

**Present at Meeting:**

Cheryl Erickson, Chair  
James Dewar, Vice Chair  
Rich Nawrot  
Ross Schoembs  
Troy Scripture  
Neil Brandmeir, Alternate #2

**Also Present:** Town Attorney Brian Reichenbach, Zoning Administrator Scott Olson, Steve and Cindy DeCarlo, Candida Fasano, Cyrus Similly, Ashur Crawford, Andrew Cappabianca, Larry & Lydia Bell, Sarah & Jim Hayes, Bob & Laurie Smalley.

**Pledge**

**Review of Minutes:** Ross Schoembs made a motion to accept the September 22, 2020 minutes as written. Second by Troy Scripture. **ALL AYES.**

**NEW BUSINESS:**

**File # 2020-01 Use Variance**  
**Tax Map # 88.-1-3 and 88.7-1-1**  
Mill Pond ADK Holdings LLC (Drew Cappabianca)  
Echo Mountain Road and 3 New Street  
Brant Lake, NY 12817

Requesting a **USE Variance from Section 15.70 Use Variances** to build up to four tent camping platforms.

Drew Cappabianca spoke about his proposal for a Use Variance on the Mill Pond ADK Holdings property. Drew would like to place 4 glamping campsites on the parcel to rent to tourists and that overlaps with the CR 20,000 overlay zone which is not an allowed use in that zone. He cannot put the campsites further up the parcel because there is too much ledge rock and it is not physically feasible. It is in line with the Towns Comprehensive Plan. It's leveraging our natural resources to support careers and business. It is behind the tree line and you will have no idea that the campsites will be there if driving by. It is a low intensity use for the property and will bring tourism to the Town.

Chair Cheryl Erickson asked if he would be putting water to the property. There will be no Yurts.

Drew Cappabianca responded no water will be there and just 4 tents.

Vice-Chair Jim Dewar asked where the porta-potty and showers will be located.

Drew Cappabianca responded that the trailer is near New Street and between the vegetation that grows there and the berm it will be physically invisible from Route 8.

Vice-Chair Jim Dewar asked where the #4 tents came from.

Drew Cappabianca responded that is what is physically possible in the space and is the only level land on the parcel.

Vice-Chair Jim Dewar asked Drew to explain how the 4 lots became one bordering with Echo Lane and one bordering New Street address.

Drew Cappabianca explained that the property he is talking about is the hill and Echo Road is the address. The parcel is land locked that does not have access by Echo Mountain Road. The parcel does not touch a road without going through someone else's property.

Chair Cheryl Erickson stated that with the Use Variance you have to show that for each and every permitted use under this Zoning Local Law for the particular district where the property is located that applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

Drew Cappabianca responded that it's not physically possible so it can't be financially possible. All the money in the world cannot achieve something that is physically impossible.

Zoning Administrator Scott Olson stated that for each and every permitted use under this Zoning Local Law for the particular district where the property is located the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

Drew Cappabianca responded the Hub is not relevant here. That is a completely separate entity. The Hub rents from the Mill Pond ADK Holdings. Ultimately Mill Pond LLC is relevant here.

Zoning Administrator Scott Olson asked if Mill Pond ADK Holdings LLC cannot make a profit without having these tents.

Town Attorney Brian Reichenbach stated the evidence he will come up with is up to him, but he needs to show any other uses that are permitted on that property cannot make a profit and would be a financial hardship. There is no particular set test, no percentage that he has to meet. He has to make that showing and it's up to the ZBA members to judge the sufficiency of that showing.

Drew Cappabianca responded that it's up to the ZBA members to make that determination.

Town Attorney Brian Reichenbach responded that it is up to Drew to put the evidence out there.

Chair Cheryl Erickson stated that they will have to have something like a projection about how much he can make over the summer having these four campsites versus not having them. There will have to be some kind of financial evidence or projection in order for the Board to address the request of the Use Variance.

Rich Nawrot read **Section B. Use Variance: #2** which states that no such use variance shall be granted by the Board of Appeals without a showing by the applicant that this Zoning Local Law has caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals. What is the unnecessary hardship here?

