

**Horicon Planning Board  
Regular Meeting**

**June 18, 2014  
7:00 PM**

**Present at Meeting:** Harry Balz, Chairman  
Bill McGhie, Vice-Chair  
Teri Schuerlein, Member  
Michael Raymond, Member  
William Siegle, Member  
Georgia McMeekin, Alternate  
Dan Freebern, Alternate

**Also Present:** Mike Hill, Town Attorney  
Jim Steen, Zoning Administrator  
Bob Olson, Town Board Member  
Gary Frenz, Zoning Board Chairman

Harvey and Herta Leidy, Richard Dwyer, Gail Frenz

**Agenda Items: File # 2012-12-CU Tax Map 71.16-1-18 Dwyer, Erikson & Schwalji**

Chairman Harry Balz called the meeting to order at 7:00 PM  
Pledge

Minutes Approval: Harry Balz stated that due to recusal of members in the March 2014 meeting, Bill McGhie, Dan Freebern, William Siegle will be only members voting on the March 2014 minutes. Bill McGhie made a motion to approve the March 2014 minutes, 2<sup>nd</sup> Dan Freebern, All Ayes.

Harry Balz stated that the April and May 2014 minutes will be tabled until the July meeting.

Teri Schuerlein asked when the May minutes would be completed. Harry Balz stated that they are being worked on.

Teri Schuerlein stated that she is recusing herself from the Dwyer, Erikson, Schwalji application, and sat in the back of the room. Harry Balz stated that Georgia McMeekin will replace Teri Schuerlein.

**PUBLIC HEARING:** File # 2012-12CU  
Tax Map 71.16-1-18  
Property Location: Palisades Road  
Property Owners: Richard Dwyer, Peter Erikson, Joseph Schwalji  
Project: Conditional Use for a Multiple Access Dock System

Harry Balz asked Jim Steen to update the Board on the application. Jim Steen stated that this application was before the ZBA due to the "E" Shape. In speaking with Mr. Dwyer, he indicated that the "E" Shape was not new and the dock had been in an "E" shape in years past. Jim Steen requested Mr. Dwyer to produce proof showing the shape of the dock, a photograph was produced from the early 1980's showing the Palmer

Brothers. Jim Steen spoke with John Palmer and confirmed that was him in the photo stating it was approximately 1982 or 1983, before the dock regulations took effect in 1987. Jim Steen continued on to state that the old dock was an "E" shape but constructed out of wood, and made a determination that a variance for the "E" shape was "grandfathered" prior to the docking regulations and the application before the ZBA was terminated. Jim stated that Mr. and Mrs. Leidy could challenge his determination if they so choose.

Bill McGhie asked if the new dock is larger than the original.

Jim Steen stated that the current dock is larger, but still meets the criteria, as they are allowed 330 square feet, the current dock is 272.5 square feet, the setback from the property lines are 30 feet on one side and 40 feet on the other where 22 feet is required, and does not extend further than 40' from the mean low water mark.

Harry Balz asked if any board members had any questions for Jim Steen. As there were no questions at this time, Harry Balz stated that he will open the public hearing to the audience for comments or questions, stating that he would like the dock situation to be discussed, nothing else.

Harvey Leidy stated that this is a complex issued and submitted a memo to the board for their review. Harvey Leidy re-capped the information in the memo for the board, requesting that the Board look for a reasonable solution since this has been an ongoing issue since 2002, reading the definition of:

- A) **Section 9.70.10 Multiple Access Dock:** A waterfront facility which provides either docking or mooring facilities for more than four (4) boats. The term shall not include the noncommercial docking or mooring of boats which are owned or registered in the name of the owners or the waterfront facilities or their immediate family. The term shall include a waterfront facility which provides either docking or mooring for more than four (4) boats upon property owned by a corporation or association or by two (2) or more individuals' not related by blood or marriage. See Section 9.70.10. Harvey Leidy stated that when you go to Section 9.70.10 (a) and (b) talks of subdivisions, this property is not part of a subdivision, thus Multiple Access Dock does not apply to this application.
- B) **Commercial Marina Definition:** A commercial waterfront facility including docks, wharves and moorings which provides accommodation services for boats by engaging in any one of the following: [1] The sale of marine products or services and/or [2] The sale, lease, rental or charter of boats of any type and/or [3] The sale, lease, rental or any other provision providing for the docking, mooring or storage of more than two (2) boats or for the launching of boats. The term "commercial marina" shall include facilities with or without supply and repair services. See Section 9.70.9. Harvey Leidy stated that since there are a minimum of four (4) boats being rented, the Commercial Marina would apply.

