

TOWN OF WARWICK  
ZONING BOARD OF APPEALS

Members Present:

Chairman Jan Jansen

Attorney Jay Myrow

Diane Bramich

Chris Daubert

Jim Mehling

Mary Garcia, ZBA Recording Secretary

Not in Attendance: Marc Malocsay

**CONTINUED PUBLIC HEARING OF Joseph Tomczak & Laura Krill** - for property located at 364 Liberty Corners Road, Pine Island, New York and designated on the Town tax map as Section 1 Block 1 Lot 36.3 and located in an SL District for a variance of Section 280-a of the Town Law allowing access for a single-family dwelling over a private road. Continued from the 1/23/23 ZBA Meeting. (Postponed to 5/22/23)

Chairman Jansen: The first item on the agenda is that of continued public hearing of Joseph Tomczak and Laura Krill. Anybody here representing them? If not, I am not going to postpone it until next month. I think I'm going to postpone that one indefinitely and if they do come in and resolve their problem, it'll have to be re-advertised.

**PUBLIC HEARING OF Thomas & Amy Sibilla** - for property located at 7 Skysail Lane, Warwick, New York and designated on the Town tax map as Section 27 Block 1 Lot 116 and located in an RU District for the renewal and affirmation of a resolution adopted by the ZBA on May 24, 2021 granting a variance pursuant to Town Law 280(a) variance for the development of a four-lot residential subdivision off of a private road, said Resolution being set to expire on May 24, 2023.

*Representing the applicants: Brian Friedler Engineering Properties*

Chairman Jansen: Please identify yourself for the record.

Brian Friedler: I'm Bob Brian with Friedler Engineering.

Chairman Jansen: Okay. And do you have the mailings?

Brian Friedler: Yeah, I got the mailings.

Chairman Jansen: Thank you.

Brian Friedler: You're welcome.

Chairman Jansen: Okay. Is there anything different about this application from when we heard it?

Brian Friedler: No, It's not.

Chairman Jansen: Is there anyone from the public that wishes to address this application? Yes ma'am.

Elizabeth Korchin: I just have a hopefully a quick question.

Mary Garcia: State your first and last name please.

Elizabeth Korchin: Sure. My name is Elizabeth Korchin and my husband Brian Korchin and I own the property on 1 Skysail Lane.

Mary Garcia: Can you spell your last name please?

Elizabeth Korchin: K O R C H I N.

Mary Garcia: Thank you.

Elizabeth Korchin: My question is, will the decree from the zoning board match the language of the prior decree exactly, other than the date?

Chairman Jansen: Yes.

Elizabeth Korchin: Perfect. Thank you. Go ahead.

Chairman Jansen: Okay. Is there anyone else from the public that wants to address this application? If not, public hearing is closed. Mr. Myrow?

Attorney Myrow: So this is an application to extend a variance that expires May 24th, 2023. Your code doesn't specifically state that there are extensions, so this would be a rule and affirmation of the original resolution, with just changed date will be for an additional 2 years pursuant to the code. And basically the criteria that you have to address here is whether or not there are any change of circumstances either with the law or in the facts. So this is to allow construction across a private road—that's it. So as assuming the law hasn't changed regarding bulk requirements and the layout of the subdivision is going to be identical to that, which is in front of the Planning Board?

Brian Friedler: Yeah, it's going to be back in front of them hopefully in the next month or so.

Attorney Myrow: And the layout is exactly the same?

Brian Friedler: Yes.

Attorney Myrow: Okay, there's been no change.

Elizabeth Korchin: Sorry, may I make another comment?

Attorney Myrow: It's closed. The public hearing's closed. Is it something...

Elizabeth Korchin: It relates to what you just said.

Attorney Myrow: Which part?

Elizabeth Korchin: A change in the facts and what was put in front of the Planning Board.

Attorney Myrow: Well, if the application is exactly the same in front of the Planning Board as it was here, there would be no change of circumstance.

Elizabeth Korchin: The issue is that the application hadn't been provided to us for review before the prior hearing that was on May 24th, 2021.

