

**TOWN OF WARWICK**  
**ZONING BOARD OF APPEALS**  
**FEBRUARY 23, 2009**

**Members Present:**

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

**Members Absent:**

**Mr. Jan Jansen, Chairman**  
**Mr. Charles Todd**

**Co-Chairman Malocsay called the meeting to order at 7:30P.M.**

**CO-CHAIRMAN MALOCSAY:** Can I have a motion to approve the minutes of the January 26<sup>th</sup>, 2009 meeting?

**MR. PAULSEN:** I make a motion to approve the minutes of the January 26<sup>th</sup>, 2009 meeting.

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

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

**MR. PAULSEN:** Aye.

**MRS. BRAMICH:** Aye.

**CO-CHAIRMAN JANSEN:** Aye.

**Motion Carried.**

**Public Hearing of CHARLES & GRACE BRACK – for property located at 4 Wisner Court, Warwick, New York and designated on the Town tax map as Section 36 Block 2 Lot 23 and located in an SM District for a variance of Section 164.41A(1)(b) allowing an existing accessory building less than 5 feet from the side lot line. *Continued from the 1/26/2009 ZBA meeting.***

**CO-CHAIRMAN MALOCSAY:** Since our last meeting, I met with the Building Inspector to ask him some questions because there were a few things that didn't make sense. The first one was that one of the reasons that the shed couldn't be moved further from the property was it would be too close to the house. The Building Inspector asked that it be sheet rocked so that it could be moved closer to the house. Our concern was that we didn't see a certified map that really showed distances; we had conflicting reports as far as where the shed was. Since then, was there any verification about where the shed is located?

**MR. BRACK:** It's 5 feet away from the house.

**CO-CHAIRMAN MALOCSAY:** The shed is how long?

**MR. BRACK:** Ten feet.

**CO-CHAIRMAN MALOCSAY:** And how far is the house from the property line?

**MR. BRACK:** Approximately 22 feet.

**ATTORNEY FINK:** We have a survey dated 1975 and another dated 1995 and it looks as though a garage has been added.

**MR. BRACK:** Well, I didn't add a garage. There's still the question of how do we know that my shed is too close to his property? Does he have a valid survey?

**ATTORNEY FINK:** It's because of the Building Inspector; that's why we're here.

**CO-CHAIRMAN MALOCSAY:** If your shed is in fact 5 feet from the house we need to give a variance for that.

**MR. BRACK:** The Building Inspector said to sheet rock it with 5/8ths fire proof sheet rock, which I had done, and he said that would be okay. He gave me the compliance letter.

**CO-CHAIRMAN MALOCSAY:** But if the shed is 5 feet from the house and the shed is 10 feet long, that means the shed is 7 feet from the property line.

**MR. BRACK:** According to the survey.

**ATTORNEY FINK:** We don't know that.

**CO-CHAIRMAN MALOCSAY:** The next question I have is, if the shed is only 5 feet from the house, and that's really not before us...

**ATTORNEY FINK:** Why didn't John say that? I mean that's the obvious one.

**CO-CHAIRMAN MALOCSAY:** I asked him why can't we move the shed closer to the house and he says because it has to be 10 feet away by code for fire.

**MR. BRACK:** That's why he said for me to sheet rock it and that would take care of it.

*Discussion regarding measurements*

**CO-CHAIRMAN MALOCSAY:** Here's the problem. If the shed is 10 feet, and its 5 feet from the property line, we're already at 15 feet, so at most we're going to be is 2 ½ feet away from the property line which is...

**MR. BRACK:** The shed weighs 2000 pounds. I don't know how I'm going to move it, which is why I'm here for a variance. Still, there's no proof, according to his survey, which isn't a survey since there's no stamp on it; he hasn't proved anything.

**CO-CHAIRMAN MALOCSAY:** You understand there's only 3 of us tonight, so if you would have to have all of us in favor in order for it to pass.

**ATTORNEY FINK:** There's no reason not to vote, unless we move to deny it, if you don't get all three, it just goes over to the next meeting.

**CO-CHAIRMAN MALOCSAY:** But at the same time, because it's in litigation, you're in no rush to have a decision made tonight, are you?

**MR. BRACK:** I have school, I go to Nursing School on Mondays, Tuesdays and Wednesdays. So for me to have to leave school and come up from Rockland, it's getting tough. Already my teacher has made two allowances and this type of school is pretty strict. It would be better if we could settle this one way or the other tonight...

**ATTORNEY FINK:** The only thing John has said is it's too close to the line. There's nothing that shows conclusively that it's too close.

