

April 12, 2018

The Town Board of the Town of Warwick held a Public Hearing to amend Chapter 164 of the Code of the Town of Warwick, a Local Law entitled "Zoning". Said public hearing was held on Thursday, April 12, 2018 at the Town Hall, 132 Kings Highway, Town of Warwick. Supervisor Sweeton opened the public hearing at 7:00 p.m.

**ATTENDANCE:** Supervisor Michael Sweeton  
Councilman James Gerstner  
Councilman Floyd DeAngelo  
Councilman Russell Kowal  
Councilman Mickey Shuback

Attorney for the Town, Jay Myrow  
Town Planner, J. Theodore Fink - Absent

**LEGAL NOTICE:** The Clerk read the legal notice, which was duly published in the Warwick Valley Dispatch on April 4, 2018.  
(Copy of this legal notice is printed at the end of these minutes.)

Supervisor Sweeton – I apologize in advance because our Planner who was supposed to be here to guide this discussion and he's not so I'm going to do the best I can to explain it to everybody and then I will open it up for public comment. Just want to note for the record and to the Board that this was submitted to the Planning Board as per Chapter 164-60, it's required before we take action for us to get input from them. We also submitted it under 239-LMN to the County Planning Department for their comments and they have 30 days to comment and we won't take action until we hear from them as well. Tonight, these are mostly small changes but some not so small I guess. I will read through what they are and I will go through them. It amends Chapter 164 governing accessory uses, kennels, meeting notices, wireless telecommunications, adult day care, farm animals, household pets, office and industrial park district uses and apartments in the local business district. The amendments are proposed to address land use and related issues identified by the Town Board, Town Planning Board and the Town's Planning, Engineering and Building departments. The proposed amendments are designed to further implementation of the Town Comprehensive Plan. There were two changes to definitions, one is a definition of an accessory apartment and the other one was defining solar energy commercial large scale. Currently in our zoning we permit small, medium and large scale and going to different seminars and educational webinars from the State of New York, the State of New York is committed to reaching a goal of 50% of its energy from renewables by the year 2030. They recognize they can't get there by doing just rooftop solar and so they now started to look at the next generations solar energy systems, commercial large scale solar systems which means an active utility-scale commercial facility with a direct interconnection to an electric distribution or transmission line or substation with existing capacity, or potential capacity if upgraded to accommodate that proposed development. The other definition that was clarified was a dog kennel, a structure or structures used for the harboring of more than six dogs on the premises that are more than six months old or more than two litters of dogs that are under six months of age. Any dog owner whose dogs exceed

the stated limitations for the purpose of this chapter are considered as maintaining a dog kennel and must adhere to all regulations governing the same. This distinguishes it from the homeowner that might have up to six dogs. In the table of uses, as I mention in the beginning we made accessory apartments available in the LB Zone. The LB Zone if you look at the map there's a little tiny red small area and they are generally around our hamlets or in our hamlets and that's where we feel its appropriate to have accessory apartments above a business use. Commercial large scale solar we are only permitting in the RU and the OI Zone and it has some restrictions which we will talk about in a minute. We removed from the use #84 which is the institution of higher learning the ability to have that in the OI Zone. The Board did not feel that was an appropriate use in the Office Industrial Zoning. We've added a new use, adult daycare which is regulated by the State of New York and its becoming more and more prevalent as our population ages so it gets the ability to create small less than six people or less than three people for less than six hours per day and it defines some other restrictions on it. Accessory uses, what was added to accessory uses was an accessory caretakers apartment for a dog kennel. If you have a use that's a dog kennel you could, if this adopted have an accessory apartment for a caretaker of that facility. That was recommended to us and we have that provision for several uses in the town already and it's being proposed to add it there. One thing for notifications, we currently require and this was a change we did five or six years ago where if there was a subdivision coming before the public prior to our changes six years ago the public only had to be notified five days before the public hearing. We changed that to when the application first comes to the Planning Department the public gets that notice. We thought that was fair and it was a better way to do it and what was not included was site plans in that provision so there was no provision to notify early on that kind of thing and so we are adding that in the zoning changes. We've clarified accessory to a residential use that you can keep currently it says dogs can't not exceed three dogs over six months on a lot less than three acres. Later on, in our zoning there's a definition of large animals and small animals and theoretically you can have more horses on your property than you could have dogs, so the homeowner who has four dogs would be in violation of the zoning but you could have four horses it didn't make any sense. We clarified that to say that the remains about the three dogs needing three acres and you can keep no more than six dogs over six months or two litters on less than six acres. Double the acres for double the dogs which seems reasonable and anything above six dogs is a kennel which requires a special use permit. The accessory apartments we just defined those more specifically in some of the code on section a special condition 51 the main item being that the accessory apartment is limited to one bedroom and it should not exceed 750 square feet and it's an annual renewal through the Building Department, so you would have to renew that annually. The adult daycare there are a whole bunch of regulations mostly from the State on how you would regulate those. I think the relevant thing is three people no more than six hours a day. Large scale solar, like I said we deal with large scale and large-scale commercial is the new entity. We have a restriction on large-scale which would be your 2-megawatt of arrays which is what has been prevalent and we limited that to a maximum of 15 acres or 60% lot coverage and there are other setback requirements etc., etc. A commercial Large-scale which is a 20-megawatt system we have defined that, that should be restricted to 200 acres or 60% lot coverage and it has to be on property that is adjacent to or contains the transmission lines, so it's not available in many places in the town. Wireless telecommunications, we have a section of our code that was created 10 years ago since then there has been updates through the federal government the Telecommunications Act has made some changes. In 2009 the Federal Communications Commission adopted the shot

