

# February 16, 2012

**Present:** Polly Roberts, Todd Catlin, Peter Bowman, Rod Wyant,

**Alternates:** Chip Wildman

**Absent:** Kathy Leab, Todd Peterson, Alt.

**Staff:** Shelley White, Mike Ajello

**Also Present:** Atty. Kelly, Ms. Kaplan, Mr. & Mrs. Carreira, Mr. Provey, Mr. Wright, Mr. & Mrs. Frank, Mr. Sweeney, Mr. Kleinberg, Residents

Ms. Roberts called the meeting to order at 7:31 pm.

## PUBLIC HEARING

Seated: Polly Roberts, Todd Catlin, Peter Bowman, Rod Wyant, Chip Wildman, Alt.

ZBA-0910 – Request of EIS Realty II, LLC, 6 Bee Brook Road, for a Variance, Zoning Regulation(s) 11.5.2 (Lot Coverage), 11.6.1 (Side Yard Set Back), to install 6 sq. ft. generator.

Mr. Wright of Wright Electric was present to represent E.I.S. Realty, LLC for this application. Ms. White confirmed that E.I.S. Realty, LLC called to confirm that Mr. Wright is representing them and would fax a letter granting representation. The Commission and Mr. Wright looked at the Property Boundary Survey map prepared for EIS Realty II LLC, 6 Bee Brook Road, by T. Michael Alex, Surveyor, dated January 2012. Mr. Wright stated that the Bank needs a generator for security, heat, etc. during power outages. The Commission and Mr. Wright briefly discussed the proposed location of the generator. Mr. Wright stated that because of parking and the location of the night drop and drive through the proposed location is the only place the generator could be located. He stated that the propane tank would be buried; the generator is a Kohler 8.5 KW, has a full sound enclosure and would be 21.22' away from the building principally served, 1 ft. off the property line and the cable would be underground. Ms. Roberts looked at the spec. sheet for the generator. Mr. Bowman asked if bollards would be installed. Mr. Wright stated that bushes would be planted around the generator. There were no further comments from the public or the Commission.

Motion:

to close ZBA-0910 – Request of EIS Realty II, LLC, 6 Bee Brook Road, for a Variance, Zoning Regulation(s) 11.5.2 (Lot Coverage), 11.6.1 (Side Yard Set Back), to install 6 sq. ft. generator, by Mr. Catlin, seconded by Mr. Wyant, by 5-0 vote.

## MEETING

Mr. Catlin stated that the proposed location seems to be the only location to place the generator and that he does not have a problem with this application. Mr. Bowman, Mr. Wildman, Mr. Wyant and Ms. Roberts agreed with Mr. Catlin.

Motion:

to approve ZBA-0910 – Request of EIS Realty II, LLC, 6 Bee Brook Road, for a Variance, Zoning Regulation(s) 11.5.2 (Lot Coverage), 11.6.1 (Side Yard Set Back), to install 6 sq. ft. generator, passed by 5-0 vote.

## **PUBLIC HEARING**

ZBA-0911– Request of Sweeny (Nauiakas-Harrison), 10 Loomarwick Road, for a Special Exception 17.5 (Increasing Nonconformity), to raise the roofline and add a dormer to the existing nonconforming accessory apartment.

Mr. Sweeney, Property Manager was present to represent Ms. Nauiakas and Mr. Harrison for this application. He stated that the proposed building has been permitted and approved by the Health Department and is already under construction. Mr. Sweeney stated that Mr. Ajello, ZEO, visited the site and found an issue with a volumetric increase because the roof was changed from a hip roof to a gable roof, which, Mr. Ajello confirmed, was an oversight on his part and would require a Special Exception from the ZBA. The Commission and Mr. Sweeney looked at the drawings of the West Elevation and South Elevation with the previous structure in red and a blue overlay indicating the approved proposed structure showing the change in the roofline. Mr. Sweeney explained the drawing and stated that there was a bump out with a separate roof that houses the mechanical equipment for the structure and the proposed roof would be extended over the bump out as one contiguous roof. The Commission and Mr. Sweeney looked at the drawing titled Existing Elevations, by Consolidated Design Studios Ltd, sheet A-2, dated 8-9-11. Mr. Sweeney stated that the roof was changed to comply with building codes and current construction methods. He stated that the existing foundation was concrete piers, which were not frost protected, and this was replaced with a frost wall and a small crawl space underneath for access. Mr. Sweeney stated that the floor level would remain the same and the deck is being constructed in the exact same footprint.

