

TOWN OF WARWICK
ZONING BOARD OF APPEALS
JUNE 25, 2018

Members Present:

Jan Jansen, Chairman

Mark Malocsay, Co-Chairman

Kevin Shuback

Diane Bramich

Chris Daubert

Attorney Robert Fink

PUBLIC HEARING OF Warwick Pet Lodge (Cathy Bauman) - for property located at 54 Jessup Road, Warwick, New York and designated on the Town tax map as Section 29 Block 1 Lot 14.22 and located in an RU District for a variance of the Bulk Area requirements of the Code allowing one side setback of 182 (+/-) feet and the second side setback of 289.7 (+/-) feet where 300 feet are required for the purpose of a proposed dog kennel and grooming business. **Continued from April 23, 2018 ZBA Meeting.**

Postponed to the July 23, 2018 ZBA Meeting.

PUBLIC HEARING OF Joseph LaNeve - for property located at 10 Morning Glory Lane, Warwick, New York and designated on the Town tax map as Section 42 Lot 2 Block 24 and located in an RU District for a variance of Section 164.41.A.(1)(a) adding a 26 foot X 46 foot addition to an existing 40 foot X 22 foot detached garage exceeding the maximum 1,200 square feet in floor area and 48 feet in greatest median dimension.

CHAIRMAN JANSEN: Please come up and state your name for the record and briefly tell the board what it is you would like to do.

MR. LaNEVE: My name is Joseph LaNeve and I would like to add on to my existing garage because there is no other good spot on my property to add an outbuilding of any kind without it being unappealing to the eye. I feel the least invasive way is to add onto my garage that exists already.

CHAIRMAN JANSEN: Does anybody have any questions of Mr. LaNeve? I know a couple of you have visited this location. It's an item that comes up quite often where you're allowed to build another building of that dimension without adding to something existing, which does not make sense. Sometimes it's multiple buildings, not just one. There really needs to be a change in the Zoning Law to allow for larger buildings. Anyway, is there anyone from the Public that would like to address this application?

MS. FASULO: My name is Valerie Fasulo and I live at 4 Morning Glory Lane. I'm just curious about the type of traffic on the road this will incur.

CHAIRMAN JANSEN: It's not going to be a place where people come for business.

MS. FASULO: I'm curious about what's going to happen there.

MR. LaNEVE: It's just an addition onto my garage so I have more storage which is better than storing items outside. It's either I add that onto my garage or I can just put up a 30' x 40' pole barn up on my front yard. I think this is the best way to do it.

ATTORNEY FINK: The application reads to accommodate his machinery and things of that nature.

MS. FASULO: Machinery that will be running up and down the road?

MR. LaNEVE: No, I don't leave my property.

ATTORNEY FINK: The issue is he could add 1 or multiple buildings on the lot. It's something in the Zoning that this board questions from time to time. So what is

more aesthetically pleasing, increasing the size of this building or putting other independent buildings on the lot to accomplish the same purpose?

MS. FASULO: Will it be seen from the road?

MR. LaNEVE: Probably not. It's to the left of my garage.

CHAIRMAN JANSEN: Anyone else? Any questions before I close the Public Hearing? No? OK, the Public Hearing is now closed.

ATTORNEY FINK: Will the proposed variance cause an undesirable change to the character of the neighborhood or be a detriment to nearby properties?

MR. SHUBACK: No.

MR. MALOCSAY: No.

CHAIRMAN JANSEN: We don't think so because adding that together is better than having separate buildings on the property.

ATTORNEY FINK: Can the benefit sought by the applicant be achieved by any other feasible method?

CHAIRMAN JANSEN: Absolutely, but that's what we don't want to see, more separate buildings.

MS. BRAMICH: Exactly.

ATTORNEY FINK: Is it a substantial variance?

MR. DAUBERT: No.

MR. MALOCSAY: No.

ATTORNEY FINK: Will this have an adverse effect or impact on physical or environmental conditions?

MR. MALOCSAY: No.

MR. SHUBACK: No.

ATTORNEY FINK: Is the alleged difficulty self-created?

MR. SHUBACK:	Yes.
MS. BRAMICH:	Yes.
ATTORNEY FINK: with no adverse environmental impact?	Would someone care to type this as “Unlisted”
MS. BRAMICH:	So moved.
MR. DAUBERT:	Seconded.
CHAIRMAN JANSEN:	All in favor? (5 ayes) Motion carried.
ATTORNEY FINK: granted as advertised?	Does anyone care to move that the variance be
MR. DAUBERT:	So moved.
MR. MALOCSAY:	Seconded.
CHAIRMAN JANSEN:	All in favor? (5 ayes) Motion carried.

