

**Horicon Planning Board
Regular Meeting**

**June 19, 2013
7:00PM**

Present at meeting: Harry Balz Chairman
Bill McGhie, Member
Mike Raymond, Member
Jim Remington, Member
Teri Schuerlein, Member
Georgia MeMeekin, Alternate
Paul Holmes, Alternate

Also Present: Cathi Radner, Esq Town Attorney
Gary Frenz, ZBA Chair
Priscilla Remington, ZBA Member
Matt Simpson, Town Board Member
Bob Olson, Town Board Member
Jim Steen, Zoning Administrator
Dorothy Johnson, Secretary

Dan Smith, Tom Johansen, Herta Leidy, Sally and Jeff Clark, Gail Frenz, and John Hall

Agenda Items:

File #2013-08CU	Tax Map 71.-1-45.1	Lewis Property 20 Additional Sites
File # 2012-17SD	Tax Map 38.16-1-45.1	Clemente Property 3-lot subdivision
File # 2013-06AV	Tax Map 55.10-1-4	Hall Property Setback Variance

Pledge

Chairperson, Harry Balz called the meeting to order at 7:00 PM. Stated that the two Alternates will not be voting or participating as there is a full quorum of the board.

APPROVAL OF MINUTES: Teri Schuerlein made a motion to approve the May minutes , 2nd by Mike Raymond, All Ayes

COMMUNICATIONS: Chairperson Harry Balz reviewed his memo with the board regarding vernal ponds

NEW BUSINESS: File#2013-08CU
Tax Map 71.-1-45.1
Lewis, Michael and Brenda
109 Bean Road
Conditional Use to add 20 additional RV sites

Jim Steen stated an application for Conditional use was submitted to the office to expand the campground sites located on Bean Road, this is considered a Class B regional project due to an expansion of at least 25%, the Lewis" will need septic approval from the NYS Dept. of Health and he has requested that information and maps, showing the expansion be submitted but he

has not received them speculating that the Lewis^ would have been present at the meeting.

Mike Raymond asked Jim Steen how many sites are presently there now.

Jim Steen stated that the Lewis' started with thirty (30) sites and that they had recently expanded with another twenty (20).

Harry Balz asked about winter improvements.

Mike Raymond stated that he thought they had already had approval for another twenty (20) and had completed the project.

Jim Remington confirmed they had completed another twenty(20) sites but were seeking application for an additional twenty (20) sites.

Harry Balz made a suggestion to table application as they were missing information.

Being no further comments Bill McGhie made a motion to table the application 2nd by Jim Remington. All AYES.

PUBLIC HEARING: File#2012-17SD
Tax Map 38.16-1-16
Clemente, Ryan, DeBari
1114 Palisades Road
Three (3) lot subdivision

Harry Balz stated that he had questions regarding the vernal pond and consulted the Town's Attorney Mike Hill. The Town's Attorney suggested the Planning Board hire an engineer for any such advice. Harry Balz did not feel that the referral to the Town's engineer would be justified and contacted the NYSDEC. The NYSDEC stated that they had no jurisdictional control over this vernal pond. Harry Balz also contacted the Army Corps of Engineers on May 4th, and reported that the APA, DEC, and the Army Corps of Engineers had no jurisdiction over the vernal pond located on this property.

Attorney Cathi Radner stated since there are no wetlands and the APA, DEC, and the Army Corps of Engineers have stated that they have no jurisdictional authority, there's nothing that prevents the Planning Board from moving forward with this project.

Teri Schuerlein asked if a neighbor could force the APA to take samples of the vernal pond.

Cathi Radner responded that the APA could not be forced by a neighbor to come in to take samples. Restated that the APA has stated that this is non-jurisdictional in this situation.

Teri Schuerlein stated that she had a vernal pond on her property that they had filled in and the APA came in at a later date and forced them to remove fill.

Cathi Radner stated that there is always a risk to property owner that the APA could change their mind at a later date but that there is no liability to the Planning Board.

