

TOWN OF WARWICK
ZONING BOARD OF APPEALS
SEPTEMBER 26, 2022

Members Present:

Jan Jansen, Chairman
Robert Fink, Attorney
Diane Bramich
James Mehling
Mary Garcia, ZBA Recording Secretary

PUBLIC HEARING OF Michael & Marie Pillmeier - Joint Revocable Trust for property located at 276 Round Hill Road, Florida, New York and designated on the Town tax map as Section 7 Block 2 Lot 47.2 and located in an AI District for a variance of Section 164.42E(2) permitting an adaptive reuse of an existing non-agricultural building with acreage of 1.4 acres wherein 2 acres are required at minimum.

Representing the Applicant: Dave Getz, Engineering Properties & Surveying. Michael Pillmeier, Applicant.

Chairman Jansen: The first item on the agenda is Michael and Marie Pillmeier Joint Revocable Trust for property located at 276 Round Hill Road, Florida, New York designated on the Town tax map as Section 7 Block 2 Lot 47.2 located in an AI District for a variance of Section 164.42E(2) permitting an adaptive reuse of a non-existing non-agricultural building with acreage of 1.4 acres wherein 2 acres are required at maximum. Please identify yourselves for the record.

Bob Fink: David, keep in mind, all we're interested in is acreage. Everything else is of special permitted use. Everything else is the Planning Board.

David Getz: Okay. We've been, we've started our application with the planning board <inaudible> same description you used and because of the acreage question they referred us.

Bob Fink: You're looking for a 30%, well, 70%. So you're 30% less than what you need.

David Getz: Yes.

Chairman Jansen: And I should also point out that there are only three members present tonight.

Bob Fink: But we have to hear it.

Chairman Jansen: So we'll hear it, but it'll only go to vote. You have an option.

David Goetz: Okay. So just a little bit of background on the property, the building's been in existence and has been since...

Mike Pillmeier: 1966

David Getz: It's a 9,000 square foot steel building. And it's been in an adaptive reuse for many years but didn't have a role. That's why we avoid planning work now to sort of retroactively allow the applicants to continue what they've been doing for many years, which is to rent out the building, but most of the building is for non-agricultural use. Before that, for many years it was used for agriculture.

Chairman Jansen: Okay. Questions?

Bob Fink: Well, I'll pretend that I'm Mark. Mark's going to want to know, is there any surrounding land that could be used or purchased or, well, who owns the land around you? Let's put it that way. It's the first question.

David Getz: Do you want to address that? (To Mike Pillmeier)

Mike Pillmeier: Yeah, there's a property to the left. One building, owned by a Florence <inaudible> , residential. And to the right, it's owned by a Joe Pillmeier. Adjacent to the personal property.

Chairman Jansen: And that wraps around your property, right?

Mike Pillmeier: yeah.

Bob Fink: Okay. Have you attempted to purchase property from either person?

Mike Pillmeier: No.

Chairman Jansen: No, I doubt very much that they would be interested in.

Bob Fink: Well, we don't know.

Mike Pillmeier: On both sides there were buildings very close to the property line, so it doesn't really make it...

Chairman Jansen: Questions? I'd like to open it up to the public. Did you have any minutes? Do we have the minutes?

Diane Bramich: Yes. He just gave this to me.

Chairman Jansen: Open this up to the public. Is there anyone from the public that wants to address this? Please identify yourself for the record.

Joe Pillmeier: My name is Joe Pillmeier. Folks. Because he does not have enough land to do this. My house is simply just too close for this activity that goes on at that warehouse. He's leasing the warehouse to an oil tank company and the handling of oil tanks and heavy commercial equipment is within a hundred feet of my house. And it's too loud, and that's really basically it. Well, you know, I mean, that's all I've got.

Bob Fink: Well do you think it would make a difference if he had the two acres?

Joe Pillmeier: Well, I mean, if he had approached me and asked to purchase a half acre or so, perhaps you know, we could come to an agreement, but unfortunately because of this, my dad hasn't spoken to me in years.

Chairman Jansen: Is yours the property that wraps around?

Joe Pillmeier: Yes, sir.

