

TOWN OF WARWICK
ZONING BOARD OF APPEALS
FEBRUARY 27, 2017

Members Present:

Jan Jansen, Chairman
Mark Malocsay, Co-Chairman
Kevin Shuback
Diane Bramich
Attorney Robert Fink

Members Absent:

Chris Daubert

CHAIRMAN JANSEN:
the minutes of January 30th meeting?

Do I hear a motion to accept

MS. BRAMICH:

So moved.

MR. SHUBACK:

Seconded.

PUBLIC HEARING OF Second Amended Application of Black Bear Campground – for property owned by Rita P. Smith as Trustee of the Rita P. Smith Living Trust and located at 197 Wheeler Road, Warwick, New York and designated on the Town tax map as Section 8 Block 2 Lot 27.14 and located in an RU District for an interpretation of whether the applicant is subject to the limited occupancy provisions of Section 164.49.2V of the Warwick Code for the existing 74 sites, adding the application for a variance of Section 164-49.2(F)(1) for 35 of the existing 74 camp sites allowing encroachment wholly or partially within the 100 foot setback(s). **Continued from the January 23, 2017 ZBA Meeting.**

CHAIRMAN JANSEN: We are continuing the hearing of this application tonight. The Public Hearing has been closed so there will be no input from the Public we will be discussing the criteria.

ATTORNEY FINK: I think you all have reviewed this draft of what I propose we do. I propose we come to a consensus of the different elements that can authorize me to draw a resolution that is a denial or approval with conditions of the variance. We will vote on it at the next meeting. There are two principal objectives, one of which is MiraBella. Apparently there has been an agreement reached. Has the Board had a chance to review it?

The Board members indicated that they had reviewed it.

ATTORNEY FINK: It appears as though the question is resolved as concerns MiraBella. So we are looking at the principal objective. Any questions or suggestions?

MR. MALOCSAY: I am unclear: was that about 5, 6 or 7 lots on the one side?

ATTORNEY FINK: Do you have the packet?

MR. MALOCSAY: Yes.

ATTORNEY FINK: They are looking at 47 through 51.

MR. MALOCSAY: But what I wanted to ask was where it butts up to the Neiman property.

ATTORNEY FINK: No, that we will discuss; now we are just talking about MiraBella.

MR. MALOCSAY: But if we are giving a setback/variance, her property is easy enough to do what the recommendation that was agreed upon. The other property will be very difficult to do.

ATTORNEY FINK: That is what we will be discussing.

MR. MALOCSAY: So I don't understand how we can say that the Neiman property is any different than her property.

ATTORNEY FINK: It would appear that Neiman is right on the property line. Which I think is far different from MiraBella.

MR. MALOCSAY: I was looking at it if we are giving Neiman 100 feet variance setback on sideline. I was looking at the property as a whole and not an individual site.

ATTORNEY FINK: They are very different in the topography and how close the lots are.

MR. MALOCSAY: For each individual campsite, we are going to have different setback requirements?

ATTORNEY FINK: I don't know if you are or not; but if you look at the map, 95 through 112 appear to be right on the line. 64 through 68 there appears to be some separation. 63, 58 and 57 appear to be close to MiraBella. Let's say for the sake of argument, you were going to allow 112 through 95, you were going to grant a variance on the line. That doesn't mean that 68 through 60 would also be on the line. To a certain extent, you will have to treat these sites differently. It's up to you to discuss. Any questions or suggestions?

CHAIRMAN JANSEN: There hasn't been anything additional since our last meeting.

ATTORNEY FINK: They want a variance in order to expand the sites; it doesn't have to be all of the sites. You have a choice: don't expand the sites or move the sites. The issue of them being legal, pre-existing is not an issue. We have to decide is this Type I or Type II. Is our consensus, not a vote, that this a Type II with no adverse environmental impact?

MR. MALOCSAY: Yes and no.

