

# Town of Horicon

## ZONING BOARD OF APPEALS

**Minutes of April 28, 2009**

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

**Members Absent:** none

**Others Present:** Counsel to Boards Mike Hill, Town Board Member Bob Olson, Planning Board Member Harry Balz and Jim Remington

**Guests Present:** Erin, Bernie Hill, Tom Johanson, Bill McGhie, Charles Jelenick, Jack Haggerty, Roscoe Chase, Jane and Thad Smith, Matthew Fuller, Tim Beadnell, John Carfry, Maureen and Stephen Rossley, Paul and Marylou Carstensen, Peter and Anthony Polimino, Brad Williams, Jean and Scott and Robin Olson and others

### **PUBLIC HEARINGS:**

**File #2008-44AV Tax Map 55.14-1-5 James Fisher** seeking a 45' roadway setback variance to construct a boathouse with attached permanent dock on parcel located on Palisades Rd. Erin Hayes, representing the applicant stated that she has been in contact with George VanDusen, Assistant Engineer Warren County DPW, and a letter was presented to the board stating that a permit to work within the right of way is not applicable to the boathouse but a permit is required for work to be done to establish a safe work zone. Erin Hayes continued to state that work will not begin until the fall to reduce the traffic impact, warning signs will be placed on the project and no major equipment will be used within the mean high water mark. Priscilla Remington questioned how far the boathouse would be from the road. Erin Hayes stated that the dock will sit 16' from the edge of the road with a 5' ramp up to the boat dock, 11' feet from the edge of the road and 83' from the (Murray) neighbors property, Jack Haggerty stated that he owns the Murray property and stated that he submitted information to the board and does not object to the boathouse/dock but is concerned with the proximity of the boathouse to their boathouse and property line, as it will stick out 30' and impede the view up the land and vehicle safety issues due to the sharp curves and pedestrian safety suggesting that the boat house sit 120' from the side yard, internet search regarding safe breaking distance for vehicles stopping on a 30 mph road requesting the board impose restrictions if site distance. Erin Hayes stated that George VanDusen took site distance in to account walking the property. After a brief discussion regarding posted signs during the construction phase and stone steps Gary Frenz made a motion to close the public hearing, 2<sup>nd</sup> by Cheryl Erickson. All Ayes

**File # 2009-03AV 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 Chase submitted a letter from Surveyor, Jim Hughes regarding the subdivision lot design stating the development limitations. Dan Smith reviewed the letter stating the surveyors remarks regarding access, utility wires, steep slopes and view concerns. Roscoe Chase submitted information from the Town regarding the abandoning of the road stating that the road is gated but not locked, there is public access and the road is in good shape and the maintenance of the road would be the property owners responsibility. Priscilla Remington stated that the new owner(s) could plow the road for their access. After lengthy discussion regarding a right of way agreement, Cheryl Erickson made a motion to close the public hearing, 2<sup>nd</sup> by Gary Frenz. All Ayes.

**File # 2009-09AV Nicholas Chervinsky** seeking and 47.5' shoreline setback variance and an 8' side yard setback variance to replace existing 10' x 21' boat storage building with a 12' x24' boat storage building on parcel located at 7635 State Rte 8. Michael Hoff, Morse Construction representing the applicant explained the project stating that the structure is being expanded to the center and back of the property, no closer to the lake. Dan Smith stated that the board received the scaled plot plan as requested. Priscilla Remington made a motion to close the public hearing, 2<sup>nd</sup> by Gary Frenz.

The Regular meeting of the ZBA was called to order by Chair Priscilla Remington. Gary Frenz made a motion to accept the minutes as corrected, 2<sup>nd</sup> by Cheryl Erickson. All Ayes