Attorney Myrow: Alright.

Elizabeth Korchin: So when we appeared, we hadn't yet seen those plans. We were provided those afterwards in October of 2021. And we have many objections in front of the...

Attorney Myrow: That's something you can do in front of the Planning Board.

Elizabeth Korchin: Okay, I just wanna make sure that our objections are ...

Attorney Myrow: Right, the only criteria here is whether what was presented to us originally remains identical. If it is identical, then the Board can find that there was no change in circumstances.

Chairman Jansen: They're not making any changes.

Attorney Myrow: Whether you agree with it or not, that's something you can argue with the Planning...

Elizabeth Korchin: I only want the record to indicate that there has been a change of facts because what was in front of the board at this time was, is different than what it is now. When we were here in May, 2021, there was a different plan and now they have made changes and...

Chairman Jansen: Those changes are not in front of us.

Elizabeth Korchin: Okay. So long as it's...

Chairman Jansen: They're not in front of us.

Elizabeth Korchin: There has been a change in facts. Because what was, were in front of the board then.

Attorney Myrow: The resolution is what's being extended. There's no change in the wording of it. The Planning Board is going to have to deal with the resolution exactly as it was worded 2 years ago. That's what's going to be reaffirmed so long as, you know, as long as nobody's asking for any change to that. So if there were changes at the Planning Board and they have to do with the layout of the lots or whether you had to deal with slopes, or whether you had to deal with engineering stuff, that's something the Planning Board can still rely on based on this resolution. Okay?

Elizabeth Korchin: Yes.

Attorney Myrow: Alright. So the Board basically has to decide whether to, basically you're going to vote now as to whether or not you agree to renew and reaffirm the prior resolution exactly as drafted.

Chairman Jansen: Yes. Okay.

Diane Bramich: I'll make that motion.

Chairman Jansen: Okay. That Motion made by Diane, Seconded by Jim. Any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Myrow: Thank you.

Brian Friedler: Thank you.

**PUBLIC HEARING OF Keri Dawson, as Trustee** - for property located at 537 Union Corners Road, Warwick, New York and designated on the Town tax map as Section 7, Block 2, Lot 75.3 and located in an RU District for an area variance for the construction of a 38 X 20 ft. addition to an accessory building on the premise expanding the total square footage to 1,280 square feet where a maximum of 1,200 square feet is permitted.

*Representing the Applicants: William Dawson, Applicant*

Chairman Jansen: Please identify yourself.

William Dawson: I'm William Dawson.

Chairman Jansen: Okay. And would you give her the...

Attorney Myrow: Mr. Chairman, Mr. Dawson and the applicant have been my client over the years and I've done work for them recently. So I have to recuse myself on this matter and I'm just going to take a seat down in the audience.

Chairman Jansen: That's fine. So the only thing that you're doing in this case is expanding the total square footage of the accessory building.

William Dawson: The existing building, right.

Chairman Jansen: And you have all the setbacks, no problem?

William Dawson: Yes, correct.

Chairman Jansen: All right. And what about the character of the neighborhood? Anything unusual about this?

William Dawson: No, it's just an extension of what was already approved.

Chairman Jansen: Okay.

William Dawson: So it's the same style, same roof pitch, same siding, same everything, just longer.

Chairman Jansen: All right. Any questions?

Diane Bramich: Yes.

Chairman Jansen: Yes, ma'am?

Diane Bramich: You've started it already?

William Dawson: I've started the two car part of it, which is, I have a permit for two cars with a work area. So I have not started already.

Diane Bramich: And what's the reason for making?

William Dawson: They told me I could continue on that until I got this approved.

Diane Bramich: Okay. So you're extending it 80 feet?

William Dawson: That's correct.

Diane Bramich: And why do you need an extra 80 feet?

William Dawson: Third car plus a carport.

Jim Mehling: Toys. He's got toys.

Chairman Jansen: Yes, toys, right.

William Dawson: I have three cars, so I really should have done three.

