

**TOWN OF WARWICK
ZONING BOARD OF APPEALS
AUGUST 22, 2011**

Members Present:

Jan Jansen

Kevin Schuback

Norman Paulsen

Attorney Robert Fink

Mark Malocsay

Members Absent:

Diane Bramich

Chairman Jansen called the meeting to order at 7:30 p.m.

Chairman Jansen:
to the minutes of last month? No?

Are there any additions or corrections

Mr. Paulsen:
July 25, 2011 meeting.

I motion to approve the minutes of the

Mr. Shuback:

I second it.

Chairman Jansen:

All in favor; any opposed?

All in favor (Three 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 164.45.1 D permitting a 2 lot subdivision where proposed Lot 2 is 2.9 acres and 5 acres are required, and Section 280-a of the Town Law permitting a residence on a private road. Continued from the 7/22/11 ZBA Meeting.

CHAIRMAN JANSEN:
application; Ms. Emmerich what do have for us tonight?

This is a continuation of the Brady

KAREN EMMERICH:
your memory, is a 5.9 acre piece of property up on Brady Road that they want to sub divide into two parcels. One would be 2 acres, the other 2.9 acres. Therefore we would need a variance because of the 3 acre requirement, and also we would need a 280-a variance for access for lot number 2.

The Brady application, just to refresh

ATTORNEY FINK:
please. To obtain a 280a variance, we're generally looking for fire, police and do you have a right to use it? As far as the right to use it it would appear as though the various agencies as far as I can see they have all consented. The variance for the lot size is a bit different that come under section 164.5.1D. I will read it, it says "existing lots in the agricultural protection over lay district" which this appears to be, "lots within the APO qualifying area that were in existence on January 1, 2002 may be subdivided for one additional residential lot in accordance with the table of requirements of the '89 zoning law...which was 3 acres." We have a parcel of 5.9 acres that they want to divide into two lots which actually requires 1/10th of an acre variance.

Let me interrupt you for a moment

Ms. Emmerich:
different emergency services, I don't know if you have that on file.

We did submit letters to the

ATTORNEY FINK:
to McGovern date June 2010.

You should also have a letter

MS. EMMERICH:
basically states that "I am in receipt of the site plan, I've reviewed the plans and it appears ok except for the gate on Tower Road – will it be re-located to the other side of the proposed driveway on lot 2". That's something that we have to discuss with the Planning Board. We did send to the Ambulance and Fire Department and the DPW. The only one we heard back from was the Police Department.

Yes we do have that. It

ATTORNEY FINK:
driveway initially there were going to be quite a few improvements. The conservation easement manager wrote back in May 2011 objecting to all of those improvements. That was followed up with a letter from Scenic Hudson saying "maintenance of Tower Lane by the owner of Lot 2 was permitted by the conservation easement provided the land owner not materially increase any of the dimensions of the existing roadway and any maintenance of the roadway surface utilize similar materials as is currently exist on the roadway. Lastly Scenic Hudson finds that the right of way benefiting Lot 2 may also be executed provided that said agreement contain language substantially similar to that noted in Section 8.6.

As far as improving the

MS. EMMERICH: Yes, and we've modified the plan so that the driveway where Tower Lane touches the Brady lot is where the driveway will access.

ATTORNEY FINK: Orange County also responded with a letter dated July 27, 2011 stating that the owner should obtain express permission to have the road significantly widened and paved. Which, they're not going to get permission for that. So insofar as the lot being subdivided, Tower Lane is only to be used for access to a single family home and it remain unpaved, they have no objections. If the variance is granted we could put those conditions on it.

MR. MALOCSAY: Is the Planning Board okay with this?

MS. EMMERICH: Well they're aware of it.

CHAIRMAN JANSEN: So from here you're going back to the Planning Board?

MS. EMMERICH: Yes.

ATTORNEY FINK: Is it the consensus of the Board that if the Planning Board will approve those conditions that this Board will grant it?

MR. MALOCSAY: No I'm not happy with it.

CHAIRMAN JANSEN: Is the establishment of the standards of that road a function of our Board or is that a function of the Planning Board?

MR. MALOCSAY: The first part is ours (the accessibility of emergency vehicles to the lot) and the second part is theirs.

Long discussion regarding the width of the driveway.

ATTORNEY FINK: Is it the consensus of the Board that we would grant both variances if the Planning Board is in agreement?

