

**TOWN OF WARWICK
ZONING BOARD OF APPEALS
MARCH 24, 2008**

Members Present:

- Mr. Jan Jansen, Chairman**
- Mr. Mark Malocsay, Co-Chairman**
- Mr. Norman Paulsen**
- Mr. Charles Todd**
- Attorney Robert Fink**

Members Absent:

- Mrs. Diane Bramich**

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

CHAIRMAN JANSEN:	Can I have a motion to approve the minutes of the January 28th, 2008 meeting?
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MR. PAULSEN:	I make a motion to approve the minutes of the January 28th, 2008 meeting.
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MR. TODD:	I second it.
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CHAIRMAN JANSEN:	Any discussion? Any opposed? All in favor?
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MR. PAULSEN:	Aye
MR. TODD:	Aye
MR. MALOCSAY:	Abstain
CHAIRMAN JANSEN:	Aye

Motion Carried

Public Hearing of RAY CARLISLE – for property owned by Myrna Carlisle and located at west side of Co. Rt 21, Warwick, New York and designated on the Town tax map as Section 63 Block 1 Lots 8.21 & 8.22 and located in an MT District for a variance of Section 164.46J(2) permitting an existing building to be used for a kennel which is located 102 (+/-) feet from the side line where 300 feet are required. *Continued from the 1/28/08 ZBA meeting. Adjourned to June 2008.*

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 164.45 D allowing enlargement of a building increasing the degree of non-conformity and Section 164.40 N reducing setback to less than 100 feet from a “special area” (Greenwood Lake). *Continued from the 1/28/08 meeting.*

MS. SARDO: Representing the applicant?

JAMES R. PAWLICZEK: James R. Pawliczek for Rosemarie Castillo.

CHAIRMAN JANSEN: Do we have a survey?

JAMES R. PAWLICZEK: Yes.

CHAIRMAN JANSEN: Does this show if the extension is across the line?

JAMES R. PAWLICZEK: Yes, it’s the same map.

CHAIRMAN JANSEN: Is there anything else you would like to add at this time?

JAMES R. PAWLICZEK: Someone raised the issue of the septic, the Building Inspector looked into it and there is no problem.

CHAIRMAN JANSEN: At this point, how much are you over the line?

JAMES R. PAWLICZEK: Approximately 2 1/8 inches.

CHAIRMAN JANSEN: Comments?

ATTORNEY FINK: Let’s discuss first what we can and can’t do. This Board can’t grant a variance for a building going over the line. We would have power to give a variance *to* the line.

JAMES R. PAWLICZEK: That’s basically what we’re looking for. The neighbor says we are 1 inch still on our side. At some point we will have to work out some kind of boundary agreement with the neighbor. Our purpose here tonight is to obtain a variance to the line. The neighbor had it surveyed and said it was not over, our surveyor said it’s over. I don’t know how to reconcile the two.

CHAIRMAN JANSEN: It would seem to me that you would have to get together with the neighbor and come to some agreement because otherwise, it's going to become a matter of "taking down".

JAMES R. PAWLICZEK: I would agree with you, but the neighbor is saying we're not over.

CHAIRMAN JANSEN: Are you able to talk to the neighbor?

JAMES R. PAWLICZEK: Relations are somewhat strained.

CHAIRMAN JANSEN: He didn't seem like he was unwilling to negotiate.

MS. CASTILLO: My first meeting with him was greeted with some expletives.

ATTORNEY FINK: Whether it's over or not is not the concern of the Board. If we are to give a variance it can only be given to the line.

CHAIRMAN JANSEN: If we don't give a variance, it will have to be removed.

ATTORNEY FINK: That's right, it has to go back to where it was.

CHAIRMAN JANSEN: Okay.

ATTORNEY FINK: The root of the problem is that the building was made bigger than it previously was.

JAMES R. PAWLICZEK: That wasn't our impression, but apparently that appears to be what occurred.

MR. PAULSEN: Was there a building permit when this was added on?

MS. CASTILLO: Yes.

JAMES R. PAWLICZEK: Everything had a permit.

MR. PAULSEN: But it was made bigger than what the permit said?

