

TOWN OF WARWICK
ZONING BOARD OF APPEALS

Members Present:

Chairman Mark Malocsay

Attorney Jeremy Havens

Glenn Ehlers

Aaron Ubides

Bill Cerone

Mary Garcia, ZBA Recording Secretary

Members Absent:

Diane Bramich

Approval of ZBA minutes for June 23, 2025

Chairman Malocsay: First, we need approval of the minutes for the last ZBA meeting held June 23, 2025.

Glenn Ehlers: Moved.

Aaron Ubides: Second.

Chairman Malocsay: Any discussion, all in favor?

Board Members: Aye.

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

Continued from the ZBA Meeting of June 23, 2025.

Chairman Malocsay: Kraftify Holdings is not here this evening.

Attorney Havens: It was their request for a favorable interpretation that they didn't have to go before the Planning Board; that portion was denied by the ZBA. The other part of their application was if the request for an interpretation was denied, then they were seeking a variance. The variance part of the application was never formally closed, so we need to close the public hearing, as it can't remain open indefinitely without the applicant's agreement.

Glenn Ehlers: I'll make a motion to close the public hearing.

Bill Cerone: Second.

Chairman Malocsay: How do we vote?

Board Members: Aye.

Chairman Malocsay: Public Hearing is closed.

PUBLIC HEARING OF Joshua Young & William Young – regarding property located in the RU district at 22 Foley Rd., Warwick, NY 10990, and designated on the Town tax map as Section 29, Block 1, Lot 39.1 for an area variance from Town Code §164-41(A)(1)(a) for a proposed 80'x 30' detached garage with a side open roof overhang with a proposed square footage that exceeds the allowable 1,200 square feet in floor area, and 80' in greatest median dimension where only 48' is permitted.

Continued from the ZBA Meeting of June 23, 2025

Representing the Applicant: Joshua Young, Applicant

Chairman Malocsay: I read it as it was advertised but there was a discussion that the roof overhang was going to be removed, so the building size did change. Before we open the Public Hearing let me state that after the last meeting (June 23, 2025), a member of the public asked why the topos weren't here. So we were going to look at the property to confirm the drop and the applicant was going to bring the topos. I went to the property and didn't see a need for the topos because I saw that the building was as described, with an elevation of about 12 feet lower than the pool height. So it was just to make sure that if anybody could see it, they'd only be looking at the top part of the roof. So that's why the topos didn't have to come. If you can let us know, I believe it was five antique cars is what you wanted?

Joshua Young: Yes, there was a list that was requested of us too. We did scrap the overhang, as agreed upon at the last meeting. At this time, we still are looking for the 80 x 30. The vintage vehicles came up, but there is a great many things that require storage, not just the automobiles.

Applicant Joshua Young provides details regarding the inventory to be stored. He included vintage items, memorabilia, family heirlooms and such, as well as stating that his family is preparing for future life changes regarding elderly parents. He goes on to say that this one structure he has proposed is more pleasing to the eye aesthetic wise than to have multiple structures. He also agreed to plant as much foliage/tree coverage as needed and while he understood there were some concerns, he felt he had addressed the issues.

Glenn Ehlers: I'm in favor of it now; I think they worked with us. They took some of the square footage off; it's no longer three times the size. It's down to double what's allowable, but I'm okay with it now.

Chairman Malocsay: I'm going to interrupt. After talking to another member, it wasn't a quorum, but the question on the garage door opening—it's larger than it has to be. The first thing they think of when something's that large is what's being put in there when everything you have will fit through a 10 by 10 opening easily? So they're thinking it's not vehicles. It might be for something else, larger.

Joshua Young: So if you're trying to maneuver to one side or another than a 10 or 12 foot door, if you're not an expert you may wind up missing half the garage. If someone turns the wheel the wrong way...I'm just nervous about cramped spaces.

Aaron Ubides: I agree, because I built mine 10' wide just so that I can pull something in sideways and not try to get around something else. I'd like to finish polling; I agree with the applicant. He's gone through a lot to do this and he's willing to put growth greenery there to shade it and the site visit, I don't see an issue with this.

