

TOWN OF WARWICK
ZONING BOARD APPEALS

JULY 27, 2009

Members Present:

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

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

CHAIRMAN JANSEN: Any other additions or corrections? Can I have a motion to approve the minutes?

MRS. BRAMICH: So moved.

CHAIRMAN JANSEN: I have a motion. Can I have a second?

MR. MALOCSAY: Second.

CHAIRMAN JANSEN: Second by Mark. All in favor?

MRS. BRAMICH: Aye.

MR. MALOCSAY: Aye.

MR. PAULSEN: Aye.

CHAIRMAN JANSEN: Any opposed? Motion carried.

PUBLIC HEARING OF DENNIS KEELY – for the property located at 82 Sleepy Valley Road, Warwick, New York and designated on the Town tax map as Section 31 Block 2 Lot 68.2 and located in the RU District for a variance of Section 164-41.C.(4)(f) permitting a 6 foot wooden fence in the front yard setback where fences are limited to not more than 4 feet in height. **Continued from the 6/22/09 ZBA meeting.**

CHAIRMAN JANSEN: Is Dennis Keely here? No? Okay.

ATTORNEY FINK: Actually he doesn't have to be here.

CHAIRMAN JANSEN: That's right he doesn't need to be here. Okay so let's just finish that one up. That was the fence.

ATTORNEY FINK: I wrote to the Town Attorney concerning the fact after the Department of Public Works verified the fence was on Town property. I wrote to Mr. Hicks, and Mr. Hicks responded, after speaking to the Town Supervisor, the Commissioner of DPW that the Town has no objection to fence remaining where it is, however we would like the applicant to furnish a whole promise agreement to the Town acknowledging the fence is within the Town's right of way and it is our consent that the fence remaining at the point is not in anyway prejudice, our rights, and I will give you this. To have it removed at anytime in the future that it would interfere with the Town's traffic concerns, and if the owner holds the Town harmless from any damage of the fence or any maintenance work done, on that roadway, the ditch or any plowing but included in these items. So my suggestion is if the Board is inclined to grant the variance that we conditions upon the applicant producing that agreement, then the Town Attorney with in X number of days... 30/60 days?

MR. MALOCSAY: I know that a lot of times we don't want to do these things conditionally, the fence is there and exist now, but could we have then draft something up before that then we grant a variance? He's in the rush.

ATTORNEY FINK: We're not going to pass on it anyway, Hicks is, and if it's not acceptable then at least give him 60 days to get it up.

MR. MALOCSAY: We can do it that way too.

ATTORNEY FINK: Whatever you're most comfortable with.

MR. MALOCSAY: Well as long as you are good at wording the motion I'm happy with that.

CHARIMAN JANSEN: Okay so another concern or questions; if not can I have a motion?

Town of Warwick ZBA Minutes of 7/27/09

ATTORNEY FINK: It's a little more formal than that.

ATTORNEY FINK: Is it going to create and undesirable change in the neighborhood or be a deterrent to the nearby properties?

MR. PAULSEN: No.

MR. MALOCSAY: No affect, right.

ATTORNEY FINK: Can it be achieved by any other feasible methods?

MR MALOCSAY: Yes.

CHAIRMAN JANSEN: Is it a substantial variance?

MR MALOCSAY: We've had this so many times with the fence going from 4 feet to 6 feet. I don't know how to answer that. Is it?

ATTORNEY FINK: Yes it is.

MRS. BRAMICH: Yes and its encroaching on the Town.

CHAIRMAN JANSEN: Yes but he's not asking for a variance for that.

MRS. BRAMICH: No he's not.

CHAIRMAN JANSEN: Just the height.

MRS. BRAMICH: Okay.

MR. PAULSEN: Are we giving him the variance?

ATTORNEY FINK: No we can't give him the variance, nor is he asking for one and put it on Town property. The Town is consenting to it with the limited circumstance. Alright so I guess it is percentage wise.

