

TOWN OF WARWICK
ZONING BOARD OF APPEALS
SEPTEMBER 25, 2012

Members Present:

Jan Jansen, Chairman

Mark Malocsay, Co-Chairman

Attorney Robert Fink

Norman Paulsen

Members Absent:

Diane Bramich

Kevin Shuback

CHAIRMAN JANSEN:
minutes from the meeting of July 23, 2012 approved?

Is there a motion to have the

MR. MALOCSAY:

I make a motion to approve.

MR. PAULSEN:

I second.

CHAIRMAN JANSEN:
favor?

Any further discussion; all in

All in favor (Three Ayes), motion carried.

PUBLIC HEARING OF SCOTT ROBERTS - for property located at 45 Buttermilk Falls Road, Warwick, New York and designated on the Town tax map as Section 65 Block 1 Lot 52.1 and located in an MT District for a variance of Section 164.41.C.(4)(f) permitting a fence 6 feet in height within the front yard setback where only 4 feet are permitted. Continued from the 7/23/12 ZBA Meeting.

CHAIRMAN JANSEN: Please come forward.
Anything else you want to add?

MR. ROBERTS: No, sir.

CHAIRMAN JANSEN: The issue here is, is the wall considered part of the fence or not. Mr. Fink, you are of the opinion that it is considered part of the fence?

ATTORNEY FINK: I am at odds with what I hear from the Planning Board. So let's see what the definition says: "An artificially constructed barrier of any material, or combination of materials, erected to enclosed or screen areas of land." Let's look at how high they can be. The variance talks in terms of how high the fence is: six (6) feet in height. So if you put a fence on the ground, you measure from there. What happens if you put a fence on something that is artificial? Whether it is a wall or ground that is artificially raised, do you measure the fence how high it is from ground level? The Planning Board takes the position that the measurement goes from the bottom of the fence to the top of the fence.

MR. MALOCSAY: Is there a grade change on the other side of the stone wall?

MR. ROBERTS: Yes. Part of the wall is rock boulders that were there; when I put in a septic field, I moved dirt and rocks to make the boulders even. So I built the fence on top of those.

ATTORNEY FINK: The definition says artificial materials or combination of such.

MR. MALOCSAY: What I saw was the four (4) foot fence; but the stone end of it could be measured and say it was higher. There is a grade change behind it; so in this particular application the stonework could be considered hardscape and not part of the fence. The stone wall should not be considered part of the fence; because it is acting as retaining wall and not a fence.

CHAIRMAN JANSEN:
that?

Norman, do you agree with

MR. PAULSEN:
discussion first.

You should open this up for

CHAIRMAN JANSEN:
to address this application? No, the public hearing is closed.

Anyone here from the public

ATTORNEY FINK:
fence is constructed on top of a ?

The Board finds that the

MR. MALOCSAY:
retaining wall.

I am going to call it a

CHAIRMAN JANSEN:

Retaining wall.

MR. MALOCSAY:

Hardscape.

MR. PAULSEN:

Regraded area.

CHAIRMAN JANSEN:
ground there.

There is not much level

MR. PAULSEN:
grade of the area.

Basically, he changed the

ATTORNEY FINK:
over six (6) feet.

The actual fence itself is not

MR. MALOCSAY:

No.

MR. PAULSEN:
of the Board.

I move that this is the finding

MR. MALOCSAY:

I second it.

CHAIRMAN JANSEN:

Any discussion; all in favor?

All in favor (Three ayes) Motion carried.

PUBLIC HEARING OF SHERRY ROSSO & RUTH BARONE - for property located at 1 Pine Road, Florida, New York and designated on the Town tax map as Section 21 Block 7 Lots 14,15,16.1 & 20.1 and located in an RU District for a variance of Section 164.40N reducing front setback to 34 feet 4 inches and reducing 1 side setback to 68 feet 15 inches where 75 feet are required for each setback for the purpose of an addition to an existing single family dwelling.

CHAIRMAN JANSEN: Please identify yourself for the record.

MS. RIPKIN: Kathleen Ripkin, Architect.

CHAIRMAN JANSEN: Briefly tell the board what it is you are trying to do.

MS. RIPKIN: We are doing a small addition on the side of the existing house. The property is smaller, although it is grandfathered, than the required area so the setbacks are difficult to meet.

ATTORNEY FINK: Because of your location on two roads, you are subject to two (2) front yard variances.

MS. RIPKIN: So the building plans will be submitted after the variance is granted.

MS. ROSSO: I am Sherry Rosso and here are the certified.

CHAIRMAN JANSEN: Any other way this can be configured?

MS. RIPKIN: Not really, the house is a very simple structure and the addition has to be attached to the side. And it doesn't conflict with the roads around it.

