

TOWN OF WARWICK
ZONING BOARD OF APPEALS
OCTOBER 24, 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 meeting of 9/26/16?

Do I have a motion to accept

MS. BRAMICH:

So moved.

MR. SHUBACK:

Seconded.

PUBLIC HEARING OF Apple Dave's Orchard - for property owned by the Estate of David E. Hull and located at 82 Four Corners Road, Warwick, New York and designated on the Town tax map as Section 23 Block 1 Lot 23.12 for a variance pursuant to 280-a of the Town Law allowing access to a public road for Lot #2 of a proposed 2 lot subdivision.

CHAIRMAN JANSEN: Unfortunately, the mailings for this application were not sent out so this is postponed until the next meeting.

PUBLIC HEARING OF Second Amended Application 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 164.49.2V of the Warwick Code for the existing 74 sites, adding the application for a variance of Section 164-49.2(F)(1) for 35 of the existing 74 camp sites allowing encroachment wholly or partially within the 100 foot setback(s). **Continued from September 26, 2016 ZBA Meeting.**

ATTORNEY FINK: One thing with regard to Black Bear, although the County did not have to be notified as originally it was an interpretation; they did have to be notified for this amended application for a setback. The County has been notified but has not responded; therefore, we cannot reach a decision tonight. The decision will be reached at the next meeting. There is an application for an interpretation as to whether or not the existing sites are subject to the new zoning. And then it was amended to provide for this setback variance for 30 some lots. It is going to go forward, if the applicants making the application for the variance, if the variance is granted, the application for the interpretation will be held in advance pending a settlement with the Town or withdrawn without prejudice. So the only thing the Board is going to be hearing tonight is the application for the setback variance.

CHAIRMAN JANSEN: Please come up and identify yourself for the record.

MR. KLEISTER: My name is Chris Kleister, Attorney.

MR. SANDER: Michael Sandor, MJS Engineering.

MR. CLEARWATER: James Sandor, MJS Engineering.

MR. KLEISTER: (Sets up a survey showing current lots.) This application is being brought seeking a variance from the 100-foot setback requirement which is contained in section 164. The basis of this application details the areas that are highlighted, which are sites bordering the rear property line. And as the Board is aware, I think we informed the Board at the last meeting relative the interpretation that the applicant was seeking there was a developer's agreement reached with regards to the Town. One of the issues we anticipated arising was that these sites are in question along the rear property line. Mainly it was the applicant's position, both in the interpretation as well as our pending site plan, which is

pending before the Town, that the existing sites that were in existence predating zoning were those sites along the back property line. And that ultimately those were the sites that were depicted going back to the 1979-1980 map that the Town of Warwick approved. In part of our discussions with the Town of Warwick, we agreed that we would seek a variance to avoid any confusion relative to the fact whether those sites were the sites from the 1979 map or whether the Town believed they were new sites. So basically, this is a campground that has been in existence for well over 40 years, it began its operation before the zoning laws that are currently in place that regulate it. The area in question has been continuously operated like that for countless years. Most people talk about 1979/1980 as when the campground came into existence; it is not true. The campground came before the Town in 1979/1980 for certain improvements: roads, swimming pools and recreational activities that were approved by the Town of Warwick. Our request, which are the yellow sites in question, some or which go right up to the property line of the two adjoining parcels. One property owner, the Neiman property, which borders the largest amount of those lots, is rural area that is close to 50 acres of land consisting of trees. The applicant has gone through the questions which are raised. Can this be achieved in any other feasible method? Those sites are delineated maximizing the area of Black Bear campground, there are roads, pipes, sewer and conduit that access those sites. It is not so easy to pick up and relocate those sites. Next, is the variance substantial? From looking at the map, clearly some areas represent a substantial variance. Is there going to be an adverse effect on the physical or environmental conditions of the neighborhood? We have indicated "no". It is an entirely rural area that is not connected to any residential homes. Was it self-created? Our position is that we have been operating in that area at that proximity for over 40 years. We are willing to seek a variance to get this fully approved and into compliance.

ATTORNEY FINK:
talking about? 47 through 114?

What number lots are you

MR. MALOCSAY:
setback requirements on some of the lots. The count of 35 accurate. The lots are 58 or 59 but before that, its number 47 through 51 are also included, totaling the 35 they are requesting.

MR. CLEARWATER:
and 95 through 114.

47 through 51, 59 through 68

ATTORNEY FINK:
variance for 52 through 58.

So, you are not seeking a

MR. SANDER:

That is correct.

MR. KLEISTER:
to point out to the Board was that this campsite has existed well before any of the Zoning laws

and regulations came into effect. My client wants to clear up any issues now that regulate usage of this property.

