

TOWN OF WARWICK
ZONING BOARD OF APPEALS

Members Present:

Chairman Jan Jansen

Attorney Jeremy Havens

Attorney Robert Krahulik

Diane Bramich

Jim Mehling

Marc Malocsay

Chris Daubert

Glenn Ehlers, Alternate Member

Mary Garcia, ZBA Recording Secretary

PUBLIC HEARING OF 138 Pine Island Tpke., LLC - 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 from the Town Law §164-41(A)(1)(a) for the construction of a new detached two-story garage creating a singular accessory building comprising 4,500 square feet, where a maximum of 1,200 square feet is permitted; and having a greatest median dimension of 88' where no more than 48' is permitted. Continued from ZBA Meeting of 4/22/2024. **Public Hearing was closed at the May 28, 2024 ZBA Meeting.**

Chairman Jansen reported receipt of a letter to the Town of Warwick Board of Appeals.

"Please withdraw my application from the ZBA."

Chairman Jansen then states the application has been withdrawn; it will not be heard.

PUBLIC HEARING OF Woglom Construction, LLC/Yung-Sam Ski, Ltd – regarding property located at 40 Ski Ln., Warwick, NY 10990, and designated on the Town tax map as Section 58, Block 1, Lot 14 and located in the MT district for an area variance from the Town Code §164-41(A) permitting the proposed construction of a 2,000 square foot two-story pole barn with electric where a maximum of 1,200 square feet is permitted.

Representing the Applicant: David Woglom, Woglom Construction

Let the record reflect that Attorney Jeremy Havens recused himself on the matter stated, as he has previously represented Woglom Construction. Bob Krahulik will be filling in as Attorney for the ZBA on said hearing.

Marc Malocsay is an adjacent property owner (Attorney Krahulik asked David Woglom if he had a position on that; David Woglom stated he had no issue with that) and Jim Mehling stated he was previously the Ski Patrol Director at Mount Peter for 12 years. Attorney Krahulik did not believe there was reason for either Board Member to recuse himself.

After addressing CCRA under the State Environmental Quality Review Act, it was determined that this is considered a Type 2 action under section 617.5 (c) (9), therefore no further consideration is necessary under SEQR.

David Woglom: The goal is to erect a 40x50 pole barn where the current snow tubing storage is. They currently have several sea containers storing their tubes during the off-season. So the goal is to remove all of them, erect this building right at the base of where the snow tubing comes down to. It's going to be two levels; the ground floor will have 2 overhead doors strictly for tube storage and the second floor is going to be a viewing area so parents can view the kids coming down the tubing. The backside of that is going to house all the safety equipment for the tubing.

Chairman Jansen: Public hearing is open, any questions?

Christine Giraud: Hi, my name's Christine Giraud. I live at 6 Pysners Peak with our family and we love Mount Peter. All of our kids have learned how to ski and snowboard there. Three out of four of them worked there and we absolutely love it. We do in the winter time, with all the lights for Mount Peter, makes it so we no longer have our view. And we're concerned with the pole barn being two stories where it is, with the lighting it's going to make it worse. And the reason why we spent so much money on our property is because of the awesome view that we have. So we're very concerned about that.

David Woglom: I can tell you that the height of the pole barn is going to be within the 25 foot height for the ridgeline restriction issue. We're going to have a very low pitch roof structure to keep it down and there really isn't going to be any additional large lighting that light up the area for the tubing. The only lighting we'd be attaching on this building would be like the gooseneck fixtures, just where the doors are.

Christine Giraud: So there'll be nothing shining up?

David Woglom: No, there won't be any more additional snow lighting or anything like that on this building. It is just going to be gooseneck fixtures at door opens.

Christine Giraud: Okay. Alright.

Chairman Jansen: Anyone else?

Diane Bramich: Question. David, this picture...all of these sea boxes are going to go?

David Woglom: Yes.

Chairman Jansen: Can we have a motion to close the public hearing?

Diane Bramich: So moved.

Marc Malocsay: Second.

Chairman Jansen: Motion and second. Any discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Krahulik: Unless the Board members have questions for the applicant, we can start going through the criteria. Any specific questions? Number 1, whether granting of the variance would result in an undesirable change in the character of the neighborhood or a detriment to nearby properties caused by granting the area variance?

Board Members: No.

Attorney Krahulik: Two, whether the benefit sought by the applicant can be achieved by some method which would be feasible for the applicant to pursue but would not require a variance.

Chairman Jansen: They need the space.

Marc Malocsay: And they explained why they need that space as opposed to the 1200 square feet that's allowed.

