

Present at Meeting:

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

Also Present: Town Attorney Brian Reichenbach, Zoning Administrator Scott Olson, Bonnie Rosbozom, Donald Rosbozom, Pete Palmer, Eric Thorne, Dave Betts, Sean McMeekin, Bob Cehowski, Todd Drake, Teri Schuerlein, Barbara Richard, Bob Olson, Art Dombrowski and Drew Cappabianca.

Pledge

Review of Minutes: Jim Dewar made a motion to accept the November 17, 2020 minutes as corrected. Second by Ross Schoembs. **ALL AYES.**

PUBLIC HEARING:

File # 2020-08 AV
Tax Map # 72.13-2-44
ADK Leisure Properties LLC
7027 State Route 8
Brant Lake, NY 12815

Requesting an Area Variance from **Section 8.09** for dock surface area of 721 square feet where 400 square feet is the maximum and a dock length of 96' where 40' is the maximum.

Art Dombrowski spoke on behalf of the project and briefly went over the proposed project again for the Public and the Board members. He stated that they are applying for a variance for a multiple access dock for the dock rights holders. It has long been an issue with not having enough dock space for the number of owners who have deeded dock rights. They are proposing a 15' extension in length as you can see from the overlay of the current dock space with the older dock system. It pretty much takes up the same amount of room area wise, the width of the docks and length into the water. It sticks out further than the current dock because it is located in a shallow bay and they need to provide 24" to 26" depth of water for safety. There are 14 deeded owners with a right to use a dock and they are trying to accommodate all the residents.

Rich Nawrot asked about the deeds.

Art Dombrowski responded that we provided the deeds.

Ross Schoembs asked about 2 numbers for the amount of docks for number 11 and 14. He wanted clarification on the number of docks.

Art Dombrowski responded there are 11 property owners that have 8 individual docks and 3 owners have 2 docks on the property. That's what makes the total 14 docks. We meet all of the requirements for a multiple access dock and if you used the formula provided we would be entitled to 30 something different docks with the 550' of lakefront. North Country Vacation properties owned the original piece of land and it was divided up in 1968 into 11 parcels with

attached deeded dock rights to each of the properties. Some deeds are original deeds from North Country Vacation Lands, Inc. Other properties have since been sold but have the deeded references.

Town Attorney Brian Reichenbach asked if the deeded rights are conveyed as ownership of the property itself or merely convey the rights to use the docks and the property to get to the dock, common owner or merely rights to use the docks.

Art Dombrowski responded that they have a right to use the dock.

Town Attorney Brian Reichenbach stated so, the dock is situated on the property owned by one single entity, ADK Leisure Properties LLC and no one else owns the dock, they just have a right to use it.

Art Dombrowski responded that is correct and the deed will say something like: "granting to the party of the second part, his heirs and assigns, the right to use a beach and dock one boat at the highwater mark of Brant Lake, to be used in common with others entitled thereto, as described in a deed from Panther Mountain Vacation Properties, Inc. to North Country Vacation Lands, Inc. and recorded...".

Rich Nawrot asked if the owners have the right to use a dock then does that mean everyone has a right to use a dock or just use a dock that's already there?

Town Attorney Brian Reichenbach responded to Rich Nawrot stating if there is a dock there to use, but if there isn't a dock to use then the property owners would have the right to build a dock. That would be beyond the scope of the Zoning Board.

Vice-Chair Jim Dewar asked for clarification on the page that was submitted with the original application showing ADK Leisure Properties, LLC is the owner of record timeline of ownership and wanted to know why that page was included.

Art Dombrowski stated that it just shows continuity from owner to owner and rights transferred with the deed.

Zoning Administrator Scott Olson explained that Roger Newkirk owns the 40-acre lot and the beach property.

Rich Nawrot asked who pays the taxes on the lakefront because it is not an association.

Art Dombrowski responded that it is not a formal association and he cannot answer the tax questions, he just pays his own tax bill.

Zoning Administrator Scott Olson stated that this is a one-off tax situation. They divided up the taxes so that all of the people that have access to the beach lot pay a portion of the taxes.

Rich Nawrot said then there is one owner of the beach lot.

Zoning Administrator Scott Olson stated that this was done many years ago and would not be done today.

Chair Cheryl Erickson stated then its not seen on the assessments.

Zoning Administrator Scott Olson spoke to the Board members in his capacity as Zoning Administrator stating that this a multiple access dock and the Planning Board reviewed this application as well and they approved the application for dock length with the condition the Zoning Board approves the variance.

Chair Cheryl Erickson asked the Town Attorney if the owners have a right to put a dock in or build one?

Town Attorney Brian Reichenbach responded that there are a couple of rights, there are mooring rights at a buoy, there are high water mark mooring rights and rights to use a dock. They are not owners of that parcel which goes to Cheryl's question about multiple access docks. They have rights to use a dock.

Vice-Chair Jim Dewar asked if we can use pre-existing non-conforming when it comes to a dock.