MR. MALOCSAY: Yes.

ATTORNEY FINK: Can it have an adverse impact on physical or environmental conditions?

MR. MALOCSAY: No.

Town of Warwick ZBA Minutes of 7/27/09

ATTORNEY FINK: Self created?

MRS. BRAMICH: Yes.

MR. MALOCSAY: Yes.

ATTORNEY FINK: Someone care to type this unlisted with no adverse environmental impact.

MR. MALOCSAY: So moved.

MRS. BRAMICH: Second.

CHAIRMAN JANSEN: Motion is second any discussion? All in favor?

MR. PAULSEN: Aye.

MRS. BRAMICH: Aye.

CHAIRMAN JANSEN: Any opposed? Motion carried.

ATTORNEY FINK: Okay would someone care to move that it be granted with the revise of that the Zoning Board is not granting him the right to have a fence on Town property and number two that he has to produce and agreement satisfactory to the Town Attorney in accordance with the Town Attorney's email within sixty days.

MRS. BRAMICH: Thirty.

ATTORNEY FINK: Thirty?

MRS. BRAMICH: Why sixty?

ATTORNEY FINK: Only because except for me most Attorneys' are very slow.

MRS. BRAMICH: You're right.

CHAIRMAN JANSEN: You can attest to that?

MRS. BRAMICH: You're right I can attest to that.

Town of Warwick ZBA Minutes of 7/27/09

CHAIRMAN JANSEN: Okay, thank you.

MRS. BRAMICH: Sixty days.

CHAIRMAN JANSEN: Sixty days.

MRS. BRAMICH: I'd like to make that motion.

CHAIRMAN JANSEN: I have a motion. Second?

MR. PAULSEN: Second.

CHAIRMAN JANSEN: Any discussion? All in favor?

MR. MALOCSAY: Aye.

MRS. BRAMICH: Aye.

CHAIRMAN JANSEN: Any opposed? Motion carried.

PUBLIC HEARING OF GARY MARINA – for property located at 266 Nelson Road, Monroe, New York and designated on the Town tax map as Section 58 Block 2 Lot 27 and located in the MT District for a variance of Section 164.41.A.(1)(b) allowing and existing accessory building 5 feet 5 inches from the dwelling where 10 feet are required.

CHAIRMAN JANSEN: You're looking for a variance to allow you to leave the building where it is now?

MR. MARINA: Correct.

CHAIRMAN JANSEN: Okay the question is can you move it?

MR. MARINA: It would be very extremely difficult to move. Half of it is loaded with fire wood and its 16x10 with a little porch on to it. I would have to take it down to move it. I couldn't move it as one piece.

CHAIRMAN JANSEN: Okay, but it could be moved that's the question.

ATTORNEY FINK: Maybe you would like to go into that a little bit. What's the problem with disassembling it?

MR. MARINA: Well I just put it up in the fall first of all and to take it down I'm most likely going to ruin a lot of the lumber I would assume.

CHAIRMAN JANSEN: Couldn't you put some rollers under it?

MR. MARINA: No at the very least I would have to remove all the firewood that is inside of it to even attempt that.

MR. PAULSEN: You're going to have to do that to put the sheet rock in.

MR. MARINA: I don't know anything about the sheet rock.

CHAIRMAN JANSEN: That is the alternative.

MR. MARINA: Okay but am I going to have to put the sheet rock in where the firewood is too? Because part of it is fire wood and part of it is storage.

MR. PAULSEN: Because it's within ten feet of the house that the fire code protector and the Building Inspector are telling us that.

ATTORNEY FINK: This was the letter to you dated June 25; second paragraph: Should you be successful in obtaining the variance for locating the shed closer to your residence the Building Department would require that inside the shed you cover it with 1 hour fire rated material.

MR. MARINA: Okay well I never received that letter; I didn't know anything about that. I mean I don't mind doing that it's just that when unloading firewood the sheetrock is going to just eventually crumble.

