**ZONING BOARD OF APPEALS**

MINUTES

Public Hearing – Regular Meeting

**April 20, 2017**

7:30 P.M. Main Level Meeting Room

**MEMBERS PRESENT:** Mr. Catlin, Ms. Roberts, Mr. Wyant, Mr. Bowman

**MEMBERS ABSENT:** Mr. Peterson

**ALTERNATES PRESENT:** Mr. Wildman, Mr. Horan

**ALTERNATES ABSENT:** Ms. Kaplan

**STAFF PRESENT:** Mr. Ajello, Ms. Pennell

**OTHERS PRESENT:**  Mr. Johnson, Mr. Platt, Mr. Szymanski, Mr. Kraigler,

Mr. Talbot, Mr. Komisar, Mr. McMorrow, Atty. Fisher,

Mr. Gunnip

**PUBLIC HEARING:**

Mr. Catlin called the meeting to order at 7:30 p.m.

**ZBA-1029: Request of Steve Kempf and Dixie Carter/147 West Shore Road/For Special**

**Exception from Section 17.5, Nonconforming Structure:**

**Seated:** Mr. Catlin, Ms. Roberts, Mr. Bowman, Mr. Wyant, Alt. Horan

Mr. Eliot Johnson of West Mountain Builders presented this application, along with Mr. Adam Platt, architect for this project.

Mr. Johnson gave a brief history of this property and discussed the issues with the garage. He showed photos of this property, as well as Site Plan of Proposed Garage & Pool dated 02-15-17, by John B. Murray Architect, LLC. Mr. Johnson stated the home was built in 1890 and renovated significantly around 1920. He noted the owners are currently doing renovations on the home, pointing out that these renovations are being conducted with sensitivity to the historical aspect of this home.

Mr. Johnson noted that the garage was built in the back of the home, estimating that this was done sometime in the 1960’s. He stated this is a preexisting nonconforming structure, partially located in the sideline setback area. Mr. Johnson stated the property is 1.65 acres and maintains only 8% lot coverage of the allowable 15%. He also made note that part of this driveway/lawn is owned by the neighbor, resulting in the setback coming off their driveway. Mr. Johnson explained that the garage foundation and floor are cracked, broken and in poor condition. He stated the access into the garage has been problematic with the house and driveway. Mr. Johnson stated the intent is to redesign the garage, square it up with the property and improve the grade along the side. He is proposing to demolish the existing garage, making the footprint slightly smaller and move it back on the property 6 ft.

Mr. Bowman asked how much of this proposed building will be in the setback area vs the existing building. Mr. Platt did the calculation and it was noted the proposed side yard setback is 4’ 9” and the current is 5’ 5”.

Mr. Catlin asked if the applicant considered making this a more conforming structure rather than more nonconforming, as well as turning this into a two car garage and find another location on the property for the storage space. Mr. Johnson stated that this will be a one car garage/one and a half and further explained the difficulties with changing the proposed location to a different area as suggested. Mr. Catlin asked if applicant considered pushing the garage further into the lot, to the south, away from the shared driveway. Mr. Johnson stated that it would make it very problematic to access the garage, as it would become behind the house rather than alongside it. He further explained the issue with the grade and the other ideas they considered that were just not feasible.

Mr. Bowman stated he believes something could be done with the grade. He suggested shifting the garage along the proposed retaining wall and using the space where the garage is now to make the gable end more accessible. Discussion took place between Board members, Mr. Johnson and Mr. Platt regarding different scenarios on location of this proposed garage.

Mr. Catlin expressed his concern with moving the existing garage further into an area where it should not be, becoming more nonconforming in its footprint. Ms. Roberts stated that the Board is under increased pressure with activity on Lake Waramaug. She noted that the Board’s Land Use attorney has indicated on numerous occasions that when you tear down a nonconforming building, one is not entitled to just move it somewhere else or even entitled to rebuild it.

Mr. Johnson asked what Board members thought if they moved the garage so as to alleviate the issue of encroachment onto the property line. Mr. Catlin stated he encourages they try to make this structure less nonconforming.

Mr. Catlin asked if there were any questions from members or the Public. Board members voiced their opinions that applicant should look at ways to make this nonconforming building less nonconforming, or to at least maintain its current nonconformity.