All members state yes.

CHAIRMAN JANSEN: Can you get on the Planning Board's agenda fairly quickly?

MS. EMMERICH: The soonest we can is October.

Continued to the next meeting.

Public Hearing of THOMAS POST- for property located at County Rt 1, Pine Island Turnpike, Warwick, New York and designated on the Town tax map as Section 29 Block 10 Lot 1 and located in an RU District for a variance of Section 164.40.A allowing construction of a 30 X 40 foot accessory building on a vacant lot. Continued from the 7/22/11 ZBA meeting.

ATTORNEY FINK: There is a letter in the file from Cornell. The letter basically states that variances for agricultural use should be granted but it never really addresses the issue of commercial use vs. hobby so I sent a letter to the applicant asking if they intend to proceed since they didn't come to the last meeting.

CHAIRMAN JANSEN: From what I understand, the issue here is that even though they're establishes as a L.L.C., they haven't decided if it was going to act like a profit making business or not.

ATTORNEY FINK: If we're talking about the Agricultural Markets Law, that principally has to do with the production of food, timber etc. Usually that's a commercial operation but perhaps not so. Naturally in order to get your Agricultural assessment you have to meet certain criteria like acreage, the amount of money you make. It also talks about a farm operation and that means the land and on farm buildings equipment, processing and handling facilities, and practices that contribute to the production, preparation and marketing of crops, livestock as a commercial enterprise. I don't know why couldn't have a commercial enterprise and still not qualify for an Agricultural exemption. What he's looking for is a variance allowing an accessory use that's on a separate lot. So is it important to this Board that this be something more than a hobby so that it does come under the umbrella of the Agricultural Law?

MR. MALOCSAY: John Bollenbach disagrees with you in that he believes that in order for somebody to get the relief from Ag and Markets that they have to also be getting an Ag exemption. I however agree with you. There are people who don't want the tax relief but they are at the same time they are following what Ag and Markets says as far as being some type of production but don't.

MR. SCHUBACK: As long as this building is going to be use purely for Ag use I have not problem with it.

ATTORNEY FINK: Commonly when a variance is granted it will state that should the property revert to a non-ag use, you have to remove the building. Do we have enough in front of us to show that this is in fact a farm operation?

MR. PAULSON: I believe he is but he never came back with any paperwork to back it up.

ATTORNEY FINK: I sent the letter out asking him to provide us with more information.

MR. SCHUBACK: When he was here he said he was raising beef. Obviously if we go out there and see animals and equipment, he's telling the truth.

ATTORNEY FINK: It's in the minutes that he wanted the building to house a tractor and farming equipment and he stated he was raising beef but

didn't want to file a tax return because it was too much of a hassle. Jan recommended that he contact Ag and Markets. So that's it, he's raising beef.

MR. MALOCSAY:
the standard to 7 ½ acres for a farm, it used to be 10.

Also Ag and Markets lowered

ATTORNEY FINK:
something beyond a hobby, that you were producing some product that would be enough.

My position is that if you were

MR. PAULSON:
hobby but then donating it to some charity? Would you deny him?

What if he was doing it as a

ATTORNEY FINK:
something for consumption other than your own household, no.

If he was legitimately raising

MR. MALOCSAY:
a lot line change to combine the two lots which I believe he did not want to do.

We also gave him the option of

ATTORNEY FINK:
and discuss all of this with us.

I think he should come back in

CHAIRMAN JANSEN:
until the applicant come back in.

Okay, so we'll post-pone this

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 164.43.1H4A that awing signs are permitted in a DS District or, if not permitted, a variance permitting 6 awning signs. Continued from the 7/25/11 ZBA meeting

ATTORNEY FINK:

This application is kind of in limbo due to them going back and forth with the Planning Board. *Continued to the September 2011 meeting.*

Public Hearing of GLEN & AMI ANTON- for property located at 18 Drew Road, Warwick, New York and designated on the Town tax map as Section 40 Block 1 lot 3.22 and located in an RU District for a variance of Section 164.40N reducing front setback from 40.07 feet to 36.07 feet and 1 side setback from 39.15 feet to 30.15 feet where 75 feet are required for the purpose of construction of an addition to an existing single family dwelling.

CHAIRMAN JANSEN: Please state your name and explain to the Board why you're here.

