

Town of Warren ZONING BOARD OF APPEALS 50 Cemetery Road Warren, Connecticut 06754

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REGULAR MEETING and PUBLIC HEARING MINUTES

Wednesday, August 25, 2021 – 7:30 pm

Attendance in person and via Zoom Video Conferencing (Recording Link Below)

Those present were Rick Valine, Chairman, Ray Furse, Vice Chairman, Members Bill Hopkins, Robin Ploch, and John Morton, Alternate. Alternates Andrea Kliss and Thomas Maguire were absent, and Member George Githens had resigned. Town Clerk Joanne Tiedmann was the Zoom video conference monitor.

Call to Order and Designation of Alternates

Chairman Valine called the meeting to order at 7:32 p.m. Chairman Valine announced that Mr. George Githens resigned as of the August 17th, and seated John Morton in his stead.

Approval of Minutes

A MOTION was made by Mr. Furse to approve as written the minutes of the regular meeting held on Wednesday May 26, 2021; his motion was SECONDED by Mr. Hopkins; all were in favor. The MOTION CARRIED.

No old business.

Public Hearing

Hearing Appeal by Susan H. Bates of a decision by the Zoning Enforcement Officer to issue a permit for a dock at a lakefront parcel identified as Assessor's Map 44 Lot 03 and belonging to John F. Lyons and Susannah Gray of 369 Lake Road. Chairman Valine stated that notices were posted in the newspaper as required by state statute. Chairman Valine stated he received certificates of mailings to those within 200ft of the property in question. Chairman Valine stated he received a photograph of the posted sign.

Ms. Gail McTaggart, attorney representing Appellant Bates stated that the board should have a copy of the survey. Attorney McTaggart stated that the client is not present due to a personal emergency. Attorney McTaggart stated that she had sold the property to Mr. Lyons and Ms. Gray however there has been no communication between Ms. Bates and Mr. Lyons or Ms. Gray regarding the proximity of the properties. Had there been a special exception hearing this could have been discussed. Attorney McTaggart stated that a stake had been placed in front of Ms.

Bates boathouse. Attorney McTaggart stated that the stake was supposed to be placed at the property line however it was placed within Ms. Bates property. Attorney McTaggart stated that the record included a GIS Map which looks like her boat house encroaches and crosses over the boundary line, however Attorney McTaggart stated that this is inaccurate. The A2 survey shows that the boathouse is 1.5ft from the property line, very close, however it does not encroach on the neighboring property. Attorney McTaggart expressed concern that this stake is in the wrong location and that measurements would be taken based on it. Attorney McTaggart stated that the 504c survey and another survey by Michael Alex (only a portion was received), and that she had spoken to another surveyor agree that both have A3 on the survey lines and there was concern about how they were set out. Attorney McTaggart stated that the picture that was put in front of the GIS has written on the bottom: This is not a legal document. Attorney McTaggart stated that the GIS maps are aerial views. The 504C survey shows the shoreline frontage on the Lyons property is 56.1ft, therefore it is a narrow shoreline property. The dock that is proposed is 50ft long with two connecting 4ft X 16ft catwalk sections plus either a float or a connecting platform. Attorney McTaggart stated that the zoning regulations define a float as a dock. The catwalk is 32ft long with the platform of 18ft so there is very little room for connection and 50ft is the maximum on the lake. Attorney McTaggart stated that the diagram is hand drawn and does not really describe where the dock is and in looking at the application for the zoning permit you can see that the it looks like the boundary line goes through the boathouse, and the next sheet shows the 16x4ft sections and she would like to point out in the land use file there is an image of this reversed with the platform against the shoreline. Attorney McTaggart stated that the zoning regulations describe the setback along the shorelines as using lines of extensions, using the words, "into the lake" and then discusses lines of extension. The dock can be larger than 8ft wide when you go 5ft out from the shoreline, however the regulations also require a setback. Therefore, the regulations are not mutually exclusive. The words are that the side lot lines are measured into the lake but the words regarding special expectation that if you do not have 25ft from the line of extension then the line of extension has to be 50ft, in this case that's the amount that's proposed. Attorney McTaggart stated that the regulations state that if that setback requirement is not met, than there must be a special exception to review it. Attorney McTaggart stated that this is due to the traffic and use on the neighboring property can impact the neighboring property. There is a right to request the allowance however that was not done. Secondly, if there is a float it can only be 10X10, sometimes it called a float, however Attorney McTaggart believes its attached and is a dock, either way it can only be 10X10 and the proposed float/dock is larger than the regulations allow. Attorney McTaggart stated that she believes this violates the zoning regulations and therefore the application should be denied based on not meeting the setback requirements, there was no application for special exception and Ms. Bates would have appreciated a discussion regarding the application such as lighting on the dock, activities, what kind of boat/boating, how would it be used so close to her property, and there may have been an agreement made however there was not. Attorney McTaggart requested they grant the appeal and deny the application. Attorney McTaggart stated that the surveyor, Adams, put a note on the map stating 1.5ft showing how close the boathouse was to the neighboring property in order to show the scale and closeness. Attorney McTaggart submitted the maps for

