

TOWN OF WARWICK  
ZONING BOARD OF APPEALS  
SEPTEMBER 23, 2013

Members Present:

Jan Jansen, Chairman

Mark Malocsay, Co-Chairman

Attorney Robert Fink

Kevin Shuback

Diane Bramich

Norman Paulsen

CHAIRMAN JANSEN:  
minutes from the meeting of August 26, 2013 approved?

Is there a motion to have the

MR. SHUBACK:

I approve.

MR. MALOCSAY:

I second.

CHAIRMAN JANSEN:

Any discussion; all in favor?

All in favor (Four Ayes) Motion carried.

**PUBLIC HEARING OF LISA GOLDBERG** - for property located at 84 Old Ridge Road, Warwick, New York and designated on the Town tax map as Section 18 Block 1 Lot 12.41 and located in an MT District for a variance of Section 164.46(16) permitting an existing 12 foot X 20 foot shed 20 feet from 1 side line and a proposed 14 foot X 24 foot shed 40 feet from 1 side line and 81 feet from the front line where 100 feet from any lot line are required and a proposed 6 foot X 11 foot 6 inch run-in 44 feet from the front line and 21 feet from 1 side line where 50 feet from any lot line are required.

CHAIRMAN JANSEN: Please identify yourself and briefly state what you would like to do.

MS. GOLDBERG: My name is Lisa Goldberg.

MR. DUARTE: My name is Joe Duarte. It is for a pen for goats. I enjoy raising them. Some I keep and some I sell. My neighbors seem to enjoy them also.

ATTORNEY FINK: Why couldn't you conform with the code?

MR. DUARTE: Because of the lay of the land; also so it is away from houses.

MS. BRAMICH: Is it already existing?

MR. DUARTE: Yes.

ATTORNEY FINK: What prompted the application? Was the Building Inspector driving by one day?

MR. DUARTE: Yes.

CHAIRMAN JANSEN: Any questions?

MR. MALOCSAY: How long was it pre-existing? I drove by last month and I saw it for the first time. I never noticed it before.

ATTORNEY FINK: I looked at the special conditions and this is what I found out. Livestock is one thing and animals are another. The setbacks are different.

There was a discussion of the pens and sheds for the goats and the corresponding front lines and side lines set-backs.

ATTORNEY FINK: Animals shall be housed within 100 feet of any plot line; any penning area less than one acre in size shall be set back 50 feet from any plot line. So we are talking about two different kinds of setbacks: penning areas and housing.

MR. MALOCSAY: I think we should make the distinction between the animals and livestock here.

ATTORNEY FINK: Horses, cows, cattle and bison are listed as livestock. These are large livestock. I wouldn't consider goats large livestock.

MR. MALOCSAY: I agree with that; so what is it for not large livestock?

ATTORNEY FINK: It is one hundred feet for small livestock for housing and fifty feet for pens.

CHAIRMAN JANSEN: Anyone from the public to address this application? No? 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. PAULSEN: No.

MR. MALOCSAY: No. In fact, there is a horse farm right across the street.

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

CHAIRMAN JANSEN: It could be but then it would be closer to the neighbor's houses.

ATTORNEY FINK: Are the variances substantial?

MR. SHUBACK: Yes.

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

CHAIRMAN JANSEN: No.

ATTORNEY FINK: Is this self-created?

MR. MALOCSAY: Yes.

MS. BRAMICH: Yes.

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

MS. BRAMICH: So moved.

MR. MALOCSAY: Seconded.

CHAIRMAN JANSEN: Any discussion; all in favor?

All in favor (Four Ayes) Motion carried.

ATTORNEY FINK: Would someone care to motion the application be granted as advertised with the changes of 100 to 150 feet?

MS. BRAMICH: So moved.

MR. SHUBACK: Seconded.

CHAIRMAN JANSEN: Any discussion; all in favor?

All in favor ( Four Ayes) Motion carried.

