

TOWN OF WARWICK
ZONING Board OF APPEALS

Members Present:

Chairman Jan Jansen

Attorney Jeremy Havens

Diane Bramich

Marc Malocsay

Chris Daubert

Glenn Ehlers

Aaron Ubides (Alternate)

Mary Garcia, ZBA Recording Secretary

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. **Continued from the 6/24/24-ZBA Meeting.**

Representing the Applicant: Ben Wiley, Applicant

Ben Wiley: The Department of Building said if the finished deck is below 30 inches we do not need a railing. Our finished deck is going to be 21 1/2", I think that's enough, Mr. Havens?

Attorney Havens: Yes that's protocol.

Ben Wiley: The only other issue was the SEQR.

Attorney Havens: Not the SEQR but the Orange County GML referral. And we did receive a response on that on July 10. And there was a local determination with no further recommendations from the County. So it's up to this Board to make their determination.

Chairman Jansen: Did we do a preliminary determination at the last meeting?

Attorney Havens: No we didn't do a full determination because we couldn't deliberate on it until we close the public hearing which was open because we were waiting for the GML response.

Aaron Ubides: Mr. Jansen? I have a question. I looked at the drawings and the plans read 21.5" rise. I didn't see any stairs.

Ben Wiley: So it's sloped. It's a south-facing house so from west to east the ground slopes a little bit. So the tallest section is 21 1/2", whereas the shortest section is like 4".

Aaron Ubides: So you'd be entering from where the garage door is?

Ben Wiley: Exactly.

Aaron Ubides: Thank you, sir.

Attorney Havens: I don't have any notes in my file regarding the SEQR typing. So the Board apparently still needs to type this as a Type 2 action under SEQR section 617.5(C) subsections 12 and 16. Would someone care to make a motion typing this action as a TYPE 2 with no adverse environmental impact?

Marc Malocsay: So moved.

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

Board Members: Aye.

Chairman Jansen: Any opposed?

Attorney Havens: Does the Board have any further questions or discussion for the applicant?

Marc Malocsay: No.

Attorney Havens: Do you have anything else you want to add?

Ben Wiley: I don't, thank you very much.

Chairman Jansen: I would like to close the public hearing unless someone objects. The public hearing is closed.

Attorney Havens: So in considering the five statutory criteria for consideration of area variance question number 1, will an adverse change be produced in the character of the neighborhood or a detriment to

nearby properties be created by the granting of the variance requested? The Applicant states no. And the reason, "Our proposed front deck will be cared for and used daily, we will stain it and fully furnish it, including potted plants, premium furniture, et cetera. It is the very front of our house, so we will make it very attractive".

Attorney Havens: Does the Board agree with the Applicant that there will be no undesirable change produced in the character of the neighborhood or detriment to nearby property?

Chairman Jansen: But more important, I think it doesn't change the character of the neighborhood because there are other places like that.

Marc Malocsay: Yes, because the previous zoning I believe was 50 feet. So most of them are sitting at that distance; the porch is hardly going to be noticeable.

Attorney Havens: Everybody in agreement?

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. And the reason given "Any porch or deck would need a variance in order to cover the existing slab, no matter the size. The existing slab is 49.5 feet from the property line". Does the Board agree with the Applicant?

Board Members: Yes.

Attorney Havens: Question 3, is required variance substantial? The Applicant states no. And the reason given is "There are no upright structural elements. There is no roof. The pergola over the 12 foot section of the deck is not a roof. The overall appearance will be open bright and airy." So the question is whether the variance is substantial. Does the Board believe that the variance is substantial or not?

Marc Malocsay: Yes, kind of.

Diane Bramich: No.

Glenn Ehlers: I would say not.

Attorney Havens: Point five feet?

Marc Malocsay: So numerically, yes. But because everybody else's is at 50 feet, then no.

Chairman Jansen: He needs an answer one way or the other, yes or no?

Attorney Havens: Is it substantial, yes or no?

Marc Malocsay: Yes. Numerically yes.

Chairman Jansen: Yes.

Diane Bramich: Numerically.

Chris Daubert: Numerically, yes.

Glenn Ehlers: No.

Attorney Havens: No? Okay. So we have 'numerically'. We have (4) yes and (1) no; that's still a yes. 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: "No trees or plants or wildlife currently use the area." Does the Board believe that the proposed variance would have an adverse effect or an impact on the physical or environmental conditions in the neighborhood or district?

Board Members: No.

Attorney Havens: Question number 5, is the alleged difficulty self-created? There was no answer, so I can't specify.

Diane Bramich: It's always self-created.

Chairman Jansen: Yes, he put the porch there.

Attorney Havens: So the answer from the Board is...

Board Members: Yes.

