WARWICK ZONING BOARD OF APPEALS
MINUTES OF THE MAY 19, 2022 MEETING

A special hearing of the Warwick Zoning Board of Appeals was held on Thursday, May 19, 2022 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 Paul DePetrillo.

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

Present: Paul DePetrillo – Chairman
          Robert DeGregorio – Vice-Chairman
          Salvatore Deluise
          Walter Augustyn
          Lorraine Caruso Byrne
          Constance Beck - Alternate

Absent: Julie Finn – Alternate

Also present: David Petrarca, Esq., City Solicitor
              Sean Henry, Warwick Planning Department
              Mary Ellen Hall - Stenographer
              Amy Cota, Secretary

Appeal #10806 Ward 3 2055 Warwick Avenue

The appeal of Christine Vieira, P.O. Box 9212, Warwick, RI and Janet Aurelio, 38 Ansonia Road, Warwick, RI, appealing the decision of the Planning Board dated March 11, 2022 approving the application for Preliminary Plan Approval of a Major Subdivision/Land Development Project heard by the Warwick Planning Board at the regularly scheduled meeting held on March 9, 2022 for demolition of an existing building and construction of a new gas station, Assessor’s Plat 328, Lots 408, 409, 410, 411 & 412, zoned General Business (GB).
Constance Beck was the voting member for Robert DeGregorio who had to recuse himself from this petition.

Janet Aurelio, Appellant, 38 Ansonia Road, Warwick, RI, was present and sworn in by the Chairman.

Christine Vieira, Appellant, 40 Ansonia Road, Warwick, RI, was present and sworn in by the Chairman.

Ms. Vieira stated they are here regarding two procedural deficiencies. There was a lack of notification to the abutter, Janet Aurelio for the Planning Board Preliminary approval public hearing that was scheduled for March 9, 2022. The second deficiency is she, Ms. Vieira was denied the right to complete her comments and questions at the March 9th Planning Board meeting that was held via Zoom. She states she was cut off by the Planning Board Chairman while she was speaking, and that is evidenced by the audio recording from the meeting, and should be reflected in the transcript as well.

Ms. Aurelio stated she is in agreement with all that Christine has said.

Ms. Vieira stated they did review some of the information Attorney Noonan provided, and they did see there was certified notification that went out, and there was to be signed returned receipt, but if you review those receipts they don’t have any of the abutter’s signatures on them, they were signed by the mailman.

Sean Henry from the Planning Department stated the Preliminary Plan application was transmitted to the Planning Department on October 29, 2021. The application was certified complete on February 7, 2022 and was scheduled for a public hearing at the March 9, 2022 meeting of the Planning Board. In order to meet the advertising requirements for the public hearing in RIGL § 45-23-42, notice of the public hearing was advertised at least 14 days prior to the meeting, in the February 17, 2022 edition of the Warwick Beacon. Abutting property owners within 200’ were notified by certified mail. The applicant provided a list of abutters and copies of the green cards that were used for the certified mailing.

Mr. Henry stated having read the appellants’ submitted materials, and after reviewing the records of the Preliminary Plan application, he found no apparent prejudicial procedural error, clear error, or lack of support within the record found by the Administrative Officer in the Planning Board’s decision to approve the Preliminary Plan application.

Elizabeth Noonan, Esq. was present and representing the appellee’s, Colbea Enterprises.

Attorney Noonan stated they may recognize them, as they were before this Board last September for a Zoning Board approval on this same project. She stated our Solicitor Attorney David Petrarca has outlined the standards, and she concurs with those.
They have submitted a brief outlining their position on what they understand to be the claims under appeal, the claim is for two procedural errors.

Attorney Noonan stated they complied with notice as required by the statute, which requires the notice be sent by certified mail 14 days prior to the hearing, and that was done. The statute does not require they all be signed. Under law, a letter that is mailed is presumed received, it’s called the mailbox rule. So in this case, it’s their position that there cannot be a procedural error due to the fact they have complied with the statutory requirements as outlined in the Planning Board regulations. As to the contention the appellant’s were not allowed to enter all of their comments and questions, Attorney Noonan didn’t see any reference to the audio or transcript from the record. The meeting was held via Zoom, and Attorney Noonan was at that meeting, and it’s her recollection that Ms. Aurelio testified for a period of time, a good twenty minutes if not more, and there were others matters, perhaps she wanted to get in to but it had been a lengthy presentation that she had done and some of the issues had already been raised and discussed by the Board before. So it’s their position that there is no prejudicial procedural error, they concur with the Administrative Officer’s position, there’s no clear error, and additionally the weight of the evidence that was presented at the Planning Board was uncontroverted. They established consistency with the Comprehensive Plan, the Zoning Ordinance, there will be no environmental impacts, and no creation of lots that are substandard in any way.

Attorney Noonan stated they do not contend there were any procedural errors, and they would ask the Board to deny this appeal.

The Chairman asked if there were any comments from the public.

Sherry Coogan, 29 Ansonia Rd., Warwick, RI, was present and sworn in by the Chairman.

Ms. Coogan stated looking around at the wealth in the room, they have the attorneys, and the local homeowners have nothing, the Board wants to make money, the City of Warwick wants to make money, with that being said, she has lived in Warwick her whole life and the land they want to build on is all swamp. She stated back when Douglas Drug was constructed, they didn’t have all this environmental stuff. She knows that was built on swampland. She doesn’t see any information saying that wasn’t built on swampland.