the record. Ms. Hodza, the ZEO officer was present. Ms. Hodza stated that she had spoken with Edgar Berner, Chairman of the Lake Waramaug authority and discussed the major safety issues that come into play with docks and closeness to other properties. Ms. Hodza stated that Mr. Berner reported no concerns regarding the closeness of the proposed dock to the neighboring property. Ms. Hodza stated she did not receive a written statement from Mr. Burner however she had discussions with home on the application.

Ms. Hodza emphasized that she was fully aware from map 504c that there was only 56.1 ft of shoreline and because of that she had spoken with the dock installer, Mr. Singer regarding the design as he would only have 1ft of space on each side. Ms. Hodza stated she had concerns regarding where exactly the dock could be placed and requested a surveyor put stakes and then measure from either side. Ms. Hodza read letter L from her approval of the application. Ms. Hodza stated that in her view this application reasonably met the 25ft setback, she stated there is no definition in the regulations of "lines of extension", so one is to interpret how far those lines go out into the lake. Ms. Hodza stead that in her view it seemed reasonable that the 344sqft dock being requested was not only 16sqft smaller than allowable, but that it goes out a full 32ft before it extends to the 12ft width somewhere in the middle of the lake. Ms. Hodza stated that in her view, the proposal, because the property owners had 56.1ft altogether, their proposal was reasonable. Chairman Valine asked if any board members had questions. Mr. Furse asked a question to Ms. Hodza unclear on the recording. Ms. Hodza responded stating that as she had mentioned, there is no clear definition in the regulations regarding the "lines of extension". Ms. Hodza stated that typically its used in architectural drawings, and at one point that the regulations discussed a 60ft extension, and therefore the lines of extension would extend 60ft. Ms. Hodza stated that because there is no definition of lines of extension and the greatest setback for residents, is 30 ft. so Ms. Hodza's stated that because this application is at 32ft she interpreted the regulation to the best of her ability and judgment and felt that the proposal was not only, in the concourse of the lot but the distance to be acceptable. Mr. Furse stated the property line extension is not an issue than once it extends beyond the 30ft would there be another evaluation of the 8ft. Ms. Hodza stated that there is nothing in the regulation stating you cannot get wider than 8ft. Ms. Hodza stated that the idea is, we will give you 8ft at the shoreline to protect the vegetation at the shoreline. Ms. Furse asked a question that the recording could not understand (28 minutes) Mr. Furse stated he was wrestling with if there was something missing in the regulations that was the responsibility of the commission to address. Mr. Hopkins asked, the extension of the property lines into the lake, you are not suggesting that is the actually the property of the landowner. Ms. Hodza stated that this is the odd thing, they are suggesting imaginary lines of extension, not property ownership, imaginary lines of extension from the property out into the water. Mr. Hopkins stated that his property on the lake and made the point that the on jetty properties the lines of extension often cross and there is difficulty determining property lines. Ms. Hodza reiterated that lines of extension is not defined in the regulations. Chairman Valine acknowledged Mr. Lyons and his attorney. Mr. Lyons stated that his goal was to get a dock for his children to fish from and that his architect had designed the dock with the intent to fish from. Mr. Lyons stated that over the years after having purchased the house in

