

Board Members:

- _ Cheryl Erickson, Chair
- _ James Dewar
- _ Rich Nawrot
- _ Ross Schoembs
- _ Troy Scripture
- _ Larry Bell, Alternate

Others Present: Brian Reichenbach, Town Legal Counsel; Craig Leggett, Zoning Administrator; Mike Prisco; Joseph Metzger, Architect; John Francisco

Meeting called to order: 7:00 p.m.

Pledge

Review of Minutes: April 23, 2024 Draft minutes

Motion to accept minutes: James Dewar; 2nd Ross Schoembs ALL AYES

PUBLIC HEARING:

- File: 2024-02 AV
- Tax Map#: 55.12-2-2
- Mike and Annika Prisco
- 7626 State Route 8
- Brant Lake, NY 12815

Chair Cheryl Erickson stated that the Priscos are requesting a variance from Section 6.10 for a shoreline variance of 43' (a change from the 42' originally requested) and a roadway variance of 32'11" (a change from the 31'11" originally requested) in order to build a 24'x 16' (originally 19'x16') square foot enclosed porch on the top of the existing 24'x16' square concrete block storage shed that will sit 28'11" from the center line of the road and 8' from the shoreline. Also to be discussed on this same file was a separate vote on a variance request for a fence along the shoreline roadway which will be a variance of 35' from shoreline setback where 50' is required, and a roadway setback of 6' where 25' from highway centerline is required.

No public comments were made at this time, and there was no correspondence.

Chair Erickson asked Mr. Prisco to address the Board about changes made to the original proposal.

Mr. Prisco stated that to alleviate the water, he'll put drains in on both sides of the structure, 2'x3' deep so the water will run out, and he'll raise the grade on both sides 2 notches to the stairs. Chair Erickson asked Mr. Prisco to clarify what he meant by showing on the diagram where the this would be. He stated that on the side where you come in, it'll be raised up so there will be one or two natural stone steps at the most, so it's a

safe distance from the road and will not be approaching the roadway at all. The 2'x 3' drainage with crushed stone is installed to catch the water.

Mr. Metzger said that was to do away with that wooden-frame porch on the side, because that was in question last meeting, as that porch was infringing upon the further setbacks, which Chair Erickson agreed.

Rich Nawrot asked if Mr. Prisco will be raising the grade where the door's going to be, so there won't be a porch, it'll just be one step into the house? Mr. Metzger replied there will be two risers with one tread.

Troy Scripture asked if the stone drainage would run the whole length of the building right into the water, to which Mr. Prisco replied no, it will stop at the length of the building. Troy then questioned if that stops roughly two to three feet from the water, and Mr. Prisco thought it was more like seven feet.

Chair Erickson said the variance says seven feet, but that the concrete pad is part of the structure, so that is in debate with the Board, because the concrete pad goes right up to the water. Does the drainage go the length of the pad? Mr. Prisco said it stops before the pad. Chair Erickson asked: at the end of the wall? Mr. Prisco said it stops before the pad. The pad is in front of the building, so it would be before the pad on the side of it.

Troy Scripture pointed out that the building overhangs the concrete, and the roof overhangs the building, so it's out almost to the edge of the concrete pad, so it's running right into the lake.

Mr. Prisco said the concrete pad is in front of the entrance way, and the extensions are two feet on the outside of that pad, so it's not against the concrete pad. Chair Erickson said it's going in the other direction, so it's not coming off the end of it onto the concrete pad.

Troy Scripture said the building is also over the concrete wall; the roof sticks out over the building a foot so now you're two feet past the wall of the building. Chair Erickson said the drawing shows it 1' forward of the building toward the lake, and 1' toward the rear of the building toward the road. Mr. Prisco replied that that is the same as the floor. Chair Erickson said that it's not the same as the floor – you have two extra feet over the building. Troy Scripture said it's encroaching on the lake. Mr. Metzger said he can cut that back, it was an oversight on his part.

Troy Scripture asked if they had any numbers to verify what runoff would be. That would have to run through software to verify what the runoff is and how much it'll slow the water down. He still thinks the 7' is incorrect.