MR. MALOCSAY: Yes. I checked with the Building Department. When everything was said and done, it was 2 feet more than what they had on the building permit.

ATTORNEY FINK: We're here based upon a notice to the Board of a violation by the Building Inspector.

MR. MALOCSAY: I wasn't clear with the testimony, so that's why I went to the Building Inspector to look at the original building permit.

MR. PAULSEN: Was there a drawing?

MR. MALOCSAY: Yes.

MR. PAULSEN: Did they tear down a part of the building and then rebuild it?

MR. MALOCSAY: Yes. We already asked, but if there is property available, could we get a letter from the neighbor saying that he is not interested in doing anything, then we can move forward. As opposed to giving or not giving the variance. Yet if you want to poll this now to see how people feel and it seems like we're not going to give it, it seems like their only option is to see about getting something through the neighbor.

MR. PAULSEN: Do you use the dirt driveway to access your shed?

MS. CASTILLO: No.

CHAIRMAN JANSEN: But is that a right of way that you have on the neighbor's property?

MS. CASTILLO: At one time that was what was said.

CHAIRMAN JANSEN: But is it in your deed?

MS. CASTILLO: I don't believe so.

CHAIRMAN JANSEN: We can't grant an approval, going over the line.

JAMES R. PAWLICZEK: Maybe what we should do is to keep it open, and of course we will reach out to the neighbor, but I know how that's going to go. We will also talk to a contractor and see if we can come back with a proposal to show you we can close it in.

CHAIRMAN JANSEN: You ought to be able to go at least 6" off the line, right?

MR. MALOCSAY: Well that's the issue. We give the minimum relief, the variance that we can. And we've never given one that was 2 feet from the property line. So even if you shave off 6" and you're within your property, then we have to give you the relief for that and I don't know if the Board will.

CHAIRMAN JANSEN: We can poll the Board about that. The neighbor on either side, one has 4.2 feet and the other has 5.9 feet off the line. So even if we did 6" off the line it would be a substantial variance.

MR. PAULSEN: When you're riding by the neighborhood looking you can't really tell whether or not anything is 6" off the line or 2 feet off the line. Its not going to make a difference as far as aesthetic appearance is concerned.

MR. MALOCSAY: I agree with you but it becomes an issue when any work needs to be done on the house. Do you really think they can be on their property and do the work? They will be going on someone else's property and that's the reason to have the set backs in the first place.

MR. PAULSEN: I understand that, but the house is up.

CHAIRMAN JANSEN: What would be the Boards comfort level as to a distance to the line?

MR. MALOCSAY: Two feet.

JAMES R. PAWLICZEK: That's what it was before.

CHAIRMAN JANSEN: That's what the building permit was for. Chuck?

MR. TODD: Two feet.

CHAIRMAN JANSEN: Norm?

MR. PAULSEN; I could go a little bit higher. He should have somebody go over and find out how much he can get off without wrecking the whole thing.

CHAIRMAN JANSEN: You get two feet from the neighbor somehow, alright? Weigh the cost one way or the other.

JAMES R. PAWLICZEK: Alright, we'll try to get this shaved back. Okay.

CHAIRMAN JANSEN: We'll continue this to the next meeting. Any one here to address this application?

NICHOLAS CATINELLA: Is there a problem with them building over the septic tank?

CHAIRMAN JANSEN: As long as they can access it in order to pump it out, no.

NICHOLAS CATINELLA: The deck they built is within the 100' of the lake and it is below power lines where you could reach up and touch the power lines.

CHAIRMAN JANSEN: That's an issue for the building inspector and the Planning Board, it is not part of our jurisdiction.

LOUIS D'AMELIO: So you said in order for the addition to have been built, it would have to go before the Planning Board; was that done?

MS. SARDO: No.

JAMES R. PAWLICZEK: It's not within 100' of the lake.

LOUIS D'AMELIO: It is also my understanding of the Zoning Board, that you should go before you guys prior to anything being built. For example, they should have consulted the Zoning Board before constructing the addition.

CHAIRMAN JANSEN: Whatever the zoning for the area is, it would be up to the Building Inspector. If it conforms, all they would need to do is obtain a building permit. Anyone else? Continued.