2014, Attorney McTaggart and Ms. Bates have shown up on their property a minimum of half a dozen times with various unnecessary complaints. Mr. Lyons asked his attorney to make a statement. Mr. Lyons stated that he does not currently own a boat. Chairman Valine asked the board if they had any questions. Attorney John Casey, representing the Lyons stated that they support the ZEOs approval and report and as discussed, the ZEO went to the site, there was no dispute regarding the frontage of the site, meeting the regulations. Attorney Casey stated that the side lot lines that run adjacent the late are important, 14.4.10 is that when it talks about the lines of extension, which is not defined anywhere, the regulations could have stated "into the lake" however they didn't use them to describe lines of extension "into the lake" and therefore those elites could be run "forever" if your property lines converge it would almost be impossible to place a dock in that area. The key thing, Attorney Casey stated is that the 50 ft in length, the widths of the dock, the square footage of the dock and/or the 8ft width after 5ft of the shoreline, are all met with this dock as presented. Attorney Casey stated that what is presented is a dock, not a float, and the dock itself meets all the requirements. Attorney Casey stated that a float is disconnected from the shore, and this is not a float, but the dock itself meets all the requirements. Attorney Casey stated that the proposal meets the setback requirements and that it meets a reasonable, he asked the board to dismiss the appeal and he stated he was happy to take any questions. Mr. Furse asked in regard to other cases the attorney was familiar with, in his personal opinion, was there something the board was lacking in regard to their regulations. M. Casey stated that he had not come across a situation where a local zoning authority had zoned into a lake, courts have said when it comes to riparian rights is that one person's exercise cannot have a negative impact on a neighbors use of their riparian rights as well. Attorney Casey stated that a hard and fast rule is difficult to create. Attorney Casey stated he had not seen other towns with lakes that had an extension requirement, while there are setback requirements at the shore. This application shows the dock placed centered to minimize the impact on the neighboring properties. Chairman Valine acknowledged Attorney McTaggart. Attorney McTaggart stated that the zoning application which had been approved, shows the dock extending 32ft rather than 50ft. Attorney McTaggart read the dock regulation 14.4.10 into the record. Attorney McTaggart stated that all in creating regulations words are supposed to have meaning, and you would have to ignore the words lines of extension in this application, however it has meaning. Attorney McTaggart stated that it matters not how its owned, but it's the impact, not just regarding what is growing on the shoreline but safety also. Attorney McTaggart stated that the decisions of the board should be based on health, safety and welfare which are appropriate rationale. Attorney McTaggart stated that whatever the riparian rights are, which are defined in different ways, the regulations under zoning are these regulations, however if they should be different, they should be changed by the board using the necessary steps, however these are the regulations which exist. Attorney McTaggart referred to Ms. Hodza's statement that she had felt the most important part of 14.4.10 was the term, "reasonably". Attorney McTaggart stated that this term, "reasonably," doesn't apply for the first order, which is, if it meets the setback; however if it doesn't meet the setback, it will go to the commission for a special exception review. Attorney McTaggart stated that in a special exception review, a case-by-case determination, as discussed by Attorney Casey, is not a variance – is not looking for a hardship. Attorney McTaggart stated

that the very discussion that should have been had about the dock could have been had, and maybe some variations or modifications to make it work better. Attorney McTaggart stated that Ms. Bates was not allowed the opportunity; however, these regulations require her to be allowed this opportunity. Attorney McTaggart stated that riparian rights are designed so that one person's use does not affect another person's use. Attorney McTaggart stated that this is exactly what this special exception does: it allows a review of how one person will affect another person. Attorney McTaggart stated that there was a diagram submitted by the zoning officer of a hypothetical dock and how it could be placed on Ms. Bates's property. Attorney McTaggart stated that this is not the only concern -- how far the docks are away from each other -- it's the activities in front of her client's property. Attorney McTaggart stated that if Ms. Bates wants to swim in front of her property and boats are coming alongside the dock or a fishing line with a hook on it is in the water, for example -- these are things that could have been discussed. Attorney McTaggart stated they are concerned about a dock with a platform so wide at the end for various reasons, not that they did not feel there should not be a dock on the property. Attorney McTaggart stated that zoning is not about individuals, but about how the regulation could affect other property owners down the line. She held that there should not be a platform so wide that it sits within the lines of extension.

Attorney McTaggart read a portion of her letter of request for denial into the record. She added that she had experience with riparian rights and felt that the extension of the property line is certainly to provide a setback beyond the property line. Attorney McTaggart stated that she and her client would like to, and would appreciate, having a conversation with Mr. Lyons.