Chair Erickson asked Ross Schoembs, Jim Dewar, and Rich Nawrot that when they went out to the site to inspect it, if they agreed or disagreed on that shoreline setback request? It's 7' now; it was 8'. The pad has to be counted as part of the structure. If that pad goes to the mean high water mark, it will be much closer than 7', its' going to be right up to the shoreline. Mr. Metzger asked that the pad was not part of the original variance then? Chair Erickson reiterated that the pad is part of the structure. Mr. Metzger asked if it was part of the original variance or added later, and Chair Erickson said she couldn't say that, but it is part of the structure now. So the variance would have to be changed. Generously it would be 3' but probably less than that, and Troy Scripture said from mean high water? Absolutely.

Mr. Prisco said now we've lowered it and extended the roof 2' past it. Chair Erickson replied that they were talking about a different one, the one with the garage door -type thing.

Mr. Prisco said you asked how far does the drainage go. You asked if it goes up against that concrete pad and it does not. The pad stops on the side of the building. But the drainage is under the roof eaves, which is 2' on the outside of that where there is no concrete pad.

Troy Scripture agreed, but said in the other direction toward the lake, you're encroaching on the lake, if you go as far as your roofline from where that drain is, you're starting to encroach into the lake. The water will run into the lake, even with crushed stone, as that's worse than dirt. Water will drain through stone very quickly, much faster than it will with just sand.

Ross Schoembs commented that they're not mitigating the point of water runoff from an impervious surface, and Troy Scripture remarked that it's almost making it worse with the crushed stone.

Chair Erickson asked Mr. Prisco if he does acknowledge that he's coming off the footprint of the original storage structure with the rooflines coming off the original footprint 2' in either direction and then 1' towards the lake? Mr. Prisco answered yes, he'll change, but the 2' he did to accommodate a couple of meetings ago because the Board wanted to lower it. So should he go back to the other one?

Chair Erickson responded that she was just saying Mr. Prisco was now off the original footprint. It's a non-conforming structure and he's going to build a more non-conforming structure on top of it.

Mr. Metzger asked if it would help if they don't do on the lakeside or the roadsid, if they just make that deeper, and Chair Erickson replied no.

Chair Erickson asked if there were any other issues to address before closing the public hearing. Was there anyone else there from the public?

John Francisco spoke, saying that, listening to the proposal for the drainage, how can it be drainage if the water is going nowhere? How can you divert the water from going into the lake?

Mr. Metzger said he believed the issue was the water draining too fast; however, Troy Scripture responded that the issue was water going into the lake, period.

Ross Schoembs remarked that right now the water goes into the ground, not the lake. Mr. Prisco responded that that is why he has the drainage ditch down 3', absorbing into the soil.

Chair Erickson stated that when the public hearing is closed, it will be closed on both issues at the same time, as it is one file. She then asked Mr. Prisco if he could please tell the Board what he wants to do with the fence.

Mr. Prisco replied that his original intent was to repair the fence that's been there; it's stopped. It's broken, there's holes, the posts came down. Now he just wants to replace it – same place, continuing where it was.

When Chair Erickson asked what kind of fence it was, Mr. Prisco replied that it's a split-rail, the same that's there. Ross Schoembs asked about the purpose of the fence, and Mr. Prisco answered that it was for safety, to keep children and dogs from getting into the road; the fence is right against the road. It is 3' high, see-through (not for privacy). Ross Schoembs asked how the fence keeps the dog from getting out, and Mr. Prisco said he'd use something like chicken wire.

At that point, as there were no other comments, Chair Erickson closed the public hearing to continue the Board's discussion. She then read the Board guidance (the Balance test), and began discussing the structure

first. As the structure already had a variance, and because that variance has three conditions, from which the Priscos are asking relief, Chair Erickson said she'd give a little more guidance.

The first condition is no running water, plumbing fixtures of any kind shall never be installed in the building. The second condition is the structure will be shielded from sight of Route 8 by planting of shrubs, and the third is that no future additions will be permitted which would exceed the planned elevation as shown on the request.