Chairman Jansen: Cars. We understand, we understand. Okay. Any other questions at this point? I'll open it up to the public. Is there anyone from the public that would like to address this application? Once, twice, three times? Thank you. Public hearing is closed. Jay, can you come up and just do the criteria for us?

Attorney Myrow: Sure. This is an application for an area variance, a criteria that ultimately you have to rule on is whether the benefit requested by the applicant outweighs any potential detriment to the community or the surrounding neighborhood. In order to do this, you have to consider the five factors, which I'll go through one at a time, and you guys can discuss them as we go through them. The first factor is whether this granting of the variance will have an adverse impact on the community or the surrounding area.

Diane Bramich: No.

Jim Mehling: No.

Chairman Jansen: No, not really. I looked at that too.

Attorney Myrow: Number two. Is there any other feasible way that the applicant could obtain this requested benefit other than the granting of a variance?

Chairman Jansen: Sure, he could build another building which would not be desirable to the neighborhood.

Diane Bramich: He can what?

Chairman Jansen: Build another building.

Chris Daubert: He can build a separate building.

Jim Mehling: Separate building.

Chairman Jansen: I mean, if he's limited 1200 square feet, he can put another one of 1200 square feet.

Diane Bramich: Don't go there.

Chairman Jansen: I think this makes perfect sense.

Attorney Myrow: So I'm going to say no. Yes, there's no real other feasible benefit.

Chairman Jansen: No.

Attorney Myrow: No other way to do this. The third factor is whether or not this is substantial. The requested variance is substantial?

Diane Bramich: Yes.

Chairman Jansen: 80 square feet is substantial?

Diane Bramich: 80 feet? Yes.

Attorney Myrow: It's 80 square feet square. 1200 to...

Diane Bramich: From 1200 to 1280.

Chairman Jansen: To me it's not substantial, but we have two other board members. I'm not the only one.

Jim Mehling: Oh, don't bring me into that.

Diane Bramich: Somebody's gotta be the bad guy.

Chairman Jansen: Okay.

Attorney Myrow: Just so you know, substantiality is not necessarily just numeric, it's based on the totality of the circumstances, but Diane says it is. Do you feel it's substantial?

Chris Daubert: Yeah.

Attorney Myrow: Okay.

Jim Mehling: No, sorry.

Attorney Myrow: Two nos and two yeses. The fourth criteria is whether or not this granted variance will have an impact on the physical environment or environmental conditions.

Board Members: No.

Attorney Myrow: And the last criteria is whether or not this is self-created...

Jim Mehling: Absolutely.

Attorney Myrow: ...and even if it is, that one alone cannot be the sole reason for you to deny the variance.

Chairman Jansen: And there's definitely...

Attorney Myrow: Just so you know, your answers to these are based on just giving you guidance as to how you're going to answer the end result, which is whether or not there's the benefit here is going to outweigh any detriment to the community. Even though you had two people say yes, it's to substantiality. Do you believe the substantiality alone is enough to cause a detriment to the neighborhood?

Diane Bramich: No.

Attorney Myrow: Okay. All right. So you've answered all the questions.

Chairman Jansen: You need a motion.

Attorney Myrow: You can have a discussion as to whether or not you feel that there's grounds for denying this hearing. If you don't, you can move forward with a motion to approve.

Chris Daubert: I'll make a motion. It's 80 square feet.

Chairman Jansen: We have a motion.

Jim Mehling: I'll second it.

Chairman Jansen: And second. Any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Myrow: I vote to grant the variance. And since this is my first time here, I'm going to draft a decision. Is that coming back to the Board?

Chairman Jansen: No.

Attorney Myrow: It's going to come to you for signature.

Chairman Jansen: Yep.

Attorney Myrow: Got it. Okay.

Chairman Jansen: So it's four to two.

Attorney Myrow: You win; that's it.

William Dawson: Yes, sir. Thank you.

Attorney Myrow: All right. Variance is granted.



