

February 22, 2024

The Town Board of the Town of Warwick held a Hearing to Appeal the Revocation of Airbnb Permit for 5 Peach Tree Lane, Warwick NY, said public hearing was held on Thursday, February 22, 2024 at the Town Hall, 132 Kings Highway, Town of Warwick. Supervisor opened the public hearing at 7:15 p.m.

ATTENDANCE: Supervisor Jesse Dwyer
Councilman Floyd DeAngelo
Councilman Russell Kowal
Councilman Kevin Shuback
Councilman Thomas Mattingly

Attorney for the Town, John Buckheit

LEGAL NOTICE: The Clerk read the legal notice, which was duly published in the Warwick Valley Dispatch on February 14, 2024.
(Copy of this legal notice is printed at the end of these minutes.)

Supervisor Dwyer – I would like to open up the revocation hearing for 5 Peach Tree Lane any interested party please come forward and state your name.

Ashley Torre – Esq., Naughton & Torre, LLP. - So, our clients received the short-term revocation notice on January 16th, and it deals with a hot tub being on premises without a permit. Just some initial things on the notice itself. The code does require it to be served by hand delivery or by posting the notes on the door, and that wasn't done in this case. It also did not specify how to remediate the violation other than by filing the request for appeal, which we've done. My clients have also removed the hot tub that was in violation. They did that promptly upon receiving the notice. They were given a follow-up date of January 26th, so they did remove the hot tub. A few days before that, on the 23rd, the building inspector had verified that on the 25th. My clients since received a variance to allow the hot tub in the front yard, and this is really what stems from why they weren't able to get a hot tub permit in the first place, because of the location. So, they did obtain that, and they will proceed to getting a permit from the building department, but they have to resolve this revocation hearing before they're able to get that. We have reviewed the town's precedent. I know we've had some of these revocation hearings in the past, and it does seem that where the property owner is taking the right steps and resolving the violation, that the board allows the permit to continue and imposes a fine. So, we would ask that you do the same with this situation.

Supervisor Dwyer - So just a couple of things, and I appreciate you coming and making the comments. We did send a certified letter to the property owner and the card came back, so assume they got it.

Ashley Torre – So, they did receive it. I was just noting just the objections of the record.

Supervisor Dwyer – Duly noted. The other issue and the concern for us is that the hot tub was removed, and then they put it back and continued to rent without approvals, and we have 15 to 20 reviews of the hot tub being on the premises after it was said to have been removed. So, we understand that they may have gotten a variance, and after this hearing and after they get the permit, they can put the hot tub back if it's not back as it is now. But we do know, and the reason they're here today is because they put the hot tub back after they had removed it.

Ashley Torre - And I do understand that, and there was some miscommunication or some error on their part. They were under the impression that while the hearing for the ZBA, while that application was pending, that they would be able to have it back there.

Supervisor Dwyer – Very hard to believe.

Ashley Torre – Right.

Supervisor Dwyer – But that's okay.

Ashley Torre – Right away they did remove it.

Supervisor Dwyer - Yeah, so what we were going to consider, because we do believe that they should eventually rent again, and we don't want to hold them up. They did follow necessary steps by going to the ZBA. We were going to revoke the permit for one day and then allow them to reapply as if it's a brand-new application, submitting a new fee, which you could consider to be a fine, and a slight penalty. But it's essentially having the review process start from scratch. It will not take long to accomplish, but that is our way of objecting to not following the rules. We don't think it's too drastic. We're not looking to prevent them for six months or a year or other measures that we could possibly do. We don't think it's necessary in this case. But since there was that deception of putting the hot tub back, we feel that it was deception. It might not have been. It might have been oversight. I don't think that that's really a reasonable explanation. But whatever the case may be, we want the property to be re-inspected from scratch and a new application submitted to the town building department. So that's going to be our recommendation.

Ashley Torre- Is there anything other than a failed inspection that would warrant a denial of the permit?

Supervisor Dwyer- No. I think it would—I think everybody's on the same page that as long as we meet the inspection requirements and submit the fee, there shouldn't be any issue. We're not going to hold; the building department is not going to hold this revocation against them in their attempt to reapply.

Ashley Torre- Understood. Well, of course we'd ask that it not be revoked. We'd still go forward with the inspection and all of that, pay the new application fee, if possible, to not

have that revocation. Perhaps a stay of them not renting it while they await a new inspection would be reasonable.

Supervisor Dwyer - I don't know what kind of negotiation would occur. I don't think that that's really appropriate. I think we would recommend; I've recommended to the town board. It's really up to the town board how they'd like to proceed. But it was my recommendation that we revoke, which would initially it would create the new process of inspection and a new fee for the building permit.

