TOWN OF WARWICK

ZONING BOARD OF APPEALS

NOVEMBER 24, 2008

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 22nd meeting?**

CHARLES TODD: **I make a motion to approve the minutes of the September 22nd meeting.**

MR. PAULSEN: **I second it.**

CHAIRMAN JANSEN: **Any discussion? All in favor?**

MR. PAULSEN: **Aye.**
MR. TODD: **Aye.**
CHAIRMAN JANSEN: **Aye.**

MRS. BRAMICH: **Aye.**
MR. MALOCSAY: **Abstain.**

Motion Carried.

CHAIRMAN JANSEN: **Can I have a motion to approve the minutes of the October 27th meeting?**

MRS. BRAMICH: **I make a motion to approve the October 27th meeting.**

MR. PAULSEN: **I second it.**

CHAIRMAN JANSEN: **All in favor? Any discussion?**

MR. PAULSEN: **Aye.**
MR. TODD: **Aye.**
MRS. BRAMICH: **Aye.**
CHAIRMAN JANSEN: **Aye.**
MR. MALOCSAY: **Abstain.**

Motion Carried.

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 the Code. *Continued from the 10/27/08 ZBA meeting.*

MR. CROGAN: My name is Richard Crogan and I represent Mr. Rapaj. It is my understanding that last time the Board requested some documentation showing that there were tenants living there a year ago. I have the warrant that was signed by the Judge dated November 3rd and here is the Notice of Eviction from the Sheriff's Department dated December 7th. Larry Brown was the same way, he was another tenant there as well. I represented Kris (Rapaj) when we went through the eviction process and believe me, it was a long process to get them out. We had to have the Sheriff's Department there twice. I don't know if the Board has any other questions for us but there were tenants there certainly within the year.

CHAIRMAN JANSEN: The public hearing is still open; is there any one from the public to address this applicant?

MR. KING: My name is Mike King, I'm a neighbor. I just wanted to clarify that this is just regarding the rooms above the restaurant?

MR. CROGAN: Yes. Larry Brown and Patricia Campbell lived above the restaurant.

MR. HICKS: My name is John Hicks; I'm the Attorney for the Town of Warwick. I would like to address a couple of issues and I just wanted to make everyone aware of what the Town's position is on this application. First of all, in regard to the sign issue and the new ordinance coming in to effect with the five year time period was a valid one. We have no objection to that. We'll let the sign exist in its present form until the new ordinance takes effect. With regard to the issue of the non-conforming use status of the rooms above the restaurant, there are two here, I think. One is that your Board has complete jurisdiction to decide whether it's a pre-existing non-conforming. The evidence has

been presented to you by Mr. Rapaj and his attorney satisfying that it is a pre-existing non-conforming use. However we have a couple of other issues with regard to some of that. We believe Mr. Rapaj took ownership approximately one year ago. We believe the "so-called" units above the restaurant were in fact apartment units and there is no prior record in the Town files that indicates they were ever legally converted to apartments. Whether they were single rooms at some point that may be the case, but they were apartments at the time of these evictions. We believe that the conversion to apartments was done illegally. Something else that concerns the Town greatly is whether or not these units comply with New York State Building Codes. As far as we can tell, they do not. I have brought a copy of a letter with me…

ATTORNEY FINK: Excuse me John, does that letter refer to Building Codes?

MR. HICKS: Yes.

ATTORNEY FINK: Regardless of what this Board finds or does not find, we have no jurisdiction over Building Codes. So even is we were to find 1) it was legally pre-existing and 2) had not been discontinued for more than 1 year, it would still have no effect what so ever over Building Codes.

MR. CROGAN: With respect to the use of the apartments, Mr. Rapaj bought it the way it was. He didn't know who the tenants were; as far as he knew they were transient use and that is his intended use for it. He is certainly willing to comply with the transient use, that's not an issue.

ATTORNEY FINK: It normally is the burden of the applicant to show a pre-existing legal non-conforming use. The letter from the Building Inspector regarding the violation is somewhat confusing in that this letter dates September 8th and says "the Building Department cannot grant a Building Permit to remodel 8 rented rooms above the restaurant as the rooms are non-conforming to the current Town of Warwick zoning ordinance and have been vacant for over 1 year". That might imply the Building Inspector was satisfied that it was a legal pre-existing non-conforming use because otherwise the 1 year would have no relevance what so ever. It could be vacant 1 day and it wouldn't matter if it wasn't legal to begin with. But Mr. Hicks raised that issue and I guess it *could* be read into the Building Inspectors letter, so in order to claim legal pre-existing non-conforming use you would first have to show that and show it hadn't been vacant for more than 1 year, which apparently the Board may find that you've shown.

