TOWN OF WARWICK

ZONING BOARD OF APPEALS

OCTOBER 26, 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: **Can I have a motion to approve the minutes of the September 28th 2009 meeting?**

MRS. BRAMICH: **I make a motion to approve the minutes.**

MR. MALOCSAY: **I second it.**

CHAIRMAN JANSEN: **All in favor?**

MR. PAULSEN: **Aye.**

MR. MALOCSAY: **Aye.**

MRS. BRAMICH: **Aye.**

MR. TODD: **Aye.**

All in favor; motion carried.

Public Hearing of <u>RICHARD HUTTNER</u>- for property located at 111 W. 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. *Continued from the 9/28/09 ZBA meeting.*

CHAIRMAN JANSEN: I believe we've gotten all the paperwork that we needed?

ATTORNEY FINK: Yes, the agreement was submitted and signed by the Supervisor. Is this going to create an undesirable change in the character of the neighborhood or be a detriment to nearby properties?

CHAIRMAN JANSEN: No.

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

MR. MALOCSAY: No because a lower fence would cause a lack of privacy and wouldn't block out the noise.

ATTORNEY FINK: Is this a substantial variance?

MRS. BRAMICH: Yes.

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

MR. MALOCSAY: No.

ATTORNEY FINK: Is it self created?

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

MRS. BRAMICH: I second it.

CHAIRMAN JANSEN: Any discussion; all in favor?

All in favor (Five Ayes), motion carried.

ATTORNEY FINK: You were going to talk to the Planning Board about this Mark?

MR. MALOCSAY: There is vegetation above where the fence is now; the vegetation has to stay. The screening created by that vegetation is fine the way it is. I make a motion to grant this variance as advertised with the condition that any existing vegetation must remain.

MRS. BRAMICH: I second it.

CHAIRMAN JANSEN: **Any further discussion; all in favor; any opposed?**

All in favor (Five Ayes), motion carried.

Public Hearing of <u>ROBERT E. KRAHULIK</u> – for property located at 46 West Cove Road, Greenwood Lake, New York, designated on the Town tax map as Section 76 Block 1 Lot 48 and located in an SM District for a variance of Section 164-40N reducing front yard setback from 46(+/-) feet to 14 (+/-) feet where 30 feet are required and side setback from 13.6 feet to 9 (+/-) feet where 18 feet are required and both side setbacks from 35 (+/-) feet to 31 (+/-) feet where 45 feet are required for the purpose of construction of an attached 24 foot X 24 foot shed/garage to an existing single family dwelling. *Continued from the 9/28/09 ZBA meeting.*

ATTORNEY FINK: **We were waiting for the County to come back and it came back with a "local determination".**

CHAIRMAN JANSEN: **The public hearing is now closed.**

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

CHAIRMAN JANSEN: **No.**

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

MRS. BRAMICH: **No.**

ATTORNEY FINK: **Is this a substantial variance?**

MR. MALOCSAY: **Yes.**

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

MR. MALOCSAY: **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 discussion; all in favor; any opposed?**

All in favor (Five Ayes), motion carried.

MR. MALOCSAY: **I just want to mention that this has to go before the Planning Board so that they can approve the design.**

CHAIRMAN JANSEN: **Yes, of course.**

MRS. BRAMICH: **Does the Planning Board deal with the Lake Commission?**

MR. MALOCSAY: **I honestly don't know. I make a motion to grant this variance as advertised so long as the design is approved by the Planning Board.**

MRS. BRAMICH: **I second it.**

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

All in favor (Five Ayes), motion carried.

Public Hearing of <u>JOSEPH M. ROCITT, III</u> – for property located at 12 Lake Trail, Greenwood Lake, New York and designated on the Town tax map as Section 73 Block 8 Lot 5 and located in an SM District for a variance of Section 140.4.A allowing a pool in the front yard.

ATTORNEY FINK: **Have we received anything back from the County yet?**

CHAIRMAN JANSEN: **I haven't seen anything yet.**

ATTORNEY FINK: **Alright, then we can hear the application tonight, but we won't be able to vote on anything.**

CHAIRMAN JANSEN: **Please identify yourself and briefly state why you're here.**

JOSEPH ROCITT: **My name is Joseph Rocitt, III and I'm here regarding a pool in my front yard. I'm not sure if you have all the hardship letters.**

CHAIRMAN JANSEN: **I think everyone has that.**

MR. ROCITT: **As the hardship letter states, after several pre-construction discussions with the Town Inspector, I was given clearance to build a retaining wall which I thought was in my back yard, because my front yard is what I thought was my street address, 12 Lake Trail. I told him I wanted to put a pool in there, a small in-ground pool; he told me to keep it 15 feet off the foundation and any property lines; I agreed. He then came to visit me about half way through it and said I have two front yards and I can't put a pool in there. The pool was already purchased; a fiberglass pool was sitting in my driveway, not installed yet because I was still working on the wall. He told me to go ahead and put it in so we could finish the wall. I'm on the side of a mountain and there is a potential for rain out. He asked me to get engineering which I didn't need, but I got it anyway. That way you guys know that the wall can sustain the pool. Then he asked me to apply for a variance. The pool is in, you have pictures of everything. I'm here seeking relief as a front yard, which I felt was a back yard because we have Jersey Avenue, just so you can see the way I'm on the side of a mountain. I can understand the concern that children might see the pool in the front yard, as you can see how high we are, we're already 50 to 60 feet above the street. There's no way anyone can get to it or even see it. I couldn't put it on the side of the house because there wasn't enough room. You can see how high up it is, overlooking the lake, which is where you would want it. And I thought it was a back yard, I really didn't know you could have 2 front yards.**

