

TOWN OF WARWICK
ZONING BOARD OF APPEALS

Members Present:

Chairman Jan Jansen

Attorney Jeremy Havens

Diane Bramich

Marc Malocsay

Chris Daubert

Jim Mehling

Mary Garcia, ZBA Recording Secretary

PUBLIC HEARING OF Sofiley LLC - regarding property located at 197 Glenwood Road, Warwick, New York, and designated on the Town tax map as Section 24 Block 1 Lot 36 and located in a RU district for an area variance for the construction of a 6' X 17' ft porch/deck addition to the front of the existing dwelling located 21' from the front property line, where a 75' setback is required.

Representing the Applicants: Thomas Sofiley, Applicant

Thomas Sofiley: Yes.

Chairman Jansen: Do you have your mailing list?

Thomas Sofiley: Yes.

Chairman Jansen: Hand that to the secretary and then please identify yourself for the record.

Thomas Sofiley: I'm Thomas Sofiley, the owner of the property. <inaudible> ...he looked like a lawyer. So yes, there was a porch on the house, but it was falling off so it wasn't drawn on by the surveyor. Same distance—6 foot out, that's it.

Chairman Jansen: Okay, so basically you're trying to restore...

Thomas Sofiley: Yeah, it's the same footprint. I actually really was doing the same footprint so I wouldn't have to be here. If I had known this, I just said to my daughter, I should have put a wraparound porch on because it wouldn't have encroached anymore towards the road and I'm still within the 75 foot setback. So hindsight was 20/20. I didn't know I'd be going this route, so I tried to keep it in the same footprint so I wouldn't have to be here.

Chairman Jansen: Right.

Thomas Sofiley: So that's that.

Chairman Jansen: Okay. Well, I mean...

Thomas Sofiley: That's fine. And, 21 feet sounds a little harsh. It's more like 41 feet, but the county owns 20 feet, as you know. So just so you have an idea.

Chairman Jansen: Do we have any questions?

Marc Malocsay: Not yet.

Chairman Jansen: Let me open it up to the public. Is there anyone from the public to address this application? Guess not. Public hearing is closed.

Attorney Havens: Would someone care to make a motion typing this application as a Type 2 action with no adverse environmental impact?

Diane Bramich: So moved.

Marc Malocsay: Second.

Chairman Jansen: Motion by Diane, seconded by Marc. Any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: And would someone care to make a motion granting the variance as advertised?

Jim Mehling: I'll make a motion.

Marc Malocsay: Second.

Chairman Jansen: Motioned by Jim Mehling and seconded by Marc Malocsay. Any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

PUBLIC HEARING OF Joseph Morstatt & Dana Nazarechuk - regarding property located at 17 Horizon Farms Dr., Warwick, New York, and designated on the Town tax map as Section 11 Block 2 Lot 13 and located in a RU district for an area variance for the construction of a 8' X 9' Hot Tub in the rear yard approximately 5' from applicant's existing well, where closer than 20' is not permitted.

Representing the Applicants: Joseph Morstatt, Applicant

Chairman Jansen: Your name was Joe, right?

Joseph Morstatt: My name is Joseph Morstatt, correct.

Chairman Jansen: Do you have any mailings?

Joseph Morstatt: Correct, yes. I also have one vacant residence envelope with a return address on it.

Chairman Jansen: Just briefly tell the board what you're trying to do.

Joseph Morstatt: In our community there's an architectural review committee, which puts <inaudible> to keep up with the integrity of the neighborhood. I met with them and they encouraged us to put it where that location was. It's about 5 feet, 5 1/2 feet from our existing well which is approximately 225 feet down. It's slightly uphill from where our existing proposed location for the hot tub is going to be. No septic issues, no further issues with anything else, just looking to do it. My wife suffers from psoriatic arthritis, so something to help her soothe that. And we're just looking to keep up with the aesthetics of the community as well.

Chairman Jansen: Okay. Any questions?

Diane Bramich: Yes. What are these? I see the hot tub. What are the two pillars at the end of the driveway?

Joseph Morstatt: I put that on the original application for the Building Department. We're looking to just put two pillars at the end of our driveway with lights at the end of it. Just decorative, 4 feet tall; 2ft x 2ft.

Chairman Jansen: I don't think you even had to do that, right?

Joseph Morstatt: Well I did ask, I wanted to just be safe and to double check with the Building Department did say that we needed to do that. I'm wondering, I don't know if that was because of the electric we're looking to put on top of it or what, but I included that in the application; it'd better be safe than sorry.

Attorney Havens: That's something within the jurisdiction of the Building Department. It's not the basis or reason for why it was referred here.

Joseph Morstatt: Okay.

Attorney Havens: It was referred here specifically based on the setback issue with respect to the distance between your well and the hot tub.

Joseph Morstatt: Okay.

Attorney Havens: I actually do have a question.

Joseph Morstatt: Sure.

Attorney Havens: If you can address for the Board what measures you're implementing for addressing the Health Department regulation that requires any sort of a pool or a hot tub, which falls within the definition of a pool. The regulation requires it to be 20 feet from any well, for your own protection.

Joseph Morstatt: Sure.

Attorney Havens: And if you could just address for the Board what measures are being implemented in order to mitigate your own potential health risks.

Joseph Morstatt: Yes, no problem. We are going to go put footings down. We're going to put on the outside 3 of the 4 sides, the 4th side being on the furthest away from the backside of the hot tub. We need to keep one side open for access for maintenance. We're going to do about the same height of the actual hot tub, which comes out to be just over 36 inches tall. We're going to put a wall around that with <inaudible> putting reinforced footings down below the frost line and wrapping on 3 of the 4 sides to protect it. And it's going to be on a pad that's just going to be 4 inches of reinforced concrete. Again, the well is uphill and any drainage will go downhill towards the street. I do have also for the record, 4 letters of recommendation from neighbors supporting it, if you guys would like.

