

**Town of Horicon
Zoning Board of Appeals**

**August 23, 2016
Minutes**

Present at Meeting:

Thad Smith, Chairperson
Gary Frenz
Pat Farrell
Scott Olson, Alternate #1

Also Present: Town Attorney Leah Everhart, Paul Davies, Jamie Davies, Fred Longe, Janet Longe, Teri Schuerlein, Town Board Member Bob Olson, and Planning Board Chairperson Bill McGhie and Zoning Administrator James Steen.

Agenda Items: **File 2016-03 AV Tax Map # 72.13-2-47**
 File 2016-04 AV Tax Map # 72.13-1-8

Pledge

Chairperson Thad Smith announced that in the absence of Cheryl Erickson, Scott Olson Alternate # 1, would be seated as voting member tonight.

Chairperson Thad Smith called the meeting to order at 7:05 p.m.

Review of Minutes: Pat Farrell made a motion to approve the July 26, 2016 minutes as written. Second by Scott Olson. **ALL AYES.**

PUBLIC HEARING: **File 2016-03 AV**
 Tax Map # 72.13-2-47
 Ray Duplain
 7051 State Route 8
 Brant Lake, NY 12815

After the fact variance for a Shoreline setback from Zoning Code section 11.24 to place a deck over existing cement piers to project 16' from the mean high water mark over the lake where a 50' setback is required. The deck also requires an Area Variance from Zoning Code 8.10 for a proposed 6' 3" side yard setback where 15' is required.

The applicant was not present to speak on the issue. Jim Steen, Zoning Administrator reviewed the history of the proposed deck application with the Board members and indicated that the deck will be removed each winter. He stated that the concrete piers are three (3) feet wide in a U shape a total surface area of 153 square feet, the overhang is six (6) inches on each side and increase of twenty-two (22) square feet. The center when filled in increases by one hundred thirty-three (133) square feet; however, the total square footage increase to the footprint of the outside of the deck only increases by twenty-two (22) square feet. Chairperson Thad Smith asked if the Board can condition the applicant to remove each winter.

Scott Olson asked if the dock at the end of the deck was permitted and Jim Steen responded yes it is permitted.

Discussion ensued by the Board members regarding putting a condition on the proposed project that the deck be removed each winter. Jim Steen indicated that the applicant stated at the previous meeting that he will be removing the deck each winter.

The width of the deck is fourteen (14) feet by twenty-two (22) feet.

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Chairperson Thad Smith introduced a letter from the Brant Lake Heights Homeowners Association whose property abuts Mr. Duplain's property that puts forth their full support of the proposed project.

Jim Steen, Zoning Administrator stated that the neighbor next door to Mr. Duplain came into the Zoning office and verbally stated his support of the proposed project as well.

Gary Frenz asked how the deck will be removed and Jim Steen responded that it is removed in sections.

Scott Olson brought up whether or not handrails should be added to the deck. A short discussion among the Board members ensued and it was decided that handrails should not be a condition for this proposed project.

Being no further discussion or questions, Gary Frenz made a motion to close the Public Hearing. Second by Scott Olson. **ALL AYES.**

Town Attorney Leah Everhart stated that the Warren County referral was received with a finding of No County Impact for this proposed project. She stated that this is a TYPE II action and therefore exempt from SEQRA as well.

Being no further questions, Gary Frenz made a motion to close the Public Hearing. Second by Scott Olson. **ALL AYES.**

UNFINISHED BUSINESS: **File 2016-03 AV**
 Tax Map # 72.13-2-47
 Ray Duplain
 7051 State Route 8
 Brant Lake, NY 12815

After the fact variance for a Shoreline setback from Zoning Code section 11.24 to place a deck over existing cement piers to project sixteen (16) feet from the mean high water mark over the lake where a fifty (50) foot setback is required. The deck also requires an Area Variance from Zoning Code 8.10 for a proposed 6' 3" side yard setback where fifteen (15) feet is required.

The Board reviewed the Area Variance criteria:

The ZBA finds that variances from Section 11.24 of the Zoning Code regulations and Section 8.10 Roadway setback of the Zoning Code regulations are the minimum variances that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community. The ZBA further finds:

- 1) The benefits sought by applicant could not be achieved by any other means feasible as the home was purchased with the cement piers in place.
- 2) There will be no undesirable change to the character of the neighborhood or detriment to nearby properties as the neighbor next door has the same cement piers and these types of configurations are common on Brant Lake.
- 3) The requested variances are substantial, a forty percent increase; however, the structure is a pre-existing, non-conforming structure and is a minimal sixteen (16) feet projection into the water and the decking will not hang any further over the current cement piers.

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- 4) There are no adverse physical or environmental effects.
- 5) The alleged difficulty was not self-created because the cement piers predate the current ownership.
- 6) This is the minimum variance necessary.

Scott Olson made a motion to declare this a TYPE II action and therefore exempt from SEQRA and no further review is necessary. Second by Pat Farrell. **ALL AYES.**

Gary Frenz made a motion to approve the deck with the variances as requested and as discussed during the balancing test with the condition that the deck be removed in the winter. Second by Scott Olson. **ALL AYES.**

NEW BUSINESS: **File #: 2016-04 AV**
 Janet and Frederick Longe
 Tax Map # 72.13-1-8
 71 Brant Lake Estates Road
 Brant Lake, NY 12815

Requesting an Area Variance for dock surface area of 310 square feet where 309 square feet is allowed.

