

TOWN OF WARWICK
ZONING BOARD OF APPEALS
AUGUST 24, 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: We haven't had a chance to review last month's minutes; they were either e-mailed or will be sent out shortly so we won't have them to approve until next month's meeting.

Public Hearing of RICHARD HUTTNER – for property located at 111 West Ridge Road, Warwick, New York and designated on the Town tax map as Section 32 Block 2 Lot 5 for a variance of Section 164.41 C(4)(f) permitting a 6 foot fence in the front yard setback where only 4 feet are permitted.

CHAIRMAN JANSEN: Please approach and briefly explain to the Board what you would like to do.

ATTORNEY DAVID HOOVLER: My name is David Hoovler; I'm the attorney for Mr. and Mrs. Huttner. Mr. Chairman, essentially the Huttners have lived at the location for almost 40 years. In 1986 they erected a 6 foot high fence between their residence and West Ridge Road. At that time no building permit was needed. It was necessary to have because of increased traffic and garbage being thrown in the yard. The fence has since fallen in to disrepair and when they went to repair and replace the fence with the exact same fence, they were told by the Building Department that they would need to appear before the Zoning Board because it was a 6 foot fence. They would like to put the exact same fence, just new, in place in the exact same location. I believe it will require a variance.

CHAIRMAN JANSEN: Does anyone have any questions for the applicants?

MR. PAULSEN: Is that within the Town Right of Way?

ATTORNEY HOOVLER: I believe not, it is set back far enough.

CHAIRMAN JANSEN: It's set back far enough so it's not in the Town Right of Way.

ATTORNEY FINK: That's really the issue. Unless you can show us that it's *not* in the Town Right of Way, then we're going to have to have the Town Superintendent look at it.

MR. MALOCSAY: Didn't he do that?

ATTORNEY FINK: Not this one, no.

MR. HUTTNER: If I may, there is a drainage ditch along the road. It rises up about 3 or 4 feet. There are wild bushes between the ditch and where I want to put the fence; we have some pictures of where the old fence was.

MR. MALOCSAY: How far would you estimate the distance to be?

MR. HUTTNER: I don't know because I don't know how wide the Right of Way is. The fence would be on the inside of the wild bushes where it existed before. I have pictures.

CHAIRMAN JANSEN: Pictures are fine, but it's a matter of calculations as to whether it's in the Town Right of Way or not. If it's in the Town Right of Way then there is a waiver that needs to be established in order for the Town to not be responsible. If it does fall within the Right of Way, then they have to supply the waiver.

ATTORNEY FINK: We've been through this before and the Town has no problem as long as it doesn't affect the maintenance of the road. But the Town wants a formal agreement to say that they are not responsible for the fence etc. But if it's not in the Right of Way then it's not needed; but if you don't know...

MR. HUTTNER: We have no way of knowing that.

ATTORNEY HOOVLER: Well, the Building Inspector was out there.

CHAIRMAN JANSEN: The Building Inspector was acting on the fact that you can't have a 6 foot fence, you can only have a 4 foot fence in a front yard setback. So that's what he's acting on and it doesn't really address the Town's liability for that fence if it's within the Right of Way. We don't have a problem with you putting the fence back up, but because of the litigious society that we live in, we do have the problem of holding the Town harmless.

ATTORNEY FINK: Your survey, although I don't know if you'll ever find the irons now, does show irons.

MR. HUTTNER: Along the road?

ATTORNEY FINK: No.

MR. HUTTNER: There are irons at the rear of the property.

ATTORNEY FINK: No, this is an old survey.

MR. PAULSEN: As long as they sign the waiver, it doesn't matter is it's in the Right of Way or not, right?

ATTORNEY FINK: Right. I'll write to the Highway Superintendent and anything he writes back, I'll fax to you.

CHAIRMAN JANSEN: Is the fence up already?

MR. HUTTNER: Well, we had an existing fence and I was in the process of repairing and replacing it when the Building Department gentleman showed up and told us to stop and said that it was an illegal fence. I told him it's been here since 1986, which we can prove.

ATTORNEY FINK: It would have been illegal then too.

MR. HUTTNER: When we put the fence up originally, we called the Building Department to see if we were allowed to do it. The Building Inspector at that time told us that we didn't need any permits. There were no rules about which side had to face in or out.

