

TOWN OF WARWICK
ZONING BOARD OF APPEALS
JULY 31, 2017

Members Present:

Jan Jansen, Chairman

Mark Malocsay, Co-Chairman

Kevin Shuback

Chris Daubert

Attorney Robert Fink

PUBLIC HEARING OF Joan Hoge “Amended” Application - 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 an interpretation that the proposed location of a structure to house animals that the proposed setback of 94 feet from the front boundary line satisfies the requirements under the Zoning Code Section 164.46J-16 or, in the alternative, for a variance permitting a setback of 94 feet where 150 feet are required. **Continued from the May 22, 2017 ZBA Meeting.**

CHAIRMAN JANSEN: Did we hear anything back from the County on this amended application?

CONNIE SARDO: Not yet.

CHAIRMAN JANSEN: Does that mean we can't act on it?

ATTORNEY FINK: We can't act on it but we can hear it.

CHAIRMAN JANSEN: OK, why don't we start with that, Bob?

ATTORNEY BOB KRAHULIK: Good evening. I am Bob Krahulik, attorney for the applicant. If you recall at the last Public Hearing many neighbors expressed strong concerns or objections over the proposed location of the structure that would house the horses on the property. We have listened and Ms. Hoge has performed a lot of cleanup because people were complaining about some of the conditions of the property. What we're proposing now is to build a new structure to house the livestock toward the front of the property. The survey we submitted shows two things. One, it shows the building envelope where the structure can be built as a matter of right. Ms. Hoge explained it to the Building Department when applying for a building permit to construct that structure within the box represented in the center of the property. The topography is not terribly flat there plus if she built it there it would be right in front of the house. From an aesthetic standpoint it would look a little odd to have this right in front of the front door of the house. What we're proposing is to construct this adjacent to an existing gravel driveway toward the front of the property. We think this location locates the building far away from every neighbor. If we built it within the envelope it would be closer to Mr. Herskee's property, who had very strong oppositions to having it located along his property

line. So Ms. Hoge went to the Building Department and spoke to them about this location. They weren't sure whether or not it was within or without the required setback of 150 feet. It is 94 feet from the road but the nearest property would be across the street and that would be more than 150 feet away. So we're asking for either an interpretation that it would be permitted in that location under the Code. If not, than a variance to construct the structure where shown on the survey.

CHAIRMAN JANSEN: The Code reads: *It shall be setback 150 feet from any lot line.* My opinion would be any lot line is any lot line. This is an interesting case because most lot lines are the same line. In this instance we have the lot line and then we have the State property and we have the neighbor across the street. Any lot line, I believe, means any lot line. So basically, the only really legal area to put the structure in is the rectangle in the center which is 150 feet from all sides. Looking at the intent of the Code, I don't think the Code really has in mind highways or State property and they are more than 150 feet from any property owner other than the State. Is there any reason why on the right-hand side of the driveway versus the other side of the driveway?

ATTORNEY BOB KRAHULIK: You mean a little closer to the box?

CHAIRMAN JANSEN: Yes.

MS. HOGE: Because it can get wet over there. That area goes up into a hill.

ATTORNEY BOB KRAHULIK: There is a depression there. It also moves it closer to Mr. Herskee.

CHAIRMAN JANSEN: I understand. It's still more than 150 feet away.

ATTORNEY BOB FINK: Does it matter? It's from a highway?

CHAIRMAN JANSEN: I'm just asking the question. Any other questions? The Public Hearing is still open. Does anyone from the Public want to address the application? If not, is there any reason to keep the Public Hearing open?

ATTORNEY BOB FINK: Yes, because we haven't heard from the County.

CONNIE SARDO: It was sent out to the County on July 12.

ATTORNEY BOB KRAHULIK: See you next month?

CHAIRMAN JANSEN: It's up to you if you want to come back. The Board will vote on it. The only problem might be is if the County was opposed to it. You'll get a copy of that anyway.

ATTORNEY BOB KRAHULIK: OK, thanks.

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 June 26, 2017 ZBA Meeting.**

CHAIRMAN JANSEN: The continued Public Hearing of Moyna Singh. This is an addition to a single family dwelling decreasing the side setback from 58.5 feet to 45 feet where 75 feet are required. Please identify yourself for the record.

