

TOWN OF WARWICK
ZONING BOARD OF APPEALS

APRIL 24, 2017

Members Present:

Jan Jansen, Chairman

Mark Malocsay, Co-Chairman

Kevin Shuback

Chris Daubert

Attorney Robert Fink

Chairman Jansen: Do I hear a motion to accept the ZBA Minutes of March 27, 2017.

Mr. Shuback: So moved.

Mr. Malocsay: Seconded.

4-Ayes.

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. **Continued from the February 27, 2017 ZBA Meeting.**

Representing the applicant: Moyna Singh, Applicant

Chairman Jansen: Please tell the Board what you are trying to accomplish.

Moyna Singh: Right now I have a small house with 2-bedrooms upstairs and 1-bedroom downstairs with a dining/living room. I feel that I need more space. I am looking to add a family-room/den. The house is currently too small. It would be like an enclosed deck with a foundation. I would like to add this addition to give me more space. I have the space. I have a lot of land.

Chairman Jansen: Is there any particular reason why it has to be at that location versus the rest of the house?

Moyna Singh: Yes. Unfortunately, I have 10-acres of land. The way the house is made on one side of it there is a huge pine tree that the previous owners planted 30 years ago. There is not enough room to put the addition on the other side.

Moyna Singh shows pictures of her property and house to the Board and explains why the addition could only go on that one side of the house where she wants it and not on the other side because of a huge 30-year old pine tree and her septic tank would be in the way. Chairman Jansen explained to Ms. Singh that there would be plenty of room to build the addition on the side of the house where the pine tree is located. Ms. Singh said there would not be room.

Chairman Jansen: I was at your property yesterday.

Moyna Singh: You were there?

Chairman Jansen: Yes.

Moyna Singh: But once the roof is up it would block the window on that side.

Chairman Jansen and Ms. Singh continue to have discussions about where the addition should go and why she doesn't want it placed anywhere else on the property because of the pine tree, septic location and utilities location. Chairman Jansen tries to explain that the additions could go on the other side where there is plenty of room. Ms. Singh does not want the addition to be on the other side. She wants the addition to be where it is. She loves her house and on that side there would be a lot of light. Ms. Singh said if she had to, she would make the addition a little smaller.

Chairman Jansen: Ok. Let me open it to the public. This is a public hearing. If there is anyone wishing to address the Moyna Singh application, please rise and state your name for the record.

Irit Goldman: I am a neighbor. I live at 30 West Lake Road. I am the neighbor abutting the property on the side where she wants to put the addition. I just want to clarify a couple of things. I know about this house from when the previous owners owned it. I have been living here 20 years now. When I moved here, I wanted to live in a rural area. I respect the privacy of my neighbors. The fact that Moyna states that I live far enough from the fence doesn't mean it would not affect my privacy. The topography of the way the land is, she is higher than me. This would affect my property. There is a way to build. There is no need to cut the tree. I just want the Board to respect someone else's privacy. I don't want the Board to grant a variance just because of convenience. She wants me to respect her privacy. What about my privacy? I don't want the addition closer to me. When I had done my subdivision, I knew what the setbacks were. I had to abide by that. When she purchased the house, she knew about her limitations. It's not that she can't build. It probably would cost her a little bit more money to build it somewhere else on the property. But, she could do it. That is the way it goes. Sometimes it would cost a little bit more. I would just appreciate that the Board would look at this. We are in a rural area. I would like to respect my neighbor. I would also like to be respected as well. Thank you.

Hal Rosenberg: I live across from West Lake Road. I have a similar objection from the last time I was here. We collect money very infrequently. We don't have a good road Association for the road. The 18 or 19 families that live there pays into the Association. The only one that has not and is in arrears is Moyna Singh. She owed us \$1500.00. She acknowledge that she had paid us \$1,000.00 two months ago. The other \$500.00 that is owed, she wanted to look that up in her checkbook. She told me that 5 months ago. She still has not acknowledged that.

Attorney Fink: If she were to pay, would you be objecting to the variance?

Hal Rosenberg: I told her today in a phone call my objection. If she paid the \$500.00 and if she agreed with what she said over the phone, that in the future she would pay in a timely manner. She stated that she agreed to that. There is also a bridge that goes from my property to her property. Moyna said that she would give me a letter stating if any damage is done to it, she would repair it. It wouldn't be on me. The real objection is that she still owes us \$500.00 for the road. She still hasn't paid just like she hasn't been paying over the years.

