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

Member(s) Absent:
Bob Larsen, Alternate

Other Considerations:

- ✓ ZBA Minutes of August 24, 2026
    - Motion to approve made by Glenn Ehlers, Second by Aaron Ubides

PUBLIC HEARING OF Mark Formica - regarding property located in the SM district at 53 Shore Ave, Greenwood Lake, NY 10925, designated on the Town tax map as Section 77, Block 1, Lot 18 for an area variance from Town Code §164-40N to permit an existing 31 ft x 5 ft front deck with a 10 ft x 6 ft covered porch roof, which reduces existing front yard setback from 24.7 ft to 21 +/- ft front yard setback where a 30 ft front yard setback is required.

Representing the Applicant: Jonathan DeJoy, Attorney (Mahon, Rider, & McKay, Attorneys at Law)

Attorney DeJoy: My name is Jonathan DeJoy. I'm from the law firm of Mahon, Rider, & McKay, here on behalf of the Applicant. We are looking for a variance for an existing covered front porch. Originally, the property was slightly larger with larger front yard setbacks. The HOA insisted they needed to acquire a small portion of this front yard, possibly because there's a water pump house there. That reduced the front yard setback. When the structure was built in 2012, my clients hired a contractor who was going to get the permits from the Town. However, he did not and my clients were unaware. When my clients went to sell the house, they were informed that they needed to come for a variance. Nothing new is being proposed. It's a variance consistent with many of the neighborhood homes. It's a relatively small covered structure on the porch and it fits with the character of the neighborhood; it is not substantial.

Chairman Malocsay: Does anybody from the public want to address this application?

Lisa Mulcahy: I'm Lisa Mulcahy, the agent representing the buyers of this property. This is a pre-existing situation since 2012. It's a unique situation with the pump house, which is taking up some of the front yard but is in keeping with the neighborhood; very few of those houses meet the 30 foot setback.

Chairman Malocsay: We're going to keep the public hearing open for a few minutes as we go through a few more things and see if any questions are raised.

Attorney Havens: This is a simple area variance for an extension of a primary residence. It's pre-existing, non-conforming so it qualifies as a Type II action under SEQR §617.5C, subsections 11 and 16. Would anyone make a motion to type the action as a Type II action with no adverse environmental impact?

Diane Bramich: So Moved.

Aaron Ubides: Second.

Chairman Malocsay: Any further discussion? All in favor?

Board Members: Aye.

Chairman Malocsay: Any opposed? Motion carried. The character of the neighborhood is probably the most important.

Diane Bramich: I know the house and I don't see a problem with it.

Chairman Malocsay: Public hearing is closed.

Attorney Havens: The ZBA is required to consider five statutory criteria. For the record, we received Counsel's submission with a detailed response on each of these items. I'm going to review the summary responses then give Counsel an opportunity to supplement that. Question 1, will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by granting the variance requested? The applicant stated no, stating that it's an overhang porch that adds to the charm of the neighborhood and has been in place for 14 years. Does the Board 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 states no for the reason given that the look of the home will be diminished. Does the Board agree with the applicant?

Board Members: Agree.

Attorney Havens: Question 3, is the requested variance substantial? The applicant states no, it's a small covered porch and it does not block anyone's view. 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, it's a small covered porch shedding very little water. 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 that the builder was to file for the permits since the applicant lives out of state. Does the Board agree?

Board Members: It was self-created.

Attorney Havens: Council, do you have any further comment?

Attorney DeJoy: I would just add that the property's kind of situated in the outside apex of almost a 90 degree turn in the road. So it actually sits farther back than you might imagine for having a 21 foot setback. It's maybe closer to somewhere between 30 and 50 feet to the road.

Chairman Malocsay: Would someone like to make a motion?

Aaron Ubides: I make a motion that we approve it.

Diane Bramich: I'll second.

Chairman Malocsay: Any further discussion? How do we vote?

Board Members: Aye.

Chairman Malocsay: Five ayes.