Mr. Lyons interjected that he had attempted that and had been denied, adding his recollection of historic interactions with Attorney McTaggart and Ms. Bates.

Attorney McTaggart stated that there are easements on Ms. Bates's property and the concerns that Mr. Lyons raised were not material. Attorney McTaggart stated it had been a long time since she had been at the property.

Attorney McTaggart requested that the Board review the application again.

Chairman Valine asked the committee if they had anything to add. Attorney Casey had nothing further to add.

Chairman Valine opened the hearing to the public and reviewed the points of order.

Mr. Geoffrey Fairbairn, a Washington resident, was acknowledged by Chairman Valine. Mr. Fairbairn asked how many dock approvals had been done by the Town. Mr. Fairbairn asked if this issue regarding lines of extension had been brought to the commission before. Chairman Valine stated that he had been on the board for five years and had not yet had a case like this. Mr. Fairbairn stated that he had built docks on the shoreline of the Long Island Sound, stating

that it typically takes a year to get a permit and that sideline setbacks on salt water are allowed to build 40ft out. Mr. Fairbairn stated his opinion regarding the necessity for consideration of each neighboring properties line of extension was unreasonable. He stated he has done a lot of building on the lake and this was a new one to him. It would have a "domino effect" that would make each next dock determine be determined by the last person's dock. Mr. Fairbairn explained his experience on the lake and stated that in his work it takes a year to receive a permit with the necessity of going through zoning, inland wetlands, DEEP and Army Corps of Engineers, but never have the lines of extension been a part of the process.

Mr. Adam Singer of A&J Docks was acknowledged by Chairman Valine. Mr. Singer stated that he had been hired by Mr. Lyons to build the dock. He stated that the design of the dock specifically called for the 18' dimension to extend into the lake, with the 12' dimension being the width, which is a very common dimension for docks, one of the reasons being for stability. Most houses would rather have had the 18' dimension wide. Mr. Singer spoke about his experience on Lake Lillinonah and Candlewood Lake and the various instances where First Light [the utility company] owns to the 440 [elevation] line and regulates all dock permits. Mr. Singer also spoke about the shallow waters that posed certain limitations in front of the Gray property. Mr. Singer said that a surveyor would actually have to then go out into the water 50 feet out to figure out exactly where the property lines – if extended – would actually meet out there. The north property line – the line shared by Mr. Gray and Ms. Bates – stated Mr. Singer, heads north and the line of extension would then go away from the dock and thereby increase the width of the imaginary line by 3½ feet. Mr. Singer did not think a special exception was required because everything that needed to be met was met. He stated he was out to the property three times and went to two meetings to make sure everything was done to how the Town of Warren wanted it.

From Zoom, Mr. Herman Tammen, 50 Curtiss Road, stated that the planning and zoning regulations are meant for everyone to follow. Mr. Tammen stated that there was no information for him as a part of the public posted online and he had to go to the town hall. Mr. Tammen asked that the letter be read written by Ms. Bates. Mr. Tammen stated that he checked that the docks show up 25 times in planning and zoning regulations, everything concentrates on 14.4 (Mr. Tammen read part of this into the record) and his understanding of having to do with the site lines is that extending into there is a continued minimum of 25ft on either side of the dock where a dock must be 3ft in width, with means the lot requires 53ft. This does not mean you cannot build a larger dock but you need a special exception permit. Mr. Tammen pointed out that the commission had a lot of paperwork on the table and he would appreciate those documents shared with the public via the website. Mr. Tammen requested seeing the map of the dock.

On Zoom, Mr. Warner Fite, 375 Lake Road, was acknowledged by Chairman Valine. Mr. Fite stated he lived 2 properties to the south of the properties in question. Mr. Fite stated that they were on the east shore of the lake, he stated that he did not have a particular interest or point of view on the outcome other than to state that Ms. Bates and Mr. Lyons seem to be arguing over a lot. Mr. Fite stated that clearly the proposed dock is set in the center of the property, the property

being 56ft it would have the ability to maintain the 25ft distance required within impinging on any neighboring property and have a 6ft dock on the end of it. With the most restrictive definition of lines of extension, they are asking for 12, 3ft to the left and 3ft to the right. Mr. Fite stated that he received a letter from Attorney McTaggart regarding this application and that this was the second letter he had received from her. Mr. Fite explained that when they purchased their home in 2004 they had inadvertently placed a no trespassing sign on their property and rather than a phone call they had received a cease and desist letter. Mr. Fite stated that he felt this should be able to be resolved amicably between neighbors regarding 3ft of space. Mr. Fite stated that he would love to see our community act in a more neighborly fashion on issues like this.