Chair Erickson said the Board is not going to make the Priscos take the building down, but they will keep in mind that all three conditions have been ignored (she's not saying this is Mr. Prisco's fault, as he is the recent – of six months' - owner of this property).

Troy Scripture asked Mr. Prisco if he did his homework in knowing there was an existing variance requirement, and Mr. Prisco said he had, right after and during the purchase of the property. He went to previous ZA Kristena Williams and asked about the fence, and she said repair it, don't worry about it. He also had a conversation with current ZA Craig Leggett, who was okay with it. In terms of the structure on top, ZA Williams said exactly what was happening now – he'd get the denial, then go through the appeals process and variance. Her concerns were going back on the 45-plus year variance and having no water, etc.

Chair Erickson asked if Mr. Prisco had put water in, and Mr. Prisco answered that it was already there. Then Chair Erickson asked about the orange cable running by the water, and Mr. Prisco said he believed it was a Spectrum line. There had been a camera in the structure.

Chair Erickson stated the property is three acres. As she had read through the two letters from neighboring properties who were in support of this plan, they stated how the property had run into a state of disrepair. They mentioned the hope of a year-round home being built. She said these neighbors were thinking of the property across the road, so this process could be achieved by other means, by building something across the road from the lake.

Ross Shoembs said the benefit has changed substantially since this process was started. Originally it was an area on top of the building that was going to be a 3-season screened in area with no electricity, and now we're talking about something else.

Chair Erickson said there *is* electricity to the building, and water. The people who wrote in talked about a screened porch structure. In the application, in the violation compliance certificate, Mr. Prisco talked about an open deck with a screened room which is substantially different from what the architectural plans are for, and different from what was given the neighbors. From the letters, she said, it seems the neighbors believe Mr. Prisco is going to build a screened porch structure on top of the concrete structure. From the plans submitted it is looking more like a cottage with a screened porch on the front. It goes 7' out and 16' across and that's the porch. She said in her mind it's not a porch. It's a house and we're going to have problems keeping within the code, because once you've enclosed something then - where's the water? where's the bathroom? where's the kitchen? – you're going to end up wanting those and it's not in our code to be that close to the lake.

Ross Schoems commented that the original purpose was to enjoy the lake, and if you're in an enclosed building, you're not enjoying the lake.

Chair Erickson asked if there is an alternative to the way they can do this, or other means feasible, and Troy Scripture suggested a screened gazebo. Chair Erickson agreed, and said you could see through it, it would

shade you from the sun, and it would shield you from the road if you come into compliance by planting the shrubs. Ross Schoembs added that the Priscos also have the other side of the road to build on if they want a house or a more permanent structure.

Troy Scripture added that it doesn't violate the existing variance.

Rich Nawrot asked if the original application called for a screened porch, and Chair Erickson answered yes. The Code Compliant Certificate called for a 19 x 16 square foot area, existing 24 x 16 square foot open deck with screen room. But now having three sides enclosed, and it's insulated.

Rich Nawrot said so now you're talking about a three-season cottage. Chair Erickson added it's without water, supposedly; without bathroom facilities, it can't have a kitchen, and it's like a problem somewhere else, where people will do the next thing and there's no way to enforce that.

Chair Erickson, following guidance, asked if the current plan creates an undesirable change to the neighborhood character or to nearby properties?

James Dewar replied that he didn't think it changes anything; he thinks it's an improvement, as what's existing is an eyesore. Troy Scripture added that what's there could be improved upon.

Ross Schoembs said whether it's an undesirable change in the neighborhood could be a separate question. He doesn't know as it is, but an improvement doesn't necessarily fit congruently with the neighborhood.

Chair Erickson asked if it would create an undesirable change for the neighbor next door? Troy Scripture said absolutely.

Chair Erickson stated the neighbors seem to think it is just an enclosed porch, not a small house. And it's really right on the water. The Board can suggest ways to make that more desirable for that neighborhood. She asked if this request is substantial and all said yes, because it goes directly against all points of the variance in effect in the land. It's not in compliance with any of the conditions, including the third one. In addition, it comes off the grandfathered-in, non-conforming footprint of the storage area. They need to consider it as a separate structure.