CHAIRMAN JANSEN: **It's one of those unusual situations. Anyone have any questions?**

MR. MALOCSAY: **I saw the retaining wall going up. It looks great, you can't see the pool. Is there a fence around it?**

MR. ROCITT: **Yes, a wrought iron fence.**

MR. MALOCSAY: **We know why pools really aren't allowed in the front yard; you truly cannot see this. The pool can't go anywhere else on the property and if you know that property, then you know that this really is the case. I don't have any problems with this.**

MR. ROCITT: **I really put a lot of money into this and I've received many compliments.**

CHAIRMAN JANSEN: **Let me open this up to the public and see if anyone has any questions. Is there anyone here to address this application?**

CAROL COOK: **My name is Carol Cook. When we first saw the wall going up, we were very concerned because it seemed to be getting bigger and bigger. Is there an Engineering report on the wall?**

MR. ROCITT: **Yes, it's all in the booklet there with the Engineer's stamp. I have several copies for anyone who would like one. It's all summed up on the first page.**

CHAIRMAN JANSEN: **Anyone else from the public?**

ARGIE BOWMAN: **My name is Argie Bowman and my concern is similar to Carol's. When you started to take down the trees, did you get permission before you started?**

MR. ROCITT: **Yes, John (Bollenbach) was notified of everything and as you can see in the booklet, if you read through it, everything is in order.**

MS. BOWMAN: **Did you contact the neighbors on each side?**

MR. ROCITT: **Yes, do you mean the gentleman who lives in Florida and comes up for 1 month a year? He came home when we were about half way through it and he's a friend of mine, well *was* and he came over with the other neighbors and we all sat outside and talked. He was happy, fine. I offered to help him with anything he needed while I had the guys there since he's older. He said he was fine, he lived in Florida 11 months a year; also he's been having health problems. Everything was fine. Afterwards you saw him getting upset.**

MS. BOWMAN: **I never saw him get upset...**

CHAIRMAN JANSEN: **We're only dealing with issues that pertain strictly to the construction.**

MS. BOWMAN: **The trees were being taken down across Jersey Avenue.**

CHAIRMAN JANSEN: **There's nothing in the ordinance that says you can't take a tree down.**

MS. BOWMAN: **I honestly thought that the trees were on his house.**

MR. ROCITT: **Who's house? Ralph's house? No, they weren't at all.**

MS. BOWMAN: **Looking at the line...**

MR. ROCITT: **No, I had it surveyed, I had Surveyors there.**

MS. BOWMAN: **Can I finish speaking?**

MR. ROCITT: **Are you speaking *for* Ralph?**

MS. BOWMAN: **No, as a concerned person who lives there who doesn't want Jersey Avenue blocked off by things tumbling down.**

MR. ROCITT: **Which there was; a police officer stopped by during the whole thing. There was loose, dead trees from storms, everything was being cleared down. I had 12 guys there on the side to remove chippings from the brush. I had to clean it all out before I could start marking all the stakes.**

MS. BOWMAN: **I'm not sure I saw all that.**

MR. ROCITT: **It went on for a good month; I think we did a good job. Do you like the wall?**

MS. BOWMAN: **I like the wall as long as somebody says it's strong enough to hold back the pool.**

MR. ROCITT: **Well, just look over the booklet, there are plenty of copies. The Engineer stands by it, it's all certified. You can see all the qualifications, the actual safety level of it. Would you like a book? I think this will clear it up, if you just read through it, you'll feel better. I understand it's a large wall but I'm not just your average home owner, I'm in the construction industry, my whole family is. It's not like I just "winged" it. Just so you know, I don't want any kind of disaster; I don't want to lose the 100 grand I put into it.**

CHAIRMAN JANSEN: **Is there anyone else? The public hearing will remain open. We can't vote on it until next month when we hear back from the**

County. You don't have to appear at the next meeting, we'll notify you. ***Continued to the November 2009 meeting.***

Public Hearing of <u>KIMBERLY & MARK CONNELLY</u> - for property located at 3 Noviski Lane, Warwick, New York and designated on the Town tax map as Section 1 Block 1 Lot 26.1 and located in an SL District for a variance of Section 164.41.A (1) (b) allowing the distance between the principal building and accessory structure to be 4.5 feet where 10 feet are required for the purpose of construction of an addition to the existing single family dwelling.

CHAIRMAN JANSEN: Please identify yourself and briefly describe the project.

TED KLEIN: This is Mark and Kim Connelly, the homeowners and I am Ted Klein the contractor for the project.

CHAIRMAN JANSEN: Can you show the Board the drawings?

MR. KLEIN: Sure, the basic concept is the sun room is going to be attached in the back of the house where the kitchen actually is. The kitchen is relatively small, where it doesn't have room enough for a table. We're going to bump that kitchen out 5 ½ feet to allow it to hove the table in the kitchen so they have access directly to the sunroom.

