

**Town of Horicon
Zoning Board of Appeals**

**March 28, 2017
Minutes**

Present at Meeting:

Thad Smith, Chairperson
Cheryl Erickson
Pat Farrell
Scott Olson
James Dewar Alternate # 1

Also Present:

Attorney Mark Schachner, John Dunn, Don Studler, Todd Meyer, Gloria Mangano, Victor Mangano, Kimberly Meyer, Mary Probst, Alice Altieri, Bob Olson and Zoning Administrator Jim Steen.

Agenda Items:

File # 2017-03 AV Tax Map # 105-1-6 Shoreline Setback
File # 2017-01 AV Tax Map # 89.9-1-10 and 89.9-1-9 Undersized lot and Road Frontage
File # 2017-02 Tax Map # 72.13-2-48 Retaining Wall permit and roadway setback

Pledge

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

Chairperson Thad Smith appointed Alternate # 1 James Dewar as a voting member in the absence of Gary Frenz.

Review of Minutes: Scott Olson made a motion to **accept the January 24, 2017** minutes as written. Second by Vice-Chairperson Cheryl Erickson. **ALL AYES.** Vice-Chairperson Cheryl Erickson made a motion to **accept the February 28, 2017** minutes as written. Second by Scott Olson. **ALL AYES.**

NEW 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 5th wheel **mobile home 47"** from the shoreline where 150' is required.

Gloria Mangano spoke about her proposal to place the mobile home on the property they purchased last March 2016. When they purchased the property they did not realize a 5th wheel could not be placed on the property and after speaking with the Zoning Administrator Jim Steen she found out it needed a shoreline setback variance as well. Her family spent time last summer at the property and found it to be such a lovely area. They had no intention of doing things incorrectly. Gloria went on to explain there would be a hardship for their family if they are not able to place the 5th wheel home on the property. They would have to stay in hotels or tents when coming up to the property and that was not their intention. They have no plans of building a home on the property and there was a previous home on the property that burned down.

Chairperson Thad Smith asked if this was an undersized lot and Zoning Administrator Jim Steen responded that no it is not an undersized lot and that is not the issue.

Zoning Administrator Jim Steen spoke to the Board regarding the travel trailer placements on properties in the Town of Horicon and he stated that it has become a contentious issue. Our Zoning Code is not clear when it comes to travel trailer placements. He took guidance from the APA flyer on shoreline restrictions that states "motor vehicles and trailers that are registered with the DMV, have a

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current inspection sticker and are not connected to an in-ground wastewater treatment system are generally not considered structures subject to the setback requirements". Given the fact that the Mangano's are hooking up to a septic system he made the decision to treat it as a mobile home which is an allowed use in that zone. It will be further away from the shoreline than the previous home; however, it still does not meet the shoreline setback requirement. The septic system was legally installed in about 2011 and inspected and signed off on by the previous Zoning Administrator. He informed the Mangano's of the need for a variance after it sat there all summer and having had a few phone calls regarding the trailer on the property. He then spoke with other Zoning Administrators from the towns of Hauge, Bolton and Chestertown and all of those towns have problems with travel trailers and how to treat them. So he took his guidance from the APA shoreline restrictions and decided to call it a mobile home.

James Dewar asked if there is a well on the property and Zoning Administrator Jim Steen responded yes it has a well that has to be hooked up to the water system.

James Dewar asked if the phone calls that Zoning Administrator Jim Steen received were only from the residents of Horicon and Zoning Administrator Jim Steen responded that he had calls from residents in Chestertown as well asking about travel trailer in the Town of Horicon.

Chairperson Thad Smith asked the Board if there is any more discussion on this application or do they want to deem the application complete.

Vice-Chairperson Cheryl Erickson stated the only variance they are looking at is for the shoreline setback.

Zoning Administrator Jim Steen stated that the applicants have to go before the Planning Board as well for a Site Plan Review due to the change in the Zoning Code.

Mark Schachner stated that the only thing before the ZBA is the shoreline setback variance.

Vice-Chairperson Cheryl Erickson made a motion to deem the application complete and schedule a Public Hearing for next month's ZBA meeting on April 25, 2017. Second by Pat Farrell. **ALL AYES.**

Gloria Mangano asked the Board if their whole family has to attend next month's hearing as well and Vice-Chairperson Chery Erickson stated that it is better if someone attends the Public Hearing in case the Board has questions for the applicant. Zoning Administrator Jim Steen further clarified the process for Gloria Mangano.

PUBLIC HEARING: **File # 2017-01 AV**
 Tax Map # 89.9-1-10 and 89.9-1-9
 Don Studler
 Duell Hill Road
 Brant Lake, NY 12815

Seeking an Area Variance from Zoning Code 6.10 for 2 pre-existing undersized lots of 2.644 acres and 2.272 acres where 5 acres are required and on lot 1 roadway frontage of 200' (now 205') where 300' is required.