**CO-CHAIRMAN MALOCSAY:** That's what I had to ask him. He said that what he had before him, and that's why he wrote the violation; which is what you just measured from.

**ATTORNEY FINK:** This is what he based the violation on, the neighbors' survey.

**MR. BRACK:** Which isn't a survey, it's a computer drawing. I could have done that on my computer. Isn't that a mute point?

**CO-CHAIRMAN MALOCSAY:** Except that the survey you gave us pretty much verified that the shed at 10 feet wide and 5 feet from the house leaves us 2 ½ feet from the property line.

**MR. BRACK:** Its 18 feet, 3 feet from the property line.

**CO-CHAIRMAN MALOCSAY:** And the variance that you would seek would be a variance for 3 feet.

**MR. BRACK:** Exactly, I'm here for the variance, the 2 ½ or 3 feet or whatever it is, to allow the shed. Isn't that the point? I'm asking for a variance.

**CO-CHAIRMAN MALOCSAY:** Would we feel comfortable saying its 3 feet from the property line?

**ATTORNEY FINK:** Yes.

**CO-CHAIRMAN MALOCSAY:** We would be giving a variance for 2.4 feet. Is there anyone from the public to address this application? Please state your name.

**MR. STREELMAN:** Steve Streelman. To sum it up, I'm looking at a big pile of soil over 2 feet high against a fence that is .7 feet from my property line. No retaining wall; nothing to stop the soil from washing into my yard.

**CO-CHAIRMAN MALOCSAY:** That's not before us, the only thing is the shed.

**MR. STREELMAN:** I'm looking at a shed that's 2.7 feet off of my property line.

**CO-CHAIRMAN MALOCSAY:** And the code says that it can be 5 feet away, so he's asking for 2.4 feet.

**MR. STREELMAN:** It's an eyesore. The code says 10 feet from the house. Why can't it just be moved to the backyard where it belongs?

**CO-CHAIRMAN MALOCSAY:** Anything else? Public hearing is closed.

*Discussion regarding moving the shed closer to the house.*

**MR. BRACK:** I came here to get a variance so the shed could stay where it is.

**CO-CHAIRMAN MALOCSAY:** Would you like us to go ahead and vote?

**MR. BRACK:** Yes.

**ATTORNEY FINK:** Speak to John first.

**CO-CHAIRMAN MALOCSAY:** I did speak with him once. I don't know...I'll speak to John again.

**MR. BRACK:** So you're continuing this again?

**ATTORNEY FINK:** It's not necessary for you to appear.

**CO-CHAIRMAN MALOCSAY:** If something comes up where John, if there are questions or concerns, we can give you a call. All the information is before us that we need to know right now, it's really just his input. We'll leave the public hearing open. *Continued to the March 23<sup>rd</sup> 2009 meeting.*

**Public Hearing of GERALD TERRY – for property located at 23 Lower Hillman Road, Warwick, New York and designated on the Town tax map as Section 22 Block 1 Lot9.1 and located in an RU District for a variance of Section 164.40N allowing an existing 20,257 square foot lot with 2 existing dwellings to be subdivided into 2 lots; proposed Lot 1 being 11,550 square feet and proposed Lot 2 being 8,707 square feet where the minimum lot area is 174,240 square feet and allowing variances for minimum lot width, depth, front yard, side yard, both side yards and rear yard for the existing dwelling son each of the proposed lots.**

**ATTORNEY FINK:** John, I would have liked it if you put what the dimensions are so the Board knows exactly what the variances they're granting are.

**JOHN MCGLOIN:** First of all, I need to make a statement that the physical address is what was put in the Hearing Notices, his mailing address not the physical address of the property. I just want to make that clear, it's actually 9 and 11 Upper Hillman Road. His mailing address is Lower Hillman Road. All the notices were scaled and measured from the proper addresses. The variances are so many because of the size of the property. Also, I'd like to present to the Board the old tax map from 1995 and it shows two separate tax lots. Somehow, they were merged.

**CO-CHAIRMAN MALOCSAY:** Okay, can you tell us about the application?

**JOHN MCGLOIN:** Sure, basically Mr. Terry proposes to split the property not quite in half, actually as I stated it's very similar to the tax map I just presented, which is the way it used to be. It used to be two tax lots before and his proposal would put it back that way, separating the two houses with their own wells and septic systems. They're in existence at this point. Their own driveways as well.

**MRS. BRAMICH:** Are the other lots in the area the same size?

**JOHN MCGLOIN:** They're similar. If you look at the vicinity map, it shows the tax lot 9.1 as site. There are some smaller lots and some bigger lots. The thing about this lot is that it does have two structures on it.

