



CITY OF WARWICK
ZONING BOARD OF REVIEW
WARWICK, RHODE ISLAND 02886
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WARWICK ZONING BOARD OF REVIEW
MINUTES OF THE MAY 16, 2017 MEETING

A regular hearing of the Warwick Zoning Board of Review was held on Tuesday, May 16, 2017 at 6:00 P.M. in the Warwick City Council Chambers, Warwick City Hall, 3275 Post Road, Warwick, Rhode Island. The meeting was called to order by Chairman Donald Morash.

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

Donald Morash, Chairman
Fred Sarno
Beverly Sturdahl
Mark McKenney
Julie Finn
Paul Wyrostek

Absent: Everett O'Donnell

Also present: Diana Pearson, Asst. City Solicitor
Richard Crenca, Warwick Planning Department
Amy Cota, Secretary
Mary Ellen Hall, Stenographer

The Chairman declared a quorum.

The Chairman advised the minutes from the April 11, 2017 would be reviewed at the next Zoning Board meeting.

The Chairman asked if there were any petitions to be WITHDRAWN or CONTINUED.

The Chairman advised that Petition #10454 of George Caramiciu, 58 Guild Ave., Warwick, RI, and Zarrella & Associates, 2 Olsons Way, E. Greenwich, was being withdrawn without prejudice. Paul Wyrstek made a motion to withdraw the petition, seconded by Fred Sarno and passed unanimously by the Board that the petition be withdrawn.

The Chairman also advised that Petition #10458, of Malibu Investments, LLC, P.O. Box 1449, Coventry, RI was being continued until the June 13, 2017 hearing. Paul Wyrstek made a motion to continue the petition, seconded by Fred Sarno and passed unanimously by the Board that the petition be continued.

The Chairman called the first petition.

Petition #10452

Ward 4

109 Doris Ave.

The petition of William C. Ruggieri, 1 Country Club Dr., Warwick, RI, request a special use permit to display storage sheds on existing property. Subject property containing an existing single family dwelling. Assessor's Plat 319, Lot 193, zoned General Business (GB).

Richard Crenca from the Planning Department read his recommendations into the record.

William C. Ruggieri, petitioner, was present and sworn in by the Chairman.

The Chairman asked the petitioner if he was in agreement with the stipulations. Mr. Ruggieri stated he was in agreement with them and will do what is necessary.

The Chairman asked if he spoke with his neighbors. Mr. Ruggieri stated he didn't speak to any neighbors, but he doesn't think anyone will be in objection. He stated this is the location he started building the sheds fifty years ago.

The Chairman asked if there was anyone there in opposition or in favor of the petition. There being none, Mark McKenney stated this was pretty straight forward, he went by the property, it is an appropriate use, and with the stipulations set forth by the Planning Department, he made a motion, seconded by Beverly Sturdahl, and passed unanimously by the Board that the petition be GRANTED WITH STIPULATIONS.

Petition #10453

Ward 9

36 Oberlin Dr.

The petition of SMD Realty & Construction, 2570 Warwick Ave., Warwick, RI, request a dimensional variance to convert existing storage area over the existing garage to a master

bedroom & bathroom. Subject property being an existing non-conforming lot with proposed master bedroom having less than required side yard setback. Assessor's plat 238, Lot 35, zoned Residential A-10.

Richard Crenca from the Planning Department read his recommendations into the record.

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

Steven Davis, 99 Blackstone Ave., Warwick, RI, contractor, was present and sworn in by the Chairman.

Mr. Brennan stated the petitioner appeared before the Board approximately three years ago for a dimensional variance to construct a garage attached to the dwelling with storage area above. Mr. Brennan stated it took a little while for the project to get started due to personal problems with the contractor she was hiring. They were fighting and having issues about the work. He states what brings them here today is they were trying to do this work legally, but in essence they did it in the wrong order. They should have come to the Zoning Board first and asked for permission to convert the upstairs from storage to a bedroom. They are in the wrong for the order they did it in.

Mr. Brennan stated the reason Ms. Gamelin needs to turn it into a bedroom, is because she has disabilities, and over the past three years they have become more painful for her. They converted an existing bedroom within the existing dwelling into a master bathroom with a walk-in shower for ease.

Mr. Brennan stated Ms. Gamelin would like to re-claim the third bedroom. The house has always been a three bedroom, and will remain three bedrooms if they are granted the dimensional variance. He stated the owner, Mary Gamelin is present if they need her to testify to this information.

