

TOWN OF WARWICK
ZONING BOARD APPEALS
APRIL 27, 2009

Members Present:

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

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

CHAIRMAN JANSEN: Before we get started, can I have a motion to approve the minutes of the February 23rd, 2009 meeting?

MR. PAULSEN: I make a motion to approve the minutes of the February 23, 2009 meeting.

MRS BRAMICH: I second it.

CHAIRMAN JANSEN: Any discussion; all in favor?

MR. PAULSEN: Aye.

MRS. BRAMICH: Aye.

MR. TODD: Aye.

MR. MALOCSAY: Aye.

Motion Carried.

¹ Town of Warwick ZBA April 27th, 2009 meeting

Public Hearing of NEDILJKO SARIC & ZELJKA KULUSIC-SARIC – for the 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 the RU District for a variance of Section 164.40M allowing conversion of a 2-family dwelling to a 3-family dwelling. Continued from the 3/23/09 ZBA meeting.

CHAIRMAN JANSEN: Public hearing of Nediljko Saric and Zeljka Kulusic-Saric. Are you hear?

MR. MALOCSAY: They're not hear.

CHAIRMAN JANSEN: They're not hear? I guess we can't do them first. They did not send in a letter to be pulled off the agenda. They did last month but not this month, and Connie did call them, so. Alright we'll give them a little but of time here.

CHAIRMAN JANSEN: Kastriot Rapaj, are you hear this evening?

MR. MALOCSAY: We'll get that at the end.

CHAIRMAN JANSEN: Okay. Public hearing of Charles & Grace Brack. Okay come on up.

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 the 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 3/23/09 ZBA meeting.*

CHAIRMAN JANSEN: Okay this was continued and I believe there was a question about a survey proving how far everything was. Did we resolve the survey?

MR. BRACK: Well I have my original survey, if you want to hear that? This thing that was in question here was not certified, and I don't think even necessary on my part. This was taken of the original stakes that we found there some 20 some years ago. It was a certified survey of the property. You see the tape measure shows the distance. This one was done recently, last fall. But it wasn't certified. For me to get this certified I have to spend another three hundred dollars. Which I already spent six hundred dollars to prove something that didn't need to be proven.

ATTORNEY FINK: The violation was issued by the building inspector. I talked to the building inspector and he said the shed is too close to the property line.

MR MALOCSAY: Okay so we can proceed and say that it is 2.7 feet and if something comes up, a year or two or three from now that is different, can you come back before us? At least then everyone will know more.

CHAIRMAN JANSEN: So who has to show?

ATTORNEY FINK: If you were to deny the variance based upon the uncertified survey I think that would be an issue. We either grant the variance and accept that as being the true distance, and then I don't think it is an issue. Unless some time in the future it comes up to be substantially less.

MR MALOCSAY: I'm okay with that.

CHAIRMAN JANSEN: You're ok with what? Something went by me that I didn't get.

ATTORNEY FINK: We'll go thru the list, the criteria, and we will come up with a 2.7 or 2.9 feet?

MR. BRACK: 2.7

MR. MALOCSAY: 2.7 plus or minus.

ATTORNEY FINK: Plus or minus, then we will vote on it and see how it goes.

MR BRACK: The only question I had is the distance from the house.

MR MALOCSAY: I asked that question and I'm under the assumption that because it can't be moved closer to the house, you have sheet rocked the inside for fire safety. That's my understanding. If you want to go see the building inspector, and he feel there's a violation, if he does then you'd be back before us.

MRS. BRAMICH: No that was the last time.

ATTORNEY FINK: That's true but he got cited for that.

MR MALOCSAY: He didn't. That's what I said. I said if you going to talk to him and the building inspector decide that there is a violation, and he does that, then he has to come back before the Board. But right now that is not before us.

MR BRACK: I'm going thru some information right now and I don't see anything in there that if you sheet rock you can have it closer. It says cut and dry, it is only ten feet or better.

ATTORNEY FINK: Again, this board is the Public Board. You can't grant relief from something that doesn't exist. The Building Inspector has issued violation, based upon it being too close to the side line. If there are other violations that's not before this Board. The Building Inspector has decided that, so we can't grant relief.

MR BRACK: There's a question on the side line of the house as far as the zoning?

ATTORNEY FINK: Correct.

CHAIRMAN JANSEN: Is there anyone from the public here to address this application? If not public hearing is closed.

MRS BRAMICH: What did I miss? So I know what I'm doing.

CHAIRMAN JANSE: This is the storage unit that is 2.7 feet from the line.

MRS BRAMICH: Okay.

CHAIRMAN JANSEN: And its suppose to be 5 feet.

