

TOWN OF WARWICK
ZONING BOARD OF APPEALS
AUGUST 27, 2018

Members Present:

Jan Jansen, Chairman

Mark Malocsay, Co-Chairman

Kevin Shuback

Diane Bramich

Attorney Robert Fink

Members Absent:

Chris Daubert

PUBLIC HEARING OF View Wireless Infrastructure Fund LP and Orange County Poughkeepsie Limited Partnership - dba Verizon Wireless for property owned by Pine Island Warehousing & Storage LLC and located at 39 Transport Lane, Warwick, New York and designated on the Town tax map as Section 3 Lot 2 Block 2.222 and located in an AI District for variances of Sections 164.77(C)(1) – maximum height – an increase from permitted height of 120 feet to 164 feet; 164.77(C)(2)(c) – setbacks - a decrease from the required 164 feet to 138 feet and 145 feet; 164.79(C)(3) – foundation - delaying the submission from a professional engineer until a time concurrent with the building permit application, and 164.80(C)(8) omitting the requirement of a landscaping plan, for the purpose of construction of a wireless communications facility.
As per 6/25/18 ZBA Meeting – postponed and date TBD.

CHAIRMAN JANSEN: The first item on the agenda is the continuance of the hearing on the tower.

ATTORNEY FINK: Just as a prefix to this, when the legal ad was noticed it was for 4 variances. As I look through the material that was shown, there are actually 5 needed, the fifth being the fence. You're looking for fencing with 10 foot height, correct?

ATTORNEY OLSON: No, I don't think so. I don't recall the details but usually it is 8 foot, sometimes 6 foot.

ATTORNEY FINK: Either way you still need a variance. The way we will handle that is by doing an amended application. It has to be mailed, not certified or anything, to the same people as the other variances.

ATTORNEY OLSON: I'll talk to the client. If that's the case, that's not something the Planning Board nor I identify but we can possibly even change the plans so it's not an extra variance needed.

ATTORNEY FINK: OK. Now I have a question for you concerning the so-called shot clock: what is your interpretation as to when it starts?

ATTORNEY OLSON: It starts upon receipt of the application, not upon completion. However, an October 2014 FCC Order that says there are some municipalities that think and have interpreted the shot clock to start upon a determination that an application is complete. They said specifically that is incorrect. What happens is an application is submitted, the Town then has 30 days within which to identify any incomplete issues with the application. If that happens within 30 days, the shot clock tolls or until those items are provided.

ATTORNEY FINK: Forgetting about the fence for the moment there are essentially 4 variances you are looking for. One has to do with the height of the tower and a lot depends upon whether or not you can show you need that height coverage. We haven't received anything and what we're using is the same experts as the Town. They're going to be

making their opinion to the Town Board and giving it to us for guidance. As of now, we have no guidance.

ATTORNEY OLSON: It's a little frustrating that the Town's consultant, who has had the application for months, hasn't provided any guidance on the height or the RF. I'm not criticizing anyone here, but it's been 3 months. Tomorrow I plan to talk to who I know personally Mr. Musso.

ATTORNEY FINK: Understood. That's the first one. The second one is the fall zone. We have that 1 letter from your engineer but we have nothing from the Town, so there's really nothing we can talk about yet. The next one is the vegetation or landscape. We can certainly talk about that as I'm kind of interested in what you're going to be putting on this site. The last one has to do with the foundation and I believe the consensus of the Planning Board is that they have no problem with that it's just they won't sign the map until it's provided. That's not going to be an issue.

ATTORNEY OLSON: Of course, we're not suggesting we not do it. We always do it.

ATTORNEY FINK: Exactly, it's a timing issue. So I guess tonight what we can accomplish is getting into the landscaping and why you think there shouldn't be any.

ATTORNEY OLSON: Sure. Landscaping is traditionally provided to help screen the base of the facility and the base of this facility will not be seen from any of the surrounding properties because you have existing vegetation that surrounds it. Based on where the proposed tower will be located, you have a building behind it so anyone beyond there won't see the base of the facility. Same with the people along Pine Island Turnpike, as you come down that road there is a lot of vegetation right there. If you look at the site plan, you're not going to see any part of that base of the facility because of where it's located.

