

**TOWN OF NEWBALTIMORE ZONING BOARD OF APPEALS**  
**Regular Monthly Meeting**  
**November 1, 2017 – Page 1**

The meeting was called to order at 7:30 p.m. by Pat Linger, Chair, followed by the Pledge of Allegiance. Other Board Members in attendance were Craig Albano, Kingsley Greene and Jeff Carlson. Mike Meredith was absent. Also in attendance were Planning Board Chair, Rob Van Etten and applicant, William Towslee.

**Minutes**

It was moved by Linger and seconded by Albano to approve the minutes of the June 7, 2017, Lent, West, Parker Area Variance Application Public Hearing as presented.

Ayes: Linger, Albano, Greene, Carlson  
Nays: None  
Abstained: None  
Absent: Meredith

It was moved by Linger and seconded by Greene to approve the minutes of the June 7, 2017, Regular Monthly Meeting as presented.

AYES: Linger, Albano, Greene, Carlson  
Nays: None  
Abstained: None  
Absent: Meredith

**Correspondence**

1. 10/16/2017 letter from Acting Code Enforcement Officer Elliott Fishman, Re: William Toslee Referral

**New Business**

**William & Gail Towslee Area Variance Application**

Linger: I assume you are Mr. Towslee.                      Towslee: Yes, I am.

Linger: Okay. So the letter that we got was sent by the Acting Code Enforcement Officer. There is a barn or a garage that was taken down at some point on your property; and now, you want to put up another structure but not in the same place.

Towslee: Right.

Linger: And it was denied for the setback so we have the application here for a Variance. The applicants are: *William and Gail Towslee at 485 High Rock Road, West Coxsackie, NY. Tax Map ID# is: 16.00-5-1; and the above described property was acquired: in October, 1999. You are looking for an Area Variance on set back. We have the letter from Code Enforcement Officer. What practical difficulties, if any, would arise if the area variance is not granted? To meet the Town required setback, a great deal of fill would have to be brought in at substantial expense. How would the variance affect the character of the district? It enhances the appearance. The new garage is set back farther from the road than the one taken down. And it is signed.*

Our Code in Residential/Agricultural District for an accessory structure is a minimum of 40 feet set back on the front border.

Towslee: From what point, middle of the road, side of the road?

Linger: Well, apparently that is a bone of contention with our Code Enforcement Officer. I don't know that we have the authority to override his order that he sent you. This is that process. Our, I was kind of hoping that he was going to be here, but our setback definition in our Code:

*The minimum distance required for compliance with this chapter, the Zoning Chapter, as measured by the shortest horizontal line between any portion of any structure and the lot line, man-made structure or topographical or natural feature designated as being the reference point from which such minimum setback is measured.*

So I don't quite understand where the Code Enforcement Officer is coming from when he says that a setback for zoning purposes needs to be measured from the end of the public right-of-way. Our definition

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does not anywhere include a public right-of-way.

Clerk: The Highway Superintendent said the exact same thing as the Code Enforcement Officer.

Linger: The Highway Superintendent would have a right-of-way from the center of the road but that does not mean that that property owner doesn't still own the property that is the road. By our definition, we go by the lot line. That is what we defined it as here in the Town of New Baltimore. The Department of State gives an either/or, a lot line or public right-of-way. By home rule, we can specify which we have done. So I don't really understand why this setback is not being measured from the roadway, from where the road stops because the property owner still owns that so you can't just discount. Your public right-of-way I believe is 25 feet from the center of the road so that would allow for a 12-foot lane and then another 13 feet of right-of-way. That 13 feet that is off the road, and not lane, is still owned by the property owner. He just can't build anything there; but our 40-foot setback encompasses that. We have 27 feet beyond their 13 feet. So I don't really understand where the Code Enforcement Officer is coming from on this when our definition is very clear that our lot line, our setback is measured from the lot line.

I believe that tonight in the packet here according to the deed, the deed I have, in Schedule A description on the property, when you look at the parcel itself says:

*Beginning at a point marked by a spike set in the center line of a Town road known as High Rock Road, said point being "x" degrees and feet westerly from a fence post, but it is marked in the center line of the road of High Rock Road, in a division line between lands on the north and lands on the south.*

So his property line is actually in the center of the road, not even at the edge. Even if you measure back 40 feet from the center of the road, you still encompass that 25 feet that the public right-of-way is and he would have to be 15 feet back from that if you took this quite literally. It would still allow the public right-of-way to exist without any structure on it and an additional 15 feet. The way I have read this, the structure that he is trying to put up is actually 40 feet from the edge of the road.