CHAIRMAN JANSEN: Questions anyone?

ATTORNEY FINK: I don't know if everyone saw it in the file, but the Building Inspector said "should the variance be granted, the Building Department recommends that the accessory building be treated with at least a 1 hour fire rated material".

MR. KLEIN: Sheet rocking the inside of the garage by that one wall wouldn't be a problem.

MR. MALOCSAY: It would be the whole bay.

MR. KLEIN: The garage is a very large detached garage. Is there another way we could do it instead?

ATTORNEY FINK: That's a Building Code which we have no control over.

MR. KLEIN: That's acceptable; we can handle that.

CHAIRMAN JANSEN: Any other questions? Is there anyone here from the public to address this application? No?

ATTORNEY FINK: Briefly explain for the record why you can't put this addition somewhere else.

MR. KLEIN: **Well, the sunroom is the driver here and to put it in the front of the house obviously wouldn't convey. And to put it on the side would put it in bedrooms. The only logical location is exactly where the kitchen is. The kitchen has a sliding glass door that goes directly out to the deck. Basically, where the deck is today is where the sunroom would go. It creates a very tight space in the kitchen. There is nothing you could do to rearrange the kitchen to allow it without pushing the wall out the 5 ½ feet.**

CHAIRMAN JANSEN: **Anything else?**

MR. MALOCSAY: **Besides the 1 hour burn the Building Inspector has, if it's decided and we grant the variance, I would want another fire retardant material in the addition as well. Cement bonded particle board is commonly used. It comes in such a wide variety so no matter what you were planning to do, I'm sure you could find something that would work.**

ATTORNEY FINK: **Since that deals with building issues as oppose d to zoning issues, if we choose to grant the variance we could just put "conditioned upon complying with Building Codes".**

MR. MALOCSAY: **I believe if we give the variance without the sheet rock, the Building Inspector wouldn't have any choice but to allow...**

ATTORNEY FINK: **Maybe we could put in there as required or requested by the Building Inspector.**

MR. MALOCSAY: **The other one is something commonly done, it's just that he didn't make the recommendation yet, so I have to make sure it's there.**

MR. KLEIN: **So what you're saying is that we could use the fireproof material in the addition instead of the sheetrock in the garage?**

MR. MALOCSAY: **No, the idea of the garage being sheet rocked is because it's so close that chances are, the fire is going to start there and we want to contain it long enough to put it out. If the fire were to start there so close to the house, if it were cedar or vinyl, there would be no stopping it. So commonly any houses that are within 5 feet of another structure must have a flame retardant material built onto the outside of it.**

CHAIRMAN JANSEN: **Okay, if there's no one here from the public to address this application, the public hearing is now closed.**

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, not really.**

ATTORNEY FINK: **Is this a substantial variance?**

MR. MALOCSAY: **Yes, numerically.**

ATTORNEY FINK: **Is it self created?**

MRS. BRAMICH: **Yes.**

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

MR. MALOCSAY: **I second it.**

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

All in favor (Five Ayes), motion carried.

MR. MALOCSAY: **I make a motion to grant this variance as advertised with the conditions that the garage must be sheet rocked with a fire proof sheet rock that has a one hour rate burn, and that the addition must be constructed using a flame retardant material such as cement bonded particle board as well.**

MRS. BRAMICH: **I second it.**

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

All in favor (Five Ayes), motion carried.

Public Hearing of <u>MARY ELLEN RICCARDO</u> – for property located at Chardavoyne Road, Warwick, New York and designated on the Town tax map as Section 16 Block 1 Lot 33 and located in an RU District for an interpretation of Section 164.43.B (rights-of-way) and a variance of Section 164.40N and Section 164.43.A allowing a 2 lot subdivision with lots of 4 acres each (including an O&R easement) and front yard setbacks of less than the required 75 feet for the purpose of a 2 lot subdivision.

CHAIRMAN JANSEN: **Please identify yourselves for the record.**

MARY ELLEN RICCARDO: **Mary Ellen Riccardo, I'm the owner.**

RONALD CABRELLE: **Ronald Cabrelle, I'm the Engineer.**

ROBERT ZISGEN: **Robert Zisgen, I'm the Attorney for Peter Sheely who's now the sole owner of the abutting adjoining lot as well as Al Schildeman the neighboring abutting property owner as well.**

MS. RICCARDO: **Hi, it's nice to be here again, hopefully we can come to a final decision tonight because this has been going on for a few years. I would just like to say a few things before I turn things over to my Engineer. I came before the Board in 2006 with a request for a 3 lot subdivision of a piece of property that has been in my family for almost 50 years and after extensive research, I checked the Code diligently. I did my own drawings; I did my own research because I didn't have the funds to hire an attorney at the time. The final decision was denied and it was suggested to me that I try to subdivide...**

ATTORNEY FINK: **Excuse me, I wasn't aware that there was any denial; this Board denied it?**

