

TOWN OF WARWICK
ZONING BOARD OF APPEALS
APRIL 26, 2021

Members Present:

Jan Jansen, Chairman

Mark Malocsay, Co-Chairman

Robert Fink, Attorney

Diane Bramich

Kevin Shuback

Chris Daubert

PUBLIC HEARING OF MARK & JILL MANTE - for property located at 242 Bellvale Lakes Road, Warwick, New York and designated on the Town tax map as Section 47 Block 1 Lot 78.232 and located in an MT District for a use variance for proposed Lot 2 of a 2 lot subdivision permitting an accessory building (existing garage) to be used as a principal use until the new dwelling is constructed and a variance pursuant to Section 280-a of the Town Law permitting the said Lot 2 to have access to a public road off a private road. **Continued from the 3/22/21 ZBA Meeting.**

CHAIRMAN JANSEN: Ok Mr. Rother, go ahead.

MR. ROTHER: Kirk Rother, Consulting Engineer representing the applicants. This is a continuation of the Public Hearing from last month. The applicants are seeking 2 variances: the first one being the 280-a variance which would allow the creation of additional lots on a private drive/common driveway; the other being the allowance of an existing accessory structure to be placed on the new lot until such time as the new house is built. I believe the topic that was open-ended last month was the question of improvements that were to be made to the existing private road/driveway that was part of the prior subdivision for Alan Mante. In re-reviewing the approved filed map for the Alan Mante subdivision, there are improvements shown as part of that private road but there was not a condition that it had to be done prior to a certificate of occupancy; having said that, he has every intention of doing it. This applicant has been in touch with Alan Mante, who is his brother, and he is going to do it. After our meeting last month we have been back to the Planning Board and advised them of your concerns of making sure this widening is in fact going to take place. They said they would definitely make it a condition of this approval and give you a letter to that effect.

ATTORNEY FINK: A condition of the approval or a condition of not getting a certificate of occupancy?

MR. ROTHER: Condition of a CO.

ATTORNEY FINK: Now we have the little problem we were trying to get around, the use variance with an accessory building on a lot with no principal use as of the present time. Mark had a bit to say about that. So what do you think, Mark?

MR. MALOCSAY: We realize that it would be a principal use for the property. However, it exists, it is for a subdivision, it is for a dwelling that we know is going to be built. So if we allow the subdivision to go forward it would be under the condition that the dwelling be built as the principal use. If something were to happen (or not happen) in a certain amount of time then the accessory structure or principal structure would have to be removed.

CHAIRMAN JANSEN: Does that sound reasonable?

MR. ROTHER: It does.

CHAIRMAN JANSEN: What kind of a timeline do you want to put on this?
I think it has to be some finite time.

MR. ROTHER: What has to happen in regard to the new dwelling
that affects our timeline, a building permit, a certificate of occupancy, etc.?

ATTORNEY FINK: I would say you would have to get the CO within a
certain amount of time.

MR. ROTHER: For a CO, I would probably ask for 2 years.

CHAIRMAN JANSEN: I would suggest going a little further, perhaps 3
years. Are you comfortable with that?

MR. ROTHER: Yes.

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

ATTORNEY FINK: We'll go through the criteria and do each item
separately. We can start with the 280-a, then come back with this 3-year variance.

CHAIRMAN JANSEN: Ok.

ATTORNEY FINK: First is the 280-a. Will the proposed variance cause
an undesirable change to the character of the neighborhood or be a detriment to nearby
properties?

CHAIRMAN JANSEN: No.

MR. DAUBERT: No.

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

MR. MALOCSAY: No.

ATTORNEY FINK: Is it a substantial variance?

MR. MALOCSAY: No.

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

environmental conditions?

CHAIRMAN JANSEN: No.

ATTORNEY FINK: Is the alleged difficulty self-created?

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? [5 ayes]
Motion carried.

ATTORNEY FINK: Does anyone care to move that the 280-a variance be granted with the condition that the driveway improvement has to be installed before a certificate of occupancy can be issued for the proposed home?

MR. SHUBACK: So moved.

MR. DAUBERT: Seconded.

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

ATTORNEY FINK: Now the variance for temporarily permitting the existing accessory structure or garage to stand on the new lot for a period of 3 years from the date of this variance to get a certificate of occupancy. If the certificate of occupancy is not granted the variance will lapse and the building will have to come down. That's going to be the motion and now we'll 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?

CHAIRMAN JANSEN: No, it exists.

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

MR. SHUBACK: No, other than tearing it down.

