

**Town of Horicon
Zoning Board of Appeals**

**April 30, 2019
Minutes**

Present at Meeting:

Cheryl Erickson, Chairperson
Scott Olson, Vice-Chairperson
James Dewar
Rich Nawrot
Ross Schoembs
Troy Scripture, Alternate #1

Also Present: Town Legal Counsel Leah Everhart, Michael Bird, Thom and Sally Thurston, Jim Faber, Attorney Colleen Delcore, Michael Comisky, Bob Olson, Bill McGhie and Jim Steen, Zoning Administrator

Chairperson Cheryl Erickson called the meeting to order at 7:00 p.m.

Pledge

Review of Minutes: Scott Olson made a motion to accept the March 26, 2019 minutes as written. Second by Ross Schoembs. **ALL AYES.**

NEW BUSINESS:

**File 2019-03 AV
Tax Map 72.13-1-31**
James Faber
6929 State Route 8
Brant Lake, NY 12815

Requesting an Area Variance from **Zoning Code 6.10** to construct a walkway above wetlands to extend 95.1 feet to mean high water mark of Brant Lake to sit at 0' from the shoreline where 50' is required and an Area Variance from **Section 8.08 A.** for dock surface area of 1,085.6 square feet where maximum allowance is 400 square feet.

Jim Faber was present to speak about his proposed project. He stated that he is trying to gain access to the Lake through the wetlands. Winchip Engineering came up with a design to build a raised boardwalk over the wetlands out to the dock.

Scott Olson asked if this is similar to one approved next to his property.

Jim Faber responded yes it is the next parcel one over from the adjoining parcel that has a dock that is similar to this proposed project although he himself has more wetlands.

Chairperson Cheryl Erickson asked Jim Faber if he is currently working to resolve the APA issues that were addressed in the incomplete permit application.

Jim Faber responded yes and he spoke with Winchip Engineering today and will address all of the components that the APA wants addressed and the APA will schedule a site visit. He is hoping a site visit in the next month. He has left a message for the APA to find out when the site visit will take place.

Chairperson Cheryl Erickson asked if a deed is on file for this application.

Jim Faber submitted his deed into the record.

**Town of Horicon
Zoning Board of Appeals**

**April 30, 2019
Minutes**

Scott Olson asked Zoning Administrator Jim Steen if this proposed dock request is any different from the one the ZBA approved on the Greenwald property.

Zoning Administrator Jim Steen stated that Greenwald never came in for a permit and never followed through with putting in the dock. Mr. Liebowitz who has property up a little way from Faber property has a dock that is very similar to this proposal.

Chairperson Cheryl Erickson asked Zoning Administrator Jim Steen if there are any surface area restrictions on the deck itself.

Zoning Administrator Jim Steen stated that there are no surface area restrictions on structures.

Ross Schoembs asked how deep the water is at the end of the dock.

Zoning Administrator Jim Steen stated last July 2018 when Winchip measured the depth was at six feet; however, they consider three foot depth for docking the boat. They will be going out to measure again once water recedes again. The Planning Board will have to do a Site Plan Review on the length of the dock because it may exceed the forty foot maximum extension into the lake.

Town Legal Counsel Leah Everhart asked Jim Steen if the Planning Board will review this as a Class A or Class B project. If this is a Class A then there would not be any SEQR review on this project.

Scott Olson made a motion to deem the application complete and schedule a Public Hearing for May 21, 2019. Second by Jim Dewar.
ALL AYES.

NEW BUSINESS:

**File 2019-04 AV
Tax Map 88.17-2-11 & 14**
Michael Cominsky and Nancy Jeffs
30 Delaney Drive
Brant Lake, NY 12815

Requesting an After the Fact Variance from **Zoning Code 6.10** for a roadway setback for a gazebo to sit 43 feet where 60 feet is required.

Attorney for the applicants, Colleen Delcore was present to speak about this project. She stated that the map that was submitted with the application was not to scale and she passed out a new map of the property that was to scale to the Board members. This is an after the fact variance request that does not meet the roadway setback. The structure itself is a 380' square foot structure. There was a sideline issue as well but the two lots were merged and the merger process is completed.

Town Legal Counsel Leah Everhart asked Colleen Delcore if they actually merged the parcels for tax map purposes.

Attorney, Colleen Delcore stated that the County indicated there is no town sign off on a lot merger and that the person owning the property is entitled to merge the lots. The applicants were using the two lots as one anyway. This does not require local approval for the merger.