Chairman Valine asked if there was anyone here who was specifically in favor of this appeal. Attorney McTaggart stated she was in favor on behalf of her client. Chairman Valine asked if anyone was opposed to the appeal. Mr., Lyons and Mr. Singer identified themselves as in opposed. Attorney McTaggart stated that Mr. Fairbairn asked the commission how many docks had been approved. Attorney McTaggart stated that this commission does not grant permission for docks. The zoning enforcement officer, when an application meets the requirements, can issue approval for zoning permit. Attorney McTaggart stated that in this case that is what happened however she and her client did not agree with the decision. Attorney McTaggart stated that the zoning enforcement officer can refer to the planning and zoning commission and their capacity and they can also do that, she stated that she was unaware of how many docks were granted by the planning and zoning commission. Attorney McTaggart stated that she was also aware of other towns with differing regulations and had witnessed other cases where there existed issue between neighboring properties. Attorney McTaggart stated she felt that the zoning regulation was a good one regarding if there exists situations where you are close to another property it is necessary to be concerned about how they each affect one another. Attorney McTaggart stated that the board is faced with the question of not if it's a good regulation or a bad regulation but what is the regulation saying and how is it applied. Attorney McTaggart acknowledged she stood corrected in the size of the dock. Attorney McTaggart stated that there may be docks on the lake that don't meet the regulations because of being placed prior to a regulation being put in place. Attorney McTaggart stated that she would like to ask again that the application be re-reviewed. Attorney McTaggart reiterated that the lines of extension into the water are in the regulation to protect the property owners and their activities in the water. Attorney McTaggart reiterated that while the regulations do not say that they cannot have the dock requested, the regulations state that it requires a special exception. Mr. Hopkins stated that they are not looking at this as a variance. Chairman Valine stated that this is the proper process for it to take place. Attorney McTaggart stated that when a zoning permit is issued, there is no proceeding, so until it is published in the paper you would not know about it. In this case Ms. Hodza published it and notice was received and they immediately filed their appeal. Attorney McTaggart stated that they received notice of it due to the wetlands application and then she and her client waited assuming there would be a special exception hearing. Attorney McTaggart stated that their only outlet is to come to this board and interpret its regulations. Mr. Lyons stated that they had asked the town if they needed a special exception, and they were told that they did not. Mr. Lyons stated that Ms. Bates called him after receiving notice of the wetlands application and he told her of the plans. Mr. Lyons stated that if the board was going to go into the determination of how lines of extension are measured and how far out they be applicable they would have to define and maintain that. Mr. Lyons stated that Attorney McTaggart stated that the lines of extension apply to 50ft out based on the fact that is how far a dock can be placed, however nowhere in the regulations does it specify a distance into the water that these lines be applied and measured. Attorney Casey stated that if they are unfamiliar with the standards of appeals based on a decision of the zoning officer, Attorney Casey advised that the commission refer to their own town attorney who may provide them with direct advice about the standards to be followed due to this not being a variance. Attorney McTaggart stated that in response to Mr. Lyons statement she would like to state that you look at the regulations as a whole, so in looking at the length of the dock and the lines of extension, reading it as a whole so that it makes sense that this was how she determined the lines of extension at 50ft. Attorney McTaggart stated she did not oppose the commission seeking their own counsel.

Mr. Furse MADE A MOTION to close the public hearing; Ms. Ploch SECONDED the motion. All were in favor, the MOTION CARRIED.

