

TOWN OF WARWICK  
ZONING BOARD OF APPEALS

Members Present:

Chairman, Jan Jansen

Attorney, Jeremy Havens

Marc Malocsay

Chris Daubert

Mary Garcia, ZBA Recording Secretary

Not in Attendance:

Diane Bramich

Jim Mehling

**PUBLIC HEARING OF Albert Bolger** - regarding property located at 34 Amity Road, Warwick, New York, and designated on the Town tax map as Section 27 Block 1 Lot 72.21 and located in a SL district for an area variance for the construction of an 8' X 28' ft covered porch addition to the front of the primary residence located 45' from the front property line, where a 50' setback is required.

*Representing the Applicants: Albert Bolger, Applicant and JT Bolger, Applicant's father*

Chairman Jansen: Please identify yourself for the record.

Albert Bolger: Albert Bolger.

Chairman Jansen: Okay. Briefly tell the board what you want to do.

Albert Bolger: I'm looking to add a covered front porch on the front of my house, mainly aesthetics. <inaudible> Everyone else on my street seems to have a covered porch, everyone else in the block.

Chairman Jansen: Okay. It doesn't look like you have any opposition here.

JT Bolger: I think his encroachment is really small.

Albert Bolger: It's only on one <inaudible> it's not the whole structure.

Chairman Jansen: I've looked at it, I'm sure the other two people have also. And you know, we always look at the character of the neighborhood also, because that's very important when you give people variances like that. Okay. So any questions from the board?

Marc Malocsay: No. We'll just see if there's anybody here that wants to address the application.

Chairman Jansen: Anyone here to address the application?

Marc Malocsay: We'll just hold it open just a little bit. What we said before in Amity and the Hamlet where you look at the surrounding community, the houses are close to the road. This isn't any closer than anything else that's there. It fits into the character of the neighborhood. So the setbacks have changed so much, but back in Amity so long ago probably predates zoning, and then it was moved, and then the last I knew it was 50 foot setbacks. So just, just, you know, to let everybody know what's, what's there.

Chairman Jansen: If there's no one else to comment on this, I'll close the public hearing, if that's okay.

Marc Malocsay: Sure.

Chairman Jansen: Public hearing's closed, so we can go with the criteria.

Attorney Jeremy Havens: So, for the consideration of the area variance for the application of Albert Bolger, will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by granting the variance?

Chairman Jansen: No.

Marc Malocsay: Yeah, absolutely not; this is very common for that area.

Attorney Jeremy Havens: Okay. And two, can the benefit you seek be achieved by some feasible method other than the variance?

Chairman Jansen: Not really.

Marc Malocsay: Yeah, because it is a front porch and it needs the front porch setback.

Attorney Jeremy Havens: All right. And is the requested variant substantial?

<inaudible - several speaking at same time>

Attorney Jeremy: You said no?

Marc Malocsay: Yes. Not really, no.

Chairman Jansen: Well, you're taking you know, quite a bit off the front of the property.

Albert Bolger: I only believe affects it because of the way that curve is on the road with the setback. The old Route 1 curves around.

Marc Malocsay: Yeah.

Albert Bolger: Quite alot.

Marc Malocsay: The current...

Attorney Jeremy Havens: The current setback, I have from my notes here, the current setback is 53.4 and you're doing an 8 foot deck. So there would only be essentially a 5 foot variance, essentially granted 5 foot, couple of inches on a 50 foot setback.

JT Bolger: It's only one corner side.

Mary Garcia: I'm sorry, what is your name, sir?

JT Bolger: Oh, I'm sorry. JT Bolger, father applicant.

Attorney Jeremy: So...

Chairman Jansen: So we're saying...

Attorney Jeremy Havens: ...any other comments from the other members of the board as to whether or not the requested variance is substantial or not?

Marc Malocsay: Not really. Especially because when you're looking at the degree of the variance so already looking at 10%, but because of the proximity of the other places, it's small.

Chris Daubert: I agree.

Attorney Jeremy Havens: So we'll go 'no'. Okay. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district? The applicant says no.

Chairman Jansen and Marc Malocsay (*simultaneously*): No.

Attorney Jeremy Havens: Is the alleged difficulty self-created? The applicant says yes.

Marc Malocsay: Yes.

Attorney Jeremy Havens: Okay. Would someone care to make a motion typing the application as Type 2?

Marc Malocsay: So moved.

Chris Daubert: Second.