Chair Cheryl Erickson said well if you are in business and you can't make any money based on the area and if other permitted uses cannot be used to make money, he will have to show that this will make money for him if the use is permitted. He would have to show that no other permitted uses will be able to show a reasonable return unless he uses it for the tents.

Town Attorney Brian Reichenbach further clarified that the strict compliance with the law will cause an unnecessary hardship on the applicant, so the Board decides what, when and under what circumstances strict compliance with the Zoning Regulations is not required. Those are the factors that have to be addressed. Much like the area variance criteria have to be addressed. He has to present the evidence to the Board. There is no set formula to show how

much of a financial hardship there is. It is up to the applicant to present the evidence to the Board and for the Board to decide based on that evidence if its sufficient.

Drew Cappabianca do we all agree this is a separate project has nothing to do with the Hub. I'm leasing the property to the persons interested in putting up the tents. Mill pond is totally separate but I'm the landowner so I have to make the application for the Use Variance.

Vice-Chair Jim Dewar stated that right now you have that big parking and bike and hiking trails. Is that something you offer for free.

Drew Cappabianca stated that he pays the mortgage and the taxes on the bike trails and hiking trails on the hill and the public can use it for free.

Chair Cheryl Erickson stated that right now she does not see enough in the application for hardship and asked what other information the Board needs to see in order to address the criteria for the Use Variance. We could possibly deem complete however there are no financials included. The terrain does not allow this use for any other place.

Drew Cappabianca stated there is just no other place to put it.

Vice-Chair Jim Dewar asked if there would be a need to know projected income.

Town Attorney Brian Reichenbach stated that it should be left to the applicant to show his evidence at the Public Hearing and it is his decision on what he wants to present.

Chair Cheryl Erickson asked Drew if he could bring more information next month to present.

Drew Cappabianca stated that because of the Zoning Law there is really no other use for this property.

Vice-Chair Jim Dewar asked if we would need to know projected income.

Town Attorney Brian Reichenbach said that is left up to the applicant to show his evidence at the Public Hearing.

Ross Schoembs asked Are there going to be any meals provided.

Drew Cappabianca stated no plans for that.

Rich Nawrot asked if the campsites would have outdoor cooking.

Drew Cappabianca responded potentially.

Town Attorney Brian Reichenbach stated that the property is in LC 10 acre zone.

Zoning Administrator Scott Olson responded no, the property is in the Hamlet. The property beyond is in LC 10. So this is in the Mill Pond Overlay.

Town Attorney Brian Reichenbach asked Zoning Administrator Scott Olson if there is a specific definition in the code for a resort in the Mill Pond Overlay.

Zoning Administrator Scott Olson stated this fits specifically listed in the Mill Pond Overlay.

Vice-Chair Jim Dewar wanted to add that the tents are temporary structures to be taken down every year.

Being no further questions or comments Vice-Chair Jim Dewar made a motion to deem the application complete and schedule a Public Hearing for November 17, 2020. Second by Ross Schoembs. **ALL AYES.**

**NEW BUSINESS:**                      **File # 2020-07 AV**  
   **Tax Map # 105.2-1-33**  
   Cyrus G. Similly  
   7 Chestnut Drive  
   Crystal Lake, NY

Requesting an Area Variance from **Section 6.10** for two front yard setbacks to build a 28' x 28' garage

Cyrus Similly was present to speak about his request for an Area Variance for a 28' x 28' garage. He stated that he has owned the house since 1985 and he and his wife are now retired and this is now their permanent residence. The main road into Crystal Lake abuts his property line. There is also another road going up to his house that he shares, there is a road behind him that he shares. In front of his house there is a right of way road as well. His property is a little over an ½ acre. His property is boxed in that is why he needs the variance. It is difficult in winters to not have any place to store cars, plow truck and equipment. He currently has two storage units at exit 18 and he has to travel there to get the things he needs.

Zoning Administrator Scott Olson told the Board members that Mr. Similly has a very unique piece of property. He has roads that circle the perimeter of his property. His original idea was to put it close to the house but made a 0' sideline setback. So trying to work with him to get the best use of the property in order to put a garage on the property this was the best solution after many discussions and hard work by Mr. Similly to come up with other solutions.

