**ZONING BOARD OF APPEALS**

MINUTES

Public Hearing – Regular Meeting

**June 15, 2017**

7:30 P.M. Main Level Meeting Room

**MEMBERS PRESENT:** Mr. Bowman, Mr. Wyant, Mr. Peterson, Mr. Horan

**MEMBERS ABSENT:** Mr. Catlin

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

**ALTERNATES ABSENT:** Ms. Kaplan

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

**OTHERS PRESENT:**  Atty. Kelly, Atty. Pires, Mr. Szymanski, Mr. Janson, Mr. Schwartz

**PUBLIC HEARING:**

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

**Seated:** Mr. Bowman, Mr. Horan, Mr. Wyant, Mr. Peterson, Alt. Mr. Wildman

**ZBA-1029: Continued: Request of Steve Kempf and Dixie Carter/147 West Shore Road/For Special Exception from Section 17.5, Nonconforming Structure:**

Mr. Bowman read a letter dated June 14, 2017 from applicant’s agent, Mr. Eliot Johnson of West Mountain Builders, requesting that the application be withdrawn.

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

Mr. Bowman read a letter dated June 14, 2017 from applicant’s agent, Mr. Paul Szymanski of Arthur Howland & Associates, requesting that the application be withdrawn.

**ZBA-1040: Request of Keith Angell/47 West Shore Road/For Variance from Section 11.6.1C Front and Rear Setback:**

Atty. Jim Kelly was present to represent the applicant and submitted an agent authorization letter for the file.

Mr. Bowman noted that this application was originally presented to the Zoning Board of Appeals in January 2017, and that it pertained to a small storage shed and a stone patio, both of which had already been constructed. Mr. Bowman asked Atty. Kelly to clarify the current status of the application and present any new information. Atty. Kelly explained that the application was now limited to the storage shed, and that the stone patio would be removed by September. Regarding the shed, Atty. Kelly indicated he had no information to present, and considered his responsibility (this evening) limited to “babysitting” the application. He noted he did not believe the shed required a variance, and that the application was submitted in response to a request from the Zoning Enforcement Officer. Atty. Kelly stated his belief that the zoning regulations allow the construction of a boat house within the setbacks from the lake, but that this exception was to conflict with other sections of the regulations, and that ZBA was the appropriate means of resolving the conflict.

Atty. Kelly noted the conflict was partially a result of measuring the front setback line from a “public road” and referenced Atty. Zizka’s past statement that the town’s regulation defines the word “lot” as any public road whether defined as a lot line or not, constitutes a lot line, requiring a variance from the front line setback in which this application is West Shore Road to the lake, despite the regulations intent to allow boat houses.

Mr. Mike Ajello, Zoning Enforcement Officer, did note the definition of setback is measured from a public right away, which in this case is West Shore Road and Mr. Angell owns underneath the road. He also gave brief history of this application.

Mr. Bowman noted for the record that a lengthy letter dated June 15, 2017 was received from Atty. Philip C. Pires of Cohen and Wolf law firm out of Bridgeport, CT. Atty. Pires represented the Lake Waramaug Association. In this letter, Atty. Pires expressed LWA’s opposition to this application, noting that the application does not support an unusual hardship for this variance. A copy of this letter is in the file.

Mr. Bowman asked if Atty. Kelly would like to respond to this letter in regard to the hardship that exist. Atty. Kelly stated he would defer to the reasons that any boathouse/shed is allowed on a property. He again noted the conflict in the regulations in the definition of “lot”, and interpreting the road as a lot line. Atty. Kelly repeated his opinion that this variance should not even be necessary and this should be an application that can be permitted under an administrative permit.

Atty. Pires spoke with regard to the LWA’s opposition to this application. He noted that in order to obtain a variance, the applicant needs to show a hardship and added that in

His opinion, there are no conflicts in the regulations. Atty. Pires stated the applicant is seeking a variance from the rear setback, front setback and from 12.1.1 that precludes the construction of this shed within 50 ft. of the lake because this is not a boat house. He added there is nothing unique about this property that warrants the need for this shed, as well as no hardship demonstrated. Atty. Pires stated that per existing regulations of the town, it is ZBA’s obligation to enforce these regulations.

Mr. Bowman did state the town discourages construction of buildings within the setback from the lake that are not considered to be a boathouse. He did note that the definition of a boathouse does include a building intended for the storage of boating related equipment/accessories. Mr. Bowman noted the application identifies the shed as “moveable” and inquired if it was the applicant’s intention to remove the shed at the end of the boating season. Atty. Kelly stated this shed will be tethered to its location and he has no knowledge of applicant wanting to move this. He again noted the conflict is in the Zoning Regulations definition as to whether or not a right away constitutes being a lot and ZBA is the ultimate arbitrator that handles conflicts in the regulations. Atty. Kelly stated he would not withdraw this application, as it is an administrative process that they are following through with.

