

TOWN OF WARWICK
ZONING BOARD OF APPEALS
FEBRUARY 27, 2012

Members Present:

Jan Jansen, Chairman

Mark Malocsay, Co-Chairman

Kevin Shuback

Diane Bramich

Attorney Robert Fink

Members Not Present:

Norman Paulsen

CHAIRMAN JANSEN:
from the meeting of January 23, 2012 approved?

Is there a motion to have the minutes

MR. MALOCSAY:
approved.

I motion that the minutes be

MR. SHUBACK:

I second it.

CHAIRMAN JANSEN:

Any discussion? All in favor?

Three ayes, and one abstention, Ms. Bramich. Motion carried.

PUBLIC HEARING OF JPMORGAN CHASE BANK, N.A. - for property located at 138 State Highway 94, Warwick, New York and designated on the Town tax map as Section 51 Block 1 Lot 40.1 and located in a DS District for a variance of Section 164.43.1H4A allowing 3 wall signs where 1 is permitted and an interpretation of Section 164.43.1H4 that awning signs are permitted in a DS District or, if not permitted, a variance permitting 6 awning signs.
Continued from the 1/23/12 ZBA Meeting.

CHAIRMAN JANSEN:
here is represent JPMorgan Chase Bank?

Public discussion is open. Who is

JASON TUVEL:
Chase Bank. The bank has agreed to a compromise on the amount of square footage. There will be a reduction of the original wall sign and the side sign at the entrance.

I am here to represent JPMorgan

CHAIRMAN JANSEN:
to discuss this issue? There was no one present, the public hearing was closed. Consideration was delayed to the end of the meeting.

Is there anyone here from the public

PUBLIC HEARING OF BORIS SHTUTMAN - for property located at 33 Lakeshore Road, Greenwood Lake, New York and designated on the Town tax map as Section 75 Block 1 Lot 25.1 and located in an SM District for a variance of Section 164.41.A.(1)(b) permitting an existing accessory structure 2.1 feet from the side line where 5 feet are required.

CHAIRMAN JANSEN: Briefly tell us in your own words what it is that you would like.

BORIS SHTUTMAN: My name is Boris Shtutman and I am basically trying to bring up to code a pre-existing shed. The shed has been there approximately 10 years and cannot be moved because of proximity to sidewalk. I believe a variance was granted in 2007 to the previous owners but they never pursued it. I bought the property a few months ago.

CHAIRMAN JANSEN: You mean a variance was granted and the previous owners didn't act on it?

BORIS SHTUTMAN: I am not sure but I called the building department and they told me it was granted.

MS. BRAMICH: Why wasn't it pursued?

BORIS SHTUTMAN: I am not sure but I believe they had the variance for 2 years and didn't act on it.

CHAIRMAN JANSEN: The shed is there and not being moved any time in the next month?

BORIS SHTUTMAN: I am having my house re-sided soon and would like to have the shed done at same time.

MS BRAMICH: This project is in an area of Greenwood Lake where there are a lot of summer homes, on small pieces of property, made into year-round residences and a lot of them have sheds on them. I see no problem with keeping the shed there.

CHAIRMAN JANSEN: I would like to delay a decision until next month so we could get a look at the shed and the property and verify that there was a variance granted.

BORIS SHTUTMAN:
the siding?

Can I proceed with

CHAIRMAN JANSEN:
meeting, we will make a final decision and the building department will send you a notification.
This matter is continued until the next meeting.

No, at the next

PUBLIC HEARING OF AMY PALUZZOLO - for property located at 12 Sterling Place, Sterling Forest, New York and designated on the Town tax map as Section 76 Block 9 Lot 7 and located in an SM District for a variance of Section 164.45.1 reducing 1 side setback to 5 feet where 7 ½ feet are required and both side setbacks to 15 (+/-) feet where 16.7 feet are required for the purpose of construction of a roof over a deck/porch on a single family dwelling.

CHAIRMAN JANSEN:
Did was the public hearing mailing done?

