

TOWN OF WARWICK  
ZONING BOARD OF APPEALS  
April 25, 2022

Members Present:

Jan Jansen, Chairman  
Robert Fink, Attorney  
Mark Malocsay  
Diane Bramich  
James Mehling  
Chris Daubert  
Connie Sardo, ZBA Secretary

**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 3/28/22 ZBA Meeting.**

Attorney Fink: This application will not be heard until the Applicant makes a new submittal to the ZBA. Once they make a new submittal, it will need to be Re-Advertised and Re-Noticed.

**PUBLIC HEARING OF MISSION LAND FARM LLC** - for property located at 93 Mission Land Road, Warwick, New York and designated on the Town tax map as Section 3 Block 1 Lots 23.22 & 69 and located in an A1 District for an interpretation of Section 164-42E and a variance of the Bulk Area Requirements of the Warwick Code allowing a woodworking business on a lot of 1.42 acres where 2 acres are required. **Continued from the 3/28/22 ZBA Meeting.**

Representing the Applicant: Dave Getz from Engineering Properties & Surveying.

Attorney Fink: The qualification of the building is now ok pursuant to change in the law signed with the Town Board. However, it is not effective until it is filed with the Department of State. I was unable to verify if it was. That doesn't stop us from going forward. It is not like the situation with the County where we can't vote. We can vote and hold it until we find out it has been filed. There are 2 Bulk Area variances required. The Applicant has 1.42 acres and the Code is stated 2 acres. The Code requires the lot width to be 125.67 feet. What do you have?

Dave Getz: That requires 150 feet.

Attorney Fink: Oh. Correct. It is 150 feet.

Dave Getz: The first issue that Bob had mentioned was about an Adaptive Reuse of an Agricultural building. The Code the last time we were in front of the ZBA a month ago required a building in that category had to exist at the time the Code was written approximately 20 years ago. This is a newer building that was built a couple years ago. The Town Board earlier this month changed that part of the Zoning Code to say that an existing building does not need to be in existence at the time of the writing of the Code. We don't any longer need a variance of interpretation of that. We are requesting a variance for the lot area and lot with.

Mr. Malocsay: Is there anyone from the public wishing to address the application. We will leave the public hearing open for the moment. We didn't receive any details before. The lot has 1.42 acres where 2 acres are required.

Dave Getz: It would not be feasible for them to add property. He has already combined the 2 lots as part of the application.

Mr. Malocsay: Ok.

Dave Getz: We have been before the Planning Board. They have reviewed the site. They are good with the parking, septic and well. Our next step is if the ZBA grants the variance, we would go back to the Planning Board for site plan approval.

Mr. Malocsay: You are adding the lot width by having the lots combined. Cannot change that. How does the Board feel? Is there anyone in the audience wishing to address this application? Seeing none, the public hearing is now closed.

Attorney Fink: Will the proposed variance cause undesirable change to the character of the neighborhood or be detriment to nearby properties?

Ms. Bramich: No.

Mr. Malocsay: No.

Attorney Fink: Can the benefit sought by the Applicant be achieved by any other feasible measure?

Mr. Malocsay: No.

Mr. Daubert: 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?

Ms. Malocsay: No.

Attorney Fink: Is it 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. Daubert: Seconded.

Attorney Fink: Does anyone care to move that the variance be granted as advertised for property located at 93 Mission Land Road, Warwick, New York and designated on the Town tax map as Section 3 Block 1 Lots 23.22 & 69 and located in an A1 District for an interpretation of Section 164-42E and a variance of the Bulk Area Requirements of the Warwick Code allowing a woodworking business on a lot of 1.42 acres where 2 acres are required.

Mr. Daubert: So moved.

Ms. Bramich: Seconded.

Chairman Jansen: All in favor? (4-Ayes). Motion carried.

**PUBLIC HEARING OF JOHN WELCH** - for property located at 111 Walling Road, Warwick, New York and designated on the Town tax map as Section 26 Block 1 Lot 25 and located in an RU District for a variance of Section 164.46J permitting a chicken coop less than 100 feet from the property lines.

Representing the Applicant: John Welch, Owner.

Connie Sardo: Mailings received.

