



## GENESEE COUNTY PLANNING BOARD REFERRALS NOTICE OF FINAL ACTION

GCDP Referral ID **T-01-ALA-3-22**

Review Date **3/10/2022**

Municipality	<b>ALABAMA, T.</b>
Board Name	<b>PLANNING BOARD</b>
Applicant's Name	<b>Mitch Bokman</b>
Referral Type	<b>Special Use Permit</b>
Variance(s)	<b>Area Variance(s)</b>
Description:	<b>Area Variances, Special Use Permit and Site Plan Review to convert a single-family home into a two-family home.</b>  <b>Lot Frontage</b> <b>Town Minimum Required: 300 ft.</b> <b>State Minimum Required: 15 ft.</b> <b>Existing and Proposed: 0 ft. (pre-existing 12 ft. driveway easement)</b>
Location	<b>1376 Church St., Alabama</b>
Zoning District	<b>Residential (R) District</b>

### PLANNING BOARD RECOMMENDS:

**APPROVAL**

### EXPLANATION:

Given that this is a pre-existing lot configuration, the proposed two-family home should pose no significant county-wide or inter-community impact.

Director

March 10, 2022

Date

If the County Planning Board disapproved the proposal, or recommends modifications, the referring agency shall NOT act contrary to the recommendations except by a vote of a majority plus one of all the members and after the adoption of a resolution setting forth the reasons for such contrary action. Within 30 days after the final action the referring agency shall file a report of final action with the County Planning Board. An action taken form is provided for this purpose and may be obtained from the Genesee County Planning Department.

**SEND OR DELIVER TO:**

GENESEE COUNTY DEPARTMENT OF PLANNING  
3837 West Main Street Road  
Batavia, NY 14020-9404  
Phone: (585) , ☎!+ \$%

**Clear Form**

**DEPARTMENT USE ONLY:**

GCDP Referral # T-01-ALA-3-22



**\* GENESEE COUNTY \*  
PLANNING BOARD REFERRAL**

**RECEIVED  
Genesee County  
Dept. of Planning  
3/1/2022**

Required According to:  
**GENERAL MUNICIPAL LAW ARTICLE 12B, SECTION 239 L, M, N**  
(Please answer ALL questions as fully as possible)

**1. REFERRING BOARD(S) INFORMATION**

Board(s) Planning and Development Board  
Address 2218 Judge Road  
City, State, Zip Oakfield, NY 14125  
Phone (716) 864 - 7350 Ext. \_\_\_\_\_

**2. APPLICANT INFORMATION**

Name Mitch Bokman  
Address 1376 Church Street  
City, State, Zip Alabama, NY 14013  
Phone (585) 590 - 9735 Ext. \_\_\_\_\_ Email mbokman4@gmail.com

**MUNICIPALITY:**  City  Town  Village of Town of Alabama

**3. TYPE OF REFERRAL:** (Check all applicable items)

- |  |  |   |
|--|--|---|
| <input checked="" type="checkbox"/> Area Variance      | <input type="checkbox"/> Zoning Map Change         | <input type="checkbox"/> Subdivision Proposal |
| <input type="checkbox"/> Use Variance                  | <input type="checkbox"/> Zoning Text Amendments    | <input type="checkbox"/> Preliminary          |
| <input checked="" type="checkbox"/> Special Use Permit | <input type="checkbox"/> Comprehensive Plan/Update | <input type="checkbox"/> Final                |
| <input checked="" type="checkbox"/> Site Plan Review   | <input type="checkbox"/> Other: _____              |   |

**4. LOCATION OF THE REAL PROPERTY PERTAINING TO THIS REFERRAL:**

A. Full Address 1376 Church St., Alabama  
B. Nearest intersecting road Church St links Alleghany Rd and Lewiston Rd.  
C. Tax Map Parcel Number 11.-1-34  
D. Total area of the property 41,600 Sq. Ft. Area of property to be disturbed n/a  
E. Present zoning district(s) R

**5. REFERRAL CASE INFORMATION:**

A. Has this referral been previously reviewed by the Genesee County Planning Board?  
 NO  YES If yes, give date and action taken \_\_\_\_\_  
B. Special Use Permit and/or Variances refer to the following section(s) of the present zoning ordinance and/or law  
Section 809  
C. Please describe the nature of this request Applicant would like to utilize the "mother-in-law" apartment and convert the use of the house from a single-family home to a two-family home.

