**Zoning Board of Appeals**

MINUTES

Public Hearing – Regular Meeting

**December 17, 2015**

7:30 p.m. Main Level Meeting Room

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

 Mr. Peterson

**MEMBERS ABSENT:** Mr. Bowman

**ALTERNATES PRESENT**: Ms. Kaplan, Mr. Wildman

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

**ALSO PRESENT:** Mr. Hamilton, Mr. Bennett, Mr. Talbot,

Mr. Ratcliff,Mr. Quinn, Mr. Szymanski,

Mr. Ike, Ms. Neuwirth, Mr. Tiernan, Ms. Brissett, Mrs. Fernandez, Mr. Fernandez, Ms. Kinkade, Mr. Lynch and others.

 Ms. Roberts, Chairman, called the Public Hearing to

 order at 7:35 p.m.

**PUBLIC HEARING:**

**ZBA-1001 Continued - Request of Douglas Hamilton, 199 West Shore Road/Request for Variance, Zoning Regulation Section 11.6. (Road Setback: 35) and Section 11.5.1A (Lot Coverage .16 Additional/25.74%):**

**Seated**: Roberts, Catlin, Wyant, Peterson, Wildman

Mr. Bennett, builder, noted that the portico mock-up was completed and Board members were able to visit the property and view the mock-up. Photos were distributed to members as well. Mr. Bennett noted that the portico was 15 ft. from the road and is now 17 ft. from the road. New drawings were presented and distributed to Board members, (drawing E3 dated 12-15-15).

Ms. Roberts stated that she feels the portico is too big at 8 ft. (from building to posts) and projects further than it needs to. Ms. Roberts feels the existing building is big enough and is not comfortable with adding a feature such as this to the building making it project even more. She posed the question as to why it could not be smaller. Mr. Hamilton stated that when the plantings/trees are in bloom in the summer it will become substantially less visible. Mr. Bennett stated that pushing the portico back further would be a problem as there are pipes and service conduits buried there. He stated they would not be able to put sono-tubes in this area to support this structure which are required by building regulations. Ms. Roberts asked why they cannot reduce it 2 ft. and place posts on blue stone. Mr. Bennett explained that this does not meet building codes. Mr. Catlin stated that he is struggling with the size of this portico as well. He pointed out that this is a boathouse and is stated as one in the application. Mr. Catlin stated that he is unclear as to why the need to get into a boathouse during winter conditions. Mr. Hamilton stated they refer to this as a boat house, but technically he does not feel it is a boat house. He stated there is a boat slip below the building, but that the structure above that has been there historically as a year round structure. The building is winterized and is a conditioned space that has been approved. Mr. Hamilton stated he could change the name if necessary. Mr. Catlin further stated that he is having a difficult time seeing the land based hardship in this situation.

Mr. Catlin felt this structure is too large at its 6’x 8’ structure to protect the door and hardware. Mr. Hamilton noted that it is more than just protecting door and hardware and referenced the seven reasons for the building of this structure that were noted at the at the last ZBA meeting held on 11-19-15.

Ms. Roberts asked the public if they had any questions. No questions noted.

Mr. Bennett asked the Board if they would prefer he move the structure back as far as possible. He stated he could move it back 18” and the posts would be able to support the portico on the stone foundation. Mr. Hamilton did note for the record that letters of support from neighbors are in the file.

Mr. Wyant stated he has no problems with the portico structure as presented, but supported members that felt it needed to be pushed back the 18”.

Mr. Peterson prefers to see the structure less protruding and is in support of it being pushed back 18”.

Mr. Catlin did commend Mr. Bennett and Mr. Hamilton for making the structure attractive in appearance, although aesthetically feeling it is too big. Mr. Catlin asked why the access was changed going into the building. Mr. Hamilton stated the change in the access to this building was to meet Inland Wetlands regulations as prior to this change there was a substantial free flowing water and debris issue which was going into the lake. Mr. Hamilton pointed out that a lot of money was spent correcting this problem and meeting the Inland Wetlands regulations.

