

TOWN OF WARWICK
ZONING BOARD OF APPEALS
November 28, 2022

Members Present:

Jan Jansen, Chairman

Robert Fink, Attorney

Diane Bramich

James Mehling

Marc Malocsay

Chris Daubert

Mary Garcia, ZBA Recording Secretary

PUBLIC HEARING OF MARK AND TIFFANY POTEPA - Property located at 24 Newport Bridge Road. Warwick, New York. Designated on the Town tax map as Section 7 Block 1, Lot 26, located in an RU District for a variance of the Bulk Area Requirements of the Code, permitting construction of a deck/patio, 30 (+/-) feet from the front yard setback and side setback, where 75 feet are required.

Representing the Applicant: Mark Potempa, applicant.

Chairman Jansen: Please come on up and identify yourself for the record.

Mark Potempa: Hi, Mark Potempa for 24 Newport Bridge Road.

Chairman Jansen: Do you wanna just briefly tell the board which, oh you can give those.

Mark Potempa: Yeah, I'll give you these. (Hands over mailing receipts)

Mark Potempa: We bought this house I guess last January and the front yard setback existing is approximately 40 feet from the road. And there was...

Attorney Fink: Well, it's not really a road, but it's your property line. The property line is not the same thing as the road.

Mark Potempa: Okay. So property line is roughly 40 feet, 30 feet, so 10 foot difference.

Diane Bramich: It's already built?

Mark Potempa: It is. My mistake was taking the back down without a permit? I didn't know that I had to do that, it was falling apart, it was in disrepair. It was a pressure treated deck that wasn't holding up very well and I replaced it with a patio. And um, yeah, so I apologize. I'm here to try to ask for a variance so I can leave it the way it is.

Attorney Fink: Is it completely finished?

Mark Potempa: It is.

Chairman Jansen: My first question would be to you is, is a patio which is on the ground, is that the same as a deck?

Attorney Fink: Well, it's, it's probably raised a foot or so. There are pictures of it. Only because it's raised however much a foot. There's something that's considered a deck and you need a permit. If it's on the ground you wouldn't even need a permit.

Mark Potempa: The way the <inaudible> was, it had to be, there was an old falling over retaining wall that we pulled out and replaced with <inaudible> block.

It replaced something you said right, it replaced an existing...

Mark: An existing retaining wall.

Attorney Fink: Did you make it bigger or the same size?

Mark Potempa: No, it was existing along the driveway is where the retaining wall is.

Attorney Fink: So you just replaced it, you didn't expand it?

Mark Potempa: The wall, yes. But the deck itself was expanded. I didn't replace exactly the footprint on the deck. And in terms of patio, like you're saying, it is raised.

Chairman Jansen: Any questions?

Marc Malocsay: Jim?

Jim Mehling: Yes.

Marc: What you said before, if the building inspector said so, my understanding is on hardscape, it doesn't have those same setbacks as structures, decks, et cetera.

Chairman Jansen: Well, that, that's why I'm asking the question.

Marc Malocsay: Yeah, but I, I'm, but I'm answering you and I'm, I'm pretty sure that it does, it doesn't fall in that category. But if the building inspector said so you know, we could follow through, but you know, well...

Chairman Jansen: Let's follow through.

Attorney Fink: whatever height is, you know, it's probably a foot more or less, if it's up a certain height than whether it's a foot or whatever that is, or 10 feet, it's still going to need a permit. Offhand, I don't know how many inches up, but obviously the building inspector believes that it needs a permit, or he wouldn't have issued a violation.

Marc Malocsay: Well, that's why I think we can move forward because I don't have a problem with it at all. But patios themselves just don't have those setback requirements.

Attorney Fink: Well, if they're not more than X inches off the ground level. And it's built up on the front, which caused the problem.

Chairman Jansen: I don't think anybody has a problem with this anyway, so let's just go on the way it is.

Marc Malocsay: Okay

Chairman Jansen: Any other questions? Anyone from the public that wishes to address this application? If not, I'll close the public hearing.

Attorney Fink: See, we're talking about, actually, it's two variances. So is this gonna create undesirable change in the character of the neighborhood or be a detriment to nearby properties?

Board Members: No.