Attorney Krahulik: Number 3, whether the requested area variance is substantial.

Board Members: Yes.

Attorney Krahulik: Number 4, whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Board Members: No.

Attorney Krahulik: And finally, whether an alleged difficulty is self-created.

Board Members: Yes.

Attorney Krahulik: Mr. Chairman, I did prepare a proposed resolution granting the variance. I can pass it down to your Board members. I've got eight copies here.

Diane Bramich: Question. You're the applicant?

Attorney Krahulik: Well technically the applicant is the property owner. This is the builder.

David Woglom: Representative.

Attorney Krahulik: Yung-Sam Ski Ltd is the applicant.

David Woglom: That's the property owner that runs the ski area.

Diane Bramich: David had said that it was going to be 25 feet. Do we need to put that in here so that it does not go any higher than that? I know we allow what, 30...?

Chairman Jansen: Well it's already in the testimony.

Attorney Krahulik: I believe it's in the application, but it wouldn't hurt under line number 1. I'm going to write 'maximum building height not to exceed 25 feet.'

Chairman Jansen: And also that no lighting be put in; that would be an adverse effect in neighborhood.

David Woglom: Which is technically already in the ridgeline restriction code. And light reflectivity values on the roofing and siding material as well.

Chairman Jansen: Anything else? Okay. Can I have a motion?

Diane Bramich: So moved.

Chairman Jansen: Motion by Diane.

Marc Malocsay: Seconded.

Chairman Jansen: Seconded by Marc. Any discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

PUBLIC HEARING OF James Angelo & Lauren Rose Yodice – regarding property located at 28 Conklin Rd., Warwick, NY 10990, and designated on the Town tax map as Section 63, Block 2, Lot 12.42 and located in the MT district for an area variance from the Town Code §164-40N & §164-46(J)(17) permitting the proposed conversion of a single-family dwelling and separate cottage into a legal two-family dwelling on 6.967 acres of land where 10.0 acres are required, by the construction of a connecting breezeway; and permitting a Livable Floor Area of 736 square feet in one of the dwellings where 1,000 square feet are required.

Representing the Applicant: Brian Friedler, Friedler Engineering

Chairman Jansen: Please identify yourself for the record.

Brian Friedler: It's Brian with Friedler Engineering.

Attorney Havens: So general comments, there's no known violations with the Town of Warwick Building Department. And the site plan special use permit application for the conversion to a legal two-family is presently before the Planning Board and referred to the ZBA for required area variances. Orange County Planning Department GML 239 referral response was received on May 3rd, 2024. And recommendation was local determination without any further recommendations. Brian, would you like to discuss the application?

Brian Friedler: There's an existing one bedroom cottage right next to the house. The applicants are trying to make it legal with the town so they're going through this process to try to make it a two-family dwelling. They're going to attach it by a breezeway so it'll be one structure. They're going to use it only for family use. They have family members that live down in Florida that come up a couple times during the year and need a place to stay. So they would like to legalize that cottage and make it right with the town so they could have a two family, have a kitchen, a bedroom in there and have their family...

Chairman Jansen: It's not going to be a rental unit for other use?

Brian Friedler: No, they have no intentions to do that at any time. So it's for family use only and I know the Planning Board has been talking about that. So it's going to end up being either a declaration or a note on the plan stating that it's for family use only at this time.

Chairman Jansen: Let me open this up to the public. Is there any one from the public that would like to address this application? Yes sir.

Bob Hohmann: My name is Bob Hohmann, I'm at 26 and my house was built in 1986. 28 was built in 1987 as a mother/daughter house. I don't know why they need to make it a two-family, if it's going to have a breezeway connecting it, why it can't stay as a single family dwelling and be a mother/daughter house versus a two-family home? The Yodice's are the fourth owner in this place, nobody has stayed. So I'm concerned about it becoming a rental property somewhere down the road. That's my concern.

Chairman Jansen: You would like to see something included that would prevent that from happening?

Bob Hohmann: Yes. When we bought the property, they were two flag lots and there were restrictions that they were not sub-dividable in the deed. So if they're not sub-dividable, now we're looking to change the zoning to make it a two-family where it was designed and planned for 2 single-family homes.

Chairman Jansen: Is that something we can include?

Marc Malocsay: I have a question before you answer that because then...

Attorney Havens: It's presently before the Planning Board. Since it's referred to us, they're doing the site plans. Could this Board, if you want to ask your question...

Marc Malocsay: And that's part of the question that I want to ask. So the part that confused me on the application is there appears to be two dwellings on one piece of property. Is that accurate?