MS. SINGH: Moyna Singh.

CHAIRMAN JANSEN: Is there anything that you have to add to what we have so far? Unfortunately we are again only 4 Board members here.

MS SINGH: Let's just vote. There is no other place that I can build. We have looked at it from every which way. So it's this or nothing.

CHAIRMAN JANSEN: The Public Hearing is still open. Any questions before the Public Hearing? Anyone from the Public want to add anything? If not, we will close the Public Hearing. Any general discussion before we get to the criteria?

MR. MALOCSAY: One of the things about the properties on that road is most all of them are larger properties with people obviously wanting to have decent size property without neighbors infringing too closely to them. So I think that's a problem.

CHAIRMAN JANSEN: Any other discussion? If not, let's go through the criteria.

ATTORNEY BOB FINK: What we are talking about here is permitting an addition to an existing single family dwelling reducing 1 side setback from 58.5 feet to 45 feet and the requirement is actually 75 feet.

CHAIRMAN JANSEN: Is this going to create an undesirable change in the character of the neighborhood or be a detriment to nearby properties?

MR. DAUBERT: It's yes and no.

CHAIRMAN JANSEN: Well first the neighborhood, is it going to create a detriment to the neighborhood?

MR. DAUBERT: No.

CHAIRMAN JANSEN: What about nearby properties?

MR. MALOCSAY: The lots are larger and don't have that setback. It's out of character for the neighborhood.

CHAIRMAN JANSEN: So it's not going to create an undesirable change but it is out of character for the neighborhood and with the adjoining property owner. This neighbor is concerned about it. The properties up and down that road are rather large. I believe that is a justifiable concern.

CHAIRMAN JANSEN: Can the benefit sought by the applicant be achieved by any other feasible method?

ATTORNEY BOB FINK: There is plenty of property there.

CHAIRMAN JANSEN: It may not be the most convenient but there is plenty of property.

ATTORNEY BOB FINK: There is other property but according to the applicant it would not be as advantageous. Is this a substantial variance?

CHAIRMAN JANSEN: It's 75 feet to 45 feet. I would say it's substantial.

MR. MALOCSAY: I would say so.

MR. SHUBACK: Yes.

MR. DAUBERT: Yes.

CHAIRMAN JANSEN: Will the proposed variance have an adverse effect or impact upon the physical or the environmental conditions in the neighborhood or district?

MR. MALOCSAY: No.

MR. SHUBACK: No.

MR. DAUBERT: No.

CHAIRMAN JANSEN: Is the alleged difficulty self-created?

MR. MALOCSAY: Yes.

MR. SHUBACK: Yes.

MR. DAUBERT: Yes.
CHAIRMAN JANSEN: Would someone care to type this as "Unlisted"
with no adverse environmental impact?

MR. MALOCSAY: So moved.

MR. DAUBERT: Seconded.

CHAIRMAN JANSEN: Any discussion?

All in favor? (4 ayes) Motion carried.

ATTORNEY BOB FINK: Would someone care to make a motion to grant
the variance as advertised?

MR. MALOCSAY: No.

MR. DAUBERT: No.

MR. SHUBACK: No.

CHAIRMAN JANSEN: No.

(4 nays) Motion denied.

PUBLIC HEARING OF Ryan Stumpe – for property located at 55 Lake Trail, Greenwood Lake, New York and designated on the Town tax map as Section 72 Block 1 Lot 112 and located in an SM District for a variance of the Bulk Area Requirements of the Code reducing front yard setback from 18 (+/-) feet to 10 feet 8 inches (+/-) for construction of a 12 foot X 22 foot open deck in the front of a single family dwelling where 30 feet are required. **Continued from the June 26, 2017 ZBA Meeting.**

CHAIRMAN JANSEN: We have heard back from the County and there was no objection, this is local determination. The Public Hearing is still open. Would anyone from the Public wish to address this application? If not, we will close the Public Hearing.

CHAIRMAN JANSEN: Will an undesirable change be produced in the character of the neighborhood and a detriment to nearby properties be created by the granting of the area variance?

MR. MALOCSAY: No.

