

September 19, 2002

Members Present: Edmund White, Katharine Leab, Bradford Sedito

Alternates Present: Heman Averill, Georgia Middlebrook, Bruce Skoog

Guests: Tracy Tibbatts, John Long, Kevin Sabia, Reginald W.H. Fairbairn, Esq., Daryl Wright, James G. Kelly Esq.

The Chairman, Edmund White, opened the meeting at 7:30pm.

PUBLIC HEARING - Continued from August 15, 2002

Mr. White seated Ms. Leab, Mr. Sedito, himself and alternate Mr. Skoog.

ZBA-0215, Request of Thomas A. & Tracy A. Tibbatts, 1 Barnes Road, for a variance from Zoning Regulations 17.4.a (increase the nonconformity of non-conforming building) and 11.6.1.c (side and front yard setbacks), to add a mudroom. Ms. Tibbatts presented survey map #456 of a boarding property at 35 School Street which shows a right of way on Moody Bridge Road. She stated that they had spoken to people in the Town Hall, Roger Cannavaro, Town of Washington Road Foreman and others, to gather information. There are no town marker points on Barnes Road. Mr. White stated that ZBA was looking for a marker point on the Tibbatts property from which to measure from. Mr. Sedito asked if they had contacted a surveyor. Ms. Tibbatts stated they were trying to avoid the added expense. Mr. Sedito added that it would be a minimal expense to have a surveyor set a couple of pins on the property. Ms. Tibbatts asked what her options were at this point. Mr. White stated that the application could be withdrawn or they could vote on the evidence that has been presented. Ms. Tibbatts withdrew the application. . Mr. White and ZBA members were in agreement that if Mr. & Ms. Tibbatts reapplied before the end of the calendar year the application fee would be waived.

PUBLIC HEARING

Mr. White seated Ms. Leab, Mr. Sedito, himself and alternates Mr. Averill and Mr. Skoog.

ZBA-0219, Request of John Long, 59 Horse Heaven Road, for a variance from Zoning Regulations 11.6.1.c (front yard setback), to add a living room. Mr. Long and his builder Kevin Sabia were present. Mr. White read Mr. Long's letter of request. Mr. Sabia explained the survey and proposed additions to the existing house. The additions to the front of the house include an entry way and livingroom. The proposed livingroom will measure 24' x 26'. The livingroom doesn't meet the front yard set back by 4'10". The existing livingroom is a converted one car garage which will be used as an office. The house will remain a one story structure. Mr. White asked the applicant if he had looked at other options, so they would be in compliance. As far as hardship is concerned Mr. White stated that this is an existing dwelling and the applicant is creating the hardship. Mr. Sedito suggested creating a smaller livingroom or adding onto the driveway side of the dwelling and pushing back the front plane of the house to be in compliance with the set back. Mr. Sabia and Mr. Sedito discussed placement of the gable ends, Mr. Sabia is looking for a clean line on the driveway side of the house. Mr. White feels that there are other options/designs the applicant could explore that would keep the building away from the road. The hardship aspect is hard to find, keeping the addition 50' from the front yard set back is an option, and no variance would be required. Mr. White asked for questions or comments from the public. Mr. White stated that the meeting is at the point of being closed and going to a vote or the applicant could withdraw. Mr. Long withdrew his application.

PUBLIC HEARING

Mr. White seated Ms. Leab, Mr. Sedito, himself and alternates Mr. Averill and Ms. Middlebrook.

