

TOWN OF WARWICK
ZONING BOARD OF APPEALS
JANUARY 24TH 2011

Members Present:

Mr. Mark Malocsay, Co-Chairman

Mrs. Diane Bramich

Mr. Kevin Schuback

Mr. Norman Paulsen

Attorney Robert Fink

Members Absent:

Mr. Jan Jansen, Chairman

Co-Chairman Malocsay called the meeting to order at 7:30 P.M.

Co-Chair Malocsay: The first item on the Agenda is the approval of the minutes of the November 2010 meeting.

MRS. BRAMICH: I make a motion to approve the minutes with no additions or corrections.

MR. SCHUBACK: I second it.

Co-Chairman Malocsay: All in favor; any opposed?

All in favor (Four Ayes), motion carried.

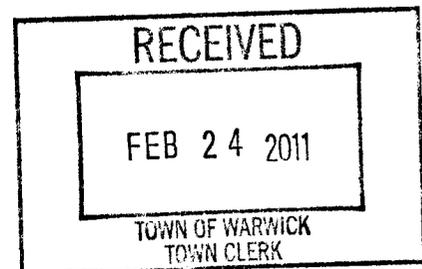
Public Hearing of RICHARD BRADY – for property located at 201 Brady Road, Warwick New York and designated on the Town tax map as Section 64 Block 1 Lot 54 and located in an MT District for a variance of Section 164.40N and 164.45.D permitting a 2 lot subdivision where proposed Lot 2 is 2.9 acres and 5 acres are required, and Section 280a of the Town Law permitting a residence on a private road. *Continued from the 11/22/2010 meeting.*

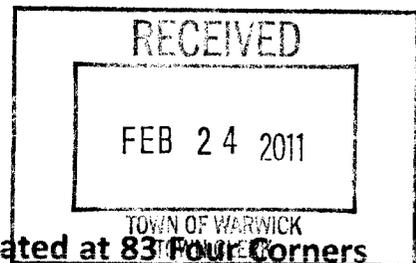
CO-CHAIRMAN MALOCSAY: Is Mr. Brady here tonight?

ATTORNEY FINK: No; I received an e-mail from him and he is still working on the wording with the Town and asked to be continued until next meeting. He's working on the easements and grants with the Town. His attorney has been in contact with John Bollenbach.

CO-CHAIRMAN MALOCSAY: I have a question for John Bollenbach if you could ask him for me. Was that lot created before or after the PDR was put in place? I don't think it was but I would like clarification on that.

ATTORNEY FINK: The original parcel, the overall parcel, was part of the 1984 subdivision. This particular parcel was conveyed in 2009 in a Brady to a Brady trust. *Continued to the February 2011 meeting.*





Public Hearing of THOMAS & DEIRDRE – for property located at 83 Four Corners Road, Warwick, New York and designated on the Town tax map as Section 23 Block 1 Lot 64.1 and located in an RU District for a variance of Section 164.40 N of the Town Code reducing 1 side setback from 42 (+/-) feet to 17 (+/-) feet for the purpose of construction of an attached garage and den to an existing single family residence. *Continued from the 11/22/2010 meeting.*

ATTORNEY FINK: Originally the Board was interested in some additional plantings to act as screening. The neighbors were supposed to get together and thereafter it was Mr. Hamlings position that there wasn't anything else to add. One or more members of the Board were going to go out and look at that and see if it was practical to put more plantings in.

MR. SCHUBACK: Me and Norman did drive out and look at it. Did you work anything out with your neighbor? (Addressing Mr. Silvestri)

ATTORNEY FINK: No they didn't. Mr. Hamling said it just wasn't practical nor was it needed.

MR. SCHUBACK: Well, from what I could see, they could add a few more things; I mean there's always room for more.

MR. SILVESTRI: Frankly, I'm surprised to hear that. At the original meet we were supposed to get together and work something out and I never heard from them. I'm still opposed to them building this addition and the Board granting this variance.

MR. PAULSEN: You do realize that they can build the garage as detached without a variance and then it could be even closer to your property?

MR. SCHUBACK: Also, his leach fields are on the other side preventing him from building there.

MR. SILVESTRI: I don't think it's fair that I should be impacted because of it. I live in a Historical home in the Historical District; it's in a RU district; it's against the zoning there. There is a reason for those setbacks.

CO-CHAIRMAN MALOCSAY: At this point we need to send a letter stating the Board's position and see if we can't get this resolved.
Continued to the February 2011 meeting.

