

TOWN OF WARWICK
ZONING BOARD OF APPEALS

Members Present:

Chairman Marc Malocsay

Attorney Jeremy Havens

Diane Bramich

Glenn Ehlers

Aaron Ubides

Bill Cerone

Mary Garcia, ZBA Recording Secretary

Katheryn Palmer & Ronald McManus - regarding property located at 18 Eden Hill Rd. Florida, NY 10921, and designated on the Town tax map as Section 7, Block 3, Lot 5 and located in the RU district for an area variance permitting the construction of a new detached garage 40' x 31' creating an accessory building comprising of 1,240 sq. ft. of Floor Area, where a maximum of 1,200 square feet is permitted.

Representing the Applicants: Ronald McManus, Applicant

Chairman Malocsay: Tell us about your application.

Mary Garcia: And your full name. Spell your last name please.

Ronald McManus: Mcmanus, M-C-M-A-N-U-S. Ronald.

Chairman Malocsay: Just tell us basically what you're doing and why the size.

Ronald McManus: I like to collect cars, putting cars in there.

Chairman Malocsay: The only thing before us is the square footage. Does anybody have any questions for the applicant? If not, I will open it up to the public. Is there anyone from the public that would like to address this application? Any questions?

Glenn Ehlers: Pretty straight forward.

Chairman Malocsay: You are literally one foot more.

Diane Bramich: It's an extra 40 feet.

Chairman Malocsay: I know, like I said, it's just not a lot.

Attorney Havens: The application qualifies as a Type 2 action under SEQR section. 617.5 (C) (12). Would somebody care to make a motion typing the action as a Type 2 for SEQR purposes with no adverse environmental impact?

Glenn Ehlers: So moved.

Diane Bramich: Second.

Chairman Malocsay: Motion by Glenn, Seconded by Diane. All in favor?

Board Members: Aye.

Chairman Malocsay: Any opposed? Motion carried.

Attorney Havens: Zoning Board should determine whether or not a site inspection is necessary.

Glenn Ehlers: I drove past it, you can't see it from the road.

Aaron Ubides: I did the same.

Chairman Malocsay: These were lots, I remember I actually worked on clearing some of the lots years ago for this development.

Attorney Havens: Okay. So there was a site inspection already conducted?

Chairman Malocsay: Yes.

Attorney Havens: ZBA to consider whether any use restrictions or other conditions need to be imposed in granting the variance or considering the variance.

Diane Bramich: There's nothing in it, it's just a workshop for your cars, right? No bathrooms, nothing else?

Ronald McManus: No bathroom, just electric.

Chairman Malocsay: Okay. We'll close the public hearing.

Attorney Havens: In considering the granting of an area variance, the ZBA is required to consider the five statutory criteria. Question number one, will an undesirable change be produced in the character of the neighborhood or a detriment to nearby property be created by the granting of the variance requested? The applicant states no. The reason given, "other houses in our development have detached garages and you can barely see our house from the road as well."

Chairman Malocsay: That is accurate.

Attorney Havens: The Board agrees?

Board Members: Agreed.

Attorney Havens: Number two, can the benefit the applicant seeks be achieved by some feasible method other than the variance? The applicant states yes. And the reason given that he can downsize the garage by 40 feet, but we believe the 40 foot will make a difference with space utilization. Does the Board agree?

Board Members: Yes.

Attorney Havens: Number three, is the requested variance substantial? The applicant states no. The reason given the building only exceeds 40 feet over the allowable limit. Does the Board agree?

Board Members: Agreed.

Attorney Havens: Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? The applicant states no. The reason given no trees or woodlands are being altered. The garage of being placed on flat grassland. Does the Board agree that it will not have any adverse impact on the physical or environmental conditions in the neighborhood or District?

Board Members: Yes.

Attorney Havens: Number five, is the alleged difficulty self-created? The applicant states no. And the reason given the applicant's attempting to add an additional 10 foot by 4 foot back strip.

Diane Bramich: It's over.

Glenn Ehlers: Yes.

Aaron Ubides: It is.

Chairman Malocsay: It always is.

Attorney Havens: Any further deliberations by the members of the Board?

Board Members: No.

Attorney Havens: Would someone care to make a motion granting or denying the variance as advertised?

Aaron Ubides: I make a motion to grant.

Diane Bramich: Second.

Chairman Malocsay: Aaron with a motion, Diane with a Second. Any further discussion? All in favor?

Board Members: Aye.

Chairman Malocsay: Any opposed? Motion carried.

Matthew & Kelly Santiago - regarding property located at 656 Union Corners Rd. Florida, NY 10921, and designated on the Town tax map as Section 7, Block 2, Lot 55.1 and located in the RU district for an area variance permitting the removal of an existing attached garage and the construction of a replacement attached garage 29'x 31'3" that reduces the side yard setback from 14.7' to 5.3' where 75' side yard setback is required.