Member from the public, Mr. Lynch, asked if abutters were present and if they were in support of this project. Mr. Lynch was informed that no abutters were present, but the file contains letters from all neighbors in support of the portico. Mr. Lynch went on to state that he does not understand why the Board has a problem with Mr. Hamilton’s application. Mr. Catlin explained to Mr. Lynch that the Board’s responsibility here is to identify land based hardship, which is a very specific thing. Ms. Roberts informed Mr. Lynch that Mr. Hamilton is requesting a variance in the zoning regulations and there is a process to go through for this to happen.

Mr. Wildman added his support in bringing the structure back the 18” and having the posts on the bluestone.

Ms. Roberts asked Mr. Hamilton if he would like us to vote on this or have it continued. Mr. Hamilton stated he would like to have a vote and is in agreement to move the structure back 18” as discussed.

 **MOTION:** To close the Public Hearing to consider the ZBA-1001

 submitted by Mr. Hamilton/199 West Shore Road; Request for

 Variance, Zoning Regulations Section 11.6 (Road Setback: 35)

 and Section 11.5.1A (Lot Coverage .16% additional coverage

 (25.74%). By Ms. Roberts, seconded by Mr. Wyant, passed 5-0.

 Ms. Roberts stated that in voting on this, it would be

 with the condition that the projection of the structure will

 be pushed back 18”. Ms. Roberts felt the hardship would be

 the location and potential for icing/safety, as it is a

 depressed entry way.

 **MOTION:** To approve ZBA-1001 submitted by Mr. Hamilton/199

 West Shore Road; Request for Variance (31.5), Zoning

 Regulations Section 11.6 (Road Setback: 18.5) and Section

 11.5.1A (Lot Coverage .74 additional coverage), with

 conditions that the Portico will not project more than

 6’x 6.5’ from the building to the face of the posts per

 amended drawings E3 dated 12-17-15. By Ms. Roberts, passed

 4-1.

 **ZBA-1004 - Request of Keith and Sheila Ratcliff, 30 East**

 **Shore Road for a Special Exception for a Nonconforming**

 **Dwelling; Section 11.6.1 (Front Yard Setback).**

 **Seated:** Roberts, Catlin, Wyant, Peterson, Kaplan

Mr. Tom Quinn, licensed professional engineer with Peak Engineers, LLC from Redding, CT informed the Board that this home was built around 1800 and the porch was built in the 1850. He stated the entire structure is located within the 50 ft. front yard setback. The front porch actually protrudes into the right away of Rt. 45, necessitating Mr. Quinn to procure a permanent encroachment easement from the Connecticut Department of Transportation, which was submitted as part of the file. Mr. Quinn also submitted a reduced copy of the plan that the State has prepared. Mr. Quinn stated they do have a letter from the State approving the easement. Mr. Quinn also noted they submitted an application about a month ago to the Inland Wetlands Commission as the home is located in the Upland Review area and they were approved.

Mr. Quinn went on to explain the owner’s desire to go to one floor living. Laundry facilities are located in the basement with 5’5” ceilings. Presently all three bedrooms are on the second floor and one full bath on the first floor. Mr. Quinn stated the owners would like to construct the addition on the East side of the house which will be 18’ x 22’, currently where the car port is located (drawings P2 dated 10-30-15 were referenced and part of the file). Mr. Quinn stated that within this space will be a bedroom. He informed the Board that the owners would also like to mimic the front porch by adding porches of the exact same size and shape to the north and south of the home, creating a wrap-around porch. Mr. Quinn informed the Board that the porch encroachment has been approved by the State Department of Transportation. Mr. Quinn stated they are seeking a special exception for an expansion of a non-conforming dwelling. Four years ago, Mr. Quinn stated that a new septic system was installed that accommodates a four bedroom dwelling and has been approved by the Health Department. He pointed out that the roof lines will match the current roof lines. Mr. Catlin questioned the wrap around porch and Mr. Ratcliff stated it would maintain the appearance of the building and offer protection to existing structure from natural elements.

