

**TOWN OF WARWICK  
ZONING BOARD OF APPEALS  
JANUARY 25, 2010**

**Members Present:**

**Mr. Jan Jansen, Chairman**  
**Mr. Mark Malocsay, Co-Chairman**  
**Mr. Norman Paulsen**  
**Mrs. Diane Bramich**  
**Attorney Robert Fink**

**Absent:**

**Charles Todd**

**Chairman Jansen called the meeting to order at 7:30 P.M.**

**CHAIRMAN JANSEN:**  
**the minutes of the November 23, 2009 meeting?**

**Can we have a motion to approve**

**MR. MALOCSAY:**  
**minutes of the November 23, 2009 meeting.**

**I make a motion to approve the**

**MR. PAULSEN:**

**I second it.**

**CHAIRMAN JANSEN:**

**All in favor?**

**MR. PAULSEN:**

**Aye.**

**MR. MALOCSAY:**

**Aye.**

**CHAIRMAN JANSEN:**

**Aye.**

**MRS. BRAMICH:**

**Abstain.**

**All in favor (Three Ayes), motion carried.**

Public Hearing of JOHN AND ALLISON STANGEBY – for property located at 214 Little York Avenue, Warwick, New York and designated on the Town tax map as Section 16 Block 1 Lot 47.21 and located in a CO District for a variance of Section 164.41C. (4)(f) permitting installation of an 8 foot fence in the front yard setback where no more than 4 feet are permitted and in the side yard setback where no more than 6 feet are permitted.

**CHAIRMAN JANSEN:** Please state your name and explain what it is you'd like to do.

**ALLISON STANGEBY:** My name is Allison Stangeby and I would like to install an 8 foot privacy fence. I don't know if you've all seen the pictures but deer come right across our front yard; it was a downgrade and they've (the neighbors) built it up to be an upgrade. It's about 5.5, maybe 5.7 feet high. If we utilize a 6 ft fence, we're concerned that the deer are going to drop on our front property.

**MR. PAULSEN:** How far from the property line are you going to start the fence?

**MRS. STANGEBY:** Approximately 35 – 40 feet. It wouldn't be visible from the road. I do have pictures.

**CHAIRMAN JANSEN:** The fence would be how far away from that raised area?

**MRS. STANGEBY:** It would be right on our property line.

**ATTORNEY FINK:** How far from the iron rod would you want to begin the fence?

**MRS. STANGEBY:** About 35 – 40 feet.

**CHAIRMAN JANSEN:** What kind of fence are you planning?

**MRS. STANGEBY:** Decorative wood fence. My neighbor has no objection.

**CHAIRMAN JANSEN:** Is there anyone here from the public to address this application?

**MR. MALOCSAY:** So there's two parts here; one, why can't it be a 6 ft fence and two, the type of fence.

**CHAIRMAN JANSEN:** Will it be visible from the road?

**MRS. STANGEBY:** Well, yes, but barely.

**MR. MALOCSAY:** Okay, why does it have to be 8 feet?

**MRS. STANGEBY:** Because it was so built up. When the deer jump it, they won't realize it's such a drop on the other side. They could be injured.

**MR. MALOCSAY:** How far is the fence from the front yard?

**ATTORNEY FINK:** 35 – 40 feet.

**CHAIRMAN JANSEN:** Any other questions? The public hearing is now closed.

**ATTORNEY FINK:** Is this going to create an undesirable change in the character of the neighborhood or be a detriment to nearby properties?

**MRS. BRAMICH:** No.

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

**MR. PAULSEN:** No.

**MRS. BRAMICH:** No, 6 feet won't be enough because it's built up on the other side.

**ATTORNEY FINK:** Is this a 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. MALOCSAY:** No. I make a motion that this is an Unlisted Action with no environmental impact.

**MRS. BRAMICH:** I second it.

**CHAIRMAN JANSEN:** Any discussion; all in favor?

**All in favor (Four Ayes), motion carried.**

**MR. MALOCSAY:** I make a motion to grant this variance as advertised provided that it is not a solid fence; it must have some lattice work or decoration on the top.