MRS BRAMICH: And this is the one we discussed last meeting when we were all together last time about that wall that Mark was talking about? The fire wall.

CHAIRMAN JANSEN: Yes.

MRS. BRAMICH: Because it was so close to the house.

ATTORNEY FINK: Well it was closer than Zone apparently closer but we don't know. It's not before us.

MRS BRAMICH: And that's not an issue?

MR MALOCASY: No, it's not up to the Board.

CHAIRMAN JANSEN: Accessory building is supposed to be not less than 5 feet from the line; this appears to be 2.7 plus or minus feet from the line. This is going to create an undesirable change in the character of the neighborhood, or in this particular instance the detriment to nearby property specifically the adjacent property by the granting of this variance.

CHAIRMAN JANSEN: Yes?

MR PAULSEN: I said no.

MR MALOCASY: Well let's talk about the neighborhood. Is it going to create an undesirable change in the character of the neighborhood?

MRS BRAMICH: Not if you've been out there.

MR MALOCASY: I know the area well and the thing you have to look at is something that is 5 feet from a property line where you don't know where it is. The question is when you're driving and you're looking at things, you know most of them are 5 feet off the property line. Now we're looking at a substantial variance of only 2 and a half feet roughly. But the question is does it really change the character of the neighborhood by only looking at 2 1/2 feet? Then I'd have to answer no. But the second part I'd have to answer yes.

MR PAULSEN: What was that?

ATTORNEY FINK: Mark feels that's a detriment of 2 and a half feet more or less, it's a detriment to the adjoining property line, but not to the character of the neighborhood.

MRS BRAMICH: I agree.

CHAIRMAN JANSEN: Anyone want to offer a different outlook on that?

CHARLES TODD: I don't think its detriment at all.

CHAIRMAN JANSEN: Two people think that, one doesn't think it's a detriment, oh two don't think it's a detriment.

CHAIRMAN JANSE: Okay three people think it's a detriment to the near by or adjoining property owner, and two don't. Well can the benefit sup for the applicant be achieved by another feasible method?

MR MALOCSAY: Could be moved.

ATTORNEY FINK: To have a shed on the property, can't be moved any place else because of the to go, there was testimony that there wasn't the possibility of buying additional property. We can't move it closer to the house, because it has to be 10 feet away from the house. The size 8x10, 10x10, 10x12 is about the smallest shed you could put in, so nothing else would fit. So I'm going to say no.

CHAIRMAN JANSEN: Anybody else? Everyone agree?

MR. PAULSEN: Yes.

CHAIRMAN JANSEN: Is this a substantial variance?

MRS. BRAMICH: Yes

MR. PAULSEN: Yes

CHAIRMAN JANSEN: Is it going to have an adverse affect or impact upon the physical environmental conditions.

MR. MALOCSAY: No.

MR TODD: No.

CHAIRMAN JANSEN: Self created?

MR. MALOCSAY: Yes.

CHAIRMAN JANSEN: So carried. Motion by Mark. Second by Diane. Any further discussion? All in favor?

MRS. BRAMICH: Aye,

MR PAULSEN: Aye.

MR MALOCSAY: Aye.

CHAIRMAN JANSEN: Any opposed? Motion carried.

ATTORNEY FINK: Okay so we move that the variance be granted allowing this existing shed to be 2.7 plus or minus feet from the property line. If you vote yes you're voted for that, if you vote no you're voting against it. It has to be 3 to 2 one way or the other.

MR MALOCSAY: So move.

MR TODD: Second.

CHAIRMAN JANSEN: Motion is second. How do you vote?

MR. MALOCSAY: Aye
MRS. BRAMICH: Aye
MR. TODD: Aye
MR. PAULSEN: Aye
MR. JANSEN: Aye

CHAIRMAN JANSE: Okay next item on the agenda is Public Hearing of Brian and Melissa Singer.

In other words, this particular Town Law in Warwick restricts to a certain district, but if someone were to want to subdivide property if it were in the district we are in Open Area Developments were allowed and it was apparently 4 lots. No variance would be necessary. The Town Board has authorized the Planning Board to grant that relief without the applicant having to come before the Zoning Board of Appeals. So what we have here is whether this is an ODA weather it exceeds the 4 lots that it probably isn't even relevant. What is relevant is whether or not the applicant should get a 288 variance pursuant to Subsection 3, and that is the type of variance that this Board has dealt with innumerable times. So frankly we can't forget about the ODA, and look at this purely under the circumstances that we usually do. Can you grant a typical 288 variance, based upon the road, or the proposed road, the lot etcetera, excreta?

MR. SINGER: Which this Board has already done.

MR PAULSEN: Where, when?

MR MALOCSAY: This particular lot?

