**Zoning Board of Appeals**

Minutes

Public Hearing – Regular Meeting

July 20, 2017

7:30 p.m. Main level meeting room

MEMBERS PRESENT: Mr. Bowman, Mr. Catlin, Mr. Horan,

Mr. Wyant

MEMBER ABSENT: Mr. Peterson

ALTERNATES PRESENT: Mr. Gunnip, Mr. Wildman

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Atty. Kelly, Atty. Pires, Mr. Hayden

Mr. Bowman called the meeting to order at 7:30 p.m. and seated Mr. Bowman, Mr. Horan, and Mr. Wyant and Alternates Gunnip and Wildman for Mr. Catlin and Mr. Peterson.

Erben Partners, LLC./169 West Shore Road/#ZBA-1041/Variances:

Sections 11.6.1.C; minimum setback and 12.1.1; wetlands and watercourses setback for an Accessory Building/Con’t.

Erben Partners, LLC./169 West Shore Road/#ZBA-1042/Variances:

Sections 11.6.1.C; minimum setback and 12.1.1; wetlands and watercourses setback to Reconstruct Existing Dwelling/Con’t.

Mr. Bowman altered the order of the agenda to read the 7/20/17 request from Mr. Szymanski, representing the applicant, to continue the public hearing for each of the above applications.

MOTION: To continue the public hearing to consider

Application #ZBA-1041 submitted by Erben Partners,

LLC./169 West Shore Road for variances of Sections

11.6.1.C; minimum setback and 12.1.1; wetlands and

watercourses setback for an accessory building to

August 17, 2017. By Mr. Wyant, seconded by Mr.

Wildman, and passed 5-0.

MOTION: To continue the public hearing to consider

Application #ZBA-1042 submitted by Erben Partners,

LLC./169 West Shore Road for variances of Sections

11.6.1.C; minimum setback and 12.1.1; wetlands and

watercourses setback for the reconstruction of the

existing dwelling to August 17, 2017. By Mr. Wyant,

seconded by Mr. Wildman, and passed 5-0.

Angell/47 West Shore Road/#ZBA-1040/Variances: Section 11.6.1.C; Minimum Front and Rear Setback for a Boathouse/Con’t.

Mr. Bowman reconvened the public hearing and seated Mr. Bowman, Mr. Horan, and Mr. Wyant and Alternates Gunnip and Wildman.

Atty. Kelly submitted the following documents:

1) Survey map, “Zoning Location Survey,” by Mr. Alex, dated June 2017

2) 1”= 20’ enlargement of the survey map to establish the location of the shed. Atty. Kelly noted at its closest point the shed was 38 feet off the road, although the application form states 10 feet.

3) Color photo, undated, of the interior of the shed to show it is used to store boating equipment. Mr. Bowman read the definition of “boathouse” in Section 21.1.11 of the Zoning Regulations and said by definition the shed could not qualify as a boathouse unless it was used to store both boats and boating equipment and so this structure was a storage shed. Atty. Kelly disagreed, saying it was large enough to store a canoe or kyak, although they weren’t stored there now.

4) Color photo, undated, of the structure

5) Copies of the current Zoning definitions for front and rear lot lines and for lot

6) Copies of the 1986 Zoning definitions for front and rear lot lines and for lot. Atty. Kelly said this demonstrated these definitions had remained the same for a long period of time.

7) Tax map for West Shore Road with the location of the property outlined. Atty. Kelly said he had driven around the lake on West Shore Road and had counted nine boathouses. He said none of the properties on which these boathouses were located were as wide as the Angell property.

8) Fifteen small color photos, undated, of the nine nearby boathouses. Atty. Kelly noted that the proposed boathouse was not inconsistent with the intent of the Zoning plan as there were nine others located nearby on smaller parcels.

9) 1998 Zoning Commission public hearing minutes, which was the year the definition of boathouse and the requirement that they are permitted by special permit were adopted. Atty. Kelly said that with the exception of the addition in 2003 that boathouses may contain no plumbing, etc. the 1998 definition has not been changed. He said that prior to 1998, boathouses had been approved by administrative permit and that front and rear yard setbacks had not applied. Mr. Catlin asked why it mattered how things were done in 1998. Atty. Kelly responded that the ZBA has two functions; determining whether a variance is warranted and arbitrating conflicts in the Zoning Regulations, and said in this case there is a conflict in the Regulations and that neither the front or rear setback requirement should be applied in this case. Mr. Catlin replied that the Board had a definitive opinion from counsel to the contrary.