ATTORNEY FINK: Has screening ever been discussed?

MR. KLEISTER: There has been some informal discussion about fencing. The applicant is more than willing to install fencing around the areas in dispute and to raise it to a height that would be acceptable to the Board in order to block any possible issues of vision.

CHAIRMAN JANSEN: It is a 4-foot fence now, right?

MR. KLEISTER: I believe so and the fence is on Black Bear property.

CHAIRMAN JANSEN: And beyond the fence, the property does drop and there is so much vegetation that additional screening will not have much effect.

ATTORNEY FINK: And you say these sites are from 1970?

MR. KLEISTER: Before that.

ATTORNEY FINK: And nothing is going to change with regards to the sites that you told us about?

MR. KLEISTER: Yes.

MR. MALOCSAY: In giving the variance, we are supposed to look at the different options: either to give no variance or the least possible. First, I don't understand why they need a variance as it appears to have been grandfathered.

MR. KLEISTER: The issue is that the applicant understands that a variance was required.

MR. MALOCSAY: But with our guidelines, I don't understand how we could do that if it something that doesn't need a variance.

MR. KLEISTER: At this point and time, there is now a consensus that a variance is not needed in that area.

CHAIRMAN JANSEN: Is that part of the negotiations with the Town?

MR. KLEISTER: Right, the applicant has agreed to submit to the requirement to get a variance on those sites.

MR. MALOCSAY: I am looking at it just the opposite. How we can give a variance if you do not need one.

ATTORNEY FINK: That would be our determination.

MR. MALOCSAY: That's mine right now and there are 4 other Board members.

ATTORNEY FINK: We have not heard from the Town on that issue. The only interpretation that is sought, is based upon the Building Inspector's interpretation that these sites were subject to the limited 120-day occupancy period. The Town has now opined upon whether or not the Town believes that these lots are legal non-conforming with regard to the setback. I believe it is the Town's position that they really don't know where these sites are.

MR. MALOCSAY: But can this be achieved in any other manner? Yes, it doesn't need a variance.

ATTORNEY FINK: You can't say that; it has not come before us.

MR. MALOCSAY: It doesn't need a variance because it is our opinion that it is grandfathered.

ATTORNEY FINK: I don't know how you can say that, we have not heard the Town's position as to whether or not it is grandfathered.

MR. MALOCSAY: My other question is there a possibility of purchasing property that would allow them the 100-foot setback. There is property there that would allow for the purchase of a 100-foot strip, if the owners were so inclined. Before we go any further, that has to be answered.

MR. KLEISTER: I can tell the Board that that relationship with any owners for the last 4 plus years is beyond hatred. We have received complaints of pollution of the properties and we had to get Orange County involved. They performed tests and there was no pollution. The Orange County tests were questioned as there is no trust or likeness between my applicant and the property owners. Therefore, there is no possibility of adjoining owners selling any property to my client.

CHAIRMAN JANSEN: This application is now open for Public Discussion.

MR. FURST: My name is John Furst and I am representing Mr. Neiman, a neighbor.

MR. MALOCSAY: We have to hold this over until next month because of the County response has not been received. To get this material at the meeting is submitting it at the last minute.

MR. FURST: I apologize but please take a look at it. As far as this being a pre-existing non-conforming use, this map represents previously approved campsites. But if you look at the 1980 approval, it shows the campsites were not along the property line. So yes, there were 74 sites approved but the location of those campsites is the issue. The campsites have essentially "migrated" closer and closer to my client's property line, illegally and without any approvals or variances from any Boards. We do not believe this is a pre-existing, legal, non-conforming use with respect to the location of the campsites. And yes, my client does have some vacant land but if you eliminate the setback, the 100-foot setback, then you limit his ability to develop that parcel. He then has to make up for that lack of a buffer and limit development on his property. If he wants to put single family homes on the adjoining parcel, nobody is going to want to abut their property to 35 campsites. The 1980 approval is not the first or only approval. There was an approval as far back as 1965. In that 1965 approval, there was a map that showed a 300-foot buffer where no activity could take place. This buffer has dwindled to 100 feet in 1980 with the regulations at that time, and now in 2016, we are looking at a 0-foot setback. This represents an issue of location of those sites.

ATTORNEY FINK: Is there any possibility of the applicant purchasing land so that the buffer can be 100 feet?

MR. FURST: This is the first we have heard about this and I would have to talk to my client. She will consider it.

ATTORNEY FINK: Is this land developable? Or is it wetlands?

MR. MALOCSAY:

It is buildable.