ATTORNEY FINK: You have to look at whether the benefit to the applicant is weighed against the detriment to the health, safety and welfare of the community by such arrangement. The benefit to the applicant is they keep their existing 72 campsites and they don't have to move them. Then they can go forward and expand. The detriment to the health, safety and welfare of the neighborhood or community; is there a detriment if we grant this variance, allowing them to keep the sites in their present condition?

MR. MALOCSAY: There was some discussion concerning that they had been there 30 years with these neighbors. Does this carry any weight?

ATTORNEY FINK: That has been contested.

CHAIRMAN JANSEN: There was one person that stated that these sites were there in the '70's.

There was a discussion regarding if there will be an undesirable change to the character of the neighborhood and it was determined that there would not be a detriment.

ATTORNEY FINK: Does the fact that someone establishes something illegally, the 300 feet originally, does that grant them any rights to keep it.

CHAIRMAN JANSEN: I have to agree with Mr. Myrow and the Building Inspector that because the two times it came before the Planning Board, nothing was ever done about it. That to me means, it is a recognition that it is an approved use of the area.

MR. SHUBACK: I have to agree.

ATTORNEY FINK: Is it the consensus that because the sites have never been contested and therefore grandfathered?

A discussion followed regarding Mr. Neiman's understanding of the site of the campsites. The consensus was that the sites were always there. He should have contested then. This will not create an undesirable change in the neighborhood was the consensus also. Any future developments of Neiman's property would involve setbacks because of the topography of the property lines. A discussion determined that granting the variance would not produce an undesirable change to the character of the neighborhood.

A discussion followed regarding what the variance should be, are you allowing the campsites to stay where they are, with screening. The consensus was yes.

There was a discussion if there were any other feasible method. The consensus was that is not feasible to move all the campsites in question, based on available land.

ATTORNEY FINK: Is this a substantial variance?

CHAIRMAN JANSEN: Yes.

MR. SHUBACK: Yes.

MS. BRAMICH: Yes.

MR. MALOCSAY: Yes.

ATTORNEY FINK: Is this going to have an adverse effect or impact on the physical or environmental conditions of the neighborhood?

MR. SHUBACK: No, because they are already there, nothing is changing.

MR. MALOCSAY: It would be more detrimental if they were not granted the variance and they had to move them.

ATTORNEY FINK: Is this self-created?

MR. MALOCSAY: Yes.

CHAIRMAN JANSEN: Yes.

MS. BRAMICH: Yes.

ATTORNEY FINK: There was a discussion regarding to the MiraBella not contesting the variance but with conditions. Our first option is to consider the variance, reducing setbacks less than 100 feet, principally where they now exist. If the area variance is not granted, they can stay right where they are and increase 15%. We can vote not to grant the variance, or we can vote to grant the variance, allowing the sites to be next to within 100 feet. But then we have to be specific as to what sites and where and whatever other conditions that may apply. What has been suggested by MiraBella agreement, is that this Board not specify the screening but make it conditional upon the applicant complying with the

screening that the Planning Board requires. This is what MiraBella agreed to. Is this the consensus to grant the variance as agreed to by MiraBella and Black Bear?

CHAIRMAN JANSEN: Yes.

MS. BRAMICH: Yes.

MR. MALOCSAY: Yes.

ATTORNEY FINK: As far as Mr. Neiman is concerned, sites #58 through 68, do not appear to go up to the boundary. It is shown to be not less than 30 feet from the line. Are you inclined to leave those sites stay as they sit?

CHAIRMAN JANSEN: Leave.

MR. MALOCSAY: Leave.

MS. BRAMICH: Leave with additional screening.

MR. SHUBACK: Leave with screening.

ATTORNEY FINK: For those sites #68 through 59, they can't be moved closer to the line?

MR. SHUBACK: No.

CHAIRMAN JANSEN: No.

MS. BRAMICH: No.

ATTORNEY FINK: And with regard to #62 through 68, they show as 30 feet so they can't be less than 30 feet. What about #112 through 95? They appear to be right on the line.