ATTORNEY FINK:	Is it a substantial variance?
MR. MALOCSAY:	Yes.
ATTORNEY FINK: environmental conditions?	Will it have an adverse effect upon the physical or
MS. BRAMICH:	No.
ATTORNEY FINK:	Is the alleged difficulty self-created?
MR. DAUBERT:	Yes.
ATTORNEY FINK: with no adverse environmental impact?	Would someone care to type this as “Unlisted”
MR. MALOCSAY:	So moved.
MS. BRAMICH:	Seconded.
CHAIRMAN JANSEN:	All in favor? [5 ayes] Motion carried.
ATTORNEY FINK: granted with the conditions as discussed?	Does anyone care to move that the variance be
MR. SHUBACK:	So moved.
MR. MALOCSAY:	Seconded.
CHAIRMAN JANSEN:	All in favor? [5 ayes] Motion carried.

PUBLIC HEARING OF RITVARS ZUKS - for property located at 283 Nelson Road, Monroe, New York and designated on the Town tax map as Section 58 Block 2 Lot 2 and located in an MT District for a variance of Section 164-41.A.(1)(a) permitting an accessory building 40 feet X 60 feet (2,400 feet) where not more than 1,200 square feet in floor area is permitted. **Continued from the 3/22/21 ZBA Meeting.**

Applicant was not in attendance.

To be continued at the 5/24/21 ZBA Meeting.

PUBLIC HEARING OF JOSEPH GRAZIADIO - for property located at 45 Old Ridge Road, Warwick, New York and designated on the Town tax map as Section 18 Block 1 Lot 40 and located in an RU District for a variance of the Bulk Area Requirements of the Code permitting a 10 ft. X 12 ft. 2 in. addition to the front an existing single-family dwelling reducing front setback from 51 ft. 1 in. to 41ft. 1 in. where 75 ft. are required.

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

MR. GRAZIADIO: I am Joseph Graziadio and this application is for a front foyer entrance that is a 10 X 12 area.

CHAIRMAN JANSEN: Does it already exist?

MR. GRAZIADIO: The house itself but not the addition. There is a staircase there now.

ATTORNEY FINK: There's nothing in front of the house?

MR. GRAZIADIO: No.

MS. HEBEL: Here are some photos from the file showing the front and rear elevations of the home.

MR. MALOCSAY: As I reviewed the application I was confused because there is a proposed garage listed.

MR. GRAZIADIO: That was a variance granted to the previous owner probably 20 years ago. It was granted and built. So it is actually existing and not proposed.

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

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

MR. MALOCSAY: No.

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

CHAIRMAN JANSEN: No.

ATTORNEY FINK: Is it a substantial variance?

MS. BRAMICH: No.

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

CHAIRMAN JANSEN: No.

ATTORNEY FINK: Is the alleged difficulty self-created?

MS. BRAMICH: Yes.

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

MS. BRAMICH: So moved.

MR. SHUBACK: Seconded.

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

PUBLIC HEARING OF JENNIFER & KEITH HARKER - for property located at 16 Wickham Drive, Warwick, New York and designated on the Town tax map as Section 36 Block 4 Lot 23 District for a variance of Section 140-4 permitting construction of a hot tub less than 15 ft. from the side line and less than 15 ft. from the house on an existing enclosed porch.

MR. MALOCSAY: This is in an existing enclosed porch which makes it part of the dwelling. Therefore the proposed hot tub is actually inside the home. I don't think they need a variance at all because people have hot tubs in their homes for regular bathrooms or indoor pools, etc. To me, this application reads as if it were outside. It is not. I would like to speak to the building inspector for further interpretation. It's possible a variance is not needed.

ATTORNEY FINK: Then let's carry this over to next month. Mark can speak to the building inspector for further clarification and to make sure we're not missing something. It's possible the building inspector will withdraw the objection.

MR. MALOCSAY: If that is the case, you can move forward with your plans. Otherwise you would have to come back next month.

CHAIRMAN JANSEN: Just out of curiosity, is there anyone present that opposes this application? No. That's a good sign.

MS. HARKER: We did speak to Mr. & Mrs. Perez who are adjacent to us and they have no issue with it whatsoever.

MR. MALOCSAY: Again, we will consult with the building inspector for further interpretation and go from there.

MS. HARKER: Thank you. Please have someone contact us with your findings as we would like to order the hot tub. We have been reluctant to do so until we know definitively one way or the other.

MR. MALOCSAY: Understood.

