

DONALD G. MORASH, JR.  
CHAIRMAN



JOSEPH J. SOLOMON  
MAYOR

**CITY OF WARWICK**  
**ZONING BOARD OF REVIEW**  
**WARWICK, RHODE ISLAND 02886**  
**(401) 921-9534**

**WARWICK ZONING BOARD OF REVIEW**  
**MINUTES OF THE JULY 9, 2019 MEETING**

A regular hearing of the Warwick Zoning Board of Review was held on Tuesday, July 9, 2019 at 6:00 P.M. in the City Council Chambers, Warwick City Hall, 3275 Post Road, Warwick, Rhode Island. The meeting was called to order by Chairman Donald Morash, Jr.

The Secretary called the roll and noted the following members present:

Donald G. Morash, Jr. - Chairman  
Beverly Sturdahl  
Salvatore Deluise  
Paul DePetrillo  
Julie Finn – Alternate  
George Shuster – Alternate

Absent: Everett O'Donnell – Vice Chairman

Also present: Peter Clarkin Esq., City Solicitor  
Daniel Geagan, Warwick Planning Department  
Amy Cota, Secretary  
Mary Ellen Hall, Stenographer

The Chairman asked if there were any petitions to be WITHDRAWN or CONTINUED.

Petition #10606

Ward 6

58 Andrew Comstock Pkwy.

The Petition for 58 Andrew Comstock Pkwy., Warwick, RI, is being continued. The applicant omitted Assessor's Plat 369, Lot 111 from the list of abutters submitted with the application to the Zoning Board of Review and the Planning Board. Applicants must reapply with the Planning Department prior to submitting an application to the Zoning Board of Review.

Petition #10596

Ward 6

Glen Drive

The petition of SKJR Properties, Inc., 22 Delbonis Dr., West Kingstown, RI; Van H. Jabagjorian, 24 Becca Lane, Middleborough, MA; Scott B. Jabagjorian, 1430 Narragansett Blvd., Cranston, RI; and Brian Jabagjorian, 5 Linbrook Dr. #203, Warwick, RI, requests a dimensional variance to construct a new 24' x 34' single family dwelling on a vacant undersized non-conforming lot. Subject property having less than required lot area, and less than required frontage. Assessor's Plat 350, Lot 77 (Glen Dr.), zoned Residential A-7.

Joseph Brennan, Esq., was present and representing the petitioner.

Daniel Geagan from the Planning Department read the recommendations into the record.

Mr. Brennan stated the petitioners are looking to construct a new single family dwelling, 24'x 34' (1632 sq. ft.) 816 sq. ft. gross area on each floor, and they are seeking relief for having less than required lot area and frontage. All other setbacks will be met.

Edward Pimentel was introduced as an expert witness in Planning and Land Use.

Paul DePetrillo made a motion to accept Mr. Pimentel as an expert witness, seconded by Beverly Sturdahl.

Edward Pimentel, Cranston, RI, expert witness in Planning and Land use, was present and sworn in by the Chairman.

Mr. Pimentel stated he has been before the Board on many occasions, and as this Board knows case law is well established. Unless a lot has been physically merged with another property, it is defined as a pre-existing recorded stand-alone lot of record, entitled to the development rights established under the law.

Mr. Pimentel stated the controlling language under our own Zoning Ordinance, pursuant to section 405.4 (A), residential use of non-conforming lots, in any district where dwellings are permitted, a dwelling may be erected, enlarged or altered on a non-conforming lot, subject to the following. Where such lots contain less than 7,000 square feet of or have less than 50' of frontage, it shall be necessary for the owner to receive from the Zoning Board of Review a dimensional variance. It states the Zoning Board shall designate the maximum size of the dwelling and its location on said lot. The language doesn't state the Board shall have the right to decide if the lot should be developed, because that would be contrary to case law.

Mr. Pimentel stated they are proposing a home that will fit into the building envelope. The two conditions they can't conform to are lot area & frontage. To deny this, would in fact result in a loss of all beneficial use of the subject property.

Mr. Pimentel stated he went out and analyzed the lots in the area and has provided an excel spreadsheet of his analysis, and the results were that this entire neighborhood is not in character with the current zoning. It's an old beach community with a lot of substandard lots. This is one of the smaller lots. They feel they are proposing a home that is reasonable in light of the substandard characteristics of the lot, but reasonable in light of the neighborhood.

Mr. Pimentel stated in his personal opinion, the hardship is in the unique characteristics of the lot, and not the prior actions of the current owner. They are seeking the least relief necessary.