Ms. Roberts asked what drawings Mr. Quinn submitted to the Inlands Wetlands Commission. It was noted that Drawing SD-1 dated 11-16-15 titled Proposed Building Additions had been submitted and a copy was provided for the ZBA file.

Ms. Roberts asked the public if any questions. No questions noted.

**MOTION:** To close the Public Hearing to consider ZBA-1004 submitted by Keith and Sheila Ratcliff, 30 East Shore Road for a Special Exception for a Nonconforming Dwelling; Section 11.6.1 (Front Yard Setback). By Mr. Catlin, seconded by Mr. Wyant, passed 5-0.

Ms. Roberts stated this is an application for a special exception and it is a modest addition to an old home. Ms. Roberts supported the application. Mr. Catlin stated this is exactly what a special exception was made for and referenced the zoning code that supports this project. Mr. Wyant is in support of this application and believes it meets the requirements of special exception. Ms. Kaplan also stated her support for the application. Mr. Peterson supports the application and is in favor.

**MOTION:** To approve ZBA-1004 submitted by Keith and Sheila Ratcliff, 30 East Shore Road for a Special Exception for a Nonconforming Dwelling; Section 11.6.1 (Front Yard Setback).

By Ms. Roberts, second Mr. Wyant, passed 5-0.

**ZBA-1005 - Request of GSN LLC - 214 West Shore Road, New Preston, CT for a Special Exception for Expansion of a Nonconforming Dwelling; Zoning Regulations, Section (s) 17.5 A1.**

 **Seated**: Roberts, Catlin, Wyant, Peterson, Wildman

 Mr. Paul Szymanski from A.H. Howland Land Surveying and

 Mr. Peter Talbot, Architect presenting. Mr. Talbot read

 aloud a letter he submitted to ZBA dated 11/23/15, which

 explained the reasons for the request for this Special

 Exception for a non-conforming structure. Survey with

 revised date of 11-10-15 prepared by A.H. Howland Land

 Surveyor was referenced and is in ZBA file.

 Mr. Talbot presented a 1934 aerial photo done by

 Fairchild Aerial Surveying Co. dated 12-17-15

showing the existing structure. Ms. Kaplan referenced

the letter from Lake Waramaug Association dated 12-16-15

with objections to this application and asked that

this aerial photo Mr. Talbot provided to the Board

proves that this home was built in 1939 predating Zoning

regulations. Mr. Talbot replied yes. In regards to the

questions of historical significance brought up by Ms.

Kaplan, Ms. Roberts sited the regulations 17.5. Mr.

Catlin also referenced 17.1 explaining that this home

clearly does meet the regulation requirements.

Mr. Talbot showed the Board photos of the existing home interior and exterior. Mr. Talbot also had done a sketch of the proposed plan showing the roof line. Mr. Talbot and Mr. Szymanski noted that the amount of obstruction in the view of the lake is very minimal. Mr. Talbot stated the increase in height in the peak is

5’4¾”. Mr. Catlin appreciated that the ridge line is going toward the lake and not blocking it.

Mr. Catlin asked what the exterior will be and Mr. Talbot replied it will be what it currently is, board and batten. Mr. Talbot stated the roof will be changed to wood shingles. Ms. Roberts went back to referencing the Lake Waramaug letter questioning the attic and when it was converted to a non-compliant living space and with what permits (if any). She asked Mr. Talbot if he knew when this attic was converted. Mr. Talbot stated that it has clearly been used for another bathroom and bedroom. Mr. Talbot assumed that the Lake Waramaug Association is concerned about water protection and protection of the environment. Mr. Talbot stated this home historically is three bedrooms with a septic system nearby. Mr. Szymanski informed the Commission that they obtained approval from the Health Department for a three bedroom code compliant septic system and submitted as part of the record. He further stated that this will be located across the road further from the lake, making for a significant improvement to water quality protection.

In response to Mr. Catlin’s question, Mr. Szymanksi stated that a rain garden will be put in place to handle drainage from roof run off.