Chair Cheryl Erickson asked if there are other homes on the other side of the road that you are requesting the variance from.

Cyrus Similly stated no that's just a right of way to get to the other two homes. There are two other homes on the other side of that road as well. The property line is the dark line and everything else is a shared road.

Zoning Administrator Scott Olson stated if the Board had the opportunity to visit the property they would see the roads he is talking about and it would be very helpful in making it clearer regarding the need for his request for this variance.

Vice-Chair Jim Dewar asked if these roads are on the tax map.

Zoning Administrator Scott Olson responded he is not sure about the tax map. They are seen on the GIS map.

Vice-Chair Jim Dewar asked if they are plowed year round.

Cyrus Similly responded that the Town does not maintain the roads.

Chair Cheryl Erickson asked Mr. Similly if the HOA takes care of them.

Cyrus Similly responded yes the HOA maintains the roads.

Rich Nawrot asked if the ROW's are considered roads.

Zoning Administrator Scott Olson stated yes, ROW's are considered the same as all roads.

Vice-Chair Jim Dewar stated he thought the 28' x 28' garage is quite large.

Chair Cheryl Erickson stated we can discuss those details at length at the next meeting.

Rich Nawrot asked if he will be storing a boat.

Cyrus Similly responded he does not have a boat. The measurements include the overhang and the inside measurement is 26' x 26' which will fit equipment, a motorcycle and cars but no boat. First time in my life I don't own a boat.

Being no further questions Rich Nawrot made a motion to deem the application complete and schedule a Public Hearing for November 17, 2020. Second by Vice Chair Jim Dewar. **ALL AYES.**

**PUBLIC HEARING:**                      **File 2020-06**  
   **Tax Map # 71.20-1-16**  
   Steve DeCarlo  
   6822 State Route 8  
   Brant Lake, NY 12815

Requesting Area Variances from **Section 6.10 for a Shoreline setback** for a 1.5 story 20' x 26' garage to sit 35' from the shoreline where 50' is required and a **Roadway setback** for the structure to sit at 43' from the roadway where 50' is required.

Steve DeCarlo spoke about his proposed 1.5 story garage project. Steve stated that his wife and he purchased the property earlier this summer and they created a vision for the development for a home located on the opposite side of the lake and a 1.5 story garage on the lakeside. They did not want to have a lot of outbuildings. They would like to be close as possible to the lake so they would condense any outbuildings to one 20' x26' garage on the lakeside lot in order to store a fishing boat, which they need 18' with the trailer, row boats and fishing gear. Also, to enjoy the lake. Proposing as shown so as not to interfere with the home being able to have a view from the home to the lake. Building the deck over the garage inhibits the setback to 35' from the lake and 43' from the road. He split it down the middle of the property trying to keep even distances from the road and the lake.

Chair Cheryl Erickson asked if there are any members of the Public that would like to speak about this proposed project.

Candida Fasano I'm a resident of Brant Lake for 12 years, it's a vacation property at 6800 State Route 8. I'm the neighbor. It is a very busy section there called suicide road intersection. She wanted to point out to the Board the property in discussion is a very delicate piece property. It's a waterfront property. It has beaver dams and lily pads. It's a special area. The property was purchased in June for a reasonable price because she thought it was unsuitable to build a garage on that piece of property. Building something in that area would change the landscape of the area. The south side of the property is the more logical place to build the garage and home. She was under the impression that it was wetlands from the APA and DEC and could not be built upon. She had even looked at purchasing the property herself but thought it was a wetlands piece of land. My question to the Board is whether this is a wetlands

piece of property. She would like to know who Brian Reichenbach is that indicated there is no permit needed from the APA that this piece of property is not wetlands.

Town Attorney Briand Reichenbach stated that there is no indication from the APA indicating the parcel is wetlands. Attorney Brian Reichenbach responded that it will have to go the APA for review; however, it does not need an APA permit.

Candida Fasano stated she would like to clarify who decides it is wetlands. Is there documentation that indicates it is wetlands.

