2016 at 7:30 p.m. Mr. Furse **SECONDED**. All were in favor and the motion **PASSED**.

Respectfully Submitted,



Richelle Hodza  
Recording Secretary