The Chairman had questions about the survey plan. Attorney Brennan stated they have the Land Surveyor, Kirk Andrews present who may be able to answer any questions about the survey.

George Shuster asked about the restrictions mentioned in the deed. Mr. Brennan stated they have not found any restrictions.

Mr. Shuster stated he understands the argument the petitioners are making about the use of non-conforming lots, but what troubles him is that if there wasn't a minimum lot size requirement, would it be Mr. Pimentel's opinion that this would still be buildable for a residential building of some size.

Mr. Pimentel said his opinion is that all land is entitled to be developed from a practical perspective, but at some point if a lot is so substandard, it wouldn't be able to accommodate a footprint.

The Chairman stated he does know they have had lots with 3,000 square feet of land approved in different sections of the City.

Michael McCaffrey, Esq. 1380 Warwick Ave., Warwick, RI, was present and representing the objectors.

Kirk Andrews, Land Surveyor, was present and introduced as an expert Land Surveyor.

The Chairman asked if he had been before this Board. Mr. Andrews stated he has not been before this Board but has been before other Boards, and has been a licensed land surveyor in the State of RI since 1975. He did not submit a bio.

Attorney Michael McCaffrey objected to Mr. Andrews testifying as an expert witness, and suggested Mr. Brennan try to qualify him. He has never been before this Board, and the basis has to be laid for him to be an expert witness before this Board.

Attorney Brennan asked Mr. Andrews how long he has been a Land Surveyor in the State of RI and if he has had continued practice in this state. Mr. Andrews stated yes, and he has been a surveyor for 44 years.

Mr. Brennan asked if he has appeared before Boards in other Cities and Towns in the State of RI as an expert witness. Mr. Andrews stated, yes he has, and he has testified before the Planning Board in Warwick, but not the Zoning Board.

Attorney McCaffrey stated he had no objection to accept Kirk Andrews as an expert witness.

Paul DePetrillo made a motion to accept Kirk Andrews as an expert witness, seconded by Salvatore Deluise and passed unanimously by the Board that Mr. Andrews be accepted as an expert witness.

Attorney Brennan asked Mr. Andrews if he is testifying today that the actual size of the lot is 3,764 square feet, and not the 2,500 shown on the plat card. Mr. Andrews responded yes, that was correct.

The Chairman asked Mr. Andrews if it was his opinion that there are wetlands in the back. Mr. Andrews stated the wetlands were located at the edge of the pond. He determined the lot has 40' of frontage, and he physically surveyed along the edge of the water to determine the size of the lot.

Kirk Andrews submitted a map and a report from the biologist.

Attorney McCaffrey objected to the report from the biologist. He also objected to the map, but only for the purpose of the red lines on the map, but no objection to the aerial view of the property, because Mr. Andrews didn't draw that map.

George Shuster asked Mr. Andrews if he just measured from the street edge to the pond when he was out surveying the property to get the North and the South lot line distances. Mr. Andrews replied that on the old plat card it called for a distance of 68' on the southern side and 79' on the northern side.

Mr. Shuster asked what caused him to measure beyond that distance. Mr. Andrews stated the old record plat shows the pond as being the boundary.

He asked Mr. Andrews if in his opinion, the distances shown of 68' and 79' on the record plat are incorrect, and not that the pond has changed over time. Mr. Andrews responded yes, it is his opinion because whoever surveyed all those other lots along that strip, had the same opinion as he did, and looking at the aerial it doesn't show that it changed.

George Shuster stated what confuses him is why this lot includes the extra land along the pond. Mr. Andrews stated all the abutting properties have included it for a hundred years. Mr. Shuster stated when this lot was previously conveyed it wasn't conveyed with a lot determination based on the edge of the pond, but instead based on a lot size that was measured from the street back 68' on one side and 79' on the other side. The deed doesn't reference the ponds edge.

The Chairman stated the deed represents some restriction, they don't know exactly what it is, and asked Daniel Geagan if he had researched it. Mr. Geagan stated he just looked at the information submitted with the application, and the restriction is in at least two deeds of record, one dated June 16, 1952, and an older deed from 1937. The City believes it would be important for the Board to know what those restrictions are.

The Chairman stated not having clarification of the restrictions could cause an issue.

Attorney Brennan requested a 30-day continuance.

Attorney McCaffrey objected, he would like to cross examine the two witnesses who have testified before the Board entertains any motion to continue this petition.

Attorney Brennan stated he doesn't mind and the witnesses can answer questions while they are still under oath.

Attorney McCaffrey questioned Mr. Andrews about the survey. He asked if the deed stated Lot 107 has rights to the water. Mr. Andrews stated it shows the water as the boundary.