Glenn Ehlers: He reduced the size.

Aaron Ubides: Yes, he reduced the size significantly by taking the overhang off.

Bill Cerone: Mr. Young, you've been more than accommodating. You listened to what we said and I think you were at 4,200 square feet, down to 24? Nine people said they don't want it so that's probably why it dragged out. Mark did the site visit and with the landscaping, I'm good with it.

Chairman Malocsay: Before we vote, I had the discussion with you that we want something evergreen in there. And we talked about arborvitae so we are going to specify on a size and spacing. As long as the rest of the Board doesn't have any other questions, the Public Hearing is closed. We'll put a condition and if it has to be tweaked we can look at that. But if what you're going to do is greater than what we're asking, then there isn't a problem.

Attorney Havens: There's no need for any further action if he's more restrictive than the condition.

Chairman Malocsay discusses the rows and spacing of the trees for the screening. He advises Joshua Young that he may need closer to 100' of arbor coverage for the length due to the angle. Chairman Malocsay also recommends someone from the tree company visit the property regarding light/shade for the variety of trees to be planted.

Attorney Havens: As a point of clarification, for purposes of the resolution I'm looking at the site plan. The barn sits lengthwise, north and south. Is the screening to be on the west side or on the east side?

Chairman Malocsay: East side of the barn.

Glenn Ehlers: I'll make a motion to close the public hearing.

Aaron Ubides: Second.

Chairman Malocsay: All in favor?

Board Members: Aye.

Chairman Malocsay: Motion carried.

Attorney Havens: In considering the granting of an area variance, the Zoning Board of Appeals is required to consider five statutory criteria. Number 1, will an undesirable 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 for the reason it's not located in a neighborhood and cannot be seen. Does the Board agree with the applicant?

Chairman Malocsay: The answer is yes. Because of the screening that we're putting in.

Attorney Havens: Everybody agree with that?

Board Members: Yes.

Attorney Havens: Number 2, can the benefit that the applicant seeks be achieved by some feasible method other than the variance? The applicant states no. And the reason given, "It's necessary for multipurpose use, storage for antique car collection..." etc. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Is the requested variance substantial? The applicant states yes. 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. The reason given is it's not located in the neighborhood and it's set back from the street. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Question 5, is the alleged difficulty self-created? The applicant states no, for the reason given there's a need for more storage. Does the Board agree with the applicant?

Board Members: No.

Aaron Ubides and Chairman Malocsay simultaneously: It's always self-created.

Attorney Havens: Any further discussion?

Board Members: No.

Attorney Havens: Would someone care to make a motion granting or denying the variance as amended with the stated previous condition that arborvitae or green giants be placed not more than 8' feet apart to screen the east side of the garage?

Aaron Ubides: I make a motion to grant it.

Bill Cerone: Second.

Chairman Malocsay: Any further discussion? All in favor?

Board Members: Aye.

Attorney Havens: You'll get a resolution in about a week or two and you'll be able to take that to the Building Department.

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.

Chairman Malocsay: They're before the Planning Board and the engineer asked us to hold it over.

Attorney Havens: Yes. Specifically that's Thomas Sibilla and Amy Sibilla public hearing. The applicant's engineer requested that it be removed from tonight's agenda. There will be no appearance.

PUBLIC HEARING OF John, Gregory & Monica Pennings - regarding property located in the RU district at 103 Hoyt Rd., Warwick, NY 10990, and designated on the Town tax map as Section 63, Block 1, Lot 1.224 for an area variance from Town Code §140-4A & §140-4C permitting an existing above-ground 18' x 33' pool and a separate hot tub located within the front yard, the hot tub located within 15 feet from the house; and §164-41A(1) & §164-41A(1)(a) permitting two (2) 12' x 40' overhands that were added to each side of an existing and permitted 30' x 40' garage increasing the overall size of the accessory garage from 1,200 sq ft to 2,160 square feet where only 1,200 square feet is permitted.

Representing the Applicant: John Pennings, Applicant and Monica Pennings, Applicant

Chairman Malocsay: Come forward and state your name please.

Monica Pennings: Monica Pennings.

John Pennings: John Pennings.