PUBLIC HEARING OF BRIAN J. & MELISSA A. SINGER- for property located at western side of Briller Road 1000 feet south of Continental Road, 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. *Continued from the 1/28/08 ZBA meeting.*

GARY GOLDSTEIN: I am here tonight because I represented Mr. and Mrs. Singer when they purchased their property. I understand that an issue has been raised by one of the neighbors regarding an easement that's used to access the Singer property. I understand that a letter has been submitted by Phyllis Briller who sold the property to my clients and who is one of the property owners along where the private road is located. The issue she raised to the Board is that if the subdivision approval is granted to Mr. and Mrs. Singer, then that would make 7 lots that benefit from the easement. That is not true. In fact I have a letter from Mrs. Briller herself acknowledging that legally right now including the current Singer property there are only 5 lots that have a legal right of use of this easement. If the subdivision were to be granted, that would make only 6 houses that would be accessing the private road which to my understanding under the code is the number that is permitted. Frankly, I don't know what issue Mrs. Briller is trying to raise. She has acknowledged it in her own writing. I previously submitted a letter to the Planning Board based upon this issue that was previously raised by Mr. Briller previously.

CHAIRMAN JANSEN: Do we have any questions at this point?
Very well, let me open it up to the public.

PHYLLIS BRILLER: Good evening, I am Phyllis Briller. For the record, those who use Briller Road are Bob and Peggy Barnett, Mark and Mary Mansfield, Theresa McQuade, Linda and Max Blake, myself and the Singers. That makes 6 and if they have 2 homes it will be 7.

MR. GOLDSTEIN: In a letter submitted to John Bollenbach dated 9/27/07 written by Mrs. Briller, she acknowledges there are 6 landowners using the premises but only 5 have a legal right to use the premises. The Barnett's are not a party to any easement or road maintenance agreement. In fact, their property fronts on Continental Road and they have access via a Town road. So if Mrs. Briller has been on her own giving them permission to use the road, that does not give them legal entitlement. The fact of the matter is, is that there is recorded easements and road maintenance agreements that only benefits 5 land owners currently, not six.

BRIAN SINGER: This is the easement – “Purchaser shall be authorized to utilize the existing roadway known as Briller Road and shall be obligated to pay a pro-rated share currently 1/5 of the maintenance cost of said road”. This is the easement given to us when we purchased the property at closing.

MR. GOLDSTEIN: Further, when they purchased the property Mrs. Briller signed an easement agreement stating that she would give any other further easement that might be necessary for the Singers. So again even if there were 6 people using this easement, she already agreed to give them additional easement which by itself would only benefit the Singers. So again, I’m not sure what issue she’s trying to raise here to the Board.

MR. BARNETT: My deed specifies that I have use of the right of way that runs the length of my property.

MRS. BRILLER: Bobby has a 20 foot easement across what was my property. Everyone who has road frontage on Briller Road is also a member of the road maintenance agreement. But he did not have to sign. The only signers that were required would have been the 3 parcels that were the original 3 lots in my subdivision. They are owned by the Mansfield’s, Theresa McQuade and myself. The Blakes were not members at all and it wasn’t until a court settlement that they agreed to become a party to that. Bobby was never required, but voluntarily agreed to pay 10% of our road maintenance bills.

MRS. SINGER: That doesn’t make it legal.

MR. BARNETT: It’s in my deed.

MR. GOLDSTEIN: I can tell you from the Title Recording, the policy states that it’s 5 lots, which included the Singers lot. Also, I have a cop of the easement agreement where she states that she would provide additional easement to the property. And that’s an agreement prepared by her own attorney.

MRS. BRILLER: There is no question that I offered the Singers a second easement. I did this because the owners of the 60 acre parcel were in flux and we were unable to negotiate an arrangement due to their family problems. Therefore we offered a “generic” easement. I feel they now need an “iron clad” easement.

CHAIRMAN JANSEN: Specifically what are you objecting to or what are you proposing?

MRS. BRILLER: I am asking the Singers to obtain an “iron clad” easement, that will stand up in court if we are threatened by the owners of the 60 acre parcel. I want them to produce a common road maintenance agreement if

they are to be sharing that roadway with anyone and I am asking that them to come before you again to obtain a variance for a single home.

