

**Town of Horicon
Zoning Board of Appeals**

**March 24, 2015
Minutes**

Present at Meeting: Thad Smith, Acting Chairperson
Pat Farrell, Alternate #1
Scott Olson, Alternate #2

Also Present: Mike Hill, Esq., Town Attorney; Jim Steen, Zoning Administrator; Paul Kazmer, Thea Kazmer Bill McGhie, Planning Board member; Zachary Monroe and Bret Winchip, Winchip Engineering.

Agenda Items: File # 2015-02AV – Patricia Greenwald – Tax Map # 72.13-1-32

Pledge

In the absence of Chairperson Gary Frenz and Vice-Chairperson, Cheryl Erickson, Pat Farrell made a motion to appoint Thad Smith as acting Chairman. 2nd by Scott Olson. **ALL AYES.** Thad Smith, acting as Chairperson, called the meeting to order at 7:10 p.m.

Thad Smith, acting Chairperson, announced that Pat Farrell and Scott Olson would be seated as voting members tonight in the absence of ZBA Board members Gary Frenz and Cheryl Erickson.

Approval of Minutes: Chairperson Thad Smith asked if the members saw a need for any revisions to the draft meeting minutes for the February 24, 2015 ZBA meeting. There was discussion of some proposed revisions. Scott Olson made a motion to approve the draft February 24, 2015 minutes with the proposed revisions discussed and agreed upon by the Board. 2nd by Pat Farrell. **ALL AYES.**

PUBLIC HEARING: **File # 2015-02AV
Tax Map # 72.13-1-32
Patricia Greenwald
6941 State Route 8**

Application for an Area Variance of 375 square feet to permit a dock with a surface area of 672 square feet, where 297 square feet is allowed, in order to construct a dock extending over wetlands to access open water.

Zach Monroe, from Winchip Engineering, speaking on behalf of applicant Patricia Greenwald, reviewed for the Board and members of the Public present the proposal to construct a dock system that would cross over the wetlands on the property and extend forty (40) feet out into the lake beyond the mean low water mark. Based on the Zoning Code and the length of the shoreline of the parcel, the allowable dock surface area square footage is 297 square feet, and the applicant is requesting 672 square feet of dock surface area in order to make the dock long enough to reach over the wetlands near the shoreline, therefore requiring a variance of 375 square feet. Zach Monroe noted that this is a very unique situation where the distance between the mean high water mark and mean low water mark is over 100 feet, much greater than usual on Brant Lake, and is further complicated by the presence of wetlands between the mean high and low water marks. The proposed dock will go over the wetlands, preventing future disturbance of the wetlands. The 128' long portion which will be above the APA designated wetlands is necessary in order to access the 40' long portion of the dock that will be in the open water of Brant Lake. The dock will require a variance from Section 11.60 of the Town of Horicon Zoning Ordinance for dock surface area where, based upon the length of the shoreline of 99 feet, 297 square feet of dock surface area would be allowed (3 square feet of dock surface for each foot of shoreline).

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Scott Olson asked Zach Monroe to point out on the wetlands map provided by Winchip Engineering the location of the proposed project and other docks in the area that have similar circumstances with wetlands. Zach Monroe pointed out the extensive wetland areas along the surrounding shoreline of Brant Lake and stated that they provided the wetlands map in response to the Zoning Board's request from the previous meeting. He pointed out the proposed project and other docks in the area.

Acting Chairperson Thad Smith asked if there were any questions or comments from the Public regarding this proposed project. Paul Kazmer from Brant Lake Estates questioned how many boats were going to be allowed and if this proposed dock would be a multiple-use dock. Zach Monroe responded that only one dock will be built and this is not a commercial marina project. This proposed dock is for a residential lot with an existing cottage and is intended for use only by the owner of that property, not other properties.

Paul Kazmer asked if the project has APA approval and Jim Steen, Zoning Administrator stated that Ms. Greenwald has an application pending at APA. He explained that the Town allows docks up to 6' wide and the APA allows docks up to 8' wide.

Acting Chairperson Thad Smith asked if there were any other questions or comments. There were no more comments from the audience. One written comment in support of the requested variance was received from adjoining owners Joseph and Joan Henshaw. It was read into the record.

The application was previously referred to the Warren County Planning Department and their response was received, indicating there is no county impact from this proposed project. The applicant provided a signed "Authority to Act as Agent form", which was accepted by the Board.