Representing the Applicants: Matthew & Kelly Santiago, Applicants

Chairman Malocsay: Your names?

Kelly Santiago: Kelly Santiago.

Mary Garcia: And you are? Matthew Santiago.

Chairman Malocsay: Could you tell us a little bit about the application?

Kelly Santiago: We have a one car garage. We'd like to have a two car garage. It'd be nice for us to both have our vehicles inside.

Matthew Santiago: It's very small, her SUV won't even pull in to open the doors so with inclement weather it would be great for her to be able to get the kids out of the car in the garage.

Chairman Malocsay: Does anybody from the Board have any questions at this time?

Diane Bramich: Seems to be room, there's no place else to put the garage?

Kelly Santiago: We don't necessarily have room in the back. We have our septic and the leech field.

Matthew Santiago: Our leech field is directly behind the existing garage now.

Bill Cerone: And you'll be extending it backwards towards the back of the property, correct?

Kelly Santiago: Very small, but yes.

Bill Cerone: Is there anything behind you?

Kelly Santiago: Yes, there's a shed.

Bill Cerone: Any other <inaudible>?

Kelly Santiago: No.

Board Members discuss plans

Chairman Malocsay: Alright, if nobody has any questions then I want to open it up to the public. Is there anyone from the public that would like to address this application? Okay, we'll keep the public hearing open. It's going to come up in questions later, but after driving by and inspecting, what Diane was asking is there's a single car garage there now. With everything being there, it only makes sense that it goes there even though it's so close to the property line. We always look at the character of the neighborhood and all of the other properties in the area are very close to the property lines. This isn't really different from anything else.

Diane Bramich: When was the built?

Matthew Santiago: 1966, I believe.

Chairman Malocsay: Which almost predates our zoning.

Matthew Santiago: So I believe our house was the first on that road because they purchased the second parcel. That's why there's so much property on one side.

Chairman Malocsay: That would make sense. Alright, anybody else have any questions?

Glenn Ehlers: I have one question. How large is the garage that's there currently? I can't quite tell on the map square footage-wise or dimensional.

Matthew Santiago: I don't have the paperwork.

Glenn Ehlers: No, that's okay.

Matthew Santiago: I had a little Honda Civic in there and it barely fit in there. It's a very small garage.

Board Members discuss plans

Attorney Havens: While the Board is looking at this, I also wanted to point out for the benefit of the Board and any members of the public that may have any questions about it. When it was originally built, the dwelling was almost centered on the existing lot and a larger parcel was added to this lot in the back. And that's why the house is situated so far off to one side, because it was originally built on a much smaller lot. But now there's additional land next to and behind the house on the opposite side from the garage that was added to this parcel after the house was built.

Chairman Malocsay: The applicant already discussed the project, so we're going to potential environmental concerns.

Attorney Havens: I also wanted to point out that a GML 239 referral was made because the parcel is within 500 feet of County Road 41. A response was received from Orange County Planning on January 24th, 2025 with the county recommendation that this is a local determination with no further recommendations or suggestions. On the SEQR short form EAF, I just wanted to note for the benefit of the applicant question number 15, does the site of the proposed action contain any species of animal or associated habitats listed by the state or federal government as threatened or endangered? And the short form EAF does say yes and it identifies Indiana bat. I wanted the applicant to be aware that there are limitations for Indiana bat protection within the town regarding the clearcutting of trees. You're allowed to do it essentially from the Fall to the Spring, October 31st to March 31st. After March 31st any tree that's greater than 18 inches diameter at breast height, you'd have to get the Building Department to review it before you'd be able to cut those trees down in between March 31st and October 31st. So Zoning Board needs to consider SEQR and this action does qualify as a Type 2 action under SEQR section 617.5 (C) subsection (11). Would someone care to make a motion typing the action as Type 2 with no adverse environmental impact?

Diane Bramich: So moved.

Glenn Ehlers: Second.

Chairman Malocsay: Diane with a motion seconded by Glenn. Any further discussion? All in favor?

Board Members: Aye.

Chairman Malocsay: Any opposed? Motion carried.

Attorney Havens: Zoning Board needs to determine if a site inspection is necessary or has one already been conducted?

Several Board Members reply "I did", or "I stopped by" simultaneously.

Attorney Havens: Do you feel any further inspections are necessary?

Chairman Malocsay: No. This is not unusual for the houses and properties in that area being smaller lots in an older development.

Attorney Havens: The ZBA should consider whether any use restrictions or other conditions need to be imposed.

Chairman Malocsay: They're making the garage larger for a two car garage, I can't think of anything.

Diane Bramich: No.