I am not the Code Enforcement Officer so I don't know that it is my call here but he is actually 25 feet further than what it would actually have to be if you took our definition literally as the lot line and measured from the center of the road where his deed says he owns to. I know this happens a lot in a lot of these highway-by-use roads which is what most of our Town roads are. A lot of people own most of the road. This one specifies that it is center line of High Rock Road. So where does that put us?

Towslee: Where does that put me?

Linger: You know for purposes of expediting the process, I don't think that we stop this because I don't know the answer. As to whether I can say well, this doesn't conform to our Town Code; and by all rights, it doesn't, which is his letter from the Code Enforcement Officer. You know, our definition is very clear. The setback is measured from the lot line. His deed says his lot line is the center of High Rock Road. So in essence, 40 feet setback from the center line of the road is still 15 feet further than the 25 foot public right-of-way. I don't think they are separate from each other. I think that they encompass the same land so your public right-of-way measures from the center of the road no matter where the property line is; but your setback for zoning purposes measures from the lot line, which in this case, is deeded as the center of the road. So I really don't know where he is coming from on this. Maybe he has some other information that I don't have.

Believe me, I have tried to look this stuff up on the Department of State's website so that we could get some more clarification on it. The Department of State is either/or. That is the way they specify it; but since we have Zoning, there are a lot of Towns that don't have zoning. We have zoning and we have specified it. I am not sure why this was written this way. That being said until we can get more of a clarification on that, I do think that we need to follow the process forward here and not delay this any further. I think you are coming in to the end of the construction season here if he wants to get a building in.

Towslee: [Part not understood; spoke at same time as Mr. Linger.] I got it already.

Linger: Before snow flies. I think this needs to go forward.

Carlson: Can I ask you a question, sir? How far back did you push the new garage from where that barn was originally. Quite a ways, right?

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Towslee: It is back 40 some feet. The barn stopped at about, what was that?

Van Etten: When they plowed the road, I am surprised they didn't plow into the building.

Carlson: Where the old structure was.      Van Etten: It was five, six feet off.

Towslee: I used to look before I opened the door all the way. I had to look into the road to see if there was a car coming down. The door would actually go into the roadway.

Carlson: It is quite a ways back now. I went by today.

Van Etten: It measures 40 feet off the edge of the road.      Carlson: Forty feet off the edge.

Towslee: [Several words not understood.] almost to the back side of the house.

Carlson: It looks like you could probably get three cars in line before the front of the building.

Towslee: Yes. It is quite a ways. When what you call him came down, he stood on where the garage door would be and I was standing in the middle of the road. It measured 52 feet and he said you still have to go back another 25. I don't know how.

Carlson: It drops right off there.

Towslee: I tell you the amount of fill that was brought in there was unreal. I didn't realize.

Carlson: Just to where you are now?

Towslee: Yes and winter is coming. I sure would like to get going here before winter.

Linger: Exactly and certainly, I think from anybody's perspective, you are improving the situation on the road to begin with.

Carlson: As far as he could.

Linger: Even if you had only gone back 40 feet off the center of the road, you are still back further than what that old building was. It creates a safer environment for the Town plows, for the traffic and for you in using the building so whatever way this winds up, I think it is an improvement for everybody all around to do what you are trying to do. I just am not sure that we needed to stop a building permit process because of it nor am I sure that I can, that the Zoning Board has the authority to say the Code Enforcement Officer is wrong and go ahead because we are not the one that issues a Building Permit which is what he will have to do.

Albano: We would have the ability to give him a Variance.

Linger: We can absolutely give a Variance.      Albano: So he can continue his process.

Linger: Correct. The problem, like I said, now is that you are running toward the end of the construction schedule and now you are looking at this month and next month before you can get a Variance to do it. You are into the first week in December for our meeting; and then he would have to get a Building Permit after that with the Variance. I just think that the process was not correct when it was done; and I don't know if he specifically knows what our Zoning definitions are. He may work for three or four different Towns that have different zoning rules. As far as ours go, I think it is relatively clear but this is where we are at. So does anybody have any other questions?

[?] What is the next step?

Albano: Yes, right, exactly. If we go by our guidelines, he is not required to get a Variance. Who has that authority? Is that the Planning Board since it is not a Zoning change?

Linger: Your Code Enforcement Officer and Building Inspector have the authority to issue a Building Permit or put a Stop Work Order. That doesn't lie with us and I don't believe the Planning Board can even issue a Building Permit. They can go through and say yes, the process was all made. The inspector will say, okay, I will issue it. So you know as far as this goes, this process goes, it is not going to change

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our process at all. Do you have any other questions?