Anyone present for Amy Paluzzolo?

AMY PALUZZOLO:

No, I did not do the mailing.

CHAIRMAN JANSEN:

This matter will be re-advertised and addressed at the next meeting. This matter is continued to the next meeting.

PUBLIC HEARING OF ROBERT GIBBONS - for property owned by Arthur J. and Michele A. Aeberli and located at 122 Big Island Road, Warwick, New York and designated on the Town tax map as Section 17 Block 1 Lot 38.21 and located in an RU District for a variance of Section 164.41.A.(1) permitting an existing accessory structure 20 (+/-) feet from the front line where 75 feet are required.

CHAIRMAN JANSEN: Who is representing this application?

ROBERT GIBBONS: I am Robert Gibbons. I am trying to build a garage/barn 20 feet from the road. I am asking for a variance because of a shale bank located on the original location; this is the only feasibly economic spot to build it.

CHAIRMAN JANSEN: Any questions?
Ok, no questions. I am opening this up for public discussion. No, no one here from the public. Ok, public hearing is closed.

CHAIRMAN JANSEN: Can this be achieved by any other means besides the variance?

ROBERT GIBBONS: No, because of the cost issue to excavate the shale.

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

MR. MALOCSAY: No.

ATTORNEY FINK: Is this self-created?

MR. MALOCSAY: Yes, I motion this is an Unlisted Action with no environmental impact.

MR. SHUBACK: I second it.

CHAIRMAN JANSEN: Any discussion, all in favor?

All in favor (Four Ayes). Motion carried.

MS. BRAMICH:
grant this variance as advertised.

I make a motion to

MR. SHUBACK:

I second it.

CHAIRMAN JANSEN:
favor?

Any discussion; all in

All in favor (Four Ayes). Motion carried.

PUBLIC HEARING OF CHARLES HASHIM AND JESSE AMBERS - for property located at 3 Soft Landings Lane, Warwick, New York and designated on the Town tax map as Section 16 Block 1 Lot 61 and located in an RU District for a variance of Section 140-4 of the Town Code permitting a 16 foot X 36 foot in-ground pool located 65 feet from the front line where 75 feet are required.

CHAIRMAN JANSEN: Is there anyone here to represent this variance? And what is the purpose of this variance? Also, I see that you did not bring in the certified mailings. You are directed to send them in as soon as possible.

JEFF MCGRAW: My name is Jeff McGraw. This request is made to install an in-ground pool in an area not impacted by the grade of the property and the septic system.

There was a discussion of the layout of the property that included the location of trees, a garage and the driveway.

CHAIRMAN JANSEN: Are there any questions before I open to the public hearing? No, is anyone here from the public? No, public hearing is closed.

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

MS. BRAMICH: No.

ATTORNEY FINK: Is this self-created?

MS. BRAMICH: Yes.

MR. MALOCSAY: I motion this is an Unlisted Action with no environmental impact.

MR. SHUBACK: I second it.

CHAIRMAN JANSEN: Any discussion; all in favor?
All in favor (Four Ayes) Motion carried.

MR. SHUBACK: I make a motion to grant this variance as advertised.

MS. BRAMICH:

I second it.

CHAIRMAN JANSEN:
favor?

Any discussion; all in

All in favor (Four Ayes) Motion carried.

PUBLIC HEARING OF STEPHANIE AND STEPHEN RAIMO - for property located at 43 Pumpkin Hill Road, Warwick, New York and designated on the Town tax map as Section 56 Block 2 Lot 5 and located in an SL District for a variance of Section 164.40N for a proposed addition to an existing garage on a single family dwelling reducing 1 side setback from 17 feet 2 inches to 12 feet 2 inches where 35 feet are required and with a front setback of 44 feet 4 inches where 50 feet are required.

CHAIRMAN JANSEN: Is there anyone here to represent this variance?

JEFF MCGRAW: I am representing this variance. I was instructed to return to receive the outcome of a county review.