Zoning Administrator Scott Olson made the decision according to the GIS system map and it did not indicate any wetlands on the piece of property. He offered to print out a map for the Board members to view.

Chair Cheryl Erickson asked if we could get a copy of that map and Zoning Administrator Scott Olson printed out the map from the GIS system which indicated no wetlands on that parcel. Just to be clear the Chair Cheryl Erickson asked Steve DeCarlo if you have a grill out there and bordered by rocks.

Steve DeCarlo responded yes that is his grill.

Troy Scripture mentioned a maple tree on the property.

Steve DeCarlo stated yes and that maple tree is in bad shape and will be coming down.

Chair Cheryl Erickson stated that she is not sure that the DeCarlo's will not have a water problem when the lake is high.

Steve DeCarlo stated that Zoning Administrator Scott Olson mentioned last spring when the water did come up high there was no water on the property. One of the reasons they selected the garage on the lakeside is because it's kind of a challenge to get people across Route 8 due to the dangers on the road. They have 2 family members who visit that are in wheelchairs and it would be better for them to not have to cross the road and stay on the lakeside. Also bringing boating stuff back and forth across Route 8 is a challenge. The lot is a building lot and could build something without requesting a variance. Because of the vision of where they want the house it is shifting the garage a little west therefore causing the variance request.

Chair Cheryl Erickson asked if the relatives in wheelchairs are going to be living there.

Steve DeCarlo stated no, they will only be there when they come up to visit for the day and go out on a row boat or just to enjoy the lake.

Chair Cheryl Erickson asked Steve DeCarlo if they are planning on having a dock.

Steve DeCarlo responded yes there was a dock on the property when they purchased the property and intend to have a dock.

Candida Fasano stated there is a lot of traffic in that area and she does not understand how the garage on one side of the road benefits having the house on the other side of the road. You would still have to cross the road to get into the house. Candida stated that everyone is welcome into the area and everyone has the opportunity to enjoy the lake so she is asking the Board to stick within the variances in trying to preserve the lake.

Zoning Administrator Scott Olson gave the map to the Board members and because the lot has three separate parcels, the only wetlands are near the third parcel across the lake in the upper corner not even on the DeCarlo property. The map was entered into the record showing no wetlands on the property of the proposed structure.

Ashur Crawford stood up to speak about the project. He asked the Zoning Administrator Scott Olson if he was saying that only this corner is wetlands and none of the other water frontage is considered wetlands. I have an adjoining right of way on the south end by Mr. Gurtowski's that is Gurtowski's dock and mine. On the water side. I'm directly across from the Boat Launch. My question is about the wetland area. Mr. DeCarlo has already improved his water frontage and I and Mr. Gurtowski have a dead tree on his property that the DEC will not let him touch because it is in a designated wetland area. They have tried to make improvements to their dock area and have been denied by DEC because it's a designated wetland area. Now according to this map, which Mr. Gurtowski has approached Zoning Administrator Scott Olson about and you have told him it is not a wetland.

Zoning Administrator Scott Olson stated that what he told Mr. Gurtowski is according to the GIS tool that we utilize determines that this is not a wetland area. Mr. DeCarlo has improved the waterfront which he is permitted to do.

Ashur Crawford stated so when the water goes over his lot that is not designated by DEC. You're saying the High Water Mark well I've seen the water go out to the road.

Rich Nawrot stated that is not the Mean High Water Mark.

Ashur Crawford asked what the High-Water Mark is.

Rich Nawrot explained that the Mean High Water Mark refers to the average height of the water throughout the season. With the enormous storms on Halloween last year caused the flooding. That was floodwaters.

Ashur Crawford stated, okay, floodwaters. So we can make improvements to our waterfrontage.

Zoning Administrator Scott Olson stated with the tools given to us a determination was made that the property in question is not in wetlands.

Chairperson Cheryl Erickson stated the area you are talking about by your place looks like wetland and I'm not sure their property has the same characteristics.

Ashur Crawford stated that the previous owner was using their runway to dock his boat. He stated that the lily pads and reeds don't just stop at the end of my Right of Way.

