

TOWN OF WARWICK
ZONING BOARD OF APPEALS
APRIL 23, 2018

Members Present:

Jan Jansen, Chairman

Mark Malocsay, Co-Chairman

Kevin Shuback

Diane Bramich

Attorney Robert Fink

Members Absent:

Chris Daubert

PUBLIC HEARING OF Warwick Pet Lodge (Cathy Bauman) - for property located at 54 Jessup Road, Warwick, New York and designated on the Town tax map as Section 29 Block 1 Lot 14.22 and located in an RU District for a variance of the Bulk Area requirements of the Code allowing one side setback of 182 (+/-) feet and the second side setback of 289.7 (+/-) feet where 300 feet are required for the purpose of a proposed dog kennel and grooming business.

CHAIRMAN JANSEN: Before we get started I'll recognize Mr. Fink who is the ZBA attorney.

ATTORNEY FINK: I would like to speak of why we're here and what we do and perhaps narrow what it is you would like to tell this board. As you know this is the Zoning Board of Appeals, this is not the Planning Board. The two have different functions. The Zoning Board of Appeals is principally two things: it takes applications for use variances, meaning it's a use not allowed in the particular district, and the vast majority of what we do is we take applications for area variances. Area variances are use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning. That's what we are considering, just the physical requirements, and in this case, the setbacks. As you know, this applicant is in an RU District. RU Districts allow animal hospitals, veterinary kennels, and dog kennels. The only thing this board is concerned with is a kennel, a runway or a pen has to have a 300-foot setback line. That's what we're considering today. We're not considering what they're going to do there, lighting, noise, maintenance or anything else. That's all Planning Board consideration, not this board. If it gets a variance from this board, then it moves on to the Planning Board for all of those considerations. Now what is the board going to be looking at in so far as an area variance? Many, many times we are asked the zoning code says this, "the setback is 300 feet, why are we here?" The code is the code. Everybody go home, right? Wrong because New York State statute requires that each municipality have a Zoning Board of Appeals. The ZBA is empowered and must look at applications that do not meet the dimensional requirements and in a proper case, we should give the variance. If the case is not proper, we shouldn't. Now, what does this board have to consider? First of all, so many times with something like this someone will stand up and say, "Where is the hardship?" Hardship is not a criterion for an area variance. Hardships are criteria, among other things, for use variances. This board has to consider the following criteria. That is what I wish you would comment on and tell this board why you don't think this applicant meets the criteria. For an area variance the ZBA shall have the power to grant the appeal upon the following determination: in making its determination the ZBA shall 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. This board also has to consider sub-specific items: 1) whether it's going to create an undesirable change in the character of the neighborhood or be a detriment to nearby properties; 2) whether the benefit sought by the applicant can be achieved by some other method; 3) whether the requested variance is substantial; 4) whether the proposed variance will have adverse effect or impact on the physical or environmental conditions; 5) whether the alleged difficulty was self-created. Those are the criteria this board is looking at. Again, it has nothing to do with what the Planning Board

beautiful pool, he's got woods, and he moved from Chester to this nice neighborhood along Jessup Road. He doesn't hear noise. But that will change for him and his neighbors if this kennel moves in. For example, this kennel seeks a 128 side yard variance.

ATTORNEY FINK: Can you identify the affected neighbors on there?

ATTORNEY Fishburg: Sure. We have Justin Sussner who is to the left and we have Donna Marie Witte-Anderson who is right here.

ATTORNEY FINK: The left meets the requirement, correct?

MR. SUSSNER: Right. I'm here and Donna Marie is there.

ATTORNEY Fishburg: Donna Marie requires a variance. The Faulkners are to the right and that's the largest variance they are seeking, which is about 128 feet or roughly a 39% variance. So let me go through the factors of why we believe the variance should be denied and why they haven't met their burden of proof. It is my understanding this is a residential area. When you walk up and down Jessup Road, you see houses on both sides of the road. People live in these houses. When this lot was created, it's true - it's zoned RU, and this was taken out of a larger plot. It was a farm as I recall. That was the way this lot was created. They purchased this lot about 10 years ago and they, in theory, were charged with the knowledge of what they could or could not do with this lot. Mr. Sussner bought his property 2 years ago. He was charged with the knowledge of what could or could not be done with the lot. This is his neighbor and that required a 300 foot side yard variance. This is a 70 dog kennel. It will produce urine, traffic, congestion, excremental secretion into the ground, noise disturbance, and the dogs could become loose. So it will be a detriment to the health, safety, and welfare of the neighborhood.

ATTORNEY FINK: I really don't mean to interrupt but that, number one, is a fact before the Zoning Board and there is no guarantee that this will or will not happen. That is really something you should be discussing with the Planning Board. I know what you're saying. Would it make any difference if it was 300 feet as opposed to, in this instance, 182 feet?

ATTORNEY Fishburg: Yes, it does. The dogs are a lot closer. There's a noise level here, Mr. Fink. Mr. Sussner has actually done studies on this. One dog barks at 100 decibels, 70 dogs is the equivalent noise level of a rock concert. So you have to consider the noise level. I heard you loud and clear that noise is a Planning Board issue, but when you look at the health, safety, and benefit to the neighborhood, you got to consider the noise. You have to consider the consequences of what this will do to the people on Jessup Road. When you consider these variances, you're right, they're set forth in Town Law 267-b. When you look at these variances you got to consider what happens if you grant them.