Marc Malocsay: I made the motion, Chris Second it.

Chairman Jansen: All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Marc Malocsay: You're free to go.

Attorney Jeremy Havens: Okay.

Albert Bolger: Thank you; appreciate It.

Chris Daubert: Oh, did you guys...

Attorney Jeremy Havens: One second, one second... Yes, we just typed it. Give me two seconds. Would someone care to make a motion granting the variance as advertised?

Chris Daubert: So moved.

Marc Malocsay: Second.

Chairman Jansen: Chris and Marc. All in favor?

Board Members: Aye.

Chairman Jansen: Motion carried.

Albert Bolger: Thank you.

**PUBLIC HEARING OF Steven & Leslie Brinster** - regarding property located at 59 Wawayanda Road, Warwick, New York, and designated on the Town tax map as Section 63 Block 1 Lot 16.1 and located in a MT district for an area variance for the construction of a 23'7" x 41'2" in-ground swimming pool in the front yard of the dwelling, where an in-ground swimming pool is not permitted.

*Representing the Applicants: Steven Brinster, Applicant*

Chairman Jansen: Just tell us why it has to be there.

Steven Brinster: Well it's the only flat area that doesn't currently have a lot of trees. What is considered, I guess based on the front road, front end, my backyard is just steep hillside and lots of trees. So that's the main reason it really can't go there. And there's septic on the other side.

Chris Daubert: Oh, okay.

Steven Brinster: Other issues that would impact it.

Chairman Jansen: Okay. Any other questions at this point?

Marc Malocsay: Not yet, no.

Chairman Jansen: Let me open it up to the public. Is there anyone from the public that wants to address this application? If not, I'll close the public hearing.

Attorney Jeremy Havens: Okay, you guys ready?

Chairman Jansen: Yes.

Attorney Jeremy Havens: So in consideration of the application for an area variance for applicant Steven and Leslie Brinster, I'm sorry, Brinster, my apologies. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by granting the variance you requested? The applicant says no.

Chairman Jansen: And we agree. I think we agree, right?

Chris Daubert: Yeah.

Marc Malocsay: Yes. Meaning correct.

Chairman Jansen: Yeah.

Marc Malocsay: Okay.

Attorney Jeremy Havens: Sorry, I didn't hear that.

Marc Malocsay: No.

Attorney Jeremy Havens: Okay. And can the benefit you seek be achieved by some feasible method other than the variance? Applicant said no.

Chairman Jansen: Looking at the property and where they're going to be putting this pool, I mean, that's correct, because most other parts of the property are just not suited for it.

Attorney Jeremy: All in agreement on that?

Marc Malocsay: Yes.

Attorney Jeremy Havens: Okay. Is the requested variance substantial? Applicant said no.

Marc Malocsay: It is. Extremely. We have a front yard setback. It's not supposed to be in the front yard. It's extreme. I'm thinking back 30 years, in a front yard setback, maybe we've had one or two applications, but they've also been pretty far off the front of the property line.

Steven Brinster: It's almost 300 feet off the front road.

Marc Malocsay: It's still the front yard.

Chris Daubert: Yes

Attorney Jeremy Havens: Will the proposed variance have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district? The applicant states no.

Marc Malocsay: Correct, no.

Chairman Jansen: No.

Attorney Jeremy: And is the alleged difficulty self-created? The applicant states no.

Marc Malocsay: Yes. I mean...

Chairman Jansen: The fact that you want a pool makes it a yes.

Marc Malocsay: Yes.

Chairman Jansen: That's okay.

Marc Malocsay: That's a hard one to get around.

Attorney Jeremy Havens: From a technical perspective, the point being, the pool is an optional thing. It's not something the town is requiring you to have. And so as a result, the fact that you're looking to put something in optional means that it's essentially self-created.

Steven Brinster: Okay.

Attorney Jeremy Havens: All right. So would someone care to make a motion typing this application as Type 2 with no adverse impact?

Marc Malocsay: So move.

Chris Daubert: Second.

Chairman Jansen: Okay. Motion by Marc, seconded by Daubert, I mean Chris. Any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Jeremy Havens: All right. And would someone carried make a motion granting the variance as advertised?

Chris Daubert: So moved.

Marc Malocsay: Second.

Chairman Jansen: Chris, Marc. Any discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried. Usually, as soon as he files the resolution and they get it at the ZBA, they'll get you to issue a permit.