MS. RICCARDO: **Yes, for the 3 lots, it was a long time ago. I started this about 5 years ago. So I came before you trying to subdivide it into 3 lots, which was denied in 2006. So now I'm back for a 2 lot subdivision. I've been through a lot of trials and tribulations with this. I just want to bring to your attention that Chardavoyne Road does consist of 28 properties and the majority of those properties are 2.7 acres or less. I'm trying to subdivide my property into 2 lots of less than 4 acres each. So this is written incorrectly, but when the notices went out I crossed out 4 acres and put "less", less than 4 acres. So I wanted you to be assured that it went out properly. So on the first lot we're requesting a variance for a front yard setback of – what does it come out to?**

MR. CABRELLE: **55.3 feet where 75 feet is required.**

MS. RICCARDO: **I calculate 18; it comes out to about 20. That's lot 1; it will not be 4 acres, it will be 2.36 acres. And lot 2 will be - we had it at 3.6 but keep in mind that the utility lines are there and if we deduct the utility lines, it will be less than that. It will come out to 2.9.**

MR. PAULSEN: **What is the size of lot 1?**

MS. RICCARDO: **It's 2.36 with a front yard setback, requesting a variance of approximately 20-25 feet. So that's lot 1. For lot 2, we're only asking for a variance of the lot size.**

MR. CABRELLE: **Basically what we originally had was a little more than 80 feet to the property line with the 25 foot setback calculating the setback from that point back to here would give us 55.3 feet. This still remains the property so we didn't deduct any of this property from the bulk. The only change between that and the original one is that you'll see a shaded area here. Because on the 2nd lot what they would do, is we needed to get 250 feet of frontage at the 75 foot setback from the 25 foot setback from the center of the road. So it's one less easement needed. So basically what we have here is we need a bulk variance for the size of the lot which still includes all the property she still owns and a front yard setback. On this one we need a bulk variance. Now there's the interpretation that you're supposed to decide is whether we take the easement out or leave the easement in. So basically what we have here in the parenthesis, this is the lot area with that new piece and then if you subtract .7 from that and you get 2.9 acres. If you choose to take that out. The code says "right of way", this is for all intents and purposes an easement. It goes across neighboring property, it goes across the street; it's not ever going to be a road or anything else.**

CHAIRMAN JANSEN: **Are there wires on it?**

MR. CABRELLE: **A telephone pole.**

MS. RICCARDO: **Can I add a couple of things to that? Even if we deduct the utility lines that comes out to 2.9 it's still larger than the majority of the properties there. If you look at the tax map, my neighbor to the right, those same lines go through his property which is only 2.2 acres and if you look at it, those lines would significantly deduct from those 2.2 acres. It would be reduced to under an acre. So I'm not sure, I checked with the Planning Board to see how large that lot is, but I just flew in from Chicago so I was unable to get that information, but you can see for yourself. So if it hasn't been deducted from that, I don't see why I should have to deduct it from mine. Even if I do deduct it from mine, it would still be almost twice the size of his. Both of my neighbors to the right and to the left have subdivided their properties to do exactly what I want to do right now. The neighbor to the right subdivided a piece of his property for his mother; the one to the left also subdivided a piece for a family member as well. This property has been in my family way before the 2 acre zoning was in effect. I don't think my request is unreasonable. I've contacted New York State attorney's and I've had them review the Town Code of Warwick and they've informed me that this Board has the right to choose and make a decision on this as you see fit.**

ATTORNEY FINK: **That's not exactly true; there are statutory criteria which this Board has to follow.**

MS. RICCARDO: **Orange and Rockland call it an easement/right of way. I asked them if they had a glossary on file, they did not. N.Y.S.E.G. does. They say an easement is the right granted by a property owner for the specific use of a defined area of said owner's property. The definition of "right of way" is land acquired for construction and operation of an electric _____ (?).**

MR. ZISGEN: **Mr. Cabrelle, you're the author of this map entitled "Zoning Board Submittal" dated 10/26/2009, correct? That was the map you were referring to a few minutes ago?**

MR. CABRELLE: **Yes.**

MR. ZISGEN: **So you would agree with me that the current bulk requirements in that zone is 4 acres?**

MR. CABRELLE: **Yes.**

MR. ZISGEN: **You are proposing on lot 1 to exhibit 102,965 square feet?**

MR. CABRELLE: **Yes.**

MR. ZISGEN: **Can you tell me what percentage of that is of the required 4 acres?**

MR. CABRELLE: **No.**

Mr. ZISGEN: **Would it be about 60% of the bulk?**

MR. CABRELLE: **Yes.**

MR. ZISGEN: **In fact, I calculate that on your own proposal which was an earlier drawing date of September 23, 2007, in that time you proposed that lot 1 would have 104,500 square feet and that was 60%, correct?**

MR. CABRELLE: **Yes.**

MR. ZISGEN: **So actually, now the disparity has grown? Calling your attention once again to the drawing dated 10/26/09, the 158,237 square feet that would be about 90% of that which is required in the zone, right? Calling your attention once again to the 10/26/09 drawing, you testified that the required front yard set back of lot 1 was 75 feet, correct?**

MR. CABRELLE: **Yes.**

MR. ZISGEN: **What is the paved width of Chardavoyne Road?**

MR. CABRELLE: **22 feet.**

MR. ZISGEN: **Are you aware that Section 164.43 B of the Warwick Zoning Ordinance reads "rights of way – in calculating the required lot area lot width, depth or yards as part of the required area, according to 164.43.2, rights of way shall not be considered part of the required area? Are you aware of that?**

