

# Town of Horicon Zoning Board of Appeals

**Minutes - May 26, 2009**

**Members Present:** Priscilla Remington, Gary Frenz, Dan Smith, Cheryl Erickson, Curt Castner,  
Alternate: Jim Steen

**Members Absent:** None

**Others Present:** Counsel to Boards Mike Hill, Town Board Member Bob Olson

**Guests Present:** Matthew Fuller, Esq Attorney for Brant Lake Heights HOA  
John Caffry, Esq. Attorney for Webster Family  
Erin Hayes, Bernie Hill, Tom Johanson, Bill McGhie, Roscoe Chase, Tim Beadnell,  
Maureen and Stephen Rossely, Paul and Marylou Castensen, Peter and Anthony  
Polimino, Jean and Scott Olson, Robin and David Gotshall, Mark Polsinello and others.

## **Pledge**

**Priscilla Remington:** We will begin with

**Pubic Hearing for File # 2009-03 AV Tax Map 55.-1-6 Roscoe and Nancy Chase** seeking a 326.58' and a 231.52' roadway frontage variances to subdivide parcel located at 248 South Ike Hayes Rd in the LC-10 acre zone. Roscoe, our Attorney thinks there are things you might have to do with this qualified abandoned road situation, how far is it from where it would be from your house to the lot. About.

**Roscoe Chase:** 400 feet

**Priscilla Remington:** about 400 feet. Mike would you explain.

**Mike Hill:** Sure at the last meeting you may recall a question came up about the qualified abandoned town road and about access along the qualified abandoned

town roads and the proposed driveways. I think we've established that the town is not maintaining the qualified abandoned road hence the qualified abandonment . Based on the research we did it looks like this Zoning Board of Appeals and Planning Board in considering your subdivision would need to be sure that the driveways are accessing a section of road that is maintained throughout the year, so it is plowed in the winter time and accessible to emergency vehicles year round. That would be the case with the proposed driveways ...the qualified abandoned town road. So it looks like there may be two possibilities at this point. One would be to reconfigure your subdivision so that the driveways from the proposed lots intersect the public road at a point where the road is still being maintained, that would be a possibility. The other one would be for you to approach the town board with a proposal to maintain the road or to have your purchasers to maintain the road from the point where the maintenance currently ends up to the points where the driveways intersect. You have to maintain at least to the point where the second driveway intersects the qualified abandoned road, and if you are able to get the town board's agreement to accept that kind of commitment then that would perhaps be a basis on which the Zoning Board and the Planning Board could act on furtherance of your subdivision without access on the main road if wouldn't be appropriate from a health and safety standpoint to grant variances or subdivision approval for subdivision. I would suggest that the board continue to table the matter you may want to think about your options and perhaps have a conversation with other town officials to see if there is any receptivity level to accept some kind of a proposal either by you or on behalf of the would be buyers to your subdivision lots to maintain the qualified abandoned road at the point where those driveways intersect.

**Roscoe Chase:** So if you had would be buyers, that I don't have at this point.

**Mike Hill:** No, I'm not suggesting you would have to have them, but there would have to be I think an arrangement, a proposed arrangement with the town that would either have you as the subdivider or who ever ultimately purchases the lots at this point I realize you may not have buyers you basically speaking on their behalf and agreeing on their behalf to maintenance of the road and then of course when you sell the lots it would be with the understanding ok you understand now as a buyer you are responsible for maintaining the road a the point where town maintenance ends and the

point where your driveway intersects.

**Roscoe Chase:** Right, that sounds good.

**Mike Hill:** That may be, you may want to talk with other town officials about whether or not that would be a (illegible)

**Roscoe Chase:** Ok

**Dan Smith:** Is there a clear picture as to what maintenance means. Is it something that could be found out

(illegible) talk about bringing it up to town road standards. Is that what maintenance means.

**Mike Hill:** That's a good question Dan I think that from the health and safety stand point the most obvious concern is plowing in the winter time to keep free from snow and ice so that it's accessible to emergency vehicles, that the main thing, the emergency vehicle access the ingress and egress by emergency vehicles to cover the most important thing. It has to be maintained at least to that level of terms of plowing, salting and sanding, whatever the key maintenance would be.

**Priscilla Remington:** I think it makes more of a difference because it's a subdivision, instead of just a regular lot that someone might build on a qualified abandoned road.

**Roscoe Chase:** (illegible)

**Priscilla Remington:** right, ok

**Mike Hill:** Again, my suggestion to the board would be to table this matter pending receipt of further information from the applicant.

**Dan Smith:** I so make that motion

**Gary Frenz:** I seconded it

**Mike Hill:** We have a public meeting so you may want to have public input.

**Priscilla Remington:** Does anyone in the audience have any question or comments on this project? Ok then want to make that motion again?

**Dan Smith;** So make that motion

**Gary Frenz:** I'll seconded it

**Priscilla Remington:** All in favor

**Board Members;** Ayes

**Priscilla Remington:** OK, Alright Roscoe

**Roscoe Chase:** Thank You

**Priscilla Remington:** We'll go to the regular meeting with the minutes

**Gary Frenz:** I make a motion to accept the minutes.

**Cheryl Erickson:** I'll second

**Priscilla Remington:** All in favor

**Board Members:** Ayes

**Priscilla Remington:** carried.

**Priscilla Remington: Next public hearing**

**File # 2009-11 AV Tax Map 122.-3-3 Ridin-Hy Dude Ranch/Beadnell** seeking a 25' shoreline setback variance to replace an existing two (2) bedroom 18' x 28' cabin with new 24' x 36' cabin on parcel located in the R2-3.2 acre zone located at 95 Ridin-Hy Road.

**Tim Beadnell:** My name is Tim Beadnell, we talked about this last time we want to replace one of our older cabins at the ranch it is numbered a little bit strange the actual dimensions of the cabin with the deck are actually 23' x 28' for the old one and 29' x 36' for the new one, there's a 5' decks that's missing on each of the dimensions. (Illegible) we are going 75' from the lake which is the required setback in the R2-3.2 like we talked about unfortunately because this is a tourist accommodation for some reason we have to be 100' so that why we are requesting a 25' variance to put it back in the same place (illegible)

**Priscilla Remington:** Comments from the audience?

**Dan Smith:** I make a motion we close the public hearing

**Curt Castner:** I second that motion

**Priscilla Remington:** All in favor

**Board Members:** Ayes

**Priscilla Remington:** Ok, we'll go back to **unfinished business**

**File # 2009-11AV Ridin-Hy** area variance seeking a 25' shoreline setback.

**Dan Smith:** the applicant is replacing an existing structure with a moderate expansion, not a major change in the neighborhood

**Cheryl Erickson:** (illegible) less impact on footprint

**Gary Frenz:** (illegible) no change in aesthetics

**Dan Smith:** (illegible) keeping it aligned and clustered

**Curt Castner:** do we any more information needed on this?

**Gary Frenz:** benefit can not be achieved (illegible) variance isn't that substantial

**Dan Smith:** 25% is not substantial (illegible) nothing undesirable (illegible)

**Gary Frenz:** no adverse effect on the environment

**Dan Smith:** (illegible) original cabin before zoning, matches footprint, not self created

**Gary Frenz:** septic and water lines are existing.

**Dan Smith:** traffic patterns are the same for foot and vehicular traffic

**Gary Frenz:** I'd like to make a motion that we (laughing) grant the area variance for File #2009-11AV for the reasons we stated.

**Curt Castner:** seconded

**Priscilla Remington:** All in favor

**Board Members:** Aye

**Priscilla Remington:** Carried, 30 days

(laughing)

**Tim Beadnell:** good luck with the docks

(laughing)

**Priscilla Remington:** OK, next is public hearing

**File #2009-10A Tax Map 72.13-2-48 Brant Lake Heights HOA** seeking an appeal of the Zoning Administrators's determination dated March 9, 2009, review of Conditional Use application

**Christine Smith-Hayes:** Curt Castner is rescuing himself from the board and sitting in the audience.

**Priscilla Remington:** All right

*Paperwork submitted to the board members*

**Matt Fuller:** more paperwork, good evening for the record again, I am Matt Fuller, I am a partner with Fitzgerald, Morris, Baker and Firth a law firm in Glens Falls and I represent Brant Lake Heights Homeowners Association, we've been through this matter in (illegible) detail but the matter that brings us here tonight is of course our appeal of Mr McMeekin's zoning determination regarding Section 11.60 (illegible) all of the information in quite detail there's a lot of information back and forth (illegible) Mr Caffry and myself. I want to touch on a few points tonight just following up on comments that have been made, papers that have been submitted information and the information that we submitted to you. You asked for copies of the deeds, you have one copy in front of you. I submitted a letter on Friday and Friday night I did get the minutes, I thank the town for getting them to me. Before you that I've just given you is a follow up letter just basically following up on my review of the minutes, a couple points that I didn't address in my letter on Friday that I did want to add to the record, what I think our position is on (illegible) we're asking the Zoning Board of Appeals to uphold the zoning and I think Mr. Caffry said it in his letter they want you to apply the same rules to everybody. Couldn't agree more. The Association's position is not (illegible) that they should throw out the zoning. We are actually asking to apply Section 9.70.one zero, so it's a critical distinction we want to be treated just like anyone else, allow our Conditional Use permit application to go forward and allow the Association to have it's day in court Planning Board, that's why we're here. (illegible) that was brought up is in regards to this boards decision in December, if you

remember Mr McMeekin (illegible), Mr Olson and Mr Long applied last year for the docks, he made a determination in July of last year, Mr Caffry came forward with a lot of information I think that was a surprise to a lot us. Town, us included regarding a law suit back in 1990 and this zoning board in granting a variance did not follow the procedural practice of SEQRA, State Environmental Quality Review Act, and Judge Dier overturned it. Some would predict you mess with the procedure, you're gonna get overturned. So that decision was binding. After that though, the point you've got to take into account, all of the information you are getting about that case is the developers themselves, went to the town board and asked the Town to change the zoning and in our initial submission we didn't pick and choose a couple of sections out of it, I gave them all to you. All of those minutes from the 1990's, the Town Board, the Planning Board are taking up the review of the potential changes including changes to the dock structure laws in Horicon. That's completely within any property owners legal rights, again, to petition the Town Board to change the law that they don't think is equity applied. That's what Mr Olson and Mr Long did and a company Olson Development went to the Town Board said you've got to give us relief here, (illegible) various dock interpretations out there, couple of appeals, variances that have been filed, the late eighties early nineties it wasn't working, it was obvious that there were a few (illegible) amongst the boards as I read the minutes that's what I see and the town board back in , (illegible) now town attorney now Judge Krogman came up with laws, drafted them, that process was fully vetted, the residents (illegible) a lot of the arguments that we are seeing against this current appeal are the same arguments that were made back then. Don't change these laws, don't change the dock regulations, you're going to allow hundreds of boats to exist. First of all (illegible) and that's not what's going to happen here, I think when I read the criteria, that is a strange requirement the Planning Board is going to go through, it's a Conditional Use permit, it's not a walk in here and get a building permit. There's going to be a review process, there's going to be environmental review, and we understand that, we understand the process that we have to go for, go through. What we are asking this board is to let us get to that process Um, looking at the direction of your, (illegible) back in September, again we appealed that direction to remove ten docks, that's the sole direction that came out of that July meeting, all the applications were withdrawn certainly as a direct result of the letter coming out of Town Board (illegible) board and the association removed those docks. They've done that, they've complied with the law. As a matter