CHAIRMAN JANSEN: What else do you need for the record? It does not interfere with the character of the neighborhood because there are all different types of houses around.

ATTORNEY FINK: Could it be smaller?

MS. RIPKIN: No, because of the addition of a bathroom and stairs.

CHAIRMAN JANSEN: Any questions:

MR. MALOCSAY: When there are two front yards and a setback requirement, we look at the main street as the main front yard setback. It still needs a variance but it is impossible to do anything with two seventy-five (75) foot setbacks.

MS. RIPKIN: Especially with a piece of property has less than one-quarter the size of the requirement.

MR. MALOCSAY: Yes.

CHAIRMAN JANSEN: Is there anyone here from the public that would like 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 detriment to nearby properties?

MR. MALOCSAY: No.

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

MR. MALOCSAY: No, it is about as small as they can do.

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

CHAIRMAN JANSEN: No.

ATTORNEY FINK: Is this self-created?

MR. MALOCSAY: Yes.

ATTORNEY FINK: Is it a minimal variance?

MR. MALOCSAY: Yes, because of its size.

MR. PAULSEN: I make a motion to type this as an unlisted with no adverse environmental impact.

MR. MALOCSAY: I second it.

CHAIRMAN JANSEN: Any further discussion; all in favor?

All in favor (Three Ayes) Motion carried.

MR. MALOCSAY:
advertised.

I move to grant this variance as

MR. PAULSEN:

I second it.

CHAIRMAN JANSEN:
(Three Ayes) Motion carried.

Any discussion? All in favor,

MS. RIPKIN:
the variance good for?

I have one question; how long is

ATTORNEY FINK:
years. If you can't, then you can come back and ask for an extension.

You have to start within two (2)

PUBLIC HEARING OF KARA-MARIE REYES-RINALDI - for property located at 59 West Ridge Road, Warwick, New York and designated on the Town tax map as Section 31 Block 1 Lot 5 and located in an RU District for a variance of Section 164.40N permitting conversion of a 1 family dwelling to a 2 family dwelling on a 2.001 (+/-) acre parcel where 4 acres are required.

CHAIRMAN JANSEN: Please identify yourselves for the record.

MR. REYES, JR: I am Ramon Reyes, Jr.

MS. REYES-RINALDI: I am Kara-Marie Reyes-Rinaldi.

CHAIRMAN JANSEN: Please tell the Board what it is that you are trying to do.

ATTORNEY FINK: When this application came to me, it said a lot variance area of eight (8) acres whereas the property only has 1.8 acres. And you'll note that I advertised it as the four (4) acres. I called Connie Sardo and asked why eight (8) acres because a two-family home needs four (4) acres in a zoning district. She stated that is what the Planning Board said it needed. She could not explain why and I know of no rational reason why this particular applicant needs eight (8) acres when the code says four (4) acres. So keep that in mind that it may be an issue; although I do not think it is an issue. Also, the property survey line goes to the center of the road; so the actual property area is 1.8 acres.

MR. REYES, JR: The reason the eight (8) acres is in the application is because that is what we were told we needed.

ATTORNEY FINK: I know, that is the zoning application information from the Building Department that came to me also.

MR. REYES, JR: This is our family home that we bought in the late 1970's; it was our parents' first house. When my dad passed away, it was his intention that the house go to my sister's daughter. My mother was too frail to live alone and moved in with me. The house needed complete reconstruction. When my niece returns from serving in the Peace Corps, she will live in the house. But in order for her to afford it, we need to add on a rentable apartment.

ATTORNEY FINK: What this Board has to look at is the variables under the area variance, which you filled out. We have to look at if an

undesirable change would produce a change or detriment in the neighborhood. You say the character of the neighborhood, which is residential, would not be adversely affected.

MR. PAULSEN: This is an area variance and not a use variance?

ATTORNEY FINK: Yes; because you can convert to two-family, which you have already done or you want to do?

MR. REYES, JR: The renovations have already been done for a two-family. We have one issue with the Building Department, to put an additional layer of fire retardant.

ATTORNEY FINK: The sole issue is the acreage; it is substantially under the requirement, 50% or more. Are there other two-family homes in the neighborhood?

MS. REYES-RINALDI: There is Sleepy Valley Arms; which is just up the road from us, a Bed and Breakfast now. It also has one and two bedroom apartments. It was a rehab when we were growing up in the house.

MR. MALOCSAY: The Sleepy Valley Arms is the only piece of property that has a pre-existing, non-conforming variance.

CHAIRMAN JANSEN: Would they be allowed to mother/daughter?

ATTORNEY FINK: I didn't look at that.

MR. PAULSEN: It would not be a mother/daughter.

MR. REYES, JR: It would be an owner occupied two-family.

