

TOWN OF WARWICK  
ZONING BOARD OF APPEALS

Members Present:

Chairman Mark Malocsay

Attorney Jeremy Havens

Glenn Ehlers

Aaron Ubides

Bill Cerone

Mary Garcia, ZBA Recording Secretary

Member(s) Not Present:

Diane Bramich

**PUBLIC HEARING OF Jayne Lawrence** - regarding property located in the SM zoning district at 551 Jersey Ave., Greenwood Lake, NY 10925, and designated on the Town tax map as Section 72, Block 1, Lot 147.1 for an area variance from the front yard setback requirements under Town Code §164-40N for an existing 12'x16' deck built in the front and on the side of the existing dwelling less than 10' from the front property line, where a 30' setback is required.

*Representing the Applicant: Jayne Lawrence, Applicant*

Chairman Malocsay: State your name and please tell us just about your application.

Jayne Lawrence: Jayne Lawrence. I didn't realize I needed a permit for the floating deck because I looked it up in New York State but when I came to Warwick they said Warwick has different laws.

Chairman Malocsay: Does anybody have any questions? I talked to Diane, she knows the property. I did not see the property. I went off of what was provided before us. Does anybody have any questions yet?

Glenn Ehlers: No, we went to Google Earth. You could see it clearly, there's just nowhere else to put it.

Chairman Malocsay: Is there anybody from the public that would like to address this application?

*Chairman Malocsay reads a letter that was hand delivered on March 31, 2025 at City Hall. The letter has no correspondent name or address.*

*To Warwick Zoning Board members. Thank you for reading. In consideration of the following information concerning above illegal wooden deck built three years ago without getting a permit, no permit was pulled because the person Mike, who built it, knew that it was legal to build legal to build one in the location in front, in front the dwelling. The deck is not 12 by 16 as reported in the zoning paperwork. But closer to 16 by 22, none of the entire deck is five feet from the, from his neighbor's property adjoining to the south. This is a, there is a fence there. So it's impossible to know that it was being built in violation of building codes and building code in face. The south side of the deck is literally on the neighbor's property, literally built on another person's property. The front extends way too far out into the street, causing dangerous driving conditions because it blocks the view of the driveway south of it. In the winter when heavy snow exists, the snow is piled up so high and not plowed to the right because the illegal deck is, is so far into the street, it blocks the view of the driveway south, causing dangerous conditions. There are many other reasons for not allowing this variance, including that there are no footings built on loose stone. Other main reason is that it takes away from the property value of all the residents in the direct area. It is a total eyesore and does not conform to any building codes at all. It is dangerous and outrageous to the Town. The Town has not acted professionally in three years of receiving this unsafe, illegal structure. It is literally built on the neighbor's property and into the street. Please have the wisdom and the insight to do what is right to fix this disgraceful problem once all, once and for all. Thank you. I am currently not in New York. Not in New York state to attend the meeting, nor are four other neighbors. All the neighbors want the structure removed. Thank you.*

Attorney Havens: So the applicant previously submitted an initial application a few months ago. In reviewing the application, we requested that the applicant submit a survey because it did appear from the documents that were previously submitted and Google Earth images that the deck may encroach outside the bounds of the property line. The applicant did in fact obtain and submit a survey in support of their continued application. The survey does show that pursuant to the survey, that the deck itself extends 2.8 feet east of the front property line into the right of way of New York State Route 210. And apparently it extends 0.6 feet south of the property line onto the adjacent neighbor's property. In light of the fact that the deck was built outside the bounds of the property line, the ZBA is legally without authority to grant the application. Unfortunately, there's nothing that they can do to approve it after the fact because it's built on property that doesn't belong to the property owner. So as a Town ZBA Board, nobody has the authority to grant a property owner the right to build on a public highway. So this Board doesn't even have legal authority to grant the requested relief. I do want to note for your reference since you can't get the relief requested, you're going to be required by the Town to remove it. How you do that, you might be able to work with the Town building inspector to see if you can keep some of it, but not all of it. I just want to note for the record that Town code section 164-61 regarding supplemental regulations in residence districts provides that section (A)(1) provides that an accessory building or structure such as a deck shall be located within or outside the parameters of the required side yard or rear yard provided that such building shall be set back five feet from any lot line. Subsection (A)(4) of the same provision says 'no accessory building or structure such as a deck pool or dock shall be located within the minimum required front yard.' So every property has a front yard setback that's legally required to be met. And you're not going to get approval for the deck within that front yard setback from the building inspector. But if you can work with the building inspector to hopefully find something that's more acceptable, he may say, 'I can't approve this', but you could come back. If you cut it back a certain distance, then you could come back to us and get a variance for some of the setback.