Attorney Mike Hill stated that this project is exempt from SEQRA because it is subject to APA review as a Class A project requiring an APA Permit.

The Public Hearing was left open to allow members of the Public in attendance the opportunity for questions and/or comments during the Board's review of the criteria for approval of the requested variance.

Before discussing the variance criteria, Board members reviewed the dimensions of the proposed dock project. The proposed dock will be 4' wide and 168' in length and approximately the first 128' will be above the APA designated wetlands and the last 40' of the dock will be beyond the mean low water mark, in the open water of Brant Lake. The dock will require a variance from Section 11.60, #1 of the Town of Horicon Zoning Ordinance for dock surface area because, based upon the shoreline length of 99' on the applicant's lot, 297 square feet of dock surface area would be allowed. The proposed dock will be 672 square feet in area and will therefore require an area variance of 375 square feet from the Town Zoning Board of Appeals, as well as a permit from the APA.

The applicant's engineers submitted the following in support of the application:

Area Variance Application of Patricia Greenwald / Tumblebrooke
Farm
For
Boat Dock

Balancing Test: The ZBA shall balance the benefit to the applicant if the requested variance is granted with any detriment to the health, safety and welfare of the community that would result from granting the variance.

Criteria for ZBA to Consider for the Balancing Test:

1) Whether the variance would result in an undesirable change in neighborhood character or to nearby properties.

There would not be any undesirable change in neighborhood character or to nearby properties from granting the variance, which would enable Mrs. Greenwald to have a boat dock for her rental cottage property. Boat docks are typical for properties on Brant Lake. The neighborhood and nearby properties are residential lakefront properties. Many, if not most, of the homes are occupied seasonally, mainly during the summer, when the property owners like to be on the water in motorboats. The shoreline is significantly developed. Most of the lots around the lake have boat docks. The lots that have associated wetlands, like Mrs. Greenwald's lot, often have boat docks that pre-date Town Zoning and APA regulations. Some, have received a variance and APA Permit like those Mrs. Greenwald is requesting. The dock being proposed by Mrs. Greenwald will fit in and be consistent with the existing character of the neighborhood and surrounding properties and will not detract from them or be a detriment to them. There would not be any cover or roof over it; the dock would essentially be just above water level, so any visual intrusion would be minimal and similar to the other docks on other area properties.

2) Whether the variance would result in adverse physical or environmental effects.

The variance would not cause any significant adverse physical or environmental effects. The dock surface will have an open grid pattern that will allow sunlight to pass through and reach the plants in the water below. The plants should therefore be able to continue growing and will not be negatively affected. The support posts for the dock structure have small "footprints" (less than 1 square foot for each), so the area that would be affected by the posts would be very minimal. Once the dock is in place, it will allow people to reach the lake without having to walk through the wetlands area. It will therefore help to eliminate future damage to the wetlands and the wetlands vegetation from people trying to reach the lake by walking through the wetlands from the property to swim or go boating. As noted above, the dock would be relatively close to the surface of the water, so there would not be any significant visual blockage or other visual effect when looking across the water.

3) Whether the variance requested is substantial.

The proposed dock would have a surface area of 672 square feet, or 375 square feet more than allowed under the Town's zoning, which permits 297 square feet without a variance. The 297 square-foot figure is based on 3 square feet of dock area for each foot of shoreline. The lot has 99 feet of lake frontage, resulting in an allowable dock surface area of

297 square feet. The requested variance seems mathematically substantial. However, in the area of Brant Lake where the property is located, the water is extremely shallow and the shoreline area is intermittently wet and dry for extended distances between dry upland portion of lots and the lake itself. The mean high water mark of the lake is far from the mean low water mark. Under these unusual natural conditions, a dock of normal length is not long enough to reach from the on-shore area above the wetlands, over the wetlands, and into the lake where the water is deep enough for a boat. Any other property in this area of the lake is faced with the same circumstances. Considering these extenuating circumstances, the variance request is not excessive or substantial.

4) Whether benefit being sought by the applicant can be achieved by some other means, feasible to the applicant, that would not require a variance.