Chairman Jansen: Any other questions, concerns?

Marc Malocsay: Just it's so funny being here for years and years and years. And recently we've probably had a half dozen of them in the last year on pools and hot tubs. I went to the building inspector and I asked him why and he said because that's what the requirement is. But usually there's a reason for it. So I'll reach out to the County just to find out why. But we couldn't come up with a reason that 5ft, 10ft, 20, 30ft from a well it's for safety reasons, for,... there doesn't appear to be.

Chairman Jansen: At one time, wells were not that deep and they were mostly hand dug wells and stuff like that. So you had the potential there of something coming out of there. And I think in this case, we're 225 feet deep and the well being uphill from the hot tub and particularly with the footing underneath it and the wall around it, anything that's going to come out of that hot tub is going to fall downhill.

Marc Malocsay: Yes; and I agree with it. And again, this is a relatively new development, so we know the well and the casing and all the other requirements, but again pools and hot tub within <inaudible> our Building Department couldn't give me a reason why that's there. So I'll just reach out to the County and see if there's a reason for...

Attorney Havens: I can actually identify the section of the Code that makes it relevant.

Marc Malocsay: Okay.

Attorney Havens: Two bases. Number one, New York State Department of Health requires that 20 foot separation distance between any swimming pool or an active well. Two, it's incorporated into Town of Warwick Code under a specific section related to wells. That's Code Section 159-4b7 four specifically expresses an area around any well-head shall be maintained as a clear grassed area, stone or gravel sloping away from the well for a minimum distance of at least 20 feet in each direction. And it says, no paving containing leachable contaminants such as semi volatile organic compounds in asphalt shall be allowed within 50 feet of the well-head. The whole basis and purpose of it is a concern about any kind of chemicals leaching through the dirt and down into the water supply that's being actively consumed, whether it be by the property owner or their adjacent neighbors. The idea is to protect the water supply. It's to prevent leaching chemicals from being close enough that they can leach through the soil and get into the water supply.

Marc Malocsay: And again, I can see that, especially with the older wells. With the newer well systems, I just don't understand how that's even possible. So it is very possible that in our Code and the second part that you read was carried on from something that might've been in 10, 20, 30, 40 years ago and just never changed. But I had the conversation with the well drilling guys that I know, and I asked him why. He said years ago the casing didn't go down into bedrock, in which case the casing only had to go so far. And he said then it was possible. But he said, today's standards, there's nothing that can get in from there. So on the Board of Health, I'll just see if their law referenced the older ones, because I would just feel more comfortable if an application like this one came before us and it's a new well, and we know that. And giving them a variance as opposed to an older well, and not giving the variance for the same reason that

there is a possibility of leach. So, I'll look into that and not that it's going to affect this one at all, you answered all, the precautions taken are great.

Jim Mehling: Not to mention the fact that the volume of water in a hot tub is significantly less than the volume of water in the average swimming pool.

Joseph Morstatt: The volume in this specific 8x9 is 615 gallons.

Marc Malocsay: Yeah.

Joseph Morstatt: Just over 600 gallons.

Jim Mehling: Significantly, awesome.

Marc Malocsay: Yeah.

Chairman Jansen: Okay. Any other questions? Public hearing is open. Is there anyone from the public to address this application? If not, I'll close the public hearing.

Attorney Havens: Would someone care to make a motion to typing this application as Type 2?

Chris Daubert: So moved.

Diane Bramich: Second.

Chairman Jansen: Motion by Chris, seconded by Diane. Any discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: And would someone care to make a motion granting the variance as advertised?

Marc Malocsay: So moved.

Jim Mehling: Second.

Chairman Jansen: Motion by Marc Malocsay, Seconded by Jim Mehling. Any discussion? All in favor?

Board Members: Aye.

PUBLIC HEARING OF 138 Pine Island Tpke, LLC/Tony Napolitano - regarding property located at 138 Pine Island Tpke, Warwick, New York, and designated on the Town tax map as Section 29 Block 1 Lot 74 and located in a RU district for an area variance for the construction of 3 additions to an existing barn, each of which measure 35' X 24'2", 20'10" X 18'6", & 35'6" X 45' respectively; creating a singular accessory building comprising 3,952 square feet, where a maximum of 1,200 square feet is permitted; and having a greatest median dimension of 80'6" where no more than 48' is permitted.

Representing the Applicants: Anthony Napolitano, Applicant & Sebastian Carlton, Engineer

Chairman Jansen: Please identify yourself for the record. And do you have a copy of the mailings?

Anthony Napolitano: Yes. Anthony Napolitano and I'm the owner of 138 Pine Island Turnpike.

Chairman Jansen: Okay. Now there's a lot of things have changed since we originally did this, right?

Anthony Napolitano: Yes.

Chairman Jansen: You want to just briefly inform the board of what's going on?

Anthony Napolitano: Well, first I think I owe the Board an apology. I did not realize that I needed a permit to take a structure down. So my original attempt was to file for a permit to put up an addition to the barn. I took my older 25x30 steel pole barn down with a couple of friends. I saved the wood and the steel, which still is on my property. And then when I filed these plans with the Board, they said, 'well, what's happened to your old barn?' I said, 'well, the old barn is down'. They said, 'you need a permit for that'. I did not know that. So I apologized, I paid that fine violation, notified my architect who said that we'll have to refile plans as the ladies in the office told me, which is what I think we're here to do, or at least amend plans.

Chairman Jansen: Questions?

Marc Malocsay: Not yet.