Ms. Frank stated that she is a neighbor and lives in front of this structure and feels that it is significantly larger than what was there before and does not understand why it has to be so high. She stated that she would have asked that the front door of the accessory building be moved so that the walking traffic would not be directly outside her kitchen window if she knew it would be totally rebuilt. Ms. Frank asked where the height of the building is measured. Ms. Roberts stated that it is measured from the grade. Ms. Frank stated that she believes it exceeds the height of the previous structure. Mr. Sweeney stated that the existing building was built inadequately and was not up to code and they took special care to design a structure that was in keeping with the neighborhood and with the primary structure, which also has a dormer with the same type of window. He stated that they would not gain anything with the volumetric increase because it is an increase in interior ceiling height. Ms. Frank submitted photos of the structure from her deck. The Commission briefly discussed the photos.

Mr. Ajello stated that he did not measure the height of the building when he noticed the volumetric increase. Mr. Sweeney stated that he made sure the structure was the same height of the previous building and that he measured 12 ft from the deck to the peak of the roof. He stated that once the building was demolished he shot elevations of the existing piers and used that as the benchmark for the top of the wall for the foundation and the top of the new foundation is the same height as the previous structure's piers. Mr. Sweeney stated that it was his understanding that the footprint of the structure could not change and that is why the deck is in the same location and that the front door opens onto the deck. He stated that this structure is 346 sq. ft. and the occupancy and traffic to the structure would be minimal and that there is a large border of hemlocks and a 6-foot privacy fence between the two properties. Ms. Frank stated that the use of this structure could change in the future. Mr. Bowman stated that flipping the floor plan to relocate the front door would not make sense because of the location of the three main windows.

Mr. Frank stated that the Special Exception is only available to historical or culturally significant accessory buildings and he does not believe that this structure is either. Mr. Bowman stated that it is his understanding that this building was an icehouse to an inn. Mr. Sweeney submitted a photo of the structure as the "Honeymoon Cottage" for the old Lake Waramaug Inn circa 1930's. Ms. Roberts stated that the structure has been torn down. Mr. Sweeney stated that the building was structurally unsound; the roof was caving in on one portion of the structure, and the floor joists were falling to the ground.

The Commission agreed that since the structure was torn down that this is tricky and a grey area in the regulations. Mr. Frank stated that he believes that the protection of the Special Exception expires if the structure is removed. Mr. Bowman stated that the structure could be maintained and this could be considered an extensive repair. Mr. Frank stated that an expansion is not allowed. He stated that he feels that the process has somehow failed in this situation and that if someone applies to rebuild a historically or culturally significant non conforming structure that the neighbors should be notified even if it does not need to go to the ZBA. Ms. Roberts stated that she believes that everyone present agrees that this should have come to the ZBA because of the volumetric increase and in this situation it was mistakenly overlooked. Mr. Frank stated that he feels that even if the structure were to be rebuilt exactly that a substantial rebuild such as this should go to the ZBA. Atty. Kelly stated that his understanding of section 17.5 is that it is for the continued use of a historically/culturally significant building or a single family dwelling but it does not have to meet both requirements. Ms. Roberts stated that this is not a single-family dwelling. Mr. Ajello stated that an accessory apartment could be considered a single-family dwelling. The Commission and Mr. Ajello discussed the meaning of "single-family dwelling." Atty. Kelly stated that he did not feel that that an accessory apartment was a single-family dwelling. Mr. Catlin stated that he feels that there is a hardship here albeit not necessarily a land based hardship. Mr. Sweeney stated that the main reason for the change in the roof is to meet the building code. He stated that the ceiling height in the original building was a 6'11" soffit that was a couple feet wide around the perimeter of the room and then the ceiling rose in the center of the room. Mr. Sweeney stated that the volumetric increase is 42 cu. ft.

