

WARWICK ZONING BOARD OF REVIEW
MINUTES OF THE MARCH 10, 2015 MEETING

A regular hearing of the Warwick Zoning Board of Review was held on Tuesday, March 10, 2015 at 6:00 P.M. at Warwick City Hall, in the Warwick City Council Chambers, 3275 Post Road, Warwick, Rhode Island. Donald Morash, Chairman, called the meeting to order.

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

Donald Morash, Chairman
Richard Corley, Vice Chairman
Everett O'Donnell
Beverly Sturdahl

Alternate: Julie Finn

Absent: Paul Wyrostek

Also present: Diana Pearson, Esq., Assistant City Solicitor
Richard Crenca, Warwick Planning Department
Carol Chevalier, Secretary
Mary Ellen Hall, Stenographer

The Chairman declared a quorum. The roll was called. The Chairman stated that Mrs. Finn would be the fifth voting member for the evening. He then asked if there were any petitions to be WITHDRAWN or CONTINUED.

Petition #10185

Ward 8

1 Home Loan Plaza

The petition of One Home Loan Plaza, LLC, 2 Altieri Way, Warwick, RI and Home Loan Investment Bank, 1 Home Loan Plaza, Warwick, RI, for a use variance and dimensional variance to construct a 20' x 20' electronic LED message center sign on the subject property, proposed sign being higher and larger than allowed, northerly side of Home Loan Plaza (1), Warwick, RI, Assessor's Plat 276, Lot 18, zoned General Industrial.

James Briden, Attorney, representing the petitioner, was present.

Mr. Briden stated that he and his client are addressing issues with RIDOT and request the case be continued to the May 12th hearing date.

A motion was made by Everett O'Donnell, seconded by Julie Finn and passed by a four (4) to one (1) vote (Donald Morash voted to deny the continuance) that the petition be CONTINUED to the May 12th hearing.

Petition #10196

Ward 5

54 Ship Street

The petition of Peter Roy, 54 Ship Street, Warwick, RI for a request for a dimensional variance to legalize location of existing sheds, pool and pool filter, sheds having less than required front yard, and side street setbacks, pool and pool filter having less than required front yard, side street setback and side yard setbacks, southeasterly corner of Ship Street (54) and Wheeler Street, Warwick, RI, Assessor's Plat 359, Lot 132, zoned Residential A-40.

Peter Roy, petitioner, was present.

Mr. Roy stated that he purchased his property 27 years ago. He is in the process of an Administrative Subdivision with the Planning Board and after the survey was done he realized that his sheds, pool and pool filter encroach on City property. He will be moving the sheds onto his property and is seeking relief for setbacks for the sheds, pool and pool filter.

Mr. Corley stated that the petitioner is moving the sheds so that they do no encroach on the City land. There were no objectors. The petitioner is doing the right thing. With that statement he made a motion to approve the petition. The motion was seconded by Everett O'Donnell and passed unanimously by the Board that the petition be GRANTED.

Petition #10197

Ward 7

45 Juniper Avenue

The petition of Daniel Petrocelli, 45 Juniper Avenue, Warwick, RI, for a request for a dimensional variance to demolish existing dwelling and construct a new 2,529 square foot single-family dwelling with less than required front yard and side yard setbacks southwesterly end of Juniper Avenue (45), Warwick, RI, Assessor's Plat 367, Lot 139, zoned Residential A-15 (formerly Residential A-7).

K. Joseph Shekarchi, Esq., representing the petitioner, was present.

Daniel Petrocelli, petitioner, was also present.

Richard Crenca, Warwick Planning Department, read recommendations into the record.

The attorney stated he and his client met with the Planning Department and have no objections to the stipulations. The attorney presented an exhibit to the Board (Petitioner's Exhibit #1 – Assessment records for subject property and surrounding properties). The attorney described the exhibit to the Board. The petitioner purchased the house last year. They stated the reason for the location of the house on the lot is both an economic issue and an engineering issue. The attorney stated that his client spoke to the neighbors and has met all of the requirements from FEMA. The petitioner still has to receive approval from CRMC.

There were neighbors present in objection.

Kenneth Mancuso, 35 Juniper Avenue, was present in objection.

He stated that he purchased his house last year. The price was not just for the structure but for the views of the bay as well. 45 Juniper was in probate the heir did not retain the property. He felt secure that the current zoning would protect his property. He would not have bought his house if he had known.

The Chairman stated to Mr. Mancuso that you do not own a waterfront view.