Attorney McCaffrey submitted a certified copy from the Warwick Land Evidence Records of the recorded plat showing lot 107, marked as Objector's Exhibit #1.

Attorney McCaffrey submitted a certified copy of a deed from the Warwick Land Evidence records, dated September 20, 2001, between Roger and Patricia Jabagjorian to Van Jabagjorian, Brian Jabagjorian, and Scott Jabagjorian, marked as Objector's Exhibit #2.

Attorney McCaffrey submitted a certified copy of a deed from the Warwick Land Evidence records, dated May 30, 1972, between Raymond Joseph Spatcher to Roger and Patricia Jabagjorian, marked as Objector's Exhibit #3.

Attorney McCaffrey submitted a certified copy of a deed from the Warwick Land Evidence records, dated July 23, 1965, between Albert J. Groux, Jr., Evelyn T. Groux, to Raymond Joseph Spatcher, marked as Objector's Exhibit #4.

Attorney McCaffrey questioned Kirk Andrews about the exhibits he submitted.

Attorney Brennan objected to the line of questioning. He stated he has been asked the same question about every deed, and he has testified that although it doesn't necessarily say that, in his expert opinion as a surveyor, it refers to the plat of record. So now when we go to the plat of record it shows it going to the pond.

Attorney McCaffrey asked that be stricken from the record because that is not what the record plat shows.

Attorney McCaffrey stated he believes if the deed doesn't state they have rights to the water's edge, then they don't own to the water's edge, and asked where in case law it says you can pick up the extra square feet of the water.

Attorney Brennan objected. He stated Mr. Kirk has testified that he used his calculation from the deed to the plat, to the pond, and in his professional experience as a land surveyor. He doesn't have to rely on case law to determine how he got there.

Attorney McCaffrey submitted a certified copy of a deed from the Warwick Land Evidence records, dated June 18, 1952, between Anthony and Madelyn Riccio to Albert & Evelyn Giroux, marked as Objector's Exhibit #5.

Attorney McCaffrey cross examined Edward Pimentel. He asked when he did his study of this property if he looked at the recorded map. Mr. Pimentel replied no.

Mr. McCaffrey stated the recorded plat shows a substantial difference from what the Survey provided by the petitioner. Mr. McCaffrey also asked if he looked at any restrictions relative to the property. Mr. Pimentel replied no, he is not an attorney.

Mr. McCaffrey stated Mr. Pimentel submitted a detailed study of the area relative to lot sizes and that nature, and in 1935 the required zoning for that area was 5,000 sq. ft. Mr. Pimentel stated he didn't research the zoning. Mr. McCaffrey stated Mr. Pimentel never did any zoning research on this area, but he is here testifying as a Planning expert.

Mr. McCaffrey submitted a petition signed by the neighbors, dated April 30, 2019, in opposition to building a new house on the subject property, marked as Objector's Exhibit #6.

There were several neighbors present in objection of the petition.

Attorney Brennan requested a 30-day continuance.

A motion was made by Paul DePetrillo, seconded by Beverly Sturdahl and passed unanimously by the Board that the petition be CONTINUED.

Petition #10600

Ward 8

92 Bleachery Ct.

The petition of DVBK Realty, 3838 W. Pine Ridge Blvd., Beverly Hills, FL, requests a special use permit to occupy existing non-conforming commercial structure to provide a day program to people with disabilities (Avatar Residential). Also seeking a dimensional variance for the existing condition of less than required rear yard & side yard setbacks to the existing structure, less than required 10' landscape buffer along frontage, less than required setback of parking spaces from the front & side yard property lines, less than required setback of parking spaces from the existing structure, less than required loading spaces. Assessor's Plat 274, Lot 241, zoned Residential A-7.

Joseph Brennan, Esq., was present and representing the petitioners.

Daniel Geagan from the Planning Department read the recommendations into the record.

Attorney Brennan stated the petitioners have occupied the building for the past three years without any issues, outside of the parking and traffic that they will address and make better. They are here seeking the special use permit, but need a little bit of dimensional relief due to the building being existing. He stated they have worked very closely with the Planning Department on this project, and they are in agreement with the stipulations being placed on the approval.

Cathy Valade, Assistant Executive Director (Avatar Residential), 100 Keeley Ave., Warwick, RI, was present and sworn in by the Chairman.

The Chairman asked Ms. Valade to describe in detail what they do at the facility.