MR. HARKER: Thank you.

PUBLIC HEARING OF THE APPEL LIVING TRUST - for property located at 21 Waterbury Road, Warwick, New York and designated on the Town tax map as Section 42 Block 1 Lot 82.23 and located in an RU District for a variance of Section 140-4.C permitting an existing pool 10 ft. from the house basement where 15 ft. are required.

ATTORNEY KRAHULIK: Good evening ladies and gentlemen. My name is Bob Krahulik, attorney for Dr. & Mrs. Appel.

ATTORNEY FINK: How did this come up?

ATTORNEY KRAHULIK: This involves a house that was built in the year 2001 by Dr. Appel's partner Paul Canevari. Paul also, at the same time, installed the pool. Dr. Appel thought that Paul took care of the permit for both the house and the pool, but he did not. Dr. Appel is now selling the house. As part of a typical transaction, the buyer's title company sent a letter seeking a municipal search and the pool turned up as a violation. The pool is located 10 feet from the house where 15 feet are required. I've provided copies of the survey for each of you. The pool has been there for 20 years so I don't think it's going to change or upset the character of the neighborhood. It's a considerable distance from any of the neighboring property owners. The only issue is the proximity of the pool to the house itself.

CHAIRMAN JANSEN: Let's open the Public Hearing. Is there anyone from the Public that wishes to address this application? If not, the Public Hearing is now closed.

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

MS. BRAMICH: No.

MR. SHUBACK: No, it's been there for 20 years.

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

MR. MALOCSAY: No.

ATTORNEY FINK: Is it a substantial variance?

MR. DAUBERT: Yes.

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

MS. BRAMICH: No.

ATTORNEY FINK: Is the alleged difficulty self-created?

MR. SHUBACK: Yes.

ATTORNEY FINK: This is a Type 2 Action so there is no environmental concern. Does anyone care to move that the variance be granted as advertised reducing it from 15 feet to 10 feet?

MS. BRAMICH: So moved.

MR. DAUBERT: Seconded.

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

PUBLIC HEARING OF JASON SCHULER & MORGANNE FRAZIER - for property located at 246 Pine Island Turnpike, Warwick, New York and designated on the Town tax map as Section 27 Block 1 Lot 18 and located in an LB District for a variance of the Code Section 164-41.A.(1)(a) permitting expansion of an existing building with a proposed dimension of 60 ft. X 30 ft. (1,800 sq. ft.) where no more than 1,200 sq. ft. are permitted and Sub-Section (4)(f) permitting installation of deer fencing with a proposed height of 8 ft. in the front yard setback where no more than 4 ft. are permitted and elsewhere on the property where no more than 6 ft. are permitted.

CHAIRMAN JANSEN: Please identify yourselves for the record.

MR. GETZ: David Getz, Engineering & Surveying Properties along with Jason Schuler and Morganne Frazier who are the applicants and property owners. There are 2 areas of proposed deer fencing. One is on the side of the house and the second area is in the interior of the property. Basically 2 rectangles: one up by the road and the other in the interior of the property. Maybe you want to explain what you're planning to grow inside those areas?

MR. SCHULER: Sure. The one closer to the road is set for strawberries and flowers. In the back we're looking to put in peach trees, so a peach orchard. We're looking to grow a majority of this produce to support one of our businesses which is a syrup manufacturing company. We have consumer packaged goods for a company called Drink More Good. It's a healthier version of soda syrups that our consumers can use to flavor their seltzer water or make cocktails with. We're sold in Whole Foods throughout New York, New Jersey and Connecticut. We've partnered with a ton of local farms in the Hudson Valley for the past 8 years. We've just had a really difficult time obtaining produce last year. When we acquired this property in June we're really looking to consolidate some of our businesses and be as self-sufficient with our produce sourcing as possible.

MR. GETZ: We filed an application with the Planning Board for a site plan and special use permit approval. We went to a work session at the Planning Board meeting last week. They referred us here for these variances. We're also dealing with the Orange County Health Department for water supply and a new septic system. We also applied to the Orange County DPW for modifications to the entrance. So we're in the Planning Board process and this is one of the steps that we seek your approval. With regard to the fencing, the 4 foot height that is allowed really wouldn't be effective for deer. Could you describe the fencing?

MR. SCHULER: Sure. We want to keep it very esthetically pleasing. We're proposing going with bark on cedar posts. The fence is black, plastic mesh. You really won't see it unless you're right next to it.