Chairman Malocsay: How did all of this come about?

Monica Pennings: A loan required a title search.

John Pennings: I want to straighten up what I did wrong In order to get the loan money to operate this year.

Chairman Malocsay: If it's okay with everybody else, can we treat the pool and the hot tub separately and then we'll deal with the larger building? So there was a reason that the pool had to go in the front yard.

John Pennings: It's not exactly in the front yard. The septic goes to the front yard. It's off to the right, it's a little bit of a front of the <inaudible>. It was because we didn't have enough room in the back.

Monica Pennings: The back is the well so there's no room.

John Pennings: Then there's electric goes through there.

Aaron Ubides: I'm familiar with the property. The way the house is set, Point Road runs all the way, so that whole piece is front. And the house is way up at the far end, so you couldn't put it towards the other side.

Chairman Malocsay: I'm familiar with the property too, but it's...

Aaron Ubides: It's a unique piece the way the house is laying out.

John Pennings: It's like three acres down here and the rest is up above. And our entrance to the driveway's down at the bottom too. It's not like it's in our front yard and it's not by any houses.

Chairman Malocsay: What year was the house built?

Monica Pennings: 1999.

Chairman Malocsay: I don't think there was any more setback since then. So the house was back far, but anything that would sit within the front of the 75 foot setback that's considered the front yard, is the front yard.

Attorney Havens: I did want to note for the record pursuant to the survey that was submitted and prepared by John McGloin, the corner of the house sits back 268 feet from Hoyt Road. How far away from the front of the house would you say the pool is, approximately?

John Pennings: From the front corner, 15 feet maybe 20 feet.

Attorney Havens: So the point I wanted to make for the record is that the pool is not within the front yard setback. It's like more than 150 to 175 feet, maybe even 200 feet from the road. It's within the front yard

technically, but not the front yard setback. And that's the problem with the code is it says it can't be in the front yard. The other point that I wanted to make for the benefit of the Board Members is when I was reviewing the application, I pulled up the GIS map and Mr. Pennings, please confirm for me if I'm accurate, that the vast majority of Hoyt Road from your driveway to the corner of your property is all covered with trees and wooded from the road.

John Pennings: Yes, all the way.

Attorney Havens: So with the exception of the opening at the driveway, Hoyt Road is completely wooded and also the back property behind the pool from the neighbor's property.

John Pennings: There's a stonewall fence back there as well.

Attorney Havens: So it's basically not visible except if you're sitting in this driveway. Is that accurate?

John Pennings: Actually, that's lower over here. You can't even see sometimes that way. You don't see it really until you get way up.

Attorney Havens: So until you get closer to the house, even up the driveway.

John Pennings: I guess you could see it from there if you technically look up the hill.

Attorney Havens: But essentially for the most part, the only place it could be seen is from the driveway itself at one point or another. Is that correct?

John Pennings: That's correct. You can't see it from <inaudible> road at all, really.

Chairman Malocsay: So on the hot tub, I don't have a problem with it. I just don't understand the reasoning why it has to be that many feet away.

Attorney Havens: There are no setback requirements for hot tubs under the Town Code. So by default they fall under the broad definition of a pool. The setback requirements for a pool is a minimum of 15 feet.

Chairman Malocsay: With that said, our Town Code says it's only a technicality in giving a variance for this application.

Attorney Havens: There has to be some form of practical difficulty that the applicant would suffer if the Code were enforced. In this particular case, is your hot tub already installed?

Monica Pennings: Yes.

Attorney Havens: Would you suffer a practical difficulty or a hardship if you had to move it more than 15 feet away from the house?

John Pennings: Yes.

Attorney Havens: Would you say that it would be a financial hardship to move the hot tub more than 15 feet from the house?

Monica Pennings: Yes.

Chairman Malocsay: We covered the pool, we covered the hot tub. Last are the two overhangs; it's very clear that you needed that additional space for storage. I've been there and I've seen everything that's under it. Does anybody have any questions or comments?

Aaron Ubides: I'm very familiar with the property.

Chairman Malocsay: You have a running farm although the property itself is not attached.