ATTORNEY FINK: Apparently he didn't ask how high it would be or where it was located either.

CHAIRMAN JANSEN: We're going to have the Highway Department come out and take a look at it and if we need a waiver, we'll let you know about it.

ATTORNEY HOOVLER: Okay, so you'll correspond with my office?

ATTORNEY FINK: Yes.

Continued to the September 28th ZBA meeting.

Public Hearing of KASTRIOT RAPAJ – for property located at 40 Jersey Avenue, Warwick, New York and designated on the Town tax map as Section 75 Block 1 Lot 21 and located in an SM District for an interpretation of the decision of the Building Inspector tat 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 7/27/09 ZBA meeting.*

ATTORNEY FINK: What I did, was, I did a corporate search and the corporation that conveyed the property 7 years ago is still showing as an active corporation. However, the investment corporation is still the old address. I communicated this to the applicant and the applicant e-mailed back saying he thought that he could find somebody that had additional information. But there's nobody here.

CHAIRMAN JANSEN: So will we put a deadline on this?

MRS. BRAMICH: We did, two months ago, last month it was supposed to be done.

ATTORNEY FINK: What I suggested to him was for him to contact his attorney to see who the attorney was who represented the corporation and we might be able to run it down that way. This communication went back and forth from July 28th.

MR. MALOCSAY: Diane, I'm not 100% sure but I was pretty sure that at our last meeting, we didn't think he could get that information in 30 days and I thought that we gave him 2 months at our last meeting which would be September's meeting. Because I didn't see any way that he was going to pull off getting the information that we needed in 30 days.

ATTORNEY FINK: Unfortunately we don't have the minutes from that meeting because of a computer problem.

MR. PAULSEN: Let's just put it over to the next meeting.

CHAIRMAN JANSEN: Can we make it the October meeting because we might not have a meeting next month.

MR. MALOCSAY: I think one of the reasons we said that is because I didn't think we were having a meeting this month.

ATTORNEY FINK: He doesn't have to appear. That's his choice. We'll review the minutes, the application and make a decision.

MR. PAULSEN: I make a motion to continue the application until the October meeting.

MR. MALOCSAY: I second it.

CHAIRMAN JANSEN: Any discussion; all in favor? Any opposed?

MR. MALOCSAY: Aye.

MR. TODD: Aye.

MR. PAULSEN: Aye.

CHAIRMAN JANSEN: Aye.

MRS. BRAMICH: Opposed.

CHAIRMAN JANSEN: Motion Carried.

MR. PAULSEN: When you corresponded to him, did you impress upon him that if he doesn't come up with this (information), that his application would be denied?

ATTORNEY FINK: No, I can't tell him that. Let me read from my letters, to answer Norman's question. This was a letter in June " a motion be made for an interpretation that the prior legal non-conforming use was lost because he failed to provide any proof of tenant use from Jan '01 – May '07...the vote was 2 for and 2 against, resulting in a non-vote etc...the reasons the members voted against a resolution was because those members thought that you should be given one last opportunity to provide proof of continued occupancy during this period".

MRS. BRAMICH: We just keep postponing it and postponing it.

CHAIRMAN JANSEN: This will be the last one.

MRS. BRAMICH: That's what you said the last time.

CHAIRMAN JANSEN: I never said that. Our livelihood doesn't depend on it.

ATTORNEY FINK: Moving on. There were two applications that were made, both of which were incomplete. One somebody wanted to convert an existing garage but there wasn't enough information on the application. Since then, they have told Connie that they really didn't want it but they haven't formally withdrawn it.

CHAIRMAN JANSEN: The question was should we refund the fee?

ATTORNEY FINK: Yes, and my recommendation is that the application should be complete before the Board asks the Town Board to return the fees.

MR. TODD: I make a motion that the application be completed before a decision is made regarding the return of fees.

MR. MALOCSAY: I second it.

CHAIRMAN JANSEN: Any discussion; all favor?

MR. MALOCSAY: Aye.

MR. TODD: Aye.

MRS. BRAMICH: Aye.

MR. PAULSEN: Aye.

CHAIRMAN JANSEN: Motion Carried without prejudice.

MR. TODD: I motion to adjourn.

MRS. BRAMICH: I second it.

CHAIRMAN JANSEN: All in favor?

All in favor, meeting adjourned.

Frances N. Sanford, ZBA Recording Secretary