MR. CABRELLE: **Rights of way, yes.**

MR. ZISGEN: **In section 164.43A, it reads front yards on narrow streets except in the traditional neighborhood district and we can agree that this is not, on streets with less than a 50 foot right of way, which is clearly Chardovoyne Road, correct? The front yard requirements shall be measured from the center line of the existing road way and 25 feet shall be added to the front yard requirements. So that means that the front yard requirement on Lot 1 would be 100 feet, correct?**

MR. CABRELLE: **Yes.**

MR. ZISGEN: **Yes, that's what you said, yes? So indeed the variance you're seeking is even greater than the original request, right?**

MR. CABRELLE: **It's for 25 feet off the center line.**

MR. ZISGEN: **The requirement was 75 foot setback on Lot 1 and you're showing 55.3 feet?**

MR. CABRELLE: **I'm showing 55.3 feet from the edge of the 25 foot setback from the center line of the road.**

MR. ZISGEN: **If we were going to abide by 164.43A, we would have to add 25 feet, would we not?**

MR. MALOCSAY: **You lost me there too.**

MR. CABRELLE: **The 55 feet is measured from the 25 feet off the center line of the road.**

MR. MALOCSAY: **That's correct; that's the way we've done it for a long time, but I want to hear how you came up with your calculations.**

MR. ZISGEN: **Well, because Chardovoyne Road is less than 50 feet wide the front yard requirement shall be measured from the center line of the existing road way which was...**

MR. MALOCSAY: **Can you read that again?**

MR. ZISGEN: **164.43A – Front yard on narrow streets except in the traditional neighborhood district on streets with less than a 50 foot right**

of way, the front yard requirement shall be measured from the center line of the existing roadway and 25 feet shall be added to the front yard requirements.

MS. RICCARDO: **I believe that's what he did.**

MR. MALOCSAY: **That's what I understand he did too.**

MR. ZISGEN: **Okay, if 80.5 goes to the other side of the roadway, and you say its 30 feet wide?**

MR. CABRELLE: **No, it's 22 feet.**

MR. ZISGEN: **So, 11 feet.**

MS. RICCARDO: **No, it would be 22 plus 55.3 subtracted from 100.**

MR. ZISGEN: **55 and 25 comes out to 80 feet.**

MS. RICCARDO: **That's what I just said.**

MR. ZISGEN: **My point is, let me show you on the map. The map shows 80 feet from the far side of the road.**

MR. CABRELLE: **It's the center line of the road.**

MR. ZISGEN: **80.5 feet from the far side of the roadway to the front of the house!**

MR. MALOCSAY: **It's my understanding that this hasn't been dedicated yet.**

MS. RICCARDO: **Nor will it be.**

MR. MALOCSAY: **It's still her property.**

MR. ZISGEN: **I don't see what that has to do with how far back the home must sit from the roadway.**

MS. RICCARDO: **Well, that's for the Planning Board to work out.**

MR. ZISGEN: **But she's seeking a variance, so clearly that's within the realm of the request being sought before the Board tonight.**

MS. RICCARDO: **But it's a variance of no more than 25 feet on a front yard setback.**

MR. ZISGEN: **Okay. Now turning our attention to the right of way, with regard to the area contained within the O&R right of way. There was a deed of easement.**

MS. RICCARDO: **But that's not on Lot 1, are we talking about Lot 1?**

MR. ZISGEN: **The utility easement depicted on the map dated 10/26/09. Do you have a copy of that deed of easement with you tonight?**

MS. RICCARDO: **I don't have it but the Planning Board does.**

MR. ZISGEN: **I think it would be prudent for the Board to obtain a copy, and I intend to obtain a copy, to ascertain what the content is of the deed of easement.**

MS. RICCARDO: **What do you mean the "content"? Whether it's 25 feet on each side or 50 feet on each side?**

MR. ZISGEN: **What obligations are imposed upon the lands over which the easement runs?**

MS. RICCARDO: **It's only 50 feet on each side.**

MR. MALOCSAY: **That's a very reasonable request, so at the next meeting we can get that information.**

MS. RICCARDO: **Do you have a copy?**

MR. CABRELLE: **No.**

MR. ZISGEN: **Would you agree with me that if the area contained within the utility easement is construed as a right of way under the Warwick Code...**

MR. MALOCSAY: **If I may? Let's just wait until we get the deed and then we'll figure it out. We'll get it for the next meeting.**

MR. ZISGEN: **There are two issues here. One is – what is O&R allowed to do within the easement and how might that impact his desire...**

MR. CABRELLE: **Your client has the same easement.**

MR. ZISGEN: **I understand that, on a much larger, on a 10 acre parcel of land.**

MS. RICCARDO: **On a two acre parcel.**

MR. ZISGEN: **All I'm saying is the proposed driveway you intend to construct to access the dwelling on proposed Lot 2 would have to go through that utility easement area.**

MR. CABRELLE: **Yes.**

MR. ZISGEN: **And my point being, depending on what the utility company has reserved unto itself being able to do in terms of maintaining the lines, perhaps expanding the lines, that might interfere with the proposed lots.**