Jayne Lawrence: So I just have to set it back from the road. And what about the side where he's saying I'm on the fence?

Attorney Havens: Technically speaking, it's still a little bit more than just over half a foot onto the neighbor's property. That's going to have to be cut back too. But from looking at the from looking at the drawing, this is only a very small section of the deck here that is actually extending onto the neighbor's property. You cut off this whole from section here, then you may be able to get approval for it, but it has to be fully within your property if it can't be outside the bounds of the property line or we couldn't under any circumstance prove it. Additionally—and I will provide this to you for your reference—under the same provisions of the code, there is a provision regarding existing setbacks that states if 'two or more existing dwellings are located within 200 feet on each side of a proposed dwelling on the same side of the street and within the same block and same district said proposed dwelling need not have a front yard greater than the median setback of all existing dwellings'. What that means is if you have two houses on each side of your house within 100 feet of your house, you can look it up on the maps, then you can request a modified smaller front yard setback based on the median setback of all five of those houses. So you would take the five houses, what's the setback from their property line to the front of their house. And some of them are tiny, it's only a couple of feet, which would allow you to actually not have to remove the entire deck, just part of the front of it. Speak with the building inspector and let him know that you're going to take off the part that extends beyond your property and you'd like to resubmit an application. But you're going to have to specify how far back you're going. We can't dictate that here.

Jayne Lawrence: But he can by looking at it?

Attorney Havens: If you invite him out, he can help you figure out what might be acceptable.

Chairman Malocsay: And then what will likely happen is you will still need variances depending on the median depth with the other houses. As a building inspector, he has to go by the code. We have the ability to grant you that relief, but as long as he's content with what you're proposing and it's not on the neighbor's property and it's not on the road itself we can give the relief needed. Now with that said, I'm going to ask a question. legal advertisement, the variances that we'll end up giving are not as substantial as the ones that were legally advertised. Do you really want her to come back with a new application?

Attorney Havens: No, we can't approve it. There's no variance that we could grant.

Jayne Lawrence: So then there's no sense in doing it. I have to take it down.

Chairman Malocsay: No, it means that we can't give any variances with the legal advertisement that came before us. Until you speak with the building inspector, you're going to submit another application and the variance that you're seeking will be less than the one, if we could give you a variance.

Attorney Havens: We can't grant the variance you're asking because the deck extends beyond your property. So what you need to do is have the building inspector come out and see what his recommendation is as to what might be approvable. And you may still need to come back here for another variance; it depends on how far back you go. With the provision that I just gave you, if you go far enough back, you may not need to come see us. He could make that determination himself because he can interpret that code and identify what the median setback would be for the five houses in a row. But if you don't want to go back that far, then you may still have to come back for a variance, but within your property.

Bill Cerone: I don't think you have 30 feet to go. Is this your property?

Jayne Lawrence: Yes.

Bill Cerone: I know Jersey Avenue. There's no 30 feet there.

Jayne Lawrence: Okay. So then I can't have it?

Bill Cerone: You'll most likely need a variance because that's not 30 feet.