**MRS. BRAMICH:**  
area the same size?

Are the other lots in the

**MR. MCGLOIN:**

They're similar. If you look at the vicinity map, it shows the tax lot 9.1 as site. There are some smaller lots and some bigger lots. The thing about this lot is that it does have two structures on it. And why they were merged is not this Boards issue, but they were merged together for some reason after 1995, before Mr. Terry owned it.

**CO-CHAIRMAN MALOCSAY:**

Does anybody else have any questions? Let's open this up to the public now. Is anyone here from the public to address this application?

**PETER SULLIVAN:**

My name is Peter Sullivan, I represent some of the neighbors and there's also a Home Owners Association that's involved in this. I have an officer here today. We're curious, first of all, with the first sentence, they're talking about a variance for 23 Lower Hillman Road and the gentleman stated that it wasn't the correct address but on that premise, I would like them to correct that then and if we could wait another month we can see exactly what it is they're trying to do before we make a decision on this. Is that legally prudent, to make a decision like that on the wrong address? Shouldn't they put the application in properly before they do that?

**VALERIE WARD:**

I'm Valerie Ward, Vice President of the Home Owners Association. When we received the document, it was not clear. Is it true that you're talking about Lot 9.1?

**MR. MCGLOIN:**

The section, block and lot are correct. The only thing that's incorrect is the physical address because the confusion with his mailing address.

**MS. WARD:**  
now?

Where does Mr. Terry live

**MR. MCGLOIN:**

I don't know if that's relevant, but he's here, we can ask him.

I don't know if that's

**MR. TERRY:**

I live on Lower Hillman.

**MR. MCGLOIN:**

It's one of the houses.

**MS. WARD:**

Which lot is it, 9.1?

**MR. MCGLOIN:**

Yes.

**MS. WARD:** Just for the record, this was a Mother/Daughter house, commonly known as big house, small structure. And Mr. Terry purchased it a couple of years ago and in the last year the small house turned into a big house. It may be larger or at least the same as the big house on the property. So we now have two house of the same size on this very small lot. I don't know why we weren't (brought) here before he built the house; before he made all these grand plans.

**CO-CHAIRMAN MALOCSAY:** Let me interrupt a moment; that's not before the Board. We're here because we're looking at the subdivision of this into two separate lots because on the tax map its one lot.

**MR. SULLIVAN:** Can someone answer the question that I posed? Is it proper to have a hearing on something that is described incorrectly? What other inconsistencies are included in this proposal? As a resident of the community, I would want the opportunity to look this over more.

**CO-CHAIRMAN MALOCSAY:** The Board has always done that. However while everyone is here, we'd like to gather as much information as possible. Likewise, with only three of us here to vote tonight, I imagine the applicant would like for us to hold off anyway.

**MS. WARD:** Can you explain to some of the other members that are here from the community, what exactly is involved in voting on this variance?

**ATTORNEY FINK:** Essentially, if it's an area variance, the applicant has to show that the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood. That's it in a nutshell. Then there are various specific requirements that the Board looks at.

**CO-CHAIRMAN MALOCSAY:** The most common one in this particular application would be the character of the neighborhood and what was already presented to us, and we can see on the site map, is the size of the lots. If there are lots that are smaller than these that are being subdivided, then it *does* fit into the character of the neighborhood. If the lots were larger and/or considerably larger, then the subdivision *doesn't* fit into the character of the neighborhood. That would be our biggest criteria for this variance.

**MR. SULLIVAN:** The gentleman stated that there was a file full of variances relating to that property. Is that public information?

**ATTORNEY FINK:** Yes, all the requirements in that particular district are in the code. And the requirements *are* shown on the proposed subdivision map. What is *not* shown is what each lot is supplying. In other

words, lets take the first minimum lot area, in that district its 174,000 plus feet in this particular instance one is 11,550, the other is 8,707, so and there are various setbacks, there are a lot of things, requirements none of which these lots comply with. The only issue here is that you're sitting with two existing dwellings. It's not as though he's coming in wanting to subdivide a piece of property and build *a* house or *two* houses; this already exists.

**MR. SULLIVAN:** They exist as two dwellings  
or as two structures?

**ATTORNEY FINK:** They're shown as two  
dwellings.

**MS. WARD:** I've been there since 1989.  
The people lived in Brooklyn and they came up for one week in the summer.  
Frankly, I'm a little surprised at this drawing.