Further discussion took place regarding options and what direction the applicant should move. Mr. Johnson then requested that the Public Hearing be continued to the next ZBA meeting.

**MOTION:** To Continue Public Hearing for ZBA-1029 Request of Steve Kempf and Dixie

Carter/147 West Shore Road/For Special Exception from Section 17.5, Nonconforming

Structure to the next ZBA meeting scheduled on May 25, 2017 at 7:30 p.m. in the Main Level Meeting Room at Bryan Memorial Town Hall. By Mr. Catlin, seconded by Mr. Wyant, passed 5-0 vote.

**ZBA-1031: Request of WLR214, LLC/213 & 214 West Shore Road/For Special Exception from 12.14, Noise Generating Equipment:**

**Seated:** Mr. Catlin, Ms. Roberts, Mr. Bowman, Mr. Wyant, Alt. Wildman

Mr. Paul Szymanski, P.E. from Arthur Howland & Associates, submitted a letter dated April 20, 2017 requesting that this application for the generator be withdrawn. Mr. Catlin read this letter into the record and the application was withdrawn.

**ZBA-1033: Request of WLR214, LLC/213 & 214 West Shore Road/For Special Exception for from Section 17.5, Nonconforming Structure:**

Seated: Mr. Catlin, Ms. Roberts, Mr. Bowman, Mr. Wyant, Alt. Wildman

Mr. Paul Szymanski, P.E. from Arthur Howland & Associates, presented this application, along with Mr. Gunther Kraigler, architect from G-Ologic Design. Mr. Szymanski and Mr. Kraigler presented landscaping plans from Kent Designs dated 03-12-17, a neighborhood survey of West Shore Road dated April 2017 and site plans submitted 04-20-17 sheet A1.1, A2.1, A2.2, A2.3, A3.1, A4.1, G1.1. Also submitted was a Proposed Zoning Location Map ZL.2 dated 02-22-17 prepared by Arthur Howland & Associates, as well as a model of the property and photos.

Clarification was made by Mr. Catlin with respect to this property and a prior ZBA approval of plans submitted in December 2015 by Peter Talbot, architect, that never were implemented/built and stated this application currently being presented will be reviewed by the Board as a new application based on the building that exists now. Board members, Mr. Szymanski and Mr. Kraigler were in agreement and understood this.

Mr. Kraigler stated that his clients would like a sustainable, ecological, super energy efficient home, which he stated his firm specializes in. He noted he did use the prior plans approved by the Board in December 2015 as precedent to come up with the plans they are presenting at this meeting in terms of volume and size.

Mr. Kraigler presented the West Shore Road Neighborhood Survey they prepared. He stated it is not their client’s intent to build a very large home and further stated if it were, they would have purchased a larger home. Mr. Kraigler noted the surrounding properties of this home, pointing out data in terms of sizes and development of what is going on. He pointed out window sizes, scales and proportions and what has been approved by ZBA today. Mr. Kraigler stated that with this survey of these 22 structures within a third of a mile span showed that this home comes in fifth for the smallest structure within this span. Mr. Catlin questioned if this included lakeside homes and the size of lakeside lots vs across West Shore Road from the lake. Mr. Catlin also pointed out that many of the houses given as examples were not previously granted variancces of Special Exceptions by the ZBA. Mr. Kraigler stated the lakeside lots were about a quarter of an acre and across the road, the lots sizes were about an acre.

Mr. Kraigler discussed the landscaping they will propose to put in place, showing photos and plans with respect to this. He noted the plans show sensitivity to the building’s volume and being sensitive to the lakefront, as well as roadside views. He stated there will be buffers with plantings and landscape walls that will break down the scale of the home to the street. Mr. Kraigler did note that Inland Wetlands has approved this landscaping plan. He further stated that they will be addressing drainage issues by putting in catch basins and water management. Mr. Kraigler presented renderings of this landscaping plan with the proposed changes to the structure.

Mr. Kraigler explained in detail the architectural plans and how this home will be energy efficient. He noted this involves specific insulation throughout the home, including the foundation, solar energy gains with larger windows placed in specific locations. Mr. Szymanski noted the surrounding window size of homes in the area. Mr. Kraigler did note the changes made based on the Board’s feedback from last meeting held on this application. He spoke on specifics on how this thermal home will be obtained and addressed questions from Board members with respect to this.