Attorney Havens: Correct. But the provision I gave her is a special provision. This is a GIS map image of the property. What she has is approximately 10 or 11 feet from the front of the property to the property line. But all the other houses are similar or closer. If you look at the second house, that's probably a 3' or 4' setback. So if you take a 3 or 4 and a 7 and 10 and another 10, you may end up with an average of a 6' setback that she would be able to get the building inspector to approve without coming to us.

Chairman Malocsay: It's very doable. I can meet one of the building inspectors to talk to them or go out to take a look at it too. Public hearing is open.

Attorney Havens: We have to type it for SEQR purposes before we can close it.

Chairman Malocsay: But we're going to have a motion that we can't act upon.

Attorney Havens: This application qualifies on as a Type 2 action under SEQR section 617.5 (C), subsection 12 and 16. Would someone care to make a motion typing this action as a Type 2 action with no adverse environmental impact?

Aaron Ubides: I'll make a motion.

Bill Cerone: Second.

Chairman Malocsay: Motion by Aaron, seconded by Bill. All in favor?

Board Members: Aye.

Chairman Malocsay: Any opposed? Motion carried.

Attorney Havens: Since the Board cannot grant the relief requested under these circumstances, would someone care to make a motion denying the variance as advertised?

Bill Cerone: I'll make a motion.

Aaron Ubides: I'll second.

Chairman Malocsay: Motion by Bill, second by Aaron. You have a motion and a second. All those in favor?

Board Members: Aye.

Chairman Malocsay: Any opposed? Motion carried.

**PUBLIC HEARING OF Ethan Shafran & Michelle Barone** - regarding property located in the RU zoning district at 2 Ridgeway Loop, Warwick, NY 10990, and designated on the Town tax map as Section 18, Block 1, Lot 82 for area variance from Town Code §164-40N for new construction of a one-family dwelling with a front yard setback of 74.5', where 75' is required.

*Representing the Applicant: John Shafran, Builder, and Ethan Shafran, Applicant*

Chairman Malocsay: Your names for the record.

John Shafran: John Shafran.

Ethan Shafran: Ethan Shafran, father and son.

Chairman Malocsay: Ridgeway Loop is newer, but for the character of the neighborhood, a lot of the homes went from 50 to 75 feet. So a lot of the homes are closer.

John Shafran: The road does curve a little but we should have made sure. There's a tiny portion that measured 74 and 1/2 so we're technically a little too close.

Chairman Malocsay: Does anybody from the public want to address this application?

Attorney Havens: Point of correction on the short form. EAF Question number 13a, does any portion of the site of the proposed action or lands joining or proposed action contain wetlands or other water bodies regulated by a federal, state, or local agency? The application says yes, but public records state none. So that's just an error in the application. I just want to note it for the record. Does the site of the proposed action contain any species of animal or associated habitats listed by the state or federal government has threatened or endangered? The EAF form says yes, identifying the Indiana bat. I just want to make sure that the applicant and the builder are aware of the tree cutting limitations that are imposed during the summer months for that protection. If you're going to do any tree cutting, you have to have the building inspector identify which ones you can or can't do between April 1st and October 31st.

John Shafran: Yes, I'm aware, thank you.

Chairman Malocsay: Generally in Warwick when the the foundation's in is usually when the surveyor comes back to do an as-built, is that when it was caught?

John Shafran: Yes. It was shortly after that.

Attorney Havens: This application qualifies as Type 2 Action under SEQR section 617.5C (11) (16) and (17). Would someone make a motion typing the action as Type 2 action with no adverse environmental impact?

Glenn Ehlers: So moved.

Bill Cerone: Second.

Chairman Malocsay: Motion by Glenn, seconded by Bill. All in favor?

Board Members: Aye.

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

Board Members: No.

Chairman Malocsay: Public hearing is closed.

Attorney Havens: ZBA is required to consider 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? Applicant states no. Reason given "Most structures on Ridgeway Loop are closer than 75 feet from the road." Does the Board agree with the applicant?

Board Members: Agree.

