

**TOWN OF WARWICK
ZONING BOARD OF APPEALS
SEPTEMBER 26, 2011**

Members Present:

Jan Jansen, Chairman

Mark Malocsay, Co-Chairman

Kevin Schuback

Norman Paulson

Diane Bramich

Attorney Robert Fink

Chairman Jansen called the meeting to order at 7:30 PM

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 1D permitting a 2 lot subdivision where proposed Lot 2 is 2.9 acres and 5 acres are required and Section 280a of the Town Law permitting a residence on a private road. *Continued from the 8/22/11 ZBA Meeting.*

CHAIRMAN JANSEN: We have the letter from Benjamin Astorino, the Chairman of the Planning Board, he states:

“This is in response to your letter dated August 30, 2011. The Planning Board is comfortable with the Agencies’ stipulations regarding Tower Lane and will consider granting a waiver for the Paving requirement.”

Where do we stand at this point?

ATTORNEY FINK: We will go through the criteria for both the area variance and the 280a but at the same time, we don’t have an easement agreement to my knowledge.

KAREN EMMERICH: Actually I thought an easement agreement was provided earlier on; how can we verify that? It was a general easement that would have to be modified.

ATTORNEY FINK: There has to be an easement agreement and that agreement is going to have to provide and incorporate the conditions as expressed to Paul Schuck in July 20th 2011 letter from Scenic Hudson.

KAREN EMMERICH: That would also be a condition of the Planning Board.

ATTORNEY FINK: The Board can vote on this subject to my receipt and review and then it can go off to the Planning Board.

KAREN EMMERICH: Usually the attorney works out the language with John Bollenbach.

ATTORNEY FINK: Normally there is a deeded easement when you come before us or when it’s part of a subdivision but in this particular instance it’s not a part of the subdivision. That’s the difference of why we have to be involved. If this Board is going to grant a 280a we have to know that you in fact have a right to use it. The Board can vote on it subject to my review and approval of the easement agreement and it ultimately has to be approved by the Planning Board also.

CHAIRMAN JANSEN: Any other questions from the Board? 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 the character of the neighborhood or be a detriment to nearby properties? First let us consider the fact that they’re looking for an area variance and then we’ll consider the 280a.

MRS. BRAMICH: No.

ATTORNEY FINK: As was stated the application the neighborhood consists of 8 residential lots between 2.9 and 6 acres. Plus several large agricultural lots. So a 6 acre lot is in character with the neighborhood. Would the Board concur with that?

CHAIRMAN JANSEN: Yes.

ATTORNEY FINK: Insofar as granting the 280a variance, would that create an undesirable change in the character of the neighborhood or be a detriment to nearby properties?

MRS. BRAMICH: No.

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

MR. MALOCSAY: No; for neither one.

ATTORNEY FINK: Is it a substantial variance?

MR. MALOCSAY: Yes for the area but no for the 280a.

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

MR. SCHUBACK: No.

ATTORNEY FINK: Is it self created?

MRS. BRAMICH: Yes for both. 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 (Five Ayes), motion carried.

MR. MALOCSAY: I move to grant both variances subject to the applicant providing a proposed easement agreement incorporating Scenic Hudson's criteria.

MR. SCHUBACK: I second it.

CHAIRMAN JANSEN: Any discussion; all in favor?

All in favor (Five Ayes), motion carried.

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 foot X 40 foot accessory building on a vacant lot. *Continued from the 8/22/11 ZBA Meeting.*

CHAIRMAN JANSEN: I received your e-mail regarding the business part of it. Does the Board have any questions?

ATTORNEY FINK: What we're looking at is an Agricultural activity and it's the philosophy of the State under their Article 25 that under the Agricultural Markets Law that there be protection and enhancement of New York State's agricultural land as a viable segment of local and state economy and resources. Now as the Board is aware in order to be deemed a farm operation and to be eligible for an agricultural exemption there are certain acreage and monetary requirements, neither of which this applicant enjoys. Under the code he's looking for a use variance to build an accessory building on a separate lot. If the Board chooses to take a very expansive look at this and deem it to be an agricultural activity even though it doesn't qualify for an agricultural exemption because as Jan points out for a farmer to become involved and incorporate this property into property that enjoys an agricultural exemption he could. But at any rate this Board sees that it could conceivably take an expansive view.

CHAIRMAN JANSEN: Do you understand that part? If another farmer that could be involved in some way and that has the 10,000 dollars and the Ag exemption it would certainly make it a little more palatable.

MR. MALOSCAY: How many animals do you have and where are they?

MR. POST: We have Herford beef and sheep and some Scotland Highlanders; about 12 to 15 all together.

ATTORNEY FINK: Mr. Bollenbach takes the position that unless the land qualifies for the exemption it should not enjoy the benefits under the Agricultural and Markets Law.