Town Attorney Brian Reichenbach stated that does not apply here because they are not asking for that. At this point it's the Board's charge as to whether this is a multiple access dock or not. That will determine which standards apply and how much of a variance is needed and from what standards.

Art Dombrowski stated that the intended use was for the owners to have a dock. If it was deeded into the deeds the intended use was for all parcels to have their own dock to use because deeded rights are transferable with the deed. So, when they purchased the property with deeded rights, they have a right to assume that right and it is granted so they expect to have a dock. He thinks this is a multiple access property, that's the way it was set up.

Members of the Public got up to speak to this issue.

Eric Thorne, agent for Jaqueline Rikard at 35 Pleasantview Road stated they support the proposed dock plan. There won't be any negative impact on the lake or the beach area and will give them the opportunity to have the dock rights as deeded to them on March 15, 1973. The property and home have been in the family for the past 47 years. Without the variance the property will be affected negatively, and this is a fair plan which includes all equally. It will give the opportunity for their families to enjoy the lake and beachfront for years to come.

Todd Drake spoke and he is purchasing a property that is a part of this requested proposal. This plan codifies the existing circumstances. It takes the mooring out of the lake and puts it nice and neatly as a new dock. Enables the property owners use of the lake. Puts to bed decades of confusion.

Sean McMeekin spoke and said he lives at 53 Pleasantview Road, which has two deeded dock rights as deeded in 2010. They have enjoyed the beach, but this situation has been opaque considering the docking rights. It has affected his property value negatively with not having the docking. Now that his children are older, he would like to have a dock in order to enjoy the lake with them. The plan does not affect the landscape or the beach. He thinks this plan is transparent and fair to everyone. It will affect the property owners positively and will give his children something to look forward to.

Troy Scripture asked what type of docking system is this?

Art Dombrowski responded it is a permanently fixed aluminum dock, brand name of Floormaster that allows light to penetrate. The exiting dock is the same and will just be reconfigured. The water is shallow there with a sandy bottom.

Rich Nawrot asked a question about something on the application. It shows the existing 550 square feet and it will expand to 721 square feet. The request for the variance is 321 square feet so he is a little confused.

Zoning Administrator responded if you subtract the 400 square feet maximum from the 721 square feet you get the request for the variance of 321.

Art Dombrowski responded that the 550 square feet is already existing and non-conforming at 550 square feet. It will be extending 721 square feet.

Zoning Administrator responded that the variance requested has to be based on the current law not based on what is in the water. It has to bring the dock into compliance.

Art Dombrowski stated they tried to bring about a design with the least impact on the variance request. The existing 550 square feet accommodates 5 boats and the new design at 721 square feet will be able to accommodate 14 boats. By adjusting the width between them and less structure in the water.

Ross Schoembs asked if the 550 square feet is grandfathered?

Zoning Administrator Scott Olson responded the 550 square feet has been in the water since the early 1970's. It has remained in the same configuration since then.

Vice-Chair Jim Dewar said speaking about the distance from the shoreline is it now that we get into these negative numbers?

Zoning Administrator Scott Olson responded the distance from the shoreline maximum is 40' and the current configuration is at 78'. They are asking for 96' length out to gain the proper depth of water for safety. So, the variance request is 56'.

Ross Schoembs asked if any of the neighbors have concerns.

Zoning Administrator Scott Olson responded that he has spoken with Mr. White which is the neighbor on There is a significant amount of space from his dock to the Roger Newkirk dock. Mr. White has no problems with this proposed dock. The next parcel over belongs to Remington and it is a 10' wide strip but he has not spoken with him yet. The next neighbor is Tim Monroe and he spoke with his wife and they have no negative concerns with the dock.

Ross Schoembs asked if this is under the definition of a marina.

Zoning Administrator Scott Olson stated no. It fits the definition of a multiple access dock because they have deeded rights to docks and the beach. The docks are not for rent.

Town Attorney Brian Reichenbach read the definition of multiple access docks from Section 8.09 in the Zoning Law. These spaces are not for rent therefore this is not a marina.

Rich Nawrot asked if these docks are supposed to be owned by an Association.

Town Attorney Brian Reichenbach reiterated the Section 8.09 multiple access docks, and this fits squarely into the definition. There is an inclusion that states if it meets this definition it shall be a multiple access dock. It does not have to be owned by an Association.

Art Dombrowski stated that this is 11 parcels and 3 of the owners have 2 docks each. There will not be any more moorings. They are trying to achieve the least amount of variance necessary and cause a minimal impact.

Chair Cheryl Erickson asked if this is an LLC does that make this fit the definition of "4 or more boats owned by a corporation".

Town Attorney Brian Reichenbach stated that not on the plain language. They are similar; however, a corporation is very different from and is not an LLC.

Troy Scripture asked if the area is very congested now.

Art Dombrowski responded that no it is not congested because they only have 5 boats there now.

Troy Scripture asked if this proposal is granted will all the slips be used.

