

TOWN OF WARWICK
ZONING BOARD OF APPEALS

AUGUST 25, 2014

Members Present:

Jan Jansen, Chairman

Mark Malocsay, Co-Chairman

Attorney Robert Fink

Kevin Shuback

Diane Bramich

Members Absent:

Norman Paulsen

CHAIRMAN JANSEN:
minutes from the meeting of June 30, 2014 approved?

Is there a motion to have the

MR. MALOCSAY:
minutes.

I make a motion to accept the

MR. SHUBACK:

I second.

CHAIRMAN JANSEN:

Any discussion; all in favor?

All in favor (4 Ayes) Motion carried.

PUBLIC HEARING OF TANYA M. HERNANDEZ BY FRANK NAHOVM, ATTORNEY IN FACT – for property located at 19 Deer Trail North, Greenwood Lake, New York and designated on the Town tax map as Section 72 Block 1 Lot 16.1 and located in an SM District for a variance of Section 164.41A permitting a 2 car garage 15 (+/-)feet from the front line where 30 feet are required and 4.6 feet from 1 side line; where 5 feet are required. **Continued from the 6/30/14 ZBA meeting.**

CHAIRMAN JANSEN: We are continuing with the Public Hearing of Tanya M. Hernandez by Frank Nahovm. Can you update us as to where we are?

ATTORNEY SWIFT: Yes, back on July 21st or prior to, there was an Engineer and Laura Barca, Town Engineer, who came to the home and performed a scope test. The test results and the built plans and the Engineer letter were all submitted to the town on July 21st. It indicated that everything was connected and operated the way it should.

CHAIRMAN JANSEN: The Public Hearing is still open, any questions? No one? The Public Hearing will be kept open for now.

MR. MALOCSAY: Going through our guidelines, concerning approving or denying the application, there are basically five of them. What doesn't fall into place is the absence of a Building Permit and building a garage on top of a leach field.

MR. NAHOVM: We had a work permit from the Building Department that was approved by the Town. Now I have two Engineers saying there is nothing wrong with having a seepage pit under a garage, as long as it is accessible.

MR. MALOCSAY: My understanding is that the garage was built without a permit.

MR. NAHOVM: That is incorrect. We had a permit.

MR. MALOCSAY: That was not my understanding as to why the application came before us; I find it hard to believe the Building Department would approve a permit to build a garage on top of a leach field.

MR. NAHOVM: It is a seepage pit; the leach field is under the driveway. It is a concrete, 12 inch thick steel seepage pit that will last longer than the mountain. It is reinforced concrete; airplanes could land on it. We did have a permit, check your records.

ATTORNEY FINK: You were issued a violation notice for building a structure, detached garage that does not conform to plans submitted to the Building Department. The plans are too close to property lines.

MR. NAHOVM: Yes, it was 4 ½ feet off the property line as opposed to 5 ft.

ATTORNEY FINK: And it was not built according to the plans.

MR. NAHOVM: It was built according to the plans. The only addition was the balcony. We revised the drawings time and time again.

ATTORNEY FINK: I am reading from the violation, one of the things that bring you here.

ATTORNEY SWIFT: We are representing here before the Board that we are not using the second floor for a living space; it is just for storage.

MR. MALOCSAY: That is not before us; that is not relevant. It does raise a question that I have to ask the Building Department.

MR. NAHOVM: You should have a copy of the permit in your files.

MR. MALOCSAY: It's clear that you have a permit now.

ATTORNEY FINK: According to a July 13th letter, from the Building Inspector, Wayne Stevens, that it has become apparent to the Building Department of Warwick that your garage is almost complete and there is no record of an inspection being done on this permit. Upon a site visit, the building that has been built does not match the drawings submitted with your permit application.

MR. NAHOVM: We satisfied that.

ATTORNEY FINK: Let me quote the letter, "to correct this matter, you will need to submit a correct set of plans to provide the Town with a letter from a New York State Registered Engineer. The NYS Registered State Engineer stating that the garage was built to New York State building code. You will need to provide the Town

with a survey performed by a licensed surveyor showing the location of the building, in addition to all property lines.”

MR. NAHOVM: That has all been done.

ATTORNEY SWIFT: We supplied that.

MR. NAHOVM: You should have seen that during the last couple of hearings here. This has all been submitted and rectified. The last thing required was the two exams performed by Laura Barca and that has been completed. We have complied with everything you guys have thrown at us.

ATTORNEY FINK: Please distinguish “you guys”, this Board has made certain requests but most of the requests made have presumably come from the Building Department or the Town Engineer.

MR. NAHOVM: From my last conversation with Ms. Barca, she stated that she would contact the Board members and explain what was going on and how we were handling it. I have complied 100% and I have spent a lot of money complying.

ATTORNEY FINK: Do we have anything from the Building Department stating he has complied with their requests?

MR. NAHOVM: I have a letter from Ms. Barca stating we complied with her request.

ATTORNEY FINK: That had to do with the septic system. It has nothing to do with what you are saying you have.

ATTORNEY SWIFT: One of the steps we have gone through to get us here today is to contact the Orange County Department of Health. That is where the whole issue of the septic system came into play. That was the only concern that they had. Resolve this and we will close the file.

ATTORNEY FINK: According to the County, they noted an insufficient separation between the well and the septic system, and recommended disinfection, an ultraviolet system.

ATTORNEY SWIFT: Did you do that?

MR. NAHOVM: Yes.