MR. SINGER: We went back to the Planning Board and they referred us back to this Board for a second issue.

ATTORNEY FINK: I think the Board had already granted the 288 variance as far as I can see and my opinion is that Subsection 4 is totally irrelevant, the open development area. Whether its 4 lots, 6 lots or 10 lots.

CHAIRMAN JANSEN: So is there any action needed at all?

MR MALOCSAY: Yeah I think the Board is, ya know any discussion or if not ...

ATTORNEY FINK: What would be its determination of this Board that the previous 288 variance controls?

CHAIRMAN JANSEN: Okay then can I have a motion to that effect.

MR. PAULSEN: Second

CHAIRMAN JANSEN: Motion by Todd, second by Norman. Any further discussion? All in favor?

MRS. BRAMICH: Aye.

MR. PAULSEN: Aye.

CHAIRMAN JANSEN: Any opposed? Motion carried.

Public Hearing of Vincent Mcateer – for property located at 1621 Lakes Road, Warwick, New York and designated on the Town tax map as Section 59 Block 1 Lot 1 and located in an MT/SL District for a variance of Section 164.41.A(1) to permit a 12 foot X 20 foot shed to be located 14(+/-) feet from the front line which is within the required front yard setback.

CHAIRMAN JANSEN: Please identify yourself for the record.

MR. MCATEER: Vincent Mcateer

CHAIRMAN JANSEN: Okey dokey. Anything you'd like to add?

MR. MCATEER: In order to close on the property initially we had to demolish six sheds, and a lean to that were illegally built. And with that said there was a lot that was in those sheds that ended up in our basement and garage and we are just bursting at the seams at this point, we need storage big time.

CHAIRMAN JANSEN: I believe there was a letter from the Planning Board somewhere.

MRS. BRAMICH: This is it? No.

ATTORNEY FINK: Building Department and local determination, found it. There is no Planning Board issue.

MRS. BRAMICH: No.

CHAIRMAN JANSEN: Okay

MR. MCATEER: It's within the font setback.

MRS BRAMICH: I know the property very well. I knew it before this couple purchased it and what they have done to the land and the building has brought it so far up that it's amazing. There were a lot of sheds there. They are all gone.

MR. MCATEER: Yup.

MRS. BRAMICH: My personal opinion is I don't think there is any reason why they shouldn't be allowed to have this shed on their property.

CHAIRMAN JANSEN: Okay then we'll open it up to the public. Is there anyone here from the public who would like to address this application?

MR MALOCSAY: Can you explain why it has to be there as opposed to where the other sheds were there in the back?

MR. MCATEER: The other sheds were built on site, this shed is one of those prefabricated Dutch style barns that they pretty much trailer in and drop into place. The back property is on an incline immediately about ten or so feet from the house and goes up to an incline. There is no room for it in the back. And preferable the garage is at ground level versus having to return mowers and stuff up a hill to some shed in the back. It would be at the same level. It would be convinent. We have a lot of stuff that we had to demo that those sheds had to clean that property. And right now as it is it is a fire hazard, gasoline, power washers and lawn mower and things that are currently in our basement and in our garage.

MRS. BRAMICH: This is going to go on the side lot where you cleaned everything out?

MR: MCATEER: Yeah and actually 3 of the sheds were in the area where I want to put this one back. So we just have a lot of stuff and no storage, and you being familiar with the property can attest to that.

MRS. BRAMICH: I knew the gentleman who owed it before.

MR. MCATEER: He was a junk collector, and I don't have the heart to throw out some of the things. We have Popular Mechanics going back to the 30's and 40's. I can't part with it. But for the most part we have chainsaws and things I'm not comfortable with, gas powered things that are in the basement that I really don't feel safe with being there. Gas cans and things that I rather just not have outside for the Public to have to look at.

MR. MALOCSAY: Is this unique that there are other garages and sheds in this area?

MRS. BRAMICH: There is one down the street that has a shed and that is in front of the house. The houses are closer to the road along there than anywhere else. If you go down further toward Nelson Road down in that area you will see them back off the road a little bit. But these particular houses are all built right there on the road.

MR. MALOCSAY: Right.

MRS. BRAMICH: At this particular piece of property, they cleaned everything from one side of the house towards Monroe. That's all cleared out in there and it looks like a separate lot, and its not, it's a decent looking building and some of them are really not. It's not going to be a detriment to the area at all.

MR. MCATEER: It will be painted eventually to match the house.

CHAIRMAN JANSEN: No one in the Public? There are no objections. So Public Hearing is closed. Go ahead.

MR. MALOCSAY: It won't create and undesirable in the character of the neighborhood? Can it be achieved by any other feasible method?