*******Late arrival of applicant*******

MRS. HAMLING: I'm so sorry; I incorrectly believed that there was no meeting tonight.

CO-CHAIRMAN MALOCSAY: We are asking for a screening plan because we feel some screening could put in since it is so close to the property line.

MRS. HAMLING: Yes I thought that was what we decided the last time.

ATTORNEY FINK: Your husband attended the last meeting and stated that you both had decided that you didn't want to do any more plantings.

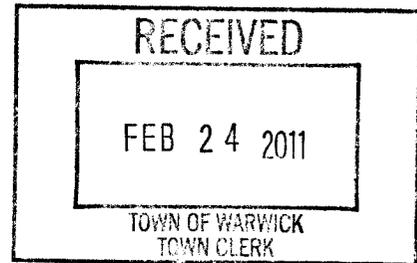
MRS. HAMLING: Well I actually told him to let me handle it. I prefer to remain on friendly terms with my neighbors but I received a distraught phone call from my older child who was at home looking after the younger ones that my neighbor had called the police regarding my dogs barking. She was understandably upset and now I'm beginning to get upset as well because I feel that this is heading in a direction I'd rather not go. It seems like it's going to get "ugly" and I just want resolution without destroying the relationship which in the past has been civil. In fact we once had trouble with their dog barking so much when my children were younger that it lost its voice. So I called and spoke to his wife who was very nice and she immediately rectified the situation and it was fine from there on. But that's what good

neighbors do; discuss it and resolve it, not call the police. That's a little overboard.

MR. SCHUBACK: We even pointed out to him that if you didn't receive the variance that you could still construct the garage but that it would be even closer to the property line but he didn't care.

CO-CHAIRMAN MALOCSAY: He stated that no contact had been made regarding a discussion about a screening plan.

MRS. HAMLING: We are certainly willing to add more screening. I'm afraid we're heading down a rocky road here. I will call my landscaper tomorrow. Thank you.



Public Hearing of RICHARD BRENNAN – for property located at 2 Marie Court, Warwick New York and designated on the Town tax map as Section 62 Block 3 Lot 7.1 and located in an RU District for a variance of Section 164.40 N reducing front setbacks to 18.5 (+/-) feet and 10 (+/-) feet where 75 feet are required and 1 side setback to 18.5 (+/-) feet where 75 feet are required for the purpose of construction of an addition to an existing 1 family dwelling. *Continued from the 11/22/2010 meeting.*

ATTORNEY FINK: If the Board recalls, with this application, we weren't sure exactly where the boundary was and how far it was from the road.

MR. BRENNAN: I called my mortgage broker and he supplied me with a survey.

MR. SCHUBACK: The way the neighborhood is with the streets the way they are, his addition would not change the character of the neighborhood. Most of the houses are right on top of the road anyway so it's not going to change anything.

CO-CHAIRMAN MALOCSAY: We just really need to know the distance. Is there anyone else here from the public who would like to address this application? No? The public hearing is now closed.

ATTORNEY FINK: What the applicant proposes to do is to build a 30 X 18 foot addition on the Marie Court side and a 30 X 6 foot addition on the Cooper Road side. The one on Cooper Road will be 18 feet from the property line and the closest point on Marie Court will be 5 feet from the

property line. Is this going to create an undesirable change in the character of the neighborhood or be a detriment to nearby properties?

CO-CHAIRMAN MALOCSAY: No. It is very much in character with the rest of the neighborhood. In fact, his house is 3 lots combined.

ATTORNEY FINK: Can this be achieved by any other means?

MRS. BRAMICH: No.

ATTORNEY FINK: Is this a substantial variance?

CO-CHAIRMAN: Yes.

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

CO-CHAIRMAN MALOCSAY: No.

ATTORNEY FINK: Is it self-created?

MR. PAULSEN: Yes; I make a motion that this is an Unlisted Action with no environmental impact.

MRS. BRAMICH: I second it.

CO-CHAIRMAN MALOCSAY: Any discussion; all in favor?

All in favor (Four Ayes), motion carried.

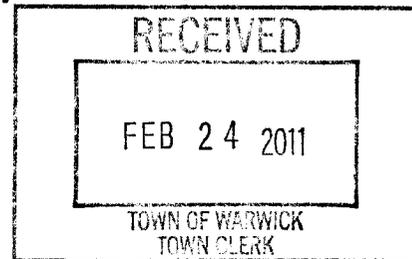
MRS. BRAMICH: I make a motion to grant the variance allowing the applicant to construct a 30 X 18 foot addition which will be 18 feet from the property line and a 30 x 6 foot addition which will be 5 feet from the property line.