Bob Fink: Would it be feasible to subdivide some of your property to his? If so, how would that affect you? Would it make it any better? Wouldn't you have the same concerns?

Joe Pillmeier: That's correct, sir. Yes, I would. However you know, all things being reasonable. I mean I'd rather get along with my neighbors than not. And you know, perhaps we could all come to, you know, agreement with my issues, with noise.

Bob Fink: Now you understand that this is everything other than the size of the lot has to do with the planning board's special permit use the planning board controls. First of all, planning board doesn't have to permit it. Okay? Just special permitted use. Secondly, noise, activity, hours, everything is controlled by the planning board.

Joe Pillmeier: I understand. I'm just, you know, wondering where this all fits in, how, this all ties together. I'm new to this type of stuff. You know, this is my first meeting ever. So, you know, I apologize for bringing up issues that don't pertain to this, but I'm just trying to you know, be reasonable be you know, whatever.

Chairman Jansen: But aren't you talking about how the activity is run as opposed to just the acreage?

Joe Pillmeier: I am and I apologize for that. You know, outside, it's, it's probably not the time or place, but you know my house is right there, I mean...

Diane Bramich: Is it in this picture?

Chairman Jansen: Where is your house? Where will your house be on this, make a little "x" where your house is.

Joe Pillmeier: Just, well, this pic is beside here. My is right here. And maybe I am a little too close.

Diane: Can you see it here?

Joe Pillmeier: Yeah, well, absolutely, ma'am, absolutely. Right here.

Diane Bramich: Okay.

Chairman Jansen: Okay.

Joe Pillmeier: Thank you.

Chairman Jansen: Really, I don't think it would be feasible for you to convey any property. Just looking at it, I don't see how it would fit in with zoning.

Joe Pillmeier: Well what can I say? I don't want to beat a dead horse and be a pain. But I just wanted to say I don't think he's got enough land to do what he's doing there.

Diane Bramich: I have a question.

Joe Pillmeier: Yes ma'am.

Diane: This is what we're talking about. What is this?

Joe Pillmeier: That is my barn.

Diane: That's your barn?

Joe Pillmeier: Yes ma'am.

Bob Fink: What do you do in your barn?

Joe Pillmeier: I store my kids four wheeler, basically my wife's old furniture that I'd love to get rid of. Not much, it's storage basically.

Chairman Jansen: All right, that's it.

Joe Pillmeier: Thank you so much. I appreciate it.

Chairman Jansen: Anyone else for the public that wants to address the application, if not I'll close the public hearing. Mr. Fink...

Bob Fink: Alright, David did you know you have to get three permit votes, whereas if there were five people here, which usually there are.

Mike Pillmeier: you would need three to five?

Bob Fink: There are 3 out of 5 members this evening. If one person doesn't vote for it, that's the end of it. You have your choice. You can come back with a vote next week or next month. I'm sorry.

Mike Pillmeier: I didn't hear what you said, Mr. Fink.

Bob Fink: You need three positive votes to get your variance.

Mike Pillmeier: Okay.

Bob Fink: There are only three people here.

Mike Pillmeier: Okay.

Bob Fink: If you don't get all three, you lose, you don't get your variance. Whereas if there were five people here, you'd still need three. But now it would be 3 out of 5.

Mike Pillmeier: Gotcha.

Bob Fink: Obviously the odds would favor you the more people than three out of three.

David Getz: Just to follow up on the noise issue that the father mentioned. The Planning Board has the same concerns and we have a site visit with the, to take a look at those things. Can we sort of take a strong poll and see?

Bob Fink: No.

David Getz: So your suggestion is to come back next month?

Bob Fink: No. No. It's just, it's your option. It's your option.

Mike Pillmeier: Okay.

Bob Fink: And you'd really just be coming back for the vote. There'd be very little presentation. The absent members would read the minutes. They might have a question or two and then there would be a vote.

Diane: That's the only thing we're doing is voting. We're not voting on buildings or anything.

Chairman Jansen: No, just acreage. It's just acreage. 30% reduction.

Mike Pillmeier: Well I can see your point where you're 3, I could get shot down tonight.