Ms. Valade stated the people they support start their day at the center. They spend approximately four hours a day outside of the building, and generally come back for lunch. They offer classes for social skills, cooking classes, money skills, but in the State of Rhode Island they are mandated to spend the bulk of their time in the community. They volunteer or go to work with their job coaches.

The Chairman asked if any of the members drive. Ms. Valade responded no, the traffic issue is during drop-off and pick-up times. The Chairman asked what plans they have to remediate that issue.

Attorney Brennan stated they will be clear with the clients that during drop-off and pick-up times, they can't park on the street. They don't have an exact plan, but are going to address the traffic plan. They have also worked with the Pontiac Village Association, and believe they are okay with what is being presented.

George Shuster asked about the required ten foot (10') buffer. Attorney Brennan stated they felt it was safer to ask for relief from a landscape buffer rather than a parking lot buffer.

The Chairman asked if there was anyone present in opposition of the petition.

David Bouchard, 133 King St., Warwick, RI, President of the Pontiac Village Association was present and sworn in by the Chairman.

Mr. Bouchard stated this is the only commercial building in a block of forty residences. He stated they have had issues but the neighborhood has had a good working relationship with their Councilman resolving these issues. Their concerns are with setbacks, traffic, safety issues for their children, and concerns with parking on the street.

The Chairman asked how many employees work each day.

Cathy Valade stated between 17-25 employees per day.

Mr. Bouchard stated they welcome any small business into their neighborhood, though this is not the best fit, but the building has been against their wishes from day one.

The Chairman stated the business will need to take a little time to educate the people who are dropping off and picking up to make sure they understand there shall be no parking on the street.

The Chairman asked if there was anyone else present to speak in opposition of the petition.

Eleanor Riley, 113 Bleachery Ct., Warwick, RI, was present and sworn in by the Chairman. She stated she lives with her son, who owns the home. She had safety concerns with there being no sidewalks.

Attorney Brennan stated they have already agreed to work with the Planning Department, and they would be happy to include the Pontiac Village Association in on those discussions.

The Chairman asked if there was anyone to speak in favor of the petition. There being none, George Shuster stated the petitioners have agreed to the stipulations, and to include the neighborhood in the Planning Department meetings to resolve the parking issues. He stated they meet the standards for a dimensional variance, the facility meets the general characteristics of the area, and made a motion to approve, seconded by Paul DePetrillo, and passed unanimously by the Board that the petition be GRANTED WITH STIPULATIONS.

Petition #10605

Ward 6

Seminole Street

The petition of Warwick Cove Marina, 22 Seminole St., Warwick, RI, and John Williams, 25 Mohawk Ave., Warwick, RI, requests a use variance to occupy vacant lots for parking and storage of boats and marine related materials. Assessor's Plat 376, Lots 258 & 259, & 260, zoned Residential A-10.

Joseph Brennan, Esq. was present and representing the petitioner.

Daniel Geagan from the Planning Department read the recommendations into the record.

Attorney Brennan stated the property is zoned residential but has been used for over forty years as a marina use. They do not agree with stipulation #9, stating the lots need to be merged, as they are legally merged per the Zoning Ordinance. One other stipulation they would like to clarify is stipulation #4 regarding the fencing. On one side there is no fence because the neighbor on that side prefers to have it open with no fence. The neighbor on the other side prefers a chain link fence. They have maintained a stockade fence at the rear of the property.

Attorney Brennan submitted a photo, marked as Petitioner's Exhibit #1 showing a photo of the lot cleaned up. The photo was taken on July 9, 2019.

The petitioner's stated they are willing to work with the neighbors to improve the conditions on the subject property.

John Williams, Petitioner, was present and sworn in by the Chairman.

Mr. Williams stated Coastal Resources has changed their requirements over the years, and they expect them to do more with less.

George Shuster stated he is a strong supporter of marine trade businesses. One concern he has is the 120' of street frontage with no curbing or landscaping. He suggested installing landscaping, and believes he should have room along the front of the property.

The Chairman asked if there was anyone present in opposition of the petition.

Rita Dumont, 72 Logan St., Warwick, RI, was present and sworn in by the Chairman.

Ms. Dumont stated she is not opposed, she doesn't trust Mr. Williams will adhere to the stipulations. She stated most boats that are stored on the property are inoperable.

The Chairman asked if there was anyone else to speak in opposition or in favor of the petition.

Gina Cleri, 5 Seminole St., Warwick, RI, was present and sworn in by the Chairman. She spoke in favor of the petition.

Frank Russo, 9 Seminole St. Warwick, RI, was present and sworn in by the Chairman. He spoke in favor of the petition.