MR. SCHUBACK: I second it.

CO-CHAIRMAN MALOCSAY:

Any discussion; all in favor?

All in favor (Four Ayes), motion carried.



Public Hearing of ARLENE BEDROSS – for property located at 201 Pine Island turnpike, Warwick, New York and designated on the Town tax map as Section 29 Block 1 Lot 42.2 and located in an RU District for a variance of Section 164.46J Special Conditions 16 & 101, allowing 2 horses on a lot with 1.5 acres where 4 acres are required, a housing shed 60 (+/-) feet from the lot line where 150 feet are required and a penning area 15 (+/-) feet from the lot line where 50 feet are required. *Continued from the 11/20/2010 meeting.*

ATTORNEY FINK: At the last meeting it was suggested by Mr. Malocsay for the applicant to find out if she would be able to lease additional land from the Town and she was to go to the Assessor's office to see what she would have to do.

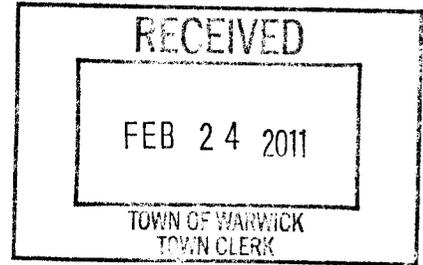
MS. BEDROSS: I've brought a copy of the letter I sent to them; I've yet to hear back from them.

ATTORNEY FINK: This letter was sent on December 24th, 2010? The letter basically states what she needs and why she needs it. It would be my suggestion to wait one more month to see if you get a response. It might be better if you sent it so you have a certificate of mailing.

MS. BEDROSS: I can re-send no problem.

ATTORNEY FINK: Just put in the letter "please respond" so we can assume that if they don't respond then they're not interested.

CO-CHAIRMAN MALOCSAY: Is there anyone here from the public to address this application? No? This will stay open until next month. *Continued to the February 2011 meeting.*



Public Hearing of ROBERT & CATHRYN ANDERS – for property located at 78 Continental Road, Warwick, New York and designated on the Town tax map as Section 66 Block 1 Lot 81.2 and located in an MT District for a variance of Section 164.40 N reducing front setback to 30 (+/-) feet where 100 feet are required for the purpose of construction of a 2 story addition to an existing single family residence.

CO-CHAIRMAN MALOCSAY: Please state your name and explain to the Board what it is you'd like to do.

MR. ANDERS: My name is Robert Anders and I'm planning on adding another bedroom so that my grand-daughter can have her own bedroom and on the first floor will be a gym so that I don't have an excuse not to exercise.

ATTORNEY FINK: How did you determine that it is 34 feet?

MR. ANDERS: In 2000 we built an addition to the house and at that point in time it was just my wife and I; the other bedroom was for guests. Shortly after that my daughter called me and said that she was moving back home with my grand-daughter so they have been living in the guestroom for the last 8 or so years. She is old enough now that we'd like for her to have her own room so this addition is my solution.

CO-CHAIRMAN MALOCSAY: Bob, I need some clarification and correct me if I'm wrong but if somebody is building something and the structure is further away than the existing structure, then the setback that

they're seeking is considered to be no more of an encroachment on a front yard setback.

ATTORNEY FINK: Well the Building Department still believes that they need an area variance. And it's true that it's not anymore of an encroachment.

MR. ANDERS: I haven't submitted this to the Building Department.

ATTORNEY FINK: I have a letter here and if you didn't get disapproval, then you wouldn't be here.

MR ANDERS; What is the date of this letter?

ATTORNEY FINK: December 6th, 2010.

MR. ANDERS: Well I went to the Building Department and they said I had to come here. But I didn't submit the drawings.

ATTORNEY FINK: It's basically the same thing.

CO-CHAIRMAN MALOCSAY: Is there anyone from the public here to address this application? No? The public hearing is still open. You've already answered many of the questions the Board usually asks. The addition itself is set back further than the house is as far as the setbacks. So when you talk about the character of the neighborhood, it is no different than other houses. The public hearing is now closed.

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

CO-CHAIRMAN MALOCSAY: No.