**6. ENCLOSURES** – Please enclose copy(s) of all appropriate items in regard to this referral

- |   |  |  |
|---|--|--|
| <input checked="" type="checkbox"/> Local application | <input type="checkbox"/> Zoning text/map amendments  | <input type="checkbox"/> New or updated comprehensive plan |
| <input type="checkbox"/> Site plan                    | <input type="checkbox"/> Location map or tax maps    | <input type="checkbox"/> Photos                            |
| <input type="checkbox"/> Subdivision plot plans       | <input type="checkbox"/> Elevation drawings          | <input type="checkbox"/> Other: _____                      |
| <input type="checkbox"/> SEQR forms                   | <input type="checkbox"/> Agricultural data statement |  |

**7. CONTACT INFORMATION** of the person representing the community in filling out this form (required information)

Name Leslie Moma Title PDC & ZBA Clerk Phone (585) 201 - 6254 Ext. \_\_\_\_\_  
Address, City, State, Zip 113 Summit St., Batavia, NY 14020 Email toaplanningboardclerk@gmail.com

Permit # \_\_\_\_\_  
 Zoning Permit Fee \$ \_\_\_\_\_  
 Building Permit Fee \$ \_\_\_\_\_  
 Fee Total \$ \_\_\_\_\_

**Town of Alabama**  
 Genesee County, New York

**Application For Zoning/Building Permit**

Fill out the application with a black or blue ballpoint pen. **Return the completed application to the Town Clerk.**  
 Once the application has been processed the Town Clerk will contact the applicant to inform them it is ready to be picked up and the cost of the permit. Permits must be picked up within two weeks from the date the town clerk notifies the applicant. If applicant fails to pick up the permit within the time stated the application will be returned to the Zoning/Building Officer and Voided. A new application will need to be submitted for the project. **Permits Expire one year from the date it is issued.**

Mitch Bokman Mitch Bokman 2/16/2022  
 Property Owners Name (Print) Property Owners Signature Date Submitted

Property Owners Mailing Address 1376 Church Street Alabama NY

Owners Home Phone: 585-590-9735 Owners Cell Phone: \_\_\_\_\_

Address of property where work will be done **if different** than mailing address \_\_\_\_\_

Contractors Name \_\_\_\_\_ Contractors Phone Number \_\_\_\_\_

\*Contractors MUST provide proof of Workers Compensation Insurance before starting work.

Nature of work:  New structure \_\_\_\_\_  Addition to \_\_\_\_\_  Remodel \_\_\_\_\_  
What is it? - is it Pre Fab or Stick built (What) (Number of rooms)  
 Other (explain) Special Use Permit for mother in law unit to be 2<sup>nd</sup> Unit

If a NEW dwelling: No. of Stories \_\_\_\_\_ No. of Families \_\_\_\_\_ Garage - Attached \_\_\_\_\_ Unattached \_\_\_\_\_ No. Cars \_\_\_\_\_

1. Solid Fuel Burring Units (what type) \_\_\_\_\_ Must provide MF installation manual

2. Remodeling \_\_\_\_\_ Total Sq. Ft. \_\_\_\_\_

3. Dimensions of addition \_\_\_\_\_ Ft. BY \_\_\_\_\_ Ft. Total Sq. Ft. \_\_\_\_\_

4. Dimensions of New structure \_\_\_\_\_ Ft By \_\_\_\_\_ Ft Total Sq Ft \_\_\_\_\_

5. Pools, Spas & Hot tubs \_\_\_\_\_ Ft BY \_\_\_\_\_ Ft Depth \_\_\_\_\_  
What is it? If a pool above or in-ground

6 Size and Area of the lot 160 Ft. BY 260 Ft. Total Sq. Ft. 41,600  
Width Depth (Lot size must be feet not Acres)

7 Zoning District in which property is located -  Agricultural / Residential  Residential  Commercial  Industrial  
 WNY Science & Technology Advanced Manufacturing Park -  TD-1  TD-2  TD-3

8. Tax Map # 11.-1-34 9. Estimated cost of project \$ \_\_\_\_\_ Lot creation date per Table 1 Row \_\_\_\_\_  
 (This will be provided by ZEO)

**DO NOT WRITE BELOW THIS LINE, FOR OFFICIAL USE ONLY**

Does the proposed construction or use violate any Town Zoning Law, Ordinance, or Regulation? \_\_\_\_\_  
 If yes give details \_\_\_\_\_

Approved Date | \_\_\_\_/\_\_\_\_/\_\_\_\_ Permit Expires \_\_\_\_/\_\_\_\_/\_\_\_\_  Denied Date 2/25/22

Reason Denied  A is Variance required  A Special Use Permit is required  Other \_\_\_\_\_

\_\_\_\_\_  
 Signature of Zoning Enforcement Officer

TOWN OF ALABAMA

Genesee County New York

PETITION APPLICATION FOR A SPECIAL USE PERMIT

If the Applicant is NOT the owner of the property for which the request is being made, a letter signed by the property owner giving authorization for the applicant to apply for the request MUST accompany the application or no action can be taken. You must Provide a plot diagram showing the layout and size of the lot, the location of all buildings and structures located on the property as well as driveways and parking areas for both the resident and the business.