John Pennings: It was attached but we were recommended that we subdivide it.

Attorney Havens: So just wanted to note for the record that while there was a application for a building permit that was denied, there appeared to be no violations of record with the exception of the permits

that they're seeking to obtain through this variance. There was no GML 239 referral needed based on the nature of the application and location of the property. On the short form EAF that you prepared and submitted, question number five asks, "Is the proposed action a permitted use under the zoning regulations" under 5a, and 5b "Is the proposed action consistent with the adopted comprehensive plan"? And there wasn't an answer. There's a notation from Connie (Sardo) that the ZBA would know. I just wanted to note that for the record. Is it a, is the proposed action a permitted use under the zoning regulations? Yes, because a pool, a hot tub and a garage and the expansion of a garage are all accessory structures to a residential dwelling. And so they would be permitted so long as they're in the right location and of the right size. That's why you're here for variances. Is the proposed action consistent with the adopted comprehensive plan? Again, these are comparatively small residential accessory structures which would be consistent with the adopted comprehensive plan. I'm going to note for the record that we're going to select 'yes' for both 5a and 5b on your short form EAF. Is that acceptable?

Monica Pennings: Yes.

Attorney Havens: Question 13a, does any portion of the site of the proposed action, or lands adjoining the proposed action contain wetlands or other water bodies regulated by a federal state or local agency? You stated yes. Could you elaborate for the Board, I presume you're talking about the stream that runs along the boundaries of your property, is the location where you're seeking to get permits for the preexisting barn overhangs, the pool, or the hot tub immediately adjacent to that wetland body?

John Pennings: No, and I made a mistake because that stream doesn't flow all year long.

Attorney Havens: Would you prefer to correct your application to state 'no' for this question?

Monica Pennings: Yes.

Attorney Havens: Question 14 says, "Identify the typical habitat types that occur on or are likely to be found on the project site. Check all that apply." We just clarified that you don't have any official wetland, so there are 7 different options. Shoreline, I don't believe it's shoreline. Forest, it's not really forested, is it?

Monica Pennings: No.

Attorney Havens: Agricultural/grasslands, you're immediately adjacent to it. Wetlands, we said no, it's not urban. And it would be suburban given that you have other residences in your immediate vicinity, correct?

Monica Pennings: Yes.

Attorney Havens: Okay so we will say that it's agricultural and suburban for question number 14. Is that acceptable?

John Pennings: Yes.

Chairman Malocsay: We're going to open this up to the public and we're going to leave it open as we discuss SEQR.

Attorney Havens: So given all of the requested variances relate to improvements or expansion of accessory structures to a residential dwelling, all of the variances that are requested would be considered a Type 2 action under SEQR section 617.5 C, subsection 12. Would someone make a motion typing the action as a Type 2 action with no adverse environmental impact?

Aaron Ubides: I make a motion.

Glenn Ehlers: Second.

Chairman Malocsay: All those in favor?

Board Members: Aye.

Attorney Havens: The Zoning Board needs to determine if any site inspection is necessary.

Chairman Malocsay: As we discussed, two of us know the property well enough; nobody else would have to see it.

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

Chairman Malocsay: No. All three are already there and none of the neighbors came to complain.

Attorney Havens: So we're done.

Chairman Malocsay: Public hearing is closed.

Aaron Ubides: Motion.

Glenn Ehlers: Second.

Chairman Malocsay: We've got a motion and a Second. All in favor?

Board Members: Aye.

Attorney Havens: So in granting the area variance, the ZBA has to consider these five statutory criteria. Question number 1, will an undesirable 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. Does the Board agree with the applicant?

Board Members: Agree.

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

Board Members: Yes.

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

Board Members: Agree.

Attorney Havens: And question 5, is the alleged difficulty self-created? The applicant states no. Does the Board agree with the applicant?

Board Members: No.

Chairman Malocsay: Would someone care to make a motion granting the variance as advertised?

Bill Cerone: I'll make the motion.

Glenn Ehlers: I'll Second.

Chairman Malocsay: Any further discussion? All in favor?

Board Members: Aye

Attorney Havens: You'll get a resolution in about a week, week and a half.