CHAIRMAN JANSEN: Is there something in your deed to them that prohibits them from subdividing that property?

MRS. BRILLER: Absolutely not. They originally told me they were only interested in a single family home.

CHAIRMAN JANSEN: Any questions?

MR GOLDSTEIN: I just want to address the two issues Mrs. Brilller raised to the Planning Board. The first being the definition of the easement. In the letter to me from Luke Charde dated 4/21/05 he clearly acknowledges that the easement is the same easement as to the Blake property. The reason for the additional easement was that if the Blakes were not going to contribute to the improvement of this current easement, that would allow us to add an additional easement, that the Blakes would not benefit from because the cost was borne by my clients and Mrs. Brilller on her own consent. So for her to say there is no defined easement is inaccurate. In addition she has not presented anything that shows currently there are 6 people legally using the easement, there are really only 5 people. There was no prohibition in either the contract or the deed that prevented them from doing a subdivision. Based on that I request that the Board grant Mr. and Mrs. Singers application.

MR. SINGER: This agreement began 6 years ago, our family situation has changed in such that we cannot afford to build one home at this time. We may sell it, we may not. We have time to decide yet.

MRS. BRILLER: I was willing to concede that one house is built. Due to the increased traffic that would result from 2 houses being built on the parcel, I think we would have to consider making Brilller Road a public road. If Mr. Goldstein were to look at my deed, he would see that on that original parcel, there are two parcels that have easements across my land. One is Lands of Brumbach, the other is the farm of John Hay, which is now the 60 acre property in the back. The Singers property does not appear on that at all because it was totally landlocked. So it's not as if we can go back to any existing deed for their purposes. Also, there are a number of my neighbors in the audience. We were not made aware of the ZBA meeting in January. I was able to read the transcripts; can anyone summarize the meeting for the neighbors who were unable to attend the meeting?

ATTORNEY FINK: You can foil the transcripts. The Board can't summarize the last meeting. I am going to ask the Chairman to continue this an additional month so that I can review the material and advise the Board next month.

CHAIRMAN JANSEN: If any of you would like to make a comment at this time, you may.

MRS. BRILLER: With respect to the specific easement, outside of Mr. Goldstein's letter, I see no other reference to the fact that the 385' from the end of Briller Road to the Singers property in his opinion has a width of 14 – 15 feet. I know of nothing that indicates what the width of that easement is. I would disagree with him on that. The paved portion which is known as "Briller Road" is 18' wide. What we were required to provide in 1977 was an access strip 16' wide and 1000' long, to the beginning of lot 3. We did that. In the Planning Board discussion in July, there was some question about how long is this road really. We constructed the entire thing, width and length as it should have been. It was 16' wide when I sold parcels 2 & 3; I knew because of the slope from lot 3 down to Continental Road, it was steep and icy in the winter. At my cost, I had it widened to 18'. The other half, from lot 3 down to the Singers property, is an even steeper slope. If it is as Mr. Goldstein is suggesting, and it is accepted as fact, assuming he is correct (which I disagree with him), and if the Singers have the same easement as the 30 acre parcel, they would have 14 – 15 feet. That doesn't allow 2 cars going past each other on an icy, slippery road in the winter. That again is something that needs to be addressed in their road maintenance agreement. Thank you.

CHAIRMAN JANSEN: Okay, anyone else?

MR. MANSFIELD: I have lived on the road for 10 years and for 10 years there have been 6 of us who have been contributing to the road maintenance agreement. I attended the meeting Mrs. Briller had at her house for the purpose of finding out how the neighbors felt about possibility of making Briller Road public. I was not interested because of the increased traffic. I asked Brian (Singer) what his intent for the property was and at that time he said one house.

CHAIRMAN JANSEN: Thank you. Anyone else? Do you have anything regarding the right of way?

