

TOWN OF WARWICK
ZONING BOARD OF APPEALS
MARCH 22, 2021

Members Present:

Jan Jansen, Chairman

Mark Malocsay, Co-Chairman

Robert Fink, Attorney

Diane Bramich

Kevin Shuback

Chris Daubert

PUBLIC HEARING OF SANDRA McMAHON - for property located at 35 & 39 Oak Hill Road, Warwick, New York and designated on the Town tax map as Section 48 Block 3 Lots 5.2 and 3 and located in an MT District for a variance of Section 280-a of the Town Law granting variances to permit access to residences off a private road. **Continued from the 1/25/21 ZBA Meeting.**

PUBLIC HEARING OF 27 OAK HILL ROAD, LLC. - for property located at 27 Oak Hill Road, Warwick, New York and designated on the Town tax map as Section 48 Block 3 Lot 2.2 and located in an MT District for a variance of Section 280-a of the Town Law permitting access from a private road to a public road for a new single-family dwelling. **Continued from the 1/25/21 ZBA Meeting.**

ATTORNEY FINK: These 2 applications will be done together. They share the same problem.

CHAIRMAN JANSEN: Please identify yourself for the record.

ATTORNEY DICKOVER: Robert Dickover, from Dickover, Donnelly & Donovan, representing Sandra McMahon. I have a submission I'd like to hand out this evening. I apologize for the late submission. I was just retained last week on Thursday.

CHAIRMAN JANSEN: We all received it via email this afternoon.

ATTORNEY DICKOVER: I'll give you the original which has my signature on it. Let that become part of the record.

MS. HEBEL: Thank you. I'll add it to the file.

ATTORNEY DICKOVER: Again, I apologize for being a 'Johnny come lately' to this. In abbreviation, you've seen the submission. I included with it a list of the real property tax information for the other homes that have been built and serviced by Oak Hill Road. There are 7 other houses there constructed already. I gave to you a copy of the file map for Oak Hill Road and the subdivision there, which I think you had already.

CHAIRMAN JANSEN: The only thing that held this up since the last meeting, which was 2 months ago was, are they willing to sign unto the road maintenance agreement.

ATTORNEY DICKOVER: So from that instruction, our client had prepared a road maintenance agreement and presented it to 2 of the people who have houses on Oak Hill Road. Both of them respectively declined with a statement from one of them to the effect, "I've been here 26 years, why would I sign this now?"

CHAIRMAN JANSEN: There is an existing road maintenance agreement.

ATTORNEY DICKOVER: There was an agreement that was signed by the former owners of filed Lot Numbers 4, 5, 6 and 7. I believe those are pretty much across the street from where our client's property is. It was 2 owners at the time that owned 2 lots each for a total of the 4 lots. They entered into a mutual driveway maintenance agreement for their own purposes. That document is not binding upon any of the other lots in that subdivision. The title search for our client's property fails to reveal it as an encumbrance on title and it doesn't appear to be for other lots there.

CHAIRMAN JANSEN: I think, from our standpoint, we could not approve anything unless there is a road maintenance agreement.

ATTORNEY DICKOVER: With respect to that, in my submission, I've directed your attention to the Section 280-a of the Town Law, which is really a 2-pronged test. The first prong of the test is: Does the road have formal status? Is it a road shown on a filed map or an approved official map for the Town? And the answer to that is, yes it does. The second prong of the test is whether or not the road was suitably improved to the satisfaction of the Town Board or the Planning Board. That is where it does not meet that second prong, hence our request for a variance. As you can see in the photos provided and perhaps your familiarity with this road, it is certainly passable. It certainly has been improved. It is paved. It is approximately 50 feet wide in its dimension on the filed map, the paved portion of which is probably 26 feet or so. It is certainly passable by 2 cars. So it is passable and it is improved and therefore our position is that since the lots front upon Oak Hill Road that it meets the second prong of 280-a. And, regardless of whether or not there is a road maintenance agreement should really have no bearing on this board's decision.

CHAIRMAN JANSEN: Well, I think it does.

ATTORNEY FINK: We don't have the power to enforce that.

CHAIRMAN JANSEN: They'll be coming in with construction equipment and the like to build houses. Obviously it will have some effect on the road.

ATTORNEY FINK: Then they are responsible for it.

ATTORNEY DICKOVER: To that question, my client would sign an undertaking that damage to the road created by their construction vehicles would be repaired to the condition of which it was found. If that is something the board is looking for, we would enter into that undertaking.

CHAIRMAN JANSEN: You're agreeing on at least the fact that if you

disturb the road or do any damage to the road, it will be restored.