10) 10/9/17 letter from Atty. Zizka re: Setback question/198 Tinker Hill Road. Atty. Kelly thought this legal opinion was wrong. He noted the Regulations state only that boathouses are allowed by Special Permit in the district and that they are exempt from the watercourse setback. Mr. Bowman stated they are not exempt from any other setback requirements. Atty. Kelly argued that the Zoning Regulations must never be interpreted in a way that makes them moot. In this case, he said it made no sense to require compliance with the rear setback requirement because that would completely undo the exemption from Section 12.1.

11) 1/20/2003 letter from Atty. Byrne re: the Sarjeant boathouse. Atty. Kelly pointed out that Atty. Byrne opined that Section 12.1 specifically exempts boathouses from the rear setback requirement. He further stated that the Regulations are supposed to be interpreted in a way that furthers their intended effect. He thought Atty. Zizka came to the conclusion he had because he had failed to study all of the definitions, including the definition of “lot,” had not reviewed a map of the property, and did not address the issue of boathouses. Atty. Kelly argued that if the ZBA accepted Atty. Zizka’s opinion, then it must also accept that all lots are capable of being developed with principal buildings and that all of the small parcels on the lake side of West Shore Road could be developed in that way. He explained his client was seeking a variance that Zoning did not require until 2007 and that he was only applying for the variances because he had been directed to do so.

Mr. Catlin referred to the 9/10/2015 letter from Atty. Zizka, which addressed questions from the Board dealing with properties around the lake. Atty. Kelly questioned Mr. Catlin’s standing to present evidence at the hearing and Mr. Catlin responded that he was a member of the public and of the Board and could participate in the discussion during the hearing even though he was not seated. Mr. Catlin read a portion of #4 on page 5 of the letter, which stated that property on either side of the road should be viewed as separate lots or parcels, even if owned by the same person or persons and even if described as a single parcel in deeds filed on the land records. Atty. Kelly thought the historical interpretation and intent of the Regulations should be considered.

Mr. Bowman read the definition of setback, which Atty. Kelly said should apply only in the case of a lot. Mr. Bowman disagreed. A lengthy discussion followed regarding whether the tiny parcels around the lake should be considered lots capable of being developed, whether setback requirements apply to public right of ways, and which setbacks should apply in this case.

Mr. Bowman said it was his understanding that the proposed shed would be located on the existing concrete slab allowed by a 1999 variance, but that upon inspection he found the shed was not on the slab, and so said the application was inaccurate. Att. Kelly said the shed had not yet been affixed; it was moveable and would be placed on the slab when approved. Mr. Bowman had measured the slab and determined it was 4’ X 8’. Atty. Kelly stated the concrete slab was 8’ X 10’. It was apparent there was a discrepancy between the information in the application and that on the survey. Also Atty. Kelly noted he had thought where the shed is now was the location being applied for. He agreed that neither the photos nor the survey supported the existence of an 8’ X 10’ slab and said that Mr. Angell would have to address this matter before the Board could progress with consideration of the application.

Mr. Bowman referred to a previous application made by Mr. Angell in January 2017, but Atty. Kelly said that should not be a part of this record.

Atty. Kelly read his letter dated 7/20/17, submitted it for the record, and said he had found Byrne’s letter later, otherwise he would have cited it in the letter.

Mr. Bowman noted that Section 12.1 exempts boathouses from the wetlands and watercourses setback, not from setbacks from lot lines. Atty. Kelly responded the Regulations are intended to further a purpose and to be read in a way that makes sense. He asked Mr. Bowman if he agreed that if a rear setback is required in this case, it would make Section 12.1 moot. He also asked what intent was furthered if boathouses were exempt from the watercourse setback, but were still required to get a variance from the rear yard setback.

Mr. Catlin asked if the ZBA agreed every sliver of land was capable of being developed with a primary structure. Atty. Kelly said that was the only way the Board could accept Atty. Zizka’s opinion. He added that the Board must be careful when using the terms, lot and parcel and said he believed that under the Zoning Regulations, most of these small parcels were not lots.

