

# Town of Horicon

## ZONING BOARD OF APPEALS

### Minutes of January 26, 2010

**Members Present:** Gary Frenz, Curt Castner, Dan Smith, Cheryl Erickson, Alternates: James Steen and Thad Smith

**Members Absent:** Priscilla Remington

**Others Present:** Counsel to Boards Mike Hill, Zoning Administrator Gary McMeekin, Planning Board Member Harry Balz.

**Guests Present:** Ralph Bartlett, Tom Johansen, Chris Bedell, Donald Ford, Edward Kowalewski, Jr. John (Jack) Reifenburg, Wesley Butler Sr. Roscoe Chase, Ann Marie and Henry Pokripinski, Robert and Hilda Duell, Tom and Sally Thurston, Bill McGhie, Herta Leidy, Chris and Chris Burke,

#### Pledge

**Regular Meeting called to order by Gary Frenz, Chairperson**

#### NEW BUSINESS:

**File # 2010-01A Tax Map 89.5-1-11 Dan and Deanne Paull** seeking an appeal of Zoning Administrator's determination regarding acreage of parcel to keep animals on property where definition of farm, full or part time requires land in excess of one acre. Dan Paull stated that if he had one square foot over the acreage then he could keep the goats on his property, continuing to say that the recent tax bills are wrong. Being no discussion, Dan Smith made a motion to deem the application complete and schedule a public hearing, 2<sup>nd</sup> by Jim Steen. All Ayes.

#### NEW BUSINESS:

**File #2010-03AV Tax Map 72.17-1-4 Christopher and Christine Burke** seeking a 41'8" roadway setback variance to add an addition onto existing home located at 7 Duell Hill Rd. Dan Smith stated that he wanted the record to reflect that he and these applicants are good friends and go to the same church. Christopher Burke stated that the den extends off the main part of the house and would like to expand but house is very close to the road. Cheryl Erickson stated that the house is already non-conforming. Being no further comments or questions, Cheryl Erickson made a motion to deem the application complete and schedule a public hearing, 2<sup>nd</sup> by Curt Castner. All Ayes.

#### NEW BUSINESS:

**File #201004AV Tax Map 55.10-1-9 Anne Vandevander** seeking to modify or replace existing home on parcel located at 720 Palisades Road, Brant Lake. The applicant is being represented by Kevin Mulcahy of Eric & Eric. Kevin Mulcahy stated that the house is pre-existing non-conforming and it is more cost effective to remove the house and replace it would a new home 11' off the lake. Discussion ensued regarding the proposed variance request and clarification made that the applicant is requesting a 89' shoreline setback variance. Being no further comments or questions, Curt Castner made a motion to deem the application complete and schedule a public hearing, 2<sup>nd</sup> by Dan Smith. All Ayes.

#### PUBLIC HEARING:

**File #2009-35AV Tax Map 89.5-1-11 Dan and Deanne Paull** seeking a .20 acre density variance to keep animals on property where definition of farm, full or part time requires land in excess of one acre. Parcel located at 130 Duell Hill Rd Brant Lake. Gary Frenz stated that this Application is on hold due to filing of appeal File #2010-01A.

## **PUBLIC HEARING:**

**File # 2009-36 AV Tax Map 39.17-1-15 Betty Marriott** seeking 26' roadway setback variance to build a 14' x 36' x 15' high portable garage on parcel located at 7833 State Rte 8 Brant Lake. Betty Marriott stated that there would be sixteen anchors in the ground and no cement pad. Gary Frenz stated that there is shelf rock behind the area and this could not go back any further. Gary Frenz asked if anyone had any comments or questions. Being no further comments or questions, Cheryl Erickson made a motion to close the public hearing, 2<sup>nd</sup> by Curt Castner. All Ayes.

## **UNFINISHED BUSINESS:**

**File # 2009-36 AV Tax Map 39.17-1-15 Betty Marriott** seeking 26' roadway setback variance to build a 14' x 36' x 15' high portable garage on parcel located at 7833 State Rte 8 Brant Lake. Dan Smith stated that in reviewing the criteria that this is not self created as there is rock ledge in the back. Cheryl Erickson agreed together that there would be no undesirable change to the neighborhood looking at the map, it is canvas, non-reflective and there would be no detriment to other properties. Curt Castner added that this is not substantial. Gary Frenz stated that there is no feasible alternative as there is no better location will have minimal impact and no change to the topography, is moderately substantial but can't go back any further due to rock ledges. Curt Castner made a motion to approve the 26' roadway setback variance as there is no undesirable change to the character of the neighborhood or detriment to nearby properties, the benefits sought can not be achieved by any other means, the request is moderately substantial, there will be no adverse effects on the environment and is not self created. 2<sup>nd</sup> by Cheryl Erickson. All Ayes.

