

TOWN OF WARWICK
ZONING BOARD OF APPEALS
September 27, 2021

Members Present:

Jan Jansen, Chairman
Robert Fink, ZBA Attorney
Mark Malocsay
Diane Bramich
Kevin Shuback
Chris Daubert

PUBLIC HEARING OF CONTINUED APPLICATION – JOHNNY HAYSEED LLC - for property located at Glenwood Road, Warwick, New York and designated on the Town tax map as Section 24 Block 1 Lot 35.22 and located in an RU District for a variance of Section 164-41A(1)(a) & (b) permitting construction of a 4,824 square foot accessory building less than 10 feet from the existing dwelling where not more than 1,200 square feet are permitted and the distance from the dwelling has to be 10 or more feet. **Continued from 8/23/21 ZBA Meeting.**

This application was not heard this evening.

To be continued at the October 25, 2021 ZBA Meeting.

PUBLIC HEARING OF ALEXANDER KARAMEROS - for property located at 4 Clark Street, Warwick, New York and designated on the Town tax map as Section 38 Block 1 Lot 6 and located in an SM District for a variance of Section 164-41.A(1)(4) permitting an existing single story storage garage 24 foot X 22 foot less than the required 30 feet from the front line.

Chairman Jansen: Mailings received. Please identify yourself for the record.

Alexander Karameros: We are seeking a variance to meet the front yard setbacks of 30 feet for an existing single story storage garage. The size of the garage is 24'x22'.

Attorney Fink: On your survey, you see where your lot line is located. Your lot line is not Clark Street. That little space between Clark Street and the front line. It is an existing garage. You don't know how far off it is from Clark Street. It is not Clark Street. It is your front line.

Alexander Karameros: That is where I am not clear as to my front line. I am looking at from the front of my house to where it is. That is 90 to 100 feet away from that. My house is basically on Airport Road. It is not on Clark Street.

Attorney Fink: That doesn't matter.

Mr. Shuback: You have two front yards. You have two roads in the front.

Mr. Malocsay: The Board is usually very lenient on the variances when there are two front yard setbacks. Generally, on the roads there are approximately 50 feet wide of a deeded road itself. From the center, you would go out about 25 feet. That should give you a measurement as to where your property starts and the Town's easement is. Assuming it is a standard road that would be roughly 12 feet from the center. It usually is where the blacktop will end. There might be a shoulder just in case there is curbing. It's about 25 feet from the road. The survey should show that easily. We as a Board could do a couple of things. We could wait for a survey to know exactly what it is that we are giving a variance for. If we were to grant the variance tonight and the variance was wrong, we would have wasted our time. Since the structure is already in place, is there anything crucial that you are waiting on? Is there any rush for us to make a decision tonight?

Alexander Karameros: No.

Mr. Malocsay: Bob, it would be answering your question. We would then know exactly how much of a variance to give for.

Attorney Fink: Are you selling the house?

Alexander Karameros: No.

Attorney Fink: How did this come about with getting the Building Inspector involved?

Alexander Karameros: I have never done this before. It was my ignorance that created this problem. I went through the Building Department process. I came down here to find out the process of what I needed to get a permit for. I told them what kind of structure it would be. When I brought the survey down, I was told that I just had to make sure I was 5 feet from the property line. In my mind, I thought I was doing more than that away from the property line. I thought that was it. I was wrong. I miss understood with what they had said. I've never heard about two front lots.

Mr. Malocsay: It is common. The survey you have is too small for us to look at. You should have an official survey for us to look at. Bob Schmick should have that. We want to see what structures are on the property and where they are located. Since no one has come here tonight to speak about your application, speaking for myself, we usually have been lenient with these types of applications that have two front yards.

Alexander Karameros: I understand. It was my ignorance. I have spoken to my neighbors about this. They all seem to love what I have done.

Mr. Malocsay: Get us an official survey for us to look at. That way we could give you the variance that you are exactly looking for. It is already existing. You are not being held up. We could discuss it at next month's meeting.

Attorney Fink: Bob Schmick the Surveyor could easily locate it. He did the survey.

Alexander Karameros: Yes.

Attorney Fink: That is the good news. The bad news is Bob Schmick having the survey done by the next ZBA meeting. I don't see that happening.

Mr. Malocsay: If the curbing is there and we know the curbing is 5' on the Town's property, then we could measure from the curbing and know exactly what the setback is.

Attorney Fink: Is there a curb? The survey shows there is.

Alexander Karameros: That is where I took the measurement from.

Attorney Fink: Hold on. This survey that we have is readable. Don't need Bob Schmick. If you would accept him to measure from the curbing.

Mr. Malocsay: It is not scaled.

Attorney Fink: It could be scaled. It could be done easily.

Mr. Malocsay: But it is only sketched in.

Attorney: It just has to be measured from the curb to the building.

Mr. Malocsay: Ok.

Attorney Fink: Get the measurements from the curb to the building. We will continue your application at the October ZBA Meeting.