PUBLIC HEARING OF Adam Riback - regarding property located in the SM district at 265 Jersey Ave, Greenwood Lake, NY 10925, designated on the Town tax map as Section 74, Block 1, Lot 21 for an area variance from Town Code §164-40N and §164-41.A(1)(d) to permit a proposed 12'x22' shed with a 2' side yard setback where 5' is required, and a setback from the dwelling of 7' where 10' is required; and to permit an additional proposed 12'x19' shed with a side yard setback of 1' wheeler 5 feet is required, and a rear yard setback of 3' where 5' is required.

Representing the Applicant: Adam Riback, Applicant

Chairman Malocsay: I was at the site today with the Building Inspector. The existing sheds aren't on the map and there aren't any permits for them. We'll put in a condition that these sheds be removed. Looking at the house from the road, are your water and leach field on the left side of the house?

Adam Riback: Correct.

Chairman Malocsay: Do you have a well?

Adam Riback: I don't have a well.

Chairman Malocsay: Can you point on the map where the leach field is in that picture?

Adam Riback: It's parallel with the propane tanks that are right here.

Chairman Malocsay: Does anybody else have any questions now?

Diane Bramich: You said a garage, this says a shed. What is it?

Adam Riback: It's a shed, but because I want to put one of them parallel with my garage, I'm having it custom made to have a garage door in the front. The goal is for the shed to appear as a garage. The color and the roof shingles are to match the home as close as possible.

Diane Bramich: Not attached to anything, standalone?

Adam Riback: No. It's just a shed with a garage aluminum door that goes up and down.

Chairman Malocsay: And the other one is roughly the same size from what I remember, 12 by …?

Adam Riback: So the first one, my intent is to duplicate the size of the garage, which is 12 x 22. This area is raised, so I reduced it down to 17' just to make sure there's enough room to go behind it.

Diane Bramich: Can I ask why you need so many sheds?

Adam Riback: I moved here single, but now I'm married with a stepson, a baby, and a couple pets. My home is 1,250 square feet but part of that footage is a 3-season room; it's not livable in the winter.

Diane Bramich: It's storage. Is that what you're saying?

Adam Riback: Yes. As a cold water diver, I have tons of tanks and equipment. I also do volunteer work in Brooklyn, which I'm looking to start here. I have a mulcher, kayak, lawnmower, a lot of basic things.

Chairman Malocsay: I looked at the feasibility of moving them to a different location but it's tight. It's not going to look out of place if it's closer. On the property line, who owns the white fence?

Adam Riback: My neighbor owns the fence.

Chairman Malocsay: Do you understand that you would not be issued the Certificate of Compliance until the other structures are removed?

Adam Riback: Not an issue at all.

Chairman Malocsay: The only other thing that I'll address because it came up with your neighbor was water. We had two and a half to three inches of rain. I didn't notice any real water issues. However, the neighbor, they live across Jersey Avenue?

Adam Riback: He lives across Julie Lane which slopes downward from south to him. So wherever you dump water on my property, when there's enough water, it's going to find its way to the same place.

Chairman Malocsay: Public hearing is open. Anyone from the public with any comments, questions? Public hearing is closed.

Attorney Havens: This was typed as a Type II action at the August 24th meeting.

Aaron Ubides: I make the motion on the condition that the existing temporary storage sheds are to be removed.

Bill Cerone: I'll second.

Chairman Malocsay: Any further discussion? All in favor?

Board Members: Aye.

Chairman Malocsay: Motion carried.

Attorney Havens: Will an undesirable change be produced in the character of the neighborhood or detriment to nearby properties be created by the granting of the variance the applicant requests? The applicant states no for the reason that the new sheds are wood color and will be close to the color of the home. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Question number 2, can the benefit the applicant seeks be achieved by some feasible method other than the granting of the variance? The applicant states no, the sun deteriorated the temporary vinyl sheds so he needs new ones. Does the Board agree with the applicant?
Chairman Malocsay: With looking at it, he's coming up with a pretty good solution and he's still less than 500 square feet where he's allowed 1200 square feet for an accessory structure. So yes, I would agree.