Attorney Fink: Can it be achieved by any feasible method other than tearing it down?

Chairman Jansen: No.

Diane Bramich: No.

Attorney Fink: Is it a numerically substantial variance? The answer being, yes. All right. 75 feet required and it's, you know, 30 plus or minus feet. So it is numerically substantial.

Diane Bramich: Yes

Chairman Jansen: Yes

Attorney Fink: Is it going to have an adverse effect or impact upon the environment conditions?

Board Members: No.

Attorney Fink: Is it self-created?

Board Members: Yes. Certainly.

Attorney Fink: Would someone care to type it as listed with no adverse environmental impact?

Diane Bramich: So, moved

Chairman Jansen: Motion, Diane.

Chris Daubert: Second.

Chairman Jansen: Seconded, Mr. Daubert. Any discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Attorney Fink: Someone care to make a motion it be granted in accordance with the.....

Chris Daubert: So moved.

Chairman Jansen: Motion by Chris

Jim Mehling: second.

Chairman Jansen: Seconded. Who seconded it? First name? I'm getting old.

Jim Mehling: Jim

Chairman Jansen: All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried?

Chairman Jansen: Out of curiosity, the Building Inspector issued the violation, what could have caused it?

Mark Potempa: The big thing that we are doing with this, we listed an Air B 'n B without a permit.

Attorney Fink: Ahhh....

Mark Potempa: That's what triggered all this.

Chairman Jansen: I was just curious.

Mark Potempa: This is step one and we're gonna do everything necessary and see if it's possible or if it's not. And so they said correct your variance problem first and then we'll go from there.

Jim Mehling: One step at a time.

Mark Potempa: Thanks.

PUBLIC HEARING OF RTT Associates LLC - for property located at 24 Newport Bridge Rd, Warwick, New York designated on the Town tax map as Section 7 Block 1 Lot 26, located in an RU District for a variance of a bulk area requirements of the Code permitting construction of the deck patio, 30 plus or minus feet from the front yard setback and side setback where 75 feet are required.

Representing the Applicant; Brian Friedler, Applicant's Engineer & Ted Edwards, Applicant

Chairman Jansen: Please identify yourselves for the record.

Inaudible - Brian

Ted Edwards: Ted Edwards, RTT

Chairman Jansen: Okay. Briefly tell us why you're here.

Brian Friedler: We were here to get a side yard variance back in October of last year for the right side and now he's hoping to get a side variance for the left side.

Chairman Jansen: Thanks. Somebody measured wrong?

Brian Friedler: Yeah. During construction the house was shifted a little bit to get a better view and that caused the one side to encroach on the side of the setback.

Chairman Jansen: So it's already built.

Brian Friedler: Yes.

Chairman Jansen: Questions? Anybody have any questions?

Marc Malocsay: No.

Chairman Jansen: Okay. Is there anyone from the public that would like to address this application? Public hearing is closed.

Diane Bramich: If you're looking at it from the front...

Brian Friedler: Which side are we talking?

—Brian speaks with Diane—

Chairman Jansen: Are there any other concerns? Otherwise I'll let Mr. Fink continue.

Attorney Fink: Is that gonna create change be affect near properties?

Board Members: No, no.

Attorney Fink: Can it be achieved by other feasible method other than by tearing the building down?

Chairman Jansen: No.

Attorney Fink: Is it a substantial variance? What we're talking about is one side setback, 60 feet, 61 feet, where 75 feet are required on both sides. 121 where 150 are required. Is it substantial?

Chairman Jansen: No.

Attorney Fink: Can it have an adverse effect or impact upon the physical environmental conditions of the neighborhood?

Chairman Jansen: No.

Diane Bramich: No.

Attorney Fink: Self-Created?

Board Members: Yes.

Attorney Fink: This is unlisted, because we have two variances. Care to type it as listed with no adverse environmental impact?

Marc Malocsay: So moved.

Chairman Jansen: Motioned by Marc. Second?

Jerry Maney: Excuse me.

Chairman Jansen: Yes, sir.

Jerry Maney: You said this was for Newport Bridge Road?

Chairman Jansen: Yes.

Jerry Maney: Is this the property you are referring to? And not Onderdonk?

Chairman Jansen: No, it's Onderdonk. Well it's Onderdonk.