Chairman Jansen: Is there anyone else? Mr. Rosenberg, how large of a property do you have?

Hal Rosenberg: It was 15 acres. About a year ago, it became approximately 14 acres.

Chairman Jansen: Ms. Goldman, how many acres do you have?

Irit Goldman: I have 10 acres.

Chairman Jansen: Ms. Singh, how many acres do you have?

Moyna Singh: I have 10 acres.

Chairman Jansen: The public hearing is now closed.

Attorney Fink: Ms. Singh, tonight we only have a 4-member Board to vote on your variance. You would need 3 votes tonight in order for your variance to be granted. We only have 4 members here tonight. If we had 5 members here tonight, your odds would be better. Do you want the Board to still vote on it tonight or would you want to be continued to next month's meeting when we have a 5 members here?

Moyna Singh: What would the date of that meeting be?

Attorney Fink: It is always the 4th Monday of every month.

Pam Carroll: May 22nd is the next ZBA meeting.

Moyna Singh: Ok. Let's put it to over to May 22nd. If I have a problem with that, could I be put over to the meeting after that?

Chairman Jansen: As long as you give notice.

Mark Malocsay: Since the public hearing is closed, you do not have to be at the next meeting.

Chairman Jansen: Correct.

Attorney Fink: At the next meeting, there would be no discussion on your application. It would just be a vote. You don't have to be here for that.

Moyna Singh: Let's take the option of putting it on for the May 22nd meeting.

Attorney Fink: The Board will consider at vote on the application at the next meeting.

Moyna Singh: Ok.

Chairman Jansen: Ok. The application is adjourned to the May 22, 2017 ZBA Meeting.

PUBLIC HEARING OF Yonique, Inc. - for property located at 15 Rocky Trail, Greenwood Lake, New York and designated on the Town tax map as Section 72 Block 1 Lot 139 and located in an SM District for a variance of the setback requirements of the Code permitting construction of a 10 foot X 12 foot deck & balcony on an existing single family dwelling 8 feet from the front property line where 30 feet are required. **Continued from the March 27, 2017 ZBA Meeting.**

Representing the applicant: Yonique, Applicant.

Chairman Jansen: Do you absolutely need the 2nd deck upstairs?

Yonique: Do you mean the balcony upstairs?

Chairman Jansen: Yes.

Yonique: The balcony is going to be on the 2nd story. It is a lake view property. The guy below us is obstructing the view. It is going to be something that is very nice and relaxing. There are not going to be any bedrooms on the first floor. It is only going to be upstairs on the 2nd floor. That is where the Master bedroom would be located. This 2nd balcony would make it very nice up there.

Chairman Jansen: Ok. Any questions? The public hearing is still open. Does anybody have any comments?

Mark Malocsay: I have a question if this would need another variance?

Attorney Fink: It does need another variance. There is a specific provision in the non-conforming use in the Code.

Mark Malocsay: Ok.

Chairman Jansen: Does anyone else have anything to add?

Yonique: There is currently no other way to enjoy it. It is a lake view property. In the back of the property it is all mountain with trees. There is no other way to sit out there and enjoy the sun and the view. The character of the neighborhood would not change. I think it would fit in. Greenwood Lake is a beautiful lake. It would be nice to sit out there. I don't think the deck and balcony is anything excessive. It would add value to the block and the community.

Fink: The balcony you are talking about is a 4'x14' balcony. The deck is 10'x12'. Is that correct?

Yonique: Correct.

Attorney Fink: The balcony is located on the 2nd floor. Is that correct?

Yonique: Yes.

Attorney Fink: The deck stands off the front porch. It is a raised deck.

Yonique: Right.

Chairman Jansen: Does anybody have any other questions? The public hearing is still open. If there is anyone in the audience wishing to address the Yonique application, please rise and state your name for the record.

Mr. Montemarano: I am one of the many neighbors. I live at 17 Rocky Trail. All of us neighbors from the block has spoken about this. One: is issue is that it was disturbing to hear that a second story was going up so high. It will definitely impede my view of the lake. I want to make sure whatever the height limit and the measurements are, I want to make sure they are maintained.