Chairman Jansen: Anyway, I believe because the advertisement was incorrect, that it has to be re-advertised. Isn't that correct?

Attorney Havens: That's accurate. Unfortunately the advertisement that was submitted, the '*Notice of Public Hearing*' was for an application to add 3 additions as was just recited and read by the Chair of the Board for expansion and adding 3 additions to an existing building that no longer exists. And therefore the application as presented can't be approved. Essentially, since the application was submitted, it can no longer be approved in the way it was presented because there's a fundamental difference between doing an extension of a building versus putting up a brand new building, even if you're using old parts.

Anthony Napolitano: I completely understand. It's my understanding that I'm here today, that we'll be resubmitting an entirely new application and plans.

Attorney Havens: So that being understood, I guess you can open the matter for public hearing and take comments.

Chairman Jansen: Alright.

Attorney Havens: And then we close the public hearing and take a vote.

Chairman Jansen: Take a vote on what? On the application, or...? I thought we could not approve the application anyways.

Attorney Havens: Ultimately it's going to end up having to be denied because it can't be granted as submitted.

Chairman Jansen: Alright. Public hearing is open; anyone that would like to address this application? Yes.

Shannon Kattowski: I would. I think it might just be...

Dianne Bramich: We need your name, ma'am.

Shannon Kattowski: Sure. Can I come up?

Chairman Jansen: Yes, please do.

Shannon Kattowski: I'm Shannon Kattowski. I live at 15 Distillery Road. I understand why this can't go forward, but I think it's worth having the discussion just while they have the opportunity to make changes if they need to, and they can do that before having to resubmit everything and then continue to drag it out.

Mary Garcia: I'm sorry, could I have your last name again, please?

Shannon Kattowski: Sure. It's Kattowski. K A T T O W S K I.

Mary Garcia: Thank you.

Tyler Folino: And I'm Tyler Folino.

Shannon Kattowski: This is my husband. So I've prepared <inaudible> for the Board, and the <inaudible> for the letter that we submitted.

Board Members thank Shannon Kattowski as she hands out her documents.

Shannon Kattowski: So we just passed out a packet of exhibits as well as the copy of the letter that we submitted to the Town last week, and a copy of essentially information that supports the argument that this sort of structure is uncharacteristic and other precedent applications that you could compare this to that appeared previously before this Board. Has everyone had a chance to review the letter that we submitted last week? Do you want me to read it aloud or are we okay to just kind of move on with other points?

Attorney Havens: If everybody's read it I don't think you need to read it out loud. You can just submit your letter as part of the record.

Shannon Kattowski: Yes, ok.

Anthony Napolitano: Could I trouble you for a copy of those, if you don't mind?

Shannon Kattowski: Yeah, absolutely. I have an extra copy of...

Anthony Napolitano: Thank you.

Shannon Kattowski: Here's the letter and then here's the other packet, and here are the additional figures as well. So really, the intent of the zoning ordinance for accessory structures in residential districts having a setback of five feet and rear and side yards is really based on the maximum permitted floor area and greatest meaning dimension of that structure. As you increase the floor area, traditionally the intent of the zoning ordinance is that the setback then has to also increase as well because you're taking into consideration the safety, the privacy, the overall wellbeing from a noise perspective, air quality perspective, things of that nature. Larger structures often mean having larger roof lines. They're just generally larger masses which is why they warrant greater setbacks from other structures. I think the use of this building is also relevant to the application because not only could the variances that they're requesting be substantial, but they may not actually be applying for all the variances that are required dependent upon the actual use of this structure. This is a very large structure. A 3,952 sq ft footprint is larger than actually most of the home footprints in the vicinity of this property, which you can see in that one packet that I provided that has both precedent applications that have come before this Board where

you have approved these area variances, just illustrating how much smaller they are, how they are actually significantly greater distance from existing neighbors nearby, as well as just showing again, the full substantiality that you have approved compared to this application. And then the other portion of that packet is just going through the homes that are in the immediate vicinity of 138 Pine Island Turnpike. Their building footprints, if they have any accessory structures, how large their footprints are, as well as the whole triangular area that's made up by Pine Island Turnpike, Jessup Road, and Distillery Road, any homes that had accessory structures within that vicinity. I also took the time to measure the footprint of those structures. And again, to illustrate that majority, the vast majority of those accessory buildings are less than half of what this applicant is requesting. And again, the accessory structure being 3,952 square feet, a footprint that's much larger than many of the primary dwellings in the area. It just kind of lends itself towards the fact that this mass is much more representative of a primary dwelling or a secondary dwelling that would have to adhere to higher setbacks, larger setbacks that are more related to those of primary dwellings.

Anthony Napolitano: I'm sorry, I don't mean to interrupt you. This is a barn, it's not a primary dwelling. This is a large storage barn for automobiles, some landscape equipment, a trailer.

Shannon Kattowski: Right. And a lot of the previous applications that have come before this Board for similar uses of that nature, 2000 sq ft, 2,500 sq ft. 3,952 sq ft is very, very large. A standard two-car garage with storage is 600 sq ft. So you can fit 12 cars.

Anthony Napolitano: Have you seen the plans or have you seen my plans?

Shannon Kattowski: I saw a site plan. The Building Department said that they didn't really have any plans for us to look at for the actual structure.

Sebastian Carlton: Can I interrupt? I just want to address some of the things you're saying. Yes, I understand when you're thinking of mass and size, but I think you also have to keep in mind this entire site is sloped. So the way the building actually sits, it's very inconspicuous. It is almost like, think of it as like three separate buildings in a way. There's a lower part where he's mainly storing cars, that's on the lower end of the slope.

Shannon Kattowski: So more square footage?

Sebastian Carlton: No, it's on the lower, it's included in the total square footage.