Brian Reichenbach said that his advice, on that third condition, is to just ignore it. That Board from 40-some years ago can't bind the current Board, and the current Board can't bind a board 40 years from now. Just judge the variance application that's before you.

Chair Erickson said the shoreline setback request is very substantial. She thinks it's an error on the application and the request should be less than 1'. It goes right up to the shoreline rather than 7' and she thinks the applicant didn't realize they had to count that pad.

Troy Scripture said the first time he was there at the edge of the pad, its almost vertical down, about a foot into the water.

Ross Schoembs commented that it's substantial from the roadside too, so anyway you look at it, it's substantial.

Chair Erickson read from the guidance: will the request have adverse physical or environmental effects?

Troy Scripture said absolutely. By putting metal roofing on, the water is going to come off at an extremely fast pace, and when it hits that ground, it's headed to the lake. It's a steep bank and even with the crushed stone it would move to the lake even faster; it's just not a good situation.

Ross Schoembs said that what we're talking about is something that would prevent the water from going directly into the lake and let it get absorbed to some extent. This plan doesn't do that and may in fact accelerate the water going into the lake.

Chair Erickson mentioned that there are already two big trees cut down on the side, and another dead tree will have to be taken down. So a significant number of large trees have been cut down or will be cut. Ross Schoembs said that's more than 30% on the waterfront. Chair Erickson stated that that is an environmental effect. She asked why the other dead tree was not taken down, and Mr. Prisco replied that it's too close to the power lines, and they're afraid to take it down; still trying to figure out how to get it down. Chair Erickson said the power lines would also make this structure very difficult to build. It is 5-6 feet from where the power lines cross the front of the road, and that is where the roof overhang would be, so that is a bit of an issue. So it will have adverse environmental and physical effects with runoff, and loss of large trees.

Chair Erickson, following guidance, asked "is this alleged difficulty self-created?" Yes. Nobody is telling anybody to build on there, so yes, it's self-created. If approved, we need to grant the minimum variance necessary and impose any reasonable conditions. What she'd like to see is them come back in compliance with the shrubs. The building has never been attractive, and they were going to mitigate that 40 years ago with the shrubs. That's if we approve it; we can only recommend it. Both Ross Schoembs and Troy Scripture agreed.

Rich Nawrot, referring to condition #2 on the existing variance- talks about shielding the structure from the road - if they go ahead with the new structure, there's no way they can shield it from the road unless they plant 14' trees.

Chair Erickson said she didn't hear a lot of positive thoughts on this, and asked if anyone wanted to make a motion to deny this variance for both the road and the shoreline setback, which is in error, and the roadway setback for the purpose of building a structure on top of that?

Troy Scripture said that, based on what was discussed, he made the motion to deny it.

Chair Erickson stated Troy made the motion to deny it based on previous conversations; James Dewar 2nd it. All members denied the building application by separate vote. Consensus was made to deny for the building.

Ross Schoembs commented that the building, as it sits there- is that in violation with having water in there? And Chair Erickson said yes, it is, so they should come in compliance.

Troy Scripture stated that as it looks now, it doesn't look like it's hooked up. He's just seen that pipe from the ground and into the building. But if they were drawing water out of the - as you're facing the right hand side, the pipe that goes almost into the wall, there's just a coupling in there, they can add that piece back in to the lake; and is probably stored in the building.

Ross Schoembs added that if you want a sprinkler system you have no need to have a pump in the building, because most people take out the pump in the winter, as it will freeze anyway.

Chair Erickson asked the Board if they wanted to say they concur that they want to enforce the prior variance conditions or just leave them in effect, and then if the Priscos need to come in compliance with the variance conditions that are existing, the Board is not going to change them, just leave them there. The Priscos will have to come in to compliance with them, so no running water, no plumbing fixtures of any kind to be installed in the building, the structure is to be shielded from sight from Route 8 by planting of shrubs. The third one says no future additions be permitted which would exceed the planned elevation shown on the

request. She told Mr. Prisco if he decides he wants to put in a pop-up gazebo-type tent for the summer so that he has shade, he could do that on the ground or on there. It's not a permanent structure. So that would be in compliance with that third condition. But the Board does want them to come into compliance with the shrubs. That would be moving along with the intentions they have for privacy.

