

TOWN OF WARREN
DEVELOPMENT REVIEW BOARD

MINUTES OF MEETING
FEBRUARY 19, 2009

Members Present: David Markolf, Peter Monte and Lenord Robinson.

Others Present: Susan Simpson, Alan Solomon, Dick King, Candy Barr [by speaker phone], Miron Malboeuf and Ruth Robbins.

Agenda: Call meeting to order, 7:00 pm.

1. Reconsideration /Rehearing (continued from January 21st, 2009) of the Warren Development Review Board Decision, signed October 22nd, 2008 in RE: Appeal of the Administrative Officer's Determination letter: Don & Susan Simpson have appealed the Administrative Officer's letter of August 15th, 2008 which required the land owners to file for an Accessory Dwelling permit (Article 4. § 4.1) for a camper trailer on their property located 493 Prickly Mountain Road (parcel id. #210013-000) in the Rural Residential District. The camper trailer is connected to the existing septic system. This appeal requires review under Article 9, §9.5, Appeals, of the Warren Land Use and Development Regulations.
2. Other Business
 - a. Review & Sign Minutes from January 7th & 21st, 2009,
 - b. Review DRB Schedule March – April 2009 Schedules
3. Adjourn Meeting

Mr. Monte called the meeting to order at 7:25 pm.

- 1) Reconsideration /Rehearing (continued from January 21st, 2009) of the Warren Development Review Board Decision, signed October 22nd, 2008 in RE: Appeal of the Administrative Officer's Determination letter: Don & Susan Simpson have appealed the Administrative Officer's letter of August 15th, 2008 which required the land owners to file for an Accessory Dwelling permit (Article 4. § 4.1) for a camper trailer on their property located 493 Prickly Mountain Road (parcel id. #210013-000) in the Rural Residential District.

This hearing was continued from January 21st to allow an interested party, Ms. Barr, the opportunity to attend the proceedings, via speaker phone, as well as have the attendance of the DRB Chairman, Mr. Monte who was unable to attend the previous hearing. After a review of the minutes from the January hearing, Mr. Monte asked for clarification of the Simpson's position on requesting the rehearing. Attorney Solomon, representing the Simpsons, stated that there were inconsistencies between the facts and the resulting decision reached by the DRB that upheld the Administrative Officer's Determination letter. He continued to explain that the camper pad had been in existence for more than fifteen years, and though used only seasonally had never been abandoned and as such due to the length of time could not be claimed as an alleged violation. Mr. Solomon also cited some cases that he believed supported his argument. In addition as a side comment, Mr. Solomon pointed out that if the Board said no, that they would come back and request a variance which could most likely relocate the camper to a less desirable place in the eyes of the nearest neighbor.

Mr. Monte asked what the longest time period was that there was NO trailer situated on the property. Mr. Solomon said that it was always there from season (summer) to season. Mr. Monte said that his recollection from the original hearing was that there was a period of time during which there was no camper on the property, even during the summer. Ms. Simpson stated that there has never been a summer without a camper being on the property – maybe not the

entire summer, but for some of the time. Mr. Monte asked how long she had owned the property and she replied ten years and her family had owned it for almost twenty years prior.

Mr. Solomon brought up that he was looking at this as an issue of abandonment, that being of two parts, the intention to abandon and the actual abandonment in the form of an overt action. Mr. Monte disagreed saying that this was an issue of a non-conforming use and the right to continue that non-conforming use and that it was Mr. Solomon's responsibility to establish the factual predicates. Mr. Solomon continued to emphasize that the use had been ongoing, thus never having been abandoned. Mr. Monte said that if there had been any year in which the trailer had not been used then there would have been a cessation in the non-conforming use, whatever the intention may have been, the fact that it hadn't been used could make an argument for the clock to start over running again.

Mr. King spoke up and noted that in a letter submitted by the applicant that the year 1998 is the first reference to the location of a camper on the property for various periods of time. He also noted that if the Board were to consider the pad as the determining factor, then concrete pads or slabs might start appearing all over town, fifteen years could pass and one could build on it without a permit. Mr. Solomon said that campers had been used on the property since 1989 to which Mr. Monte said his memory agreed with that. Mr. Solomon went on to say that Ms. Simpson's father, Mr. Idol had testified at the original hearing to the use of the property with a trailer continuously to which Mr. Monte said that the key word was continuous.

The pad was installed in 1989, consisting of a level spot with gravel fill. In 1991 electric and water service was added [a buried conduit], and in 1999/2000 a hook-up to the primary residence's wastewater system was made. Ms. Barr, attending the hearing by phone, was asked what her recollection was of a camper being used on the premises since 1989. Her answer was that there had not been a trailer there continuously. It was her understanding that the pad was used as a holding station for a camper they [Mr. Idol] rented and used to go elsewhere, not utilize on the property. Mr. Monte then asked Ms. Barr how often, since 1999 when Donn and Susan bought the property, was a camper/trailer used? Was there a whole summer during which no camper was used? Ms. Barr replied that she only observed three summers during which the camper pad was used.