Bob Fink: I'm sorry?

Mike Pillmeier: I could get shot down tonight.

Bob Fink: You could next month too, but...

Mike Pillmeier: Right.

James: You can get three out of five,

Mike Pillmeier: Yeah.

Bob Fink: That's your option.

Mike Pillmeier: Is there an appeal process?

Bob Fink: Certainly is article 78, decision within 30 days of when it's filed and you spend the next, well takes six to eight months to get a decision, then of course you can appeal the decision and that goes before the Supreme Court.

David Getz: We're better off.

Bob Fink: Does it really matter? When are you going back to the planning board?

David Getz: We don't have any, we don't have a date set, I mean they basically said come back.

Bob Fink: I mean if you're operating already.

David Getz: Yeah.

Bob Fink: So it's not as though you're building something or something's moving in.

David Getz: No

Chairman Jansen: And you don't have to come from back from Florida. He can represent you.

David Getz: Yeah. Right.

Mike Pillmeier: Yeah. We'll wait,

Diane Bramich: It'll be a four man board next month; I will not be here.

Chairman Jansen: Still better. Still better.

Diane Getz: Just so you know.

Mike Pillmeier: But are we sure before? We don't know that either.

Chairman Jansen: Well we don't know that either. We expected four people here tonight but...

David Getz: We'll wait. Is there any additional information we'd like to have in the meantime?

Chairman Jansen: Thank you.

Chairman Jansen: We will hold over this application to the October 24, 2022 ZBA Meeting.

PUBLIC HEARING OF Joseph Tomczak & Laura Krill - for property located at 364 Liberty Corners Road, Pine Island, New York and designated on the Town tax map as Section 1 Block 1 Lot 36.3 and located in an SL District for a variance of Section 280-a of the Town Law allowing access for a single-family dwelling over a private road.

Representing the Applicant: Joseph Tomczak & Laura Krill, Applicants.

Chairman Jansen: Okay, next item on the agenda is Joseph Tomczak and Laura Krill for property located at 364 Liberty Corners Road, Pine Island, New York. Designated on the Town tax map as Section 1 Block 1 Lot 36.3 and located in SL District for a variance of Section 280-a of the Town Law allowing access for a single family dwelling over a private road. Please identify yourselves for record.

Laura Krill: Hi, I'm Laura Krill

Joseph Tomczak: Richard Krill

Joseph Tomczak: I'm Joseph Tomczak

Chairman Jansen: Okay. So briefly tell us about this access.

Joseph Tomczak: The access from our living quarters has a lot of rock at the corner of road and that's without even getting it blasted out to even get the driveway to start from the three corners. And then there's about five or more yards of trees then more rock that has to get blasted out and we'd rather not change that whole landscape. We put it from Kelly Lane where you turn left onto in order to have that access there. I have these pictures.

Chairman Jansen: Any questions in the meantime?

James Mehling: So the pictures that you submitted to the board, the last picture shows a back pile of...

Joseph Tomczak: That was for each list from the all the, the pretests and all the rock tests that we had to do. Cause we couldn't, it's full of rock everywhere. So we had to do as many tests as we could because the whole place is rock.

James Mehling: Welcome to Orange County.

Joseph Tomczak: Yes. That's <inaudible>

James Mehling: Okay, got it. Thank you.

Chairman Jansen: Let me open it up to the public. Is there anyone that has to, come address this application, please come up here and give us your name for the record. Speak up so she can get it.

Chairman Jansen: Go ahead,

Lloyd McCalsky: I want know whether my property joins it. I have problems already I'm going through with them. I want know where road they're gonna have on the Kelly Road and where I have the property on the other side of the stone wall.

Chairman Jansen: To the right or to the left from Kelly Lane?

Lloyd McCalsky: At the very end, I'm down by the Bierstine farm.

Chairman Jansen: Okay. Alright. So it's across the street then?

Lloyd McCalsky: Yeah. Kelly Lane.

Chairman Jansen: Okay, well they're not coming that far.

Lloyd McCalsky: That's what we want to know is where the right of ways are gonna be. Because if it's just gonna be down to Kelly Lane, no problem, but if it's gonna go across.