Mr. Brennan stated the addition is done already, which is why he stated they did it out of order. The property is in a Residential A-10 zone which requires a fifteen foot (15') side-yard setback, they are proposing five feet (5'). He states they are not here to try to defraud the Board, the petitioner previously testified this will not be used as an in-law apartment and with her testimony she is staying true to her word. Mr. Brennan stated the bathroom was constructed within the existing dwelling not within the storage area. There will be no separate entrance, the only access will be through the dwelling.

Mary Gamelin, 36 Oberlin Dr., Warwick, petitioner, was sworn in by the Chairman.

The Chairman stated things that have transpired were not done correctly, based on the previous approvals. He asked Ms. Gamelin if she looked for a licensed contractor when she was hiring a contractor.

Ms. Gamelin stated she would like to back up. She stated she initially came for a Minutes for the regular hearing of May 16, 2017

variance for the storage area above the garage, which was granted, however due to certain circumstances she decided to just do the garage. The contractor she hired for the garage, she thought in good faith, she had known since high school, he had done a terrible job so she had to terminate him three-quarters of the way through the job. She stated she called the Building Department to inspect it. She said the roof leaked over a period of a few years, so again she decided to build up, and went looking for a contractor. She interviewed a few contractors and they started construction in January 2017.

Fred Sarno asked if it is being used as a bedroom now. She stated yes, it is being used as a bedroom. Mr. Sarno stated when you change the use from storage to a bedroom, the Building Department needs to approve the plans to make sure it meets code and has egress in case there is an emergency. The Building Department will not approve a storage area as a bedroom. Mr. Sarno stated because of the public safety issue and because this was done out of order, the Board will also have to do it out of order. He stated he would like to see Mr. Davis go in and do whatever the Building Department is requiring. Mr. Sarno stated this space can't be used as a bedroom until it has been approved by the Building Department.

After further discussion, Mark McKenney stated it's nice to describe things as being out of order, but stated he took a look at the minutes and the decision that was rendered last time around. He stated it's not just out of order, they are talking about a direct violation of exactly what was laid out for storage only. According to Ms. Gamelins testimony when this was heard previously, this would be storage only, and per the decision letter, it was to be storage only. Mr. McKenney stated his inclination when he saw this, would be to deny this petition, simply because of the fact it was not done in accordance with what was stated very clearly, and he thinks the message they send when they say they can work around it, can be the wrong message. He says that recognizing that there is value to the practical side and he understands what they are suggesting, but from his perspective, he is not inclined to make it too easy when you violate something, and then come back in and ask for forgiveness. Mr. McKenney suggested they come back when they can show the Board they did what they were required to do, and the Board will go from there.

Prior to coming back before the Board, the petitioners must comply with the following stipulations:

1. The petitioner shall hire a registered, professional structural engineer, licensed in the State of RI –or- a registered, professional architect, licensed in the State of RI to review all of the work performed and certify, on their professional letterhead, that the work meets all of the applicable State Building Codes.
2. The petitioner shall hire a master, licensed plumber, electrician and mechanical tradesperson to apply for and obtain all necessary permits for this project. The electrician, plumber and mechanical tradesperson SHALL NOT be, or be associated with, those who installed the unpermitted work.
3. The electrician, plumber and mechanical tradesperson shall review and test all aspects of the existing work that is relevant to their particular field, such as, but not

- limited to, wiring, circuits, drains, piping, fixtures, heating and cooling, etc.... They shall confirm their findings in a letter to the Warwick Building Official composed on their individual business letterhead.
4. The certifications shall be submitted to the Warwick Building Official no later than 60 calendar days from the recording date of the approval letter, or this approval shall become null and void.

Mr. McKenney stated he believes this is reasonable and he is more inclined to agree to this, than just include it as a stipulation, because it seems to him there has already been a showing of disdain for stipulations they have set forth in the past.

Attorney Brennan stated he understands the notion they are asking for forgiveness, but they are here on their own volition, although he agrees with the Board, he stated they haven't been violated with any kind of notice or Municipal Court date, and in the end they are trying to do it right.

The Chairman stated that is why he wanted Ms. Gamelin testify as to how this all happened.

Steven Davis, the contractor, asked the Board if the Building Department will accept his plans without the variance. Mr. Sarno stated Mr. Crenca can speak to the Building Official, Alfred DeCorte.