ATTORNEY DICKOVER: We will enter into an undertaking to that effect. I'm not sure who you want us to enter into it with.

ATTORNEY FINK: We could make it a condition, although we can't enforce it. Why don't we hear from the Public and the rest of the board?

CHAIRMAN JANSEN: Ok, the Public Hearing is now open. Is there anyone from the Public that wishes to address this application? This is for Sandra McMahon and 27 Oak Hill Road, LLC. If not, the Public Hearing is closed.

ATTORNEY FINK: Now some discussion from the board. First of all, a 280-a variance in the situation we're in now is, if the vote is passable, of course we have a problem that there is no turnaround. It's impossible to get a turnaround. So, is the road passable? There are other houses on it. Frankly, I don't see how, legally, this board can deny them their 280-a variance. Insofar as the undertaking, that sounds wonderful, but if we make a condition, as I said a moment ago, we don't enforce that. The building inspector does. What is the building inspector going to do? We really can't take them to court for that. We really can't revoke the 280-a after the house is there. It's an impossible situation created by the Planning Board and we have to live with it. What's even more confusing is they had a bond, apparently, and the Town released it. Let's hear from some of the other members.

CHAIRMAN JANSEN: Anyone else have any comments?

MR. MALOCSAY: Jan, out of the many 280-a variances we've given, there is no question that the road is accessible. It's better than most that we've seen. It would be nice if somebody would give up some space for a turnaround area for emergency vehicles, but at the same time, we have driveways that are longer that emergency vehicles have to back down. It would have been nice if there was a turnaround. There was supposed to be one. Not sure why it wasn't followed through. There's no question that this is accessible for emergency vehicles.

CHAIRMAN JANSEN: I just want to make sure that everyone is protected.

ATTORNEY FINK: Sometimes you can, and sometimes you can't. Right now, you can't.

CHAIRMAN JANSEN: Ok, anyone else? If not, go ahead.

ATTORNEY FINK: Actually, I don't see any reason why we can't do them both at the same time. There is absolutely no difference. So we're voting on Sandra

McMahon and 27 Oak Hill Road, LLC. The criteria can be the same as an area variance. So we'll go through the criteria as there's no reason not to. That is what I choose we should do. Will the proposed variances cause an undesirable change to the character of the neighborhood or be a detriment to nearby properties?

MS. BRAMICH: No.

CHAIRMAN JANSEN: No.

ATTORNEY FINK: Can the benefit sought by the applicants be achieved by any other feasible method?

MS. BRAMICH: No.

MR. SHUBACK: No.

ATTORNEY FINK: Are these substantial variances?

MR. MALOCSAY: No, it's passable.

ATTORNEY FINK: Will they have an adverse effect upon the physical or environmental conditions?

MR. MALOCSAY: No.

ATTORNEY FINK: Are the alleged difficulties self-created?

MR. SHUBACK: Yes.

ATTORNEY FINK: Would someone care to type these as "Unlisted" with no adverse environmental impact?

MR. MALOCSAY: So moved.

MR. SHUBACK: Seconded.

CHAIRMAN JANSEN: All in favor? [5 ayes]
Motion carried.

ATTORNEY FINK: Does anyone care to move that the variances be granted as advertised?

MS. BRAMICH: So moved.

MR. MALOCSAY:

Seconded.

CHAIRMAN JANSEN:

All in favor? [5 ayes]

Motion carried.

PUBLIC HEARING OF MARK & JILL MANTE - for property located at 242 Bellvale Lakes Road, Warwick, New York and designated on the Town tax map as Section 47 Block 1 Lot 78.232 and located in an MT District for a use variance for proposed Lot 2 of a 2 lot subdivision permitting an accessory building (existing garage) to be used as a principal use until the new dwelling is constructed and a variance pursuant to Section 280-a of the Town Law permitting the said Lot 2 to have access to a public road off a private road. **Continued from the 1/25/21 ZBA Meeting.**

ATTORNEY FINK: I will confess this is the first of its kind looking for a temporary variance. My biggest problem with that is what if the temporary variance is granted and they discontinue living there. Let's put it this way, there is no house built so this remains an accessory dwelling which can't be on a separate lot.

CHAIRMAN JANSEN: For how long?

MR. ROTHER: Kirk Rother, Consulting Engineer. The applicants are ready to build as soon as we get the approval.

CHAIRMAN JANSEN: So we're looking for a minimum of 2 years?

MR. ROTHER: I think even less than that. I don't know when the principal structure would be considered principal; after it gets the Certificate of Occupancy?

CHAIRMAN JANSEN: Yes.

MR. ROTHER: Two years tops, most likely less.

CHAIRMAN JANSEN: I don't see a problem with that.