He stated that in the absence of clarity, it was the ZBA’s job to interpret and apply the Regulations.

Mr. Bowman and Atty. Kelly again discussed the definition of boathouse and Mr. Bowman said again that this was a storage shed that should meet the setback requirement from the public right of way. Atty. Kelly noted the application form said the distance from the right of way to the structure was 40 feet, but the survey said it was 38 ft. He said he understood that he must supply accurate measurements, both for the concrete slab and for distance from the right of way.

Mr. Bowman asked what the hardship was in this case. Atty. Kelly said this had been a commercial property that had been converted to residential use and had three unique characteristics. The first was the small size of the parcel. The second was the location of the dwelling high on the hill above the shoreline and its distance from the structure. The third was the location of the shoreline. He said it was also unique due to the public parking area and the common right of way for eight other properties across this property and due to the easement given to the Lake Waramaug Authority for the lakeside buffer. He said Mr. Angell fully addressed the issue of hardship on the application form.

Mr. Bowman asked for public comment.

Atty. Piers represented the Lake Waramaug Assoc. He submitted the ZBA Special Meeting minutes of March 2016, which included a discussion regarding what constitutes a hardship. He noted that Mr. Angell accepts that variances are required in this case because he has applied for them. He stated that if the ZBA considers the structure to be a shed, it may not grant a variance for Section 12.1 because the applicant has applied only for variances of Section 11.6.1.c, and he added that the application itself refers to it as a storage shed. Atty. Piers said the fact that there are other sheds around the lake; that other people have this use, is not a hardship; that he is not entitled to do the same things. He further noted that he had addressed the issue of hardship in his 6/15/17 letter to the Board.

Mr. Catlin stated for the record that he had the right to participate in the public hearing discussion as both a Board member and a member of the public and that he was aware that since he was not seated, he could not participate or vote once the hearing was closed. He said his intent was to provide general information regarding the concept of setbacks, lots, etc.

Mr. Bowman asked Mr. Ajello if a property not near a lake would have to comply with the setback from a public way. Mr. Ajello said it would. Atty. Kelly this setback would only apply if the property was a lot.

Atty. Kelly stated his goal was for the ZBA to understand his position before it comes to any conclusion about the application. He noted that he had just submitted a lot of material and so said he would be willing to grant an extension to give the Board time to review it. He also said he understood that amendments to the application were required to address the questions about the size and location of the concrete pad and the distance between the public right of way and the structure. Mr. Horan stated it also was not clear exactly where the proposed location for the shed was.

Mr. Bowman asked if the stone terrace would be removed. Atty. Kelly said per agreement with the Inland Wetlands Commission, it would be taken out before September 15.

Atty. Kelly said he would research the 1999 variance to determine what it says and whether the concrete pad was installed per the approved specifications.

Atty. Kelly submitted a written request, dated /20/17, to continue the public hearing.

MOTION: To continue the public hearing to consider

Application #ZBA-1040 submitted by Mr. Angell/47

West Shore Road for variances of Section 11.6.1.C;

minimum front and rear setback for a boathouse to

August 17, 2917. By Mr. Wyant, seconded by Mr.

Wildman, and passed 5-0.

Other Business

Mr. Hayden, new executive director of the Lake Waramaug Task Force, introduced himself and spoke briefly about that agency’s goals. He will offer educational services and technical support for land use agencies and said he looks forward to helping the Board. He said he could provide advice on construction and other sources of stormwater pollution, noting there are many measures that can be taken to protect the lake’s water quality in perpetuity.

Mr. Catlin was seated for Mr. Wildman.

Consideration of the Minutes

MOTION: To accept the June 15, 2017 meeting minutes as

written. By Mr. Gunnip, seconded by Mr. Wyant,

and passed 5-0.

Mr. Wyant noted that Ms. Pennell, ZBA clerk, had left for a new job and he suggested the ZBA thank her for her service as land use secretary. The members unanimously agreed and officially thanked Donna for her excellent service, efficiency, and cheery attitude.

Election of Officers

MOTION: To nominate Mr. Catlin for ZBA Chairman and

Mr. Bowman for Vice Chairman. By Mr. Wyant,

seconded by Mr. Horan, and passed 5-0.

MOTION: To adjourn the meeting. By Mr. Bowman.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Administrator