PLEASE PRINT OR TYPE

Mitch Bokman
Applicant's Name

585-590-9735
Phone #

2-16-22
Date Submitted

1376 church st
Applicant's Mailing Address

Address of Special Use Permit (if different)

Tax map # of Property # 11.-1-34

Zoning District of Property R

What you are requesting a Special Use Permit for Turn in law apartment into a two family

\* Will your business pose any of the following?

- Storage of toxic or harmful chemicals: [ ] Yes [X] No
Hazard of fire or explosion: [ ] Yes [X] No
Cause radiation or interference with radio or television reception: [ ] Yes [X] No
Testing of materials or instruments as to constitute a public nuisance: [ ] Yes [X] No
Have dissemination of Noise, Vibration, Smoke, Dust, Glare or Fumes: [ ] Yes [X] No

If answered YES to any of the above explain:

If the Planning Board accepts the petition, the applicant must sign the application below.

Mitch Bokman
Applicant's Signature

The Planning Board Must set the fee, and then forward the application to the Town clerk to collect the fee. Note: Fees paid for petition do not include fees for the zoning/building permit that may apply.

FOR OFFICIAL USE ONLY

The above request is for approval of a Special Use Permit from the Town Planning Board of Alabama according to Article V Section 502 B. 1 of the Town of Alabama Zoning Law.

Request has been [ ] Approved [ ] Disapproved Date / / (see attached resolution)

Application Fee\*\* \$ 200
Received By [Signature]
Date Received 2/28/22
[Signature]

Planning Board Chairman
Planning Board Member
Planning Board Member
Planning Board Member
Planning Board Member

\*\*Section 813 - Public hearing and Notice Requirements. Town of Alabama Zoning Law. When a public hearing is required by the Town of Alabama Zoning Law, the requirements set forth in this section, as well as the applicable requirements of the NYS Town Law, shall be followed. All costs for the public hearing including, but not limited to the legal ad(s), required mail notifications and posting of signs, shall be paid by the applicant. \*\* An any additional cost inquired by the town to process this application as per the town fee schedule

TOWN OF ALABAMA  
Genesee County New York

**APPLICATION FOR AN AREA VARIANCE**

If the Applicant is **NOT** the owner of the property for which the request is being made, a letter signed by the property owner giving authorization for the applicant to apply for the request **MUST** accompany the application or no action can be taken

PLEASE PRINT OR TYPE

Date:

Applicant's Name  Mitch Bokman  Phone:  585-590-9735

Applicant's Mailing Address:  1376 Church st

Area Variance requested for property located at:  1376 Church st

Tax Map #  11.-1-34  Zoning District of property:  R

Lot was created – \_\_\_\_\_

Explain why you are requesting a variance:  Request SUP for a 2 family that is existing

**\*A detailed plot diagram clearly showing lot lines, lot size and all buildings and structures located on the property is required. It must also clearly and accurately show the distances from any purposed buildings or structures to all lot lines.**

Mitch Bokman   
Applicant's Signature

**Fees for application must be paid before a pubic hearing will be scheduled**

**For official use only**

The above request is for an Area Variance from the Town of Alabama Zoning Board of Appeals according to Article VIII Section 807-I-3 of the Town of Alabama zoning law

Article \_\_\_\_ Section \_\_\_\_\_ requires \_\_\_\_ Zoning Schedule A requires 60,000 Sq ft lot size 300 feet of frontage Minimum yards front 75 side 25 \_\_\_\_\_

An Area Variance is needed for: The lot is 38,000 sq feet The frontage is 40 feet and the side yard is 8

Date \_\_\_\_/\_\_\_\_/\_\_\_\_ request was sent to the County (County recommendations attached).  
Request has been – [ ] Approved [ ] Disapproved Date \_\_\_\_/\_\_\_\_/\_\_\_\_ (see attached resolution)