of fact, (illegible) they are working to install the amount of docks that they're allowed right now, currently, eight more docks (illegible) the association has been working right now on (illegible) to put those docks in to comply with the law. We are not (illegible) setting aside laws or want anything but to comply with the law, we'll comply. That's where we are now. I want you to turn to section, to one of the arguments that's have been brought up as to why this (illegible) the zoning should be, that section is to be repealed but more importantly why our appeal here is wrong and why our interpretation is wrong. Um, in his letter to the Town Board asking to repeal the section Mr. McMeekin asked, said that this law section 9.70.10B applies to two developments, ok, two developments in the entire town, Brant Lake Heights and Adirondack Acres, ok, the Town of Horicon has no subdivisions, this is the statement, no subdivisions that can meet the criteria of section B, my request (illegible). We carry that argument with you here today (illegible) support (illegible) that 11.6 should apply. (illegible) 9.70.10B said we don't. The flaw with that is they're asking you to say that the Town Board adopted a law that it knew it could not apply. I want you to think about that. (illegible) if it only applied to two subdivisions, the Town Board obviously understands what it's doing when it legislates, then the natural result of that is the Town Board adopted the law that could not be applied. That (illegible) every rule statutory to the (illegible) of the United States. I've looked them up, I've actually, my letter to you today is (illegible) I brought the book just so you know I'm not making this up, This is the legislature's own rules for statutory interpretation. Generally statutory, given a reasonable construction (illegible) that are reasonable results (illegible) ended by legislature. What I would ask you is it reasonable to throw out a section of the zoning law the Town Board adopted. (illegible) the Zoning Administrator it can't fly, no that's blatant and unreasonable, no one could ever presume that the legislature adopted a law that it couldn't apply. The legislature here being the Town Board. The next section I gave you is 144. Statutes will not be construed as to render them ineffective. Again, I want you to think about that, statutes will not be construed as to render them ineffective. If you interpret 9.70.10B as not applying to the two developments in town, the only two developments that the Zoning Administrator says it can apply to you've rendered that statute ineffective. Again, (illegible) you can't render a statute ineffective, and that's not what we are asking you to do. We are asking that you render it effective. Allowing us to apply to the Planning Board under that section. That's the (illegible) of our request. I want you to take a look at the Zoning (illegible) I thought it was a little

bigger, it was a little bigger when I was looking at it. But that section (laughing) 9.70.10B um, (illegible) and I'm now going to go directly to your zoning law. Included in the district, (papers shuffling) included in the district for the town are multiple access docks. That's what we are dealing with here, right, it said in all those districts, for multiple access docks you have to get a Conditional Use permit. Multiple access docks are (illegible) as of page 7 of the zoning law, if anybody has it. Dock, multiple access, a water front facility which provides either docking or mooring facilities for more than four boats. The term shall not include the noncommercial docking or mooring of boats which are owned or registered in the name of the of the owners of the waterfront facilities or their immediate family. The term shall include a waterfront facility which provides either docking or mooring for more than four boats upon property owned by a corporation or association or by two or more individuals not related by blood or marriage. In accordance, see section 9.70.10. So for all conditional uses for multiple access docks it had to go to 9.70.10. Ok (illegible) interpretation in, is that 9.70.10B can not apply, why, because of that first criteria, any dock design parameters specified as part of the subdivisions original approval. That's the sole (illegible) that's what their pointing to. It can't apply because of that. But what I'm going to ask you is, ok, if that doesn't apply (illegible) the Zoning Administrator's determination is upheld and we have to apply for an area variances, what that (illegible) Nothing. Why, we don't need a Conditional Use permit, that's the degree of (illegible). The only way we need a Conditional Use permit is if section 9.70.10 (illegible) the Planning Board shall apply the criteria, it doesn't say the (illegible) multiple access docks or (illegible) able to apply for (illegible), they just have to have these criteria because the Planning Board are going to take (illegible con't). 9.70.10B does not apply to this subdivision. Now I'll ask you, what does. That (illegible) is out the window, it's gone. (illegible) there will be no Conditional permit criteria for subdivisions falling between May 3<sup>rd</sup> of 1963 and November 11 of 1987. If that criteria doesn't apply and if both standards (illegible) again that's ridiculous, it defines logic, it renders that section ineffective. Now that argument of that first criteria is going to come up at the Planning Board. We recognize that, that's the criteria the Planning Board will take into account. Any dock standards, not the dock standards or not that you have to have these dock standards it says any dock standards. Looking at the criteria further (illegible) hundreds of docks here, couldn't be further from the truth, you would never get away with that looking at the standards, go right down through them,

the width of the shoreline in relation to the boat dock, the dock location on adjacent parcels, lake bottom conditions and the impact the proposed dock will have on general navigation. That's the criteria in lieu of overall size standards, square footage, the whole nine yards in 11.6, that's the criteria the Town Board has said for subdivisions between May 3<sup>rd</sup> 63 and November 12<sup>th</sup> of 87. This is the criteria you will apply. What we have to with those criteria when we get there, if those criteria are thrown out the window, and we eventually go through a variance and get to the Planning Board the arguments will come right back here, oh no no now, now you have to comply, comply with these criteria. You can't have the whole thing. If that criteria is gone, it's gone, it doesn't even come back and that's what I would tell you is, it's very clear, its very clear with the wording of this uh, section of your zoning law that the developments approved during this time, this, this section (illegible) applies, no question. And when you look at section A that applies for pre 63 after 87, that's quite clear and (illegible). End of that first sentence, all multiple access docking and other appropriate dock standards Section 11.60 shall apply. (illegible) that's the correction that the Town Board adopted. They adopted the standard, they said 11.60 will apply for developments pre....

**(Tape change)**

**Matt Fuller** (con't): (illegible) can't legislate, this board here tonight. The arguments that have been made as why is this a good plan or why this is a good idea, that may be fine before the (illegible) town board that's for the legislative board, that's where all the things happen, but to try to (illegible) this board, to use good planning in the interpretation of lack letter law, which is clearly what this is, is inappropriate. Um, ok, those standards, those arguments are going to come up at the Planning Board. The Planning Board is going to take into account the shoreline, the adjacent parcels, lake bottom conditions, general navigation, (illegible) that stuff there fine. Fully prepared to (illegible) ask you that. But what we don't need, we don't need, yet another road block. Let's face it this matter here is contended, the neighbors are contending it, either way there will likely be further action beyond us here tonight, if we have a variance, depending on which way that goes there could be further action following that, we may end up with a Conditional Use permit if, whatever way that goes there could be further action on top of that. Here is unnecessary steps, all you are being asked to do is apply the law that applies here today. That's all we're asking. With that I'll reserve for final rebuttal, I'm sure you're going to have a lot of comments. Certainly if you have any

questions feel free.

**Priscilla Remington:** want to comment?

*Paperwork submitted to the board members*

**John Caffry:** For the record I'm John Caffry, Caffry and Flowers from Glens Falls representing the Webster family, we're the adjoining owners to west of the Brant Lake Heights property . Christine who lives there at the Webster property had to be out of the town, the other family members couldn't be here tonight, among the things that I gave you, the documents I gave you were some letters from other family members, previously I gave you a letter from Dan Webster, this is from his mother Dorothea, and brother and sisters. At the last meeting several homeowners association members spoke about the personal issues and the effects of the dock situation on their property values. Well those aren't really relevant to the decision you have to make tonight which is a legal issue called interpretation. I didn't want you to think that this didn't effect the Webster's, didn't effect their property values, it does directly effect them their peaceful enjoyment of the property their perhaps the property value, there are two sides to that story. Turning to the merits of the appeal we ask you to uphold Mr McMeekin's decision. Our basic point is the Brant Lake Heights Association doesn't come under the exception that was added to the zoning law in 1992 that applied to docks previous approved by the Planning Board that are associated with 1963 to 1987 era subdivisions. Past look at the letter of the law and since it is subject to different interpretations we think that you should look at the Town Board's intent in the passing that is reflected in the minutes which are in the packet I just gave you. The letter of the law here under Section 9.70.10B creates any exception from the dock rules to 11.60 for multiple access docks associated with subdivisions approved after May three of 1963 and before November 12<sup>th</sup> 1987 so, this exemption applies only if the dock we approved in that time frame and if they were associated with the subdivision. I think the Homeowner's Association's error is in thinking that it applies in subdivision's approved in the time frame but I think if you look at the code and if you look at the Town Board minutes, they were looking at whether or not the docks were in that time frame. We think it applies to docks and not to subdivisions. There's no dispute, I don't think, about the fact that there were no docks approved as part of the original 1972

subdivision. So therefore I think that the exception of 97010B doesn't apply to the docks that they are now proposing which they think applies, since that doesn't, that exemption doesn't apply we think section 11.60 which applies to all docks applies to these docks. We think Mr McMeekin was correct about that, and should be upheld. Since the Homeowner's Association doesn't agree, again we urge you to look at the Town Board's intent the minutes we've shown, we've given to you, show that intent those grand fathered docks that have been approved by a prior Planning Board, it wasn't for carte blanche for any subdivision approved during that twenty-four year time frame, without docks. What I've given you is the full set of minutes where this issue was discussed between 91 and 92 by the Town Board and at public hearings and at workshops with the Planning Board and Zoning Board. And I think that they confirm that intent was grand fathered docks, and did not grand father subdivisions Some of the citations in there were from the Town Attorney Dave Krogman who said specifically that rights to use the lake are not docking privileges, so just because the subdivision had lake rights doesn't mean they had docks. He said, quote, The boards were in agreement the subdivisions between May of 63 and November of 87 that had dockage would be grand fathered dockage, where dockage in August of 92, he would be referring to Adirondack Acres which is a similar situation. If docks were approved in the original subdivision approval and if was done during the time period we are talking about, then yes it was grand fathered. Likewise again referring to Adirondack Acres he said Adirondack Acres would have the docking privileges the original subdivision approval and then he said also at that same meeting, that the burden of proving a subdivision is grand fathered is upon the person asserting that it is grand fathered, so the Association has the burden of proof, not Mr McMeekin, they have the burden of proof, proving that they come under the (illegible) they come under the grand fathering. The letter of the law and it's intent, we think it's clear again that only docks are grand fathered, if they were reviewed during that time frame. If none were reviewed and approved then it's not going to apply, You look at it as it applies to this particular case, you know it is possible that when the Town Board approved the zoning amendment 91 92 they may have had Brant Lake Heights in mind, but I don't think people maybe didn't do their homework then because as it turns out, there were no docks reviewed or approved by the Planning Board (illegible) 72 , the subdivision regulations require that the preliminary plat must show any facilities to be provided in the open space areas, that would include docks. And there were no docks shown on

the subdivisions plat, which is in the package that I gave you tonight. The Planning Board minutes which are also in the package I gave you tonight, no discussion of docks there were apparently seven lots sold by the original subdividers between 72 and the time they conveyed the rest of the subdivision to Olson, none of those docks, none of those deeds refer to dock rights, the talk about swimming and bathing and boating, but they don't talk about dock rights and those again are (illegible). The 1998 deed which is the package Mr Fuller sent you last week which conveyed to Olson the remainder of the subdivision, all the vacant lots and the common property including the beach lot did not convey any dock rights. The sellers reserved a few in that deed reserved some of the lots for themselves they didn't retain any dock rights, so if they thought there were dock rights that went with the property they would have said so. So it's only when Olson started selling lots after 1988 did anybody start to talking about dock rights. The Planning Board at that point (illegible) had never actually approved any dock rights. In the 1988 Planning Board minutes which again I supplied, the Planning Board specifically found that no dock rights were grand fathered. And in Mr. Fuller's document number 24 which is a 2005 amendment to the declaration of covenants and restrictions refers to a 1990 version of that declaration which admitted that they only have 8 dock slips or 8 dock rights at that time. So, clearly there were no dock rights approved in 1972. So maybe Mr Olson thought, maybe the Association thinks that Brant Lake Heights is covered by this rule that the dock in 91 (illegible) first discussed in 91 and then adopted in 92, but if you look at it closely it's not included. And in 92 when they were discussing this amendment, this gets to a point Mr Fuller made earlier, when they asked Attorney Krogman how many subdivisions does this apply to, he said I don't really know. He said in August of 92, it hasn't be itemized as far as subdivisions with lake rights, so they passed this rule, but they didn't specifically sit down and make a list of what might be included, what might not be included for all they knew there were dozens, they didn't know at the time. It appears giving history now that there are only two but Mr Fuller says well if you rule for Mr McMeekin you'll render the rule an nullity but at the time the board didn't look at it on a case by case basis, they just thought good idea. So we think (illegible) the association hasn't met its burden of proof, it doesn't meet the requirements of the section. I would also like to point out, they already have more docks there that predated the new rules so they did receive for the docks that existed at the time the ten for the Butler Loop and the eight that they have. They did get grand fathered for the docks that actually existed,

it's only the ones that were never approved that they are trying to grand father, again we don't think the statute (illegible) that way. The other reason, and I think this gets to what Mr McMeekin is saying that this exception doesn't apply but because there were no dock parameters, (illegible) so they can't review any dock design parameters even though the code says that they shall review them. But I want to make clear that the argument I've just been making is a different argument whether or not there are dock design parameters. This goes back to the first paragraph of section B that says that it applies to docks that are related to a subdivision that are approved in a certain time period. If no docks were approved than the section doesn't apply. So in conclusion the letter of the law says that the exemption only applies to docks approved in that twenty four year time frame the intent of the Town Board as shown in 1992 minutes were that grand fathered docks had been approved in that time frame not to grand father entire subdivisions so they could come in for even more docks. The facts show that subdivision regulations required the applicants in 72 to show the common property facilities, there were no docks shown, applied for or discussed in 72, the deeds likewise show the original subdivider's never conveyed any dock rights. The deeds of Olson from those subdivider's did not convey or reserve any dock rights, so those people didn't think they had any grand fathered docks. The Planning Board found in 88 there were no docks grand fathered and so we think under logical interpretation of the zoning that paragraph B the exemption doesn't apply to this particular subdivision and I'm not asking you to rule it out it may apply to other subdivisions and this subdivision should now be (illegible) reviewed under section 11.60 because it is no longer exempt and Mr McMeekin should be upheld.