GLEN ANTON: I'm Glen Anton and this is my wife Ami. First I'd like to make a correction to the set backs; it should have been 40.07 feet to 34.07 feet not 36. We're looking to expand along that side of our house because we do not have a functional family room. We'd like to re-organize the house in order to have a dining area as well as a family room/ library. Also the length that the architect put down on the plans is 28 feet and it really should be 32 feet. We have a well in the back of the house to the middle as well as a septic in the back to the right. So the only way to extend the house is on that side. And of course the bedrooms are on the other side.

CHAIRMAN JANSEN: Does the Board have any questions? No? Is there anyone here from the public to address this application? No? The public hearing is closed.

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

MR. MALOCSAY: No.

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

MR. SCHUBACK: No because of the well and septic.

ATTORNEY FINK: Is it a substantial variance?

MR. MALOCSAY: Yes.

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

MR. PAULSEN: No.

ATTORNEY FINK: Is it self created?

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

MR. PAULSON: I second it.

CHAIRMAN JANSEN:

All in favor; any opposed?

All in favor (Four Ayes), motion carried.

MR. MALOCSAY:

I make a motion to grant this variance as advertised changing the front setback from 40.07 feet to 34.07 (a correction from the 36.07 listed previously).

I make a motion to grant this

MR. SCHUBACK:

I second it.

CHAIRMAN JANSEN:

Any discussion; all in favor?

All in favor (Four Ayes), motion carried.

Public Hearing of MICHAEL & JOAN FALINE – for property located at 35 Ryerson Road, Warwick, New York and designated on the Town tax map as Section 49 Block 2 Lot 7 and located in an RU District for a variance of Section 164.40N reducing 1 side setback from 46.9 feet to 27 feet where 75 feet are required and rear setback from 45.9 feet to 15.2 feet where 50 feet are required for the purpose of attachment of an existing accessory building to the existing dwelling so that the structures will comprise 1 single family dwelling.

CHAIRMAN JANSEN: Please state your name and tell the Board what you're trying to do.

JOAN FALINE: My name is Joan Faline and this is my husband Michael. My father in law had a stroke and we're caring for him. We want to use the garage as a room for him so I went to the Town and they said if I attach it to the house, it would be considered a one-family dwelling since it's so close to the existing house.

ATTORNEY FINK: What it really comes down to is that it is a single family house because they're attaching two structures. What goes on inside has nothing to do with it; who lives there, how many families, that's really for the Building Inspector. It's a simple dimensional variance. Nothings being changed as far as setbacks.

CHAIRMAN JANSEN: Does the Board have any questions? No? Is there anyone here from the public that would like to address this 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?

MR. MALOCSAY: No, it already exists.

ATTORNEY FINK: Can it be achieved by any other method?

MR. MALOCSAY: No.

ATTORNEY FINK: Is it a substantial variance?

CHAIRMAN JANSEN: Yes.

ATTORNEY FINK: Is it 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. SCHUBACK: Yes, I motion that this is an Unlisted Action with no environmental impact.

MR. PAULSON: I second it.

CHAIRMAN JANSEN: Any discussion; all in favor?

All in favor (Four Ayes), motion carried.

MR. PAULSON:
as advertised.

I motion to grant the variance

MR. SCHUBACK:

I second it.

CHAIRMAN JANSEN:

All in favor; any discussion?

All in favor (Four Ayes), motion carried.

Public Hearing of CHARLES HASHIM & JESSE AMBERS- for property located at 3 Soft Landings Lane, Warwick ,NY 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 reducing existing front setback from 63.9 feet to 57 feet where 75 feet are required and 1 side setback from 73.79 feet to 40.6 feet where 50 feet are required for the purpose of construction of an addition to an existing single family dwelling.

CHAIRMAN JANSEN: Please state your name for the record.

JEFF DEGRAW: My name is Jeff Degraw, I'm the Architect and I represent the applicants. This is the site plan which shows the existing house with the septic in the front of the property. It shows a big drop-off by Big Island Road. The couple bought the house for their primary residence. They have two children and the house has only two bedrooms, it's very small. They would like to construct an addition for more room.

ATTORNEY FINK: What is the approximate drop-off by Big Island?

MR. DEGRAW: About 12 to 14 feet. The other thing they want to do is to re-locate the drive-way because it is very hazardous the way it is now. We will eliminate the one that's there now.

ATTORNEY FINK: Can they make the addition any smaller?