**MR. MCGLOIN:** Tell me why you're  
surprised and if I can answer any questions I'll be very happy to; I'm a surveyor.

**MS. WARD:** You're a surveyor, you're  
not an engineer and you haven't inspected any of the septic tanks.

**MR. MCGLOIN:** What I can tell you is that  
Mr. Terry applied for a building permit and received a Certificate of Occupancy for the work he performed on the property. That information is available in the Building Department. If there was a question about the size of the septic, or about any issues with failure of the septic, I believe it would have behooved the Building Inspector to require a dye test. Again, I believe there are records of how many bedrooms these structures were, and the size of them prior to him doing any renovations. All of this information is available in the office of the Building Inspector.

**MS. WARD:** Where is the original lot  
division you said you had?

**MR. MCGLOIN:** This is the way it was in  
1995. Two separate tax entities; two separate tax bills. Those records are also available in the Building Department.

**MS. WARD:** So you'll give us time to  
look this over and come back next month?

**CO-CHAIRMAN MALOCSAY:** Absolutely, we'll hold it  
over until next month. Is there anyone else here who would like to address this?  
Please state your name.

**MR. TERRY:** My name is Gerald Terry and I'm the owner of the property. I would hope that the standards that are applied to my home would be applied to the other homes in the subdivision. If they're going to request anything unusual or extraordinary, I don't mind, I'll comply, but their homes are very close and I'd just like everyone to meet the same standards.

**CO-CHAIRMAN MALOCSAY:** Again, what's before us is the subdivision of this property and it's fairly close to what's shown on the previous tax map and really we're not asking for any other relief as far as setbacks. It's really just the square footage.

**ATTORNEY FINK:** Every setback does not meet the code. On both lots.

**MR. MCGLOIN:** If you would like me to get a list, I'd be very happy to do that.

**CO-CHAIRMAN MALOCSAY:** I looked at this incorrectly. I was looking at the existing small lots.

**MR. MCGLOIN:** Actually the only ones you're creating are the side yard setbacks. All the other setbacks exist.

**ATTORNEY FINK:** That doesn't technically matter. We're talking about existing lots. This is not an existing lot. What I'm talking about is we're dividing it to make it into another lot.

**CO-CHAIRMAN MALOCSAY:** If we look at it as an existing lot, it's a pre-existing small lot.

**MR. MCGLOIN:** One half acre.

**CO-CHAIRMAN MALOCSAY:** And then the setback requirements are...

**ATTORNEY FINK:** True, but you have a lot and you're creating two lots out of one.

**CO-CHAIRMAN MALOCSAY:** But it's still an existing small lot.

**ATTORNEY FINK:** I don't think it comes under the existing small lot exceptions because of that.

**CO-CHAIRMAN MALOCSAY:**  
they're new existing small lots.

If we create two lots and

**ATTORNEY FINK:**

opposed to an existing lot. It's now a new lot. As a practical matter, they already exist.

But you're creating them as

**CO-CHAIRMAN MALOCSAY:**

As I said, I looked at it as an existing small lot and I didn't see the need for the setback requirements. Does everybody understand what we were just talking about? There's a side yard, front yard and rear yard setback requirement because it's an existing small lot the way that it is now with two houses on it and there isn't any relief that's needed because existing small lots don't require what new lots require. And these would fall into the character of the neighborhood exactly what was brought up before us, so if many of the houses are sitting on small lots that have 5 foot setbacks and 20 foot setbacks where 40 or 50 feet are required, it fits into the character of the neighborhood. That's all we were discussing. Does anybody else have any questions for the Board? If not we will continue this to the next meeting. *Continued to the March 23<sup>rd</sup> 2009 meeting.*

As I said, I looked at it as

an existing small lot and I didn't see the need for the setback requirements. Does everybody understand what we were just talking about? There's a side yard, front yard and rear yard setback requirement because it's an existing small lot the way that it is now with two houses on it and there isn't any relief that's needed because existing small lots don't require what new lots require. And these would fall into the character of the neighborhood exactly what was brought up before us, so if many of the houses are sitting on small lots that have 5 foot setbacks and 20 foot setbacks where 40 or 50 feet are required, it fits into the character of the neighborhood.

That's all we were discussing. Does anybody else have any questions for the Board?