ATTORNEY FINK: That's not really going to have any effect upon the people on Jessup Road. Isn't it going to be the 2 adjacent neighbors?

ATTORNEY Fishburg: It's going to affect Donna Marie, who's to the north. It's going to affect the Faulkners who are to the right.

ATTORNEY FINK: The right meaning?

ATTORNEY Fishburg: If you're looking at the map, here, it's to the right. That's the biggest variance. That's 128 feet. It's going to affect them. You'll see as part of your package, we've enclosed a letter from [Allan Schanker](#), another person that wants to read into the record. We have tests from Justin Sussner that will also explain how loud the noise is going to be. One of the factors that you have to consider is the benefit without the area variance. In other words, can the applicant use the property for some other purpose without the variance? The short answer to that is yes. The applicant currently rents 2 houses on that property and gets rent from that property. Mr. Fink, you're right, they can try to purchase the property from the property owners so they can meet the setback requirements and accomplish what they want to do if they bothered to purchase the property. Is the requested variance substantial? It sure is, without a doubt. One of those variances is 128 feet, actually 118 feet. 118 divided by 300 is about 40%. That's a 40% variance. I'm going to guess in the many years you've been on this board; you haven't given many 40% variances. It's a big number. The other side I can understand that, 10-12 feet I get it, but not 40%. That's almost half of the setback requirements. And that's substantiality. It's something that should give you pause before granting the applicant the variance. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions? That's another factor you have to consider. I've talked about the noise. I've talked about the excrement. Let's talk about the increased traffic. You got all these people coming in from Jessup Road. You've got a windy road with a double yellow line. I know, you're telling me that's a Planning Board issue.

ATTORNEY FINK: That has nothing to do with this variance. Jessup Road is far away from this proposal. Again, this board has very narrow consideration. I appreciate everything you've said, I really do. That's not what the variance is about, traffic on Jessup Road.

ATTORNEY Fishburg: The other thing you have to consider is the difficulty self-created? The answer absolutely is yes. It is self-created. I understand it's not a use variance, I get it, but this has an overall impact to the health, safety, and welfare of the neighborhood. Does it change the character of the neighborhood? It sure does. There isn't a single kennel along Jessup Road, this is it. This is the only kennel. So when you look at the character of the neighborhood, the overall impact, I think you should consider the health, safety, and welfare of the neighborhood. Then I think you have to consider the noise, the excrement, the urine, and traffic. The health, safety, and welfare of the neighborhood has to be considered. That's what the statute requires and that's why this variance should be denied.

MS. EMMERICH: I'd like to respond to a couple of things. One thing I'd like to say is the **Miller Farm**, which is to the north and we're requesting the variance from that property line, is in PDR. So we cannot purchase additional land from that farm as a buffer.

MR. SCHUBACK: That's the 182 setback?

MS. EMMERICH: Yes, it's a 182 setback from that property line. Also, I'd like to show you some aerial photos I brought in just so you get an idea of how remote this location is compared to neighboring dwellings. We may be close to a property line for the **Faulkner Farm** but we're hundreds of feet away from other houses, including the house that is in front of the property. We're almost 400 feet away from the house. We may be 316 feet from the property line, but from the house there's even more of a buffer. The other thing I'd like to say is this is an enclosed facility. The dogs will be kept inside. They are not running around outside and they are not unsupervised. It's going to be more like a dog resort than your standard kennel where people think of dogs being outside in cages and running in and out of the facility. It's much more controlled than that. I also brought a picture. The applicants run an operation similar to what we're proposing in the Town of Tuxedo. They have been there about 10 years. I spoke to the Town of Tuxedo attorney and the building inspector and learned there has never been a complaint about their operation in that township. This is what the kennels look like inside the building. It's a very well run, very closely supervised operation. The septic system has to be designed to meet DEC and Orange County Health Department requirements. As far as traffic, the dogs and cats are brought to the kennel by appointment only. It is not a constant flow of traffic. So I think some of things that have been brought up are simply due to misinformation.

CHAIRMAN JANSEN: You said the Miller Farm in under PDR, correct? So there will never be any building there?

MS. EMMERICH: Correct.

MR. WITTE: I'd like to request a response. My name is Larry Witte. I am the owner of the old Miller Farm, it is in PDR, and we do run a dairy operation there. I'm going to be brief but the variance you are talking about, which is the shorter variance of 182, is a pasture for our dairy cows. This is our livelihood. I have several documents that show how stress can affect milk production. Dairy cows are used to a farm dog barking but I think having 70 dogs barking is taking a risk and this is a risk on our livelihood and our children's future. So to me it's a serious risk. It's not just a matter of sitting out with my coffee and listening to dogs far off. They actually would be far off. I would not be that affected by the noise myself. However, my single point is that we have the farm, it's a PDR farm, dairy is our business, and I think it's taking a risk I'm not willing to take.