Bob Hohmann: It actually is not accurate. When it was built it was a house with a deck between the two structures which was never completed, which was supposed to be the breezeway. So you can say it's two structures because one structure is to the left of it as you're facing the home and the main house is on the right and there's maybe 20 feet between them, which is supposed to be an enclosed breezeway. So you can say it's two structures because they're not connected at this point. But the original design—which was never completed—was supposed to be connected.

Brian Friedler: That's probably correct. I think when they bought the property, when the building inspector did their inspections, there was a kitchen and I believe they had to remove the kitchen.

Lauren Yodice: Yes. So we took out everything. There are no more appliances, there's no running water or anything. And just to clarify something Bob said, this was not sold to us as a mother/daughter. I have no history of this home being a mother/daughter ever. It was sold to me as an illegal dwelling and with violations. And we were told upon purchasing it that it was flagged by the town and it had never been legal. No taxes have ever been paid on it. I was told it was not a mother/daughter because a mother/daughter would've had to be in the same unit. This is a separate structure. So I was told by the town that to become a mother/daughter—which would be great with us, this is going to be for my mother-in-law—we would've had to be in the same unit. So we were just told buying this, this was just an illegal structure that...

Marc Malocsay: That answers a lot of my questions because what I didn't see was any violations. We have a dwelling—the principal use of the property, and we have an accessory structure which is allowed. And at that time they didn't get permits. They converted it and it was used as an apartment.

Bob Hohmann: It was never altered when that structure was built since I was there next door having my own home built, they built it. If you have the original blueprints, which the town should have a copy of, that was a garage. And it never was a garage, they never put the garage doors in. It was framed as a small little cottage, which was supposed to be joined to the main house. And the person that built it, his mother-in-law did live in it.

Marc Malocsay: What we have is a dwelling and an accessory structure. And the accessory structure now we want to join to the dwelling.

Brian Friedler: Yes.

Marc Malocsay: So I just wanted to clear, because what I couldn't figure out was if there's two dwellings on the property and we want to connect, it makes no sense to me. I would never want to do that because we already have two dwellings and I thought it was grandfathered. But now it makes sense. It's an accessory structure and we want to connect it and we want to have it as such and such. So I believe to answer some of your questions, once that happens that it would be a violation for them to be renting that out. I believe once it's connected, it becomes one house. One house with two kitchens, which you can have a separate entrance and exit and you can have that thus connecting it. One dwelling. Is that the way the Planning Board is looking at it?

Brian Friedler: So originally we wanted to do two separate, but you have to show that the lot is subdividable, which it's not. So then the next option is connecting them with a breezeway and calling it a two-family.

Attorney Havens: It's a legal conversion. A two-family. You're actually in front of the Planning Board doing a legal conversion.

Brian Friedler: Yes. What the Planning Board wants is either add a declaration to it or just put a note saying that it's for family use. So they would never be able to Airbnb at VRBO or rent it. It's for family use.

Diane Bramich: Question. There is a walkway between the two houses connecting them?

Brian Friedler: So right now there's just a deck in between the house and the accessory structure. But they will be connecting it if they get approval by a breezeway.

Diane Bramich: So you're saying that this is not a concrete path here? What is this?

Brian Friedler: That's a deck.

Diane Bramich: The deck is over here.

Brian Friedler: Yeah. Then you step down like two steps and that's another deck.

Diane Bramich: So they're connected.

Brian Friedler: They're connected but by a deck.

Attorney Havens: The rule for it to be connected...

Diane Bramich: It has to have a roof.

Attorney Havens: Correct. You have to have a connected roof.

Diane Bramich: I was just wondering because it looks like it's connected by something.

Brian Friedler: It's a lower deck and you walk up two steps, you get to another deck and then you walk into the accessory structure.

Marc Malocsay: I just didn't think that they (Planning Board) would have the authority to put a restriction on that it was only for family members. What we're doing is we are giving this to become a two-family house. It's sold two years down the road, it's a two-family house.

Attorney Havens: It would be a legal two-family, correct.

Marc Malocsay: So I don't see how the Planning Board has the authority to put a restriction on that it's for family members...which brings me to the next thing is why can't it simply be a single house with a kitchen?

Brian Friedler: What I'm told is now is that the mother/daughter housing doesn't really exist it's ...

Attorney Havens: It would have to be within the same structure. And because it's only connected by a breezeway. If you were to fully enclose a breezeway...

Brian Friedler: We've also talked about that and they said they wouldn't allow having two kitchens in two livable areas in one dwelling.