**PUBLIC HEARING OF Jamie Lynch** - for property located at 2 Woods Road, Greenwood Lake, New York and designated on the Town tax map as Section 78 Block 3 Lot 43 and located in an SM District for an area variance for the construction of an 8 x 16 ft. tool shed located 6 feet from the dwelling on the premises where 10 ft. is required.

*Representing the Applicants: Jamie Lynch, Applicant*

Chairman Jansen: Please identify yourself for the record.

Jamie Lynch: Jamie Lynch.

Chairman Jansen: Okay. Why do you want to build that there?

Jamie Lynch: I need somewhere to put my tools.

Chairman Jansen: Okay.

Jamie Lynch: Woods Road is primarily the side of a mountain, so there's very limited level space. I would say 80% of the homes on Woods Road have sheds beside their house, not to the rear. The only level spaces are the driveway, the house itself. So I've got over...

Chairman Jansen: And I commend you for coming for a variance because most people will just put them up.

Jamie Lynch: Okay.

Jim Mehling: They figure it's easier to ask for forgiveness than ask for permission.

Chairman Jansen: And it only comes up when they're ready to sell because then all of a sudden they need to come back and get the variance. So anyway. Diane, do you want to comment on this one?

Diane Bramich: I was down there today and I don't see a problem with it. That's a very congested area down there. The properties are not large; the properties are small. It's a very, very old neighborhood. I don't see a problem with it. If there was a pool, I would have a problem with it because it's also hilly down there.

Jamie Lynch: That'll be next year.

Diane Bramich: What?

Jamie Lynch: That'll be next year.

Diane Bramich: Oh I don't want to hear that.

Chairman Jansen: Just think that out well.

Attorney Myrow: There's a rock retaining wall behind?

Jamie Lynch: To the side.

Attorney Myrow: You would be behind the proposed shed would you say?

Jamie Lynch: To the side of it.

Attorney Myrow: To the side, okay, so this is Woods Road?

Diane Bramich: This is Woods Road.

Attorney Myrow: When you come in so it's on the side of the house.

Diane Bramich: This is the driveway and it's on the side of the house.

Attorney Myrow: How high is that retaining wall?

Jamie Lynch: Four feet.

Attorney Myrow: And does the...

Jamie Lynch: I'm less than one to one.

Attorney Myrow: Does the proposed shed sit at the... lower than the retaining wall? In other words, is the retaining...

Jamie Lynch: No, my property is higher than the neighbor's.

Attorney Myrow: Okay. Alright.

Diane Bramich: It's a hill. The road goes like this.

Attorney Myrow: I got it. Okay.

Chairman Jansen: All right. Let me open it up to the public. Is there anyone from the public that would like to address this application? Okay, the public hearing is closed.

Attorney Myrow: All right. So same criteria for an area variance here. The issue is whether or not the benefit to be gained by the applicant outweighs any proposed perceived detriment to the neighborhood or the community. So we have to go through the five factors. The first one is whether or not this granting of this variance will have a detrimental impact on the surrounding neighborhood.

Chairman Jansen: No, like I said, there's lots of them there that have similar situations and that probably never came for a variance.

Attorney Myrow: We are all in agreement now?

Jim Mehling: True.

Attorney Myrow: Second criteria. Is there any other feasible way for the applicant to obtain this benefit without granting of the variance?

Jim Mehling: Sell your tools.

Attorney Myrow: Sell your tools. Typically it's that you can buy land from your neighbor, but looks like...

Chairman Jansen: No such thing here.

Attorney Myrow: So the answer is no. Third thing is the granting; is this variance requested substantial?

Diane Bramich: They were both substantial.

Attorney Myrow: Will anyone else agree with Diane? Yes?

Chairman Jansen: Yeah, I'll agree with Diane.

Chairman Jansen: Yeah.

Attorney Myrow: You think it's substantial?

Chairman Jansen: Well, they're all substantial.

Attorney Myrow: So we think this variance is substantial. Number four; will the granting of the variance have an impact on the physical environment in the area?

