

**Town of Horicon
Zoning Board of Appeals**

**May 21, 2019
Minutes**

Present at Meeting:

Cheryl Erickson, Chairperson
Scott Olson, Vice-Chairperson
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 and Jim Steen, Zoning Administrator

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

Pledge

Chairperson Cheryl Erickson appointed Troy Scripture, Alternate # 1 in the absence of Board member James Dewar at tonight's meeting.

Review of Minutes: Scott Olson made a motion to accept the April 30, 2019 minutes with changes as per Chairperson Cheryl Erickson. Second by Ross Schoembs. **ALL AYES.**

NEW BUSINESS:

**File 2019-05 AV
Tax Map 105.2-1-9
Matthew Spinelli
101 Summit Road
Brant Lake, NY 12815**

Requesting an Area Variance from **Zoning Code 6.10** for a roadway setback in order to construct an addition of a carport to the existing garage to sit 49' where 60' is required.

Chairperson Cheryl Erickson asked if there was anyone present to speak about this project and then asked if the applicant was present to speak. The applicant was not present to speak about the project so the Board members decided to look at the requested project for a roadway setback for the addition of a carport.

Chairperson Cheryl Erickson asked that the deed be presented at the next meeting.

After the Board reviewed the application Scott Olson made a motion to deem the application complete and set a Public Hearing for June 25, 2019 with the condition that the deed be received by the next ZBA meeting. Second by Ross Schoembs. **ALL AYES.**

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PUBLIC HEARING: **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 and gave a quick review of his requested project. He stated that he is trying to gain access to the Lake through the wetlands by building a walkway. The large square footage is because he has to go out to the end of the dock in order to get the depth of water needed to dock a boat. Hopefully he will not have to go out that far with the dock in order to get the proper depth for the boat docking. He will only go out as far as is necessary to dock the boat. Winchip Engineering came up with a design to build a raised boardwalk over the wetlands out to the dock. The APA has a site visit planned on July 8, 2019.

Chairperson Cheryl Erickson asked the width of the walkway.

James Faber stated it is for four foot (4') wide.

Chairperson Cheryl Erickson stated she was at the property and asked Jim Faber if the neighbor had a walkway similar to his proposed walkway because she did not see it when she visited the site.

Jim Faber stated that his neighbor Patricia Greenwald was granted a variance for a similar walkway but never had the walkway installed.

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.

Scott Olson asked if this will be the same type of walkway as the Greenwald's.

Jim Faber stated that the APA will let him know what type of walkway will be necessary and he does not have any other alternatives. Whatever the APA regulations are is what he will install. They have a site visit with the APA scheduled for July 8, 2019 and Zoning Administrator Jim Steen and Winchip Engineering will also be at that site visit. The APA wants something that the light will pass through.

Scott Olson stated that all the dock manufacturers have a system for walkways above the wetlands.

Jim Faber stated that Zach Monroe from Winchip Engineering is working on putting together what the APA requested into the project.

Chairperson Cheryl Erickson stated that she was at the property site today and asked Jim Faber where on the property the walkway is going to be located.

Jim Faber showed Chairperson Cheryl Erickson where the dock, walkway and deck will be positioned in the picture that was presented to the Board.

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Marlene McGinson an adjacent property owner on the right of the Jim Faber stated that she has no objection to the proposed project.

Chris Burke is the neighbor across Duell Hill Road has no objection to the proposed project.

Being no further comments or questions Ross Schoembs made a motion to close the Public Hearing. Second by Scott Olson. **ALL AYES.**

Town Legal Counsel Leah Everhart asked Zoning Administrator Jim Steen if the APA determined whether this was a Class A or Class B project.

Zoning Administrator Jim Steen stated the APA determined this is a Class A project.

Town Legal Counsel stated that being this is a Class A project there will be site plan review and the Planning Board will make a recommendation to the APA. This will be an unlisted action under SEQR review.