Attorney Havens: Does the rest of the Board agree that the benefit can't be achieved by some feasible method other than granting a variance?

Aaron Ubides: I disagree because it could be moved to another location.

Attorney Havens: So can it be done by some feasible method other than the variance, yes or no?

Board Members (Chairman Malocsay, Diane Bramich, Glenn Ehlers): Yes.

Bill Cerone: I disagree.

Aaron Ubides: I disagree.

Attorney Havens: So we have a majority that says yes, it can be. Is the requested variance substantial? The applicant states no because he's only asking for a few feet.

Chairman Malocsay: Numerically the number is substantial, yes.

Attorney Havens: Does the rest of the Board agree that the variance is substantial?

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 ground will be repaired properly with stones so the wood will not rot from touching the wet ground.

Chairman Malocsay: Not exactly for his reason, but yes.

Aaron Ubides: I agree with Mark.

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

Board Members: No.

Attorney Havens: Would someone care to make a motion granting or denying the variance as amended to include the previously approved condition that the existing temporary storage sheds be removed?

Diane Bramich: Motion.

Aaron Ubides: Second.

Chairman Malocsay: Any further discussion? All in favor?

Board Members: Aye.

Chairman Malocsay: Motion carried.

PUBLIC HEARING OF Nicholas Conetta - regarding property located in the SL district at 192 Alexander Rd, Monroe, NY, 10950 and designated in the Town tax map as Section 60, Block 3, Lot 21 for an area variance from Town Code §164-40N and §164-45.1 to permit construction of a new residential dwelling on an existing undeveloped tax lot with a lot area of 0.34 acres, where 3 acres are required; a front yard setback of 36 ft where a 50 ft front yard setback is required.

Representing the Applicants: Nicholas Concetta and Alexandra Steinberg, Applicants

Board member Diane Bramich advises the Board that she is a personal friend of the Applicant, and they both serve on the ambulance corps. She offers to recuse herself if the Board deems necessary. Upon being asked if there is any conflict of interest regarding possible monetary issues, and whether she believes her decision may be affected, she answers 'no' to both questions; she simply wanted the Board to be aware. Board members decide there is no reason for her to recuse herself.

Nicholas Conetta: Our front yard is only 36 feet, but the actual distance from our house to the road would be 73 feet. So our property line stops around the bend before the road.

Alexandra Steinberg: The house was subdivided in 1956.

Chairman Malocsay (to Attorney Havens): Quick question—pre-existing small lots front yard setbacks—it says 50 feet. I thought for pre-existing small lots it was less.

Attorney Havens: There isn't a separate front yard setback for the pre-existing small lots, but there is for the sides and the rear. What has been done in preparation of the public hearing notice with respect to the necessary setbacks is a review of the proposed site plan. The longer side yard, because it's on a curve, would essentially have two front yards, one side yard, and one rear yard. The side yard would be 157 feet long and the rear yard 125 feet. I looked at the dimensions of the parcel and compared that to the tables in the existing Small Lot Provisions of the Code. The property is 0.34 acres (14,810 sq ft) which qualifies as an existing small residential lot, within the category to allow consideration under 164-45.1C. I calculated the variances based on side yard setback and rear yard setback. In this case, because it's an existing small residential lot, it doesn't require any side or rear yard variance; the property would only require a front yard variance. The referral from the Building Department said a 280a variance may be necessary. I've reviewed the applicable provisions of the code relevant sections regarding 280a and application for permission to get a building permit on something other than a public Town road. This is a private road, filed before the Town Planning Board was officially created and authorized to approve subdivisions. Therefore, this street meets the street requirements of being an official road within the Town. The only question is if that road is suitably improved to meet safety standards for emergency access, which is a determination for the Building Inspector. This Board does not need to grant the 280a variance simply because it meets the access requirements.

Chairman Malocsay: Does anybody have any questions?

Aaron Ubides: The house would actually be further back from the road, but not the property line itself?