Shannon Kattowski: So is the lower part going to be a higher ceiling or is it going to be two separate levels?

Sebastian Carlton: No, it follows the slope of the land. What I'm saying is that it doesn't increase the square footage because you're talking about mass and the way it sits on the site. So what I'm trying to explain to you is that the building itself, the way it sits on the site, it's very inconspicuous as far as privacy. Because I think you mentioned things like privacy, how it is in relationship to scale of the context of maybe the neighboring buildings. I don't think this project in particular would lend itself to be imposing to the neighbors or to the characteristics. If you're storing excavators and you're storing heavy equipment, you're not doing that in a 2000 sq ft barn. You need the size of this structure. And on 16 acres, it's basically doing this, it's almost like limiting the footprint on the property itself of having to have to build three separate structures, which he could have done. I think if we want to talk about characteristics and how it impacts environment, that's worse than trying to squeeze everything into a footprint that works with the landscape. And actually, if you want to look at the plans and the building...

Anthony Napolitano: Back to your earlier point relative to square footage of the local homes, my home is 3,800 sq ft. The barn is I think 39 and change. So relative to my home on my property, it's roughly equivocal.

Shannon Kattowski: Well, you're actually not allowed to have an accessory structure that's larger than the primary building.

Anthony Napolitano: That I don't know.

Sebastian Carlton: Well, that's why we're here.

Shannon Kattowski: We have the documents; I can pull the code, but this is what I was trying to explain, right? So is this double height ceiling or is this down here, this is garage space and then this is additional garage on top?

Sebastian Carlton: This is garage space.

Shannon Kattowski: Our house is right next door to this. I know how the slope works because I have a walkout basement at the lower level. I'm also a professional engineer.

Sebastian Carlton: Okay.

Shannon Kattowski: So I do understand what you're saying.

Sebastian Carlton: Okay.

Shannon Kattowski: But what I'm asking is: Is this...

Anthony Napolitano: 9 foot ceiling.

Shannon Kattowski: ...one story or is there also storage space above?

Sebastian Carlton: This is nine foot and then this is his workshop.

Shannon Kattowski: Okay. So there's additional square footage beyond even the footprint of what you're requesting as well, because there's this square footage of this garage and then this upper level, which is the 3952 sq ft.

Sebastian Carlton: No, actually it's all, we added it up because for...

Shannon Kattowski: There's no way, because the dimensions add up to 3952. So the garage below is additional square footage on top of the 3952 that you're requesting.

Sebastian Carlton: No, I don't think so, I think we added it. We used the footprint to polyline and added it all up. We didn't...

Shannon Kattowski: So did I. So look, subtract the existing structure was I think, actually I have my notebook here.

Mary Garcia: I'm sorry sir, could I have your name, please?

Sebastian Carlton: I'm Sebastian Carlton.

Shannon Kattowski: So the existing structure that was previously there has been removed. The square footage of that was roughly 1100 sq ft. And then you added on 845, 385...

Anthony Napolitano: It was 600 sq ft.

Shannon Kattowski: ...and 1597. And so that totals altogether the 3952 sq ft.

Anthony Napolitano: The barn I took down was 20 by 30.

Tyler Folino: The drawing you represented to us shows a larger structure so that's a confusing thing to go off of then. Maybe...

Sebastian Carlton: <inaudible> large structure.

Tyler Folino: That's not 20 by 30.

Anthony Napolitano: All I know is there was a 20 by 30 pole barn when we took it down.

Shannon Kattowski: One of the figures when you look on the overlay also shows the existing structure that aligns with what you've drawn; that is not 20 by 30.

Sebastian Carlton: So this is directly from the survey.

Shannon Kattowski: Right, but this is not 20 by 30...

Tyler Folino: So then the barn <inaudible> even looking at that shape, it's an elongated rectangle. 25/30 is a pretty stout rectangle.

Sebastian Carlton: I would have to verify it exactly.

Tyler Folino: There's a basement level with the garage or the first level with the garage and a workshop and then a second floor on top of that with finished space?

Sebastian Carlton: It's just the attic space.

Anthony Napolitano: Yeah.

Shannon Kattowski: Okay. Well we're talking about significantly more square footage when you start incorporating the garage level. I'd have to refer to the code if the attic actually gets included, I guess since it's not necessarily finished, it doesn't. But again, this goes back to the fact that this is a substantial building that they're proposing. This is larger than most people's primary dwellings in this area. They're proposing this 10 ft, 10 inches off the property line. Our house is roughly 50 feet off the property lines because our rear yard setback. So there's going to be 60 ft between our home and this structure. When you look at these relative to each other, this is going to be essentially towering over our home; our home is a single story ranch.

Sebastian Carlton: Where's your home?

Anthony Napolitano: Behind the bamboo wall.

Shannon Kattowski: Right there.

Anthony Napolitano: So behind the thick bamboo wall, that's like...

Shannon Kattowski: In regards to the bamboo, if I'm being honest, that's been on our list to get rid of and install different trees because it's the running bamboo; it's very invasive. It's really encroaching upon our property and it's encroaching on the preserved wetlands that are behind our property. We bought the house three years ago; it was completely overwhelmed with raccoons and everything. We fully renovated the home and then we got married. So you can understand that our time and funds have been allocated elsewhere. But the bamboo has been on our list since the very beginning when we purchased the home. And in the 3 years that we've been there it is towering and not in an attractive way.

Anthony Napolitano: So I agree with you, and not to be contentious, but a significant portion of that bamboo is on my property, which I would not take down.

Shannon Kattowski: No, we would of course respect.

Anthony Napolitano: And with the <inaudible>, the clearance of the roof of my structure would not clear the bamboo. So I understand your point that you think you're going to have an unsightly structure from your basement view.