Mr. Mancuso stated that he looked at the zoning and the house is bigger than most of the homes and does not meet the A-7 setbacks.

Mr. Mancuso explained his objection to the Board and the Board discussed the plan with Mr. Mancuso.

Timothy O'Connor, 29 Juniper Avenue, was also present in objection.

He stated that the homes were built in 1915 – 1925 and they were all built close to the road to have viewing capability. The property across the street was subdivided and they met all of the A-7 requirements. There is an access to the beach for the neighbors and the petitioner can only build on ½ the lot. He explained to the Board his objections and the reasons for the objection.

Michelle O'Connor, 29 Juniper Avenue, was also present in objection.

She showed the Board a photo from her cell phone. She stated that the placement of the house would affect five homes in the area.

Mr. Shekarchi in closing reiterated the need for the proposed setbacks to the Board.

Mr. Corley stated that taken into account the comments of the Planning Board and the petitioner accepted the stipulations. The objectors were concerned about the taller house and that it would upset their water view. The petitioner owns the waterfront property. The neighbors were concerned with the height. It is a flood zone requirement. The property was platted prior to zoning in the City. The property is grandfathered and it is unique in character. The homes in the

area do not comply with the setbacks. The neighbor's only concern was the water view. The neighbors would not be denied access to the beach. The petitioner has the right to change the style of their house. The petitioner is trying to build a new house with the least relief necessary. The slope of the land affects the proposed setbacks. It would not be in the best interest for the neighbor's views to place arborvitaes on the property. With that statement he made a motion to approve the petition with the stipulations from the Planning Department. The motion was seconded by Beverly Sturdahl and passed unanimously by the Board that the petition be GRANTED.

Petition #10198

Ward 5

1710 West Shore Road

The petition of Silverfish Realty, 1710 West Shore Road, Warwick, RI, for a special use permit, use variance and dimensional variance to demolish existing car wash building and add a fast food operation with a drive-thru in existing legal non-conforming gasoline station with convenience store, to construct two additions to existing building (10' x 30' & 5' x 30'), subject property having less than required landscaping, landscape buffer abutting residential zone, aisle (travel lane) having less than required setback from abutting residential zone, dumpster having less than required setback for side property line and property line abutting residential zone, freestanding sign having less than required setback from front yard and side street property line, sign being higher than allowed, existing vacuum island having less than required side street setback, parking having less than required setback from side street property line, southwesterly corner of West Shore Road (1710) and Warwick Neck Avenue, Warwick, RI, Assessor's Plat 358, Lot 320, zoned General Business.

K. Joseph Shekarchi, Esq., representing the petitioner, was present.

Richard Crenca, Warwick Planning Department, read recommendations into the record.

Barry Fishback, 11 Chestnut Street, East Providence, was present.

Mr. Shekarchi stated that the proposal is to remove the existing car wash building and expand the building and add a drive thru for the existing Dunkin Donuts. There would be new tanks installed and additional landscaping added. The petitioner has no objection to the stipulations presented. The hours would be the same 5 A.M. to 10 P.M. They spoke to the neighbor's, The Chapron's.

The Chairman asked if there would be a volume control on the order board.

The attorney stated that they would be adding plantings along the property line to muffle the sound.

Raymond Jordan, 23 Warwick Neck Avenue, was present.

He stated that the owner has been a good neighbor and all the traffic has been on the other side of the building. He stated that the car wash was on the other side of the lot and had concerns of headlights and noise.

Mr. Shekarchi stated that he would have a fence or arborvitae or both places along the property line.

Options were discussed with the abutter, the attorney and the Board.

Mr. Corley stated that the petitioner is replacing a car wash with a drive thru. The use would be a less intense use and would not be as noisy as a car wash. They have done everything to increase the landscaping. That the attorney will have a new six foot fence installed. That the plantings would help control the headlights. With that statement he made a motion to approve the petition with the stipulations from the Planning Department. The motion was seconded by Everett O'Donnell and passed unanimously by the Board. Mrs. Finn stated that the addition of arborvitae would benefit the neighbor and that she lives near a Dunkin Donuts.

Petition #10199

Ward 4

108 Airport Rd.

The petition of Patricia Smith, Steven Clarke Trustee & Bruce Smith, 108 Airport Road, Warwick, RI for an amendment to a previously approved petition for a use variance and dimensional variance, to rent residential structure on subject property, southwesterly corner of Airport Road (108) and Granger Court, Warwick, RI, Assessor's Plat 320, Lot 44, zoned Residential A-7.

Michael McEntee, Attorney, representing the petitioner, was present.
Stephen Clarke, petitioner, was also present.