MR. SHUBACK: No.

MR. DAUBERT: No.

CHAIRMAN JANSEN: It's within the character of the neighborhood.

CHAIRMAN JANSEN: Can the benefit sought be achieved by any other feasible method?

MR. DAUBERT: No, other than not doing it at all.

ATTORNEY BOB FINK: It's either not doing it or possibly building a smaller deck, but would a smaller deck be practical?

CHAIRMAN JANSEN: Not really.

CHAIRMAN JANSEN: Is the requested variance substantial? What we're talking about is 18 to 10 feet.

MR. DAUBERT: Yes.

MR. MALOCSAY: It's not quite half but it is still substantial.

CHAIRMAN JANSEN: Will the proposed variance have an adverse effect or impact upon the physical or the environmental conditions in the neighborhood or district?

MR. MALOCSAY: No.

CHAIRMAN JANSEN: Is the alleged difficulty self-created?

MR. MALOCSAY: Yes.

ATTORNEY BOB FINK: This is a single family dwelling. It is a single lot line variance. By definition this is a Type 2 Action so there is no environmental concern. I need a motion to pass as advertised.

MR. MALOCSAY: So moved.

MR. DAUBERT: Seconded.

CHAIRMAN JANSEN: Any discussion?

All in favor? (4 ayes) Motion carried.

PUBLIC HEARING OF David F. Breen - for property located at 29 Kelly Lane, Warwick, New York and designated on the Town tax map as Section 1 Block 1 Lot 16.1 and located in an SL District for an addition to an existing single family dwelling reducing 1 side setback from 32 (+/-) feet to 9 (+/-) feet where 35 feet are required and both side setbacks from 57 (+/-) feet to 33 (+/-) feet where 80 feet are required.

CHAIRMAN JANSEN: Please identify yourself for the record.

MR. BREEN: I'm David Breen.

CHAIRMAN JANSEN: Briefly tell the Board what you are trying to do and why you are in this predicament.

MR. BREEN: I bought the house in 1997 and I would like to put a small addition where the 2-car carport, with a deck above it, currently is.

CHAIRMAN JANSEN: So the reason this all came about was because you went for a building permit and then they said the rest of it never had a building permit, right?

MR. BREEN: Correct. The previous owner when they put the house up I believe they added the carport and deck on without ever obtaining a building permit and is close to the neighboring property. This was news to me when I went to apply for the permit.

MR. SHUBACK: You're just going up and not going out any closer?

MR. BREEN: No.

CHAIRMAN JANSEN: It's been there for how long?

MR. BREEN: I've been there since 1997 and it was there before me. It was there in the 1970's. The only issue is the lot next door, the road frontage. I believe the north side and east side is not a problem with the variances, is that correct? It's just the one property sideline?

CHAIRMAN JANSEN: No, it's 1 sideline and both sidelines combined, 2 sidelines. You don't have the total which is 80 feet and you don't meet either.

MR. BREEN: Actually the lot next door, 23 Kelly Lane, I have it in contract. I'm buying it anyway. I don't know if it makes a difference.

CHAIRMAN JANSEN: It's an empty lot?

MR. BREEN: Yes. I have the contract here ready to be signed.

CHAIRMAN JANSEN: Are you planning to build something there?

MR. BREEN: No, I was thinking of buying it and putting a little retirement home there but come to find out the neighbors' wells you need 200 feet from the septic so it's not the most ideal building lot. You'd have to put the pumping station in for the septic and move it up and go behind the house. So I'm just buying it to have it and have a little more privacy at my house.

ATTORNEY BOB FINK: Which lot is that as you're standing on Kelly Lane?

MR. BREEN: It would be to the right of my house when facing the house. That's where the deck is a little close to anyway.

CHAIRMAN JANSEN: It would probably make you legal if you made it 1 lot.

MR. BREEN: That's the plan down the road.

ATTORNEY BOB FINK: How close are you to closing?

MR. BREEN: I'm just waiting for my lawyer to come up from NYC and sign the contract. We're waiting for a closing date.

CHAIRMAN JANSEN: The Public Hearing is still open. Would anyone from the Public wish to address this application? If not, let's close the Public Hearing.