Ms. Frank stated that it was hard for her to believe that the peak of the roof on the new structure is the same height as the previous structure. Ms. Roberts stated that the intent was to rebuild what was there previously and according to the plan it looks to be the same height and on the same footprint. She stated that she feels it is a modest increase and that the structure may look significantly larger than the previous structure at this point in construction but she feels that it will look smaller when the structure is finished and landscaped. Ms. Frank stated that she feels that there is some truth to Ms. Robert's statement.

Mr. Ajello stated that he measured the height of the previously existing building using the preexisting average grade. Mr. Sweeney stated that he had tracked the height throughout the construction process and that he does not believe that the height should be an issue. He stated that he did not remember if the existing flooring system was constructed of 2x4 or 2x6 lumber but the new flooring system is constructed of 2x10 lumber and that the height from the floor to the roof peak is 12' 11". There was a brief discussion regarding options to decrease the height of the structure and possibly continuing the hearing to verify the height of the structure.

Ms. Frank was recognized and she asked that her concern for the height of the building be withdrawn.

Mr. Catlin asked the applicant to consider grading and landscaping on the neighbors side of the structure and that a verified height be submitted to the ZEO. Mr. Sweeney stated that there is a landscaping plan.

Ms. Roberts read section 17.5.c.2 and stated that she feels that this new structure meets these criteria. She stated that she feels it is a very small building, that has the same footprint and the architectural style is more in harmony with the primary dwelling. Ms. Roberts stated that she hopes the Franks find that the finished structure is not as large as it seems in its unfinished state.

Mr. Catlin stated that he feels that this application supports the continued use of a single-family dwelling or continued use of an accessory building in section 17.5.c.1.

There were no further questions or comments from the public or the Commission.

Motion: to close ZBA-0911– Request of Sweeny (Nauiakas-Harrison), 10 Loomarwick Road, for a Special Exception 17.5 (Increasing Nonconformity), to raise the roofline and add a dormer to the existing nonconforming accessory apartment, by Mr. Catlin, seconded by Ms. Roberts, by 5-0 vote.

## **MEETING**

Mr. Bowman stated that he has no objections to this application and that the previous structure was dilapidated and needed a lot of work. He stated that this proposed structure compliments the primary dwelling and it will meet current building standards. Mr. Wyant stated that he supports this application and that he feels that there was an oversight but he is glad that the neighbors are satisfied. Mr. Catlin stated that he is in favor of this application and that every effort has been made by the applicant to do this correctly. He stated that it is a modest increase and believes it meets all the criteria, will not look as large when it is finished, and will be safer because it meets the building code. Mr. Wildman stated that he agreed with the previous Commissioners' comments. Ms. Roberts stated that she too agreed with the other Commissioners and feels that this application meets the criteria of a Special Exception.

Motion:

to approve ZBA-0911– Request of Sweeny (Nauiakas-Harrison), 10 Loomarwick Road, for a Special Exception 17.5 (Increasing Nonconformity), to raise the roofline and add a dormer to the existing nonconforming accessory apartment, passed by 5-0 vote.

## **PUBLIC HEARING**

Request of Ingrassia, 143 East Shore Road, for a Special Exception, Zoning Regulation(s) 17.5 (Nonconforming Structures), to demolish and rebuild dwelling on a nonconforming lot & for a Variance, Zoning Regulation(s) 11.5 (Lot Coverage), 11.6 (Minimum Set Back), 12.1.1 (Wetlands & Watercourse Set Back) & 17.4 (Nonconforming Structure), to demolish and rebuild dwelling on a nonconforming lot.

Attorney Kelly was present to represent the Ingrassias for this application and he stated that the Ingrassias applied for a variance and a special exception "to cover all bases" but he does not think they would need the variance. Atty. Kelly and the Commissioners looked at the map titled Property Survey, prepared for Timothy J. Ingrassia & Stephanie Ingrassia, by Charles Farnsworth, dated April 8, 2011. Atty. Kelly stated that the property is subject to a front lot line of 50 feet southeast and wetlands set back of 50 feet northwest and the existing structure has been there since 1939. He

