

TOWN OF WARWICK
ZONING BOARD OF APPEALS
OCTOBER 29, 2018

Members Present:

Jan Jansen, Chairman

Mark Malocsay, Co-Chairman

Kevin Shuback

Chris Daubert

Attorney Robert Fink

Members Absent:

Diane Bramich

PUBLIC HEARING CONTINUATION OF Warwick Pet Lodge (Cathy Bauman) - for the revised site plan 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 251 (+/-) feet where 300 feet are required for the purpose of a proposed dog kennel and grooming business. **Continued from the September 24, 2018 ZBA Meeting.**

CHAIRMAN JANSEN: Before we get started I would hope that we can keep the noise down a little bit and let's be civil to each other. There were some remarks made last month by someone that was way out taste and shouldn't be here. So we would like to keep this as civil as possible. We'll give everyone that has something to say a chance to say it. But please be civil to each other.

ATTORNEY FINK: With regard to the Public Hearing we'll probably conclude it tonight. The board is very well aware of all the arguments that have been made on both sides. We would appreciate it if you just not get up and repeat what we've already heard several times. If you have something new to say, we really want to hear it. But if it's just to repeat what we've heard before, please save us all the time and energy.

CHAIRMAN JANSEN: And basically the only thing that we're addressing is the side setbacks. That's it. We're not addressing noise and things like that. That is part of the Planning Board process, not the ZBA. The Public Hearing is still open. Is there anyone from the public that would like to address anything relating to the setbacks?

UNIDENTIFIED SPEAKER #1: I have a letter that I would like to give to the board. It's just from another dairy farmer who lives down the road and commented on one from way back when there was a kennel on the road which raised controversy. I spoke with him and he was concerned about it. You can just put that in there. I don't have anything more to say about it.

UNIDENTIFIED SPEAKER #2: Mr. Chairman, we'd like it to be read it into the record.

ATTORNEY FINK: I got it. This is from a Steve Mureski.
In reference to the proposed dog kennel on 54 Jessup Road, I live about 2 miles north of the site. I see our impact as being minimal at that distance and it would most likely be the sound of dogs barking down in the valley. But I would like to mention to the board that there is a deja vu here. I remember growing up in the early to mid-1970s, there was a kennel on Jessup Road on the hill near the Taylor Road intersection. The dogs were of the husky mountain breed and they would howl at feeding time or if one set the rest off. The kennel was less than a mile from our farm and also caused a controversy in the neighborhood. As the Zoning laws, AG, and markets have changed, do you have any Town minutes from that time? That kennel only lasted a few years.

As far back as the 70s, do we have any of those minutes, I don't know.

CHAIRMAN JANSEN: OK, anyone else? If not, can we have the 2 attorneys summarize?

ATTORNEY TERHUNE: I did submit something to you guys earlier. I just have copies. This isn't my summary. It's just something I would like into the record.

ATTORNEY FINK: Please let me interrupt before you start. This is about 2 sideline variances. That is what we're considering. If you would please limit your remarks to that

ATTORNEY TERHUNE: I have a brief summary as I stated earlier. First of all, thank you for the opportunity to address the board. I have about a 5 minute, maybe 3 minute, summary that I would like to read to the board and into the record on behalf of my clients. First I want to stress to the board and to the public that my clients are proposing a high-end pet boarding facility on property with amenities ... please let me finish, its 5 minutes and it addresses ...

ATTORNEY FINK: That doesn't address what we're here for. Please. We've heard all of these arguments. Please address what we're going to take action on. That is 2 setbacks. It has nothing to do with how luxurious this is going to be, or how people want to put their dogs there. It's got nothing to do with that.

ATTORNEY TERHUNE: I would only ask that you would keep the opponents' attorney to the same limitation.

ATTORNEY FINK: Absolutely.