Mr. Bowman asked Mr. Ajello if he had anything to add to this discussion. Mr. Ajello did note that this structure does constitute a boat house according to the definition in the regulations. He explained that a boathouse is allowed per section 12.1.1. and that the watercourse setback is not in effect here. Mr. Ajello stated the issue is the front and rear setback. He noted this property is 45 ft. deep from the road surface to the shore and that you cannot put a building on this parcel without a variance, pointing out the

unique shape of this property.

Upon questioning from the Board, Atty. Kelly stated he does feel a variance is necessary as there is a conflict in the regulations and ZBA is the arbitrator that needs to address this. He did note that he does not believe that a hardship in this application is necessary.

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

Mr. Bowman noted the current application is incomplete, in that it does not include a current survey and the submitted site plan includes only approximate dimensions. Mr. Bowman suggested to Atty. Kelly that a survey be provided that includes exact dimensions from the lot lines to the shed. Mr. Bowman noted that the submitted site plan includes dimensions to an existing concrete slab, but since the application pertains to the shed, these dimensions are not applicable. Mr. Bowman requested that the application material be revised to delete any reference to the stone patio and should include an explanation of why Atty. Kelly believes the regulations are in conflict. Atty. Kelly stated that the request for a survey was reasonable and then requested a continuance so that applicant can provide an accurate survey.

**MOTION:** To continue ZBA-1040/Request of Keith Angell/47 West Shore Road/For Variance from Section 11.6.1C Front and Rear Setback. By Mr. Bowman, seconded by Mr. Wyant, passed 5-0 vote.

**ZBA-1041: Request of Erben Partners, LLC/169 West Shore Road/For Variance from Section 11.6.1.C, Minimum Setback and Yard Dimensions, and Section 12.1.1, Wetlands and Watercourse Setback:**

Mr. Paul Szymanski, P.E. of Arthur Howland and Associates, Mr. Mark Janson of Janson Goldstein, LLP Architects and property owner, Mr. Mark Schwartz presented this application.

Mr. Szymanski reviewed plans dated May 25, 2017 titled “Proposed Walkway Plan” prepared by Arthur Howland and Associates. Also submitted at the meeting were plans prepared by Jason Goldstein, LLP Architects, which included a site plan with existing conditions, site plan with proposed renovations, existing and proposed elevations, photos of existing and proposed property, 01 through 07, and plans prepared by McCobb Landscape Architect sheet 1 of 1.

Mr. Szymanski stated this application is for a variance for the walkway that surrounds the accessory building, as it is affixed to the ground. He noted the proposed rear side yard setback is 13.8 ft. and the front right of way is 0.0 ft. Mr. Szymanski noted there is a purported right of way that was never formalized. He noted the hardship is with respect to the overlapping setbacks on the property and affords homeowner’s access to it. Mr. Janson showed this area on maps provided.

Board members took a moment to review the new plans that were submitted at the meeting. Mr. Bowman asked Mr. Szymanski to explain the hardship. Mr. Szymanski stated is due to the overlapping setbacks and a unique situation of the building in which the right of way goes through the building itself. Mr. Bowman asked why the need for the walkway to which Mr. Szymanski stated to access the building. Mr. Horan inquired how the building is accessed currently. Mr. Szymanski stated it is accessed from the road through this accessory building and the homeowner, Mr. Schwartz stated this building will be used for storage.

Mr. Bowman noted for the record that a lengthy letter dated June 15, 2017 was received from Atty. Philip C. Pires of Cohen and Wolf law firm out of Bridgeport, CT. Atty. Pires represented the Lake Waramaug Association. In this letter, Atty. Pires expressed LWA’s opposition to this application, noting that the application does not support an unusual hardship for this variance. A copy of this letter is in the file.

Atty. Pires stated that the applicant’s statement that the hardship is based on the overlapping of setbacks is not considered a hardship. He cited cases that have addressed this issue in which a ZBA decision was reversed for granting a variance based on such a hardship. He pointed out there is an existing accessway that can be utilized.

Mr. Bowman pointed out that there is an accessway from this building from the roadway currently and asked why this accessway is not acceptable. Mr. Szymanski replied by asking the Board if in fact a walkway within the front setback requires a variance coming from a road to a house. Mr. Bowman believed it did, but referred question to the Zoning Enforcement Officer, Mr. Mike Ajello. Mr. Ajello stated that regulations do not measure setbacks from walkways/driveways for obvious reasons, such as not being able to get to properties when necessary. He noted certain situations that are exempt from setbacks.

Mr. Szymanski stated he valued the Board’s time and would review these plans further and see what they can come up with. Mr. Bowman stated that he fails to see a hardship in accessing this building. Mr. Horan asked if there is a reason why this hardship is being requested other than what has been discussed. Mr. Schwartz did state that he has family members that are in wheelchairs and this is a safety concern.

**MOTION:** To continue ZBA-1041/ Request of Erben Partners, LLC/169 West Shore Road/For Variance from Section 11.6.1.C, Minimum Setback and Yard Dimensions, and Section 12.1.1, Wetlands and Watercourse Setback. By Mr. Bowman, seconded by Mr. Wyant., passed 5-0 vote.

