

TOWN OF WARWICK
ZONING BOARD OF APPEALS
MAY 24th, 2010

Members Present:

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

Members Absent:

Mr. Charles Todd

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 February 22nd 2010 meeting?
MRS. BRAMICH:	I make a motion to approve the minutes.
MR. MALOCSAY:	I second it.
CHAIRMAN JANSEN:	Any discussion; all in favor?
MR. PAULSEN:	Aye.
MRS. BRAMICH:	Aye.
MR. MALOCSAY:	Aye.

CHAIRMAN JANSEN:

Aye.

All in favor (Four Ayes), motion carried.

CHAIRMAN JANSEN:
22nd, 2010 meeting?

Can I have a motion to approve the March

MR. PAULSEN:

I make a motion to approve the minutes.

MR. MALOCSAY:

I second it.

CHAIRMAN JANSEN:

Any discussion; all in favor?

MRS. BRAMICH:

Aye.

MR. MALOCSAY:

Aye.

MR. PAULSEN:

Aye.

CHAIRMAN JANSEN:

Aye.

All in favor (Four Ayes), motion carried.

CHAIRMAN JANSEN:

**At this time we are unable to vote to
approve the minutes of the April 26th, 2010 meeting due to the absence of Mr. Charles Todd.**

Public Hearing of JOHN & LORETTA HOGAN – for property located at 1 Horseshoe Lane, Warwick, New York and designated on the Town tax map as Section 27 Block 1 Lot 83 and located in an RU District for a variance of Section 164-40N reducing front setback from 100 feet to 96(+/-) feet, reduction of 1 side setback from 69.4 feet to 36(+/-) feet where 75 feet are required and both side setbacks from 91.5 feet to 58 (+/-) feet where 150 feet are required, to allow an existing 36 X 32 foot garage and 8 foot X 23 foot front porch on an existing single family dwelling.

CHAIRMAN JANSEN: Please identify yourself for the record and briefly explain to the Board what you'd like to do.

JOHN HOGAN: My name is John Hogan and this is my wife Loretta. We'd like to add a garage on and a front porch. There's already an existing stone stoop; we'd like to make it bigger. We eventually would like to add the garage; we're unable to right now due to financial restrictions. We want to go ahead and get the variance anyway.

CHAIRMAN JANSEN: Does anyone have any questions?

MRS. BRAMICH: This is the front of the house? Where the steps are?

MR. HOGAN: No, that's an existing deck. Right here is where the front is.

MRS. BRAMICH: So you're adding a porch and a garage. Is it an attached garage?

MR. HOGAN: Attached, yes and it will be a three car garage.

CHAIRMAN JANSEN: Is there anyone here from the public to address this application? No? The public hearing is closed.

MR. MALOCSAY: Regarding the surrounding properties, this would not stand out. Some of the other lots are very small; it's an older subdivision. This would definitely be within the character of the neighborhood.

MRS. BRAMICH: Can you make it smaller?

MR. MALOCSAY: What are the dimensions?

MR. HOGAN: It's going to be 36 X 32.

CHAIRMAN JANSEN: Any other questions?

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

MR. MALOCSAY: No.

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

CHAIRMAN JANSEN: No.

ATTORNEY FINK: Is this a substantial variance?

MRS. BRAMICH: Yes.

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

MRS. BRAMICH: No.

ATTORNEY FINK: Is it self created?

MR. PAULSEN: Yes.

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

MRS. BRAMICH: I second it.

CHAIRMAN JANSEN: Any further discussion; all in favor?

All in favor (Four Ayes), motion carried.

MRS. BRAMICH: I make a motion to grant the variance as advertised.

MR. MALOCSAY: I second it.

CHAIRMAN JANSEN: Any discussion; all in favor?

All in favor (Four Ayes), motion carried.

Public Hearing of RICHARD BRADY – for property located at 201 Brady Road, Warwick, New York and designated on the Town tax map as Section 64.40 N and 164.45.1D permitting a 2 lot subdivision where proposed Lot 2 is 2.9 acres and 5 acres are required, and Section 280a of the Town Law permitting a residence on a private road.

CHAIRMAN JANSEN: Is the applicant here tonight? Please come up.

DAVID GETZ: I'm David Getz from Lehman & Getz Engineering. As you mentioned it's a proposed 2 lot subdivision; there's an existing house down on the front of the property. Mr. Brady's home, pool and garage are located right near the front of the property here. The property is 5.9 acres all together and as you mentioned, under the zoning ordinance he's allowed one lot under the previous MR guidelines which would be 3 acres minimum. So the proposal has the front lot at 3.0 acres conforming with that and seeking a variance to create the second lot in the back which would be 2.9 acres. It also requires a 280a variance because access to that second lot in the back via Tower Drive is a private road. It's not feasible to add acreage to the property but the surrounding land on that side of Brady Road is all tied up in PDR.

CHAIRMAN JANSEN: Are there any restrictions on using the private road?

MR. GETZ: I'm not familiar with that, but according to Mr. Brady it would be no problem.

