

**Town of Horicon
Zoning Board of Appeals**

**October 24, 2017
Minutes**

Present at Meeting:

Cheryl Erickson, Chairperson
Gary Frenz
Pat Farrell
Scott Olson
James Dewar

Also Present: Town Attorney Justin Grassi, Maryann Polhemus, Frank Dinger, Mike Infantino, Joseph Brand, Susan Brand, Bob Olson, Bill McGhie, Angie Mead, James Schillinger, and James Steen.

Agenda Items:	File 2017-15 AV	Tax Map # 36.15-1-8
	File 2017-17 AV	Tax Map # 36.11-1-11
	File 2017-18 AV	Tax Map # 36.11-1-10
	File 2017-16 AV	Tax Map # 88.7-1-14
	File 2017-13 AV	Tax Map # 39.9-1-20.2

Pledge

Chairperson Cheryl Erickson called the meeting to order at 7:00 p.m.

Review of Minutes: Scott Olson made a motion to accept the September 26, 2017 minutes as written. Second by Pat Farrell. **ALL AYES.**

NEW BUSINESS:

File 2017-15 AV
Tax Map # 36.15-1-8
Robert Morgan (represented by Mike Infantino)
288 East Shore Drive
Adirondack, NY

Requesting an Area Variance for a shoreline setback and a roadway setback from **Zoning Code 6.10** to build a 12' x 20' deck and move an 8' x 8' shed and a deck from the waterfront to top of bank and attach it to the deck to sit 20' from the shoreline where 50' is required and to sit 47' from the roadway where 60' is required.

Mike Infantino was there to represent the Morgan's application. He stated that the customer wants to remove the deck on the water and to move it up on the bank away from the shoreline. The Morgan's purchased the property last February 2017.

Scott Olson asked Mike Infantino if the stairway and the orange shed indicated on the site plan were staying.

Mike Infantino responded that the orange thing on the map is not a shed just a small 8' x 8' existing platform. There is a shed by the waterfront.

Chairperson Cheryl Erickson asked the reason for moving it up the hill.

Mike Infantino stated it is old, falling apart and rotted.

Gary Frenz asked if the square footage of the new deck is equal to or less than the original deck.

Mike Infantino stated they are not the same.

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Scott Olson stated that the plan shows the new one is 12' x 20' and the old one was 8' x 20'. Just a different shape, it is wider and shorter.

Jim Steen Zoning Administrator stated the original numbers on the site plan do not match up with the numbers on the application. The staircase is only 12' and the deck is 24'. It has to be measured from the closest point to the shoreline so the variance request would be 38'.

Chairperson Cheryl Erickson asked Mike Infantino if he agrees with that and stated we would have to amend the numbers on the variance request.

Jim Steen Zoning Administrator stated it shows it is 50' feet from edge of road and we now measure 60' from the center line of the road so that would make the variance request for roadway setback not necessary.

The Board members indicated that the site plan is not drawn right. It is very difficult to measure a slope. The members stated that it would need a small variance and would amend the roadway setback request for a variance of 2' and the shoreline variance to 38'. The roadway setback is actually 58' from the center line of the road and the shoreline setback is 12' from the water.

Chairperson Cheryl Erickson stated that the application would be amended to show the variance request of 2' for the roadway setback and a 38' variance request for the shoreline setback. Mike Infantino agreed with the amendment to the application.

Being no further questions or comments Scott Olson made a motion to deem the application complete and schedule a Public Hearing for November 28, 2017. Second by James Dewar. **ALL AYES.**

NEW BUSINESS:

**File 2017-17 AV
Tax Map # 36.11-1-11
Frank and Sandra Dinger
376 East Shore Drive
Adirondack, NY**

Requesting an Area Variance from **Zoning Code 6.10** for a side yard setback for a proposed landing and stairs off of the existing deck to sit 8' where 15' is required.

Frank Dinger was present to speak about his request for this variance. He stated he had a new front deck done by Eric and Eric and he would not like to have a staircase on the deck for another way out of the house. If he put the staircase on the other side the front of house is glass and if on the far side would run into the driveway.

