

**Town of Horicon  
Zoning Board of Appeals**

**April 25, 2017  
Minutes**

**Present at Meeting:**

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

**Also Present:**

Town Attorney Leah Everhart, Todd Meyer, Kimberly Meyer, Mary Probst, Alice Altieri, Bob Olson, Gerald Byrne, Bob Ward, Mary Inower and Zoning Administrator Jim Steen.

**Agenda Items:**

**File # 2017-04 AV Tax Map # Tax Map 88.18-2-9 Roadway Setback  
File 2017-08 AV Tax Map 88.10-1-19 Shoreline and Side yard Setback  
File # 2017-03 AV Tax Map # 105-1-6 Shoreline Setback**

**Pledge**

Chairperson Thad Smith called the meeting to order at 7:00 p.m.

**Review of Minutes:** Scott Olson made a motion to **accept the March 28, 2017** minutes as written. Second by Vice-Chairperson Cheryl Erickson. **ALL AYES.**

**NEW 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.

Zoning Administrator Jim Steen spoke to the ZBA members about this application. He stated that he noticed this structure at the end of February 2017 and issued a stop work order. Informed the owner by letter sent on February 27, 2017 stating a variance is necessary for a roadway setback.

Robert Ward spoke on behalf of his application for the variance. He did not realize it was so close to the road. It is too hard for him to dump the leaves due to his handicap so he built this walkway in order to dump leaves down the other side of his property. This was the only purpose for building this walkway.

Gary Frenz asked if we have a copy of the deed. Secretary Teri Katsch responded yes we have the deed on file.

Chairperson Thad Smith asked if this was a walkway that is used every day.

Robert Ward responded no it is only used for dumping his leaves into the compost heap.

Vice Chairperson Cheryl Erickson asked if his house was on the other side of the road and she asked if this was part of his property as well.

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Robert Ward responded yes his house is across the road from this is piece of his property. He went on to state that this was mainly constructed because of his disability and inability to climb up and down the bank to dump his leaves.

Vice-Chairperson Cheryl Erickson made a motion to deem the application complete and set a Public Hearing for May 16, 2017. Second by Scot Olson. **ALL AYES.**

**NEW 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.

Zoning Administrator Jim Steen spoke to the ZBA members regarding this project. These provisions are not the standard setbacks for structures. These are special requirements for Inns. The provisions are listed in the Zoning Law under Inns and it states that the property shall be a minimum of 3.2 acres and no portion of a tourist accommodation shall be closer than fifty feet (50') from the boundary line of any adjoining property not in the same ownership, nor closer than one-hundred feet (100') from the shore or any lake or pond, or any river or stream navigable by boat, including canoe. This requested variance will have to go to the APA for review as well.

Drew Cappabianca spoke to the ZBA Board members and stated that this will be more like a hostel, which is like a Bed-and-Breakfast. This is not addressed per se in the Zoning code so he cannot do a true Bed-and-Breakfast; however, it is closer to the definition of an Inn.

Drew went on to state how it will impact the town. He stated nothing will change. He has plenty of parking for the use and it goes along with the Towns Comprehensive Plan.

Town Attorney Leah Everhart stated that a SEQRA will need to be reviewed at the next meeting.

Vice-Chairperson Cheryl Erickson asked if there is a deed for this file. Drew stated yes, he has given it to Zoning Administrator Jim Steen.

Scott Olson made a motion to deem the application complete, conditioned upon receiving the SEQRA form by the next meeting, and set a Public Hearing for May 16, 2017. Second by Cheryl Erickson. **ALL AYES.**

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**PUBLIC HEARING:**

**File # 2017-03 AV**  
**Tax Map # 105-1-6**  
Victor and Gloria Mangano  
67 Horicon Avenue  
Horicon, NY 12815

Seeking a Variance from **Zoning Code 6.10** for a shoreline setback to place a 5<sup>th</sup> wheel **mobile home 47'** from the shoreline where 150' is required.

Todd and Kim Meyer stated they were here tonight to seek approval for the requested variances for a mobile home on the property they purchased last March 2016.

Chairperson Thad Smith asked if any Board members have questions for the applicants.

Vice-Chairperson Cheryl Erickson asked if this is hooked up to the septic system and Todd Meyers responded yes and the water system as well.

Todd Meyer stated there was a home that burned down prior to them purchasing the property.

Chairperson Thad Smith asked if the 5<sup>th</sup> wheel is placed approximately where the previous house was placed.

Todd Meyer stated that is it actually further away from the water; however, it is on the same footprint as the previous home.

Gary Frenz asked if it's a 30 amp hook up or 50 amp hook up and Todd Meyer stated 50 amp.