Attorney Havens: Question 2, Can the benefit the applicant seeks be achieved by some feasible method other than the variance? The applicant states no and the reason is the house is already under construction. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Question 3, Is the requested variance substantial? The applicant states no, required setback is 75 feet; structure setback is 74.5 feet. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Question 4, Will the proposed variance have an adverse effect or impact on the physical or environmental condition in the neighborhood or district? The applicant states no for the reason most structures on Ridgeway Loop are closer than 75 feet from the road. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Question 5, Is the alleged difficulty self-created? The applicant states yes, for the reason that the builder moved the house location. It's now in violation of the setback. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Any further deliberations?

Board Members: No.

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

Aaron Ubides: I make a motion to grant it.

Glenn Ehlers: Second.

Chairman Malocsay: We have a motion and second. Any further discussion? All in favor?

Board Members: Aye.

Chairman Malocsay: Motion carried.

**PUBLIC HEARING OF Ryan & Teresa French** - regarding property located in the RU zoning district at 25 Lower Hillman Rd., Warwick, NY 10990, and designated on the Town tax map as Section 22, Block 1, Lot 5.2 for an area variance from Town Code §164-40N for expansion of the front of a pre-existing one-family dwelling with a proposed front yard setback reduction from 32.1' to 28' where 75' is required.

*Representing the Applicant: Ryan & Teresa French, Applicants*

Chairman Malocsay: State your names for the record.

Ryan French: My name is Ryan French.

Teresa French: I'm Teresa French.

Chairman Malocsay: Tell us about the application.

Ryan French: So the house already has an existing front laundry doorway entry that was built 40 years ago and we're just trying to square off the house. Unfortunately in the front of the property it cuts a little bit diagonally. So we are asking for the 4 foot variance from 32 to 28 so we can square off the house.

Chairman Malocsay: Just for the record most of the houses in the area are on smaller lots and most of them at the time being built were much closer to the road. And then our zoning changed. And it seems like a substantial variance, but the truth is that all of the homes are exactly like that. So do any of the Board members have any questions before we open it up to the public?

Board Members: No.

Chairman Malocsay: Is there anybody from the public that would like to address this application?

Attorney Havens: So this application qualifies as a Type 2 action under SEQR section 617.5(C) subsection (11), (16) and (17). No GML 239 referral was needed. Would someone care to make a motion typing the action as a Type 2 action with no adverse environmental impact?

Glenn Ehlers: So moved.

Bill Cerone: Second.

Chairman Malocsay: Motion by Glenn, Second by Bill. All in favor?

Board Members: Aye.

Attorney Havens: The ZBA needs to determine if a site inspection is necessary.

Board Members: No.

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

Board Members: No.

Chairman Malocsay: Public hearing is closed.



Attorney Havens: In granting the area variance, the ZBA considers following five statutory criteria for consideration. Question number 1. Will an undesirable change be produced in the character of the neighborhood or a detriment in nearby properties be created by the granting of the variance requested? The applicant states no without further explanation. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Question 2, can the benefit the applicant seeks be achieved by some feasible method other than the variance? The applicant states no with no further explanation. Does the Board agree with the applicant?

Board Members: Yes.

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

Board Members: No.

Attorney Havens: Question 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: Question number 5, is the alleged difficulty self-created?

Board Members: Yes.

Attorney Havens: Any further questions or deliberations?

Glenn Ehlers: No.

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

Bill Cerone: So moved.

Aaron Ubides: Second.

Chairman Malocsay: Motion by Bill, second by Aaron. All in favor?

Board Members: Aye.

Chairman Malocsay: Motion carried.

**PUBLIC HEARING OF Valentine Home Builders, LLC** - regarding property located in the LB zoning district at 1 Liberty Corners Rd., Pine Island, NY 10969, and designated on the Town tax map as Section 11, Block 1, Lot 25 for an interpretation of the Town Code regarding whether a residence that was built in 1935 and located in the LB zoning district requires an application to the Planning Board for conversion of a single-family residence to a two-family residence.

