TOWN OF WARREN
ZONING BOARD OF APPEALS
SPECIAL MEETING AND PUBLIC HEARING
MINUTES
WEDNESDAY, MAY 3, 2017 – 7:30PM
WARREN TOWN HALL – 50 CEMETERY ROAD

Board members PRESENT were Trisha Barry, Ray Furse, Jon Garvey, George Githens, Bill Hopkins, Tom Paul (new alternate), and Rick Valine. Others present were Stacey Sefcik (Zoning Enforcement Officer), her attorney Matthew J. Willis; Charles R. ("Peter") Ebersol, Jr., attorney for the Town, and Robert L. Fisher, Jr., attorney for the appellant. Richelle Hodza (recording secretary) was also in attendance.

Chairman Garvey CALLED the meeting TO ORDER at 7:30 pm. Chairman Garvey introduced Mr. Paul, a new alternate, whose seating was not required at present.

PUBLIC HEARING CONTINUED

Lake Waramaug, LLC, 387 Lake Road: Appeal of Zoning Enforcement Officer's Non-Issuance of Certificate of Zoning Compliance.

Atty. Fisher presented himself before the Board on behalf of his client, Lake Waramaug, LLC, Mr. Charles P. Eaton, its Manager. He began by addressing the issue of the early listing of the property on Vacation Rentals by Owner (www.vrbo.com). That early advertisement prompted a response by Ms. Sefcik in the form of a Cease and Desist Order. Atty. Fisher stated that the original listing on the VRBO website and on other similar websites was a recurring point of discussion both at Planning and Zoning meetings as well as at Zoning Board of Appeals hearings. Atty. Fisher stated that it was an unfortunate mistake by an employee to have posted the initial listing, because it made certain claims that were improper; however, the only "crime" was the posting itself, since none of the activities advertised actually took place, nor would take place at the premises. He stated that he had no doubt that the inability to obtain a number of variances from this Board in order to bring the property into compliance, as well as the attempt to arrive at a text amendment to achieve the same, arose from the online publication of the property as a rental location where weddings and other commercial activities could take place. The VRBO listings were corrected for the main house and for the carriage house some time ago. Atty. Fisher had checked the website before coming to tonight's special meeting and there was nothing that mentioned anything other than a residential use. It is intended to be a family-oriented get-away from home, for peace and quiet. The feedback from residents around there, stated Mr. Fisher, is positive and as far as Mr. Fisher knew, no one had complained of noise or traffic. Atty. Fisher directed the Board's attention to Mr. Eaton's letter and stated that there is a limit of six vehicles at the property and that this is a far less intense use than any weekend that the Boulders Inn ever enjoyed as both an inn and restaurant. Mr. Eaton had also stated that there would be no "tented" events, such as weddings or other outdoor gatherings under tents. Atty. Fisher presented copies of a map of Washington and Warren around Lake Waramaug, which indicated all of the VRBO listings in the area, demonstrating that the activity is locally not uncommon.

Ms. Barry wanted to know why Atty. Fisher was bringing up the issue of the VRBO listing again. She felt that it was extraneous to what was before them presently. Atty. Fisher reiterated that he did not want the listing on VRBO to linger and cloud the judgment of the Board. Ms. Barry repeated that it was not relevant. Atty. Fisher thanked Ms. Barry and then continued, stating that land use agencies cannot use concern over a future violation as a reason to deny a permit now. If there is a concern of a possible future violation, there is a remedy: a cease and desist order followed by legal action.

Attorney Fisher went on, noting that Atty. Willis had stated in his memorandum that the Zoning Board of Appeals has no jurisdiction in the matter since Ms. Sefcik had not actually made a decision. For, without a decision, there was nothing to appeal. Although Atty. Willis cited several precedents, Atty. Fisher felt that the present situation is different. Atty. Fisher and/or his client have made several requests both in writing and at least once verbally requesting that the ZEO issue the certificate of zoning compliance and they have gotten no response. Ms. Sefcik's silence and non-action is tacit denial. That is why they are appealing, said Atty. Fisher. They have done everything they can to put the matter before the Zoning Board of Appeals in a posture that allows for its decision. They are merely asking for a decision.