## **PUBLIC HEARING:**

**File # 2009-37AV Tax Map 55.17-1-25 Thomas McCann and Jennifer Winton** seeking a 100' shoreline setback variance for deck with stairs and a 80' shoreline setback variance for a retaining wall built on shoreline without permits. Parcel is located on 494 Palisades Rd Brant Lake, the applicant is being represented by Ralph Bartlett of Stock Farm Construction. Ralph Bartlett stated that the estate is being required to obtain the permits for the deck and wall in order for the property to be turned over to the children. Lengthy discussion ensued regarding the need to modify the stairs to the dock as the water is eroding the land under the deck. Gary Frenz asked when this deck was built. Ralph Bartlett stated that the work was done in 1985 - 1986. Gary Frenz asked if anyone had any comments or questions. Being no further comments or questions, Cheryl Erickson made a motion to close the public hearing, 2<sup>nd</sup> by Dan Smith. All Ayes.

## **UNFINISHED BUSINESS:**

**File # 2009-37AV Tax Map 55.17-1-25 Thomas McCann and Jennifer Winton** seeking a 100' shoreline setback variance for deck with stairs and a 80' shoreline setback variance for a retaining wall built on shoreline without permits. Parcel is located on 494 Palisades Rd Brant Lake. Dan Smith stated that character of the neighborhood will not change as this has been part of the property for years and more change would occur with the removal of the deck. The benefits are pre-existing, the requests are substantial but again pre-existing, the physical or environmental effects will be no more than as they already exist with twenty years of use having a minimal impact and was not self created as the new owners inherited the issue. After a brief discussion, Cheryl Erickson made a motion to approve the 100' shoreline setback variance for deck with stairs, a 80' shoreline variance for the retaining wall and a 2' height variance for retaining wall as there will be no undesirable change to the character of the neighborhood or detriment to nearby properties as there is no change due to pre-existence, the benefits sought by the applicant can not be achieved by other means, the requests are substantial, the difficulty was not self created, permits were not obtained by previous owners now looking to bring property into compliance, there will be no adverse physical or environmental effects and allow improvements to be made, 2<sup>nd</sup> by Dan Smith. Mike Hill reminded the board that feasible alternatives need to be examined. Dan Smith stated that he feels not granting the requests would defeat the objective. Thad Smith stated that this is not self created and moving it would incur a lot of expense. Gary McMeekin stated that the board could reduce the deck to 100 square feet. Lengthy discussion ensued regarding the size of the deck. Cheryl Erickson stated that she would like to withdraw her motion

and discuss the 100 square footage possibility. Gary McMeekin stated that the APA will not have a strong opinion if a deck is under 100 square feet. Cheryl Erickson stated that if the board reduces this by half there is still only a 10' setback from the lake. Mike Hill reminded the board to grant the minimum variance necessary and asked if the applicant had plans to modify the size of the deck. Ralph Bartlett stated there are no plans to modify the deck but to re-support the deck and repair stairs to the dock as this is the only access to the water due to ledge and stairs would be removed each year along with the dock. Lengthy discussion ensued as to the extent the deck extends over the mean high water mark, erosion of area, moving the deck back 3' and revision the variance request to 97', reducing the square footage of the deck by 42 square feet. Cheryl Erickson made a motion to approve the 97' shoreline setback variance for the deck reducing the square footage from 280 square feet to 238 square feet, the 80' variance request for the retaining wall and the 2' variance request for rock wall height as there would be no undesirable change to the character of the neighborhood or detriment to nearby properties as the undesirable change would occur if the deck is removed or altered, the benefits sought by the applicant can not be achieved by other means as this is the only access to the water, has been in existence for twenty years, the request is very substantial but to a minimum as it exists, there is no physical or environmental effects as removing it would create more of an effect, and this was not self created, but created by prior owner, 2<sup>nd</sup> by Gary Frenz. All Ayes

#### **PUBLIC HEARING:**

**File # 2009-34AV Tax Map 55.7-1-4 Thomas and Sarah Thurston** seeking a 73' shoreline setback variance to build a 22' x 24' screen porch addition on existing home located at 882 Palisades Rd. The applicant is being represented by Chris Bedell of Bedell Builders. Tom Thurston explained the project. Gary Frenz asked if this porch would be insulated with windows. Tom Thurston stated that this would only be a screen porch. Gary Frenz asked if anyone had any comments or questions. Being no further comments or questions, Dan Smith made a motion to close the public hearing, 2<sup>nd</sup> by Curt Castner. All Ayes

