

Present at Meeting:

Cheryl Erickson, Chair
James Dewar, Vice-Chair
Rich Nawrot
Ross Schoembs
Troy Scripture
Larry Bell

Also Present: Town Attorney Brian Reichenbach, Zoning Administrator Kristena Williams, Matthew and Irene Spinelli, Scott and Margaret Springli, Garrett Lee, Richard Henzler, Tadeus and Kathleen Naumowicz, Candida Fasano, Magdalena Spencer, Tina Sweetser, Bill and Ann Maiz McKeon, and Colleen Wittenberg.

Pledge

Review of Minutes: Ross Schoembs made a motion to approve the June 20, 2023, minutes with changes. Second by Vice-Chair Jim Dewar. **ALL AYES.**

PUBLIC HEARING:

File 2023-04 AV
Tax Map # 105.2-1-9
Matthew and Irene Spinelli
101 Summit Road
Brant Lake, NY 12815

Requesting Roadway setback from **Section 6.10** for a 12' x 21' carport to sit at 39' where 60' is required. The variance request is for 21'.

Irene Spinelli passed around pictures of a 12' x 21' carport. They were originally approved in 2009 for a larger carport; however; they did not put that one in. This one they are asking for has no footings and is smaller. It is just sitting on top of the ground.

Being no comments or questions from the Public Chair Cheryl Erickson closed the Public Hearing.

Chairperson Cheryl Erickson stated that the Board would now go ahead and discuss the Balancing Test to balance the benefit to the applicant with detriment to the health, safety, and welfare of the community.

The ZBA further finds:

1. The proposed project cannot be achieved by other means feasible to the applicant because it was previously approved for a larger carport that was not put in and this one is much smaller without a foundation. This is the other means feasible to the previously approved larger version and this one is minimal.
2. The proposed project will not create any undesirable change in the neighborhood character or undesirable change to nearby properties.
3. It is a relatively small variance request; the carport has no footings and can be moved if they move. It is placed directly next to the garage and the area is already paved.
4. This request will have no adverse physical or environmental effects to neighboring properties.
5. This proposed project is self-created but not prohibitive.
6. This is the minimum variance necessary, and it is an after the fact variance and is a reduced version of the originally approved carport variance.

Based on the previous discussion Vice-Chair Jim Dewar made a motion to approved **File # 2023-04 AV for a 12' x21' carport to sit at 39' where 60' is required.** Second by Ross Schoembs. **ALL AYES.**

PUBLIC HEARING: **File 2023-05 AV**
 Tax Map # 36.12-1-59
 Scott and Margaret Springli
 35 Lake View Drive
 Adirondack, NY 12808

Requesting Roadway setback from **Section 6.10** for an addition, a dormer and stairs to sit at 54' where 60' is required. The variance request is for 6'.

Scott Springli spoke about his project. He stated he wants to add 8' of depth to the ground floor that faces the street and above put a dormer where a 6' crawl space is currently. It will give us more height and be able to put a bathroom up there. Where the variance comes in is for the deck on the other end of the house and the corner of the deck stairs will be extended and that is where the 6' variance is needed.

Chairperson Cheryl Erickson asked if the proposed stoop is the reason for the variance.

Scott Springli stated that is not the closest to the road. The deck on the other side of the house where we will put the stairs is what triggers the need for the variance. The bottom of the steps is the closest to the road at 54' from the centerline where 60' is required.

Chair Cheryl Erickson asked if anyone is present that would like to speak to the project.

Tina Sweetzer has no objections and is in favor of the project.

Being no further questions or comments Chair Cheryl Erickson closed the Public Hearing.

Chair Cheryl Erickson stated that we received the Warren County Planning Department Project Review back indicating this proposed project will have No County Impact.

Chair Cheryl Erickson stated that the Board would now go ahead and discuss the Balancing Test to balance the benefit to the applicant with detriment to the health, safety, and welfare of the community.