Chairman Malocsay: We'll close the public hearing.

Attorney Havens: And so in considering the granting of an area variance, the ZBA has to consider a five statutory criteria. Question number 1, will an undesirable change be produced in the character of the neighborhood or a detriment to nearby property be created by granting the variance requested? The applicant states no. The reason given is the variance is in support of a renovation and improvement to an existing single-family home in a rural single-family home area. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Can the benefit the applicants seek be achieved by some feasible method other than the variance? The applicant states no. And the reason given, the project includes enlarging the existing garage to support a growing family. The current existing undersized garage is already located within the side yard setback. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Question 3, is the requested variance substantial? The applicant states no. And the reason: it's not substantial because we are improving the current existing undersized garage. The function of that side of the property remains unchanged that of an active driveway to an attached garage. Does the Board agree with the applicant that the variance is not substantial?

Chairman Malocsay: It's substantial.

Diane Bramich: It is substantial.

Chairman Malocsay: Numerically we're supposed to be at 75 feet. The circumstances that you have are different, but it is still a substantial variance.

Attorney Havens: Question number 4. Will the proposed variance have an adverse effect or impact on physical or environmental condition in the neighborhood or district? The applicant states no for the reason that the variance is in support of a renovation and improvement to an existing single-family home in a rural single-family home area. The renovation will be an aesthetic improvement to the area. Does the Board agree with the applicant that the requested variance will have no adverse effect or impact on the physical or environmental condition of the neighborhood or district?

Board Members: Yes.

Attorney Havens: Number 5, is the alleged difficulty self-created? The applicant states no for the reason that the existing attached garage was undersized as part of the original construction of previous owners. Does the Board agree with the applicant?

Board Members: It's always no.

Attorney Havens: Having considered the statutory criteria, is there any other further deliberations? If not, then would someone care to make a motion granting or denying the variance as advertised?

Diane Bramich: So moved.

Chairman Malocsay: Diane with a motion...

Aaron Ubides: Second.

Attorney Havens: Granting or denying?

Diane Bramich: Granting.

Chairman Malocsay: ...and Aaron with a Second. Is there any further discussion? If not, how do we vote?

Board Members: Aye.

Krista Witterschein-Volpe - regarding property located at 19 Ridgeway Loop, Warwick, NY 10990, and designated on the Town tax map as Section 18, Block 1, Lot 3.5 and located in the RU district for an area variance permitting construction of a new 24' x 28' two-car garage attached with a breezeway connecting such garage to the primary residence which will reduce the existing front yard setbacks from 71.1' to 43' on Ridgeway Loop, and from 80.7' to 52' on Morgan Lane, where 75' is required.

Representing the Applicants: Krista Witterschein-Volpe and Adam Volpe, Applicants

Chairman Malocsay: Your names?

Krista Witterschein-Volpe: Krista Witterschein-Volpe. This is my husband, Adam Volpe.

Chairman Malocsay: Could you tell us a little bit about the application?

Krista Witterschein-Volpe: We are requesting to build a two-car garage. Our current home does have an attached garage, but at some point the original owners of the house had finished half of it. So we cannot fit either of our cars inside of it. And due to his disability, it'd be a really big benefit for us if our cars could be covered in the winter. We're also going to attach it and have a ramp hopefully into the house eventually as a part to make it easier for him to get in and out of our home. As for the location, based on where our driveway is, where our house is, and also the elevation—we're at the top of the ridge, it would be very difficult to put it anywhere else that would also be functional in order to access directly into the house. We have a side-by-side that we use for plowing which is what we'd like to put under the breezeway.

Chairman Malocsay: Jeremy, before I open up to the public I'd like to address the potential environmental concerns.

Attorney Havens: Sure. On the short form EAF question number 15 regarding whether or not the site of proposed action contains any species of animal or associated habitats listed by the state or federal government as a threatened or endangered species the EAF says yes, Indiana bat. You're restricted from clearcutting trees with a 18 inch diameter breast height between October 31st and March 31st. After March 31st if you don't have it done and you have to remove any large trees, you're going to have to get approval with the Building Department. And question 17b, will the proposed action create stormwater discharge, either from point or non-point resources? If yes, question b: will the stormwater discharge be directed to established conveyance systems(runoff for storm drains)? The application states yes. And it explains that stormwater should run down current driveway to a storm drain hole next to the driveway. Can you just clarify that for the Zoning Board?

Krista Witterschein-Volpe: Yes. So the elevation of our property, our driveway is sloped down and right on the edge of Ridgeway Loop and Morgan Lane and our driveway there's an actual culvert there.

Diane Bramich: What is this?

Adam Volpe: There's a culvert there we'll curve it into it.