MR. SHUBACK: I totally disagree. You will still see the base of that unit from the road.

CHAIRMAN JANSEN: I think just because all of those wheels or spools are there, that's not exactly landscaping. Those spools get moved and you will see everything.

ATTORNEY OLSON: That's not landscaping. Those spools are there based on the landlord's business. I don't know why they are stored there but they're quite high.

CHAIRMAN JANSEN: They may be here today and they could be gone tomorrow.

ATTORNEY OLSON: There is still vegetation and mature trees on the

property in between our proposed lease area and the road.

CHAIRMAN JANSEN: I'm going to open it to the Public but right now your comments are limited to the landscaping. That's the only thing we're discussing at this point.

MS. MILLER: My name is Amanda Miller and we live right on Transport Lane and can see it clearly from where we live and where we have our business. There is an issue also with our farm with everyone coming down to buy milk and for my father-in-law's business. They are all going to pass it and they're all going to see it, so it is visible. During the winter the spools will be moved further back making it more visible. I have little girls that could get hurt, God forbid, if they come too close to that fence.

ATTORNEY OLSON: We never said the tower and facility would not be seen from the road and children shouldn't be left unsupervised.

MS. MILLER: But it's on our property.

MR. MILLER: My name is Scott Miller. This cell tower is going on our deeded right-of-way out of the property so it would be a danger with her little girls riding their bikes, etc. Today they came down and told me from that property management that the Town has already allowed them to move the USDA road which I find hard to believe.

ATTORNEY FINK: But sir, we are talking about landscaping.

MR. MILLER: I understand that, but you can't landscape someone else's property.

MR. LEBONOWSKI: My name is Stan Lebonowski. The landscaping really is probably the least of all our problems. It will be the height of the tower that's the problem. I went in behind Price Chopper to the cell tower there and they got signs all over "high radiation" so when you are on the right-of-way with cell tower, regardless of how it's landscaped, you are really being radiated. It also devaluates all the property right around it. In regards to the nearby trees, they are on someone else's property and when the leaves are off the tower would be visible. If the property owners ever decide to take down said trees, then it would be even more noticeable because the trees are not on his property. I'm not sure how you justify it or rectify it or what the situation will be with that. Thank you.

CHAIRMAN JANSEN: No one else on the landscaping - no? OK, what's the next thing?

ATTORNEY FINK: That's it. You let us know what you want to do with the fence, whether it's 8-foot or 10-foot. If you can, let us know before the time when the next

ads get put out for the September meeting and we'll do an amendment.

ATTORNEY OLSON: That won't be a problem. In the meantime, does the board have a copy of our visual impact analysis?

ATTORNEY FINK: I do. Connie supplied me with a copy but I'm not sure about the entire board.

CHAIRMAN JANSEN: So this will be continued for the next meeting. That date is: Monday, September 24 at 7:30pm.

ATTORNEY OLSON: OK, thank you.

PUBLIC HEARING OF St. Stephen the First Martyr Church - for property located at 75 Stanfordville Road, Warwick, New York and designated on the Town tax map as Section 42 Lot 1 Block 49 and located in an SL District for a variance of Section 164-40N allowing expansion of lot coverage from an existing 29.6% to 31.5% where 20% is allowed to expand its common areas and existing footprint.

CHAIRMAN JANSEN: Please identify yourselves for the record.

MR. DeHAAN: Chris DeHaan, DeGraw & DeHaan Architects.

MR. GETZ: David Getz, Lehman & Getz Engineering.

CHAIRMAN JANSEN: Briefly tell the board what it is you want to do.

MR. GETZ: St. Stephen's plans to add on to their sanctuary building, Chris can describe that in a little more detail. They also plan to expand their parking facilities on the site. We have been before the Planning Board with our site plans and recognize that the impervious coverage currently exceeds the 20% allowed and this will increase it slightly. As part of our Planning Board application, we need to address draining and visual impacts which we plan to do. The use of the new facilities will not increase the number of people on site.

MR. DeHAAN: The addition, which is an annex to the sanctuary, is more of a fellowship hall for after-service gatherings. Right now they happen in the main lobby which becomes crowded after services. Also at different times of year, like Christmas or Easter when they have additional services and programs, there is a need for additional space.