MR. CROGAN: I have a letter here dated January 22nd 2001, it's from Mr. John Batz, it states "after an extensive search of old records the Building Department has determined that a Building Permit was issued on August 11th 1960 for constructing an addition to the Restaurant. The Building Permit application stated the use was for a restaurant and 8 single rooms above the Restaurant; a Certificate of Occupancy was issued on August 10th 1961. As

discussed, this would be pre-existing and pre-dates present day building codes". If I may present this to the Board?

MR. HICKS: **I certainly can't dispute the letter written by the Building Official; however the issue of the illegal conversion from single occupancy units to apartments is another issue. Our understanding is that these units were, prior to Mr. Rapaj taking ownership, full-fledged apartments with kitchens and bathrooms and so-forth. Even if that letter were to be taken as face value, it would seem to me that they would only indicate that they were single room occupancy and not apartments and somehow along the way they were converted to apartments and the Town Planning Department has no records that they were ever legally converted which would require Building approval and Planning Board approval.**

MRS. BRAMICH: **John, you're saying now they're apartments, one bedroom apartments?**

MR. HICKS: **That is our understanding that they were when Mr. Rapaj took ownership of the property. That was what Patricia Campbell was living in.**

MRS. BRAMICH: **Each one of the units had a bathroom?**

MR. HICKS: **As far as I know, yes ma'am.**

MS. CARNEY: **Excuse me; I'd like to address the Board. My name is Patricia Carney and I live across the street. That used to be the _____Motel, it was a seasonal place when it was first built, it was never zoned for year round living, it was just from Memorial Day to Labor Day and I will tell you the quality of life issues the Neighborhood has suffered before Mr. Rapaj bought the place because of the transients were just awful! There were health issues, with rats running around, people coming up the driveway taking lights out. The Warwick Police were down there sometimes twice a day along with the Ambulance. Why do we have to put up with this, that's what I want to know? What's going to happen when you start renting them out again? You don't live there, we do and we have to put up with this. It really is unacceptable.**

CHAIRMAN JANSEN: **Thank you.**

MR. CROGAN: **Mr. Chairman, if I may? I have an additional letter dated May 4th, 2001 regarding 40 Jersey Avenue; it says "the Building Department considers the 8 single rooms located above the restaurant as pre-existing use for transient occupancy". It's signed by Mr. Batz.**

CHAIRMAN JANSEN: **Again, one of our questions will be, at the time these evictions took place, were they apartments? When did that become and apartment from a motel room?**

MR. CROGAN: **Well, we don't know, again when we acquired the property, we had these tenants that were there, so we evicted the tenants because they weren't good tenants to begin with. But we didn't know if they were long term tenants or short term tenants, what they were. Again, we're willing to comply with transient use.**

CHAIRMAN JANSEN: **So there are still 8 units there?**

MR. CROGAN: **Yes there are.**

MRS. BRAMICH: **Are there also units on the ground level? Behind the restaurant, connected to the restaurant?**

MR. RAPAJ: **There's one.**

MRS. BRAMICH: **And then there's the other building. Do you have 2 buildings? One is a single story and one is a two story.**

MR. HICKS: **That second building is approved as a motel and is still operating as a motel. This whole thing came about as a result of the Town initiating an unsafe building proceeding against Mr. Rapaj because of conditions that exist there.**

MR. PAULSEN: **Such as?**

MR. HICKS: **We had issues with the septic system and trash on the property. In all fairness to Mr. Rapaj the property is in much better shape since he took ownership. Many of the issues have been dealt with. The issue of Motel vs. Apartments is still a simmering one for the Town. I don't think that's an issue before the Board. The issue before the Board is regarding the sign and the pre-existing non-conforming status of the 8 rooms above the Restaurant. I think as Mr. Fink stated, it's the obligation of the person buying the property to determine exactly what it is he's buying and a title search will show that. I think based on the letters that have been shown to you tonight, it is in the Towns building records, at best it shows as a single room occupancy, therefore the issue still remains if it was illegally converted to apartment use.**