MR. FURST:

It is an investment property but the lack of a buffer with a commercial use property, would impact his ability to sell to one family dwelling use. Let me address the 5 questions: Is this an undesirable change in the neighborhood? Yes, because you have a commercial activity surrounded by residential uses. You have a pre-existing, long standing requirement in the Town from 1965 that required a 300-foot buffer to 1980 where they had an existing landscaping buffer on the site plan. They do not currently exist today because of unauthorized, illegal activities where they expanded this campground. Another alternative to purchasing more land is to use already the land they own. They have approximately 50 acres of unused land, where they could relocate the sites to the interior area of the campground. As far as a substantial variance, yes, they are requesting a 100% variance. And if you consider the original 300-foot buffer, it is a far greater variance. Will this have an environmental impact? Yes, with the buffer now at 0 feet, noise pollution is no longer insulated. Is this self-created? Yes, they have illegally expanded this campground. Not only have they added onto the 74 approved sites, they have moved them right onto the back property line. They are here because they have not complied with the law in the past; they are trying to legitimize and legalize prior illegal activities.

MS. BRAMICH:

each have water and septic lines to them?

These sites across the back

MR. KLEISTER:
electric.

Yes, cable, water, sewer and

MS. BRAMICH:

move them to the interior?

How much would it cost to

MR. KLEISTER:

We have not forecasted that cost. Right now the campground is in the middle of a million-dollar septic upgrade with the County of Orange. In 1979 and 80, when this applicant came before the Town of Warwick, that application had nothing to do with the sites. They came before the Board for roads, shuffleboards and a store. The approvals were granted for infrastructure improvements.

MS. BRAMICH:

All of the sites?

MR. KLEISTER:

74 of the sites.

ATTORNEY FINK:

are indicated on the 1980 map?

Are the trees still there that

MR. SANDER:
there. Have we checked every one? No.

Many of those trees are still

ATTORNEY FINK:
Is that on the 1980 map?

John, you mentioned 300 feet.

MR. FURST:
packet.

On the 1965? It is in my

MS. NAUGHTON:
and I represent MiraBella Farms. I also have a late submission. I ask the Board demand proof that this use has been there in these locations continuously since that time. I think that the applicant almost threatens that if this variance is not granted, then the developer's agreement is going to fall through with the Town and I don't want the Board to look at the application in that way. The Board should not look to reward the applicant because the infrastructure is already there. They still need a variance for the sites to remain and the 100foot variance. The applicant has sufficient acreage to relocate sites. It is not before the Board to determine if it monetarily feasible. There is no buffer between the camp sites and the neighboring property. The landscaping is not enough to block the view of the campers and their activities. There is pollution in the form of noise, smells and visuals. Granting this variance would impact these neighbors and their ability to enjoy their property. Clearly, this is self-created as they have not complied with the zoning code and this was pre-existing non-conforming. This is a 100% area variance and not a mere formality.

My name is Kelly Naughton

ATTORNEY FINK:
five criteria are part of the overall benefit to the applicant as opposed to being a detriment to the community. So the benefit to the applicant would certainly will include a monetary benefit.

Not to contradict you but the

MS. NAUGHTON:
they put in there?

A monetary benefit for things

ATTORNEY FINK:
detriment.

Yes, as opposed to the

MS. NAUGHTON:
according to the code, it would not be a detriment.

If they put it in there

ATTORNEY FINK:

No argument there.

MS. NAUGHTON:
favor of this application, we ask that something more than a fence. A fence does nothing to block the visual or noise pollution. We ask for additional landscaping.

Should the Board vote in

MR. KLEISTER: The applicant would like to point out now to the Board is to consider the present day situation of these sites. It is pure speculation to imagine what would happen tomorrow to the parcels that but up to the campsites. I took a deposition from the owner of the 50-acre property. He only walks the property 2 times a year and the home is a weekend home. He has never indicated that the campground interferes with the use of his property. As to the owner of the horse farm, when you walk out of the horse barn, you must look up to see the campsite property. It is impossible to see any campers. As far as the applicant and their campground, they do not impact these properties at all.

MS. KARLOWITZ: My name is Terry Karlowitz, owner of MiraBella Estates. I would like to address the visibility of this. I know from my property that when you look up, you can see those campers. They were not there when I purchased the property 14 years ago. We were told it was a seasonal campground. I am not against them being open more time. I have no problem with them being in business. But I do have a problem with them being within sight distance of my property. My customers come to me because of my rural property. I invite anyone to come to my property and look anytime.