Richard Crenca, Warwick Planning Department, read recommendations into the record.

The Planning Department requested a new site plan showing the employee parking which the petitioner provided.

The attorney stated there was some confusion at the last hearing as to whether or not the petitioner would be residing on the property. The petitioner was trying to rent the single-family dwelling on the property and was told there was a violation of the original approval. The attorney presented the transcript to the Board from the original hearing (Petitioner's Exhibit #1). He referenced page 61 of the transcript. Since the original hearing the petitioners have since changed their residence and were proposing to rent out the dwelling. The attorney presented exhibits to the Board. Petitioner's Exhibit #2 - entire transcript, Petitioner's Exhibit #3 - decision of the Board, Petitioner's Exhibit #4 - Resume, Petitioner's Exhibit #5 - email from Margie Ryan, Petitioner's Exhibit #6 - List of Improvements, Petitioner's Exhibit #7 - List of amount of money spent on renovating the property.

Mr. Clarke was accepted as an expert witness in the field of engineering (Motion was made by Everett O'Donnell and seconded by Julie Finn and passed unanimously by the Board)

He described the changes made to the property to the Board. The attorney, the engineer and the Board discussed the past hearing and the evidence presented at the time.

Patricia Manning Smith, petitioner, was also present.

She stated that she owns a home in Exeter she has owned the home since 1992. She stated that she had originally planned on living at the subject property. That she is at the Airport Road property 75% of the time. The attorney stated that they want to amend the application to have two uses on one lot. They discussed the parking area on the subject property. She presented a copy of her license and her husband's license as an exhibit (Petitioner's Exhibit #8).

The Chairman stated the petitioner was misleading the Board as to whether or not the petitioner would be living there.

Mr. O'Donnell stated that he felt that they were misled the last time but they have improved the parking area and the Planning Department has no objection. With that statement he made a motion to approve the petition. The motion was seconded by Beverly Sturdahl. The petition was DENIED by a three to two vote. (Richard Corley and Julie Finn voted to deny the petition).

Petition #10200

Ward 6

243 Promenade Avenue

The petition of Judith & David Clark, 243 Promenade Avenue, Warwick RI, for a request for a dimensional variance to construct a breezeway, garage and an addition to the existing legal non-conforming dwelling, garage and breezeway having less than required front/corner side yard setback (Cooper Avenue), addition to dwelling having less than required front yard setback (Promenade Ave.), Warwick, RI, Assessor's Plat 373, Lots 184 & 185, zoned Residential A-15.

Richard Crenca, Warwick Planning Department, read recommendations into the record.

Steven Rodio, Attorney, representing the petitioner, was present.

He stated that this client is currently involved in a lawsuit with the Buttonwoods Beach Association. He stated that his client purchased the property in 2009 and presented photographs to the Board. He described to the Board the issue pertaining to the lawsuit.

Harvey Allen Wagner, Architect, was recognized as an expert witness (Motion was made by Richard Corley, seconded by Everett O'Donnell and passed unanimously by the Board).

Mr. Wagner described the plan to the Board and the need for the configuration and location and the setbacks.

Thomas Sweeney, was recognized by the Board as an expert in the field of real estate (Motion was made by Everett O'Donnell, seconded by Richard Corley and passed unanimously by the Board)

Mr. Sweeney prepared a report and described the findings in his report to the Board.

Harry Miller, was recognized by the Board as an expert witness in the field of surveying (Motion was made by Everett O'Donnell, seconded by Julie Finn and passed unanimously by the Board).

He described the site plan to the Board and the relief requested.

John McCoy, attorney, was present representing the objector's.

Mr. Rodio stated that he wanted it on record that Mr. McCoy was the opposing counsel in the adverse possession lawsuit and he represents the Buttonwoods Beach Association.

Mr. McCoy cross examined Harvey Allen Wagner and Thomas Sweeney.

Edward Pimentel, was accepted as an expert witness in the field of land use (Motion was made by Richard Corley, seconded by Beverly Sturdahl and passed unanimously by the Board.)

He stated that he was the Zoning Official in the City of East Providence. He stated that the property contains a pre-existing use. There are two units on the property. The petitioner did not seek relief from the intensification of a non-conforming use.

Mr. Rodio asked if Mr. Pimentel was being paid by the Buttonwoods Beach Association, Susan Phipps and he stated yes.

Mr. Pimentel stated that it was his opinion that the petitioner has not met the burden of proof.

Susan Martins Phipps, 84 Janice Road, was present in objection.

