**ZONING BOARD OF APPEALS**

MINUTES

Public Hearing – Regular Meeting

**September 21, 2017**

7:30 P.M. Main Level Meeting Room

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

**MEMBERS ABSENT:** Mr. Catlin, Mr. Horan

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

**ALTERNATES ABSENT:** Ms. Kaplan

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

**OTHERS PRESENT:** Mr. Angell, Atty. Pires, Ms. Holmes, Atty. Fisher, Mr. Szymanski, Mr. Janson, Mr. Schwartz, Mr. & Mrs. Berne

**PUBLIC HEARING(S):**

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

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

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

Mr. Angell discussed the history of the property. He stated that there are three unique characteristics of his property; 1. His property is 4+ acres with 600 linear feet of frontage on Lake Waramaug, the house is at a high elevation and the property is bisected by the State road. 2. There is an easement to the LWA with model buffer zone plantings which people visit and 3. There is an unsupervised parking space adjacent to the model plantings which tend to bring trespassers onto his property and items have been stolen from his dock and beach area.

He stated that the proposed shed is temporary at this time and was a replacement for a small wooden box that was down near his b ach area. He noted that it is cedar and the doors are safer and it holds enough equipment for boating, a small kayak and it keeps the beach area less cluttered. He referred to the pictures that were submitted (on file in the Land Use Office).

Mr. Angell read the letter addressed to the Zoning Board of Appeals from Atty. James Kelly, dated September 21, 2017 Re: 47 West Shore Rd. (on file in the Land Use Office).

Mr. Bowman stated that he understood that this shed was originally supposed to be installed on the existing concrete slab but it is not at the present time.

Mr. Angell explained that the front of the shed is on the existing concrete slab and the remainder of the shed is on crushed stone.

There was a brief discussion regarding the lot coverage in regards to locating the shed on the existing slab and locating only the front of the shed on the existing concrete slab.

Mr. Bowman asked about the pending Inland Wetlands application regarding the stone terrace. He stated that this structure has been referred to as a boat house but should be considered a storage shed.

Mr. Angell stated that he is still working with the IWC regarding the terrace, they are waiting for the water to be low enough at the Lake and extensions have been granted for these applications.

Mr. Bowman noted that he visited the site and found that there were items stored outside the shed. Mr. Angell stated that it is small shed and he has been storing more valuable items inside of the shed.

Atty. Pires was present to represent the Lake Waramaug Association. He stated that the LWA is opposed to this application and that it is a convenience to the property owner and does not meet the criteria for extreme hardship.

Ms. White noted that there is a question of safety crossing the State road with bulky boating equipment.

Mr. Bowman asked if Mr. Angell had considered withdrawing this application and including it in the new presentation to the Inland Wetlands Commission.

Mr. Angell stated that they did bring it to the IWC as part of a comprehensive improvement plan and they didn’t want to hear it.

Mr. Ajello stated that he presented the shed to the IWC and they did not have any objections because there was no perceivable impact to the water.

There were no further questions from the public.

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

**Meeting**

Mr. Wildman stated that he feels it meets the requirements for Zoning Regulation 12.1.1.B, IWC is not concerned about its location, it will keep the property owners valuable equipment protected and he is in favor of the shed. Mr. Bowman stated that he does not consider this a boathouse but a storage shed. He noted that if it were a boathouse it would have to go through the Special Permit process. Mr. Wyant stated that he was unsure that he could support this application. Mr. Peterson stated that he could support this application, ZBA has dealt with storage sheds often and he does not see this shed as a big issue. Mr. Gunnip supports this application because he would not want the property owner to request a larger structure, the proposed location and size is unobtrusive and not too noticeable from the road. Mr. Bowman stated that he would call this a shed, the IWC does not show a concern for the proposed location and size of the shed and it is consistent with other sheds that have been approved in the past.

**MOTION**: To approve application ZBA-1040: Request of Keith Angell/47 West Shore Road/ For Variance from Section 11.6.1C Front and Rear Setbacks to build shed per map titled “Zoning Location Survey,” prepared for Keith Angell, 47 West Shore Rd, by T. Michael Alex, revision date 8-19-17. By Mr. Bowman, seconded by Mr. Wyant, passed 5-0 vote.

**ZBA-1041 – Request of Erben Partners, LLC/169 West Shore Rd/ For Variance from Section 11.6.1.C and Section 12.1.1:**

It was noted that at the last ZBA regular meeting Mr. Szymanski stated in error that this application had been withdrawn. Mr. Bowman read the letter that was submitted via email, dated September 21, 2017, formally requesting that the application ZBA-1041 be withdrawn.