Atty. Fisher continued, stating that Atty. Ebersol took no position in his April 25th letter on whether Ms. Sefcik's non-issuance constitutes a decision from which an Appeal could be made. Thus, Atty. Fisher said it is up to the Board to decide.

Atty. Fisher stated that Section 32 of the Zoning Regulations authorizes the ZEO to issue a Certificate of Zoning Compliance after completion of work that is properly permitted. It does not authorize the ZEO to take no action. Atty. Fisher interprets the non-action as a denial. He urged the Board to take the position that the failure to issue the Certificate of Zoning Compliance constituted a denial of that certificate.

Atty. Fisher addressed the merits of the situation, which he considered more important than procedural issues. In his letter, stated Atty. Fisher, Atty. Ebersol wrote that Section 17 "allows the continuation of structures as the result of change of use." That change of use, said Atty. Fisher, is the change from a commercial inn to a residential use. Obviously commercial or business activities are prohibited. Only typical residential uses take place now and no commercial activities will be conducted at the property. Atty. Fisher requested that the Board take what he read as Atty. Ebersol's position, that the Board can direct the ZEO to issue the Certificate of Zoning Compliance subject, of course, to the proviso that the property be used only for those residential purposes that are listed for the South Zone. Doing so, said Atty. Fisher, will end this dispute that has gone on for about two years, and will allow for the withdrawal of the appeal that is still pending in the Litchfield Superior Court.

Atty Fisher observed that The Zoning Regulations do not define residential uses, nor do they list prohibited activities therof. Thus, Atty. Fisher read a list of what he and his client believe to be permissible residential uses:

1. Property can be used by groups of family and or friends of the owner without charge;

2. Rental of the main house and the carriage house, jointly or separately, to vacationing groups of family or friends, primarily on a weekly basis, but on occasion for a four-day period. For clarity, the property will never be rented by the room or by the day, as would be characteristic of an in; this is not a self-service inn. It will always be to a group for an entire building; there will be no staff working at the premises on a regular basis, just an off-site caretaker and someone who performs maintenance and cleaning at the end of each usage;
3. Rental to groups who are attending a local event, such as a wedding, which event is not on premises, for a weekly or a four-day weekend basis;
4. In conjunction with rental for a week or four-day weekend, use for a one-day event, such as a party with on-site parking, limited to six vehicles, attendance limited to 40 people including the rental group, and strict noise control. No event tents will be allowed;
5. Arranging for one or more meals (take-out), to be delivered on the property as requested by the tenant;
6. Arranging for a caterer-type chef to cook one or more meals on site, but meals are never going to be served by the owner or its employees on a regular basis.

Atty. Fisher concluded by confirming with Chairman Garvey that the Board was in receipt of each of the following documents:

- Initial application along with (a) a letter from Atty. Fisher, (b) a reduced-size survey, and (c) a copy of the warranty deed to the property
- Letter from Ms. Sefcik, dated December 8, 2014
- Letter from Atty. Fisher to Atty. Willis re Lake Waramaug LLC, 387 Lake Road (former Boulders Inn) dated October 27, 2016
- Letter from Atty. Fisher to Warren Planning & Zoning Commission, dated January 9, 2017
- Letter from Atty. Fisher to the Warren Zoning Board of Appeals re Lake Waramaug LLC (387 Lake Road), Appeal from non-issuance of Certificate of Zoning Compliance, dated March 17, 2017
- Atty. Willis's Memorandum of Law addressed to Mr. Garvey, Chairman of the Warren ZBA, dated March 17, 2017
- Mr. Eaton's Letter dated April 17, 2017
- Atty. Ebersol's Letter to Mr. Garvey, Chairman of the Warren ZBA re Appeal of Lake Waramaug LLC, dated April 25, 2017
- The Vacation Rentals by Owner (VRBO) map of Warren and Washington indicating vacation rental properties around the lake, distributed presently
- Warren Zoning Regulations, Effective May 11, 2012, Amended February 11, 2014

Chairman Garvey added that he was also in receipt of a Letter from Atty. Fisher, dated December 12, 2016. Atty. Fisher thanked him for the correction and thanked the Board for its consideration of both procedure and the merit.