ATTORNEY FINK: This comes to us with a positive recommendation from the Planning Board.

CHAIRMAN JANSEN: Let's open it up to the Public. Is there anyone from the Public that would like to address this application? No? OK the Public Hearing is closed. Do we want to do an informal poll regarding approval or disapproval? [All are in favor.]

ATTORNEY FINK: We will formally vote on it at the next meeting as we are waiting to hear back from the County. You don't need to attend.

MR. GETZ: Thank you.

PUBLIC HEARING OF Matthew Tangredi - for property located at 9 California Road, Warwick, New York and designated on the Town tax map as Section 64 Lot 3 Block 12.2 and located in an MT District for a variance of Section 280-a of the Town Law allowing access from a private road for proposed lots 1 & 2 of a proposed 3 lot subdivision.

CHAIRMAN JANSEN: Please identify yourselves for the record.

MR. TANGREDI: Matthew Tangredi, 9 California Road.

ATTORNEY FINK: Again, we are waiting to hear back from the County but can listen and do an informal poll regarding approval or disapproval.

CHAIRMAN JANSEN: Briefly tell the board what it is you want to do.

MR. GETZ: Daniel Getz, Lehman & Getz Engineering. This is a 3-lot cluster subdivision. One of the lots is for the exiting dwelling and then 2 more lots are for building new dwellings. The lot is bordered by 2 private roads and no public roads, so we are here for a 280-a variance. We have been referred by the Planning Board to be able to build new driveways off of Cherry Tree Hill Road. The existing driveway is off of California Road.

CHAIRMAN JANSEN: Let's open it up to the Public. Is there anyone from the Public that would like to address this application? No? OK the Public Hearing is closed. Do we want to do an informal poll regarding approval or disapproval? [All are in favor.]

ATTORNEY FINK: We will formally vote on it at the next meeting even if we don't hear back from the County. You don't need to attend.

MR. GETZ: Thank you.

PUBLIC HEARING OF Pamela Comrie - for property located at 12 Canterbury Lane, Warwick, New York and designated on the Town tax map as Section 55 Lot 2 Block 10 and located in an RU District for a variance of Section 164-41A(1)(a) permitting construction of a basketball court and tennis court exceeding 1200 square feet in floor area and Section 164-41C(4)(f) allowing a 10 foot fence where no more than 6 feet are permitted.

ATTORNEY FINK: Before we get started, when this came to me to make the advertisement I looked at what the building inspector had documented. The building inspector took the position that tennis and basketball courts were structures that needed a variance if they were in excess of 1200 square feet. That is not correct. They are not structures. I gave my opinion to the building inspector after it was advertised. The response was that they agree. So, the only issue before this board tonight is the 10-foot high fence for the tennis court, not the basketball court. There is no fencing proposed for the basketball court.

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

MR. GETZ: David Getz, Lehman & Getz Engineering. I am working with Mr. & Mrs. Comrie the owners of the property. They have proposed to build a single family home and, as you know, a driveway, basketball court, tennis court and pool. The plan has been reviewed and approved by the Town Building Department and Orange County Health Department. As Mr. Fink said, we are proposing a 10 foot high fence surrounding the tennis court. That is an industry standard to put height for tennis court fencing and feel this is a reasonable request. I'm also ready to discuss the coverage since we looked into that also.

ATTORNEY FINK: You have calculated it and come up with what?

MR. GETZ: I come up with 24.7% as the proposed coverage where 35% is allowed.

ATTORNEY FINK: You don't have to go any further. That issue is not before us. If the Building Department thinks there's an issue, you can deal directly with them.

MR. GETZ: OK, that's my presentation to this point.

ATTORNEY FINK: I have a question. Is there no alternative to 10 feet all the way around the tennis court?

MR. GETZ: In some cases they can use 10 feet at the ends and reduce the height nearer the nets on the sides of the court. We feel the tennis balls will go out of the court continuously if lower on the sides. Even at 10 feet there's the possibility of going over the fence.