Harvey continued on to state that if the photo showed an "E" shape dock back prior to the 1987 dock regulations, submitting aerial photography photos to the board from the Warren County GIS site, that the configuration of the dock has changed over the years, the "E" shape would no longer be grandfathered, reading **Section 15 NON\_CONFORMING USES AND STRUCTURES:**

**15.10 Continuation:** Subject to the provisions of this section, a nonconforming structure or use or a structure containing or constituting a nonconforming use which was lawfully in existence on December 29, 1977 and has not been discontinued for any period of one (1) year since that date may be continued and maintained in a reasonable repair but may not be altered, enlarged or extended.

**15.20 Discontinuance of Non-Conforming Use:** If a non-conforming use is discontinued for a period of one (1) year, further use of the property shall conform to this ordinance.

Harvey Leidy continued on to state that this Board recently approved a very large dock for the Brant Lake Heights HOA (BLHHA) (May 2014), similar conditions are needed on this application such as 1) no rental of boat slips, only owners of the property are permitted to dock a boat. 2) Off road parking, safety issue as related to BLHHA also needs to be added and 3) side yard setbacks of 20% need to be adhered to. There is limited site distance, no shoulder, there is a need for pedestrian and bicycle safety, allow for unobstructed parking for adjoining beach property. There has never been any permits issued for this dock, there are picture of six (6) boats, sometimes seven (7) boats, presently only three (3) boats docked, look at the rental issue. March 12, 2012 Gary McMeekin, Zoning Administrator sent a letter stating that only four (4) boats were allowed and that began the Conditional Use process. Nothing was done in 2013, no meetings, no permits. Photos of 2013 were submitted to the Board showing different dock shapes. Meetings held at the ZBA stated that they felt the docks should not be rented, asking the board to added reasonable conditions as there are a number of issues of non-compliance, asking if everyone that has 110' of shoreline are eligible to have a seven (7) boats docked on their property.

Michael Raymond asked Harvey Leidy to explain the Pine Ridge HOA (PRHOA).

Harvey Leidy stated that there are four (4) property owners that have rights to PRHOA, a property that adjoins the subject property. There are two (2) pre-existing bathing rights attached to the PRHOA beach property

Michael Raymond asked if the dates of the aerial photography were known.

Harvey Leidy stated approximately 2004 and 2010, showing that the docks have been modified over the years.

Jim Steen stated that the majority of the photos are taken in the fall or spring and the docks could be in the process of being removed or installed and it was difficult to pin point an exact date of when the photos were taken.

Harvey Leidy stated that on one of the photos the leaves are turning, but there is substantive changes throughout the years.

Jim Steen stated that in his opinion the "E" shape dock was in existence prior to the docking regulations of 1987, if in fact the dock shape was discontinued for a period of one year, the ZA at the time did nothing about it, this is an act of omission, and to request me to go back ten (10) years and apply the law at the time, cannot be done. An appeal of a ZA's determination must be done within sixty (60) days.

Richard Dwyer stated that there has only been one dock shape, an "E".

Jim Steen stated that if someone wanted to challenge the "E" shape, it must go before the ZBA, but feels there is no reason this Board could not continue with a condition of the ZBA's determination.

Harry Balz stated that he concurred with Jim Steen's thinking and asked the Board to continue on.

Jim Steen stated that this property is not part of a subdivision but the Multiple Access Dock Section 9.70.10 (a) does not exclude this type of Multiple Access Dock application. Continuing on to state that he felt that the wording in Section 9.70.10 (a) is in error, and the intent of the law was to include this type of application. If the definition of Multiple Access Docks and the reference to Section 9.70.10 (a) does not apply, then there is no need for this application to come to this Board, and he will issue a Zoning Compliance Certificate to Richard Dwyer. Suggesting that the Town Attorney review the definition and Section and advise this Board.

Mike Hill stated that he has no response or comment at this time.

Harry Balz stated that he felt this Board should continue.

Jim Steen stated that if Section 9.70.10 (a) does apply to this application, the first paragraph is not worded correctly.

Mike Hill stated that he wanted to clarify for the Board the Section being referred to and Jim Steen stated that this Section 9.70.10 (a) does apply to the application.