Crosstalk Shannon Kattowski and Sebastian Carlton

Anthony Napolitano: My point is I don't think you're going to be able to see the barn from the basement. And that bamboo is 65 feet tall, quite impenetrable, and only growing.

Shannon Kattowski: Well, I think we're in the <inaudible>, which technically restrains you to 25 feet as your maximum height permitted versus the typical 35 in the RE district. So that would be something else to take into consideration as well.

Sebastian Carlton: We'll look at that. But I'm pretty sure from based on the <coding?> side, it was 35.

Shannon Kattowski: But, and even as the bamboo exists today, we can still kind of see through in the area where this building is going to be located. So when we remove the portion that's on our property, we will still see this building.

Anthony Napolitano: Unless I could let it continue to run where it's overrun half of the driveway now. And there's no reason why I couldn't let it continue further up and then obstructing my view to your home when I come down my driveway.

Shannon Kattowski: Right. But between the building and our property is 10 feet. So even if it expands 10 feet, we can go back and forth about the bamboo. Even if the bamboo was to stay, that's not going to take away our concerns with the structure.

Anthony Napolitano: Okay.

Shannon Kattowski: And even as we've proceeded today, I'm seriously concerned with the discrepancies in your plans and the fact that you're actually requesting more square footage than I think you even realize at this point in time, the footprint of the building that you've proposed. And I have AutoCAD, that's how I prepared a lot of these figures; I measured it myself. That is 3,952 square feet when you start taking into account the existing grade and the lower levels; that's even more additional square footage than you're proposing. That 45 by whatever that portion addition, that's an additional 1597 square feet that you're proposing on top of the 3,952 square feet.

Anthony Napolitano: You measured it aerially? By drone?

Tyler Folino: I don't <inaudible>

Anthony Napolitano: No, you measured it aerially, by drone?

Shannon Kattowski: No.

Anthony Napolitano: Or no, you walked on my property,

Tyler and Shannon simultaneously: It's mentioned in the plans.

Sebastian Carlton: This is 45 by 35 <inaudible>.

Shannon Kattowski: Oh, and the plans just showed a bathroom.

Anthony Napolitano: But it's a in cinerary toilet there.

Shannon Kattowski: But there's a bathroom. So there's plumbing, which is even more furthering the argument that this should be classified as a guest house?

Anthony Napolitano: There's no plumbing in there.

Tyler Folino: There's a toilet and sink with no plumbing?

Sebastian Carlton: There is an in cinerary toilet, which doesn't need required plumbing.

Tyler Folino: But then what's the sink?

Sebastian Carlton: On the sink it's just if he has to do wash-up, which means he put a tank in there because it is a workshop.

Shannon Kattowski: So where does the <inaudible> go?

Sebastian Carlton: It's ash that you really just take it, you compost it.

Shannon Kattowski: Okay well I still think that's the definition of a guest house or even a accessory apartment or secondary dwelling. The bathroom is the component whether there's physical plumbing that requires a septic field or not. That's <inaudible> your use. This is not a garage.

Anthony Napolitano: Yes it is.

Sebastian Carlton: How...I mean,

Shannon Kattowski: ...How's it not a garage?

Sebastian Carlton: ...you can see it's not a garage, but it's...

Shannon Kattowski: Sure it has a garage. But the definition of a garage by the town of Warwick, and I'll read it out loud from section 164-22, "a garage used for storage purposes only and having capacity, not more than three automobiles, or not more than two automobiles per family house in the building to which such garage is accessory, whichever is greater. Space therein may be used for not more than one commercial vehicle and space may be rented for not more than two vehicles of others than occupants of the building to which such garage is accessory. Based off of that definition, this has multiple other incidental uses that are well beyond what is there.

Anthony Napolitano: Is there a town definition of barn?

Shannon Kattowski: There is...I don't think there is definition of a barn.

Anthony Napolitano: Because I would say this is more of a barn.

Shannon Kattowski: But if you want to say it's a barn, that's only permitted as an accessory use for a primary use of an agricultural use. Your primary use is not agricultural.

Anthony Napolitano: In time I plan to have animals and that's why I have several bays up top where I'm going to be able to store animal feed.

Tyler Folino: And your primary use is still a single family residence?

Anthony Napolitano: It was, yes.

Tyler Folino: Yes.

Anthony Napolitano: So this is not a single family residence, this is a barn and storage.

Tyler Folino: But a barn is not allowed to be an accessory use to a single family residence.

Anthony Napolitano: This is a language that I do not speak. So we could go back and forth and I don't want to beleaguer the Board's time and I don't want to speak on something that I'm not familiar with.

Sebastian Carlton: Yeah and I think this is why we're here seeking the size variance. This is why we're here to kind of present the project and get feedback from the Board. If we have to make certain concessions and certain things, that's what the Board is here to do.

Shannon Kattowski: Right. And so...

Sebastian Carlton: I think that to just look at the project and think that in terms of scale and things that's going to be towering over your project, I think that's a misconception.

Anthony Napolitano: And Sebastian, I don't mean to interrupt you. My intent was to build something that compliments the neighborhood and the surrounding environment. I was told that to put up anything greater than 1200 square feet, I need an architect and town approval, I understand that. Anything less than 1200 square feet, a footprint of less than 1200 square feet, do I need to seek the approval of the board?

Board Members: No.

Anthony Napolitano: So in theory, if I wanted to knock down the bamboo...

Attorney Havens: So long as it's not for commercial use.

Anthony Napolitano: Fair enough. It wouldn't be for commercial use. If I wanted to put up...

Attorney Havens: So long it's an actual accessory use to a residential dwelling.