Ms. Roberts asked the public for any questions. Mr. Lynch stated he supports this application.

**MOTION:** To close the Public Hearing to consider ZBA-1005 submitted by GSN LLC, 214 West Shore Road, for a Special Exception for Expansion of a Nonconforming Dwelling; Zoning Regulations, Section(s) 17.5 A1. By Ms. Roberts, seconded Mr. Wyant.

Mr. Catlin stated he is very sensitive to the letter from Lake Waramaug Association and their concerns. Mr. Catlin commended the applicant, Mr. Talbot and Mr. Szymanski for demonstrating another good example of a special exception. He felt this has been done in a very sensitive way and supported this application.

Mr. Wyant agreed with Mr. Catlin. He stated the application was well done, reasonable and sensible. Mr. Wyant is in support of the application.

In referencing letter from Lake Waramaug Association, Ms. Roberts noted for the record that this house was built in 1934 and does pre-date zoning regulations. She noted that in the Lake Waramaug Association letter, they claim that regulations stipulate that the building be one of historical significance. Ms. Roberts clarified regulations which state that it be a single family dwelling or of historical cultural significance. Ms. Roberts continued that she feels the applicant has been very sensitive to the scenic road aspect by designing the hip roof, which minimizes the height and length of the ridge. Ms. Robert was in support of this application.

Mr. Peterson stated he is in favor of the application. He stated this has been very well done. Mr. Peterson felt that this was a modest change and he supported the application.

Mr. Wildman agreed with the members, stating that without changing any setbacks, this is a modest volumetric increase. Mr. Wildman feels that the home will continue to look like a home built in the 1930’s. He was in support of this application.

**MOTION**: To approve ZBA-1005 - Request of GSN LLC - 214 West Shore Road, for a Special Exception for Expansion of a Nonconforming Dwelling; Zoning Regulations, Section(s) 17.5 A1. By Ms. Roberts, passed 5-0.

**ZBA-1006- Request of State of Connecticut Department of Transportation, 103 Blackville Road, Washington Depot, CT for an Application for Variance/Zoning Regulations, Section(s) 11.3.3 (minimum lot size).**

 **Seated**: Roberts, Catlin, Wyant, Peterson, Kaplan

On behalf of the State of Connecticut Department of Transportation Division Right of Away, Mr. Robert W. Ike, supervisor with the Department, was present representing this application.

Mr. Ike stated that the Connecticut General Statutes 48-24 requires that when a governmental authority is making a property more non-conforming to local Zoning, they are required to seek redress from the local Zoning Board of Appeals.

Mr. Lynch, member of the public, asked Mr. Ike if the Town has to grant approval. Mr. Ike replied no, further stating that the D.O.T. is making these properties at 103 and 109 Blackville Road more non-conforming to local Zoning and required by statute to seek redress before the Department can move forward.

Ms. Kaplan asked Mr. Ike if he defines redress as automatic acceptance from ZBA. Mr. Ike replied no and stated the statute was enacted to give the local citizens the avenue for redress if they are not in favor of this proposed acquisition.

Mr. Ike went on to say that if the variance is denied, the State will have three choices: 1) to try to pull the work off the property; 2) they can acquire the whole property in its entirety; 3) they would go with a define easement for highway purpose. Mr. Ike stated that the property owners will be compensated for the acquisition for any of the three possibilities.

Mr. Ike noted that a public informational hearing was held on November 18, 2014 at Washington Town Hall. Mrs. Fernandez, member of the public, asked if the public was notified. Mr. Ike explained that their engineers send letters to all the neighbors. He also explained that they also place a legal notice in the local paper covering the Town of Washington, adding that the town officials also post this information on their town website.