MR. DEGRAW: It wouldn't be practical for my clients.

CHAIRMAN JANSEN: The public hearing is open. Is there anyone here from the public to address this application? No? The public hearing is closed.

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

MR. MALOCSAY: No.

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

CHAIRMAN JANSEN: No because of the septic and the drop-off.

ATTORNEY FINK: Is it a substantial variance?

MR. 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. PAULSON:
Unlisted Action with no environmental impact.

Yes; I move that this is an

MR. SCHUBACK:

I second it.

CHAIRMAN JANSEN:

Any discussion; all in favor?

All in favor (Four Ayes), motion carried.

MR. PAULSON:
advertised.

I move to grant the variance as

MR. SCHUBACK:

I second it.

CHAIRMAN JANSEN:

Any discussion; all in favor?

All in favor (Four Ayes), motion carried.

Public Hearing of PHYLLIS EPSTEIN – for property located at 4 High Meadow Drive, Warwick, New York and designated on the Town tax map as Section 87 Block 1 Lot 5 and located in an RU District for a variance of Section 164.40N reducing 1 side setback from 48.5 feet to 32.5 (+/-) feet where 75 feet are required for the purpose of an addition to an existing single family dwelling.

CHAIRMAN JANSEN: Identify yourself and tell the Board what you need please.

CHRISTOPHER FISHER: My name is Christopher Fisher and I'm Phyllis's son in law. Our original plan was to have both my in-laws move in with us but my Father in Law passed away about 3 weeks ago. We're just looking to make a separate living space for her with a living room and a bedroom as well as a kitchen and a bathroom in our original structure.

CHAIRMAN JANSEN: So a "mother/daughter" structure?

MR. FISHER: Yes.

CHAIRMAN JANSEN: Can you put it anyplace else?

MR. FISHER: The septic is on one side and the well is in the back.

CHAIRMAN JANSEN: Does the Board have any other questions? The public hearing is open. Is there anyone here from the public to address this 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?

MR. MALOCSAY: No.

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

MR. SCHUBACK: No because of the well and the septic.

ATTORNEY FINK: Is it a substantial variance?

MR. MALOCSAY: Yes.

ATTORNEY FINK: Is it 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. MALOCSAY: Yes, I move to grant the variance as advertised.

MR. PAULSON:

I second it.

CHAIRMAN JANSEN:

Any discussion; all in favor?

All in favor (Four Ayes), motion carried.

Public Hearing of MARK JACOBUS - for property located at 5 Kings Ridge Road Warwick, New York and designated on the Town tax map as Section 18 Block 1 Lot 74 and located in an RU District for a variance of Section 164.41.A.(4) allowing an accessory building with a 25 foot front setback where 75 feet are required.

CHAIRMAN JANSEN: Please identify yourself for the record and briefly describe to the Board why you're here.

MARK JACOBUS: I'm Mark Jacobus and the because of the topography of the property, that's the only flat section it could go on. The rest of the property consists of a swampy drop-off.

CHAIRMAN JANSEN: Is it an existing shed?

MR. JACOBUS: No.

CHAIRMAN JANSEN: The public hearing is open. Is there anyone here from the public to address this 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?

MR. MALOCSAY: No. The only thing I want to mention is that the development isn't that old but to have something at 25 feet won't be out of character of the neighborhood but 25 foot setback is.

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

MR. SCHUBACK: No.

ATTORNEY FINK: Is it a substantial variance?

MR. MALOCSAY: Yes.

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. MALOCSAY: Yes, I move that this is an Unlisted Action with no environmental impact.

MR. SCHUBACK: I second it.

CHAIRMAN JANSEN: Any discussion; all in favor?

All in favor (Four Ayes), motion carried.

MR. PAULSON:
variance as advertised.

MR. MALOCSAY:

CHAIRMAN JANSEN:
favor?

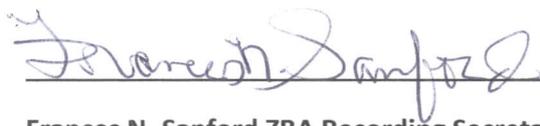
All in favor (Four Ayes), motion carried.

Meeting Adjourned.

I move to grant this

I second it.

Any discussion; all in

A handwritten signature in blue ink, appearing to read "Frances N. Sanford", is written over a horizontal line.

Frances N. Sanford ZBA Recording Secretary