ATTORNEY FINK: They are allowed a one family; a two-family; a conversion of an existing one family to two-family. Frankly, I don't know why they are in front of the Planning Board. Well, yes, because of the conversion. If you have a two family house, that is a permitted use. But if you want to convert a one family to a two-family, assuming you have the acreage, it becomes a special permitted use.

MR. MALOCSAY: What is the acreage requirement for the single family in that area? I thought it was four (4) acres also.

ATTORNEY FINK: It is.

CHAIRMAN JANSEN: This is now open to the public, is there anyone here to address this application?

MR. FERRARO: My name is Armando Ferraro, 62 West Ridge Road.

ATTORNEY FINK: Please locate your house on the map.

MR. FERRARO: It is here, across the street.

ATTORNEY FINK: You have two (2) acres.

MR. FERRARO: No, I have twenty (20) acres.

There was a discussion as to the location and size of Mr. Ferraro's property.

MR. FERRARO: I am not opposed to a mother/daughter, but if he sets a precedent of having a two family in a single resident neighborhood.

ATTORNEY FINK: Two family houses are allowed. The problem is the acreage he has.

MR. FERRARO: I think you will also have to take into consideration the setback; his house is pretty close to the street, and the septic and the water.

ATTORNEY FINK: There is no request for a variance in the set backs. He is before the Planning Board and they look for that type of thing. They make sure there is adequate water and septic.

MR. FERRARO: I just can't see it perking enough for 4 or 5 bedrooms.

MR. PAULSEN: The Planning Board gets involved and the Building Department checks into all of that.

MR. FERRARO: I would just like to see it stay a clean, one family residence.

CHAIRMAN JANSEN: I did receive a letter that I need to read into the record. It is from Thomas and Suzanne Mattson, 43 Beverly Drive, Warwick, NY 10990. It is dated September 25, 2012 and it states:

To whom it may concern:

We recently received a certified letter regarding an application to convert the house at 59 West Ridge Road from a single family to two family home.

We purchased the property at 43 Beverly Drive a little over two years ago. One of the top reasons we did was the zoning in the neighborhood. Our front window faces the back of this property and that view was another big reason we bought our home. All our research showed us that it was zoned single family only.

We are not trying to be bad neighbors. We have had no problems with anything regarding that address up to this point. The only concerns we have are the possibility of increase noise and/or traffic and the possibility of a requirement to add more parking or a new entrance thereby changing the existing aesthetics of the property.

Thank you for your time and consideration.
Signed: Thomas and Suzanne Mattson

MR. MALOCSAY: Two things: the first thing is that I have to agree with Mr. Fink about the acreage requirement on the four acres but I would like to hear, if just in case, they are adamant that it is eight acres, I would like to know where they are coming from on the eight acres. The second thing is when we look at an application like this; we really ought to know what we have for two-family in that neighborhood. That is something we don't know by just driving by and taking a look. We need to look at town records to see how many two family and what those acreage requirement is-

MR. PAULSEN: What difference would that make?

MR. MALOCSAY: It is allowed in there so the character-

MR. PAULSEN: So every house in there could be two-family.

MR. MALOCSAY: We giving a variance so the question is, the character of the neighborhood on two family, how many acres do they have? Because if they are all on two acres, then it is easy to give a variance. But if there aren't any, then it is a totally different-

ATTORNEY FINK: If you look at the tax map, there aren't a lot of four acre lots in the neighborhood. There are some large ones.

MR. MALOCSAY: But that would help them out if there were two acres; so that is why I want to look at the records.

ATTORNEY FINK: Do you know if there are any two family homes in your immediate vicinity?

MR. REYES, JR: I am fairly confident that there aren't. We have been in this community for a long time and we are not certain of any. Most are small lots and single family houses.

MS. REYES-RINALDI: I know there are mother/daughter but I do not know of any official two family houses.

CHAIRMAN JANSEN: Let's list the things we need to know for sure for the next meeting so that we have all the information.

ATTORNEY FINK: I am not sure we need to go to the next session based upon what we have heard. And there is no recommendation from the Planning Board. What the Planning Board is looking at is what it is going to be, are you making any changes?

MR. REYES, JR: The outside exterior, no.

ATTORNEY FINK: How many bedrooms in each apartment?

MR. REYES, JR: Two bedrooms in each apartment. The left hand side is slightly larger; it has a den type room. Each has its own laundry room, kitchen, and bathroom. They have separate entrances and a shared porch.

CHAIRMAN JANSEN: The issue here is to find out why the Planning Board and/or Building Department think there is supposed to be eight (8) acres.

MR. FERRARO: Even at four (4), you are asking a 50%.

CHAIRMAN JANSEN: Can we continue this until the next meeting? Yes? We will continue this until the next meeting.

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