Attorney Fink: This is an existing coop. Where is this chicken coop located on the lot?

John Welch: It is behind the shed.

Attorney Fink: How far are you from the side lines?

John Welch: It is located on our property. It is 5 feet to the side line.

Attorney Fink: Are you saying the existing chicken coop is located 5 feet? That is from one side line. How far is it from the other side line?

John Welch: We are about 20 feet short. It's supposed to be 100 feet on each side. We are lacking approximately 20 feet. If I put the coop in the middle, it will be on top of my leach field.

Ms. Bramich asked Mr. Welch to show her on the survey where the coop is located. The coop is located behind the shed.

Attorney Fink stated that looking at the survey the coop is 5 feet from the line and it is not even located 50 feet from the front line. Mr. Welch states that they are 20 feet short from the 100-foot property lines. Mr. Malocsay asked the Applicant how far is the coop from the road. The Applicant states that it is not even near the road because the coop is located in the back of the property. Mr. Mehling stated that the house is 75 feet away from it. There is continued discussion amongst Attorney Fink, ZBA and Applicant regarding the setbacks and distance of the existing chicken coop. Attorney Fink states that the chicken coop is 50± from the side lines.

Mr. Malocsay: Is there anyone from the public that would like to address the Welch ZBA application?

Mike Faulls: I am a neighbor to Mr. Welch's property. I have been having issues the last 3 to 4 years ago with Roosters crowing. I have spoken to John Welch about this. The chickens come onto my property scraping my mulch out onto my yard.

Attorney Fink: It seems to me that this chicken coop is more than 100 feet from your lot line.

Mike Faulls: Yes.

Attorney Fink: Do you think that having a problem with them is really relevant to this application?

Mike Faulls: They crow almost all day long. They had 3 Roosters.

John Welch: We only have 1 Rooster now.

Attorney Fink: We are only dealing with the distance from the lines. The distance from your line appears to be well in excess of 100 feet.

Mr. Malocsay: We've had a couple applications with chickens and chicken coops. Generally, what happens if nobody has a problem with it, we have given variances. But if there is an issue with a neighbor, then we try to make it as close as possible to what the Code would be. With that said, there is a huge difference between chicken coops and chickens that are not in the coop that are free-ranged.

Mike Faulls: My issue is that I tried to be a nice neighbor.

Attorney Fink: If you have a complaint regarding the chickens dumping stuff, it has nothing to do with this application as it affects you.

Mike Faulls: It kind of does.

Attorney Fink: No. It does not.

Mr. Malocsay: The issue is with the coop with us the chickens are supposed to be in the coop. If the chickens are outside of the coop, it is another issue that is not before the ZBA. It is about the chicken coop itself. The chickens have to be inside the coop. The chicken coop has to be as far away as possible for us to give a variance. It is 5 feet from a property line. We know that your property is not 200 feet. It is going to have to be somewhat centered in the property. If the chickens were not outside of the coop, you would not have a problem with the chickens being on your property.

Mike Faulls: The other problem is that they have 3 Roosters. They crow all day long.

John Welch: We only have 1 Rooster now.

Attorney Fink: You would have to speak to the Building Inspector about that.

Mike Faulls: I have spoken to the Building Inspector about this before back in October. John's wife is giving me issues. She has threatened me numerous times. I just had to call the Cops tonight over this.

Mr. Malocsay: We've had applications like this before us. If we were going to give a variance on this, we have no say whether its Hens or Roosters, but we could as a compromise on giving a variance and there are to be no Roosters if it was going to be in a certain distance of the property.

Attorney Fink and the ZBA continues to discuss the issue of free-ranged chickens and chickens that are supposed to be contained. In the Town Code, the chickens need to be contained in a coop or fenced in area. Attorney Fink states what is before the ZBA is the placement of the coop. It is not about the chickens. The application before the ZBA is for permitting an existing chicken coop less than 100 feet from the property lines. Mr. Malocsay mentions to the Board members, if they were to grant a variance and as a compromise on granting the variance would be to not have the chickens free-ranged and no Roosters. Attorney Fink does not agree with what Mr. Malocsay stated. Ms. Bramich stated that the chickens need to be contained in a coop or within a fenced in area. Attorney Fink continues to state that the chickens are supposed to be housed in a coop. The rest of that is not before the Board. What is before the ZBA is about the placement of the coop. Regarding the Applicant that is in violation of letting the chickens run lose, is not before this Board. That would be a complaint made to the Building Department because he is in violation of the Code. Mr. Fink asked the Board members as to why the coop can't be moved. Mr. Malocsay states no matter where the Applicant places the coop on the property, it is not going to work. Attorney Fink replies back that maybe the Applicant should not have a chicken coop. Mr. Malocsay states that is why the Applicant is before the ZBA for a variance.

