TOWN OF WARWICK

ZONING BOARD OF APPEALS

NOVEMBER 26, 2012

Members Present:	Members Absent:
Mark Malocsay, Co-Chairman	Jan Jansen, Chairman
Attorney Robert Fink	Diane Bramich
Norman Paulsen	
Kevin Shuback	

CO-CHAIRMAN MALOCSAY: The first two applications are going to be held over to the next meeting. Please be informed that there are three of us on tonight's board but in order to get a vote to pass, you will need all three in favor. So if you would like to present and then wait until next meeting for us to vote, that is your choice. We can take a look and have feedback back and forth and we should have a good idea how the Board feels before a vote.

Is there a motion to have the minutes from the meeting of October 22, 2012 approved?

ATTORNEY FINK: There are a couple of changes I would like to make. Under the **Public Hearing of John Turney,** the first page of the minutes, second line says "I am a couple primary remarks". It should read "I have a couple primary remarks". And in the next line, it says "'89 variance"; it should say "'89 Code". And further down in same paragraph it says "which would have legal" should say "which would have been legal".

MR. SHUBACK: I make a motion to approve with corrections.

MR. PAULSEN: I second.

CO-CHAIRMAN MALOCSAY: Any further discussion; all in favor?

All in favor (Three Ayes), motion carried.

PUBLIC HEARING OF <u>KARA-MARIE REYES-RINALDI</u> - 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. **Continued to the December 17th ZBA Meeting.**

PUBLIC HEARING OF <u>JOHN D. TURNEY</u> - for property located at 13 Pumpkin Hill Road, Warwick NY and designated on the Town tax map as Section 44 Block 1 Lot 88 and located in an SL District for an interpretation whether keeping up to 100 pigeons in an enclosure not less than 50 feet from the property line constitutes a prior legal non-conforming use. **Continued to the December 17th Meeting.**

PUBLIC HEARING OF <u>JAMES PECORARO</u> - for property located at 55 Old Mt. Peter Road, Warwick, New York and designated on the Town tax map as Section 66 Block 1 Lot 35.1 and located in an MT District for a variance of Section 164.40N reducing 1 side setback from 44.3 (+/-) feet to 13.83 (+/-) feet where 75 feet are required and both side setbacks from 67.8 (+/-) feet to 37.33 (+/-) feet where 150 feet are required for a proposed 2 story addition to an existing single family dwelling.

CO-CHAIRMAN MALOCSAY: Briefly describe what it is you would like to do.

MR. PECORARO: Do you currently have the survey?

MR. SHUBACK: Yes, I have a copy of it.

CO-CHAIRMAN MALOCSAY: Please state your name for the record.

MR. PECORARO: My name is James Pecoraro. I would like to build a two car garage with storage space above. The house does not have a basement and I really need the storage space that would be provided and also a Rec room. The right side of the house is the only location feasible; there is even less space on the left side.

CO-CHAIRMAN MALOCSAY: I am familiar with the lot. That lot was not part of the sub-division off of Abbey Road; that was an existing lot before?

MR. PECORARO: Yes, it was.

CO-CHAIRMAN MALOCSAY: Before we open it up for discussion, does anyone have any questions? Is there anyone here from the public who would like to address this application?

MR. NALEZNY: My name is Allen Nalezny and I don't have a copy of the survey.

ATTORNEY FINK: Would you like to see the survey?

MR. NALEZNY: No, I am very familiar with it. It will be available for review, correct?

ATTORNEY FINK: What do you mean by review?

MR. NALEZNY: I mean, if I would like to review it, is it available or is this the only time I would be able to see it?

ATTORNEY FINK: It is not complicated and it would only take a moment to look at it.

MR. NALEZNY: The problem I have with it, in addition to it being very, very close to where my home is; is all the water run-off coming from the back mountain. It used to come down and be split around both sides of the home. Now the water is being backed up into the back yards and flowing both into the woods but mostly into my property. If this is going to be approved, I would like someone to look into placing a half-pipe of three feet or so in there for the water drainage off the mountain in times of flooding. This has been a problem. And he says he is going to use it for storage; is it for his own personal use? As he doesn't live there; he rents the property.