Chairman Malocsay: The way I'm looking at it, correct.

Aaron Ubides: So there's more than enough front road setback, just not the front property line setback.

Chairman Malocsay: Correct. Any other questions? Public hearing is open.

Bill Cerone: Who owns in front of you?

Alexandra Steinberg: The frontage?

Nicolas Concetta: Across the street?

Bill Cerone: No, between the <inaudible> and the road.

Attorney Havens: Generally speaking, it wouldn't be owned by any individual. As a general rule of thumb, while there are exceptions, state case law interprets private roads such that if it's not privately owned by a person or a homeowner's association, the property owners adjacent to and with immediate access to that road would have ownership rights to the center of the roadway and therefore have ingress and egress rights on the road. Whenever it's a private road there's an unspoken (if not written) responsibility to share in the cost of maintenance and plowing and so forth.

Bill Cerone: Do you intend to maintain that area?

Alexandra Steinberg: Yes.

Chairman Malocsay: If we don't have any further questions, we'll open the Public Hearing. Is there anyone from the public that would like to address this application? Public hearing will remain open.

Attorney Havens: Given that this is a proposal for construction of a residential construction and/or expansion of a residential dwelling and residential property, it qualifies as a Type II action under SEQR §617.5C, subsections 11 and 16. Would anyone care to make a motion typing the action as Type II with no adverse environmental impact?

Diane Bramich: So moved.

Aaron Ubides: Second.

Chairman Malocsay: Any further discussion? All in favor?

Board Members: Aye.

Chairman Malocsay: Motion passed. Diane (Bramich), can you verify the character of the neighborhood?

Diane Bramich: The character of the neighborhood is the same. It is a crowded residential area building up more and more. There are still some vacant lots and they're all small.

Chairman Malocsay: I can't think of any conditions so before we close the public hearing are there any further comments? Okay, public hearing is closed.

Attorney Havens: In considering the granting of an area variance, ZBA is required to consider the five following statutory criteria. Question 1, will an undesirable change be produced in the character of the

neighborhood or a detriment to nearby properties be created by granting 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 that the applicant seeks be achieved by some feasible method other than granting the area variance? The applicant states no. Does the Board agree?

Board Members: Agree.

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

Board Members: No, it is not 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 states no.

Board Members: Agree.

Attorney Havens: Is the alleged difficulty self-created? The applicant states no.

Board Members: Yes.

Glenn Ehlers: I say no because he didn't create the lot.

Diane Bramich: You're right.

Chairman Malocsay: However, creating the size of the house determines the setbacks.

Attorney Havens: I have reviewed case law and when a person buys an undersized lot that doesn't meet the minimum area or setback requirements, courts have interpreted that that is a self-created difficulty.

Glenn Ehlers: I agree but I think that’s why the Town has the small lot section specifically for this purpose.

Chairman Malocsay: Any further discussion? Would someone like to put this in the form of a motion?

Bill Cerone: I'll make a motion to grant as advertised.

Aaron Ubides: I second.

Chairman Malocsay: Any further discussion? All in favor?

Board Members: Aye.

Chairman Malocsay: Five ayes.

PUBLIC HEARING OF Jonathan Sismey – regarding property located in the MT district at 347 Nelson Rd, Monroe, NY 10950, and designated on the Town tax map as Section 58, Block 2, Lot 1.3 for an area variance from Town Code §164-40N and §164-45.C to permit relocation and reconstruction of a residential dwelling, damaged by fire to the extent of more than 50% of its assessed value, on a pre-existing non-conforming lot which increases the existing front yard setback from 15.5 ft to 75 ft, where a 100 ft is required; and which decreases the existing side yard setback from 30 ft to 40 ft, where 75 ft is required.