**MRS. BRAMICH:** I second it.

**CHAIRMAN JANSEN:** Any discussion; all in favor?

All in favor (Four Ayes), motion carried.

Public Hearing of WILLIAM LYNCH for property located at 368 Mount Eve Road, Goshen, New York and designated on the Town tax map as Section 6 Block 4 Lot 26.2 and located in an MT District for a variance of Section 164-40M permitting an apartment above a garage.

**CHAIRMAN JANSEN:** Please state your name and describe what it is you want to do.

**WILLIAM LYNCH:** My name is William Lynch. Recently my circumstances have changed. For additional income I've rented out my home. I would like to have the apartment approved so that I can use it as my residence. Currently I'm living with a friend.

**ATTORNEY FINK:** Just so that you understand, we can hear this tonight but we can't vote on it because it has been less than 30 days since it was sent to the County. We can't vote unless we've either heard back from them or 30 days have passed with no response.

**CHAIRMAN JANSEN:** There were a couple of letters that were written and sent in. Do you want to read them into the record?

**ATTORNEY FINK:** Yes, I have them. I can paraphrase them. There's a letter from Jim Delaune, the Director of the Orange County Land Trust. The Orange County Land Trust holds a conservation easement on the property owned by Frederick and Jill Buell which Lynch currently accesses the garage over a Right of Way granted by Buell in 1999. It is imperative that the property boundary be maintained in order for the terms of the conservation easement to be properly observed. He wants any variance that may be granted to expire once Mr. Lynch ceases to own the property. He wants an iron pipe to be installed to reflect the property line. In the letter from Buell, he requests that the approval process involve making two things clear. First, they want the boundary line to be clearly demarcated so any future tenant knows what land is his/hers to use and what is not. Second, they are willing to extend the Right of Way to tenants as long as Mr. Lynch is the property owner; they are not willing to continue the arrangement if he should sell or transmit it to someone else.

**CHAIRMAN JANSEN:** Okay, what about the status of the apartment above the garage in that District?

**ATTORNEY FINK:** That's a Use variance as far as I'm concerned. Regardless of the District, it's not allowed.

**CHAIRMAN JANSEN:** This is an existing apartment?

**MR. LYNCH:** I put it in when I built it in 1986. I originally put it there to live in while I renovated the house.

**CHAIRMAN JANSEN:** What does he have to show for a Use variance?

**ATTORNEY FINK:** He has to show that he can't realize a reasonable return on the property, it has to be substantial, demonstrated by competent evidence, he has to show hardship related to the property in question is unique not applicable to district or neighborhood . He has to show that the variance that granted won't alter the essential character of the neighborhood and the killer is, that he has to show that the hardship isn't self created.

**CHAIRMAN JANSEN:** Are you prepared to do that?

**MR. LYNCH:** I'm not sure I understand.

**ATTORNEY FINK:** Well, it's all stated in your application, with the exception of the word "killer". It's almost impossible to get a Use variance. It doesn't appear that from what's in the file and what you've said, that you can.

**MR. LYNCH:** Did I mention that I'm disabled?  
Would that matter?

**ATTORNEY FINK:** Unfortunately, no.

**CHAIRMAN JANSEN:** If you need to seek Counsel, the Board will keep it open.

**ATTORNEY FINK:** The Board can't vote tonight anyway because we haven't heard from the County.

**MR. LYNCH:** What would you suggest I do next?

**ATTORNEY FINK:** You should probably talk to an Attorney. But I have to tell you, obtaining a Use variance is difficult at best. The Statute is written to make it nearly impossible; as opposed to an Area variance which is written to make it, not a sure thing, but considerably easier. We can continue this to the next meeting or you can withdraw your application, which you can then pursue at another time.

**CHAIRMAN JANSEN:** Just be in touch with Connie, the Planning Board secretary, and she'll let you know when the next meeting is. *Continued to the February meeting*

**Public Hearing of ROBERT M. ROSSMAN – for property located at 15 Indian Trail N., Greenwood Lake, New York and designated on the Town tax map as Section 72 Block 2 Lot 60.2 and located in a SM District for a variance of Section 164.41 A (1) permitting construction of a 22 foot X 34 foot detached garage 15 feet from the front line where 30 feet are required.**

**CHAIRMAN JANSEN:** Please identify yourself and briefly explain to the Board what you're trying to accomplish.

**ROBERT ROSSMAN:** My name is Robert Rossman and I want to put up a garage at my house. The problem is I need a variance for the setback.