Anthony Napolitano: Understood. If I wanted to put up three ugly cinder block structures with a steel roof that are less than 1200 square feet, in theory I could do that without ZBA's permission? I wouldn't. But in theory, that's something that could be done as opposed to hiring an architect, using the town builder, or building something pretty. I just want to know what I could do, in theory.

Attorney Havens: Technically, yes.

Anthony Napolitano: Okay. Thank you.

Shannon Kattowski: And you could do that. And we wouldn't have any opposition to that because three 1200 square foot buildings have significantly lower roof lines than one singular structure as you can even see from the plans that they submitted for the building permit. My concern on top...

Tyler Folino: There's a basement that's exposed and two floors on top of it. You said that it was built into the slope, but it's a full structure sticking out of the ground.

Sebastian Carlton: The entire structure's not sticking out of the ground, but most of the slope is...

Tyler Folino: I'm an architect, she's an engineer, we've seen drawings, we're not...

Shannon Kattowski: Our concern as we've continued this conversation, I'm even more concerned now because you're misrepresenting the full square footage that's even being asked here when you fully look at these plans. And in addition to that, I truly do think that you're misrepresenting the use; you're using very selective language to find loopholes in the Code so that you don't have to go through the Planning Board process of obtaining a special use permit for a guest house, which this is clearly much more closely related to. The whole, I can see it now, this building, this is something that you could one day finish, even without zoning permit approval. You finish it, you live there, no one has to know, or you go to sell it one day and then you have to come before the board retroactively to obtain a permit for finished living space that you've already put in there, it's not harming anyone. And then it gets approved because then the town gets put into this position where their hands are kind of tied. It's either take down this giant structure or we just have to permit the use.

Sebastian Carlton: Yeah but this is all supposition. This is all what ifs, this is not what's...

Shannon Kattowski: Not what ifs, the fact that your building is over 5,000 square feet when you take 3952 and add 1597 to it, you're well above and beyond. And that's not even concluding the attic.

Sebastian Carlton: <inaudible>.

Shannon Kattowski: No. You were here for the variance for the 3952 for three additions to an existing barn that was torn down.

Sebastian Carlton: Correct.

Shannon Kattowski: You tore down the barn in March, according to the department, you didn't even come before for the building permit until June. The only reason that you paid the fine and expressed the whole existing barn being torn down was because we submitted the letter saying that you tore down the existing barn and had to file a complaint form with the Building Department. When you tore it down in March, I didn't file a complaint form. I was like, this is his property, he can do whatever he wants. Okay, that's great. He wants to take down that unsightly structure? Good for him. He wants to put another thing in its place that's brand new? Good for him. But then when you come before with this monstrous mass of a structure that is significantly larger than primary dwellings in the immediate vicinity, then yeah, I am going to. When I go to obtain the one site plan that shows the dimensions of your building, and I say to them,

'the existing barn's not even existing'. And they go, 'well, they didn't have a permit for that. Can you please file out this complaint form'? Yeah, unfortunately my hands were tied and I had to file a complaint form. No neighbor wants to be in this position.

Anthony Napolitano: Well, and I don't want to be in the position of having unhappy neighbors. As far as square footage, this is why I retain people who don't do what I do. You don't see me in the operating room. I don't see you guys in front of the drafting table. Again, this is a language I don't speak, which is why I rely on my architect and my builder.

Shannon Kattowski: I don't really know if I have anything else to add other than what I've already said. We included the packet that has a significant amount of the precedent applications that have come before this Board dating back to 2018, all the ones that are publicly available online where you have granted similar variances. Again, the vast majority of them are nowhere near as significant of a variance as this application is. In instances where they were, they were a significant amount of distance away from existing neighboring homes. And I understand that right now, they're technically not before you for a setback variance, but the setbacks of accessory structures is under the provisions of the 1200 maximum square foot floor area. So I think once you're in <inaudible> that floor area, the conversation does need to be had regarding the setbacks from the property line being in excess of the minimum of 5 feet, that is permitted for your standard accessory structure. The way that the code is written, the intent is very clear that these accessory structures are sheds, detached garages, even. They are things that are significantly smaller in footprint area, which again is the vast majority of the applications that you have seen come before you. The other one, I took the time to look at all the adjacent properties, not all of them, but a very exhaustive list of all the properties within that triangle that's made up of Pine Island Turnpike, Jessup Road, Distillery Road, and I detailed out the square footage of the footprint of any accessory structure as well as the primary dwelling to truly drive home how significant this footprint is. I don't think that most people really understand how big, just a straight footprint of 3,900 square feet is; it's very large. And another, I think good example of how this should be considered is 41 Silo Lane. It's nearby the applicant's property somewhere near our property. It's currently for sale. There is an existing barn on the property. I believe that it's totaling 5,000 square feet. It was once used for I think horse stables. But there's the opportunity to finish a three-bedroom apartment on top of it. I think that's a good comparison to draw. That structure seems very relative to the structure that you're proposing here. I'm under the impression that building was permitted with the town as either a secondary dwelling or a guest house because that accessory structure is actually located on its own six acres separate from the primary house, which is how the entire code is written. When you are proposing a secondary dwelling or an accessory apartment on your property, it needs to be constructed in a way that it could realistically be subdivided out from the primary structure and be its own independent use. I really do think that that's very relative to what this is. This is a very significant mass and the square footage that you're representing is not the total square footage that you're proposing. And the roof lines are going to be obstructive to our property, even with the grade change because your main floor is equal with our finished floor elevation, relatively. So give or take a foot or two, and then you have a whole other high roof line with dormers above it.

Anthony Napolitano: So just to dumb it down, for those who don't speak PE and architecture...

Shannon Kattowski: Sure.