MRS. BRAMICH: It would be very difficult because of the upgrade in the back.

ATTORNEY FINK: Is this a substantial variance?

MR. PAULSEN: Yes

ATTORNEY FINK: Will it have an adverse affect on the physical environment?

MRS. BRAMICH: No.

ATTORNEY FINK: Admissions no. Self created?

MRS. BRAMICH: Yes

MR. MALOCSAY: Yes

ATTORNEY FINK: Now you penciled in the dimensions for a 12 x 20 shed approximately but not less then five feet from one line and 14 feet from the front line.

MR. MCATEER: Approximately, well five feet definitely from the side line, but I don't know what the front line is because I have to actually set down with rope or string. But it will be close to that. Thirteen? But if it has to be as it's written than it will be fourteen. Whatever you need I need storage!

CHAIRMAN JANSEN: Someone care to type this as an unlisted environmental effect?

MR. PAULSEN: So Moved.

CHAIRMAN JANSEN: Motion by Norman. Second?

MR. MALOCSAY: Second.

CHAIRMAN JANSEN: Second by Mark. Any discussion? All in favor?

MRS. BRAMICH: Aye.

MR. PAULSEN: Aye.

MR. MALOCSAY: Aye.

CHAIRMAN JANSEN: Any opposed? Motion carried.

ATTORNEY FINK: Some care to move that this proposed shed 12x 20, located not less then five feet from the side line and 14 (+/_) from the front line be granted and the condition being that that style wood as showing in the application be painted to match the house.

MRS. BRAMICH: So moved.

MR. MALOCSAY: Second

CHAIRMAN JANSEN: Motion by Diane and second by Mark. Any further discussion? All in favor?

MRS. BRAMICH: Aye.

MR. MALOCSAY: Aye.

MR. PAULSEN: Aye.

CHAIRMAN JANSEN: Any opposed? Motion carried.

MR. MCATEER: Thank you.

Public Hearing of Allan & Maureen Mante – for property located at east side of Bellvale-Lakes Road, 6281 feet southwest of Co. Rt 82, Warwick, New York and designated on the Town tax map as Section 47 Block 1 Lot 78.234 and located in the MT District for a variance of Section 280a of the Town Law permitting a dwelling on proposed Lot 2 of a 2 lot subdivision which does not front on a municipal road.

ATTORNEY FINK: There is a favorable recommendation from the Planning Board.

MR. PAULSEN: I'm going to refuse this one.

CHAIRMAN JANSEN: Norman is going to refuse them.

MR. MALOCSAY: Why?

MR. PAULSEN: Because they were working when they first started.

CHAIRMAN JANSEN: Go ahead.

MR ROTHER: Good evening, Kirk Rother representing Mr. and Mrs. Mante. An application has been submitted to the Planning Board for a 2 lot subdivision of approximately 11.9 acres of land situated in the MT Zoning District. This one lot out of a four lot subdivision that was filed in 1977 by Mr. Mante, the four lots currently share a common driveway with a 50 foot right of way. The two lots would meet both the Zone criteria with the exception of the front municipal street, because lot number 2 has its own 50 foot right of way and lot number one will continue to share the existing 50 foot right away and paved drive out to Bellvale Lakes Road. As I said we were before the Planning Board and they referred us here, they gave us a favorable recommendation and also sent the Plans into Emergency Services and leave correspondences received by the Police Department indicating that they don't foresee any access or impediments to Emergency vehicles.

CHAIRMAN JANSE: Is there something there that the fire truck can turn around?

MR. ROTHER: No.

ATTORNEY FINK: Actually in essence, this is a long driveway, is what it is.

MR. ROTHER: Yes.

MR. PAULSEN: A very long driveway.

ATTORNEY FINK: You can't expect the fire truck to back out of there.

MR. PAULSEN: That's the problem, to provide a turn around.

CHAIRMAN JANSEN: There has to be a turn around of some kind.

MR. MALOCSAY: I have a question. I don't know if the egress is fine on the trip that the Planning Board was looking at this thing. You only have a twelve foot wide a grove now?

MR. ROTHER: Right, more or less.

MR. MOLOCSAY: That isn't the minimum standard for that many lots off of a, I'm looking for language now.

MR. ROTHER: Careful what language you use it changes. Anyways it's going to be deemed a common drive and we're either going to want to be 16 feet wide. If they call it a private road they want it 20 feet wide.

MR. MALOCSAY: That was my question. I just assumed they were going to bring it to 16 feet as opposed to the 12 that it is now. And just wondering where do we want the turn around area? There has to be some place to put that in.

ATTORNEY FINK: Okay then we'll request the turn around area. You can make it on a condition that a suitable turn around area be provide as designed by the Planning Board.

