

TOWN OF WARWICK
ZONING BOARD OF APPEALS

Members Present:

Chairman Mark Malocsay

Attorney Jeremy Havens

Diane Bramich

Glenn Ehlers

Aaron Ubides

Bill Cerone

Mary Garcia, ZBA Recording Secretary

Approval of ZBA minutes for August 25, 2025

Chairman Malocsay: First item is the approval of the minutes from our previous meeting held on August 25, 2025. Do we have a motion?

Bill Cerone: Motion.

Glenn Ehlers: Second.

Chairman Malocsay: Is there any discussion? All in favor?

Board Members: Aye.

Chairman Malocsay: Any opposed? Motion carried.

PUBLIC HEARING OF John Turnbull - regarding property located at 56 Pine Island Tpke, Warwick, NY 10990 in the SL district, and designated on the Town tax map as Section 43, Block 1, Lot 17 for an area variance from Town Code §164-47 C.(2)(e)[1] & C.(2)(h) for a proposed 30'x40' extension to an existing commercial building with a reduced back yard setback of 28.5' where 30' is required; and for an increased lot area coverage from an existing 65% to 75% where 60% is permitted.

Representing the Applicant: Brian Friedler, Friedler Engineering

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

Brian Friedler: I'm Brian Friedler with Friedler Engineering. The applicant is proposing a 30 x 40 addition to his existing structure. He's using it to store his well-drilling rig. He doesn't want to leave it out in the parking lot so he needs another structure or an addition to the structure to park it. There's already a building on it, so lot coverage is going to be more non-conforming. The way the lot lays out, putting a 30 x 40 extension requires that rear yard variance request 28 and a half feet where 30 is allowed.

Chairman Malocsay: I drove by and I'm very familiar with the property. Some variances are substantial but we have equipment and things in outside storage of which we would rather see inside a building as opposed to outside. This addition is towards the back of the building and will not be noticeable from the front or when driving by.

Attorney Havens: I want to note that because it is fronting the village boundary line, it required a GML 239 referral. That referral was made September 9th and we have not yet received comments from the Orange County Planning Department. Therefore, the Board is without legal authority to grant or deny any variances this evening. Secondly, I did ask the applicant to provide architectural renderings including exterior dimensions of all portions of the existing building and proposed extension as well as elevations for the consideration of the Board. I don't know that I've received that. Were they submitted?

Brian Friedler: The architect is in the process of getting that done.

Attorney Havens: With respect to the short form EAF, number 13a, does any portion of the site or proposed action or lands adjoining the proposed action contain wetlands or other water bodies regulated by a federal, state, or local agency? The EAF says yes, but there's no description as to what that water body might be. Have you looked into it?

Brian Friedler: There's nothing even close, that's an autogenerated response. I think there's something down the street but back in the woods.

Attorney Havens: So it's near, but not your property?

Brian Friedler: No. There's nothing on his property.

Attorney Havens: Question number 15, does the site of the proposed action contain any species of animal or associated habitats listed by the state or federal government as threatened or endangered? It identifies Indiana bat.

Brian Friedler: Same, that was generated through the website. No trees will be taken down for this addition.

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

Attorney Havens: I requested dimensions of the existing building to confirm that the combined buildings would be under 4,000 square feet. I'm going to recommend we hold off on making that determination

until we have a floor plan that articulates the dimensions of the existing building so we can do an actual calculation. Nothing excludes it from being over 4,000 square feet; this is for SEQRA purposes to determine the action type.

Brian Friedler: We're going to be quite under 4,000.

Attorney Havens: The applicant is seeking variances under setback requirements for the Traditional Neighborhood Overlay district. The application was originally denied by the Building Department based on a side yard setback.

Attorney Havens reads the Building Department's denial letter which states a ZBA variance must be applied for to reduce the side yard setback from 13.7 feet to 10.8 feet. He explains the Traditional Neighborhood Overlay regulations, citing section 164-47C(2)f and subsection C(2)(e)(3) regarding property line and right of way. This provision requires a 9 feet, eliminating the need for a variance.

Attorney Havens: I just wanted to clarify that the building permit was denied based on the side yard setback, but under the Traditional Neighborhood Overlay district and the fact that they have a side access road, that essentially equates to an alleyway—unless the Board determines that it doesn't. But it specifies under this provision that it only needs to be 9 feet to the alley right-of-way. So if the purpose here is for storage of a well digging truck then I propose that it would be considered a garage for storage for that purpose. Is that accurate?

Brian Friedler: Yes.

Attorney Havens: Therefore, I don't believe legally there's any side yard setback requirement because they're proposing 10.8 and under this regulation, they would only need 9 feet. They fall short on the rear setback under subsection (e)(1) for principal dwelling, a minimum of 30 feet. That's what was in the public notice as well as the minimum coverage where the applicant states they're going to be covering 75% where 60% is permitted. Any questions on those technical points?