Attorney Havens: Okay. Having considered all of that, is there any further deliberation?

Board Members: No.

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

Diane Bramich: I'll make a motion to grant.

Chris Daubert: Second.

Chairman Jansen: Diane makes a motion to grant. Chris seconded. All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

PUBLIC HEARING OF Stella Alcindor – regarding property located at 16 Williams Dr., Monroe, NY 10950, and designated on the Town tax map as Section 62, Block 7, Lot 9 and located in the MT district, for an area variance from the front setback requirements under Town Code §164-41(A)(4) & §164-40N permitting an existing 20' x 9' front deck on the front of the pre-existing nonconforming dwelling, which will reduce the existing front yard setback from 37.6' to 28.6' where 100' is required.

Representing the Applicant: Stella Alcindor, Applicant

Stella Alcindor: I purchased a home that already had a deck attached and you cannot get into the entrance without going onto the deck. And I only found out during inspection that the previous owner had put the deck on without a permit and it really delayed the whole process of buying the home. In the end, Because it was taking so long, we had decided that I would purchase it with a violation and then come before you to ask if you could be merciful and grant the fact that I can keep the deck so I can get into my home.

Attorney Havens: We have just received this evening additional amended papers and that includes the responses to the five statutory questions for the granting of an area variance as well as an amended short form EAF. We can review this real quick and then the Board can determine whether they want to consider this application tonight or if it needs to be adjourned. Let's address that first before we get into all of the details of the additional submission. We did receive a GML 239 referral response from Orange County Planning dated July 10, 2024. There isn't any significant change to the context of what's being applied for. So the published variance that's being requested is still the same variance that's being requested. It's just that there was some answers in the application that needed to be amended. And so it raises a question as to whether or not we need to resubmit the whole thing to Orange County planning to reconsider this before we have authority to grant a variance. Or do we just accept the amended application and the already preexisting Orange County Planning response letter that clearly said it's a local determination with no further comments.

Marc Malocsay: I wanted to ask you, because we see these fairly often, the 100 foot setback. When this was done, the setback was much closer and thus when the house was built, everything was fine. Doesn't this property fall under pre-existing small lots and doesn't it also have a setback reduction for the front property? I know there's side ones and I know there's rear, I wasn't sure about the front.

Attorney Havens: Preexisting...?

Marc Malocsay: Preexisting small lots. And then we have a different reg for the setback requirements for that...

Diane Bramich: Actually preexisting non-conforming.

Marc Malocsay: Preexisting non-conforming. So what I'm saying is we can take it this way and I believe the Board would give the variance but if it's a preexisting small lot, it's a lesser variance to give. But it also depends on the the size of the lot not being less than a certain amount of acreage.

Attorney Havens: I don't know that this would qualify for a small lot, 50 x 150.

Diane Bramich: I think all the lots in that particular road are the same. And that particular road is a dead end dirt road that I'll bet is not even 25 feet wide.

Stella Alcindor: It is not.

Marc Malocsay: Clearly the lot is 50 x 150 and if you stuck to the code the way it is, you can't even put a house on the property with meeting setbacks. So that's why I said that if we're going to give a variance,

we can give it for the 100 feet which is a greater variance than if we gave it for, I'm pretty sure that setback is like 30 feet for a pre-existing small lot.

Attorney Havens: I can't look it up, I don't have access. I'm going to have to get a hard copy of <inaudible>.

Marc Malocsay: So as long as you're okay and it was advertised that way, I don't have a problem giving the variance for the 100 feet.

Attorney Havens: I hear what you're saying, it's a valid point. That's up to the Board.

Diane Bramich: In that particular area they just don't have the room. And years ago when these places were built, a lot of them were bungalows.

Marc Malocsay: I get it. I'm fine with moving forward with the way that it was legally advertised.

Attorney Havens: I'm just quickly reviewing the EAF to see if I have any questions for the applicant. <Inaudible> to considering it this evening, we're going to need to open it to the public.

Chairman Jansen: Anyone from the public that would like to address this application?

Attorney Havens: I don't have any specific questions in the EAF because the only ones that might be relevant wouldn't be relevant because there's no new construction. So the application for a front yard setback preexisting construction qualifies as a Type 2 action under SEQR section 617.5(C) subsections 12 and 16. Would someone care to make a motion typing the application as a Type 2 action with no adverse environmental impact?

Marc Malocsay: So moved.

Chris Daubert: Second.

Chairman Jansen: Motion by Marc, Second by Chris. Any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: Zoning Board to determine whether a site inspection is necessary.

Chairman Jansen: We have.

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

Board Members: No.

Marc Malocsay: Do you want to go through the five criteria before we...

Attorney Havens: Just close the public hearing first.

