

**Town of Horicon
Zoning Board of Appeals**

**October 25, 2016
Minutes**

Present at Meeting:

Thad Smith, Chairperson
Cheryl Erickson
Gary Frenz
Pat Farrell
Scott Olson, Alternate #1
James Dewar, Alternate #2

Also Present: Town Attorney Leah Everhart, Paul Davies, Jamie Davies, Vice-Chairperson of the Planning Board Teri Schuerlein, Town Board member Bob Olson, Planning Board Chairman Bill McGhie, Zoning Administrator James Steen, Mike Raymond, Matt Steves, Joyce Greenridge, Marlene Vincent and Kay McKeon.

Agenda Items:

**File 2016-05 AV Tax Map # 38-1-12
File 2016-06 AV Tax Map # 55.10-1-11
Rile # 2016-04 AV Tax Map #72.13-1-8**

Pledge

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

Chairperson Thad Smith called the meeting to order at 7:00 p.m.

Review of Minutes: Scott Olson made a motion to approve the September 27, 2016 minutes as written. Second by Vice Chairperson Cheryl Erickson. **ALL AYES.**

PUBLIC HEARING:

**File 2016-05 AV
Tax Map # 38.-1-12**
Jack and Gail DeGregorio
10 Clearwater Lane
Brant Lake, NY 12815

Requesting an Area Variance from Zoning Code 8.10 for a 1.43 acre undersized lot in the LC 10 acre zone.
Requesting Area Variance from Zoning Code 8.10 for road frontage of 381.9 feet of road frontage where 400 feet is required

Matt Steves representing Jack and Gail Degregorio stated that the applicants are seeking a variance for an undersized lot and road frontage for a lot to be created from a subdivision. The APA has reviewed this lot and has no concerns with the requested proposal.

A letter in support of the proposal was received from neighbors Peter and Mara Gaddy on October 19, 2016 as well and they have no objections or concerns.

Zoning Administrator Jim Steen stated he had a phone conversation with Mary Cozza on October 12, 2016 and she has no problem with the variance request proposal.

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Kathleen McKeon, a neighbor of the DeGregorio's who lives on Clearwater Lake Road asked if this lot is going to be sold. Matt Steves responded yes it will be sold.

Vice Chairperson Cheryl Erickson asked if the variance for road frontage includes both Clearwater Lake Road and Palisades Road. Matt Steves responded yes the frontage is off of both roads.

Matt Steves stated that the proposal to create this lot (Lot 2) off of the DeGregorio's larger parcel, Tax Map # 38.-1-12 will be consistent with the historical use of the parcel and will prevent having to subdivide the wetlands on Tax Map # 38.-1-12.

Being no further questions or comments Gary Frenz made a motion to close the Public Hearing. Second by Pat Farrell. **ALL AYES.**

UNFINISHED BUSINESS: **File 2016-05 AV**
 Tax Map # 38.-1-12
 Jack and Gail DeGregorio
 10 Clearwater Lane
 Brant Lake, NY 12815

Requesting an Area Variance from Zoning Code 8.10 for a 1.43 acre undersized lot in the LC 10 acre zone.
Requesting Area Variance from Zoning Code 8.10 for road frontage of 381.9 feet of road frontage where 400 feet is required

The Board reviewed the Area Variance criteria:

The ZBA further finds that variances from **Section 8.10 Undersized lot and Road frontage** of the Town of Horicon Zoning Code regulations is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community because:

- 1) The benefits sought by applicant could not be achieved by any other means feasible because they are restricted in the back of Tax Map # 38.-1-12 parcel by the wetlands and don't want to have to subdivide the wetlands. The lot is in keeping with the lots in the area as well as the road frontage.
- (2) There will be no undesirable change to the character of the neighborhood or detriment to nearby properties: All the other lots in the neighborhood are of the same size and it is to the benefit of the area to keep from impacting the wetlands behind this lot.
- (3) The requested variance is substantial on paper; however, it is in keeping with the other non-conforming properties in the area for the acreage variance. The roadway frontage is not substantial at all.
- 4) There are no adverse physical or environmental effects as it is conforming to all other properties around it and the APA has no issues with this proposal. There won't be any construction done, no new septic, no new well and the boundary line being drawn will be to protect the wetlands and homes around the lot.

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5) The alleged difficulty was not self-created because the wetlands are existing and the houses are where they are, the boundary lines were drawn long ago. The current owners have to deal with what they have been dealt.

6) This is the minimum variance necessary.

The Warren County Review was completed and the issues here appear to be of a local nature involving local issues without any significant impact on County properties or resources.

Conditions: None

Scott Olson made a motion that this variance is for residential use and therefore is a SEQRA TYPE II action and no further review is necessary. Second by Vice Chairperson Cheryl Erickson. **ALL AYES.**

Gary Frenz made a motion to approve the requested area variance for an undersized lot of 1.43 acres in the LC 10 acre zone and for a variance for roadway frontage of 18.1 feet to create 381.9 feet of road frontage where 400 feet is required based on previous discussions. Second by Pat Farrell. **ALL AYES.**

PUBLIC HEARING:

**File # 2016-06 AV
Tax Map # 55.10-1-11
Mike Raymond
12 Sand Beach Point
Brant Lake, NY 12815**

Requesting an Area Variance for a Shoreline setback from Zoning code section 11.24 to place a 24' x 36' garage to sit 75' from the shoreline where 100' is required.