Attorney Fink: Is this Board in not having giving variances before for chicken coops that are 5-feet from a property line...?

Ms. Bramich: We have done that before. We have done that on Jersey Avenue in Greenwood Lake.

Mr. Malocsay: The chickens in a coop itself cannot be free-ranged. If they are within a fenced-in area that would be fine.

John Welch: We do have a fence.

Mr. Malocsay: Bob, do you want to take some time on this to look in the Code to see what the Code says about chickens?

Attorney Fink: No. It is irrelevant. They are only before this Board for the setbacks of the existing coop.

Mr. Malocsay: What about if we have the Applicant get rid of the Rooster? That would get rid of the noise issue.

Attorney Fink: Let us put this application over to next month's meeting. I want to look more into this matter regarding chickens with the Town Code.

Mr. Malocsay: Is there anyone else wishing to address this application?

Roy Faulls: I am a neighbor. I live ¼ mile down the road. The Applicant said earlier that he was about 20 feet short.

Attorney Fink: No. He is approximately 90 feet short.

Roy Faulls: He had stated that he was 20 feet short. I could hear those Roosters ¼ mile away every 17 seconds. He is looking for a variance which has nothing to do with the crowing.

Mr. Malocsay: Unfortunately, right now that is correct.

Roy Faulls: Thank you.

Mr. Malocsay: Is there anyone else wishing to address this application? Because of the situation, our Attorney, Bob Fink will look into the legality of chickens. We will leave the public hearing open. We will continue this application to the May 23, 2022 ZBA Meeting.

John Welch: Do I come back next month?

Mr. Malocsay: Yes.

John Welch: Connie, will you let me know?

Connie Sardo: The next ZBA Meeting is May 23, 2022 at 7:30 p.m.

Mr. Malocsay: We will leave the public hearing open.

Attorney Fink: I will do a memo regarding chickens. I will give the memo to Connie. She will distribute the memo to the Board members and give you a copy of the memo.

John Welch: Ok. Thank you.



**PUBLIC HEARING OF ROY L. & VICKY K. BRACHFELD** - for property located at 4 Sky Sail Lane, Warwick, New York and designated on the Town tax map as Section 27 Block 1 Lot 63.221 and located in an RU District for a variance of Section R326 of the Residential Code of NYS permitting an in-ground swimming pool 12 (+/-) feet from a well where 20 feet are required.

Chairman Jan Jansen joins the ZBA Meeting of April 25, 2022.

Representing the Applicant: Roy and Vicky Brachfeld, Applicants.

Connie Sardo: We received the mailings for the Brachfeld public hearing.

Chairman Jansen: Why does the pool have to be that close?

Roy Brachfeld: There are rocks all the way around. There is a patio and house are located there. There is just no place else to put it.

Chairman Jansen: How deep is the well?

Roy Brachfeld: I am not sure.

Chairman Jansen: The reason why I am asking the question is because normally there is a 20 to 40-foot casing that goes down before the driller puts a well in.

Mr. Malocsay: Recently we had 3 different applications similar to this situation with the septic and well. We wondered the question to ourselves as to the reason why? There could be possibilities of well contamination if the pool should fail. That is why they have the distance away from it. How old is the house?

Roy Brachfeld: The house was built in the year 2006.

Mr. Malocsay: Ok. More than likely the casing would have the well information underneath. If not that, the well casing might have the well driller's name on it. You could call them. They would have those records. You could try asking the Building Department for the well records. It is a 50% chance they might have it. Could we hold this application over to next month until we get that information?

Chairman Jansen: Is the pool in?