Glenn Ehlers asks reference between an alley and right-of-way to which Attorney Havens mentions the previously discussed "alley/right-of-way" Traditional Neighborhood Overlay provision. Chairman Malocsay and Glenn Ehlers agree with Attorney Havens.

Chairman Malocsay: We will leave the public hearing open; once we get a response from the County we will be set.

Brian Friedler: Okay.

Attorney Havens: And your floor plans.

Brian Friedler: Yes. Do you want it prior to the meeting?

Attorney Havens: Prior, so that we have an opportunity to review it prior to the meeting. We don't need stamped plans, but whatever you present to us has to be what you present to the Building Department. As long as we have floor plans that show what the actual dimensions are of the building, the extension, the elevations, that's really what we need.

Brian Friedler: Are we on for the next meeting or do I have to resubmit?

Attorney Havens: No need to resubmit other than the additional documents we've requested.

PUBLIC HEARING OF Thomas Sibilla & Amy Sibilla - regarding property located in the RU district at 7 Skysail Ln., Warwick, NY 10990, and designated on the Town tax map as Section 27, Block 1, Lot 116 for renewal of a 280(a) variance previously granted on May 22, 2023 to allow for subdivision of land containing four lots with access from a shared private driveway.

Continued from the ZBA Meeting of April 28, 2025.

Attorney Havens: They are not here this evening; they've requested to be removed from tonight's agenda and continue the application while their current application before the Planning Board is pending.

Other Discussions

- *Sibilla*
- *Kraftify*

Attorney Havens: The Chairman and I had a conversation about the Sibillan application. I clarified for the Chairman that while there has not been a written request directed to the Chairman, there has been a submission every month at each Zoning Board of Appeals meeting requesting that the application be held over and continued stating the applicant wouldn't be here, but that they were not withdrawing the application. I just wanted to clarify that for the record because there was correspondence today from a neighbor to the Planning Board Secretary regarding this application as to why it's continued to be on the Zoning Board of Appeals agenda each month if they're not appearing.

Attorney Havens: While it's not on the agenda, there was a written request on behalf of Kraftify to withdraw their pending application. I received a letter on September 8th from counsel for Kraftify LLC and there was a specific request articulating various legal cases and doctrines citing that the applicant should be permitted to withdraw their application because the Zoning Board of Appeals has not yet made an actual determination on their request for variances. And since they have formally withdrawn their application, the ZBA no longer has any authority to make a formal determination on their variance application. I do want to note for the record that the applicant had submitted an application for interpretation or any alternative area variances. Zoning Board of Appeals passed a resolution on the first appearance on this matter on February 24th, 2025 denying the request for an interpretation of the applicant was not required to go before the Planning Board for site plan approval. At that same meeting, the applicant requested an adjournment of the public hearing on their alternate request for a variance so they would be able to get their site plan and floor plans updated to clarify the actual floor area of the buildings in question and the proposed new extensions. There was no appearance at the March Zoning Board of Appeals meeting. An extension of the public hearing was requested and granted on April 28th, 2025. The May and July Zoning Board of Appeals meetings were canceled for administrative reasons. The applicant failed to reappear or request any additional extensions at the ZBA meeting scheduled for June and August, 2025 despite being provided with notice that they were still on the agenda. As a result, the ZBA passed a motion to close the public hearing at the August 25th, 2025 ZBA meeting. The applicant's counsel was advised that the public hearing was closed, but no deliberations were made on the requested area variance, after which the applicant's counsel submitted a formal written request to withdraw the pending application by letter dated September 8th, 2025. Since no formal resolution was adopted by the ZBA prior to the withdrawal of the pending application for an area variance, the applicant's request to withdraw that part of the application should be granted and no final decision on that aspect will be rendered. With respect to the applicant's request that such withdrawal be without prejudice to return to the ZBA in the future and their legal arguments and support of such requests, I wish to note for the record as follows: Number 1, the applicant's request to withdraw their application will apply only to their request for area variances, not to the prior interpretation for which the ZBA already passed a resolution. Number 2, when an applicant withdraws an application, that application is closed. Therefore the applicant must submit a new application for any future consideration. There is no procedural mechanism to reopen a previously withdrawn application for which no determination was made. And if the 60 day period within which the applicant has a right to submit an appeal of a determination of the zoning enforcement officer has expired, then the applicant would need to have a new legal basis for submission of a new application for consideration. Just want to clarify those legal points for the record for the benefit of the public and future. The ZBA has already rendered a determination on the interpretation part of that application. I will

prepare a decision on that aspect of it. And since the applicant withdrew the pending area variance part of their application, there's no further deliberation necessary. Does anybody have any questions on that?

Chairman Malocsay: With that I'll entertain a motion for adjournment.

Diane Bramich: So moved.

Aaron Ubides: Second.

Chairman Malocsay: All in favor?

Board Members: Aye.