Marc Malocsay: You are allowed that by code right now. The Zoning Board is to the best of my knowledge, the only one that has the power to interpret the code. Pretty sure the code is very clear in a house that you could have two kitchens.

Brian Friedler: Yeah. I'm not sure.

Attorney Havens: You can have two kitchens if it's a legal two-family within the same structure.

Marc Malocsay: I don't think so. I think you are allowed to have two kitchens in one house as long as it's, it is a single family residence.

Diane Bramich: Yes because you're going to have one upstairs and then downstairs.

Marc Malocsay: You can have one outside when you're cooking by the pool, you can have a kitchen. So you can have bathrooms that are separate. You can also have more entrance and exits. Again, I'm not the Planning Board, but I think they're making a mistake. And I have a problem with it because by our guidelines, we can't give the relief if the relief sought doesn't need a variance. All I'm saying is I think we have to look into this a little bit further. A discussion with the Planning Board doing...

Attorney Havens quotes Town Code 164-46 J (17) in the Table of Use Requirements which states the requirements for converting a one-family to a two-family dwelling to explain why a variance is needed in this situation.

Marc Malocsay: The testimony that was given to us is that they want a family member to live there. It is not going to be a two-family. And if they want to make it a two-family...

Attorney Havens: What we would be considering is they're seeking two variances. Number 1, the parcel is only 6.967 acres where 10 acres are required under the bulk code for two-families. And secondarily, the cottage doesn't meet the minimum 1000 sq ft for a two-family. And so those are the variances that they would need. This Board would have authority to impose that condition as a condition to granting the two-family variance. But the Planning Board could not impose such a condition so Planning Board can't grant them the relief they're asking for because of the size limitations.

Marc Malocsay: Correct. But what I'm hearing from what you want to do, do you truly want to make this a two-family?

Lauren Yodice: No. It's just for his mom.

Diane Bramich: One family house.

Lauren Yodice: It's just to help and get tax on it because it's a liability on my head. I don't want his mom staying there...it's very stressful, we have kids...I don't need something to happen in that...

Marc Malocsay: We understand, but the application before us is for a two-family. And you need, I don't want to say some substantial variances, but what you want to do, you don't need a two-family. You can connect the breezeway. This is a single family residence. We've given at least three of these and I'm totally against it because people are making their garages and they attach it. Now it becomes part of the house and you know that they're going to make it into an apartment, rent it out. That's not before us. So, but we've had three of these that I know of that have come before us where they attach with a breezeway and then they have this apartment. None of those called it a two-family. It was simply a dwelling that was increased in size. A lot of times the accessory structure met, the setbacks for that, but not for a residence. So all I'm saying is you guys should consult to see if that's truly, if what I'm talking about is what you really want to do, you need nothing from us except, and actually I don't think you need anything from us because you can get a building permit to attach them and everything is done. So I think you should just think about that. The two-family thing. The taxes, the...

James Yodice: I think Brian can talk about it. We tried to talk about it.

Brian Friedler: Yes, we've sat down at the work sessions and asked why can't we just make it a mother/daughter by connecting with a breezeway? And it gets shot down every single time.

Marc Malocsay: Okay. In my world, you go to the Planning Board and you get a permit to build the breezeway to attach the structures.

Brian Friedler: But you wouldn't need it because it would be just a Building Department application.

Marc Malocsay: Exactly.

Brian Friedler: So what they're saying is that in a lack of better words, is that a mother/daughter dwelling, they don't want to call a house that anymore. They want to call it a two-family house. And that's why we sat down several times with them and we've tried to go through the easiest, cheapest way to get this done. And it's always been connected by a breezeway and the breezeway might have to be enclosed, and it's going to be a two-family house and that's why you have to get your...

Marc Malocsay: No, totally disagree.

James Yodice: We've actually talked to the Building Department and tried to do that on two occasions. And they said, 'No, you have to go to the Planning Board.' So we went to the Planning Board. We even spent extra money to hash it out. And now we're here to get these variances, we just want it legal with the Town of Warwick.

Marc Malocsay: Alright. So I'm going to consult with our Lawyer.

Diane Bramich: I don't see why this needs to be a two-family house.

Marc Malocsay: And the only reason that it came before us is because every single one of them, the garage met the setbacks for a garage, but not a residence.

Chairman Jansen: So can we send them back to the Planning Board...

Attorney Havens: My recollection, without having the capacity at this moment to actually access and review the code, is a dwelling unit is essentially a self-contained dwelling unit with its own exit, its own cooking facilities, its own bathroom and sleeping facilities. And if it has those elements, whether it's a studio or a one-bedroom or a five-bedroom, then it's a dwelling. Whether it's in the basement or in a garage that's attached or not, it's still a dwelling if it has all of those elements.