MR. GETZ: That's one variance we're seeking. The other is to

expand an existing small barn. We've provided some pictures of that. It is located behind their house. As Jason mentioned they have several businesses. They want to have a farm stand. They want to do some of their syrup food-related activity. Morganne teaches Pilates. They want to have a home occupation. Those are all being reviewed by the Planning Board. So they would like to consolidate those in that building but need to expand it. The building is currently about 1,200 square feet and we propose to go to 1,800 square feet.

MR. MALOCSAY: I am slightly concerned by the multiple usages but it seems the Planning Board is okay with it. In regard to the fencing behind the house, if you can line that area up with the house you would be allowed a 6 foot fence. Then you would only be looking to go from 6 feet to 8 feet, like the fencing in the interior of the property.

MR. SCHULER: I don't think that would hinder what we're trying to do by pushing it back to be in line with the house.

MR. GETZ: The Planning Board did schedule us for a Public Hearing indicating they are comfortable as long as we get Health Department, DPW and the variances.

CHAIRMAN JANSEN: Anything else before I open it up to the Public? No. The Public Hearing is now open. Is there anyone that wishes to address this application? Yes, go ahead Mr. Walter.

MR. WALTER: I'm Joe Walter and I'd like to take a look at the plans. I can't form an opinion unless I see what they're trying to do. *[Mr. Getz and Mr. Walter quietly discuss the plans.]* Ok, thank you for showing and explaining your plans. I have no more questions.

CHAIRMAN JANSEN: If there's no one else from the Public to address this application, I'll close the Public Hearing.

ATTORNEY FINK: So again, we'll go through this twice: first the fence and then the building. So with the fence, what we're talking about is 8 feet up from 6 feet in both locations now that you're pushing the one area back to be in line with the house. The variance will reflect that. Will the proposed variance cause an undesirable change to the character of the neighborhood or be a detriment to nearby properties?

CHAIRMAN JANSEN: No, we're talking 8 feet where 6 feet is allowed.

MR. MALOCSAY: Especially with the type of fence they propose.

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

CHAIRMAN JANSEN:	Not really.
ATTORNEY FINK:	Is it a substantial variance?
MR. SHUBACK:	No, 6 to 8 feet is only 25%.
ATTORNEY FINK: environmental conditions?	Will it have an adverse effect upon the physical or
MS. BRAMICH:	No.
ATTORNEY FINK:	Is the alleged difficulty self-created?
MS. BRAMICH:	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? [5 ayes] Motion carried.
ATTORNEY FINK:	Does anyone care to move that the variance be granted with the difference now for both areas being 8 feet where 6 feet are allowed?
MS. BRAMICH:	So moved.
MR. MALOCSAY:	Seconded.
CHAIRMAN JANSEN:	All in favor? [5 ayes] Motion carried.
ATTORNEY FINK:	Now for the building: 1,200 square feet are allowed and they are requesting 1,800 square feet. Will the proposed variance cause an undesirable change to the character of the neighborhood or be a detriment to nearby properties?
MR. MALOCSAY:	No. Most outbuildings in that area are larger than the allowed 1,200 square feet.

ATTORNEY FINK: achieved by any other feasible method?	Can the benefit sought by the applicant be
CHAIRMAN JANSEN:	Not really.
ATTORNEY FINK:	Is it a substantial variance?
MR. MALOCSAY:	Yes.
ATTORNEY FINK: environmental conditions?	Will it have an adverse effect upon the physical or
MR. DAUBERT:	No.
ATTORNEY FINK:	Is the alleged difficulty self-created?
MR. SHUBACK:	Yes.
ATTORNEY FINK: with no adverse environmental impact?	Would someone care to type this as "Unlisted"
MR. SHUBACK:	So moved.
MR. DAUBERT:	Seconded.
CHAIRMAN JANSEN:	All in favor? [5 ayes] Motion carried.
ATTORNEY FINK: granted as advertised?	Does anyone care to move that the variance be
MS. BRAMICH:	So moved.
MR. DAUBERT:	Seconded.
CHAIRMAN JANSEN:	All in favor? [5 ayes] Motion carried.

OTHER CONSIDERATIONS:

CHAIRMAN JANSEN:
March 22, 2021 meeting.

Motion to approve the ZBA Minutes from the

MS. BRAMICH:

So moved.

MR. MALOCSAY:

Seconded.

CHAIRMAN JANSEN:

All in favor? [5 ayes]
Motion carried.

Meeting adjourned.

[ZBA Recording Secretary – Mary Hebel]