ATTORNEY FINK: Is the storage for you or for the tenant?

MR. PECORARO: As I said, it is also a recreation room.

MR. SHUBACK: Do you live there or do you rent it out?

MR. PECORARO: Currently it is rented out. The garage is a big safety concern. There are a lot of wild animals in the area and it is essential to have a point of entry into the house without having to worry about what is running around in the back yard. You can pull into the garage, close the door behind you and you know you are safe.

CO-CHAIRMAN MALOCSAY: Sir, did you want to say anything about the application?

MR. POTASH: My name is Bruce Potash and I have a question. I live on the other side of the road. What I am reading here is that the required set-backs have already been abbreviated. It says here there is a 75 foot setback required but it is only 45 feet now and now it is going to go down to 13 feet?

CO-CHAIRMAN MALOCSAY: When the house was built, it met up with the zoning requirements, since then, they have been changed. And they are a lot more strict.

MR. SHUBACK: If someone was building starting from scratch, that is where the setback would have to fall.

MR. POTASH: So what are the setbacks that required now, that it is a grandfathered property?

CO-CHAIRMAN MALOCSAY: Yes, except that he is building or making an addition onto that now so he has to meet up with the new setbacks. For example, the first one would be impossible to meet up with because the house itself sits closer. But the side yard setback is a new setback requirement. Now if the applicant wanted to put up a garage that wasn't attached to the house, the garage only has to be five feet from the property line. But since he is attaching it to the house, then it has to meet up with that setback requirement.

MR. POTASH: Also, the other question I have is, a drainage issue in the area. During Irene, the street flooded. There has been a lot of water in the area and the stream runs in front of the house and in the back. The same with my house.

MR. SHUBACK: Does the water run into the street behind it?

MR. POTASH: It is coming down from the mountain, so its coming down from the ski center area down behind my house and then there is another stream from, I think, 17A going along the back of the two properties. And then it continues to run down Old Mt. Peter Road.

MR. PECORARO: It is basically like a loop.

MR. PAULSEN: So you are saying this garage is going to divert the water?

MR. POTASH: I don't know that, I just want to make everyone aware that there are active streams in the area. I don't know what this would cause.

MR. PAULSEN: Where do you live?

MR. POTASH: I live on 12 Abbey Road.

MR. PAULSEN: In respect to the lot?

MR. POTASH: It sits on the corner where my property is.

MR. PAULSEN: He is your neighbor?

MR. POTASH: Yes, he is my neighbor.

MR. PAULSEN: Is there anything you can do when you build the garage to ensure that the excess water does not run onto your neighbor's property?

MR. PECORARO: Absolutely, I have no problem installing French drains around the garage and in addition, I would be more than happy to install French drains in my back yard and have it divert the water as much as possible around the houses.

CO-CHAIRMAN MALOCSAY: What are the dimensions of the addition itself?

MR. PECORARO: It would be 26 feet wide by 32 feet long.

MR. SHUBACK: So it is a two car garage.

MR. PECORARO: The reason why it has to be is because I have a mud room already existing on the side of the house that is bumped out 8 feet so that is why it seems a little large.

ATTORNEY FINK: This looks to be an existing small lot; that being the case, the side yard requirements would be 20 for one side and 50 for both. So the degree of the variance is somewhat less than advertised.

CO-CHAIRMAN MALOCSAY: Because of a pre-existing small lot; I didn't realize that until I looked at the size, it is only ½ acre.

MR. PAULSEN: What is the total set-back?

ATTORNEY FINK: The total would be 37.

MR. PAULSEN: No, you said both sides.

ATTORNEY FINK: Both sides, the total would be 37 and it should be 50 and one side should be 20. We do have an environmental issue here; if the Board is inclined to grant it there should be some plans submitted, for the drainage, to the Building Department or Town Engineer, for them to look at to see if they are adequate.

MR. PECORARO: Currently, it is not a flood plain; it's not designated as a flood plain. So I didn't think there was any kind of environmental impact. It

is basically when there is a tremendous amount of overflow of rain. Then it is not just my house; everyone has a problem. The ground water does not dissipate fast enough.