clock which is an amount of time you as a municipality had time to review an application, so we updated our code to reflect those changes to be in compliance with federal law. We've also allowed for co-locations when you have a tower and you get another carrier who wants to co-locate on it and a minor modification so if a cell company wants to change out its current antennas to a different antenna, currently they would have to go back to the Planning Board to go through that process again. With these changes it will be administratively done in the Building Department and reviewed by the Engineers for the Town, so it facilitates that a little bit and makes it in compliance with federal law. Those were the changes that have been proposed. Any Board members have any questions on them? I will open it up to the public and I ask whoever wants to speak to please come forward.

Justin Sussner – Resident, Jessup Road, Warwick, NY 10990 – Thank you for listening to us. The first thing I want to say is and what I'm about to say is before another meeting with the planning and the zoning. There is a lot of us in the Jessup, Windmill, Chester Hill, of that whole area of Distillery that are strongly against the proposed Jessup Road Kennel. That being said I know that's not the argument here but our concern and we were not made aware of this zoning proposal until a couple of days ago, so our preparation isn't that great. In all the research that I've done there's no other commercial kennels in the town as far as I'm aware and there's no other on the proposal. This proposed change as the appearance and I'm not saying it's intentional, has the appearance that it was tailor written for this account. To us, even though it applies to the entire town it's a version of spot zoning.

Supervisor Sweeton – Kennels have always been permitted in the zone, so what we were entertaining was a care takers apartment via an accessory to it, just to clarify that. We have had a couple of applications for kennels in the town and I think there was one on Warwick Turnpike and I don't know if it ever got approved, almost at the top of the hill on the right, but I'm not going to argue that there isn't one existing. Just to be clear on the record that it's always been possible.

Justin Sussner – I know that I'm not arguing that, but the ZBA meeting in less than two weeks with some variance issues to us you do the research on this they have a lot of hurdles to go over and this to us is removing one of the hurdles. We have these zoning laws so that if I'm going to build a ridiculously large building, I don't know if you know the scope of it, but again I know that's what we are not here for 70 dogs at 6,000 square feet, is huge in what yes is rural but has over time become residential. My point is this removes one big hurdle to them and to us it's giftwrapped with a bow, to me that's interesting. The other thing is we do have a petition that we have collected in the surrounding area and it's been over the past few months because this project has been on hold. I'm presenting you with a copy because I don't want to get rid of the original at this point because that's really planning and zoning. We're missing one person's collection and we think they snow birded it, but without that person with just Distillery there's 101 adult signatures on this, only of the surrounding roads.

Supervisor Sweeton – What we'll do is maybe close the hearing tonight but keep it open for written public comments for two weeks, so you will have time if there's something else you want to add. I will give this to the Clerk and she will distribute that.

**Justin Sussner – When does this actually get decided and voted on?**

**Supervisor Sweeton – We won't entertain it tonight and the soonest would be two weeks from tonight. We meet every two weeks, so it will be the 26<sup>th</sup>.**

**Justin Sussner – Ok, thank you.**

**Janice Ash – Resident, Jessup Road, Warwick, NY 10990 – I'm not speaking for everyone here, but they are all here because we are against this kennel. It has become a residential neighborhood and we feel the town has given out permits for all the homes to be built and that would change the whole character of the neighborhood that has now since developed. Just for your information some of us came here tonight to let you know and there are quite a few of us.**

**Supervisor Sweeton – You know you're aware because I can hear it that the Planning Board is where you should make sure you're at those meetings and the ZBA because they are going to entertain the variances. I think they are area variances that they are looking for.**

**Janice Ash – Setbacks.**

**Supervisor Sweeton – Yeah, but that's where you make that argument and it's the bigger venue to make the argument about whether it should be approved or not.**