Alexander Karameros: Do I have to be here next month?

Mr. Malocsay: I will go out to the property and help with the measurements.

Attorney Fink: Ok. That would be fine.

Attorney Fink: We will see you next month.

Alexander Karameros: Ok. Thank you.

PUBLIC HEARING OF EDWARD VIRAG - for property located at 74 Simpson Lane, Warwick, New York and designated on the Town tax map as Section 38 Block 1 Lot 24 and located in an SM District for a variance of Section 280-a of the Town Law permitting construction of a single-family residence on a private road.

Representing the Applicant: Neil Frishberg, Attorney. Dave Getz from Engineering Properties. Ed Virag, Applicant.

Ms. Bramich: Do you have the mailings?

Neil Frishberg: I do have the mailings. I left them at my office. They are sitting on my desk.

Ed Virag: I have a copy of the mailings that you could have.

Attorney Fink: That's alright. Just get the mailings to Connie. She could verify them.

Neil Frishberg: Ok. I will get them to Connie.

Dave Getz: Mr. Virag has owned this property that is located right near Wickham Lake for many years. Airport Road comes down to a road called Knights Lane that has been on the books for a long time. Our office had done the Wickham Lakes Subdivision approximately 20 to 25 years ago. These lots were never built. Knights Lane was never extended as a real road until recently. Four or five of those lots are currently being built. Knights Lane has now made an offer of dedication to the Town Board. I don't think they would take it as a public road until the final wearing course is placed. That connects about half the distance from Airport Road to Ed Virag's property. His property is located down here that is surrounded by Town property. There is a driveway that connects now that goes from the end of Knights Lane through the Town's property and to Mr. Virag's property. At the start of that graveled driveway, the Town has a water plant. The Town has been maintaining the road. Maybe Mr. Virag could explain that Town Residents could purchase a key to unlock the gate and access down by the lake using the same driveway that leads to his property. Ed, is that Correct?

Ed Virag: That is correct. They are selling Town keys to that parcel to launch boats on a daily basis. There is a record of it in the log book upfront in Town Hall. They have collected money on a regular basis. That has been happening for a couple of years now.

Dave Getz: Mr. Virag owns about 7/10th of an acre. Our Engineering office back in 2003 had done soil tests, designed a well location, septic system, driveway and house location. He got approval for a septic permit back then. Nothing has been built on the property yet. Now he is ready to build a house on the property. He applied for a building permit. The building permit was denied because it is not on a public road. He would need 280-a variance. That is why we are here tonight.

Attorney Fink: How far is this road that would be dedicated at some point?

Chairman Jansen: I don't think that is part of the road that is going to be dedicated.

Attorney Fink: I know. I just wanted to know.

Dave Getz shows Attorney Fink on a map where the public road ends at the cul-de-sac.

Ed Virag: It actually ends at the gate.

Dave Getz asks Mr. Virag to show him on the map where the gate is located. Looking at a map there shows a circle which is no longer a circle. The box cut out that is shown here there is the Town's water plant located here. Mr. Virag states that there is another graveled road that goes around it. There is a house located adjacent that is past it. Mr. Virag states that the road has been there forever. Attorney Fink wanted to know how that house got built without a variance. Mr. Getz states that house has been there for a long time. Mr. Virag states that it probably goes back to the Wickham Subdivision back in the 1930's.

Neil Frishberg: We have the 1932 map.

Attorney Fink: The gate is located just beyond the house.

Ed Virag: It is located just about 25 to 30 feet beyond the house.

Dave Getz: The Town has a water plant in that vicinity.

Ed Virag: Looking at the map, the water plant is located here. There is a big turnaround around it.

Dave Getz: Are you saying that this Hillcrest Avenue would be renamed to Simpson Lane?

Ed Virag: I believe so. They have changed it 3 times.

Dave Getz: Mr. Virag's 911 property address is 74 Simpson Lane.

Ms. Bramich: That is unpaved.

Ed Virag: It is just like the way Buttermilk Falls Road has been. It is just like 1000 other roads in the Town that has not been paved.

Ms. Bramich: Is it a passible road for Police and Fire?

Ed Virag: You guys have all of the documentations from 2003 and on.

Dave Getz: The road is in good condition. People have been bringing boats down occasionally and things like that.

Attorney Fink: Is that the road they bring boats down?

Ed Virag & Dave Getz: Yes.

Ed Virag: It is an emergency access. The Town has a Right-Of-Way down through it to allow people and they are charging people to get to the property to launch a boat. There is a sign located right there that states in case of an emergency call 911 and these are the Town's rules. As far as liability and maintain the road, you guys have been maintaining it. Ben has been going down there for years.

Attorney Fink: How do you turnaround on this road?

Ed Virag: There is a big cul-de-sac. There is a big cut out that the Town had provided. It is monstrous.

Mr. Shuback: If a boat could turnaround a fire truck could turnaround.

Ed Virag: You have letters from the State Police.