**Town of Horicon
Zoning Board of Appeals**

**April 30, 2019
Minutes**

Zoning Administrator Jim Steen stated that these are all in the same zone. Up until two months ago the county needed the Town Assessor to sign off on the merger; however, when the Town Assessor spoke with the county they determined there is no necessity for the Town Assessor to sign off on the merger and the property owners can merge their lots. They will never be able to be sold separately again without a subdivision and these lots if subdivided again would have to meet the Town's requirements for density and road frontage. Zoning Administrator Jim Steen told the Board members that he would get clarification from the Town Assessor by the next meeting.

Attorney Colleen Delcore stated that the practicality of how these lots are being used it would not make sense to have two lots. It has a contiguous driveway, the ancillary structure and the house. There are wetlands in the back of the property, north of the stone wall and that is one of this issues of why the structure had to be placed where it is placed.

Rich Nawrot asked about the APA determination letter that was included in the package Exhibit E page 3 that states, "This project will likely require approval from the Town of Horicon under its Agency-approved local land use program." Is this what we were just discussing?

Attorney Colleen Delcore stated that she included that document from the APA that was originally obtained in 1992 for the purpose of determining whether the lot that has been merged was a buildable lot. It was never built on and she included it because she wanted the Board members to see the constraints on the property is the wetlands in the back of the property.

Chairperson Cheryl Erickson asked if the tee pee has already been taken down.

Attorney Colleen Delcore stated yes, unfortunately it has been torn down and replaced with the gazebo. The tee pee was constructed in the early 1990's with the footings and the canvas became worn and not usable so they replaced the tee pee with the gazebo.

Being no further questions or comments Scott Olson made a motion to deem the application complete and set a Public Hearing for Tuesday, May 21, 2019. Second by Ross Schoembs. **ALL AYES.**

PUBLIC HEARING: **File # 2018-16 AV**
 Tax Map # 55.7-1-4
 Thomas and Sarah Thurston
 882 Palisades Road
 Brant Lake, NY 12815

Requesting an Area Variance from **Zoning Code 6.10** for a shoreline setback for the addition to sit 14' from the shoreline where 100' is required.

Michael Bird is representing the Thurston's proposed project at this Public Hearing.

Scott Olson wanted to get clarification that the map they will be looking at tonight is dated 3/15/2019.

Michael Bird responded that there is a new site plan and a new map to scale.

**Town of Horicon
Zoning Board of Appeals**

**April 30, 2019
Minutes**

Michael Bird refreshed that memory of the Board they own a 1.39 acre site with 598' 36" feet of shoreline. The current location of the house to the east is 82' 5" to the corner of the property. From the west corner of the property to the house is 450 feet. The existing first floor is 2,463 square feet and the existing second floor of the house is 527 square feet making the total square footage of the existing home 2,990 square feet. The length along the shoreline is 72' 5", the current set back of the existing house is 6' 6" from the lake and the building height is 26' tall. That is all the existing home as it sits today. I was asked by the owners to provide a new kitchen, additional bedrooms and to make the enclosed screen porch into a new great room. The site constraints prohibited expansion to the North and East due to the existing driveway and setbacks. Therefore it made sense to expand to the west behind the screen porch where the current driveway did not extend behind the house. The proposed addition does meet the clients future needs. The expansion consist of the following: the first floor expansion is 1,830 square feet, the second floor expansion is 817 square feet making the total 2,647 square feet.

Chairperson Cheryl Erickson asked if that included the decks.

Michael Bird responded yes that is including the decks. So they added 2,990 square feet making the building a total of 5,637 square feet. The original length of the structure was 72' 5" and they total length of the structure is now 102' 5", they added 30.5' to the structure. The overall height has increased to 30' 6". The setback from the addition to the lake is now 14'. They plan to remove seven (7) trees where the addition will be built plus add six (6) new trees in the front of the house. They will plant two (2) more trees in front of the dining room addition.

Scott Olson asked if the picture submitted represent the new green trees.

MB responded yes. In the picture you can barely see the second floor roof and even in the winter it will be hidden due to the trees.

We feel this is the best and smallest expansion to meet the client's needs. The original plan was 1,111 square feet larger and 7' 3" wider than the current plan. They pushed the addition back from the shoreline and pushed the second story further back from the original plan. The current neighbors on both sides have similar additions. They don't believe the character of the neighborhood will be effected negatively. We feel this will not create a negative impact physical or environmental, there are no wetlands involved and replacing the septic field will help the water quality for years to come.

James Dewar stated that last time they talked about a basement. Where will the access to the basement be located?

Michael Bird stated that there is an existing staircase in the house and they will be using that staircase to access the basement from inside the home.

Chairperson Cheryl Erickson asked the Thurston's how many kids they have.

Sarah Thurston responded that they have four children and the grandparents and cousins come to stay with them as well. They have two sisters in the neighborhood about 1/2 a mile in either direction.