ATTORNEY FINK: One of the things we usually require when granting a 280a is some indication that you have a right to use it. It's usually contained in the deed or a separate right.

MR. GETZ: With reference to the criteria of granting a variance, specifically will it be within the character of the neighborhood, we point out that there are 8 lots in the vicinity that are between that 2.9 and 6 acres including several that are on the opposite side of Brady Road that are only a couple of acres in size. We also did soil testing on the back proposed lot and found suitable area for a septic system and a well. So from that point of view it's a buildable lot.

CHAIRMAN JANSEN: Is there anyone here from the public to address this application? This will remain open until we receive clarification as to whether or not there is permission to use the private road and if it's accessible to emergency services.

ATTORNEY FINK: Yes, we need something from the Police, Ambulance and Fire Department stating that's there's accessibility. And that you in fact have a right to use it (the private road).

MR. MALOCSAY: I'm assuming we're going to treat this like any other area variance. If he only has 5.9 acres and it's in the agricultural district overlay, so

they're allowing a 3 acre lot per the 1989. So the only area variance we're giving is for the 2.9 acres from 5 acres?

MRS. BRAMICH: From 5 acres, I thought it was 3?

ATTORNEY FINK: When I looked at it too, it's kind of like backing in to it.

MR. MALOCSAY: The other thing is being in the Ag (agricultural) overlay and I wasn't sure, it's 5.9 acres we have overlay really was for agricultural operations which you're allowed to do, but when you're down to 5.9 acres with a residential property, there really isn't too much you *can* do. So because it's in the Ag overlay, like most properties are, in that area, it's not really making sense. Do you understand where I'm coming from?

MR. GETZ: I understand that you're trying to make it clear what the acreage requirements are, but I'm not sure about the Ag operations part.

CHAIRMAN JANSEN: I guess the predicament there is if you've got 5.9 acres and you're allowed the 3, and the other 2.9 are land locked by Brady Road, the private road and by the PDR property, then do you just "throw away" the right to subdivide that or do you show... I mean, that's why we're here.

MR. MALOCSAY: Like I said, I've never seen *we've* never seen anything like this before.

MR. GETZ: His (Mr. Brady) wish is just to build a small house for himself and his wife on the new lot.

ATTORNEY FINK: And of course, he could sell it 3 weeks later.

MR. MALOCSAY: Like I said, if we're treating it as an area variance, from 5 acres to 2.9, it's a pretty substantial variance, however, the character of the neighborhood does show that there are smaller lots but the whole...I just want to make sure before we follow this 164-45.1D. That this does in fact fall under that. Because it would make sense if it were something that was larger that could be put in that Agricultural operation. But if its so small, the property is still in the Ag district, which I understand, it seems to be kind of defeating the purpose.

MRS. BRAMICH: The other small lots, there's not agricultural use on those lots, is there?

MR. MALOCSAY: No because they're residential.

CHAIRMAN JANSEN: The smaller lots are residential but the surrounding area, the farms...

MR. MALOCSAY: Diane, remember you cannot have an agricultural operation if they're too small.

ATTORNEY FINK: The section says existing lots in the agricultural protection overlay district, lots within the APO district qualifying area that were in existence since Jan 1 2002 subdivided for one additional residential lot ...requirements of 1989.

CHAIRMAN JANSEN: So they're really only looking for a tenth of an acre.

MR. MALOCSAY: No. They're allowed one, 3 acres, which he's subdividing again. The other one is going from 5 to 2.9, which I want to make sure everyone's clear on.

ATTORNEY FINK: Right, they're coming in "backwards". You're starting with 5 acres, you have a qualifying 5 acre lot and then you're looking for the 3 acre lot. You have to start with 5 acres because that's what's required now, if you can get one additional lot if it's 3 acres. But it's backwards. It's almost two variances in a sense.

MR. GETZ: To be honest, the dividing line between the two could be shifted so that it would be closer to a 4.0 and then a 1.9 if that were the preference but Mr. Brady was flexible...

CHAIRMAN JANSEN: No, that doesn't make sense.

MR. MALOCSAY: I just want to make sure we're not missing something.

CHAIRMAN JANSEN: Plus like I mentioned earlier, the fact that the road is in the front, you can't buy across the road, you can't buy across the right of way either, and you can't buy behind you because of the PDR so you're locked in one way or the other. Alright, the applicants will get back to us and in the meantime, we'll consider.

MR. GETZ: Alright, thank you.

ATTORNEY FINK: With regard to the use of the road, if you could get some evidence of that, we'd appreciate it.

CHAIRMAN JANSEN: Why can't you go out on Brady Road?

MR. GETZ: There would be a lot more disturbances and it's fairly steep.

MR. MALOCSAY: The driveway itself; is it on their property?

MR. GETZ: According to the tax map it looks like it's not but a little bit of the driveway comes on but in general Tower Drive is separate.

MR. MALOCSAY: I really think the biggest hurdle is going to be the right of way. Who owns the property that the right of way is on?

MR. GETZ: That's part of the PDR, I believe.

ATTORNEY FINK: You mentioned that there's a right of way it shows Tower Lane but it looks as though its part of Lot 56.2.

