

TOWN OF WARREN
ZONING BOARD OF APPEALS
PUBLIC HEARING and
REGULAR MEETING MINUTES

WEDNESDAY, FEBRUARY 22, 2017 – 7:30PM
WARREN TOWN HALL – 50 CEMETERY ROAD

PRESENT were Chairperson Jon P. Garvey, Vice Chairperson M. Trisha Barry, Members Richard D. Valine, George S. Githens, and William L. Hopkins. Richelle Hodža, Recording Secretary, was also present; **ABSENT** were Alternates Peter C. Brodhead, Nancy A. Florio, and Raymond W. Furse.

The meeting was **CALLED TO ORDER** by the Chairman at 7:31 p.m. Alternates were neither present nor needed.

PUBLIC HEARING CONTINUED

Chairman Garvey opened the public hearing in the matter of *Lake Waramaug, LLC, 387 Lake Road: Appeal of Zoning Enforcement Officer's Non-Issuance of Certificate of Zoning Compliance*. Ms. Hodža read the original notice of public hearing as published in the Republican American on December 15 and 21, 2016. On behalf of his client, Lake Waramaug, LLC, Attorney Robert L. Fisher, Jr. of Cramer & Anderson, LLP, presented the Commission with the certificates of mailing to abutting neighbors notifying them of the public hearing. Attorney Fisher reviewed the events and documents leading up to the present, beginning with the Application for Zoning Permit in December 2013 for Change of Use by Mr. Rafe Churchill on behalf of the Lake Waramaug, LLC. Attorney Fisher cited Section 17 of the Warren Zoning Regulations regarding "Non-Conforming Uses"; referred to the Connecticut General Statutes, Chapter 124: "Zoning", Sec. 8-2: "Regulations"; and cited portions of Section 30 regarding "Zoning Permits". Attorney Fisher asserted that the Planning and Zoning Commission has not compelled Ms. Sefčík to issue a certificate of zoning compliance and that the Town has not filed an enforcement action.

Chairman Garvey asked, if the Zoning Permit were issued, to what use(s) was his client entitled? Attorney Fisher responded that he was entitled to Residential Uses, which would include the renting of the residence as allowed. Chairman Garvey questioned the number of units on the property especially inasmuch as the two cottages were actually duplexes and therefore constituted four dwellings plus the cottage and the main house for a total of six residential dwellings on a single lot. Attorney Fisher stated that the cottages were neither used, nor intended for rental as duplexes; thus, there were essentially four, not six, dwellings on the lot. Attorney Fisher added that the property was to be rented by one family at a time who might use the additional buildings to house "overflow." No events were intended to be held at the property, it was not intended for transients, and the rental period was no fewer than four consecutive nights. Attorney Fisher stated that a number of Warren home owners advertise and rent their properties.

Attorney Matthew J. Willis of Branse & Willis, LLC, representing Ms. Stacey M. Sefčík, Zoning Enforcement Officer for the Town of Warren, questioned whether Ms. Sefčík had in fact made a decision, which would have to exist before an appeal. Attorney Willis produced case law: *Reardon et al. v. Zoning Board of Appeals of the Town of Darien, 311 Conn. 356 (2014)* in support of his argument. Ms. Sefčík had written but one letter to the Appellant in December 2014, which, argued Attorney Willis, was informational and did not constitute a decision; as such, the Zoning Board of Appeals does not have jurisdiction. Attorney Willis also stated that the Section 17 regulations which "grand-fathered" (thereby allowing) the non-conformity, did so within the scope of the coincident use; a change of use would require compliance with that new use.

Attorney Fisher countered that the letter written by Ms. Sefčík was a refusal to issue a zoning compliance certificate and that protracted inaction is tantamount to a decision. He also reiterated that Section 17 refers to non-conforming uses, structures, and parcels.

Attorney Charles R. ("Peter") Ebersol, Jr. of Ebersol, McCormick, Reis & Steck, LLC, advisor to the Town of Warren Zoning Board of Appeals, spoke to the Commission. He charged the Commission with (1) determining whether or not a decision had been made by Ms. Sefčík, and (2) if a decision had been made, deciding whether it should be overturned or upheld. Attorney Ebersol advised the Board that it could choose to not to close the public hearing tonight and did not have to render a decision tonight.

Attorney Fisher requested the opportunity to respond to the matter raised by Attorney Willis - whether or not a decision had been made – in writing.

Attorney Willis stated that even if the letter written by Ms. Sefčík in 2014 is determined by the Board to have constituted a decision, the statutory period of appeal is thirty days and no appeal had been filed within that period.

Mr. Githens requested to know where the Board stood vis-à-vis the pending action, *Lake Waramaug, LLC v. Zoning Board of Appeals of the Town of Warren*, in the Superior Court at Litchfield. The attorneys explained that the Court expected the parties to seek further attempts to settle the case for a period of 120 days beginning when the parties have informed the Court that the period should commence. Mr. Githens asked where Mr. Charles P. Eaton, the property owner, resides. Mr. Fisher responded that he lived on the other side of the lake in Washington, but that people are allowed to have more than one residence.

The attorneys agreed, as did the Commission that it would be best to receive briefs from each party regarding the issues raised at the meeting within three weeks or by Friday, March 17, 2017. After comparing schedules, Mr. Valine made a MOTION to continue the Public Hearing until April's Regular Meeting of the Zoning Board of Appeals on **Wednesday, April 26, 2017 at 7:30 p.m.** at the Warren Town Hall. Ms. Bates SECONDED; the motion CARRIED.

REGULAR MEETING

Ms. Barry made a MOTION to approve the **January 25, 2017** regular meeting minutes. Mr. Valine SECONDED; motion CARRIED.

Mr. Valine made a MOTION to amend the agenda to include a discussion of the budget under OTHER BUSINESS PROPER TO COME BEFORE THE BOARD. Ms. Sefčík had made recommendations for the 2017-18 budget based on the increase in the number of applications being received by the Land Use Office and increases in related expenses. Mr. Hopkins made a MOTION to ACCEPT the proposed budget. Mr. Valine SECONDED, the Board voted UNANIMOUSLY to CARRY.

Ms. Barry made a MOTION to close the meeting at 8:26 p.m. Mr. Githens SECONDED. The motion CARRIED. The next regular meeting of the ZBA is **Wednesday, March 22, 2017 at 7:30 p.m.**

Respectfully Submitted,



Richelle Hodža
Recording Secretary