Vice-Chairperson Cheryl Erickson asked Todd Meyer if it is his intent to leave the trailer there forever.

Todd Meyer stated that it is usually there in the summertime.

Vice-Chairperson Cheryl Erickson asked Todd Meyer if he is planning to remove it after the summertime.

Todd Meyer stated that they could remove it if needed.

Zoning Administrator Jim Steen said that this application will have to go to the Planning Board for a Conditional Use in order to place the 5<sup>th</sup> wheel on the property because they are hooking up to the septic and well and will have to go to APA for review if approved.

Scott Olson asked if they would be allowed to re-build a house on the property.

Zoning Administrator Jim Steen said that they would be able to build it only on the same footprint.

Town Attorney Leah Everhart asked if there is a time limit on the rebuilding.

Zoning Administrator Jim Steen said there is no time limitation on single family dwellings.

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Pat Farrell asked if this is a permanent hookup to the septic.

Zoning Administrator Jim Steen said the APA does not make a distinction. According to the APA if it is registered with Department of Motor Vehicles, has a valid inspection sticker and not hooked up to septic system it is not subject to set backs.

Gary Frenz asked if the septic tank hookup is a screw in base and Todd Meyer responded yes it is a screw in.

Pat Farrell asked if they will pull the trailer off each year for inspection and if so it is not inspected now. He continued to ask how the Town would handle that situation.

Zoning Administrator Jim Steen said that if this Board grants the variance as it is now and the Planning Board grants the Conditional Use then it would not be subject to inspection each year because it would be hooked up to the septic system.

Vice-Chairperson asked if the septic currently on the property is a new one. Todd Meyer stated a septic system was installed in 2008.

Zoning Administrator Jim Steen said it was signed off on by the previous Zoning Administrator and is a 1000 gallon tank with a 200' leach field.

Chairperson Thad Smith asked if there are any more questions.

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

Town Attorney Leah Everhart stated that Warren County has issued their recommendation and there are no County wide impacts on this application. This is a single family home and therefore a Type II SEQRA action with no further review required.

Vice-Chairperson Cheryl Erickson made a motion to approve the applied for variance for a shoreline setback to place a 5<sup>th</sup> wheel mobile home 47' from the shoreline where 150' is required and that this is a TYPE II SEQRA action and no further review is necessary. Second by Scott Olson. **ALL AYES.**

**UNFINISHED BUSINESS:**           **File # 2017-03 AV**  
  **Tax Map # 105-1-6**  
  Victor and Gloria Mangano  
  67 Horicon Avenue  
  Horicon, NY 12815

Seeking a Variance from **Zoning Code 6.10** for a shoreline setback to place a 5<sup>th</sup> wheel **mobile home** 47' from the shoreline where 150' is required.

The ZBA Board members discussed the proposed application.

Scott Olson stated that if they put the trailer no closer to the water than the house was and they would be allowed to place a new house there he does not see any problems with this request.

Vice-Chairperson Cheryl Erickson is worried about setting a precedent on travel trailer placements; however, this one application is unique enough because it will be placed on an existing footprint of the house that was previously built.

Scott Olson asked if the Board should place any conditions on this proposal if approved.

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Vice-Chairperson Cheryl Erickson stated maybe condition could be stay on footprint of the house.

Chairperson Thad Smith stated well they should be able to stay on property anywhere if home is built.

Town Attorney Leah Everhart said it would no longer subject to setback requirements if a new home is built and that no conditions need be set.

Vice-Chairperson Cheryl Erickson asked if the travel trailer is not hooked up to the septic system can it be put anywhere on property and not subject to setbacks.

Zoning Administrator Jim Steen said yes and he recently has been getting questions weekly about this issue.

Town Attorney Leah Everhart said that current Zoning Law indicates this travel trailer can be located anywhere on property of the property owner.

Zoning Administrator Jim Steen said yes that is correct and he has been struggling with this issue for about 2 ½ years. Every town around us is struggling with it. He checked with other towns and in Chestertown no travel trailers can be used as dwellings. In his view there is a distinction between parked or located as stated in the Town of Horicon Zoning Law. If you live in this town you should be allowed to store the travel trailer on your property. However, people are purchasing property in the Town of Horicon and using this as their destination and wanting to place travel trailers on the property.

Chairperson Thad Smith said so it could be located there and hooked up to power and still not considered a dwelling.

Zoning Administrator Jim Steen said yes, that is when he relies on the APA guidelines where they make the distinction of being hooked up to septic system. If hooked up to septic system then it is subject to the setback restrictions and the restrictions only talk about hooking up to septic systems not water or power.

Vice-Chairperson Cheryl Erickson stated she thinks it would be ok to stay there and being hooked up to septic is a positive.