Marc Malocsay: The word dwelling as in opposed to an apartment, because if...

Attorney Havens: But a dwelling makes the distinction between a one-family and a two-family. If it's an independent dwelling capable of supporting an independent household providing all the fundamental elements: kitchen, bathroom, cooking facilities, separate entrance and separate sleeping facilities, then it constitutes an independent dwelling. And that's why I believe the Planning Board sent them here for a two-family because this would incorporate all of those elements.

Brian Friedler: The Planning Board Attorney mentioned a few times if it has its own entrance and exits, you can't really call it a mother/daughter because you're going to...

Diane Bramich: You have that if you have a two story house.

Attorney Havens: It doesn't matter whether it's a two story or they're physically attached or they're separated by a breezeway. If you have two independent self-compartmentalized dwelling units, then it's a two-family.

Jim Mehling: If they've removed all the appliances, then the only thing that it serves as is sleeping area.

Attorney Havens: True, and that's the critical point, is this cottage going to have a bathroom and cooking facilities?

James Yodice: Yes.

Brian Friedler: They want to put the kitchen back in. I think there's a bathroom and a shower there already.

Attorney Havens: So if it's going to have a room to sleep, cook, a bathroom, and it's got its own entrance, it has to be identified as an independent dwelling and it has to be converted to a two-family.

Brian Friedler: That's what they want. They want to redo the kitchen because they want to have a separate living area attached by a breezeway.

Marc Malocsay: The big question is the one that you have because on the restrictions on making sure that it's for a family member and not something that's going to be Airbnb'd out because of the other issue. So I'm just trying to resolve if this is one dwelling, but it has this separate part, then clearly it's very difficult for something to be rented out. The separate entrance and exit from the main dwelling does sound to be the determining factor on the two of them. Is it possible in this construction if the way they get around this was that there was the main entrance to the house and then the breezeway went over to the other one is that something that's feasible or do you want the mother-in-law to have her own separate one? Because then it sounds like it might be a two-family.

James Yodice: Yes. My mom's only going to come up twice a year for two weeks because we've got two young kids.

Lauren Yodice: We prefer her to have her own space.

Diane Bramich: Is this breezeway enclosed?

Brian Friedler: It's not, and we're talking to the Planning Department about what they would want. We want it as cheap as possible, but if they're forced to put up walls, I don't think they would heat it.

Marc Malocsay: Right. I just think we really need to ask some questions unless we want to hang our hat on it right now that it's a two-family and move ahead with the variances. But I don't think the applicant really wants to have that and I am not sold on just because it has those criteria makes it a two-family.

Attorney Havens: Well those are the four principle criteria to constitute a dwelling. And the way a dwelling is defined in the code is essentially using those four criteria specifically for the point and purpose of preventing people from putting in all of those elements within the four walls of their own primary dwelling and being able to rent it out but not calling it a legal two-family. Point being you can't have all four of those elements of independent entrance, independent cooking facility, bathroom and sleeping borders without it being recognized as an independent dwelling. And that's what makes this a two-family application. If they want that independence of the unit, then it has to be a two-family conversion. Otherwise they'd have to eliminate one of those elements. They'd have to eliminate the private entrance, cooking facilities, bathroom, something along those lines. Then it's not an independent dwelling. If it has a shared bathroom, a shared kitchen, then it's no longer an independent dwelling and now it's a detached bedroom connected by a breezeway.

Marc Malocsay: Are you good with what he's saying?

Lauren Yodice: We would prefer in that case to keep it too, because I don't think we would want to remove any of those elements.

Attorney Havens: So I think the applicant does want a two-family approval.

Lauren Yodice: In that case.

James Yodice: Yeah. If that's what...

Chairman Jansen: So we go with the two-family?

Attorney Havens: So with respect to SEQR, the Planning Board's already declared lead agency, so we have no further review required here. The Zoning Board needs to determine if a site inspection is necessary.

Chairman Jansen: I don't think so.

Diane Bramich: I think we've gone over it pretty well and the photograph that we have shows exactly what they want to do.

Chairman Jansen: So what about the other conditions to impose? Is there any place that we can get into that so that we can make sure that it stays just within the family?

Attorney Havens: Well, un as Marc pointed out, unlike the Planning Board, this Board does have the capacity if it so chooses or feels it's appropriate to set conditions on the approval and granting of the variance. And so if this Board feels it's appropriate to set those conditions, then we certainly can make that part of the approval process.