Mr. Sarno stated section 1006 in the Zoning Ordinance is certainly clear, and while he is not here to impose it or even suggest it, but the Building Officials can impose a \$500 per day for each offense, and it's not a court appointed fine it's the Building Official who implements the fine, and then one can grieve that to the local jurisdiction. Mr. Sarno stated there was a tragic loss of life on Buttonwoods Ave., in a building in which every rule was followed. He stated it was very close to home and an absolute tragedy. Mr. Sarno stated he is trying to be clear on what they've seen and what the potential for tragedy is.

Ms. Gamelin stated her husband was a Captain on the Providence Fire Fighters. He is now deceased, but stated all her life they were very aware and have seen tragedies.

Mr. Crenca stated Mr. Davis brought up a good point as to whether the Building Department will accept his plans without a decision from the Board. He stated this is a very unique situation here, where the work is already done. It's finished as a bedroom and master bath and being used that way. The petitioner has put herself in this position. He stated he will speak with the Building Official, who has been very involved in this, but they should be able to file their plans for the bedroom and bathroom, which will be reviewed for compliance with the building code as a bedroom and a bathroom. Once they provide certification that is acceptable to the Building Official, they can come back

to this Board, and it will be this Board's decision whether they will grant living space above the garage.

Mark McKenney stated it's important to make it clear, that what they rule upon is to be followed and he does think doing it this way, while they reserve the right in the end, it is highly unlikely if the petitioner is jumping through hoops to get done exactly what is asked, they will come back and get a negative determination, but does think it's important they understand this was more than just a mere oversight.

The Chairman asked Attorney Brennan if they would like to request a continuance.

Mark McKenney made a motion to continue the petition, seconded by Fred Sarno, and passed unanimously by the Board that the petition be CONTINUED.

Petition # 10455

Ward 2

1225 Warwick Ave.

The petition of James Bessette, d/b/a Rigatoni's Family Restaurant, 1225 Warwick Ave, Warwick, RI; Leonard J. Sholes, Life Estate and Sholes Brothers, GP, 1375 Warwick Ave., Warwick, RI; and James Bessette, 1225 Warwick Ave., Warwick, RI, request a dimensional variance to convert vacant space to storage and office space, subject property having less than required parking. Assessor's Plat 308, Lot 274, zoned General Business (GB).

Andrew Sholes, Esq. was present and representing the petitioner.

Attorney Sholes stated the petitioner is taking over the vacant unit next door to him, which he will use for storage and office space for the restaurant. He stated there will be no additional seating.

The Chairman asked if there will be an opening between the two units. Mr. Sholes stated yes there will be an opening. They would like to move the storage up from the basement.

James Bessette, petitioner, was sworn in by the Chairman.

The Chairman asked if this would be for storage and office only. Mr. Bessette stated it will be, and there will be no public access to this area at all.

The Chairman asked where the storage is now. Mr. Bessette stated he has storage in the basement, but there is moisture in the basement so he would like to bring it upstairs.

The Chairman stated it appears pretty straight forward, but apparently there are some people with an interest in this.

Mr. Bessette stated this use is less intense for parking. If another tenant occupied the

vacant space, they would require more parking than what is required for storage and office space.

Mr. Sarno asked what the flower shop would have required for parking. Mr. Crenca stated with those uses today, they would require 60 spaces. Mr. Sarno stated it is being changed from a flower shop to storage. MR. Crenca stated it is an increase of one or two spaces if used as the storage area. Mr. Sarno stated the storage area requires less parking than the flower shop.

Mr. Sholes stated they are not increasing the seating.

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

Russell Bramley, Esq., was present and representing Craig Callen from Governor Francis Inn.

Attorney Bramley stated he would like to bring up a point Mr. Crenca mentioned, which was the use as a restaurant would require 60 parking spaces, he thinks it is clear there are not 60 spaces.

Mr. Sarno stated with all due respect, they should put to bed the argument for the parking requirement. The restaurant use has been there for 25-30 years. He stated there are a lot of restaurants in the City of Warwick that do not meet the parking requirements.

Mr. Sarno said the parking had been granted by the Board long ago, so it is a legal non-conforming use.

The Chairman stated common sense tells you he could conceivably rent this store for another store and impact parking even worse.

Mr. Bramley asked if another store would have different requirements for parking. The Chairman stated no because it would be the same use which wouldn't require any more parking. He stated the storage and office area are less intense.