Steven Brinster: Okay.

Chairman Jansen: So it should be no longer than a week.

Steven Brinster: Alright, thank you.

Attorney Jeremy Havens: One additional thing I'd like to offer to you doing the pool. There's guidelines on perimeter fencing. I'm sure the building inspector will go over all of that with you, but just so that you're aware up front.

Steven Brinster: Okay, thank you.

**PUBLIC HEARING OF Michael Darren Bates & Carlota Bates** - regarding property located at 19 Ryans Way, Warwick, New York, and designated on the Town tax map as Section 40 Block 1 Lot 77.4 and located in a RU district for an area variance for the construction of a 20' X 40' in-ground swimming pool in the front yard of the dwelling, where an in-ground swimming pool is not permitted.

*Representing the Applicants: Michael Bates, Applicant, Carlotta Bates, Applicant*

Chairman Jansen: Same thing. Okay. Please identify yourself for the record.

Carlota Bates: I'm Carlota Bates

Michael Bates: I'm Michael Bates.

Chairman Jansen: You want to just briefly tell us why we're this and where?

Michael Bates: Our backyard is very small, our septic system and leech field are both located within the backyard. And we were hoping to build a pool at the bottom of a hill on the front of our property; most of our property is frontage. It's really not visible to the neighbors; one of our neighbors across the road from us, it may be visible from a window over their garage that nobody resides in. And the neighbors directly across from us in the other direction wouldn't be able to see either. We have a large weeping willow at that part of the property; it completely obstructs the view.

Carlota Bates: It also dips down quite a bit and then it goes back up. And so it would be sort of almost in a ditch already. So there's even minimal digging.

Chairman Jansen: Okay.

Mary Garcia: Do you have any mailings with you today?

Michael Bates: I have mailings.

Mary Garcia: Could I have them please?

Michael Bates: No problem.

Chairman Jansen: Any other questions?

Mary Garcia: Thank You.

Chairman Jansen: At this point, any reason to keep the public hearing open?

Marc Malocsay: No.

Chairman Jansen: No? Okay. So the public hearing is closed. Go ahead.

Attorney Jeremy Havens: So on the application of Michael Darren and Carlota Bates for an area variance: Will an undesirable change be produced in the character of the neighborhood or detriment to nearby property be created by granting the variance requested? The applicant stated no.

Chairman Jansen: They just explained why and we've seen it. So I agree.

Attorney Jeremy Havens: All in agreement that's it's no?

Board Members: Yes.

Attorney Jeremy Havens: Can the benefit the applicant seeks be achieved by some feasible method other than variance? The applicant stated no, based on no other suitable area that would meet the criteria.

Chairman Jansen: Agreed.

Attorney Jeremy: Agreed?

Chairman Jansen: Yes.



Marc Malocsay: Yes.

Attorney Jeremy Havens: Is the requested variance substantial? The applicant states yes.

Chairman Jansen: Well, it is, yes.

Marc Malocsay: Yes.

Attorney Jeremy 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.

Chairman Jansen: No.

Marc Malocsay: Correct, no.

Attorney Jeremy Havens: Agreed?

Chairman Jansen: Yes.

Attorney Jeremy Havens: And is the alleged difficulty self-created? The applicant stated no.

Chairman Jansen: Well, it is, yes. Because you want a pool.

Michael Tates: Yes.

Attorney Jeremy Havens: Would someone care to make a motion typing this application as a Type 2 application with no adverse environmental impact?

Marc Malocsay: So moved.

Chris Daubert: Second.

Chairman Jansen: Second, Chris. All in favor? Any opposed? Motion carried.

Attorney Jeremy Havens: Would someone care to make a motion granting the variance as advertised?

Chris Daubert: So moved.

Marc Malocsay: Second.

Chairman Jansen: Chris and Marc, any further discussion? All in favor? Any opposed? Motion carried.

Carlota Tates: Ok, thank you.

Michael Tates: Thank you. Would you happen to have another copy of the fencing guidelines?

Attorney Jeremy Havens: Sorry, sir?

Michael Tates: the fencing guidelines?

Attorney Jeremy Havens: Yes, I do in fact have one for you. We had two pools so I made sure to bring one for each of you.

Michael Tates: Thank you.

Chairman Jansen: Thank you.

Carlota Tates: Thank you very much.