Zoning Administrator Scott Olson stated it depends on the type of improvements you want to make.

Ashur Crawford stated he wants to improve the water frontage. So then whatever is dry there you can tell us what we can do to the area.

Chair Cheryl Erickson asked if Steve DeCarlo what changes to the land will be done when you build the garage.

Steve DeCarlo stated essentially we will excavate to put in footings and a foundation. No intention of raising the elevation of the property. When completed the property will look the same as it does now.

Chair Cheryl Erickson stated so no fill.

Steve DeCarlo stated right no fill. The foundation wall will come 6" out of the ground and then the building. The property will look the same as it does today.

Candida Fasano asked Steve DeCarlo about three truckloads of rocks delivered that you put at the shoreline.

Chair Cheryl Erickson stated so that is fill. If you did something to shoreline that is considered additional material and considered fill.

Steve DeCarlo stated that yes he did put rip rap along the shoreline by placing the rocks on the bank and pressed them in.

Chair Cheryl Erickson asked Zoning Administrator Scott Olson if he was aware of the situation.

Zoning Administrator Scott Olson stated yes, what he did was stabilize the bank.

Chair Cheryl Erickson stated that in the past we have had trouble with people doing projects and pretty soon it's extended out further or made higher. Maybe we should not be doing any more changes.

Steve DeCarlo apologized and stated that he did not realize the two were connected and after discussions with Scott Olson I was okay to proceed with the conditions that are in place.

Chair Cheryl Erickson asked if there was soil moved or just rock placed.

Steve DeCarlo stated just rock.

Rich Nawrot has concerns that the overlay maps seem to contradict what these folks were told by DEC about wetlands.

Lengthy discussion ensued regarding whether or not to have the APA come out to look at the site to determine if there are wetlands on the property.

Chair Cheryl Erickson stated that their parcel is not marshy and very clear.

Ross Schoembs asked are we certain it's wetlands or not certain.

Troy Scripture stated he has been here for 52 years and would be opposed to having the APA come out because he believes it has never been wetlands.

Chair Cheryl Erickson asked what is the distance a structure has to be away from the wetlands if there are any.

Zoning Administrator Scott Olson stated it would be the same distance as from the shoreline. The wetlands would start at the lake and would not go beyond that. They are not asking for any side yard setbacks only from the shoreline.

Chair Cheryl Erickson asked Board member Jim Dewar, a long time resident, his opinion of whether the APA should look at it. She stated she looked at the property today in the rain and it did not look wet.

Vice-Chair Jim Dewar responded that the only issue that comes to his mind is when they dig for the foundation will they hit water. He always thought that wetlands are defined as the fauna and flora.



Troy Scripture stated that there on the far western side of the property there is a drainage ditch about 5' wide and 5' deep. He looked at it today as well and there was no water in the ditch.

Chair Cheryl Erickson stated that they are not doing anything in the water. Although where are you going to put you're your docks.

Zoning Administrator Scott Olson explained to the Board there was a dock on the property when the DeCarlo's purchased the property. There has been a channel over the years that the previous owners used to get to their dock. They utilize one channel to come in to their docks. There was a 20' x 3' dock on the property when the DeCarlo's purchased the property. Zoning Administrator Scott Olson stated he believes the channel was what Mr. Crawford was referring to.

After the discussion it was decided by the Board members that it would not be necessary to have the APA come to look at the site because there are no wetlands shown on the GIS map on the parcel.

Being no further questions or comments the Public Hearing was closed.