ATTORNEY FINK: It would appear that this addition would exacerbate the problem. We have to look at the environmental impact.

MR. PECORARO: Partially, where the addition is going is a paved driveway already. And it would only be an additional 10 or so feet to the right of that driveway. I can't see where this would impact it any worse; and I have no problem doing the French drains anywhere necessary, around the property and garage.

MR. SHUBACK: I don't know if the neighbors would be happy with the French drains.

CO-CHAIRMAN MALOCSAY: They both brought up the issue with the water and I am familiar with the area but not enough to say that the garage is going to have any impact on the water coming down that way. I don't remember the grade over there but since it was brought up, I would feel a lot more comfortable sending the Engineer over with the plans just to say yes or no there would be an impact or there would not be an impact. And then we would probably ask you to come up with a set of plans that would satisfy the Engineer. My thinking is that the Engineer is going to go there and say there isn't going to be any impact; but I would rather hear from him because we did hear the concerns from the neighbors.

MR. PECORARO: So basically, if he says there isn't a problem, I can leave it as it is.

CO-CHAIRMAN MALOCSAY: Yes.

MR. PECORARO: That seems fair.

CO-CHAIRMAN MALOCSAY: As far as our meeting next month, we don't know the date yet.

ATTORNEY FINK: The problem, as told to me by Connie Sardo, is if you move the date forward, there won't be enough time to advertise it.

CO-CHAIRMAN MALOCSAY: Right.

ATTORNEY FINK: Is this something you intended to begin construction on?

MR. PECORARO: Absolutely, I was planning on doing it before the end of the year. Seeing as how it is not in a designated flood plain, I can't see how the Engineer is going to make any recommendations that aren't already in the Town's records.

CO-CHAIRMAN MALOCSAY: Not that as much as the issue of if there is going to be any diversion by the garage of any water flow. I don't think there is but I don't want to say for sure; I would rather the Engineer look at it and say there wouldn't be. For the width of your property, it would be a substantial blockage for anything flowing down. I don't believe the water flows that way, I believe the water flows more to the left of the house.

MR. PECORARO: Absolutely it does. Also one other thing I would like to bring to the attention; that if I did detached, it would actually be closer to the property line then it is already and we wouldn't be having this issue.

CO-CHAIRMAN MALOCSAY: Then there would be a breakage of at least 10 feet between the two buildings.

MR. PECORARO: There is.

CO-CHAIRMAN MALOCSAY: And then with that 10 feet could be the answer as far as the water flow between those two. How does the rest of the Board feel?

MR. SHUBACK: Have the Engineer look at it and try to figure out a solution so that the neighbors are happy.

ATTORNEY FINK: It's not so much the neighbors.

MR. SHUBACK: I know, to make sure everyone is happy.

ATTORNEY FINK: He is entitled to put up the garage; he could put it up. And if it altered the flow of water, so be it. As long as you don't channel water onto other properties, you are permitted to do that. But he wants a variance and as part of the variance, we have to look into the environmental impact.

MR. SHUBACK: I think we should see what the Engineer says first.

CO-CHAIRMAN MALOCSAY: I think we are going to have the next meeting a week earlier. We have two other continued applications that may be ready by then.

MR. PAULSEN: I thought there wouldn't be time to advertise the applications.

ATTORNEY FINK: That is only for new ones.

MR. PAULSEN: So we would have new ones in January.

ATTORNEY FINK: We have two pending and this would be the third.

MR. SHUBACK: So let's call the Engineer and have him take a look at the property.

CO-CHAIRMAN MALOCSAY: So the date of the next meeting would December 17th. So who would get in contact with the Engineer?

ATTORNEY FINK: I will get a fax off tomorrow.

CO-CHAIRMAN MALOCSAY: This application is still held open until we get the information from the Engineer.