Chairman Malocsay: We're going to open this up to the public. Is there anybody from the public that wants to address the application? We're going to leave the public hearing open.

Attorney Havens: The ZBA needs to consider SEQR. This application does qualify as a Type 2 action under SEQR section 617.5 (C) subsections (11), (12), (16), and (17). Would someone care to make a motion typing the action as a TYPE 2 action with no adverse environmental impact?

Glenn Ehlers: So moved.

Chairman Malocsay: Motion by Glenn.

Cerone: Second.

Chairman Malocsay: Seconded by Bill. All in favor?

Board Members: Aye.

Chairman Malocsay: Diane, you had a question?

Diane Bramich: Yes. I don't understand where the breezeway is connecting the garage to the house.

Krista Witterschein-Volpe: I do have a picture. So it will attach basically where the side-by-side is that way it covers the breezeway and then the two-car garage is,

Diane Bramich: So you're putting up another garage?

Krista Witterschein-Volpe: The roof will basically extend all the way. <inaudible—several speaking> I do have a drawing.

Diane Bramich: So it's like just a covered port.

Krista Witterschein-Volpe: Yes.

Diane Bramich: To pull something in.

Krista Witterschein-Volpe: Exactly.

Chairman Malocsay: The next one is a site inspection. I'm familiar with the site, I know the properties well. And with the older development, this isn't uncommon for the houses and their proximity to the road.

Glenn Ehlers: Yes, Marc. That is the only suitable area for it to be built.

Aaron Ubides: I agree; I went up there.

Glenn Ehlers: There's no detriment to the neighborhood.

Attorney Havens: I did just want to point out for the benefit of the ZBA members that one of the requested variances is a variance from Town code 164-40 (1) (D) (2). That's the provision that specifies that a residential property that is a corner property that has frontage on two separate roads whether private or public has to be viewed as having two front yard setbacks, one facing each road. And that's why the public notice identified the individual variances being requested on Ridgeway Loop and on Morgan Lane with a 75 foot setback on each.

Chairman Malocsay: We've had numerous applications where we have two front yards and we understand that it's difficult to make that work. Usually one road had been added on later on as opposed to when the house was built, which is this case.

Diane Bramich: Is this going to have an entrance into the garage?

Adam Volpe: Yes.

Diane Bramich: It will?

Krista Witterschein-Volpe: Yes.

Diane Bramich: You want it so you can get in and out without having to use the stairs.

Adam Volpe: Without all <inaudible>.

Krista Witterschein-Volpe: Yes.

Adam Volpe: We currently have an elevator in the garage to get to the level of the house. But you can't pull a car in.

Chairman Malocsay: Before we close the public hearing consider use restrictions or any other conditions to be imposed? No? Okay, I vote to close the public hearing.

Attorney Havens: Question number 1, will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by granting of the variance requested? The applicant states no for the reason that the garage will match the current home. Does the Board agree with the applicant that no undesirable change will be produced in the character of the neighborhood or detriments nearby properties?

Board Members: Agreed.

Attorney Havens: Question number 2, can the benefit that the applicant seeks be achieved by some feasible method other than the variance? The applicant states no for the reason that setbacks were different from when the house was built. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Number 3, is the requested variance substantial? The applicant states yes with no further explanation. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Number 4, will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? The applicant states no with no further explanation. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Number 5, is the alleged difficulty self-created? The applicant states no with no further explanation. Does the Board agree with the applicant?

Board Members: No.

Attorney Havens: Any further deliberations?

Chairman Malocsay: Anything else from the Board?

Attorney Havens: None. Would someone care to make a motion granting or denying a variance as advertised?

Diane Bramich: So moved.

Attorney Havens: Granting or denying, Diane?

Diane Bramich: Granting.

Chairman Malocsay: Motion by Diane.

Aaron Ubides: Second.

Chairman Malocsay: Second by Aaron. All in favor?

Board Members: Aye.

Chairman Malocsay: Any opposed? Motion carried.

PUBLIC HEARING OF Louis Amend - regarding property located at 59 East Shore Rd, Sterling Forest, NY 10925, and designated on the Town tax map as Section 76, Block 1, Lot 99 and located in the SM district for an interpretation of the Town Code regarding whether the applicant's planned expansion plans for a 2nd floor addition are permissible under the Code for an accessory "cabin/bungalow" which may be a pre-existing, nonconforming building built on the property in 1950, and if so, requesting an Area Variance permitting such expansion. **Continued from the December 23, 2024 ZBA Meeting.**

Representing the Applicant: Louis Amend, Applicant

Chairman Malocsay: I want to start with a recap so that we're on the same page. I looked on the tax records to confirm roughly when the dwellings were built and for argument's sake we're going to say that one was probably in the '30s and the other was probably in the '50s. Both of them predate zoning.