The ZBA further finds:

1. The proposed project cannot be achieved by other means feasible to the applicant because the house is placed where it is. They could eliminate the stairs, but they are needed for fire codes and a bigger kitchen.
2. The proposed project will not create any undesirable change in the neighborhood character or undesirable change to nearby properties because this will be an improvement by updating an older home.
3. The request is not a substantial variance request. It is a small variance request of 6' on a pre-existing non-conforming house.
4. This request will have no adverse physical or environmental effects to neighboring properties because the next-door neighbor's house is very similar to this proposed project.
5. This proposed project is self-created, but it will be an improvement to live here permanently.
6. This is the minimum variance necessary and requires no conditions.

Based on the previous discussion Vice-Chair Jim Dewar made a motion to approve **File # 2023-05 AV** Roadway setback from **Section 6.10** for an addition, a dormer and stairs to sit at 54' where 60' is required. The variance request is for 6'. Second by Troy Scripture. **ALL AYES.**

PUBLIC HEARING: **File 2023-01 Appeal of ZA Determination**
 Tax Map # 36.12-1-8
 101 Pine Lane
 Adirondack, NY 12808

Requesting an Appeal of a Zoning Administrators Determination for a Use Variance from **Section 6.10** to add a solar panel array to their property.

Chair Cheryl Erickson stated to the Board members this is a Public Hearing for an appeal of the Zoning Administrators decision and the regulations they will be looking at will be **Section 5- Use Regulations, Section 5.10, 5.20 Land Use Regulations and Definitions in the Zoning Law.**

Chair Cheryl Erickson summarized that a Use Variance is very different from an Area Variance. It means that they have applied to use property in a way that is not permitted by the town. We must look at what is defined in the Code. We are going to be deciding whether it needs a Use Variance or not. So if anyone here wants to speak to that please do so.

Candida Fasano wanted to speak about the problems having this solar array will affect her and others in the community.

Chair Cheryl Erickson allowed Ms. Fasano to speak.

Candida Fasano stated that she just moved in March and was informed about a week ago. She spoke with the Henzler's, and she was never told by the Henzler's about the solar array. We have an A frame house that looks towards the mountains which is where the solar array will be located. I submitted pictures for the Board to look at in order to see the view she will have. She stated that now they will see the solar array. She stated that these solar panels are more than needed for a single-family house. The Henzler's have already taken down several evergreen trees. Candida stated that she submitted letters from other members of the Blue-Sky Estates Association as well that are not happy about the placement of the solar array.

Chair Cheryl Erickson stated that in the summer the trees will prevent the solar array from being seen from your house.

Candida Fasano asked why the Board is dealing with an appeal of what the law already states.

Chair Cheryl Erickson stated that we will be talking about the Zoning Code and if a Use Variance applies to this situation.

Chair Cheryl Erickson asked if any other members of the Public wished to speak on this project.

Tina Sweetzer spoke, and she stated that she owns 5 acres in Blue-Sky and the Henzler's front yard is her backyard. We have been approached by multiple members who wanted easements to go on their property to cut down trees in order to get a view of the lake. In the past the Henzler's went on her property to cut down trees without their approval. This solar array will be seen from the lake. We have deer, bear and foxes and that is their access to the lake for water and this solar array will prevent them from getting water.

Garrett Lee spoke to the Board and the Public about the array. He stated that this is a normal size array for a single family house. They will be getting rid of their kerosene heater and 660 gallons of fuel that you will not have to smell. It reduces emissions and there will not be any fuel trucks up and down the road. This will reduce the carbon emissions produced. They will be using air heat pumps to pump the electricity into the house which produces 0 emissions.

Chair Cheryl Erickson closed the Public Hearing and explained that the Board will be looking at the Zoning Code as to whether this is a permitted use. This is not the usual variance request where the Board decides on where the structures sit and do they meet the setbacks required. The Use Variance is different, and they are looked at how the land is used. The Zoning Administrator decided this is not a permitted use, so at the last meeting they decided to look at the code in order to uphold that decision or make an appeal by looking more at the code.