MR. MALOCSAY: **I agree with you 100%, but I still want to wait to look at the deed.**

MR. CABRELLE: **It's a half page long, written 50 years ago; it doesn't have any conditions on it.**

MS. RICCARDO: **I've been in touch with O&R and they said for me to go ahead and get my variances and then send them the drawings before I go spending anymore money at the Planning Board and they'll tell me what I can and cannot do. It's just a 50 foot right to cut the trees or keep the lines clear. As a matter of fact his client should have a copy of it also.**

MR. MALOCSAY: **Yes, but sometimes after either a subdivision or a sale, sometimes that's changed and updated and older pieces of property would have the older version.**

MS. RICCARDO: **But his was the older piece.**

MR. MALOCSAY: **I'm just saying that's why it might not be the same.**

MS. RICCARDO: **O&R was really concerned; they didn't want me to be restricted from anything other than what would not inhibit them from being able to work there. They were really good about it.**

ATTORNEY FINK: **That's a fair statement, this only gives O&R the right to "erect and maintain it's lines with necessary poles towers and wires, stubs, guides and anchors from carrying electrical current upon over and across" my land in the Town of Warwick and it describes where it is, "together with the right to trim or remove any and all trees or other obstructions to keep said lines clear at lease 50 feet". It's really the only issue in my experience has been whether or not a driveway across the easement would interfere with their right to put up their poles and it's usually handled between the owner and it's really a Planning Board issue.**

MR. ZISGEN: **Mr. Cabrelle, 164.43B reads – rights of way – calculating the required lot area, lot width, depth or yard as part of the required**

area (according to 164.43.2) rights of way, if any, shall not be considered part of the required area...

ATTORNEY FINK: Okay, stop there because that's something this Board is going to consider and make an interpretation on and then based upon the interpretation, consider the variance.

MS. RICCARDO: So it's 2.9 if we deduct it; 3.6 if we don't and it's still larger than most of the other properties.

MR. ZISGEN: So the utility easement effects only Lot 2, so if the utility easement area, the square footage within the easement, which runs over Lot 2, was deducted, then you show only 126,331 square feet where 174,240 is required. What's that, about 2/3's?

MR. CABRELLE: I'm not calculating until they decide if it is a right of way or an easement.

MR. ZISGEN: I have some questions for Ms. Riccardo. In order for your 2 lot subdivision proposal to comply with the Town ordinance, you need about another 3 acres or so, right? What effort have you made to acquire the additional acreage from your neighbors?

MS. RICCARDO: If I had the money, I would make a request to purchase.

MR. ZISGEN: So you've made no effort?

MS. RICCARDO: I can't.

MR. ZISGEN: Have you offered to sell your property at market value to any of your neighbors?

ATTORNEY FINK: No, don't answer that, it's totally irrelevant!

MR. ZISGEN: Mr. Cabrelle, can you tell me what the slope of the proposed driveway is?

MR. CABRELLE: Between 12% and 14%.

MR. ZISGEN: That's the steepest at any point?

MR. CABRELLE: That's really a Planning Board issue.

MR. ZISGEN: What is the length?

MR. CABRELLE: I don't know.

CHAIRMAN JANSEN: **What is your point regarding the length?**

MR. ZISGEN: **I just wanted to show the distance that would have to be traversed.**

ATTORNEY FINK: **That's certainly not a Zoning Board issue.**

MR. ZISGEN: **That's all the questions I have at this time. I would like to reserve the right to bring back an Engineer to testify at a future hearing regarding the proposal.**

ATTORNEY FINK: **Is there any reason this Board can't reach a decision tonight?**

MR. MALOCSAY: **Yes because of the point that he brought up to see if there is any additional land that could be purchased to satisfy...**

MS. RICCARDO: **I can't afford it.**

ATTORNEY FINK: **The applicant has stated that she can't afford it and that is something this Board has to take into consideration.**

MR. MALOCSAY: **When we say "can't afford" then if the attempt is made to any of the property owners and then the person comes back with a dollar amount that we feel because for all we know the person is going to subdivide and then give it to her for free, we don't know that though so I think it's a reasonable request.**

MS. RICCARDO: **I'm sorry, say that again. Subdivide it and give it to me for free?**

ATTORNEY FINK: **The request is that you contact the adjoining property owners and ask if you can purchase sufficient so that you wouldn't need a variance and ask for a price.**

MS. RICCARDO: **I do believe that I spoke to Charlie about this.**

ATTORNEY FINK: **We would need a letter that foes out and see if you get a response.**

MS. RICCARDO: **So he's not there anymore, so it would be Mr. Sheely?**

CHAIRMAN JANSEN: **It's only going to pertain to a property larger than 4 acres.**

MS. RICCARDO: **Maybe the one behind but I don't think there's enough property between the back of my property and his house.**

MR. MALOCSAY: **Then that's all the information we need but we need to know exactly that.**

MS. RICCARDO: **Okay, whatever you guys need. He's right there; can I ask him now and get it on the record?**

ATTORNEY FINK: **Yes.**

MS. RICCARDO: **Would you like to sell me a piece of your property? Would you like to give me a lot?**