MR. PAULSEN: **Are you going to use this as single room occupancy?**

MR. RAPAJ: **Yes, eventually once it is all upgraded and furnished the way I want it to be.**

MR. PAULSEN: **You're not going to have people staying there several months, years?**

MR. RAPAJ: **No, there are no kitchens there.**

MRS. BRAMICH: **Apartments have a kitchen!**

MR. PAULSEN: **Were you planning to take out these kitchens and bathrooms? And put motel type rooms there?**

MR. RAPAJ: **That's what it is now. We just have to clean it up and fix it up.**

MR. PAULSEN: **So you're going to remove the kitchens?**

MR. RAPAJ: **There is no kitchen.**

MRS. BRAMICH: **But you just said there was.**

MR. RAPAJ: **No, in the apartments upstairs there is no kitchen. Basically what is there is a room with a bathroom. Eight rooms with a bathroom. You could use a microwave oven and stuff like that.**

MR. HICKS: **If in fact there are no kitchens there and Mr. Rapaj would allow the Building Inspector to make an inspection in each of the rooms and we can verify there are no kitchens and he consents that there will be no kitchens, then I think that will resolve one of those issues and allow the Board to make a determination on the pre-existing non-conforming use status.**

ATTORNEY FINK: **You say it resolves the issue; does this mean the Building Inspector will pull the Notice of Violation?**

MR. HICKS: **Based on the letters in the file that were given to you tonight, the Town has almost conceded that they have been single room occupancy. However the issue of the 1 year is still before the Board and if this Board finds that based on the evidence submitted by the applicant indicates that the use has not been vacant and the use has not been discontinued for more than 1 year, I would say it's within this Boards discretion to say that hasn't been done.**

ATTORNEY FINK: **I see the Building Inspector can look at it too and then pull the Notice.**

MR. HICKS: **Absolutely.**

CHAIRMAN JANSEN: **This letter is dated November 29, 2007. So there are some conditions that have to be met in order for them to be occupied.**

MR. HICKS: **Yes and they are pretty stringent conditions such as fire separations, there has to be emergency ingress and egress to the rooms. All of that is Building Code stuff and not really before your Board.**

ATTORNEY FINK: **If the Building Inspector goes up and he's satisfied and you have this in your file, then there would be nothing for this Board to do, right?**

MR. HICKS: **I think you're right. I don't know if there's sort of a stand off here and we can delay this for a month so we can send the Building Inspector out and with Mr. Rapaj's cooperation to verify exactly what is there so we can come back and tell you that we have an agreement with Mr. Rapaj as to what he intends to do…**

ATTORNEY FINK: **He doesn't have to tell us anything, all he has to do is pull the Notice and it will be off our calendar.**

MR. CROGAN: **Couldn't you also grant it as conditional that there be no kitchens?**

CHAIRMAN JANSEN: **No, that would be usurping the Building Inspectors responsibility.**

MR. CROGAN: **Aren't they separate matters?**

ATTORNEY FINK: **There is also the issue whether or not that use changed. It would seem that to make the Building Inspector happy, that's not an issue that will come before this Board. We won't make any decision.**

MR. HICKS: **So for the moment, if you left it on your calendar for another month and we're satisfied in the meantime, we'll simply address a letter either from me or the Building Inspector that the issue has been resolved or if we still have an issue, it will still be on your calendar for next month.**

CHAIRMAN JANSEN: **Which more than likely we will not be meeting in December, it will be in January.**

MR. HICKS: **Okay.**

MR. CROGAN: **So if it gets pulled, will we have to come back?**

CHAIRMAN JANSEN: **Only if you still insist on keeping the existing sign and not meet up with the new sign regulation.**

MR. CROGAN: **Okay.**

ATTORNEY FINK: **You could discontinue your application regarding the sign which doesn't look like it would be granted anyway.**

MR. CROGAN: **Can I discontinue that at this point?**

ATTORNEY FINK: **Why don't you wait to hear from the Building Inspector?**

MRS. BRAMICH: **So you're saying the sign is not an issue now? Because the sign has changed; it is a brand new sign, is it not?**