Ms. Roberts asked what is different in the revised elevations compared to what was presented at last meeting. Mr. Kraigler stated they have revised and reduced the overall window openings and volume reduction in certain areas

Mr. Catlin pointed out that the south facade of the home that was approved for the prior applicant on this property was stepped back and not a single two story high façade. He further stated the roof is now being presented as one single plain, rather than as approved in the previous application by Mr. Talbot. He is concerned in this proposed plan the home has much more mass. Mr. Catlin explained how the prior applicant provided an excellent plan with broken plains and façade that made the home look more “hunkered down”. He further stated that the initial concern with the prior application exists with this new application being presented, but has been taken to a whole new level. Mr. Catlin noted the changes the prior applicant made at the suggestions of the Board and encouraged this applicant again to look at the minutes from this meeting to better understand concerns of the Board.

Mr. Kraigler stated they are trying to be sensitive to the concerns presented and understands them, but there are issues with the grade and it is a concern with respect to building a new structure for his client. He stated this plan does include cutting down the grade so that the home can sit better into the landscape. Mr. Kraigler felt there were some issues with the prior applicant’s plan that include aesthetic concessions given to the Board for functional useful spaces. He went on to point out what these were, stating that from his perspective these were not appropriate. Mr. Kraigler pointed out some facades that do not make sense with prior applicant’s plan, (including the façade showing a window going directly to a shower stall and a window going directly to a toilet stall). Mr. Kraigler explained his necessity to achieve certain solutions for his clients.

Discussion took place amongst members and Mr. Szymanski with respect to regulations and how they apply to this property and the plan being presented. Mr. Szymanski felt this structure being proposed was comparable to the existing homes in vicinity of this property. He further stated that the Regulations state in Section 17 that this is part of the requirement that the applicant must demonstrate. Mr. Catlin stated although this is correct, it is only one part of the regulations the Board needs to consider. Mr. Catlin noted that the Board has to look at how this proposed home will look on this specific property. Mr. Bowman stated the scale of the adjacent homes are quite different than the home they are proposing and the scale of these other homes are different as well. Mr. Catlin stated that some of the homes being referenced never came before the ZBA and pointing out that just because a neighbor’s house is twice as big, does not allow for an application such as this to be built just as large and not conforming of the existing Zoning code. Mr. Bowman stated he would like to see drawings of this proposed home compared to the current existing home, rather than showing the comparison to the proposed approved plans from previous owner. Mr. Kraigler did note that the current home is 1700 sq. ft. and the proposed home is 1900 sq. ft.

Ms. Roberts questioned the increase in the amount of glass being showed on these plans facing the lake front. Mr. Kraigler did agree that they did shift windows from the east facade to the west façade. He further explained the other windows and changes he made to the plan being presented. Ms. Roberts felt that this plan showed lot of glass facing the lake.

Mr. Catlin read part of regulations Section 17.5.C.1 and noted that the application has to demonstrate one of the two parts to this regulation. He stated that it does not support either of these two requirements. Mr. Catlin noted that when previously presented, it was a two and a half bedroom home. As the upstairs bedroom was difficult to get to etc., he explained that the applicant showed the continuation of the single family dwelling use and was bringing it into the twentieth century. Mr. Catlin stated this proposed plan shows this house changing significantly in size in many ways in order to end up with a two bedroom home, which it currently is. Mr. Bowman agreed with Mr. Catlin, stating that it is a significant change and the reasons being presented do not support the regulations that are in place.

Mr. Kraigler stated that this home is beyond just renovating it and listed the problems with the home. He fully understood the Board’s concerns, but asked them to consider what the client is up against with this project.

Ms. Roberts stated that what exists is a one story little cottage and this plan puts a two story gable end projecting right at the road. She explained that the plans being presented are much too large. Ms. Roberts stated it is handsome energy efficient home, however it does not meet Zoning restrictions.

Mr. Catlin suggested applicant and his client look at other previously approved ZBA applications in the general vicinity to get a better idea what the Board is looking for. Mr. Szymanski was in agreement to do this.