After reviewing the SEQR form Scott Olson made a motion that this is an unlisted SEQR Action and the Board conducted an uncoordinated review and declared a negative SEQR declaration. Second by Troy Scripture. **ALL AYES.**

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 there is no other access to the water without the walkway over the wetlands.
2. There will not be an undesirable change in the neighborhood character or undesirable change to the nearby properties because this is a reasonable request that will not result in any undesirable changes. His neighbors have no objections to this proposed project. There are other places on the lake that have long walkways through the wetlands similar to this one.
3. The request is substantial because of the size of the wetlands so the square footage requirement requires going through the wetlands and some of the walkway is considered the dock. The width of the walkway is four feet (4') which is standard size. The applicant will stop at the depth of water needed to dock a boat which is normally three feet (3').
4. There will be no any adverse physical environmental effects on the property or to the neighboring properties because the APA will do a site visit to determine that he will be using a system that lets light through to the wetlands and this will be mitigated by the APA regulations which the applicant will adhere to and mitigate the impact.
5. The proposed project is self-created because the applicant purchased the property with the wetlands but it is not fatal to the application.
6. This is the minimum variance necessary and the walkway will be four feet (4') wide which is the minimum width and the dock will go out the minimum distance necessary to reach a three foot (3') depth of water in order to dock a boat. Jim Faber has the APA incomplete application and the APA will make a site visit on July 8, 219 to review the project.

The Warren County Planning Board has concluded that there is No County impact with this project.

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Being no further discussion and based on the previous discussion Scott Olson made a motion to approve the requested variance **with the condition that the end of the dock not extend beyond the necessary length to get a three foot (3') depth of water to dock a boat at its lowest point.** Second by Ross Schoombs. **ALL AYES.**

PUBLIC HEARING: **File 2019-04 AV**
 Tax Map 88.17-2-11 & 14
 Michael Cominsky and Nancy Jefts
 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 40' 3" feet where 60 feet is required.

Attorney for the applicants, Colleen Delcore was present to speak about this project. She reviewed the requested project for the Board members. She wanted to clarify that the tax map parcel is one parcel not two because it has been merged. The merger deed is included in the packet and is in Exhibit D. There is just one parcel now. This is an octagonal structure and is for a roadway setback variance request.

Chairperson Cheryl Erickson stated that this is an after the fact variance.

Colleen Delcore stated this is a replacement structure with footings. There are numerous structures in the neighborhood and is consistent with the neighborhood and is support in the neighborhood for this construction.

Scott Olson asked if there was a structure there before this structure was constructed.

Colleen Delcore stated it was a Native American teepee.

Chairperson Cheryl Erickson stated that Colleen is not claiming they are using footings from the tee pee for the new gazebo.

Zoning Administrator Jim Steen stated that the tee pee was substantially smaller than the current gazebo.

Michael Comisky stated that the footprint is the same, the perimeter is the same but the cubic footage is much larger than the teepee.

Scott Olson asked if the tee pee had a foundation and was it closed in.

Colleen Delcore stated yes it was closed in with a tarp.

Chairperson Cheryl Erickson asked the floor is a natural dirt floor.

Colleen Delcore stated yes it is a natural dirt floor.

Scott Olson asked if the teepee was there for many years.

Michael Comisky stated the teepee was built in 1993.

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Chairperson Cheryl Erickson stated for the record that the Board received two letters in support from the neighbors who stated it is pleasing to the eye and tastefully designed.

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

Being no further questions or comments Scott Olson made a motion to close the Public Hearing. Second by Rich Nawrot. **ALL AYES.**

Town Legal Counsel Leah Everhart stated that there was information from Warren County Planning stating no county impact from this proposed project.

Town Legal Counsel Leah Everhart stated that this is a Type II SEQR action that does not require review.

Scott Olson made a motion to declare this a Type II SEQR action with no review required. Second by Ross Schoembs, **ALL AYES.**

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 teepee has already been replaced with the gazebo.
2. There is no undesirable change in the neighborhood character or undesirable change to nearby properties because it fits in nicely with the neighborhood and you don't notice it is there. It is not the only building in the neighborhood that encroaches on the road setback. It matches the house and two neighbors have given their support for the proposed project.
3. The request is substantial, about 33% bigger; however, it is on the same footprint of the previous teepee and protected from the weather better than the teepee was.
4. The request will have no adverse physical or environmental effects on the property or to neighboring properties.
5. This proposed project is self-created as it is an after-the-fact variance but it fits the property nicely and no trees had to be removed to install the gazebo.
6. This is the minimum variance necessary and no conditions will be required.