MR. GINSKI: My name is Joe Ginski. Myself, and several other property owners in the Apple Ridge development, feel this 10 foot fence is totally out of character for the neighborhood. Actually any type of chain-link fencing would be an eyesore. We're trying to maintain the rural character that brought us to Warwick to begin with. Everyone will see this fence and feel it's a huge detriment, particularly a 10 foot fence. That's even more out of character. It's almost like the applicants are proposing a sports complex for Lot 12.

MR. COMRIE: If we were to plant willow trees that would hide the fence, would that suffice?

MR. GINSKI: It would still be an eyesore coming into the neighborhood and seeing a wall of trees on that lot where everything else is wide open.

NOTE: Several neighboring property owners came forward expressing concerns that do not apply to this board. They are all Planning Board issues. Attorney Fink strongly advised them to stay within the perimeters of the discussion being the fencing.

MR. DAUWALTER: My name is Kevin Dauwalter. I'm also a resident of Apple Ridge estates. I'm here on behalf of another neighbor at 4 Canterbury who does not object. I have a copy of a notarized letter stating no objection that I'd like to give to the board on their behalf. I think the fact that Mr. Comrie is willing to make some concessions and compromises in regard to the fence, maybe this is something we can all discuss as neighbors.

CHAIRMAN JANSEN: We can't make a final decision until next month anyway so we suggest you put up 10 foot poles where the 4 corners of the tennis court is proposed so everyone can get an idea of the height. The board members will go out (2 at time) to look and you as neighbors can see as well. This will give everyone a chance to get their ducks in order before next month's meeting. I suggest as a good neighborly gesture, you find a way to compromise. One way or another you're going to have to live together as neighbors.

MR. GETZ: Yes, we can honor that request for putting up 10 foot poles for review by all.

CHAIRMAN JANSEN: OK, we'll discuss this matter further at the next meeting. That date is: Monday, September 24 at 7:30pm.

PUBLIC HEARING OF H&M Corporation of Warwick - for property located at 309-321 State Route 94S, Warwick, New York and designated on the Town tax map as Section 49 Lot 2 Block 16 and located in an LB District for a variance of Section 164-40N for a proposed 2 lot subdivision as follows: (proposed / required): Lot 1: rear setback 16.7 (+/-) feet / 20 feet; lot coverage 60% (existing) / 35%; proposed Lot 2; lot width 120 (+/-) feet / 200 feet, lot depth 190 feet (+/-) feet / 200 feet, front setback 42.6 (+/-),(existing) 100 feet; 1 side setback 15.7 feet (+/-) (existing) / 50 feet; both side setbacks 57.2 feet (+/-) / 100 feet; and Section 164-43.1H(1)(f) allowing a free-standing sign 1 (+/-) feet from the edge of the pavement where 15 feet are required and area of free-standing sign 36 square feet / 12 square feet.

ATTORNEY FINK: Again, we are waiting to hear back from the County but can listen and do an informal poll regarding approval or disapproval.

CHAIRMAN JANSEN: Please identify yourselves for the record.

MR. GETZ: Daniel Getz, Lehman & Getz Engineering, representing the property owner.

Stephen: Stephen, property owner.

CHAIRMAN JANSEN: Briefly tell the board what it is you want to do.

MR. GETZ: The applicant has an existing commercial property with 2 commercial buildings on State Route 94 and he wishes to divide the property into 2 parcels, one for each commercial building. Mainly because of the changes in the Zoning Code since the property was originally approved, dividing the property will require variances. We have been before the Planning Board and they cannot approve the project without these variances. No construction or anything is planned, these buildings already exist. We would just like them separated into 2 lots. Nothing is going to change, it's just in ownership. It becomes 2 lots instead of 1.

MR. MALOCSAY: What is the reasoning for dividing this property?

Stephen: Basically, my tenant of 20 years in the auto shop is interested in purchasing the building. He wants to make repairs to the building, change the doors and doesn't want to put a lot of money in as a tenant. I have to keep reminding him it's all 1 piece. No good deed goes unpunished. In order for me to sell him the building, this process needs to be done. He can take pride in ownership after 20 years of renting and I'll keep the strip mall. It's really that simple, there is no other reason. I thought of offering him a 20-year lease, but he wants to buy, which I understand.

CHAIRMAN JANSEN: Let's open it up to the Public. Is there anyone from the Public that would like to address this application, please come forward? No? We'll keep it

open. Do we want to do an informal poll regarding approval or disapproval? [All are in favor.]