Chairman Jansen: That's it's, to Kelly Lane. This is where the road is and it goes to Kelly Lane here. So your property is here.

Lloyd McCalsky: Yeah, this is <inaudible> here.

Chairman Jansen: This is what they were requesting.

Lloyd McCalsky: all as long as they're not on the Bierstine Lane then.

Chairman Jansen: No.

Lloyd McCalsky: All right. I have no problem long as it ain't on the Bierstine lane.

Chairman Jansen: Thank you. Anyone else?

Bonnie Nolan: My name is Bonnie Nolan. I'm directly across the street for the proposed driveway that's going in.

Chairman Jansen: Yes.

Bonnie Nolan: And what I would like to first and foremost, my main concern is that all the people that live on Kelly Lane, which is a private road,

Chairman Jansen: Yes

Bonnie Nolan: They have it in their deeds that they have access to that right of way. Everybody on that street was not notified. So I am protecting everybody's rights that live on that street. The only map, the only thing you had to do was go within 300 feet of the proposed, you know, property. And I feel that everybody on that street should be represented. I really do. Cause it's their property rights. Because you're gonna have all the traffic coming up and down a private lane. You're gonna have the Amazon trucks, you're gonna have you know, FedEx and everything else. And there's no turn around at the back, the end of Kelly Lane. So basically I move my car way over and they basically pull in the back of, you know, in my driveway or on Richard <inaudible>'s property, which is directly next to me. So really the turnaround for all these vehicles, the box trucks, is an issue.

Chairman Jansen: Proposed.

Diane: That's proposed, Where are you at?

Bonnie Nolan: I am directly across street at the end of Kelly Lane. Kelly Lane ends before my property.

Chairman Jansen: How many people are on Kelly Lane?

Bonnie Nolan: Let me see. 1, 2, 3, 4, maybe about seven houses.

Chairman Jansen: So this would be number eight, is that right?

Bonnie Nolan: Oh yes. But the road is maintained by the property owners. Everybody does their own frontage. We have been living up there for 40 years.

Chairman Jansen: Is there HOA homeowner's?

Bonnie Nolan: No, there is not.

Chairman Jansen: So you...

Bonnie Nolan: We never had a problem with it before. I maintain part of Mr. <inaudible>'s property which kind of coincides with my driveway.

Chairman Jansen: The road looks like it's in good shape.

Bonnie Nolan: Yes, because I pay for it, I maintain it, I pay the snow plow and I fully maintain the property that's in front of his proposed driveway. Now I don't want to really go into detail, I don't want to be voted on, but I think I need legal counsel because he's, in order to gain access to his driveway, Kelly Lane ends at the telephone pole before my property. The legal tax map states it, I went over this many a times with the building inspector and it ends at the telephone pole. So what the road you're looking at in front of my house is not Kelly Lane, it's my driveway. It's access to my driveway. That's the problem.

Diane Bramich: It has to be an access to that piece of property that they're going to build on.

Bonnie Nolan: No, it's not. It's Richard Tomczak's piece of land I think. I went up to the county...

Bob Fink: This is the subject. So that's why they're here. There is an access way.

Bonnie Nolan: Okay.

Chairman Jansen: But now they're looking to this new lot.

Bonnie Nolan: So they need to...

Bob Fink: To come out this way.

Bonnie Nolan: Right, okay. So they want, they can come in here.

Bonnie Nolan: His access and these, the plan...

Diane: if I was stand by the planning board back in whatever....

Bonnie Nolan: (Opening a map) I needed it bigger, I couldn't see it. This is his access.Now, whether or not he can get that way with all the rock and everything, I don't know. But this was approved as a building law with this access. Now apparently this guy over here, <inaudible> apparently is doing away with some kind of easement, which I don't know legally if he can do that. Once it's approved.

Chairman Jansen: I have a question for the applicant when everybody else is finished,

Bonnie Nolan: But these are my main concerns. Everybody was not notified, number one. He would have to drive across my personal property

Chairman Jansen: What you're saying is everybody on the lane wasn't notified, but

Bonnie Nolan: Exactly.