They will be looking first at **Article 5 on page 23 of the Zoning code, Uses by Right with a Zoning compliance Certificate A which states:** Uses permitted by Right with a Zoning Compliance Certificate. A use shall be allowed by right in a district if it is listed in the schedules of regulations as an allowed use for that district, or is a forestry use or an essential service, provided all other requirements of this Local Law are met. Then look at **Article 5 on page 23 D: Prohibited Uses:** Any use which is not an allowed use by right, by Site Plan Approval or by Conditional Use Permit, in a given zoning district or which is not an accessory use shall be a prohibited use in that zoning district. Any applicant wishing to undertake any such prohibited use shall always have the right to seek authorization from the Town Board through appropriate amendment of this Local Law, which the Town Board shall review with consideration for the economic opportunities, health, safety, and general welfare of the residents of the Town of Horicon. Any such proposed amendment must be referred to the Adirondack Park Agency. The Zoning Administrator when she first looked at this went to **Section 5.20 -: Land Use Regulations by Zoning District**, page 24, and decided this home is located in the Residential R1 district and decided this is not an approved use permitted by right with a Zoning Compliance Certificate. **The Uses Permitted by Right with a Zoning Compliance Certificate are as follows:** Boathouse, Dwelling, Single Family, Dwelling, Two-Family (Only in the R1-20,000 Zone), and Home Occupation. **Now looking at Section 5.10 – Regulation of Use by Type D. Prohibited Uses.** Any use which is not an allowed use by right, by Site Plan Approval or by Conditional Use Permit, in a given zoning district or which is not an accessory use shall be a prohibited use in that zoning district. **Now let's look at page 3 of the Zoning code definitions of an Accessory Structure:** Any structure or a portion of a main structure customarily incidental and subordinate to a principal land use or development and that customarily accompanies or is associated with such principal land use or development, including a guest cottage not for rent or hire that is incidental and subordinate to and associated with a single family dwelling. **Accessory Use:** A use of a structure, lot or portion thereof that is customarily incidental and subordinate to and does not change the character of a principal land use or development including in the case of residential structures, professional, commercial and artisan activities carried on by the residents of such structure.

Chair Cheryl Erickson stated her thought, that a single-family solar array is customarily incidental and subordinate to a structure the single-family dwelling and does not change the character of a principal land use or development including in the case of residential structures, professional, commercial and artisan activities carried on by the residents of such structure. She thinks therefore this is an accessory use. She thinks that the word "or" is a powerful word in the prohibited section and she thinks it was missed. We will do what the Town Code allows them to do because that is what is written and what we must go on. You can look at accessory use and accessory structure definitions again on page 23, Section A and D.

A short discussion ensued regarding the word "customarily". It was determined after the discussion that there are other ground mounted solar arrays in the Town of Horicon, so it is customarily subordinate to the single-family dwelling.

Attorney Brian Reichenbach tried to clarify for the Board that if its “customarily” subordinate then it is likely that is an accessory use and therefore permitted such as a well house , a generator, or a windmill. This will provide power to the house.

Magdalene Spencer from Schroon Law LLC, a new law firm in the area, stated she just noticed in **Section 5.20 Land Use Regulations by Zoning District: Site Plan Approval D:** Public Utility Use might be applicable to the discussion tonight.

Chair Cheryl Erickson stated Public Utility use is not applicable to this application. They will not be selling energy. They will receive a credit on their electric bill from solar power. This is a residential structure not an energy company.

Chair Cheryl Erickson stated that she thinks solar arrays are customarily done, it meets the definition of an accessory use and an accessory use structure. She does not believe this project requires a Use Variance according to our Code.

Chair Cheryl Erickson therefore put forth that a motion should be made to overturn the Zoning Administrator’s determination that this requires a Use Variance. The following votes were taken:

Chair Cheryl Erickson votes AYE

Vice-Chair Jim Dewar votes AYE

Ross Schoembs votes AYE

Rich Nawrot votes AYE

Troy Scripture AYE

Being **ALL AYES** from the Board members the motion was carried to overturn the Zoning Administrator’s determination for a Use Variance.

This application is for an accessory structure and meets all the Zoning Code setbacks and therefore no Variances of any kind are necessary.

Reminders: None

Correspondence: None

Public Comments: None

Board Comments: None

Being no further comments or questions Vice-Chair Jim Dewar made a motion to adjourn the meeting. Second by Ross Schoembs **ALL AYES.**

Adjourn: 8:12 PM

Next meeting date: August 22, 2023

Respectfully Submitted,
Terri Katsch, Secretary