Mr. Catlin asked if there were any more questions from members or the Public.

Atty. Robert Fisher, attorney for the homeowner for this application, stated that he has been attending the past several Zoning meetings which were addressing the revisions of the regulations. He referenced comments from the town attorney, Atty. Zizka. Atty. Fisher stated that Atty. Mike Zizka did state that it would be problematic basing Zoning decisions on aesthetics. Ms. Roberts stated that the regulations are not written to address aesthetics and they are not there to legislate architect and aesthetics. She further stated that in section 17.5 of the regulations which the Zoning Board of Appeals has to consider when reviewing an application for Special Exception does in fact require ZBA look at aesthetics and architectural aspects of the neighborhood.

**MOTION:** To Continue the Public Hearing for ZBA-1033 Request of WLR214, LLC/213 & 214 West Shore Road/For Special Exception from Section 17.5, Nonconforming Structure to the next ZBA meeting scheduled on May 25, 2017 at 7:30 p.m. in the Main Level Meeting Room at Bryan Memorial Town Hall. By Mr. Wyant, seconded by Mr. Wildman, passed 5-0 vote.

**ZBA-1032 Request of WLR214, LLC/213 & 214 West Shore Road/For Special Exception for from Section 17.5, Nonconforming Structure:**

**Seated:** Mr. Catlin, Ms. Roberts, Mr. Bowman, Mr. Wyant and Alt. Wildman

Mr. Paul Szymanski, PE and Mr. Gunther Kraigler presented application. Mr. Szymanski explained that they are proposing to shift the garage so that it matches the footprint of the side of the garage that currently faces West Shore Road. Mr. Kraigler stated they are not asking to raise the roof or extend length of the garage. He stated they are requesting to increase the width of the garage by 18”, however grow it towards the interior of the lot, adding that this would allow for a car to comfortably fit. He stated that Mr. Szymanski explained that as the generator is withdrawn this is now possible. He noted the ridge of the garage will remain as it currently exists. Mr. Catlin asked if the generator will be considered again in the future to which the parties replied no.

Mr. Kraigler stated there will be stone retaining walls put in place behind the garage into the hillside that will be put in place. He pointed out where these will be built on the map. He also reviewed the landscape plan with the Board.

Mr. Catlin asked if there were any comments from the members or the Public. None were noted.

**MOTION:** To Close the Public Hearing for ZBA-1033 Request of WLR214, LLC/213 & 214 West Shore Road/For Special Exception from Section 17.5, Nonconforming with conditions. By Mr. Wyant, seconded by Mr. Wildman, passed 5-0 vote.

Mr. Wildman and Mr. Wyant were in support of this application and had no further comments or questions. Ms. Roberts also supported this application, stating that it is a modest change in width which will accommodate a modern day vehicle. Mr. Bowmen stated he is in favor of the application stating it is a modest change and has no objections. Mr. Catlin concurred and stated the structure meets the criteria for supporting the continued use of an accessory building and aesthetically acceptable with the neighborhood.

**MOTION:** To Approve ZBA-1033 Request of WLR214, LLC/213 & 214 West Shore Road/For Special Exception from Section 17.5, Nonconforming Structure, to Rebuild and Expand a Garage, per plans dated 04-20-17 by G-Ologic Sheet G1-1and A1-1 subject to the following conditions: any change to the approved site plan will void the Special Exception. By Mr. Catlin, seconded by Mr. Wyant, passed 5-0 vote.

**ZBA-1034 for Request of Paul Atkins/159 West Shore Road/For Special Exception from Section 17.5, Expansion of a Nonconforming Dwelling.**

Seated: Mr. Catlin, Ms. Roberts, Mr. Bowman, Mr. Wyant and Alt. Horan

Mr. Peter Talbot, architect for this project, presented this application. He read a letter he submitted dated March 30, 2017. This letter requested confirmation of a previous approval dated 10-15-15 (ZBA-1000), which under Section 17.5 in addition to Section 17.5.A.1.C, ZBA approved a lot coverage of 5% over the standard allowable lot coverage of 12.5% to 17.%% for the additions and renovations to their home. Mr. Talbot noted that the exterior spaces are limited and would like to expand them and add a hot tub while still keeping under the 17.5%.