MR PAULSEN: Right.

MR. MALOCSAY: Okay. Was there already some of that discussion?

MR. PAULSEN: No.

MR. MALOCSAY: There wasn't?

MR. ROTHER: Just my reaction to that provided it seems that it could be in either one or two places. Either is this area or else right over here.

ATTORNEY FINK: I'm thinking that it would probably be that first hearing where you said that there is no reason to have a turn around area at the end of somebody's drive way.

CHAIRMAN JANSEN: Right there where the intersection is would be the perfect place.

MR. ROTHER: I agree with you.

ATTORNEY FINK: Alright then you say you expect the truck to back down?

CHAIRMAN JANSEN: Well not all the way down to the road here.

ATTORNEY FINK: It would be the same thing as anyone having a long drive way.

CHAIRMAN JANSEN: The rest of that stuff the Planning Board will address anyway.

ATTORNEY FINK: I realize, but they need a 280a regardless of how they prove the common driveway now.

MR. MALOCSAY: You say there are four lots off of that now?

MR. ROTHER: Yes the first lot, this driveway only used maybe 100 feet, as soon as you pull into the common driveway.

MR. MALOCSAY: Okay I was looking at it differently.

MR. ROTHER: So this lot owns all this land and the house is situated right on Bellvale Lakes Road. Then there is another existing resident here, and existing residence on Mante's, and this I believe is Al's brother's.

CHAIRMAN JANSEN: Okay any other questions? If not I'll open it up to the public. I would like to open this up to the public. Is there anyone here from the public that would like to address this application? Yes Sir, come up here and state your name please.

MR. MASEFIELD: My name is Dave Masefield a neighbor and I would like to ask a question about the road and the improvements that would be made on it, the changes the character it's in now. I'm talking about the curb and drains. Will it be something like that or will it remain like a driveway is?

MR. ROTHER: It would remain virtually the way it is now, no curb just remaining enough to add a strip of blacktop to the existing driveway to bring it up to the current Town Specs for a common driveway.

MR. MASEFIELD: In the future could that road be used as a thru road? Up into the mountain to come back down in another area or is that too big of a question to ask.

CHAIRMAN JANSEN: That would depend on the landowner's idea. Right? I mean I know there is one person that owns a pretty good chunk there. I don't know what your long range plans were but it would certainly....

MR. MASEFIELD: Sounds like is a driveway, right?

MR. ROTHER: Yes a driveway. We're going to put one more house on six acres of land. As far as running a municipal road thru there, we're dealing with pretty rugged terrain once we get back up the mountain a ways. So how practical would it be? But there are no plans for Mr. Mante to do anything more that this one lot.

MR. MASEFIELD: Okay. So when you say there is one more house, this is the last house?

MR. ROTHER: That's correct.

ATTORNEY FINK: Just to be fair, there is already another lot without a house on it.

MR. ROTHER: That's correct. Not owned by Al Mante.

ATTORNEY FINK: Right, okay.

MR. MASEFIELD: Okay but by the Mante's associated property would there be plans for more houses to go up?

MR. ROTHER: Here is a tax map. This is the lot we are looking at. There was a four lot subdivision done in 1977, for this one, that one, and this one. So right now we are doing two lots off that one.

MR. MASEFIELD: Right.

MR. ROTHER: And that's all that's planned at this time. As far as Mr. Mante's brother, I have never met him or ever spoke to him. I don't know if he has any plans.

CHAIRMAN JANSEN: Okay, thank you. Anyone else?
Public hearing is closed.

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

MRS. BRAMICH: Not really.

MR. MALOCSAY: No.

ATTORNEY FINK: Substantial variance?

CHAIRMAN JANSEN: No.

MR. PAULSEN: No.

ATTORNEY FINK: Adverse affect or impact on physical environment with conditions?

CHAIRMAN JANSEN: No.

MR. MALOCSAY: No.

ATTORNEY FINK: Self created?

CHAIRMAN JANSEN: Yes.

MR. MALOCSAY: Yes.

ATTORNEY FINK: Someone care to move on this unlisted action?

MR. MALOCSAY: So moved.

MRS. BRAMICH: Second.

CHAIRMAN JANSEN: Any discussion? All in favor?

ATTORNEY FINK: With the conditions.

CHAIRMAN JANSEN: Any opposed? Motion carried.

ATTORNEY FINK: I care that it be moved that it be granted as advertised with the condition that a suitable turnaround area be placed with in the property line. Is that what you were talking about?

MR. MALOCSAY: Yes. There are basically three property lines that come together there. Yes.

ATTORNEY FINK: Where it enters proposed Lot 1?

MR. MALOCSAY: Yes.