Board Chairman \_\_\_\_\_

Board Members \_\_\_\_\_

Application Fee \*\* \$200.00

# CHURCH STREET (40.0' R.O.W.)

GREGORY W. TOWNSEND

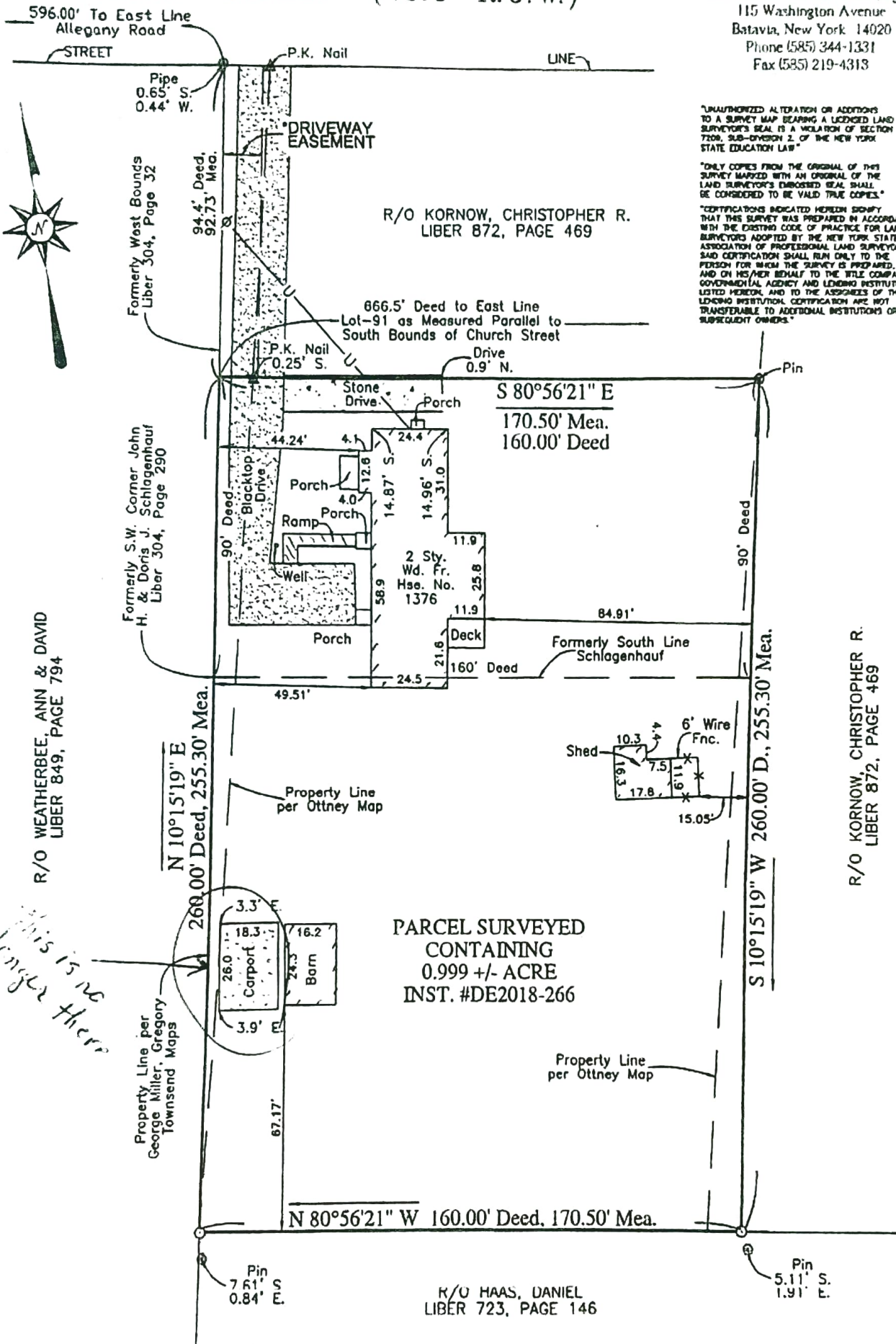
Licensed Land Surveyor  
115 Washington Avenue  
Batavia, New York 14020  
Phone (585) 344-1331  
Fax (585) 219-4313



"UNAUTHORIZED ALTERATION OR ADDITIONS TO A SURVEY MAP BEARING A LICENSED LAND SURVEYOR'S SEAL IS A VIOLATION OF SECTION 7208, SUB-DIVISION 2, OF THE NEW YORK STATE EDUCATION LAW"

"ONLY COPIES FROM THE ORIGINAL OF THIS SURVEY MARKED WITH AN ORIGINAL OF THE LAND SURVEYOR'S EMBOSSED SEAL SHALL BE CONSIDERED TO BE VALID TRUE COPIES."

"CERTIFICATIONS INDICATED HEREIN SHOW THAT THIS SURVEY WAS PREPARED IN ACCORDANCE WITH THE EXISTING CODE OF PRACTICE FOR LAND SURVEYORS ADOPTED BY THE NEW YORK STATE ASSOCIATION OF PROFESSIONAL LAND SURVEYORS. SAID CERTIFICATION SHALL RUN ONLY TO THE PERSON FOR WHOM THE SURVEY IS PREPARED, AND ON HIS/HER BEHALF TO THE TITLE COMPANY, GOVERNMENTAL AGENCY AND LENDING INSTITUTION LISTED HEREON, AND TO THE ASSIGNEES OF THE LENDING INSTITUTION. CERTIFICATION ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS."