Scott Olson made a motion to approve the after-the-fact variance for the roadway setback for the gazebo to sit at 40'3" where 60' is required. Second by Troy Scripture. **ALL AYES.**

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PUBLIC HEARING DISCUSSION CONTINUED:

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 continued discussion. Michael stated that Brett Winchip put together a storm water plan as requested by the ZBA at the April 30, 2019 meeting. This is a standard storm water management plan. It consists of a 2' by 2' gravel trench along the eve as indicated in the site plan as the dark area under the roof line. Brett Winchip did the calculations to determine the length of the trenching needed required to have 43.9' linear feet of trench however they will only need 188.5' of trenching. This maintains all of the runoff into the gravel area to seep back into the ground.

Chairperson Cheryl Erickson stated that they will be building a basement so she is assuming that once they go 3' down they will not hit any ledge.

Michael Bird stated that they will be backfilling that with gravel.

Scott Olson stated that this satisfies the request for the storm water runoff.

Michael Bird stated that since they are doing a basement they will be putting a gravel trench around the whole building.

Thomas Thurston stated that this will not be a full basement that will be accessed from inside the house for the mechanicals.

Michael Bird stated they will go down about four feet for the footings below the frost line and 16" from the slab.

Chairperson Cheryl Erickson stated that last month they discussed the landscape design and now tonight they have discussed the storm water design which is part of the record. That the outdoor shower will be connected to the septic. The date on sheet 2 of 6 will need a revised date (after the meeting it was determined that the correct revision date was on sheet 2 of 6).

Chairperson Cheryl Erickson stated that we did receive the Warren County Planning Department that finds that this project will not create any significant inter-municipal or county wide impact.

Scott Olson made a motion to determine that this is a SEQR Type II Action and requires no review. Second by Ross Schoembs. **ALL AYES.**

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Chairperson Cheryl Erickson stated that the Board would now go ahead and discuss the Balancing Test questions # 4 and #6 from April 30, 2019 meeting in order to balance the benefit to the applicant with detriment to the health, safety and welfare of the community.

The ZBA further finds that in reference to the adverse physical or environmental effects to neighboring properties criteria the Board finds:

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 was submitted and the Board had a discussion on the storm water plan. Based on the storm water plan there will be no run off that will affect the neighbors properties or on this property. There will be no runoff into the lake due to the trenches and trees within the 35 foot setback. They will be taking down seven trees and replanting eight trees that will be a mix of birch and arborvitae, a minimum of five feet at the time of planting and if they die they will be replaced as depicted in the landscaping plan.
5. The proposed project is self-created but not fatal to the application.
6. This is the minimum variance necessary because the lot is long and narrow. The topography of the property only allows for the addition to go to the side of the existing home. If building up it 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 applicant as a result of the discussion with the Board has affirmatively agreed to submit a letter from the engineer post construction be presented to the Zoning Administrator that prior to applying for a Certificate of Occupancy from the County the as built plan is in compliance with the storm water plan that was submitted.

Based upon the previous review of this project the Board determined to make a motion to incorporate last month's ZBA review (April 30, 2019) and incorporate the storm water management plan be included as well into these minutes.

Being no further discussion Scott Olson made a motion to approve File # 2018-16 AV for a shoreline setback to sit 14' where 100' is required with the following **conditions**:

1. The tree planting condition that the trees planted will be a mixture of arborvitae and birch trees to be no less than 5' tall for replacement of the seven trees that will be cut and planted according to the landscaping plan and if any trees die they will be replaced.
2. The storm water condition as previously discussed that the applicant as a result of the discussion with the Board has affirmatively agreed to submit a letter from the engineer post construction to be presented to the Zoning Administrator that prior to applying for a Certificate of Occupancy from the County the as built plan is in compliance with the storm water plan that was submitted.
3. The outdoor shower be connected to the engineered septic system.
4. The dates on the storm water plan page 2 of 6 be corrected. (After the Board meeting it was discovered that the correct date was on page 2 of 6 so there is no need for this condition).

All previous discussions of the Board concerning the balancing test be incorporated into this determination of approval as well. Second by Rich Nawrot. **ALL AYES.**

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Reminder: none

Correspondence: The APA let the Barber Variance exhaust it's time so the ZBA decision stands. The Howell's decision had a good outcome. The court accepted the ZBA Board members' identification of the minimum variance necessary.

Public Comments: none

Board Comments: This will be Town Legal Counsel Leah Everhart's last meeting with the ZBA board and Town Legal Counsel Brian Reichenbach will be the new attorney for the Boards.

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

Adjourn: 8:35 PM

Next meeting date: ~~June 25, 2019~~ June 18, 2019

Respectfully Submitted,
Terri Katsch, Secretary