

**TOWN OF WARWICK**  
**ZONING BOARD OF APPEALS**  
**JANUARY 28, 2008**

**Members Present:**

**Mr. Jan Jansen, Chairman**  
**Mr. Mark Malocsay**  
**Ms. Diane Bramich**

**Members Absent:**

**Mr. Charles Todd**  
**Mr. Norman Paulsen**

**Chairman Jansen called meeting to order at 7:30 p.m.**

**Could not approve minutes of last meeting because Mr. Malocsay had to abstain.**

**Public Hearing for Ray Carlisle is postponed until March 24, 2008 meeting.**

**PUBLIC HEARING OF ROSEMARIE CASTILLO- for property located at 25 Cove Road, Sterling Forest, New York and designated on the Town tax map as Section 76 Block 1 Lot 59 and located in an SM District for a variance of Section 164.45D allowing enlargement of a building increasing the degree of non-conformity and Section 164.40N reducing setback to less than 100 feet from a “special area” (Greenwood Lake). Continued from the 11/26/07 ZBA meeting.**

**CHAIRMAN JANSEN:** I believe we asked Mr. Batz to send us some information regarding your application and I don't see a reply at this point. Have you resolved what survey your using?

**ATTORNEY DAWLICZEK:** As far as I'm concerned we can use the Sosnowski survey. One survey has it as 7 inches and then there is 2 inches over.

Board is looking over survey.

**MS. BRAMICH:** Wouldn't we be best to use the Castillo survey. How can you use someone else's survey?

**ATTORNEY DAWLICZEK:** I have no problem using the Castillo survey, provided you can grant us the variance for the setback. If it is 2 inches off the property line there is nothing you can do about that because you have no authority to give us title to something that is not ours to begin with. At some point we are going to have to work out some boundary line. The Sosnowski survey is the same metes and bounds as our survey it is just that the distance is different.

**ATTORNEY FINK:** Does a sealed survey exist? We have a copy.

**CHAIRMAN JANSEN:** One of the questions we asked the Building Inspector for is where the septic is. At this point since we don't have either a good decision as a good survey or a septic system I would like to hold this over for another month.

**ATTORNEY FINK:** I'll get in touch with John Batz.

**CHAIRMAN JANSEN:** One of them has to become official. Will be held over until March 24, 2008.

**Mr. Catinella is a neighbor of Rosemarie Castillo**

**NICK CATINELLA:**                   **This picture is when they built the house over the septic system.**

**CHAIRMAN JANSEN:**               **There are two issues, are they really one hundred foot back from the lake and where is the septic?**

**MR. CATINELLA:**                   **I have a summons that the EPA gave them. I have to get that to you. They built this thing from day one with no permits or nothing. This survey came out after all this came about. They built this deck (new addition), these power lines; there is a stop work order on this too. This fence should come down. We have a witness that the septic is under the kitchen.**

**MR. MALOCSAY:**                   **I did have some discussion with John Batz on this. We never finished the discussion.**

**PUBLIC HEARING OF PATERCO LLC/ZIRCAR#2- for property located at Round Hill Road & Golden Hill Terrace, Warwick, New York and designated on the Town tax map as Section 101 Block 1 Lot 6 (V/Florida) and Section 8 Block 1 Lot 5 (T/Warwick) and located in an OI District for a variance of the Zoning Law Section 164-40M(s) permitting an increase of lot coverage to 42% where up to 40% is allowed for the purpose of adding an addition to the rear of the existing building of which 1,712 square feet (+/-) is located in the Town of Warwick.**

**CHAIRMAN JANSEN:** Tell us what you are planning to do?

**KAREN EMMERICH:** We were here a couple of years ago at this point and put an addition out the front and now the owners would like to add on the rear of the building 260 square feet, 1700 which is in the Town of Warwick and the other portion which is in the Village of Florida. We are currently before the Village Planning Board and will soon be going before their Zoning Board and the Town of Warwick Planning Board has reviewed this as well and I think they gave you their approval.

**CHAIRMAN JANSEN:** Yes they did.

**KAREN EMMERICH:** We are not planning any more parking, there isn't going to be any increase in employees it will just allow them an expansion of their manufacturing business. We do need a rear setback, 50 feet is required in the zone and we are requesting 46 feet. And we are also requesting a variance for lot coverage because we are at 40% and with the addition for the portion of the property that is within the Town we would need 42% coverage.

**CHAIRMAN JANSEN:** Any other way it can be done?

**KAREN EMMERICH:** The only other way is to add the addition on in another way and we would have to go for a variance in one direction or another. This way is the smallest variance that we would need both in the Town and the Village.