MR. SHUBACK: Do we put a 2-year time limit on it?

MR. ROTHER: We went to a Planning Board workshop and they were even unsure how to handle it given the circumstances. I guess the doom's day scenario would be to do a subdivision and a lot line change later, which just complicates the process.

ATTORNEY FINK: Well, I'm going to suggest that the motion read that if it is not constructed in 2 years and no continuation is done, you're going to have to tear it down. Do you have a problem with that?

MR. ROTHER: No. Tear it down or, I assume, the other option would be merge the lots.

ATTORNEY FINK: Yes; with no variance needed.

CHAIRMAN JANSEN: Let's open this up to the Public. Is there anyone here from the Public to address this application? If not, I'll close the Public Hearing.

ATTORNEY FINK: This is a use variance. A use variance has certain criteria. Not only has none of those criteria been met, but they're not even in the file. That's why I have a technical problem because use variance requirements are statutory. You can't build this without the variance. It makes sense; it just doesn't fit in the box of the use variance. Does this applicant have an attorney?

MR. ROTHER: At this time, no. I think we will need to have an attorney for the right of way, open space and things like that.

CHAIRMAN JANSEN: Let me ask if they initially for now merged the lots and later come back for a subdivision, would that take care of it?

MR. ROTHER: I don't understand. What do you mean by merging the lots? We're proposing a subdivision now. Right now it is 1 lot and we're proposing a 2-lot subdivision. The applicants' son is going to build a new house on the new lot. The end game is for the existing garage to also be on the new lot. The applicants want to give the garage to their son. The problem is the garage would be alone on the lot until the house is built. The Planning Board was unsure and since we were coming before for you for the 280-a variance, they thought the ZBA could look at that also.

ATTORNEY FINK: We can't approve it because it's a use variance.

MR. ROTHER: If this board is stuck on granting that variance because it is a use variance, which I understand, then what we would do is go back to the Planning Board with our subdivision application, change the proposed lot line, leave that garage with the existing dwelling, get our 2-lot subdivision done, get the house built and then come back at a later date to the Planning Board and do a lot line change to convey the garage from one parcel to the other. If the board is unable to deal with that, we'll just take it off the table.

ATTORNEY FINK: Let's move on to the 280-a. Do you have it designed on the proposed subdivision?

MR. ROTHER: Yes; it's not 100%. In 1977, there was a 4-lot subdivision that created this parcel, the parcel behind it that belonged to Alan Mante, the parcel to the north belonging to now or formerly Hagen, and then there's another parcel here to the northeast. I'm not sure who the record owner is.

ATTORNEY FINK: We really can't approve the 280-a variance if we don't have a planned driveway.

MR. ROTHER: This driveway exists. We were before your board with a 2-lot subdivision for Alan Mante, who is at the end of the driveway here, for a 280-a variance which this board granted in April 2009. We renewed that in January 2013. The Alan Mante 2-lot subdivision was recorded in 2014. So that created this lot in the back. The Alan Mante subdivision created the 5th lot off of this existing private road.

ATTORNEY FINK: But is there any difference in the 280-a you are looking for to what we've already granted?

MR. ROTHER: Yes. So you didn't grant it for this lot but you granted a 280-a variance for the parcel behind it using this same road. We did send the plans to police, fire and EMS in February but they are no comments back from them. We've been to the Planning Board and the Planning Board referred us to you.

ATTORNEY FINK: Is this existing driveway shown on your subdivision plan?

MR. ROTHER: Yes.

ATTORNEY FINK: I don't remember seeing a recommendation from the Planning Board. Did you get one?

MR. ROTHER: I got a referral. So, it's an existing 50-foot right of way. It's an existing paved road.

MR. MALOCSAY: The Planning Board on a subdivision to the best of my knowledge anything more than 2 lots has to be 16 feet wide. I was under the impression that was a requirement of the last subdivision and it wasn't done. Are you familiar with that? Because if this one is going to be a subdivision it would only make sense that the Planning Board would have that as a requirement too. They are going to want the driveway to be a minimum of 16 feet wide. It wasn't done for the last one. I thought it was a requirement then.

MR. ROTHER: I believe it was.

MR. MALOCSAY: You should probably find out because I don't want to put the burden on one person to make the improvements because they're doing a subdivision and the other ones should have already had this done. So we're not going to deal with the 280-a right now. I would want to make sure that the Planning Board and the property owners realize that it wasn't done.

MR. ROTHER: I'm looking at this detail here and the original Alan Mante subdivision called for widening the road and it wasn't done. There is a turnaround at the end. That was requested and done but not the widening to 16 feet.