Jim Steen read the definition of ***Dock, Multiple Access: A waterfront facility which provides either docking or mooring facilities for more than four (4) boats. The term shall not include the noncommercial docking or mooring of boats which are owned or registered in the name of the owners of the waterfront facilities or their immediate family. The term shall include a waterfront facility which provides either docking or mooring for more than four (4) board upon property owned by a corporation or association or by two (2) or more individuals not related by blood or marriage. See Section 9.70.10.***

Jim Steen stated that Section 11.60 limits square footage in relation to the width of the shoreline, length of dock from mean low water mark, and 20% setbacks. There is no limitation on number of boats. If 9.70.10 (a) does not apply to this application then there is no need for the Conditional Use.

Mike Hill stated that the ZA Jim Steen made a determination that Section 9.70.10 (a) applies to this application.

Harry Balz stated that he concurs with Jim Steen's determination.

Mike Hill stated that there is nothing to offer, Jim Steen has made a determination and this Board has to deal with his determination and can move forward.

Herta Leidy stated that the owners (Dwyer and two others) have nothing to do with the PRHOA. There are three (3) owners of the property and many of the dock slips are being rented out to non-owners, the photos sometimes shows as many as eight (8) boats and this should fall under the Commercial Marina definition

Richard Dwyer stated that there are inaccuracies being stated: 1) He and the other two (2) owners have been on compliance and gone overboard 2) The other two (2) boats are owned by Erikson who has a daughter in a wheelchair, sometimes they are there, sometimes they are not. 3) New docks are bigger as boats are bigger. Docks are in compliance, have been moved and cars are rarely in the road. Parking for parties is done at the Madden's.

Harry Balz stated that this application is not about the parties and asked if Richard Dwyer could give this Board a detailed sketch/narrative on where six (6) vehicles could park.

Richard Dwyer stated that there is one (1) vehicle for three (3) boats. Three (3) others and one (1) guest. They are there for one or two weeks.

Harry Balz asked Richard Dwyer if all four (4) cars could park on the property.

Herta Leidy asked "why do they park on our property".

Bill McGhie asked if a new SEQRA form was required.

Mike Hill stated that if the application was still pending, a new SEQRA would not be required .

Jim Steen stated that the Planning Board minutes of 8/15/2012 states the Board declared a negative declaration in regard of SEQRA.

Richard Dwyer stated that he has lived in the house since 1977 and there has never been a police report or any incident regarding a car accident etc.

Michael Raymond stated he was hit three (3) years ago, the kid next to Lewis' turned left, this is a blind area and we never saw each other.

Harry Balz asked Michael Raymond if there was a police report made.

Michael Raymond stated that there was a police report made.

Harry Balz asked if anyone had any other questions.

Bill McGhie stated there is an issue of rental of docks, you say that you don't rent docks.

Richard Dwyer: No, but now that I know we can rent two (2) we might. There are three (3) owners.

Bill McGhie: We prohibited BLHOA from renting out dock slips.

Richard Dwyer: We are not a HOA

Bill McGhie asked if he could finish

Richard Dwyer: I'm sorry,

Bill McGhie: We may do that now, will that impact you?

Richard Dwyer: We don't rent them now.

Bill McGhie: So that will pose no problem to you whatsoever.

Richard Dwyer: No, we don't rent them now, but if he says we can rent two (2) we might.

Question was asked to Richard Dwyer if boat slips were rented to Jane and Bruce Bennett, Cheryl Erickson, Poul and Marylou Carstensen, Mr. O'Dwyer?

Richard Dwyer: The Bennett's are very good friends with my daughter from school, and very good friends of ours. The Erickson's rented fifteen (15) years ago.

Michael Raymond: Bill O'Dwyer's son rents.

Richard Dwyer: Bill, Now? No, it's not his son, his son-in-law. His son-in-law has use of the dock. If they rent, they ain't renting from me.

Michael Raymond: Bill O'Dwyer's son-in-law and daughter and paid in cash.

Richard Dwyer: So you got any bills? Are there any Contracts or checks? And if we can rent two (2) then it's one of the two.

Michael Raymond: All paid in cash and they will testify to that. I guess they are just giving you a tip.

Richard Dwyer: Don't know what the other two are doing, I don't rent. The whole thing on renting docks is ridiculous. If you are going to say that someone rents a dock it's a commercial lot, if you rent a house it's a commercial lot, you can't have it for one and not for everybody.