ATTORNEY FINK: That's between you and the Building Inspector.

MR. MARINA: Okay.

CHAIRMAN JANSEN: So it might be easier for you....its a couple of feet.

MR. MARINA: Well I don't have any room to move it though. If I go the other way I'll be to close to the property line. I'm only seven feet from my property line.

ATTORNEY FINK: And the deck. You have a pool deck or something right behind that.

MR. MARINA: Behind that, yeah so I would have to go into my font yard and then it would be and eye sore. I would rather do the sheetrock thing.

MR. BRAMICH: What about the other side?

MR. MARINA: The other side of the property? That would involve taking the whole thing down to put it over there and that's sloped. It's a much steeper slope on the other side of my property than where it is now.

CHAIRMAN JANSEN: Any other questions? This is open to the Public. Is there anyone from the Public who would like to address this application? I guess not.

MR. MALOCSAY: According to the survey the house is 24 feet 1 inch from the property line.

MR. MARINA: Correct.

MR. MALOCSAY: The shed is 10 feet.

MR. MARINA: There is like a porch a three foot porch it servers as a step but it looked nicer so I made it the full length of the shed. There were some pictures.

ATTORNEY FINK: I looked at that in the definitions to see whether or not that was counted as part of the shed and it is.

MR. MARINA: Yeah because the shed it self is 8 feet from the house, but with that extra step there....I mean I could take that off a lot easier than moving the shed it that's what it came down too.

CHAIRMAN JANSEN: Okay the applicant has indicated that he is willing to do the sheet rocking.

MRS. BRAMICH: If you don't have a copy I have and extra copy.

ATTORNEY FINK: In actuality then the shed itself is how far? Eight feet?

MR. MARINA: Eight feet yes.

ATTORNEY FINK: Then you have two feet.

MR. MALOCSAY: Would you need a side yard setback.

ATTORNEY FINK: But you have another two feet on that deck. Correct?

MR. MARINA: It's almost three feet. I believe its 30 inches that little step thing.

ATTORNEY FINK: So technically it would put you are about five and a half feet.

MR. MARINA: Correct, yes.

MRS. BRAMICH: From the house.

ATTORNEY FINK: Counting the deck.

MR. MARINA: Yes.

ATTORNEY FINK: But in actuality the shed itself isn't quite that close.

MR. MARINA: So the whole problem is a fire hazard thing?

MR. MALOCASY: That's why the Code says ten feet.

MR. PAULSEN: I don't think you locked into sheet rock. The Building Inspector might allow corrugated metal or something.

MR. MARINA: The only thing I store in there that is flammable is a snow blower. Can I produce a letter?

ATTORNEY FINK: It just says fire rated material.

MR. PAULSEN: That's what happens when you're with the 10 feet you have to sheet rock or maybe use corrugated metal.

MR. MARINA: Okay.

CHAIRMAN JANSEN: Do we have to put anything in there regarding all that or will he just work it out with the Building Inspector?

ATTORNEY FINK: No that's what the Building Inspector says. So the variance should be conditioned upon, if its granted, requiring the inside of the shed be covered with a 1 hour fire rated material.

CHAIRMAN JANSEN: Okay. Is that acceptable to everybody?

MR. MALOCAY: Yes

MRS. BRAMICH: Yes

MR. MARINA: Yes

CHAIRMAN JANSEN: Okay then let me close the Public Hearing since there is no one here.

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

MRS. BRAMICH: No.

Town of Warwick ZBA Minutes of 7/27/09

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

MR. MALOCSAY: Not really.

MRS. BRAMICH: Actually it could if he moved it but he's saying it would be really difficult.

ATTORNEY FINK: Yes it sloped on the side, there is a pool and a deck behind it, so really no.

ATTORNEY FINK: Is this a substantial variance?

MRS. BRAMICH: Yes.

MR. MALOCSAY: Yes.

ATTORNEY FINK: Will it have an adverse affect or impact on physical or environmental conditions in the neighborhood?