PUBLIC HEARING OF <u>BETSY MITCHELL AS TRUSTEE OF THE LOIS R. VAN TUYL FAMILY TRUST</u> - for property located at 7 Cascade Lake Road, Warwick, New York and designated on the Town tax map as Section 64 Block 3 Lot 29.1 and located in an MT District for a variance of Section 164.40N for a proposed 2 lot subdivision with the required / provided Bulk Area Requirements: proposed Lot 1 -5.0 acres / 2.96 acres, lot width 300 feet / 281 feet, 1 side setback 75 feet / 68.3 feet, and for proposed Lot 2 - 5 acres / 2.0 acres, lot width 300 feet / 139 feet, 1 side setback 75 feet / 45.6 feet and both side setbacks 150 feet / 96.6 feet.

CO-CHAIRMAN MALOCSAY: Please state your name for the record.

MS. EMMRICH: Karen Emmrich from Lehman and Getz Engineering.

MS. MITCHELL: Betsy Mitchell.

CO-CHAIRMAN MALOCSAY: Please tell us about this.

MS. EMMRICH: It sounds like a lot however it is not any different; we are not changing a thing on this property. For estate purposes, Betsy is the Trustee of her mother's estate. Her mother lives in the house on Lot 1. Betsy lives in the house on Lot 2. Betsy's house was constructed in 1940 and her mother's house in 1969. Now it makes sense to break them into separate lots. There are approximately 9 lots in the vicinity of their property that are under the required 5 acre limit and most of them are around 2 and ½ acres; some are a little larger and some even smaller. So I think as far as character of the neighborhood, it is not going to have any impact at all because there is nothing else being constructed on the property. It is strictly separating the two lots; they will continue to share a driveway and the intent is to keep it in the family. Just separated for estate purposes.

ATTORNEY FINK: I don't see anything from the Planning Board. Have you been before them?

MS. MITCHELL: Yes, they were supposed to send you a letter.

CO-CHAIRMAN MALOCSAY: I got an email and read it with the positive subdivision.

MS. EMMRICH: Yes, I don't know if I have a copy of that. We were at the meeting just last week for the setting of a public hearing because we had met the other conditions they asked us to do as part of the sub-division. They did send a letter but you might be right, it might be an email.

CO-CHAIRMAN MALOCSAY: I saw it and I know it does exist.

ATTORNEY FINK: Did they give a recommendation? Normally they say they don't give a recommendation.

CO-CHAIRMAN MALOCSAY: It was basically a positive recommendation.

MS. EMMRICH: Yes, our water testing and dye test; they wanted us to test the water and the wells and the septic. We met those requirements and everything came out fine. That is where we stand.

CO-CHAIRMAN MALOCSAY: Before we open up to the Public, which I don't think will be an issue; the questions we commonly ask you, you have handled well with. In that area, yes, there are lots that are 1 and 2 acres throughout the road. And the same thing with the set-backs, it is nothing that is that uncommon. You would assume that this is 2 lots now.

MS. EMMRICH: That's right.

CO-CHAIRMAN MALOCSAY: With that, we will open this up to the Public. Public hearing is closed. Any questions?

MR. SHUBACK: The septics are on each one's property? They are awful close.

MS. EMMRICH: Yes.

ATTORNEY FINK: That is not before us; that is a Planning Board issue and they would not have allowed it if it did not test out. Will it create an undesirable change in the character of the neighborhood or be a detriment to the nearby properties?

MR. SHUBACK: No, it already exists, right?

CO-CHAIRMAN MALOCSAY: Yes.

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

CO-CHAIRMAN MALOCSAY: No.

ATTORNEY FINK: Is it a numerically substantial variance?

MR. MALOCSAY: Yes.

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

MR. SHUBACK: No.

ATTORNEY FINK: Is this a self-created difficulty?

CO-CHAIRMAN MALOCSAY: Yes.

MR. SHUBACK: Yes. I motion this is an Unlisted Action with no environmental impact.

MR. PAULSEN: I second it.

MR. SHUBACK: I make a motion to grant this variance as advertised.

MR. PAULSEN: I second it.

CO-CHAIRMAN MALOCSAY: Any discussion; all in favor?

All in favor (Three Ayes) Motion carried.

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