MR. SHEELY: **I'm not going to answer that question right now!**

MR. CABRELLE: **If the only lot that is available is in the back, even if she bought the property, it's not going to rectify the situation because of the septic and the wells.**

MR. MALOCSAY: **We already know that, but we have to see that an attempt was made.**

MS. RICCARDO: **What else do you need besides my letter of request?**

MR. MALOCSAY: **That's it and a response. One of the things we're going to look at is the character of the neighborhood, the lot sizes around you and the distances these houses are off of the main street. Most of them will be averaging less than 50 feet.**

MR. CABRELLE: **One of the things I hope you take into account is that I don't think they're going to make that road an interstate road.**

MR. MALOCSAY: **That's a Planning Board issue, usually with a subdivision, they ask for a dedication and with that they waive some of the requirements.**

MR. ZISGEN: **Can I ask Ms. Riccardo two questions? When did you acquire title to this property?**

MS. RICCARDO: **I really don't know the exact date.**

MR. ZISGEN: **Jan 25, 2003?**

MS. RICCARDO: **That sounds about right.**

MR. ZISGEN: **Did your mother make a gift of it to you?**

ATTORNEY FINK: **That's not relevant.**

MR. ZISGEN: **Do you know what the minimum bulk requirement was at that time?**

MS. RICCARDO: **I don't remember.**

MR. MALOCSAY: **The same as the current.**

CHAIRMAN JANSEN: **Is there anyone here from the public to address this application? Please identify yourself for the record.**

CARL LLOYD: **My name is Carl Lloyd and I have no objection to you building at all but I wrestle with the turn everyday. So my only suggestion would be that the driveways be mirror images because the turn is very bad and it is a safety issue.**

CHAIRMAN JANSEN: **Thank you. Is there anyone else?**

LAURA BRIGHTMAN: **My name is Laura Brightman and I live on Mountainside Road. I don't have a problem with building one house but I'm opposed to building two. I feel that would be too much and I think zoning laws are important and should be adhered to.**

MS. RICCARDO: **May I ask how much property do you have?**

MS. BRIGHTMAN: **A little over 1 ½ acres.**

MS. RICCARDO: **I have one of the largest pieces of property there with the greatest amount of road frontage, so building two houses really wouldn't cause any problems.**

MR.ZISGEN: **When did you buy your property Ms. Brightman?**

MS. BRIGHTMAN: **In 1987.**

CHAIRMAN JANSEN: **Thank you. The public hearing will remain open.** ***Continued to the November ZBA meeting.***

Public Hearing of <u>KASTRIOT RAPAJ</u> – 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 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 Code. *Continued from the 8/24/09 ZBA meeting.*

CHAIRMAN JANSEN: I believe the last time we met you were going to get us some information.

ATTORNEY FINK: What we're looking for is some proof of continued tenant use from January 2001 to May 2007 when you purchased the property. The issue being a non-conforming use continued or abandoned between '01-'07.

MR. RAPAJ: When I purchased the property there were people there. I've already proved to you that there were people that got evicted out of there.

ATTORNEY FINK: I don't think the Board has any issue with that you continued it; there was sufficient evidence that *you* didn't abandon it. The question is was it continued for the time period of 2001- 2007.

CHAIRMAN JANSEN: Was there someone living there; was it being rented?

KENNY SYLA: I can attest to the years 2001, 2002, 2003. I was there. I used to go up there every summer.

MRS. BRAMICH: They were single rooms with no bathrooms?

MR. SYLA: Yes.

CHAIRMAN JANSEN: Did you locate anyone else during that time period?

MR. RAPAJ: I tried but it was very hard because I wasn't involved in it then.

CHAIRMAN JANSEN: You were there renting a room during what time period?

MR. SYLA: **I was there in '01,'02, '03, not '04,'05; we stopped by in '06. I remember the year because that's the year my wife passed away from cancer.**

ATTORNEY FINK: **No notices of violation were issued during that period of time.**

MR. MALOCSAY: **The rooms you rented were strictly rooms? They didn't have a kitchen, no bathroom, a central bathroom?**

MR. SYLA: **They had bathrooms.**

MR. MALOCSAY: **They always had bathrooms, they didn't have kitchens?**

MR. RAPAJ: **No.**

MRS. BRAMICH: **They went from a transient room to an apartment room. Now that's a big difference.**

MR. MALOCSAY: **Yes, but the rooms now have kitchens in them.**

MR. RAPAJ: **No.**

MRS. BRAMICH: **Yes, that's what he said.**

MR. RAPAJ: **No, I never said that.**

MRS. BRAMICH: **You said they were apartments!**

MR.RAPAJ: **No, ma'am, I...**

MRS. BRAMICH: **In the beginning you said they were apartments, because I questioned it; I asked you if you went to a single room to an apartment and you said yes. And now you're saying no.**

CHAIRMAN JANSEN: **What's in there now?**

MR. RAPAJ: **Right now it's only a room and a bathroom. I never rented those rooms as an apartment.**

MRS. BRAMICH: **What are you doing upstairs over that restaurant now? What's up there?**

MR. RAPAJ: **Right now it's vacant, nothing. I'm looking to renovate, restore it.**

MRS. BRAMICH: We went through that at one of the meetings because I re-read the minutes and I asked you how the guy came through the ceiling that was a carpenter and working up there.