Chairperson Cheryl Erickson asked how wide the staircase is.

Frank Dinger responded that it is 3' wide, a straight run with a 36" platform to walk on to the staircase. The house does not sit square on the property.

Chairperson Cheryl Erickson asked if the neighbor's house is close or set back far enough from this staircase.

Frank Dinger responded that there are woods between his home and the neighbor's home.

Chairperson Cheryl Erickson clarified that the deck is existing and they are just adding the stairs.

Pat Farrell stated that he would rather see the stairs turned across the front.

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Frank Dinger stated that it would be blocking the glass doors. He did try it that way and it just did not work.

Being no further questions or comments Scott Olson made a motion to deem the application complete and set a Public Hearing for November 28, 2017. Second by Pat Farrell. **ALL AYES.**

NEW BUSINESS: **File 2017-18 AV**
 Tax Map # 36.11-1-10
 David and Kathleen Fitts
 370 East Shore Drive
 Adirondack, NY

Requesting an Area Variance from **Zoning Code 6.10** for undersized lot of 1.065 acres where 1.3 acres is required.

The Fitts's are being represented by Frank Dinger. The Fitts are selling a portion of their property to Frank Dinger. That will cause the undersized lot for the Fitts. This property is behind Frank Dinger's garage. It is a piece 20' x 87'.

Pat Farrell asked how close it will be to the boundary line after they sell the piece of property to the Dinger's.

Scott Olson stated once he sees the site plan being passed around he will see it has nothing to do with it. The house is actually in front of Dinger's house closer to the lake.

Chairperson Cheryl Erickson stated there is a discrepancy with the lot size on the application and the Board discussed the discrepancy, then decided that the application would be amended to read the new lot size for the Fitts's would be 1.051 acres and the variance request would be for 0.249 acres. Frank Dinger agreed.

Both of these lots are pre-existing, non-conforming substandard lots.

Being no further questions or comments Scott Olson made a motion to deem the application complete and set a Public Hearing for November 28, 2017. Second by Pat Farrell. **ALL AYES.**

PUBLIC HEARING: **File 2017-16 AV**
 Tax Map # 88.7-1-14
 Joseph Brand
 57 New Street
 Brant Lake, NY 12815

Requesting an Area Variance for a shoreline setback from **Zoning Code 6.10** for a fence to sit 39' from the shoreline where 100' is required. Also requesting a variance from **Zoning Code 8.12 A. 5** that states any fence within 40' of the center of any road shall be of see-through design. Mr. Brand is requesting the variance for a non-see-through fence design.

Joe Brand said that he wanted to put up the fence that needs the shoreline setback because he had difficulties with the neighbor.

Chairperson Cheryl Erickson stated that he has two different size fences and two different style fences.

Scott Olson asked if the variance was just for the non-see through and Cheryl Erickson stated they are for all three fences.

Joe Brand thinks the ones near the lake are compliant because of their size and he asked confirmation from Jim Steen the Zoning Administrator.

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Jim Steen Zoning Administrator explained that you can have structures near the shoreline if they are under 100 square feet. He has two and then after two you need site plan review by the Planning Board; however, they are not exempt from the see thru design. The other fence across the road is 39' from the shoreline so that needs a variance because it is larger than 100 square feet and attached to an existing fence.

The numbers on the site plan for the fences at the shoreline should be 6'x16' making it 96 square feet exempt from the 100' structures on the shoreline.

Chairperson Cheryl Erickson stated the Board would do the shoreline setback first with the fence closest to the house where Joe Brand added a section of fence to the existing fence. This fence sits about 8' from the neighbor's house and about 4' from the road. Then discuss the two stockade fences at the shoreline that need to be of a see-through design.

Chairperson Cheryl Erickson asked Joe Brand if the neighbor's wanted the extended fence there or Joe Brand wanted the fence there.

Jim Steen Zoning Administrator stated that when he first saw Joe Brand working on the fence he told him that the finished side of the fence had to face the neighbor's yard. There was a contentious meeting between, myself, Joe Brand and the neighbor.