If not we will continue this to the next meeting. *Continued to the March 23<sup>rd</sup> 2009 meeting.*

**Public Hearing of ANTHONY & SUMIRA MAZZA – for property located at 188 Pine Island Turnpike, Warwick, New York and designated on the Town tax map as Section 29 Block 1 Lot 36 and located in an RU District for a variance of Section 164.40N reducing minimum lot area from 4 acres to 2.250 acres for proposed Lot 1 and 2.241 acres for proposed Lot 2 in a proposed 2 lot subdivision.**

**MRS. BRAMICH:**

**This has two houses on it too?**

**MR. MCGLOIN:**

**Yes, it's just about the same story except a much larger lot and the setback situation is a little different. The County responded and sent a letter and there was an error on their part because they did not receive a map so they thought there was new construction proposed. I have a letter here dated February 23<sup>rd</sup> 2009, today. We hand delivered a copy of this map to the Orange County Department of Public Works and the responded with this letter. I'll read it because it's new.**

**“Dear Mr. Jansen,**

**This Department received a hand delivered copy of the proposed subdivision from John McGloin this morning. It appears that the proposed subdivision will separate two existing dwellings with access to County Route 1 into two separate tax lots. There are no proposed new traffic or drainage impacts for County Route 1. This Department has no objection to the requested variance or proposed subdivision. Further review of this project will not be required by the Orange County Department of Public Works under Section 239 of the highway law.”**

**It was signed by Patrick Kennedy, Senior Engineer. Again, this is similar, there's no new construction proposed. The structure on Lot 1 at one point was renovated substantially and has gone through all the rigors of the Building Department and received a C/O.**

**CO-CHAIRMAN MALOCSAY:**

**The other one was renovated too.**

**MR. MCGLOIN:**

**Yeah, but it was more exterior. There was no physical change in size. The one on Lot 1 was made substantially larger. What happened was the owner renovated the smaller house first so he could live in it for a short period of time while he renovated the larger house. He moved into the larger house and rents the smaller house. He now desires to separate it now so he can get some equity out when he sells the small home.**

**CO-CHAIRMAN MALOCSAY:** Is there anyone here from the public to address this application? No? We'll keep it open.

**MRS. BRAMICH:** The other lots in the area?

**MR. MCGLOIN:** You can see on the vicinity map that most of the lots in the subdivision were created when it was 2 acre zoned. So they're all just about the same size as these.

**CO-CHAIRMAN MALOCSAY:** Is there a possibility of purchasing any additional property?

**MR. MCGLOIN:** In this particular case there's no way to purchase anything from anyone without making them in violation. All the lots around it are undersize by current coding.

**CO-CHAIRMAN MALOCSAY:** Do we have a positive recommendation from the Planning Board?

**MR. MCGLOIN:** Yes.

**ATTORNEY FINK:** Yes.

**CO-CHAIRMAN MALOCSAY:** Would you like for us to proceed since there are only three of us here?

**MR. MCGLOIN:** I have no problem with you proceeding.

**CO-CHAIRMAN MALOCSAY:** 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:** Is there any other method feasible to pursue?

**MRS. BRAMICH:** No.

**ATTORNEY FINK:** Is the variance substantial?

**CO-CHAIRMAN MALOCSAY:** Yes.

**ATTORNEY FINK:**  
adverse effect or impact on the physical or environmental conditions in the neighborhood?

**Is it going to have an**

**impact on the physical or environmental conditions in the**

**neighborhood?**

**MRS. BRAMICH:**

**No.**

**ATTORNEY FINK:**

**Is it self created?**

**CO-CHAIRMAN MALOCSAY:**

**Yes.**

**MRS. BRAMICH:**  
an Unlisted Action with no environmental impact.

**I make a motion that this is**

**MR. PAULSEN:**

**I second it.**

**CO-CHAIRMAN MALOCSAY:**  
favor?

**Any discussion; all in**

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

**MRS. BRAMICH:**  
this variance as advertised.

**I make a motion to grant**

**MR. PAULSEN:**

**I second it.**

**CO-CHAIRMAN MALOCSAY:**  
favor?

**Any discussion; all in**

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

**Public Hearing of NEDILJKO SARC & ZELJKA KULUSIC-SARIC – for property located at 42 Spanktown Road, Warwick, New York and designated on the Town tax map as Section 17 Block 1 Lot 21.15 and located in an RU District for a variance of Section 164.40M allowing conversion of a 2-family dwelling to a 3-family dwelling.**

**CO-CHAIRMAN MALOCSAY:**

**Please state your name and tell us about the application.**

**ZELJKA SARIC:**

**My name is Zeljka Saric.**

**I'm one of the owners of the property. It's now a two family dwelling and we recently rented a 3<sup>rd</sup> apartment and the reason was financial hardship that we recently experienced. I did provide documentation to support that. I'm here to see what we can do to make the house legal, with three apartments if possible. We would like in the future is for it to be owner occupied. I have papers which show the rental income and the heating and mortgage expenses, how it will come out with 3 apartments vs. if we only have 2. I have copies and documents to support these numbers.**