*This is no longer there*

### Structure

Building 1	
Building Style	04 - Cape cod
Number of Stories	1.5
Exterior Wall Material	03 - Alum/vinyl
Actual Year Built	1951
Eff. Year Built	1975
Year Remodeled	1975
Number of Kitchens	1
Number of Full Baths	2
Number of Half Baths	1
Number of Bedrooms	4
Number of Fireplaces	
Heat Type	2 - Hot air
Fuel Type	4 - Oil
Central Air	No
Basement Type	4 - Full
Overall Condition	3 - Normal
Total Sq Ft	2280
1st Story Sq Ft	1904
2nd Story Sq Ft	
1/2 Story Sq Ft	376
3/4 Story Sq Ft	
Additional Story Sq Ft	
Finished Attic Sq Ft	
Finished Basement Sq Ft	
Finished Rec Room Sq Ft	
Finished Over Garage Sq Ft	



### 2021 Assessment Information

Land Assessed Value	\$15,100
Total Assessed Value	\$133,300
Equalization Rate	89%
Full Market Value	\$149,775
Partial Construction	No
County Taxable	\$133,300
Municipal Taxable	\$133,300
School Taxable	\$133,300

### Property Description

Property Type	210 - 1 Family Res
Neighborhood Code	100 Alabama
SWIS	182000
Water Supply	3 - Comm/public
Utilities	3 - Electric
Road Type	3 - Improved
Zoning	00 Unknown

### Last Property Sale

Deed Date	06/25/2021
Deed Book	2021
Deed Page	940
Contract Date	04/16/2021
Sale Date	06/25/2021
Date Last Physically Inspected	
Full Sale Price	\$155,000
Net Sale Price	\$155,000
Usable For Valuation	No
Arms Length	Yes
Prior Owner	aka Riner Family Lim Riner Family Properties,

Owner Information								
Owner Name	Address 1	Address 2	PO Box	City	State	Zip	Unit Name	Unit Number
Mitch Bokman	1376 Church St			Basom	NY	14013		

Land						
Site #	Land Type	Acres	Front	Depth	Sq Ft	Soil Rating
1	01 - Primary	0.96				

Improvements							
Site #	Structure Code	SqFt	Dimensions	Quantity	Overall Condition	Actual Year Built	Effective Year Built
1	XX1 - Septic & Well	3.00		0.00	3 - Normal	1982	
1	FC1 - Shed-machine		16.00 x 24.00	1.00	3 - Normal	1999	
1	RP1 - Porch-open/deck		8.00 x 8.00	1.00	3 - Normal	1997	
1	RP4 - Porch-enclsd		12.00 x 26.00	1.00	3 - Normal	2006	

No Exemptions Data Found

Special Districts				
Code Description	Type	Primary Units	Secondary Units	Amount
FD002 - Alabama fire	A	0.00	0.00	\$133,300.00
WD002 -		1.50	0.00	\$0.00

## Sales

Deed Date	Deed Book	Deed Page	Contract Date	Sale Date	Last Physical Inspection Date	Sale Price	Net Sale Price	Usable for Valuation	Arms Length	Prior Owner
08/30/2017	2017	1382	08/15/2017	08/15/2017		\$71,756	\$71,756	No	No	Clair Richard Cupler
02/21/2018	2018	266		02/06/2018		\$72,000	\$72,000	No	No	WILMINGTON SAVINGS FUND
06/25/2021	2021	940	04/16/2021	06/25/2021		\$155,000	\$155,000	No	Yes	aka Riner Family Lim Riner Family Properties,



C. Where zoning district boundaries are so indicated that they follow the edge of lakes, ponds, reservoirs or other bodies of water, mean high water lines thereof shall be construed to be the zoning district boundaries.

D. Where zoning district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be such boundaries.

E. If, after the application of the foregoing rules, uncertainty exists as to the exact location of a district boundary, the Board of Appeals shall determine the location of said lines.

### **SECTION 304      OVERLAY DISTRICTS**

A. In an overlay zoning district, property is placed simultaneously in two districts and the requirements of both districts apply.

B. The requirements of the overlay zone modify those of the basic district.

### **SECTION 305      LOTS IN TWO OR MORE DISTRICTS**

Where a zoning district boundary line divides a lot in single ownership at the effective date of this Local Law, leaving part subject to permissive regulations and part subject to prohibitive regulations, the Zoning Board of Appeals after public hearing may permit an extension of the use of that lot into the district where it is prohibited provided the extension does not extend more than fifty (50) feet into that district. Furthermore, the Board may impose conditions of that extension as protection to neighboring property.