Anthony Napolitano: Your biggest issue is that you're going to see the roof?

Shannon Kattowski: My biggest issue is the entire mass of the structure containing...

Anthony Napolitano: I don't mean to interrupt you, if you don't mind give me a minute. I'm up here on the weekends, I'm a physician in the city. So I come up generally Thursday through Saturday. I don't have the time or the luxury to compare myself to the other properties. But what I am very concerned with is the aesthetic of the neighborhood. And for the small gap of you when you're coming down 138 and you

can look up my driveway, which is a private drive, you can see my driveway from the house. You do see a sloping downhill. The intent was to hire local people, local architects, and build something that looked like a home slash barn slash garage as opposed to just saving a lot of time and money plunking down three 1200 foot concrete block steel and pole structures because I think it would detract from the aesthetic of the neighborhood. A It's a beautiful street; it's a beautiful winding road. I wanted to maintain it. Taking down the barn, clearly that was my fault and my error. I haven't had time to measure or compare myself to other footprints and properties. But my thought was if I was going to build a barn, I wanted to build it once and I don't want to build another one. So I do a lot of enthusiastic gardening. The plan in the long haul will probably be, have a couple of alpaca in front of the house, I have fencing for that already. And I want to be able to house animals, store animals and the equipment that I use to maintain my garden and land behind the property. That was it in a nutshell. So all this is fairly new to me. And then I presume you guys will tell us how to proceed because I'm in unfamiliar waters.

Sebastian Carlton: Well I think...

Shannon Kattowski: I just want to say quickly, I don't have the time and the luxury to put into this. I've been up until two o'clock in the morning worrying, figuring out how am I going to express truly to the board my concerns and how significant and substantial this is. I have a very, very busy job.

Anthony Napolitano: I did not imply that you did not for one minute, madam.

Shannon Kattowski: You kind of did by saying that you're in the city working and up here on the weekends and don't have the time...

Anthony Napolitano: I apologize if that was misconstrued. That was not my intent.

Sebastian Carlton: I think we hear your concerns. Now it's up to us because we have to resubmit this anyway. Taking your concerns into consideration, how we can delineate, looking at your elevations, comparing it to this elevation, to show that it's not going to be imposing and it's not going to be something that is going to be an eyesore because if he had a building that he could have very well the portion of the building that you would see, he could have built a building that same size of that footprint with the same roof height and you would have to see the roof anyway.

Shannon Kattowski: The same roof height for a 1200 square foot structure, which is smaller than the overall dimensions of your structure, which would then...

Sebastian Carlton: But I'm saying a portion that would be 1200 square foot, you would see it anyway. So what I'm saying is that when we come back trying to delineate all that to kind of show the comparison, obviously you've had a lot of time to do this research and compare the stuff. I think I would be remiss to say that maybe on the next approach we'll look at all the other buildings and compare the square footages because I'm pretty sure this is not the largest barn in the area.

Anthony Napolitano: If you wouldn't mind providing us with that list, so we could do that?

Shannon Kattowski: Yeah.

Anthony Napolitano: So all the properties that you went to...

Shannon Kattowski: It's in the thicker packet—it's in this packet, and then there's some exhibits here. Who from the town would be responsible for determining what the use of this actual structure is? Anyone can come in and say that it's not actually a guest house, it's not actually an accessory apartment. But my understanding is once you have a bathroom, that's what really triggers that requirement. And so that's when we start talking about the different setbacks that are required and that would introduce the fact of a setback variance.

Attorney Havens: So with respect to the fact that you're envisioning installing a bathroom facility as part of the structure and you also mentioned the storage of an excavator and heavy equipment...

Anthony Napolitano: No, not heavy equipment.

Sebastian Carlton: It's personal, we're talking about one tractor to his...

Anthony Napolitano: Yeah, not heavy construction equipment.

Sebastian Carlton...because he's not in the construction business. This is all personal use equipment.

Attorney Havens: Okay. So I think to mitigate concerns of both, you were saying you're hoping this Board is going to give you some direction on how to move forward. To help mitigate some of the concerns and keep you from coming back three or four times, you're going to want to be able to articulate very specifically and in detail. I think you should submit along with your new application, submit the architectural drawings that show what your height's going to be to make sure that you're within the height limitations that are permitted, because if not, that'll be a separate variance that you would have to seek and explain. Provide an explanation as to why that's necessary in order to qualify for it. And with those elevations, also reevaluate. If her calculations are accurate and if it is in fact two stories in any one section here, then your neighbor's calculations of your square footage is probably right and it's not 3,200 and changed square feet, but significantly more if any one of these additions or the existing barn consists of more than one full story. So we're going to need to see the architectural drawings with elevation so that we can determine what the overall elevation is from the lowest level to the highest ridge. Given the extensive size of it, a sufficiently detailed description. I heard storage of excavator, heavy equipment, multiple cars, and a workshop. It would be helpful to avoid any further debate over whether it's permissible use or not, if you can articulate in your application in a supplemental document what exactly your intended uses are going to be, what kind of equipment is going to be stored there. If you're going to allocate or designate a certain area to storage of live animals or something like that, then you can specify that as well because there are zoning codes that limit what kind of animals you're permitted to have, how many, and so forth. So if we're going to grant you the variance, we want to make sure that we're taking all of those factors into consideration that what you're presenting is actually within permissible uses of the code...

Anthony Napolitano: Okay.

Attorney Havens: ...for residential property. You also have to keep in mind, and I know that you were talking about adding some farm animals and doing a little bit of farming. All of that's fine on a residential property, but I'm sorry, what was your name?

Shannon Kattowski: Shannon.