*Representing the Applicant: Robert Valentine & Robbie Valentine, Applicants*

Chairman Malocsay: Your names for the record.

Robbie Valentine: Robbie Valentine.

Robert Valentine: Robert Valentine.

Chairman Malocsay: Tell us about the application.

Robert Valentine: So we purchased this house in a foreclosure action and we based our purchase on the fact that it had been listed in the Town's tax roll since prior to 1978 and currently listed as a two-family residence. It's two separate apartments, it has no staircase, no access between the apartments. Prior to that it was Jean's Garage, a gas station. I guess it was converted to a two-family after that. When we purchased it, it had a violation in our title report that said it needed a permit for a second kitchen. So we didn't think anything of it, purchased the house. Even on the property tax cards, it shows two kitchens all the way back to 1978. But the Building Department is very adamant that it never had two kitchens and it's only a one-family house.

Robbie Valentine: The class code on the property cards is 220 which from our understanding means multi-family residence. And that's been on the card all the way back to '70 or '80.

Robert Valentine: Some of the old cards are hard to read, but in '89 the card is very legible showing the kitchens. We just want to continue as a two-family house pre-existing non-conforming use. I gave multiple copies of the cards in the packet I gave in as well as the County's records and the Town's records. We want an interpretation from the Zoning Board telling us whether this is a pre-existing two-family house or not.

Attorney Havens: The applicants mentioned that when they purchased the property, they received notification of violation regarding the necessity for a permit requirement for the second kitchen. The applicant submitted through Hudson Search LLC a request dated July 19th, 2023 which pursuant to the deed records was several days before the applicant closed on the property. And the Building Department issued a list of violations. Permits are required for the second kitchen and deck and a Certificate of Occupancy are required. But it also states the above captioned one-family dwelling and shed were built before zoning. Therefore a Certificate of Occupancy is not available. At the time this was issued, it had been taxed and recognized by the County and the Town tax assessor as a two-family. Subsequent to the applicant's purchase and closing, when they submitted an application for renovations, the Building Department issued another letter dated December 24th, 2024 that identified the same violations. The Building Department did produce as part of this record, the Certificate of Occupancy issued to the prior owner dated March 23rd, 1978 approving 'certificate is issued for an addition, an alteration of a sun deck

recreation room and bedroom on a one-family dwelling to adhere to all state and local codes and ordinances'. So the rationale for the Building Department identifying this as a one-family development, this Certificate of Occupancy that was granted specifically for the expansion. Not for the building itself, but for the expansion in 1978. That being said, it's still been recognized by the Town since then. There's no other records in the Building Department that identify whether it's a one-family or a two-family. There's no GML 239 referral needed in this case because the applicant isn't seeking a variance, they're seeking an interpretation.

Chairman Malocsay: Does anybody have any questions before we open up? The public hearing is open.

Attorney Havens: The application does qualify as a Type 2 action under SEQR 617.5(C) (11) and (17). Would someone make a motion typing the application as a Type 2 action with no adverse environmental impact?

Glenn Ehlers: So moved.

Aaron Ubides: Second.

Chairman Malocsay: Motion by Glenn, seconded by Aaron. All in favor?

Board Members: Aye.

Chairman Malocsay: So you're only asking for an interpretation. We have a piece of paper from <inaudible name> in 1978 saying that it was one-family. We don't have anything from the Planning Department saying anything different other than the assessor having it as a two-family.

Robbie Valentine: We have a deed from '77 that says that an in-law had life rights to live in the separate dwelling within the building.

Attorney Havens: The purpose of paper was for the addition, it was only a Certificate of Occupancy for the work that was done for the additions that were being added to the building.

Chairman Malocsay: So right now, what's the hold up?

Robert Valentine: It's a two-family house and we can't rent it out.

Chairman Malocsay: Are you ready to rent it?

Robbie Valentine: Yes, it's ready to rent. We bought it, all the paperwork is showing it had two kitchens for the last 40/50 years.

