

TOWN OF WARWICK
ZONING BOARD OF APPEALS

MARCH 25, 2013

Members Present:

Jan Jansen, Chairman

Diane Bramich

Attorney Robert Fink

Norman Paulsen

Kevin Shuback

Members Absent:

Mark Malocsay, Co-Chairman

CHAIRMAN JANSEN:
minutes from the meeting of February 25, 2013 approved?

Is there a motion to have the

MR. SHUBACK:

So moved.

MR. PAULSEN:

I second it.

CHAIRMAN JANSEN:

Any discussion; all in favor?

All in favor (Three Ayes) Motion carried.

PUBLIC HEARING OF JOHN D. TURNEY - for property located at 13 Pumpkin Hill Road, Warwick NY and designated on the Town tax map as Section 44 Block 1 Lot 88 and located in an SL District for an interpretation whether keeping up to 100 pigeons in an enclosure not less than 50 feet from the property line constitutes a prior legal non-conforming use. **Continued from the 2/25/13 ZBA Meeting.**

ATTORNEY FINK: Mr. Malocsay raised a good question, although I do not think it is an issue, about the definition of the word “fowl”.

There was a discussion of “fowl” and “pets”.

CHAIRMAN JANSEN: John Batz, when he was Building Inspector, and when that zoning changed, he and Mr. Turney agreed that the limit of the number of pigeons that he could have there was 30.

ATTORNEY FINK: We can't accept that.

CHAIRMAN JANSEN: If John Batz swears to it, why not?

ATTORNEY FINK: Where is he?

CHAIRMAN JANSEN: He could swear to a deposition.

ATTORNEY FINK: I would have a problem with it. If he had 100 pigeons there when the law changed, and he kept 100 pigeons during the period of time, I don't care what he agrees to; he has a legal right to have 100 pigeons.

There was a discussion regarding what the number of pigeons was that Mr. Turney had.

ATTORNEY FINK: We have to decide tonight.

CHAIRMAN JANSEN: If we have to decide tonight, I am for 30 pigeons.

ATTORNEY FINK: This Board cannot decide on a compromise. You have to look at the record and make a determination based upon the conflicting testimony. You have to make a couple of findings. If you find that the number of birds is 30, that's fine. But you just can't arbitrarily say 30 birds. And you can't say 30 birds is a

compromise. It has to be based on the testimony and I think there is sufficient evidence that he had at least 30 birds when the law changed; he never had less than 30 so therefore, he is entitled to 30 birds. There are a couple of things we have to do here. The first thing is, is it fowl? Is a pigeon a fowl?

MS. BRAMICH: Yes.

MR. SHUBACK: Yes.

ATTORNEY FINK: There is no environmental impact here; these are all interpretations.

MR. SHUBACK: So moved.

MS. BRAMICH: Seconded.

ATTORNEY FINK: Wait, so the first one is: it is resolved that pigeons are included within the definition of fowl. Who wants to make that motion?

MR. SHUBACK: So moved.

MS. BRAMICH: Seconded.

CHAIRMAN JANSEN: Any discussion? All in favor?

All in favor (Three ayes) Motion carried.

ATTORNEY FINK: The next motion is: has the applicant met his burden showing that at the time the code changed that he had more than 10 pigeons on the premises?

MS. BRAMICH: Yes, people testified.

MR. SHUBACK: People said he had 10 but not more than 100.

ATTORNEY FINK: Based upon conflicting testimony of witnesses, the Board is satisfied that adequate proof has been shown that the applicant had at least how many pigeons before the law changed.

CHAIRMAN JANSEN: 30.

ATTORNEY FINK: 30?

CHAIRMAN JANSEN: That is what we are going with.

ATTORNEY FINK: And the applicant has had not less than how many pigeons on the premises in each of the years from 2002 to the date of the issuance of the violation?

MS. BRAMICH: It changed.

ATTORNEY FINK: That's the point; it is based upon conflicting testimony. You decided that he had at least 30 when the law changed. If he, for more than one year, has less than 30, then it goes down to whatever that number was.

CHAIRMAN JANSEN: It is something we could not swear to because of conflicting testimony. We have to go by our best guess, and our best guess is 30, based upon the testimony.

ATTORNEY FINK: Then, based upon the testimony, he had at least 30 when the law changed. From that period until the present, he never had less than 30 for a year. Therefore, this Board finds that he has a legal, non-conforming use to keep not more than 30 pigeons. Someone care to move that resolution?

MS. BRAMICH: So moved.

MR. SHUBACK: Seconded.

CHAIRMAN JANSEN: Any discussion; all in favor?

All in favor? (Three Ayes) Motion carried.