Chairman Valine stated that their choices are deliberate and render a decision, take no action and make a determination at the next meeting with the option of additionally speaking with counsel. Mr. Furse stated that he felt the commission could benefit from basic honing of the copious information. Mr. Furse stated that it boils down to things that the commission may have differing opinions on. Mr. Furse stated based on the very detailed report by Ms. Hodza they could eliminate concerns on footage, distance out of the water, the tie up to the bank and the rock. Mr. Furse stated that Attorney McTaggart's view of reading the regulations as a whole and because the 50ft regulation of the dock in the same regulatory body regarding the setbacks of property lines of extension is reasonable and the opposing view of course is that 30ft or something that is simply not specified; Mr. Furse stated that both interpretations were compellingly reasonable and both have flaws. Mr. Furse stated that in Attorney McTaggart's map of how property lines might be extended into the lake there will be instances where lines would cross and go directly into another dock. Mr. Furse stated in this particular case there is some convergence out there. Mr. Furse stated that Ms. Hodza's assumption of 30ft based on the setback, it is not mentioned anywhere in the regulations, while it seems logical and compelling, it doesn't exist in the regulation. Mr. Furse stated that he felt it was necessary to get advice from the attorney based on the missing specificity of the distance of lot line extension. Ms. Ploch stated she agreed with Mr. Furse. Chairman Valine stated that Mr. Furse's points were very well made and that he agreed with the whole interpretation. Chairman Valine stated that because the maximum length of a dock is 50ft, than these lines of extension would only encompass that 50ft. Mr. Furse asked if the lines would stay parallel. Ms. Ploch stated that it does say parallel from the shoreline in the regulation. A discussion was held on the interpretation of the lines of extension and how they would travel and remain parallel. Mr. Hopkins stated that he agreed with Mr. Furse. Mr. Hopkins asked what their options were. Chairman Valine stated they could overrule the ZEOs decision and send the application back for review, they could modify the ZEOs decision to make it comply by modifying the permit, or uphold the ZEOs decision.

Mr. Furse stated he did not feel they should modify the decision.

Ms. Ploch stated she felt it should go back to zoning for a special exception. Mr. Morton agreed. Mr. Furse asked if that should be their first course of action, or if they should seek counsel regarding whether to interpret 30 or 50ft.

Mr. Morton asked if they were supposed to interpret the regulation themselves. Chairman Valine stated they could. Mr. Morton stated he interpreted them as going straight out from the shoreline to 50ft and therefore it is not in compliance.

Chairman Valine stated that taken in its basic form, he agreed with that also, as he interprets it the lines of extension were put purposely left somewhat nebulous because of the property lines along the lake for the purpose of the docks. If the maximum dock length is 50ft it probably would apply to the length of 50ft.

Mr. Furse stated if they agreed with that, they would have to anticipate what that could mean down the road for other permits if they choose to interpret the regulation this way. Mr. Morton stated that the zoning board would then have to rewrite the regulation if they determine the length to be to extensive.

Ms. Ploch stated that she felt it was a flaw within the Commission as it wasn't questioned as its being questioned tonight and that it was unfair to attempt to interpret what that Commission had intended when it made the regulation.

Mr. Hopkins stated that he felt the regulations are good, but they only pertain to about 75% of the lake. Mr. Hopkins stated they granted an exception of more than 50ft.

Mr. Morton asked if the special exception public hearing was held and granted. Mr. Hopkins stated it was an application for a variance and it was granted because even at 50ft there was only a foot of water. Chairman Valine stated this was not a variance.

Chairman Valine asked Ms. Hodza for some clarification on procedure. Ms. Hodza stated that the Board could make a decision tonight.

Mr. Morton MADE A MOTION that the Board overturn the permit and send it to Planning and Zoning on the grounds that it should have gone through the process of special exception, Ms. Ploch SECONDED the motion. All were in favor, the MOTION CARRIED.

Adjournment

Ms. Ploch MADE A MOTION to adjourn, Mr. Morton SECONDED the motion. All were in favor, the MOTION CARRIED.

Respectfully Submitted,

Melissa Woodward Recording Secretary

Link to recording:

https://us06web.zoom.us/rec/play/JBDny6EVYLjRhWdMD9tb3P2NLvK9924vFSCJ53C2Lb9xp1CtJYIOHnTPHrB65oah 83XMyLjMzldsMM 4.qA6gh K7i54BfV2R?continueMode=true& x zm rtaid=jeOeJ9FUQvCOQI5bcIGqWg.16305272 33493.eda12a70b90e7b84120dcd57803d8c23& x zm rhtaid=563