MR. GOLDSTEIN: I'll submit it to the Board. I would like to address one more thing. Mrs. Briller raised the issue about from the end of Briller Road to the Singer property that hasn't been defined. Again her attorney Luke Charde in April 2005 sent a letter to me stating that "as the Singers may have explained to you, the access to the parcel from the end of Briller Road to the boundary line is via a 14 – 15' wide easement that is in significant disrepair and is shared with people named Blake". That Blake easement is specifically defined and described in Mrs. Brillers settlement with the Blakes in 1993. So clearly the understanding was that they have the same easement but at their option if they wanted an additional easement based on their agreement with Mrs. Briller in June 2005 they had a right to an additional easement if they so choose.

MRS. BRILLER: There is no question that there is a defined easement with the Blakes. There is not question that the Singers could easily access their property. Many people use it occasionally for various reasons. It was the only thing we could provide at that time. I wanted something that was absolutely specific for them.

CHAIRMAN JANSEN: We'll let Mr. Fink review all of this and come back with some recommendations. Continued to April.

Public Hearing of DENIS & JAMIE MCLAUGHLIN – for property located at 5 Clinton Avenue Ext., Warwick, New York and designated on the Town tax map as Section 52 Block 1 Lot 24 and located in an SL District for a variance of Section 164.40N reducing front setback from 51 feet to 38 (+/-) feet where 50 feet are required., 1 side setback from 20 feet to 16 (+/-) feet where 35 feet are required and both side setbacks from 75.3 feet to 71 (+/-) feet where 80 feet are required for the purpose of construction of a 16 foot X 35 foot addition to an existing single family dwelling.

CHAIRMAN JANSEN:
record and tell us what you plan to do.

Please identify yourself for the

DENIS MCLAUGHLIN:
this is my wife Jamie.

My name is Denis Mclaughlin and

MS. SARDO:
certified mailings?

Excuse me; do you have the

JAMIE MCLAUGHLIN:

Yes, but we've gotten on returned.

MR. MCLAUGHLIN:
expecting our third. We are looking to expand our home and add an extra bedroom, possibly two. We are a little too close to our neighbor's property so we are requesting a variance at this time.

We have two children and are

CHAIRMAN JANSEN:
can be accomplished?

Is there any other way that this

MR. MCLAUGHLIN:
offered to buy a piece of his property and he declined.

We've spoken to our neighbor and

CHAIRMAN JANSEN:
side?

And it can't be done on the other

MR. MCLAUGHLIN:
would have to go through the garage as well.

No, there is a gas line there and we

CHAIRMAN JANSEN:
there any questions?

This is open to the public, are

JAMIE MCLAUGHLIN:

John Hicks submitted a letter.

CHAIRMAN JANSEN:

I have received it.

ATTORNEY FINK: Which lot does John (Hicks) own?

JAMIE MCLAUGHLIN: He's to the left of us and Larry Parkin is to the right.

ATTORNEY FINK: Who is on the side where you want to build?

MR. MCLAUGHLIN: Larry Parkin.

CHAIRMAN JANSEN: Did he receive the letter?

MR. MCLAUGHLIN: Yes.

MR. MALOCSAY: I just saw him today and talked to him and he didn't say a word.

ATTORNEY FINK: Tell us a little about the neighborhood; is this going to be typical to the character?

MR. MCLAUGHLIN: Our house is small in comparison to the one Mr. Hicks recently built. The only other building is further down and that's Parkin Plumbing and Heating. As far as the Town is concerned, it's the only dwelling on the block.

CHAIRMAN JANSEN: The rest of the neighborhood is smaller residential housing.

ATTORNEY FINK: I raised a question as to whether or not his is what is needed in the letter I sent to you. Are you convinced that this is essentially the dimensions and the setbacks that you will need?

MR. MCLAUGHLIN: I'm not 100% convinced on the 16 feet, I was considering, depending on what the architect comes up with, I was thinking maybe a foot more.

ATTORNEY FINK: Maybe we can get a consensus of the Board and then you finalize and come back so we can give you what you need.

CHAIRMAN JANSEN: Do you have an architect yet?

MR. MCLAUGHLIN: I've narrowed it down to two. I'm concerned about paying on and then something goes wrong here. I was hoping to do it the other way around.

CHAIRMAN JANSEN: I don't foresee a problem, but for example, if it has to be 15 feet it would be better if we had the resolution for 15 instead of 16.