MR. MALOCSAY: I want to go back to the other one regarding the accessory structure. The way that this reads, as a use variance, we're using the accessory structure (existing garage) to be principal use. So I think this board could interpret the garage to be a garage in a subdivision that as long as there is an application or permit for the construction of the house that it still remain an accessory structure to the house being built. This is not unique. We've had this before in subdivisions where there is a barn or building that is there and someone wants to build a house. We could look at that as an interpretation and say it's an accessory structure that has nothing to do with this subdivision. But after what Bob had said, this is simply an accessory structure; an accessory to what? It's an accessory to the subdivision and a permit to build a house. Otherwise it's a real problem.

ATTORNEY FINK: You can write anything you want and it just doesn't fit this situation. You're talking about a separate lot with an accessory building. You can't have an accessory building without a principal use on the lot.

MR. MALOCSAY: Right. If the subdivision is going to be there with an application/permit because they're building a house, I don't have a problem with that. I think the other board members would say the same thing. Otherwise, I don't see any other way of doing this unless the garage gets torn down or they do a lot line change after everything is said and done.

MR. ROTHER: Let me just make sure I have everything straight before I go back to the Planning Board that what I'm asking them on behalf of my clients is before this board considers allowing the sixth home off of this private road to be built we want to make sure the improvements that were supposed to be done for the fifth home are either going to be done or this applicant is going to do them. I think that's really it. As far as a road, I'm not really designing anything.

CHAIRMAN JANSEN: I think you have enough to go with and Bob has a month to figure out how to word this. We'll carry this over to next month.

MR. ROTHER: Thank you. Good night.

PUBLIC HEARING OF TDM REALTY GROUP, LLC, - for property located at 657 Rt 94N, Warwick, New York and designated on the Town tax map as Section 19 Block 1 Lot 49 and located in an RU District for a variance of Section 164-41.A(1)(a) allowing construction of a pole barn / steel building, 40 feet X 50 feet (2,000 square feet) wherein a maximum of 1,200 square feet are allowed. **Continued from the 1/25/21 ZBA Meeting.**

CHAIRMAN JANSEN: I believe we had a consensus last meeting to approve this application, and that we were waiting to hear back from the County.

ATTORNEY FINK: Correct. Maybe we should open it up again to the Public for input, if any.

CHAIRMAN JANSEN: Ok, the Public Hearing is now reopened. Is there anyone that wishes to address this application? No, let's close the Public Hearing.

ATTORNEY FINK: Will the proposed variance cause an undesirable change to the character of the neighborhood or be a detriment to nearby properties?

CHAIRMAN JANSEN: No.

MR. DAUBERT: No.

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

MR. SHUBACK: Only by putting up 2 buildings.

ATTORNEY FINK: Is it a substantial variance?

MR. MALOCSAY: Yes.

ATTORNEY FINK: Will it have an adverse effect upon the physical or environmental conditions?

CHAIRMAN JANSEN: No.

ATTORNEY FINK: Is the alleged difficulty self-created?

MR. MALOCSAY: Absolutely.

ATTORNEY FINK: Would someone care to type this as "Unlisted" with no adverse environmental impact?

MS. BRAMICH:	So moved.
MR. MALOCSAY:	Seconded.
CHAIRMAN JANSEN:	All in favor? [5 ayes] Motion carried.
ATTORNEY FINK: granted as advertised?	Does anyone care to move that the variance be
MS. BRAMICH:	So moved.
MR. DAUBERT:	Seconded.
CHAIRMAN JANSEN:	All in favor? [5 ayes] Motion carried.

PUBLIC HEARING OF LAWRENCE & KIMBERLY BENNETT - for property located at 25 Sandfort Lane, Warwick, New York and designated on the Town tax map as Section 31 Block 2 Lot 107 and located in an RU District for a variance of the Bulk Area Requirements of the Code reducing 1 side setback of an existing dwelling 14.2 feet from the side line where 20 feet are required.
Continued from the 1/25/21 ZBA Meeting.

CHAIRMAN JANSEN: This application was also carried over from last meeting with the consensus to approve. We have heard back from the County and can proceed. The Public Hearing is now reopened. Is there anyone that would like to address this application? If not, the Public Hearing is now closed.

ATTORNEY FINK: Will the proposed variance cause an undesirable change to the character of the neighborhood or be a detriment to nearby properties?

MS. BRAMICH: No.

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

MR. MALOCSAY: No, they already built it.

ATTORNEY FINK: Is it a substantial variance?

MR. SHUBACK: Yes.

ATTORNEY FINK: Will it have an adverse effect upon the physical or environmental conditions?

MS. BRAMICH: No.