MRS. BRAMICH: No.

MR. MALOCSAY: No.

CHAIRMAN JANSEN: No.

ATTORNEY FINK: Self created?

MRS. BRAMICH: Yes.

CHAIRMAN JANSEN: Yes.

MR. MALOCSAY: Yes.

ATTORNEY FINK: What type it is? Unlisted?

MRS. BRAMICH: So moved.

MR. MALOCSAY: Second

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

MRS. BRAMICH: Aye.

Town of Warwick ZBA Minutes of 7/27/09

MR. MALOCSAY: Aye.

MR. PAULSEN: Aye.

CHAIRMAN JANSEN: Any opposed? Motion carried.

ATTORNEY FINK: I move to grant as advertised with the condition that the inside of the shed has to be covered with a 1 hour fire rated material. Of course he has to get a Building permit and a C.O. for it.

MR. MARINA: Okay.

MRS. BRAMICH: So moved.

CHAIRMAN JANSEN: Motion by Diane.

MR. PAULSEN: Second.

CHAIRMAN JANSEN: Second by Norman. All in favor?

MRS. BRAMICH: Aye.

MR. MALOCSAY: Aye.

MR. PAULSEN: Aye.

CHAIRMAN JANSEN: Any opposed? Motion carried.

MR. MARINA: Okay so I just contact the Building Inspector and set up an appointment and he'll tell me what to do?

CHAIRMAN JANSEN: Yes.

ATTORNEY FINK: Yes.

MR. MARINA: Alright thank you.

Public Hearing of 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 6/22/09 ZBA meeting.**

CHAIRMAN JANSEN: Continued Public Hearing of Kastriot Rapaj.
Where are we?

ATTORNEY FINK: The Board is wrestling with essentially two things, but the big thing is wrestling with is whether or not the use was discontinued over the seven year period when the Building Inspector sent a letter to, I guess the previous owner that it was legal non-conforming use and then you bought it seven years later. What happened in the interim? Was it not used for more than a year, or was it used continuously and there was no one year lapse? That is the big question before the Board.

MR. RAPAJ: Well I believe that we had issued that there were people in there for only a period.

ATTORNEY FINK: No the Board accepted that. From the time you bought it the Board was satisfied that it wasn't unoccupied for more than a year. In fact you had to get people out. The Board is concerned about from the time you bought it going in the other direction back seven years what was being done on the property.

MR. RAPAJ: My intentions when I was downstairs, and luckily I did meet a fellow I brought with me today, that had been there prior. He came up while I was in the restaurant business and he came to eat and he addressed himself to dinner for a room upstairs. I said no I don't have any right now because of the status of what was going on, and back and forth. But he did make a comment to me when I was in the restaurant that he was there prior. So when this came up to me to my attention I did exchange numbers that he was a mechanic up in Rockland, and I reached out to him and he came forward and he came over today as a witness that he was there then. But unfortunately I don't have any other person that I know that been living up there other than this fellow, and he was there as a transit he said. Coming in and he used to take a room and stay there for a week. That's when I reached out to him.

MRS. BRAMICH: Upstairs? He stayed upstairs?

MR. RAPAJ: Yes.

MRS. BRAMICH: Do you know when that was?

MR. RPAJ: I don't know personally, exactly when, nor probably even the person there prior had no way of reaching this fellow. But I was able to reach him.

MRS. BRAMICH: But you don't know how long, the period of time.

ATTORNEY FINK: The Board is questioning the period January 01' to May 07' when you bought it.

MR. RPAJ: That particular time, I don't know exactly, but I'm pretty sure he would know more. What time and everything and when. I was not the owner of the property then. But I know from speaking to other people and other customers that used to come in they used to make comments, but I never really thought it would come to this for me to reach out to them. But this fellow I was aware that he had a shop, a mechanic shop up in Rockland. That's when I reached out to him.

ATTORNEY FINK: Is he here?