MR. SUSSNER: Good evening, I'm Justin Sussner at 56 Jessup

Road. Yes, my house is the one located in front of the proposed kennel. Yes, that building could be built 310 feet to the kennel and in theory that meets the setbacks. My wife and I bought this house 2 years ago - myself, my wife, my 2 children (12 & 11-years-old). We moved here from a townhouse at the Chester/Monroe border. We were looking for 10 years and saving our pennies for our dream house in Warwick. We used to ride this road dropping my kids off at my parents' house in Warwick Grove. We'd ride this road and we said this is (and I kid you not) our favorite street in this town and we fell in love with it. When it was time to buy we weren't specifically looking on Jessup Road but that house came up. We looked at it, we fell upon it, we fell in love, and we're there now. Larry mentioned sitting with his cup of coffee being affected. I do often in the warmer months have my morning cup of coffee on my patio, next to my pool, listening to the birds. And the birds are fantastic. Occasionally I hear a cow in the distance. I don't mind that, it's not imposing. It's not a dog and I love dogs. I have 1 dog. We love the neighborhood. We've known a lot of people in this neighborhood before this whole thing started. I've meet a lot more. My kids like to play. They ride bikes up and down Jessup Road. They have friends up the road. They have friends down the road. To say that traffic is not going to be affected, 70 dogs have to get in and out even if it's by appointment. I've used other kennels before. Guess what? Everyone comes in around the same time because they don't want to stay all day letting people in and out. I don't want to tell my kids that they can't ride up and down Jessup. It's already busy as it is. I don't want to make it worse. My opinion is this variance is excessively large just like Neil had said which makes it not in the best interest of the neighborhood welfare. It is an undesirable change for not only the noise of dogs and the effects of traffic. Dogs bring smell, pollution, and groundwater contamination. You did say it was going to be a totally enclosed kennel. Are we saying that the dogs are never going outside with the exception of going from the car into the kennel? Are they going to be allowed to take walks? I don't know if I would be allowing my dog to go to a kennel that is never being allowed to go out. I was par oozing their Facebook page and they show pictures of them taking dogs for walks. To say that dogs never go outside is quite honestly B.S., I'm sorry. You have in that pamphlet copies of a petition signed by 116 residents, a lot of whom are here: Jessup Road, Distillery, Distillery Glen, Chester Hill, Wesley Hills, Sargent, Windmill, Meadow Ridge, all of us taxpayers and voters. Neil brought up **Section 164-46.j**: 300 feet of any lot line. Doesn't matter if it's a house, doesn't matter if it's a pizza place, doesn't matter if it's a farm – 300 feet from any lot line. Adjacent lot doesn't matter, it doesn't specify - any lot line. We talked about its 40% shy; 40% is a lot. I'm a doctor. If I'm off 40% of the time, I'm not working, I'm in jail, I'm out of business. If I'm a fraction of 40% wrong, I'm done. Forty percent is huge. Now noise, in that pamphlet, and in my opinion this is important because you talk about being 300 feet away or 500 feet from my house, you've got some studies we did based on research pages, scientific articles, and different journals. Decibels are a measurement of sound. They are logarithmic meaning they go up exponentially, they're not additives. Ninety decibels is 10 times the intensity of 80 and 100 times the intensity of 70. Multiplication, not addition. Normal conversation is approximately 60 decibels when it's right in front of you. To put it in perspective and there are more examples in that binder, an ambulance whining right by you is 109 decibels. The average dog bark is about 100. That is average. That's measured with little guys and that's measured with Great Danes. I have a medium-sized Hungarian Vizsla. We bought a sound

meter. We didn't use an App on our phone, but bought an actual sound meter. I measured my Vizsla barking about 3 feet in front of me and got him up to 106 decibels. In a study, and the reference is in there, in the Journal of Applied Animal Behavior where they took measures in a kennel (unfortunately they didn't list how many dogs were inside the kennel) at 122 decibels. That is equal to standing next to a propeller aircraft running at full speed.

ATTORNEY FINK: Do you have any substantiation of these figures? For example the number of dogs, decibel levels, what it's compared to, etc.

MR. SUSSNER: I have the articles. I can get you the articles. The references are there in your materials. Dissipation goes by the invert square law meaning for every time you double the distance you go down approximately 6 decibels meaning if your first measurement is at 5 and then at 10, you're only going down 6 decibels. From 10 the next 6 decibels is 20, then 40, then 80, then 160, etc. We did an experiment on Jessup. It didn't work the way we wanted it to because I couldn't get it loud enough. I did a test with my dog and with a 40-year-old car with side pipes. We measured down the road and the full study is in that packet. We ran the car at 4,000 RPM and we enticed the dog with treats and we measured at 0, 5, 25, 50, 100, 200, 400, and 500. They both, honestly, were about 106 decibels. Going all the way down to 500 feet you were still between 56 & 61 decibels. That's equivalent of someone having a normal conversation right in front of you. So you can see the effect of it. I can be sitting having my coffee and 1 dog on my patio sounds like another person conversing. I couldn't get 122 decibels, not without ruining the car, so I wasn't going to try. But if we use that invert square law, we're estimating that number at 500 feet, and it is estimation, to be about 80 decibels, give or take. That's a good hand power tool right in front of you. Five hundred feet is a long distance. Sound travels. It is important because it is the health, safety, and welfare of our dream home but also the welfare of the neighborhood and these fine people. I'm asking you to vote against these variances. Thank you very much.