**PUBLIC HEARING OF Patricia Majewski, as Trustee** - regarding property located at 204 Pine Island Turnpike, Warwick, New York, and designated on the Town tax map as Section 29 Block 1 Lot 102.1 and located in a RU district for an area variance for an existing 24' X 56' ft Pole Barn as an accessory building on the premises with a total of 1,344 square feet, where a maximum of 1,200 square feet is permitted.

*Representing the Applicants: Brian Friedler, Engineer*

Chairman Jansen: Okay. You're here for Majewski as trustee, right?

Brian Friedler: Yes.

Chairman Jansen: So public hearing...

Brian Friedler: I didn't submit anything. She must have did it, so...

Chris Daubert: We're going to put you on hot seat anyway.

Brian Friedler: That's fine.

Chairman Jansen: We're all kinda familiar with the property. It's been there a long time.

Mary Garcia: What is your name?

Brian Friedler: My name is Brian Friedler.

Chairman Jansen: So Brian, why are you here on this?

Brian Friedler: I've been doing work for her for septic on another piece of property she owns. So she just asked me to do the ZBA meeting.

Chairman Jansen: So what is the property in process of being sold? Is that why?

Brian Friedler: Yeah, I think it's like a few days away from the closing and of course this barn came up as being too big. Well, it was built I think, without a permit.

Chairman Jansen: Which is pretty common in those days.

Brian Friedler: Yeah. He built it I think over 25 years ago. He kept all of his equipment there and he just came up as, of course, no permit. So she went through the process of getting an architect to go there, draw up the plans and submit it to the Building Department. They denied her, and then...

Chairman Jansen: Right. Well, they have to.

Brian Friedler: Yeah.

Chairman Jansen: Okay. All right. Well, anybody else have any questions?

Marc Malocsay: No, we're all familiar with it being...

Chris Daubert: Yeah. We all know the building; it's been there forever.

Brian Friedler: Yeah.

Marc Malocsay: Really to us it's probably the most common variance that's sought even under a new construction because 1200 feet just doesn't cut it. And the only thing that we look at is character of the neighborhood. And over there, I mean, little bit more of a stretch as far as bigger buildings that are there. But the fact that it has been there forever and the fact that nobody's here to say anything about it, is all good. In Warwick you don't have to go too far to find an old farm or a bigger building that you can say character of the neighborhood. But you can't even see it, it's a pretty big piece of property.

Chairman Jansen: And you were worried about how you're going to explain all this, right?

Attorney Jeremy Havens: They're answering your questions for you.

Brian Friedler: Thank you.

Marc Malocsay: So we'll go through the list, but it's, the other is, people generally come in wanting to build a bigger one and they have to explain why. We all know what it was used for. And then usually when people come, they just want to make sure that it's not used for commercial stuff. And that's not before us. It's something that's through the Building Department. If somebody were to decide to do some other kind of a home occupation or whatever. But that's not the case, that's not before us.

Chairman Jansen: So public hearing is open and it's closed.

Attorney Jeremy Havens: The application for an area variance of Patricia Majewski: Will an undesirable change be produced in the character of the neighborhood or a detriment to the nearby property be created by the granting of the variance that's requested? The applicant stated no.

Marc Malocsay: And the answer is no. It's been there forever and nobody's complaining about it now.

Attorney Jeremy Havens: All agreed?

Board Members: Aye

Attorney Jeremy Havens: Can the benefit that the applicant seeks be achieved by some feasible method other than the variance? The applicant stated no.

Marc Malocsay: And it can't unless it's made smaller, but...

Attorney Jeremy Havens: Yeah. Tore down and moved.

Marc Malocsay: And made smaller because <inaudible>.

Attorney Jeremy Havens: Is the requested variance substantial? The applicant states yes.

Marc Malocsay: It is.

Attorney Jeremy: And 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.

Marc Malocsay: That is correct.

Attorney Jeremy Havens: And is the alleged difficulty self-created?

Marc Malocsay: Oh yeah.

Chairman Jansen: Yes, absolutely.

Attorney Jeremy Havens: Okay. Would someone care to make a motion typing the application as Type 2?

Chris Daubert: Moved.

Marc Malocsay: Second.

Chairman Jansen: Chris, Second Marc. Any discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Jeremy Havens: Would someone care to make a motion granting the variance as advertised?

Marc Malocsay: So moved.

Chris Daubert: Second

Chairman Jansen: Any discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried. Okay, thank you.

Brian Friedler: Thank you.