CHAIRMAN JANSEN: Motion by Mark. Seconded?

MRS. BRAMICH: Second.

CHAIRMAN JANSEN: Second by Diane. Any further discussion? All in favor?

MRS. BRAMICH: Aye.

MR. MOLOCSAY: Aye.

ATTORNEY FINK: Aye.

CHAIRMAN JANSEN: Any opposed? Motion carried.

MR. ROTHER: Great thank you very much.

Public Hearing of NEDILJKO SARIC & ZELJKA KULUSIC-SARIC – for the 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 the RU District for a variance of Section 164.40M allowing conversion of a 2-family dwelling to a 3-family dwelling. Continued from the 3/23/09 ZBA meeting.

CHAIRMAN JANSEN: Did the Rapaj's show up? No?

ATTORNEY FINK: Not that they had to.

CHAIRMAN JANSEN: Okay. Well let's go back to.. how about the Saric. Anyone here from Saric? So what happens with the Saric application? I mean there are ten people sitting there waiting.

MR. MALOCSAY: They said they would be here this evening.

CHAIRMAN JANSE: Right now it doesn't look like there will be a meeting for May.

MR. MALOCSAY: Whoever said they were going to be here this evening I don't have a problem. Do we deny the applications or call someone else?

ATTORNEY FINK: No, no, you can grant it as well as deny it, the applicant doesn't have to be here. They presented their case.

MR. PAULSEN: Are we waiting on something here?

MR MALOCSAY: They were seeking some legal counsel on proceeding on a with a used variance. That was my understanding. The thing is we all know how far a used variance is for that property and some of the things we know haven't been met. And it only takes one of the five.

ATTORNEY FINK: The issue is self created hardship.
Even if they could show everything else.

MR. PAULSEN: The criteria are they have to show
reasonable requirements.

ATTORNEY FINK: There are four and that is one of them.

MR. PAULSEN: One but that doesn't mean you have
meet the maximum.

ATTORNEY FINK: They haven't presented a whole lot of
evidence. The one I always like to see is the sale of the property with offers.

MRS BRAMICH: They want to make a two to a three.
There are three living in it and they want to make it into a three family
home.

MR. MALOCSAY: Yeah. That's really not relevant. It's
a legal 2 family now and they want to make it 3 just because there is third
already there. It's not like we haven't already seen that before. I don't mean
to deny the application because of lack of proof. At least that way
everybody that came out could get a legal notice if it ever comes back again.

ATTORNEY FINK: You could deem it abandoned because
they have not come back, and if you did that it would be without prejudice.

MR. MALOCSAY: Then they would have to reapply.

ATTORNEY FINK: Yeah, they would have to re-apply.

MRS. BRAMICH: They would have to re-apply and
show proof.

MR. MALOCSAY: Then let's do that at least then. At least for everybody that came out tonight, because if we hold it over and the same thing happens. "Yes I'm going to be there" again, and they all come out.

ATTORNEY FINK: The letter could go out saying that they did not appear, and we deemed it abandoned.

MR. MALOCSAY: Okay, after everybody comes out again because they're assuming she is going to be here like it is tonight. That's why they're here.

MRS. BRAMICH: So if we dismiss it we are allowing it to stay 3 family.

ATTORNEY FINK: No.

CHAIRMAN JANSEN: No.

MRS. BRAMICH: Okay it goes back to a two family.

ATTORNEY FINK: Well it is a 2-family. But the building inspector is aware of it now because of the testimony that's given. So he will probably proceed with....

CHAIRMAN JANSEN: So are we going to abandon, or are we going to deny or continue?

MR. PAULSEN: Motion to abandon.

MR. MALOCSAY: What was his motion?

CHAIRMAN JANSEN: To abandon.

MR. MALOCSAY: Second to the motion here.

CHAIRMAN JANSEN: Okay I have a motion to deem the application abandon and a second. Any further discussion?

ATTORNEY FINK: You realize that this isn't about prejudice. They can try again.

MRS. BRAMICH: Yes, absolutely.

MR. MALOCSAY: Yes.

CHAIRMAN JANSEN: Okay. All in favor?

MRS. BRAMICH: Aye.

MR. MALOCSAY: Aye.

MR. PAULSEN: Aye.

CHAIRMAN JANSEN: Any opposed? Motion carried. The application is gone. It doesn't exist.

PUBLIC: Why are they going to allowed to present it again?

MR. PAULSEN: Because if don't abandon they could be avoiding forever and ever. You're not losing anything. Even if they won't re-apply.

CHAIRMAN JANSEN: If we continue you have to come back again too.

PUBLIC: I'm asking you why would they be allowed to apply again?