Rich Nawrot asked if this will be used strictly as a primary residence.

Thomas Thurston responded yes.

Chairperson Cheryl Erickson asked the Thurston's if they primarily want to winterize the home.

**Town of Horicon
Zoning Board of Appeals**

**April 30, 2019
Minutes**

Thomas Thurston responded first to winterize and then to use it more often with the family.

Chairperson Cheryl Erickson asked when the Thurston's put the porch on the home.

Zoning Administrator Jim Steen stated that they received a variance in 2009 and they received a permit in February 2010.

Scott Olson asked if Michael Bird could talk more about the screening.

Michael Bird responded yes, and pointed out that the trees will be six (6) foot evergreens, Cedars to be more exact.

Chairperson Cheryl Erickson asked what the primary goals are for this project.

Thomas Thurston responded to winterize it and use it more with the family. Their children are getting older and they do expect grandchildren someday. They plan to spend more time at the home with their extended family. They have updated the home over the years and now just want to continue to update to meet their needs.

James Dewar stated that the mechanicals are archaic and part of the new plan is to update all of the mechanicals so by updating now everything will be brand new.

James Dewar stated that he had a roadway question. It seems like the two houses by your house share a driveway.

Thomas Thurston stated that Cindy Meade is the only neighbor that uses their driveway in the winter time because her driveway is too steep. She has her own driveway.

Ross Schoembs stated that the Thurston's had stated that they will end up with one extra bedroom with the new addition.

Thomas Thurston responded no he said that with the new design of seven bedrooms the seventh bedroom will be the extra bedroom because both parents spend time up here with the family. Right now people are sharing bedrooms.

Ross Schoembs stated that with four children and the relatives the seven bedrooms seems realistic.

Rich Nawrot stated that he did not see the kitchen on the existing floor plan.

Michael Bird showed Rich Nawrot where on the floor plan the kitchen is located.

Chairperson Cheryl Erickson asked if there were any more questions before they close the Public Hearing.

Chairperson Cheryl Erickson stated that for the record there are two letters from adjoining neighbors. The Tynebor-Hunt's are opposed to the project because it is too close to the lake and they feel it will compromise the integrity of the lake. Cindy Meade is confident that this project will be an improvement to the property and neighborhood. The Sidford's are opposed to the project because they think it is excessively long and too close to the lake as well.

Chairperson Cheryl Erickson asked if there were any more questions or comments.

**Town of Horicon
Zoning Board of Appeals**

**April 30, 2019
Minutes**

Rich Nawrot commented that this is a huge structure and he wanted to know if the Thurston's have any intention of this home becoming a Bed and Breakfast or renting it out.

Thomas Thurston stated never. They have no intentions of renting it out or of it becoming and Air B n B.

Chairperson Cheryl Erickson stated that they do have seven bedrooms and seven bathrooms so that could become an issue at some point.

Zoning Administrator addressed this issue. To operate a B & B the home would have to be owner occupied and approved by the Planning Board. However, the Town does not currently have regulations regarding rental by owner or air b-n-b's where people rent out their homes.

Thomas Thurston responded that they will never be renting out their home.

Chairperson Cheryl Erickson stated for the record the Thurston's indicated they have no intention of ever renting out their home or making it a Bed and Breakfast.

Being no further questions or comments Scot Olson made a motion to close the Public Hearing. Second by James Dewar. **ALL AYES.**

Chairperson Cheryl Erickson stated that this requested project will set a precedent so they must discuss this further. They received a variance years ago for a sizeable screened in porch which was at the time considered the minimum variance necessary. And now the project has taken another sizeable addition to winterize the existing house and add sleeping space for the growing family. They have to look at the other houses on the lake that are 5000 square feet or more but they are further away from the lake.

Cheryl Erickson asked if this project can be achieved by any other means feasible to the applicant. She thinks that it can be achieved by other means. Rich Nawrot agrees. Scott Olson stated that he does not think any other means are feasible because they can't build further back. Cheryl asked Scott to achieve what? To winterize the house and add additional bedrooms. James Dewar stated they requested the original project to be downsized from the original project and they did comply with that request. Chairperson Cheryl Erickson stated yes it has gotten shorter with less square footage, but we have to be wary here because they are setting a precedent if approved. What are alternatives to consider? Can they use the screen porch as part of the house to make bedrooms? They received a variance for in 2010 for that porch and at that time it was 6' away from the lake and the minimum variance necessary.

Town Legal Counsel Leah Everhart stated that the criteria they are discussing is whether the applicant can achieve the goal without needing a variance.

Chairperson Cheryl Erickson asked Scott Olson what he sees as being the applicant's goals.