### **SECTION 306      RESIDENTIAL USES ON PRE-EXISTING LOTS**

A single-family dwelling, customary accessory building(s) and structure(s) on lots or parcels created on and after the effective date of this Zoning Law if altered or constructed shall be in compliance with the minimum area requirements for lot size, lot width, front, side and rear yard setbacks listed in Table I, Row C below.

If the lot or parcel was created between 6/8/87 and the effective date of this Zoning Law a single-family dwelling, customary accessory building(s) and structure(s) if altered or constructed shall conform to Table I, Row C for lot size, lot width, front, side and rear yard setbacks if all said requirements can be met; otherwise, said alteration or construction shall meet all the area requirements in Table I, Row B.

If the lot or parcel was created prior to 6/8/87, a single-family dwelling, customary accessory building(s) and structure(s) if altered or constructed shall conform to Table I, Row C for lot size, lot width, front, side and rear yard setbacks if all such requirements can be met, otherwise, said alteration or construction shall meet all the area requirements in Table I, Row A.

The date upon which all lots or parcels were created shall be governed by the date the same was filed in the Office of the Genesee County Clerk. It shall be the responsibility of the applicant to provide the Zoning Enforcement Officer with adequate verification as to when a specific lot was created and all applicable Genesee County Health Department Approvals.

Compliance with the current area requirements for maximum building height and maximum lot coverage shall be required regardless of the creation date of the lot. **The setback requirements for accessory buildings and structures for a single-family dwelling are further addressed in Section 403.**

**TABLE I**

ROW	LOT CREATION DATE	ZONING DISTRICT	MINIMUM AREA REQUIREMENTS				
			Lot Size (Sq. Ft.)	Lot Width (Feet)	Yard Setback (ft.)		
					Front	Side	Rear
A	Prior to 6/8/87	R & A-R	20,000	100	40	15	40
B	6/8/87 to the effective date of the current Zoning Law	R	20,000	100	75	15	35
		A-R	40,000	150	75	25	50
C	Effective date of the current Zoning Law forward	R	40,000	200	75	15	35
		A-R	40,000	200	75	25	50

**SECTION 307      ENTRANCES AND EXITS ONTO HIGHWAYS**

A.      Written Permission Required

If otherwise required by applicable law, rule or regulation, no person, firm or corporation shall, after the effective date of this Zoning Law, cut, construct or locate any driveway entrance into or exit from a highway in the Town of Alabama without having first received written permission to do so from the Highway Department having jurisdiction, namely the NYS Department of Transportation, Genesee County Highway Department or the Town of Alabama Highway Department. Three (3) copies of such written permission shall be submitted, one to each of the following: Town of Alabama Highway Superintendent, Town Zoning Enforcement Officer, and Town Clerk. If the proposed driveway is in a designated DEC wetland, protected Federal Wetland or Flood Hazard Zone as designated by the Federal Emergency Management Agency (FEMA) then the appropriate respective permits shall also be required and three (3) copies provided as above.

2. Use Variances

The Zoning Board of Appeals, on appeal from the decision or determination of the Zoning Enforcement Officer, shall have the power to grant use variances, authorizing a use of land which otherwise would not be allowed or would be prohibited by this Zoning Law.

No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that for each and every use allowed under the zoning regulations for the particular district where the property is located:

- a. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- b. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- c. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- d. That the alleged hardship has not been self-created.

The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

3. Area Variances

The Zoning Board of Appeals shall have the power, upon appeal from a decision or determination of the Zoning Enforcement Officer, to grant area variances from the area or dimensional requirements of this Zoning Law.

In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:

- a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- c. Whether the requested area variance is substantial;

d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and

e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4. Imposition of Conditions

The Zoning Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Zoning Law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

J. Solar Access

Pursuant to Chapter 742 of the Laws of 1979, the siting of houses to take best advantage of solar energy and/or the construction of residential solar equipment shall be considered in the application of the provisions of this Chapter. Upon appeal pursuant to this Section of this Zoning Law the Zoning Board of Appeals shall consider the specific conditions of the case and may make provisions for, so far as conditions permit, the accommodation of solar energy systems and equipment and access to sunlight necessary thereof when hearing a request for an area variance.

K. Rehearing

A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the board not previously reviewed may be made by any members of the Board. A unanimous vote of all members of the Board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting good faith in reliance upon the reviewed order, decision or determination will not be prejudiced thereby.