Councilman Mattingly - I have a question for Ms. Torre. When they replaced the hot tub, because they, as you said, believe that while the ZBA was considering the variance, what did they base that on? Did they have any documentation? Or what made them feel that they could replace the hot tub?

Ashley Torre - No documentation, but they believed that they were able to locate it there while the application was pending, I believe, there were some discussions with someone in the building department.

Supervisor Dwyer - There's no way that they would have misled them to think that. And by simple fact that they got a violation and told that the cure to that violation is by getting a variance, the actual variance that has to tell anyone with a reasonable interpretation of words that they cannot do that until they get the variance. I just—I simply don't—I don't think it's accurate.

Ashley Torre - I understand the board's position.

Supervisor Dwyer - Okay, any other comments? Did you wish to make any other comments?

Ashley Torre - Just as fact, I believe you had mentioned that there were 15 or 20 reviews that had to be in there. I don't know when those are from, and I think that was—if that's really relevant as far as the...

Supervisor Dwyer - It just shows proof that they put the hot tub back. But you admitted that they put the hot tub back when they shouldn't have, so it really doesn't matter if we have reviews or not. The reviews are essentially they could have received violations for every day that they were in violation. What the reviews would show us is how many days they were in violation, so the fine could be significantly more than the \$1,000 permit fee.

Ashley Torre - And just to clarify, when you said revoked for one day and then they'd be able to reapply, would that be instantaneous? I guess if it was revoked and they could apply next week or?

Supervisor Dwyer - I'd imagine they could reapply tomorrow.

Attorney Buckheit - If the supervisor tonight denied the appeal, then there is no valid permit. So tomorrow, because there's no valid permit as potentially tonight's vote, they could reapply tomorrow.

Ashley Torre – Right, would that be though conditions that revoked for one day and allow them to reapply?

Attorney Buckheit – We would not have to condition it. Once it's revoked there is no permit. If there's no permit, you're in a position to reapply. There would be no period of time in which you're not allowed.

Supervisor Dwyer – We're not putting any language that says you cannot reapply within six months it's as if you don't have a permit at the moment.

Ashley Torre – I'm just concerned. You had said that this revocation wouldn't be held against their application, but I'm just wondering if there's some way to relay that and make that clear to them.

Attorney Buckheit - As a matter of law, the revocation would not be considered under our current building code in the determination of the application. So, they would be entitled to a de novo review of their application without any prejudice arising from the previous having been revoked.

Supervisor Dwyer - So for normal people who don't speak John's language, I would make sure that the building department does not hold the revocation against their new application.

Ashley Torre – Thank you.

Supervisor Dwyer – Okay.

Ashley Torre – Sure.

Supervisor Dwyer – All right. Are there any other comments on this situation? John, do you have a resolution drafted? I would like to make a motion that the short-term rental permit for 5 Peach Tree Lane be revoked effective immediately.

Attorney Buckheit – Excuse me, Supervisor. The motion would be that the appeal of the revocation be denied. It would be a motion to adopt a resolution denying the appeal of the revocation of the short-term rental permit for the property.

Supervisor Dwyer – But then how does the permit get revoked?

Attorney Buckheit – We already revoked it.

Supervisor Dwyer – Oh, right okay.

**#R2024-126 REJECT AND DENY APPEAL FOR SHORT-TERM RENTAL – 5 PEACH
TREE LANE**

Motion Supervisor Dwyer, seconded Councilman DeAngelo to reject and deny the appeal for the short-term revocation hearing for 5 Peach Tree Lane.

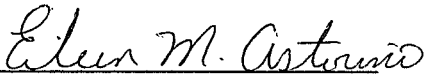
Motion Carried (5 Ayes, 0 Nays) Supervisor Dwyer declared this resolution duly adopted.

Supervisor Dwyer – You can stop at the building department tomorrow and reapply for the short-term rental.

Ashley Torre – Certainly.

Supervisor Dwyer – Thank you for coming tonight.

**CLOSE THE APPEAL HEARING: Motion Councilman Kowal, seconded Councilman DeAngelo to close the appeal hearing. Motion Carried (5 ayes, 0 nays) 7:28 p.m.
02-22-24 CP**


Eileen Astorino, Town Clerk

REVOCATION HEARING

PLEASE TAKE NOTICE that the Town Board of the Town of Warwick will hold a hearing regarding the Revocation of a Short Term Rental Permit located at 5 Peach Tree Lane, Warwick, NY 10990 on Thursday, February 22, 2024 at 7:15 p.m. at the Town Hall, 132 Kings Highway, Warwick, NY or as soon thereafter as the matter may be heard.

All interested persons will be given the opportunity to be heard.

DATED: February 14, 2024

**BY ORDER OF THE TOWN
BOARD OF THE TOWN OF WARWICK
Eileen M. Astorino
Town Clerk**