**CO-CHAIRMAN MALOCSAY:**

**We have two letters from the public, we'll read them into the minutes now.**

**ZBA RECORDING SECRETARY:**

**This is to the Town of Warwick Zoning Board of Appeals from Jean M. Miller, 43 Spanktown Road.**

**“I have lived at 43 Spanktown Road since 1969 and my driveway and that of 42 Spanktown Road are directly across from each other. Let me first say that it appears to me that the property presently is being utilized as a multi-family with at least 3 apartments and at least 4 families. There are many many vehicles in and out each day and each night. I choose to live in this lovely rural area believing that the purpose of a rural district would protect me from living across the street from an apartment building. Allowing multi-family use at 42 Spanktown Road reduces the value of my home, my largest asset. I ask the Zoning Board of Appeals to decline their request and to insure that the property is in complete compliance with proper zoning. If an inspection has not been made of the property, I hereby request that this matter be tabled until such inspection can be completed. Please notify me of the Zoning Boards decision of this matter. Respectfully, Jean M. Miller.”**

**This is to the Town of Warwick Zoning Board of Appeals from Carol and Anthony Cossentino, 41 Spanktown Road, Warwick, New York.**

**“We wish to let the Zoning Board of Appeals know that we are very much opposed to them approving 42 Spanktown Road as a 3 family property. We feel that it will definitely have a negative impact on the value of our home. Respectfully submitted, Carol and Anthony Cossentino.”**

**CO-CHAIRMAN MALOCSAY:** Just so we’re all on the same page before going any further, are we looking at a use variance as opposed to an area variance?

**ATTORNEY FINK:** No, this is a use variance.

**CO-CHAIRMAN MALOCSAY:** There are four criteria for a use variance and every one of them must be met in order for us to grant a variance. It’s very very difficult to prove and we haven’t done it often. So let’s open this up to the public. Please state your name for the record.

**BILL SIGNOR:** My name is Bill Signor; I live at 34 Spanktown Road. I have a Bed and Breakfast there and I was a builder in Warwick for 18 years. I do have some concerns. Regarding the first question of whether or not it will be a detriment to the safety and welfare of the neighborhood. The property is in an absentee landlord situation, although she says that will change, I think that will need to be verified. There are at least 6-7 cars in there all the time so already there are more than 2 or 3 families living there. The tenants have their problems; the Police have been called several times. They ride dirt bikes back and forth and up and down Spanktown Road. Sometimes there are small children riding on the handlebars, creating a dangerous situation. One of the tenants has a long conviction record. I’m sure the people living on Spanktown Road don’t want a bigger problem than it already is. I think the unattractive, unkempt structure is such that it won’t attract responsible working families. It just seems to attract transients and illegals. That’s a big concern we have. The tenants there don’t pay taxes while we all pay very high taxes. I am definitely against a variance for this property.

**CO-CHAIRMAN MALOCSAY:** Thank you; anyone else?

**CHESTER NOWICKI:** My name is Chester Nowicki and I live at 38 Spanktown Road and I would just like to say that I agree with both the letters read here tonight. I would also like to say that we all have financial problems, but if I was to come and ask that my home be made into a two family and then come back next year and ask for a three family, then possibly others on the road would do so also. Where would it end? It has to stop. There are no three family homes on the road and there shouldn’t be. This 2 family is already the exception to the rule and I ask that you don’t grant this variance.

**CO-CHAIRMAN MALOCSAY:** Is there anyone else?

**ANDY HERSE:** I'm Andy Herse and I live at 49 Spanktown Road and we've been there about 9 years. We re-located to the area primarily because it's a rural district. We moved in with the understanding that it was primarily a single residence neighborhood. We understand that there have been variances granted over the years for two family dwellings. I don't think this is the only one in the general area. But we are deeply concerned about variances for additional dwellings just because of all the comments made here this evening. Not because of the individuals involved, but we're quite concerned about the appearance of the neighborhood as well as property values.

**MICHELLE DECKER:** My name is Michelle Decker and I currently live at 42 Spanktown Road. What's going to happen to me if this is not a legal dwelling? I'm a tenant there. And for the record, the Cops were there because my son is diabetic and they were helping him. My concern is what will happen to me? I'm a single mother, I do work fulltime and I'm not an immigrant. I was born and raised in this country, right in this area. My family are business owners.

**CO-CHAIRMAN MALOCSAY:** Before us is a two family going to a 3 family, if you're already in as the third we'll have to see what the Boards decision is.

