

**Town of Warren
Zoning Board of Appeals
Regular Meeting – Minutes
Wednesday, June 24, 2015 - 7:30PM
Warren Town Hall – 50 Cemetery Road**

PRESENT: Chairman George Githens, Jon Garvey, Trisha Barry, Bill Hopkins, Rick Valine; Stacey Sefcik, Zoning Enforcement Officer.

EXCUSED: Alternates Nancy Florio and Peter Brodhead.

1. CALL TO ORDER & DESIGNATION OF ALTERNATES.

At Chairman George Githens's request, Vice-Chairman Jon Garvey chaired the meeting and called the regular meeting to order at 7:30PM. The proceedings were recorded digitally, and copies are available in the Land Use Office.

2. PUBLIC HEARINGS:

A. Lake Waramaug, LLC, 387 Lake Road – Request for Variance of Sections 8.4B, 9.4.2, and 15.1A of the Town of Warren Zoning Regulations to Permit an Accessory Dwelling Unit More than 50 Feet from the Main Dwelling Unit and to Permit an Accessway to an Interior Lot That is Not Owned in Fee Simple by the Owner of the Interior Lot that is Located within Five Feet of the Side Property Line.

Ms. Sefcik read into the record the legal notice for this matter. She also explained that the Town of Washington had been notified of this public hearing as the property was within 500 feet of the Town line. Attorney Robert Fisher addressed the Board on behalf of the applicant, and he submitted proof on notice to abutting property owners. Mr. Garvey read a prepared statement explaining that while he lived on Lake Road in the general vicinity of the subject property, he was not an abutting neighbor and he felt that he could act impartially on this matter.

Mr. Fisher explained that the property was owned by Lake Waramaug, LLC, which was established by a local resident, Charles Eaton of 284 West Lake Road, Washington. He explained that Mr. Eaton co-owned the Washington property with another couple, and he purchased this property as he had wanted to have enough room for his family to stay with him. Before Mr. Fisher had begun working with Mr. Eaton regarding this property, the use of the property had been changed from Inn to residence; however, in doing so, a nonconformity was inadvertently created whereby there were multiple living structures on a residential lot. In an effort to resolve this issue, the applicant wished to perform a free split of the lot such that one larger residence and one cabin would be on each new lot. The cabins would then become accessory apartments for each lot.

Mr. Fisher explained that Section 9.4.5 of the Zoning Regulations permitted a single driveway to serve two or more parcels provided each can be served by their own individual driveway that meet the requirements of the Zoning Regulations and provided easements to this effect be filed on the Land Records. He said that the existing driveway currently serving both of the main residences onsite would remain and would continue to be used. However, the new lot created by such a split would be an interior lot, as it would not have frontage on Lake Road; the interior lot regulations in Section 15 would therefore apply. Mr. Fisher explained that Section 15.1A required that the accessway to an interior lot be owned in fee simple by the owner of the interior lot. Because of this, the first variance requested was to permit the accessway to instead be a 50-foot wide easement over the southern portion of the front lot. Mr. Fisher stated that this easement area was really only a paper accessway in order to meet the requirements of Section 9.4.5 and would not actually be used.

ZBA Minutes 062415

Mr. Fisher then explained that the variance of Section 9.4.2 was needed because the existing driveway was through the side yard off a private road. If a new second lot was created, the existing driveway would be within five feet of the side property line. In reviewing the plans, the Board members questioned whether there would be any enlargement of the existing driveway. Mr. Fisher explained that the property line between the two lots would run down the middle of the existing driveway, and as per the requirements of Section 9.4.5, easements would be filed on the Land Records for both parcels. The easement area was slightly larger than the width of the existing driveway; however, no enlargement was planned.

Mr. Hopkins questioned what the hardship was that necessitated these variances. Mr. Fisher stated that the property owner had received a letter from Ms. Sefcik explaining that the property was not in conformance with the Zoning Regulations due to the number of residential structures onsite. The property owner wished to keep the structures onsite as they currently were; the only way to do so was to obtain these requested variances. Mr. Fisher stated that the property owner had changed the use of the property with good intentions; however, illegalities were inadvertently created. This application was an effort to resolve those illegalities.

Mr. Fisher then explained that the last variance requested was of Section 8.4B, which requires that an accessory apartment be located within 50 feet of the main dwelling unit. This variance was requested for the cabin that would be on the proposed rear lot. He explained that the cabin was an existing structure onsite that would be converted to an accessory apartment. No other location for an accessory apartment was possible on this lot due to the location of the septic system. Ms. Sefcik explained that the applicant had submitted an application to obtain a special exception from the Planning and Zoning Commission to use the cabin on the proposed front lot as an accessory apartment. Mr. Fisher explained that the property also included 17 acres in Washington, which would remain with the front lot; because of this, the front lot met the requirements for a special exception in Section 8.5.