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 could possibly be achieved by other means feasible to the applicants because they could move it either to the other side of the road, which is not what the goal of the DeCarlo's is, or they could move it closer to the road mitigating the variance needed from the shoreline. Mr. DeCarlo stated that he has no problem in putting the structure 10' closer to the road. He thought when designing the project he would just put it in the middle of the roadway and shoreline. There will be no septic or well at this site.
2. There will be no undesirable change in neighborhood character or undesirable change to nearby properties. It is in keeping with different parts of the lake but there are a lot of structures that are close to the shoreline in the area. They will not be blocking views of the lake from other neighbors.
3. The request is not that substantial; however, they are reasonable requests. Perhaps they can move the structure closer to the roadway for a larger roadway setback and lesser of a shoreline setback.
4. The request will have some adverse physical or environmental effects on the property and to neighboring properties but they will be mitigated by an engineered storm water run-off system when constructed so the run-off would not go into the lake. They are not taking any trees down except twin maples that are not in good shape. There will be no fill brought in and no future development to the structure or the property. Cannot be made habitable space in the future.
5. The proposed project is self-created.
6. This is the minimum variance necessary because the applicants have agreed to move the variance request for the shoreline to a requested 5' variance from the shoreline for a garage to sit at 45' where 50' is required and a roadway setback of 17' for the structure to sit at 33' where 50' is required.

Being no further discussion and based on the previous discussion Chair Cheryl Erickson made a motion to approve the requested variance from **Section 6.10** for a shoreline setback for a 1.5 story garage, 20' x 26' to move the variance request for the shoreline to a requested 5' variance from the shoreline for a garage to sit at 45' where 50' is required and a roadway setback of 17' for the structure to sit at 33' where 50' is required. **With the following three conditions:**

1. A required engineered storm water run-off plan added to construction plans and executed at the time the structure is built.
2. Variance has changed 10' closer to road and they adhere to the changes made when constructed.
3. Never be made into a living space with water or kitchen or bathroom on that side of the road. No bedrooms either.

Second by Rich Nawrot. **ALL AYES.**

A Warren County Planning Review was completed and there will be no Warren County impact from the requested variances.

**PUBLIC HEARING:**

**File # 2020-04 AV**  
**Tax Map # 105.2-1-4**  
James and Sarah Hayes  
79 Hayesburg Rd.  
Brant Lake, NY 12815

Requesting an Area Variance for a Roadway Setback from **Section 6.10** for the addition of a 28' x 32' detached garage.

Jim Hayes spoke about his requested proposed project. He stated the good news is there are no wetlands on his parcel. The two lots have now been combined into one lot. That is the logical area to put the garage because it is a flat area, everything there slopes downward. There is a one lane dirt road to access his home which is an Association road that only he and his wife use.

Chair Cheryl Erickson asked if the only reason for the variance on this property is because the topography in the area.

Jim Hayes stated, yes because the back of the property drops off ten feet.

Rich Nawrot asked if he will be removing the shed.

Jim Hayes responded, yes the shed will be removed.

Chair Cheryl Erickson will any trees have to be cut if you moved it closer to the house.

Jim Hayes stated yes, if we put it closer to the home, we would have to cut too many trees down.

Chair Cheryl Erickson stated, so there will be no tree cutting in the flat area where you will place the garage.

Jim Hayes stated that is correct.

Chair Cheryl Erickson stated that several people here from the Public who did not wish to speak were there in support of the proposed project. They were as follows: Sarah Hayes, Larry and Lydia Bell, Bob and Laurie Smalley.

The Public Hearing was closed.

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 given the topography of the land this is the only flat space on the parcel to place the garage.
2. There will be no undesirable change in neighborhood character or undesirable change to nearby properties. Given the location the only ones that will see it will be the Hayes family.
3. The request is not that substantial; percentage wise and the road is a dirt road.
4. The request will have no adverse physical or environmental effects. It may have a little storm run-off but it is a flat area. There will be no trees removed. It is the most reasonable variance he can request.
5. The proposed project is self-created but not detrimental to approval.
6. This is the minimum variance necessary and does not need any conditions placed on the request.

Being no further questions or comments Vice-Chair Jim Dewar made a motion to approve the variance request for a garage to sit 44' where 60' is required. Second by Ross Schoembs. **ALL AYES.**

**Reminders:** None

**Correspondence:** None

**Public Comments:** None

**Board Comments:** Rich Nawrot asked Zoning Administrator Scott Olson if he had a chance to visit 456 East Shore Drive.

Zoning Administrator Scott Olson responded yes he did and he has a permit with a placard on the road indicating the work being done was permitted.

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

**Adjourn:** 8:56 PM

**Next meeting date:** November 17, 2020

Respectfully Submitted,  
*Terri Katsch, Secretary*