Jim Steen stated that the only place the ordinance addresses rental of dock slips is Commercial Marina. Reading the definition of **Commercial Marina: A commercial waterfront facility including docks, wharves and moorings which provides accommodation services for boats by engaging in any one of the following: [1] The sale of marine products or services and/or [2] The sale, lease, rental or charter of boats of any type and/or [3] The sale, lease, rental or any other provision providing for the docking, mooring or storage of more than two (2) boats or for the launching of boats. The term "commercial marina" shall include facilities with or without supply and repair services. See Section 9.70.9.**

Mike Hill stated that under the definition if more than two (2) dock slips are rented, the facility would fall under Commercial Marina.

Jim Steen stated that the issue of dock rentals came up at the ZBA meeting.

Harry Balz stated that a property would need 3.2 acres to qualify for a commercial marina.

Jim Steen stated that if this is considered a Commercial Marina than a Use Variance would need to be obtained as this property does not have 3.2 acres.

Harvey Leidy asked that this Board consider the detailed letter submitted and address what was said at the ZBA meeting, the application was withdrawn and nothing happened after November 2012, and the Conditional Use application was resurrected in 2014 with a photo showing an "E" Shape, so the variance for the "E" shape was not relevant. Take the BLHHA approval into consideration as precedence has been set, regarding parking issue is related to land use and the dock usage, to protect the integrity of our beach and not allow cars to park on our entrance to our beach.

Harry Balz stated this this application has nothing to do with the parties on the property and the board will try to resolve parking for four (4) cars. The BLHHA people are not parking vehicles on the beach property.

Richard Dwyer stated that he pulled the application to the ZBA as he was advised that he did not need a permit to replace the docks in the same design.

Harry Balz asked the Board is they understood why the application to the ZBA has been withdrawn. Confirming with Jim Steen his determination of the "E" shape was in existence prior to the dock regulations of 1987.

The Board indicated that they understood.

Mike Hill stated that 1) SEQRA was completed 2) This application has been pending since 2012 3) Public Hearing is being held 4) Asked the Board if they need any additional information regarding docks and parking. If all is complete, the public hearing can be closed and SEQRA can be re-affirmed and the Board can request a written draft of a decision if they so choose.

Michael Raymond stated that the idea of getting a drawing of where the parking should go for use of the seven (7) or eight (8) boats before this Board goes forward.

Harry Balz stated that this Board can do something to provide parking for four (4) cars, as the applicant has indicated that that's all that will be there. If this Board wants to grant that, he can sit down with the ZA and lay out how he's going to do this, and make that a condition of the approval.

Brief discussion regarding conditions that can be opposed on an approval.

Michael Raymond stated that there is an overflow, if you have seven (7) boats and you only have room for four (4)..

Harry Balz stated that's all he's telling that we wants, that's all he feels that he needs. A provision shall be made for on-site parking for four (4) vehicles to accommodate all the seven (7) boats that are permitted to be there.

Georgia McMeekin stated that Richard Dwyer stated six (6) boats. Six (6) or seven (7)?

Harry Balz stated that the photo shows seven (7) boats.

Georgia McMeekin stated that the number of boats need to be clarified.

Richard Dwyer: six (6) boats and a spot for guest,

Jim Steen: up to seven (7) boats

Harry Balz state that the applicant is entitled to 7 boats docking for 6 boats so it's 7, only need 4 parking stalls developed on site 4 cars don't park on the public highway or across the street at Johnny Jones house

RD Extras go across the street

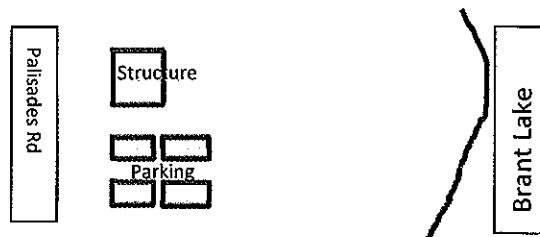
HB the extras are not because of the boats.

Jim Steen: there is a structure and 52' of road frontage.

Bill McGhie: We put limits on BLHHA about renting boat slips, I feel very strongly that we can put a Condition that no boats be rented on this application as well.

Georgia McMeekin and Michael Raymond stated that they agree with Bill McGhie.

Jim Steen stated that there is 52' of frontage on Palisades Road. The parking regulation stated that a parking spot is 10' x 20' , drew a sketch on the tax map showing four (4) parking spots, two (2) cars in front and two (2) cars in back as demonstrated below:



Bill McGhie made a motion to close the public hearing, 2<sup>nd</sup> by Michael Raymond. All Ayes.