Mr. Prisco made the comment that, as for the no plumbing fixtures, no running water -he doesn't know what they meant 40-plus years ago by saying that. This is a pump for an outside spigot. Nothing inside – no shower, sink, toilet. What is the harm of that? Troy Scripture responded that this is an enclosed building that can't be seen into. If there's water going into a building, that is running water. What it's being used for is behind closed doors. Mr. Prisco said again that he doesn't know what that variance from 46 years ago intended by that. Chair Erickson added that in the meantime, since 46 years ago, the Board has been burned by people saying "I'll never do that" and then they do. The Board is a little wary about that as they have no way of enforcing it. The Board is just keeping with the code. It's an enforceable mechanism they have. They don't want the applicant to just enclose something. It says no running water – the Board is going to hold the applicant to that. You can't have a toilet, sink, kitchen, gray water system....

Ross Schoembs said I think we do know what that means – no running water.

Mr. Prisco said three builders had told him that they wouldn't do a screened porch like that, because how do you get the water out of there? It would stay in and rot the inside. There's no place for the water to go. They would not build a screened room on a solid structure.

Troy Scripture said roofing can be put down on a deck for a structure that is completely screened in. Mr. Prisco listed difficulties with that, but Troy said it's not impossible to do.

Chair Erickson commented that Priscos do have a beautiful piece of land across the road. The neighbors are recounting a very nice, beautiful property, a perfect place across the road to build a house. Troy Scripture added that they also have a covered boathouse on the lake and an existing shed.

Mr. Metzger questioned that, as the shed has a railing on there now, if Mr. Prisco wanted to repair that railing, would that be in violation of the zoning? Would that affect the original variance? Would he be at liberty to replace any columns that he might find are bad? Chair Erickson responded that any changes to the railing have to meet the Warren County building codes.

James Dewars added that if it's kind-for-kind, it would be a Warren County code request.

Chair Erickson stated that the Board can give Priscos relief to replace the railing, as that's a safety issue. They don't need to come back as the Board has now discussed it and it's in the minutes. But as soon as they do any changes to that railing, they need to contact Warren County and have an inspector come out to be sure it meets their codes.

Chair Erickson went on to say the conditions on the denial are that you need to meet the first two conditions of the existing variance, and the third condition will be – it says any future additions will not exceed the planned elevation as shown – but with the exception of safety issues like a railing.

Chair Erickson then moved on to the fence. This is a replacement for a pre-existing (but now gone), split-rail fence variance request 35' maximum set 15' from shoreline, 19' from centerline of road, so we have a 6' variance request. With the split-rail fence, the closest point to the shoreline is 15', so it's a 35' variance request. There's not that much shoreline there; the shoreline varies.

Troy Scripture said that, looking at the drawing, it's getting close, but it's 1" 30'. He also asked if there was a split-rail fence there, and said he'd seen it on both sides of the road. Chair Erickson asked if they were going on both sides of the road, and Mr. Prisco said there was one on the other side, but no. Ross Schoembs questioned that, if you're going to put some kind of barrier behind the fence to keep dogs in, is it really a split-rail fence? Chair Erickson said they want to put chicken wire behind it. A split-rail fence, to the eye, should look like a split-rail fence. Ross Schoembs agreed, yes, if you netted it.

Chair Erickson went on to say that she sees on the plan that there are six new trees and asked if those are arborvitaes that will soon become.....Mr. Prisco responded "a lot more than that, to try to close it in." Chair Erickson said that planting trees or using some sort of greenery would help him come back in compliance. Then she asked if they were going to plant them on the shoreline side, so the fence would be by the road and the trees would be in. Height would be three to four feet?

