

TOWN OF WARWICK  
ZONING BOARD OF APPEALS

AUGUST 22, 2016

Members Present:

Jan Jansen, Chairman

Mark Malocsay, Co-Chairman

Diane Bramich

Kevin Shuback

Attorney Robert Fink

Chris Daubert

CHAIRMAN JANSEN:  
the minutes from the ZBA meetings of 6/27/16 and 7/25/16?

Do I have a motion to accept

MR. MALOCSAY:

So moved.

MR. SHUBACK:

Seconded.

**PUBLIC HEARING OF Black Bear Campground** – for property owned by Rita P. Smith as Trustee of the Rita P. Smith Living Trust and located at 197 Wheeler Road, Warwick, New York and designated on the Town tax map as Section 8 Block 2 Lot 27.14 and located in an RU District for an interpretation of whether the applicant is subject to the limited occupancy provisions of Section 164-49.2D of the Warwick Code for the existing 74 sites. Continued from the 7/25/16 ZBA Meeting.

MR. MYROW: Good evening, Jay Myrow, Attorney for the town, we have been in discussion about the issues concerning this application and at this time, we are asking for a continuance until the next meeting in order that we may work out a settlement.

CHAIRMAN JANSEN: Ok, but the Public Hearing is still open. Is there anyone here who would like to address this application?

MR. FURST: My name is John Furst, the attorney for Mr. Neiman, a neighbor who could not attend either last month's meeting or this month's. I submitted a letter this afternoon to the Planning Dept. outlining Mr. Neiman's objections. I know they are talking about a settlement, I hope that the neighbors are also involved in the process as they have concerns also. Their position is concerning the intent that at the time of the 1980 was not to allow extended or unlimited usage. The minutes taken at the time of the approval process reflect that the use was limited to seasonal use and the sites were not mobile home courts.

CHAIRMAN JANSEN: Anyone else?

MS. BELLO: My name is Kerry Bello and I agree with everything that has been said so far. Last month, the letter that I had received said we were going for Section 164-49.2D and "D" is the minimum campsite area. But when we attended the Planning Board meeting last week, the Planning Board referenced "V", which is occupancy. I feel that the Campground should at least should notify the neighbors that a typo might have occurred. This may have influenced some neighbors to not be concerned because of a possible mix-up.

ATTORNEY FINK: I will speak with Ms. Sardo and have this clarified. A new letter may be sent out.

MS. BELLO: We are also concerned about the location of the original 74 sites; nobody has been able to tell us where the original sites are.

CHAIRMAN JANSEN: Thank you, anyone else here  
to address this application? No, we will continue this application until the next meeting.

**PUBLIC HEARING OF Brian DeMarmels** – for property located at 31 Foley Road, Warwick, New York and designated on the Town tax map as Section 42 Block 1 Lot 6 and located in an RU District for a variance of section 164-41.C(4)(f) to allow a 6 foot fence in the front yard setback and the Bulk Area Requirements of the Code to permit a 2 lot subdivision. The following area variances are applied for (required by Code / proposed): Proposed Lot 1: Lot Area - 4 acres / 1.5 acres; Lot Width – 250 feet / 123 (+/-)feet; Front Setback – 75 feet / 45.8 feet; 1 Side Setback – 75 feet / 25 (+/-) feet; Both Side Setbacks – 150 feet / 102 (+/-) feet. Proposed Lot 2: Lot Width – 250 feet / 210 (+/-) feet. Continued from the 7/25/16 ZBA Meeting.

CHAIRMAN JANSEN: Have you received another survey?

ATTORNEY FINK: No, we have not.

MS. EMMERICH: No, I have not. In fact, we offered the services of our surveyor but on the day he was supposed to come; he cancelled.

CHAIRMAN JANSEN: Public Discussion is still open; is there anyone here that would like to address this application?

ATTORNEY FINK: Please summarize in 60 seconds or less, for the Board what the applicant wants to do.

MS. EMMERICH: We have a 10-acre lot that we propose to subdivide into 2 lots for an acre and a half lot for the existing house and an 8 and 5/8 acre for the new house which would be at the rear of the lot. The applicant has agreed to no further sub division of the lot. The small lot would not be out of character for the neighborhood. The existing house is in good shape so we would rather not take it down.

CHAIRMAN JANSEN: We do have a recommendation from the Planning Board to accept this. Any other questions? 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?

CHAIRMAN JANSEN: Not really as there are other properties similar to this size.