Atty. Willis addressed the Board stating that his argument about the lack of jurisdiction was laid out in his March 17, 2017 letter. The second issue, he said, is the issue of merit, asking what it means when the owner of a non-conforming inn voluntarily decides to change the use to residential, while four houses exist on the property. Atty. Willis stated that the south zone allows

one house, and possibly one accessory apartment. But, four houses on a lot isn't what the zone allows. Atty. Willis stated that this was his argument in a nutshell: it has to conform. Having four houses on one lot does not conform. Atty. Willis added that the property owner is going to rent them out presumably the way Atty. Fisher described.

In reaction to Atty. Fisher's introduction of the VRBO issue, Atty. Willis handed out to each member of the Board a packet printed in color from the Lake Waramaug LLC's website. He pointed out that it offers a chef to cook meals for you while staying at the property. Atty. Willis wondered whether most folks renting out their homes had such websites. He invited the members of the Board to look at what he had handed out, or to ignore it, because, he stated that his first two arguments – one of jurisdiction and the other of merit – were sufficient in and of themselves to deny the appeal.

Atty. Willis distributed a letter he had written, via email only, to Atty. Fisher, dated November 9, 2016. The letter, he said, was not new and he did not want to be repetitive; the summation of his argument is the same as it has ever been. The appeal should be denied.

Chairman Garvey asked Atty. Ebersol if he had anything to say. Atty. Ebersol stated that his letter of April 25 sufficed. He added only that the two attorneys would have the Board believe that this is a black and white issue, and emphasized that it is not.

Chairman Garvey stated that the Board should focus on the jurisdictional aspects of the matter because without finding proper jurisdiction, the Board cannot get to consideration of the merits. He also observed that there was much material to review and grasp. He asked for a motion to close the public hearing. Atty. Fisher broke in respectfully to remind the Board of a point of order: after the public hearing is closed, questions cannot be asked of the public or of the attorneys.

Chairman Garvey asked if anyone had any questions. Mr. Githens had a question for Atty. Ebersol regarding a portion of Atty. Fisher's letter of March 17, which reads [on unnumbered page 5 at the bottom]:

> "In conclusion, the following facts must be considered… 2. The application for zoning permit was approved by the Planning & Zoning Commission without any conditions and without notice that conversion to residential use would render the property non-conforming because of the number of existing buildings."

Mr. Githens asked if the Town or Ms. Sefcik was legally required to notify someone changing the use of his or her property as to the implications of that change. Atty. Ebersol stated that he did not believe there was any such requirement.

Chairman Garvey asked for additional questions.

Mr. Furse stated that he, too, felt that the investor in the property, the property-owner, would be the one tasked with weighing the merits of the change of use vis-à-vis all kind of regulations, requirements, costs, building codes, etc. and that the Town is merely handling the paperwork to

facilitate the decisions of that property owner. The Town ought not to be held responsible for the ramifications of the property owner's decisions.

Atty. Fisher related that in his client's letter, Mr. Eaton stated that he was "shocked" or something similar, to find that the conversion rendered the existing additional buildings non-conforming. It would be a huge hardship to make him remove, arguably, all the buildings except the main building in order to comply, because the carriage house is too big to be considered an accessory building, and the two cottages are too far away from the main house to meet the requirements. Mr. Eaton felt that he could rely on the regulations, specifically, Section 17 under which he thought the existing buildings could remain in place. And, Mr. Fisher added that Atty. Ebersol had said the same in his letter. Mr. Fisher asked Mr. Furse if he had answered his question.

Mr. Furse stated that regardless of the magnitude of the burden, Mr. Eaton was looking at the relative costs of changes to use versus costs of maintaining current use. Mr. Furse stated that perhaps he himself did not have a correct understanding of Section 17, but to him, the nonconformity dealt with in that section was not a nonconformity created at the request of the owner; but rather, the section seeks to protect the rights of the property owner when the Town initiates a change. Mr. Furse related his own experience as a solar energy panel installer. If a customer wants to install, for example, solar panels on the roof of a barn and the only existing electricity to that barn is an underground wire, the owner, because of the initiation of a change, now has to bring that underground wire up to present day code, which, in this case, would mean digging a trench and installing an underground conduit. Had the customer not initiated any such change, the pre-existing non-compliant underground wire could remain in place without further ramifications.

Chairman Garvey added that there were no changes to the regulations since Mr. Eaton's application and in fact not for a very long time. Mr. Furse agreed. He reiterated that it seemed to him that everything in Section 17 has to do with a change in Zoning Regulations beyond the control of the property owner; it is not a change initiated by the owner.