Jerry Maney: But you said it's Newport Bridge Road.

Chairman Jansen: That's what it says in here.

Marc Malocsay: He's describing the property, 86. The property located at 86 Onderdonk Road.

Diane Bramich: I think the agenda is incorrect. The address is a typo on our agenda.

Chairman Jansen: Well, I'm reading from the agenda here. Yes.

Jerry Maney: Okay, that's why I didn't raise my hand when you asked for anyone from the audience.

Chairman Jansen: We can, we can reopen. I'll reopen it.

Jerry Maney: So, my apologies.

Chairman Jansen: I'll backtrack and reopen. Your name please.

Jerry Maney: My name's Jerry Maney. I live at 3 Brick Way and I thank the the Board for your time. I just have a couple quick questions because I'm a little bit confused on this property, so bear with me. On October 19 2021, I received a notice of a public hearing on October 20th, 2021 for a variance

at 86 Onderdonk Road. I did not attend that hearing because of Covid was going on, and nor did I visit the office because of my own health concern for being out and about. So that's why I didn't go for any appeals or whatnot going on. So I assumed that his original variance request was approved even though I see no minutes from that meeting posted online and that the house is being constructed. So my first question to the board is to help me with my confusion here, is where are the minutes from that meeting?

Attorney Fink: Minutes are not posted. They are in the file and available for a foil search.

Jerry Maney: Well, with all due respect, I have a list of them, ZBA meetings and the minutes from other meetings other than what's missing is the one from October 25th, 2021.

Attorney Fink: I can't tell you why, I don't have the file, so I do not know.

Jerry Maney: Does it not exist? So my question stands, why can I read everybody else's meeting minutes and the one from what I'm looking for so I get a grasp on what's going on, isn't there?

Attorney Fink: Well, I don't, I don't know that it's not there. There may be a list. Have you checked in the office to see if the file is there? I believe...

Jerry Maney: No, sir. I went through the website.

Attorney Fink: Well, my suggestion is you check with Connie and see if the file from the original variance is there and if so there would the minutes would be there, I'm sure.

Chairman Jansen: It has to be there.

Jerry Maney: I understand that, but believe me, yet I looked and I looked again,

Attorney Fink: That's really a moot point. That variance was granted the time within which to file an article 78 has gone by. This is a brand new variance.

Jerry Maney: I understand that also, but how can I have a public comment on the change of variance when I can't even get access to the first...

Attorney Fink: Yes, you can get access. I'm assuming that it's in the building department and that the minutes are in the file. The fact that it's not listed there doesn't mean it does not exist.

Jerry Maney: Okay,

Attorney Fink: And it would take a minute to find out whether or not it's there. If it exists you can FOIL it.

Jerry Maney: Then, I'm only gonna have to request to the board is that this hearing for the variance is tabled until I can see what the first part of this is.

Attorney Fink: You can ask any questions you want about the current variance.

Jerry Maney: Does the current variance impact from the first variance?

Attorney Fink: It varies it to a small degree, yes. But it's a brand new application subject to any questions or determination of the board.

Jerry Maney: Okay. If that's how it goes. Then here's my first question. Why the new variance for the same property?

Attorney Fink: I think that was explained, but can be explained again.

Jerry Maney: Okay. Can I ask how that happened?

Ted Edwards: The people that are buying the house just wanted the house twisted a little bit to be straighter at a view. And that caused this corner of the house to be closer to you.

Jerry Maney: So you sort of moved it up?

Ted Edwards: No, no you can see here..

Demonstrates diagram

Jerry Maney: Can I ask when they asked for that change as opposed to what you submitted to the board?

Ted Edwards: I don't...

Jim Mehling: Received November 3rd, 2022.

Chairman Jansen: No, I think what you're probably asking was a request made to the building department to make a change? Is that what you're asking?

Jerry Maney: Yeah. I'll cut them quick on it. Is, was that house relocated?

Brian Friedler: No.

Jerry Maney: Before any other change?

Brian Friedler: No, no, the only thing that happened was it was just twisted a little bit to the left. We didn't encroach any further on the variance on your side, if anything...

Jerry Maney: I completely understand that.

Brian Friedler: We moved this part of the house further away from you.