**ZBA-1042: Request of Erben Partners, LLC/169 West Shore Road/For Variance from Section, 11.6.1.C, Minimum Setback and Yard Dimensions, and Section 12.1.1, Wetlands and Watercourse Setback.**

**Seated**: Mr. Bowman, Mr. Horan, Mr. Wyant, Mr. Peterson, Alt. Mr. Gunnip

Mr. Paul Szymanski, P.E. of Arthur Howland and Associates, Mr. Mark Janson of Janson Goldstein, LLP Architects and property owner, Mr. Mark Schwartz presented this application.

Mr. Szymanski did note that he will be requesting a continuance for this application due to architectural drawings have not been included in the original application and that are only now being submitted at this meeting. The original application included only a site plan dated May 25, 2017, and entitled “Proposed Site Development Plan” prepared by Arthur Howland and Associates. Also submitted at the meeting were architectural plans prepared by Janson Goldstein, LLP Architects, which included a site plan with existing conditions, site plan with proposed renovations, existing and proposed elevations, photos of existing and proposed property, 01 through 07, and plans prepared by McCobb Landscape Architect sheet 1 of 1.

Mr. Szymanski explained that this application proposal is for the reconstruction of the existing residence located near the lake. He stated that the State of Connecticut drainage system literally drains through this home and he is unaware of any existing property in Washington that this exists. He expressed his opinion that the existing drainage pipe has likely started to leak and has caused rot and mold to develop and compromising the structure. Mr. Szymanski stated they are looking to reconstruct this home and maintain the current non-conformities.

Mr. Janson used plans submitted to show the proposed reconstruction. He noted the only variation is the current pier is somewhat collapsed and falling apart and they are proposing to rebuild that with the largest length allowed for a dock. Mr. Janson stated that about 60% of the proposed roof line will be lowered and a small portion of the roof will be raised, but no higher than the existing chimney. Mr. Janson noted that the proposed structure would be 120 cubic ft. smaller than the existing structure.

Mr. Bowman inquired as to the drainage issue, which the homeowner will be replacing at his expense so that it will no longer discharge in its current direction. Mr. Szymanski explained that they are currently going through Inland Wetlands for approval of this project. He stated the plan is to reroute the drainage in a westerly direction, an upgrading of the existing sea wall, and putting a number of rechargers in place with a high overflow into the lake.

Mr. Bowman noted for the record that a lengthy letter dated June 15, 2017 was received from Atty. Philip C. Pires of Cohen and Wolf law firm out of Bridgeport, CT. Atty. Pires represented the Lake Waramaug Association. In this letter, Atty. Pires expressed LWA’s opposition to this application, noting that the application does not support an unusual hardship for this variance. A copy of this letter is in the file.

Atty. Pires stated he understood the stated explanation for hardship, but does not feel it is a hardship. He added that water under the building does not justify a hardship. Atty. Pires stated if it can’t be repaired or reinforced, then they should just tear it down, and noted the general intention of most zoning regulations is to remove non-conforming structures. He stated they need to show that this plan presented for reconstruction is the only way this property can be utilized and added that they have not done this.

Mr. Szymanski referenced C.G.S. 8-6 which states that where a hardship arises as a result of a voluntary act by one other than the one whom the variance will benefit the Board may exercise at its liberal discretion granting of the variance. He referenced a court case in which this statute applied and stated he would provide this information to the Board at the next scheduled meeting.

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

Mr. Bowman stated that this is a unique property with unique challenges. He stated he did not feel it was impossible to repair the existing building and maintain its current use which is opened to the lake and water runs right up to it. He noted that the new proposed plans submitted indicates a very different use for this property. Mr. Bowman inquired as to the current sq. footage of the portion of the existing building that is used for “living” and not as boat storage. Mr. Janson stated it is about 500 sq. ft. Mr. Bowman stated that this 500 sq. footage more than likely does not qualify as a single family home due to its size. He noted that the proposed plan is to double the size of this building. Mr. Bowman voiced his opinion that the applicant is taking an existing boat house with what appears to be a small cottage attached to it and proposing to convert it into a single family home. He stated he is not convinced that there is a hardship.

**MOTION:** To continue ZBA-1042/Request of Erben Partners, LLC/169 West Shore Road/For Variance from Section, 11.6.1.C, Minimum Setback and Yard Dimensions, and Section 12.1.1, Wetlands and Watercourse Setback. By Mr. Bowman, seconded by Mr. Wyant, passed by 5-0 vote

**CONSIDERATION OF THE MINUTES:**

Board members reviewed the May 25, 2017 meeting minutes.

**MOTION:** To accept the minutes of the May 25, 2017 meeting as submitted. By Mr. Bowman, seconded by Mr. Wyant, passed 5-0 vote.

**ADJOURNMENT:**

**MOTION:** To adjourn the meeting at 8:30 p.m. By Mr. Wyant, seconded by Mr. Gunnip, passed 5-0 vote.

**Filed Subject To Approval**

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

Donna Pennell, Land Use Clerk

June 22, 2017