Zoning Administrator Jim Steen spoke to the Board regarding this proposed project prior to the applicant stating his request. Jim stated that in his opinion this should not be on the Agenda for tonight's meeting. He went on to state that we received a complaint about an illegal dock that was too wide. Jim Steen contacted the property owners, Janet and Frederick Longe and told them this dock would need a variance. Once the Zoning Office received the application it only stated they would be seeking a variance for 310 square feet of surface area where 309 square feet was allowed. Jim Steen stated that he would never deny an application for only 1 square foot of surface area. This request refers to the width of the dock. This dock is ten (10) feet wide and the Town of Horicon regulations only allow a six (6) feet wide dock. A sketch was submitted by the applicant that shows it is clearly ten (10) feet wide and Jim sent the sketch to the APA for advice on how to treat the triangle portion of the dock, asking would it add to dock width. Robyn Burges from the APA stated that indeed it would have to be added into the dock width and Robyn then informed Jim Steen that you cannot request a variance for dock width. She stated that a variance cannot be obtained for a provision of a definition. This proposed project would need a shoreline setback variance. The APA stated that this would no longer be a dock but a structure/deck.

Zoning Administrator Jim Steen then contacted the applicant via email on August 12, 2016 stating that his project would require a shoreline setback variance, not a dock surface area variance and asked for permission to amend his application. The applicant did not reply to the request. On August 22, 2016 another email was sent and the applicant responded that he disagreed that his variance required an amendment and asked to be placed on the agenda for the August 23, 2016 Zoning Board meeting.

Scott Olson asked if the APA considered it a deck over the water. Jim Steen stated yes they would consider this a structure/deck.

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Town Attorney Leah Everhart explained to the applicant that the Town of Horicon explicitly defines docks and the ZBA cannot change definitions or what the Town Law states. Therefore, the way this application is submitted a variance cannot be obtained because there is no variance request for a dock width.

Paul Davies who represents Janet and Frederick Longe, the applicants then stated he tried to contact Robyn Burgess at the APA but was not able to reach her. He then read to the Board the definition of the APA on docks and passed that around to the Board members. Paul Davies stated that his family has been here in the area since 1967 and passed around a picture of a dock that was in the water since 1974 and he believes the new dock is grandfathered. In 2010 they decided to purchase a dock from EZ Marine and they had no idea that they needed a permit to put that dock in the water. Paul Davies stated that in 2010 they purchased \$8,000 dollars' worth of dock from EZ Marine. Six years later he found out that Bernie Hill of EZ Marine filed a complaint in the Zoning Office for the Longe's illegal dock. Paul Davies went on to state exactly what type of variance he is applying for which is a dock width of one square foot and one mooring. He stated he was threatened with fines and jail time for this illegal dock.

Scott Olson asked Paul Davies if this particular dock has been in the water for six years. Paul Davies responded yes. Scott Olson then asked him how much bigger is the dock that was put in 2010 than the one that was in the water since 1974. Paul Davies stated it is a lot bigger.

Chairperson Thad Smith stated to the applicant that once you change the size of the original dock a variance request is necessary. Paul Davies once again stated that they had no idea a permit was needed when putting in the new dock.

Town Attorney Leah Everhart explained to the applicant that in seeking a variance from a provision of the law it has to be sought from the current Town of Horicon law and not from the APA definitions. In order to have the dock be lawful a request for variance is necessary. Leah explained to the applicant that the Zoning Board nor the Zoning Administrator are not trying in any way to obstruct his right to seek a variance. The application has to reflect the correct variance from the current Town of Horicon Zoning law. The definition whether it be called a deck or a dock still needs a variance. We are only concerned with the Town of Horicon Zoning Law and it specifically states a dock shall be no wider than six (6) feet. The applicants cannot ask for a variance for dock width.

Zoning Administrator Jim Steen stated that when the enforcement letter was sent to the Longe's the language in the letter regarding fines or jail time are in every letter sent to every homeowner with an illegal structure. It was in no way directed to only this particular homeowner. This is the standard letter that is sent for enforcement purposes. He also noted that the illegal dock/structure is still present and has not been removed.

Zoning Administrator Jim Steen stated he already has the amended application completed and Leah asked if the applicant would now like to sign the amended application for the shoreline setback variance for a structure. Paul Davies agreed to amend the application.

The Board looked at the amended application for a shoreline setback for a structure. For clarification a new page two, a new page three and the depiction of the dock were added to the amended application.

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Scott Olson asked if the Board is addressing this variance as a previous dock or a new request for a variance for a structure.

Leah Everhart stated that while there was previously a dock there a new and different structure is illegally placed and now needs a variance.

Jim Steen asked if there is any problem with still calling this structure a dock and Leah Everhart stated that this will now be called a structure. Jim Steen stated they will need a shoreline setback variance for this structure.

Scott Olson asked if there would be any advantage to the applicant to wait for the new Town of Horicon regulations to be put into effect. Jim Steen explained there is no expectation as to when the new Town of Horicon regulations will become effective.

Discussion ensued regarding other means of correcting the structure to be in compliance with the Town of Horicon current regulations.

Gary Frenz asked if there is a copy of the deed on file.

Jim Steen, Zoning Administrator stated the Zoning Office would look for the deed and if not able to locate the applicant will provide a copy of the deed.

Being no further discussion, Gary Frenz made a motion to deem the application complete and schedule a Public Hearing for September 27, 2016 subject to a copy of the deed being presented to this Board. Second by Pat Farrell. **ALL AYES.**

Being no further discussions or questions, Gary Frenz made a motion to adjourn the ZBA meeting. Second by Scott Olson. **ALL AYES.**

PUBLIC COMMENTS: None

BOARD COMMENTS: None

Meeting adjourned 8:00 pm.

Next meeting: September 27, 2016

Respectfully Submitted,
Theresa Katsch, Secretary