**Priscilla Remington:** Yes

**Gary McMeekin:** I think it's very important that the board understand's one thing that in 1992 nothing was adopted. This did not go into effect until 2002 for our new zoning law took over, so in other words for this to be adopted, not only did the Town Board have to adopt it but it also had to be forwarded to the Adirondack Park Agency to become local law and become part of our zoning code. That being said it still doesn't meet the criteria. Our responsibility, mine as a Zoning Administrator, and you as a Zoning Board of Appeals, determine a proper use of the land according to our zoning codes and be sure the general health, safety and welfare of the community. Individual

agreements, deeds do not supercede zoning codes or Zoning Board of Appeals decisions. In 1988 the Zoning Board's decision was to deny the application for these docks. In 1990 also that Zoning Board disapproved the original application in 1990 and Judge Dier upheld both those decisions. This again is an attempt to bypass this board. This application belongs before you this board. For you to determine whether they meet the qualifications of whatever variances they are looking for. The variances they are looking for are quite significant. They are looking to go from 18 slips to 40. They are looking to have side line setback which is required at 59 feet to 15, dock surface that's allowed at 400 square feet to over, almost 2100 square feet, dock length that would be allowed 40 feet to over 120 feet from the shoreline that's two docks and also dock design. On December 30<sup>th</sup> of 2008 you upheld my interpretation that there's only 18 dock slips allowed on this plot. Nothing has changed since 1988 there's still 270 lineal feet of shoreline, which again only allowed at that time 18 dock slips, anything beyond that would require a variance. I again ask that you uphold my interpretation and have this application come before you, where it belongs, the Zoning Board of Appeals. Not to let this application bypass you and for you to make the determination on the proper use of land on this application.

**Priscilla Remington:** Thank you, someone else want to....sure

**Gary Frenz:** Can I have determination from our attorney. Is photography allowed in our meetings?

**Mike Hill:** As long as it doesn't disrupt the meeting.

(illegible)

**Priscilla Remington:** Like to speak?

**Frank Noon:** I'm Frank Noon, Brant Lake Heights homeowner and just a couple of points, I spoke at the last meeting then also. I just want to reiterate, if all of this is so obvious, the way Mr McMeekin and counsel states that there were no docks intended and I know this is like a big surprise all of the sudden, how is it that I was granted a deed for a dock and granted, or titled to a dock and given title insurance. I'm sure they

did their due diligence and searched it and granted it or if it's so obvious that we aren't entitled to docks why did the town sit by and allow all of these homes to be sold and people to buy them assuming they were getting docks and me personally and my wife, we've enjoyed a dock for 5 years and now we're told, I'm not just retired, we've moved up here permanently now, and now I'm told I don't have a dock. I mean this should have been done right from day one in my estimation and if it's this obvious that it's incorrect and the other point I wanted to make, I've been involved in this as much as anybody I guess, but I don't recall anybody every suggesting that we were planning on putting 40 docks in. 40 is a number that none of us have heard of. I don't know where Mr. McMeekin got the 40 from but I would be curious.

**Gary McMeekin:** Your 30 and 10 of Butler's (illegible)

**Frank Noon:** I've never even heard of us asking for 30.

**Gary McMeekin:** It's on the original application.(illegible)

**Frank Noon:** No, that's news to me. We don't have lots up there, there aren't that many lots up there that don't have dock rights on anything we've seen.

**Priscilla Remington:** I looked at the deeds and found 23 deeded dock (illegible) and

**Frank Noon:** Now the 10 for the Butler, Butler loop, that's a separate issue

**Priscilla Remington:** that's right

**Frank Noon:** We don't know anything about that. And I used to be a member of, well I wasn't a member, there was no Butler Loop at that time, but I owned a home in what now is Butler Loop and my deed didn't state anything other then like easement or beach rights it didn't state specifically that there was a dock but yet I enjoyed a dock for 20 years when I was living in that, and that's one of those 10 now. You know we've been going along and we're told to remove our docks, but uh, it's like everything else is grand fathered in, we don't quite understand that.

**Priscilla Remington:** If you have title insurance, there's no way to go back on you title insurance company.

**Frank Noon:** Oh, I'm going to notify them I'm waiting to see the decision of the board this evening because there is a statue of limitations that I have to react to and I've been told that they will defend me. You know they can't just pay me the difference whatever this like uh, the counsel for Webster and that states you know they're going to loose value in their property because if this is granted. If we want to try to compare value lost there to value lost for 27 lots for Brant Lake Heights I think the numbers are going to be a little bit disproportion. But no, I'll have to contact my title insurance company . But I don't want the money, I don't want..

**Priscilla Remington;** I understand

**Frank Noon:** I mean, I bought a lot I enjoyed the lake for 25 years, when I wasn't retired now I am retired and now I don't have a dock. You know, I bought a dock, why would people buy a place if they don't intend on receiving a dock. I mean, we have a beach, you see boats sitting out there on docks, it was kind of a given, maybe it was a naive assumption on a lot of people's parts if what everybody is saying is correct, but according to our attorney it's not correct.

**Priscilla Remington:** OK, thank you.

**Frank Noon:** Thank you.

**Priscilla Remington:** anyone else? Sir.

**Bill Olin:** Hi, I'm Bill Olin, I'm also an owner in the Brant Lake Heights Homeowners Association. Mr. Caffry brought up the fact you're concerned about the (illegible) the Webster's are concerned about their property values and would also like to remind you that I'm concerned about my property value as well. I bought fair and square there were 18 docks in the water when I bought, there have been 18 docks in the water for an awfully long time. (illegible) beside the beach . I think it's reasonable to assume that one of those docks was going to be mine if I had dock number 11 so why wasn't action

taken along time ago before I bought my property to get docks out of the water, those 18 docks have been there for a long time. So I don't when you were appointed Officer or Zoning Officer, but was it (illegible) before that, did something happen, was there a catalyst to have us remove docks all of the sudden. There has been 18 docks on our side of the beach for a long time.

**Priscilla Remington:** I don't know the answer to that.  
(illegible)

**Gary McMeekin:** (illegible) to my office and requested the extension of the existing docks, that's when the research was done.

**Bill Olin;** That answered my question, doesn't answer you know as Zoning Officer how do you help protect our property rights too. As John pointed out that he had letters from relatives of the Webster's, well I have relatives too and would be happy to get them to write letters too, but I'm one of the people that lives there, you know so I would assume that the people that live there are important so we've had 18 and right now we had a hell of a meeting last Sunday, we were told, that now the 23 or 25 people whatever it is that have deeded dock rights are going to have to share 8 docks in a summer that's right around the corner this is unfair, we need some help here. (illegible)

**Jon Olin:** Hi, my name is Jon Olin I'm one of those relative's he was speaking about but I also own property up there and I'm also a full time resident now. As of July I (illegible). I'm not a lawyer I don't know what's gone on between the people, I don't care. I just know you are affecting our lives. 27 members up there, 23 docks, you are affecting our lives and I think that has to come into (illegible) . I don't mind this (illegible) we are intelligent people not some abstract computer. Put it in, file it away and remember there's 27 families and thank you for (illegible)

**Unknown:** I was also here last month and I also spoke, non legally.

**Priscilla Remington:** Your name?

**Maureen Kronin Rossely:** Maureen Kronin Rossely, as I said last month (illegible) my

grand parents grew up here and I just never imagined we'd be in a mess like this, my husband and I bought a house in the Brant Lake Heights a year ago with a deeded dock with a number on it. I mean, I stupidly, I've lived in Lake George, I've lived (illegible) I stupidly I guess, didn't hire a secondary attorney to check to see if there really was a dock, I mean we used it all last year, everyone got along had a great summer, I thought this was Hometown USA up here in Brant Lake in good ole Horicon you know, the Higgins' and the Bolton's and everybody and then we get the news that Mr McMeekin told us to pull the docks out and don't put them back in and really as a newbie up here we really can't figure it out. We basically just need and no offence against the attorneys, there's the town attorney, Webster's attorney and our attorney and everybody is getting rich and we got no docks. It's nice to come up here, not necessarily on a Tuesday night when we've got to be to work in the morning, but it is nice to come up here we just need your help. You people aren't lawyers, we're not lawyers we just need somebody to move this along and pull something out of the air to get a decision. We don't want to spend years doing this, we don't want to have to put our boats in Schroon Lake and stay here and go back and forth. That's not why we bought on Brant Lake, I've seen structures going up around that lake that look like something on, in the village of Lake George, three story structures from (illegible) a spit away from the lake. Unbelievable, near John Hayes' old house, and we're just asking for our floating docks to go back in, they're kept neat you know we'll police them like they always have, we're a good group of people, we're just asking you to return our docks. Now you know, Mr McMeekin aside, I know he likes his job but you know we just want to have a dock to put our boat in the lake and it's not (illegible) to sell our place, we're paying taxes on these deeds, on this land with dockage and our boats are in our driveways, and that's not very attractive either. So we're just, I'm just speaking from the heart here, asking somebody on this commission here to move this somewhere, move it up, move it down, move it somewhere just to get going with it. You know, we don't want to keep rehashing the same things over and over again and we don't really want keep paying anymore than you do probably, I know this gentlemen is probably on a retainer but he's sick of hearing the same things too. We just want to move it along, we want a solution that will make everybody happy, most everybody. Thank You,

**Jim Steen:** Can I make a comment?

**Priscilla Remington:** Sure

**Jim Steen:** We are bound by this, we understand, we sympathize with everybody that speaking on behalf of the association and the Webster's and everybody, but we are bound by this, we can't disregard this and just do what certain people think are right (illegible) and believe me we want this to go away too. I would love nothing better than to be home right now with my son. But we are bound by this and that's going to be our determination and that's all there is to it, you've got to, we are listening to everything but we are bound by what is in this book, and we have two attorneys that I'm hoping to hear from a third in a minute, (illegible) simple wording, does it apply or doesn't it apply, It seems simple, but it's not as simple as it, you know, coming from there it's not that simple. So with that I'd like to ask Mr Hill Section 9710B multiple access docks associated with subdivisions through, we know all the rest, is the words associated with subdivisions, does this mean it is the docks or subdivisions.