Zoning Administrator Jim Steen said he made the determination that this will be considered a mobile home. Mobile homes are allowed in this district with Conditional Use approval by the Planning Board. There is one travel trailer up on Route 8 in the R1 1.3 acre district that is not hooked up to septic or water and pretty close to road; however, they are not violating any Zoning Law. No one has challenged his interpretation yet.

Town Attorney Leah Everhart said it would not seem appropriate that any condition be set if a home is built that the trailer be removed from the property.

Zoning Administrator Jim Steen stated he would enforce the Zoning Law one dwelling property rule. He would advise property owners that the trailer would have to be disconnected from the septic system.

After discussion the ZBA Chairperson Thad Smith went through the Summary of Area Variance Criteria.

The Board reviewed the Area Variance criteria:

The ZBA finds that the Variance from **Zoning Code 6.10** for a shoreline setback to place a 5<sup>th</sup> wheel **mobile home** 47' from the shoreline where 150' is required 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.

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The ZBA further finds:

- 1) The benefits sought by applicant could not be achieved by any other means feasible as the placement of the mobile home on the existing footprint is the best use of the property and no closer to the water than the house was. This is the best use of the mobile home on that property to put it on the existing footprint of the house that was there previously. Being hooked up to the septic system is also a positive.
- 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 because the pre-existing non-conforming footprint is closer to the water making this variance request less substantial. As a structure this is not a substantial request.
- 4) There are no adverse physical or environmental effects because it would be the same whether it is a house or a mobile home. On the other side of the river there is a camp ground with lots of trailers on it although that is in the Town of Chestertown, not Horicon. The view is the same on both sides of the river.
- 5) The alleged difficulty was not self-created because they purchased the property with the house footprint already there and it is the best use of the property. That is what the homeowner had to work with.
- 6) This is the minimum variance necessary because it allows the best access to the septic and the water,

Being no further questions or comments and based on the previous discussions, Gary Frenz made a motion to approve the requested variance from **Zoning Code 6.10** for a shoreline setback to place a 5<sup>th</sup> wheel **mobile home** 47' from the shoreline where 150' is required. Second by Pat Farrell. **ALL AYES.**

**PUBLIC HEARING REHEARING:**

**File # 2016-01 Appeal Interpretation - REHEARING**  
**Tax Map # 55.17-1-21**  
Alice Altieri/Probst Family Trust  
514 Palisades Road  
Brant Lake, NY 12815

**REHEARING** of an application has been made by the Probst Family Trust/Alice Altieri seeking to have the Town Zoning Board of Appeals issue a determination finding that the property located at 514 Palisades Road, Brant Lake, NY 12815 be considered a lot on record under **Section 13.10 A** of the Town Zoning Law.

Scott Olson asked the Town Attorney Leah Everhart if all Board members that voted the last time have to vote this time and Leah Everhart stated no, just the Board members who are present this evening as long as the vote is unanimous.

Zoning Administrator Jim Steen told the ZBA members that he went to Warren County in order to verify the Tax Map submitted by Alice Altieri at the prior ZBA meeting matched the map on file at Warren County. He went on to state that it was put on the map because it was left over from previous subdivisions. This is just a Tax Map from 1970. When he spoke to the County he explained the situation of how the ZBA members were being asked to determine if this was a lot on record prior to December 29, 1977 and Warren County employees explained that they would not be able to speak to that issue. The Town of Horicon makes that determination and the Town of Horicon does not have a definition for a lot on record.

Town Attorney Leah Everhart explained that materials that were handed to the Board members tonight are currently not part of the record unless the Board wishes to accept them into the record this evening. The ZBA members decided not to accept the newly submitted materials into the record. The map that was produced at the ZBA meeting on March 28, 2017 was unanimously voted into the record in order for the ZBA members to make a determination about a lot on record prior to December 29, 1977.

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Pat Farrell asked if taxes were paid on it from that date and Ms. Altieri responded no taxes were paid until 1983 when she purchased the property.

Alice Altieri spoke to the Board and asked if she could introduce a definition of a lot on record, there are two definitions, one being a Tax Map. She also stated she thought the Board members had access to all of the information that has been presented over the years.

Scott Olson stated the Board has not seen any documentation of how this lot came to be and asked Alice Altieri to walk the Board members through that process.