### **UNFINISHED BUSINESS:**

**File #2008-44 AV Tax Map 55.14-1-5 James Fisher** seeking area variance to construct a boathouse with attached permanent dock on parcel located on Palisades Rd. Cheryl Erickson stated that the existing stairs eliminate any erosion concerns, the safety issue has been addressed regarding site distance, stopping distance. Priscilla Remington stated the proposed area in which the boathouse is being placed is the only logical placement. Gary Frenz stated that there are other

boathouses in the area and this is the best site overall with the steps and minimal road side excavation. Dan Smith stated that this was not a high boat traffic area. Discussion ensued regarding the amount of variances requested. Erin Hayes stated that this would be a 39' roadway setback variance request instead of the original 45' roadway setback. Dan Smith made a motion to grant the 39' roadway setback variance as there will be no undesirable change to the character of the neighborhood or detriment to nearby properties as this will only partially obstruct the neighbors view and is the best placement on the lot and there are several boathouses in the area. The benefits sought by applicant could not be achieved by an other means as the shoreline is the same anywhere along this parcel. The requested variance is substantial but the parcel is narrow and the applicant does not have the option to not be close to the road. There is no effect or impact on the physical or environmental conditions in the neighborhood as this will not effect boat traffic, there would be a minimum change in the shoreline, no streams or wetlands are involved. The alleged difficulty was not self created as this is a pre-existing lot tight to the road. Noting that this project is exempt from SEQRA review, 2<sup>nd</sup> by Cheryl Erickson. All Ayes.

**File # 2009-03AV Tax Map 55.-1-6Roscoe and Nancy Chase** seeking a 326.58' and a 231.52' roadway frontage variances to subdivide parcel located at 248 S. Ike Hayes Rd in the LC-10 acre zone. Counsel Mike Hill stated that this is unique situation regarding the qualified abandoned road as there is no maintenance done by the town, this is not a private road but the public has access to it and would like to review the law that would allow for subdivisions to move forward allowing access suggesting that the board reserve there decision tonight to allow for inquiry of the law. Dan Smith made a motion to table the decision until the May meeting and request counsel to review the matter of the qualified abandoned road issue, 2<sup>nd</sup> by Gary Frenz. All Ayes.

**File # 2009-09AV Nicholas Chervinsky** seeking a 47.5' shoreline setback variance and 8' side yard setback variance to replace existing 10' x 21' boat storage building with a 12' x24' boat storage building on parcel located at 7635 State Rte 8. Dan Smith stated that this project is a mild expansion of an existing structure away from critical areas. Dan Smith then made a motion to approve the 47.5' shoreline setback variance and 8' side yard setback variance to replace existing 10' x 21' boat storage building with a 12' x24' boat storage building as there will be no undesirable change to the character of the neighborhood or detriment to nearby properties as this is a storage building, minor expansion. The benefits sought be applicant could not be achieved by an other means as the applicant is expanding the existing building to the side and rear of the parcel, no closer to shoreline. The requested variance is not substantial, minimal expansion in width. There is no effect or impact on the physical or environmental conditions in the neighborhood. The alleged difficulty was not self created Noting that this project is exempt from SEQRA, 2<sup>nd</sup> by Curt Castner. All Ayes.

Jim Steen recused himself and sat in the audience.

**File # 2007-36AV Angela Vandermark (EZ Marine and Storage)** seeking Area Variances to establish a Commercial Marina on parcel located on East Schroon River Rd in the RRD-10 acre zone. Priscilla Remington stated that she would like to go through each variance individually starting with the density variance.

1) Density variance request: The required density is 3.2 acres, 2.136 acres applied for with the County land purchase which makes the variance request 1.064 acres. Gary Frenz stated that this is a narrow strip of land but it is an existing lot. Cheryl Erickson stated that this is a significant variance request with the full extent of the project but a reduction in the number of parking spaces would have less impact on the density.

2) Shoreline setback variance request: Discussion ensued regarding the number of shoreline setback variances needed. Gary McMeekin stated that variances are needed for the gas tank facility and the main building . Lengthy discussion ensued regarding the possibility of moving the main building toward the road in order to reduce the amount of variances needed. Discussion ensued regarding the 146' shoreline setback variance necessary for the gas tank structure and information in the file about the self contained unit.

Discussion then shifted to a current plot plan of the project with discussion amongst the board members, requesting the applicant to provide a revised plot plan showing the shoreline setbacks for the structures.

3) Side yard setback variance request: Gary McMeekin stated that the docking requires 200' side yard setback on both sides of the parcel, the docking is projected to be 22.5' from the southern most side of the parcel and meets more than the minimum on the northern most side of the parcel.