**Mill Hill:** I think that as much as I'd like to be able to sit here and provide an answer. I'm not going to try to hazard an answer on that without having had the opportunity to look through all the material that 's been submitted tonight and digest the comments that have been made tonight . And my recommendation, I realize that everyone would like a decision and an answer but my recommendation, as Counsel to this board, is not to try to decide this matter for motion tonight but rather to go through all the materials that have been submitted to you. I encourage you to prepare a draft decision and discuss amongst yourselves who you want to work on the draft decision but I encourage you work on a written draft decision after having reviewed all the materials and after having considered all the comments made here tonight, rather than trying to quickly put together some kind of a verbal motion on this which you are going to render a decision. I think that you're going to have a much better chance of reaching an informed decision by going through that process and preparing a written draft rather than trying to act in the moment. That would be my suggestion.

**Priscilla Remington:** Ok, Mr Olson

**(Tape change)** *(Bob Olson thanked Jim Steen and stated Gary McMeekin's decision*

*is wrong)*

**Bob Olson:** (*illegible*) Section 9.70.10B applies to multiple access docks with subdivisions approved between 1963 and 1987 it is simple and distinct they give it that window that 10b applies. All other regulations and there are more as you know in the rest of that shall be considered by the Planning Board during its conditional use procedure that is what the homeowners association has appropriately applied for and that is where you send this application. Gary McMeekins has continually prevented this to happen thus road blocking the members of the Brant Lake Heights Homeowners Association from the path to secure the dock rights granted them by the Planning Board in 1972 he has attempted to have section 9.7010B eliminated, both the town board and the planing board have taken no decisive action on this in a half a year and this is an attempt to cover his incorrect determination. He has presented this board with only information and data that supports his determination and attempts to shield you from the more timely info that lent the modification to the land use regulations that made Judge Diers ruling irrelevant Jude Dier ruled on our zoning ordinance as it appeared then, not the Zoning ordinance as it was amended. The ZBA, you guys, do not answer to him, he answers to you, you have the right to have him provide all pertinent information on progress before you, not just the snippets that support his point of view. It is your determination, if your determination is the decision is wrong, as I believe this one clearly is, that the integrity of our land use regulations and our citizens faith in them require that you overturn that determination and send the Homeowners Association's Conditional Use application to the Town Planning Board where it belongs for their review under our regulations. You have received a volume of letters from the wealthy family that owns the property adjoining the homeowners association's common lakefront lot, while they have multiple dock slips for their own boating enjoyment and I built them with Dan Webster, whom Jean and I were quite friendly with uh, and they have also 100' feet of unusable lake shore which insulates them from the Brant Lake Heights Homeowners Assocation waterfront activities they still have their Attorney Caffry attempting to derail this application that instead of letting it proceed on its merits. Remember he changed his representation of the wording of this ordinance in an attempt to mislead bright thinking people into misunderstanding it. The Webster family certainly has a right to their opinions and an absolute right to express them, they should however be addressed at a Conditional Use hearing, they

have nothing to do with the single simple issue before you this evening, does the Brant Lake Heights subdivision approved in 1972 satisfy the single specification to move ahead under 9.70.10B the answer is clearly yes. Thank You.

**Robin Gotshall:** I'm back. Um for those of you who don't know me I'm Robin Gotshall formally Robin Olson uh I grew up in this town in fact if you look at the Arts and Crafts project on the wall I did a large part of that about 35 years ago so I feel I have a right to be here today. I have a whole pages of pages of crazy notes, um, that I have tried to, um, get out in an articulate fashion here today, but before I get into that um I wanted to say time out for a second because um a lot of discussion has been made about grand fathering the docks you know that ooh the docks you know they haven't been grand fathered they haven't been grand fathered well yeah duh for those of you who don't understand the docks, the docks at Brant Lake Heights were not grand fathered that is why the amendment was written. Mr. McMeekin doesn't understand that apparently Mr. Caffry does not understand that either all though I think he does. But we can talk about whether are not they were grand fathered but their whole argument is the docks are not grand fathered. And, and, and yeah, your right Gary your right the docks were not grand fathered and that's why Judge Krogman stepped in and wrote the amendment so that aside let me just throw myself into this, this crazy wild um (illegible) I have, first of all this whole thing has turned into um. I have to apologize you know it's not my responsibility for this whole thing has gotten so convoluted and so much more complicated then it needs to be this is really embarrassment so my comments are going to be a little bit different from some of the other comments you have heard today I'm going to say the things that I think really need to be said. You've heard from the lawyers, I'm not hear talking as a lawyer I'm hear talking about how this town is behaving right now, specifically the Zoning Administrator. I'm, having this. I. I. I asked to have this this meeting video taped today because of crazy stuff has been happening. I don't know if anyone has heard about what has been happened at the town board meeting last week but there's some crazy stuff happening here that really kind of scares me and I'll get into that in my notes but um the video tape is there just in case uh just in case something happens. But honestly uh I there's stuff going on here that doesn't make sense um one of the things that has really scared me and I'll talk about this later is last Thursday um Joe Dooris was removed from the Zoning Committee. Now I'm sure you all know Joe he's been

a (*illegible*) servant a faithful servant of this town for many, many years. I don't know twenty, thirty years I believe he was chair of the ZBA for quite some period of time he was also the um the town justice when I was a kid I think he was the town justice. He was removed for no good reason from the Zoning Committee he was removed I, I'm not exactly sure what the what the, reasons were given but guess what he was here in 1992 a lot of people that were here in 1992, I think we should be listening to the people that were here in 1992 when the amendment was passed but instead the town has decided to pick off everybody that may have been here during those deliberations in 1992 so that's (*illegible*) anyway that being said I'm going speak for about two minutes on the Websters because um it's kind of interesting um others have pointed out that that the gall of the sort of heart rendering arguments that are poured into these five or six letters from family members um you know there's a really sweet story that they tell um but they are irrelevant to this proceeding they're fake I have a lot to say about I call the on golden pond letters you know the the letters about the ooh power boats the power boats you know there are a lot of lakes that have a restriction on power boats you know Brant Lake is not one of them. We love our power boats we drag our kids around on tubes and you know the kids are squealing with delight and you know maybe the squealing of delight annoys them I don't know but if you know if you read (*illegible*) you have the letters you can read them you know uh we're talking about people here, this room full of people that have lost serious property rights and I'm reading a letter from the Websters talking about how they can no longer play fetch with their dog. I mean it you know this will come up in front of the Planning Board and I I will address this but, I you know anybody who would, who could no longer play fetch with their dog because of the boat traffic on the lake I mean really uh I think that you know, I've read their arguments I've made a list of their arguments uh most of their arguments all of their arguments are irrelevant to this proceeding most of them I think are irrelevant over all um I think that um a lot of their arguments are wholly inaccurate. But much like McMeekin the Webster's don't really understand the issues at hand they are speaking from the heart and I have respect for the um, you know a lot of things have changed in the last thirty years route eight has become crazy this but what are we going to do, sue you know, sue the state because route eight is busy now and disturbed our quiet enjoyment as it goes by our property too so alright enough about the Webster's because you know their right to quiet enjoyment is as, as they brought up is a matter that should be heard by the Planning Board not the (*illegible*) . The next

thing I want to talk about actually is Judge Dier's ruling because the Webster's and others have relied very heavily on Judge Dier's ruling and I think that people don't understand the history of Judge Dier's ruling the Webster's think that Judge Dier's ruling was a stop order. A stop order um a stop order with respect to docks, meaning you could never put more docks in but the Webster's argument at that time in front of uh in front of Judge Dier, what was ruled on was the technicality, what it said was the town said no to the docks then the town said yes to the docks so therefore nothing else changed so therefore the town's ruling was arbitrary and capricious that's what the ruling was that it was arbitrary and capricious so the town said oh gee, you know um you, we have to address this issue of being arbitrary and capricious so what does the town do the town held numerous workshops, the town held numerous public hearings and they addressed this issue, they they waived the equities, they addressed the family so Mr Caffry presented all of the same arguments that you're hearing right now all of these issues were taken into account and were waived and that's when the code was amended to allow for the multiple access docks at Brant Lake Heights now the Webster's are making all the same arguments that they made back then but you know when they made them back then their arguments didn't prevail and ultimately that amendment was passed. Now here we are again revisiting this amendment, you know, the thing is why now, but one the owners brought this up why now, why folks quiet for seventeen years, seventeen years that's a long time those docks were floating peacefully in the water for seventeen years and why following the amendment did nobody challenge those docks at that point why because everybody, the town the developers you want to call them Olson Development the Webster's and Caffry understood that when the amendment was passed the issue had been resolved. That's why I mean why why did we have this seventeen years ago after the amendment was passed why now why is why is McMeekin bringing this up now. Well no know that actually the Webster's said that um when they were asked, well you know um when they were trying to explain why for seventeen years they've been silent they said they were weary, they were weary from the battle and you know eh that's its just revision its history they weren't (illegible). I'm sure they were weary from the battle but the reason why they didn't continue to pursue it is because it had been resolved. So the real question is why is this coming up now, why is this coming up now has anyone considered why after seventeen years as I believe those docks are just um (illegible) are they illegal and the violate the code and all that after seventeen years,

I think it just defies logic it really does and the interesting thing is it wasn't the Webster's who brought this up the Webster's have been quiet, now the Webster's, can't blame them a bit they've jumped on board this bandwagon they've hopped on board because OOP this is a new opening for them. We now have a misguided Zoning Administrator that's willing to deliberately ignore what was done in 1992 I think if I were the Webster's I'd hop on board too, why not. You know this is not about the Webster's this is about McMeekin for some reason he's on some kind of quest to strip twenty seven property owners of their property rights. Why it's a really good question what I mean, what it wasn't the Webster's who asked him to do this so why is he doing this seventeen years since the amendment. No one said any, nobody said boo about a Conditional Use permit when the amendment was passed why didn't Caffry say well you still need, can't have your docks cause you need a Conditional Use permit why didn't the town say well you need a Conditional Use permit you know this is a small town not everything is done perfectly. And now, we're coming back to, to fix that and to go to just try to get in front of the Planning Board to get the Conditional Use permit. I think as you said yes, you have to apply that law that's the only thing you can do is apply that law you read that law and this is the Planning Board it doesn't say the Zoning Board of Appeals this is the Planning Board and I could argue that granted, we have Mr Caffry trying to uh to uh stretch and twist and turn the words around to try to try to kind of confuse all of you into thinking that it's not clear but it is actually quite clear. But now we have McMeekin who's like a dog with a bone hell bent hell bent to strip them of, to strip these poor property owners of their rights. You know there's a lot of them sitting here today a lot of them have been driven quite far to be (illegible) this meeting I've driven certainly (illegible) I'm sure I mean people really you know they are passionate about it as I understand you know there are two sides to the story and I know that and its all about just interpretation of the code but they're here because the code is very simple and their property rights are being taken away in spite of the amendment so that's why everybody is here today I mean everybody will (illegible) there are lot of arguments that will be presented to the Planning Board, when we get there but it still keeps coming back to the same thing. Why is Mr McMeekin so hell bent to strip these people of their property rights, I mean they've had their boat, they've invested in huge amount of money in their boats, for good reason, boats have been there for (illegible) have been there for seventeen years. Why now so here's where I'm going to get to some of the things that some maybe some people don't think