**ZBA – 1043: Request of Frank Martinelli/18 Titus Road/For Special Exception from Section 12.14-Noise Generating Equipment to install generator:**

Michelle Holmes was present to represent Mr. Martinelli, property owner. She stated that she works for Dr. Kevin Bodling who leases space at 18 Titus Road for his business, Avexia Diagnostics. Ms. White confirmed an agent representation letter was submitted.

Ms. Holmes explained that a large part of the business is Doctor’s Choice answering service. She stated that this is a 24/7 all year around answering service for mostly medical companies. Ms. Holmes stated that it is necessary for their business to have a generator so that they may continue with business in the case of power outages.

Ms. Holmes stated that the original proposed location was not approved by the Health Department due to the existing flood plain and the leaching fields.

The Commissioners looked at the map titled “Zoning Location Survey,” prepared for 18 Titus Road, LLC, by T. Michael Alex, dated September 2017.

Ms. White noted that Mr. Brinton, neighboring property owner, came into the Land Use Office today and stated that he did not have any objection to the generator but requested that the weekly testing be scheduled between 11:00 a.m. and 5:00 p.m. on a weekday.

Ms. Holmes stated that they could accommodate that request and would schedule it to run its 15 minute testing between those hours during one of the weekdays.

The Commissioners looked at the spec sheet for the Kohler, Model 48RCL generator.

Mr. Ajello stated that he, Eagle Electric, the property owner, and a neighbor worked on choosing the best available location for this generator. He stated that the entire east side of the building is in a floodway and no structures can be located in that area and the back of the building is a parking lot and septic.

There were no questions from the public.

**MOTION:**  To close the public hearing for ZBA-1043: Request of Frank Martinelli/18 Titus Road/For Special Exception from Section, 12.14, Noise Generating Equipment to install generator. By Mr. Bowman, seconded by Mr. Wyant, passed by 5-0 vote.

**Meeting**

Mr. Wildman stated that he has no problem with this application. Mr. Wyant stated that this application was very well presented and he has no objections. Mr. Peterson stated that he feels that this is the best placement for the unit. Mr. Gunnip and Mr. Bowman stated that they do not have a problem with this application.

**MOTION:** To approve application ZBA-1043: Request of Frank Martinelli/18 Titus Road/For Special Exception from Section, 12.14, Noise Generating Equipment to install generator per map titled “Zoning Location Survey,” prepared for 18 Titus Rd, LLC, 18 Titus Rd, by T. Michael Alex, dated September 2017, with the condition that exercise hours are done weekdays between 11 a.m.- 5 p.m. By Mr. Bowman, seconded by Mr. Wyant, passed by 5-0 vote.

**ZBA-1044: Request of Arthur H. Howland & Associates, P.C./169 West Shore Road/For Variance from Section 11.6.1.C, Front, Side & Rear Setbacks and Section 12.1.1:**

Mr. Stewart, property owner, stated that this is a new and totally different application that they are proposing for the property at 169 West Shore Rd. He noted that they have taken the Commissioners’ and public comments into consideration. He stated that he would like to go through all of the changes.

Mr. Bowman stated that this application must be substantially different from the previous application that was denied. He noted that the property owner has filed an appeal for the denial and he is reluctant to move on anything in case the other one gets approved.

Mr. Stewart stated that the proposed project that they are presenting tonight is different in terms of dimensions, location, height and use.

Mr. Bowman expressed concern that he felt that one of the flaws with the previous application was that they were taking an existing nonconforming structure, voluntarily removing it and replacing it with a new nonconforming building. He stated that this proposed plan does the same. Mr. Bowman informed Mr. Stewart that Town Counsel has advised against the replacing of a nonconforming structure with another nonconforming structure and the intent of the Town of Washington Zoning Regulations is to remove nonconforming buildings.

Mr. Schwartz stated that they have been residents for 16 years. He noted that they bought the property in an effort to reduce development and have made many improvements to their property in effort to improve the quality of water in Lake Waramaug. He continued to explain that this proposed plan reduces the size and nonconformities of the structure. Mr. Schwartz said that he has reviewed the plans with his neighbors and the Lake Waramaug Task Force. He read some of the letters of support from his neighbors and submitted them for the record (on file in the Land Use Office). He noted that this proposed plan improves the view of the Lake from the road and it does not have a second story.

Mr. Janson, Architect, stated that the current structure is in a state of disrepair, there is a large drainage pipe coming from wetlands up the hill that is draining under the existing structure and has undermined the foundation. He added that there are two concrete walls that are extending into the Lake which are tilting and falling into the water and serve no function. The boat garage is smaller and would not fit a modern size boat and both it and the slip are silted up.

Mr. Stewart noted that the existing boat garage had been carved out of the original shoreline and this proposed plan would restore the shoreline.

Mr. Janson stated that it is his professional opinion, along with contractor, Brad Sedito, and Brian Neff, P.E. that the foundations and framing of the existing structure all need to be brought up to current standards.