PUBLIC HEARING OF View Wireless Infrastructure Fund LP and Orange County Poughkeepsie Limited Partnership - dba Verizon Wireless for property owned by Pine Island Warehousing & Storage LLC and located at 39 Transport Lane, Warwick, New York and designated on the Town tax map as Section 3 Lot 2 Block 2.222 and located in an AI District for variances of Sections 164.77(C)(1) – maximum height – an increase from permitted height of 120 feet to 164 feet; 164.77(C)(2)(c) – setbacks - a decrease from the required 164 feet to 138 feet and 145 feet; 164.79(C)(3) – foundation - delaying the submission from a professional engineer until a time concurrent with the building permit application, and 164.80(C)(8) omitting the requirement of a landscaping plan, for the purpose of construction of a wireless communications facility.

ATTORNEY FINK: Before we start, I have some preliminary remarks. This is a little different procedure than this board has been through in quite some time. This board cannot make a determination on granting any variances until there has been a determination of significance by the lead agency which is the Planning Board. The Planning Board will make that determination. The long form that has been filed may be sufficient. They might want an EIS or they might want something in addition to what has been file, we don't know. But until they make that determination we can't grant any variances. I wondered about the reason for us meeting before they made a determination and it was explained that they would like the Zoning Board of Appeals' input on any environmental issues. As far as I can see, the only environmental issue is the height of the tower. This board can't make any kind of a determination on that because the balloon test was delayed. As I looked at the long form, the only environmental issue has to do with height. They pointed out on the very last page of the long form that there are 3 parks (2 parks and the Appalachian Trail) within various distances from this location. I know generally the area but have not been out to look at it so I don't know how close residences are. When this board goes out and looks at the balloon test then I think this board, at the next meeting, would make a recommendation to the Planning Board. Then we would wait for the Planning Board to make recommendations back on the same subject. After they do their determination of significance they would give us their opinion, assuming it's going forward, as to the issues before us and then this board could vote after that determination of significance had been made by the Planning Board. So that's the long-winded way of saying there's really not a whole lot to talk about tonight.

MR. ????: I don't disagree with what you said except that this Public Hearing was scheduled. We figured I'd come down, give a presentation, hear what the comments are so we could then start to address them.

ATTORNEY FINK: I looked at that item on the agenda and I really didn't even want this meeting. My recommendation was that we don't have it but the Planning Board wanted it so we could make some recommendation on the only environmental issue, being the height of the tower. This board can't make that recommendation because they haven't seen the balloon. So to my way of thinking, it really doesn't make sense to go through all of that now because who knows when we will be coming back to actually make a determination. It all depends upon the Planning Board.

MR. ????: If I may, could I at least provide the Notice of Public Hearing?

ATTORNEY FINK: Sure.

MR. ????: It was not my decision to schedule the Public Hearing quite frankly. The Town told us we're scheduling a Public Hearing for the ZBA tonight. So I would like to keep the Public Hearing open if the board feels comfortable with that.

ATTORNEY FINK: That's what we always do.

MR. ????: OK. At least we can talk about it as people showed up here tonight. I could answer any questions that you may have and we could start to address issues after that fact. We do have a publically noticed Public Hearing.

ATTORNEY FINK: Again, keep in mind, where we are now is determining the environmental significance. That's the only issue before this board at the present time. We can't even consider anything else until the Planning Board makes that determination. Our involvement right now is simply to make a recommendation to the Planning Board with regard to the sole environmental issue, that being the height of the tower. It just doesn't make sense to go into this and things that have nothing to do with us because really the only thing you'd be talking about here are these 4 variances. All the rest, about 99% of what you want, is going to be dealt with on the Planning Board level. If someone wants to make a comment on the environmental aspect of the height of the tower, that's not even going up yet, we'll hear it but it doesn't make sense.

MR. ????: We do have an application pending before this board, a variance application. I understand the coordinated review and procedure aspect of that, however, the Federal law says boards have to decide issues/applications within a certain amount of time.

ATTORNEY FINK: When it's completed.

MR. ????: Correction, the FCC expressly says that's not the case. This is under the declaration part. It clarified under the **shot clock** after that in October 2014 it said some municipalities have mistakenly been under the impression that it's the completion of the application that sets that **shot clock**, the time frame to start running. The FCC said, "Let us make no mistake that is not the case." They told us, "We want the ZBA's approval, submit your application so you can get them looking at the application." Again, we're just responding to everything the Town has done so far.