ATTORNEY TERHUNE: I do want to call to your attention to the fact that, I'm sure you remember, variances were provided to the Forest property; substantial variances for a dog facility in the RU district, much more substantial than what is being asked by my clients. You have a copy of that in the submission that I gave to you. You might want to take a look at that. I understand that differentiations e can be made between what the Forests are doing, which is to train and deal with dogs that have problems. Here, as you note in the record, you've got 3 to 5 dogs outside. That variance for very substantial side yard and whole lot area variance was to keep in training no more than 2 dogs at a time. So I would just say to this board that in terms of the variances that are now being requested, this is not unprecedented and you have variances that were submitted in the past and agreed to for dog kennels in this zoning district that were granted. And there have not been any complaints from the neighbors in that area as there have been none in Tuxedo I might also add. The variances are required because the topography of the property require that the pet facility be located in a certain spot. That means they will need variances from the 300 foot side yard variance requested and hopefully

provided. We have submitted information as per testimony asked to the noise which seems to be the concern for granting the variances. That because its 182 feet and 251 feet from the side yards, but somehow the dogs would be heard. There is expert testimony, sound studies that were done at real pet facilities with real dogs I might add and you have a follow-up to that in your materials as well. Finally I would just say that Cathy and Mario are well respected business owners. We've heard a lot about property potentially being impacted by a use that is allowed in this zone. I would just remind the board, as I'm sure I don't need to, that the Town Board has decided by allowing this type of facility on this property in this zoning that there's a presumption that there's not going to be a significant neighborhood impact.

ATTORNEY FINK: May I interrupt just to correct you. As you're aware it's a special permitted use. There are very rigid criteria that the Planning Board has to look at. And in fact, could deny it even though it is a special permitted use

ATTORNEY TERHUNE: I understand that. I stand not-corrected because I do understand that special uses permitted, has to be granted by the Planning Board, but my clients can't get to the Planning Board unless they are given the variances by this board. Again, in light of some of your past decisions and in light of the evidence before you in the record, these variances are not so significant that they would have an impact on the neighboring properties or their farm animals. So I would ask in conclusion that this board consider the evidence before you that's on the record. I believe it is substantial and I believe it weighs in favor of granting these 2 variances to my clients so that they can use their property, assuming they get a special permit from the Planning Board, in a way that is allowed under the Zoning Code.

ATTORNEY FRISHBERG: Thank you for considering the arguments. Thank you for hearing us. As you know, my name is Neal Frishberg. I represent many of the neighbors who have voiced an objection to the Planning Board. I will tell you I received the letter of Ms. Terhune at approximately 11:56pm and I would like an opportunity to put in a more formal response after the Public Hearing is closed. I won't need more than a week but I would like that opportunity

ATTORNEY FINK: If I could respond to that. We would have to keep the Public Hearing open. We would review what you submit next month and hopefully not have to take any more information. Then close it and, I'm going to assume, the board would vote at that point.

ATTORNEY FRISHBERG: My recollection is you have the authority to close the Public Hearing and let the people submit whatever they want to submit within a limited period of time.

ATTORNEY FINK: Because it's going to be a public record. Anyone can look at it and might want to comment.