**SECTION 808**      **PLANNING BOARD**

A. Organization

The planning Board may require, as a condition of site plan approval, that the applicant file a performance bond or Letter of Credit in such amount as the Planning Board determines to be in the public interest, to insure that proposed development will be built in compliance with accepted plans. Any such bond must be in a form acceptable to the Town Attorney for an amount approved by the Town Board.

9. Performance Standards

In all districts, uses are not permitted which violate applicable county, state and/or federal codes and regulations pertaining to environmental issues. The Planning Board, under its powers of site plan review and approval, may in its discretion reject any uses if it determines that insufficient evidence has been submitted to show compliance with these environmental standards. However, final responsibility for compliance with all environmental laws and regulations lies with the applicant.

10. Decisions

The Planning Board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the first regular monthly meeting of the Planning Board at least ten (10) days prior to which the site plan and all supporting data required by this Article are submitted to the Town Clerk. Such time may be extended by mutual consent of the Planning Board and the applicant. Prior to rendering its decision the Board shall first complete the SEQR process. In those instances where due to the location of the affected property, a site plan review is subject to review under General Municipal Law Section 239.m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. All decisions shall be in writing stating the decision, the facts found and the reasons for the decision. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail.

11. Changes and Revisions

Any applicant wishing to make changes in an approved site plan shall submit a revised site plan to the Planning Board for review and approval.

**SECTION 809**      **SPECIAL USE PERMIT**

The authorizing board (Planning Board or Town Board, depending on the zoning district involved) at a regular or special meeting, shall review and approve, approve with modification, or disapprove an application for a special use permit. Uses requiring a special use permit are those which are compatible with the general spirit of the Zoning Law if certain standards and conditions are met. Each such use is listed in this Zoning Law as a use permitted within a zoning district upon the issuance of a special use permit. All provisions of this Zoning Law shall be followed and the authorizing board must find that the proposed implementation of such use is not inconsistent with the public welfare. A special use permit may be subject to conditions and safeguards imposed by the authorizing board as set forth in Subsection D of this Section.

A. Application

Applications for special use permits shall be made in writing on the appropriate form obtained from the Zoning Enforcement Officer. Four (4) copies of each application, including site plan, shall be submitted to the Zoning Enforcement Officer, who shall review the application for completeness prior to forwarding it to the Town Clerk and the authorizing board. One (1) copy shall be retained by the Zoning Enforcement Officer. Such site plan shall show location of all buildings, parking, access and circulation, open space, landscaping and other information necessary to determine that the proposed special use complies with the intent of this Zoning Law. In those instances when the Town Board is the authorizing board, a special use permit shall not be subject to the site plan review process set forth in Section 808. When the Town Board is the authorizing board, it shall refer all special use permit applications to the Planning Board for its informal recommendation. Failure of the Planning Board to render such informal recommendation within thirty (30) days after requested shall mean the Planning Board has no such recommendation on the proposal.

B. Area Variance

Where a proposed special use permit contains one (1) or more features which do not comply with the Zoning Law, application may be made to the Zoning Board of Appeals for an area variance pursuant to Section 274.b of Town Law, without the necessity of a decision or determination of the Zoning Enforcement Officer.

C. Notice of Public Hearing

The authorizing board shall hold a public hearing as part of the special use permit review process. The public hearing shall be held at a time fixed within sixty-two (62) days from the date of the application for a special use permit is received by it and such public hearing shall be advertised in accordance with Section 813 of this Zoning Law. When necessary under Section 239 of the General Municipal Law, the authorizing board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.

D. Conditions

The authorizing board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said special use permit, any such conditions must be met in connection with the issuance of the special use permit by the Zoning Enforcement Officer.

E. Waiver of Requirements

The authorizing board is empowered, when reasonable, to waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in this Zoning Law, and may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular special use permit.

F. Decisions

The authorizing board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the public hearing. Such time may be extended by mutual consent of the authorizing board and the applicant. Prior to rendering its decision, the authorizing board shall first complete the SEQR process. In those instances where due to the location of the affected property, a special use permit request is subject to review under General Municipal Law Section 239.m, a majority plus one (1) vote of the entire authorizing board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. All decisions shall be in writing stating the decision, the facts found and the reasons for the decision. The decision of the authorizing board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail.

G. Abandonment of Special Use Permit

A special use permit shall expire when there occurs a cessation of such use or activity, for which said special use was originally issued, for a period of one (1) year. Upon evidence that a special use permit has been abandoned the Zoning Enforcement Officer shall issue a notice of abandonment to the owner of record for the property by registered mail. If after sixty (60) days the owner has not provided satisfactory proof that the special use did not cease, the authorizing board shall revoke the special use permit.