Roy and Vicky Brachfeld: The pool is not in yet. We are waiting for this variance to be granted.

Ms. Bramich: Why are we asking that?

Mr. Malocsay: Because they don't know the information on the well. The reason why they have that distance is the well casing and bedrock on how far it is because of the possibility of contaminating the well.

Ms. Bramich: How old is the house?

Roy Brachfeld. It was built in 2006.

Vicky Brachfeld: There was two. I know they renovated the house. I don't know if they changed the well at that time.

Ms. Bramich: There are laws on the casing of wells. That is why I am asking the age of the house.

Mr. Malocsay: That is why I had mentioned that the information might be on the head of the casing/cap. If not, the well driller's information would be on there. They could call them to find out the information.

Roy Brachfeld: Is that what you want to know is how deep it is?

Mr. Malocsay: More importantly is how deep before bedrock and how many feet of casing. We don't have a problem with the variance because it is a new well.

Ms. Bramich: Why are asking for that information?

Mr. Malocsay: What if the well is a shallow well?

Mr. Jansen: I think we could safely go ahead on this. It is fairly a new well.

Ms. Bramich: We gave a variance for a pool application that was located down by Forest Knolls in Greenwood Lake. We did not ask for well information or how deep it was.

Chairman Jansen: Is there anyone from the public wishing to address the Brachfeld application? Let the record show no public comment. The public hearing is now closed.

Attorney Fink: Could you put the pool anywhere else on the property?

Chairman Jansen: No. He cannot because of the terrain.

Mr. Fink: Will the proposed variance cause an undesirable change to the character of the neighborhood or be detriment to nearby properties?

Chairman Jansen: No.

Attorney Fink: Can the benefit sought by the Applicant be achieved by any other feasible measure?

Chairman Jansen: No. Because of the terrain.

Attorney Fink: Is it a substantial variance?

Mr. Malocsay: Yes.

Attorney Fink: Will it have an adverse effect upon the physical or environmental conditions?

Mr. Malocsay: No.

Mr. Daubert: No.

Attorney Fink: Is it self-created?

Mr. Malocsay: Yes.

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

Ms. Bramich: So moved.

Mr. Daubert: Seconded.

Attorney Fink: Does anyone care to move that the variance be granted as advertised for property located at 4 Sky Sail Lane, Warwick, New York and designated on the Town tax map as Section 27 Block 1 Lot 63.221 and located in an RU District for a variance of Section R326 of the Residential Code of NYS permitting an in-ground swimming pool 12 (+/-) feet from a well where 20 feet are required.

Mr. Malocsay: So moved.

Ms. Bramich: Seconded.

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

Roy & Vicky Brachfeld: Thank you.

**PUBLIC HEARING OF RICHARD MILLETTE** - for property located at 175 Alexander Road, Warwick, New York and designated on the Town tax map as Section 58 Block 2 Lot 30.1 located in an SL District for a variance of Section 164.41 permitting a 2,475 square-foot accessory building where only 1,200 square feet are permitted and the Bulk Area Requirements of the Code permitting a structure to be less than the required 10 feet from the side line and less than the required 75 feet from the front setback.

Representing the Applicant: Rich Millette, Owner. Ed Mateo, Neighbor.

Connie Sardo: We have received the mailings for the Millette public hearing.

Chairman Jansen: Briefly explain to the Board as to what you are trying to do.

Rich Millette: I want to build a large enough garage for 4-cars. My brother recently passed away. He has 2 cars. I have 2 cars.

Chairman Jansen: Do you want to keep all 4 cars?

Rich Millette: Yes.

Chairman Jansen: How many acres do you have?

Rich Millette: 7.5 acres.

Chairman Jansen: Ok. The possibility exists that he could put up a number of 1200 square feet garages on the property. However, we've always looked favorably at a single structure whenever it is possible. Does the Board have any questions before I open it up to the public?

Ed Mateo: I wanted to point one thing out. Mr. Millette's survey was a little sketchy. There might have been a communication problem. He does not need a side yard and front yard variance. He is almost 300 feet from the back line.

Chairman Jansen: Ok.

Ed Mateo: He is at least 20 feet from the side line. He only needs a variance for the structure that is larger than 1200 square feet in size.