#### **UNFINISHED BUSINESS:**

**File # 2009-34AV Tax Map 55.7-1-4 Thomas and Sarah Thurston** seeking a 73' shoreline setback variance to build a 22' x 24' screen porch addition on existing home located at 882 Palisades Rd. The applicant is being represented by Chris Bedell of Bedell Builders. Gary Frenz stated that the home is 15' from the shoreline, built in 1946 and is a pre-existing non-conforming structure. Brief discussion ensued stating that the proposed porch is not any closer to the shoreline than the existing structure. Jim Steen stated that the house is barely visible from Palisades Road and no neighbors, and next home is over a quarter of a mile away. Cheryl Erickson stated that a porch placement on this side of the home has the most clearance from the shoreline, this is not near the road, no closer to the water, is a practical option and modest request since the home was built in 1946. Jim Steen asked if there would be a foundation. Chris Bedell stated that there would be a 4' crawl space due to rodents and frost protection. Cheryl Erickson stated that this porch would not work on the other side of the house. Dan Smith stated that there are no feasible alternatives that would require a smaller variance request and this is substantial at 73' but only due to the existing footprint of the home and was not self created as the home as existed since 1946. Gary Frenz stated that there are no physical or environmental effects. Chris Bedell stated that the roof line with match the house. Cheryl Erickson stated that neighbors will not be effected and this will not change anyone's view. Tom Thurston stated that trees would not be removed from the shoreline. Cheryl Erickson stated that there would be no further runoff to effect the lake. Curt Castner made a motion to approve as there is no undesirable change to the character of the neighborhood or detriment to nearby properties as the nearest home is a quarter mile away, the benefits sought can not be achieved by another method, the request is moderately substantial, there is no adverse physical or environment effects and this was not self created. Dan Smith stated that the motion should include the detailed discussion this board has had in reviewing this project. Curt Castner agreed to amend the motion to include the discussions. Motion was 2<sup>nd</sup> by Dan Smith. All Ayes.

The board took a ten minute break

#### UNFINISHED BUSINESS:

**File # 2009-25 AV Tax Map 55.10-1-22 Golden Pond/Farrell** seeking a fifty foot (50') shoreline setback variance a 3' side yard setback variance and a 5' side yard setback variance to build a three thousand two hundred ninety eight square foot (3,298) two (2) story home with walk-out basement on parcel located at 686 Palisades Road Brant Lake. Gary Frenz stated that the Planning Board recommended denial due to size and height of the structure, the storm water runoff effect on the lake and the percentage of the lot being occupied. Gary Frenz asked if there are any further discussion between the board members on this matter. The board discussed the draft resolutions as prepared by board members and clarified by town counsel. Mike Hill asked if any board member had any changes to the drafts. Dan Smith read the resolution (as attached) and made a motion to deny the requested 50' shoreline setback variance, the 3' side yard setback variance and the 5' side yard setback variances, 2<sup>nd</sup> by Cheryl Erickson. The Board was polled: Dan Smith Aye, Cheryl Erickson Aye, Jim Steen Aye, Gary Frenz. Aye Curt Castner Aye. The motion passed.

#### UNFINISHED BUSINESS:

**File # 2009-22 AV Tax Map 72.13-1-17 John Rifenburg** per revised plans received 11/18/09 for a proposed boathouse/dock/deck on parcel located at 32 Brant Lake Estates Loop Brant Lake. Variance requests are as follows:

- 1) 50' shoreline setback variance for second story deck,
- 2) 4' dock width variance,
- 3) 4' dock length variance (*limit on distance structures may extend from the shore*)
- 4) 276 square foot dock surface area variance.

Cheryl Erickson stated that there has been a lot of input from the public on this project. Dan Smith stated that his draft was to approve the dock width variance and the draft has changed significantly.

The board began by discussing the draft resolution **approving variance from limit on distance structures may extend from shore: (4' dock length variance)**. Mike Hill read the resolution asking if any board member had any changes. Being no changes Gary Frenz made a motion to approve a 2' distance structures may extend from shore, as stated in the resolution, 2<sup>nd</sup> by Cheryl Erickson. The board was polled: Gary Frenz Aye, Cheryl Erickson Aye, Jim Steen Aye, Curt Castner Aye Dan Smith Aye. The motion passed.

The board discussed the draft resolution **denying request for variance for 50 feet from shoreline setback requirement**. Mike Hill read the resolution asking if any board member had any changes. Being no changes Cheryl Erickson made a motion to deny the 50 foot shoreline setback variance, 2<sup>nd</sup> by Curt Castner. The board was polled: Cheryl Erickson Aye, Curt Castner Aye, Jim Steen Aye, Gary Frenz Aye, Dan Smith Aye. The motion passed.

The board discussed the draft resolution **denying request for variance of four feet from dock width limit**. Mike Hill read the resolution asking if any board member had any changes. Being no changes Dan Smith made a motion to deny the 4' dock width variance, 2<sup>nd</sup> by Cheryl Erickson. The board was polled: Dan Smith Aye, Cheryl Erickson Aye, Curt Castner Aye, Jim Steen Aye, Gary Frenz Aye. The motion passed.

The board discussed the draft resolution **denying request for variance of 276 Square feet from limit on dock surface area**. Mike Hill read the resolution asking if any board member had any changes. Being no changes, Dan Smith made a motion to deny the 4' dock width variance, 2<sup>nd</sup> by Cheryl Erickson. The board was polled: Jim Steen Aye, Curt Castner Aye, Cheryl Erickson Aye, Gary Frenz Aye. Dan Smith No. The motion passed.

**BOARD PRIVILEGE:** Gary Frenz stated the Jim Steen, Curt Castner, Thad Smith and he attended the training session in Saratoga and it was a very informative and well planned.

Gary Frenz nominated Cheryl Frenz as Vice-Chair, 2<sup>nd</sup> by Jim Steen. All Ayes

There being no further business before the board, Chair Gary Frenz adjourned the meeting a 10:10 PM

Respectfully Submitted.

Christine Smith-Hayes, Secretary