CHAIRMAN JANSEN: Will this create an undesirable change to the character of the neighborhood or a detriment to nearby properties?

MR. MALOCSAY: No, it's been there for many, many years.

CHAIRMAN JANSEN: It's been there but he wants to go up above this carport. Is this in character with the neighborhood?

MR. SHUBACK: Yes.

MR. MALOCSAY: Yes.

CHAIRMAN JANSEN: Can the benefit sought be achieved by any other feasible method?

MR. MALOCSAY: He's already purchasing the lot next to him.

ATTORNEY BOB FINK: In essence he's putting it over an existing structure.
CHAIRMAN JANSEN: So the answer would be no.

CHAIRMAN JANSEN: Is the requested variance numerically substantial?

MR. MALOCSAY: Numerically yes, however the carport exists.

CHAIRMAN JANSEN: Will the proposed variance have an adverse effect or impact upon the physical or the environmental conditions in the neighborhood or district?

MR. MALOCSAY: No.

MR. SHUBACK: No.

MR. DAUBERT: No.

CHAIRMAN JANSEN: Is the alleged difficulty self-created?

MR. MALOCSAY: Yes.

CHAIRMAN JANSEN: Again we're talking about a single lot line so this is a Type 2 Action and there is no environmental concern. I need a motion to pass as advertised.

MR. MALOCSAY: So moved.

MR. SHUBACK: Seconded.

CHAIRMAN JANSEN: Any discussion?

All in favor? (4 ayes) Motion carried.

PUBLIC HEARING OF Richard & Maureen Mazur - for property located at 7 Bellvale Boulevard, Warwick, New York and designated on the Town tax map as Section 56 Block 4 Lot 21 and located in an MT District for a variance of Section 164.41A(1)(b) permitting an 8 foot X 12 foot shed and new detached 10 foot X 22 foot 1 car garage that do not meet the existing setback requirements of the Code.

CHAIRMAN JANSEN: Please identify yourself for the record and briefly tell us what you're trying to do.

MR. MAZUR: I'm Richard Mazur. I would like to put a shed in my backyard for my ATV and lawnmower to store away from the house. According to the Code, I need to be 5 feet from a property line. I have less than a half an acre of land and want to salvage whatever I can. I spoke to my neighbor prior to this meeting and they had no problems with me installing this shed closer to the property line. When I applied for the building permit I was told I need a variance because it's only a foot or so from the property line.

CHAIRMAN JANSEN: That was one of my problems in reviewing the advertisement. I couldn't find anything here that told me how far you wanted it from the property line. It may be here, but I couldn't find it. How far do you want to be off your property line?

MR. MAZUR: Between 1-2 feet. I want to put a stone pad down there which would be bigger than the shed itself and the shed would be placed inside that.

CHAIRMAN JANSEN: Only 2 feet, because aren't you going to have a little bit of overhang of the property line?

MR. MAZUR: Nothing would be overhanging the property line.

CHAIRMAN JANSEN: You can't do 5 feet?

MRS. MAZUR: It takes up usable space on our property then.

CHAIRMAN JANSEN: How big is your sideline? How big is your lot?

MR. MAZUR: The lot is less than half an acre.

CHAIRMAN JANSEN: What are the dimensions roughly? How wide each way?

MR. MAZUR: 100 feet wide by 200 feet deep.

CHAIRMAN JANSEN: I don't get that from your submissions here.

MR. SHUBACK: You're on the corner. I know that neighborhood. The road goes along the one side, the long side.

CHAIRMAN JANSEN: If you have 200 feet, what difference would 5 feet make?

MR. MAZUR: I have 200 feet deep and only 100 feet wide.

ATTORNEY BOB FINK: But your variance has nothing to do with your width.

MR. MAZUR: It's one of the flattest areas I have.

MR. MALOSCAJ: Assuming he meets the other one on the front yard setback. He has 2 front yards. The road goes around the property.

MR. MAZUR: This is away from the roadside. It would be on the other side.

CONNIE SARDO: It's a proposed new shed or an existing shed?

MRS. MAZUR: New.

CHAIRMAN JANSEN: The 10 x 22 foot.

CONNIE SARDO: The application says an existing 8 x 10 shed.