ATTORNEY FINK: Can this be achieved by any other means?

CO-CHAIRMAN MALOCSAY: **No.**

ATTORNEY FINK: **Is this a substantial variance?**

MRS. BRAMICH: **Yes.**

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

MR. PAULSEN: **No.**

ATTORNEY FINK: **Is it self-created?**

CO-CHAIRMAN MALOCSAY: **Yes.**

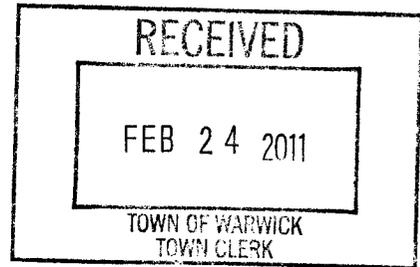
ATTORNEY FINK: **This is deemed to be a Type II Action so we don't have to go through the Environmental Impact resolution.**

MRS. BRAMICH: **I make a motion to grant this variance as advertised allowing an addition to be constructed 30 (+/-) feet from the property line to the existing single family dwelling.**

MR. PAULSEN: **I second it.**

CO-CHAIRMAN MALOCSAY: **Any discussion; all in favor?**

All in favor (Four Ayes), motion carried.



Public Hearing of JOHN JOHANSEN/LONGHOUSE CREEK DESIGN INC.#2 – for property located at 1302 Rt 17A, Greenwood Lake, New York and designated on the Town tax map as Section 66 Block 1 Lot 66.2 and located in an MT District for a variance of Section 164.40N reducing front setback to 0 (+/-) feet where 100 feet are required for the purpose of construction of a porch extending 48 inches from the front of the existing building, replacing an existing planter which extends 43 inches from the front of the existing building.

CO-CHAIRMAN MALOCSAY: I will have to abstain from hearing this application; Mrs. Bramich will take my place.

MR. JOHANSEN: Well first of all, it's not in Greenwood Lake it's actually in the Town of Warwick. And when the notice went out saying that it's 0 (+/-) setback and I don't believe that's correct. The existing planter is a minimum of 37 feet 9 inches from the center of the road, the edge of the pavement is 26 feet 6 inches and for a 50 foot Right of Way it's 12 feet 9 off center.

MRS. BRAMICH: Weren't you before the Board recently?

MR. JOHANSEN: I was here 6 months ago.

ATTORNEY FINK: It looks as though this addition is going to go right to your property line. Is that correct?

MR. JOHANSEN: I don't know; I took the measurements from the edge of the pavement.

ATTORNEY FINK: That's not how it is measured. It should be measured from your property line.

MR. PAULSEN: Where is your property line?
Do you have any stakes there?

MR. JOHANSEN: No.

MR. PAULSEN: Do you have a survey?

MR. JOHANSEN: No I don't.

MR. PAULSEN: Well you have to get a survey and have some stakes put in. Otherwise, for all we know, it could be right in the middle of the road.

MR. JOHANSEN: It's replacing an existing planter; it wouldn't be in the middle of the road.

ATTORNEY FINK: Where is the file on this; is there anything in there from the County?

MRS. BRAMICH: When you came before us 6 months ago for a variance to change the use of this to make this a wood working shop, when you got that, how come now you're asking to tear this out and put a porch in there?

MR. JOHANSEN: It looks like a porch but it's actually a covered walkway. It will provide handicap access on the end and allow the flow of people to enter the building from the side instead of the front.

MRS. BRAMICH: So you're saying that the manufacturing of the woodworking is going to be open to the public? It's going to be a store?

MR. JOHANSEN: The retail portion is. On the left hand side will be the Gallery and then my workshop will be in this portion here.

MRS. BRAMICH: It the porch coming out any further?

MR. JOHANSEN: No, not any further than the planter.

MRS. BRAMICH: I don't have a problem with it; everything he has done to the property has been an upgrade. It's just beautiful.

ATTORNEY FINK: According to the survey submitted I believe shows 4 feet; I do not believe it shows a planter. As Norman points out, who knows exactly where this addition is going to end up.

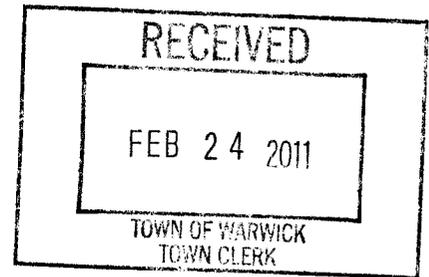
MR. PAULSEN: Where did this document come from?