**ATTORNEY FINK:** Is there anything in the file from the County?

**CHAIRMAN JANSEN:** No. Please explain the the Board why it has to be there, in that particular spot.

**MR. ROSSMAN:** I have a couple of cars that I'm keeping in other peoples garages for years and I'd like to have them at my house.

**CHAIRMAN JANSEN:** And the setback couldn't be more than the 15 feet?

**MR. ROSSMAN:** I live on a hill. Do you have the pictures there?

**CHAIRMAN JANSEN:** Yes.

**MR. ROSSMAN:** Right in the back of the garage the grade just goes up approximately 20 feet, levels off, but goes up again another 20 feet. From the top of my property line, you're looking at between 40 – 50 feet. There really isn't anywhere else to put it. I talked to all my neighbors; they're all completely happy with it.

**ATTORNEY FINK:** Did you see the copy of the letter from the Greenwood Lake Commission?

**MR. ROSSMAN:** No I did not.

**ATTORNEY FINK:** The closing paragraph reads “In order to ensure that the proposed new construction does not disrupt or disturb the existing system, prior to taking action on this application, we request that the ZBA require the applicant to indicate on the map the current location, type and condition of the existing septic system including the tank and drainage field. A dye test witnessed by the Town Engineer should be performed on the existing system.”

**MR. ROSSMAN:** Where I’m proposing to put the garage, if you’re looking northwest at the house, over to the right, the septic system and everything that has to do with that is to the left side of the property. I believe there’s 100 plus feet there. I’m going all the way to the right side, completely on the other side of the leech fields and septic system. It’s been cleaned out; I have receipts, at the beginning of last year.

**ATTORNEY FINK:** Is the location of the system on record with the Town?

**CHAIRMAN JANSEN:** Is there a map that shows the location of the system?

**MR. ROSSMAN:** No, but I can draw it if you like.

**ATTORNEY FINK:** We need some verification.

**MR. MALOCSAY:** We don’t have anything showing where the fields are. We need a map of some kind, stamped by a surveyor showing where the fields are. However, as long as he can locate where the fields are and prove the garage won’t affect them, then I’m content with that.

**ATTORNEY FINK:** We really need to have someone look at this.

**MRS. BRAMICH:** Can’t we have the Building Inspector go out and look at it?

**CHAIRMAN JANSEN:** Alright, we will have Mr. John Batz go out and locate the septic and if that works out, and it (the garage) won’t affect anything, and then we’ll be able to come to a decision. Is there anyone here from the public to address this application? No? We’ll leave it open until the next meeting. *Continued to the February meeting.*

Public Hearing of JOHN & VALERIE FASULO – for property located at the corner of Sanfordville Road and Morning Glory Lane, Warwick, New York and designated on the Town tax map as Section 42 Block 2 Lot 25 and located in an RU District for a variance of Section 164-41 A (1) permitting construction of a 40 foot X 26 foot detached garage within the front yard setback (50 feet where 75 feet are required).

**CHAIRMAN JANSEN:** Please identify yourself and explain what you're planning to do.

**JOHN FASULO:** My name is John Fasulo and this is my wife Valerie. The reason we're constructing a detached garage is to provide a residence for my Mother in Law. We want to convert our present garage, which is a two car garage into an apartment for her.