Jerry Maney: I know you took by another foot or so. I understand that. But what is the procedure when a house is being built for the town Warwick? What's the process? What are the procedures? In other words, you excavate, right? You start recording footings. When does the building department come back out and check that you are within what your first variance was?

Brian Friedler: *Inaudible* is submitted to get the CO. So this was submitted showing the actual real location of the house and that showed that it was an encroachment. So the building department told him that he couldn't get a CO until he gets a variance.

Jerry Maney: How did you locate that location for that house?

Brian Friedler: It was located by a surveyor.

Jerry Maney: All right. I believe, correct me if I'm wrong, you're required also to put in the steel pins on the property lines?

Brian Friedler: On the property corners.

Jerry Maney: On the corners. Are they there?

Brian Friedler: They should be there.

Jerry Maney: *SHOULD* be there. Are they there?

Brian Friedler: No, I'm not sure. The surveyor, the survey back during this subdivision gave an affidavit saying that the iron pins are there.

Jerry Maney: They are? I may have missed them a couple times when I was looking for them. So my question is, how would they have surveyed that property if the pins aren't there?

Brian Friedler: A surveyor can do that.

Jerry Maney: I'm still confused how the house ended up where it's at. And now, and again, I'm not trying to be disrespectful, I'm just trying to figure out what the hell happened.

Brian Friedler: It's not encroaching on your side, it's encroaching on the other side.

Jerry Maney: That's not the point. Right now you're sort of in here asking the board for a second variance and you're asking for forgiveness because a mistake was made. And it's after the fact. That's why I'm curious of when this happened, when it was discovered, and why is it now coming to our attention when his house has been going on for over a year? That's all I'm looking for. I'm looking for a clarification in my head.

Attorney Fink: He explained when they went for the building permit, they had to submit it as a drawing, which they did. And the building inspector determined that it was not the same as the variance that had been granted. It was slightly different. That's why we're here.

Brian Friedler: *Inaudible* yeah about two months ago. And then the billing department just did their letter of disapproval, the letter was dated September 23rd, 2022.

Jerry Maney: Is the billing department supposed to come out to measure your foundation as soon as it's poured?

Brian Friedler & Ted Edwards: No.

Jerry Maney: No? It's all after the fact?

Attorney Fink: Sir, I don't want to interrupt, but that really doesn't have a lot of bearing on the request that's being made.

Jerry Maney: You know, you're right. You're absolutely right. Let me just finish one little comment and then I'll move on and then maybe you'll get, what I'm simply asking you folks to think about is

that I'm a homeowner, in the town of Warwick, and I sort of feel some of my rights have been ignored. When we built the present home that we're in right now, we were required to stay in not only setback lines for the town established, but also mitigation lines because the property we're on was hazardous through an apple farm. So we had no chance of moving anything. We had a view out of our front door of Mount Peter blowing snow in the winter. We had a view at our back door of Vernon ski slopes at night with the lights on. Now, I have a view out my back door of a house that I was told originally, correct me if I'm wrong, was gonna be a small ranch. It's not a small ranch. So sir,

Attorney Fink: Sir, does, does the house comply with zoning?

Jerry Maney: Does that house comply with zoning?

Attorney Fink: Square footage? Yes.

Jerry Maney: I have no idea. I have no idea,

Attorney Fink: Well, the building department doesn't seem to have a problem.

Jerry Maney: The building department does not live where I live.

Attorney Fink: Well, that's not the case. The case is a property owner has a right to put up a compliant building.

Jerry Maney: I agree.

Attorney Fink: And the next door neighbor may not want the view of a building or whatever, but the view in this particular instance has no easement over the adjoiner's property.

Jerry Maney: I completely agree with you. I'm trying to get more to the point of the fact of what transpired. Okay. There was a four acre lot there, and the request was granted to move the house and put it into the corner of that lot so that the new people could have the view. Okay, that's nice. There's something wrong with that picture. So all I want to ask, okay, is for the board or you folks, to think about something, is that the town establishes building parameters for certain reasons. When mistakes are made, and they happen, I get it. I've made plenty in my lifetime. When they're made during residential home construction and established parameters are not followed for whatever reason...

Attorney Fink: Well, Sir, I'm sorry, but let me ask you a point in question.