MR. RPAJ: Yes.

ATTORNEY FINK: Bring him up and let's hear what he has to say.

ATTORNEY FINK: Mister?

MR. FROKI: Froki, F-R-O-K-I

ATTORNEY FINK: The Board is inquiring as to what was going on in this place between January 01' and May 07'. It was presumably a restaurant and there were rooms upstairs. What do you know about that?

MR. FROKI: In 2004 I stayed upstairs, for 3 or 4 days. In 2005 the same thing. We had a boat in West Milford and we used to go there and rent a room upstairs. If I still remember it was JP's Steakhouse or something like that.

MR. PAULSEN: Were there other people staying there besides yourself?

MR. FROKI: Yes, two or three.

MR. PAULSEN: Two or three different groups?

ATTORNEY FINK: I t was what years?

MR. FROKI: We used to rent two rooms.

MR. PAULSEN: You rented two rooms. Two separate rooms?

MR. FROKI: Yes two separate rooms.

ATTORNEY FINK: What years were they?

MR. FROKI: It was 2004 and 2005.

MRS. BRAMICH: And at each time it was 3 or 4 days?

MR. FROKI: Yes we stayed probably from Thursday until Sunday then we left and came back later again for 3 or 4 days.

CHAIRMAN JANSEN: So a couple of times during the course of the year?

MR. FROKI: A couple of times, yes, in the summer.

ATTORNEY FINK: You said there were other people there when you were there?

MR. FROKI: I saw people upstairs but I can't remember now, coming in and out. We used to walk down by the Marina by the boats.

CHAIRMAN JANSEN: So there are no retractable records from that period from the former owner or anything like that?

MR. RAPAJ: Honestly the fellow that had that place, we had discussed that before, he did some negligence to the property and we were very aware of that, and it came to my attention that we had a lot of work to do in there myself. I'm willing and hoping you guys help it not to go down fallen, maintain it and keep it up and try to cover up the expense that the property has. Unfortunately the way it's going right now it's tougher than I imagined what I would have to go thru. I probably wouldn't even able at the moment to do anything by fixing it, but I will forward to having a transit, because I want to do work on the property but it's just tough.

MRS. BRAMICH: Then somebody was working on upstairs. There is work going on upstairs.

MR. RAPAJ: To my attention, no.

MRS. BRAMICH: Yes it was in the newspaper. The carpenter drilled a hole and went down and fell thru the ceiling and stole some money. It was in the newspaper.

MR. RAPAJ: I believe it was the people downstairs at the restaurant, there was a burglary.

MRS. BRAMICH: Well it said it came from upstairs. The guy, a carpenter working on upstairs and he came down thru the ceiling and stole from you.

MR. RAPAJ: Not from me. The restaurant downstairs.....

CHAIRMAN JANSEN: Who is operating the restaurant? Are you operating the restaurant or somebody else?

MR. RAPAJ: Not right now but the people are looking to get out due to the status of the economy.

CHAIRMAN JANSEN: But there are people in there operating the restaurant in the back, previously now.

MRS. BRAMICH: Now. The restaurant is open.

MR. RAPAJ: Yes.

MRS. BRAMICH: Who is running the restaurant now?

MR. RAPAJ: Right now it's under Bobby, some fellow Bobby he's running the restaurant downstairs, but there is nobody upstairs.

MRS. BRAMICH: There was a big to-do over it in the newspaper saying that somebody came thru the ceiling, that the guy was a carpenter working on the upstairs.

MR. PAULSEN: What did the Police say about it?

MRS. BRAMICH: That's what was on the report.

MR. PAULSEN: What Police?

MRS. BRAMICH: Warwick Police.

MR. RAPAJ: He was a burglar and tried to go in and rob the place.

MR. MALOCSAY: Diane I kind of have to agree with Norm, I did hear a slightly different variation of the story that the person went thru the upstairs.

MRS. BRAMICH: Yes they did, they put a hole in the ceiling and went down. It said a carpenter working on the building.