Mike Raymond, is a Planning Board member in the Town of Horicon and he expects no special consideration. Mike spoke about his proposed variance to place a garage on his property on Sand Beach Point Road that is a twenty-four (24') foot by thirty-six (36') foot garage. In 2009 a similar proposal was before the Zoning Board and it was denied by the APA at the time because certain information did not get into the minutes that were sent to the APA and their objections were: 1) There was going to be a bathroom in the garage to include a shower, sink and toilet and there were no engineered plans. (2) He was building within the APA setback requirements. (3) There were going to be living quarters. Mike Raymond stated that this current proposal has eliminated all of those things. There will not be a bathroom, this will be setback seventy-five (75') feet from the lake in compliance with the APA setbacks and there will be no need for engineered drawings. He is asking for a twenty-five (25') foot variance because the Town of Horicon Regulations state one-hundred (100') feet setback is required. Mike Raymond stated they cannot move the building further back because it would impact both the Right of Way and there is ledge. There will be only one (1) tree taken down and the garage will not be seen from the lake as there are trees blocking the garage on the lakeside. This proposed garage is smaller than the original one proposed in 2009. The size is reduced to a twenty-four (24') foot x thirty-six (36') foot building.

Scott Olson asked what the encroachment with this proposal is. Mike Raymond stated the twenty-four (24') foot width is encroaching on the Town of Horicon regulations that state a one-hundred (100') foot setback is needed from the lake. Mike continued on to state that the width is the encroachment and goes inside the one-hundred (100') foot setback requirement.

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Gary Frenz made a motion to close the Public Hearing. Second by Pat Farrell. **ALL AYES.**

Town Attorney Leah Everhart stated that a letter was received from a neighbor of Mike Raymond, Douglas Henshaw in support of the proposed application for the requested variance.

Town Attorney Leah Everhart further stated that the Warren County Review was completed and the issues here appear to be of a local nature involving local issues without any significant impact on County properties or resources.

Being this is a minor structure, Scott Olson made a motion to find this a SEQRA TYPE II action and no further review is necessary. Second by Gary Frenz. **ALL AYES.**

UNFINISHED BUSINESS: File # 2016-06 AV

Tax Map # 55.10-1-11
Mike Raymond
12 Sand Beach Point
Brant Lake, NY 12815

Requesting an Area Variance for a Shoreline setback from Zoning code section 11.24 to place a 24' x 36' garage to sit 75' from the shoreline where 100' is required.

The Board reviewed the Area Variance criteria:

The ZBA further finds that variance from **Section 11.24** of the Town of Horicon Zoning Code for a shoreline setback is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community because:

- 1) The benefits sought by applicant could not be achieved by any other means feasible because this is an odd shaped property with ledge in the back and the Right of Way on the property limits where the garage can be placed.
- (2) There will be no undesirable change to the character of the neighborhood or detriment to nearby properties: The garage will not be visible from the lake even during the fall due to the trees on the lakeside of the property and a letter of support was received from the adjacent property owner. The requested placement of the garage is the appropriate spot.
- (3) The requested variance is substantial; however, there are mitigating circumstances and is in keeping with the APA criteria but not conforming to the Town of Horicon regulations. It is a little less substantial for the Town of Horicon
- 4) There are no adverse physical or environmental effects as it will have no bathroom or sleeping quarters. There will not be any blasting done. There will be only one (1) tree taken down and all of the other landscaping will remain.
- (5) The alleged difficulty was not self-created due to the unusual shape of the piece of land with ledge and a Right of Way and has to work within the limitations of the property.

Vice Chairperson Cheryl Erickson made a motion to approve the variance of twenty-five (25') feet for a shoreline setback of seventy-five (75') feet where one-hundred (100') feet is required. Second by Pat Farrell. **ALL AYES.**

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Town Board member Bob Olson reminded the Board they are charged with upholding the Town of Horicon regulations and not the APA regulations.

Town Attorney Leah Everhart clarified for Bob Olson that in the context of whether or not this was a substantial request the board just took note of the APA regulations on setback requirements and took that into consideration.

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

Requesting an Area Variance for a Shoreline setback from Zoning Code section 11.24 to place a structure at the shoreline to project 36' from the mean high water mark out into the lake where a 50' setback is required.

Paul Davies stated that this was his third time before the Board and he brought some materials to present to the Board. It is his understanding that there will be no undesirable change to the character of the neighborhood or nearby properties. He also has some letters of support for his proposal from his neighbors which he passed out to the Board. He believes this variance request will allow minimal linear footage along the shoreline within the allowed square footage of a similar structure and the structure is an improvement to the esthetics of the shoreline and neighborhood. Paul Davies stated that he realizes that the Public Hearing was closed and asked the Board if he could have his wife read the letters that were submitted in support of his proposal.