ATTORNEY FRISHBERG: As you know, the area variance is substantial. It's over 40%, or approximately 40%. That 40% goes to the lot line, which as I indicated in our September 24 letter, is the lot line of one of the neighbors. You've heard testimony of how the noise will adversely affect the character of the neighborhood. You've heard testimony as to how this neighborhood doesn't even have a kennel. I know they call it a pet lodge but it's really a kennel no matter what they want to call it. It's a kennel with up to 70 dogs. What the applicant is asking this board to do is to throw common sense to the wind. Seventy dogs make a lot of noise. When it's too close to the lot line they make even more noise for the neighbors. So it adversely affects the character of the neighborhood. There can be no question regarding that. I know they claim they can put in safeguards for this. I've heard the arguments loud and clear that this is a Planning Board issue but it's also a ZBA issue because you have to consider the adverse effects to the character of the neighborhood. By granting the variance you are giving them the opportunity to put in a kennel with 70 dogs. You've heard a lot of testimony regarding noise. You've heard Mr. Sussner talk about the noise. You've heard their expert talk about the noise. Their expert didn't use any dogs. He used what he thought dogs should sound like. Mr. Sussner actually used a dog. I think everyone can agree that 70 dogs make a lot of noise. I think everybody can agree that no one wants to have to monitor this pet kennel to see the number of dogs outside. They might say they're going to have 5 dogs at a time. We don't want to monitor that. We don't want to worry about that. Nor does anyone living too close to this kennel, because it's too close to the lot line, want to have to call and make a noise complaint. Nobody wants to do that. This affects the character of the neighborhood. That's one of the mandates of this board. Does it adversely affect the character of the neighborhood? The answer can only be yes. Noise, pollution, urine, feces, it all affects the character of the neighborhood particularly when it's too close to the lot lines, particularly when their asking for a 40% variance. You can't have it both ways. You can't say we're going to be fine and ignore the character of the neighborhood because that's what the statutes says, the neighborhood. They're asking to go too close to the lot line. This board has the opportunity to make a decision as to whether or not that adversely affects the character of the neighborhood. Ms. Terhune argues in her paper that people are confused by this high end pet motel. This is a kennel. It's got 70 dogs. There's nothing unique about it. It's a kennel with 70 dogs. They make noise. They pee and poop. It's just that simple. I think it's fair to say people don't want 70 dogs peeing and pooping too close to them because they need variance. I think we explained our position in our September 24 letter regarding their expert witness. I think we've demonstrated that it is too noisy. And my only application was to close the Public Hearing but allow us to put in a more formal response. If you'd give me a moment I'm just going to discuss this with my clients to see what they want to do. *[Pause]*

I'm going to withdraw my application to bring in a more formal response and ask that the Public Hearing be closed.

CHAIRMAN JANSEN: If there's no one else, I'll close the Public Hearing. Our decision will be at the next meeting. We'll be looking through all the records and we will come to a decision and that'll be made for the next meeting at which time that'll be filed.

ATTORNEY FINK: Neal, are you going to give the board a copy of the transcript?

ATTORNEY FRISHBERG: Yes, I will.

ATTORNEY FINK: You've had a transcript throughout, correct?

ATTORNEY FRISHBERG: I will send you what I have tomorrow.

ATTORNEY FINK: Actually what you should do is file that so it's available to anyone that wants to see it. If possible, as a courtesy if you could, put it in email form and email it to myself and opposing counsel.

ATTORNEY FRISHBERG: Sure.

CHAIRMAN JANSEN: Our next meeting is Monday, November 26, 2018, at 7:30pm. You will be the first item on the agenda.

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.
Continued from the August 27, 2018 ZBA Meeting.

As per email, dated September 28, 2018 – Applicant asked to be “Tabled” from the October 29, 2018 ZBA Meeting.

PUBLIC HEARING OF Alan Mamet - for property located at 30 Iron Mountain Road, Warwick, New York and designated on the Town tax map as Section 49 Lot 2 Block 41 and located in an MT District for a variance of the Bulk Area Requirements of the Code permitting construction of a 10 foot X 16 foot shed with a front setback of 40 feet where 100 feet are required.

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

MR. MAMET: I'm Alan Mament. I am just trying to put up a shed on my property and the setback is 100 feet. That puts it past my house, right in my front yard, in my only yard. There's actually no way I can put a shed anywhere my house faces or it would be right in my neighbor's yard. They would have to drive over my septic or right through my front lawn, which it can't. Where I'm trying to put it is 40 feet. When I went to the Zoning Department they said since my garage is 68 feet, we could match that. The only place I can put it is at 40 feet. It has trees all on sides of it. It would be hidden, no one would see it. Even I would barely see it. It would be by my driveway where it would house my lawn mower, snow blower, etc. This would free up my garage for parking my car and not have stuff sitting out. I'm just trying to organize my yard.