Joe Brand explained to the Board what happened between himself and the neighbor and what the conclusion they came to regarding the fence. The neighbor then had no objection.

The neighbor did not send any communication or complaint about the request when they received the Public Hearing notice.

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

UNFINISHED BUSINESS: **File 2017-16 AV**
 Tax Map # 88.7-1-14
 Joseph Brand
 57 New Street
 Brant Lake, NY 12815

Requesting an Area Variance for a shoreline setback from **Zoning Code 6.10** for a fence to sit 39' from the shoreline where 100' is required. Also requesting a variance from **Zoning Code 8.12 A. 5** that states any fence within 40' of the center of any road shall be of see-through design. Mr. Brand is requesting the variance for a non-

Chairperson Cheryl Erickson explained that they will now discuss only the shoreline setback fence and then the see through design variance.

Justin Grassi Town Attorney stated that the Board has options and can take it all as one motion or can choose to do them separately.

Chairperson Cheryl Erickson stated there will be two votes.

The Board reviewed the Area Variance criteria:

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. This review will apply to the one variance requested from **Section 6.10** for shoreline set back for the fence next to the house.

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The ZBA further finds:

1. The proposed project cannot be achieved by other means feasible to the applicant because the fence was pre-existing and he matched the fence adding privacy. Given the relationship that the neighbor had with Joe Brand a fence is consistent with what he was trying to achieve so this was the only feasible means available. Good fences make good neighbors.
2. There will be no undesirable change in the neighborhood character or undesirable change to any nearby properties because it is consistent with what is already there. It is appropriate for that neighborhood and there were no objections by anyone.
3. The requested variance is not substantial for this fence and is consistent with what is already there. They are non-conforming lots and consistent with the rest of the street.
4. The request will have no adverse physical or environmental effects on the property or to neighboring properties.
5. The alleged difficulty is not self-created because the applicant is just trying to work within the pre-existing non-conforming structures and just added on to what is already there.
6. This is the minimum variance necessary for this setbacks, in order for the applicant to achieve his goals of improving the property and keeping the neighbor happy.

Being no further questions or comments and based on the previous discussions, Scott Olson made a motion to approve the Area Variance for a shoreline setback from **Zoning Code 6.10** for a fence to sit 39' from the shoreline where 100' is required. Second by Pat Farrell. **ALL AYES.**

UNFINISHED BUSINESS: **File 2017-16 AV**
 Tax Map # 88.7-1-14
 Joseph Brand
 57 New Street
 Brant Lake, NY 12815

Requesting an Area Variance for a shoreline setback from **Zoning Code 6.10** for a fence to sit 39' from the shoreline where 100' is required. Also requesting a variance from **Zoning Code 8.12 A. 5** that states any fence within 40' of the center of any road shall be of see-through design. Mr. Brand is requesting the variance for a non- see-through fence design.

SECOND VOTE: from **Zoning Code 8.12 A. 5** that states any fence within 40' of the center of any road shall be of see-through design. Mr. Brand is requesting the variance for a non- see-through fence design.

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. This review will apply to the variance from **Zoning Code 8.12 A. 5** that states any fence within 40' of the center of any road shall be of see-through design.

The Board reviewed the Area Variance criteria:

The ZBA further finds:

1. The proposed project cannot be achieved by other means feasible to the applicant because the fence was pre-existing and he matched the fence adding privacy. Given the contentious argument that the neighbor had with Joe Brand a solid fence is consistent with what he was trying to achieve so this was the only feasible means available. Good fences make good neighbors.
2. There will be no undesirable change in the neighborhood character or undesirable change to any nearby properties because it is consistent with the fencing that was already there. It is appropriate for that neighborhood and there were no objections by anyone.
3. The requested variance is not substantial for this fence and is consistent with the existing solid fence. They are non-conforming lots and consistent with the rest of the street.
4. The request will have no adverse physical or environmental effects on the property or to neighboring properties.

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5. The alleged difficulty is not self-created because the applicant is just trying to work with the pre-existing non-conforming structures and just added on to what is already there.
6. This is the minimum variance necessary for this non-see through fence, in order for the applicant to achieve his goals of improving the property and keeping the neighbor happy.