stated that the Health Department approved the septic plans and the Inland Wetlands Commission has approved this proposed plan. Ms. White confirmed that notices were sent to the neighbors via certified mail. Atty. Kelly submitted a photo of the existing house as viewed from the lake and discussed the location of some of the structures. He stated that the current septic system is a cesspool. Atty. Kelly stated that the Ingrassias want to completely rebuild the structure and stated that they talked to the State, they considered the Inland Wetlands Regulations and the Zoning Regulations and they feel that the proposed plan is more conforming in all of these areas. He stated that there are less bedrooms, bathrooms, and total square footage by compacting the structure into the front line setback and away from the water. Atty. Kelly stated that the drainage would be improved and there would be a tall retaining wall that runs vertically behind the structure down to the concrete slab at the bottom and this is to support the fill and leveling out of the shoulder on the highway. He stated that the top floor would be a screened in porch, discussed the view of the structure from East Shore Road and submitted a drawing of the landscape rendering from the Lake Waramaug view titled proposed site, prepared for Ingrassia Lake House, by Plattdana Architects, sheet A2.0, dated November 30, 2011. The Commissioners and Atty. Kelly looked at the drawing titled Proposed Lot Coverage prepared for Ingrassia Lake House, by Plattdana Architects, sheet A1.1, dated January 6, 2012. Atty. Kelly stated that the proposed interior square footage has been decreased to 1,380 square feet and the existing lot coverage is 28.1% and the proposed plan would be 25.94% lot coverage.

Mr. Catlin stated that the proposed plan is switching out structures for other structures at the owners discretion. Atty. Kelly stated that he agreed with Mr. Catlin and stated that the proposed plan decreases the lot coverage and is therefore more conforming. He stated that the Inland Wetlands Commission was happy with the proposed plan because the structure is moved further from the water and the State is happy because it allows for a shoulder, improves the sight line and the structure is off of the State property which will help with parking and safety issues on the road. There was a brief discussion regarding parking and construction.

Atty. Kelly discussed the layout of the floor plan and how the property would be used. He stated that the number of rooms is being reduced. The Commissioners looked at the drawing titled Proposed Plan and Elevations, prepared for Ingrassia Lake House, by Plattdana Architects, sheet A2.0, dated January 6, 2012. Atty. Kelly and the Commissioners discussed the floor plan.

Mr. Catlin stated that he understands the regulations as allowing continued use of a non conforming property until they are removed. Atty. Kelly stated that Section 17.5 allows for modifications to a non conforming structure/property and modifications have consistently been determined to include a demolish and rebuild. He stated that the existing structure could be completely removed and rebuilt "as is" but the proposed plan is more conforming, it is not increasing non conformity. Mr. Catlin stated he does not feel that a Special Exception could be applied since it is a complete demolish and a totally new structure. Atty. Kelly stated that maybe it should be treated as a Variance because of the land based hardship that the whole property is located in two set back areas. Mr. Catlin stated that with a Special Exception the Commission must consider the architecture and if it is in harmony with the neighborhood and there is nothing like this on the lake. Atty. Kelley stated that he could show examples of similar screened in porches and the roof was designed to decrease the sun exposure and it expands the view of Lake Waramaug from the road. Mr. Bowman stated that if the structure is built as the plans indicate it will blend in, would be partially hidden by the vegetation and it would be less of a visual impact. There was a brief discussion regarding the height of the structure.

Ms. Roberts stated that she agreed with Mr. Catlin and stated that she is uncomfortable looking at the proposed plan as a Special Exception because it is a complete tear down and rebuild and it does not promote housing choice. Atty. Kelly stated that it would be used a single-family dwelling. Mr. Catlin stated that he feels the ZBA looks at the continued use of a single-family dwelling as an existing structure that is being amended to make it continue to be useable.