Representing the Applicants: Jonathan and Victoria Sismey, Applicants

Jonathan Sismey: Our family has lived on the property for about 24 years. We had a tragic fire on April 27th, which completely destroyed the fire. The 3-car garage and the living area above it survived. We'd like to rebuild, but not on the same footprint. We don't want a 4,000 sq ft house, we're looking for about 2,500 sq ft. and we want to integrate that garage. We'd also like to move the property back from the road. In the years that we've lived there, the road has gone from a very basic road to a much more busy road. We had a new survey done which shows that there is a 25 foot piece of land that's been taken for a potential road widening which puts the front of the property about 2 feet outside of the existing foundation. There is a sketch design of what we anticipate the new property will look like and it will actually be less visible from the road.

Diane Bramich: Is there a living area over the garage?

Jonathan Sismey: There's a space which the previous owner put on, basically like an office area.

Diane Bramich: It's not a living with a bathroom and stuff. It won't be a…

Jonathan Sismey: There is a bathroom but that's been there since we purchased the property.

Victoria Sismey: The owners before us built it like an in-law suite but they used it for nannies.

Diane Bramich: It's just a breezeway between the main center structure…

Victoria Sismey: To the garage.

Diane Bramich: …then a breezeway and then the garage.

Jonathan Sismey: Yes.

Diane Bramich: The garage is part of the original building.

Jonathan Sismey: Exactly.

Victoria Sismey: It wasn't connected to the garage.

Diane Bramich: Yes, I know the property.

Jonathan Sismey: I could forward the new survey that shows the boundary lines a lot better and shows

the property is slightly larger than we thought. It's just under 3 acres.

Chairman Malocsay: For our purposes we're giving you variances for the front yard setback and the one side. So that's not an issue, we don't need that.

Attorney Havens: I wanted to point out that what the applicant is proposing is to put the new house so that the new portion of the house that's being built is actually outside of the front yard setback and it's within permissible bounds from the front yard setback. But because he's connecting it to a pre-existing garage that sits closer to the road than the front yard setback, then it becomes part of the larger house and he still needs a front yard setback to the front point of the pre-existing garage. The Board should consider SEQR and being that this is the construction or expansion of a residential dwelling, it qualifies as a Type II action under SEQR §617.5C, subsections 11 and 16. Would someone care to make a motion typing the action as a Type II action with no adverse environmental impact?

Diane Bramich: Motion.

Bill Cerone: Second.

Chairman Malocsay: Any further discussion? How do we vote?

Board Members: Aye.

Chairman Malocsay: We're going to open it to the public and leave that open for a few minutes. Does anybody have any questions on the application?

Board Members: No.

Chairman Malocsay: We'll end up with something that is closer to what the codes require. It is because the garage is existing and connected to the house that it doesn't make that setback, but it is existing. And again, much further back from where the original house was. Does anybody have any questions?

Jonathan Sismey: We will be upgrading the garage and bringing everything to code.

Chairman Malocsay: I understand. Public hearing is closed.

Attorney Havens: In granting an area variance, the Board has to consider the following five criteria. For question 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 that the change will improve the side yard setback from 30 feet to 40 feet and will also make better use of the parcel of land. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Question 2, can the benefit the applicant seeks be achieved by some feasible method other than granting the variance? The applicant states no, the desired placement of the new structure's orientation and also design and look necessitates the requested variance. Does the Board agree?

Board Members: Yes.

Attorney Havens: Question 3, is the requested variance substantial? The applicant states no, he's only requesting one side yard setback variance. But in reality we had to consider a front yard variance because of the connection to the pre-existing garage. 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, we are rebuilding on the existing lot and just require a small variance. Does the Board agree with the applicant?

Board Members: Yes.

Attorney Havens: Question 5, is the alleged difficulty self-created? The response was to move the property to a better location on the property further from the road which has become much busier over the last 20 years. We also want to make use of the garage and the day room that survived within the new construction. Does the Board agree with the applicant that the alleged difficulty is self-created?

Board Members: Yes.

Chairman Malocsay: Is there any further discussion? If not, would somebody like to make a motion?

Diane Bramich: I'll make a motion granting as advertised.

Aaron Ubides: I'll second.

Chairman Malocsay: Any further discussion? If not, how do we vote?

Board Members: Aye.