MRS. ASHE: My name is Janice Ashe. My husband Shawn and I moved to Warwick from Staten Island over 30 years ago. We immediately fell in love with the beauty of our valley as we drove along 17A from Greenwood Lake. Having been born and raised in Staten Island we understood the value of a master plan. The iconic island of our youth was overrun with unregulated development with sole purpose of profit. Schools, neighborhoods, roads, and quality of life suffered as a result. The Town of Warwick recognized the value of a master plan. The established zoning rules have been critical to maintaining the quality of life and character that makes Warwick an attractive and prosperous community. Variances bend those rules with good and sufficient cause when necessary and when the variance will not result in a nuisance at public expense or a safety threat to the surrounding area. There would be no exceptional hardship to the owners of 54 Jessup Road. The property is currently home to 2 rental houses. If it was their intention was to build a kennel then they should have purchased an appropriate site. Granting the variances will directly result in a detriment to the well-being of our neighborhood. The potential for nuisance would not be mitigated by animals being kept indoors. Even in a soundproof building there is the possibility of 70 dogs creating enough noise

to carry and disturb neighbors, many of whom enjoy spending time in their yards. Regarding public expense, businesses that present noise and waste concerns have been shown to decrease the value of nearby homes up to 10%. Threats to safety would include increased traffic flow that would create a hazard to other motorists and the many pedestrians and cyclists who frequent Jessup Road. The elevation for the proposed kennel is also a concern. At a higher elevation than most of the adjacent homes, the noise will carry down throughout the valley. The waste and runoff could impact the well water and wetlands on surrounding properties. The setback requirements were put in place to establish a barrier that protects nearby properties. Granting the variances is not only unfair to the more than 100 neighborhood residents that signed the petition or expressed their concerns here tonight, it sets a bad precedent. In the last 30 years we have seen Warwick grow and have been ardent supporters of local businesses. We welcome investment that supports positive growth in the community. However, Shawn and I don't believe that this application meets the requirements set forth by the Town for such an exception to be made. Chipping away at our zoning laws without sufficient benefit to the community jeopardizes Warwick's master plan and all that it stands for.

MR. ASHE: I am Shawn Ashe. I'm concerned about the effect of the kennel on the environment, specifically the water runoff. There are several areas of permeating bubbling ground water on the downside of the kennel property which is also the largest variance. The water naturally runs downhill, fills the ponds and significant wetlands on the property of 62 Jessup Road. The water continues down the creek to the Witte's Dairy Farm and various other livestock drink from. That water continues to flow into the Town Park. I'm a third generation plumber. My family has been in the plumbing business for a lot of years. On more than one occasion I have seen similar steep inclines where the leach fields are not properly draining causing permeating ground water to bring the waste up to the surface. This could include soft stool, urine, and potentially dangerous cleaning products that would run down to our wetlands, ponds, and streams. That would be a disservice to our environment, our neighborhood, livestock, and wildlife. Thank you.

MR. WHITMAN: My name is Robert Whitman from 62 Jessup Road. Our property abuts the proposed kennel property. We are the ones who will be subjected to the runoff coming down and polluting our water supplies and our stream. The other thing about the noise is the land we have is full of wildlife. We got deer, foxes, turkeys, and the occasional bear. You know as well as I do that dogs have a really good sense of smell and those things will set them off like crazy. So, I certainly am not happy about the idea of living next to 70 dogs even if they are enclosed.

MR. McCOY: I am Paul McCoy and I live next to Shawn and Janice Ashe at 57 Jessup Road, almost directly across from the end of their driveway. When it rains or snows all the dirt, wood and/or stone comes down into the road and comes into my driveway and every time I have to go out there and fix it. Secondly, someone up there has a firing range, up around Distillery, one behind me over here, and the farmer to the left of us has a cannon he shoots off to get the birds off his property. When that goes off you hear a concert of

dogs in our yards all around us. I can't even listen to the radio. I can't imagine how it would be with a kennel full of 70 dogs.

MR. KAPLAN: My name is **Ira Kaplan** at 21 Sargent Road. We have a nice home. We are up on a high hill and we like to sit outside on our front porch where we can see Mountain Creek. It's very nice to sit out there. It's one of the reasons we moved to Warwick. As you know, most of these places were big farms at one time that have been broken up into smaller situations. I applaud people here trying to get a variance on a change of zone because they're trying to make money. It's not always about making money. It's about quality of life. That's what makes Warwick so nice. You see the Burger King recently remodeled the way they do things. CVS, people don't like the way it looks. You've got to maintain the character of the Village and the Town. Now it's a farm. You hear a donkey, you hear a cow, and you hear some noises like that. You don't hear 70 yapping dogs. Three or four dogs are intolerable. I can't imagine 70. Here's another thing I have a problem with: how many kennels are in Warwick at this point in time?

ATTORNEY FINK: That's really not relevant. This is zoned for a kennel.

MR. KAPLAN: This is with health and the well-being of the animals because I've seen it where the animals have been left outside for long periods of time. They've been reported and there are problems with it. You're going to have 70 dogs in there. They're going to change the set of precedent like this gentleman said before. Once you set a precedent other people can go off that precedent on their own thing changing zoning and getting variances which can change the whole character of the area. So you got to be very, very careful if going to set a precedent and change the way the zoning is for something that doesn't comply with your master plan. There is a reason why the master plan was developed the way it was. So you have in your hands the situation to change it and change the character of the Village. Now I don't think the Village of Warwick is capable of monitoring the health, welfare, and well-being of these dogs because they can't even take care of 1 or 2 stray dogs that are left out on lines for days at a time not being tended to or cared for. When we first moved up here down by the high school on the corner by County Route 1A, there was a dog house where this dog was out there 24/7. Never really saw it being tended to. All of sudden, one day it's gone. So I think if you care about the animals, 70 dogs is an awful lot. I don't think there's any place around that has 70 dogs. To put them in a quiet place that was all farm land and the reason people move up here, you're setting a precedent and you have to know you're going to live with that precedent.