MR. RAPAJ: **Yes.**

MR. HICKS: **We're in the process of changing the zoning ordinance, we believe the sign part of it will be changed at the same time. We're willing to let it ride for a little while and then he'll have to comply with the new ordinance.** ***Continued to January meeting unless notified by either Mr. Hicks or the Building Inspector***

Public Hearing of <u>BRIAN J & MELISSA SINGER</u> – for property located at western side of Briller Road 1000 feet south of Continental Road, Warwick, New York and designated on the Town tax map as Section 66 Block 1 Lot 75 and located in a CO District for a Variance of Section 280a of the Town Law allowing a 2 lot subdivision which does not have frontage on a municipal road. ***Continued from the 10/27/08 ZBA meeting.***

CHAIRMAN JANSEN: Mrs. Briller, are you represented by Counsel this evening?

MRS. BRILLER: No sir.

ATTORNEY FINK: Is there anybody here for the Singer application other than the applicant and Mrs. Briller? No? I have gone through the minutes and gone through the documents again and I won't read this but it will be make part of the record.

MEMO TO FILE – 11/14/08

RE: APPLICATION OF SINGER – WZBA

POSITION OF THE APPLICANT

The applicant contends that he has access over Briller Road and an extension from Briller Road that is between 32 feet wide on 1 side and 27 feet wide on the other side. Authority for this comes from a deed from Briller to Barlow L 2772 p 182 and L 2868 P 230 and a deed from Briller to Singer L 11879 P 0532. The metes and bounds description is provided in the deeds and is shown on the Right-Of-Way deed plot by Kirk Rother PE dated 6/25/08.

The Zoning Board has also been provided with a letter dated 9/12/08 from Linda Houser, a manager for Land America Commonwealth, the company that issued title insurance to Singer, that the title policy insured access from Continental Road to the insured premises. The preliminary title certificate references among others, L 2772 P 182 and L 2868 P 230.

POSITION OF LUKE CHARDE, ESQ.

As summarized by Ms. Briller's attorney, Luke Charde, Esq., before the Zoning Board at its meeting on 10/27/08, the following issues were raised:

-Subdividing the applicant's lot would create a 7th lot which may require a variance from the Code.

-Response: There has been no application for a variance from any such provision of the Code so that the Zoning Board is not considering that issue. However, I cannot find authority for the position in the Code that subdividing the lot into 2 lots would require a variance for a 7th lot. If that is the position of the Planning Board, the applicant will have to return with a new application.

-The other property owners have objected to a subdivision.

-Response: This issue can be dealt with in the Board's discussion of the criteria for a variance.

-Briller acknowledges a 14-15 foot right-of-way, but not the 32-27 foot right-of-way alleged by the applicant.

-Response: The applicant's deed appears clear that the right-of-way is 32 x 27 feet as shown on Kirk Rother's ROW deed plot.

-There is inadequate emergency access for larger Fire Department vehicles, a road profile and construction specifics are required before a 280-a variance can be granted and it is the obligation of the Zoning Board to determine if there is suitable access for emergency vehicles.

-Response: The road would have to be improved to allow adequate ingress and egress, a variance can be conditioned upon the Town Engineer providing the Zoning Board with required specifications and either the road being built to those specifications or a suitable undertaking filed.

-There is a controversy to the extent of utility easements to service the subdivision.

-Response: This is not an issue before the Zoning Board and application for a 280-a variance.

OBJECTION OF BRILLER

Ms. Briller reiterated that the easement was no wider than 14 or 15 feet and that an agreement signed subsequent to conveyance to Singer does not provide additional rights. That agreement, presumably the agreement dated 6/7/05, at Par. 1, alludes to granting "such additional easements as may be necessary to fully improve the access way from the end of Briller Road to the subject parcel." The agreement is not

relevant to this application and the applicant has the 32-27 foot easement as specified in his deed, and as shown on the ROW plot.

TL 280-a VARIANCE

Paraphrasing TL 280-a 1, a building permit cannot be issued on a lot that does not have access on a street or highway on the municipality's official map, or if is not on an existing municipal highway or shown on a filed subdivision.

Pursuant to sub-section 3, the Zoning Board can grant a variance if the circumstances of the case do not require the structure be related to existing or proposed streets or highway and/or an area variance pursuant to TL 267-b.