ATTORNEY FINK: Is the alleged difficulty self-created?

MR. SHUBACK: Yes.

ATTORNEY FINK: This is a Type 2 Action so there is no environmental concern. Does anyone care to move that the variance be granted as advertised?

MR. MALOCSAY: So moved.

MR. SHUBACK: Seconded.

CHAIRMAN JANSEN: All in favor? [5 ayes]
Motion carried.

PUBLIC HEARING OF TINA & KEYVAN SAGHAFI - for property located at 45 Big Island Road and 1 Hedges Road, Warwick, New York and designated on the Town tax map as 16-1-17.111 & 17.112 and located in an RU District for a variance of the Bulk Area Requirements of the Code permitting a lot line change resulting in a 78,408 (+/-) square feet lot area for Lot 17.111 & 95,832 (+/-) square feet for proposed Lot 17.112 wherein the minimum required is 12,500 square feet and for a variance of Section 164-41A.(1)(b) permitting an existing shed 2 (+/-) feet from the existing dwelling where not less than 10 feet are required.

CHAIRMAN JANSEN: Please identify yourself for the record and briefly tell the board what it is you wish to do.

MR. ROTHER: Good evening. I'm Kirk Rother, Consulting Engineer, along with Mr. Saghafi, the applicant. Mr. Saghafi has 2 parcels of land. This is a 3-lot subdivision done in the 1970's. He built his own residence on tax lot 17.112, which is currently about 2.5 acres in size. There is a vacant lot behind him (which is part of that subdivision) that Mr. Saghafi has retained all this time. Mr. Saghafi and his wife are no longer in need of this sized home for the two of them. They wish to build a new lot on the smaller parcel. That house is under construction. At the time we submitted the materials, I think it was just framed. Now it is partially sided. There is an existing accessory structure on the lot they live on now that he would like to convey to the new dwelling. Interestingly, we went to the Planning Board and they had indicated that because our lot areas don't meet the Bulk Area Requirements we must come for a variance. But, Mr. Fink, I saw how you wrote the criteria for this; because they are existing small lots, the minimum lot size is 12,500 square feet, is that correct in how you worded that?

ATTORNEY FINK: I believe I must have. It was a while back.

MR. ROTHER: If that is the case, I'm not sure we even need the area variance for the lot sizes requested. Although, the Planning Board felt we did. Anyhow, all other Bulk Area Requirements will be met. We're simply conveying about 3/10's of an acre with the existing barn from one lot to the other. The other thing that came up is the Building Department noticed there was an open violation on the shed that is close to Mr. Saghafi's house. I looked at their improvements on tax records and it has been there since at least 1997. We are asking that the board allow that shed to stay. There should be pictures included in the paperwork submitted.

MR. MALOCSAY: I'm confused too. On the lot line changes, I really didn't think you needed a variance from us.

ATTORNEY FINK: The way they have it right now is Lot 17.111 has

64,000+ feet and the proposed is 78,000. It's going to be bigger. Lot 17.112 has 108,000 feet existing and 95,000 proposed. It's going to be smaller. Lot area in that zone is 12,500 feet. I looked this up before, is that correct?

MR. SHUBACK: That doesn't seem right.

MR. ROTHER: It's 12,500 for cluster subdivisions.

MR. SHUBACK: And new lots are probably bigger.

MR. ROTHER: The underlying zoning is 4 acres. What I wasn't aware of is, since these are existing small lots, we're somehow falling under that.

MR. MALOCSAY: On the existing small lots, the lot area really isn't that key. It's just the setback requirements in existing small lots. We don't have anything for lot area, just setbacks. Like I said, I'm still confused. This is a lot line change. If anything, the 2 lots become more conforming. The smaller one is becoming a little bit bigger and the bigger one is becoming a little bit smaller. I don't know. I guess if the Planning Board thought that a variance is needed, then that's fine.

MR. ROTHER: I think the Planning Board's position is that the larger lot is getting smaller; so, it's becoming more non-conforming.

MR. MALOCSAY: Ok. I don't think anybody has an issue with that. Now on the shed, and we've had this before. Yes, it's an existing shed and the requirements are 10 feet away from a building, mostly because of fire hazards.

ATTORNEY FINK: Mark, on that I think the way we've dealt with it is, specifically, we're granting the variance, but no variance from any safety concerns. The distance is one thing, but if the building inspector decides for safety concerns it can't be done, our variance doesn't allow it to be done. I'm sure the building inspector would require fireproof material in that area; again, having nothing to do with us, really. We can't grant variances, one way or the other, from safety concerns or building requirements, as far as safety. Does that make sense?