Hary Balz asked Attorney Dan Smith to elaborate on the 3 Lot Clemente subdivision.

Attorney Dan Smith stated that he and Tom Hutchins walked the plat with the APA, APA

determined that all of the wetlands are located on lot #3 which would be jurisdictional with the APA as well as lot#2 because it is considered to be in the wetlands group as middle jurisdiction. There are 2950 sq. feet of wetlands (.067 acres) on lot #1 which is under the Agency's 1 acre rule, the 1/2 acre rule of the Army Corps of Engineers and the 1/10 rule of NYSDEC.

Bill McGhie stated that it was his understanding that they would not be completely filling in pond.

Attorney Dan Smith stated that there is a proposal to go between the two areas with a culvert, considered settling basins.

Jim Remington stated that the neighbor was concerned about water running to their property but informed the board that the neighbor has filled in areas as well, continuing on to state that the water could not run in that area as he has had personal experience with that property.

Harry Balz asked members if they had any further questions

Being no further questions or comments, Bill McGhie made motion to close public hearing 2nd by Mike Raymond. All AYES.

Harry Balz stated that the public hearing for File#2012-17SD has been closed

UNFINISHED BUSINESS: File #2012-17SD
Tax Map 38.16-1-16
Clemente, Ryan, DeBari
1114 Palisades Road
Three (3) lot subdivision
The applicant is being represented by Attorney Dan Smith

Attorney Dan Smith asked the board for an approval on the condition that an APA permit is received jurisdictional to lots#1 and#2 with a notation on the APA permit that lot#3 is non-jurisdictional.

Harry Balz recommended approval of subdivision, stating that the board had reviewed all information submitted from the applicant's representative and Engineer and feels the Zoning Administrator has reviewed the project and has made no negative comments.

The board reviewed the SEQRA form.

Bill McGhie made a motion to declare a negative declaration, 2nd by Mike Raymond. All Ayes.

Bill McGhie made motion to approve the three (3) lot subdivision with the condition that an APA Permit is received declaring that the APA permit is jurisdictional to Lots #1 & #2 with a notation on the permit that Lot #3 is non-jurisdictional, 2nd by Mike Raymond. The board was polled. Bill McGhie Aye, Mike Raymond Aye, Harry Balz Aye, Jim Remington AYE. Teri Schuerlein Nay. The motion passed by majority vote.

REFERRAL FROM ZBA: File# 2013-06AV
Tax Map 55.10-1-4
John and Ann Hall

736 Palisades Road
74 foot shoreline setback variance where 100 feet is required and a
5 foot 6 inch side-yard setback variance where 15 feet is required
to build a new home.

Attorney Cathi Radner made disclosure that John Hall is a judge in Warren County and that he has been a client of her firm and stated that it would not impact her ability to be impartial and to offer unprejudiced legal advice

Mike Raymond announced that he spoke against the project at the last ZBA meeting but he could be fair, impartial and unprejudiced and felt he did not need to recuse himself

John Hall reviewed the five criteria per Section 16.40 Requirements for granting variances of the zoning law

- 1.) Preserve and protect the same character of the neighborhood showed visual examples of other contemporary style houses similar to home that he would be constructing. No undesirable change would take place in the neighborhood.
- 2.) John Hall explained how his lot is narrow and that his new home could not be built in different location that he would be building home on same footprint of present home which is grandfathered in. Home was built in 1963. His new home would be no closer to lake and does not exceed maximum height limitation even if solar panels are placed on roof. Environmental condition would be improved with change to present septic. Placing a norwecco system in place of. Felt that requested variances were substantiated.
- 3.) Not Self Created-14 years before zoning ordinance.
- 4.) Addressed his neighbors concerns about trees. Stated that no trees would be cut to accommodate his plans for construction.