Bonnie Nolan: If it's gonna, like all this traffic is gonna be going over ther, not their property, but they have to maintain that piece of land as part of their house.

Chairman Jansen: Is there anybody you know of of course it was noticed in newspaper but has gotten wind of it, but just hasn't been able to come in here because of whatever and would like the opportunity to come in?

Bonnie Nolan: I don't know I did speak to another another resident from Kelly Lane and she had no idea what was going on. I kind of told her, you know, there's a meeting and blah, blah blah. And she says, Well, you know, I wasn't notified. And that's what she said.

Diane: The private road that you're saying is the entrance that stops at the new lot line, correct?

Bonnie Nolan: This is Kelly Lane. (Pointing on map)

Diane Bramich: okay.

Bonnie Nolan: This is my house. 14.1. Tax map, Kelly Lane ends. In this little strip in here is Richard Tomczak and Norris Tomczak's property and it wraps around; this is their property. So Joe Tomczak has no direct access to Kelly Lane without getting an easement off his dad's? He would need to, it stops here.

Bonnie Nolan: Yes.

Diane Bramich: And there's a house here.

Bonnie Nolan: That's me.

Diane Bramich: And where is the, where is the property they want?

Chairman Jansen: It's right here. They want to subdivide that. Oh, well that's one of the questions I have for the applicant. In fact,....

Bonnie Nolan: No, it says, I'm sorry. It it's 15. It's 15. He only the, maybe the corner of his property is on Kelly Lane. He has no road front on Kelly Lane.

Diane Bramic: This where's the...

Bonnie Nolan: I'm sorry, it's over here. Just over here. This is his property. This is Joe's property and this is Richard's.

Diane: So this is the property they want to get in on?

Bonnie Nolan: Yes. And they want to drive directly across my front yard.

Bob Fink: I don't see anything in my file that shows you have the right to use that lane.

Joseph Tomczak: To Kelly Lane?

Bob Fink: Yeah.

Joseph Tomczak: That's what we're trying to get at the variance toward to that.

Bob Fink: No, no, no. You can't get a variance to use something you have no right to use.

Joseph Tomczak: Wow.

Laura Krill: How did we go about that? What would the process be?

Bob Fink: Well, apparently there's an easement, Kelly Lane is an easement and presumably the easement is given to the lots and it's in the deed that they can use. I don't see anything in your deed giving you a right to use Kelly Lane. And we can't give you, the only thing we can do, and a 280a variance is what you're here for. The law says a lot, a residential lot has to front on a public road. If they don't front on a public road, but they front on some kind of a drive or something that allows them to get to the public road, then this board can grant an easement allowing them to get to the public road via a private way. But this, this board can't give you the right to use the private way. You've got to have a right to use it, and that would be in your deed generally.

Laura Krill: If it's not in our deed then?

Bob Fink: then you don't have a right to use it unless the um, I would say that all of the users of the right of way would give you that right.

Joseph Tomczak: Yeah. We did send out letters to the whole every 300 feet with our property.

Bob Fink: Doesn't matter.

Joseph Tomczak: Well, sorry, just to send that....

Bob Fink: And then doesn't it, real question is whether people say an objected or not objective. The fundamental question is do you have a right either by deed or separate written easement agreement that gives you the right to use Kelly Lane?

Richard Tomczak: Can I give him an easement?

Several speaking at same time...

Bob Fink: Everybody that has a easement right to use Kelly Lane would have to give you that. One person that has the right to use it could not give you the right.

Richard Tomczak: My good neighbor here has an extension on Kelly Lane.

Several at same time.....

Bob Fink: Please, please. You're talking to us. The whole question is does the applicant have the right to use Kelly Lane. End of story.

Richard Tomczak: Can I give him an easement?

Bob Fink: Do you have a right to use Kelly Lane? Is that correct?

Richard Tomczak: Yes.

Bob Fink: No, you could prefer to, what if I want to use it? You couldn't get me an easement. No, the answer is the only way he could get an easement would be from the holders of, all of the people that have a right to use easement would have to give that. Now, that's my opinion.