I should say but, you know. Government action is not the place for personal vendetta to be carried out and we seem to be dealing with a very angry person over here, that's on some kind of mission and um what he's doing is is extreme. Twenty seven property owners, twenty seven tax payers in this community who've had their boats in the water for a long time suddenly he wants to take them away. Twenty seven I think that's extreme and it's it's reprehensible. I just, it keeps me up at night and it doesn't even directly affect me but he seems to me and this is, this is, this is me talking but he's, he's sort of drunk with his own power and he's ordered the removal of those docks. He wasn't here in 1992 when it was just, I mean all of the passion and arguments were made it was a very careful and deliberate decision and granted if you, if you look back through the minutes, no we're not perfect people, said things and stood up on the meeting and minutes of the meetings and it's, it's, it's not perfect but at the end of the day Judge Krogman, the the town attorney at the time, extremely smart man right, extremely smart man. He heard all of this and they did decide that the docks were not grand fathered everything else in the subdivision was grand fathered that's why we are not talking about those things but the docks were not grand fathered and Judge Krogman said the way to handle the inequities here is to be very clear with respect to subdivisions approved between, I'm sorry what was the sixty three and whatever the dates with which (illegible) those subdivision, these are the rules that apply. It's, it's so clear it makes me crazy to even stand here and defend this, but back to, back to Mr McMeekin I think you know when he ordered he ordered the removal of all but eight docks. Why, I mean really is he enjoying that, that now twenty seven property owners have to squabble about sharing (illegible) can you imagine what their homeowners associations meetings is like, I mean, I this this this is a complete, complete and utter travesty and really you know the bottom line is he removed those docks because he thought he could and guess what, he did and as a town are we are gonna let, we're gonna stand by at let him just run amuck of the code and just do his thing because, because he's just hell bent to get rid of those docks then you know the thing is he didn't understand the history of circumstances. He just doing something because he thinks he can get away with it. But you know what, once he was informed about that amendment what did he do, he didn't know about that amendment he didn't understand the amendment but he was told about the amendment so what did he do said WHOO lets eliminate it, it's part of the code. You don't just take a pen and just scratch it out no no that amendment you know that that amendment that that oh he

knew I was (illegible) rights now I realize I screwed up oh so lets just, he actually made an argument that it should be eliminated a part of the code that town officials spent years putting together carefully wording he said, oh eliminate it. You know, are you kidding me, honestly the dock rights the dock rights that these people have are based on that code people acted on that code you can't just eliminate it if even he did eliminate it, he was somehow like he ended up eliminating it it doesn't take away their rights because that's what was in effect at the time that they bought their property so you know that 's just ridiculous but his efforts to have that code eliminated, as my dad mentioned, you know it it hasn't gone anywhere (illegible) because of a lot of smart people that work for the town but beyond that it was unethical and it was immoral but the next chapter was that when he didn't realize it didn't look like he was going to get away with, just, you know (illegible)

**Gary Frenz:** excuse me is this a character attack or are you pointing out.

**Jim Steen:** yeah, I'm getting pretty tired of listening to this myself.

**Robin Gotshall:** OK alright I'll speed it up

*(noise, chair moving)*

**Robin Gotshall:** I'm trying to ok, ok

**Gary Frenz:** stick to the, stick to the meat of the problem and not as a, as a, you know beating on somebodies character or what they are doing. We want to know if you have any pertinent information as is (illegible) with this code as it's written.

**Robin Gotshall:** ok, speaking of the code when the code was not eliminated McMeekin said, Mr. McMeekin said the code. The amendment to the code does not apply that's what we're talking about the code, whether the code applies or not. He says the code doesn't apply. Ok, Mr. Krogman, Attorney Krogman wrote the code, ok he wrote the code so Judge Krogman is now Supreme Court Justice wrote this amendment, specifically to address the docks at Brant Lake Heights and Adirondack Acres. Now I'm skipping over the character assignation part, now one month ago McMeekin stood here before you and argued that the reason, why he argued that they

were not grand fathered, ok, and I'm speaking about the code, he's saying that they were not grand fathered and therefore they have no dock rights, ok, he's right, he's right they were not grand fathered that's why that amendment was written. Judge Krogman was very careful when he very deliberative based on all the information said he wrote that code. Apparently Mr McMeekin doesn't agree with what Judge Krogman did. Think about that for a second he thinks he knows more than Judge Krogman . Now, I just don't understand why we're not just reading the code as it is, that's a really good question, to know why we're here today because this is taking up a lot of your time. I'm sure you all would rather be home with your kids and all of that it's a really good question. There's an ulterior motive hear and you may stop me but I'm going to try to move forward because there are facts very relevant to why this is happening. I'm gonna speculate and I'm gonna try to be really really quick about it, ok, but there's some stuff that you may not know about now granted, the code is very clear and I'll come back to that (sigh) (illegible) what, tell me what.

**Priscilla Remington:** it's been quite a while since you had (illegible)

**Robin Gotshall;** (illegible) let me just say that the why we are here to is a very important part of this question ok and we're not suppose to attack the character but unfortunately that's what's in play and (illegible)

**Priscilla Remington;** that's about all you've done since you stood up there

**Robin Gotshall:** is attack character?

**Priscilla Remington;** Uh uh

**Robin Gotshall:** well all right , let me skip to the part that I, I don't agree with that, I don't agree with that, but I respect what you have to say.

(illegible talking)

**Robin Gotshall:** you want to tell me to sit down? Or can I just, I'll skip over the next three pages and skip to the bottom I, I, I, a great deal of time and attention has been

paid to this the amendment that is question is referred to again again in the loophole. Ok, the amendment is referred to as a loop hole. The loop hole is, insinuates that somebody is taking advantage of a crack between a written statute, ok, we are not talking about a crack between a written statute we are talking about the amendment as written so I would advise to look at that. Look at that very clearly, just apply the law attorney Fuller has I think explained it very well there's no dock design parameters that are required I'm not going to go through all that again, um but I just invite you, this, this, concept called double jeopardy which is really the concept that's really at play here, you know, I mean I don't think that that you know waiting seventeen years, then pick off those that, um, that were here in 1992 and then retry the identical issue you know, not to really know what's at play here and I'm speeding it up, um, so I just invite you to, to think about what's happening here about the twenty seven owners that are being stripped of their rights and, and, and, and why, and why the Webster's didn't bring this thing up, questions why, so please just read it it's a very good (illegible) little piece of you know, it takes two minutes to read it. So anyways, I apologize that you think this is has been nothing but a character assigation but unfortunately there are things happening here that can't be explained so um (cough) anyways I'll save my arguments for the Planning Board and thank you very much. Thank you,

**Mark Polsinello:** My name is Mark Polsinello and I am a member of Brant Lake Heights Homeowners Association. I'm going to give you so much prospective that is relatively new because I bought in 2005. And I'm just going to make a couple of brief points. At my closing I had three attorneys, and in reference to Mr Caffry, (illegible) my deed specifically said dock space, specifically. My point being, the three attorneys are title people, told me to hire another attorney to check the title just because of the vague laws that exist right here. I don't have any title insurance, they don't do it anymore. I don't have a safety net, you're my safety net, you're my families safety net. I defer to you sir, I don't know what your name is you pointed to your yellow book there this is not a cookie cutter job. This is some human emotions, this is some intelligence, this is some other prospective. I refer to Mr McMeekin, he used the word safety, I don't know if anyone has thought about possibly fifteen trailers coming in and out of our place, take a ride in there and come out of there, we have to stop and listen over that knoll, we could have a serious traffic issue, my family (illegible) what are we going to do with fifteen boats out at the state launch when we leave them all there possibly.

What about the people coming to use that. And my last point (illegible) referred out to about 120 feet if you've ever looked at our area at sixty feet goes from eighteen inches, I don't know what (illegible) for reasonable safety area for motorized boats, we've got to go sixty feet out before we can even start, so our docks are really sixty feet out safety wise. I would ask you to look at the human nature. I respect the Webster's one hundred percent for protecting their property, but it has to be justifiable, reasonable. I don't think we are asking for anything more than what we were told about the (illegible), I had three attorneys, (illegible), I had the longest closing in history of (illegible) because of this issue. I couldn't do anymore back (illegible). I had attorney after attorney looking at this issue for this reason right here.

**Priscilla Remington:** And you've got deeded dock rights?

**Mark Polsinello:** I have a deeded dock space number twenty five. Specifically it says. I don't have it with me tonight, I can supply it. I do ask you to look at some of the other factors (illegible).

**Priscilla Remington:** Thank you

**Dan Smith:** I (illegible) what Jim said though there is a process where we do look at the bigger issue and that's called Conditional Use applications and other type of applications. This is specifically interpretation of law is very different from the other things that the ZBA does. And that's why we really need to look mainly at that issue and not at personal issues

**Jean Olson:** I just wanted to add a couple of points. Did the town sort out, because it came up in the minutes about how many subdivisions, we're gonna have docks all over the lake, the town sort out the number of subdivisions that would be affected by this new thing, was two, two subdivisions, there were no others, so to say that there could be hundreds of (illegible) docks is absolutely ridiculous. It was just those two subdivisions. (Pounding of hands) They amended it just to help out what was created here. I need, I would like to know, I mean, we did our homework back, in back in this day of when we were working through this whole thing, the whole town board worked very hard, (coughing) But how many multiple access docks exist now. I don't know anybody but Gary doesn't know (illegible) I don't want to make this a personal attack,

but how many exist now on the lake.

**Gary McMeekin:** I would have to review it.

**Jean Olson:** How many of those have permits

**Gary McMeekin:** I would have to review all (illegible)

**Jean Olson:** OK, I would like to know that . And you said it wasn't approved by the APA until way after the fact, that wasn't it, that wasn't true. The changes were approved by the APA in separate groups, Because we were doing such an overhaul, it was a big thing and we did it, the whole (illegible) Dave Krogman's secretary typing it all up and wrapping, finishing it all, it didn't get typed til later but it was passed by the town and became law once it was passed by the town. There was one other thing oh, assumed any of these things you take a sentence in the minutes out of context, somebody said there could be a hundred new docks on the lake. Now if you keep reading it, it says no there's no hundred docks, its two subdivisions and two subdivisions only, all these letters from the Homeowner's Association, because they were asking questions It all came up to Dier decision and that's where the law ended that it was (*ex neighed*) by Judge Dier and that was it. He never told them that there was a new law in place to take care of two subdivisions and if all those subdivisions or all the multiple access docks on the lake have permits, I would be very surprised, because docks were just put in in those days. This is Horicon, Brant Lake, everybody just seemed to work together and it worked fine for (illegible). The other thing is they (illegible) that boats and appurtenant uses . What's an appurtenant use to a boat. Docks. It said beach, it doesn't say swimming, it doesn't say sun tanning, it doesn't say sitting. It just says beach rights. So it's beach and appurtenant uses and docks and appurtenant or boats and appurtenant uses. So I, it is unfortunate that this has come up after all these years, actually. I, (illegible) I'm glad I'm not a town official anymore.

**Robert Boutelle:** I'll be very brief, folks.

**(Tape Change)**

**Robert Boutelle:** (illegible) our attorney asked earlier just to grant the appeals so it can then get to the next step, which is the Planning Board the Town Board. It seems to me that so many issues here there's no way this could go away. Just want the

opportunity to get in front of the Town Board, Planning Board and have my day (illegible) all this. Personally I spent, well the person I bought my home from spent ten thousand dollars for a dock, I have a receipt for ten thousand dollars he paid to ODI for a dock slip. Now I have no dock. So things need to be hashed out. So I just wish you would consider that in granting the appeal (illegible) next step. Thank you.

**Priscilla Remington:** Thank you

**John Caffry:** Just briefly I don't usually respond to what other people from the public say but Ms Gotshall when she was attacking the intent of my clients, I just like to clarify a few things. We're not making all the same arguments we made seventeen years ago at the time that was a legislative proposal, we made legislative arguments now we're looking at the language I'm focusing very carefully on the language that's in the code now. And I think this doesn't apply to this project. But she also said that well Caffry and the Webster's didn't challenge this after the amendment in 1992 because they knew the issued had been resolved. And I don't know how she could read my mind or Webster's mind but I can tell you that wasn't the case, they really just gave up. Mrs Olson was Town Supervisor, Mr Olson was the Developer and they had been spending money and they just finally gave up, they were just tired, they were (illegible). Then it came up again and they agree with Mr McMeekin and we want to support that. (illegible). We never believed that those docks that are there now are legal. And in fact they weren't because they never got the Conditional Use permit and that's where this board found and upheld Mr McMeekin back in December. On top of that, there, so far as I know, never an offering plan which would have been required to sell, to legally sell dock rights. Regarding what the minutes say, who said what when, back in 91, 92, I don't want to put words in anybody's mouth, that's why under FOIL I asked for all the minutes and I gave you everything that mentioned this issue and weeded out the minutes that didn't address this issue. I gave you everything that men.. You could read them for yourself (coughing) see (illegible). And one last thing regarding the seventeen years since this issue and all that. I was just in the town of Lake George last week with a client who had a fence that was built by the prior owner of his property thirty years ago, because the prior owner didn't get a permit now the Town is telling him he got to come back in for a permit. So these things happen, it's not necessarily a vendetta or (illegible) sometimes paperwork doesn't get done and you have to go back and dot the i's and cross the t's and that's what we expect (illegible) now that's this has come up it's in your laps, we're just asking you to interpret the code. The letters from my clients,

I think I was the first one to say they are not particularly relevant, they are just there because people were bringing up these issues and wanted our side of that, you have heard even though (illegible) Planning Board issue as to impact sentences (illegible).