Being no further questions or comments and based on the previous discussions, Scott Olson made a motion to approve the Area Variance from **Zoning Code 8.12 A. 5** that states any fence within 40' of the center of any road shall be of see-through design in order to allow for a 24' solid design fence without restrictions located between the houses. Second by Pat Farrell. **ALL AYES.**

The Board asked the applicant Joe Brand if he wants to withdraw the application for the two fences down by the water and make them a see-through design in order to comply with the regulations. Joe Brand agreed and withdrew the variance for that portion of the application. He will make them comply with the regulations and make them a see-through design.

The Warren County Planning Review stated there will be no county impact on this project.

PUBLIC HEARING: **File 2017-13 AV**
(Cont'd) **Tax Map # 39.9-1-20.2**
Ken and Arlene Miller
31 Maine Blvd.
Brant Lake, NY 12815

(Amended) Requesting an Area Variance for a road setback, rear yard setback and a side yard setback from **Zoning Code 6.10** for an addition to sit 52.5' from centerline of road where 60' is required, 20' from the rear where 50' is required and to sit 6.1' from the side yard where 15' is required.

James Steen Zoning Administrator stated that based on the survey submitted tonight there are changes to the variance request. The roadway setback will now sit 52.5' where 60' is required with a 7.5' variance request. The rear yard setback will now sit 20' where 50' is required with the variance request now 30' and the side yard setback will now sit 6.1' where 15' is required with the variance request of 8.9'.

The Board members asked James Schillinger if he accepted the new numbers and James Schillinger agreed to amend the application.

James Schillinger stated that he brought the new survey and paperwork that was requested by the Board at the previous meeting and they have all of the requested paperwork tonight. It shows all of the square footage and the proper paperwork for the deck showing the Zoning Compliance Certificate for the deck was approved. A map showing the tree line and no trees need to be taken down, which addresses one of the objection letters received at the last meeting. As far as the road the map shows the edge of the gravel road which is owned by the Millers and they let the community use that road without any problems. The road is 17' from the wall.

Scott Olson stated rather than go out the back why not just put a second story.

James Schillinger stated cost is a factor and they want to keep the cathedral ceiling and keep the look of that part of the house.

Scott Olson asked about the notch in the corner of the floor.

James Schillinger showed Scott Olson on the map what the notch is. He stated that it keeps the front profile smaller. You will not see this from the road. The only thing you will see is the small dormer in front.

Chairperson Cheryl Erickson stated that you would be able to see the addition from the road and it would look like the two houses are going to converge at the same point.

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James Schillinger stated that is because the houses sit on an angle and will see it only on one side.

Angie Meade stated that there are 55 camp owners and 15 owners in the Association that use that roadway.

Mrs. Polhemus stated that the road is very narrow there and people do use the road.

Chairperson Cheryl Olson asked if there is any other way to put it more towards the center of the property.

James Schillinger stated that the interior does not allow for that and if we did that we would need for a variance for that side.

Chairperson Cheryl Olson stated that the footprint takes up the majority of the small lot and that deck is enormous. Is there a way to bump out the house and remove part of the deck?

James Schillinger responded that the Miller use that deck because their yard is unusable. If they just bump out the house it would be unusable space.

Chairperson Cheryl Erickson stated that they will be doubling the size of the house and it will affect the character of the neighborhood by being way out of character in that neighborhood.

James Schillinger does not believe that the house will be out of character compared to the Konczeki's house. This will be only 21' longer, have the same siding and will only see the little gable roof in the front. He stated that the only thing that could be done is to jog it in in order to create more space between the two houses. Could shorten it up on the side of the Polhemus home.

James Dewar stated that now the side yard setback of 6.1' leaves an extremely small distance between the neighboring house.

Angie Mead who is a property owner in that association stated that her family owns the campground bordering the property and based upon this proposal there are already encroachments on all setbacks here. These camps were never meant for this type of square footage. The Board will be setting a precedent if you allow this to happen for the other 15 camps in there. It will interfere with the character of the neighborhood.