Atty. Kelly asked Mr. Catlin if he thought the property is entitled to a Variance. Mr. Catlin stated that he feels that the hardship is self-created and that the proposed plan is more attractive and more conforming than what exists, but the ZBA does not usually look favorably on trading coverage for something else. He stated that he is struggling to find a non self-created hardship. Atty. Kelly stated that the hardship is that the property has existed before the regulations and because the property owners are reducing the non conformities in various ways that they are within their rights to build a larger structure than what is proposed as long as they stay within the existing footprint and this would increase the density and intensity of the property. He stated that they have kept the plan, "in every measurable way," under or at what exists and a rebuild does not have to be identical to what exists. Atty. Kelly read Section 17.4.a. Mr. Catlin stated that there is an increase in non conformity because a portion of the main building is closer to the Lake. The Commission and Atty. Kelly looked at the drawing titled Proposed Site Plan, prepared for Ingrassia Lake House, by Plattdana Architects, sheet A1.0, dated January 6, 2012. Mr. Catlin showed Atty. Kelly the area that he feels is in increase in the non conformity. Mr. Catlin stated that he is very uncomfortable with this proposed plan because of the size of the structure, the lot coverage is still 25% and he does not feel there is a hardship. Atty. Kelly stated that he is comfortable with his position that there is a hardship because the property is covered by two setbacks and variances are often granted because of setbacks. Mr. Catlin stated that the Ingrassia's bought the property knowing that it is non conforming.

Mr. Frank stated that he feels the plans are thorough and his thought is that the Zoning Regulations should not be varied where they would disturb a basic policy of the Zoning Regulations. He stated that the Zoning Regulations state that it is the intent of these regulations to permit these non conformities to continue until they are removed. Mr. Frank stated that a balance should be found between the intent of the Regulations and the reasonable expectations of the purchaser of a property. He questioned what the proper forum would be to address a non conforming use of a property where the proposed plan changes the property completely and it seems to him that the thrust of the Regulations is that the non conforming structures may stay and certain changes can be made but when you stop using that structure or remove that structure then it must conform to the Regulations.

Ms. Roberts stated that based on the past there have been instances where an older non conforming structure has been replaced by a newer non conforming structure and if it was within the same scope the ZBA has approved it. She stated that when the Zoning Commission added Section 17.5 the intent was that there are a great deal of older structures in the Town that are non conforming and if they wanted to make changes when a land-based hardship was not present. Ms. Roberts stated that she is not as uncomfortable as Mr. Catlin regarding the corners of the proposed structure that are closer to the Wetlands setback and she feels that the greater impact on the property has been reduced. She stated that this is a very ambitious project and she does not feel that a Special Exception could be applied to this complete teardown and rebuild because to her, the point of a Special Exception is to retain the ability of the property owner to renovate, add on, etc. to a structure that predates the Zoning Regulations. Ms. Roberts stated that she sees Mr.

Catlin's point regarding hardship and she believes that there is case law that has seen it both ways but that the State has also been very clear that when somebody buys a property and that property has certain attributes, they know what they are buying. Atty. Kelly stated that he and the Ingrassias understand that this is a discretionary permit and their intent is to make changes that do not increase the non conformity and thought the ZBA would find this favorable. He stated that he disagrees that this is a self-created hardship because there was nothing done to the property that created the hardship and the proposed plan decreases non conformities with the exception of the front setback.

Ms. Kaplan stated that it troubles her that the neighbors may not favor the aesthetics of the proposed plan and was wondering if concerns would decrease if the façade were to change. Atty. Kelly asked if the Commission would like more information of the materials that would be used.

Mr. Catlin stated that he would like to address two issues regarding Section 17. He stated that he believes that the Special Exception could not apply to this proposed plan because the removal of the building and in Section 17.5 there is a specific requirement that the ZBA is to give special consideration to the size, scope, location, architectural style and appearance of the buildings and other structures in the vicinity. Mr. Catlin stated that he drove around Lake Waramaug and did not see that this proposed structure would be in harmony with the other houses on the Lake. Mr. Catlin stated that he is struggling with the requirement to find a land-based hardship for a Variance. He stated that he would like to see the proposed structure reduced further in scope and he is not comfortable with the many things that the ZBA is being asked to vary.

Ms. Roberts asked Atty. Kelly if he would like to continue the public hearing so that he may have a chance to discuss the issues with his clients or if he would like the ZBA to vote tonight. Atty. Kelly stated that he would like to continue the public hearing and that maybe he should bring the architect to the next meeting. Mr. Catlin stated that giving examples of existing buildings on the Lake that are of similar vernacular would help. Ms. Roberts stated that the issues the ZBA would like addressed are comparable properties around the Lake, finishing materials of the structure and whether a Special Exception could be applied to demolishing a building.