MR. GETZ: It's just a strip, not a separate right of way.

ATTORNEY FINK: Somebody owns that strip, presumably Lot 56.2 is the owner of the strip and they happen to have a driveway or who knows what.

MR. GETZ: Richard Brady is part owner of that; it's his families, four family members.

ATTORNEY FINK: Well it might be then, that this particular lot doesn't have any rights over those 50 feet.

MR. MALOCSAY: Then it might not be an issue because it's in the family anyway...The main thing on the PDR is that it's the purchase of development rights so therefore if it already has an existing right of way going through it I don't see there being an issue of someone adding on to an existing right of way; there isn't any subdivision.

ATTORNEY FINK: Keep in mind that this doesn't look like this is a right of way. It's a part of the lot.

Continued to the June 28th 2010 meeting.

Public Hearing of JOHN JOHANSEN – for property located at 827 Rt 17A, Greenwood Lake, New York and designated on the Town tax map as Section 66 Block 1 Lot 66.2 and located in an MT District for a Special Permit (164-45.A.(c)) or, in the alternative, for a use variance of Section 164.40M permitting a woodworking shop with retail sales in an existing building. *Continued from the 4/26/2010 ZBA meeting.*

ATTORNEY FINK: You're here tonight to seek a variance for a continuation of a previous legal non-conforming use?

CHAIRMAN JANSEN: Yes, he's here for a non-conforming use variance.

MRS. BRAMICH: So the woodworking shop is in the old bar?

MR. JOHANSEN: Yes with a gallery for furniture and the paintings my wife does.

MRS. BRAMICH: You also did the log cabin?

MR. JOHANSEN: Yes I did.

MRS. BRAMICH: You did a beautiful job.

ATTORNEY FINK: What we're looking at, assuming that it is an existing legal non-conforming use. He's looking for a change under A1C, "any non-conforming use may be continued indefinitely but any changes shall not be changed to another non-conforming use without special permit from the Zoning Board of Appeals and then only to a use which in the opinion of said Board is of the same or a more restrictive nature...such changes will conform to the extent practical of the current design standards and are also subject to site plan approval by the Planning Board". This is the first issue we have to get over. Discontinuance; "non-conforming use shall not be re-established if such has been discontinued for any reason for a period of one year or more or has been changed to or replaced by a conforming use. Intent to resume a non-conforming use shall not incur the right to do so".

CHAIRMAN JANSEN: How long have you been using it?

MR. JOHANSEN: I purchased it in 2006. I've been using it for commercial use up until now; woodworking equipment, to renovate the property, things like that.

ATTORNEY FINK: What was the prior legal non-conforming use?

MRS. BRAMICH: It was a bar. It's been a bar since the time it was built.

ATTORNEY FINK: So it's been a bar and it stopped being a bar when?

MRS. BRAMICH: He's been renovating, well he finished one, the little one and made it back into a beautiful little log cabin...

ATTORNEY FINK: It was bar, but it was other things too, right?

MR. JOHANSEN: It's been a bar since at lease 1976.

ATTORNEY FINK: What we need is a non-conforming use that hasn't *not* been used for more than one year.

CHAIRMAN JANSEN: It's been a residential property, we don't know what kind of arrangements they had when they used to do the training up there.

MRS. BRAMICH: Well, it's definitely an improvement over what it is now because I imagine you're going to fix up the outside of that building.

MR. JOHANSEN: It will be similar to the log cabin.

CHAIRMAN JANSEN: It's a much more restrictive use than what it was.

MRS. BRAMICH: Plus there won't be nearly the amount of traffic as in the past.

CHAIRMAN JANSEN: Of course after he leaves here he has to go before the Planning Board to obtain site plan approval. I do believe it's a more restrictive use and that there has been a business there all those years.

MRS. BRAMICH: Yes, and I can attest to that.

ATTORNEY FINK: What has the use been for the last four years?

MR. JOHANSEN: I've been using it for woodworking.

ATTORNEY FINK: Then we're interpreting the code. Expanding it somewhat. We're not focusing in on the bar, we're focusing in on the business. So that changing it from a bar, to woodworking, is really not a change; it's from one business to another . He continued a prior legal non-conforming use.

CHAIRMAN JANSEN: The public hearing is closed.

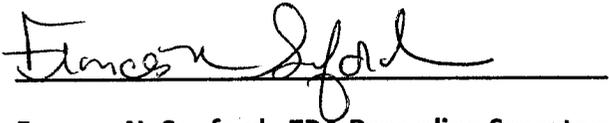
MRS. BRAMICH: I make a motion to grant the variance as advertised and that it is the interpretation of this Board that this is a continuation of a legal pre-existing non-conforming use.

MR. PAULSEN: I second it.

CHAIRMAN JANSEN: Any discussion; all in favor?

All in favor (Three Ayes), motion carried.

Meeting Adjourned

A handwritten signature in cursive script, reading "Frances N. Sanford", is written over a solid horizontal line.

Frances N. Sanford, ZBA Recording Secretary