Attorney Fink: The Building Inspector would take care of that.

Mr. Montemarano: Ok. Hopefully. The other thing is that a lot of people walk up and down the block. The deck is going to be elevated about 8 feet off the ground. It is going to be right off the street. Anybody walking on the street will be looking underneath the deck. Then you are going to have a balcony about 30 feet high right off the road.

Chairman Jansen: The balcony is only 4 feet.

Mr. Montemarano: Yes. But it is going to be 20 feet high because there will be a first and second story. If you are right on the road, you are going to have this balcony above. Right now the community is rural. Many of the houses there have been existing. None of them are overwhelming. This house that he is doing will be very large and the decks will be protruding from it. It is going to be overwhelming to the rest of the community. It is not going to blend in. Most of the houses and decks are set back. The ones that do have decks with the exception of one or two they are just 4 feet off the ground. This one is going to be right off the road. It shouldn't change the whole entire community. One person doing this is going to set a precedent. I don't think that is right. If it was ground level, it would be less intrusive. But with it being up 8 feet, you would be looking underneath the deck.

Chairman Jansen: Is that what it is going to be? Is it going to be 8 feet?

Yonique: I am not sure where he got that measurement from. I can't imagine it being that high. I think it would be approximately 2 or 3 feet.

Mr. Montemarano and Yonique look at pictures of the house and discuss where the deck and balcony will be and the height of both of them. Mr. Shuback asks Mr. Montemarano where his house is located from the property. He shows him where his house is located. There is continued discussion how this addition with the deck and balcony will potentially obstruct the view to the lake for everyone. Mr. Montemarano also has a concern about what color the house is going to

be. He states that it should be a color that is not going to be overwhelming and that it would blend in with the community.

Chairman Jansen: Does the deck have to come out 8 feet? Could it be less?

Barbara Carolan: I live at 13 Rocky Trail. The deck is a 10x12.

Yonique: Where is your house located?

Barbara Carolan: I am to the left of it.

Yonique: What is the distance from your house to the road?

Barbara Carolan: I don't know. Yonique stated that it is shaded in the back yard. I have the same back yard. It is not.

Chairman Jansen: How far are you proposing from the house to come out? Is it 10 feet from the house?

Yonique: It is 10 feet. Yes.

Chairman Jansen: It would be a lot less intrusive if you only came out about 6 feet.

Yonique: It is on a raised level. The ground goes up. We could make that esthetically pleasing by planting some flowers.

Chairman Jansen: The only thing is if you lower it any then you would be covering those windows in the basement. Is that right?

Yonique: No. It is not a basement. It is for electrical storage. It is a crawlspace. You can't walk in it. It is not a usable basement.

Chairman Jansen: Could it be lowered?

Yonique: I don't care. We could bring it down and put some lattice and flowers.

Chairman Jansen: I am not so concerned about the small balcony up on the top. I don't think that would affect anybody.

Chairman Jansen: Could we make some compromise here?

Attorney Fink: You don't have to grant a 10x12 deck. You could grant a variance that you want. You don't need the consent of the applicant. Lattice work and some sort of other measures were mentioned. If you chose to grant the variance, that would have to be a condition. I think you would have to be fairly specific as to what it is you would want. Perhaps, we would want the applicant to present something. You might want to delay this for another month so that we could have a 5th Board member here.

Yonique: What are the issues?

Chairman Jansen: It is the height and the size as to how far it comes out to the road. It is overwhelming.

Yonique: Even though there is one right next door in the same situation.

Chairman Jansen: I did not measure that one. I can't tell you that.

Yonique: I don't mind delaying this. But could we come to a determination as to whatever it is so that we could close the public hearing? I am ok with waiting for the 5th Board member next month.

Chairman Jansen: Bob, could we close the public hearing?

Attorney Fink: No. If we are asking the applicant to bring in something in addition to, we could limit it simply to that.

Yonique: I could talk to my Architect about that.

Chairman Jansen: See if he could reduce the size, bring the height down and do some screening.

Yonique: Ok.

Chairman Jansen: This application will be continued to the next ZBA Meeting of May 22, 2017.