CHAIRMAN JANSEN: The Board is waiting the response of the county review. They have thirty days to respond and it has not been thirty days yet. We cannot act until we receive the response. We will continue this matter to the next meeting. Briefly tell us what it is you would like to do.

JEFF MCGRAW: I would like to build a connecting breezeway from the house to the garage and a bedroom above the garage.

MR. MALOCSAY: You would not need a variance for the breezeway. But you would for the bedroom.

There was a discussion of the location of the bedroom/addition to garage and a stairway for access to the bedroom. There was emphasis placed on the amount of the set-back as the basis of this variance.

CHAIRMAN JANSEN: Are there any questions before I open to public hearing? No, public hearing is closed.

JEFF MCGRAW: Then I can proceed with project?

CHAIRMAN JANSEN: No, we have to wait until we hear from the County and/or the thirty days is up. This is continued until the next meeting.

PUBLIC HEARING OF ALBERT & JANICE R. GENITI - for property located at 172 Union Corners Road, Warwick, New York and designated on the Town tax map as Section 17 Block 1 Lot 21.41 and located in an RU District for an interpretation whether a helicopter landing pad on a parcel improved by a single family dwelling used to access that dwelling for approximately 40 years is a permitted accessory use and/or a legally permitted non-conforming use.

CHAIRMAN JANSEN: Please identify yourself for the record.

ALLEN LIPMAN: My name is Allen Litman and I represent the Geniti's. This matter is a result of three successive notices of violation issued by the building inspector concerning the use of a helicopter and a heliport in the town of Warwick. I believe the use falls in the category of 'principal' use, not 'accessory' use. The ordinance allows heliports in certain zones as a 'principal' use. The building inspector has since issued a letter rescinding the violations, implying the usage is lawful. I would be open to having this matter adjourned until next month in order for the building inspector to be present at the next meeting.

Long discussion regarding when original usage was granted in 1971 and a 22 page memorandum submitted to the board by Mr. Litman outlining the 6 issues and why the issues are wrong. He also wanted to clarify ZBA's jurisdiction to approve this variance or if it should be referred back to the law of the State.

CHAIRMAN JANSEN: Aren't you trying to argue that this is a legally permitted non-conforming prior use?

MR. LIPMAN: Prior accessory use.

CHAIRMAN JANSEN: Is that not the issue whether or not it is illegal?

MR. LIPMAN: It is legal with respect to the zoning laws.

CHAIRMAN JANSEN: I would like to defer to Mr. Fink to recommend our next step.

ATTORNEY FINK: Opening to the public.

CHAIRMAN JANSEN: The public hearing is open; is there anyone here who would like to address this application? One of the issues is how long this has been going on so if anyone could help us regarding this, it would be appreciated.

DOROTHY HAUPT: My objection is to the amount of time that this heliport has been in operation. I have lived there a long time and prior to 2010, I never saw helicopter on the property.

CHAIRMAN JANSEN: Please tell the board where you reside.

DOROTHY HAUPT: I have lived at 180 Union Corners Road for 30 years.

CHAIRMAN JANSEN: You now see and hear the helicopter coming up and down?

DOROTHY HAUPT: Yes, it goes over my horse field.

CHAIRMAN JANSEN: You hadn't seen it prior to two years ago?

DOROTHY HAUPT: No.

TOM TESKERA: My name is Tom Teskera and I live at 145 Union Corner Road. I have lived there for 26 years and I have not seen or heard a helicopter until 2 years ago.

DANACIA TESKERA: My name is Danacia Teskera and I have lived at 155 Union Corner Road for 26 years part-time but the last 8 years full-time. I started seeing the helicopter about 2 years ago. I moved here to get away from the noise of the city and get peace and quiet. The helicopter comes too low over my house; I can not take the noise.