Ms. Barry questioned whether Mr. Fisher was stating that the property owner would be unable to live onsite without these variances. Mr. Fisher responded that, without the variance of Section 15.1, the property cannot be divided. The regulations did not permit two primary residences on one parcel of land, which Mr. Fisher stated he understood due to well and septic issues. Ms. Garvey verified that the property already had a well and septic system in place, and Mr. Fisher responded affirmatively. Mr. Garvey questioned what would happen if the Board were to decide not to grant the requested variances. Mr. Fisher said that Ms. Sefcik might have a better answer to that question, as she had informed them that what is there right now violates the Zoning Regulations. He said it was possible the Town could state that the property owner was not permitted to use some of the buildings onsite. Mr. Fisher stated that, in retrospect, the property owner should probably have just left the designation as Inn, without taking in any guests.

Mr. Garvey then verified with Mr. Fisher whether the intent of the property owner was to use this property for residential purposes. Mr. Fisher stated that Mr. Eaton, his grown children, and grandchildren get together every weekend and the property was to be used primarily for that purpose. He stated that the property had been posted as available for rental either of the main buildings as a whole. Mr. Garvey stated that he had seen the listings of the property on the several websites, and it was booked through November. Mr. Fisher stated that Mr. Eaton and his family use the property periodically, and they have also gotten people who have booked either a week at a time or 3-4 days at a time. Mr. Fisher stated that some of the dates booked on the calendar were in fact for Mr. Eaton's family. He stated that this was much like other property owners in Town who occasionally rented out their properties.

ZBA Minutes 062415

Mr. Fisher stated that the person who had created the listing had been overeager and had gone a bit too far in what had been written when they stated the property was available for corporate events, boat rides, and weddings. Ms. Barry stated that the listings still offered these items; Mr. Garvey concurred. Ms. Barry stated that she had looked at the listing earlier that day and catering and housekeeping were still listed as available. Ms. Sefcik produced a copy of the listings from June 20th to show to the Board and Mr. Fisher. Mr. Garvey pointed out that the listings stated that both houses were available as a “package deal.” Mr. Garvey stated that it sounds like the property owner was trying to run an inn onsite, and Ms. Barry concurred. Mr. Fisher stated that the Zoning Regulations define an inn very differently. He reiterated that he had spoken with the applicant earlier that afternoon and had been assured that nothing would be done onsite that has any sort of business or commercial connotation. Mr. Valine stated that what was described sounded, in his opinion, like a business. Mr. Fisher stated that he had spoken with the applicant when he had first been made aware of the website, and he had been told that there was not going to be doing anything like a business onsite, except renting out a building or buildings intact.

Mr. Fisher stated that he believed “catering” was a poor choice of words; people staying on the property may wish to have takeout delivered or else the applicant could give them the name of someone who could bring food in. There would not be furniture, cooking equipment, etc. coming onto the site; everything that is necessary to serve food to the number of people able to be accommodated onsite is already present. Mr. Fisher stated that he was not aware that the property had been used for anything other than residential purposes since Mr. Eaton has owned it. Ms. Sefcik stated that this was not her understanding. Mr. Fisher stated that the posting of the site as available for all of the business-related uses was very poor judgment, but the property has not and would not be used for any commercial purpose. Mr. Fisher stated that he had drafted a letter to Ms. Sefcik to request an opportunity to meet and discuss these issues and what uses would be permitted. He said he believed he understood what anyone who owned a house in Warren could do with their property, but he wanted to verify there were no business or commercial activities that would stand in the way of total compliance with the Zoning Regulations.

Ms. Sefcik then distributed copies of a Notice of Violation letter and a Cease and Desist letter that had been sent to the property owner. She explained that the Cease and Desist letter had been mailed out but might not have reached Attorney Fisher as yet; she gave him a copy for his records. Mr. Fisher stated that there was no activity to cease and desist; while the applicant’s listing was foolish and, in his opinion, in violation of the Zoning Regulations, the listing was in fact as far as it went. He stated that there had not been and there would not be any use of the property that is in violation of the Zoning Regulations. Ms. Sefcik stated that it was her understanding that a party stayed onsite within the past few weeks in connection with a wedding in the area, and in so doing had cancelled out of their bookings at two other inns in the Town. Mr. Fisher asked how it was a zoning violation for a group of people to stay in one of the buildings. He stated that he did not understand how renting the house out, either building, violates zoning. Ms. Sefcik stated that it might pertain insofar as the Accessory Apartment regulations require a property to be owner-occupied, and the Board might wish to consider this issue in light of those regulations. Additionally, the listings currently show that events are permitted onsite.

Ms. Sefcik noted that the Board might want additional information regarding the cabin that was to become an accessory apartment. She noted it was currently a duplex, and the Regulations only permitted one accessory apartment per property. She stated that Mr. Fisher had indicated the cabin would be converted to one apartment; however, the Board had no specific information about this plan.