CHAIRMAN JANSEN: Does anyone have any questions at this point? Have you had a chance to look at it? No. Let me open it up to the public. Is there anyone from the public that would like to address this application?

MR. AHEARN: I'm Frank Ahearn, 24 Iron Mountain Road. I just have a couple of questions. Alan and I have known each other for a while. Alan is a good neighbor and whatnot. I'm just wondering if you give him the variance at this location what if there is another property owner that wants to put a shed up, I just don't want the neighborhood looking like a storage facility. Is there some kind of mechanism that can put in place if you do approve Alan's application that this would be the only shed that goes up on that property?

ATTORNEY FINK: Unfortunately not. We look at each property and application separately. There usually are differences, but you're right this would be precedent. If someone else wanted to do it and there were substantially no differences, if the board granted this that would be precedent and the chances being good that the board would grant the next one. There is no way we can say this is it.

MR. MAMET: I really don't want my shed to be seen from the street either. I picked a spot that has a dense tree line between the street and my shed. I can make it really pretty with lots of plantings. I totally understand where Frank is coming from.

MR. AHEARN: The property has changed hands. That was my concern, that was my question, and you've answered it.

CHAIRMAN JANSEN: Each one would be on an individual basis.

MR. AHEARN: I would be in here fighting more vigorously if there was another one. The shed itself is of basic category as far as 1-story and there must be height restrictions that would have to conform to a shed, I would imagine?

CHAIRMAN JANSEN: We could put them on there. Do you have a picture of the shed?

MR. MAMET: No. It's a standard 10x16 and I can stand in it. I would say it is 8 feet in height.

CHAIRMAN JANSEN: So if we put a restriction of no higher than 15 feet that's OK with you?

MR. MAMET: Yes.

MR. AHEARN: Thank you.

CHAIRMAN JANSEN: Are there any other questions or anyone else to address this? No. OK, 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?

MR. SHUBACK: No.

MR. MALOCSAY: No.

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

CHAIRMAN JANSEN: Only with difficulty.

ATTORNEY FINK: Is it a substantial variance?

MR. DAUBERT: 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.
MR. DAUBERT:	Yes.
ATTORNEY FINK: with no adverse environmental impact?	Would someone care to type this as "Unlisted"
MR. MALOCSAY:	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 with the condition that the shed be no higher than 15 feet in height?
MR. MALOCSAY:	So moved.
MR. SHUBACK:	Seconded.
CHAIRMAN JANSEN:	All in favor? (4 ayes) Motion carried.

PUBLIC HEARING OF Howard & Russell Hansen (Cascade Lake Properties, LLC) - for property located at Seminole Drive & Hansen Circle, Warwick, New York and designated on the Town tax map as Section 64 Block 1 Lots 24-29 and located in an MT District for a variance of Section 164-53(b)(12) granting a 4th extension of a variance of Section 280-a of the Town Law.

ATTORNEY FINK: The law on this is if there is no change then it's automatically granted. That's really the issue. Have there been any changes since it was granted and progressively continued?

MR. HANSEN: No.

CHAIRMAN JANSEN: Let me open it up to the public. Is there anyone from the public that wishes to address this application? If not, the Public Hearing is closed.

ATTORNEY FINK: OK, we still have to go through the criteria. 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?

CHAIRMAN JANSEN: No.

MR. DAUBERT: No.

ATTORNEY FINK: Is it a substantial variance?

MR. DAUBERT: Yes.

MR. SHUBACK: Yes.

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

MR. MALOCSAY: No.

MR. SHUBACK: No.

ATTORNEY FINK: Is the alleged difficulty self-created?

MR. SHUBACK:	Yes.
MR. DAUBERT:	Yes.
ATTORNEY FINK: with no adverse environmental impact?	Would someone care to type this as "Unlisted"
MR. MALOCSAY:	So moved.
MR. SHUBACK:	Seconded.
CHAIRMAN JANSEN:	All in favor? (4 ayes) Motion carried.
ATTORNEY FINK: granted as advertised?	Does anyone care to move that the variance be
MR. MALOCSAY:	So moved.
MR. SHUBACK:	Seconded.
CHAIRMAN JANSEN:	All in favor? (4 ayes) Motion carried.