MR. MCLAUGHLIN: Okay.

ATTORNEY FINK: The consensus would be favorable, so get what you want.

MR. MCLAUGHLIN: Do you require an architect or the exact dimensions?

ATTORNEY FINK: It should be very close because otherwise the Building Inspector may send you back. For your own sake you would be better if you nailed it down so that the Board can give you what you need. It may end up very different from what you'd think.

CHAIRMAN JANSEN: Just come back in with the final measurements.

ATTORNEY FINK: If you need more than a month, then that's fine too.

CHAIRMAN JANSEN: Continued.

Public Hearing of SILVIO & EMILY AUSTIN GALTERIO – for property located a 98 Pine Island Turnpike, Warwick, New York and designated on the Town tax map as Section 43 Block 1 Lot 68.1 and located in an SL District for a variance of Section 164.41B. (1) and (4)(f) allowing a 6 foot fence at an intersection and within the required front yard setback.

CHAIRMAN JANSEN: Please identify yourself and tell us what you want to do.

SILVIO GALTERIO: My name is Silvio Galterio and my wife is not here. We purchased the old Hawkins’s farm in the early 90’s. I’m an avid gardener and planted extensive gardens. In the beginning I had very little problems with deer. There are now developments on my right and left. My property is situated between a Northern section consisting of 100 acres and a Southern section of over 100 acres. I have a “deer highway” to the right of my property. The deer are now eating everything that I have. In an effort to protect my property, I have erected over 1000’ of fence going around the entire property. On one side which faces a rock wall, I have a 6’ wire fence that no one can see. On Pine Island Turnpike I have over 800’ of fence only 100 feet of that I erected at a 5’ level with 6’ posts to put wire on the 6’ posts. I have one other section in back of the barn which is going to enclose a 40 foot of a real 6’ fence that encloses a vegetable garden. I have gone to considerable expense to put up a very nice picket fence and a stone wall, also 4’. The areas where the deer come down from North and South I made that a little higher. It has solved the problem; that’s why I put it up.

MS. SARDO: Excuse me; do you have the certified mailings for the public hearing?

SILVIO GALTERIO: I do at home; I’ll have my wife drop them off tomorrow morning.

MS. SARDO: Okay, because we really need them.

ATTORNEY FINK: Did we hear anything from the County?

MS. SARDO: No.

ATTORNEY FINK: The problem is, we can’t vote on this if it hasn’t been 30 days.

CHAIRMAN JANSEN: We can’t vote yet. We have to wait for the County to get back to us, or for 30 days to pass. Anyone here from the public?

SILVIO GALTERIO: So I have to come back next time?

CHAIRMAN JANSEN: Yes.

MARK GREGORIO: I live on Panorama Drive adjacent to Silvio. I have a 4' fence around my property and I've spent \$100,000 on landscaping. It doesn't get eaten by deer. On his property there is now a "concrete" wall on the Pine Island Turnpike side.

SILVIO GREGORIO: The wall is four feet. Can you identify here where you believe there's a problem? It's been marked with the heights of the existing fence.

MARK GREGORIO: This is all 4' here?

SILVIO GALTERIO: Yes.

MARK GREGORIO: Then there's no problem.

RAYMOND MORANO: Can I also take a look? I didn't understand the letter. Can you just show me what you are looking to do or change?

CHAIRMAN JANSEN: Nothing is going to change. Whatever you see now is what he's getting the variance for.

RAYMOND MORANO: So really, where he needs the variance is not in the green section?

ATTORNEY FINK: That's correct, but he needs it here and here.

RAYMOND MORANO: The only places I'm concerned about are here. Where it would block the line of sight coming in or out of the road.

CHAIRMAN JANSEN: Continue to the April meeting.

MS. SARDO: We have to think about the May meeting.

CHAIRMAN JANSEN: We'll let you know. We have to see if this room is available. Can I have a motion to adjourn?

MR. MALOCSAY: Motion to adjourn.

MR. TODD: I second it.

All in favor (Four Ayes), motion carried.

Frances N. Sanford, ZBA Recording Secretary