The Zoning Board has to consider the public health, safety and general welfare in regard to access.

If adequate access does not exist so that improvements on the access are required, a condition of a variance could be posting an adequate security in an amount recommended by the Town Engineer to construct the improvements.

Under the circumstances, the Zoning Board should not delegate its approval authority to the Planning Board. Rather, if the Zoning Board is inclined to grant the variance, it should be a 2-step process; the variance being granted subject to a report being generated by the Town Engineer as to what improvements must be made, if any, and if the variance is to be granted prior to those improvements being made, that a sufficient security be posted. In short, an interim decision could be made by the Zoning Board followed by a final decision. If this is the course taken, there should be a limitation of time within which the applicant would return with the Town Engineer's report and security requirements.

TO GRANT OR DENY THE VARIANCE, THE BOARD MUST CONSIDER THE STATUORY CRITERIA

The Board must take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:

1. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of the variance?

2. Can the benefit the applicant seeks be achieved by some feasible method, other than the variance?

3. Is the requested variance substantial?

4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

5. Is the alleged difficulty self-created?

6. Is this the minimum variance that can be granted?

ATTORNEY FINK: With regard to whether or not the variance will be granted does either the applicant or Mrs. Briller have any questions for me or the Board?

MR. GOLDSTEIN: I have one question. You referred to the Board considering the specifications and whether any improvements would be required based upon recommendation of the Town Engineer. It was my understanding that back in May that you sent a letter to John Bollenbach indicating it was the consensus of the Board that the 280-a variance would be granted and that basically my clients would have to go to the Planning Board and the Planning Board was going to come up with the determination as far as what specifications would be needed for the road and the Planning Board said, no, we're not going to consider any specifications until the ZBA actually grants the 280-a variance. So the question I have is why would this Board here even need to consider whether or not any improvements would need to be done in conjunction with their granting the variance? Wouldn't the Planning Board be making that determination?

ATTORNEY FINK: Mr. Charde raised a legitimate question when he asked whether or not this Board can "hand-off" to another Board its obligation to determine if there's adequate ingress and egress. If this Board could determine *now* if there's adequate ingress and egress that would be the end of it; they could make that finding and grant the 280a and so on. But if the Board can't make that determination now in order to have the Planning Board move forward they could if they chose, grant the variance. They could grant the variance in 2 steps. First the 280-a upon the condition that the Town Engineer along with the Planning Board would come up with a plan for the road and either the road would be constructed or it would have to be bonded. This Board would look at what the Town Engineer had done and assuming the Board is in agreement, we would grant the second part.

MR. GOLDSTEIN: Okay. Another thing I wanted to mention is that it's my understanding that the Police Department and the Ambulance Corp. have already submitted letters to the Planning Board and I think this Board as well stating there was suitable access for emergency vehicles. The Fire Department didn't issue a letter because I was advised by John Batz that they will issue one only if there's *not* satisfactory access for emergency vehicles.

ATTORNEY FINK: **Again, this Board can make a determination tonight that there's adequate access. I'm addressing the fact that if the Board determines there is not adequate access, they would not have to deny the variance based upon that alone, because many times there would not be adequate access at the time and improvements would have to be made. Mrs. Briller, do you have anything to add?**

MRS. BRILLER: **Yes, with respect to the documentation you gave me. It wasn't Mr. Charde who was questioning the variance for the 6th lot, it was Mr. Bollenbach.**

ATTORNEY FINK: **Well, I know Mr. Charde was referencing Mr. Bollenbach, but in effect and Mr. Charde said, correctly so, that if a variance was needed that was not part of the application, then the Board couldn't grant it, so without even getting into that, the Board isn't considering whether or not a variance would be needed from this so-called 6th lot requirement or no more than 6 lots. It may be that the Planning Board was going to make a determination that it won't go forward with the subdivision without it and perhaps a variance would be needed. My own reading of the Code is and I don't know how the Planning Board comes up with that but I'm sure if they decide that it's important, they will tell us where in the code they do come up with it.**

MRS. BRILLER: **You must understand that Briller Road is a private road in name only. It does not meet the specifications for the zoning regulations for a private road today; if it did you could have as many as 20 houses on that road. But Briller road falls through that and therefore becomes nothing more than, according to the code, a shared driveway. When it was approved in 1977 it was approved as an access strip, and because it does not meet the Towns specifications and by default meets the shared driveway specs, that's where the 6 lots come in.**