**CHAIRMAN JANSEN:** Where is your septic located.

**VALERIE FASULO:** On the other side of the house.

**ATTORNEY FINK:** Technically, you have two front yard requirements.

**CHAIRMAN JANSEN:** Is there anyone here from the public to address this application? No?

**ATTORNEY FINK:** How did you determine that this will be 50 feet from your property line?

**CHAIRMAN JANSEN:** Are there stakes that you can relate to, regarding your setbacks?

**MR. FASULO:** Yes.

**CHAIRMAN JANSEN:** Any questions?

**ATTORNEY FINK:** I see where the well is, but he can't go another 25 feet back?

**MR. FASULO:** Then it will be too close to the house.

**ATTORNEY FINK:** You're proposing a 40 foot X 26 foot garage, is it my imagination, or is that kind of big?

**MR. MALOCSAY:** It will be a 3 car garage. If you look at the character of the neighborhood, for example on Pine Island Turnpike, a much older development, those houses are usually within 50 feet of the road, so if you're looking at this garage as you're coming down the road, it does not look out of place at all because the other homes are so much closer to the road itself. Like you said, the 50 foot set back requirement was what it was, but then it was changed to 75 feet. So again, this garage will not look out of place as you're going down the road.

**CHAIRMAN JANSEN:** Anyone else? The public hearing is now 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. MALOCSAY:** No.

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

**MRS. BRAMICH:** Yes, but it wouldn't be as aesthetically pleasing.

**ATTORNEY FINK:** Is this a substantial variance?

**MR. PAULSEN:** Yes.

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

**MR. MALOCSAY:** No.

**ATTORNEY FINK:** Is this self created?

**MRS. BRAMICH:** Yes. I make a motion that this is an Unlisted Action with no environmental impact.

**MR. MALOCSAY:** I second it.

**CHAIRMAN JANSEN:** Any discussion; all in favor?

All in favor (Four Ayes), motion carried.

**MRS. BRAMICH:** I make a motion to grant this variance as advertised and substantially shown on drawing prepared by architect Kamrowski # 09123G.

**MR. MALOCSAY:**

**I second it.**

**CHAIRMAN JANSEN:**

**Any discussion; all in favor?**

**All in favor (Four Ayes), motion carried.**

Public Hearing of JOHN JORDAN & CASSIE LEWIS – for property located at 101 Iron Mountain, Warwick, New York and designated on the Town tax map as Section 63 Block 1 Lot 13.11 and located in an MT District for a variance of Section 164-40N permitting a 14 foot 8 inch X 15 foot addition to an existing single family dwelling resulting in a 61 (+/-) foot side setback where 75 feet are required.

**CHAIRMAN JANSEN:** Please state your name and explain what you're trying to do.

**JOHN JORDAN:** My name is John Jordan and I want to put a sun room on the south side of my house. Once we put that essentially 15 foot by 15 foot room on, that 75 foot required setback, would be reduced to about 61 feet. I understand that I will need a variance for this.

**CHAIRMAN JANSEN:** Does anyone have any questions?

**MR. MALOCSAY:** I don't have a question, just a comment. Iron Mountain Road has a lot of homes on it that are closer than this would be with the addition and it would not be out of character for the neighborhood.

**CHAIRMAN JANSEN:** Is there anyone here from the public to address this application? No? Well, we can't vote on this tonight because it we haven't heard back from the County yet. This will have to be carried over to the meeting next month. *Continued to the February ZBA meeting.*

Public Hearing of GARY MORGIEWICZ –for property located at 216 Pine Island Turnpike, Warwick, New York and designated on the Town tax map as Section 29 Block 1 Lot 49.2 and located in an RU District for a variance of Section 164-41.C (4) (f) permitting an existing 6 foot fence in the front yard setback where only 4 feet are permitted.

**CHAIRMAN JANSEN:** Please identify yourself and explain why you need a 6 foot fence.

**GARY MORGIEWICZ:** My name is Gary Morgiewicz. I need a 6 foot fence to block the car headlights from shining into our bedrooms. Also to restore our privacy. Since we moved into our house, the traffic has increased and the school bus picks up or drops off children twice a day right in front of our house. So we just have a lot of lights shining into our house and it can only be blocked out by a fence that's 6 feet tall.

**CHAIRMAN JANSEN:** We haven't heard back from the County on this yet, have we?

**ATTORNEY FINK:** No. This fence is going to be between your driveway and your property line?

**MR. MORGIEWICZ:** That's correct.

**ATTORNEY FINK:** From the road, looking at it, it's running down your driveway on the left?

**MR. MORGIEWICZ:** Yes.

**ATTORNEY FINK:** That 25 feet, is that from the highway?

**MR. MORGIEWICZ:** Yes.

**CHAIRMAN JANSEN:** Is there anyone here from the public to address this application? No? Does anyone on the Board have any questions?