Towslee: When can I pour concrete?

Linger: When you get a building permit.

Albano: Do we have to wait 30 days for another meeting? Could there be a way to expedite it?

Linger: Well you still have to give time for the notifications to all be made to the property owners that are adjoining and they would have to have 14 days. Marjorie needs ten days to put it into the paper so you know by the time that is done, you are at three weeks anyway.

Clerk: Three weeks is Thanksgiving Eve.

Linger: Yes. I don't know that you are going to save anything by saying let's have a meeting in 21 days or whatever to really do anything. If a Variance is awarded, does that then need to go back to the Planning Board before anything can be done?

Clerk: It doesn't even go to the Planning Board.

Linger: It does not. Okay, so once a Variance is awarded, if a Variance is awarded, then a Building Permit can be issued. All right, so we are at whatever delay there has already been since October 16 and this month in doing it. Like I said, I can't get any definite answers on how, since this letter was written by the Acting Code Enforcement Officer, he is the only one that can say.

Carlson: We haven't the authority to overrule it.

Linger: Right. In the meantime, if I can get an answer one way or other and I can get with the Building Inspector/Code Enforcement Officer and say, hey, listen, you know, this is what we are looking at; and he changes his mind, then I suppose he could put a stop to the whole thing by issuing a Building Permit. Whether he would do that or not, I don't know. Is it up to me? I would say right now that we go ahead with this.

Just for reference purposes from the Department of State. Their setback line, and this is from their Analyses and Valuation of Existing Zoning Regulations, *their setback lines, which establish a distance by which structures must be set back from lot lines, are an important and flexible tool in the zoning law or ordinance for the protection of highway rights of way, sidewalk areas, space for planting of street trees, streetscapes and street walls and for the assurance of adequate sight lines for traffic. Furthermore, they can insure adequate access to light and air and prevent overcrowding of the land and provide for openness, privacy protection against noise in general, amenity and street design, local customs and habits of living, climate conditions which would affect the growth in shrubbery or other decorative planting, extent of traffic on streets, prevailing building heights, the direction of streets, prevailing winds, the desire to promote a downtown appearance, any orientation of buildings to obtain maximum sunlight or factors that must be considered in the establishment of setback requirements as in the establishment of side and rear yard standards. The setback lines may also be desirable along the edge of streams and drainage ways.*

So, you know, they are not very restrictive in what they say and that is why we have our zoning to define that. So if I can get any further with them, then perhaps it would stop the process in its tracks. I don't know; but as far as I am concerned, I think we need to continue the process forward and make sure he is able to move forward with what he is trying to do to make it a little better for everybody before snow flies.

Towslee: Sounds good to me.

Linger: Any other questions that you have for us?

Towslee: I don't think so.

Linger: I think it is pretty straight forward, just a two-car garage replacing the barn that he took down. and moving it a lot further back off the road. I don't believe I saw anything here that is within 500 feet of a municipal property or a county highway or state road or anything like that where it needs referral to anybody.

Clerk: I don't think it does.

Linger: I think the nearest one that I measured was like 975 feet or something like from a county road so

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we are beyond the 500 feet for that requirement.

It was moved by Linger and seconded by Albano that the Board move forward with the regular Zoning process for an Area Variance.

Ayes: Linger, Albano, Greene, Carlson

Nays: None

Abstained: None

Absent: Meredith

Required Public Hearing was scheduled for 7:30 p.m., December 6. The Clerk provided Mr. Towslee with the blue instruction sheet for sending Public Hearing certified letters and a list of the property owners to be notified.

Albano: Unless we can get a.      Linger: Unless something happens in the meantime.

Clerk: Well, what is going to be the time frame so he won't have sent out the letters yet?

Linger: Well, if I could not get an answer in the last week, I am not sure I can give you a time frame. I don't know, which is why I say we should continue with the process because right now as it stands that is the letter that defines everything, is the denial for building permit and the measurement of the set back.

Carlson: You have not been able to get an answer from Mr. Fishman instead of the State?

Linger: No, actually, I didn't call him. I didn't get a hold of him. The number that I had was a Catskill number and I would really more like to hear it from the Department of State, you know, that says yes, the two, the public right-of-way and the setback, can encompass the same property. One doesn't necessarily start where the other ends.

Greene: It makes sense.

Linger: It makes a lot of sense to me because otherwise anybody who owns property really doesn't own the first 13 feet and, you know, can't do anything with it. That just doesn't make any sense to me. It is very possible. This is New York but it doesn't make any sense to me.