Mr. Talbot stated that in this previous ZBA-1000 application, approval was made for 16.5% and they are now requesting slightly below 17.5% under the Special Exception due to the nature of the building. Mr. Catlin reviewed the previous approval of ZBA-1000. Mr. Talbot stated they are requesting about a foot more on the porch facing the lake and to enlarge the terrace behind the house. He noted that his clients felt the porch was too narrow and have requested it be enlarged a foot and a half.

Mr. Catlin asked if this porch extension was already built. Mr. Talbot replied yes and showed photos of the revised, constructed porch. Mr. Catlin asked if anything else has changed and Mr. Talbot stated no. Board members reviewed the previous map from ZBA-1000 application. Mr. Talbot stated the additional square footage is 844 sq. ft. and noted they are still under by 23 sq. ft.

Mr. Talbot did note that neighbors to this applicant, Mr. and Mrs. Paul Frank, indicated in an email to him and the homeowners that they supported this application. Mr. Talbot agreed to submit a copy of the relevant portion of an email to him from the Franks for the record (there was other privileged information in the email he did not wish to disclose.)

Mr. Catlin asked if there were any further questions from Board members or the Public. Mr. Bowman asked Mr. Talbot regarding the last ZBA application on this property if the approval was based on a percentage of the overall lot size or specific square footage. Mr. Talbot stated that ZEO, Mr. Mike Ajello, explained that he was misinformed on how he had received prior approval and that ZBA only approves applications for what applicants are showing and not an abstract percentage.

**MOTION:** To Close the Public Hearing for ZBA-1034 for Request of Paul Atkins/159 West Shore Road/For Special Exception from Section 17.5, Expansion of a nonconforming Dwelling, By Mr. Catlin, seconded by Mr. Wyant, passed 5-0 vote.

Mr. Horan and Mr. Bowman stated they are in support of this application. Mr. Catlin concurred, adding that this should have been part of the prior application submitted. Ms. Roberts and Mr. Wyant stated their support for this application as well.

**MOTION:** To Approve Request for ZBA-1034 for Paul Atkins/159 West Shore Road/For Special Exception from Section 17.5, 17.5.1.c, Expansion of a Nonconforming Dwelling to Expand a Nonconforming Structure to add a Hot Tub, Bluestone Patio and Extend Porch to 3 Sides by 1” per Site Plan SP.1 by Peter Talbot, AIA dated 03-29-17. Any changes to the approved Site Plan will void the Special Exception. Passed by 5-0 vote.

**ZBA-1035: Request of Komisar Investments, LLC-Larry Komisar/154 New Milford Tpke./For Variance from Section 12.1.1 and 12.1.2, Wetlands and Watercourses Setbacks.**

Seated: Mr. Catlin, Ms. Roberts, Mr. Bowman, Mr. Wyant and Alt. Wildman

Mr. Larry Komisar, property owner of Komisar Investments and Litchfield Kitchen and Bath, and Mr. Dennis McMorrow, PE with Berkshire Engineering & Surveying, LLC, presented this application.

Mr. McMorrow referred to plans submitted “Site Layout Plan Proposed Turnaround dated 03-13-17 by Berkshire Engineering & Surveying, LLC. He stated that his property is an odd shaped lot adjacent to the parcel in question. Mr. McMorrow had highlighted an area on the map in green to show an option Mr. Komisar has with the Department of Transportation (DOT) to purchase a small piece of property to accomplish building the driveway being applied for. Mr. McMorrow stated this will allow the driveway to actually be on his property, if the DOT lot is acquired. He also noted that there is an

existing driveway to an existing garage with a slope coming off the downhill side that is very steep. He pointed out that there is a retaining walls on the uphill side. Mr. McMorrow stated that when you pull into this driveway, there is no room to turn around and forces one to back out onto the state highway, which is a safety issue.

Mr. McMorrow explained that they had to work around the septic area and placed the retaining wall at its present location as a result. He discussed the steepness of the embankment and used the map to show the specific size of the wall and the grade. Mr. McMorrow indicated where the area to be filled in would be located. He noted the restrictions involved with having the East Aspetuck River in the backyard. He stated they are proposing 30 ft. away from the river, as well as a driveway that will be a paved surface within 30 ft. of the river. Mr. McMorrow stated that Inland Wetlands has approved this application. He noted the wall faces the river and is not visible from the road. Mr. McMorrow stated the wall will be a segmental concrete block wall with a guiderail on top of the wall.