Chairman Jansen: No.

Attorney Myrow: And is the matter self-created?

Board Members: Yes.

Attorney Myrow: So you have a yes on substantiality. None of these, no one particular factor requires you to vote yes or no. So it's simply a balancing here. Based on looking at the five factors and looking at the

application, does anyone feel that there's, that there's a negative impact on the character of the neighborhood?

Board Members: No.

Attorney Myrow: Okay. So that being the case, you can entertain a motion to grant the variance.

Diane Bramich: Motion.

Jim Mehling: I'll make a motion.

Chairman Jansen: Motion by Diane, seconded by Jim. Any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Myrow: So these are four zeros. Variance is granted, thank you very much.

Jamie Lynch: Thank you all.

**PUBLIC HEARING OF John Maher & Jennifer Maher** - for property located at 220 Pulaski Highway, Pine Island, New York and designated on the Town tax map as Section 4 Block 2 Lot 22 and located in an AI District for an area variance for the construction of 1,280 square feet detached garage where a maximum of 1,200 square feet is permitted.

*Representing the Applicants: John Maher and Jennifer Maher, Applicants*

Chairman Jansen: Identify yourself for the record and then just tell us why you need 1,280 square feet.

Jennifer Maher: Jennifer Maher.

John Maher: John Maher

Jennifer Maher: Because we're building a garage that burnt down due to a fire.

Chairman Jansen: So the other one was that size?

John Maher: Yeah, pretty much, same footprint.

Chairman Jansen: That's good. Alright; that's all the questions I have.

John Maher: <inaudible> by 40 is the same.

Diane Bramich: Same footprint?

Jennifer Maher: Same footprint.

Chairman Jansen: All right, let me open it up to the public. Anyone from the public wants to address it? If not, let the public hearing be closed.

Attorney Myrow: So basically we're asked to grant an area variance to allow a garage...

Chairman Jansen: A replacement.

Attorney Myrow: ...a replacement garage on the same footprint, same square footage as was previously there before it was destroyed by fire. So again, the criteria is whether or not granting the variance will cause a detriment. So going through the five factors, that's the first factor. Does anyone believe that this granting the variance will have an adverse impact on the surrounding area or the neighborhood?

Jim Mehling: No.

Chairman Jansen: No, because it was already there before.

Attorney Myrow: You all agree?

Board Members: Yes.

Attorney Myrow: Number two: is there another feasible way to do this without the granting of the variance?

Chairman Jansen: Feasible but not practical.

Diane Bramich: It's already there.

Chairman Jansen: Right, it's not practical to do.

Attorney Myrow: So I'm going to put no. Number three is the granting of the variance, is it a substantial request for the variance substantial?

Chairman Jansen: I don't know how you could call it substantial since you're replacing what was an existing building.

Diane Bramich: Why do you look at me?

Attorney Myrow: Because you've been very consistent.

Attorney Myrow: Anyone feel...?

Chris Daubert: No.

Attorney Myrow: No?

Jim Mehling: No. I'll sleep just fine tonight.

Attorney Myrow: Will the granting of the variance have a negative impact on the physical environment?

Chairman Jansen: No. It's all already there.

Attorney Myrow: Is the matter self-created?

Diane Bramich: Yes; it's self-created because they're rebuilding it.

Chairman Jansen: Yeah.

Attorney Myrow: I agree.

Diane Bramich: It was there before.

Attorney Myrow: No, it is self-created.

Jim Mehling: But he didn't burn the building down, so it wasn't—just saying.

Attorney Myrow: So based on going through the five factors, does anyone feel that granting the variance will have a negative detriment on the surrounding neighborhood or the character of the community?

Diane Bramich: No.

Attorney Myrow: Okay. Based on that, I can make a motion to grant.

Chris Daubert: I'll make a motion.

Chairman Jansen: Motion by Daubert, Seconded by Jim. Any further discussion? All in favor?

Board members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Diane Bramich: Good luck.

John Maher: Thank you.

Jennifer Maher: Thank you.