Attorney Fink: We don't have them in our files. Maybe the Town has them. We don't have the letters here. They were not supplied to us. If they are there, we could request them. Who maintains the road?

Ed Virag: The Town has been maintaining the road.

Attorney Fink: What happens when there is snow?

Ed Virag: There are no boats that goes through there in the winter.

Attorney Fink: I am not asking that. How do vehicles get through there in the winter months?

Ed Virag: I cannot answer that question. The bottom line is that has not been my responsibility. It has been the Town's access to that property. I have been blocked off from my property.

Attorney Fink: You are looking for 280-a variance there has to be access not only in the summer time but also in the winter time.

Neil Frishberg: Who has been plowing the property?

Ed Virag: I have not had to plow. There is no reason to. There is no house back there.

Attorney Fink: Ok. So, it hasn't been plowed. Who is going to plow it if you put a house there?

Ed Virag: I would plow it to my gate. I wouldn't plow the Town's portion.

Chairman Jansen: Whoever buys that property would have that responsibility.

Neil Frishberg: That is right. Just like anyone else would that own a property.

Ed Virag: I could see that during the winter being an object. During the other 9 months out of the year that the Town is using the park, I don't know how that would work.

Neil Frishberg: I understand Mr. Fink's concern.

Attorney Fink: Has this road been dedicated?

Dave Getz: No. It is in the process.

Attorney Fink: It has been offered. Is that correct?

Dave Getz: Yes.

Attorney Fink: Irrecoverable offer. Has it been bonded yet?

Dave Getz: The bonding has been done.

Ed Virag: They are waiting for the top coat until the last 3 houses are finished.

Dave Getz: Right.

Attorney Fink: That would presumably take care of this.

Ed Virag: As far as throwing some gravel on it, I could do that. When I build a house up there, I would take care of my responsibilities.

Attorney Fink: Are you saying that during the summer months the Town has been maintaining this so people could get to the lake.

Ed Virag: Yes. Correct.

Neil Frishberg: Why would it need to be maintained during the summer?

Attorney Fink: It could get washed out.

Neil Frishberg: Ok.

Chairman Jansen: The Town is going to move the gate just beyond this driveway.

Attorney Fink: That would create a problem for emergency vehicles.

Ed Virag: You have the keys. What was the problem with Buttermilk Falls Road?

Attorney Fink: There is not a gate there.

Ed Virag: You could cut a gate. If there was a fire, I would drive right through it with my pickup truck.

Mr. Malocsay: Looking at that driveway/Right-Of-Way, it is going through the Town's property. It is on the deed that they have access to that property.

Ed Virag: That I have access to it, yes. I have all the easements, drainage and utility lines.

Attorney Fink: I don't have that. The Town might have that. Could you get that to us?

Neil Frishberg: I might have that letter in my car. It indicates that they were satisfied that there was enough emergency access.

Mr. Malocsay: I wasn't looking at the emergency access. I was looking at the right to use it.

Attorney Fink: The right to use it. That is where it stems from.

Neil Frishberg: We have a deed. All rights, privileges and easements subject to all covenants... and it states Town of Warwick designated on the map.

Attorney Fink: Is it together with subject to?

Neil Frishberg: Together with all rights, privileges and easements.

Attorney Fink: Ok. But we don't know what those easements are. We have never seen that. I don't have any legal questions if you could provide me and the Board showing that he has the right to use that road. That would satisfy my question.

Neil Frishberg: We have a map from 1932. There was a variance granted way back.

Attorney Fink: A variance was granted before but it lapsed. Is that correct?

Neil Frishberg: Yes. Back in 1979 it was not an issue.

Attorney Fink: A variance was once granted in order to deny it after it had been granted. You would have to show some error or some change in circumstances. The variance had lapsed. Now we are looking at it as a new variance unless there was some change in circumstances.

Mr. Malocsay: I can't think of anything that has changed since then.

Mr. Shuback: The road has actually gotten better.

Ed Virag: That was part of it. I couldn't afford to buy all this property. If I could have afforded to purchase this, I would have come up with half a million dollars and bought this. I would have put the road in for half a million dollars and put this to bed. Mr. Sweeton wanted

this road even though there was a road here for a sewer plant that you guys were maintaining previously.

Mr. Malocsay: Bob, with what you had just said because there was a variance, are we still giving the variance?

Attorney Fink: Yes. That is because the previous variance lapsed. It could be a new variance or a continuation of the other variance. It is all the same.

Mr. Malocsay: Ok. I am good with that.

Chairman Jansen: Is there anyone from the public that would like to address this application? Let the record show no public comment. 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?

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?

Chairman Jansen: No.

Attorney Fink: Will it have an adverse effect or impact?

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 variance be granted as advertised?

Mr. Malocsay: So moved.

Mr. Shuback: Seconded.

Chairman Jansen: All in favor? (5-Ayes)
Motion carried.

Ed Virag: Thank you.

Neil Frishberg: Thank you.