PUBLIC HEARING OF Joan Hoge - for property located at 165 Union Corners Road, Warwick, New York and designated on the Town tax map as Section 17 Block 1 Lot 21.191 and located in an RU District for a variance of Section 164.46J(16) permitting the housing of livestock in an existing shed 11 (+/-) feet from the property line where 150 feet are required.

Representing the applicant: Bob Krahulik, Attorney. Joan Hoge, Applicant.

Pam Carroll: Do you have the certified mailings?

Bob Krahulik: Yes. I just wanted to clarify something. The list of property owners we thought that there were way more neighbors within 300 feet.

Chairman Jansen: They also go a little further with the tracing. It is done as a matter of safety. We try to make sure that nobody is missed.

Bob Krahulik: I understand that. We are confident that we have everyone within 400 feet.

Chairman Jansen: Good.

Bob Krahulik: I am the attorney for the applicant. This application is for the construction of a garage which is approximately 11 feet from the north westerly boundary of a neighbor's property. They received a Building Permit and Certificate of Occupancy for that garage. There may have been a disconnect as to what the Building Department thought the garage would be used for and what the intended uses were going to be. Ms. Hoge uses the garage to store 1 horse and 2 ponies. They live there during the winter time. The Code requires a setback of 150 feet if this type of structure is going to be used for livestock. We are seeking a variance allowing the maintenance of the garage for the housing of livestock 11 feet from the property line rather than the required setback of 150 feet.

Jan Jansen: Please just clarify something for me. I was out there on Sunday. I had seen this canvas structure that is being used for the horses at this time. Then, I had seen the other building beyond it. Which one are we talking about?

Bob Krahulik: On the survey that I had submitted, I highlighted the one that we are talking about.

Jan Jansen: You are talking about livestock. Is that correct?

Bob Krahulik: Yes. There is 1 horse and 2 ponies.

Jan Jansen: That is interesting. When I was there on Sunday, I had seen 3 horses.

Bob Krahulik: There is 1 horse and 2 ponies.

Jan Jansen: Those are 2 ponies. Those are big ponies.

Joan Hoge: Those are 14-2 ponies. Anything that is 14-2 and below are considered ponies. Anything above 14-3 and up is considered a horse.

Attorney Fink: This will come up. You need 3 acres for 1 one large animal or horse. For each additional large animal you need 1-acre for each.

Bob Krahulik: Correct.

Attorney Fink: The Code goes on and says you would need 3 acres also for 2 medium animals like a goat or a pony. For each additional acre, you could get 2 small animals or ponies. Does that mean with 3 acres you could put 1 large animal and 2 small animals? Or, does it mean you need 6 acres? It is not and. It is or.

Bob Krahulik: It doesn't say and/or. We have already been in Town Court over the Code violation over that very issue. That was resolved in our favor.

Attorney Fink: Frankly, I don't care what the Court had said. That is an interesting question in my mind. I'm sure that Mr. Lipman will have an opinion on that. The fact that the Justice Court made a ruling on that. Let us assume that they did. The Justice Court interpreted that to me. You could have 1 horse and 2 medium animals on 3 acres.

Bob Krahulik: We are not seeking a variance per say for 3 livestock residing there. You could only be having 1 livestock. Our variance is simply for the construction that would house livestock within the required setback. If we end up having 5 livestock, then the Building Department could issue a violation.

Chairman Jansen: I agree. It is not an issue about that.

Bob Krahulik: Ok. We have photographs of some of the neighboring properties around here. The neighborhood is very much located within the Agricultural neighborhood. There are other neighborhood farms that have facilities housing livestock. They are very close to property lines.

Mr. Krahulik shows photographs to the board of neighboring properties that have farms with out buildings and are housing livestock.

Attorney Fink: That ruling happened before you filed your application for a variance. Is that correct?

Mr. Krahulik: Correct.

Mr. Krahulik continues talking to the Board regarding the photographs he has of other neighboring farms between Spanktown Road and Union Corners Road that house livestock. Mr. Fink asks Mr. Krahulik if he is showing these pictures of other properties because they might not be in compliance with the Code because they are housing animals too close to the property line.