Mr. Janson noted that the existing structure has 12,750 cubic feet, the original application (that was denied) reduced the cubic feet to 12,620 in which they arranged the volume to create a small second level. This current application eliminates the second level and further reducing the cubic feet from 12,750 to 11,950. The existing structure is at an elevation of 716.7 ft. and the elevation of the proposed structure is 716 ft. Mr. Janson stated that this proposed plan indicates moving the structure 6 inches to the west, which would put the structure an additional 6 inches from the east property line. He noted that the wall facing the Lake is proposed to being moved 6 inches to the south and the wall facing the road, 6 inches to the north. He informed the Commission that they are proposing to use all natural material, stone native to the area and a zinc standing seam roof. There will be no parking.

Mr. Bowman asked what they are planning on doing with the existing garage.

Mr. Stewart answered that they will be rebuilding what is there and it would not require a variance.

Mr. Szymanski, P.E. pointed out that Town Counsel referenced the Verillo v. Town of Branford case and that case is distinctly different from what is being proposed. He said that the case mentions that the narrow allowance to the hardship test is only when every single nonconformity is being reduced on the property, which this application does. He stated that the front setback is 50 feet and the rear setback is 25 feet and they overlap on this property and the strict conformance with the Zoning Regulations would be impossible.

Mr. Bowman stated that it is his understanding of Atty. Zizka’s opinion is that if and existing nonconforming building is torn down voluntarily there is no inherent right to rebuild on that lot. He referred to Section 17.4.B of the Zoning Regulations that read, “Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.”

Mr. Szymanski stated that they cannot confirm no matter what they do.

Mr. Bowman stated that the conclusion is that the building cannot be moved or removed.

Mr. Szymanski responded that he respectfully disagrees.

Mr. Bowman stated that the Commission is being clearly advised by Town Counsel that if there is a nonconforming structure and it’s removed, the property owner does not have the right to replace it.

Mr. Szymanski stated that this applies to a lot in which there are conforming setbacks and there is an ability to build somewhere on the property.

Mr. Stewart said that maybe this would be solved if they keep parts of the existing foundation.

Mr. Bowman responded that the property owner has the right to renovate the existing building and repair it.

Mr. Stewart stated that he is willing to commit to retaining parts of the existing foundation so it would be considered a renovation.

Mr. Bowman responded that he was not sure how that affects the regulations and would prefer to talk to Town Counsel about.

Mr. Stewart stated that after consulting with legal experts he believes that because they are reducing all of the nonconformities they are able to put in the new structure and because of the hardship caused by the State putting drainage directly into the structure and the plan proposes to correct that.

Mr. Bowman noted that the proposed plan is an improvement in many ways but that is not justification for a variance. He feels that the drainage into the building has been occurring for years and it could have been repaired and it could still be repaired.

Mr. Stewart responded that professionals have advised against repairing the existing building because of its condition.

Mr. Janson stated that the building has been inundated with moisture and mold for 80 years and is not habitable or safe. He does not believe that these conditions could be repaired.

Mr. Bowman suggested a condemnation action and that may result in the building being demolished but he is not sure what would be allowed, but certainly not just anything.

Mr. Szymanski stated that they would have to reduce all nonconformities for the ZBA to approve a variance without a hardship.

The Commissioners looked at the proposed Site Plan and noted the proposed drainage and installation of a septic system. Mr. Szymanski explained the proposed drainage and filtration system.

Atty. Fisher wanted to make sure that the ZBA is aware that the Town of Washington Zoning Commission has been working on reviewing and revising the Zoning Regulations with regard to nonconforming structures. He stated one of the revisions being considered is allowing reconstruction of a building that either the Building Official or a professional engineer to certify whether the structure is not capable of being renovated. Atty. Fisher said that “historically, the Zoning Commission has allowed this.” He noted that the new regulation has not been enacted at this time but feels that it indicates the “spirit” of where the Zoning Commission is regarding nonconforming buildings.

Atty. Fisher suggested that if the ZBA feels favorably inclined to grant this variance that a condition be imposed that some portion of the building or its foundation be retained or what other condition would allow to what really amounts to a total reconstruction. He feels that it would be in keeping with the efforts of the Zoning Commission.

Mr. Bowman stated that he was reluctant to base a decision on what the Zoning Commission may do. He continued to say that he was also reluctant to base an approval by the property owner committing to save a small portion of the existing foundation. He noted that there is also the issue that the property owner has appealed the ZBA’s decision from their last submission. He asked what happens if the ZBA grants this decision and the appeal goes forward.

Mr. Stewart stated that if the ZBA grants a variance for this submission he will withdraw the appeal.

There was a brief discussion regarding how the existing appeal would affect this submission.

Mr. Janson stated that Mr. and Mrs. Stewart purchased this property with the intent to use it the way it has always been used.