**CHAIRMAN JANSEN:** Are you limited by wetlands?

**KAREN EMMERICH:** Yes, the wetlands are an issue in the rear of the property and to the west. The parking on the eastern side is an area, which can be

used for parking in the future but it would put the building closer to a residential area, which expanding in the rear of the property it abuts an agricultural

**CHAIRMAN JANSEN:** Anyone from the Public to address this application? Public Hearing is closed. Anything changed.

**MR. MALOCSAY:** I'm trying to remember what we did last time for the variances. It is written down one spot pre-existing, non-conforming. Is the use allowed conforming with the zoning or is it pre-existing?

**CHAIRMAN JANSEN:** It must be because Planning Board has a recommendation.

**KAREN EMMERICH:** The use in the Town is conforming; in the Village of Florida is non-conforming use.

**MR. MALOCSAY:** Under a 15% expansion, but if that is not something we have to deal with.

**KAREN EMMERICH:** We're over that. Over 15% within the Town.

**MR. MALOCSAY:** But because it's not a pre-existing non-conforming that doesn't matter?

**ATTORNEY FINK:** If it were pre-existing non-conforming that would be the Planning Board to give that. I don't see where the over 15% is being requested. It's not coming in under Section 164.5. Under that provision if it were a legal pre-existing non-conforming use the Planning Board could permit an expansion not to exceed 15%, that's not a variance. If it was a legal pre-existing non-conforming use and they wanted over 15% then we would be granting a variance from that particular section.

**CHAIRMAN JANSEN:** The non-conforming use is in the Village of Florida.

**MR. MALOCSAY:** I'm remembering the case that was before us; I thought that was an issue. When they came for a variance before. It was only a question of if it was something that was overlooked and they are going to need it,

then we could grant that. But it appears that we don't need it at all and the Planning Board is happy then I'm happy.

**KAREN EMMERICH:** I think last time it was something with the parking and setbacks from the front and possibly side because the Village and Town line runs right through the building.

**MR. MALOCSAY:** Ok. It's a Planning Board issue but then expanding the business but not having to increase the parking. I thought the building size determined the parking?

**KAREN EMMERICH:** It does and we can show that we could put enough parking if we needed to, the required number of spaces

**MR. MALOCSAY:** Ok.

**CHAIRMAN JANSEN:** Any further questions?

**MR. MALOCSAY:** Is the variance for three or four feet?

**KAREN EMMERICH:** Four feet.

**MR. MALOCSAY:** The question is couldn't you just make the building four feet shorter and not need the variance? Is there a reason it has to be four feet?

**KAREN EMMERICH:** I can't answer that; I was hoping that one of the owners could be here tonight and they could explain it to you. They have certain equipment that they need to fit in there

**MR. MALOCSAY:** Since it's such a minor variance that sounds good to me.

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

**CHAIRMAN JANSEN:** No, because there is really no neighbor close by.

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

**CHAIRMAN JANSEN:** I think we discussed that before.

**ATTORNEY FINK:** Is this a substantial variance? Again, there are two variances. Two percent on coverage and four feet on fifty feet.

**MR. MALOCSAY:** No.

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

**CHAIRMAN JANSEN:** No.

**ATTORNEY FINK:** Self-created?

**CHAIRMAN JANSEN:** Yes.

**ATTORNEY FINK:** Someone like to type this as Unlisted with no adverse environmental impact?

**MS. BRAMICH:** Yes.

**MR. MALOCSAY:** I second.

**ATTORNEY FINK:** Grant as advertised?

**CHAIRMAN JANSEN:** Motioned by Diane, seconded by Mark. Any further discussion? All in favor? (Three Ayes), motion carried.

**PUBLIC HEARING OF BRIAN J. & MELLISA A. SINGER- FOR PROPERTY LOCATED AT 328 Rt. 17A, Warwick, New York and designated on the Town tax map as Section 66 Block 1 Lot 75 and located in a CO District for a Variance of Section 280-a of the Town Law allowing a 2 lot subdivision which does not have frontage on a municipal road.**

**CHAIRMAN JANSEN:** Please identify yourself for the record.

**KIRK ROTHER:** Engineer for the Singers.

**GARY GOLDSTEIN:** Attorney for the Singers.

**MR.MALOCSAY:** Jan at this time I would like everyone to know that I'll have to abstain from any further discussion.

**CHAIRMAN JANSEN:** Ok. Mark will be abstained.

**MR. ROTHER:** The application will be for a proposed 2-lot subdivision on approximately thirteen acres of land in a CO District. The parcel is partly accessed by a private road that is fifty feet in width to a point after which access continues along via an easement between Mrs. Briller and the Singers, that is fifteen feet in width. We have appeared before the Planning Board on a couple of occasions, we do have soil testing done on the lots, the Board had directed us to appear before the ZBA for a variance allowing us access from a private road

**ATTORNEY FINK:** I don't know if they gave a referral, we had asked for one.

**CHAIRMAN JANSEN:** Yes, they did. There is a referral from the Planning Board. Anyone from the Public that would like to address this application? One of the questions was the right of way and there were some things that Mrs. Briller had. I think you got that all straightened out right?