CHAIRMAN JANSEN: There appears to be a 5-foot fence running along that line. Any planting or screening would require at least 5 feet.

ATTORNEY FINK: Should we leave that to the Planning Board?

CHAIRMAN JANSEN: As long as they don't crowd the camping sites and make them unusable. Can the screening be fencing?

ATTORNEY FINK: As regard to the property on the line, 95 through 112, the screening no more than 10 feet. I will draw up a resolution with these stipulations. We can vote on this next month.

CHAIRMAN JANSEN: Do I have a motion to continue this application next month?

MS. BRAMICH: So moved.

MR. SHUBACK: Seconded.

CHAIRMAN JANSEN: Any discussion? All in favor?

(5 Ayes) Motion Carried.

PUBLIC HEARING OF Gregory Stobbs - for property located at 356 Buttermilk Falls Road, Warwick, New York and designated on the Town tax map as Section 64 Block 2 Lot 3 for a variance pursuant to 280-a of the Town Law permitting construction of a single family dwelling on a lot that does not front on a public highway. **Continued from the January 23, 2017 ZBA Meeting.**

CHAIRMAN JANSEN: This is continued from last month, Mr. Stobbs please approach.

MR. STOBBS: At the last meeting, I was asked to write letters to emergency services. I sent letters to the Ambulance, Fire and Police services. I have only gotten a reply from the Police.

CHAIRMAN JANSEN: Can we have copies of those letters? Along with proof of mailing?

The letter from the Chief of Police was read by Chairman Jansen, indicating “I see no increase in limitation of access to your property by such a variance. As you know, this is a private road with reduced access already due to the problem with the bridge. As long as emergency responders know to enter from the side near Cascade Lake, nothing is changed.”

CHAIRMAN JANSEN: The Public Hearing is still open, is there anyone here that would like to address this application?

MR. TESTA: My name is Rocco Testa and I would like to go back to emergency vehicle access and the 280A variance.

CHAIRMAN JANSEN: We have asked for letters from those people and they have not responded.

There was a discussion between Mr. Testa and Attorney Fink regarding a 280A. Mr. Testa insisted that it applies to this variance. Attorney Fink stated that this is not up to debate. The road is dead-ended; in order for a fire truck to enter the road and turn around, they use Mr. Testa’s driveway. The bridge being out is an added complication.

MS. BRAMICH: May I ask you a question?

MR. TESTA: Sure.

MS. BRAMICH: How long have you lived on that piece of property?

MR. TESTA: About 29 years.

MS. BRAMICH: And is there an association for the road?

MR. TESTA: We are trying to get one.

MS. BRAMICH: It's the homeowners' responsibility to maintain the road.

MR. TESTA: I understand that, but we can't fix the road with bridge being out.

CHAIRMAN JANSEN: Maybe you could sign a petition for the Town to declare the road unsafe and then have them assess all the homeowners for improvement.

MR. TESTA: We are working on several solutions.

MR. SHUBACK: Wouldn't it be better to have another house with which to share the fees?

MR. TESTA: No, because the construction vehicles make the road even worse.

ATTORNEY FINK: Is it ok with the Board to wait until we hear back from the other emergency services?

CHAIRMAN JANSEN: Are you well into the construction of your house?

MR. STOBBS: Yes, the permit was issued before they realized that a variance was needed.

ATTORNEY FINK: I think we should wait until the next meeting so we can review the materials.

MR. MALOCSAY: I can follow-up on the response from the Fire Department.

CHAIRMAN JANSEN:
to the next meeting.

This application is continued

PUBLIC HEARING OF Michael Carvaglia - for property located at 92 Birdsall Road, Warwick, New York and designated on the Town tax map as Section 53 Block 1 Lot 18 and located in an MT District for a variance of TL 280-a permitting construction of a single family residence on property located on a private road.