Scott Olson responded that the goals are adding bedrooms to fit their expanding family and winterizing the home.

Scott Olson stated that he does not think they can achieve even a portion of what the applicant's want to do and stay within the current footprint and perimeter of the existing structure. Anything to the west is going to require a variance.

Chairperson Cheryl Erickson and Scott Olson had a lengthy discussion on the size of the variance and the distances from the addition to the lake and the impact on the neighborhood.

**Town of Horicon
Zoning Board of Appeals**

**April 30, 2019
Minutes**

James Dewar stated that he does not think that this addition as presented will have any negative effects on the neighborhood. If they were to build up then that would have a negative impact.

Ross Schoembs stated that the size of the home and thinking about the size of the family the seven bedrooms for that family does not seem excessive. Does the precedent take into account the parcel size and the topography of the parcel?

Chairperson Cheryl Erickson stated right now we are discussing if there are other feasible means to add this addition.

Rich Nawrot stated that they could put a third story on the building but that would have a negative impact.

Chairperson Cheryl Erickson stated yes that is taken into consideration.

Town Legal Counsel Leah Everhart stated the general idea of precedence is that when you have similar requests and acts in a similar way. That the Board does not selectively benefit some applicants to the detriment of others. It depends on the factors in the case. If the requests are similar than the outcome should be similar.

Rich Nawrot stated that this property is long and not very deep.

Chairperson Cheryl Erickson stated that she does not see other homes in the area with similar proximity to the lake.

Discussion by members of the Board continued with the question of whether or not this plan can be done by other feasible options. One member of the Board does feel that it could be done differently but other members think this is the only feasible option. The Board does not have to have a consensus on this subject.

The Board reviewed the Area Variance criteria:

Chairperson Cheryl Erickson stated that the Board would now go ahead and discuss the Balancing Test to balance the benefit to the applicant with detriment to the health, safety and welfare of the community.

The ZBA further finds:

1. The proposed project cannot be achieved by other means feasible to the applicant because the topography of the property only allows for the addition to go to the side of the existing home. It could be added by building up but that would not be architecturally appealing and too much of an impact from the lake. The applicants did move the addition back further when asked to do so. The goal is to winterize the home and extend the home for a growing family. It will be the closest to the lake of any the other larger homes on the lake. One Board member feels that a three story home has more impact on the lake than a two story home.

**Town of Horicon
Zoning Board of Appeals**

**April 30, 2019
Minutes**

2. There will not be an undesirable change in the neighborhood character or undesirable change to the nearby properties. It is consistent with other larger homes on the lake, Chairperson Cheryl Erickson for one does not think it is appropriate for the lot. Though almost all of the other larger homes are further back from the lake. However, some Board members do not think this is an undesirable change in the neighborhood character and some feel it enriches the character of the neighborhood. The neighbors that oppose the request is because it is too close to the lake. This will change the character but not necessarily an undesirable change to the neighborhood.
3. The request is substantial because it is an eighty-six percent (86%) variance request. All of the Board members are in agreement that this is a substantial request.
4. In order to determine if there will be any adverse physical environmental effects on the property or to the neighboring properties a storm water runoff mitigation plan must be submitted for the Board to review at the next meeting. There will be an increase in impervious surfaces and larger roof surfaces. They will be removing two trees # 5 and # 7 within the 35' setback and replacing eight (8) trees at least six feet (6') tall. Zoning Administrator Jim Steen stated that Town Code allows 30% of trees to be removed in a ten year period within 35% of shoreline.
5. The proposed project is self-created but not fatal to the application.
6. The question of whether or not this is the minimum variance necessary will have to be discussed at the next meeting on May 21, 2019 after receipt of the storm water runoff plan is submitted and reviewed by the Board members.

There will be conditions placed on this request that will include the shower be hooked into a septic system. Any trees replaced will be replaced if they die. The storm water plan be submitted for the Board to review at the May 21, 2019 meeting.

A motion to hold the discussion open until the May 21, 2019 meeting to further discuss the variance request was made by Ross Schoembs. Second by Scott Olson. **ALL AYES.**

Scot Olson made a motion to declare this a SEQR Type II action and not subject to SEQR review. Second by James Dewar. **ALL AYES.**

Reminder: none

Correspondence: New ZBA and Planning Board regulations governing the meetings be placed on the back of the Agenda's after approval by the Planning Board.

Public Comments: none

Board Comments: none

Being no further comments Scott Olson made a motion to adjourn the meeting. Second by Rich Nawrot. **ALL AYES.**

Adjourn: 9:15 PM

Next meeting date: *May 21, 2019*

Respectfully Submitted,
Terri Katsch, Secretary