ATTORNEY FINK: It's really irrelevant anyway. If he had a Building permit it doesn't matter.

MRS. BRAMICH: But he didn't.

ATTORNEY FINK: Again, that's not an issue before us. It's up to the Building Inspector. If they're up there building without a permit the Building Inspector is suppose to take care of that.

CHAIRMAN JANSEN: Is anyone living up there now?

MR. RAPAJ: No it has to be livable. There is now way anyone would be able to live up there now. Right now it just has to be maintained and hopefully we will be able to go up there and do the right thing.

CHAIRMAN JANSEN: What kind of status are we at now?

MR. MALOCSAY: Its something we mentioned before and have been asking for. Is there any way we can look on any kind of a tax return from the people. They have to have them for seven years; they have to have rental income. If they have the rental income we can say that the place was used.

MRS. BRAMICH: We ask for it time and time again.

CHAIRMAN JANSEN: Do we have the right to subpoena past owners.

ATTORNEY FINK: Sure.

CHAIRMAN JANSEN: So let's run a subpoena.

MR. MALOCSAY: Where are they?

ATTORNEY FINK: Isn't that the issue? Where is the past owner do you know?

MR. RAPAJ: I have no idea. I have no clue of this fellow. I believe he had owned a hotel also. He just vanished. I don't know. I have no information of him.

ATTORNEY FINK: I was thinking that the records themselves that we could get regardless of who had them but no.

CHAIRMAN JANSEN: We're not going to be able to get any tax records if we can't find the guy.

ATTORNEY FINK: Yeah.

CHAIRMAN JANSEN: So first we have to locate the previous owner in order to be able to subpoena the records.

CHAIRMAN JANSEN: It would not be an issue if part of the public were not concerned with what had been there previously and I guess the type of tenants that might have been in there at one time. Is that the concern?

MRS. BRAMICH: Right.

CHAIRMAN JANSEN: So before we continue that use we need to be able to justify that.

MR MALOCSAY: It doesn't really solve the issue but could we at least can peruse to try and find out who the pervious owner is and see if we can get in touch with them? To see about getting some records.

MRS. BRAMICH: Would that be our job or would that be his job?

CHAIRMAN JANSEN: I think it would be our job to issue a subpoena to someone.

MR. PAULSEN: Maybe he should try to do what he can, I don't know if there are internet services now or what to try to find somebody or get a location then we can subpoena.

MR. RAPAJ: On the records how would that show?
Taxes?

MR MALOCSAY: All we need to do is to get in touch with the person who pervious owned the place because we could then subpoena the records. You don't have to do that.

MR. RAPAJ: I have the name of the person who used owned it, but who know before that.

MR. PAULSEN: Do you have an address?

ATTORNEY FINK: It doesn't mater before that. The Building Inspector acknowledged that as of January 01 it was a legal non-conforming use. So we don't care about anything before then. It's the period January 0' to when you bought it in May 07'. That's the question mark.

CHAIRMAN JANSEN: Was it used.

MR.PAULSEN: Did you have a lawyer when you bought this place?

MR. RAPAJ: Yes.

MR. PAULSEN: Did he have a lawyer when you bought this place?

MR. RAPAJ: Yes.

MR. PAULSEN: Well then your lawyer must know his lawyer.

MRS. BRAMICH: It's going to have to be in his records.

MR. PAULSEN: In other words if you contact your lawyer and he contact his lawyer to find out where this guy is. You let us know and we can subpoena him. Would you like to try that?

MR. RAPAJ: Anything, but if there are people that lived there before?

CHAIRMAN JANSEN: He's talking about two years okay; we've got a period of seven years. Right? Or less?

ATTORNEY FINK: Six and a half years.

MR. RAPAJ: But for me to reach out to every person who has been there.....I mean when I took the place there were people up there.

CHAIRMAN JANSEN: So if there were people there and you know who those people where, find out how many years they lived there. If those people that were there when you took it over were living there, if they been there since 01'.....