ATTORNEY FINK: **I still don't see that in the code, but regardless that's not before the Board.**

MRS. BRILLER: **You indicated that with respect to my discussion of the agreement that was signed at the same time, that this is not relevant. Could you explain why this is not relevant?**

ATTORNEY FINK: **Because as I look at the Deeds and the reference to the Right-of-Way, when you conveyed to Singer an easement that's 32-27 feet and in the survey that's what Mr. Rother has presented to the Board, you may disagree with that and I have gone on record as saying that's the way I read it and I'm not saying that's correct, just the way I read it.**

MRS. BRILLER: **Kirk Rother is not a licensed surveyor.**

ATTORNEY FINK: **You don't have to be a licensed surveyor to plot something. The metes and bounds description goes all the way from Continental Road to the Singers lot and that's what Mr. Rother put on the survey.**

MRS. BRILLER: **He did not show the 20 foot easement that is the Lands of Brumbach.**

ATTORNEY FINK: **I was only interested in what the applicant received from you in the Deed and as Mr. Rother plotted it.**

MRS. BRILLER: **You underlined in the Memo "such additional easements" etc. Is that pertinent to this discussion?**

ATTORNEY FINK: **I don't think so. I think that their right to use that Right-of-Way is granted by you in the Deed. Any other agreement doesn't affect the Deed. I don't see any conditions.**

MRS. BRILLER: **My last question is with respect to the need to go to the Town Engineer and to obtain something in writing as to how the road will be make safe for access.**

ATTORNEY FINK: **Only if the Board determines that at the present time there isn't adequate ingress and egress then yes, it would be up to the Town Engineer to advise the Board.**

MRS. BRILLER: **Since the applicant does not own the land over which it is proposed the ZBA might decide to be upgraded, what then? If he hasn't been given permission by the landowners? What is the position of the ZBA then?**

ATTORNEY FINK: **If he was not able to upgrade it, then the variance would lapse.**

MRS. BRILLER: **In reference to the letter from the Ambulance Corp; it is conditional. It says that the roads must be kept clear during inclement weather and since you have no way of ascertaining that will be done because there is no road maintenance agreement, it would seem they are only giving a conditional acceptance.**

ATTORNEY FINK: **Okay, that is a valid point.**

MR. GOLDSTEIN: **First of all, there is common road maintenance by the landowners. Also regarding access and condition of the road, the Blake property which is the house behind the Singers has access to**

emergency vehicles as well as the others on the road. I think for the Board to come up with a determination that there would have to be improvements to the road in order to have access for emergency vehicles would require the Board to find that simply subdividing the Singers lot from 1 to 2 is going to cause a change to the road and clearly that will not. The access as it is now is adequate and there are provisions for the maintenance of the road.

MRS BRILLER: The common road maintenance agreement covers the 1st 1000 feet which goes from Continental Road to the beginning of Lot 3. It does not cover the 345 feet from the beginning of Lot 3 to the Singers lot.

CHAIRMAN JANSEN: Thank you. Is there anyone else? The public hearing is now closed.

ATTORNEY FINK: Keep in mind that the Board must take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider: Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of the variance?

MR. PAULSEN: I don't see any.

MRS. BRAMICH: I don't see one.

ATTORNEY FINK: Can the benefit sought by the applicant be achieved by some other feasible method?

CHAIRMAN JANSEN: No.

ATTORNEY FINK: Is the requested variance substantial?

MR. PAULSEN: No.

ATTORNEY FINK: Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

CHAIRMAN JANSEN: No.

ATTORNEY FINK: Is the alleged difficulty self-created?