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

CHAIRMAN JANSEN:	It could be.
MS. BRAMICH:	It could be.
MR. SHUBACK:	Not really.
ATTORNEY FINK: substantial variance?	Is this a numerically
CHAIRMAN JANSEN:	Yes.
MS. BRAMICH:	Yes.
ATTORNEY FINK: adverse effect or impact on the physical or environmental conditions of the neighborhood?	Is this going to have an
MR. MALOCSAY:	No.
ATTORNEY FINK:	Self-created?
MR. SHUBACK:	Yes.
MS. BRAMICH:	Yes.
CHAIRMAN JANSEN:	Yes.
ATTORNEY FINK: this as Unlisted with no adverse environmental impact?	Would someone care to type
MR. MALOCSAY:	So moved.
MS. BRAMICH:	Seconded.
CHAIRMAN JANSEN:	Any discussion?
All in favor (5 Ayes) Motion carried.	
ATTORNEY FINK: motion the variance be granted as advertised?	Would someone care to
MS. BRAMICH:	So moved.

MR. MALOCSAY:

Seconded.

CHAIRMAN JANSEN:

Any discussion?

MR. MALOCSAY:

Yes, what the person brought forward before, on a survey would change one of the variances needed here. If he came through with it, and I think it was just the one that was the one that was the lot width, 250 feet and they are asking for 210 feet. If they come through with that, the variance would be and show that they didn't have the 210, then what we are giving would be null and void.

ATTORNEY FINK:

the court says it is null and void.

It is not null and void until

MR. MALOCSAY:

Ok, I'm good with that.

CHAIRMAN JANSEN:

All in favor (5 Ayes) Motion carried.

**PUBLIC HEARING OF Kimberly Somers** - for property located at 30 Amity Road, Warwick, New York and designated on the Town tax map as Section 27 Block 1 Lot 72.22 and located in an RU District for a variance of Section 164.46J-16 & 101 to house chickens and goats in a structure 70 (+/-) feet from the lot line where 150 feet are required. Continued from the 7/25/16 ZBA Meeting.

CHAIRMAN JANSEN: Is there anyone here from the Public that would like to address this application? No, this application was requested to be continued at the next ZBA meeting. Public discussion remains open.

**PUBLIC HEARING OF Rodney Mason** - for property located at 1 Four Corners Road, Warwick, New York and designated on the Town tax map as Section 87 Block 2 Lot 9 and located in an RU District for a variance of Section 164-41.C(4)(f) allowing a 6-foot fence in the front yard setback where no more than 4 feet in height are allowed.

CHAIRMAN JANSEN: Please identify yourself for the record.

MR. MASON: My name is Rodney Mason and I would like to construct a 6foot high fence in order to minimize the noise heard from the Kings Highway.

CHAIRMAN JANSEN: Any questions from the Board?

ATTORNEY FINK: Does it matter what kind of fence?

MR. MALOCSAY: It is a noise barricade and we have never given one for noise.

CHAIRMAN JANSEN: What about the one on County Route 1 for Lehman and Getz?

MR. MALOCSAY: We have to be careful; the Town is in the process of changing that variance. They are ok for deer but they cannot be a barricade that you cannot see through a 4foot high fence. This is the first time we are hearing an application for a 6foot high noise fence/barricade.

ATTORNEY FINK: The question really is, does 6 feet quiet the noise.

MR. MASON: I have tried planting evergreen trees along there and that doesn't stop the noise.

CHAIRMAN JANSEN: So what kind of fence are you proposing?

MR. MASON: A 4inch wide stockade fence.

CHAIRMAN JANSEN: So it will be straight and not baffled?

MR. MASON: No.

CHAIRMAN JANSEN: I'm not sure that will help.

MR. MASON: I do not know how else I can baffle it down. When I stand by where my evergreens are, on the embankment and the traffic is going by, it hits me up the high. It does not hit me down low, a 4foot fence is not going to work.

MS. BRAMICH: Is this a picture of the trees?

MR. MASON: The trees are going to stay there; I want to put the fence on the house side of the trees.

MS. BRAMICH: The trees would help hide the fence and would help in the noise blockage.

CHAIRMAN JANSEN: I have no problem with this.

MR. SHUBACK: Is there room to put plants in front of it to soften the look?

MR. MASON: I don't know what plants.

MR. DAUBERT: The trees will block it?

MR. MASON: Yes.

MR. MALOCSAY: The 6foot fence for Lehman was requested to put vegetation in front of it to block the view. This already has trees up to block the view from the road. This makes this application different and I don't have problem with granting it. Grant it with a condition that the trees remain.

MR. DAUBERT: The trees will block the view of the fence.

CHAIRMAN JANSEN: Anyone here to address this application; no, Public Hearing is closed.

MS. BRAMICH: How far off the property line are the trees?

MR. MASON: About 3 to 4 feet.

MS. BRAMICH: From the property line?