H. Standards Applicable for all Special Use Permits

When the Planning Board is the authorizing board, it may issue a special use permit only after it has found that all the following standards and conditions have been satisfied, in addition to any other applicable standards and conditions contained elsewhere in this Zoning Law. When the Town Board is acting as the authorizing board, it may use the following standards and conditions as guidelines but may include other issues it finds relevant.

1. The location and size of such use and intensity of the operations involved in or conducted therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous and shall be in harmony with the orderly development of the district.

2. The location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings, nor impair their value.

3. The operation of any such use shall not be more objectionable to nearby properties than would be operation of any permitted use.

4. The proposed use shall not cause undue noise, vibration, odor, lighting glare, and unsightliness so as to detrimentally impact on adjacent properties.

5. When a commercial or industrial special use abuts a residential property the authorizing board may find it necessary to require screening of sufficient height and density (i.e. fences, hedges, etc.) to reduce or eliminate the conflicting environmental conditions previously mentioned.

6. Electrical disturbances shall not be caused so as to disrupt radio or television communications in the immediate area.

7. The proposed use shall meet the off-street parking and loading requirements of similar uses.

8. Appropriate on-lot drainage shall be provided so as to eliminate any potential on-site water related problems. Also, the drainage systems created shall not detrimentally impact on adjacent properties.

9. Traffic access to and from the use site, as well as on-lot traffic circulation, shall be designed so as to reduce traffic hazards.

10. Such use shall be attractively landscaped. This shall involve grading, seeding, and regular mowing of the front yard area at a minimum.

11. A special use permit shall not be issued for a use on a lot where there is an existing violation of this Zoning Law unrelated to the use which is the subject of the requested special use permit, as determined by the authorizing board.

12. As a condition of all special use permits, right of entry for inspection with reasonable notice shall be provided to determine compliance with the conditions of said permit.

13. In addition to the general standards for special permits as set forth herein, the authorizing board may, as a condition of approval for any such use, establish any other additional standards, conditions, and requirements, it deems necessary or appropriate to promote the public health, safety and welfare, and to otherwise implement the intent of this Zoning Law.

14. The above standards are not intended to apply to uses whose regulation has been preempted by the State or Federal government, i.e. mining.

I. Annual Review by Zoning Enforcement Officer

The Zoning Enforcement Officer shall at least annually inspect the use of the property in question to insure compliance with conditions that have been imposed by the authorizing board in issuing such special use permit and other applicable provisions of this Zoning Law.

J. Revocation of a Special Use Permit

1. A special use permit may be revoked by the authorizing board, which has issued said permit. Said board shall hold a public hearing to consider whether or not the special use permit grantee has violated the terms and conditions of said special use permit. Said public hearing shall be



held only after the permit grantee has been notified by the Zoning Enforcement Officer of said violations, and has failed to correct said violations within the time period established by the Zoning Enforcement Officer to be not less than fifteen (15) days.

2. At least ten (10) days before said public hearing, a legal notice of said hearing shall be published in a newspaper of general circulation in the Town. Written notice of said hearing shall be mailed to the special use permit grantee by certified mail, return receipt requested, and by regular first class mail, directed to the last known address of the permit grantee.

## **SECTION 810            VIOLATION AND PENALTY**

A. It shall be unlawful for any person, firm or corporation to construct, alter, repair, move, equip, use or occupy any building, structure or land or part thereof in a manner not permitted by an approved zoning permit or certificate or compliance.

B. It shall be unlawful for any person to fail to comply with a written order of the Zoning Enforcement Officer within the time fixed for compliance therewith.

C. It shall be unlawful for any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or for any person taking part or assisting in the construction, repair or use of any building to violate any of the applicable provisions of this Zoning Law, or any lawful order, notice, directive, permit or certificates of the Zoning Enforcement Officer made hereunder.

D. Any violation of this Section and/or this Zoning Law shall be punishable as set forth in Section 268 of the Town Law as amended.

E. The Zoning Enforcement Officer may request that the Town Attorney initiate the legal action necessary to enforce provisions of this Zoning Law. (amended 12/13/2010)

F. In addition to the foregoing remedies, the Town of Alabama may maintain an action for injunction to restrain, correct or abate any violation of this Zoning Law and/or maintain an action at law for damages sustained as a result of any violation of this Zoning Law. Damages may include, but not be limited to, the legal fees and court costs expended or incurred by the Town as a result of any legal proceedings brought hereunder.

## **SECTION 811            COMPLAINT OF VIOLATION**

Whenever a violation of this Zoning Law occurs, any person may file a complaint in regard thereto. The Zoning Enforcement Officer shall properly record such complaint and immediately investigate it and take appropriate action.

## **SECTION 812            STATE ENVIRONMENTAL QUALITY REVIEW (SEQR)**

# T-01-ALA-3-22



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