MaryAnn Polhemus stated that now the Millers are going down to a setback of 6.1' it is a very tight feeling. This is meant to be a summer home to enjoy the woods and feels it is getting less woodsy and more like a residential neighborhood.

Zoning Administrator Jim Steen stated to the Board that in Section 6.30 of the Zoning Regulations state maximum lot coverage shall be 30% for all lots 2 acres or less in size, including on-conforming undersized lots. Even with this addition this is only at 27% coverage. This property has two tax map numbers but is considered one lot and would have to go through a Subdivision in order to sell it.

Town Attorney Justin Grassi stated that you can have two tax map numbers and be considered one lot.

Being no further questions or comments Scott Olson made a motion to close the Public Hearing. Second by James Dewar. **ALL AYES.**

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UNFINISHED BUSINESS: **File 2017-13 AV**
 Tax Map # 39.9-1-20.2
 Ken and Arlene Miller
 31 Maine Blvd.
 Brant Lake, NY 12815

(Amended) Requesting an Area Variance for a road setback, rear yard setback and a side yard setback from **Zoning Code 6.10** for an addition to sit 52.5' from centerline of road where 60' is required, 2.01' from the rear where 50' is required and to sit 6.1' from the side yard where 15' is required.

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 Board reviewed the Area Variance criteria:

The ZBA further finds:

1. The proposed project can be achieved by other means feasible to the applicant because a second story could be put on and would have less impact on the neighbors. It is a very small lot and there is already building on the lot that is substantially bigger than it needs to be and could be made smaller or pushing it over to increase the side yard setback which the builder could accommodate. If the homeowners need a bigger home they could sell and look for a larger house to accommodate their needs. The side yard setback requested is just way too close to the boundary line.
2. There will be an undesirable change in the neighborhood character and an undesirable change to the nearby properties because it is way too close to the property line and is essentially a campground and has been there for approximately 50 years. The newer and bigger homes going up on the periphery of the campground are larger; however, this is in a campground which consists essentially of smaller lots and smaller buildings that are in the neighborhood now. This request will have a negative effect on this neighborhood.
3. The requested variance is substantial especially because the side yard setback is only 6.1'. This piece of property is maxed out as far as the Board members are concerned even though these are non-conforming lots.
4. The request will have adverse physical or environmental effects on the property or to neighboring properties because the land is sloped which would cause the rainwater runoff and with the closeness to the boundary line it may cause problems for the neighboring property; however, this could be addressed by adding gutters to the gable roof. The neighbor is concerned with an excavator getting on to the property which could cause physical effects to her property.
5. The alleged difficulty is self-created because the applicant is just trying improve a kitchen and add more space for the sake of the granddaughter with health issues which is not mandated by any state or local authorities for improvement.
6. This is not the minimum variance necessary for this application.

Being no further questions or comments and based on the previous discussions during the Balancing Test, Scott Olson made a motion to deny the (Amended) Request for an Area Variance for a roadway setback, rear yard setback and a side yard setback from **Zoning Code 6.10** for an addition to sit 52.5' from centerline of road where 60' is required, 20' from the rear where 50' is required and to sit 6.1' from the side yard where 15' is required. Second by James Dewar. **ALL AYES.**

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Communications: None

Public Comments: Bob Olson stated that he attended a Planning Board meeting in Fort Ann and he wanted to commend the ZBA Board for their professionalism and he is very appreciative of the thought that the Board puts into their decisions. He also mentioned that they are still looking for alternates for the ZBA Board and they have two candidates right now that need a little more research on before a decision is made.

Bill McGhie, Chairman of the Planning Board wanted to mention that after hearing the ZBA discuss the self-created criteria he now has a much better understanding of it.

Board Comments: Gary Frenz mentioned that he will be leaving for Florida and will be back in April 2018 and will not be able to attend the Board meetings until his return.

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

Adjourn: 9:15 PM

Next Meeting Date: November 28, 2017

Respectfully Submitted,
Terri Katsch, Secretary