MR. ROTHER: Yes. If the board grants the variance to allow the shed to remain, it would be subject to the building inspector finding that it is safe.

ATTORNEY FINK: Undoubtedly, requiring you to do some things to fireproof it.

MR. ROTHER: The other option would be to move it.

ATTORNEY FINK: That would have to be worked out with the building inspector, not us.

CHAIRMAN JANSEN: It's not that difficult to make it fireproof. Ok, let's open the Public Hearing. Is there anyone that would like to address this application? No, the Public Hearing is now closed.

ATTORNEY FINK: With each question we'll deal with the 2 things. So firstly, is an undesirable change going to be produced to the character of the neighborhood or be a detriment to nearby properties by creating the area variance for the lot size of the 2nd lot?

CHAIRMAN JANSEN: No.

MR. MALOCSAY: No, we're making them closer to the same size.

ATTORNEY FINK: Now the shed, which is 2 feet from the dwelling where no less than 10 feet are required. Will this cause an undesirable change to the character of the neighborhood or be a detriment to nearby properties?

MS. BRAMICH: No, it already exists.

ATTORNEY FINK: As far as the lot size, can the benefit sought by the applicant be achieved by any other feasible method?

MR. SHUBACK: No. If anything, they improved it.

ATTORNEY FINK: For the shed, can the benefit sought by the applicant be achieved by any other feasible method?

MR. SHUBACK: No.

ATTORNEY FINK: Are these substantial variances?

MR. MALOCSAY: Yes.

ATTORNEY FINK: Will they have adverse effect or impact upon the physical or environmental conditions?

MR. MALOCSAY: No.

ATTORNEY FINK:	Are the alleged difficulties self-created?
MR. DAUBERT:	Yes.
ATTORNEY FINK: with no adverse environmental impact?	Would someone care to type these as "Unlisted"
MS. BRAMICH:	So moved.
MR. SHUBACK:	Seconded.
CHAIRMAN JANSEN:	All in favor? [5 ayes] Motion carried.
ATTORNEY FINK: granted insofar as advertised for the shed and I'll correct the footage for the lot size requirement?	Does anyone care to move that both variances be
MR. MALOCSAY:	So moved.
MR. SHUBACK:	Seconded.
CHAIRMAN JANSEN:	All in favor? [5 ayes] Motion carried.

PUBLIC HEARING OF WARWICK PIONEER FARM, LLC, - for property located at 65 State Rt 94S, Warwick, New York and designated on the Town tax map as 52-1-26.2 and located in an SL District renewing a variance of Section 164-53B(12) extending the period for the expiration of a lot area variance for proposed Lot 3 of a proposed 4 lot subdivision reducing acreage from 3 acres (required) to 1.5 acres (proposed) and for a variance of Section 280-a of the Town Law providing access to a municipal highway for proposed Lot 3 over a driveway.

ATTORNEY FINK: It appears you are not asking for anything different than the variance you received that expired. The only real question there is has there been any change in circumstances?

MR. GETZ: Daniel Getz, Engineering & Surveying Properties. The only change that has been made since we were last before the board is the driveway was going to be closer to the neighboring property. After discussions with the Planning Board, it has been moved so that it would be further away from the neighbors. Otherwise, everything is basically the same.

CHAIRMAN JANSEN: The Public Hearing is now open. Is there anyone that would like to address this application? No, the Public Hearing is now closed.

ATTORNEY FINK: On a variance that has been granted it can be renewed whether it expires or whether a request is made before it expires. The only question is has there been any change in circumstances, essentially in the area that would affect the previous subdivision granted?

MR. SHUBACK: No.

ATTORNEY FINK: So that being the case, that is all we are really interested in. There has been no change. We already dealt with undesirable change in the neighborhood, benefit to the applicant, requested variance. The only new question is will it have an adverse effect or impact upon the physical or environmental conditions in the neighborhood?

CHAIRMAN JANSEN: No.

ATTORNEY FINK: Would someone care to type this as "Unlisted" with no adverse environmental impact?

MR. SHUBACK: So moved.

MR. DAUBERT: Seconded.

CHAIRMAN JANSEN: All in favor? [5 ayes]

Motion carried.

ATTORNEY FINK: Does anyone care to move that the previous variance be continued for an additional 2 years?

MS. BRAMICH: So moved.

MR. SHUBACK: Seconded.

CHAIRMAN JANSEN: All in favor? [5 ayes]
Motion carried.

PUBLIC HEARING OF HOLLY POPOWSKI - for property located at 5 Ridge Road aka 5 Ridge Lane, Warwick, New York and designated on the Town tax map as Section 76 Block 1 Lot 80.100 and located in an RU District for a variance of the Bulk Area Requirements of the Code permitting construction of a 21foot X 27foot garage located 15 feet from the front line where 100 feet are required.