Mr. Bramley stated he would raise one legal argument and asked if the appropriate Zoning Ordinance was cited for parking, section 700 of the Ordinance. Mr. Crenca stated as far as he is concerned it is, they are asking for a building or use that is non-conforming by parking.

Mr. Bramley asked if they are enhancing a non-conforming use. Mr. Crenca stated that is why they are here. Mr. Bramley stated his argument is making a non-conforming use more non-conforming and now what is happening is Craig is getting parking in his lot because of the inadequate parking. Mr. Sarno asked Mr. Bramley if Mr. Callen has cameras, and if they have any pictures of anyone being towed from Governor Francis Inn.

Craig Callen, owner of Governor Francis Inn, was present and sworn in by the Chairman.

Mr. Callen stated he does have cameras but he doesn't have pictures. He stated Rigatoni's employee's park up and down the road. Mr. Callen stated back in 2000 he didn't have enough parking and the police would come in to make customers move their cars. Mr. Callen said his restaurant meets the requirements for parking.

Julie Finn stated she works for the Warwick Housing Authority and they own Charles Ford Terrace, and she stated many customers from the Governor Francis Inn park in their lot every day. She stated they have cameras and they see it every day. Craig stated he has over 100 parking spaces.

The Chairman stated they are not here to talk about parking overall, they are here to talk about this vacant space and whether it is a lesser use than what was there before. The restaurant is existing and the parking problem will still be there.

Attorney Bramley stated that is a false equivalency trying to say what Mr. Callen does is the same as what the petitioner does in terms of parking. He meets the law's requirement, the petitioner does not. He stated the fact that people park in a different area to go to his restaurant is beyond his control.

Fred Sarno stated there is no false equivalency, they are both busy because they provide a good service.

The Chairman asked if there was anyone else to speak in favor of the petition. There being none, Mark McKenney moved to approve the petition for the storage and office, and suggested there be strict compliance required with respect to those. He stated the parking will be an improvement over the present situation, and moved to grant the petition, seconded by Paul Wrostek and passed unanimously by the Board that the Petition be GRANTED WITH STRICT COMPLIANCE.

Petition #10456

Ward 8

1400 Bald Hill Rd.

The petition of 1400 Bald Hill LLC, c/o Mark Kaufman, 306 Dahlia Drive, Wayland, MA 01778, request a use variance to construct a field of solar panels on Lot 143 to supply electricity solely to the commercial building on Lot 16. Assessor's Plat 255, Lots 16, 27 & 143, zoned General Business (GB).

Richard Crenca from the Planning Department read his recommendation into the record.

Daniel K. Flaherty, Esq. was present and representing the petitioner.

Mr. Flaherty stated he had a chance to review the stipulations, but has an issue with three of them. He stated the subject property has two tenants, one is a tile store and the other is Minutes for the regular hearing of May 16, 2017

a motorcycle accessory store. The petitioner is proposing a field on solar panels on lot 143. The petitioner owns lots, 143, 16 and 27 which all abut each other. The petitioner is asking to supply electricity to his building on lot 16. The electricity will not be sold to any other customers. The solar panels will meet all the required setbacks.

The proposed solar field will not be visible from the roadway, it's behind the building and the only access is a very narrow driveway next to the building.

Attorney Flaherty stated the rear of the property abuts wetlands and Scott School property which is a very heavily wooded area. He stated this is a very clean energy source, there is no noise, it is not for sale, and it will only sustain the businesses at 1400 Bald Hill Rd. and is consistent with the City's plan to promote affordable, clean energy.

Mr. Flaherty stated he had a chance to review the stipulations with his client and he doesn't object to most of them, however, he would ask the Board keep in mind, the reason people put in solar energy is to save money and some of these proposed stipulations are very expensive. The first recommendation he is asking the Board not to include is the bond. He states he has tried in the past to get oddball bonds, which would ensure the removal of the solar field if it was abandoned. Sometimes these bonds are so expensive it's not worth doing the project. He stated if the Zoning Board puts that stipulation on that the solar field be removed and dismantled if the use is abandoned, that will run with the land and be recorded.

The second recommendation he is asking the Board to remove is the administrative subdivision. The point being if they did merge the three lots, they would not be here before the Board, as it would be an accessory use to main use of the retail stores. This lot is also a land locked piece of land. They don't allow land locked lots to be separated.