The petitioner was asked what will be stored in the trailer on the lot. The petitioner responded it will be used to store tools.

George Shuster stated recognizing the long time use of these lots, and the new stipulations by the Planning Department that need to be taken seriously, made a motion to approve the petition removing stipulation #9, that the lots be merged, and clarify stipulation #4 for the record, seconded by Beverly Sturdahl and passed unanimously by the Board that the petition be GRANTED WITH STIPULATIONS.

Petition #10607

Ward 6

36 Eleventh Ave.

The petition of 3611, LLC, 36 Eleventh Ave., Warwick, RI, requests a dimensional variance to construct a side porch/deck fronting on 12th Ave. having less than required front yard setback to the property line along Promenade Ave., and to remodel the existing front stairs, having less than required front yard setback and encroaching over the property line by 2.3' on Promenade Ave. Assessor's Plat 374, Lots 37, 38 & 39, zoned Residential A-15.

Joseph Brennan, Esq., was present and representing the petitioner.

Mr. Brennan stated the petitioners recently purchased this property with another couple. The property is located within the Buttonwoods Beach Association and has been vacant. They have been making improvements, and as part of doing that they are looking to replace the rear stairs & landing. They are not seeking relief for that, but wanted to mention it, as it is part of the renovation on the exterior.

The petitioners are proposing to construct a porch/deck with a front yard setback of 27.6' (30' required). They will also be remodeling the existing front stairs that currently encroach over the property line by 2.3'. The property has received approval from the Buttonwoods Beach Association for the proposed encroachment.

The hardship is not any prior action of the applicant, and will not impair the intent or purpose of the Zoning Ordinance. The repairs are needed for safety.

George Shuster asked if the lots will be merged. Mr. Brennan stated they are being merged through an Administrative Subdivision.

The Chairman asked if there was anyone present in favor or in opposition of the petition. There being none, George Shuster made a motion to approve the petition, seconded by Paul DePetrillo and passed unanimously by the Board that the petition be GRANTED.

Petition #10608

Ward 5

412 Narragansett Bay Ave.

The petition of Stephen Markesich & Sarah Belden, 2 Duke St., Unit 1, West Warwick, RI, requests a dimensional variance to construct a new (4) four bedroom, single family dwelling. Subject property being an undersized lot. Assessor's Plat 383, Lot 46, zoned Residential A-40.

Sara Belden, Petitioner, 412 Narragansett Bay Ave., Warwick, RI, was present and sworn in by the Chairman.

Daniel Geagan from the Planning Department read the recommendations into the record.

The petitioner stated the property has been in her husband's family for many years. They had the existing dwelling evaluated, and it was determined demolishing the dwelling and constructing a new dwelling vs. repairing the structure was a better option.

Ms. Belden stated their contractor was present if the Board had any questions. She stated they have received DEM approval for the new septic system.

The Chairman stated it appears to be a standard two story, four bedroom house, and from his advantage point it looks like a standard request.

The Chairman asked if there was anyone there to speak in opposition or in favor of the petition.

There was one neighbor present in favor of the petition.

The Board entertained a motion made by George Shuster, seconded by Paul DePetrillo and passed unanimously by the Board that the petition be GRANTED WITH STIPULATIONS.

Petition #10609

Ward 7

38 Lockhart Ave.

The petition of Aquidneck Harvest Company, 110 Wilcox Ave., #1R, Pawtucket, RI, and Litterio Properties, Inc., 38 Lockhart Ave., Warwick, RI, request a special use permit to have more than one non-residential use on a lot. Also seeking a dimensional variance for having less than required parking and loading. Assessor's Plat 295, Lot 329, zoned Light Industrial (LI).

Donald Morash, Chairman of the Board recused himself for this petition.

Tim Ryan, petitioner, was present and sworn in by George Shuster, Acting Chair.

Mr. Ryan stated they are seeking relief for having mixed used on one lot. They are seeking a dimensional variance for the existing conditions of the parking and loading requirements.

Mr. Ryan stated the hardship is due to the unique characteristics, and is the least relief necessary.

George Shuster asked if there was anyone present to speak in opposition or in favor of this petition. There being none, Julie Finn made a motion to approved based on the Previous approval, seconded by Beverly Sturdahl and passed unanimously by the Board that the Petition be GRANTED.

A motion was made by Julie Finn to adjourn the meeting, seconded by Paul DePetrillo, and passed unanimously by the Board that the meeting be adjourned at 9:00 p.m.

BY ORDER OF THE ZONING BOARD OF REVIEW, WARWICK, RHODE ISLAND

Donald G. Morash, Jr., Chairman