

**Town of Horicon
Zoning Board of Appeals**

**May 16, 2017
Minutes**

Present at Meeting:

Thad Smith, Chairperson
Cheryl Erickson
Gary Frenz
Pat Farrell
Scott Olson

Also Present:

Town Attorney Justin Grassi, Bob Olson, Andrew Cappabianca, Mike Raymond, Bob Ward, Brian Wolert, Brandon Himhoff and Zoning Administrator Jim Steen.

Agenda Items:

File # 2017-09 AV Tax Map # 55.10-1-11 Shoreline Setback
File 2017-04 AV Tax Map 88.18-2-9 Roadway Setback
File # 2017-08 AV Tax Map # 88.10-1-19 Shoreline, Side yard Setbacks and undersized lot

Pledge

Chairperson Thad Smith called the meeting to order at 7:02 p.m.

Review of Minutes: Scott Olson made a motion to **accept the April 25, 2017** minutes with changes as noted on page 4. Second by Pat Farrell. **ALL AYES.**

NEW BUSINESS:

**File 2017-09 AV
Tax Map 55.10-1-11**
Mike and Sandra Raymond
12 Sand Beach Point
Brant Lake, NY 12815

Requesting an Area Variance for a Shoreline Setback from Zoning Code Section 6.10 to place a 28' x 36' garage to sit 65' from the lake where 100' is required.

Mike Raymond stated that he is a Planning Board member of the Town of Horicon and he expects no special considerations for this request. He stated that he previously received an approval for a variance to build a 24' x 36' garage to sit 75' from the lake where 100' is required by the Town of Horicon back in October 2016 and was within the 75' APA setback. Once they started prepping the land he realized that he cannot get the building in that parameter. When they filled the land they were closer to the lake than originally projected. He is now requesting a 35' variance relief from the Town of Horicon and 10' setback relief from the APA.

Scott Olson asked if Mike Raymond already had the approved variance by the Planning Board and Mike Raymond explained that yes the previous request was granted by the Planning Board in October of 2016. However, now the building will not fit in that size parameter. The Planning Board originally approved a variance for building 25' off the lake for building placement and it was within the 75' setback from the lake allowed the APA.

Chairperson Thad Smith asked what size the building is and Mike Raymond stated that it is 28' x 36' garage. What was the original size of the building when the Planning Board approved the request in October 2016? Mike Raymond responded that the building was a 24' x 36' garage but now he is requesting a 28' x 36' garage.

Scott Olson stated so the building is the same size? Mike Raymond responded no, the building is now 4' wider and the corner of garage is 65' from the lake, it sits on an angle so in order to make the turn to get into the garage the angle must remain the same.

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Scott Olson asked what the necessity is for the extra four feet. Mike Raymond responded just to be able to store a truck, a car and boat in the winter. The boat itself is 24' long so now he needs the 28' to be able to swing the boat in.

Scott Olson asked again for clarification on the change in size from the previous approval. Mike Raymond explained he is now asking for a 65' setback from the lake for 28' building. Scott Olson stated that then all you are asking for is 10 additional feet and Mike Raymond responded yes.

Chairperson Thad Smith asked if anyone has any more questions.

Gary Frenz wanted to know if notification to Warren County is again necessary. Town Attorney Justin Grassi responded yes it needs to be resubmitted to Warren County Planning Department before approval.

Gary Frenz made a motion to deem the application complete and set a Public Hearing for June 27, 2017. Second by Vice-Chairperson Cheryl Erickson. **ALL AYES.**

PUBLIC HEARING: **File 2017-04 AV**
 Tax Map 88.18-2-9
 Robert and Jean Ward
 178 Horicon Avenue
 Brant Lake, NY 12815

Seeking an after the fact Area Variance from Zoning Code 6.10 for a Roadway Setback of 28' to have a 12' x 5' walkway across the road from his home.

Chairperson Thad Smith noted that we received a No County Impact Statement from Warren County Planning Department and opened the Public Hearing. He asked if anyone wanted to speak on this project.

Robert Ward was present at the meeting and he did not have anything more to add than what was stated last month.

Brandon Himhoff, a neighbor of Robert Ward has no problem with the walkway.

Pat Farrell made a motion to close the Public Hearing. Second by Scott Olson. **ALL AYES.**

UNFINISHED BUSINESS: **File 2017-04 AV**
 Tax Map 88.18-2-9
 Robert and Jean Ward
 178 Horicon Avenue
 Brant Lake, NY 12815

Seeking an after the fact Area Variance from Zoning Code 6.10 for a Roadway Setback of 28' to have a 12' x 5' walkway across the road from his home.

