

TOWN OF NEW BALTIMORE ZONING BOARD OF APPEALS
Regular Monthly Meeting
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Prior to opening the meeting, Mr. Linger advised the Board that they were present for a scheduled Public Hearing on the William Towslee Variance Application. There was a very lengthy discussion at the last meeting on what could and could not be done by the Board as far as the legal requirements for the discussion held on setback. Mr. Linger further advised that he had since spoken with the Department of State and the Town Attorney and the Department of State has put everything back to the Town Attorney and our Board as far as our Code reads. This definite information was not received until about two weeks after our last meeting.

Mr. Linger communicated with Mr. Towslee. He had already sent out his Public Hearing notification letters. One of the things that Mr. Towslee can do if he so wishes is to amend his application requesting the ZBA to make an appeals determination on the Code Enforcement Officer's letter that denies his Building Permit based on the setback. If that is the route he wishes to go, then a Public Hearing is not needed. If it goes through the Variance, then the Public Hearing is needed.

The meeting was then formally called to order at 7:32 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 was applicant William Towslee.

Minutes

The Chair had brought two minor corrections to the attention of the Clerk earlier and the minutes had been corrected to reflect the word "roadway" rather than the word "doorway" used.

It was moved by Linger and seconded by Greene to approve the minutes of the November 1, 2018, meeting with those two minor corrections.

Ayes: Linger, Albano, Greene, Carlson

Nays: None

Abstained: None

Absent: Meredith

Correspondence - None

Old Business

William & Gail Towslee Area Variance Application

Mr. Towslee was asked if he would want to move forward with the Zoning process for a variance or if he would like to amend his application to request a determination on appeal. Mr. Towslee responded he would like to proceed the fastest and easiest way.

Mr. Linger explained that the process could be completed at this meeting either way. He further explained an appeals process would be the Board stepping back, taking a look at the letter and saying how does this apply to our Zoning? Does it agree or does it not agree? The Board can agree with the letter sent or the Board can totally reverse in whole or part any portion of that letter. It appeared at the last meeting, that all Board Members were in agreement that what was said from the Code Enforcement Officer's point of view did not match what is actually in the Town's zoning.

In response to Mr. Towslee's question that he thought all had been taken care of, Mr. Linger explained we could not do that. The letters had already been sent out for the scheduled Public Hearing. Without going through an amendment to the application, we could not legally do that. Mr. Towslee can amend his application if he wants to do that and then the Board will move forward with that process. Mr. Towslee questioned how that would be done and it was explained to him that it would be just by him amending his application. Rather than asking for a Zoning Variance, he would ask for an appeal determination. That process would also be through this Board.

As further explanation, Mr. Linger referred to Section 112-84, Variances and appeals, Sub-Section C and cited:

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Appeals - Applicants, or any officer, department, board or bureau of the Town has the right to appeal any order, requirement, decision, interpretation or determination of officials charged with the enforcement of this chapter to the Zoning Board of Appeals.

So basically anyone can appeal to the Zoning Board of Appeals on any of those things that were said or written by the Enforcement officer.

The Zoning Board of Appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, interpretation or determination being appealed and shall make such order, requirement, decision, interpretation or determination as, in its opinion, ought to have been made in the matter by the administrative official charged with the enforcement of this chapter, and to that end shall assume all the powers of the administrative official from whose order, requirement, decision or determination the appeal is taken.

As further explanation, Mr. Linger continued what that means is under an appeals process the Board would have the same discussion and say either “yes” we agree with the letter and the appeal will be denied or “no” we don’t agree with the letter either in whole or in part and why. The Board can then make the decision that the letter is correct or the letter is not correct and you should not be denied because of that. If the Board says “no” the letter was correct, your application is here and your Public Hearing is scheduled. With an appeals process if the Board says the letter was in contrast to our Code, then your property does not require a Variance to have what you have done.

Mr. Towslee questioned would this settle this whole mess about to the center of the road 25 feet and then 40 feet from there or is it 40 feet from the edge of the road? Mr. Linger responded that is what we would discuss if you want to appeal. We would do that right now. Mr. Towslee responded that he just wanted to get it over with.

Mr. Linger further advised our definition specifies “measured from the lot line” (Section 112-84, Article XVI, definition of SETBACK). It was then pointed out and noted that it states from the center of the road in Mr. Towslee’s deed. Having heard the additional information, Mr. Towslee indicated he would like to move forward with the appeal.

It was moved by Linger and seconded by Albano to accept Mr. Towslee’s request to amend for a determination of appeal on the October 16, 2017, letter sent by Acting Code Enforcement Officer Elliott Fishman.

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

The October 16 letter read as follows:

Dear Mr. & Mrs. Towslee:

This letter is to acknowledge receipt of your Building Permit Application for your garage and my visits to your property regarding placement of the garage on your parcel.

As discussed with you on site, the garage slab forms set up by your contractor, Robert Van Etten, was measured as being approximately 52 feet off the centerline of High Rock Road at its closest point. Taking the edge of road right-of-way as 25 feet off the centerline, leaves 27 feet. Thus, the proposed location of the new garage does not meet the prescribed 40-foot accessory building front yard setback for your Rural Residential/Agricultural (RA) zoned property.

For this reason, pursuant to Chapter 112-10 of the Code of the Town of New Baltimore, I have to deny your Building Permit Application and refer you to the Zoning Board of Appeals for an Area Variance. The required Variance Application is enclosed for your completion. The deadline for submission.....