Mrs. Neuwirth, member of the public, asked Mr. Ike who the D.O.T considers the people in the impacted area. Mr. Ike explained that the letters go to the abutting neighbors. Mr. Tiernan, member of the public, asked how far in advance these letters are mailed out. Mr. Ike replied that certified letters were mailed out on December 8, 2015 (copies were provided for the files). Mr. Ike listed the property abutters that were notified by certified mailings. Ms. Roberts asked if any of these property owners mentioned were present at this meeting. Mr. and Mrs. Tiernan were present. Mr. Tiernan acknowledged that he did receive notice for the public informational hearing. He also confirmed he did receive notification for the February meeting in a reasonable time frame and attended the meeting.

Mr. Ike reiterated that he is here at this meeting specifically for Connecticut State Statutes 48-24. Mr. Ike explained that the Federal Design Approval that went to the Federal Highway Administration stated that bridge #06786 (located Rt. 109 over Mallory Brook) needs to have the culvert replaced beyond a reasonable doubt, stating that if repairs are not performed this will create a hazard to the traveling public.

The public did interject throughout Mr. Ike’s explanation, expressing their concerns for the project. Mr. Tiernan, member of the public stated the bridge almost was swept away during Hurricane Irene in 2011. Mr. Tiernan stated afterwards the State sent down surveyors and in the end, the two culverts were replaced. He further stated that if the Town did not send a crew down in August to clear out the debris that was blocking the culverts, Mr. Tiernan feels that the bridge would have been washed away. Mrs. Fernandez, member of the public who resides on Sabbaday Lane, expressed her concern for this project; how will it affect her property, and why propose taking down the yellow barn.

Mr. Ike explained that property owner, Jacqueline Douglass is in a R1 zone. Currently the property has 13,068 square feet. Mr. Ike stated after their proposed acquisition of 485 square feet, they will be left with 12,585 square feet. Mr. Ike again referenced statutes 48-24, failure to grant variance may result in the total acquisition of the subject property, thus denying the owner’s use and occupancy of the property.

Mr. Ike referenced the map dated September 2015 (Right of Way Survey) showing the acquired land from Jacqueline D. Douglass Parcel No. 1, located at 103 Blackville Road. He noted that the existing culverts are partially on this property. Mr. Ike reviewed the map with the Board members.

Mr. Ike explained that the State will be temporarily moving the river, replacing the culverts and putting the river back. He further explained that the State needs this additional land because the existing culverts are on these properties and property owners will be compensated. Mr. Ike stated that by approving this parcel acquisition, this will make it legal to have the old and the new culverts on State property.

Mr. Teirnan, member of the public whose property is affected, spoke out stating that he felt the State did not need any of the additional property other than the fact they are widening and straightening the road. Mr. Ike noted for the record the design standard requirements for Blackville Road.

Mrs. Neurwith presented the Board with the question of what the ZBA can do about this situation. Ms. Roberts stated that the State application is quite clear and again referred to the Connecticut Statutes 48-24, failure to grant the variance may result in the total acquisition of the subject property thus denying the owner use and occupancy of the remainder through no fault of their own.

Mr. Ike pointed out that if the Board denies the variance, he would go back to the State and obtain a defined easement for highway purposes and the owner would still own their land, but state would have easement for their structures and roadway.

Ms. Roberts clarified that the State is applying for a variance to take a sliver of land and have the State now own it, as well as make the property more non-conforming.

Mr. Catlin clarified that the State is asking permission from the Board to make the two properties being discussed in this application more non-conforming. He pointed out that it is not the Board’s role to get involved in how the property owners will be compensated. Mr. Catlin suggested the abutting property owners could seek their own legal advice.

 Further discussion continued between the Board and the

 Public with regards to their concern for this project,

Mr. Michael Ajello, Zoning Enforcement officer for the Town of Washington, did state the concern he has with the site lines on this road and for all the individuals living along this road, specifically the Tiernan and Douglass property owners. Mr. Ajello did inquire about non-conforming setback issues of these properties. Mr. Ajello wanted to be sure there are no other compliance issues for either property. Mr. Ajello noted the Board’s attorney having a concern with making sure only lot area is varied by 48-24. Mr. Ike stated that his concern is about lot area only with respect to both 103 and 109 Blackville Road properties.