4) Dock surface area request: 400 square ft minimum required, 3,020 square feet applied for making the variance request 2,620 square foot Dan Smith stated that 400 square ft is the maximum allowed. Gary McMeekin stated that the calculation includes the fingers, dock sections and walkways.

5) Dock design request: Dan Smith stated that this is a E type of design referring to the plot plan submitted.

6) Parking Space request: Gary Frenz stated that 62 spaces are required for 31 boat slips. Lengthy discussion ensued with the applicant regarding the parking spaces that could be eliminated, the effect of parking near possible wetlands and the actual number of parking spaces needed for the boat slips, customers and employees taking the septic placement into account.

Mike Hill stated that the board has had a general discussion identifying the area variances needed and affirmed with the applicant as to the observations of the board as to the placement of the main building. Bernie Hill stated that with the purchase of the Warren County property the option is available to move the building and would be visually more appealing.

Discussion ensued regarding the mean high water mark of Schroon Lake. Bernie Hill stated that he has spoken with Warren County and the culvert must be removed, the grade of the property must be raised and the building could be moved up the hill. Discussion ensued regarding the existing docks, boat displays, vegetation placement. Gary Frenz stated that the main building should be built closer to the road for less impact on the shoreline and no impact on the septic placement. Discussion regarding the dock setback ensued regarding the 200' side yard setback requirement. Board was asked if the 177.5' is the minimum relief necessary. Gary Frenz responded by stating that this is the best placement for the docks as placing them further along the shore would be encroaching on the wetlands, adding to the existing dockage is recommended as the remaining shoreline could not support the docks due to slope etc. Dan Smith then stated that the dock surface area variance request is dramatic but appropriate as this is a marina not a residence. Bernie Hill stated that he could reduce the dock width to 3' to reduce the amount of variance requested by 320 square foot making the requested variance 2,300 square ft of dock surface area, adding that the walkway/ramp will need to be 4' wide to safely access the dock system. The applicant was asked if he would consider a reduction in the number of boat slips. Bernie Hill stated that it would not be economically feasible to reduce the number of slips as this is a seasonal rental and boat slips are the majority of income a Marina needs. Discussion ensued regarding the number of parking spaces needed and types of parking, customers verses employees, future parking issues and the new location of the proposed building. Mike Hill stated that the board has covered all variances necessary and wanted to briefly summarize the boards thoughts. 1) request a revised map showing the building moved closer to the road with a 50' setback from edge of the road. 2) revised dock plan showing 3' wide dock slips reducing the side yard setback from 177' to 161.5' also reducing the dock surface area from 2,620 square feet to 2,300 square feet, showing 26 parking spaces and reserving a number to be determined for the size of the store. Lengthy discussion ensued regarding the actual number of parking spaces that might be needed. Cheryl Erickson stated that she would like to see the flagged wetlands depicted on the revised plot plan. Discussion regarding moving the gas tank structure to lessen the required setback. Consensus amongst the board members stating that a longer hose would risk more spillage. Curt Castner made a motion to table this matter until the May meeting with the consent of the applicant requesting receipt of the revised plot plan, 2<sup>nd</sup> by Cheryl Erickson. All Ayes.

Jim Steen returned to the board.

Curt Castner recused himself from the board and sat in the audience.

#### **NEW BUSINESS:**

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

Matt Fuller representing Brant Lake Heights HOA stating that the ZBA upheld an appeal in December 2008 regarding the Notice of Violation issued by Gary McMeekin to remove 18 dock slips explaining the two parts of the current appeal application 1) DEC determination which is not a condition before the Planning Board and zoning does not require this to be met as a condition and 2) Multiple access dock situation involving section 9.70 involving bulk area requirements for subdivision approved between 1963 and 1987. After a lengthy accounting of his position that the previous Town Board's intent to exempt Brant Lake Heights HOA from any docking criteria, Matt Fuller concluded to request that this board grant the appeal application and allow the Conditional Use application be submitted to the Planning Board in so that the Brant Lake Heights HOA can complete the process, noting that there are people here from out of town requesting the board allow them to speak in anticipation of the public hearing.

Mike Hill stated that the board could take comments for the record in order for the board to determine if the materials presented are complete noting that this is not a public hearing.

Priscilla Remington stated that the board would take brief comments from audience members if they were not able to attend next months meeting.