Attorney Havens: Shannon mentioned a barn being an accessory use only permissible in an agricultural district. It's not an accessory. A barn itself is not an accessory use to a residential dwelling. Some of the properties that you see have pre-existing barns like yours did and they can remain there because they were standing before the zoning code was passed.

Anthony Napolitano: Okay.

Attorney Havens: Okay? But building a barn on residential property for agricultural purposes would require a special use application. That's not a permissible use within a residential district if it's intended for agricultural purposes.

Anthony Napolitano: Okay.

Attorney Havens: And last August, the town of Warwick passed a modification to the zoning code to clarify because there was apparently a lot of confusion previously. They passed the zoning a modification of the zoning ordinance to clarify that there's only one primary use that's permissible on any given tax lot. You can't be residential and farming; you're either farming or you're residential. And that's what's going to

dictate what you're allowed to do on the property and what other rules you're going to be subject to. What is your primary purpose?

Crosstalk—inaudible

Anthony Napolitano: I'm sorry. If I'm not applying for an agriculture exemption, the plan was to have two or three pet alpaca.

Attorney Havens: Okay, that means agriculture. I'm just trying to help you. You said you were hoping perhaps the Board could provide you with guidance. I'm trying to give you details that will help answer a lot of questions that are going to be asked when you come back.

Anthony Napolitano: Okay.

Attorney Havens: So the more you can put into more detail you can put into the application, the less questions everybody's going to be asking and the less likelihood is that you're going to have questions and objections from other members of the public.

Anthony Napolitano: Understood. Thank you.

Shannon Kattowski: I also, just to add onto that, I don't remember off the top of my head, but I do believe that the storage or keeping of domestic animals, whatever the specific wording is for that permitted accessory use does have additional setback from existing residential properties. I want to say it's 150 feet. I could be wrong, could be misquoting that, but I do believe that there is an additional setback when you are proposing the storage of a structure for the storage of domesticated animals or livestock.

Diane Bramich: Do you have another copy of this?

Shannon Kattowski: Yes.

Diane Bramich: Please.

Shannon Kattowski: And just while we're here, like I said, no one wants to be the neighbor in this position. I wasn't excited for this or coming here with great joy to tear down my neighbor's hopes and dreams of what they could have on their property. In the packet with the exhibits at the very end we did provide two alternative locations that they could propose the structure that we really wouldn't be as intensely concerned about. One was up in the rear behind the primary structure. There is what appears to be an existing driveway already up to there. Sure it would require some additional tree clearing, but you already did some tree clearing in this area, so you should not have done that before having the permit if that was a concern. Alternatively, I understand if you don't want it up near your house and you have other plans for that land. The other option would be proposing it on the opposite side of the driveway that is a little bit further away from our house. So generally in the same distance off of the road and same general location along your driveway, just on the opposite side of the driveway. This way it's provided I think roughly 150 feet between our home and the accessory structure. It still would be within the primary building setbacks if this were to ultimately be considered a primary or a secondary dwelling or accessory apartment. But the property on the opposite side of 138 Pine Island Turnpike is currently for sale. It's vacant property. Ultimately I'm sure someday someone will purchase it, subdivide it into a couple lots for some homes. But the area directly behind where this accessory structure would be if it were to go there, would likely not be large enough to actually have any sort of home there because the way that the gas pipeline runs through and the access going up into there wouldn't really, I don't see there being, and again, with the primary setbacks for a home, I don't think that there's a realistic footprint or buildable footprint for them to put a home if someone in the future were to purchase that property. So I think that's a perfectly reasonable alternative location. Again, I understand that there's a little bit additional site work that would have to be done for that, but I don't think that it's significant enough that it would be that impactful to the project.

Chairman Jansen: Okay. Anyone else?

Attorney Havens: So in preparing your revised application, I'm providing you with some guidelines that's prepared by the New York State Department of State. Provide guidance for what we have to consider...

Anthony Napolitano: Okay.

Attorney Havens: ...what we're permitted to approve and what we're not permitted to approve, and under what circumstances.

Anthony Napolitano: Okay. That's helpful.

Attorney Havens: Alright?

Anthony Napolitano: I'll put something <inaudible>.

Chairman Jansen: Anything else that we need to do?

Diane Bramich: <inaudible>

Chairman Jansen: Is there anyone else that would like to address the application?

Female member of the public: No, she did great.

Shannon Kattowski: Thank you so much

Anthony Napolitano: Folks. Thank you for your time.

Attorney Havens: Do you have anything else you'd like to present?

Anthony Napolitano: No, I have to give you a great big list of everything I plan on storing in a barn or a garage or whatever we're going to call it. That's what I got from that. Anything I could possibly think of, now or in the future, we're in a really detailed lab. The more paper the better.

Attorney Havens: Elevate.

Anthony Napolitano: Elevate, yeah, that's his job. So he's on that. I have to come up with the what's going inside this. Got it.

Shannon Kattowski: Does anyone else need any copies of the stuff that we've provided?

Chairman Jansen: Okay, I'll close the public hearing.

Tyler Folino: Thank you.

Members of public speaking amongst themselves.

Attorney Havens: Excuse me; we need to finish the meeting. Excuse me, we need to finish the meeting.

Unknown: Yes.

Attorney Havens: You want to close the public hearing?

Chairman Jansen: Public hearing is closed.

Attorney Havens: Would someone care to make a motion to type this action as submitted as advertised as a Type 2 action?

Diane Bramich: So moved.

Marc Malocsay: Second.

Chairman Jansen: We have a motion by Diane, seconded by Marc. Any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? No.

Attorney Havens: Would someone care to make a motion denying the variance as advertised because the actual project doesn't meet the description of the application?

Diane Bramich: So moved.

Marc Malocsay: Second.

Chairman Jansen: Motion by Diane, Seconded by Marc. Any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.