She stated that she was President of the Buttonwoods Beach Association and resides in the Private Buttonwoods Section of Warwick. She stated that she has been in the field of real estate and appraisal. She explained her objections to the Board.

Sharri Tyas, Hawthorne Avenue, was present in objection.

She stated that she walks the area. That she is in opposition to a huge house being close to the street.

Mr. Corley stated that he listened to all of the testimony. That he is making a motion to approve the petition. The petitioner needs a way to enter the house without the garage cutting off access.

That there be a condition to the motion that all driveways and walkways be of a pervious material. That he did not like the first plan and that the redesign with the windows is an improvement. That the issue before the Board is not the adverse possession suit and has nothing to do with the zoning issue. That the testimony of the Buttonwoods Beach Association is biased. That #11 in the stipulations be changed to strict compliance. That the relief requested is not unreasonable. The motion was seconded by Everett O'Donnell and passed unanimously by the Board that the petition be GRANTED with the stipulations presented.

Petition #10186

Ward 6

875 Oakland Beach Ave.

The petition of James Rengigas, 9 Mathew Drive, Johnston, RI, for a request for a dimensional variance to demolish existing structures on subject property and construct a 32' x 42' one story building (with 4' x 32' overhang) to be occupied for fast food restaurant operation, proposed building having less than required front yard and side yard setbacks, dumpster having less than required setback from residential zone, outside seating having less than required side yard and front yard setbacks, subject property having less than required off street parking and less than required setbacks for parking, less than required landscaping and landscape buffer, westerly side of Oakland Beach Avenue (875), Warwick, RI, Assessor's Plat 375, Lot 437, zoned General Business.

Richard Crenca, Warwick Planning Department, read recommendations into the record.

Robert Flaherty, Esq., representing the petitioner, was present.
James Rengigas, petitioner, was also present.

The attorney described the proposal to the Board and all of the relief requested.

Robert DeGregorio, was accepted as an expert witness in the field of real estate (Motion was made by Richard Corley, seconded by Everett O'Donnell and passed unanimously by the Board)

Petitioner's Exhibit #1 - Photographs

Mr. Rengigas described the history of the property to the Board.

Paul Bannon, was accepted as an expert witness as a traffic engineer, (Motion was made by Everett O'Donnell, seconded by Beverly Sturdahl and passed unanimously by the Board)

John DeSimone, Attorney, representing the abutting property owner, David Gravino, was present and objected to Mr. Bannon being accepted as an expert. He stated that Mr. Bannon does not have a license as a traffic engineer in Rhode Island.

Mr. Bannon presented a report to the Board (Petitioner's Exhibit #2) He explained the findings in his report to the Board.

Mr. DeSimone called his first witness.

Steven Cabral, was accepted as an expert witness as a civil engineer by the Board. (Motion was made by Richard Corley, seconded by Julie Finn and passed unanimously by the Board).

He presented a report to the Board (Objector's Exhibit #1). He described the findings in his report to the Board.

William Coyle III, was accepted as an expert witness in the field of Real Estate Appraisal (Motion was made by Richard Corley, seconded by Everett O'Donnell and passed unanimously by the Board).

He described his findings to Board.

David Gravino, owner of Iggy's Doughboys, abutting property owner, was present.

He stated that he looked at the proposed plans and the size of the building and the proposed kitchen. The kitchen is larger than the one he operates at Iggy's. There is not enough parking in the area. He stated there is a lot of traffic there during the summer months.

Mr. DeSimone stated the proposal would adversely affect his clients existing business.

Mr. Flaherty stated that there was one abutter present in object who owns a competing business. Parking has always been a problem in the area. The Planning Department recommended approval.

Mr. Corley stated that his observation is that they are trying to put ten pounds in a five pound bag. Mrs. Finn stated that she agrees and questioned why they need a building that big.

Mr. Corley made a motion to deny the petition. The plans and testimony do not justify the variances. The lot is too small for the proposal that the parking spaces are against the property lines. The motion was seconded by Julie Finn. The petition was DENIED by a three to two vote. (Richard Corley voted to deny, Julie Finn voted to deny, Everett O'Donnell voted to approve, Beverly Sturdahl, voted to approve and Donald Morash voted to approve.

The Chairman closed the hearing at 11:30 P.M.

The Chairman asked for a motion to approve the minutes from the January 13, 2015 hearing. A motion was made by Richard Corley, seconded by Everett O'Donnell and passed unanimously by the Board that the minutes be accepted.

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

Donald G. Morash, Jr., Chairman