**ATTORNEY GOLDSTEIN:** Yes, there was the issue too many property owners having enough access or use of this. I believe there is only five that

houses that have legal access to this private road and with this subdivision it would make it six, which does comply with the zoning code.

**CHAIRMAN JANSEN:** Ok. Kirk the one thing that we need for the next meeting, the access the Emergency Services, Fire Department and Police Department so that we have them in the file and it does not become a question.

**MR. ROTHER:** They have already been sent. Your said you got something from the County?

**ATTORNEY FINK:** Nothing keys the County on this one.

**MR. ROTHER:** Ok.

**This application will be continued on the next ZBA meeting.**

**MR. MALOCSAY:** Jan before we finish I would like to discuss something from the last meeting. It was the Matthews, piece of property on 17A, three residences. I was here at the first meeting. My question is what proof did they provide that that was a legal business that was there for that stonework. There is nothing in the Building Department that there was any kind of business what so ever and we use that to determine that the residence would be a lesser use which I would agree with 100%. There biggest problem was showing us that from the time they bought that property, from that point that was a legal business.

**MS. BRAMICH:** It was before they bought it.

**MR. MALOCSAY:** No. When that person that property it was used as an Antique Shop. That discontinued after they bought the property. That makes that an accessory structure with a garage.

**MS. BRAMICH:** Right.

**MR. MALOCSAY:** Pre-existing, non-conforming accessory structure. I didn't see at the meeting reviewing this that there was any proof that there was any type of a business that was there that was a legitimate business. Any business. I talked to John Batz. Nothing on record.

**ATTORNEY FINK:** They submitted affidavits from people.

**MR. MALOCSAY:** Ok. Were they people who bought stuff, knowing that he was selling stone from there. Doesn't mean that he had a legal business there. Because if we are using this in the future and somebody has a garage and they start a business out of it and they had it for fifteen years and everybody knows about it and all of a sudden they say hey it's non restrictive if this building is a residence as opposed to this business, we'd have to agree wouldn't we. The question is was it a legal business that he had there and the answer is absolutely definitely no. The first thing you can do is never mind all the information he brought us because people legitimately bought stuff. I bought all this material from him, wholesalers delivered stuff. Doesn't mean it's a legitimate business, just go talk to John Batz. Did he ever get a permit, no, end of discussion. Question is what do you guys want to do now?

**ATTORNEY FINK:** There is nothing you can do. I take that back, if the Board notes to re-hear, they can re-hear it.

**MR. MALOCSAY:** That has to be unanimous to do that though.

**MS. BRAMICH:** I'll go along with it because I was against it anyway.

**MR. MALOCSAY:** So, I don't want to see another residence there. I don't know how the Planning Board is dealing with it. I would rather have an Antique Shop and I'd rather have it ratable without sending kids to school. But, he's going to have a hard time, the only thing he is going to be able to do with that is some sort of a Home Occupation extension, that's all he is going to be allowed other wise it's going to be a use variance coming before us. So, I don't know. The thing is now, could an Article 78 be brought against us. I think the time lapse, we only have thirty days from the decision, so that's done. I'm assuming it's before the Planning Board I don't think they would be through, I didn't check so if it snuck through the cracks that's fine but if the Board wants to take a look at it, I wasn't here, I'm sorry.

**MS. BRAMICH:** I was against it. I told you that when we were voting.

**MR. MALOCSAY:** I don't know now. Do we make a note to the Planning Board to see how they are with it or even if they are considering it because it might not even work to put in a residence there. I mean there are definitely issues with the septic and the setbacks.

**CHAIRMAN JANSEN:** There are no setbacks.

**MR. MALOCSAY:** Setbacks being septic systems from wells still has to come up with a residence. That's up to them.

**MS. BRAMICH:** Well, you're giving them something to consider.

**MR. MALOCSAY:** Like I said, when we asked them for that information at that first meeting, I knew that they could not provide it. If he had a legitimate business there, tax returns from the time that he bought the property, we

could ask him for that. But the simplest way was to just go talk to John at the Building Department. No, he started his business out real small with the rock and he had what would be considered the Landscaping Business where he was just doing stuff on the side and then he started bringing material in and he started selling

material. No body said anything. I drive past it once a week, beautiful building, he did a great job fixing it up. I wanted to bring it to the Board's attention. What ever you decide to do, that's up to you.

CHAIRMAN JANSEN:                      Ok.

**A motion was made by Ms. Bramich and seconded by Mr. Malocsay.**

**Meeting adjourned at 8:12 pm.**

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**Dawn Woods, ZBA Recording Secretary**