Chairman Jansen: I think both parties would like to see that.

Marc Malocsay: But I am having a hard time because I was hoping to go the other way. I am having a hard time saying that second dwelling would only be relation to the other dwelling. It's going to be sold 10 years down the line. It's a two-family. That's it sounds like it's a real stretch for us to put that condition on it.

Diane Bramich: That's why it's better off as a one family house.

Marc Malocsay: I'm just saying that we can go ahead and do the two-family, but I think it would be difficult for us to put a restriction like that.

Attorney Havens: That's for this Board to...

Marc Malocsay: It's only because...

Attorney Havens: Legally speaking you can, or you can vote to say that you feel it's inappropriate. The applicant—correct me if I'm wrong—seems to be requesting that it be recognized as restricted for familial residence only.

Marc Malocsay: Our variance goes with the lay of the land. It doesn't go for you nice people, the nice neighbor, it just...

Brian Friedler: So if we added a note to a plan that gets signed off by the Chairmans, doesn't that note always carry with that property then?

Marc Malocsay: It could be challenged.

Diane Bramich: If somebody purchased the land from them, wouldn't it show up if we had a restriction on it?

Attorney Havens: Yes, definitely. Greg, what was your comment?

Glen Ehlers: I know of multiple variances that have conditions attached to them and they stay with the variance forever. And when the property's sold there's a title search done, the variance comes up that the property's occupied with a variance and if there's conditions to the variance, they're on there.

Attorney Havens: Yes. The copy of the determination. Once filed with the clerk, a copy goes into the Building Department file and it becomes part of the title search Building Department file.

Glen Ehlers: The next owner has to also rent it to family only. And if they wanted to make it a two-family open, they would have to come in for a variance the same way anyone else would to amend the variance.

Marc Malocsay: And I'm agreeing with you a hundred percent, but I can...

Glen Ehlers: Right or wrong, but that's the way it is.

Marc Malocsay: But I can say you put that restriction on there, somebody challenges it and the words arbitrary capricious when they say it's a two-family and now you're saying that it has to be related to the other family? Because it's two-family, it's separate already. I can see a judge easily saying you can't say that. I have no problem putting that on as a restriction if we're going to move forward that way. I'm just thinking that it could be something...

Attorney Havens: You have a valid point Marc. Some future person could potentially—well no, actually some future person couldn't potentially. If they don't do it within 30 days of filing this determination, then the time to appeal it has expired. And there is no future appeal because it was already granted 30 days

to appeal that time passes, nobody files an Article 78 Notice of Appeal. It cannot subsequently be appealed by future neighbors, owners, or otherwise. The time to appeal has passed.

Glen Ehlers: Could it come back to the ZBA in the future to amend the variance that we...

Attorney Havens: Absolutely. Somebody could come back and amend it. They could come back to request a change for it. But appealing the initial decision wouldn't be subject to...

Glen Ehlers: No, they would have to come back in for with a new application.

Attorney Havens: That's just like what you were saying Brian. If there's a note on a site plan approved by the Planning Board, any of those notes become conditions and requirements associated with the approval. But anybody can then go back to the Planning Board and then request the removal of that note or condition. But it would be a separate application to be reconsidered.

Brian Friedler: And if they go renting it out, someone can go to the Building Department and say they're renting it out and they'll be in violation because there's a note there saying it's for family use.

Marc Malocsay: How far along is it in the process?

Brian Friedler: We're set for a public hearing as soon as we resubmit.

Marc Malocsay: So the Planning Board has on it where they changed the driveway to be 16 feet wide and blacktop the whole way?

Brian Friedler: No.

Marc Malocsay: Why not?

Brian Friedler: I don't know.

Marc Malocsay: There's more on that one driveway and as soon as it's more than two...

Bob Hohmann: The driveway's only a 10 foot gravel driveway.

Marc Malocsay: If it's going to public hearing an order would be in there already.

Brian Friedler: Well we were set for a public hearing, there's no date yet for it.

Chairman Jansen: Any further questions? Anyone else in the public that wants address this? If not, I'll close the public hearing.

Bob Hohmann: I have nothing else I can say about it.

Marc Malocsay: We're going to put the restriction that it's a family member.

Bob Hohmann: That'll be recorded with the deed?

Marc Malocsay: It'll be recorded. So again, it goes with the lay of the land.