Jerry Maney: Yes.

Attorney Fink: Does the variance requested adversely affect you to any degree more than the variance was previously granted?

Jerry Maney: You know, I knew you'd asked that question and the answer to that is no, it does not. Other than, other than the fact that I now have a house sitting 60 feet from my property line.

Attorney Fink: But if it's,

Jerry Maney: I understand what you're asking me.

Attorney Fink: You don't have the right to make your adjoining keep their land vacant.

Jerry Maney: I'm not asking that. I'm asking for the board, when you start setting up new parameters, you're talking about a comprehensive plan, is to give us some thought when they make changes from established parameters or rules that you dig a little deeper on how it's going to affect the rest of the people and sending out a Notice of Hearing is okay.

Attorney Fink: But sir, that was presumably and should have been and I'm sure was considered when the, when the original variance was granted.

Jerry Maney: We can agree to disagree on that,

Attorney Fink: And I don't know why we would disagree. That variance would've been noticed in the newspaper. It would have been mailed presumably to you because you're an adjoiner. So you should have gotten a notice and the record should show that you received it.

Jerry Maney: I did. I, I already said...

Attorney Fink: Well, I don't know that but the receipts or the, the mailing proof of mailing would be in the file maintained by the building department.

Jerry Maney: Sir, I'm not denying I didn't get it. I, I did the first for the variance that showed up, never gave it a thought in a million years that variance request was for that piece of property. Never gave it a thought, number one. Two, as I said in the beginning, Covid, I'm not coming to a meeting.

Attorney Fink: Well but again, with all due respect, this is kind of past history, the small difference in the variance granted to a building that already exists. What is your justification, or why do you believe that this board should not grant it? Keeping in mind there are legal criteria that I went through previously as to what this board has to look at.

Jerry Maney: This might help you and I'll finish cause I don't wanna take the board. I was born and raised in Monroe. I suggest that the town of Warwick look very closely as to what happened in Monroe and when the leaders shrugged their shoulders in the early 1970s when the builders made their mistakes and then they asked for forgiveness. Precedents were set then, and they're followed to this day, unfortunately, and quite frankly, I don't see much of a difference going on here. But with that said, and then I'll leave you alone, it appears in this case, the horse has left the barn. I get that. I completely do. When the first variance came out, I said, I don't have a solid leg to stand on. And it's for me to say, oh, don't do it. I don't have, and I knew it from the GetGo, but the fact of the matter what was going on, bothered me. But with that said, I oppose to the variance approval on the grounds that the established procedures weren't even followed. I don't get it, why they got changed. I still don't believe it. You can say what you want, but I don't believe it. I don't know whether I have gotten answers to the questions that I have, that the building department, maybe didn't check something, I don't know. But all I can say is that something in this whole procedure doesn't consider the rest of the homeowners enough. With that, I thank the board for your time and Ed—Ted, good luck with the house.

Ted Edwards: Thank you.

Attorney Fink: Enough, enough. Well we went through the criteria. We found that it did not create a noticeable, undesirable change that the building couldn't feasibly be changed. The requested variance was not substantial, that the proposed variance wouldn't have an adverse effect or impact upon the physical or environmental conditions, that the alleged difficulty was in fact self-created. And I believe we were going through the negative depth. And we've got to Marc making the motion to be listed as an untyped, as an unlisted action going adverse environment, environmental impact. I do not believe we had a second to that.

Chairman Jansen: Not yet. Not yet. So can I have a second for that?

Jim Mehling: Jim will second that.

Chairman Jansen: Thank you. Any further discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

Board Members: Aye.

Attorney Fink: Can someone care to move that the motion be granted as advertised?

Marc Malocsay: So moved

Chairman Jansen: Was that Marc?

Marc Malocsay: Yes

Chairman Jansen: Seconded by Diane. Any further discussion? All in favor?

Board Members: Aye

Chairman Jansen: Any opposed? Motion carried.

PUBLIC HEARING OF Peter & Hillary Esposito - for property located at 40 Panorama Drive, Warwick, New York. Designated on the Town tax map as Section 43, Block 1, Lot 63 for a variance of Section 164.41.A.(1)(a) permitting construction of a 40 foot X 60 foot pole barn which exceeds the allowed maximum square footage of 1,200 square feet. Please identify yourself for the record again.