ATTORNEY FINK: Well, the Town then really fouled up because if they're going to start the clock running, we can't make a determination tonight.

MR. ????: We're not looking for a determination tonight. Again, from our perspective, the Town told us, "You are having a Public Hearing." We didn't ask for it. OK, we'll make the notices and do all that. We didn't suggest it. So what you're telling me is the Town sets the Public Hearing, we submitted the application as we were requested to do, I spend 2 hours travelling down here, we spent money publishing now to be told I could go home. With all due respect, I don't think that's fair or reasonable.

ATTORNEY FINK: OK, you can go through it but keep in mind we're only dealing now with 4 things, the 4 variances.

CHAIRMAN JANSEN: I would direct you to write a letter to the Town attorney that this thing doesn't come up again.

MR. ????: OK, understood. You explained the 4 variances we're looking for. The Code says you can build a tower upon a **special use permit** up to 120 feet tall without the need for ZBA approval. Anything between 120 feet and 199 feet requires ZBA approval. My commentary is honestly anything above 120 requires approval because you'd be seeking a variance anyway. The other one that you mentioned is setbacks. We have a 135 foot setback on the front of the property line and from the building we have to be 164 feet from that because of the height of the tower. On the side property line we are about 145 feet from that. We're seeking variances for that because of the use of the property and the way it's configured; we cannot fit the tower in a location that would comply with the requirements. Having said that, we are committed to having a tower designed so that it will basically, should it fail, it will collapse within a 130 foot radius. That's in Exhibit 7 of our application. It was done by a New York State licensed engineer. The third variance is the landscaping. We believe that landscaping is not really appropriate because you have a bunch of existing landscaping that surround this property so we requested a variance from that. The fourth one is we are requesting a variance from providing a foundation report right now. We're not saying we don't want to provide it but it's a very expensive proposition. It's done 99.9% of the time after the review of the application because the application could change during the review and we don't want to have to conduct it twice as it costs several thousands of dollars. We're just saying can we do it if and when the application is ultimately approved, if it's going to be approved. I'm happy to answer any questions you may have regarding this application and our justification as to why we feel we are entitled to these variances.

CHAIRMAN JANSEN: If everyone could, just hold your questions until the Public Hearing is open. Thank you.

MR. MALOCSAY: I'm confused. I haven't seen anything like this in the 30+ years I've been on the board. The first question I have is on the height variance. You keep talking about the environmental end. We've never looked at an environmental end on a height variance to the best of my knowledge, ever.

ATTORNEY FINK: I can't remember the last time on a height variance.

MR. MALOCSAY: There were a couple with churches because of the steeples; they wanted more than the 35 feet required.

ATTORNEY FINK: Let me put it this way, it is an environmental issue. In the applications that come before us, 99.9% of them are short forms. We routinely run through the determination of typing it, which is normally unlisted, and we haven't really sorted out the environmental issue of the height. Again, I can't remember the last time that came before this board. This is a little bit different; this is type 1, it's a long form; the significance before this board can act has to be determined whether or not there is significance needed for their documentation. It's my opinion the height of the tower is an environmental issue. None of the other issues are.

MS. BRAMICH: What is the height of the tree tower on Route 94 near Price Chopper?

MR. ????: That one was done about a year ago and it's between 95-100 feet. That's generally where tree towers are effective. They blend in.

CHAIRMAN JANSEN: Let's open it up to the Public for questions. If anyone wishes to ask questions or express concern, please come up and identify yourself for the record then ask your question.

NOTE: Several neighboring property owners came forward expressing concerns that do not apply to this board. They are all Planning Board issues. Attorney Fink strongly advised them to attend all future Planning Board meetings to ask questions and gain more information. This board really needs recommendations from the Planning Board before acting on these variances. Mr. ??? offered to answer their questions after the meeting

CHAIRMAN JANSEN: At this point I'd like to adjourn the meeting. This application process is postponed indefinitely. There is much work to be done with the Planning Board, etc. before we can act on it.

OTHER CONSIDERATIONS:

CHAIRMAN JANSEN: Motion to approve the ZBA Minutes from the April 23, 2018 meeting.

MS. BRAMICH: So moved.

MR. MALOCSAY: Seconded.

CHAIRMAN JANSEN: All in favor? (5 ayes) Motion carried.
Meeting adjourned.

[ZBA Recording Secretary – Mary Hebel]