CHAIRMAN JANSEN: Please identify yourself for the record and briefly tell us what you want to do.

MS. POPOWSKI: I'm Holly Popowski, the property owner. We're just trying to add a garage to the property. It's a long, narrow lot with a substantial drop-off. Therefore, we have to put the garage closer to the road than we would normally want to do. There are 3 houses on the road and we're the middle house.

CHAIRMAN JANSEN: So, is it similar circumstances with the other houses around you?

MS. POPOWSKI: Yes. The house to the left of us takes up their whole property. It's a very small lot. They basically don't have anything around them besides the fence. Our house has quite a bit of grassy area in the front because the lot is long. And the house on the end is a bigger home.

CHAIRMAN JANSEN: Any questions from the board? No, let's open this to the Public. Is there anyone present who wishes to address this application? If not, the Public Hearing is now closed.

ATTORNEY FINK: Will the proposed variance cause an undesirable change to the character of the neighborhood or be a detriment to nearby properties?

CHAIRMAN JANSEN: Not really, it's typical.

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

CHAIRMAN JANSEN: Not really, there are a lot of terrain restrictions.

ATTORNEY FINK: Is it a substantial variance?

MR. SHUBACK: Yes.

ATTORNEY FINK: Will it have an adverse effect upon the physical or environmental conditions?

MS. BRAMICH: No.

ATTORNEY FINK: Is the alleged difficulty self-created?

MR. DAUBERT: Yes.

ATTORNEY FINK: This is a Type 2 Action so there is no environmental concern. Does anyone care to move that the variance be granted as advertised?

MS. BRAMICH: So moved.

MR. DAUBERT: Seconded.

CHAIRMAN JANSEN: All in favor? [5 ayes]
Motion carried.

PUBLIC HEARING OF RITVARS ZUKS - for property located at 283 Nelson Road, Monroe, New York and designated on the Town tax map as Section 58 Block 2 Lot 2 and located in an MT District for a variance of Section 164-41.A.(1)(a) permitting an accessory building 40 feet X 60 feet (2,400 feet) where not more than 1,200 square feet in floor area is permitted.

CHAIRMAN JANSEN: Please identify yourself for the record and briefly tell us what you're trying to do.

MR. ZUKS: My name is Ritvars Zuks. I am the property owner at 283 Nelson Road. Basically I have a collection of vintage cars that I want to protect from the sun, snow and rain. I need storage. That's all it is.

CHAIRMAN JANSEN: Does anyone have any questions to start with?

MR. MALOCSAY: Not yet.

CHAIRMAN JANSEN: Let me open it up to the Public. Is there anyone from the Public that wishes to address this application? Yes, please identify yourself for the record.

MR. GORDON: I am Luke Gordon. I live at 309 Nelson Road. My property abuts Mr. Zuks'. Since Mr. Zuks has moved here in 2018, he has cut down almost an acre full of trees. He has brought in dozens of loads of fill, much of which, with no permits from the Town. We have been inundated with noise for the past 3 years. He now seeks to build a huge new building directly in eyesight of my living room, dining room and deck. We are here to oppose that. We believe that the proposed variance will cause an undesirable change to the character of the neighborhood and will be a detriment to nearby properties, specifically ours next door. Thank you.

MR. OBROTKA: I'm Jim Obrotka. I'm here for my friend but I'm also the Building Inspector for the Town of Warwick. I understand what Mr. Gordon is saying with regard to the fill. Mr. Zuks went to a considerable expense bringing in 20 to 25 foot trees to make the property much nicer. It's a large piece of property. Where he wants to put this proposed building is very far from Mr. Gordon's window. There's been a lot of animosity. I am aware of this through the auspices of the Town. Again, I'm here as his friend; I am not here officially. There's been a lot of animosity towards Mr. Zuks by Mr. Gordon over the last 2 or 3 years as he said. So you'd have to put that in its proper context. I personally know where the thing is going. It'll be way in the back of the property and down on a slope. There are a lot of trees around the proposed building. I don't see it as an eyesore. It's not going to be used for any of his business. From what I understand, it's going to be storage, that's it.

MS. SLATTER-TANNER: Susan Slatter-Tanner. My husband and I live across and just opposed from Mr. Zuks' property. We have certainly been aware of the change in the

terrain. There is an existing garage that the previous owner had. I've never been on the property so I can't attest to if that is inadequate. My question is if we have a facility that is twice the allowable amount and these vintage cars come in and go out, sometimes before 8:00 a.m., most of them not necessarily, it will mean more traffic. Mr. Zuks already has quite a collection. Can I ask the board or Mr. Zuks, how many cars do you expect to house there?