Louis Amend: Do you know which one was which?

Chairman Malocsay: It really didn't say but going by the size, it would've been the smaller one first and then the larger one. But again, it's very difficult because they don't have that much detail. They have pictures but the pictures weren't taken back then, they were taken more recently for assessment purposes. So we know that we have pre-existing non-conforming. We know that we can expand those up to 15%. The question is, in an expansion on a pre-existing non-conforming, I'm under the impression that our Board, because they're not asking for a variance from that, but would the Planning Board get involved in an expansion of a pre-existing non-conforming or would the Building Department have the authority to do that?

Attorney Havens: No. So as a point of clarification going back to last month's meeting I was trying to explain that the application that was submitted by the applicant initially identified itself as an interpretation by checking off the box as such. But in the supporting letters and explanatory details that were provided by the applicant, they did make reference to a request for a variance. And so while the form wasn't necessarily filled out requesting both an interpretation and a variance in the check boxes on the application specifically, only in question number 7, the only thing checked off for the type of an appeal is an interpretation of the zoning ordinance. We did discuss last month I inquired with the applicant as to whether or not they would be seeking a variance because there was in the additional explanations, cover letters and so forth, a request for variance if that's in fact needed. Additionally, at the last meeting we wouldn't have had the statutory authority to make any determination because GML 239 referral would've had to been submitted if the applicant was in fact seeking an area variance or a special use permit and the applicant was specifically requesting both. So we followed up after that meeting with a Orange County department planning GML 239 referral. Response was received from the Orange County Planning Department on January 21st, 2025. And the County Planning recommendation was that this is a local determination and it does not appear that inter-municipal or countywide impacts would result if the Board finds that granting relief is warranted in this matter. So we have no further restrictions from the Orange County Planning Department. With respect to the specific question at hand, the Planning Board under the section of the zoning code that limits a preexisting non-conforming use to an expansion not to exceed 15% of the gross floor area, that's what the Planning Board is permitted to grant without requiring a variance. Anything beyond that 15% is why the applicant would be here seeking a variance before this Board because only this Board would have the authority to grant that.

Chairman Malocsay: And so that we're all clear on the Board, you do want to increase more than the 15% per the conversation that we had at the previous meeting. So my question is if we give a variance and the Planning Board does not allow for the 15% expansion...

Attorney Havens: Nope. If we grant the variance, there's no need to go back to the Planning Board for request of any expansion. The Planning Board would not have statutory or legal authority to grant anything more than 15%. That's why the applicant is before the ZBA because only the ZBA could grant that.

Chairman Malocsay: But they're the ones that can grant up to 15%.

Attorney Havens: Correct. And we discussed at the last meeting, we did the calculations on what that 15% would be. It was essentially about the amount of space for the staircase and nothing else. It would be 612 total square feet because there's currently 532. If you grant 15%, then it would be a combined total of 612 total square feet.

Chairman Malocsay: The reason that I bring that up is the Planning Board isn't involved and they're not saying that they can get the 15%. They go before the Planning Board, the Planning Board gives them the 15%, then they come before us and ask for more. If we give them more without going before the Planning Board, we don't have anything to increase the size from and to. We're assuming that he can take it to the max of 15% and then we're going to give a variance for X amount more square feet. Do you follow me?

Diane Bramich: I'm listening to you, but I'm thinking if they've come before us, because the Planning Board has told them to come here...

Chairman Malocsay: They haven't. They're not involved at all.

Diane Bramich: So why do we have to worry about them granting the 15%? Why can't we just grant them the variance for the amount of square footage they need? That's our authority.

Chairman Malocsay: It is but the difference between the Planning Board and us is the Planning Board and the expansion of 15% will look at a great deal of other things on the property. One of them being the septic. If they're going to make an expansion of up to 15%, they're going to want to make sure that the septic system is handling what they're doing now.

Diane Bramich: That's a County thing that's not ours.

Chairman Malocsay: It's not ours, that is correct. It goes to the Planning Board and then the Planning Board can give it to the County. It's not our area of expertise. We've never dealt with it before. I'm going to give you an example. The statement I believe last time was the holding tank was 1,250 square feet. The records indicating when it was pumped was only 1,000 gallons. So is it 1,000 gallons or is it 1,250? The difference is if it's 3 bedrooms, they need 1,250.

Diane Bramich: But if that's the only amount that was taken out, it doesn't mean that it wasn't a 1250 tank. It just means they took out 12.

Chairman Malocsay: Thus the Planning Board has its area of expertise that we don't deal with. So I'm going to go back to Jeremy again because you were going to say something.

Attorney Havens: We had discussed the septic at the last meeting and the plans show a 1 bedroom for this unit and there's 2 bedrooms in the other unit, which would be a combined 3 bedrooms. I wasn't aware of any new information from the Building Department. And based on the conversation that just took place it very well may still be in fact 1250, but I don't know that to be 100%.