Mr. Linger further pointed out the basic premise on the denial is the setback of the garage that Mr. Towslee is proposing to build and for which he put in a building permit application. In the letter, our

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Code Enforcement Officer states that there is only left 27 feet for setback. As already mentioned, our setback specifies the lot line. With the application, we do have a Schedule A description as part of Mr. Towslee's deed which gives the legal description for the property for that parcel, 16.00-5-1. It states:

All that place, parcel or lot of land situate, lying and being in the Town of New Baltimore, Greene County, New York, more particularly described as follows:

Beginning at a point marked by a spike set in the centerline of a Town road known as High Rock Road, said point being (We have latitude and longitude here.) 860.47 feet from a point marked by a fence post on the westerly side of High Rock Road.

So the deed states his lot line is actually in the center of the road which is very, very common for a Town road. It is called "highway by use" or a "user road" as it is more commonly known as. These popped up all over the country and just kind of meander from these farms. The Town owns the surface of the road and maintains it but the property owner owns the property. In order to give credit to the property owner for owning his property, our Zoning specifies that your setback measures from the lot line. You would still have to be outside of a public right of way regardless but the way our setbacks are done, 40 feet from centerline allows you 15 feet off of the public right of way. Even on the side line, I believe it is 15 feet so you would be right, you would be 25 feet from center line so you would still be two feet over passed the right-of-way on a side lot if your Town road was on your side for the property lines.

So my opinion on this, and please speak up in agreeance or disagreeance but the letter from the Code Enforcement Officer measures a right of way and then measures setback where, the way I read our Code, the setback starts at the property line which in this case happens to be the center line of the road and then should be measured concurrently. The setback would include the public right of way. It is not measured consecutively because that would start his setback as being measured 25 feet from the centerline of the road which is not in our Code. It is not said anywhere by even the Department of State. Mr. Linger continued that he did speak with the attorney. Our Code is very specific and it is more specific than the State. We have home rule and it is absolutely within the Town's right to do that. That is my opinion on it that the Code Enforcement Officer's opinion on how a setback is measured does not meet our definition; and my opinion is that this denial should be overturned based on what our Town Code Book definition is which has been approved by the Town Board.

Mr. Greene pointed out his concern was that there will be other deeds that aren't consistent with that description so you will have, not to be flippant, lot line envy because one property owner will be forced farther back from the road than his neighbor because his deed defines the lot line as the center line of the road and that neighbor's deed says from the setback. Mr. Linger pointed out the setback would not be a legal description on a deed. The neighbor's deed description could be different so I guess we would have to deal with those as they come along.

It was further noted what we are doing is we are relying on the wording in the deed description which we are required to do and everybody's may be different but we are still going by our Code which says "the lot line". It was then pointed out in addition to the user roads, we have deeded Town roads where the Town owns, 10, 12, 18 feet off the road surface. The public right-of-way would measure from the center of the road but your setback does not necessarily start there because that might not even be your property line now. You would still have to go by that lot line. State Roads could be different but it is all based on the lot line and everyone's lot line would be different. It was emphasized that the common denominator is the "lot line".

Nowhere in our Code is the setback measured by the end of a public right-of-way at all which was done by the Code Enforcement Officer's letter. Mr. Linger pointed out I don't know why. I do know he works for other Towns and maybe other Towns have that in their Codes. I do know ours is very specific.

Both Mr. Albano and Mr. Carlson had no objection to Mr. Towslee's asking for an appeal on the letter. One person was present for the Public Hearing, Mr. Towslee's neighbor across the street. He had no issues with Mr. Towslee's plans. Mr. Linger again commented on and apologized for the length of time that it took to get answers from the State and attorney. In Mr. Linger's opinion, he did not want to put a Variance on a piece of property that doesn't need it as we define it.

. DETERMINATION ON APPEAL - RESOLUTION

WHEREAS, William & Gail Towslee of 485 High Rock Road, West Coxsackie, bearing Parcel Tax ID Number 16.00-5-1, wishing to construct a new garage submitted Building Permit Application, was

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denied by Code Enforcement Officer due to lack of minimum front setback and referred to Zoning Board of Appeals, submitted an Area Variance Application at the November 1, 2017, Zoning Board of Appeals Meeting; and

WHEREAS, at the December 6, 2017, Zoning Board of Appeals meeting, William Towslee advised the Board that pursuant to Section 112-84 C. of the Code of the Town of New Baltimore, he wished to amend his application to that of requesting an appeal of Acting Code Enforcement Officer Fishman's October 16, 2017, decision as outlined in the letter of said date denying requested Building Permit due to lack of minimum front setback; and

WHEREAS, after interpretation and deliberation of said Code section by the members of the Town of New Baltimore Zoning Board of Appeals at its December 6, 2017, Regular Monthly Meeting, it was determined that the Board has the power to overturn fully, or in part, any determination by the Code Enforcement Officer; and therefore be it

RESOLVED, that based on:

1. The definition of setback as stated in the Code of the Town of New Baltimore; and
2. Wording in Schedule A of deed transferring said property from William E. Denny, Jr. to William Towslee and Gail Towslee, filed in Book 914, at Page 208 in Greene County Clerk's office stating:

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 14 degrees, 30 feet 37 inches west, 860.47 feet from a point on the westerly side of High Rock Road in the division line between the lands on the north... and lands on the south....

3. And the determination by the Board that a setback is measured concurrently with the public right-of-way rather than consecutively as suggested by the Code Enforcement Officer in his October 16, 2017 letter; and
4. That the setback distance as designed exceeds the required 40 feet and is outside the public right-of-way.

The determination by the Code Enforcement Officer is hereby overturned and issuance of the building permit shall not be denied based on setback requirements as designed.

Moved by: Linger
Seconded by Greene

AYES: Linger; Greene; Albano; Carlson
NAYS: None
ABSTAINED: None
ABSENT: Meredith

At 8 p.m., it was moved by Albano and seconded by Linger to adjourn the meeting.

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

Respectfully Submitted by:
Marjorie B. Loux
ZBA Clerk