The property, along with adjacent property to the west, has been in the applicant's family since the mid-1800. In the past, renters occupying the cottage on the property have accessed the lake by crossing through the applicant's adjacent property, which extends all the way to, and beyond, present-day Brant Lake Estates Road. From the road, the lake can be reached by proceeding down a dirt road / path, through a marshy area, to a small wooded area on Moongazer Peninsula at the shore of the lake. Following this route, the distance from the cottage to the shore of the lake is more than six hundred yards and requires going through an area (the marshy area) that has been designated as a wetland. The use of the road / path and the shoreline area pre-date the Town's Zoning Ordinance and existence of the APA and are "grandfathered." Continuation of such access for the occupants of the cottage is not practical and would be expected to cause detrimental impacts to the wetlands on route to the peninsula and at the shoreline there.

The goal of having the dock for the cottage lot is to provide access to the lake for those occupying the cottage, eliminating the need to travel a long distance from the cottage to Moongazer Peninsula and reducing impacts to the wetlands on the road/path to the peninsula and at the shoreline there. The distance, over six hundred yards, as a practical matter requires the cottage occupants to use a motor vehicle to carry boats, related equipment and supplies through the wetland and out to the end of the peninsula. The proposed dock at the cottage lot would eliminate this and the impacts to the wetlands on the peninsula. Additionally, a dock at the cottage lot would allow that lot to be transferred without the need for an easement across the rest of the property for lake access, thereby preventing continued and additional detrimental impacts to the wetlands through, and at, the peninsula.

It is not feasible for Mrs. Greenwald to obtain an easement for access to the lake through a non-wetland property because all surrounding lakefront properties have the same problem: they all have wetlands at the shoreline. Similarly, the public boat launch is not a feasible alternative for boating by anyone in the area for more than one day because of the distance, congestion and the inability to dock and keep a boat there. For regular boating over a period of a week or two, or longer, the public launch is just not practical. The public swimming area is even farther away. Likewise, the only commercial marina in the area, Palmer's Marina, apparently has no vacancies and a waiting list for those seeking dock space, so it is not a viable alternative either. Considering all of the above, the proposed dock is the only alternative that can reasonably accomplish the objective of providing the cottage lot with lake access for boating and swimming purposes while minimizing and reducing long-term potential impacts on shoreline wetlands in the area.

5) Whether the alleged difficulty is self-created.

The difficulty is not self-created. There is an unusually long distance between the main high watermark and mean low water marks along the shoreline on the section of Brant Lake where Mrs. Greenwald's property is located. As a result,

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very long docks are needed to span the shallow wetland areas to reach the lake. This condition affects a number of properties in the surrounding area and was not created by anything that Mrs. Greenwald has done. Rather, it dates back almost 120 years, to 1907, when the original dams were built at Brant Lake to raise the water level in the lake.

Considering the information above regarding the criteria for an area variance, the benefit to Mrs. Greenwald / Tumblebrooke Farm from granting the requested dock surface area variance of 375 square feet outweighs any potential detrimental impact to the health, safety or welfare of the community. The granting of the variance is therefore justified and there is precedent for it.

The Board had the following discussion about the criteria for granting the requested Area Variance Criteria:

- 1) The consensus of the Board was that the dock that would result from granting the variance will not cause any undesirable change in the character of the neighborhood or be a detriment to nearby properties. The variance would allow the applicant to have a boat dock for her cottage property. Boat docks are very common for properties on Brant Lake, not unusual at all. The properties in the surrounding area north of Route 8 are residential lakefront properties. The shoreline is very developed with other homes and docks. The majority of lots around the lake already have docks. The Board agreed that the dock would fit in and be consistent with the other docks and with the existing character of the neighborhood and surrounding properties. The Board noted that another nearby property (Lebowitz) has a dock that goes over wetlands, like the one being proposed by the applicant, and that dock received a variance approval and a permit from APA in 2013. The Board thought the requested dock would not be a detriment to other properties or detract from their appearance. The height of the dock above water would allow room for plant growth under the dock but would be low enough not to be any significant visual blockage; it would be similar to other docks.
- 2) The Board concluded that the benefits sought by applicant could not be achieved by any other feasible means. Any alternatives would result in greater damage to wetlands. The applicant's goal is for people occupying the cottage to have lake access on that lot, eliminating the need to travel a long distance (over 600 yards, which as a practical matter must be done by car) from the cottage across adjoining property and through a major area of other wetlands there to reach the shoreline. The proposed dock would reduce impacts to the wetlands on the adjoining property by cottage users and would also prevent the need for cottage users to walk through the wetlands on the cottage lot to reach the lake. The 600 yard distance from the cottage through the adjoining lot and wetlands means that occupants of the cottage use cars or other vehicles to bring boats, boating equipment and other supplies through the wetlands on the adjoining property and to the lake. These continuing wetlands impacts would be avoided and eliminated by the proposed dock. It is not practical for the applicant to get an easement for lake access through a non-wetland property because the other lakefront properties have the same problem, wetlands at the shoreline. In addition, people do not want to allow others to use their docks for liability reasons and because they can end up with strangers using their dock. The public boat launch is not a practical alternative either because boats cannot be docked there. People coming to the Brant Lake area for more than one day need to be able to keep a boat in one place. The public launch can also be a problem because of the number of day-users, especially on weekends and holidays. Palmer's Marina, the only commercial marina in the area, is booked up and has a waiting list for people who want docks, so it is not a practical alternative either. After considering all of these factors, the consensus of the Board was that the proposed dock is the only feasible alternative. It would provide the cottage lot with access to the lake for boating and swimming and will reduce impacts on the shoreline wetlands.