Richard Tomczak: Okay.

Bob Fink: You might want to talk to your own attorney. I have no doubt that my opinion is correct, but without showing you have a right to use it or all of the users who have rights to use it give you a right, that's the end of the story.

Richard Tomczak: Okay. So I'd have to get a lawyer and go through all the...

Bob Fink: No, no, no, no. The question would be is the simple question, you have a right to use the lane, could you give this gentleman the right?

Richard Tomczak: Right.

Bob Fink: And the answer is, as far as I'm concerned, no. No. But unless all, that's not gonna take an attorney, unless all the other neighbors agree.

Richard Tomczak: Unless all the other neighbors agree.

Bob Fink: Right. That's my opinion.

Joseph Tomczak: But she's not going to, she's not going to.

Bob Fink: My opinion, my recommendation is you speak to your own attorney and see if there's something that can be done.

Joseph Tomczak: All right.

Bob Fink: You can't rely upon me for legal advice. It doesn't matter even if Kelly Lane ran the whole length of the property.

Richard Tomczak: Yeah, but it does say right of way, all the way.

Bob Fink: Don't...No, no, no, no, no, no, no. Please. That's enough. If, you want to consult an attorney, okay, please do. That's my opinion to the board. And if you think there's a way around it, or perhaps I'm incorrect, you've got to speak to your own attorney.

Joseph Tomczak: Okay, All right. Thank you.

Laura Krill: If we don't go that route and we talk to everybody on the lane and everyone does agree like what paperwork...

Bob Fink: Well then what they would do is there would be an agreement filed. It's unfortunate that this subdivision was quite some time ago. This would never have, first of all it would always be a problem for you but now the planning board will not grant the subdivision on a private way without a homeowner's agreement. So you don't get into these issues about who's responsible for what, somebody at the end doesn't want to contribute for somebody that lives up at the very back. But that's not the issue here. The issue here is do you have the right to use, doesn't matter that it's titled the right way, you have no more right to use it than I do.

Laura Krill: If we got everybody to agree,

Bob Fink: Oh of course.

Laura Krill: Is there like a formality? Is there something...

Bob Fink: That you're gonna have to talk to your own attorney.

Laura Krill: Okay. That would be through the attorney as well.

Bob Fink: Yes.

Laura Krill: Ok

****Discussions between all

Bob Fink: No. You may not. I think my recommendation to the board would be to put this over a month to allow you to speak with an attorney and see if you wanna pursue your application or withdraw it, and of course you've got to notify Connie if you want to be on for next month or you wanna withdraw. And if you would just call the building department, speak to Connie Sardo, a couple days before the meeting.

Bonnie Nolan: That would be the planning board meeting?

Bob Fink: Sometimes it good not to continue.

Bonnie Nolan: Yeah, but you not letting me tell you what's going on and the whole problem.

Bob Fink: No. Don't you understand my opinion is they can't use it because they have no right thing. So why don't we stop there? That's the end of it.

Bonnie Nolan: I know, I know.

Bob Fink: Okay, thank you.

Bob Fink: So you let Connie know whether you wanna be on next week, next month, or you wanna withdraw your application.

Joseph Tomczak: And to, if I do, cause she gave me all the addresses for all the neighbors to send...

Bob Fink: No, no, no, no. Do that. No, you don't have to do that.

Joseph Tomczak: whatever address she gave me, I've got 15 receipts there.

Chairman Jansen: Yes, I have 15 receipts here.

Discussions among everyone

**Status pending; applicants to decide whether they will ask for a hold over or withdraw their application.

Chairman Jansen: We will hold this application over to the October 24, 2022 ZBA meeting to give him time to either hire an attorney or withdraw his application.

OTHER CONSIDERATINS:

1. ZBA Minutes of 8/22/22 for ZBA approval.

Diane Bramich: So moved.

James Mehling: Seconded.

Chairman Jansen: All in favor? (3-Ayes).
Motion carried.

Ms. Bramich makes a motion to adjourn the September 26, 2022 ZBA Meeting.

Seconded by Mr. Mehling. Motion carried; 3-Ayes.