ROBERT CARRABS: My name is Robert Carrabs and I have lived at 161 Union Corner Road for 40 years, right across the street. I recently sold my house and moved in December 2011. Just about a year ago, I started seeing and hearing the helicopter. It was very noisy. I have ten pictures of the property the way it look before the changes occurred. There used to be horses and several fences on the property; but they have all been taken down and removed.

There used to be two helicopters, now there is only one. I thought the property was residential and agriculture, why is a helicopter there?

CHAIRMAN JANSEN: Can we look at the pictures and let Mr. Litman see them also.

ROBERT CARRABS: Yes, you may keep them.

The pictures were numbered and explained what they represented. There were pictures of three separate helicopters, one red and two white. They also showed trees, fences and horses.

Mr. Lipman questioned Mr. Carrabs about the number and frequency of the helicopter sightings and the exact location of Mr. Carrabs' house.

CHAIRMAN JANSEN: Is there anyone else who would like to speak? Mr. Litman? The whole issue here is that it is a valid accessory use. If it is a valid accessory use, I don't know why it has been there one day or 40 years, it doesn't matter. Only if it is not a valid accessory use, and you are trying to show that it is a pre-existing legal use. Because the zoning has now rendered it illegal but that's not your point, right?

MR. LIPMAN: I find the use began during the period of the 1966 ordinance.

CHAIRMAN JANSEN: But for all intents and purposes, the 1966 ordinance and as it went up to two or three more ordinances were all the same. It never mentioned an airplane as accessory uses, all it did was to mention principal permitted uses, as special permitted uses. But that's not what you are saying.

MR. LIPMAN: I do recognize that this is not the same issue at all, the duration during which the use existed.

CHAIRMAN JANSEN: That is not relevant, is it?

MR. LIPMAN: It may not be because I did not look at any ordinances subsequent to 1966.

CHAIRMAN JANSEN: They were all essentially the same.

MR. LIPMAN:
difference when it was established.

It doesn't make any

CHAIRMAN JANSEN:
mentioned as an accessory use.

It was never

MR. LIPMAN:
next month?

So am I to see you

CHAIRMAN JANSEN:
hearing will remain open. So this matter will be continued to the next meeting.

Yes, sir. The public

PUBLIC HEARING OF JPMORGAN CHASE BANK, N.A. - for property located at 138 State Highway 94, Warwick, New York and designated on the Town tax map as Section 51 Block 1 Lot 40.1 and located in a DS District for a variance of Section 164.43.1H4A allowing 3 wall signs where 1 is permitted and an interpretation of Section 164.43.1H4 that awning signs are permitted in a DS District or, if not permitted, a variance permitting 6 awning signs.
Continued from the 1/23/12 ZBA Meeting.

MR. MALOCSAY: We have to finish the Chase Bank sign variance.

CHAIRMAN JANSEN: Have the members had a chance to look through the Chase variance? The application has been reduced to just one additional sign over the second entrance. The sign has been reduced to 25 by 61 square feet. The Planning Board had no problem with it. I thought it was a reasonable compromise. Is this going to have an adverse effect or impact on the physical environmental conditions in the neighborhood?

MR. SHUBACK: No.

CHAIRMAN JANSEN: Can it be achieved by any other method?

MR. SHUBACK: No.

CHAIRMAN JANSEN: Is it a substantial variance?

MS. BRAMICH: A second sign is substantial.

CHAIRMAN JANSEN: At the same token, the total square footage allowed if it had been only one sign is slightly more.

MR. MALOCSAY: This is not the smallest sign. They are asking for more than what we should be giving them, in order for it to be seen from Route 94. We should be giving them the minimum relief.

There was a discussion about the number and sizes of the signs that Chase Bank is asking for. The board was divided in their vote for the variance. This was continued to the next meeting when all the members would be in attendance to vote.

CHAIRMAN JANSEN:

Motion to adjourn?

MS. BRAMICH:

I motion to adjourn.

MR. SHUBACK:

I second.

CHAIRMAN JANSEN:

Meeting adjourned.

Pamela J. Carroll Acting ZBA Recording Secretary