Chairman Jansen: Public hearing is closed.

Attorney Havens: So considering the five statutory criteria to be considered for the granting of an area variance, question number 1, Will an undesirable change be produced in the character of the neighborhood or detriment to nearby properties be created by granting the variance requested? The Applicant states no, and the reason given: no changes are being requested, the deck is pre-existing.

Chairman Jansen: We agree.

Board Members: Yes.

Attorney Havens: Question 2, Can the benefit that the Applicant seeks be achieved by some feasible method other than the variance? The Applicant says no. And the reason given: the deck's preexisting, making it a hardship that creates an obstacle preventing me from meeting the current setbacks. I cannot enter the house without the deck and this is part of the entrance. So does the Board agree with the Applicant that the benefit cannot be achieved by some feasible method other than the variance?

Board Members: Yes.

Attorney Havens: Question 3, Is the requested variance substantial? The Applicant states no. Reason given: Preexisting structures do not obstruct or create issues for other homeowners or people. Does the Board agree with the Applicant that the requested variance is not substantial?

Diane Bramich: It is.

Marc Malocsay: No.

Diane Bramich: It is substantial.

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 says no. And the reason is that they're pre-existing.

Board Members: Agree.

Attorney Havens: And is the alleged difficulty self-created? The Applicant says no. And the reason given was that it was a hardship created by previous owners.

Diane Bramich: I agree with that.

Marc Malocsay: I agree with that.

Attorney Havens: Any further questions or deliberation?

Chairman Jansen: No.

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

Diane Bramich: Move to grant.

Marc Malocsay: Second.

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

Board Members: Aye.

Chairman Jansen: Any opposed? Motion granted.

PUBLIC HEARING OF Craig Robert Shields - regarding property located at 48 Little York Rd., Warwick, NY 10990, and designated on the Town tax map as Section 12, Block 5, Lot 8.1 and located in the SM district, for an area variance permitting an existing Hot Tub (7'x7') to be placed within 8' of the property owner's existing well where a 20' setback is required under Town Code §140-4(D).

Representing the Applicant: Craig Robert Shields, Applicant

Craig Shields: So I had somebody gave me a hot tub four or five years ago, put it off the back of my deck. So we replaced it last summer. So I figured well I'll do the right thing and get a permit for it so when I sell the house in the future, I can leave it there. And I put in the permit and Danny kicked it back saying it was too close to the well. So I put it for a variance so I can keep it where it is.

Chairman Jansen: How deep is your well?

Craig Shields: 370 feet.

Chairman Jansen: Thank you. That's all I need to know.

Marc Malocsay: And how many feet of casing, do you know off hand?

Craig Shields: No, I don't. Quackenbush did it, so I'm sure it was done right.

Marc Malocsay: We have this law and people come for their variances, but we've asked around, and we don't know why it can't be that close to the well.

Attorney Havens: Give me a second and we'll save that for deliberation.

Craig Shields: It's portable, it's not in-ground. It's just sitting on gravel put down. It's downhill from the well so if God forbid it ever leaks, it's going to run away from the well.

Chris Daubert: Oh, the well's uphill, it's in the back.

Craig Shields: Yes. I had the well pump changed by Quackenbush last year. He had no trouble getting to it and putting the machine on it to pull up the pump and everything.

Attorney Havens: Okay. Any further comments or explanation you want to give to the Board at this moment? We'll give you an opportunity to add more later.

Craig Shields: Yes. The way it's laid out I could have the hot tub out in the middle of my backyard. Where it is right now, it's right off the deck so in the wintertime it's convenient. You don't want to be running 40 feet to get into the house when it's freezing cold out. So that's why I put the one somebody gave me where it is. I provided pictures.

Attorney Havens: So we did receive an Orange County Planning Department, GML 239 response on July 10th. And that was a local determination with no further comments. So the Orange County Planning Department doesn't have any specific issues or objections with it.

Chairman Jansen: Anyone from the public would like to address this applicant?

Attorney Havens: Short form EAF question number 15 asks whether the site has any known endangered species, et cetera. And the known identified endangered species are Bog turtle and Indiana bat. So with respect to Indiana bat, there's construction limitations. With respect to bog turtle, if you happen to see any you're going to have to contact DEC and report it and have them check it and make sure that the turtles aren't by your hot tub.

Craig Shields: Okay, it's got a locking cover on it.

Attorney Havens: And question 16, is the project located within the 100 year floodplain? And the answer to that is yes. So you understand that in a horrible storm, your hot tub could float away across your yard?

Craig Shields: Yes. It'd have to be pretty high, I'm on the high side of Little York Road.