Atty. Pires was present to represent the Lake Waramaug Association, submitted minutes from the minutes from the previously denied application for this property and the minutes from the March 7, 2017 meeting. Atty. Pires stated that it is the ZBA’s job to decide whether this application is distinctly different from the previously denied application and if they are similar then the Commission must determine whether there is something materially different with the property now. He noted that the application represents the property as 3.733 acres and the submitted site plan shows only the waterfront portion of the property. Atty. Pires referred to Vine v. Town of Branford ZBA

and gave reasons why that case is not pertinent to this application. He continued to explain that the hardship must arise from the property itself and not based on what is on the property. He stated that the reduction in nonconformities with this application are very minimal and is similar to the denied application. Atty. Pires stated that removing the boathouse aspect of the structure makes it even more nonconforming because boathouses are allowed within 50 feet of the Lake. He pointed out that he believes that the proposed deck requires a variance as well and referred to Section 6.6.5 of the Zoning Regulations.

There was a brief discussion regarding Section 6.6.5 & 6 and it was determined that a variance was not needed for the deck.

Atty. Fisher discussed whether this is a substantially different application. He noted the reduction in the footprint and interior volume are different. He informed the Commission that they have the discretion as to whether the applications are the same or not. He asked the Commissioners to keep in mind that all nonconformities are being reduced and the height was never an issue. He reiterated Mr. Stewart’s comment that they would withdraw the appeal for the previously denied application if this variance is granted.

Atty. Fisher recalled that Chairman Bowman referred to the existing structure as a cottage. Atty. Fisher stated that there is no definition for “cottage” in the Zoning Regulations and that a cottage is essentially a small house. He said that the existing structure is either a single family residence or a boathouse and it is clearly not a boathouse because it has plumbing, a kitchen facility and produces effluent.

Mr. Bowman responded that if it was a compliant boathouse it would not have those things but it could be considered a noncompliant boathouse.

Atty. Fisher stated that it was used for habitation off and on.

Mr. Bowman asked, if it a single family residence, why not redirect the drainage and repair what is there.

Mr. Stewart suggested if they leave a portion of what exists of the foundation and renovate.

Mr. Bowman stated that they can propose that in an application and submit drawings that show that, but that is not what has been presented here tonight.

Mr. Stewart listed the issues that the ZBA expressed with the last application and has considered when putting together this application.

Mr. Bowman repeated that the proposed plan is an improvement and would most likely improve the water quality of the Lake but that does not take away the fact that they are voluntarily demolishing a nonconforming structure and replacing it with another nonconforming structure.

Mr. Janson and Mr. Stewart reviewed the floor plan with the Commissioners.

Atty. Fisher suggested a continuation.

9:32 pm – Break

9:37 pm – Reconvene meeting.

Atty. Fisher submitted a letter addressed to the ZBA dated 9/10/17 addressing some of the ZBA’s issues.

Mr. Wildman asked if the drain was installed before the structure was built or after.

Mr. Szymanski responded that it is most likely the structure was there first.

Atty. Fisher stated that they would like to regroup, respond to the ZBA’s concerns, and continue the public hearing.

Mr. Bowman stated that allowing a continuation would imply that this application is significantly different from the previous one that was denied.

Atty. Fisher stated that the Commission is required to accept the application and the continuation of the public hearing.

Mr. Stewart asked what other issues the Commission would like to see addressed.

Mr. Bowman responded that Town Counsel has advised the ZBA that an existing nonconforming structure could not be demolished voluntarily and replaced with another nonconforming structure.

Atty. Fisher said that he would like Town Counsel to define “voluntary,” because for decades, before Mr. Schwartz purchased the property, this drainage from the State Rd was installed and never corrected.

Mr. Schwartz said that when they purchased the property the inspector failed to discover this.

**MOTION:** To continue the public hearing for application ZBA-1044: Request of Arthur H. Howland & Associates, P.C./169 West Shore Road/For Variance from Section 11.6.1.C, Front, Side & Rear Setbacks and Section 12.1.1, Wetlands and Watercourses Setbacks. By Mr. Wildman, seconded by Mr. Wyant, passed by 5-0 vote.

**CONSIDERATION OF THE MINUTES:**

**Correction(s)**

Staff Present **should read:** Mr. Ajello, **Ms. White**

**MOTION**: To accept the minutes of the August 17, 2017, meeting minutes as corrected. By Mr. Bowman, seconded by Mr. Wyant, passed 5-0 vote.

**ADJOURNMENT**

**MOTION**: To adjourn the meeting at 9:50 p.m. By Mr. Wyant, seconded by Mr. Wildman, passed 5-0 vote.

**Filed Subject To Approval**

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

Shelley White, Land Use Clerk

September 27, 2017