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Chairperson Thad Smith opened up the discussion by the Board on this proposed project.

Zoning Administrator Jim Steen had a question for the Town Attorney Justin Grassi. Jim Steen stated that he had a discussion with Warren County on this project and they had no interest in even looking at this walkway and there is no need for them to issue building permits. If the Board approves the variance Zoning Administrator Jim Steen wants to know if he signs off on this as constructed and someone gets hurt will he or the Town be liable. Jim Steen believes it is not constructed to code. The Zoning Administrator just lets people know where they can build not how they can build.

Town Attorney Justin Grassi stated it is very difficult to sue the Town and usually not successful.

Discussion ensued regarding Warren County building permits versus Town of Horicon Zoning Compliance Certificates. Zoning Administrator Jim Steen would like to not stamp the construction drawings and issue a letter indicating that the Town of Horicon approves the location of the structure only and not the construction of the walkway and makes no warranty on the construction.

Scott Olson asked if the applicant would have dumped two loads of gravel there would a variance be needed. Zoning Administrator Jim Steen responded no.

Town Attorney Justin Grassi stated he would get back to the Zoning Administrator with the language for a letter.

Town Attorney Justin Grassi stated that for purposes of this Board they could go through SEQRA review and move forward with the variance request.

Town Attorney Justin Grassi explained the SEQRA process. He explained that the ZBA members will complete Part 2 by answering questions and determining whether aspects of the action will have “no to small” impacts or “moderate to large” impacts and then check which box on Part 2 best applies to the question. The purpose of SEQRA is to identify if there are potentially significant adverse environmental impacts that might result from the project. Attorney Justin Grassi reviewed the SEQRA form with the ZBA members. The ZBA identified no “moderate to large” adverse impacts. Attorney Justin Grassi stated after the review was complete this is a negative impact SEQRA declaration.

Vice-Chairperson Cheryl Erickson made a motion to declare a negative impact SEQRA declaration. Second by Scott Olson. **ALL AYES.**

The Board reviewed the Area Variance criteria:

The ZBA finds that variance from **Section 6.10 of the Zoning Code** regulations for Roadway Setback of 28' to have a 12' x 5' walkway across the road from his home is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The ZBA further finds:

- 1) The benefits sought by applicant could not be achieved by any other means feasible as the ditch is existing.
- 2) There will be no undesirable change to the character of the neighborhood or any detriment to nearby properties.
- 3) The requested variance is not substantial. Percentage wise it may be substantial but will not have any negative impacts on use of road.
- 4) There are no adverse physical or environmental effects.

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- 5) The alleged difficulty was not self-created because the ditch is already existing and he will be able to bridge the ditch.
- 6) This is the minimum variance necessary.

Being no further questions or comments and based on the previous discussions, Vice-Chairperson Cheryl Erickson made a motion to approve the requested variance for seeking an after the fact Area Variance from Zoning Code 6.10 for a Roadway Setback of 28' to have a 12' x 5' walkway across the road from his home. Second by Pat Farrell. **ALL AYES.**

PUBLIC HEARING: **File 2017-08 AV**
 Tax Map 88.10-1-19
 Andrew Cappabianca
 19 Market Street
 Brant Lake, NY 12815

Seeking a Variance from **Zoning Code Section 8.35 a, 3 (b)** for .673 +/- acres where 3.2 acres is required, and from **Zoning Code Section 8.35 C** Shoreline setback of 60' where 100' is required and a Side Yard setback for the structure to sit 23' where 50' is required.

Gary Frenz made a motion to treat this as one project and note that this a pre-existing non-conforming structure on the property. Second by Vice-Chairperson Cheryl Erickson. **ALL AYES.**

Andrew Cappabianca spoke to the Board members. He said that he purchased the pre-existing non-conforming structure that he will use as a Hostel. He will not be using this as his primary residence and therefore cannot be called a Bed and Breakfast because that requires primary residency. He will call it an Inn because there are no definitions for Hostels in the Town of Horicon Zoning Law and this meets more the definition of an Inn. The structure is 1800 square foot with a maximum of 4 rooms. He will not be using the existing driveway on the property and will use the HUB parking next door only that he currently owns. It will not cause disturbance in the community, no cars coming in and out, used only for sleeping and will not be serving food.

Gary Frenz asked what the total number of people that will be housed in this structure. Andrew responded he is looking into what the NYS regulations are, but he believes no more than 12.

Scott Olson asked three bedrooms 4 people in each just used for sleeping.