Attorney Havens: So given that it's an area of variance for a hot tub, this application would qualify as a Type 2 action under SEQR section 617.5(C) subsections 12 and 16. Would someone care to make a motion typing the action as a Type 2 action with no adverse environmental impact?

Marc Malocsay: So moved.

Chris Daubert: Second.

Chairman Jansen: Motion by Marc, Seconded by Chris. All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: The Zoning Board needs to determine whether or not a site inspection is necessary.

Chairman Jansen: Already did it.

Chris Daubert: Yes I drove by.

Attorney Havens: ZBA to consider use restrictions and any other conditions to be imposed.

Chairman Jansen: The only condition is the latch I believe.

Attorney Havens: Yes, correct.

Chairman Jansen: So is it locked?

Craig Shields: Yes. It has a lock.

Attorney Havens: You're going to still have to prove to the Building Inspector that it has the latching cover under the residential code.

Craig Shields: Yes.

Chairman Jansen: Public hearing is closed.

Attorney Havens: So deliberations: Marc.

Marc Malocsay: I don't understand. Is it because of a better example would be an accessory structure that's within 10 feet of a house? There's fire codes and that's why it is. But everybody that I've asked, because we've had them too close to the house, and yet you can have a hot tub in a house. So I just don't understand what the logic is other than you can still service it. The only possibility I can think of is there are still some wells that are hand dug, and that water could get inside of them. I asked on the casing because I truly believe it's code that the casing goes until you hit bedrock and then it's in the bedrock so many feet. So you're not going to get any seepage from anything on the surface making it down. In this case we have that it is downhill so the water can't flow up. I don't see any reason that we can't give this variance.

Attorney Havens: So the applicable code section cited in the public hearing notice is 140-4(D) and it references pool locations. Unfortunately, while the town has begun discussing modifying the code to provide specifically for hot tubs, it is still currently defined under 'pool'. I also wanted to make sure the Board was aware that technically speaking, this particular provision says that the pool must be at least 20 feet from any active well, septic tank, leach bed, etc..., unless conditions warrant a lessening or increasing of this distance. And so the restrictive provision within the code actually grants latitude. I did the research and there is no applicable State or County equivalent that sets this as a standard. This is just simply something that was put into the Town code. Any other further deliberations? So would someone care to make a motion granting or denying the variance as advertised?

Diane Bramich: So moved.

Marc Malocsay: Second.

Attorney Havens: Granting or denying?

Diane Bramich: Granting.

Marc Malocsay: Second.

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

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Havens: We're all set.

Chairman Jansen: Except for the picture of the latches.

Attorney Havens: So bottom line, that's going to be specified as a condition of your variance.

Craig Shields: Yes.

Attorney Havens: You're going to have to provide a picture of your latching top.

Craig Shields: Yes, no problem.

Attorney Havens: ...that has the capacity to be secured when you go in to request your permit.

Craig Shields: Okay.

Chairman Jansen: Give it to Connie or to the Building Inspector?

Attorney Havens: Connie, Stephanie or Dana could take it as well because it's going to ultimately have to get in front of the Building Inspector. He's going to have to see that and the determination. Then he's going to be able to issue your permit.

Craig Shields: Okay.

Attorney Havens: My apologies. I skipped the five criteria...we're not authorized to grant it without going through that. With respect to the five statutory criteria for the granting of an area variance 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. And the reason given is the hot tub is not visible.

Chairman Jansen: We agree.

Attorney Havens: The Board agrees that it's not a detriment?

Board Members: Yes.

Attorney Havens: Question 2, can the benefit you seek be achieved by some feasible method other than the variance? The Applicant states no. It doesn't provide any detail. Does the Board believe that the benefit that the Applicant seeks can be achieved by some feasible method other than the variance?

Marc Malocsay: It can..

Diane Bramich: It can be put...

Marc Malocsay: But yes, unfortunately we have to say yes.

Attorney Havens: Okay. Is the requested variance substantial? The Applicant states no. And reason given is that this is replacing an existing hot tub.

Marc Malocsay: It is not substantial, even though I don't agree with the part it's replacing a hot tub, because it's still a variance.

Attorney Havens: Everybody agree that it's not substantial?

Board Members: Yes.

Attorney Havens: Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Board Members: No.

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

Board Members: Yes.

Attorney Havens: I need to re-request approval of the motion after considering the five statutory criteria for the area variance. Would someone care to remove the granting of the variance as advertised?

Diane Bramich: So moved.

Marc Malocsay: Second.

Chairman Jansen: Motion and a Second. Any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

OTHER CONSIDERATIONS:

ZBA Minutes of 6/24/24 for ZBA approval:

Motion to approve by Diane Bramich, Seconded by Chris Daubert

Diane Bramich motions to adjourn, Seconded by Chris Daubert