Mr. Krahulik states that he did not measure them but states that yes, he is making that statement. Mr. Krahulik does not want to suggest that there are Code violations on any of the neighboring properties. They are just trying to illustrate that if the variance is granted, it would not impact the neighborhood.

Mr. Krahulik: In order to locate the structure within 150 feet of the property line, it would end up right in the center of the lot. It would then be in front of the house. That would make it a violation. You can't have it in front of the house. We think from an esthetic standpoint the location of the garage where it is now is more attractive than it would be if you moved it right in the middle of the lot. It could technically conform to the Code's requirement. The problem is that Ms. Hoge obtained a Building Permit and a Certificate of Occupancy for the garage where it is located now. Unfortunately, it is not a type of structure that can be moved. We don't have the ability to drag it further away from the lot line. The structure would have to be torn down and rebuilt in order to move it. We are in a jam.

Chairman Jansen: Do any Board members have any questions? This is a public hearing. If there is anyone in the audience wishing to address the Joan Hoge application, please rise and state your name for the record.

Alan Lipman: I represent the neighbor that owns the property right next to the site that we are talking about.

Chairman Jansen: Would it be behind the Herskee property?

Alan Lipman: Yes.

Andrew Herskee: I am Andrew Herskee. I own that lot and the home bordering onto Spanktown Road.

Mr. Lipman: I have a number of documents that I would like to hand to you.

Attorney Fink: What is the bottom line of what your presentation is going to be?

Mr. Lipman: The bottom line in my point of view is that she is not entitled to a variance.

Attorney Fink: What are you going to contend...what the harm would be by allowing it to stay where it is?

Mr. Lipman: We are already suffering harm. We have odor, manure, flies, and all kinds of problems.

Attorney Fink: Ok. I did not mean to interrupt you. We now know where you are going.

Mr. Lipman: I have a copy of a Memorandum to give to you. I have a tax map that I highlighted in orange that represents the Herskee property. What is highlighted in yellow represents the Hoge property. I also have some photographs to show you.

Attorney Fink: Does anyone have an idea on what it would cost to move that barn?

Mr. Lipman: No. I do not know what it would cost. But when someone builds a barn without a permit...

Attorney Fink: I don't think there is any issue with regards to the barn.

Mr. Lipman: That is what we are talking about.

Attorney Fink: The issue was the use of the barn.

Mr. Lipman: The barn was built without a building permit.

Mr. Lipman and Mr. Fink continue to discuss the use of the barn/shed and states that there is no violation on the barn. The issue is the use of the building to house livestock.

Mr. Lipman reads a letter for the record addressed to the Zoning Board of Appeals on behalf of Andrew and Tricia Herskee in connection with and application of Joan Hoge for an Area Variance. The letter undated is stated as follows:

This office represents Andrew and Tricia Herskee in connection with the application of Joan Hoge (the "Applicant") for an area variance from Section 164-46J(16) of the Town of Warwick Zoning Code (the "Application") to permit the maintenance of a Barn for the housing of livestock animals (the "Barn") on her property designated as Section 17 Block 1 Lot 21.191, as shown on the Town of Warwick Tax Maps (the Premises). The Barn is impermissibly located within 150 feet of her property line as it adjoins the real property owned by Mr. and Mrs. Herskee, shown as Section 17 Block 1 Lot 21.18 on the Town of Warwick Tax Mas (the "Herskee Property"), which is a legal building lot upon which Mr. and Mrs. Herskee plan to build their future home.

My clients have submitted a letter to the ZBA in connection with this application, dated April 24, 2017 (the "Herskee Letter"), a copy of which is also submitted at this time. As the Herskee letter indicates and as the survey entitled "Survey of Property for Joan Hoge" prepared by John A. McGloin, LS, dated February 27, 2017 (the "Survey") submitted in connection with the Application confirms, the following conditions are present on the Premises:

- 1. The Barn is 26 foot by 42 foot structure, (shown as a "Garage" on the survey) and is located just 11.1 feet from the Herskee property line.*
- 2. Two (2) other structures where animals are sheltered, each shown as a "Dome Canopy" on the Survey, are located less than 50 feet from the Herskee property line.*
- 3. A penning area (the "Penning Area") on the northwest side of the Premises, enclosed by a fence marked as "wire fence" on the Survey which is less than (1) acre in size, is located immediately along the Herskee property line.*

As the Herskee Letter also establishes:

- 1. The location of the Barn and the two Dome Canopies, respectively within 30 feet of the Herskee property line, and the Penning Area immediately adjacent to the Herskee*

property line have created odors from urine and manure intruding upon and adversely affecting the Herskee property.