**PUBLIC HEARING OF SALVATORE & JANET LEALE** - for property located at 3132 Regent Road, Warwick, New York and designated on the Town tax map as Section 95 Block 1 Lot 26 and located in an RU District for a variance of Section 140.4.B of the Warwick Code permitting an in-ground swimming pool 6 feet from 1 side line where 15 feet are required.

CHAIRMAN JANSEN:  
be heard at a future meeting.

The applicants asked that this

**PUBLIC HEARING OF ELROSE, LLC.** - for property located at 6 Round Hill Road, Warwick, New York and designated on the Town tax map as Section 7 Block 2 Lot 16 and located in an RU District for an interpretation that an existing 3 family home is a legal pre-existing use or, in the alternative, for a variance allowing a 3 family home (maximum permitted in the Code is 2 family) on 2.6 acres (2 family home requires 8 acres). **Continued from the 8/26/13 ZBA Meeting.**

CHAIRMAN JANSEN: Have you found out anything new?

MR. EHLERS: No, just that it was used as a multi-residential house.

MR. SHUBACK: I was told it was used as migrant housing; but that person is longer alive.

CHAIRMAN JANSEN: In this case, this is a problem. So where do we go from here?

ATTORNEY FINK: This is two-fold: was there more than one family living there pre-dating the code in the 1960's and has any lived there since that time.

CHAIRMAN JANSEN: How many people are you going to find alive that lived there in the 60's?

MR. EHLERS: I tried to find someone alive but was unsuccessful.

ATTORNEY FINK: I suppose one could find pictures.

MR. EHLERS: I bought the house as advertised from the county as multi-family. What can I do about that?

CHAIRMAN JANSEN: You can sue the County for misrepresentation.

There was a discussion about the lack of communication between the County, Tax assessors and Building Inspectors.

MR. MALOCSAY: I do not see that with what we have, that we could give the interpretation or grandfathering of this application. First, there isn't any substantial testimony that was a three family prior to selling it. We agreed that this is very difficult to prove. The biggest thing we have against it is the Town's records say it was a single family house; it was given a building permit in 1977 or 79. After that it was never inspected and that is the Town record.

MR. EHLERS: It was already built in 1973; they never asked for a permit until 1979.

MR. MALOCSAY: We have in the records what the Building Dept said. So we have something that is proof that it was not a three family house back in the mid-70's.

ATTORNEY FINK: Are you referencing the Building Inspector's letter.

MR. MALOCSAY: Yes.

There was a discussion regarding the dates of the letter, the Building Inspector's report and how the building was rated.

ATTORNEY FINK: Based upon the evidence and testimony this Board is satisfied that this was a three family home that pre-dated the code in 1968. Do we have a motion to grant the variance as advertised?

MR. PAULSEN: So moved.

MR. SHUBACK: I second it.

CHAIRMAN JANSEN: Any discussion; all in favor?

Three in favor; one nay. Motion carried.

The application of JOHN D. TURNEY

CHAIRMAN JANSEN:  
the letter?

Did everyone get a copy of

ATTORNEY FINK: Let's review what we did the last time. He was not looking for a variance. He wanted an interpretation that he had 100 pigeons pre-dating the code limiting the number of pigeons allowed. It was determined, based upon what was heard, that he had not enough proof of the number of pigeons owned. This Board can vote to re-hear the application and the vote has to be unanimous with the members present at the time of the vote.

MR. PAULSEN:

How many did we give him?

MS. BRAMICH:  
wants to go up to 75?

We gave him 30. And now he

MR. SHUBACK:  
up 100.

I think he wants to get back

There was a discussion of poultry and whether pigeons could come under the rule of poultry.

ATTORNEY FINK:  
hear this application. You vote whether or not you want to re-hear it.

There is no requirement to re-

CHAIRMAN JANSEN:

Any discussion? All in favor?

Four Nays; Motion denied.

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