PUBLIC HEARING OF Anthony Cossentino - for property located at 41 Spanktown Road, Warwick, New York and designated on the Town tax map as Section 7 Lot 2 Block 54.4 and located in an RU District for a variance of Section 164-45.1.C(6) permitting construction of a 24 foot X 24 foot garage attached to an existing dwelling by a 6 foot breezeway with 1 side setback of 26 feet where 35 feet are required, or in the alternative, should Section 164-40N apply, permitting 1 side setback of 26 feet where 75 feet are required and both side setbacks of 88 feet where 150 feet are required.

ATTORNEY FINK: The County had to be notified on this application. They have responded as local determination.

CHAIRMAN JANSEN: Please come on up and identify yourself for the record and briefly tell us what you want to do. And do you have the mailing receipts as well?

MR. COSENTINO: I do. My name is Anthony Cossentino. I have a 38-year-old handicapped daughter, but she is more like 16. She works at Quick Chek a couple hours a day, 3 days a week. She passed her driver's test. She needs some type of independence. We thought if we built some sort of small apartment over the proposed garage she could have her own space. We still need to be there for her and could be by being right next door. I could use the garage to store my antique car and have a place for my daughter upstairs above it.

CHAIRMAN JANSEN: Is there anyone from the public that would like to address this application? No. OK, we can 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. MALOCSAY: No.

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

CHAIRMAN JANSEN: No.

MR. MALOCSAY: No.

ATTORNEY FINK: Is it a substantial variance?

MR. DAUBERT: 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.
MR. DAUBERT:	Yes.
ATTORNEY FINK: with no adverse environmental impact?	Would someone care to type this as "Unlisted"
MR. MALOCSAY:	So moved.
MR. DAUBERT:	Seconded.
CHAIRMAN JANSEN:	All in favor? (4 ayes) Motion carried.
ATTORNEY FINK: granted as advertised?	Does anyone care to move that the variance be
MR. DAUBERT:	So moved.
MR. SHUBACK:	Seconded.
CHAIRMAN JANSEN:	All in favor? (4 ayes) Motion carried.

PUBLIC HEARING OF James Peter & Lisa Bacenet - for property located at 78 Four Corners Road, Warwick, New York 10990 and designated on the Town tax map as Section 23 Block 1 Lot 24.22 and located in an RU District for a variance of Section 164-46J.(16) permitting an existing 3'9" X 2'5" X 4.5' chicken coop 20(+/-) feet from the sideline where 100' are required and a 3' fenced penning area 20(+/-) feet from the sideline where 50' are required.

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

MR. BACENET: I am James Bacenet. We are trying to put in a chicken coop. We are in possession of the coop. It's one of those prefabricated ones. It's empty. We haven't put it up or the surrounding fence until we get approval.

CHAIRMAN JANSEN: Is there a place you could put it that's more conforming?

MR. BACENET: Not really. The lot is about 150 feet across and about 400 feet deep, if I remember correctly. So basically on either side we are just shy of it. If we put it right in the center we could probably squeak by, but in all honesty, we want it next to an existing garden so we could let the chickens loose in the garden.

CHAIRMAN JANSEN: The only thing about this is if we grant it as advertised the problem is anybody next time coming up would be able to hold that and ask for the same thing. We would be setting a precedent by putting it that close to the line. Unless we put in a condition that it has to be adjacent to an existing garden.

MR. MALOCSAY: I'm good with that.

CHAIRMAN JANSEN: Is there anyone from the public that would like to address this application? No. OK, 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. MALOCSAY: No.

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

MR. SHUBACK: No.

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

[ZBA Recording Secretary – Mary Hebel]