Chairman Jansen: Ok.

Attorney Fink: You are withdrawing that part of the variance for the 10 feet from the side line and the 75 feet from the front.

Chairman Jansen: Ok. Is there anyone from the public wishing to address the Millette application? Let the record show no public comment. The public hearing is now closed.

Attorney Fink: You are not asking for a variance of any lines. It is just for the size of the structure. Do you understand that?

Ed Mateo: Yes.

Attorney Fink: Will the proposed variance cause an undesirable change to the character of the neighborhood or be detriment to nearby properties?

Ms. Bramich: No.

Attorney Fink: Can the benefit sought by the Applicant be achieved by any other feasible measure?

Mr. Malocsay: Yes.

Attorney Fink: They could put up more than one building. But the answer is no. Is it a substantial variance?

Mr. Malocsay: Yes.

Attorney Fink: Would someone care to type this as “Unlisted” with no adverse environmental impacts?

Ms. Bramich: So moved.

Mr. Daubert: Seconded.

Attorney Fink: Does anyone care to move that the variance be granted for property located at 175 Alexander Road, Warwick, New York and designated on the Town tax map as Section 58 Block 2 Lot 30.1 located in an SL District for a variance of Section 164.41 permitting a 2,475-foot accessory building where only 1,200 square feet are permitted.

Mr. Malocsay: So moved.

Ms. Bramich: Seconded.

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

Rich Millette: Thank you.

**PUBLIC HEARING OF PAUL HANEY** - for property located at 91 Cascade Road, Warwick, New York and designated on the Town tax map as Section 65 Block 1 Lot 10.2 located in an MT District for a variance of the Bulk Area Requirements of the Code permitting construction of a 30 foot X 30 foot accessory structure with a front setback of 30 (+/-) feet where 75 feet are required.

Representing the Applicant: Paul and Debby Haney, Owners.

Connie Sardo: We received the mailings for the Haney public hearing.

Chairman Jansen: Please explain briefly as to what you want to do.

Paul Haney: I am trying to build a workshop/mechanic's shop.

Chairman Jansen: You cannot set it back further on the property. Is that correct?

Paul Haney: The property is all solid granite ledge. The property is steep uphill.

Chairman Jansen: Do any Board members have any comments? Is there anyone from the public wishing to address the Haney application? Let the record show no public comment.

Attorney Fink: There is no way that this structure could be moved back?

Debby Haney: No.

Paul Haney: It would be impossible to do move it back. There is a 6-foot granite ledge rock.

Chairman Jansen: The public hearing is now closed.

Attorney Fink: Will the proposed variance cause an undesirable change to the character of the neighborhood or be detriment to nearby properties?

Ms. Bramich: No.

Attorney Fink: Can the benefit sought by the Applicant be achieved by any other feasible measure?

Ms. Bramich: No.

Attorney Fink: Is it a substantial variance?

Mr. Malocsay: Yes.

Attorney Fink: Is it self-created.

Mr. Malocsay: Yes.

Mr. Daubert: Yes.

Attorney Fink: Will it have an adverse effect upon the physical or environmental conditions?

Mr. Malocsay: No.

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

Mr. Daubert: So moved.

Ms. Bramich: Seconded.

Attorney Fink: Does anyone care to move that the variance be granted as advertised for property located at 91 Cascade Road, Warwick, New York and designated on the Town tax map as Section 65 Block 1 Lot 10.2 located in an MT District for a variance of the Bulk Area Requirements of the Code permitting construction of a 30-foot X 30-foot accessory structure with a front setback of 30 (+/-) feet where 75 feet are required.

Mr. Malocsay: So moved.

Ms. Bramich: Seconded.

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

Paul Haney: Thank you.

Debby Haney: Thank you.

**OTHER CONSIDERATIONS:**

1. ZBA Minutes of 3/28/22 for ZBA approval.

Ms. Bramich makes a motion to approve the ZBA Minutes of 3/28/22.

Seconded by Mr. Daubert. Motion carried; 5-Ayes.

**Ms. Bramich makes a motion to adjourn the April 25, 2022 ZBA Meeting.**

Seconded by Mr. Daubert. Motion carried; 5-Ayes.