ZBA-0220, Request of B.I. Acquisition, LLC, 182 East Shore Road, for a variance from Zoning Regulations 12.14 (generators & air conditioners) and 11.6.2 (minimum setback), to install generator & (3) air conditioning units. Reginald W.H. Fairbairn, Esq. was present to represent the applicant. He read the letter of request. Mr. Fairbairn went onto explain that the highway department marks the boundary lines between towns. In this case the town line between Washington and Warren was affected by a misplaced marker. The property owned by B.I. Acquisition LLC straddles the town lines. Mr. Fairbairn pointed out the discrepancy of the town lines on the map presented. Permits were taken out in the town of Warren to install a generator and (3) air conditioning units, applications were granted, permits were given and the work was done (Mr. Fairbairn presented these documents). Mr. Fairbairn offered pictures of the work done. The installation was done within the last year. Mr. White asked about regulations in Warren for the placement of generators, Mr. Fairbairn said there were none. With the misplaced monument, steep incline and with using the old map of the property which was mismarked an error was made, the intention was clearly to place the generator and (3) air conditioning units in Warren. The land has been surveyed. Under Washington' current regulations the generator is to close to the town line and not within 10' of the structure principally served. Mr. Sedito inquired about the distance from the town road. Mr. Fairbairn stated that the generator is 54' to the pole on Route 45 and 100' to Lake Waramaug. Mr. Sedito asked how this problem came to their attention. Mr. Fairbairn replied that someone reported it to Janet Hill. Daryl Wright, a representative for Wright Electrical explained that they initially wanted central air conditioning in the Boulders Inn but didn't want the units located near the outside dining, so they moved them to the edge of the property, because Warren has no regulations against this. It was inspected by the Warren building inspector and everything was hooked up by CL&P, SNET and Cablevision in Warren. Then somebody notified Janet Hill and her measurements showed that the work was done 10' inside the Washington town line. Mr. Wright explained that had the error been found during the project they would have moved everything to the Warren property. Mr. Fairbairn stated that nothing was done maliciously. When the units were installed the mountain side was excavated, a plateau and pad were made for the units. It would cost approximately \$50,000.00 to relocate the units. Mr. Fairbairn stated that it would be harsh punishment for an obvious error that was not intentional "a good faith error". Members suggested screening the units with shrubbery. Mr. Wright replied that it was the intent to put up shrubbery screening but when the boundary line problem arose they stopped work on the project. Mr. Fairbairn is trying to find a practical solution to the problem. Ms. Leab asked about unhappy neighbors, Mr. Fairbairn has spoken to the closest neighbor Mr. Franklin and he has no problem except he would like to see shrubs planted to screen the units. Mr. Fairbairn added that the installation meets all the set backs for neighboring property. Mr. White asked members if they were comfortable not actually seeing the Warren regulations. Ms. Leab interjected that when she was doing research on generator regulations, Warren had no such regulations. Mr. White asked Mr. Fairbairn if they would be willing to install screening so the units were not visible from the road. Mr. Wright again reassured members that installation of shrubbery was part of the original plan. Mr. White asked for questions or comments from the public. Mr. White asked members if they were comfortable voting on the application as is with the stipulation that a vegetation screen be installed so that the equipment was not visible from the road. All members were comfortable.

MOTION: to close the Public Hearing Re: ZBA-0220, request of B.I. Acquisition, LLC, 182 East Shore Road, for a variance from Zoning Regulations 12.14 (generators & air conditioners) and 11.6.2 (minimum setback), to install generator & (3) air conditioning units was made by Mr. Averill, seconded by Mr. Sedito, by a 5-0 vote.

MEETING

Members discussed prior generator applications and Ms. Leab stated that this was a very special situation. Mr. White stated that if this application had come to ZBA they would have never approved it. The sighting of this project was sloppy, is it up to ZBA to clean it up? Mr. Sedito added that there was no intent to violate. All members were in agreement. Ms. Leab stated that they attempted to comply, all organizations involved agreed upon the wrong line. Mr. Sedito felt that if they chose to relocate the equipment it would create a bigger problem and mess than already exists. Ms. Middlebrook said it was obviously the mistake of the person who sighted the line and sign, a unique situation. Mr. White once again stated that this would not fly under Washington regulations, but Warren has no such regulations. Ms. Leab asked when are you punitive, when people really have made an effort and gone through the process, if it is not discommoding to the neighbors, doing harm to others and can be hidden do you want to be \$50,000.00 punitive. Ms. Leab added the project did go through a process, yes there was a mistake made, with everyone involved nobody corrected the mistake, it was all done in good faith but turned out to be wrong, intent counts, process counts and how punitive you want to be when it's not doing harm counts also. Ms. Middlebrook agreed with Ms. Leab and added that it's not a problem if it can be screened with shrubs and it's not causing noise problems. Mr. Averill agrees and feels the penalty would be out of line. Mr. Sedito felt that no malice was intended and literally enforcing regulations in this situation would create more detriment to the landscape. Mr. White is undecided; it troubles him that because somebody else made a mistake ZBA is left to cover somebody else's tracks, ZBA would not have granted a variance for this project, it's a tough situation. Mr. White reread the legal notice.

MOTION: to approve ZBA-0220, request of B.I. Acquisition, LLC, 182 East Shore Road, for a variance from Zoning Regulations 12.14 (generators & air conditioners) and 11.6.2 (minimum setback), to install generator & (3) air conditioning units, by a vote of 4-1

Ms. Leab, Mr. Sedito, Mr. Averill and Ms. Middlebrook voted to approve.