Alice Altieri stated that the property in question is adjacent to property she owned with neighbors in 1972. She was part of Pine Shores development to the west of this lot. She also owned property to the east of this property in Adirondack Acres after she sold her property in Pine Shores. Hobart Rosen owned Pine Shores and her property. He sold the garage piece to her in 1983. There was no record of it because Warren County thought it was part of Adirondack Acres and labeled it Lot 22 and it's not. In 1983 when Hobart Rosen sold it to Alice Altieri he had to create a deed. Prior to that no taxes were paid on the property until 1983. She has filed two Article 78's after purchasing this lot in order to determine if this a lot of record. Based on a 2004 Planning Board decision in 2004 that this was not a lot on record. Alice Altieri stated that in her opinion the Planning Board does not have a right to determine if a lot is a lot on record, only if in a subdivision. She put it up for sale and it came before the Zoning Board in order to determine if it was a lot of record and could not get a determination at that time and the purchaser gave up saying it was too much trouble. Only the Zoning Administrator has the right to determine a lot on record and then she filed another Article 78 because the Zoning Office at that time would not let her present additional information to the Zoning Board. At the end of last year (2016) a Judge ordered the Zoning Board to determine if this is a lot on record. So now she has presented the Tax Map and in her opinion this should now be able to be defined as a lot on record.

Vice Chairperson Cheryl Erickson stated that they are only rehearing whether or not this is a lot of record based on the new Tax Map that is presented. This is the only issue at hand and if anyone speaks on this subject they must have information as to whether or not this is a lot on record as of December 29, 1977.

Town Attorney Leah Everhart stated that if this is determined to be a lot on record then there are certain variances that would not be required in order to develop the site, specifically lot size and line lot width. And other variances would still be needed in order to develop the site. It does not deem the property buildable but it would alleviate the need for variances for certain dimensional requirements.

At this time it was decided to open a Public Hearing because this was noticed as a Public Hearing in the media and to adjoining owners so that any members of the public present want to speak. Pat Farrell made a motion to open a Public Hearing for speakers to comment only on the issue at hand. Second by Vice-Chairperson Cheryl Erickson. **ALL AYES.**

Jerry Byrne, a neighbor of Alice Altieri, wants to give information on how the lot came to be. He showed the Board members where his property is located on the map. In 1982 his property has no sand beach and he knew of this lot and that it was an unbuildable lot. Even Alice Altieri knew it was not buildable. He still wanted to buy it in order for him to have a sand lot with access to the beach. Mr. Rosen made it clear to him it was not a buildable lot. He entered into a bidding process at that time and the price kept going up. Ms. Altieri was bidding on the property as well. He spoke with Ms. Altieri at the time and he called her and she said she wanted it because it was contiguous to her property and she had no intention of building on the lot. She also told him that it was a bad investment because it could not be built upon. He pulled out of the transaction due to the price and it being a bad investment.

Chairperson Thad Smith asked if anyone else wanted to speak on the subject.

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Being no further questions or comments Pat Farrell made a motion to close the Public Hearing. Second by Vice-Chairperson. **ALL AYES.**

Town Attorney Leah Everhart had a question for the Board members prior to making the motion. If the Board renders interpretation of the Zoning Code then the Zoning Administrator uses that to apply to every property in the Town of Horicon. Is it the Boards position that under the Zoning Code what lot on record means is a lot that appears in its current configuration on a Tax Map on or before December 29, 1977 even if a deed was not created? The Board determined that yes that would be a good definition of a lot on record.

Vice-Chairperson Cheryl Erickson made a motion to consider this a lot on record prior to December 29, 1977 based on the Tax Map verified by Warren County as being authentic, dated 1970. Second by Scott Olson. **ALL AYES.**

It was suggested by Board member Gary Frenz that a Role be called for the vote. Secretary to the Board Terri Katsch called the roll with the following votes:

Chairperson Thad Smith - Yes  
Vice-Chairperson Cheryl Erickson- Yes  
Gary Frenz - Yes  
Pat Farrell - Yes  
Scott Olson – Yes

**ALL AYES.**

The determination was reversed and this Tax Map # 55.17-1-21 is considered a lot on record prior to December 29, 1977.

Chairperson Thad Smith asked if there was any further business to be discussed.

Town Board member Bob Olson wanted to talk to the ZBA Board members regarding attendance requirements of Board members. Bob Olson would like the ZBA members to consider how many absences would be allowed prior to termination of that Board member and what procedure will be followed. The Chairperson of the ZBA will bring the information to Bob Olson and the Town Board in order for the Town Board to make a ruling. Chairperson Thad Smith stated it would be better to be discussed at the next ZBA meeting on May 16, 2017.

Being no further comments or questions Gary Frenz made a motion to adjourn. Second by Pat Farrell. **ALL AYES.**

**Communications:**

**Public Comments:** None

**Board Comments:** Town Board member Bob Olson spoke to the Board members regarding absences.

**Adjourn:** 8:15 pm

**Next Meeting Date:** May 16, 2017

Respectfully Submitted,  
*Terri Katsch*, Secretary