The third recommendation Attorney Flaherty has an issue with, is the fence. He stated there is very restrictive access, it's very heavily wooded and to the left where Dick's Sporting Goods is there is a fifteen to twenty foot wall. He stated a fence in front of a retaining wall serves no purpose. He also stated the whole purpose of the petition is to save on energy costs, the project may not be worthwhile if there is extra costs for engineering, especially with the administrative sub-division, there would be additional legal and engineering costs.

Mr. Flaherty feels these three recommendations are overkill and too much red tape and would ask for a more business friendly decision. He feels the rest of the recommendations are fair and reasonable.

The Chairman asked if kids were to find their way back there, would they get hurt if there were no fencing around it. Attorney Flaherty stated they could break them.

The Chairman stated he thinks it is a safety issue to have the fence around the panels.

Charles Kovochik, representative from Direct Energy Solar, No. Grafton, MA, was present and sworn in by the Chairman.

Mark McKenney asked if there is any danger to kids who do climb on these panels.

Charles Kovochik stated technically yes, there is electricity that flows from the panels to the wires to the inverters, and if you break something you can get electrocuted, but noted if you put a six foot fence up, the kids will jump over the fence.

Mark McKenney asked if there will be anyone policing this and keeping an eye on it. Mr. Kovochik stated they monitor the products to be sure they are producing what they promised to the customers.

Fred Sarno asked what his experience is with people staying away from these solar panels. Mr. Kovochik stated his experience is that people stay away from electricity.

After further discussion regarding the stipulations, the Chairman asked if there was anyone there in opposition or in favor of the petition. There being none, Mark McKenney stated it seems to him they have means of insuring there will be removal by the owner that might go belly up or by the next owner, because it runs with the property, and they would be required before they can get a loan, to remediate the situation. The bond requirement concerns him when they don't know what that bond will cost and if it will make this project feasible. To simply require a bond, before knowing what that bond would cost is a bit much.

Mark McKenney stated the criteria for the relief has been met, and with deletion of stipulation #3 and #11, and accepting all the other stipulations as being appropriate, moved to grant the petition, seconded by Paul Wyrostek. After Paul Wyrostek seconded the motion, the Chairman stated he would like to again discuss whether a fence is needed on top of the twenty foot wall. Attorney Flaherty stated he thinks the fence should be connected to the wall, so there are no gaps. The wall will be used as part of the barrier. Paul Wyrostek made a motion to amend the motion, seconded by Fred Sarno and passed unanimously by the Board that the petition be GRANTED WITH AMENDED STIPULATIONS.

Petition #10457

Ward 9

4565 Post Rd.

The petition of James Pardy, 54 Contour Rd., Warwick, RI, request a dimensional variance to construct a 158 sq. ft. dormer addition to the third floor apartment in the five unit apartment building, and construct a 150 sq. ft. addition to existing apartment over garage to square off building and eliminate flat portion of roof. Subject property being an undersized non-conforming lot with less than required side yard setback. Assessor's Plat 220, Lot 54, zoned Residential A-10.

Daniel K. Flaherty, Esq. was present and representing the petitioner.

James Pardy, 54 Contour Rd., Warwick, RI, petitioner, was present and sworn in by the Chairman.

Attorney Flaherty stated the petitioners have owned the property since 2015. This Board previously approved five apartment units in the main dwelling and one apartment unit above the existing detached garage. The petitioners are not asking for anymore dwelling units. He would like to square off the roof in the apartment over the garage, it will enhance the use and avoid the headache of a flat roof. With regards to the five unit, he would like to add a dormer to the third floor apartment by adding head room. The top of the stairs will allow for 6' of headroom.

Fred Sarno stated this may need Building Board approval, because they need a minimum ceiling height of 6'8" according to the building code. Attorney Flaherty stated this was inspected long ago, but if anything has changed in the code, they will conform.

Attorney Flaherty stated they are seeking dimensional relief only.

The Chairman asked if anyone had any questions. There being none, he asked if there was anyone there to speak in opposition or in favor of the petition. There being none, Paul Wyrostek stated the enhancements will be appreciated by the tenants, eliminating the flat roof will solve the leakage problems, and moved to approve the petition, seconded by Beverly Sturdahl and passed unanimously by the Board that the petition be GRANTED.

A motion was made by Paul Wyrostek, seconded by Fred Sarno and passed unanimously by the Board that the meeting be adjourned. The meeting was adjourned at 8:10 P.M.

BY ORDER OF THE ZONING BOARD OF REVIEW, WARWICK, RHODE IS-LAND

Donald G. Morash, Jr., Chairman