Mrs. Fernandez, member of the public, asked Mr. Ike why they are taking down the yellow barn. Mr. Ike stated that it is in the State right away and Mr. Ike spoke to Ms. Douglas, property owner to 103 Blackville Road and she has stated she has no problem with taking down the barn.

Ms. Diane Kinkade, member of the public, inquired as to the impact of this project to Mallory Brook. Mr. Ike replied that the State did their “environmental program” and received design approval, which includes a checklist for environmental issues.

Ms. Cynthia Brissett spoke from the public. Ms. Brissett lives at 96 Blackville Road, stating her property is right along the river. Mr. Brissett stated that whenever any disruption happens upstream, the brook turns all different colors, the fish are affected and everything is disrupted. When this occurs, she stated it takes a long time for the brook to go back to normal. She feels this project will disrupt the brook and feels this would not be environmentally sound. Ms. Brissett also asked if the Seitz house will be demolished. Mr. Ike replied no and explained the plans for the Seitz house, which may include applying for a variance.

Mrs. Neuwirth, of 56 Sabbaday Lane, noted the historical value of this road and its structures (noting town records that exist to support and demonstrate the historical significance of this area). Mrs. Neuwirth stated that if we were to say that every road in the Town of Washington was to come into conformity, this town would be black topped by the State. She stated the concern of the people, particularly those residing on Sabbaday Lane, with regards to straightening of the road by taking down the yellow barn. Mrs. Neuwirth concluded by stating that what will happen if the State removes the yellow barn is that Rt. 109/Blackville Road will become a speedway, is already a speedway and extremely dangerous. Mrs. Neuwirth’s suggestion is to put a stop sign for Westbound and Eastbound traffic, creating a perfectly safe situation.

Mr. Ike then recommended to the public that they get in touch with their First Selectman and have him contact the State Department of Transportation advising them of the public concern regarding the proposed project. Mr. Ike said at that point, the First Selectman can ask for another

Public Informational Meeting at which time the public can express their grievances to the State’s Engineering Dept.

Mr. Catlin pointed out that the Town and Board members need to have a conversation with First Selectman Lyon regarding this application. Mr. Catlin stated that this ZBA forum is not the correct forum to discuss the grievances the public is presenting and suggests all involved to get in touch with First Selectman Lyon.

Mr. Ike noted for the record that despite the outcome of the public informational meeting, the State situation will not change with regards to the application for the variances.

The Board agreed that more discussion needs to happen before the Board can make any decision on the applications pertaining to Blackville Road.

**MOTION**: To continue the Public Hearing to consider ZBA-1006 Request of State of Connecticut Department of Transportation, 103 Blackville Road, Washington Depot, CT for an Application for Variance/Zoning Regulations, Section(s) 11.3.3(minimum lot size). By Ms. Roberts, passed 5-0.

**ZBA-1007- Request of State of Connecticut Department of Transportation, 109 Blackville Road, Washington Depot, CT for an Application for Variance/Zoning regulations, Section(s) 11.3.3(minimum lot size).**

**Seated:** Roberts, Catlin, Wyant, Peterson, Ms. Kaplan

**MOTION**: To continue the Public Hearing to consider ZBA-1007 Request of State of Connecticut Department of Transportation, 109 Blackville Road, Washington Depot,

CT for an Application for Variance/Zoning Regulations, Section(s) 11.3.3(minimum lot size). By Ms. Roberts, passed 5-0.

**Other Business:**

**MOTION:** To accept the minutes from the November 19, 2015

 meeting as submitted. By Ms. Roberts, seconded by

 Mr. Catlin and passed 5-0.

Ms. Roberts reviewed and signed off on bills from the Board’s attorney, Murtha Cullina.

**MOTION**: To adjourn the meeting at 9:45 p.m. By Mr. Catlin,

seconded by Mr. Peterson, passed 5-0

**SUBMITTED SUBJECT TO APPROVAL**

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Donna Pennell/Land Use Clerk/12-23-15