MR. BERKOWITZ: Good evening, my name is **Jack Berkowitz** and along with my wife, children, and beloved dog we reside and own at 32 Jessup Road. I rise in opposition to the proposed kennel at 54 Jessup. I want to introduce into the record and read to you a letter from the distinguished veterinarian **Allan Schanker** who could not be here tonight. I quote, "Dear Sirs and Madams, I am a veterinarian who has owned and operated Orange

County Veterinary Hospital (OCVH) a veterinary clinic, hospital, grooming and boarding facility for over 35 years. For the first 25 of those years my business was located in the heart of the Village of Goshen. When I initially acquired OCVH the applicable zoning regulations were grandfathered in since the 1940s when the original owner veterinarian served as the Town Supervisor. Today the Goshen zoning laws in effect would preclude me from conducting such a new and startup business within a residential area. While in the Village of Goshen I boarded approximately 25-30 dogs during peak season. Indeed I tried to be a good neighbor and even though my interest was partially self-serving. You see, my home was adjacent to the kennels and I did the best I could to insulate the noise and high decibel volume of the barking dogs. Nevertheless, I still received regular complaints from those living nearby as well as visits from the police. Additionally, there were more than an occasional night when the incessant indoor barking dog made sleeping difficult for me and my family. I spent resources and tried to mitigate the sound problem by acoustically modifying the walls, ceiling and windows within the kennel facilities and would further limit outdoor hours from 8:00am to early evening. If a particular dog was louder than others, and it only takes one to get the others barking, he or she was immediately brought inside. I invested in anti-barking devices to no avail. In spite of all efforts, the noise remained virtually impossible to contain or manage effectively. Ten year ago when I chose to expand and relocate OCVH out of the Village of Goshen I was careful to select a locale that would not interfere with a residential community. I moved OCVH to a commercially zoned area on Route 17M adjacent to State Highway 17. In closing it is important for me to note that I would never, ever again purchase a home next to or nearby a dog boarding facility ever again. Very truly yours, Dr. **Allan Schanker.**”

MS. ANDERSON-WITTE: My name is **Donna Marie Anderson-Witte**. I live at 81 Jessup Road. I just want to point out that we bought the PDR farm and we can build on it but we have to go through the rules and regulations regarding what we can build and what we can't. We have our own variances that we can't get variances for. Also, Mr. Whitman brought up the fact of the downhill runoff of the streams. We walked it and there are actually 3 water sources that are downhill from where this kennel would be. Runoff will come into the water and it will wash into where our cows are. My husband has a few scientific papers that are articles of diseases that are communicable from dogs to cows. I won't go into the noise any further but I hope with all these factors mentioned tonight that all of you would consider not granting these variances as there are justifiable reasons for not doing so. Thank you.

MS. FAULKNER: My name is **Rhonda Faulkner**. I am co-owner of the property that is behind, next to, and alongside the lot in question. I have lived there my whole life, 56 years. My family has owned the property that long. Due to the nature of the business, I hope the Zoning Board does take into consideration that any variance for this project should not be granted because this type of business needs every foot it is required to have. Thank you.

MR. FINNEGAN: My name is David Finnegan. I live on Jessup. It appears in this proceeding that we are trying to defeat the granting of the variance. I have not

heard any justification for why we should give the variance. So I'm wondering if the board's sort of purpose here is to grant the variance in the absence of demonstrative detriment or harm or if it's the opposite that they need to show a need. I could see if this was an existing business that was seeing competitive challenges needed to expand to stay in business.

ATTORNEY FINK: The law seeks the benefit to the applicant weighed against the detriment to the health, safety, and welfare of the community. So the benefit is obvious, they want to make a kennel there. There's nothing wrong with making money but it's the other things that have been brought out that are just as important.

CHAIRMAN JANSEN: At this point I would like to ask Karen to summarize what she has and ask Neil to summarize what he has and then the board can take a vote.

MS. EMMERICH: As I explained, we do not have the ability due to the shape of the lot to put in a kennel structure on this property within the setbacks that exist in the Town. This does comply with the Town Zoning Code as far as use. It certainly doesn't reflect badly on the Comprehensive Plan which was brought up. The Planning Board has actually visited the Tuxedo Pet Lodge because they will be looking at the issue of septic, of noise, and of traffic. All these issues will be delved into in depth at the Planning Board process. They were quite impressed with the facility and with the noise factor which was not the problem they thought it might be. They sent a letter to the Zoning Board talking about their visit to the Tuxedo Pet Lodge. We are of the belief that this facility will be soundproofed. There were a lot of concerns expressed about waste etc. and actually all the dog waste will be removed through solid waste stream. It is not going to go into the septic system. It's a hardship and I understand that hardship isn't necessarily a requirement for this type of variance but the setbacks do pose a problem for the applicant.