**Matt Fuller:** All right, five minutes (illegible)

**Priscilla Remington:** Well

(laughing)

**Matt Fuller:** This is a highly emotional issue, both sides (illegible) that's why (illegible) like I said (illegible) on behalf of the association. I sit on that side (illegible) no amount of money in the world (illegible) your attorney can tell you (illegible) which way you should go (illegible)

(laughing)

**Matt Fuller:** I represent zoning boards myself, that's what (illegible) there's no amount of money for me to come up for me to give you that answer that's why you all are here. He may guide you in that proposal (illegible) but (illegible) asking point blank he can't tell you. To get to (illegible) Mr Caffry (illegible) there's an exemption created, there is no exemption that was created. And I want to be clear with that, you don't have law that applies then create an exemption. The Town Board adopts a law that applies to certain circumstances they adopted a law that applies to multiple access docks. Ok, it goes way back and have that dock apply. Permanently apply to two separate sets of developments pre 63 and post 87 (illegible). to have docks associated with those developments (illegible) clearly (illegible) Adirondack Acres, I've looked at the map, so far as I know, there's not twenty, thirty docks on that map, they have lake front (illegible) clerk's office myself looking at that map, and I don't see docks on it. (illegible) with that subdivision. It's very clear. Mr Caffry forgot what they were talking about back in the early nineties was their development, those (illegible) I gave you the same thing, they are extensively clear, both developments are talked about point blank in that law, no question, no question both the Planning Board, they were reviewing the law before it got adopted and the Town Board knew exactly what they were doing. They did this in response to a law suit . There were a lot of issues out there as I said before circulating (illegible) Town Board (illegible) the language is very clear. Butler Loop, there's no dock rights associated with that part of the development, for the, I call them the Sinkora & Saluzza lots, the lots that came out before Olson Development. Those what, ten docks (illegible) but they weren't on the subdivision map and they're

there. That subdivision was approved by the subdivision regulations and their arguments, you should not apply, because there were no docks associated with that development, those lots were in that development (*illegible*) docks, (*illegible*) some of those people had docks. It's clearly (*illegible*) , we're not asking for anything different. John talked about the offering plan, there wasn't an offering plan, not relevant here, yes there was. The right to dock a boat on any (*illegible*) of vacant lot, again, you violate the (*illegible*) lot, anyone on the lake, you don't get also the right to dock a boat. (*illegible*) it can't apply, laws applies, that's what's happening here. The association owns this lake front and they have a right to (*illegible*) a dock, under that section that applies (*illegible*) the Town Board adopted a law to apply, not the association got the burden of proving (*illegible*) some law (*illegible*) to the extent that Olson (*illegible*) opposed to this appeal would argue that that was ambiguous. If it is ambiguous, and your attorney will quickly cite that for you, that's construed against the town. Not (coughing) (*illegible*) . Zoning rights, the zoning laws are a (**derogation**) of the town law, town lobby, you can do whatever you want with your property so long as it's not a nuisance. If the town adopts that law and it's ambiguous, that they're trying to argue that it is, and that ambiguity is construed as benefit of the association, not the town, That's (*illegible*) that argument was made, was made (*illegible*) goes against it. A couple of things I'm, Mr McMeekin's (*illegible*) we have a difference of opinion. What applies, what doesn't. It's interesting. You're goal here is to determine proper use of land, no it isn't, that's not for your determination here, it's been determined that how this law is being interpreted. The Town Board determines what's the appropriate use of land in adopting the zoning law (*illegible-chair moving*) site plan, conditional use permits the whole nine yards. The legislative board determines who (*illegible*) of the law. I don't want to (*illegible*) the specifics here, looking for forty slips here, definitely not looking for forty slips. I have no idea where that number came from. Conditional Use permit application I have.

**Unknown:** We don't have any discussion about forty dock slips. At All.

**Matt Fuller:** Not what we're looking for. As I say in the application, (*illegible*) even numbers there's going to be (*illegible*) as slip. I say we are looking for twenty seven. That's the (*illegible*). I don't (*illegible*) ever seen a deed to the development (coughing) (*illegible*) , is twenty seven. I put fourteen slips in the application because you can't

apply for thirteen and have half a slip. But one (*illegible*) not give up the use and have you know, approval for eight, nine ten slips. and how do they get configured, some (*illegible*) structure there, some may end up over there, some may up on, closer to the Webster's side, that's all got to be faired out with the Planning, using that criteria, navigation, health and safety, things like that. So we'll deal with that when we get there (coughing). (*illegible*) close, again quoting right back to the language that we are (*illegible*) . Again 9.70.10B for multiple access docks associated with subdivisions approved after May 3<sup>rd</sup> 1963 and before November 12 1987, that's for subdivisions approved during that time. There's no question, (*illegible*) there design should take into account the general health, safety and welfare of the public with an emphasis on maintaining acceptable navigation. So their design, the design that you get to the Planning Board to present should take into account those general principles. If it was a condition that you had to have dock design parameters specified as part of the original subdivision in order to apply this section, why would you apply that first sentence, that part of the sentence, that the design should take into account (*illegible*). If they were already designed it wouldn't take it into account . There already would have been a design. And the logic here is intended to shield the actual language (*illegible*) there's really from a legal standpoint, urks me too. (*illegible*) some of the arguments, (*illegible*) you know, we want you to just read the language verbatim. If you read it verbatim, A, very clearly, from section 11.60. B, clearly does not. That's what, (*illegible*) that difference right there in it of itself, in it of itself, is (*illegible*) to say that the determination applies. 11.60 does not apply, (*illegible*) direct. There's really no other (*illegible*) , they wouldn't put it in the section. Right? I think that's reasonable, if they intended those criteria of section 11.60 to apply to these subdivisions, they would have (*illegible*) . They made that choice. To wrap this up, don't envy your position, you're being asked to overturn the Zoning Administrator's determination (*illegible*), any of the rest of us in this room, rely on his opinion but statutorily, constitutionally, the property owner has this right, has this right to ask you (*illegible*) again, having been on that side of the fence I don't (*illegible*) but I think, if all the emotional arguments get satisfied and you take a look at just the wording that's on these pages, the four points of these pages that you are required to do, I think you're going to find that the determination is incorrect and the appeal should be granted. Thank you.

**Priscilla Remington:** Thank you.

**Bob Olson:** I'll take less than a minute, just a housekeeping item. As many of you know I'm a member of the Town Board but tonight I make no representation to present the opinions of the Town Board in any way, They were all my personal opinions and personal statements as a member of the Brant Lake Heights Homeowners Association. I neglected to do that at the beginning, I would ask that the record show that I make no representation in speaking for the Town Board (illegible)

**Bill Olin:** (illegible) You pointed out that your jobs are to enforce that law. ok.

**Unknown:** interpret

**Bill Olin:** and then, interpret, ok, then I heard that's there's probably (illegible) of docks on the lake under multiple use permit, we don't know how many, that Gary is going to review that? Ok (illegible) part of the record, will we be told. How many have multiple use permits and whether they all have the right number of docks for their use permit or were we singled to remove docks versus other multiple use permits on the lake. So is that part of this meeting is that what happens from this, do we see minutes that will say that, that something has been reviewed, you looked at all the multiple use permits on the lake and yes they all have the proper paperwork for the number of docks that they have. Otherwise, I would feel that we were singled out and that would be unfair.

**Priscilla Remington:** (illegible)

**Dan Smith:** (illegible) responsibility to find that information out unless we decided we need it. (illegible)

**Mike Hill:** (illegible) to be reasonable, I don't know that it's germane to this interpretation (illegible) it may go to other (illegible) overall merits of enforcement and so on but I don't think it bears directly on your question (illegible)

**Dan Smith:** necessary if somebody wants to research that and provide us with that they may, but we're not obliged to research anything that the public requests.

**(illegible talking)**

**Maureen Kronin Rosselly:** (illegible) as a tax payer here, can a taxpayer FOIL that information from the town.

**Mike Hill:** you can submit a FOIL request.

**Priscilla Remington:** shall we follow Mr Hill's guidelines and discuss this and

someone make a draft decision, whether it be one of the board or Mr Hill?

**(illegible talking)**

**Gary Frenz:** I make a motion that we close the public hearing.

**Dan Smith:** I second that

**Priscilla Remington:** All in favor?

**Board:** Aye

**Gary Frenz:** I make a motion that we have the town attorney draft decisions both yes and no to review at the next meeting.

**Priscilla Remington:** He made a motion, do you want, agree or?

**Dan Smith:** I seconded that, (illegible) do you want to have some discussion now that would aid our eternity, our attorney  
(laughing)

**Gary Frenz:** It's only been an eternity

**Dan Smith:** Aid our attorney in making that draft.

**Priscilla Remington:** You mean, for or against.

**Dan Smith:** do we just see the draft and amend it, (illegible) look through some of the information before we have a (illegible) preliminary discussion.

**Gary Frenz:** I think we should just have the attorney do the (illegible) piece of paper work that goes with (illegible)

**Dan Smith:** we have some kind of information.(illegible)

**Cheryl Erickson:** (illegible) another application before (illegible) in fact that this was (illegible) and capricious, well, I don't like you so we're going to look at your docks (illegible)

**(illegible talking)**

**Cheryl Erickson:** There's a sleeping dog out there, somebody kicked it and said hey we're going to

**(illegible talking)**

**Gary McMeekin:** (illegible) request from the Association to increase their dock size.

**Cheryl Erickson:** and that

**(illegible talking)**

**Gary McMeekin:** (illegible) we send the referrals to the Planning Board. (illegible) before this but but what Cheryl is asking what initiated this (illegible) this application. The Association came before my office requesting that the dock size (illegible) initiated all the those were basically those two boxes behind there all the paperwork involving Brant Lake Heights.

**(illegible talking)**

**Priscilla Remington:** I have a motion and a second, all in favor?

**Board:** Aye

**Dan Smith:** (illegible) included?

**Gary Frenz:** (illegible) table it for the next meeting

**Priscilla Remington:** Yes

**Mike Hill:** Is that what the minutes reflect?

**Christine Smith-Hayes:** the motion was to have the town attorney draft decisions for both yes and no to review at the next meeting.

**Mike Hill:** did it formally say table, Gary did you want to amend your motion to table the matter for the next meeting in preparation in a draft decision (illegible)

**Gary Frenz:** I'll amend my motion

**Mike Hill;** Gary's amends his motion, you second it Dan, you second that.

**Dan Smith:** Yes

**Mike Hill;** you second that, ok Priscilla I think you ought to call for a vote again so that we make sure that we have it straight on the record

**Priscilla Remington:** All in favor?

**Board:** Aye

**Christine Smith-Hayes:** do you want to take a break?

**Priscilla Remington:** Yeah, I make a motion that we take a break first

*Break at 9:35 PM*

*Board back in session*

*Curt Castner returned to the board*

**File #2007-36AV Tax Map 53.-3-1 Vandermark (EZ Marine and Storage)**

*Jim Steen recused himself and sat in the audience.*

**Priscilla Remington:** ( illegible ) they overturned our Area Use Variance conclusion without prejudice to reconsideration by the ZBA. If you'd like Mr Hill to explain what you can do next.