MR. JOHANSEN: I'm not sure. I think we found it while researching during the process of buying the property.

ATTORNEY FINK: The only thing that has to be run is the front line. When you bought it, you didn't survey it?

MR. JOHANSEN: No.

MRS. BRAMICH: I'd like to open this up to the public. Is there anyone here to address this application? No? This will stay open and be continued to the February meeting so that the applicant can have it surveyed. *Continued to the February 2011 meeting.*



Public Hearing of THOMAS J. WARREN – for property located at 58 Ryerson Road, Warwick New York and designated on the Town tax map as Section 40 Block 1 Lots 19, 20 & 21 and located in an RU District for a variance of the use and area requirements of the Code allowing a horse barn/stable in a 2 (+/-) acre parcel located 94 feet from the front line, 69.5 feet from one sideline and 77.9 feet from the other side line.

ATTORNEY FINK: Before we go into this, I'd like to explain some of the issues with this application. As you point out, you have a shed that is on the lot so it's a principal use as opposed to an accessory use. Insofar as accessory use, you can keep horses but there are "special conditions". One of the conditions is that you have to have 10 acres. But that's a commercial/agricultural operation. If it is an accessory use to a structure, it requires 3 acres for the first animal and 1 acre for each additional animal.

MR. SCHUBACK: How many horses do you have?

MR. WARREN: This is mine and this is my son's. It was all one piece. It was all my property. So I have the land; I've had these horses for over 15 years. We have a total of 14 acres, between my son and me with 4 horses on it.

ATTORNEY FINK: We have the same situation as the previous application. If the previous applicant can lease land, even if she doesn't own it, that would fulfill the acreage requirement. So in this particular instance the acreage requirements to an extent anyway would be fulfilled. The issue would not be so much as that there are lot lines, they are separate tax lots and separate deeded lots presumably; that's not the issue. The other issues are setbacks and the principle issue is that we have a lot that they're looking for an

accessory use and it has to be a principle use. We've run into this before where people have put up garages on separate lots and the obvious solution is to erase the lot lines and then it becomes an accessory.

MRS. BRAMICH:

Do you live on any of the properties?

MR. WARREN:

Yes.

ATTORNEY FINK:

The last time we had a problem where somebody put up a garage on a lot I do not believe it was contiguous to the house lot.

CO-CHAIRMAN MALOCSAY:

It wasn't because there was a road between it.

ATTORNEY FINK:

Here we have contiguous properties. I suggest that it might not be irrational for the Board to interpret that we have contiguous properties even though they are separate tax lots. That it could still be deemed an accessory use to a contiguous residential property.

MRS. BRAMICH:

Could the barn be set back further?

MR. WARREN:

Well that's the problem. The reason it's there is because the land there is all wet and that's the driest spot that I had and when I went for the building permit they said I couldn't build it because I didn't have enough land.

ATTORNEY FINK:

Looking at this again, it really is 100 feet because you're talking about the housing of animals within 150 feet but it goes on to say no storage of manure or other odor or dust producing substances within 150 feet. So it really is 100 and not 150 feet unless you are storing manure or dust producing substances.

MR. WARREN:

No I'm not.

MRS. BRAMICH: So the variance would be 6 feet.

CO-CHAIRMAN MALOCSAY: I'd like to open this up to the public. Is there anyone here to address this application? No? Do we have any more questions for the applicant?

ATTORNEY FINK: Well we're looking at a setback reduction from 100 feet to 94 feet and then we're looking at an interpretation. The interpretation being in substance that the requirement that the accessory use and the principal use be on the same lot is satisfied when the applicant owns contiguous lots and that accessory use is subject to a dwelling on a contiguous lots.

CO-CHAIRMAN MALOCSAY: The public hearing is now closed.

ATTORNEY FINK: Insofar as the setback is concerned, is that going to create an undesirable change in the character of the neighborhood or be a detriment to nearby properties?

MRS. BRAMICH: No.

ATTORNEY FINK: Can it be achieved by any other feasible means?

MRS. BRAMICH: No.

ATTORNEY FINK: Is it a substantial variance?

CO-CHAIRMAN MALOCSAY: No.

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

MR. SCHUBACK: No.

ATTORNEY FINK:

Is it self-created?

MR. PAULSEN:

Yes.

MR. SCHUBACK:

Unlisted Action with no environmental impact.