Attorney Havens: Any further comments, questions among the Board members? Alright, so let's consider the five statutory criteria for the granting of an area variance. Number 1, will an undesirable change be produced in the character of the neighborhood or a detriment to the nearby property be created by the granting of the variance requested? The applicant states no. And the reason given is the existing one bedroom cottage has been there for over 25 years. The applicants would like to attach it to the main dwelling with a breezeway and have it classified as a legal two family dwelling. The two family dwelling will be for family use only. Does the Board agree that no undesirable change will be produced in the character of the neighborhood detriment to nearby properties?

Marc Malocsay: 100% correct. Everything is exactly the way it is with the exception of the possible connection...everything exists.

Attorney Havens: Number 2, can the benefit the applicant seeks be achieved by some feasible method other than variance? The applicant states no. And the reason is it would be practically impossible to

increase the size of the lot by 3.03 acres in order to meet the lot size requirement. The applicants do not need the second livable area to be greater than 1200 square feet. The existing cottage which is 736 square feet, is for family use. So does the Board agree that the benefit the applicant seeks can't be achieved by some feasible method other than the variance?

Marc Malocsay: I like my idea but evidently nobody else does.

Diane Bramich: No, I agree with you Marc.

Attorney Havens: So what's the consensus of the Board? <Inaudible> majority of whether or not the benefit the applicant seeks can be achieved by some feasible method other than the variance, yes or no?

Marc Malocsay: Yes, it can be.

Diane Bramich: It can be.

Jim Mehling: Yes.

Marc Malocsay: Well there's 3 of us. Not that that really changes anything.

Attorney Havens: That's all right. I just need to be able to show a resolution here. Question 3, is the requested variance substantial? The applicant states yes. The reason given: the lot area is 6.97 acres; for a two-family house you need 10 acres. We were also requesting a variance for livable area. The cottage is 736 square feet. In a conversion 1000 square feet is required, so the applicant states that the variance is substantial. 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 conditions in the neighborhood or district? The applicant states no. And the reason given is the cottage has always been part of the property, the applicants (new owners of the property) are trying to make it right with the town. Does the Board agree that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Board Members: Yes.

Attorney Havens: Question 5, is the alleged difficulty self-created? The applicant states no. And the reason given is that the cottage has existed for over 25 years. The applicants are trying to make it legal with the town. Does the Board agree with the applicant? The difficulty is not self-created.

Diane Bramich: It is self-created.

Marc Malocsay: I'm going to say no.

Jim Mehling: No.

Chairman Jansen: no.

Attorney Havens: Alright I hear 3 no's, so that's a majority. Is the Board in agreement with the consensus that a restriction for any approval would require that the additional dwelling associated with this two-family would be for family use only?

Board Members: Yes.

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

Marc Malocsay: So moved.

Jim Mehling: Second.

Attorney Havens: Granting or denying?

Marc Malocsay: Granting.

Jim Mehling: Second.

Chairman Jansen: Motion by Marc, seconded by Jim. All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

PUBLIC HEARING OF Ben & Stacy Wiley – regarding property located at 78 Warwick Estates, Pine Island, NY 10969, and designated on the Town tax map as Section 93, Block 1, Lot 14 and located in the RU district for an area variance from the Town Code §164-41(A)(4) & §164-40N permitting the construction of a proposed new 8' x 58' open deck addition to the front of the existing dwelling, which will reduce the existing front yard setback from 49.5' to 48' where 75' is required.

Representing the Applicant: Ben Wiley, Applicant

Attorney Havens: General comments. Town of Warwick Building Department has no known violations on file. There was an Orange County Planning referral made on June 6th, 2024. I did not get any response back on that yet. Unfortunately we have not met the 30 day time limit for the GML 239 referral.

Marc Malocsay: That means we can't officially make a decision.

Chairman Jansen: We can hear it.

Marc Malocsay: So this subdivision's older but not that old. You have to remember that back then the setback was 50 feet. Even the houses, when you drive through there, they're not 75 feet back. So it sounds pretty substantial but it's not. I just wanted to make sure that everybody was aware of that.

Chairman Jansen: Actually on his house there's a slab in the front that extends that far.

Ben Wiley: Yes.

Chairman Jansen: So that was meant to be a front porch, but it...

Marc Malocsay: And interestingly enough that hardscape and cement doesn't fall in the criteria of the same as porches decks. So it's pretty clear that it's meant to be there.

Diane Bramich: So the slab that's by the front door, the new deck isn't going to go any further out than that slab?

Ben Wiley: About 6 inches.

Diane Bramich: It's going out another six inches?

Chairman Jansen: Yes.