ZBA Minutes 062415

Also, the Accessory Apartment regulations required that the apartment be no larger than 900 square feet. While the cabin itself met that requirement, it had two decks at the front and back; when this area was included the cabin was greater than 900 square feet. She suggested the Board might wish to obtain clarification on this issue from Planning & Zoning Commission. Mr. Fisher stated that in his interpretation the regulation referred to the floor area of the accessory apartment. Ms. Sefcik stated that may very well be the case; however, she felt clarification might be helpful.

Mr. Hopkins again asked about hardship in this matter. He questioned whether the hardship in this situation had been created by the owner of the property. Mr. Valine observed that this had been alluded to earlier when Mr. Fisher explained that the applicant had changed the use of the property. Mr. Hopkins questioned whether this was a hardship. Mr. Fisher stated that the property owner had thought that changing the use to residential and eliminating traffic and guests coming and going from the property would be an improvement; he had not realized that changing the use would lead to the creation of illegal conditions that would have to be remedied by either the Zoning Commission or the Zoning Board of Appeals. Mr. Fisher stated that he thought that overall this was a good plan for the neighborhood as well as the owner. He explained that he had met with Ms. Sefcik and the Planning and Zoning Commission several times over this issue and there were not really any other options. He stated that the property owner was responding to a legitimate order from a zoning official; while he acknowledged that hardship was a difficult thing to prove, there was no other way to make this property conform without waivers or variances.

Mr. Githens noted that Mr. Fisher had explained that Mr. Eaton jointly owned the property in Washington with another couple. He questioned whether each of them would own one of the new lots this proposal may eventually create. Mr. Fisher responded negatively. He then stated that the question had come up at the Zoning Commission regarding what the Regulations require, and he said that it did not mean full-time occupancy of either the main building or cabin. He said that the Commission specifically stated that weekend use was fine, and that he believed the goal was to make sure that the person who is responsible for the property is present on the property more than just a small amount of time, which was clearly the case at this property. Mr. Fisher stated that Lake Waramaug, LLC was comprised of Mr. Eaton and his wife; the other couple who co-owns the Mr. Eaton's house in Washington have no association with this property.

Mr. Garvey informed Mr. Fisher that the members of the Board would like to be able to hold a site walk on the property. Mr. Fisher stated that would be fine. Ms. Sefcik explained that since the Board was in the midst of a public hearing, the date and time of the site walk should be determined now or else a legal notice would have to be published. The Board agreed to hold the site walk on Wednesday, July 1, 2015 at 3PM.

Mr. Fisher stated that he had not been contacted by any neighbors or the general public regarding the notifications that were mailed or in response to the signage. Ms. Barry stated that the sign was very hard to read because there was so much information in such a small space. Ms. Sefcik said the sign should be moved closer to the street.

Hearing no further comments or questions, Mr. Garvey opened the floor to public comment; however, no one present expressed a desire to speak.

MOTION Mr. Garvey, second Ms. Barry, to continue the public hearing in the matter of **Lake Waramaug, LLC, 387 Lake Road – Request for Variance of Sections 8.4B, 9.4.2, and 15.1A of the Town of Warren Zoning Regulations to Permit an Accessory Dwelling Unit More than 50 Feet from the Main Dwelling Unit and to Permit an Accessway to an Interior Lot That is Not Owned in Fee Simple by the Owner of the**

ZBA Minutes 062415

Interior Lot that is Located within Five Feet of the Side Property Line to Wednesday, July 1, 2015 at 3PM at 387 Lake Road for a site walk and then to the July 22, 2015 regular meeting at 7:30PM; unanimously approved.

3. APPROVAL OF MINUTES.

A. May 27, 2015 regular meeting.

MOTION Mr. Garvey, second Ms. Barry, to approve the minutes of the May 27, 2015 regular meeting as written; unanimously approved.

4. OLD BUSINESS:

A. Lake Waramaug, LLC, 387 Lake Road – Request for Variance of Sections 8.4B, 9.4.2, and 15.1A of the Town of Warren Zoning Regulations to Permit an Accessory Dwelling Unit More than 50 Feet from the Main Dwelling Unit and to Permit an Accessway to an Interior Lot That is Not Owned in Fee Simple by the Owner of the Interior Lot that is Located within Five Feet of the Side Property Line.

This matter was tabled to the July 22, 2015 regular meeting.

5. NEW BUSINESS:

No business was discussed.

6. OTHER BUSINESS PROPER TO COME BEFORE THE BOARD.

No business was discussed.

MOTION Mr. Garvey, second Mr. Hopkins, to adjourn at 8:25PM; unanimously approved.

Respectfully submitted,

**Stacey M. Sefcik
Zoning Enforcement Officer**