Attorney Noonan stated if you’re not familiar with the Planning Board process, in order to get to the Preliminary Plan stage, you have to have all of your State permits in place and those permits are from the Department of Environmental Management, along with the Department of Transportation, and a few others, but for the Department of Environmental Management they had to go through various permitting processes and part of what they also presented was a stormwater analysis, which was presented to the Planning Board. They had Professional Engineers testify at that hearing that there would be no environmental impact as a result of this development.
Ms. Vieira stated it would be reasonable that if the Board thought of this consideration and all the aspects mentioned, allow for a new Preliminary Plan approval to be held again, and assure all of the abutters are receiving notification that is being a good neighbor. Having a gas station less than 22’ from our property is concerning. She and her husband have health issues. She thinks people should have the opportunity to speak if they never received the notices. They need to be rightfully informed

Attorney Noonan stated the addresses for the abutters came from the Tax Assessor’s records. This was the third public hearing we had in this matter. Some of the questions that came up about asbestos and different things like that, those are under different jurisdictions. Her clients are always available to reach out to discuss the plan with the neighbors, but they do believe the record is complete, supports the Preliminary Plan approval and that there are no defects under the statutory & regulatory schemes.

Attorney Noonan would ask that there be a motion to deny the appeal, as there has been no procedural, clear error or any proof that the evidence was insufficient. She stated Ms. Vieira mentioned something she submitted after the hearing, but unfortunately the way these things go, items entered into the record after the fact cannot be considered, so it’s their belief everything was dealt with at the hearing. Ms. Viera was allotted a great deal of time to speak, based on all of the above, we think a motion to deny due to lack of proof of any procedural error would merit a denial of the appeal.

Ms. Vieira stated she did not present things after the fact, she presented things in a timely basis. They did not receive the proper notification and she believes that has to have some value, whatever you want to call it a procedural technicality, especially when you look at the exhibit, my address is not on Yucatan.

Salvatore DeLuise asked if there was any chance to continue this meeting to give the appellant’s time to get legal representation.

Attorney Noonan stated the Planning Board decision was back in mid-March. The appeal was filed on April 4th, while she understands where they are coming from, they’ve already continued for a week, and it’s already been at least size weeks since the Planning Board approval, and any time would just be more of a delay on their side. Plus there is proposition that if you show up at a hearing, you’ve waived any notice argument that you have, and both of them were on the Zoom call. So whatever merit there might be to that argument is effectively waived by showing up on the Zoom. So the question is, what would be different in this appeal if they had an attorney. It wouldn’t change the procedural posture of the case, there’s been no challenge to the law or the evidence that was presented in the case. They would oppose a continuance because ultimately there isn’t a merit to the procedural defect.

Ms. Coogan stated from what she is hearing, they should have had an attorney because they don’t speak attorney. She asked the Board to give them a little bit of time to gather money for an attorney to get fair representation. She wants to see proof they checked that
land for environmental issues. So they will need a little time to gather some money unless they can find an attorney who wants to do this pro bono.

Andrew Delli Carpini, owner, 7 Josephine Dr., Smithfield, RI, was present and sworn in by the Chairman.

Mr. Delli Carpini stated he has heard a lot of things tonight about this project. They’ve had this project on the table for a couple of years, and have followed all procedures, all the requirements. We received the addresses from the City to exactly what the abutter radius was. We sent out the notices. It was noticed once or twice, it was noticed three times between zoning and planning. The City sends out tax bills that get paid to those same addresses, and ultimately as I sit here and listen, this case is based on procedures and were the procedures followed. Based on what the City has found we feel we have satisfied all the requirements for due diligence for this project. We noticed the abutters based on the addresses provided, we noticed in the local newspaper, we’ve had hearing after hearing after hearing, so he believes they have satisfied all of the requirements. They do own the property and it’s becoming financially challenging for us to continue to have that property just sitting there, and obviously in New England we only have a certain amount of time for construction. A lot of the procedurals that were brought up by the appellant are handled by different departments, whether it’s the Health Department, DEM, construction. All of that will have oversight starting with the demolition. He stated they do have other Season’s locations in Warwick and they think they’ve been good neighbors in the City. He knows they can’t make everyone happy, but they have fulfilled their requirements, and he would recommend the Board re-affirm the Planning Board decision.

After further discussion, the Chairman of the Board stated Mr. Delli Carpini has always satisfied the neighbors in the past and goes above and beyond.

Lorraine Caruso Byrne stated based on RIGL 45-23-70 Appeal Standardization Review, the Planning Board did not make any prejudicial procedural error, clear error, or lack of support. Ms. Byrne made a motion to deny the appeal, seconded by Paul DePetrillo, and approved 3-2.

(Paul DePetrillo voted in the affirmative, Lorraine Caruso Byrne voted in the affirmative, Walter Augustyn voted in the affirmative, Salvatore DeLuise voted in the negative, and Constance Beck voted in the negative.)

A motion to adjourn was made by Walter Augustyn, seconded by Paul DePetrillo, and passed unanimously by the Board that the special appeal meeting be adjourned at 7:20 P.M.

BY ORDER OF THE ZONING BOARD OF APPEALS, WARWICK, RI

Paul DePetrillo, Chairman