Louis Amend: Last time I did present the last two pump-outs we had, it is 1250. I still have it if you guys want to look at that as well.

Chairman Malocsay: No because the records did indicate that they did explain where that could have come from. But you have it on the record that it's showing that it's a 1250 tank. So if the Planning Board were looking at this, does the Planning Board require a separate septic system or is it tied into the same one?

Diane Bramich: It's tied in now.

Chairman Malocsay: But are we grandfathering that too?

Attorney Havens: Well, if it's pre-existing non-conforming, it's not something that would be permitted today. But if it's pre-existing non-conforming and it meets the state statutory requirements for capacity based on the number of bedrooms, then I don't see it being an issue for us.

Chairman Malocsay: Okay. then before we go forward in answering the question you feel that it is not necessary for the Planning Board to allow up to a 15%?

Attorney Havens: Not at all. And the applicant did submit detailed architectural drawings that specify the exact square footage for the construction that's being proposed. So the footprint of the building where they're adding stairs where there's currently a small front porch, they'd be removing a small front porch and putting stairs there up to the second floor and building up above that. So our footprint is 23 x 29, 667 square feet, they would have a total floor area between both floors of 1,334 square feet of floor space.

Chairman Malocsay: One of the questions that we're going to go through is the size of the variance given, so it's pre-existing non-conforming, you're allowed to expand up to 15%. What you're asking for is a lot more than the 15%.

Diane Bramich: I don't think that this exceeds anything that we've done before.

Chairman Malocsay: I can't remember any applications where there's been a second dwelling on the property, though. The part that's pre-existing non-conforming is the fact that there's two dwellings on one piece of property, whether we call it a bungalow or a cottage...

Glenn Ehlers: An accessory dwelling, that's what we determined.

Attorney Havens: That it was in fact an accessory dwelling based on the terms and definitions under the zoning code.

Chairman Malocsay: There was something that was different when we labeled as an accessory dwelling which is allowed in that zone or not allowed because we're deeming it as pre-existing non-conforming.

Attorney Havens: So an accessory dwelling is not a permissible accessory within this particular district, which is the SM zone. But it is a special use, it is permitted as a special use in the TNO overlay district, which this property sits in. And so while on the Use and Bulk tables in the underlying zoning district, this would not be something that the Planning Board could grant a special use permit for, it is not only a permissible by special use permit, but encouraged under the TNO overlay district regulations.

Chairman Malocsay: It's still pre-existing nonconforming. But from the way you just described it, I missed something because it sounded like you said both that it was not allowed and the Planning Board couldn't give permission. But it's encouraged in that overlay for someone that wants to put a accessory dwelling.

Attorney Havens: Correct. In the TNO overlay district, it is permissible anywhere within the TNO overlay district because the TNO overlay district regulations promote denser population, denser construction, smaller lots, multiple uses of a given lot, et cetera.

Chairman Malocsay: And who has then the authority to do that? Does something like that have to go before the Planning Board for somebody to do that? Or do they go to the Building Department and pick up a permit for an accessory dwelling?

Attorney Havens: Because it's within the TNO overlay district, the Planning Board could grant a special use permit for an accessory dwelling in that overlay district even though it wouldn't ordinarily be permissible in the SM zone.

Diane Bramich: It's already there. It is not that they're going to build a new structure. The structure's there.

Chairman Malocsay: I agree with you. The issue though before us is the expansion—that's more than 15%.

Diane Bramich: But we can grant that.

Chairman Malocsay: We can grant it, but we have to go through the whole criteria. And it's a substantial variance for something that the Planning Board, if it was a new application, might say no because of X, Y, and Z.

Diane Bramich: If it was not preexisting.

Glenn Ehlers: No I disagree. I agree with you Marc, because it says 'shall not'. We can read some minutes back as to how it was termed.

Chairman Malocsay: Diane, maybe this will help clarify because it was such an important part that came out at the end of the meeting. I just want to make sure that we're all clear.

Glenn Ehlers: Page 14 in the minutes.

Diane Bramich: How many feet did you say it would end up being?

Attorney Havens: The square footage on the site plan is a total of 1,281 square foot.

Diane Bramich: So it's limited to 800, that's what you have from the last meeting. You said that it's going to be over a thousand square feet. It's limited to 800 square feet.

Chairman Malocsay: We can do the math again that sounds a little high. If the dwelling now is 532, increasing 15% of 532 doesn't bring us to 800.

Diane Bramich: You said 612 last meeting.

Chairman Malocsay: Yes.