ATTORNEY Fishburg: Thank you hearing us and for listening to what is probably one of your longer applications. You've heard a lot of these nice people talk about the character of Warwick particularly on Jessup Road. You've heard about their houses and how they would like to keep the character of the neighborhood. I don't think anyone disputes that a kennel will change the character of the neighborhood and will impact it in a detrimental manner. I think everyone agrees that dogs make noise. I think everyone agrees if you are too close to the property line the dogs will be louder. That seems to be common sense. In this case those dogs are 128 feet closer to the property line of Ms. Faulkner who spoke earlier. She is against the variance and she is the person most affected by this variance. It affects the other neighbors on Jessup Road. If this variance is granted this property will affect their septic, their quiet enjoyment, their ability to stay in their yards, and I understand that some of this is Planning Board issues and maybe the Planning Board can cause this to be soundproof but the first threshold they have to show is do they really need this variance. It's their burden to demonstrate their need for this variance. I heard Mr. Fink loud and clear that they are entitled to make money on the property. They can still make money on the property. They're already renting houses on the property. They're already making money on the property. This would

actually be a third structure on the property which is something, perhaps, this board should consider. You heard Mr. Fink talk about the burden of proof. I think they haven't met their burden of proof. They've got to demonstrate that their benefit outweighs the detriment to the neighborhood. They haven't demonstrated that. They haven't demonstrated that by making their place too close to other neighbors' homes that those neighbors aren't going to be adversely affected. It's their burden to show that their benefit outweighs the detriment to the neighborhood. That's their burden. It's not the burden of us and the neighbors to say this is bad and therefore you shouldn't do it. They first have to show you how their benefit outweighs the detriment and they haven't. You heard about how this reflects badly on Warwick. I want to talk a little bit about precedent. When this board issues a decision that decision can affect other decisions this board makes. If the board has turned down substantial variances in similar situations that the board has to comply with what it had done before. So I ask the board collectively, when is the last time you granted a 40% variance? And if the answer to that is, no you've never done it, I would submit to you that you shouldn't do it now. This opens the door to everyone in the Town of Warwick seeking a 40% variance. That's not what you want.

ATTORNEY FINK: That's not correct. Every application is different and rises and falls on its own merits. The fact that this board either has or hasn't (frankly I don't remember) granted a variance of 40%, more or less, unless it's almost identical, that doesn't set a precedent for the next applicant. It's got to be almost identical. It would have to be.

ATTORNEY Fishburg: We'll have to agree to disagree. I would submit that 128 feet is too big. I would submit when you weigh the benefit to the applicant to the health, safety, and welfare of the neighborhood that this variance should be denied. Thank you.

ATTORNEY FINK: Ok, two things: 1) we only have 4 board members which means you need to get 3 out 4 votes and traditionally we allow applicants, if there is less than a full board, to request it be put over to the next meeting rather than let the board consider it that night; 2) would you like to review the issues as to decibel level?

MS. EMMERICH: I would.

ATTORNEY FINK: And thirdly then, you can inquire into obtaining property which might allow you to move it. Because, very frankly, even though most of these issues are Planning Board issues, the variance on such an obtrusive activity is very difficult for this board to grant.

MS. EMMERICH: This is Cathy Bauman who is owner of the pet lodge.

MS. BAUMAN: I just wanted to comment on something that was said that there would be 70 dogs basically outside barking. It's not at all like that. The way it works is that dogs will be inside in our soundproof building. When they go outside it's only

PUBLIC HEARING OF Warwick Pioneer Farm, LLC - for property located at 65 State Route 94S, Warwick, New York and designated on the Town tax map as Section 52 Block 1 Lot 26.2 and located in an SL District for a variance of the Bulk Area Requirements of the Code for a lot area variance for proposed Lot 3 of a proposed 4 lot subdivision reducing acreage from 3 acres (required) to 1.5 acres 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.

CHAIRMAN JANSEN: Please tell the board what it is you would like to do.

MS. EMMERICH: I am Karen Emmerich of Lehman & Getz Engineering presenting the applicant, **Jane Newman**.

CHAIRMAN JANSEN: I believe there is a lot of misunderstanding about this particular application thinking that you're going to put up low-income housing there.

MS. EMMERICH: No, not at all. We have a 144 acre parcel known as Pioneer Farm on Route 94 just outside the Village of Warwick; 116 acres of which have been put into PDR.

CHAIRMAN JANSEN: Could you explain what that is because some people are not familiar with the term?

MS. EMMERICH: Sure. PDR is Purchase of Developing Rights. The Town of Warwick has purchased the developing rights of the bulk of this farm. We have outlined the area. Here you see the Village of Warwick boundary and this is the portion of the farm that is protected and cannot be developed.

MS. NEWMAN: In 2016 we sold the developing rights. We wanted to make sure this land is kept as dairy farming land and the soils in the middle are particularly good. There is a piece of land at the top of the farm and there is this corner here at Southern Lane. This corner is 3 acres, in a 3-acre zone. The access point would be Carroll Drive.

MS. EMMERICH: There is a provision in the Code that allows a farm to create a lot based on the zoning in 1989. So they can create 1 lot of 1.5 acres. The zoning now is 3 acres.

MS. NEWMAN: So we can put 1 house here, a 1-family dwelling. It's in the Town, not the Village. We wish to respectfully request the ZBA to grant us the ability to put up 2 houses. The real reason for doing this is we are facing financial hardship. This would help us greatly to pay down some debt.