Motion:

to continue ZBA-0912 – Request of Ingrassia, 143 East Shore Road, for a Special Exception, Zoning Regulation(s) 17.5 (Nonconforming Structures), to demolish and rebuild dwelling on a nonconforming lot

by Ms. Roberts, seconded by Mr. Wyant, passed by 5-0 vote.

Motion:

to continue ZBA-0913 - Request of Ingrassia, 143 East Shore Road, for a Variance, Zoning Regulation(s) 11.5 (Lot Coverage), 11.6 (Minimum Set Back), 12.1.1(Wetlands & Watercourse Set Back) & 17.4(Nonconforming Structure), to demolish and rebuild dwelling on a nonconforming lot,

by Ms. Roberts, seconded by Mr. Wyant, by 5-0 vote.

## **PUBLIC HEARING**

ZBA-0914 – Request of Provey (Carreira), 19 New Preston Hill Road, for a Special Exception, Zoning Regulation(s) 17.5 (Increasing Nonconformity) to reconstruct a portion of the home that is

within the front setback.

Mr. Provey and Mr. & Mrs. Carreira (property owners) were present to discuss this application. Mr. Provey stated that he designed an addition for the back of the house, which is conforming and a small portion in the front of the house, which is non conforming. Mr. Provey submitted pictures of the existing house and stated that they would like to reconstruct and raise the height of the roof in the front of the house to allow for more headroom and to tie in the roof of the existing house to the addition. He stated that the proposed roof would be 17 feet off the floor line and existing roof is about 6 feet tall. Mr. Provey stated that the existing structure is poorly constructed and is in desperate need of reconstruction. He stated that he plans to maintain the existing foundation and the existing shed area would not be rebuilt. The Commission looked at pictures of the existing house. Mr. Provey stated that the major portion of this addition would be on the back of the house and out of the setback area. The Commission looked at the proposed elevation drawings and floor plans (on file in the Land Use Office) and discussed the pergola area. Mr. Provey added the dimensions of the pergola to the floor plan and signed the adjustment. There were no further questions or comments.

Motion:

to close ZBA-0914 – Request of Provey (Carreira), 19 New Preston Hill Road, for a Special Exception, Zoning Regulation(s) 17.5 (Increasing Nonconformity) to reconstruct a portion of the home that is within the front setback,  
by Mr. Catlin, seconded by Ms. Roberts, by 5-0 vote.

## **MEETING**

Mr. Bowman stated that a lot of problems are being fixed and it promotes the continued use of a family dwelling. Mr. Wyant stated that he agrees with Mr. Bowman and that this will be a considerable improvement to the house. Mr. Catlin stated that he is in favor of this application and he commended the applicant for keeping the majority of the addition outside of the setback areas. He stated that he feels that this meets the required criteria and supports the continued use of a family dwelling. Mr. Wildman stated that the proposed plan would be more contiguous with the neighborhood. Ms. Roberts stated that she agreed with the rest of the Commissioners.

Motion:

to approve ZBA-0914 – Request of Provey (Carreira), 19 New Preston Hill Road, for a Special Exception, Zoning Regulation(s) 17.5 (Increasing Nonconformity) to reconstruct a portion of the home that is within the front setback, passed by 5-0 vote.

## **Consideration of the Minutes:**

The Commission considered the minutes from the December 16, 2011 and January 19, 2012 regular meetings of the Zoning Board of Appeals.

Motion:

to approve the minutes of the December 16, 2011 regular meeting of the Washington Zoning Board of Appeals as submitted,  
by Ms Roberts, seconded by Mr. Wyant, passed by 5-0 vote.

Motion:

to approve the minutes of the January 19, 2012 regular meeting of the Washington Zoning Board



of Appeals as submitted,  
by Ms. Roberts, seconded by Mr. Wyant, passed by 5-0 vote.

### **Other Business**

The Commission briefly discussed the intent of the Special Exception Regulation. It was the consensus of the Commission that the intent is to preserve an antique house that predates the Zoning Regulations and is in need of modifications to continue the use.

### **Adjournment**

Motion:  
to adjourn at 10:20 pm,  
by Mr. Catlin, seconded by Mr. Wyant.

Ms. Roberts adjourned the meeting.

Submitted Subject to Approval,  
Shelley White, Land Use Clerk