**MR. MALOCSAY:** No, but we might require some screening.

**CHAIRMAN JANSEN:** Is there some shrubs there now?

**MR. MORGIEWICZ:**  
much luck getting anything to grow well there.

There's some, but I haven't had

**CHAIRMAN JANSEN:**  
to grow there even though it's shady. I don't think anyone on the Board has any objections other than more plantings to help it to not stand out so much. We have to continue this at the next meeting because of the County. *Continued to the February ZBA meeting.*

**Public Hearing of KEVIN & SUSAN WALTER – for property located t 206 Old Dutch Hollow Road, Monroe, New York and designated on the Town tax map as Section 58 Block 1 Lot 80.31 and located in an SL District for a variance of Section 164.40N allowing construction of a 20 foot X 24 foot detached garage 20 feet from the front line where 50 feet are required.**

**CHAIRMAN JANSEN:** Please identify yourself and explain why you need a variance.

**KEVIN WALTER:** My name is Kevin Walter and I'm here to obtain a variance for a garage. I need a setback variance for 20 feet because 50 feet are required.

**MRS. BRAMICH:** Why do you have to put it there?

**MR. WALTER:** If we move it back to the actual 50 foot setback then it would encroach on our septic. The back yard is out of the question because if you look at the survey we have an existing well; additionally there is a house behind us and they ran the two driveways side by side and ran all the utilities, gas and electric, telephone, everything underneath the driveways. On the east side of our property, obviously we don't want it there because we'd have to drive across our front yard to get to it. On the west side is where our existing garage is.

**CHAIRMAN JANSEN:** Diane, how is that with the character of the neighborhood?

**MR. WALTER:** If I could say something about that? There are three houses right down the road that have garages closer to the property line than ours would be.

**CHAIRMAN JANSEN:** Any questions from the Board? No? Is there anyone here from the public to address this application? No? Does the Board have any concerns about what it's going to look like?

**MRS. BRAMICH:** Do you have any drawings?

**MR. WALTER:** No, but we're basically going to match it to the house. Vinyl sided, beige with blue shutters; single story.

**CHAIRMAN JANSEN:** The public hearing is now closed.

**ATTORNEY FINK:** Is this going to create an undesirable change in the character of the neighborhood or be a detriment to nearby properties?

**MRS. BRAMICH:** No.

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

**CHAIRMAN JANSEN:** Yes, but with great difficulty and expense.

**ATTORNEY FINK:** Is this a substantial variance?

**MRS. BRAMICH:** Yes, but it's in character with the neighborhood.

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

**MR. MALOCSAY:** No.

**ATTORNEY FINK:** Is it self created?

**MR. MALOCSAY:** Yes; I make a motion that this is an Unlisted Action with no environmental impact.

**MRS. BRAMICH:** I second it.

**CHAIRMAN JANSEN:** Any discussion; all in favor?

All in favor (Four Ayes), motion carried.

**MRS. BRAMICH:** I make a motion to grant this variance as advertised with the condition that it be a single story garage that matches the appearance of the house.

**MR. MALOCSAY:** I second it.

**CHAIRMAN JANSEN:** Any discussion; all in favor?

All in favor (Four Ayes), motion carried.

Public Hearing of BRUCE HARDY – for property located at 169 Jersey Avenue, Warwick, New York and designated on the Town tax map as Section 74 Block 9 Lot 41 and located in an SM District for an interpretation that an existing 7<sup>th</sup> apartment constitutes a legal pre-existing non-conforming use or, in the alternative, a variance of Section 164.40M, and Section 164.40N for a use variance permitting an existing 7<sup>th</sup> apartment on a lot with an area of 36,000 (+/-) square feet where 152,460 square feet would be required for 7 apartments, and a variance of Special Condition #112 allowing the apartments to be serviced by septic and well where provision for community sewer and water is required. *Continued from the 11/23/2009 ZBA meeting.*

**CHAIRMAN JANSEN:**  
your tenant.

Mr. Hardy, I see you've brought

**MR. HARDY:**  
and she's been in the apartments for almost 40 years. She agreed to come along and answer your questions.