MR. PAULSEN: Because it was abandon with out prejudice.

PUBLIC: Is there a problem with your just making a decision that says not no it's not allowed to do? Because you didn't show up and you didn't show us the evidence we asked for?

MR. MALOCSAY: No and I'll give you an example. If they were on their way over here and they were in a car accident I would feel really bad voting the other way. It's only in fairness to them that there may be a legitimate reason that they're not here tonight. But now they have to reapply. Legal notice has to go out again. You guys will be notified and at least then there is a pretty good guarantee they're going to show up that time. This can go on again, and you guys are going to show up, then nothing.

PUBLIC: Well I did notice that we do have a petition. I do know that my three neighbors who came in will join us in it asking for and requesting that you make a decision tonight and not postpone it. However I was thinking that if they're not here that you can make a decision. Am I wrong?

ATTORNEY FINK: We did exactly as it said. We didn't postpone it. We made a decision to abandon it.

MRS. BRAMICH: It could come back.

PUBLIC: So therefore your letter will require that they undo the third apartment? That's what will happen?

ATTORNEY FINK: That's before the building inspector now. He knows about it so he'll have an order to remedy. And again it has nothing to do with us because the application came as a 2 family converting to a 3 family. It already was a 3 family with her testimony. So the building inspector will act on that.

PUBLIC: He will act on that now based on the resolve of this meeting?

ATTORNEY FINK: No the testimony that was given.

MR. PAULSEN:
to defend the case.

We have to give the room for the right

PUBLIC:
effort to try to reach them. I guess that's it.

I understand there was a diligent

Public Hearing or Kastriot Rapaj – for the 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 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 3/23/09 ZBA meeting. Public Hearing re-opened at the 3/23/09 ZBA meeting.*

CHAIRMAN JANSEN: Okay. Rapaj?

ATTORNEY FINK: They didn't have to come in. They were given the opportunity. I have a little bit to say about this.

CHAIRMAN JANSEN: First on the agenda is Rapaj.

ATTORNEY FINK: I received a telephone call from John Hicks in reference to my letter. My letter went out saying that the hearing had been reopened. There really hadn't been a lot of testimony if any testimony about the continued use, and he was a relatively new purchaser. So he had presented nothing as to what had transpired before he bought it. It's my understating that the Town doesn't have an issue with transit use, and they've not been cited based on that. They have been cited based upon the change in use to apartments.

MR. MALOCSAY: The original Public Notice said that, what you just said.

ATTORNEY FINK: That's come thru in the minutes.

MR. MALOCSAY: I thought that from the original Public Notice, and we were dealing with one was a sign...

ATTORNEY FINK: Yeah and that's been taken care of already.

MR MALOCSAY: And one was a use.

ATTORNEY FINK: Right, whether the use had been lost.

MR. MALOCDAY: And the use had been lost in my opinion because it was discontinued. I don't care if the Town has a problem with it or not. What was presented to us was a use.

ATTORNEY FINK: No, I thought your question was not that it was discontinued but you raised a question as to the history of the legal use. The letter from the building inspector, two letters showing that at one point in time the Town said that this was a legal use. And then the building inspector, I believe, had in issue with the change in that use. Then you raised the additional question. Was it discontinued between the time the letter was given by the building inspector and he purchased the property. I mean there was some question as to whether there had been discontinuance from the point he purchased the property.

MR. MALOCSAY: Actually I'm going back further than that.

ATTORNEY FINK: I know that, but when we first addressed it the issue appeared to be, and what was discussed, was whether or not the use had been terminated from the time he owned the property. Then there was testimony about going the Court. And they established, I believe that probably it wasn't and they couldn't get the people out. Then you raised the question but I don't see any testimony or evidence as to the period of time from the letter until the applicant purchased the property. That would show me that the use was continued during that period. That was the subject of my letter, saying the Board was reopening it because there was a question. There was no evidence presented. The evidence presented is to his continuance.

MRS. BRAMICH: But he still hasn't presented anything.

ATTORNEY FINK: No. If the issue is raised then the burden will be upon him. But as I understand it the only issue that was raised was whether or not the use had been lost during his time.

MRS. BRAMICH: No.

MR. PAULSEN: No.

ATTORNEY FINK: No?

MRS. BRAMICH: It should have been from the use from the time that it was not used until today.

ATTORNEY FINK: Oh I know that, I realize that. But I don't know if that's what the building inspector raised the issue on.

MRS. BRAMICH: But this is what we've been raising the issue on every time it comes up for the same thing. Exactly the same thing and he has never proven.

ATTORNEY FINK: No he's not. He hasn't because he can't.

MRS. BRAMICH: Oh well. Then the proof is on him.