MS. DENBECK: My name Louise Denbeck. I want to make a personal statement about this application. My family's, Neiman, property will be impacted by this variance. This is not an existing condition; it has embarked upon an expansion program in the past 10 to 15 years and allowed campers to park within the setback areas. They have relied on the 1980 approval that was for roads, pavilions not camp sites. They do have a plan that has not yet been implemented and in fact, the permits have expired. They have not implanted any septic improvements.

MR. SOUSSA: My name is Jason Soussa and I would like a clarification. What is the variance for?

ATTORNEY FINK: It is for the 35 lots on the backside.

MS. BALTES: My name is Linda Balttes. These are the 35 they are referring to?

MR. SHUBACK: Basically the yellow highlighted ones on the map.

MS. BALTES: And they say these sites have been there since 1970's? I moved to my property in 1974 and they were not there. They were campsites with extension cords. They were tent sites.

MR. KLEISTER:
they are today.

And they evolved into what

ATTORNEY FINK:

You raised an interesting point. Were there in fact tent sites where they now represent that there are sites that they want variances for?

She indicated that this is true.

MS. GODD:

My name is Terry Godd. Back in the mid '70's, I was still in high school. I had a friend who lived up there and their family lived in tents. It was a big meadow with tents.

ATTORNEY FINK:
tents were?

Can you tell us where those

She indicated the area highlighted with yellow.

MR. GIONINI:

I own the land behind the campsites. They put a septic tank 20 feet on my property. All of this did not exist in 1990. I am very upset about the septic tank on my property. I apologize for my outburst.

MS. NAUGHTON:

I would like a clarification from the people who saw tents. Were the tents 100 feet from the property line? They say they couldn't tell.

CHAIRMAN JANSEN:

The Public Hearing will stay open until the next meeting on the 4th Monday of next month. Can someone make a motion to adjourn the meeting?

MS. BRAMICH:

So moved.

MR. SHUBACK:

Seconded.

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

Area Variance Balancing Test

A. The variance will produce an undesirable change in the character of the neighborhood and a detriment to nearby properties:

The requested variance will change the nature of the neighborhood and be detrimental to neighboring properties because the application requests a setback of zero feet from the property line. There are no special circumstances that are attached to this property that do not apply to other properties in the same district, and there are no special circumstances that relate to this property that would make the granting of this area variance rational and unique, rather than arbitrary and capricious.

This variance would allow campsites to be developed – and the existing campsites to remain – up to the adjacent property lines with absolutely no buffer. There would be zero landscaping or other form of protection for the adjacent lots.

The Estate of Mira Bella was found by the Town to be a valuable piece of property – so much so that the Town purchased development rights (“PDR”) on this property. A PDR property is farm or agricultural land that a municipality has purchased the development rights for in order to protect the property from development. The granting of this variance would be a detriment to this property, as it would permit five campsites to encroach into the 100-foot setback along the shared property line. Furthermore, the request of the Applicant is not limited in any respect. As the site plan indicates, there is additional space along the property line that could be developed into more campsites.

It is respectfully requested that the Zoning Board of Appeals deny the requested variance. If the Board determine otherwise, it is respectfully requested that the variance be denied with respect to the boundary along the Estate of Mira Bella, which would impact only five campsites that could be relocated on the property.

B. The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance:

The Applicant has over fifty (50) acres of property, and can relocate the campsites that are located within the side yard setback area to other locations on the property. There is no reason why the applicant cannot build conforming campsites on this lot. The site plan provided with this application demonstrates that there are other feasible means for achieving the benefit sought by the Applicant.

C. The requested area variance is substantial:

The variance requested for the campground is substantial. The Applicant is requesting a 100% variance from the restrictions contained in the Town Code. The spirit of the Town Code

Black Bear Campground

Town of Warwick Zoning Board of Appeals

Submitted by: Kelly M. Naughton, on behalf of the Estate of Mira Bella, LLC

provision would not be observed due to the degree of the variance being requested – this variance request is extreme.

D. The proposed variance will have an adverse effect or impact on the physical and environmental conditions in the neighborhood or district:

The project will have physical and environmental impacts on the neighborhood. There will be absolutely no buffer between this property and the neighboring properties if this application is granted. Therefore, without this setback, the neighboring properties will experience higher levels of noise, from both people and vehicles, and there will be direct visual impacts from one property onto another.

The Estate of Mira Bella is a horse farm. There will be direct noise, visual, and other pollution impacts on the horses and the residents of the property. Furthermore, the granting of a 100% variance for structures and uses to be located in the side yard setback area is not in the public interest. The granting of such a variance would deprive neighboring property owners of substantial rights by interfering with the enjoyment of their property.

E. The hardship has been self-created:

This hardship has clearly been self-created, as the Applicant is requesting a variance from the existing Zoning Code.