Andrew Cappabianca responded that he will have 3 bedrooms one room will have 4 bunks, one room will have 2 Queen beds and one room with 1 King bed. A Hostel is a very inexpensive place to stay and they have no expectation of private rooms when staying at a Hostel. Mostly used for bikers coming through the area.

Scott Olson has concerns about precedence being set with people renting out their houses on websites. Can anyone consider their house a hostel?

Gary Frenz responded no because it would need to go before the Planning Board for a review which is their role and the ZBA is only approving that it meets setbacks and if not to approve variances.

Justin Grassi stated there are zoning districts that allow Inns and only permitted with Site Plan approval and meet minimum guidelines. If someone was doing it without Planning Board approval that would be a compliance issue. As far as setting future precedent people would have to go before the Planning Board. This structure is an allowable use in the Zone CR 20,000 Hamlet.

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Brandon Himhoff who is on the Chamber of Commerce spoke about the need in the area for this type of accommodation. It fits with the Comprehensive Plan and Tourism. This is a modest Inn and is in keeping with what the Town is looking to attract. There is not a big desire for large Hotels in the Mill Pond area.

Being no further questions or comments, Vice-Chairperson Cheryl Erickson made a motion to close the Public Hearing. Second by Gary Frenz. **ALL AYES.**

UNFINISHED BUSINESS: **File 2017-08 AV**
 Tax Map 88.10-1-19
 Andrew Cappabianca
 19 Market Street
 Brant Lake, NY 12815

Seeking a Variance from **Zoning Code Section 8.35 a, 3 (b)** for .673 +/- acres where 3.2 acres is required, and from **Zoning Code Section 8.35 C** Shoreline setback of 60' where 100' is required and a Side Yard setback for the structure to sit 23' where 50' is required.

Town Attorney Justin Grassi explained the SEQRA process. He explained that the ZBA members will complete Part 2 by answering questions and determining whether aspects of the action will have "no to small" impacts or "moderate to large" impacts and then check which box on Part 2 best applies to the question. The purpose of SEQRA is to identify if there are potentially significant adverse environmental impacts that might result from the project. Attorney Justin Grassi reviewed the SEQRA form with the ZBA members. The ZBA identified no "moderate to large" adverse impacts. Attorney Justin Grassi stated after the review was complete this is a negative impact SEQRA declaration.

Vice-Chairperson Cheryl Erickson made a motion to declare a negative impact SEQRA declaration. Second by Scott Olson. **ALL AYES.**

The Board reviewed the Area Variance criteria:

The ZBA finds that variances from **Zoning Code Section 8.35 a, 3 (b)** for .673 +/- acres where 3.2 acres is required, and from **Zoning Code Section 8.35 C** Shoreline setback of 60' where 100' is required and a Side Yard setback for the structure to sit 23' where 50' is required are the minimum variances that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The ZBA further finds:

- 1) The benefits sought by applicant could not be achieved by any other means feasible as the structure and setbacks are not changing at all.
- 2) There will be no undesirable change to the character of the neighborhood or any detriment to nearby properties as this property is existing. There are no neighbors that have any opposition to this project.
- 3) The requested variance is not substantial. This is a pre-existing non-conforming structure that is being re-purposed so the request may be substantial but it is already a non-conforming structure.
- 4) There are no adverse physical or environmental effects.
- 5) The alleged difficulty was not self-created because the structure and setbacks already exist.
- 6) This is the minimum variance necessary.

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Being no further questions or comments and based on the previous discussions, Vice-Chairperson Cheryl Erickson made a motion to approve the requested variance for seeking a Variance from **Zoning Code Section 8.35 a, 3 (b)** for .673 +/- acres where 3.2 acres is required and from **Zoning Code Section 8.35 C** Shoreline setback of 60' where 100' is required and a Side Yard setback for the structure to sit 23' where 50' is required. Second by Gary Frenz. **ALL AYES.**

Town Board member Bob Olson talked to the ZBA Board members regarding attendance requirements of Board members. Chairperson Thad Smith stated that in order to keep the attendance requirements consistent with both Boards (ZBA and PLANNING) he will speak with Chairperson Bill McGhie of the Planning Board and they will let Bob Olson know their thoughts after the discussion.

Being no further comments or questions Vice-Chairperson Cheryl Erickson made a motion to adjourn. Second by Scott Olson. **ALL AYES.**

Communications: None

Public Comments: None

Board Comments: None

Adjourn: 7:50 pm

Next Meeting Date: June 27, 2017

Respectfully Submitted,
Terri Katsch, Secretary