I motion that this is an

MR. PAULSEN:

I second it.

CO-CHAIRMAN MALOCSAY:

Any discussion; all in favor?

All in favor (Four Ayes), motion carried.

MRS. BRAMICH:

I motion that this is an Interpretation by the Board that the requirement that the accessory use and the principal use be on the same lot is satisfied when the applicant owns contiguous lots and that accessory use is subject to a dwelling on a contiguous lots and the variance for the setback reduction from 100 feet to 94 feet be granted.

I motion that this is an

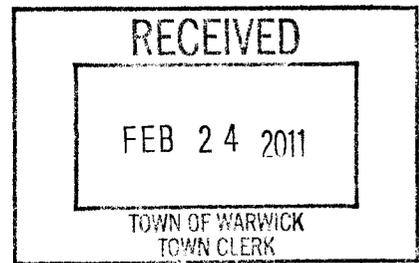
MR. PAULSEN:

I second it.

CO-CHAIRMAN MALOCSAY:

Any discussion; all in favor?

All in favor (Four Ayes), motion carried.



Public Hearing of EMANUELE INTORRELLA – for property located at 34 West Cove Road, Sterling Forest, New York and designated on the Town tax map as Section 76 Block 1 Lot 52 for a variance of Section 164.41.A.(1) permitting an existing shed in the front yard setback.

CO-CHAIRMAN MALOCSAY: Please explain to the Board what you'd like to do.

MR. INTORRELLA: My name is Emanuele Intorrella and I'm here because in the process of applying for a refinance, it came up that there is an existing violation for a shed that's on the property. I bought the house in 2003 and it didn't come up then. It was a new shed at the time I purchased the property and since then, I've been thinking of replacing it with a larger one which would have to be closer to the house. So at the very least, I need a variance for the one already there and at best a variance to put up a new, larger one.

CO-CHAIRMAN MALOCSAY: We need to first look at the violation itself.

ATTORNEY FINK: We really can't look at something that you haven't even applied for and been rejected for.

MR. INTORELLA: I understand I was just confused about how to approach this.

CO-CHAIRMAN MALOCSAY: So when you purchased the property the shed was already there?

MR. INTORRELLA: Yes.

ATTORNEY FINK: What happens is some building departments, when they give applications will actually go out and look and had they done that, they would have seen the violation. Others simply look

at the file and see that there are no existing violations. That doesn't mean that there isn't one just that it is not in the file. And clearly that is what happened in this instance.

MR. INTORELLA: I've brought with me 2 letters from the neighbors stating that they're okay with it. No one objects to it. We need it because there is no storage in my house; there's no basement. There is no other place on the property to put it. The backyard is in a flood zone and cosmetically this is the only logical place and it's already been there for the last 7 years.

CO-CHAIRMAN MALOCSAY: This application is now open to the public. Is there anyone here from the public to address this application? No? We will leave it open. Diane are you familiar with the area?

MRS. BRAMICH: Yes; all the properties are very similar, very small. This would not change the character of the neighborhood; it is quite typical. On the map you show something besides the shed. What is this other area highlighted in yellow?

MR. INTORELLA: That is my deck.

ATTORNEY FINK: We have other issues here though. We are dealing with an existing shed but what about the exterior renovations and open deck? My point is that I'm looking at the violations. Let's assume you get a variance for the shed but about the other ones? Have you removed those?

MR. INTORELLA: The deck is still there but it was there when I bought it.

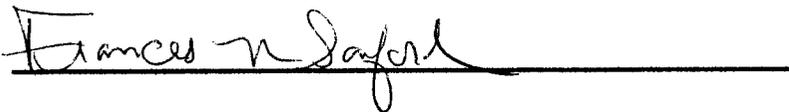
ATTORNEY FINK: That doesn't matter.

MR. INTORELLA: I don't know if it was a violation. There was a letter to remove the shed but it didn't say anything about the deck. I have a building permit for when they installed the deck.

ATTORNEY FINK: My suggestion is for us to continue this until the next meeting and that you amend your application to include the removal of the existing shed and replace it with a larger one. That avoids having to come back before us to get a variance for the new, larger one.

MR. INTORELLA: Alright I will do that. Thank you. *Continued to the February 2011 meeting.*

Meeting adjourned.

A handwritten signature in cursive script, reading "Frances N. Sanford", is written over a solid horizontal line.

Frances N. Sanford, ZBA Recording Secretary