Greene: Why am I paying taxes on it?

Linger: Absolutely, you are paying taxes on it.      Towslee: You are paying taxes on it, yes.

Linger: So that is where it stands. I don't like it but it is what it is and the letter that denies that Building permit kind of starts this process off so we will see where it goes. I would hope that I can get an answer that defines this better; but if not, we will continue the process here and then on December 6 we will have the Hearing.

Concern was expressed regarding negative comment, on the proposed variance or otherwise, that could come forth at a Public Hearing and the effect it could have on Variance issuance.

Linger: At a Public Hearing, anybody who gets notification can come in and give their concerns, that is what it is for. We have had people here before who have said things—they didn't want something to happen or they wanted something different to happen. That is our job to take all that in, to take all that under consideration along with our Zoning Code and what it does for the overall Town, a bit more specifically, your property as it relates to the Town, so positive or negative we are going to listen to everyone's comments.

Albano: Do you know what guideline he is using to make this determination and not using the Town's Code Book.

Linger: The only thing I could find was the Highway Law that gives you the 25 feet from the center line and the Department of State that says either lot line or public right-of-way. The Highway Law does specify 25 feet from the center line and that is okay but that doesn't mean that a setback starts from that point.

Van Etten: Can I say something for the record? It would be nice to get a clarification going forward so

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we don't run into this again.

Linger: Absolutely.

Van Etten: I mean that is kind of half the reason I wanted to come, to find out for going forward. People come before the Planning Board.

Linger: Yes, in my opinion, it is pretty straight forward and clear now.

Van Etten: And you know, we have to get this hashed out and Elliott sooner or later is going to have to hash it out with us.

Linger: Yes. I mean I can find places in different laws, Highway Law and Municipal Law that do reference the public right-of-way; but when we have zoning here in Town that specifies that is our home rule. We are allowed to do that. It is within Department of State guidelines so we are well within our right to define that and the Town has and that is what we should be going by.

Van Etten: I believe that was in the training the other night, they discussed part of that, the local zoning, making those specifications.

Albano: That is why they had the local zoning do that.        Van Etten: Yes.

Albano: So you don't run into these problems.

Van Etten: There again, we have to hash that out with Elliott.

Linger: Yes and then he is really the only one that can.        Van Etten: Address it.

Linger: Either rescind his original letter or say here is why it can't be done that way. In the meantime, we go forward with this; and barring any catastrophic things that happen, then this Board will decide whether to give the Variance or not, you know, and go from there, so both processes are kind of going to work at the same time. This zoning process I would hope would be longer than getting a definite answer on why it was done this way. I don't understand it. I don't understand why. I am not a Code enforcer. I am not a Building Inspector. I am not trained by the State for it so I don't know why.

Albano: But with that in mind, would it be worth a conversation with him to see if that is necessary and those setbacks the way he has them set up which would hinder his ability to continue this process?

Linger: Well, I think if it is anybody's [Rest of comment not understood since Mr. Albano continued speaking].

Albano: And as Rob says now you have an understanding of where we have to go from here on forward?

Linger: And this is just a Town road. There is Interstate 90 up through Albany where they just put up a parking garage and office complex and it sets about 30 feet off I-90.

Greene: If that.

Linger: If that, right. It is a brand new building and the thing sets about 30 feet off the edge of the road.

Greene: It is apartments and a parking garage, yes.

Linger: I just don't agree with the way it was done.        Towslee: They had a Variance.

Linger: That could be. I don't know the specifics on it but it is there and it is literally about, the corner of the parking garage is about 30 feet off the edge of the road. It is just a little marsh area with ditch for drainage and then the parking garage starts. I don't think we should be making things harder for our Town residents than they really need to be especially when I think it is pretty well specified. So that is where we are at. We are going to continue forward. He has his list and so we will see you back on December 6 maybe.

Towslee: Okay and then pour concrete on the 8<sup>th</sup>.        Linger: We will plan on it.

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Towslee: I hope.

Linger: It is tough this time of year.

Albano: Should have left it at the same foot print then you would not have had to do this.

Linger: Yes, well then you would have been but this improves the whole situation without a doubt.

Albano: It sets further back. It is the right thing to do.

Linger: Without a doubt. Sometimes we have to try to work with people a little bit to get that done.

**Adjournment**

Being nothing further to come before the Board, at 8:01 p.m., it was moved by Linger and seconded by Albano to adjourn the meeting.

Ayes: 4   Nays: 0   Abstained: 0   Absent: 1

Respectfully Submitted  
Marjorie B. Loux, Clerk