Ben Wiley: So we are proposing to build a front deck—an unmoved structure, not front porch so that my wife and I can spend time watching our 3 young children play in the front yard. The front yard is the only level section on our property. So they spend a lot of time out front. We spend time with them and we have a concrete slab as one of the Board members mentioned that's there and we would like a little more space. So just to make it a little more congenial, pleasant atmosphere, easier to hang out with the kids. We submitted the permit and actually didn't think we'd have to come to the Zoning Board because we didn't really see it as substantial. And that's what we're looking for. If you go up and down Warwick Drive—that's our street, I think every single house other than ours does have a front porch. So we did want to make a point of just saying we have every intention of keeping the tone and the tenor of the neighborhood, respecting that. That's why we moved there. We just don't have a front porch—front deck if you will—we do not want a roof on it if that makes sense.

Attorney Havens: So he's discussed it. You'd have to open the public hearing, we make a secret determination and we hold it until next month.

Chairman Jansen: Okay. I'll open the public hearing. Anybody in the public have any comments?

Attorney Havens: Being this is just the addition of a deck to an existing dwelling under SEQR, this would be a Type 2 action under section 617.5C subsections 12 and 16; therefore no further SEQR review is required. Zoning Board should consider whether they feel a site inspection is necessary.

Marc Malocsay: Been there.

Jim Mehling: Done.

Chris Daubert: I drove by.

Attorney Havens: ZBA to consider any use restrictions or other conditions to be imposed?

Board Members: No.

Attorney Havens: Okay. So we have to leave the public hearing open for receive Orange County Planning Department referral response next month and we'll see what happens. Would anybody care to make a motion to keep the public hearing open and adjourn this to next month pending receipt of the Orange County Planning Department response on the GML 239?

Diane Bramich: Motion.

Marc Malocsay: I'll second it.

Chairman Jansen: Motion by Diane, seconded by Marc.

Attorney Havens: And in the meantime, the Building Department made a couple of comments on the initial denial level with respect to providing the height of the deck above grade and if applicable railing specifications. So it would be in your best interest to get those to the Building Department before we reconvene on this next month. And that way we can get a confirmation from the Building Department that you've met all of their expectations with respect to your plans.

Ben Wiley: Is that something that we would get in writing from them?

Attorney Havens: That's something you need to provide to the Building Department is the height of the deck and the railing specifications.

Marc Malocsay: They changed the log a few years ago on deck heights and having railings and you might want to know what that is to make a grade change because if you're not thinking about putting up railings, don't quote me...Chris, is it 32 inches now in height before you need a railing? It used to be 20 or 24.

Chris Daubert: It used to be 18.

Marc Malocsay: Then it's 24 now, they raised it. But if you're thinking you don't want to have a railing, then just check with them to see what that height is.

Ben Wiley: Yes, will do. We had one of the building inspectors come visit the house with myself and our contractor. They said because we were proposing 20 inches as the height of the deck at the deepest part because it's a slight slope, and he told me and my contractor that you don't need a railing at all. And the contractor agreed, he didn't know why the railing issue was number 2 on the denial letter because the inspector was there with us and said we don't need a railing, do the 20 inch height.

Attorney Havens: So understand that the way it's worded is you need to provide the proposed height of the deck above grade so that they know how high it's going to be. And then if it exceeds the height that requires a railing, then you have to give railing specifications. So where it says 'if applicable', that means if the height that you're proposing exceeds the amount where a railing is required, then you have to provide railing specifications too, but once you give them what the height above grade is, they'll make a determination and tell you whether or not you need railings.

Chairman Jansen: Sometimes you can raise the area slightly so that you don't.

Ben Wiley: Thank you very much. Can I ask just about the SEQR part? Because I don't really understand. I don't have to come back directly?

Chris Daubert: He doesn't need to come back. We're just going to do the vote.

Attorney Havens: We've heard your application, you don't necessarily have to come back next month if you don't want to. Once we get the GML 239 referral, assuming that it doesn't come up with any kind of crazy recommendation which I don't anticipate, then there's going to be very little else for the Board to consider and they'll just do their vote and you'll get a determination within about a week after the meeting.

Ben Wiley: That's this Board or a different Board?

Attorney Havens: Yes, this Board.

Ben Wiley: Oh, so it'd be the same thing.

Attorney Havens: This Board just next month.

Ben Wiley: Understood.

Diane Bramich makes a motion to keep the hearing open until next month pending Orange County response.

Seconded by Marc Malocsay.

Other Considerations:

1. ZBA Board Minutes of 05/28/2024 for approval

Jim Mehling makes a motion to approve the ZBA Board Minutes of 05/28/24.

Seconded by Diane Bramich; 6 Ayes and 0 Nays.

Chairman Jansen adjourned the ZBA Meeting of June 24, 2024