PUBLIC HEARING OF WENDI PEREZ -for property located at 9 Sunset Terrace, Warwick, New York and designated on the Town tax map as Section 36 Block 3 Lot 7 and located in an SM District for a variance of Section 164.40N reducing 1 side setback from 7.3 feet to 2.3 feet to construct a deck and from 18.1 feet to 2.5 feet to construct a carport on an existing single family dwelling, where the minimum side setback is 18 feet and both side setbacks are 45 feet. **Continued from the 2/25/13 ZBA Meeting.**

CHAIRMAN JANSEN: Mr. Shuback and I were at this residence to look at the project. There are two items that definitely have to be changed. The lights need to be changed so that they do not shine on the other property. The drainage has to be changed so that it does not drain on the neighboring property. If they had installed a stone wall and pavers up to the house, we would not have had to be here at all. The Public Hearing is still open.

MS. PETERS: The Zoning Law is 5 feet and it is not even 5 inches.

CHAIRMAN JANSEN: They could have constructed a small stone wall right on the property line and filled it in with dirt and pavers and it would have been legal. Would you have them tear down the deck and use these materials instead?

MS. PETERS: Why not? I think they would hang out more on the deck than they would on the pavers.

CHAIRMAN JANSEN: No, it would be the same thing. I think if they move the lights and change the drainage, it would solve the problems.

MS. PETERS: It's just that the law is the law.

CHAIRMAN JANSEN: But they are not breaking the law.

MS. PETERS: But you have to be 5 feet from the property line.

CHAIRMAN JANSEN: To put a regular deck.

MS. PETERS: So tell them to take it down and put up a wall and pavers. They knew that they needed permits for these projects. He has made his house much bigger. And I do not like the deck that close to my house. Maybe if the

deck was not so close to my home. I am not happy with it. And what about the Fire Marshall inspecting the property?

CHAIRMAN JANSEN: There really isn't an issue. Is there anything else to be discussed? Public hearing is closed?

ATTORNEY FINK: We have the carport issue to discuss. If the Board is inclined to grant this application, how do you plan to enforce the conditions?

CHAIRMAN JANSEN: The Building Inspector would enforce the conditions.

ATTORNEY FINK: So he is not going to get a CO or certificate of compliance until he has made the changes.

CHAIRMAN JANSEN: Correct.

ATTORNEY FINK: So what about the carport?

MS. BRAMICH: So they have an 85 foot piece of property and they are going to go from line to line.

MR. JOHNSON: We are two and a half feet inside the property line.

ATTORNEY FINK: It is 18.1 feet to the property line, so this carport goes to 16 feet?

MR. JOHNSON: Yes, sir.

MR. PAULSEN: Is it connected to the house?

MR. JOHNSON: Yes, sir.

MR. SHUBACK: Yes, it is connected to the house.

ATTORNEY FINK: We are dealing with a single setback and 2 setbacks: the setback there is 12 feet and two setbacks are 30 feet. So we are dealing with 0 on one side and 2 ½ on the other.

There was a discussion about both the patio and the carport/garage variances.

ATTORNEY FINK: We will need 3 affirmative votes to pass this. Do we want to wait until Mr. Malocsay is present?

MS. BRAMICH: I am inclined to vote no as they are taking up all but 3 feet of their property from side to side.

MR. PAULSEN: I propose that we put off a vote until Mr. Malocsay is here.

ATTORNEY FINK: So we will close the Public Hearing and vote next meeting.

CHAIRMAN JANSEN: Okay. This is continued until the next meeting.

PUBLIC HEARING OF CLIFFORD J. HOLLYWOOD, II - for property located at 1471 State Rt 17A, Warwick New York and designated on the Town tax map as Section 55 Block 1 Lot 64 and located in an RU District for a variance of Sections 164.41C.(4)(f) permitting a 6 foot fence in the front yard setback.

CHAIRMAN JANSEN:
tell us what you are trying to do.

Please identify yourself and

MR. HOLLYWOOD II:
Hollywood II.

My name is Clifford

CHAIRMAN JANSEN:

Is the fence already there?

MR. HOLLYWOOD II:
fence but didn't know if it was allowed to be so close to the road front. I am putting it up to buffer the noise from Route 17.

No, it is not up yet. I have the

CHAIRMAN JANSEN:

Is it for the garage also?

MR. HOLLYWOOD II:

No, the garage was approved.

MR. SHUBACK:
are you putting the fence?

How far away from the road

MR. HOLLYWOOD II:
property line; so it is maybe 10 to 12 feet.

It is going to be on my

ATTORNEY FINK:
you put up a 4 or 5 foot fence?

For the record, why couldn't

MR. HOLLYWOOD II:
would be enough to deflect the noise and sight of the traffic.

I don't think a 4 foot fence

ATTORNEY FINK:

You say you have the fence?

MR. HOLLYWOOD II:
but I still need more.

I was given 120 feet of fence

ATTORNEY FINK:

What is the fence?

MR. HOLLYWOOD II:

It is a shadow box style.