Ms. Barry asked if Mr. Furse was saying that, had it remained commercial, the owner could have continued to use all the buildings.

Mr. Furse clarified, stating that Section 17, which allows the continued use of non-conforming structures and non-conforming uses applies only to changes that the Town makes to its regulations, changes that the owner may not have wanted but was beyond his control. It does not apply to changes that an owner makes. Mr. Furse, put forth a hypothetical case in which a person had a residential dwelling and wanted to convert it to commercial use. That person would have to bring it up to commercial code, installing wheelchair access, and a host of other features. He can't say, I don't have to do those things, because it was once residential. He offered as example the many homes along U.S. Route 202 in New Milford, which are being converted to commercial uses for doctors' and dentists' offices. Mr. Furse offered to be persuaded otherwise, but this was how he was reading the regulations and interpreting the situation.

Atty. Willis stood to make clear that there has never been an order to tear down any buildings; the issue surrounds the use of the structures that exist there and whether one can have four dwelling units on one lot.

Atty. Fisher wanted to respond to Mr. Furse. He stated that there is no evidence at the Planning and Zoning Commission or here about the costs of bringing the property into compliance after doing the renovations. Mr. Eaton never had any intention of continuing the inn; he always wanted to convert it to a residential property. Atty. Willis stated in his letter that cost was probably a factor in his decision to convert it to residential, but Atty. Fisher had never heard from Mr. Eaton that cost was ever a factor in his decision.

Atty. Fisher responded to Atty. Willis's comment, affirming that there has been no order to tear down any buildings; however, the effect is that Mr. Eaton can't get a certificate of compliance and therefore he cannot get a certificate of occupancy, which means that without a certificate of occupancy the legality of using any of the buildings for anything is unclear. Ms. Sefcik's letter of December 8, 2014 stated that the property needed to be brought into compliance. That suggests either splitting the property – which was tried and which didn't work – or getting rid of the buildings that don't comply. So even though the words don't say, 'raze the buildings', that is the practical and legal effect. That is a disappointing and onerous result, unless a certificate of zoning compliance can be issued.

Mr. Paul asked whether the owner is living in any of the houses or is planning on living in any of the houses.

Atty. Fisher said that the question had come up before, but recognized that Mr. Paul was brand new. The answer to the question, said Atty. Fisher is, "yes" …probably not more than short durations, but the Planning and Zoning Commission considered that to be in compliance with the Zoning Regulations that require owner occupancy of one of the buildings.

Mr. Hopkins wanted to understand why, when the Planning and Zoning Commission gave Mr. Eaton a permit to change the use, such problems were created. He felt that the Commission should not have granted the permit, but as they did, it should be okay. Mr. Hopkins wanted further clarification.

Chairman Garvey, suggested that Mr. Hopkins's point be best taken up during discussion after the Public Hearing was closed.

At 8:10 p.m., Ms. Barry MOVED to close the PUBLIC HEARING, Mr. Hopkins SECONDED. All were in favor, the MOTION CARRIED.

It was decided to continue the matter and its deliberations to a Special Meeting on Wednesday, May 31, 2017 at 7:30 p.m. Atty. Willis confirmed with Atty. Fisher that he was amenable to, and available on, this date at this time.

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WEDNESDAY, MAY 3, 2017 – 7:30PM
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Those PRESENT Trisha Barry, Ray Furse, Jon Garvey, George Githens, Bill Hopkins, Tom Paul (new alternate), and Rick Valine. Others present were Stacey Sefcik (Zoning Enforcement Officer), and Richelle Hodza (recording secretary). No alternates were seated.

The Chairman asked for a motion on the approval of the minutes of the last meeting. Mr. Valine made a MOTION to APPROVE THE MINUTES of the February 22, 2017 regular meeting. Ms. Barry SECONDED; the motion CARRIED.

Mr. Furse made a MOTION at 8:21 p.m. to ADJOURN the MEETING until **May 31, 2017 at 7:30 p.m. in the lower level conference room of the Town Hall at 50 Cemetery Road**. Ms. Barry SECONDED. The motion CARRIED unanimously.

Respectfully Submitted,

Richelle Hodza
Recording Secretary