ATTORNEY FINK: I don't know how co-operative they would be.

CHAIRMAN JANSEN: But if they were there since 01', that solves your problem.

MR RAPAJ: Right.

MR. PAULSEN: You can only verify 2 of the 7 years. If you find people who were living there from 2002, 2003, 2006, 2007 because if a non-conforming use isn't used for a year it's done. You have to show at least one or two people that lived there for the other 4 years you are looking for. They have to say just like that guy, he did, and they got to say they lived there in 2002, 2003, 2006, 2007.

MR. MALOCSAY: I have a question for you. When you were there did they have bathrooms or kitchenettes in the rooms?

MR. FROKI: Bathrooms.

MRS. BRAMICH: In each room?

MR. FROKI: Those two rooms where we rented yes but I don't know about the other ones. I can't answer that one.

ATTORNEY FINK: Did you say yes they have kitchenettes also or just bathrooms?

MR. FROKI: Small ones a small kitchen and a bathroom.

CHAIRMAN JANSEN: Okay so we're not getting any place.

MR MALOCSAY: Because it would be really nice to know when did it happen when it went from the other issue we had was when it went from just rooms to when it went from bathrooms in the rooms.

MR. RAPAJ: The rooms have a bathroom for them to stay in.

MR MALOCSAY: Yes but there was testimony that at one point they were just rooms and there was a central bathroom that you had to go to down the hall.

MRS. BRAMICH: That's right.

MR. RAPAJ: That I don't know.

MR MALOCSAY: Well there was testimony to that because I didn't know that until I heard.

MRS. BRAMICH: We should go back and find out where the testimony came from.

MR. MALOCSAY: And I believe that's when the Building Inspector had an issue with it was eight rooms I believe but there was only at that time one bathroom so the were renovations that were made without a Building permit. And that was one of his comments. That's where we had the issue if we were going from.....

MRS. BRAMICH: No we were going from a bedroom to an apartment with a bath and a kitchen.

ATTORNEY FINK: And did that constitute a use change.

MR. MALOCSAY: Yes

ATTORNEY FINK: Sufficient

MR. MALOCSAY: Right, sufficient.

MR. RAPAJ: I believe last meeting we had, we had brought this up. But the Building Inspector was going to come and take a look at the property, if there are any kitchenettes, and I authorized anybody that wants to come down and take a look at the place. There is no kitchenette in that upstairs other then the kitchen downstairs in the restaurant.

MRS. BRAMICH: I thought you said you are building apartments. We're getting two different stories.

MR. RAPAJ: I never said an apartment. I'm not look for an apartment. I'm just looking for transit people to move and basically have a restaurant running. I'm not looking for an apartment at this particular time, just transit if I could be able to have people live upstairs. There are no kitchenettes upstairs.

CHAIRMAN JANSEN: That the Building Inspector can determine, I'm not even going to get into that. We need a record of it being occupied.

MRS. BRAMICH: How many times are we going to ask for this and not get it?

MR. PAULSEN: We're going to get the job done right.

MRS. BRAMICH: Well the job is done.

MR. PAULSEN: But we have to give him a month to get some names.

MR MALOCSAY: Truly I believe this is the first time of the meeting that he's come in to try to answer those questions that we've asked, but there really wasn't any answers, but he's here now. Right now nothing is happening with the place. I mean it would be different if he was in a rush to do something or we were in a rush to do something, but right now its before us, its kind of in limbo land, he can't proceed, he cant get a building permit, and I was the one who wanted to end it two months ago too because there wasn't any response.

MRS. BRAMICH: So was I.

MR. PAULSEN: He's made some progress. We have two out of the 5 of 6 years. So give him a chance to get more.

MR. RAPAJ: I'm going further into the hole than could possible be, and the way it seems

CHAIRMAN JANSEN: Well are you doing anything to the upstairs now? You're not doing anything to the upstairs now. Maybe you can have a tenant downstairs. Right? Nothing is going to change in the next month, obviously.