MRS. MAZUR: That's by the garage. We didn't know we needed a permit. That's old. And the garage has been there since we've been here. We've been here for 41 years. We don't even know why the garage is written into this. It was there when we arrived.

CHAIRMAN JANSEN: Someone didn't get a permit for it.

MRS. MAZUR: That was 41 years ago. When we bought the house the garage already existed.

CHAIRMAN JANSEN: A lot of those things keep popping up.

MRS. MAZUR: But we like it.

CHAIRMAN JANSEN: So you seem to meet all the other setbacks for the new shed placement. It's interesting because you have 2 front yards: Bellvale Boulevard and Miriam Drive. Can you make it 5 feet from the property line?

MR. MAZUR: If I have to. That's the bottom line. I would prefer to maintain a smaller area because those 5 feet behind the shed area would become a dead area.

CHAIRMAN JANSEN: We all have that. Not to confuse matters, but in order to get this variance you would need 3 positive votes. There are 4 board members here tonight and you would need to get 3 out of 4. Most of the time we have a full board of 5 which would mean you need 3 out of 5. Many times on a close call the applicant would prefer to get all 5 people here. Someone not here is effectively a 'No' vote. If you want to put this application over hoping we have 5 members next meeting so you would only need 3 out of 5 rather than 3 out of 4, we generally offer the applicant that choice.

MR. MALOCSAY: If we grant the variance it's forever with the land. One thing I would like to ask because they are 4 of us, could you stake out the proposed placement of the shed? This way we could look at it to get a better understanding of why it has to go here. That would really help us out. Right now we're drawing blanks as to why it has to be there.

ATTORNEY BOB FINK: The argument that you create 5 feet of dead space applies to everybody. That's what the ordinance calls for.

CHAIRMAN JANSEN: What it boils down to is you can either agree to the 5 foot setback or you can stake it out at 2 feet and we will look at it over the next month and you can come back to the next meeting which is Monday, August 28 at 7:30pm.

MR. MAZUR: Ok, let's do that. I will stake it out for you to see and come back August 28. Thank you.

OTHER CONSIDERATIONS:

CHAIRMAN JANSEN: We have a request from the Planning Board regarding lead agency on KP Homes, Pine Island mixed use building on the corner of Pine Island Turnpike and County Route 1. This is on the corner where the little farm stand used to be.

CONNIE SARDO: They will be coming before the ZBA.

CHAIRMAN JANSEN: They want to put a mixed use building: a restaurant and offices, no apartments.

ATTORNEY BOB FINK: Why is the ZBA being involved here?

CONNIE SARDO: They will need a setback variance. I believe it's going to be a 3-story building with a restaurant on the first floor and offices on the second and third floors.

ATTORNEY BOB FINK: Three stories would require an extinguisher system. Also, do they need a height variance? I believe the Code is 35 feet.

CHAIRMAN JANSEN: This is not going to be a Type 1 Action, is it?

CONNIE SARDO: No. I don't think there are going above 35 feet but I'm not certain.

ATTORNEY BOB FINK: If it's 3 stories, they are.

MR. MALOCSAY: They may be going down and digging part of the first story.

CONNIE SARDO: But I know they need setback variances.

CHAIRMAN JANSEN: When you talk about a lead agency I don't want to get into a coordinated review because there would be no need for a coordinated review. So this is fine. Could you email or fax us over a copy of this?

CONNIE SARDO: Yes, I can email this information.

CHAIRMAN JANSEN: That's fine. That can go as it is. I just want to make a comment to the Planning Board. We would also need to discuss the septic system. The system was supposedly redone a couple years prior to the property/business (The Jolly Onion restaurant) being closed down and has now sat for many years. That would have to be tested for functionality.

CONNIE SARDO: They will be definitely coming in soon. I'm not sure if it will be the August or the September meeting, but soon.

CHAIRMAN JANSEN: Motion to approve the ZBA Minutes from the June 26, 2017 meeting.

MR. MALOCSAY: So moved.

MR. DAUBERT: Seconded.

CHAIRMAN JANSEN: All in favor? (4 ayes) Motion carried.
Meeting adjourned.

[ZBA Recording Secretary – Mary Hebel]