ATTORNEY FINK: No, I don't know if that was the complaint. Why would the building inspector cite it?

MRS. BRAMICH: He changed the use from rooms to apartments.

ATTORNEY FINK: That's right, but he was not cited because he lost the use.

MRS. BRAMICH: Then why was it brought up and why are we even discussing it all this time?

MR. PAULSEN: How long was it?

ATTORNEY FINK: Not very long. He purchased in May of '07.

MRS. BRAMICH: There were no apartments in the building Norman.

MR. PAULSEN: It was treated like a motel, right?

ATTORNEY FINK: Right.

MR. PAULSEN: Correct me if I'm wrong but the prior owner has changed it over to some apartments in there. Is that correct?

MRS. BRAMICH: No the owner now changed it over.

ATTORNEY FINK: No he did it.

MR. PAULSEN: I remember him telling me he was trying to evict these people. So that means the apartments were there before he did it. He doesn't want to put apartments there now.

MRS. BRAMICH: No he changed the rooms to apartments.

ATTORNEY FINK: But he was willing to put it back.

MRS. BRAMICH: And the bathroom was down the hallway.

CHAIRMAN JANSEN: Alright so what's your pleasure?

ATTORNEY FINK: Let's make sure we are all looking at it the same way. Then there was the other issue use, was it changed from transit to apartment?

MRS. BRAMICH: That's right.

ATTORNEY FINK: And that raised the legal issue by changing one non-conforming use to another non-conforming use, does result in the surrender of the prior non-conforming use? The law goes both ways on that and the bottom line is if it's very very close the courts hold it doesn't. But if it's nothing close to it then it does. So this Board did vote 2 to 2. Two members thought it was sufficiently different to result in the surrender of the prior non-conforming and two member thought it was close enough that it didn't.

MR. MALOCSAY: What I said before I think is mute because they lost the use because it was discontinued for a period of time.

ATTORNEY FINK: When?

MR. MALOCSAY: We don't know when, there wasn't any testimony that said other wise.

MR. PAULSEN: Therefore we don't know if it was discontinued.

CHAIRMAN JANSEN: So you don't know it was and the building inspector has not raised that issue.

MRS. BRAMICH: But we asked him to show us proof that it was not being used.

ATTORNEY FINK: And couldn't.

MRS. BRAMICH: And couldn't. Right.

ATTORNEY FINK: But the building inspector is not cited in this and said that it wasn't. If the building inspector cited it then the burden would be upon him to prove it.

CHAIRMAN JANSEN: Well is there anyone living there now?

MR. PAULSEN: I don't see that the problem is if the Town is okay with transient homes and that's what this guy wants then I don't see what the problem is.

MRS. BRAMICH: It's a big problem.

MR. PAULSEN: You don't want it.

MRS. BRAMICH: No there is a problem because there is a community that doesn't want it. It is a community, a residential area; it is not a transient area. And I believe on our agenda it shows that, part of it was that Building Inspector that 8 single rooms over a restaurant cannot be rented because the use does not conform to the Code and the their prior legal non conforming use status has been lost, because the use has been discontinued for a period of one year or more.

CHAIRMAN JANSEN: Right.

MRS. BRAMICH: Okay.

ATTORNEY FINK: And as I understand the building inspector he wasn't raising the issue of having them lost before the applicant purchased the property it was lost during his tenant.

MR. MALOCSAY: Okay how would he know that because he's the building inspector, how would he have proof of that? He doesn't. He wouldn't know either way it would have to come from us to determine.

ATTORNEY FINK: Well that true but that's not what he was cited for. You're making this man prove something that the building inspector didn't cite him for.

CHAIRMAN JANSEN: I'll offer a solution for this evening. We may not meet next month but the following month if you could just get the legal evidence and exactly what it is that we are going to be voting on not whatever everybody feels that they want to vote on.

ATTORNEY FINK: Alright we'll have the minutes available and review the minutes.

MRS. BRAMICH: And you know what in the mean time he keeps building. And that's what he's doing. This has been going on for months.

MR. MALOCSAY: You know at the same time I think legally he can as long as it's in litigation I don't think there is any reason that he can't proceed.

ATTORNEY FINK: Well he can build anything he wants as long as he gets a building permit.

MRS. BRAMICH: Does he?

MR. MALOCSAY: Well I'm sure he's being watched. I'll talk to John about that too.

CHAIRMAN JANSEN: Okay?

MR. MALOCSAY: I don't have a problem waiting two months.

CHAIRMAN JANSEN: We need to go back to the legal issues not what everybody is thinking about right now. Alright? Motion to adjourn.

Meeting adjourned.

Frances N. Sanford, ZBA Recording Secretary