2. The manure and urine is located and stored within 150 feet of the Herskee property line, in some cases on or within one or two feet of the line between the Herskee property and the Premises.
3. The surface water drainage ditch running along the property line between the Premises and the Herskee Property has become contaminated with urine, wet manure and construction debris from the construction of the Barn, all of which have adversely affected the Herskee Properties and the properties of other neighbors.

Section 164-46J(16) of the Town of Warwick Zoning Code provides as follows:

*“Accessory to a residential use, not more than one bitch and two other dogs over 6 months old nor more than one litter under six months of age; liv stock [according to the limitations and requirements of Subsection J (101) of this section] and not more than 10 fowl, rabbits, or other small domesticated animals shall be permitted; and no animals of fowl shall be housed within 100 feet of any lot line, **except where livestock animals are housed then such housing shall be set back 150 feet from any lot line. Any penning area less than one acre in size shall be set back 50 feet from any lot line. No storage of manure or other odor-or dust producing substance or use shall be within 150 feet of any lot line.** See also special condition in Subsection J (101) for large animal.”*

Accordingly, Section 164-46J (16_ imposed three (2) setback requirements respecting the existing use of the Premises. They are that:

1. The Barn (housing livestock animals) must be located at least 150 feet from the Herskee property line.
2. The Penning Area must be located at least 50 feet from the Herskee Property. The Dome Canopies providing shelter for livestock animals must be set back 50 feet as required for a penning area.
3. Any manure storage must be located at least 150 feet from the Herskee Property.

The Premises is not conformity with any of those requirements. In order to place the Premises in conformity with Section 164-46J(16), the ZBA would need to grant the Applicant not one (1), but three (3) area variances set forth above, which the Applicant has failed to request.

Section 267-b of the Town Law requires the ZBA to consider five (5) issues in deciding whether to grant or deny any area variance. A consideration of each as they pertain to the Application follows:

1. *Whether a detriment to nearby properties will be created by the granting of the variance?*

Here, there can be no question that the very conditions sought to be protected against by the regulations now sought to be varied, are being caused by the existing violations of the regulations. Odors are being imposed upon adjoining

properties and manure, urine and construction debris runoff emanating from the Barn, the Domed Canopies and Penning Area, all misplaced too close to the Herskee and other neighboring properties, and are polluting those properties and potentially affecting Stoney Creek.

- 2. Whether the benefit sought by the variances can be achieved by some other method feasible for the Applicant?*

Here, the Premises is 3.4 acres in area and it appears from the Survey that there exist, many locations where the Barn, the Domed Canopies and the Penning Area may be placed in conformity with the Zoning Ordinance. Although the Application states that the Barn cannot be moved, common sense suggest that to be wrong. Moreover, the Barn is a "pole barn" which should be easily taken down, relocated and reassembled.

- 3. Is the area variance sought substantial?*

Here, the Application concedes that the request to reduce the setback for the Barn from 150 feet to 11.1 feet is substantial. The existing setback of the Barn is only eight percent of the requirement and is clearly a substantial shortfall. Moreover, the fact that two (2) more area variances are required to put the Premises in conformity with the Section 164-46(J)16, both of which by themselves are substantial, makes the relief required by the applicant very substantial indeed. Particularly, where the Penning Area on the northwest side of the Premises is required be at least 50 feet from the northwest boundary line of the Premises, it is located on the Herskee Property line, and where the storage of manure is to be at least 150 feet from the property line, it is stored on the Herskee Property Line.

- 4. Whether the variance would have an adverse effect or impact on the neighborhood?*

Clearly, as explained under issue One, the odors and polluted runoff adversely affects the entire neighborhood, perhaps including Stoney Creek.

- 5. Whether the alleged difficulty was self-imposed?*

The Application concedes that the difficulty was self-imposed when the Applicant built the Barn and presumably the Domed Canopies and the Penning Area without seeking the necessary building permits and variances, and when confronted with the failure to obtain a building permit and certificate of occupancy for the Barn, obtained a permit apparently legalizing its existence under the pretense that its use was to be as a "shed", -- a 42' by 26' shed, which has been used to house livestock and which was apparently the Applicant's intention when the Barn was constructed.