Mr. McMorrow stated that if they receive all approvals from the commissions/board then Mr. Komisar will purchase this property from the state and it will be merged with his property.

Mr. Catlin asked if there were any further questions from the Board or the Public. None were noted.

**MOTION:** To Close the Public Hearing for ZBA-1035 for Komisar Investments, LLC-Larry

Komisar/154 New Milford Tpke/For Variance from Section 12.1.1 and 12.1.2, Wetlands and Watercourses Setbacks. By Mr. Catlin, seconded by Ms. Roberts, passed 5-0 vote.

Mr. Wildman supports this application, stating it addresses the safety concerns and it maintains the septic. Mr. Wyant and Ms. Roberts agreed and supports the application. Mr. Bowman stated the property does have a unique hardship with the steep grade and configuration. He feels this plan addresses these concerns. Mr. Catlin stated he also understands the hardship with this difficult lot and the safety issues are a concern. He is in support of this application.

**MOTION:** To Approve ZBA-1035 for Komisar Investments, LLC-Larry Komisar/154 New Milford Tpke/For Variance from Section 12.1.1 and 12.1.2, Wetlands and Watercourses Setbacks to construct turnaround and retaining wall as per plans by Berkshire Engineering and Surveying, LLC, 12-2418(SP) dated 03-17-17 “Site Layout Plan Proposed Turnaround” and an A2 survey dated 03-07-17, with the following condition that any change to the approved site plan will void the variance. Passed by 5-0 vote.

**CONSIDERATION OF THE MINUTES:**

Board members reviewed the March 16, 2017 meeting minutes.

It was noted that Mr. Paul Szymanski was not listed as present for the meeting and he was in fact present.

On page 2 first paragraph, the sentence stating “She further noted that they are also requesting to demolish the large concrete platform that is 72’ x 16’ which extends into the lake, replacing this with a smaller wooden floating dock 16’ x 5’ that connects to the dock further out”, should read, “She further noted that they are also requesting to demolish the large concrete platform that is 7’2” x 16’ which extends into the lake, replacing this with a smaller wooden floating dock 5’ x 16” that connects to the dock further out.”

On page 8, last paragraph, the sentence stating, “He noted this property is under new ownership and they are requesting some modifications to a previous application submitted, which was for a second story addition”, should read, “He noted this property is under new ownership and they are requesting some modifications to a previous approval (ZBA-1005) application, which was for a second story addition.”

**MOTION:**  To accept the minutes of the March 16, 2017 meeting as amended. By Ms. Roberts, passed 5-0 vote.

**OTHER BUSINESS/DISCRETION OF THE FLOOR:**

As this was Ms. Roberts last Zoning Board of Appeals meeting due to her resignation, Mr. Catlin took a moment to thank her for her service to the Zoning Board of Appeals.

Mr. Catlin stated, “Tonight is sad night in the history of the ZBA. Polly Roberts has been a stalwart, dedicated, cheerful, thoughtful and stunningly dedicated member of this Board for an amazing 22 years. Her guidance as the Vice Chair, then Chair, then Vice Chair again has been first rate. Polly’s attention to the balance of the rights of the landowner and respect of the Zoning Code should be a template to how to be a really good Board member. I know it has been for me. She will be greatly missed here on the third Thursday of every month, except in May of course, as she always reminded us, due to the Towns Meeting! We wish you well as you aspire to fill those few hours every month without us! Thank you very much for your dedicated service to this Board and to this wonderful town we call home.”

Board members expressed their gratitude and acknowledged that Ms. Roberts will be greatly missed. Ms. Roberts thanked the Board and expressed what a pleasure it has been to work with the members.

**ADJOURNMENT:**

**MOTION:** To adjourn the meeting at 9:40 p.m. By Ms. Roberts, passed 5-0 vote.

**Filed Subject To Approval**

**Submitted by:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Donna Pennell, Land Use Clerk

May 3, 2017