Peter Esposito: Peter Esposito, 40 Powerline Road <address inaudible>

Chairman Jansen: Briefly tell us what you want to do.

Peter Esposito: We own Pioneer Coal building a 40 60 building for storage, vehicles, tractors, trailers, things that we have, that we really want to get out of the weather. We're in a pretty hostile view of the west and the weather by me is different than it is right here. So if I can get all my equipment and the things that we use to take care of the property and, you know we'd like to get it inside. I also have eight cars, so I look in their older cars over 20, 30 years old, I could get them inside too. I have a three car garage, but that doesn't accommodate. And these old cars, you know, today they make them with a aluminum back then they were steel. So they will, they they do draw.

Attorney Fink: So you have classic cars. Are they classics?

Peter Esposito: No. I mean, they're good cars. Some couple were inherited from my in-laws, my parents, things that we're not gonna let go.

Attorney Fink: Im saying the board routinely grants variances if they're classic cars, but if they're not classic probably, it'll be denied. That's why I asked.

Peter: Alright, they're classic. They're over 25, is that considered classic?

Chairman Jansen: You have to have insurance.

Peter: I'm in the carwash business. I own a carwash. So you know, I even have to shuttle my cars back and forth to keep them out of the weather. But I'm tired of doing that.

Chairman Jansen: You're not in need of any setbacks. You don't need setbacks.

Attorney Fink: No. The the only question we have in the, the square footage to that, I mean, is this...

Peter: It's square footage.

Attorney Fink: Is this size building a typical of barns, structures in the area?

Jim: Well, Pioneer's a kit barn that, I mean, they've been around a long time.

Attorney Fink: Not, not, but the size. Is this out of keeping with the area, the neighborhood?

Jim: No.

Peter: No, no. There other Barnes in that area. There's two behind me, I think they're bigger.

Jim: True.

Chairman Jansen: Anyone from the public to address this application? Guess not.

Jim: One at a time, one at a time.

Chairman Jansen: All right. The public hearing is closed.

Attorney Fink: Is this gonna create an undesirable change in character or be detrimental to nearby properties? Again, the size of the building is not out of keeping, you know, can it be achieved by other feasible method other than getting rid of these non-antique cars?

Chairman Jansen: Well, they could put two or three buildings up.

Attorney Fink: Yeah, I keep routinely avoid like that. So the answer is no.

Chairman Jansen: No.

Attorney Fink: Is it a substantial variance?

Board Members: Yeah/yup/yes.

Attorney Fink: Will it have an adverse effect or impact upon environmental conditions?

Board Members: No.

Attorney Fink: Self-Created?

Board Members: Yes.

Jim: Did you build it yet? (Laughter)

Peter: No.

Jim: It seems to be the way.

Attorney Fink: Okay. At any rate, will someone care to type this as unlisted with no adverse environmental impact?

Marc: So moved

Chairman Jansen: And that was Marc first? Marc and Diane. Okay. Any discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried?

Board: Aye.

Attorney Fink: Who did we pass? So Diane, you were Trumped again.

Diane Bramich: Yeah, I know, the story of my life.

Chairman Jansen: Any discussion? All in favor?

Board Members: Aye.

Chairman Jansen: Any opposed? Motion carried.

PUBLIC HEARING OF Dan Doyle - for property located at 10 Fence Road, Warwick, New York and designated on the Town tax map as Section 17 Block 1 Lot 37.2 for “Renewal” of a variance granted on 7/27/20 of Section 164.46.J(3) reducing the 200-foot buffer strip to 95 feet, 96 feet and 86 feet for 3 residences on the property for the purpose of siting a brewery building.

Chairman Jansen: Are you here for Dan?

Member from audience: Yeah, he wanted me to tell you guys that they never sent out the mailings.

Chairman Jansen: Hopefully, right? We can't vote on it tonight.

Member from audience: Yes. He just wants us to give, he wants to see if he could just adjourn to January.

Chairman Jansen: Yeah, it's automatically adjourned.

Dan: Okay.

Diane Bramich: So this will be continued to January?

Member from audience: Thank you.

Minutes from 9/26 approved