Board member Mr. Robinson said that though he couldn't say he'd been up in that neighborhood every year, that just the same he remembered whenever he had been up there had been a camper on the property. Mr. Monte said that even with all the testimony that has been given, it still was not conclusively clear to him as to when a camper had or had not been in use on the property. He continued to say that he was prepared to accept that the camper did not have to be there "hour to hour" to establish continuous use, but did need to have been there year to year. Ms. Simpson asked if it had to be the same camper. If not then there has always been a camper on site every year, contrary to Ms. Barr's recollection. Ms. Simpson also pointed out that she lives there, is there all the time, and Ms. Barr is sometimes away during the summer for a week or two or more. Ms. Barr stated that she was always there and if she wasn't, her partner, Michael, was.

Mr. King made two additional comments. He said he felt that it was the applicant's responsibility to prove that there had been a camper being utilized on the property for at least 15 years, and even then if there were different types of campers/trailers, how did that affect the degree of non-conformity and contribute to a continuous 15 year use. Mr. Markolf said he had been bothered by the fact that it was not just one specific camper in use over the years. Mr. Monte agreed that the type of camper/trailer used, whether it be an airstream, pop-up, or camper cab on a truck, could have bearing on the continuous use issue. Mr. Monte also told Mr. Solomon that he saw this as an issue of discontinuance, not abandonment, and that he accepted the seasonal use as not being a case of discontinuance. In this case, discontinuance was if the use skipped one summer season to the next. Mr. King said he thought there was the issue of a non-conforming use as well as a non-conforming structure, both of which the ordinance addresses.

Mr. Monte stated that they really needed to go back – that in order to even be allowed as a non-conforming use it has to be a use that was legally in existence as of the effective date of the regulations. Was the trailer in legal conformance on day one? Mr. Monte said he did not think so due to the setback requirements which no one believed had changed from day one. He continued by saying that given the placement of the trailer was not legally in compliance with the regulations at any time then the non-conforming use does not apply in any case. Then, when looking at the statute of limitations – is this a violation of the zoning ordinance that can't be enforced because the statute of limitations has run out [§4454]. However, Mr. Monte felt it still came down to an issue of continuous (or not continuous) use of the trailer on the property.

If the use began and if it had been continuous, [it can be seasonal but demonstrate a regularity of use] then §4454 would bar the action. So far, the Board has heard conflicting testimony on the continuous use of the trailer and as Mr. Markolf pointed out, the burden of proof lies with the Simpsons. Ms. Simpson said she would get an affidavit from her dad as to a trailer being on the property from 1989 to 1999. Mr. Monte said that it was his memory, though the dialogue was confusing, that at the original hearing Ms. Simpson's father led him to believe there had not been a trailer there every year without fail – that there had been gaps.

Ms. Simpson said she wasn't living at home full time from 1989 to 1999 but believed that there had been a camper there each year but could not attest to it for sure. Mr. Monte said the Board would more closely review the testimony at which Mr. Idol spoke to see if they could garner any further clarification. Mr. Monte then asked Ms. Simpson if there were different types of campers on the property from 1999 to now? She replied yes. And was there a year that only a pop-up was on the property? Ms. Simpson said no, not only a pop-up. She clarified by saying that in addition to the year a pop-up was there, they also had a camper like the one now that also occupied the property during that same season. Ms. Simpson also said in response to Mr. Monte's quires that there has been a camper, of similar type and size, on the property since 1999. When asked if there had ever been an RV on the property, Ms. Simpson said that back in the beginning, 1989, her dad did have a Winnebago.

Mr. Solomon noted that he did not think one could separate the issues of non-use and abandonment, the latter having two elements, one of intent and one of an overt act. He continued to emphasize that the use of a camper on this property had never been "abandoned" and had been used as such for more than fifteen years. Therefore, the use of the camper has a right to remain. Mr. Monte asked him if he had any case references that show that this is a situation of abandonment versus non-use or discontinuance.

Mr. Solomon said he'd get a copy of case study to the Board within the week, Mr. Monte said to copy Mr. King for his response, and Mr. Monte said that staff would re-listen to the first hearing [10/01/08] to see exactly what Mr. idol stated regarding the use of a camper on the property. Mr. Monte said that they would close the hearing and move to deliberate once the additional materials were supplied.

MOTION by Mr. Monte to conclude the evidentiary hearings and schedule deliberations for our next meeting date of March 5, 2009. **SECOND** by Mr. Markolf. **VOTE:** all in favor, the motion passed.

The Board adjourned the meeting at 8:35 pm. The next meeting is scheduled for March 5, 2009 at 7:00 pm.

Respectfully submitted,

Ruth V. Robbins
DRB/PC Assistant

00734

TOWN OF WARREN
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING 2/19/08

DEVELOPMENT REVIEW BOARD

Peter Monte 4-9-09
Peter Monte date

Lenord Robinson 4/9/09
Lenord Robinson date

David Markolf 4/9/09
David Markolf date