**MS. DECKER;** I would have to move obviously; how much notice would I have?

**CO-CHAIRMAN MALOCSAY:** I honestly don't know.

**ANNMARIE SCOTTY:** I agree with everyone. We're a close knit community, we all get along. If you were to make this a 3 family home I think it would adversely effect all our homes. We're all hardworking families; we're all struggling with financial problems. She's not the only one. I'm concerned about my kids, there's a lot of traffic coming in and out of that driveway. I have two little kids with special needs; I'm concerned about their safety.

**GIOVIONNE SCOTTY:** I have a question for the Board. Considering that right now there are 3 families living in that house. How many vehicles are allowed in that driveway? Every night there are between 12 and 16 cars in that driveway. And what bothers me is that there's more than one family living in each apartment. And the lights of their vehicles shine in my kid's bedrooms all night long. The cars are noisy with the music in and out all night. We didn't move up here for this; we moved up here for peace and quiet.

**CO-CHAIRMAN MALOCSAY:** I can't answer your question about the cars; that's not before us.

**ERNEST PERLMUTTER:** My name is Ernest Perlmutter; 40 Spanktown Road. We moved out of the city to get away from tenements and traffic and drugs. Across the street looks like McDonalds parking lot. Occasionally, I smell marijuana coming from there, not too much in way of noise. I thought the area was single family homes. I don't want to live near a multi-family dwelling.

**MRS. PERLMUTTER:** We're concerned about that. We don't mind that it's a two family because it was that way when we moved in, but if it becomes a three family, what will happen next?

**NICK CONKLIN:** My name is Nick Conklin. I'm good friends with the Saric's and if they say they're going to move in and make it owner occupied, then they will. And that will change the nature of the issues.

**JEAN MILLER:** I'm Jean Miller, you read my letter tonight. I just want to add to that. Nick lives at the end of the road, I live directly across and I do not wish for an apartment building to be there. Will the Board reach a decision tonight?

**CO-CHAIRMAN MALOCSAY:** It's possible, I'm not sure. Regarding the use variance, the four criteria have to be met. I don't think you're (Ms. Saric) prepared to do that tonight.

**ATTORNEY FINK:** I think the biggest problem is going to be the 4th criteria. That is, the Board can't grant a use variance if it's a self created hardship. A self created hardship is an extraordinary circumstance. If you bought the property subject to existing zoning, which you did, the Board by law can't grant the variance. That's assuming you meet the other 3 criteria which is questionable. I suggest to you to seek some legal advice to see if you can get around that 4<sup>th</sup> criteria. And also bolster up the first 3 answers.

**MS. SARIC:** Okay, I will do that.

**CO-CHAIRMAN MALOCSAY:** This is going to be held over to give the applicant a chance to get some information. If you need more time, please let us know.

**JEAN MILLER:** Can you tell us what the 4 criteria are?

**ATTORNEY FINK:** They have to show that they can't realize a reasonable return and they would have to give substantial evidence, they have to show that the hardship relating to the property is unique and not common to other properties in the neighborhood, they have to show that it won't alter the essential character of the neighborhood and they have to show that the

**hardship was not self created. That's the four criteria. There is no violation before the Board. There was an application made to convert it from a 2 family to a 3 family and it was denied. The applicant has stated that there are 3 families living there which is in fact a violation, but there is no violation in front of the Board. *Continued to the March 23<sup>rd</sup> 2009 meeting.***

**Public Hearing of KASTRIOT RAPAJ – for property located at 40 Jersey Avenue, Warwick, New York and designated on the Town tax map as Section 75 Block 1 Lot 21 and located in an SM District for an interpretation of the decision of the Building Inspector that 8 single rooms over a restaurant cannot be rented because the use does not conform to the Code and that their prior legal non-conforming use status has been lost because the use has been discontinued for a period of 1 year or more and that a proposed 4 foot X 5 foot sign does not conform to the Code. *Continued from the 1/26/09 ZBA meeting.***

**ATTORNEY FINK:** You're probably aware that a letter went out from this Board to your Attorney and to Mr. Hicks, to see if any agreement had been made between yourself and the Town. And apparently no progress had been made. So both your Attorney and Mr. Hicks said fine this Board is to make a decision based upon what was presented before. Do you have anything new to present?

**MR. RAPAJ:** No.

**ATTORNEY FINK:** What's before the Board is an interpretation, not a variance. There were two issues, one was the sign and the other was these 8 apartments. In so far as the sign is concerned and it's showing in the November 24<sup>th</sup> minutes, page 3, Mr. Hicks stated in regard to the sign issue and the new ordinance coming in, he has no objection that the sign exist in it's present form until the new ordinance took effect. Then on page 9, he stated again that the Town was in the process of changing the ordinance with regards to signs and he believes the sign ordinance will be changed and "we're willing to let it ride a little while and then he'll have to comply with the new ordinance". So there's no variance being requested, all that's being requested is an interpretation. It's up to the Town, but the interpretation is that when the 5 years is up, unless you feel for some reason they're not, I don't see where the sign issue is subject to an interpretation.