Mr. White voted to deny.

PUBLIC HEARING

Mr. White seated Ms. Leab, Mr. Sedito, himself and alternates Mr. Averill and Mr. Skoog.

ZBA-0221, Request of Arnold J. Herrmann, Trustee, 316 Nettleton Hollow Road, for a variance from Zoning Regulations 11.6.1 (minimum yard setback), to construct a porch. James G. Kelly, Esq. was present to represent the applicant. Mr. White read the letter of request. Mr. Kelly added the following to the file; a letter by Mr. Kelly dated 9/19/02, a letter from Duane Dill, Senior Architect dated 9/17/02, a memo from Felix Flint of David Kleinberg Design Associates dated 9/19/02, and a revised lot plan. Mr. Kelly gave lot coverage specifications (Mr. Flint's memo); to clarify that there was not a lot coverage issue. Atty. Kelly read the letter from Mr. Dill which gave reasons for the location of the screened in porch. Mr. Kelly and members reviewed the lot plan, the proposed screened in porch is 29'6" from the front lot line (the front lot line being the stonewall). Mr. Kelly read his letter dated 9/19/02, which described the existing house and work being done on it. It also referenced other properties in the neighborhood, this information Mr. Kelly felt would help prove that this variance is within the nature and harmony of the neighborhood. Mr. White asked for proof of hardship. Mr. Kelly referenced case law that states that a house that exists with in a set back in and of itself can create a substantial difficulty or hardship. He also stated that case law will support a ZBA that will not grant a variance because of lack in proof of hardship. Mr. Kelly feels the hardship in this case is the location of the existing structure, the substantial height issue of the property, and it doesn't dilute the effect of the regulations generally. Mr. Kelly referenced the desire of the town to preserve historical structures. Ms. Leab asked about the terrain of the property, Mr. Kelly replied that it is a substantial up slope. Mr. Kelly and members went on to review the proposed plans and look at other options. Ms. Middlebrook described the property as being

"right on the road" and hidden behind a stockade fence. Members asked about moving the porch back in line with the house or extend it off the back of the house. Mr. White asked if the applicants had pursued other options. Mr. Kelly emphasized that the porch is off the bedroom and will be a private outdoor space, to be built on pillars and used seasonal with no heat or plumbing. Mr. White asked Mr. Kelly to have the applicant explore other options, to do with location, size and worked on the plan, and provide that information to ZBA. Mr. White states that there is no hardship, it is a luxury. Mr. White asked for questions or comments from the public.

MOTION: to continue the Public Hearing Re: ZBA-0221, Request of Arnold J. Herrmann, Trustee, 316 Nettleton Hollow Road, for a variance from Zoning Regulations 11.6.1 (minimum yard setback), to construct a porch, was made by Mr. Sedito, seconded by Ms. Leab, by a 5-0 vote.

MOTION: to accept the minutes of the August 15, 2002 meeting as submitted, was made by Ms. Leab, seconded by Mr. Sedito, by a 5-0 vote.

OTHER BUSINESS

Mr. White reminded members of the meeting with Mike Zizka on October 10th at 6:30pm. The meeting will last for approximately two hours and will cover state and local regulations, how other ZBA commissions act, procedures, discuss "hardship", special exceptions and special permits, and to focus on the core of what a ZBA does and should do, also how other ZBA commissions operate.

Members received copies and discussed the proposed revisions to the Zoning Regulations to go to a Public Hearing on October 28th (Sections 12.14, 17 and 18.1.3) and the draft of revisions to the Zoning Regulations to be addressed at the September 23rd meeting of the Zoning Commission (Sections 14). There was much discussion on these proposed changes to the Zoning Regulations. Mr. White had hoped that with the Planning Commission working on a new Plan of Conservation and Development regulation changes would slow down, it's hard to keep up with the changes although some are over due. Ms. Leab felt that the proposed changes should be accessible on the town's website and that the Zoning Regulations themselves be formatted differently so one does not have to download the entire document to obtain certain sections. Mr. White encouraged members to put their comments in writing and/or attend the meeting/Public Hearing.

Mr. White mentioned that Mr. Owens, Janet Hill, David Owen and himself met to discuss coverage issues. There seem to be many different view points and conflict in definition on figuring lot coverage.

MOTION: to adjourn was made by Mr. Averill, seconded by Mr. Sedito, by a 5-0 vote at 9:40pm.

Submitted subject to approval,

Pamela L. Osborne, Secretary