**Bernie Hill:** I certainly would

**Mike Hill:** I'll try, as Priscilla said the Adirondack Park Agency has issued a lengthy letter running to about fifteen pages and in that letter they state that they have overturned the use variance that was granted by the Zoning Board of Appeals, they stated that the Agency reverses the ZBA's, the use variance issued by the ZBA, without prejudice to reconsideration by the Zoning Board of Appeals and well I am hesitate to try to interpret the APA's letter to any great extent the last phase there without prejudice to reconsideration by the ZBA it seems to be in indication that they are not saying that they would not themselves consider a referral from the Zoning Board of Appeals after a reconsideration of (illegible) the letter which I would encourage you to read very carefully if you haven't had the opportunity to **(illegible)** **(illegible talking, laughing)**

**Mike Hill:** the letter as I noted is a fifteen page letter that goes on at significant length about the reasons why the ZBA overturned, or excuse me why the APA overturned the ZBA's decision and as far as any decision about how to proceed from here it would be important to read the letter very very closely because I think that is going to indicate the things, if you were to do some kind of a (illegible) or re-submission of the application or modified application or something, that required a use variance this board would have a look at that and if this board were to approve some other proposal that you might make or after a request for a hearing, it would again go to the Adirondack Park Agency for review so this letter is important because it indicates their concerns, and obviously would be things that you would have to address for re-

submission in the future, so with regard to you area variance application. The area variance application this board is not going to rule on the area variance application because the underlying use variance has been overturned. These no application anymore on which to render a decision. So there's not going to be any action taken in respect to the Area Variance and that's the way the matter stands with Zoning Board of Appeals.

**Bernie Hill:** I guess, I read the whole thing through and the very last paragraph before conclusions basically talked about where we were getting into the area variance and possibility of what we were looking at (illegible) marina and dock slips (illegible) etcetera and to me that last paragraph had a lot to do with what the conclusions were, which is kind of ironic because here the start of the process through and the area variance and now to get cut off in that process which really (illegible) what could be done on the property, what can make sense to make it feasible project. I guess from my standpoint I would have to go back and say that with this economic recession on, I've got time on my hands here. I'm more than willing to go back and (illegible) at that submitting an application again, I will submit an application again and I will redo the project and I will (illegible) forward if that's what we have to do because I think again, we were going over the area variances (illegible) the drawings done, I have detail drawings showing drastic improvements in the setbacks that were fifty feet from the river is now changed, we've made drastic improvements there and some other opportunities I can do in the meantime, that may help this whole process and I read through, it talked about the analysis about going through all the other analysis in there in reference to the use variance, talked about agriculture uses, I could do a study on agriculture, you know I could put a farm on there, can I raise chickens, cows whatever the heck, you know I could do that, again, I have plenty of time to read that other dissertation was going on and those are some of the things that the APA said, you know, the ZBA failed to recognize those areas and either I have to provide the information on that or (illegible) condition on those areas. (illegible) limited use, talked about agricultural use, you know, all of trailers, all of the different other uses and that's what it needs to be I can go through and do all that. Right through every single analysis all the way through. But there is some reality to all this here too about what you can and can't do with this property. So I guess I'm looking for some recommendation (illegible) if maybe I can go back and resubmit an application with an amendment to change the (illegible) what the place would look like, I'll do it.

**(illegible)**

**Mike Hill:** I'm sorry, I think that really from a procedural standpoint Bernie it's not up to this board to make a recommendation so to speak. You've got a copy of the APA's letter overturning the Use Variance that was approved by the board if you decide you want to pursue this further the Adirondack Park Agency letter is going to provide you with their insights as to their thinking, again anything that this board, this board would ultimately to approve some revised application or reconsidered application it's going up to the APA so be pretty confident that this the kind of analysis that they are going to engaged in so this provides you with more information but as far as a recommendation about what you should do I think that's definitely something that after you digest this letter and think about it whatever you decide you decide the ZBA and Planning Board are here obviously if you decide whether to make another application or do whatever it is that you are going to do with that it has to be your decision rather than a recommendation.

**Dan Smith:** question as (illegible) from our standpoint if this application (coughing) I should say (illegible) applicant, if nothing has changed in the application that came before us and in the variance that was applied for that we approved and just simply further information is provided do we need to go through the whole process again? Anyway? In other words it's been returned to us does that mean we would actually have to start the whole process over again even if it is just providing further information?

**Mike Hill:** I think you can certainly if none of the information was previously submitted if none of that needs to be withdrawn and simply more information needs to be provided, then an updated application can be submitted and then the question becomes whether or not you rehear the application, and that process, that consideration about whether to rehear an application would typically require a unanimous vote of four as to whether or not to rehear an application. So I think that's the position you are in.

**Dan Smith:** So just to make it clear, if there were any change in the application itself in terms of variances etcetera then we're back at square one.

**Mike Hill:** Yes, I think that's right, there some change in the propose, what's being proposed that that would require a re-submission, rather a new submission, from the very beginning. From and new application form right on through the whole process. If the material is already submitted is still relevant than I think Bernie can refer to that,

whatever he was doing to ask for a rehearing of the application but otherwise a new application will be required.

**Dan Smith:** I have something that bothered me about this and (illegible) my basic understanding how use and area variances are separated (illegible) that last page from the APA and they seemed to be implying granting of a use variance is tied to very specific things like number of parking spaces and etcetera, in other words they seem to be implying that we can't grant the use variance until we have all of that in place. And it seems to me if it's true then we would have to process both the use and area variances together. Otherwise they're tying it to the minimum variance required.

**Bernie Hill:** Again, I would refer to that last paragraph (illegible) talks about area variance conditions, changes, they rejected the use variance and yet they are implying the area variances may have an impact on the use variance. Again I'm at a loss with that. I also talked to Colleen Parker at the APA and one of the things she told me that, this whole process is supposed to happen where the town goes through it's process of Use, Area and then submit to the APA, sort of (illegible) one portion of it then it comes back and now we can't go to the second portion of it in the process. I'm getting kind of confused by what she made a statement to me that the town supposed to do their thing first and yet we weren't afforded that opportunity to (illegible).

**Priscilla Remington:** I think that, if you don't have a use variance in place you have to have that (illegible)

**Bernie Hill:** (illegible, coughing) what Dan is speaking about certainly has an impact on the use because they are telling us it has in that last paragraph

**Mike Hill:** I think, yes, there is that element in considering whether to grant a use variance there is that element of it's really area variance but the...

**(Tape Change)**

**Mike Hill:** (illegible) requirement that would other wise or be unnecessary hardship that would result in the strict application of the zoning code, prohibition against the use that is being sought. So, I guess to maybe illustrate if you're proposed use is not a permitted use then if what's necessary for realization of a viable economic use on the property can be satisfied by some building analogy, if it can be satisfied by or met by something the size of a single family home then you cant be applying for the Taj Mahal. Again, to use a building type of analogy. So, they're not saying that they are strictly, they are considering the area, the proposed area variances that are being sought, I think what they are saying is that there was an indication in the record that

something smaller than what was proposed would actually satisfy to overcome the unnecessary hardship element and preserving that discussion for the record, which are part of the meeting minutes, part of the discussion here for making that observation that they consider the relative size if you will, what's being applied for, the use variance, they're seeing that and to use this kind of weak building analogy that I mentioned, they are effectively saying well it looks like the applicant is applying for the Taj Mahal on the one hand but saying that something less than the Taj Mahal will allow the realization of an economic return on the property. That's what I see in what I'm reading. I would encourage you to talk further with the APA to get further clarification on that, it's their letter, so, you should probably talk with them about it. That's as much as I can make out of it in response to your question Dan, that's what I see.

**Dan Smith:** (illegible) we have a clear sense of what the difference is between a use variance and an area variance.

**Mike Hill:** They are definitely two distinct things, but again

**Dan Smith:** enough for now.

**Priscilla Remington:** Ok so what's done next.

**Mike Hill:** Because of the fact that APA has overturned the use variance, there's no area variance to consider at this point, there is no project in which the area variances can be applied, so there's no ruling to be made on the area variances so I think you're concluded here. (illegible) application.

*Jim Steen returned to the board.*

**Priscilla Remington:** All right new business

**File # 2009-13AV Paul and Randi Nolan** seeking a 400 square foot dock surface variance and a 160 foot dock length variance to construct a 100' x 4' wetlands walkway with attached 100' x 4' floating dock on parcel located at 339 Palisades Rd in the R1-10 acre zone.

**Erin Hayes:** Well, I'll be brief, I represent Paul and Randi Nolan with regard to their current application, the parcel that they own is located across Palisades Rd on the lake the entrance to Shultz's across the street from the small cabin (illegible). All of the parcel is located in that section of lakefront have essentially man made jetties, that step on out into the lake. They were created a long time ago before zoning and they

are made of dirt, earthen jetty. Obviously at this point putting an earthen jetty out into a section of wetlands is not a viable option for my clients to be able to have any possibility use of their lake front, however, one option that the Adirondack Agency has explored in situations such as this (illegible) would need to cross wetlands in order to get to navigable water, for purposes of boating, docking (illegible) swimming, is to install what's called a wetlands walkway which is what my client wishes to do they have an applications before both the APA and DEC. The APA is planning to do their site visit in July. Basically what it is is a dock, however, instead of pouring concrete cemented piers or building rip-rap bank they use screws, they are enormous screws but they are screws, they do down into the mud. It drastically reduces the environmental impact of crossing a section of wetlands because then the decking for that, that's attached to those screws is placed up above it. So essentially the wildlife and fauna can get underneath it undisturbed. (illegible) Obviously their application is going to go through rigorous scrutiny both here and with the Adirondack Park Agency, (illegible) our process here is to get our application deemed complete and get the matter scheduled for a public hearing. We (illegible) with an application, a SEQRA review form, a scaled site plan and a copy of the deed along with our check to Chris. (illegible) scheduled for a public hearing. (illegible) ask the attorney any question that you may have, the site plan you have before you is actually a revised site plan that was prepared after the initial site visit by DEC and additional measurements taken over the winter by surveyors to indicate where the true boundary of the wetlands ended and therefore made our request to this board the minimum possible variance amount that would be necessary to get them out to navigable water where they can then dock a boat.

**(Illegible talking)**

**Erin Hayes:** The wetlands walkway?

**Gary Frenz:** Yes

**Erin Hayes:** The screws go in two and a half feet into the mud so

**(laughing)**

**Gary Frenz;** I seen twenty foot pilings be lifted right up out of the water

**(laughing)**

**Erin Hayes:** the intent, they are the same screws that they use to get through the wetlands up at the Vic etcetera even if they shift somewhat each year based on the

overlying structure (illegible) held in place (illegible). The visitor information center that are throughout the Adirondacks .

**Dan Smith:** Paul Smith's

**Erin Hayes:** yeah, they actually do exact type of screws that we will get (illegible) for this project and they've held up to ice for quite a long time.

**Dan Smith:** What's the depth that they were looking for for navigable water?

**Erin Hayes:** They would just like to be able to get out to six feet, the draw of the boat which you have to go out very, very far in that section of the lake to be able to get to six feet of water without sucking mud in the intake. Where they propose to locate it you should know does not impact the docking or beaching availability of the neighbors, the other jetties are further down and I think it's indicated on the proposed picture we gave you, there also, the one that comes off of Kenny Higgins' cottage is off the side because they ran it parallel with that one so that it wouldn't impact his ability to get a boat in.

**Priscilla Remington:** and the other one that's close to there too?

**Erin Hayes:** The other side of the um

**Priscilla Remington:** Lamey

**Gary Frenz:** Lamey and Nolan's is the next (illegible)

**Erin Hayes:** Bill,

(illegible talking)

**Erin Hayes:** No, Lamey's dock is a, goes straight off the land, not off the jetty.

**Priscilla Remington:** oh, I know that, but it goes straight out.

**Erin Hayes** Yup

**Priscilla Remington:** It goes straight out and Kenny's goes this way.

**Erin Hayes:** they don't even come anywhere close to each other.

**Gary Frenz:** what about the hundred foot dock that Lamey share's with other people, that's becoming part of this dock

**Priscilla Remington:** No

**Erin Hayes** No

**Gary Frenz;** there's a big hundred foot dock on Lamey's, at the end of Lamey's house right now.

**Gary McMeekin:** it's an eighty foot dock

**Gary Frenz:** eighty foot dock

**Gary McMeekin:** owned by the Nolan's, ok, now my point being, I would assume that,

I shouldn't say that (illegible) move the docks what they are going to do if they get the approval.