Mike Hill reiterated that this is not a public hearing and if the board deems the application complete a public hearing would be scheduled for next month.

Frank Noon stated that he is speaking as a homeowner with beach access in his deed who obtained a title search for his property and now discovers he no longer has a dock would like clarification of beach rights, lake rights, dock rights.

Marion Rosselly stated that she purchased property in the subdivision one year ago and believed she was entitled to a dock slip continuing on the state she is imbedded in Brant Lake and wants to get to the root of the problem and doesn't see the big issue.

Brad Williams stated that he is the Treasurer of the Association and has the same desire to finalize this issue as the HOA

had 18 docks, there are 35 taxpayers that bought lots with deeded docks.

John Caffry attorney representing the Webster family stated that he has a 20 year history with this issue explaining that in 1990 Judge Dier overturned the ZBA's variance approval but Bob Olson built the docks on the parcel ignoring the Zoning Administrators Notice of Violations issued and then sold them to the homeowners. John Caffry continued on to state that the situation is not as simple as Attorney Fuller states with lengthy discussion on the zoning ordinance section 11.60.

Bob Olson stated that he is a town board member, not representing the town board but a member of the HOA objecting to John Caffry's statement that anything was done illegally as he sought to seek legislative relief from the Town Board in the new zoning ordinance.

Gary McMeekin stated that the ZBA denied the variance request in 1988, that decision was not appealed, the applicant again applied to the ZBA in 1990 and was granted the variance but that approval was overturned by the Supreme Court. the appeal was also denied, the proper procedure, if the appeal was granted, would be for the applicant to submit a conditional use to the planning board for their approval, Gary McMeekin continued to stated that the applicant's intent is to circumvent this ZBA specifically regarding Section 9.70.10 B which states "Any dock design parameters specified as part of the subdivision's original approval" submitting minutes from the Town Board and Planning Board meetings specifically stating that the Brant Lake Heights docks are not grand fathered. Gary McMeekin also submitted to the board a 2002 Deed to Olson Development Inc reciting 6 boat slips and an affidavit from the previous owner addressing future docks and dock rights. Gary McMeekin reiterated that the HOA is attempting to bypass the ZBA and contends that a project such as this requires variance approval before a conditional use can be sought.

Robin Gotchel stated that she grew up on Brant Lake and does not understand why this is being discussed again as this has been addressed at nauseam, continuing to state that Judge Dier's decision was a blow to the Brant Lake Heights and the town rewrote the code to address this situation and taking issue that her father is being accused doing something illegally.

Matt Fuller spoke again stating that the zoning law is clear and after the 1990 zoning case in which the court overturned the ZBA's decision, Bob Olson petitioned the Town Board to change the law.

Cheryl Erickson asked when the description in the deeds to properties in this subdivision changed from lake rights, to deeded dock rights. She stated that the timeline of events in this case seemed relevant to the request, and she asked specifically which year the deeds to this subdivision began granting "deeded dock rights" to the subdivision property owners.

Jean Olson stated that she worked for the town for 20 years in which this matter was discussed and believed the subdivision was grand fathered including the docks.

Priscilla Remington made a motion to deem the application complete and schedule a public hearing with the additional information requested, 2<sup>nd</sup> by Gary Frenz. All Ayes.

Curt Castner returned to the board.

**File #2009-11 AV Ridin-Hy Dude Ranch/Beadnell** seeking a 25' shoreline setback variance to replace existing two (2) bedroom 18' x 28' cabin with 5' deck with new two (2) bedroom 24' x 36' cabin with 5' deck on parcel located in the R2-3.2 acre zone located at 95 Ridin-Hy Ranch Road. Tim Beadnell stated that he would like to replace an oldest building that requires a 100' setback due to the tourist accommodation classification, the new cabin would not be any closer to the lake than the existing cabin. Gary Frenz made a motion to deem the application complete and schedule a public hearing, 2<sup>nd</sup> by Dan Smith. All Ayes.

**Board Privilege:** Training Reminder April 29<sup>th</sup> 5-7PM Town of Horicon

There being no further business before the board, Chair Priscilla Remington adjourned the meeting at 11:00 PM

Respectfully Submitted.  
Christine Smith-Hayes, Secretary