It is respectfully submitted, that under these facts and circumstances the application should be denied.

*Respectfully submitted,
FABRICANT LIPMAN & FRISHBERG, PLLC.
Attorneys for Andrew and Tricia Herskee
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Attorney Fink: We are only dealing with the barn. This application that is before this Board is just for the barn. The canopies and penning area is not before us. The Building Inspector sent this application to the ZBA just for permitting the housing of livestock in an existing shed 11+/- feet from the property line where 150 feet are required. The other issues regarding the canopies and penning area even though they are legitimate issues that is not what is before this Board. This Board I don't think is going to make a decision on all of those horrendous conditions.

Mr. Lipman: I think that issuing a variance that allows this condition to exist because of the location of the barn that is far too close. It is missing 90% of the dimension as what it is called for.

Attorney Fink: Ok. If this barn was moved, would it be your contention that these other conditions wouldn't exist anymore?

Mr. Lipman: It is not just the movement. It is that they get resolved.

Mr. Herskee: It is our contention that if that barn was relocated or had been located properly within the variances. These other problems might have had been resolved.

Mr. Herskee presents some photographs to the Board of the properties and discusses about a ditch that causes a lot of runoff. He also discusses about the manure and urine that could cause contamination. They do know and understand that Joan loves her animals. The issue is the placement of the barn at where it is located. He states that there are locations on the property to put the barn somewhere else.

Sally Wiley: My daughter Emily Wiley owns the house adjacent to the property. She couldn't be here tonight. As far as the barn goes where it is located doesn't really affect her. What does affect her is the penning area where they have too many animals in there. In the summer you could smell the manure and there are a lot of flies. I know that is not what they are here for but it all contributes.

Ivo Teskera: I live at 155 Union Corners Road. I have complaints about the water runoff and the barking of the dogs. I also have complaints about the smell of the manure which is very bad.

Michel Hoensch: I live at 50 Spanktown Road. I know all my neighbors. I try to do whatever we can so that we could all get along. I assume that the problem is the location of this building. If the building was utilized for storage of equipment or something else there wouldn't be a problem. Regarding the smells of the manure and urine, anywhere you put the building you would still have the smells of the urine and manure. I am here to try to get us together as neighbors and try to help out. My suggestion is what if they put an impervious floor inside that building? Where this urine and manure would not be removed? Maybe the animals could be housed in a different way.

There is continuation of discussion of the placement of the barn, urine and manure smells that are occurring at the property.

Chairman Jansen: Do we want to close the public hearing? Is there any reason why we should not close it?

Attorney Fink: How long has this condition been going on? I will tell you why I asked that. The next thing would be to ask the applicant if you would like to put this application over to the next meeting. Maybe at the next meeting we would have one additional Board member. Do you request to be adjourned to the next meeting?

Bob Krahulik: We will request the adjournment to be put over to the next ZBA meeting. I am going to talk to my clients about submitting a manure management plan to help elevate some of the concerns that were raised.

Chairman Jansen: How about placing the barn somewhere where it would be legal without even having to move this as a storage area?

Bob Krahulik: If she doesn't get the variance, she has no choice. It cost her \$20,000.00 to put up this barn. It is beyond her financial status to either remove this barn or build another barn.

Chairman Jansen: It would be up to you. In all reality, it would be very difficult for us to grant that variance. We could hold it over for another month. But, I don't think it is going to change greatly.

Bob Krahulik: Ok.

Mr. Malocsay: Bob, there were other issues that came up that the Building Inspector that is not before us but we know there are violations. I would like to see a bigger picture as to what those other violations are. We are here to give a variance for the barn.

Bob Krahulik: Those issues were cited. They have been resolved by putting up a fence.

Attorney Fink: They were in court for various violations. The issue of the penning area had been resolved by them putting up some fences.

Mr. Malocsay: Ok.

Chairman Jansen: The only issue in front of us is the variance for the setback for the housing of livestock.

The Joan Hoge application is to be continued at the May 22, 2017 ZBA Meeting.