MS. EMMERICH: Just so the Board knows, the Village has agreed to provide sewer and water to the 2 houses we are proposing. Access point would be Carroll

Drive, not Route 94 (which is on the complete opposite side of the farm).

MS. QUINN: My name is Antoniette Quinn. This proposed area is residential, correct? Also, how long would this proposed project take?

MS. EMMERICH: Yes, it is residential. The timeframe would depend if both houses are built at the same time, one at time, etc. I would say realistically, it takes about 1 year to build a house.

ATTORNEY FINK: We have not heard back from the County on this application. It was mailed on April 10th.

CHAIRMAN JANSEN: Therefore, a vote tonight is not possible.

ATTORNEY FINK: Have you entered into an agreement with the Village for water and sewer?

MS. EMMERICH: We have a letter from the Village attorney. We have not entered into an agreement yet.

ATTORNEY FINK: If it were granted it would be subject to you entering into agreement.

CHAIRMAN JANSEN: Any questions or comments?

MR. MALOCSAY: So this 3-acre lot was subdivided out from the PDR and is no longer part of the farm?

MS. EMMERICH: No, it was not subdivided out. They don't have tax parcels. We should really call it a 3-acre area, not a lot. This area here and this land over here were not put into PDR. Let me show you the overlay. The whole area is a farm. This area is in PDR and these areas along here were exempted.

MR. MALOCSAY: I would just want to be sure that there isn't any kind of restriction on that.

MS. EMMERICH: No restrictions. We've been before the Planning Board. John Bollenbach who handled the whole PDR transaction is in favor.

ATTORNEY FINK: There is nothing in the comments from the Planning Board that says this can't be done. So I don't think it's an issue.

CHAIRMAN JANSEN: We cannot decide tonight anyway. This will give us

all a couple weeks to look into some of the concerns brought up this evening. The Public Hearing will remain open. By next month's meeting we should have word from the County and we will act. That meeting date is: Monday, May 21 at 7:30pm.

PUBLIC HEARING OF Jeffrey Zygmunt - for property located at 89 Newport Bridge Road, Warwick, New York and designated on the Town tax map as Section 26 Block 1 Lot 29.1 and located in an RU District for a variance of the Bulk Area Requirements of the Code permitting construction of an addition (garage) to an existing single family dwelling 28 (+/-) feet from the front yard setback where 75 feet are required.

CHAIRMAN JANSEN: Please identify yourself and briefly tell the board what it is you would like to do.

MR. ZYGMUNT: My name is Jeffrey Zygmunt. I am requesting this variance for the opportunity to put an addition (garage) to the existing home. The house is currently owned by my father. Later this year ownership will transfer to me.

ATTORNEY FINK: Can you show us where the house is now and where the proposed garage addition would be?

MR. ZYGMUNT: Here is the house and this would be the addition.

CHAIRMAN JANSEN: Any questions?

MS. BRAMICH: You are taking down the old garage and moving the driveway over? What about the house? That is coming down as well?

MR. ZYGMUNT: The old garage would come down and just part of the house. They driveway would move over.

CHAIRMAN JANSEN: Let me open it up to the Public. Would anyone from the Public like to address this application? No. I will close the Public Hearing at this time. Are you comfortable with only 4 people voting as opposed to 5? You would need 3 votes.

MR. ZYGMUNT: That's fine.

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

MR. SHUBACK: No.

MR. MALOCSAY: No.

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

MR. SHUBACK: No.

MR. MALOCSAY:	No.
MS. BRAMICH:	No.
ATTORNEY FINK:	Is it a substantial variance?
MR. SHUBACK:	Yes.
MS. BRAMICH:	Yes.
MR. MALOCSAY:	Yes.
ATTORNEY FINK: physical or environmental conditions?	Will this have an adverse effect or impact on
MR. MALOCSAY:	No.
MR. SHUBACK:	No.
ATTORNEY FINK:	Is the alleged difficulty self-created?
MR. SHUBACK:	Yes.
CHAIRMAN JANSEN:	Yes.
ATTORNEY FINK: with no adverse environmental impact?	Would someone care to type this as "Unlisted"
MR. SHUBACK:	So moved.
MS. BRAMICH:	Seconded.
ATTORNEY FINK: granted as advertised?	Does anyone care to move that the variance be
MS. BRAMICH:	So moved.
MR. SHUBACK:	Seconded.
CHAIRMAN JANSEN:	All in favor? (4 ayes) Motion carried.

PUBLIC HEARING OF John Curran - for property located at 29 High Hill Avenue, Warwick, New York and designated on the Town tax map as Section 32 Block 6 Lot 3 and located in an RU District for a variance of the Bulk Area Requirements of the Code permitting construction of an 18 foot 6 inch X 6 foot covered porch 51 (+/-) feet from the front yard setback where 75 feet are required.

CHAIRMAN JANSEN: Please identify yourself and briefly tell the board what it is you would like to do.

MR. CURRAN: I am John Curran. I am looking to rip down an existing deck and porch and build new. Right now it's an eyesore and becoming hazardous as there is sagging in the middle. It would be an improvement for the house and neighborhood.

MS. BRAMICH: This is the front of the house?

MR. CURRAN: Yes.

CHAIRMAN JANSEN: Are you changing the footprint?

MR. CURRAN: Slightly. As it is now, it comes 6 feet off the house. That would stay the same. I wish to extend it longer this way.