MR. ZUKS: About 20. Those cars go out for service once in a while. They won't create traffic.

MS. SLATTER-TANNER: Is that going to constitute a business or a hobby?

MR. ZUKS: A hobby.

ATTORNEY FINK: Can I just mention one thing? He's giving us a reason why he wants this. This board isn't granting any approvals, or would not grant an approval, for a specific use. This board would only grant an approval for the size of the building. He could do anything, or the next owner could do anything, as long as it was legal and permitted in that district. Just so everybody understands that.

MS. SLATTER-TANNER: It helps for the neighbors to understand it would change the nature. We've lived there almost 40 years and certainly the nature of the neighborhood has changed over the last couple of years. Everyone is building. Not just Mr. Zuks, but Mr. Zuks is just a little more ambitious. He has planted trees. That doesn't mean that we know the comings and goings. So, that was the question and Mr. Zuks answered it. Thank you very much.

CHAIRMAN JANSEN: The alternative is he could build two 1,200 square foot buildings instead of one 2,400 square foot building.

MS. SLATTER-TANNER: The zoning codes would allow that?

MR. SHUBACK: Correct. He could put up 2 buildings but is looking to do 1 building.

MS. PERRY: I'm Yolanda Perry and I'm here with my husband Lewis. Our property is adjacent to Mr. Zuks. We are downhill where he is building as I think I heard someone say he is going to build to the back of the property. I think that abuts up against our property which is undeveloped right now. It is buildable. My concern is this building and where it's exactly going.

MR. ZUKS: Right here, I can show you.

MS. PERRY: Thank you. That answers my question.

CHAIRMAN JANSEN: Anyone else?

MS. FLEMING: Lucinda Fleming. I also live at 309 Nelson Road with my husband, Luke Gordon. I know you have variants and you have different laws that you deal with that we may or may not be able to have an impact on. But I think it says something that so many of us around, that have been there for years and not had any issues with the previous 2 property owners, are concerned with the changes that have already occurred. They have been significant. It did surprise me to hear the building inspector say, "My friend."

CHAIRMAN JANSEN: That has nothing to do with it.

MS. FLEMING: In regard to the animosity, all I ever did was call the building inspector to make sure he was following the rules. I think that's what most of us have probably done. Instead, we receive a letter from Mr. Zuks threatening to sue us. So the animosity isn't just from all of us sitting here tonight. I know it doesn't have anything to do with the variance. I wanted to put the context of where the animosity comes from.

CHAIRMAN JANSEN: Thank you.

MR. OBROTKA: If it's necessary, I can make a comment about that. I have to deal with Michael Sweeten all the time and if there was any animosity it was coming from these folks. They were the ones contacting Mr. Sweeten on several occasions complaining about Mr. Zuks.

ATTORNEY FINK: Again, that's really not relevant. What I think hasn't been adequately addressed is we have this large building that's at the back end of the property. There is no indication how ingress and egress are going to be. There is no indication as to why it has to be there and relatively close to the adjoining property line. Nobody said anything about whether it's going to be shielded by sight and how visible is it going to be. Will it stand out? That's what I would like to hear about, from the legal standpoint.

CHAIRMAN JANSEN: Besides the legal standpoint, I don't think everyone has had a chance to visit the property to see what is exactly going on there. I would lay it over to next month so we can all get a chance to get out there and see what's going on.

ATTORNEY FINK: Can the board get to the proposed location?

MR. ZUKS: Yes. I have 2 driveways on either side of the property. You would drive down the hill into the right corner. I could stake it out for you if you like.

CHAIRMAN JANSEN: That would be good. Excuse me sir, is there

something else?

MR. GORDON: If you are coming out to examine, I'm available and would be more than happy to welcome you to see the view from my house and you can see the effect of this building upon the neighboring properties. I'll leave my phone number and contact information.

CHAIRMAN JANSEN: Please leave it with the clerk. So we're holding this over until next month. Let's leave the Public Hearing open. We'll all try to get out there to take a look and see if we can alleviate some of the concerns of the neighbors.

MR. ZUKS: Ok. Thank you. Good Night.

OTHER CONSIDERATIONS:

CHAIRMAN JANSEN:
January 25, 2021 meeting.

Motion to approve the ZBA Minutes from the

MS. BRAMICH:

So moved.

MR. MALOCSAY:

Seconded.

CHAIRMAN JANSEN:

All in favor? [5 ayes]
Motion carried.

Meeting adjourned.

[ZBA Recording Secretary – Mary Hebel]