Yes I have. This is Ms. Anita Arietta

**MS. ARIETTA:**  
listening device.

I'm hard of hearing. I will get my

**CHAIRMAN JANSEN:**  
issue in question is the number of apartments prior to the zoning 35 years ago. In other words, were there 7 apartments before 1975?

Can you hear me now? I guess the

**MS. ARIETTA:**  
moved to these apartments in the late 60's early 70's, there were only 5 apartments and the owner owned upstairs. There were 6 rooms and he lived with his mother. Not too long after that she passed away. He decided then he was making a 6<sup>th</sup> apartment. I warned him that he needed approval and he said he did it. So he made a 6<sup>th</sup> apartment. Then he decided to retire and move to the state of Florida and he sold it. His place became 7 and that's where it stands today.

Well, I can tell you that when I

**CHAIRMAN JANSEN:**

He sold it when?

**MS. ARIETTA:**  
been 4 other owners before Bruce.

I don't remember when; there have

**ATTORNEY FINK:**  
person he sold to?

Do you know the name of the

**MR. HARDY:**

His name was Frank Mariano.

**MS. ARIETTA:** Frank Mariano was the name of the owner when I came there.

**ATTORNEY FINK:** I can check that easily enough. You say a 6<sup>th</sup> apartment was made; do you know approximately when it was made?

**MS. ARIETTA:** No I don't remember.

**ATTORNEY FINK:** You said you lived there in the late 60's early 70's and there were 5 plus the owners. Do you remember how long you'd been there until the 6<sup>th</sup> apartment was made?

**MS. ARIETTA:** Over 35 years.

**ATTORNEY FINK:** No, you moved there and sometime after that he made the 6<sup>th</sup> apartment.

**MS. ARIETTA:** After his mother died.

**ATTORNEY FINK:** How long had you been there when his mother died?

**MS. ARIETTA:** All that time up to now.

**ATTORNEY FINK:** No. You moved in the late 1960's or early 1970's. You were living there; at some point he made the 6th apartment. About how long had you been there from the time you got there, to the time he made the 6<sup>th</sup> apartment? Was it 1 year, 5 years or 10 years?

**MS. ARIETTA:** It happened in the summer of the mid-seventies. I just can't pinpoint it because I just don't remember.

**CHAIRMAN JANSEN:** Thank you.

**ATTORNEY FINK:** It would be interesting to see if there's something in the Assessors records; there might be something in the Building records. I don't know.

**CHAIRMAN JANSEN:** Was that when Poloniak was here?

**ATTORNEY FINK:** 1966 through 1973.

**MR. MALOCSAY:** Yes.

**CHAIRMAN JANSEN:** It's been there more than 30 years. What at this time would be accomplished by discontinuing it? At this point I don't know what the difference is.

**MR. PAULSEN:** If it hasn't bothered anybody in the last 35 years, it won't bother anybody for the next 35.

**ATTORNEY FINK:** It's existing. So is this Board going to make a determination based upon the testimony, you find that it was legal when...

**CHAIRMAN JANSEN:** We believe, to the best of our ability, that it was legal at that time.

**MR. MALOCSAY:** I would still like to see what Bob comes up with.

**CHAIRMAN JANSEN:** Okay, that's fine.

**ATTORNEY FINK:** It really doesn't matter; it's existing.

**CHAIRMAN JANSEN:** You're not looking to sell this month, are you?

**MR. HARDY:** No, just to clear up a violation.

**CHAIRMAN JANSEN:** We appreciate that. He's just going to look back in the records.

**MR. HARDY:** Do I need to come back to the next meeting? Does Anita have to come back?

**CHAIRMAN JANSEN:** Yes, you should but she doesn't have to.

**MR. HARDY:** Alright, I will see you at the next meeting.

**CHAIRMAN JANSEN:** Thank you. *Continued to the February 2010 ZBA meeting.*

**MR. MALOCSAY:** I make a motion to adjourn.

**MRS. BRAMICH:** I second it.

All in favor (Four Ayes), motion carried.

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**Frances N. Sanford ZBA Recording Secretary**