Attorney Havens: The difficulty is there's two different provisions in the code that identify two different maximum sizes for an accessory dwelling depending on the circumstances and which section of the code you're working under. One is 750, the other is 800; that was the 800 reference.

Diane Bramich: So if the variance was to be approved, the variance would be for how many square feet?

Attorney Havens: So as presented in the architectural drawings, the architect has calculated first and second floor as to be constructed as 1,281 square feet of floor space. Subtract from that 532 square feet, it's a 749 square foot variance.

Chairman Malocsay: Which Diane, when we do the math and we say, is it substantial? We're over 100% larger than what's allowed.

Diane Bramich: But that's what we are here for.

Chairman Malocsay: We're here to give the minimum relief weighing out with the applicant and the detriment to nearby property owners, the zoning, all of those things in consideration. It's like if this was something that the Planning Board approved and they came to us for a variance to increase the size, I could see increasing it to the largest size allowed, which we came up with two numbers of 750 and 800 square feet—*not to exceed 800*. So now what they have pre-existing non-conforming, never mind the 15% increase in size, the *maximum* allowed for an accessory dwelling is 800 square feet. Sounds like we're giving two variances now. One for over 15% and one for over the 800 square feet that are allowed.

Attorney Havens: I need to correct the record. The increase in size would be 749 square feet. That would be the increase in size, what's being proposed. But that wouldn't be the variance because he's allowed an

additional 15% increase under the pre-existing non-conforming regulations, which puts him at 612. So the variance is actually only 669 square foot variance for floor area.

Chairman Malocsay: Which is still over 100%.

Attorney Havens: Correct. And then the other variance for total floor area over 800 is 481 square feet over the 800 limit.

Diane Bramich: Because the porch is being enclosed and making a stairway we have to count the stairway.

Chairman Malocsay: If it's enclosed, absolutely. Just like we count a stairway in any house.

Glenn Ehlers: What was the County's response to this application?

Attorney Havens: The County response was a local determination. And to summarize for you and the record, it does not appear that inter-municipal or countywide impacts would result if the Board finds that granting the relief is warranted in this matter. Because we couldn't do anything without the Orange County response last month we also never typed this for SEQR purposes which we should have done at the start of this meeting. After having reviewed the applicable provisions of the code because it is an expansion of an existing residential dwelling, it would qualify as a Type 2 action under SEQR section 617.5, subsection (C)(11) and (12). Would someone care to make a motion typing the action as a Type 2 action with no adverse environmental impact?

Diane Bramich: So moved.

Aaron Ubides: Second.

Chairman Malocsay: Diane with a motion, Aaron with a Second. All in favor?

Board Members: Aye.

Glenn Ehlers: What was the date on your response from the County on that one?

Attorney Havens: January 21, 2025.

Chairman Malocsay: We just want to make sure that if you're ending up with the variance that we did everything we're supposed to do and we still have to go read through the criteria, but it's it's a substantial variance. And we wanted to get to the point where we can say pre-existing, non-conforming was used that way since day one. But given the variance, we have to have a number so that we know how much of a variance we're actually giving you. One of the drawbacks is the 15% is in there for preexisting nonconforming. But because we said that it was an accessory dwelling it's limited to 800 square feet, that code stated 'shall not exceed'.

Attorney Havens: So in looking at the second floor plan, the other question that I have is there's two additional accessory areas. One is identified as a proposed office, the other is identified as a closet. The closet is approximately a 111 square feet measuring 13' x 8'6.5". The proposed office is approximately just under 88 square feet measuring 7'11.5 x 11'.

Chairman Malocsay: What I think he's saying is that you want to expand to the 1200 and change square foot but those rooms are larger than they have to be. You can't build a house I believe in Warwick that's under 1500 square feet. I know there's some changes that are coming about with our code. The point is that even if this is just shy of 1300 square feet compared to what's there, it's huge compared to the house that already sits on the property. I think that's why we're having problems with it as far as the size of the dwelling. I don't know if anybody needs any more information, if anybody wants to review on minutes. The public hearing is still open and we have our list of things to go through. Do you want move forward with the vote?

Diane Bramich: Yes.

Aaron Ubides: I think we can navigate through this.

Diane Bramich: I think we've gone through enough.

Glenn Ehlers: I don't want to vote 'no' on it today, but I would prefer if we did as a Board a site visit together,

Chairman Malocsay: I don't think we can together because it's a quorum.

Glenn Ehlers: If we schedule it together, I think we can. Is that true Jeremy? Can we schedule a special meeting and site visit together?

Attorney Havens: If it's publicly identified as a meeting.

Glenn Ehlers: Yes. We'd schedule a special meeting. And meet on site so we don't make a mistake. I'm not ready to move forward yet on it.

Chairman Malocsay: Diane seems to be in favor of it, but I don't know how the other Board members are. So I'm fine with anything that would help us all come to a decision.