MS. BRAMICH: Is the fence back far enough
for snow trucks?

MR. HOLLYWOOD II: Yes, there is room for the
pushed snow to pile up.

CHAIRMAN JANSEN: Will some of the bushes be
outside of the fence?

MR. HOLLYWOOD II: The bushes will be on the
inside.

CHAIRMAN JANSEN: Can you put some outside?

MR. HOLLYWOOD II: Yes, I can plant some bushes
and trees on the outside. My neighbor has plants and bushes on the outside of his fence.

CHAIRMAN JANSEN: Is his fence in line with
yours?

MR. HOLLYWOOD II: Yes, his is following the
property line.

CHAIRMAN JANSEN: Is his 6 feet also?

MR. HOLLYWOOD II: Yes, it is probably 6 feet.

MR. PAULSEN: I don't have any problem
with a fence on this property.

CHAIRMAN JANSEN: I don't either.

MR. SHUBACK: No.

CHAIRMAN JANSEN: Do we have a consensus?

MR. SHUBACK: Yes.

MS. BRAMICH: Yes.

CHAIRMAN JANSEN: The Public Hearing is open;
is there anyone here to discuss the application? No, the Public Hearing is closed.

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

MS. BRAMICH: No.

MR. SHUBACK: No.

ATTORNEY FINK: Can this be achieved by any
other feasible method?

MS. BRAMICH: No.

CHAIRMAN JANSEN: No, but we would like him to
soften up the outside of the fence.

ATTORNEY FINK: Is it a numerically substantial
variance?

CHAIRMAN JANSEN: Yes.

MS. BRAMICH: Yes.

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

MS. BRAMICH: No.

CHAIRMAN JANSEN: No.

ATTORNEY FINK: Is this self-created?

MS. BRAMICH: Yes.

MR. SHUBACK: Yes.

ATTORNEY FINK: Would someone care to type
this as an Unlisted Action with no adverse environmental impact?

MR. SHUBACK:

So moved.

MS. BRAMICH:

Seconded.

CHAIRMAN JANSEN:

Any discussion; all in favor?

All in favor (Three Ayes) Motion carried.

ATTORNEY FINK:

motion to grant this variance as advertised with conditions?

Would someone care to

MS. BRAMICH:

softens up the outside of the fence with a couple of trees and plants.

So moved, as long as he

MR. SHUBACK:

I second it.

ATTORNEY FINK:

least 20 maintained shrubs.

Let's put a minimum of at

CHAIRMAN JANSEN:

Any discussion; all in favor?

All in favor (Three 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 164.45.1(C) allowing an existing garage to be attached to an existing single family dwelling with a side setback of 25 feet 2 inches where 50 feet are required.

CHAIRMAN JANSEN: There is no one here to address this application. They are asking to be allowed to connect an existing garage to their house; but it is already connected.

MR. PAULSEN: It is a garage, not a carport.

MR. PAULSEN: Did they build this without a permit?

CHAIRMAN JANSEN: I think that is what happened.

ATTORNEY FINK: The garage is legal.

CHAIRMAN JANSEN: But it is the connection part.

ATTORNEY FINK: Yes, but once they connect it, the side setbacks would have to be the same as the house.

There was a discussion about the driveway and how it would or would not affect rain runoff drainage to neighbors.

MR. SHUBACK: But only issue we have before us is the garage connection.

CHAIRMAN JANSEN: It has nothing to do with plot lines, driveways or drainage. It just has to do with the setback because now the garage is part of the house and he does not have the required setback. The question is are we allowing the existing garage to be attached to a single family dwelling where the side setbacks are 25 foot 2 inches where 50 feet is required.

ATTORNEY FINK: If he doesn't attach the garage, it is legal.

MS. BRAMICH: It's already done? Take it down.

CHAIRMAN JANSEN: The Board can carry this over
and we can discuss it further next meeting.

ATTORNEY FINK: If the consensus is to pass
this, then fine. If the consensus is to not pass; then you have to wait until the applicants are here.

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

MS. BRAMICH: No, it is already there.

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

MR. SHUBACK: No.

ATTORNEY FINK: Is it numerically substantial
variance?

CHAIRMAN JANSEN: It became a substantial
variance because of the connection.

MR. SHUBACK: Yes.

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

CHAIRMAN JANSEN: No, it has nothing to do with
the drainage problems.

ATTORNEY FINK: Is this difficulty self-created?

MS. BRAMICH: Yes.

ATTORNEY FINK: This is deemed a Type 2
action so we can go right to the resolution.

MR. SHUBACK: So moved.

MR. PAULSEN: Seconded.

CHAIRMAN JANSEN:

Any discussion; all in favor?

All in favor (Three ayes) Motion carried.

Meeting adjourned. Submitted by Pamela J. Carroll ZBA Recording Secretary.