Chair Erickson then referred to the Balance test: whether this benefit could be achieved by other means feasible to the applicant. She stated Mr. Prisco wants to contain the property so that kids or dogs don't run in the road, which makes sense. "Does it create an undesirable change in the neighborhood character or nearby properties?" All agreed "no". She said she thinks a split-rail fence is the most desirable along the lakeshore. Again, following guidance, she asked "whether the request is substantial." It's 60-65% from the shoreline setback and then not as much for the roadway setback because it's to the centerline, but that's the nature of a fence. It's substantial but she thinks it's not determinative of whether or not this should be approved or not approved. She then asked "whether the request will have an adverse physical or environmental effect", to which all the Board agreed there would be no effects. In response to the question of "whether the alleged difficulty is self-created," Chair Erickson stated that it is self-created, but it's not detrimental to the request.

Further, she stated that "if approved, we shall grant the minimum variance necessary to in imposing reasonable conditions."

Ross Schoembs added that he had a concern, which is to keep the distance between the side of the road and the fence as clear as possible so that pedestrians, bikers or someone with a stroller can get off the side of the road. And the 6' is smaller than he'd personally like, but he doesn't have a problem with that. But if that's not clear, then you can be stuck without an exit route. From the road to the fence should be clear.

ZA Craig Leggett clarified that there are two 6' involved. On the variance, 19' from the center of the road gives you a clear 6' from the edge of the pavement to the fence line. Chair Erickson asked, so that's the other side of the fence toward the water, but you're saying the center line to the curb is about 13'? ZA Leggett said it's more like 12'.

Chair Erickson stated that there are more reasons for doing that, as plows will push snow up there and you're going to lose your fence again if you put it any closer than that.

James Dewars added that the adjacent fence is not that far.

Mr. Prisco asked how would he continue on with the adjacent fence that's there? Chair Erickson asked if that is not 6' from the curb? And Mr. Prisco said then you have the water and erosion, so you don't even have that far. Chair Erickson asked about which side he was talking about – the narrow part or the one by the structure? Mr. Prisco: the one on the outside. Chair Erickson said she was looking at the corner one that is by the structure, as that is the only fencepost she saw.

Ross Schoembs commented that this was the first the Board really had a chance to hear this, but said ZA Craig Leggett probably looked at it from a fencing structure standpoint. Mr. Schoembs said in an ideal world, he would like plenty of room for people to get off the road.

Chair Erickson said she doesn't know as it's that important that it comes into alignment with that other property fence.

Ross Schoembs stated that if people are walking on the road the way we like them to, they're walking facing traffic.

Chair Erickson said she thinks you just need to make sure you have that 6' barrier between the end of the pavement and your fence.

Rich Nawrot asked about the fence that runs on the shoreside, if that needed to come into compliance with the side of the road? But it doesn't. Chair Erickson stated that that's the variance Priscos are looking for. Troy Scripture said he wanted to make sure that that was added in, that it's to lakeside only.

Chair Erickson, to clarify, asked Mr. Prisco: you're officially saying you are not putting a fence along the other side of the road from the lake? Mr. Prisco said "no fence." Chair Erickson said "no fence at all?" Just leave the fence. Mr. Prisco said he had to figure out a different area.

Chair Erickson then confirmed that the fence variance had been withdrawn by the applicant, and asked Mr. Prisco if he had any questions about what the Board's expectations were. Mr. Prisco said he'd try to what he can with the fence, and then asked about how to appeal, or how that works.

Chair Erickson said he could appeal. Council Brian Reichenbach added that Mr. Prisco could file an Article 78 under the Civil Practice Laws and Rules, and he could appeal to the Supreme Court, but he has a short time frame to do that.

Chair Erickson addressed Mr. Prisco, saying do feel free to upgrade your railing, just go through Warren County, if you intend to use it as kind of a porch, a gazebo; not a permanent structure in any way. But you can improve the railing.

Rich Nawrot asked if they needed to vote on that variance for the fence, but Chair Erickson said that had been withdrawn.

As there were no public comments and no correspondence, Chair Erickson asked for a motion to adjourn.

Motion to adjourn was made by Ross Schoembs; 2nd by Rich Nawrot. ALL AYES.

Meeting adjourned at 8:03 p.m.

NEXT MEETING: June 25, 2024

Respectfully submitted,

Becky Ross