**Janice Ash- Ok, thank you.**

**Dave Smith – Resident, Jessup Road, Warwick, NY 10990 – I'm just curious you said they have had other dog kennel applications. How many are there?**

**Supervisor Sweeton – I want to say 2, I'm trying to think back, there was one up on Continental Road and was that was up on Warwick Turnpike. I don't recall if he ever finished.**

**Dave Smith – Is that over the last 10 years or so?**

**Supervisor Sweeton – Yes.**

**Dave Smith – It seems to me this is not an everyday occurrence dog kennels and apartments above dog kennels.**

**Supervisor Sweeton – No.**

**Dave Smith – It seems to me the nature of what you are trying to do is establish the towns zoning rules and regulations that the variance for things for some conform would be a good place to have some discussion.**

**Supervisor Sweeton – I just want to make the distinction that the kennel issue you could always come in the past 10 years and file for a kennel, you just could never have a caretaker there. The argument was made to us that it makes sense if you're going to have a kennel with a number of dogs that somebody right there on site made sense. That is why we were entertaining it and I don't know if the argument has been made or not, but that's what was sort of...**

**Dave Smith – There is presence for that at a horse farm.**

**Supervisor Sweeton – There's 3 other uses in the town where you can have an accessory to a use. The table is based on uses and then accessories to the uses. Agriculture and agriculture can be a horse farm, winery, greenhouses and my house is by my greenhouses. Any of those uses I could have a dwelling as a caretaker for that facility. The other one was outdoor recreational facilities, now they are defined as a lot of different things a hunting club, fishing club, camping. The third one was some amusements but it escapes me at the moment.**

**Dave Smith – They seem like all primary use of those activities. A horse farm that has an accessory building for a caretaker to live as opposed to a house that has an accessory dog kennel with an accessory apartment attached to that. With what we are talking about with Jessup Road, it's a residential area, there's a house there and the dog kennel has the accessory use already and add another accessory use to that.**

**Janice Ash – There's 3 houses on the property.**

**Supervisor Sweeton – I haven't looked at their plan, so I can't speak to that but I did know there was one house there because I went by it. The argument that's been made is if you're going to have one of these it makes sense to have someone in close proximity to where you're building it, or where it is, so attached to it in other words. We will have to decide whether that makes sense or not.**

**Dave Smith – I wanted to make sure it wasn't a certiorari.**

**Supervisor Sweeton – Thank you, I appreciate your input.**

**Justin Sussner - With regards to the proposed accessory apartment or the caretaker's apartment, is it for and let's use the example as the kennel in this case but is it for a full time resident that is now a caretaker for that?**

**Supervisor Sweeton – An employee of the facility.**

**Justin Sussner – Or almost like a resident doctor on call where I might be the overnight person on Monday, Thursday and Sunday and then the other doctor is on Tuesday. Is that going to be a full time person and that's going to be their full time apartment?**

**Supervisor Sweeton – Yes.**

Justin Sussner – They have their normal house and when they are working they are there those nights.

Supervisor Sweeton – No, that's how they exist today for the other uses that's someone's permanent residence.

Justin Sussner – Full time, ok. Thank you.

Supervisor Sweeton – They are essentially on call 24 hours a day.

Justin Sussner – Thank you.

Supervisor Sweeton – You're welcome.

Frank Eisele – Resident, Jessup Road, Warwick, NY 10990 – Is there a use case in place today where this is actually taken effect where there's a kennel with an accessory building?

Supervisor Sweeton – No, because currently in the zoning it's not an accessory to a kennel at this point and time, so you can have a kennel but you can't have an accessory use to it or accessory apartment caretaker.

Frank Eisele – But there's no kennel in Warwick today that actually falls under those requirements going forward.

Supervisor Sweeton – There is not.

Frank Eisele – Ok, thank you.

Janice Ash – This particular case seems like it's being presented for the benefit of this kennel there are 2 homes on that property so why add an accessory apartment when there's already 2 residents there's not necessarily a need.

Supervisor Sweeton – Ok, fair enough. I knew there was one, I didn't realize there were two.

Janice Ash – I was mistaken I thought there was 3 but there is 2.

Justin Sussner - They are both rented out.

Supervisor Sweeton – Is there anyone else who would like to address the Board on the zoning issues?

Jenny Monson – Geronimo Energy - We want to thank the Planning Board for accepting some written comments and I wanted to thank you for considering those and considering our comments today as well. In our letter we said we are supportive of the proposed solar law and supportive of the towns initiative to update the code to reflect changes in the state's energy policy focusing on

encouraging medium and large scale solar. We did know there were two items in the proposed law that we were a little bit concerned about. In the original version it seemed like there was a 15 acre limit that would apply to even large solar.