Glenn Ehlers: I can attest to the two kitchens because I was there when it burned and there's definitely two kitchens. I was inside as a firefighter there.

Robbie Valentine: I think the class code and the assessment kind of supports that as well.

Glenn Ehlers: And I don't know what year that was, but had to be 15 years ago.

Aaron Ubides: So what would we be doing, a pre-existing non-conforming continuous use?

*Discussions amongst Board Members regarding pre-existing non-conforming use and the tax maps.*

*Attorney Havens cites the case of Cacsire vs City of White Plains Zoning Board of Appeals 87 AD3d 1135 in which the property was classified for tax purposes as a two-family dwelling. Also with the absence of a Certificate of Occupancy, the property had been used for decades as a two-family. The Court reversed the denial of the variances emphasizing the longstanding use and tax classification of the property as a two-family dwelling. Attorney Havens also made mention of Kennedy vs Zoning Board of Appeals, in which the Court held that the lack of a Certificate of Occupancy did not make the use of the property unlawful because the zoning ordinance preserved existing lawful uses as a two-family residential property in a zone where that use is permitted as of right.*

Attorney Havens: We have a legally portable basis to make an interpretation that the use should be permitted as of right just based on case law.

Aaron Ubides: I agree.

Chairman Malocsay: I agree, I'm fine with that.

Bill Cerone: So then who would categorize it?

Attorney Havens: It's just an interpretation.

Aaron Ubides: I believe the precedent's set with the taxes and the case law.

Attorney Havens: Because it's an interpretation not an area variance, we're not required to consider the five statutory criteria that apply to an area variance. The ZBA needs to determine whether a site inspection is necessary.

Aaron Ubides: No.

Chairman Malocsay: No, we've all been out there.

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

Board Members: No.

Attorney Havens: Unless there's somebody in the public that wants to make any last comments?

Chairman Malocsay: We close the public hearing.

Attorney Havens: ZBA can deliberate if there's any further questions.

Board Members: No.

Attorney Havens: Would someone care to make a motion granting or denying the interpretation that the applicant's property is in fact a two-family dwelling de facto based on its public record history and the representations that were made with respect to the fact that there wasn't a Certificate of Occupancy issued for the property?

Chairman Malocsay: You want to make that motion?

Glenn Ehlers: Motion.

Bill Cerone: Second.

Chairman Malocsay: All in favor?

Board Members: Aye.

Chairman Malocsay: Motion carried.

**PUBLIC HEARING OF Kraftify Holdings, LLC.** – regarding property located in the OI zoning district at 251 State School Road, Warwick, NY 10990, and designated on the Town tax map as Section 46, Block 1, Lot 37 for an Interpretation of Town Code §164-46B(5) and 46E regarding whether or not the applicant’s expansion plans are subject to submission of site plan review and/or special use permit application before the Planning Board, or if a Building Permit may be issued without review, and, if needed various area variances for front and side yard setbacks for proposed improvements. **Continued from the ZBA Meeting of February 24, 2025.**

***\*\*\*No appearance or representation present for Kraftify Holdings, LLC***

Attorney Havens: Note for the record that the ZBA is permitted to defer on making a determination for up to 62 days beyond the end of the hearing as can be extended in agreement with the applicant. If the applicant is not here the ZBA doesn't have the ability to hold that open in perpetuity.

Bill Cerone: Is that after you close the hearing?

Attorney Havens: No. Once the public hearing is opened, if the applicant agrees, then it can be extended as long as the ZBA and the applicant agree. But if not, then it's 62 days from the end of the public hearing that wasn't extended. It was extended until today. Since the applicant isn't here and didn't submit a request to extend it, we should close.

Glenn Ehlers: We'll give him one more month?

Bill Cerone: One more month.

Chairman Malocsay: A motion for adjournment?

Glenn Ehlers: Yes.

Bill Cerone: Second.

Chairman Malocsay: All in favor?

Board Members: Aye.