Don Studler spoke on behalf of his proposed project for undersized lots and road frontage variance requests. Don Studler stated that he had the survey prepared as requested and the numbers came out pretty much as expected.

Zoning Administrator Jim Steen stated the number on the road frontage is actually 205' as opposed to 200' and the change is because of a shed on the property causing the line to be moved over slightly so the shed would meet the 15' side yard setback requirement.

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Don Studler stated that the reason for the difference in the acreage is because there was an error on the old map. The 150' setback on the back of the Youne's property was actually 175' on the old map and should have been 150' so the surveyor corrected that error.

Scott Olson stated the Board did discuss at last month's meeting that there could be possible changes.

Thad Smith asked if they needed to re-notice this application due to the changes and Attorney Mark Schachner stated that the variance sought is less than previously advertised and would not require re-notification.

Don Studler stated that the Board had received a letter opposing the request from neighbor Howard Amann. When Don Studler heard about the letter written by Mr. Amann Don Studler spoke to him about the proposal. Mr. Amann was confused because he thought Don Studler was dividing the already undersized lots further into separate lots which is not the case. Mr. Amann then sent a letter to the Board stating his confusion and stating his support for the proposed project.

Being no further questions or comments Chairperson Thad Smith stated that the Public Hearing was now closed. **ALL AYES.**

UNFINISHED BUSINESS: **File # 2017-01 AV**
 Tax Map # 89.9-1-10 and 89.9-1-9
 Don Studler
 Duell Hill Road
 Brant Lake, NY 12815

Seeking an Area Variance from Zoning Code 6.10 for 2 pre-existing undersized lots of 2.84 acres and 2.24 acres where 5 acres are required and on lot 1 roadway frontage of 200' where 300' is required.

The Board discussed the application as presented and Scott Olson stated that he thinks this is a very well thought out plan and would not do it any differently.

The Board reviewed the Area Variance criteria:

The ZBA finds that variances from **Section 6.10 of the Zoning Code** regulations for two (2) undersized lots measuring 2.644 acres and 2.272 acres and roadway frontage of 205' 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 applicant will be correcting a curving boundary line and making it into a straight line.
- 2) There will be no undesirable change to the character of the neighborhood or any detriment to nearby properties because these are two pre-existing, approximately 2 ½ acre lots and straightening the boundary line between them with no adjoining owners to be effected. No buildings on the lot are being changed, simply the road frontage and it makes sense for the homeowner. The survey that was corrected will help if any future surveys are done.
- 3) The requested variances are not substantial.
- 4) There are no adverse physical or environmental effects. The lot line change does not affect the wetlands.
- 5) The alleged difficulty was not self-created because the acreage was already there. That is what the homeowner had to work with.
- 6) This is the minimum variance necessary.

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The proposed action will not result in any significant adverse environmental impacts. Vice-Chairperson Cheryl Erickson made a motion to declare a negative SEQRA declaration. 2nd by Scott Olson. **ALL AYES.**

Being no further questions or comments and based on the previous discussions, Vice-Chairperson Cheryl Erickson made a motion to approve the variances requested for two (2) undersized lots of 2.644 acres and 2.272 acres where 5 acres is required and roadway frontage on lot 1 of 205' where 300' is required. Second by Scott Olson. **ALL AYES.**

Zoning Administrator Jim Steen explained the rest of the process to Don Studler. This approved application will go to the APA who then has 30 days for the review and Don Studler will go before the Planning Board on April 19, 2017 for a Boundary Line Adjustment.

PUBLIC HEARING:

File #2017-02 AV

Tax Map # 72.13-2-48

Brant Lake Heights Homeowner's Association

Route 8 and Grassville Road

Brant Lake, NY 12815

Seeking an after the fact Area Variance from **Zoning Code 6.10** for a retaining wall to sit 40' from shoreline where 50' is required and a roadway setback to sit 36' where 60' is required.

Scott Olson recused himself from participation in this application.

John Dunn representing Brant Lake Heights Homeowners Association is requesting shoreline and roadway setbacks for a rock wall and boulders placed on an existing beach lot at Grassville Road and State Route 8 owned by the Brant Lake Homeowner's Association for work performed without a permit because they did not know they needed a variance. A letter from the Warren County Planning Board Review suggested contacting the DOT to make sure the project was not in the State Route 8 ROW and a letter was received from the DOT stating the project that was done was not in the ROW on State Route 8.