**UNFINISHED BUSINESS:** File # 2012-12CU  
Tax map 71.16-1-18  
Property Location: Palisades Road  
Property Owners: Richard Dwyer, Peter Erikson, Joseph Schwalji  
Project: Conditional Use for a Multiple Access Dock System

Mike Hill stated that there was a discussion regarding SEQRA and suggested that the board re-affirm the negative declaration from 2012.

Bill McGhie stated that there have been no changes to the property since 2012 and made a motion to re-affirm the negative declaration of no Environmental Impact, 2<sup>nd</sup> by Michael Raymond. All Ayes.

Bill McGhie stated that the parking issue has been addressed, there is room for four (4) vehicles, I want put a condition of approval that no dock space be rented out.

Harry Balz stated that we will do the cars first: There is room for four (4) vehicles to be parked on the property for the use of boats. A minimum of four (4) parking spaces on the property as depicted in the sketch.

Mike Hill suggested that the criteria of the code Section 9.61 and 9.70.10 (a) be reviewed individually.

Section 9.61:

- 1) Dock complies with dimensional limitations of the code,
- 2) Lakefront parcel and docks are allowed and consistent with lakefront parcels, typical use for a maximum of seven (7) boats, the use is limited. In harmony with lake/beach front.
- 3) Ample room for parking off the highway, provided that they are kept off highway, this Board is talking about use of dock only.

The Board agreed that this application complies with Section 9.61 (1), (2), (3).

Section 9.70.10 (a):

- 1) This application is for seven (7) boats per 100 feet for shoreline.
- 2) Maximum width does not exceed 50% of the total shoreline of 110' at mean high water mark.
- 3) Discussion regarding buoys, ingress and egress of boats ensued. Board agreed that the property is shallow, the DOH does not get involved with buoys, and there are navigation rules that will protect the property. Richard Dwyer stated that there are two (2) float boats and one (1) ski boat.
- 4) This application is subject to inspection and review by the Zoning Administrator.

The Board agreed that this application complies with Section 9.70.10 (a) with Conditions on Parking and Rentals.

Mike Raymond made a motion to approve the Conditional Use application for a Multiple Access Dock "E"

Shape for a maximum of seven (7) boats as shown on sketch based on discussion with the conditions:

- 1) Parking to be provided for a minimum of four (4) cars on the property.
- 2) Rental and/or renting of boats slips is prohibited.

Richard Dwyer stated that the ordinance allows two (2) rentals.

Bill McGhie stated that this will be the condition of approval and asked if he had an issue with it.

Richard Dwyer stated no.

Motion was made and 2<sup>nd</sup> by Bill McGhie. All Ayes.

New Business: File # 2011-06CU

Tax Map 88.14-1-3

Property Location: 6421 State Route 8

Property Owner: Charles Higgins (Robert Higgins)

Project: Conditional Use approval 7/27/2011 – Three year review

Harry Balz stated that it has been three (3) years since the approval of a Conditional Use to cut firewood on property, and requested that the Zoning Administrator send a letter to the property owner requesting his presence at this meeting.

Jim Steen stated that Robert Higgins called his office and stated that he is no longer selling firewood, he would be taking down the temporary structures, removing the junk vehicles to the back of the home and cleaning up the property and is withdrawing the application to the Board.

Harry Balz stated that it might be appropriate for the Town Attorney to draft a letter stating the Board's concerns with the property.

Jim Steen stated that this Board can only deal with the sale of the firewood operations and the junk issue is his responsibility.

Brief discussion ensued regarding the drafting of a letter and the contents to be included in the letter.

Mike Hill suggested that the Board send a letter that this application is subject to review and he declines to come in and to participate, this Board can rescind the Conditional Use approval and intends to do so at the July 2014 meeting at 7 PM, if owner has any objection he can appear before this Board and advise this Board of his intent. This should be a written notification sent Certified Mail/Return Receipt.

Bill McGhie made a motion to authorize the Town Attorney to draft a letter to Robert Higgins per discussion on Town Letterhead and Harry Balz' signature. 2<sup>nd</sup> by Michael Raymond. All Ayes.

Public Comments: Bob Olson thanked the acting secretary for stepping in tonight.

Board Comments: Harry Balz stated that a recent application before this Board was difficult for the three (3) members that had to deal with it. He feels they did an excellent job in getting the issue resolved and has learned a lesson to never decide on a document that has not been approved in a public meeting.

Next Meeting: July 16, 2014

Being no further business before the board, the meeting was adjourned at 9:20 PM

Respectfully submitted  
*Christine Hayes, Acting Secretary*