ATTORNEY FINK: And then they went on to say “installation of an aerobic unit does not require this department’s review”. As far as I can see, they closed their file.

CHAIRMAN JANSEN: It seems to me that the only thing at this point is Mr. Malocsay’s question as to whether or not the building was built according to specs and whether it was approved.

MR. MALOCSAY: My question is whether or not the garage could be built over top a seepage pit. The point is if we give the variance, the Town could come back and say that to build over a seepage pit is not allowed.

MR. NAHOVM: Who would say it is not allowed?

MR. MALOCSAY: The Town Engineer has seen all the plans and the only issue was is the system that is in place now is operating correctly and doing what it is supposed to do where there is no disconnect. Ms. Barca was supposed to report to this Board the results of the latest tests performed and photographed, stating that everything is OK.

ATTORNEY FINK: You are before this Board, having nothing to do with the septic system, but really setbacks. But the point is, if we were told, as Mr. Malocsay is concerned, that no, you cannot put a building over a septic system, then we would have to provide a variance. There is nothing in my file to show that the system has not been objected to at this point. Now if it turns out that this Board were to grant the setbacks and the Building Inspector takes the position that, no, you cannot build over a septic system, this Board’s variance is irrelevant.

MR. NAHOVM: But we have two NYS Engineers stating that that is not an issue.

ATTORNEY FINK: Again, the fact that you can or cannot build over a septic system had nothing to do with the variance that we are going or not going to grant. We could grant the variance.

MR. NAHOVM: I do want to correct you as to the septic system. It is a seepage pit, not a septic system. The septic system is next to it.

ATTORNEY SWIFT: I agree that the reason we are here today has nothing to do with the septic system or seepage pit. We are here before this Board because of the variance we are asking because the setbacks are not correct. The only authority this Board can give us is to grant a variance for the 5 feet versus the 4 ½ feet. Let's focus on what this Board can or can not do regarding our application.

MR. NAHOVM: Understood.

ATTORNEY FINK: To clarify this application, you amended your plans to include an overhang?

MR. NAHOVM: Yes.

ATTORNEY FINK: You were looking for a variance for 15 plus or minus feet from the front line where 30 feet is required

MR. NAHOVM: Yes.

ATTORNEY FINK: And then you added an overhang? So that, considering the balcony does your plan show how far you are from the front line?

MR. NAHOVM: Absolutely. It was also put on the survey. You should have copies. I paid to have copies made for this Board, so I am a little frustrated that you never got them.

ATTORNEY FINK: Please don't be frustrated at this Board. You are here because you put up a building illegally.

MR. NAHOVM: I don't have a copy of the survey with me.

ATTORNEY FINK: Let me check the file here.

MR. NAHOVM: This may be the amended survey. (Shows the Board).

ATTORNEY FINK: This does not look like what we have.

Plans were compared and the latest was found.

ATTORNEY FINK: The balcony goes over the door, correct?

MR. NAHOVM: Yes.

MS. BRAMICH: How wide is the balcony?

ATTORNEY FINK: It is 15 ft 6 inches.

MS. BRAMICH: No, how wide is it?

MR. NAHOVM: 5 feet.

MS. BRAMICH: It comes out 5 feet so the structure comes out beyond that.

ATTORNEY FINK: Then that is not correct depiction of what the balcony looks like. How far does it come out?

MR. NAHOVM: I think it is 5 feet, what does the photo say?

There was a discussion of the distance the balcony goes out beyond the garage and pictures shown. It was determined to be 58 inches.

MR. SHUBACK: So it places the structure approximately 10 foot from the property line instead of 15.

MR. NAHOVM: It is also 13 or 14 feet in the air, it is not obstructing anything.

MS. BRAMICH: It doesn't matter.

CHAIRMAN JANSEN: So now we know exactly where it is, what other questions do we have?

MR. MALOCSAY: There are 4 of us here tonight; you would need a vote of 3 positive in order to pass. You could wait until there are 5 or take your chances tonight.

ATTORNEY FINK: In other words, an absence is a 'no' vote.

CHAIRMAN JANSEN: I suggest you wait until the next meeting.

MR. MALOCSAY: I was going to make the recommendation that the Board hold over a decision pending a confirmation with the Building Department. It exists now, you are in litigation; therefore everyone goes about their business.

ATTORNEY FINK: Is there litigation?

MR. MALOCSAY: This is the litigation.

ATTORNEY FINK: There is no litigation.

MR. MALOCSAY: At the time of the violation.

CHAIRMAN JANSEN: That is not litigation; it is a violation. No one is suing anybody.

MR. MALOCSAY: Okay, the violation exists until we make a decision.

ATTORNEY FINK: That is correct.

MR. MALOCSAY: Therefore the garage stays for now.

MR. NAHOVM: It delays me from finishing it.

ATTORNEY SWIFT: Is your meeting next month?

CHAIRMAN JANSEN: Yes, even if there are no other cases, we will finish this up.

MR. SHUBACK: I suggest we amend this to 15 feet to accommodate the overhang.

ATTORNEY FINK: As per the circumstances, it will be 15 feet, plus or minus.

ATTORNEY SWIFT: The balcony is not a new issue; I submitted pictures at the beginning. We respectfully request to be held over until the next meeting.

CHAIRMAN JANSEN: Request granted. Motion to adjourn?

MR. MALOCSAY: I motion.

MR. SHUBACK: I second.

CHAIRMAN JANSEN: So moved, meeting adjourned.

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