CHAIRMAN JANSEN: The Public Hearing is now open. Would anyone from the Public like to address this application? No, the Public Hearing is 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.

MR. MALOCSAY: No.

CHAIRMAN JANSEN: No, it's typical for the neighborhood.

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

MS. BRAMICH: No.

MR. MALOCSAY: No.

ATTORNEY FINK: Is it a substantial variance?

MR. SHUBACK: No.

MR. MALOCSAY: No, it exists. It's already there.

ATTORNEY FINK: Will this have an adverse effect or impact on physical or environmental conditions?

MR. MALOCSAY: No.

MS. BRAMICH: No.

ATTORNEY FINK: Is the alleged difficulty self-created?

MR. SHUBACK: Yes.

MS. BRAMICH: Yes.

MR. MALOCSAY: Yes.

ATTORNEY FINK: This is a Type 2 Action so there is no environmental concern. I need a motion to pass as advertised - only it should read 51 (+/-) feet from the front setback, not 15.

MS. BRAMICH: So moved.

MR. MALOCSAY: Seconded.

CHAIRMAN JANSEN: All in favor? (4 ayes) Motion carried.

PUBLIC HEARING OF Lavinia McNamara - for property located at 11 Sunset Terrace, Warwick, New York and designated on the Town tax map as Section 36 Block 3 Lot 6 and located in an SM District for a variances of the Bulk Area Requirements of the Code permitting an existing 8 foot X 8 foot shed 4.16 (+/-) feet from the sideline where 5 feet are required; 4.16 (+/-) feet from the dwelling where 10 feet are required and Section 140-4 permitting an existing a 15 foot (circumference) by 4 foot high above ground pool 7.25 (+/-) feet from the sideline where 15 feet are required and 6 (+/-) feet from the house basement where 15 feet are required.

CHAIRMAN JANSEN: Please identify yourself and briefly tell the board what it is you would like to do.

MS. McNAMARA: My name is Lavinia McNamara. This is Jim, my partner. We are seeking a variance for our pool and the existing shed.

CHAIRMAN JANSEN: Everything is already there?

MS. McNAMARA: Yes. I purchased the home in October 2014 with the shed already existing on the property. From my understanding from the previous owners, the shed has been there for 30 years.

CHAIRMAN JANSEN: The concern is the fire hazard of being that close to the house.

ATTORNEY FINK: The Building Inspector will require certain safety issues to be addressed, which has nothing to do with us.

MS. McNAMARA: When I purchased the home there was no outstanding violation regarding the shed. I was under the impression there was no issue. It wasn't until I applied for a permit to build an addition that the inspector brought to my attention that there was no permit for that shed. I would have never known. Even when the bank/mortgage company came out to survey the property prior to me purchasing the home, the shed is in the pictures.

CHAIRMAN JANSEN: Now the pool.

MS. McNAMARA: The pool is up next to the deck. That is the only flat area on the property. You can see in these pictures the property is all a downward slope. We thought it was OK in that location. There really isn't anywhere else it could go. The previous owner had a pool there at one time. She had a gate in the deck that lifts up. So what we did was we modified it to make it a self-closing gate. I have a 5 ½ year old child and I am very concerned about the safety of the pool. We have an alarm as well as the self-closing gate. The inspector said that the latch was not at the proper height. The builder said he would correct that in the scope of work.

CHAIRMAN JANSEN: If we grant the variance, the Building Inspector will probably ask you to modify the inside of the shed at least closest to the house so that it's fireproof.

MS. McNAMARA: OK.

CHAIRMAN JANSEN: The Public Hearing is now open. Would anyone from the Public like to address this application? No, the Public Hearing is 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.

MR. MALOCSAY: No.

MR. SHUBACK: No.

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

MS. BRAMICH: No.

MR. MALOCSAY: No.

ATTORNEY FINK: Is it a substantial variance?

MS. BRAMICH : Yes.

MR. MALOCSAY: Yes.

ATTORNEY FINK: Will this have an adverse effect or impact on physical or environmental conditions?

MR. MALOCSAY: No.

MS. BRAMICH: No.

ATTORNEY FINK: Is the alleged difficulty self-created?

MR. SHUBACK: Yes.

MS. BRAMICH: Yes.

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

MS. BRAMICH: So moved.

MR. SHUBACK: Seconded.

CHAIRMAN JANSEN: All in favor? (4 ayes) Motion carried.

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

MR. MALOCSAY: So moved.

MS. BRAMICH: Seconded.

CHAIRMAN JANSEN: All in favor? (4 ayes) Motion carried.

OTHER CONSIDERATIONS:

CHAIRMAN JANSEN: Motion to approve the ZBA Minutes from the
March 26, 2018 meeting.

MR. MALOCSAY: So moved.

MR. SHUBACK: Seconded.

CHAIRMAN JANSEN: All in favor? (4 ayes) Motion carried.
Meeting adjourned.

CHAIRMAN JANSEN: Motion to move the May 2018 ZBA Meeting from
May 28, 2018 to May 21, 2018 due to the Memorial Day holiday.

MR. SHUBACK: So moved.

MS. BRAMICH: Seconded.

CHAIRMAN JANSEN: All in favor? (4 ayes) Motion carried.
Meeting adjourned.

[ZBA Recording Secretary – Mary Hebel]