CHAIRMAN JANSEN: Please identify yourself and tell us what it is you would like to do.

MR. CARVAGLIA: My name is Michael Carvaglia. Birdsall is a private road and there were 4 houses; I took one down. I am improving the land and I want to build a home there.

CHAIRMAN JANSEN: Did Ms. Sardo inform you that you have to send out the letters to emergency services?

MR. CARVAGLIA: Yes, that has been done and I have copies of the letters sent out. I have not received answers yet.

CHAIRMAN JANSEN: You also need access off the private road as part of this application. I am opening up the Public Discussion. Anyone here that would like to address this application? No.

MR. SHUBACK: Are you re-building on the same spot as the house you knocked down?

MR. CARVAGLIA: Yes, exactly.

CHAIRMAN JANSEN: Are you in the process of building right now?

MR. CARVAGLIA: I have a building permit from the town.

ATTORNEY FINK: You were issued a permit?

MR. CARVAGLIA: No, I applied for one.

MR. SHUBACK: I suggest we continue this application until the next meeting in order that we can take a look at the lot.

CHAIRMAN JANSEN:
Hearing open and continue this application at the next meeting.

We will leave the Public

PUBLIC HEARING OF Moyna Singh - for property located at 18 West Lake Road, Warwick, New York and designated on the Town tax map as Section 19 Block 1 Lot 25 and located in an RU District for a variance of the Bulk Area Requirements of the Code permitting a 13' 6" X 16' 6" addition to a single family dwelling decreasing side setback from 58.5 feet to 45 (+/-) feet where 75 feet are required.

CHAIRMAN JANSEN: Please identify yourself and tell us what you would like to do.

MS. SINGH: My name is Moyna Singh and I would like to add a sunroom onto my home to make more living space.

CHAIRMAN JANSEN: Any questions? No? The discussion is now open to the Public. Anyone here that would like to address this application?

MS. WARREN: My name is Grace Warren and I live on West Lake Road. My concern is that of the damage the construction vehicles will do on our private road. I want her to be responsible for any damage done the road during her construction. I am also concerned about her old septic system taking on an extra load.

CHAIRMAN JANSEN: Thank you, anyone else?

MS. SINGH: I put in a new septic tank a couple of years ago. I am not doing any plumbing. I have owned this property for over 19 years and have been making payments for the road upkeep. An informal group collects the money and I have been concerned about the accounting of the money. First, they will have to identify any road damage done by me. This is a very small project.

CHAIRMAN JANSEN: The fact that this is a private road has to be addressed. Is there a formal maintenance agreement?

MS. WARREN: No, there is not. It is all voluntary. I have never heard from Ms. Singh to inquire about the funds.

CHAIRMAN JANSEN: Anyone else?

MS. GOLDMAN: My name is Iri Goldman and I live next door to Ms. Singh at 32 West Lake. I brought some pictures to show how close her property is to mine.

ATTORNEY FINK: Are you objecting to this?

MS. GOLDMAN: Yes, I am. She is asking to get closer than 45 feet to my property and infringing on my privacy. I have pictures to show how close her house is to mine. I believe she could put this addition on the other side of her house.

CHAIRMAN JANSEN: Thank you, anyone else?

MR. ROSENBERG: My name is Harold Rosenberg and I live across the street from Moyna. I am concerned about the impact from the construction vehicles on a bridge that is near our property.

CHAIRMAN JANSEN: So noted. And after hearing the neighbors' concerns, I think we should take another look at this application.

MS. SINGH: The other side of my house is blocked by a 30-year-old pine tree. I do not want to cut down this tree. Plus, the addition would block any natural light coming into the rooms already there. Also the gradient of the property is an issue. I am saying that my house is about 150 feet from Ms. Goldman's house, I cannot see into her kitchen.

CHAIRMAN JANSEN: I am leaving the Public Hearing open and continuing this application to next month.

Pamela J. Carroll ZBA Recording Secretary