MR. RAPAJ: Of course.

CHAIRMAN JANSEN: So all we want to do is to have you contact your lawyer, and have the other lawyer find out to see of there was some continuity in rentals of....whatever..... rooms or whatever. We have two years accounted for; we don't have four and a half more accounted for.

MR. MALOCSAY: And there was a change when the bathrooms were added to the rooms upstairs. At one point there was a central bathroom that they shared.

MR. RAPAJ: How long ago was that?

MR. MALOCSAY: Had to have happened after 2001.

CHAIRMAN JANSEN: There had to have been some building done after 2001.

ATTORNEY FINK: Well actually we don't know. The Building Inspector presumably didn't make a site visit. He wrote that letter in 01' based upon what was in his records, I'm sure. So those bathrooms could have been put in when who knows when.

CHAIRMAN JANSEN: Does that have any bearing on anything at all? Or is it the occupancy?

ATTORNEY FINK: Only if you believe that what was previously there, let's say eight rooms with a central bathroom, and putting in bathrooms in all the rooms, was that a sufficient change in the use to loose the legality of the non-conforming use. Again it doesn't seem to be a big change.

CHAIRMAN JANSEN: I don't see that as the big issue, I mean every hotel in the Catskills had to upgrade over those years. I think it's the occupancy more than anything else that we're concerned about.

CHAIRMAN JANSEN: Can we at least have some uniformity as to what we're thinking. Is it the occupancy or are you into every little detail of what might have been done to the place?

MR. MALOCSAY: I would really really like to see a tax return.

CHAIRMAN JANSEN: But to get a tax return you have to find the person. Get us the name of that owner and we will subpoena him.

ATTORNEY FINK: Right. That's what I was thinking.

MR. RAPAJ: The name of the owner?

CHAIRMAN JANSEN: Yes the previous owner.

MR. RAPAJ: Pat Fitapelli.

CHAIRMAN JANSEN: Pat what?

MR. RAPAJ: Patrick Fitapelli.

MRS. BRAMICH: You didn't know a few minutes ago.

MR. RAPAJ: No I don't know his location. Of course I know who I bought it from. I don't know how to spell it.

MRS. BRAMICH: It would be on the deed and also in the tax office.

ATTORNEY FINK: It would be right here. Well actually you got the property from eleven-eleven corp., signed by Patrick Fitapelli. Well actually it would take me one second to do a corporate search.

MR. PAULSEN: Who's the lawyer, someone local?

ATTORNEY FINK: No somebody in Pelham was his lawyer.
No I'm sorry that was your lawyer.

MR. RAPAJ: Yes my lawyer.

ATTORNEY FINK: His lawyer was, well the notary was Jacquelyn Carigan, Westchester County. I don't know if she the lawyer or maybe a secretary in his lawyer's office.

CHAIRMAN JANSEN: Okay is it possible to track this person down?

ATTORNEY FINK: If its still and active corporation I could do it very quickly.

CHAIRMAN JANSEN: Okay so let's do that.

ATTORNEY FINK: I'll get in touch with you. I'll let you know what I was able to do and if I cant do it the ball will be in your court.

CHAIRMAN JANSEN: Okay?

MR. PAULSEN: Okay with me.

CHAIRMAN JANSEN: Do we vote yes or no. Don't leave it in limbo. I know I heard you, you said yes.

MR. MALOCSAY: Yes

Town of Warwick ZBA Minutes of 7/27/09

CHAIRMAN JANSEN: Diane?

MRS. BRAMICH: I guess so.

ATTORNEY FINK: And the economy is not going to recover anytime soon so that should help you out.

CHAIRMAN JANSEN: To be continued, and I'm not going to put a one month on it. It may be two months. Alright?

MR. RAPAJ: Okay.

CHAIRMAN JANSEN: Public Hearing still open and it will be continued. Meeting adjourned.