**Erin Hayes** Yes

**Gary McMeekin:** I mean it's their docks, it's all....

**Erin Hayes;** Yes, They would like to have the docks directly across from the house on land that they clearly own, there was as title issue with regards to the (illegible) common ownership, the land down by the Lamey's and so they'd like to have it on land that's clearly theirs with their dock and so there's no potential for any question.

**(laughing)**

**Erin Hayes:** (illegible) commonly owned dock (illegible) question, so

**Dan Smith:** that dock that's presently there though Gary, that has a permit and all that

**Gary McMeekin:** yes, that was pre-existing wood dock eighty foot out probably pre-zoning regulations. ok what happened was that they were just replacing that with a new dock system (illegible)

**Priscilla Remington:** you have to get a permit for that Gary?

**Gary McMeekin:** it was pre-existing, but they did get a permit, yes they did.

**Priscilla Remington:** OK, cause

**Gary McMeekin:** yes, absolutely

**Priscilla Remington:** ok, all right, cause I'm going to see if I

**(laughing)**

**Dan Smith:** so the owner's did that

**Priscilla Remington:** cause he told me I have to get a permit

**Gary McMeekin:** beg your pardon

**Priscilla Remington:** cause you told me I had to get a permit

**Dan Smith:** (illegible) the owner's of that dock could put another in there? I mean, they have a right to put a dock in there.

**Gary McMeekin:** yes, it was a pre-existing dock, they just upgraded it to a system, the same footprint

**Dan Smith:** I mean, in other words, even though the Nolan's move over, the owners, the other owners of that piece of land could put another eighty foot dock in.

**Gary McMeekin:** right, (illegible) they have to do it within a year, if they keep it out for a year then they have to start over.

**Dan Smith:** ok

**Jim Steen:** Just out of curiosity, how far are these screws have spacing on (illegible) a hundred foot walkway. I'm just curious.

**Erin Hayes:** (illegible) they haven't finished the design by, we have to (illegible) the gentlemen that designs the walkway for that and they haven't finished discussing,  
**(Laughing)**

**Erin Hayes:** But from what I learned in talking to Mark (illegible), they basically go every eight feet out, you would put in another set of two screws going down in it.

**Bernie Hill:** why not (illegible)

**Erin Hayes:** the APA would not allow it.

**Mike Hill:** (illegible) asking, in light of the question Jim that you just asked, what kind of a map or drawing or whatever is provided depicting those walkways to those docks. Have we gotten that (illegible).

**Dan Smith:** (illegible) get Harry's questions, where's the scale.

**(Laughing)**

**Erin Hayes:** well, we can provide you with the full size version.

**Dan Smith:** well, if we ask of one, we've got to ask of everybody

**Erin Hayes;** Yup

**Gary Frenz:** Yeah

**Erin Hayes;** There's actually a really good survey map, so I'll just get you a copy (illegible) full size map

**Priscilla Remington:** (illegible) SEQRA form submitted?

**Christine Smith-Hayes;** Yes, but I think it's a class A and they are getting a APA permit, so a SEQRA probably won't be necessary then.

**Priscilla Remington:** ok

**Mike Hill:** If it's a Class A than it would likely to be exempt. I will have to check. Do you have an APA application pending?

**Erin Hayes:** Yes we do

(illegible talking)

**Cheryl Erickson :** I make a motion to deem the application complete and schedule a public hearing.

**Dan Smith:** I'll second that.

**Priscilla Remington:** All in favor

**Board:** Aye

**Priscilla Remington:** Ok, next on the new business

**File # 2009-12AV John Shatraw** seeking two (2) one foot (1') side yard setback variances and a thirty four (34) square foot dock surface area variance to construct a thirty two feet (32') by two foot (2') dock on a ten foot (10') wide parcel located on State Route 8 in the R1-1.3 acre zone. Do you want to give us a short explanation of what you want to do?

**John Shatraw:** are you sure you don't want to do a long one?

**(Laughing)**

**Gary Frenz:** we've got til midnight

**Priscilla Remington:** and you don't have your lawyer here, do you?

**(laughing)**

**John Shatraw:** (illegible) why I'm here

**(laughing)**

**John Shatraw:** I have a camp up on Orlin Duell and have a piece of property down on Route 8. My wife and I have been talking (illegible) for a while (illegible).

**Priscilla Remington:** it this a really tiny piece of property?

**Johh Shatraw:** I think we've got one of the three smallest pieces of property on the lake because the rest were all deeded at twelve feet and mine is ten and the one's next to me are ten as well. We've got the three smallest pieces.

**(Laughing)**

**John Shatraw:** I say you could pull a car in but you would have to back straight in

**(Laughing)**

**(illegible talking)**

**Dan Smith:** you are right in the middle of two narrow lots that each have a dock on it?

**John Shatraw:** yes, Gary's (Scidmore) is to the left. I don't know, I have a picture.

If you look at the three parcels, Gary's dock is to the left of (illegible) this property, this one here is a couple, I didn't even see this one here. I don't know what but the dock here, I'm kinda in the middle of the, there on the far side and I'm in the middle

**Dan Smith:** how much space between each dock

**John Shatraw:** Probably, well there's three on each side so twenty four feet (24') between the docks, I think you can see the one dock (illegible), you'll see Gary's (Scidmore)

**(illegible talking)**

**(laughing)**

**Dan Smith:** where do they put their boats, do you know, they put them on the outside or the inside?

**John Shatraw:** they're on the outside, according to that drawing, and according to what I see the one dock is a permanent fixture.

**Cheryl Erickson:** (illegible) seven or eight feet available (illegible)

(illegible talking)

**Cheryl Erickson:** on a ten foot wide property, you know what I mean, you're asking for a two foot dock with an eight foot wide (illegible)

**John Shatraw:** I probably would have to, (illegible) the mathematics (illegible) works any other way

(illegible talking)

**John Shatraw:** I all ready have a boat, it's (illegible)

(illegible talking)

**Gary McMeekin:** If that's what the board decides, then the application would have to change to whatever you have to do to (illegible) move to this side, the application would be changed to (illegible) variance request (illegible)

**John Shatraw:** like I said, mathematically I don't think it works out (illegible)

**Priscilla Remington:** the variance request is

**Gary McMeekin:** (illegible) one side or the other, you have to change the variance request

**Cheryl Erickson:** (illegible) the existing dock (illegible) so you can speak with these people so they get a, you know, there is a better side to the right or to the left (illegible)

**John Shatraw:** I could meet with them and discuss it, I have no problem with that, I'm not, nothings set in stone, I just want to get my boat out into the water, (illegible) **Gary**

**Frenz:** his (illegible) looks like it's right on the line with his neighbor, (illegible) the shadow, goes right down the middle of the line.

(illegible talking)

**John Shatraw:** I don't know these folks, other than in speaking with Gary (Scidmore) on the phone after Mr McMeekin gave me his phone number, I don't know so I'm only speculating on who's dock is who's. I know the one that's there next to me is a wooden structure and it's a permanent structure. Its permanently placed as to where it is now. (illegible)

**Mike Hill:** Do you have a sense that, I understand what Cheryl has said about the

position of what the proposed position of what the dock would change of what's written here but as written, it says, seeking two (2) one foot (1') side yard setback variances. What's the minimum side yard setback.

**Gary McMeekin:** five foot (5') is the minimum that we have to get from any setback for a dock in that area, this is a ten foot (10') total shoreline. What we are looking for is the twenty percent minimum (illegible) Cheryl's suggestion makes a lot of sense, move it to the side and make it one hundred percent variance for the boat coming up and not (illegible)

**Dan Smith:** (illegible) scaled drawing of that aspect of it just showing where the final proposed dock is and the variance setbacks and the scale of that.(illegible)

(laughing)

(illegible talking)

**Priscilla Remington:** I'm glad you live on the lake, (illegible)

(illegible talking)

**John Shatraw;** I believe when I was down there, Gary's was in. (illegible) it was a month or so ago. What I've seen there, I don't foresee that being a big issue. (illegible talking)

**Dan Smith:** is the access to your property clearly marked so if we want to look at it we can find it easily?

**John Shatraw:** What it is is three parcels start over from the pole, three ten (10) foot pieces, as I was telling my parcel, runs down between Gary's and Foster's.

**Dan Smith:** do you have

**John Shatraw:** you see mine has a big mound of dirt on it. (illegible) I haven't done anything with it, (illegible) some lines. I own the mound.

**Gary McMeekin:** I think what Dan is looking for is maybe some sort of marking near the shoreline where you get your ten (10) foot basis of what you are going to be working off.

**John Shatraw:** then I would have to say to do that, you would have to pull it off of, assuming that the existing dock that's there is legitimately on.

**Curt Castner:** You said a twenty (20) foot boat?

**Gary Frenz:** Twenty (20) foot long

**John Shatraw:** it's an open bow, it's a regular boat, it would be as long as two (2) tables. It's a little it bigger than Gary's boat, but not much, if you've ever seen Gary's boat. I think he has an eighteen foot or seventeen.

**Mike Hill:** Chris, you asked the question about advertising. Assuming that the board finds the application complete. Cheryl's made a really good suggestion, from a practical standpoint, it's doesn't seem t like there's any other way to configure this that would allow the space for the boat unless the dock is to one side or the other (illegible) property, which would (illegible) to modify the application as you pointed out Gary, so I guess we should ask you, is that agreeable from your standpoint, it seems to make practical sense.

**John Shatraw:** sure, we , these folks helped me with this stuff (illegible) and we just kind of threw it down. (illegible) there's not much alternative unless I put a canoe in.

**Curt Castner:** is Gary Scidmore one of your neighbors?

**John Shatraw:** again, I believe, I don't know this, lives across the street (illegible) so the little fella that has the (illegible) little house there across the street from Gary and then the three pieces of property that looks like his driveway and so forth are other people's property, one of them being mine.

**Mike Hill:** did you yet choose which side, on which sideline of the property you would propose to locate the dock. Along which side.

**John Shatraw:** um. I guess it just the right

**Gary McMeekin:** how about the left looking from the roadway, probably want to go to your left. (illegible)

**John Shatraw:** like I said, yeah that's fine.

**Mike Hill:** which compass direction would that be,

**Dan Smith:** southwest

**Mike Hill:** do we have a northerly side

**Gary McMeekin:** It would actually be on the east of it

**Mike Hill:** so if you're looking out from the land to the water, it's going to be in the left, that's going to be on the left, the northerly

**Gary McMeekin:** that would be the southerly

**Mike Hill:** southerly, so it would be the southerly property line. (illegible)  
(illegible talking)

**Mike Hill:** so that helps with prospective description, I think, you Dan, earlier asked for a scaled drawing of the proposed dock

**Dan Smith:** showing the proposed dock in relation to the property boundary lines and the lake. I think it's a good idea, some one mentioned showing the neighbors, just because of the closeness here, showing the neighbors docks as well, how close it is

to those.

**Mike Hill:** I was just about to say, I think that it seems like that would be a good suggestion to have a scaled drawing that going to show at least all three of these neighboring properties together and the existing docks.

**Dan Smith:** That's not normally a condition but I think in this situation, it calls for it.

**Mike Hill;** Yeah, everything is so close together there, I think I would suggest that you ought to have that for purposes of evaluating the proposal, so is that a sketch you could provide us to show that (illegible). The satellite photograph here is interesting, but it doesn't have the degree of resolution to really enable a real evaluation of (illegible) so a scaled drawing makes a good argument. I would strongly encourage that.

**Christine Smith-Hayes:** so we are doing a side yard setback of zero?

**Gary McMeekin:** that's right

**Christine Smith-Hayes; and a five foot (5') side yard setback on the right side.**

**Gary McMeekin:** variance

**Christine Smith-Hayes:** five foot (5') variance, ok

**Dan Smith:** I made a motion to deem the application complete and schedule a public hearing, upon receipt of the scaled drawing.

**Cheryl Erickson:** I seconded that motion.

**Priscilla Remington:** All in favor?

**Board:** Aye

**Priscilla Remington:** Meeting is adjourned.

*the meeting adjourned at 11:00 PM*

Respectfully Submitted.

Christine Smith-Hayes, Secretary