Diane Bramich: Exactly what is the site inspection going to do that hasn't already been discussed? You're going to see two buildings on a lot that are preexisting non-conforming. You're not going to see anything different except the pictures that we have of it going straight up on all four sides and putting a second story on. I don't know what another site, I've been there, I've gone past it. I don't see a problem with it. I don't see a problem with it within the neighborhood that this is in. It's not going to make anything worse. It's actually going to make it a nicer neighborhood.

Chairman Malocsay: So when we look at the character of the neighborhood, you're telling me that there are other properties with accessory dwellings on them?

Diane Bramich: If you take that whole area, yes.

Chairman Malocsay: I don't know of any.

Diane Bramich: Maybe not a house, but accessory buildings.

Chairman Malocsay: No, no, no—dwelling.

Glenn Ehlers: Accessory dwelling.

Diane Bramich: This is already an accessory building.

Chairman Malocsay: That's why it's preexisting non-conforming. I agree with that, but I think we'd be hard pressed to find any in that area.

Diane Bramich: That have two houses?

Chairman Malocsay: Yes. When we talk about the character of the neighborhood, it is so important.

Diane Bramich: I don't think you're going to see a difference, I really don't.

Chairman Malocsay: But I think one of the things that he might be saying is he's not in favor of the granting of the variance, but if he goes and looks at it, maybe he might change his mind. I don't mean to put words in, but that's the way it sounded to me when you said that.

Glenn Ehlers: No, I agree. To go above the 800 square feet, I definitely want to do an additional site visit as a Board and let's see the character of the neighborhood.

Louis Amend: I'm farther away from all the houses than the actual houses are. You can barely see me from the road. And going straight up with the rooms, it's a double office. I'm just trying to stay in the area, do something I can afford.

Glenn Ehlers: Mr. Havens, if we did just the 800 square feet, would that even require us to give him a variance?

Chairman Malocsay: If I may, I believe it would only because we've deemed this nonconforming,

Glenn Ehlers: It's still small we'd have to go up to 800.

Attorney Havens: It would still exceed the 15% restriction. So we'd still have to grant the variance on the 15% restriction to reach whatever amount it is if it's over 632.

Chairman Malocsay: Do you have a problem with us getting together and going over taking a look at it?

Bill Cerone: No, I actually think since this is my first meeting—I wasn't here for the last meeting since I was just recently appointed, I'm sort of with Glenn where I'd like to personally take a look at it.

Louis Amend: By all means.

Chairman Malocsay: That way with us there, there can be some communication between us.

Attorney Havens: So long as it's publicly acknowledged as an official meeting of the Zoning Board. Pick a date and time and plan to be there.

Chairman Malocsay: Do we have to do it now because it's on the record? Or can we figure something out at a later date that we're not picking the date tonight at a public meeting. Can we pick it next week where we've all had time to look at our calendars?

Attorney Havens: So long as you give sufficient public notice on the Town website as to the fact that there's going to be a meeting of the Zoning Board for a special site visit in advance of the actual meeting itself.

Board members discuss scheduling a date and time for a site visit meeting and how many members will attend to which Attorney Havens informs Board Members the difference in a meeting as opposed to a quorum. Attorney Havens also informs Board Members of the Open Meetings Act as well as providing sufficient public notice via the Town website if need be depending on whether the site visit is a meeting or quorum.

Louis Amend: Would I need to be present for that?

Chairman Malocsay: We go by, we take a look. The only difference is that usually we're doing stuff from our cars because the biggest one is the character of the neighborhood. But in this particular case, we want to get out and walk around but we're not going to go into any of the structures.

Louis Amend: That's fine. Just if you needed to so somebody could be there.

Aaron Ubides: That being said, because it is a meeting you are more than welcome to be there, so understand that.

Louis Amend: Okay. Will I get an email or I would have to just follow the Town website and see?

Glenn Ehlers: It'd be a public notice.

Board Members continue discussing the date/time for the meeting.

Louis Amend: How does this work on my end after you have the meeting? Do I need to come back next month?

Chairman Malocsay: The public hearing is still open you're going to be on the agenda for next month. So at this time, does anybody else have any questions? With that said the public hearing is still open. I'll probably go out two or three times with others so that we don't have the quorum.

Louis Amend: Do you know the date for the next meeting?

Chairman Malocsay: It's the fourth Monday the month, the 24th.

Louis Amend: And they were always at 7:30, right?

Chairman Malocsay: Yes. So if nobody has anything else, do we have a motion for adjournment?

Glenn Ehlers: So moved.

Bill Cerone: Second. We

Chairman Malocsay: We have a motion by Glenn, Second by Bill. All in favor?

Board Members: Aye.