John Hall then reviewed a visual impact study that was prepared by his surveyor and architect to show that his newly constructed home would not obscure his neighbors view once they had erected it. Reviewed that his new home would only be 8-10 feet taller than existing home. Also reviewed that visual impact studies were not capable of showing contour, brought to the boards attention that there was no landscape (trees) on visual impact study

John Hall then showed actual photos of the Clark property from lake and lot showing that trees on lot were substantially more obscuring of the lake view from their newly proposed home. No view of North because trees are blocking that view as well. Made a point that none of the neighbors had a 180 degree view that the Clarks are protesting for.

John Hall continued on to review a Tax Map of other properties close to his proposed home to show how his neighbor Vandevander was able to obtain a variance in January 2010. Pointed out that after construction of that home the Vandevanders were indeed obscuring the neighbors view with height, size and trees of property. Inquired why they were granted a variance if the home that was constructed was going to block neighbors view, comparing his situation to that of his neighbors asking the Planning Board to be objective and non-prejudice in determining the outcome of his projected construction plan based on the relationship between Mike Raymond and his sister Sally Clark, his neighbor.

Mike Raymond then recused himself stating that he was becoming prejudiced by John Halls comments.

Georgia McMeekin asked for clarification about being an alternate now that she has been asked to step in to replace Mike Raymond.

Cathi Radner explained that in this situation she could review minutes and ask questions to

educate herself as she was not able to participate in discussions as an alternate.

John Hall reiterated Section 16.40 criteria requesting the Planning Board recommend to the ZBA that the ZBA approve the project.

Georgia McMeekin asked for clarification from John Hall that the building's height is thirty-six(36) feet to include the solar panels and the relevance of the Vandevander's approved variances.

Jim Steen explained that the Vandevanders had been granted approval for an eleven (11) foot variance from lake and that they had added a three (3) foot catwalk after they received the variance approval from the ZBA and after Warren County, had inspected the property, continuing on to state that he had placed a call to Warren County Building Department, but has not heard back from them and in the interim has sent the Vandevanders a certified/return receipt letter regarding the catwalk and he will be addressing any needed variance issues with the Zoning Board of Appeals (ZBA) as soon as feasibly possible.

Harry Balz asked Attorney Cathi Radner to review the Planning Board responsibilities in regards to this ZBA referral.

Attorney Cathi Radner stated that the Planning Board should review this project as Planners only, the ZBA's responsibilities is to weigh the criteria of Section 16.40, and the Planning Board is charged with making a recommendation to the ZBA as to the denial or approval of a project and that their recommendation is not binding.

There was question about audience participation in this hearing. Harry Balz stated that this is a referral from the ZBA, this is not a public hearing and this board is not required or permitted to take public comment. Harry Balz continued on to state that public comments should be made at the ZBA meeting.

Harry Balz asked for John Halls construction timetable.

John Hall responded that he does not have an immediate time table for this project and stated that he would like to begin construction in the fall and wanted to give himself enough time to comply with required documentation and approvals.

Planning Board members stated they had concerns about making a recommendation to the ZBA without having the ZBA minutes and the public comments available

Gary Frenz, Zoning Board Chair explained that John Hall was there this evening because of concerns regarding garage setbacks, landscape on lake and the size of the home

A number of conversations ensued making it difficult to follow every conversation taking place.

The Planning Board suggested that the garage should be relocated 5 ½ feet to make a straight line with residence to have less of a visual impact on the neighbors property

Bill McGhie made motion to recommend to the ZBA that they approve the area variances with the suggestion that the garage be relocated to comply with fifteen (15) foot setback. 2nd by Jim Remington. All Ayes

PUBLIC COMMENTS: none

BOARD COMMENTS: Further conversation pursued involving alternate participation. Attorney Cathi Radner reviewed the responsibilities of board members and alternates. Several board members did not agree with alternates being excluded from participation and questioning

NEXT MEETING: Wednesday, July 17

Being no further business before the board, the meeting was adjourned at 9:00PM.

Respectfully submitted

Dorothy Johnson, Secretary