MRS. BRAMICH: **Yes.**

ATTORNEY FINK: **Is this the minimum variance that can be granted?**

CHAIRMAN JANSEN: **Yes.**

ATTORNEY FINK: **Does the Board feel there are any problems with respect to Emergency Vehicles accessing the property?**

CHAIRMAN JANSEN: **No, the Police Department and Ambulance Corp have responded favorably and the Fire Department has not responded because they know they can get in there without problem if they need to, so I would say no.**

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

MR. PAULSEN: **I second it.**

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

All in favor (Four Ayes), motion carried.
Mr. Malocsay - Abstained

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

CHARLES TODD: **I second it.**

CHAIRMAN JANSEN: **All in favor; any discussion?**

All in favor (Four Ayes), motion carried.
Mr. Malocsay – Abstained

Public Hearing of <u>KENNETH & JACINDA PORTER</u> – for property located at 480 Liberty Corners Road, Pine Island, New York and designated on the Town tax map as Section 1 Block 1 Lot 56.21 and located in an AI District for a variance of Section 164.40M allowing an accessory building on a lot with no principal building and Section 164.41. A.(1)(a) permitting a 70 foot X 70 foot accessory building where the Code provides an accessory building may not exceed 1,200 square feet in floor area nor be more than 48 feet in greatest median dimension. ***The Porters have withdrawn their application.***

Public Hearing of <u>BRIAN KELLY</u> – for property located at 303 Rt. 94 South, Warwick, New York and designated on the Town tax map as Section 49 Block 2 Lot 18 and located in an SL District for a variance of Section 164.41.A.(1)(a) permitting an accessory building (existing greenhouse) with dimensions of 20 feet X 44 feet which exceed the Code maximum of 1,200 square feet in floor area and up to 49 feet in greatest median dimension.

CHAIRMAN JANSEN: Please state your name and briefly describe why you're here.

BRIAN KELLY: My name is Brian Kelly and I purchased the property in July. The property has been in my family for a long time but I just purchased it. The greenhouse has been there for a number of years. When John came out during the investigation for the mortgage, he said I may need a variance for the greenhouse. My attorney Mr. Kuhnert told me to come in and see him within 90 days to submit an application.

CHAIRMAN JANSEN: Are you using the greenhouse as a greenhouse?

MR. KELLY: Not right now, but I would like to.

CHAIRMAN JANSEN: The reason I'm asking is because in the Town of Warwick, you are required to have 10 acres of property and I think you have 91/2.

MR. KELLY: Yes, I have 9.5, that's correct.

CHAIRMAN JANSEN: Is there anyone here from the public to address the applicant? No? The concern would be if it ceases to be operated as a greenhouse, it just becomes another place to store junk.

MR. KELLY: No, it would operate as a greenhouse.

CHAIRMAN JANSEN: If we did grant the variance that would be one of the conditions. When it is no longer used as a greenhouse, it would have to be removed. Does the Board have any other questions? If it is 20 X 44

it's only 880 square feet. Their calculations are wrong. It's really because it's a greenhouse, more than the size.

MR. MALOCSAY: Greenhouses are allowed as an accessory structure.

ATTORNEY FINK: It's not an accessory structure, there's nothing else on the lot.

MR. MALOCSAY: Is it possible to purchase an additional ½ acre of land to bring it up to 10 acres?

MR. KELLY: No.

CHAIRMAN JANSEN: The applicant has shown that he can't purchase an additional ½ acre of property because he's land locked.

MR. MALOCSAY: I would like to talk to John Batz to see where he's coming from. So if you don't mind waiting another two months because we won't meet at Christmas. We are holding *you* up so you're not in violation.

MR. KELLY: That's fine.

MR. MALOCSAY: I don't see why it can't be done, but I'd like to talk to him.

ATTORNEY FINK: I think I missed this, but this is for your consumption? Or will it be a business?

MR. KELLY: I work for a contractor in New York and they build parks throughout the five boroughs and I regularly purchase a lot of plant material. I would like to be able to supply that plant material rather than purchasing it from other nurseries.

MR. MALOCSAY: I still would like to talk to John; a business is allowed there so I don't see why he would have a problem with that. This way if we give you a variance, it's for what you really need as opposed to not really answering his question.

CHAIRMAN JANSEN: Okay, the next meeting will be the fourth Monday in January 2009.*Continued to the January 2009 ZBA meeting.*

CHARLES TODD: I make a motion to cancel the December meeting.

MR. PAULSEN: **I second it.**

CHAIRMAN JANSEN: **All in favor; any discussion?**

All in favor (Five Ayes), motion carried

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

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

CHAIRMAN JANSEN: **All in favor; any discussion?**

All in favor (Five Ayes), motion carried.

_____

Frances N. Sanford ZBA Recording Secretary