Zoning Administrator Jim Steen stated that the letter received from the DOT indicated the DOT claims a 25' foot wide ROW from the center line of Route 8 towards the lake side of the property. This project sits 36' foot from the center line of Route 8 and is therefore outside of the ROW on State Route 8.

Vice-Chairperson Cheryl Erickson stated a letter was received from an adjoining homeowner as well, asking if the project has undermined the structural integrity of Route 8 and if Route 8 ever needs repairs near this location who will be responsible for the cost of repairs. By receipt of the letter from the DOT it has been determined that the rock wall and boulders are outside of the ROW. This does not affect the integrity of Route 8, in fact it helps with the erosion and if repairs need to be done it will be the responsibility of the Brant Lake Heights Homeowner's Association as it is not in the State Route 8 ROW.

John Dunn has had several conversations with Zoning Administrator Jim Steen and agreed there will no undermining, in fact they made the area improved by this project and is outside the scope of the DOT State ROW.

Chairperson Thad Smith asked if it catches a lot of the silt and road sand and John Dunn responded yes it does and that by cutting a dead tree down, cleaning the area and pitching to the culvert upgraded corrections were made.

Pat Farrell stated it corrected an eyesore.

John Dunn stated that the Boat Launch was closed there which made the State happy.

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John Dunn continued on stating there has been much improvement in this area due to the project and are planting native vegetation in order to stop further erosion in the area and to improve the quality of the lake.

Being no further questions or comments Chairperson Thad Smith closed the Public Hearing. **ALL AYES.**

UNFINISHED BUSINESS: **File #2017-02 AV**
 Tax Map # 72.13-2-48
 Brant Lake Heights Homeowner's Association
 Route 8 and Grassville Road
 Brant Lake, NY 12815

Seeking an after the fact Area Variance from **Zoning Code 6.10** for a retaining wall to sit 40' from shoreline where 50' is required and a roadway setback to sit 36' where 60' is required.

The Board discussed the application as presented and Vice-Chairperson Cheryl Erickson stated that if the Board had directed the Brant Lake Homeowner's Association to do this they would not have asked them to do anything differently.

Chairperson Thad Smith stated that it has enhanced the area and other than the boulders being 2" too big they would not have even needed a variance.

The Board reviewed the Area Variance criteria:

The ZBA finds that variances from **Zoning Code 6.10** for a retaining wall to sit 40' from shoreline where 50' is required and a roadway setback to sit 36' where 60' 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. These were very appropriate options for correction, they were affordable and falls in line with the rest of the area.
- 2) There will be no undesirable change to the character of the neighborhood or any detriment to nearby properties because this actually enhances the properties nearby and there is no road silt flowing into the lake. There is less erosion and over the long run maintains the stability of the area.
- 3) The requested variances are not substantial because only relatively minor increases of 20% and 30%.
- 4) There are no adverse physical or environmental effects. The intention of this project was to have positive environmental effects by preserving and maintaining the shoreline and eliminating erosion.
- 5) The alleged difficulty was not self-created because it was created by nature. The road had become unusable and needed to be corrected. Helps alleviate the erosion in the ditches. Makes the area safer.
- 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 Area Variance requests from **Zoning Code 6.10** for a retaining wall to sit 40' from shoreline where 50' is required and a roadway setback to sit 36' where 60' is required. Second by James Dewar. **ALL AYES.**

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The Board members discussed the letter received from Alice Altieri regarding a request for a re-hearing on the decision made on **File # 2016-01 Appeal Interpretation Alice Altieri/Probst Family Trust, Tax Map # 55.17-1-21** on January 24, 2017.

Zoning Administrator Jim Steen read the rules on rehearing from **Zoning Code 15.60 –Rehearing** to the ZBA members.

Attorney Mark Schachner explained to the ZBA members that they are not obligated by State Law to rehear this; however, the Board can do so but the decision has to be unanimous.

The Board members unanimously agreed to look at the new map that Alice Altieri had come across recently. After viewing the map, the Board members took a vote to rehear the previous decision on **File # 2016-01, Tax Map # 55.17-1-21** made on January 24, 2017.

Chairperson Thad Smith took a vote to rehear the Altieri decision made on January 24, 2017 at the next ZBA meeting on April 25, 2017, with new map included:

Chairperson Thad Smith – Yes
Vice-Chairperson Cheryl Erickson- Yes
Pat Farrell – yes
Scott Olson – yes
James Dewar – yes

The Board members unanimously voted to re-hear File # 2016-01 at the next ZBA meeting on April 25, 2017 and allow the map from Alice Altieri into the record at that meeting. **ALL AYES.**

Communications: Letter from Alice Altieri.

Public Comments: None

Board Comments: None

Adjourn: 8:00 pm

Next Meeting Date: May 16, 2017

Respectfully Submitted,
Terri Katsch, Secretary