Supervisor Sweeton – And that was clarified.

Jenny Monson – And it was clarified and we reviewed the latest version that has a 200-acre limit so we would like to withdraw our concern.

Tena Monson – Director of Distribution and Generation, Geronimo Energy – I want to thank you again for your time tonight. We have been in the State of New York for a couple of years developing solar. We have about 6 projects and have been awarded 2 projects here by NYSERDA in this Hudson Valley. We have people here on the ground who are from New York and we are starting an office and we are very excited but it's very hard to find one physically but we will get one. We are very active here and we are very excited to be here and very excited to be here tonight. The concern about the language on the inter-connection there's probably some conversations to be had on that. The inter-connection process isn't as clear or as simple as we would like it to be, for example if you have a power line on your property you can apply to the air connection utility so your NYSEG or whatever your local distribution would be Orange and Rockland would be in this area and they would be telling you yes or no. We have a site that has a power line that does run through it and we have been clearly told that we are not able to utilize that power line because it's not in service and they plan on selling it to another utility and that plan has not been finalized. Unfortunately, the line that goes through the property is no longer available for us, so then we have to work within the constraints of what the utilities are willing to let us do. Unfortunately, that information isn't available to us to find out beforehand because of security reasons. We're working on running a line to whatever location they would like us to go to. I think when you look at how the development works especially on the inter-connection line you run into a disconnect between how it works for the developers versus an ordinance required to be next door or adjacent to. Our alternative language that we provided in the letter was to require the inter-connection agreement has been executed prior to building permit to make sure the project is viable, so you're not giving someone a building permit to go out there and have to work it out with the utilities and we thought that would be a good solution to not putting it wherever you want. We can talk about concerns about alternative options as well, but that was really our concern.

Supervisor Sweeton – Our concern with not having it on or adjacent to, we don't want to base the situation where you get approval to do a large scale commercial solar and then have to run connections two miles from the site, because how do you get there, is it going through scenic areas and is it something that's going to create havoc. We are open to hear alternatives to that and you have two weeks to submit more before we would entertain anything and I'm not even sure in two weeks we can make the decision because we need to hear from the County. I would say use that as a timeline to submit thoughts on that part of it.

Tena Monson – I think one of the alternatives we were sort of thinking about is requiring if at all possible to have thing buried. We would be utilizing private easement, so we would have to

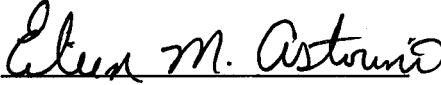
negotiate with landowners to get across property. Now the utility has their own rules and rights so if they are running or rebuilding we can't control what they are doing and obviously there are limitations. We can only bury basic lower voltage lines which we can usually work around but if it's 115KV or 69KV those are typically not allowed to be buried because it just doesn't work, its too expensive and it kills the project. We wouldn't try to run a line more than a mile just for the economics of the project that's usually how it works. Just to give you a little bit of background on the developer perspective on that. We are having to submit official comments here in the next two weeks absolutely, but I wanted to see if there were any discussions today that would be helpful.

Supervisor Sweeton – No, that's my comment, that's the concern about the inter-connection. Without some sort of way to control how you get there and I get the utility is not a willing partner in all this development and they can be hardnosed. We also have a lot of scenic protected areas, view sheds that we don't want to be faced where you get approved for something and you need 3 or 4 towers stretching a half a mile to get to where they need to go. We need to know what the alternatives and the technology are that would avoid that, so if you could submit that it would be helpful. We are adding large-scale solar which is greater than 40,000 square feet to 15-acre limitations to the mountain zone. We only permitted it currently in the OI, AI and the RU zone and it's proposed to go into the mountain zone which is a little bit trickier but we are making a requirement that avoids clear cutting and it's mandatory that it does, that it abides by the ridgeline overlay criteria which is a ¼ acre clearing. It limits where it can go in the MT zone.

**CLOSE PUBLIC HEARING:** Motion Councilman DeAngelo, seconded Councilman Gerstner that the public hearing be closed subject to written comments accepted until April 26, 2018.

Motion Carried (5 ayes, 0 nays) 7:30 p.m.

04-12-18 CP

  
Eileen Astorino, Town Clerk



**PLEASE TAKE NOTICE** that the Town Board of the Town of Warwick will be holding a Public Hearing on Thursday, April 12, 2018 at 7:00P.M. at the Town Hall, 132 Kings Highway, Warwick, NY consider amendments to Chapter 164 of the Town Code entitled "Zoning". All interested persons will be given the opportunity to be heard.

DATED: March 28, 2018

**BY ORDER OF THE TOWN  
BOARD OF THE TOWN OF WARWICK  
EILEEN ASTORINO  
TOWN CLERK**