**CO-CHAIRMAN MALOCSAY:** I have to agree with you. Because of the new sign code coming up, the Town is not enforcing it.

**ATTORNEY FINK:** But they're asking for an Interpretation as to whether or not that was a complying sign. There's no issue; it doesn't comply.

**CO-CHAIRMAN MALOCSAY:** I make a motion that this Boards Interpretation is that the sign is non-conforming.

**MRS. BRAMICH:**

**I second it.**

**CO-CHAIRMAN MALOCSAY:**

**Any discussion; all in favor?**

**All in favor (Three Ayes), Motion Carried.**

**ATTORNEY FINK:**

**Now the thornier issue is these eight apartments. As the Board knows, in order for it to come under the legal pre-existing non-conforming use, the first thing that has to be shown is that it was legal. The applicant presented proof that the 8 apartments probably were legal based upon the Building Inspectors letter. So if 8 apartments were legal, then the next issue would be was that use discontinued for more than a year. Here's where it gets a bit complicated. It appears as though the 8 rooms were changed to 8 apartments and I wondered if a change in use constituted abandonment. And the law isn't really crystal clear on that and I'm quoting from Anderson & Zoning (?) "A change from one non-conforming use to another may be regarded as an abandonment of the former use" and it gives an example where a non-conforming restaurant changed to a non-conforming warehouse. That constituted an abandonment of the restaurant but then in other cases it would say it again and it depends upon degree- however a pre-existing use is not abandonment when a restaurant/bar is changed to a bar/disco. So I guess the bottom line is number one, was the use changed from 8 transient rooms to 8 apartments, if in fact they were apartments, but is it so close that converting it from one to the other really wasn't a substantial change of use. So that at least to that degree they didn't lose the non-conforming status. But then the question would be was there more than a year? And I think that they showed that it wasn't more than a year because of having to get the tenants out. He purchased the property in May '07 and they were attempting to get these people out until December '08.**

**CO-CHAIRMAN MALOCSAY:**

**That's that year. In previous years we know that there was no-one in it and for a period of more than a year. The question I have is if there's 8 apartments and one of them was used continuously, does it mean the other 7 are being used?**

**ATTORNEY FINK:**

**There are cases like that all over the place and it depends how long most of them were vacant. If you have a 20 room house and only use 1 room over a period of time, you've lost the 20 room status. But if it's off and on and it's not a prolonged time then the law would seem to be that you don't lose it. You don't have to have 8 people in there constantly.**

**MRS. BRAMICH:**

**But they were not apartments; they were rooms with a bathroom down the hall.**

**ATTORNEY FINK:**

**So that's the question, does converting it constitute abandonment? Obviously the conversion was illegal. So did the conversion constitute abandonment?**

**CO-CHAIRMAN MALOCSAY:** Yes.

**MRS. BRAMICH:** Yes.

**ATTORNEY FINK:** Well, I don't know.

**CO-CHAIRMAN MALOCSAY:** Well, you just asked two of us who can vote and we said yes.

**ATTORNEY FINK:** The law is not quite so clear, it's a matter of degree.

**CO-CHAIRMAN MALOCSAY:** Norm, are you ready to make a decision?

**MR. PAULSEN:** If they're available to rent and nobody comes to rent them, is that abandonment?

**ATTORNEY FINK:** No, but that's not the problem.

**CO-CHAIRMAN MALOCSAY:** Diane and I believe that it was abandonment going from the 8 rooms to 8 apartments abandoned the use, the original use.

**MR. PAULSEN:** Well, I'm thinking about the two examples Bob gave us, the going from a restaurant/bar to a bar/disco, and 8 rooms to 8 apartments; it's pretty close.

**ATTORNEY FINK:** Do I detect two to one?

**MRS. BRAMICH:** Then it's over.

**ATTORNEY FINK:** No, it's not over, there's no decision.

**CO-CHAIRMAN MALOCSAY:** We have to wait until next month.

**ATTORNEY FINK:** The public hearing is still open. We'll close it tonight and then we have 62 days to reach a decision. In cases where the Board is deadlocked after the 62 days it's not so definite. That's not going to be an issue because we'll make a decision next month.

**CO-CHAIRMAN MALOCSAY:** **The public hearing is closed for this application. *Continued to the March 23<sup>rd</sup> 2009 meeting.***

**Meeting Adjourned.**

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**Frances N. Sanford, ZBA Recording Secretary**