MR. MALOCSAY: I totally disagree with that. The only thing that the applicant does not appear to do is meet the acreage requirement. Suppose somebody was trying to start a farm, and in order to start the farm they'd have to do certain things that weren't allowed in the code, there's no way they could produce or show that they're making that much of a return in order to get the exemption. But they have to get started so the right to farm according to those guidelines, the state doesn't really care if the person's making dollar one, because how many people that farm actually make money?

ATTORNEY FINK: In order to get your agricultural exemption there are monetary standards.

MR. MALOCSAY: There are but the reality is that if he were to sell those animals now he could make the monetary standard.

ATTORNEY FINK: But he wouldn't have the acreage.

MR. POST: We have the acreage. We have two lots adjoining. One lot is 17 and the other is a little over 6.

MR. MALOCSAY: We talked about merging the lots in the first meeting but the applicant didn't want to do that. Regardless though if he's building a barn on the other lot, it's still a use variance no matter how many acres he has.

ATTORNEY FINK: That's true. He could merge them and then he wouldn't need a variance other than size.

MR. MALOCSAY: Right but that's not what he wanted to do so we looked at this as an alternative and I was very comfortable with it.

MR. POST: If we're living on the 17 acre lot and the 6 acre lot is for all intents and purposes for farming operations, is that not...

CHAIRMAN JANSEN: Well if you're putting the barn on the 6.9 acre lot its 1/10 of an acre shy of conforming to the code. So that's why the question was asked if you could merge the lot.

MR. MALOCSAY: So my point to you is that I agree with Bob and I disagree with John Bollenbach.

CHAIRMAN JANSEN: I think that there should be a stipulation that if it ever falls back to just the 6.9 acre lot then it is no longer legal and if it ceases to be a farm operation then the barn has to be removed.

ATTORNEY FINK: That's common in situations when people come looking for variances. A recordable agreement between the applicant and the Town, not the Zoning Board, the Town, where the applicant states that if the agricultural operations ceases or if they sell it then that barn would have to come down.

MR. POST: What if we had a Residential use attached to the barn?

ATTORNEY FINK: Then there would be no problem. You see the barn is an accessory to a principal use. Assuming the Board would grant the variance it would be conditioned upon your Attorney providing an agreement and what I would do is I would write to you to tell you exactly what it is that we're looking for and your Attorney would provide it.

MR. POST: Are there any alternatives to tearing the barn down in 10 years if drop dead and my kids decide to sell and stop raising beef?

ATTORNEY FINK: Yes, you get principal use or...

MR. SCHUBACK: You can add a house to it.

ATTORNEY FINK: I have some agreements that I can provide, but your Attorney will have to review it and send it back.

MR. MALOCSAY: Just so I'm clear, we're on the same page with what the Ag and Markets is requiring and we're meeting up with that criteria?

ATTORNEY FINK: Well it's the general philosophy to encourage agricultural pursuits, that's the bottom line. And once you meet that, then really the burden is on us to show if it would be detrimental to the health, safety and welfare. And then the whole thing shifts.

CHAIRMAN JANSEN: Is there anyone here from the public who'd like to address this application? No? The public hearing is now closed.

ATTORNEY FINK: So we're really talking about two things. We're talking about a 30 X 40 accessory building and we're talking about *allowing* an accessory building on a separate lot. So it's actually two variances.

MR. MALOCSAY: Well, no because he doesn't need the variance for the size, just the one for it being on a separate lot.

ATTORNEY FINK: Right then, just the one. The building you want is 30 X 40?

MR. POST: Correct. Originally we didn't know how big it could be or we would have gone with a full-fledged barn.

MR. MALOCSAY: That's something you could come back before the Board with.

ATTORNEY FINK: Not necessarily. Do you want a bigger one?

MR. POST: Well, sure, we could use something twice the size of that. We could put in stalls for the horses and pens for the sheep.

ATTORNEY FINK: You don't have to come up with a size tonight. Just amend your application and it could be by a letter just saying what you want and why but get it right in and we have to re-advertise because it would be a substantial difference and the Board will vote next meeting.

MR. MALOCSAY: If we grant this variance, is it a use variance?

ATTORNEY FINK: Yes but its actually irrelevant. You're putting an accessory building with no principle use on a separate lot.

MR. MALOCSAY: I was told there were five criteria and all five have to be met for a use variance.

ATTORNEY FINK: True, until you plug in the Agricultural Markets Law.

MR. MALOCSAY: And then I brought up that if that's there, then why does the person need a variance and then you said because of the...

ATTORNEY FINK: Now you're talking apples and oranges. You're going to need a variance. It becomes a little more complicated when you need

Planning Board approval. Do you need to go through everything and the Agricultural Markets Law says no you don't. When it comes to a variance, you still have to get your variance. Now are you under the same rules? The answer as far as I'm concerned is no.

MR. MALOCSAY:
good.