Art Dombrowski responded that he does not know who will have a boat. The activity will increase whether a dock or a mooring is used. This proposal will create a more organized method for keeping the boats.

Ross Schoembs asked if it will create less congestion without the moorings.

Art Dombrowski responded yes; the boats will make less congestion. It is recessed in the bay and no boats come into the shallow water.

Ross Schoembs asked who will be responsible for the maintenance.

Art Dombrowski responded for 26 years they have worked out with the group of people who own the homes clean the beach or paint the docks. We encourage participation. There has never been a dogmatic structure to it.

Chair Cheryl Erickson asked if it would be easier in the future to formalize an Association for regulating and management.

Art Dombrowski responded no; he thinks an Association creates more non-cooperative owners. The way it works now has worked well even through a number of different ownerships. They would like to stay with the way it is run now.

Ross Schoembs stated no one knows the future and it may not continue to go this way without forming an Association.

Zoning Administrator Scott Olson stated there is one owner of this property.

Ross Schoembs stated so the Town could go to him and say fix your docks.

Zoning Administrator Scott Olson responded yes. And if there is a grievance the current owner, Roger Newkirk would be responsible.

Chair Cheryl Erickson asked who pays the taxes on this property.

Art Dombrowski responded that Roger Newkirk pays the taxes on this property.

Ross Schoembs asked if the owner is aware of his liability. He wants more assurances from the owner as to his responsibility for the docks.

Art Dombrowski asked what type of assurance are you looking for? The owner could submit a letter as to his responsibility for any violations. Beyond that it would become a legal issue between the property owner's and the

provider of the usage of the dock rights. The Town has oversight of the docks and the owner of the dock is Roger Newkirk.

Ross Schoembs stated that is very generous of the owner; however, I'm not sure I would be willing to do that.

Art Dombrowski said that he is going to be paying for the docks and will take the responsibility for them.

Chair Cheryl Erickson referred a question to the attorney regarding an opportunity at this point to correct something that should have been done differently.

Town Attorney Brian Reichenbach stated he respectfully disagrees because the Board is looking outside the Boards charge. You have to look at the Summary of Area Variance only. The ownership or who has rights to it is not in the criteria that you have to look at. Apply your test to the variance and the size of the dock. Apply the test to whether this is a multiple access dock. I do think this meets the definition of a multiple access dock.

Vice-Chair Jim Dewar stated when the properties were originally sold the dock rights were in the deed.

Town Attorney Brian Reichenbach said yes, those rights were there. How they discharge that amongst themselves has little to do with once they meet the definition of how you are going to decide the variance under the statute.

Chair Cheryl Erickson asked if there were any more questions.

Art Dombrowski said that he thanks the Board on behalf of ADK Properties for hearing this proposal.

Being no further questions or comments 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 are 11 people who have 14 deeded docking rights and they are giving up the moorings. This is not an Association so a lottery for slips won't work. This is the only feasible way for the property owners to use the dock rights. Roger Newkirk the owner, will provide the docks.
2. There will be no undesirable change in neighborhood character or undesirable change to nearby properties. There is no opposition to the project. They are removing mooring; the docks will not obstruct any views. Most of the owners will be walking to the docks. Only a small parking area is available.
3. The request is substantial based on current law; however, it's not really substantial because the addition of 321 square feet is not substantial.
4. The request will not have any adverse physical or environmental effect on the property or to neighboring properties in fact it will have a positive effect because the moorings will be removed. It will eliminate chains and cement from the lake by removing the moorings.
5. The proposed project is self-created. However, this is a solution to the ongoing problems.
6. This is the minimum variance necessary. The Board will impose a condition that all future moorings will not be allowed and eliminating current moorings as well.

Vice-Chair Jim Dewar made a motion to approve an Area Variance from Section 8.09 for dock surface area of 721 square feet where 400 square feet is the maximum and a dock length of 96' where 40' is the maximum. With the following condition:

1. That all future moorings will not be allowed, and all current moorings will be eliminated.

Second by Ross Schoembs. ALL AYES.

Chairperson Cheryl Erickson also stated that the Warren County Planning project review was received, and it indicated that the project will not create any significant municipal or county-wide impacts and no SEQR review was required for this proposed project.

Continued HEARING: **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.

Chair Cheryl Erickson stated we will be talking a lot about finances and Drew has the burden of proof to show he warrants a Use Variance. She 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 came back before the board to say that he did not bring any additional financial information tonight and he said that Colin Dunn is no longer interested in the glamping proposal so he will be withdrawing his application. He went on to say that he is not happy with the neighbors' responses from the last month's meeting. He thought it was very negative and got blown way out of proportion. He had no mal intent when proposing this glamping project.

Chair Cheryl Erickson stated that she understands Drew is a good neighbor and knows there were only good intentions with this application.

Reminders: None

Correspondence: None

Public Comments: None

Board Comments: None

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

Adjourn: 8:20 PM

Next meeting date: January 26,2021

Respectfully Submitted,
Terri Katsch, Secretary