MR. MASON: Yes.

MS. BRAMICH: How far from the trees are you going to put the fence?

MR. MASON: Within 1 foot.

MR. DAUBERT: So you will have to trim the trees.

MR. MASON: Yes, just on the house side.

MR. DAUBERT: You have to be so many feet from the center of the road, right? It's 25 feet on a county road from the center of the road.

CHAIRMAN JANSEN: Ok, Mr. Fink?

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: The fence is behind the existing trees so the answer would be no.

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

CHAIRMAN JANSEN: No.

MS. BRAMICH: No.

ATTORNEY FINK: Is this a numerically substantial variance?

MR. MALOCSAY: 4 to 6 feet is right in between.

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

MR. MALOCSAY: No.

MR. DAUBERT: No.

ATTORNEY FINK: Is this self-created?

MR. SHUBACK: Yes.

MR. MALOCSAY: Yes.

MS. BRAMICH: Yes.

CHAIRMAN JANSEN: Yes.

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

MR. SHUBACK: So moved.

MR. MALOCSAY: Seconded.

CHAIRMAN JANSEN: Any discussion?

All in favor (5 Ayes) Motion carried.

ATTORNEY FINK: Would someone care to motion that the variance be granted as advertised with the condition that the trees remain on the Kings Highway side of the fence?

MS. BRAMICH: So moved.

MR. DAUBERT: Seconded.

CHAIRMAN JANSEN: Any discussion?

All in favor (5 Ayes) Motion carried.

**PUBLIC HEARING OF William Miccio** - for property located at 1 Deer Trail South, Greenwood Lake, New York and designated on the Town tax map as Section 72 Block 10 Lot 11.1 and located in an SM District for a variance of the Bulk Area Requirements of the Code permitting construction of a 2 car garage 4 (+/-) feet from the front property line where 30 feet are required.

CHAIRMAN JANSEN: Please identify yourself for the record and briefly tell the Board what it is you would like to do.

MR. MICCIO: My name is Bill Miccio and I bought the house about a year and a half ago. It is a smaller cottage on the mountain. There is one corner of the property that is fairly level but unfortunately there a big piece of ledge there.

MS. BRAMICH: I have a picture of the property and the slope, so there is no other spot for the garage.

CHAIRMAN JANSEN: So is this out of character for the rest of the neighborhood or are there other such structures?

MS. BRAMICH: No, it is not out of character.

CHAIRMAN JANSEN: Anyone here from the Public that would like to question the application? No, Public Hearing is closed.

MR. MALOCSAY: Does anyone have a survey of the property? I was not given one.

MR. MICCIO: The Building Department has a copy of the survey.

ATTORNEY FINK: We were not given the survey but it was done.

MS. BRAMICH: It is 4 lots but it is rock.

MR. MICCIO: Can I ask a question? I am assuming that they are both fronts?

MS. BRAMICH: He has 3 sides on the road.

ATTORNEY FINK: That is a very good question. As far as fronts, you have 3 front yards.

MR. MICCIO: I thought as much.

MR. MALOCSAY: If I were building a 2 car garage, it would be 26 by 30. 24 by 24 is almost as small as you can go. And because it is part of the front yard setback, if you went 22 feet deep, it would be hard to park a full size truck. The 24 by 24 is realistic.

CHAIRMAN JANSEN: You might want to reconsider the size of the garage. But that is the size you want so any more questions? No, Mr. Fink?

ATTORNEY FINK: We did not advertise this as 24 by 24 and if it was 28 wide, it would not affect this variance.

MR. MALOCSAY: No, it wouldn't, it is the depth.

ATTORNEY FINK: The depth is irrelevant; it is 10feet off on one side. That is ok. It is only the front. You are not restricted by the 24 feet; it could be wider. Where the doors are, it could be wider.

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

MS. BRAMICH: No.

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

MS. BRAMICH: No.

MR. DAUBERT: No, because of the ledges.

ATTORNEY FINK: Is this a substantial variance?

MS. BRAMICH: Yes.

MR. MALOCSAY: Yes.

ATTORNEY FINK: It is 30 feet down to 4 or 5 feet.

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

CHAIRMAN JANSEN: No.

MS. BRAMICH: No.

ATTORNEY FINK: Self-created?

MS. BRAMICH: Yes.

MR. DAUBERT: Yes.

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

MS. BRAMICH: So moved.

MR. DAUBERT: Seconded.

Any discussion; All in favor (5 Ayes) Motion carried.

ATTORNEY FINK: Would someone care to motion that the variance be granted as advertised?

MS. BRAMICH: So moved.

MR. MALOCSAY: Seconded.

Any discussion; all in favor (5 Ayes) Motion carried.

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