As long as you're okay with that, we're

MR. POST:
would this have been an easier process?

If we had chosen to apply for a barn,

ATTORNEY FINK:
erased any doubts that it's purely agricultural. You could put anything in a 30 X 40 building. You could put cars. Or trains. So just amend the application by letter specifying what you want.

Continued to the October 2011 ZBA meeting.

Public Hearing of JP MORGAN 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 164.43.1H4 that awning signs are permitted in a DS District or, if not permitted, a variance permitting 6 awning signs. *Continued to the October 2011 ZBA meeting.*

Public Hearing of JARROD AND CINDY WHIDDEN – for property located at 579 Union Corners Road, Florida, New York and designated on the Town tax map as Section 7 Block 2 Lot 64.32 and located in an RU District for a variance of Section 164.41.A (1) (a) allowing construction of a 36 foot X 48 foot barn which exceeds the 1,200 square foot floor area and 48 foot median dimensions permitted by the Code.

CHAIRMAN JANSEN: Please identify yourselves and explain to the Board what it you'd like to do.

CINDY WHIDDEN: My name is Cindy Whidden and this is my husband Jarrod. We just want to put a barn up and bring our three horse's home. I don't want to put anything else in the building. I tried to do a smaller building but the horses that we have are Belgians. I tried a 30 X 40 to avoid this process but no matter how I arraigned it I could not fit 3 Belgian mares into it. The smallest of our mares is 1,750 pounds. They're "hay-burners" but they're all rescues and one of the stalls that we have to use is a permanent Ferrier stock stall. Belgians cannot balance their weight on three legs for traditional Ferrier services so one of the stalls will have a stock inside with a hydraulic hand held pulley you bring the hoof up so the Ferrier can work on it. Then we need one for grain and hay and then the tack. I just want to bring them home.

CHAIRMAN JANSEN: How many acres do you have?

MRS. WHIDDEN: 5.2.

MR. WHIDDEN: This would just be easier to have them at the house.

MRS. WHIDDEN: Last winter one of them was injured and I had to go back and forth 4 times a day to walk a 1,900 pound horse up and down the aisle, freezing to death. I can't go through that again.

MR. MALOCSAY: You've covered everything on the barn size which is probably the most important. As far as the character of the neighborhood, there's old farms and horses galore. It's not out of character.

ATTORNEY FINK: There are other issues besides the size of the barn. This variance requires 3 acres for 1 animal and 1 acre for each additional so you meet that. Did you consider how far this would have to be from any lot lines?

MR. MALOCSAY: Any paddock over 1 acre in size can be on the property line.

ATTORNEY FINK: Special condition 16, " no animals or fowl should be housed within 100 feet of any lot line except for livestock animals ...should be setback 150 feet from any lot line, any penning area less than 1 acre in size should be setback 50 feet from any lot line".

CHAIRMAN JANSEN: That doesn't even apply. How far is the barn going to be from anybody's lot line?

MRS. WHIDDEN: More than 75 feet.

ATTORNEY FINK: Again, there's been no application for a variance but it would seem to me that it would have to be 100 feet from the lot line. Which presumably wouldn't be a problem, you just sketch in 75 feet.

MR. WHIDDEN: There's plenty of room.

ATTORNEY FINK: The only thing this Board is considering is the size of the structure.

CHAIRMAN JANSEN: What we mean is if you can keep it 100 feet from the lot line and comply with all the other stipulations, that's fine. If it's going to be closer than you may need another variance.

MR. SHUBACK: There's plenty of buildings and plenty of trees between the lots.

MR. WHIDDEN: You won't be able to see this thing from the road.

ATTORNEY FINK: Well, this Board has to consider the fact that maybe there won't be horses there a year from now.

MRS. WHIDDEN: For what this will cost, we'll be there a long long time.

CHAIRMAN JANSEN: 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. SHUBACK: No, it's not visible from the road and there are several barns and horse farms in the neighborhood.

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

MR. MALOCSAY: No due to the size of the animals.

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. SHUBACK: No.

ATTORNEY FINK: Is it self-created?

MRS. BRAMICH: Yes.

MR. MALOCSAY:
with no environmental impact.

I move that this is an Unlisted Action

MRS. BRAMICH:

I second it.

CHAIRMAN JANSEN:

All in favor; any opposed?

All in favor (Five Ayes), motion carried.

MR. MALOCSAY:
advertised.

I move to grant this variance as

MRS. BRAMICH:

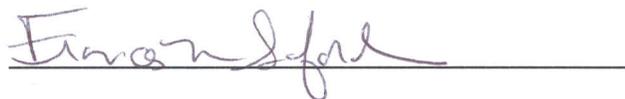
I second it.

CHAIRMAN JANSEN:

Any discussion; all in favor?

All in favor (Five Ayes), motion carried.

Meeting Adjourned.



Frances N. Sanford ZBA Recording Secretary