ATTORNEY FINK: So, we will come back next month and formally vote even if we don't hear back from the County. That date is: Monday, September 24 at 7:30pm.

MR. GETZ: Thank you.

PUBLIC HEARING OF Betty Ann Buono - for property located at 6 Knoll Croft Terrace, Warwick, New York and designated on the Town tax map as Section 40 Lot 1 Block 9.26 and located in an RU District for a variance of Section 164-46 Special Condition J(16) permitting a penning area 29 (+/-) feet from the lot line where 50 feet are required, for animal housing (10 feet X 48 feet) 52 (+/-) feet from 2 lot lines and 41 (+/-) feet from a third lot line where 150 feet are required and a 70 foot X 120 foot paddock 15 (+/-) feet from 2 lot lines and 40 (+/-) feet from a third lot line where 50 feet are required.

CHAIRMAN JANSEN: Please identify yourselves and briefly tell us how you got into this mess.

MS. BUONO: We are Betty Ann & Michael Buono. Well this was sold to us as a horse property. We did call Zoning and spoke with Connie and asked her specifically what the ground rules were. We did tell her we were planning on dropping a barn and placing fencing for a paddock and that we would have live animals.

MR. BUONO: I asked her how many feet we had to be from the property lines. She had said to me to put the fence on the property line and the barn had to be 20 feet off the property line. I ended up putting it 40 feet off the property line. I put the fence 5 feet on 1 side off the line and 15 feet off the other side, or thereabouts.

MS. BUONO: This is the only area we could drop the barn as our property is real narrow. The house and backyard area sit in the wider part of the lot. The remainder of the lot is quite narrow.

ATTORNEY FINK: Did you apply for building permits?

MR. BUONO: We hired a company out of Lancaster, Pennsylvania who said they had the building permit. I never checked to see if he had it as I took him on his word.

MS. BUONO: We did have electrical done and they pulled a permit for that. The electrician put it up in the barn so we just assumed that everything was moving along as it should.

ATTORNEY FINK: The big problem isn't the structure it's what you're doing with it. When were these put up?

MR. BUONO: Within the last 3 months. Here are some pictures I can show you.

CHAIRMAN JANSEN: We have a letter from Alice Ackerman at 189 Blooms Corners Road questioning why you don't have permits for all this work.

MR. ACKERMAN: I'm Drew Ackerman for around the corner at 114 Ryerson Road. Alice Ackerman is my mother. We don't mind the animals but the installation is right on top of us and apparently there are rules and regulations that weren't met. That's our concern. Being that there was no technical permit, is it OK for the paddock and/or barn to be there or not?

ATTORNEY FINK: No, if they don't get a variance it's got to be removed.

MR. ACKERMAN: Can they move it elsewhere on the property?

ATTORNEY FINK: That was going to be my next question. Is it feasible to move this thing?

MS. BUONO: Unfortunately not. The upper part of the property is a slope. The only other area that is flat is where the leech field is located. That's the problem.

ATTORNEY FINK: How many horses do you have?

MS. BUONO: We have 3 horses.

MR. MALOCSAY: There are a lot of properties out that way with barns and other accessory buildings that are as close if not closer to the road than the applicant. I'd like to take another look and see what I can find out on the character of the neighborhood and see what's actually there.

CHAIRMAN JANSEN: The bigger problem is no building permits were obtained.

ATTORNEY FINK: For what it's worth, it apparently wasn't intentional.

MR. MALOCSAY: And it already exists.

CHAIRMAN JANSEN: So we'll carry this over to next meeting so we can take a better look at this property before voting.

MS. BUONO: And the next meeting is September 24, correct?

MR. SHUBACK: Yes, 7:30pm.

OTHER CONSIDERATIONS:

CHAIRMAN JANSEN: Motion to approve the ZBA Minutes from both the
May 21, 2018 and June 25, 2018 meetings.

MS. BRAMICH: So moved.

MR. MALOCSAY: Seconded.

CHAIRMAN JANSEN: All in favor? [4 ayes] Motion carried.
Meeting adjourned.

[ZBA Recording Secretary – Mary Hebel]