MR. RAPAJ: Working? Where?

MRS. BRAMICH: He was working up there and he came down through the ceiling and robbed you and it was stated and I asked you then.

MR. MALOCSAY: I looked into that and I think the only thing that they determined was that the person got access through the upstairs to get in there but they didn't say the person was working there.

MRS. BRAMICH: He said it! I don't know about the Warwick Code because I didn't have a chance to read up on it but there are laws stating about having rooms over a restaurant today.

MR. MALOCSAY: Yes, that's the whole issue because if the rooms were there prior to the Zoning when they were allowed and it has been a continued us which is what we're asking, then it's Grandfathered in.

MRS. BRAMICH: But we still don't have proof.

MR. MALOCSAY: That depends on what we accept as proof. Now we know that there were people for quite some time up until a certain year and then it seemed to be discontinued. And before that it was the question of the one woman that was there but wasn't supposed to be there. Does that justify a discontinuation of the use? I don't know. She was evicted but wouldn't leave.

CHAIRMAN JANSEN: But the thing of it is, they were trying to get her out, they're not getting paid but isn't it still occupied?

MR. RAPAJ: There were people living there. I wanted to renovate it and that's how it came to this. It's been going down the drain ever since.

CHAIRMAN JANSEN: If we find in his favor, does he have to go to the Planning Board?

ATTORNEY FINK: No, not the Planning Board, he has to get a building permit.

MR. MALOCSAY: What is he getting a building permit for?

ATTORNEY FINK: Let me back up. He was issued a violation. So if we find sufficient evidence that it was occupied during the 2001 – 2007 period

of time so he doesn't lose the non-conforming use, my review of the record and I think this Board would find that from the time he bought it he didn't abandon use. Although we seem to be getting conflicting testimonies as to what exactly was done to those rooms. Mr. Frocke said yes, he rented it and there was a kitchenette and also a bathroom.

MR. RAPAJ: They can bring their own small refrigerator but there's no drainage.

MR. MALOCSAY: Another thing with the Building Department is that if given a building permit, is he going to bring it up to code?

ATTORNEY FINK: That's a whole different issue, they were very concerned.

MR. MALOCSAY: That's where the issue came in that if it's been a continued use in order to renovate you would have to get a permit but if you're not changing the use, do you have to meet up to the current codes?

ATTORNEY FINK: Which code? Building or Zoning?

MR. MALOCSAY: Building.

ATTORNEY FINK: You always have to comply with the most current building code.

MR. MALOCSAY: A pre-existing building that doesn't have a sprinkler system doesn't have to have a sprinkler system unless there is a significant change. So I think that where the Town is really concerned with having these continue as motel rooms, transient or apartments, whatever you want to call them and not be up to code.

MRS.BRAMICH: It's not a motel room; it's above a restaurant.

MR. MALOCSAY: But I don't see the difference. Whether you stay a short period or a long period of time.

CHAIRMAN JANSEN: Let's call it a Hotel then.

MR. RAPAJ: Many fine dining places in the city and around here have rooms upstairs.

MR. MALOCSAY: Do you have a problem meeting up with the current building codes?

ATTORNEY FINK: He has to comply with the current building code. This Board has no control over the building codes. John Hicks was concerned

with that but I assured him that this Board can't grant any variances with regard to the building code.

MR. MALOCSAY: We originally asked in another meeting for any kind of proof of a tax return or the previous owner filing to show...

ATTORNEY FINK: I looked up the prior corporation and it showed the same address, no different address. Apparently, he's unable to locate him. I think we got tonight what we're going to get. My suggestion is to review the minutes from other meetings and from tonight and then we'll come back and make a decision. Unless we want to do that tonight?

MR. MALOCSAY: I would have to say that for the most part, he proved that the use was not discontinued.

CHAIRMAN JANSEN: I think this has gone on long enough. I have no problem with there being rooms above the restaurant as long as they're up to code.

ATTORNEY FINK: Diane, would it be fair to say that you feel that he did not provide sufficient proof of occupancy during the time period of 2001 – 2007?

MRS. BRAMICH: Definitely!

ATTORNEY FINK: He has to comply with the building code. Now what the building code says he has to do or not do is another issue. Regardless of what this Board thinks. We can put in there that this variance has no affect whatsoever on building code. That's if our interpretation is that the prior non-conforming use was not lost.

MR. PAULSEN: I make a motion that it be the interpretation of the Board that there has been sufficient proof that use was continued from 2001 through and including the time that the applicant purchased the property; that the non-conforming use was not lost.

MR. MALOCSAY: I second it.

MRS.BRAMICH Nay.

MR. MALOCSAY: Nay.

MR. TODD: Aye.

CHAIRMAN JANSEN: Aye.

MR. PAULSEN: Aye.

CHAIRMAN JANSEN: Any further discussion?

Motion carried (Three Ayes; Two Nay)

MRS. BRAMICH: **I make a motion to adjourn.**

MR. TODD: **I second it.**

CHAIRMAN JANSEN: **All in favor?**

All in favor (Five Ayes), motion carried.

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Frances N. Sanford ZBA Recording Secretary