Scott Olson stated "no" the Board did not want to do that. Thad Smith stated that the applicant has the right to still speak. Town Attorney Leah Everhart stated that at the last meeting the Zoning Administrator Jim Steen was asked to provide additional information on the neighbors who signed the petition and Vice-Chairperson Cheryl Erickson stated that information was provided to the Board.

Town Attorney Leah Everhart explained the procedure that follows the closing of a Public Hearing. At this point the Board now is charged with evaluating the facts and discussing the criteria. This is not a popularity contest. It does not matter what others say about the proposal. The Board is not required at this point to let additional information into the record because the Public Hearing is closed.

Paul Davies stated that the number one rule is not to affect your neighbors.

Scott Olson stated no it's not. It's about the land and complying with the Town of Horicon Regulations. The structure is not in compliance with the Town of Horicon Zoning Regulations.

Town Attorney Leah Everhart recommended to the Board to let the applicants continue with their presentation of the criteria but the Board will not accept statements made by others or the letters of support into the record.

The applicants asked to open the Public Hearing again. Town Attorney Leah Everhart stated it can be reopened but requires notification again which will prolong the procedure. The applicants then decided to continue with their presentation instead of reopening the Public Hearing.

Paul Davies referenced the letters that were received regarding the positive reflections of the structure. He went on to state other neighbors gave positive feedback as well.

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Vice-Chairperson Cheryl Erickson asked Paul Davies if they received letters supporting his proposed project from the neighbors on either side of their property. Paul Davies stated they did receive support from only one of the adjoining neighbors, Jerry Szilagyi and the other adjoining neighbor has their property for sale did not send any letter of support.

Paul Davis spoke about the configuration stating that the applicant would have a hardship with the modified configuration because it would require longer support legs to support the structure in increased depth of water. Paul Davies stated that he believes that the current configuration is safer for his small children and the structure will be removed during the winter months to help maintain safe ice thickness along the shoreline.

Scott Olson asked if this dock has ever been in an H configuration or a U or any other type configuration. Paul Davies stated that they have had many docks over the years. Scott Olson asked if it used to be in a U shape using these parts. The Davies stated no these parts were never in a U configuration. The current configuration was sold to them by Bernie Hill and their boat would not fit in a U configuration.

Paul Davies went on to state that he believes there will not be any negative impact on the environment and will be a positive improvement. He believes this alleged difficulty was not self-created as this dock was purchased from a local dock dealer and was not made aware of the ordinance requirements or the need for a permit from the local dock dealer.

Chairperson Thad Smith asked if the applicants can configure this any other way and Paul Davies stated he cannot see any other way to configure this structure.

Town Attorney Leah Everhart explained that the Public Hearing is closed and the Board has sixty-two (62) days to make a decision. The Board can discuss the criteria tonight and make a decision at the next meeting.

Gary Frenz has concerns. He brought up a previous proposal received four years ago from the Sidford's that was similar to this request and that was approved by the Board and overturned by the APA.

The APA overturned that proposal because the type of variance was the wrong type of variance to request. The Sidford's requested a dock instead of a structure.

The Board and Applicant had an extensive discussion about other possible configurations of the structure. The Zoning Officer also mentioned that the new zoning law had been adopted by the Town Board already and would be filed with the New York State Department of State shortly. Town Attorney Leah Everhart explained that, by the time the Board met next month, it was likely that the applicable definition of "Dock" would include structures up to 8' wide. There was a brief discussion regarding whether the Applicants wanted to proceed with the variance application in light of this and the Applicants indicated that they did.

The members of the Zoning Board having considered and evaluated the Area Variance balancing test and made the following findings having considered all applicable materials, public comments and information received by the Board from the Applicants, the Board hereby considers the Area Variance Balancing Test and makes the following findings:

1. The benefit can be achieved by other means feasible to the applicant because the structure can be re-configured in other ways and can make it conform to the Town of Horicon Zoning law.
2. The structure will not create any undesirable changes to the character of the neighborhood or the nearby community.
3. The request is substantial as the setback requires that structure be setback by at least fifty (50') feet from the shoreline. This structure will pass the shoreline and extend into the water by thirty-six (36') into the water.
4. There will be no adverse physical or environmental effects despite the structure being wider than allowed under the Town Zoning Law.

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5. The alleged difficulty is self-created. The structure can be configured in a manner which complies with the Town of Horicon Zoning Law and no adequate basis has been offered by the applicants for not doing so.

Gary Frenz made a motion to table the application until the November 15, 2016 meeting at which time the Board will further discuss the summary of variance criteria for approval or denial. Second by Scott Olson. **ALL AYES.**

Being no further questions or comments Scott Olson made a motion to adjourn the meeting. Second by Chairperson Thad Smith. **ALL AYES.**

PUBLIC COMMENTS: None

BOARD COMMENTS: None

Meeting adjourned 8:45 pm.

Next meeting: November 15, 2016

Respectfully Submitted,
Theresa Katsch, Secretary