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- 3) The Board discussed the question of whether the requested variance is substantial and by consensus agreed that it would not be substantial under the circumstances. The water level is very shallow in the section of Brant Lake where the property is located, and the shoreline area can be muddy for a long distance from the lake up to land that stays dry. There can be a lot of distance from the mean high water mark to the mean low water mark, as there is with the applicant's property, where that distance is over 100 feet. These are natural conditions, but they are not normal for most lakes, or even for most of Brant Lake. In these conditions, a longer dock is needed to reach over the wetlands, and out into the lake where the water is deep enough for a boat. A dock of normal length isn't long enough. The other properties in this area of the lake have to deal with the same circumstances. The extenuating circumstances on the applicant's lot are not the applicant's fault; she did not do anything to create them. After considering all of these factors, the Board's consensus was that the variance being requested is not excessive or substantial.
- 4) After discussing possible environmental effects, the Board decided that the variance, and the resulting dock, would not cause any significant negative environmental impacts and would actually prevent negative environmental effects on wetlands. The dock will have an open grid surface, so sunlight will go through it and reach the plants in the wetlands underneath. The plants will be able to continue growing under the dock. The support posts for the dock have small feet, so they will disturb only a very minimal area. With the dock in place, people will be able to reach the lake without walking through the wetlands, which would cause more damage to the wetlands. The dock will have less impact than walking through the wetlands and therefore will help to prevent future damage to the wetlands and wetland plants. There would not be any major visual obstruction looking across the water because the dock would not be high above the water, only tall enough to allow room for the plants below it to grow. The consensus of the Board was that the variance would not have any significant adverse physical or environmental impacts.
- 5) The Board discussed whether the alleged difficulty was self-created and found that it was not, due to the unusual natural conditions on the property. There is a very long distance between the mean high water mark and mean low water mark along the shoreline on this section of Brant Lake. Very long docks are therefore needed to span the shallow wetland areas and reach the lake itself. This condition is the same for many lots in the area and is not a result of anything the applicant did. It results from the decisions over 100 years ago to dam the lake and raise the level of the water, flooding areas that were previously dry, like the applicant's shoreline area.
- 6) The Board discussed whether the variance being requested is the minimum variance necessary. There was consensus that the dock could not be narrower than 4 feet without the risk that it would become dangerously unstable to walk on. The length is the minimum needed to reach over the wetlands and reach the lake and allow sufficient room to dock a boat. The consensus of the Board was that the requested variance would be the minimum necessary to safely meet the applicant's needs.

Paul Kazmer asked if the property is for sale and Jim Steen, Zoning Administrator responded he has no specific information on that property being for sale. Attorney Mike Hill said he believed the applicant has listed the property for sale.

Being no further discussion, questions or public comment, Chairperson Thad Smith made a motion to close the public hearing. 2nd by Pat Farrell. **All AYES.**

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UNFINISHED BUSINESS: **File # 2015-02AV**
 Tax Map # 72.13-1-32
 Patricia Greenwald
 6941 State Route 8

Application for an Area Variance of 375 square feet to permit a dock with a surface area of 672 square feet, where 297 square feet is allowed, in order to construct a dock extending over wetlands to access open water.

The Board considered the “balancing test” for granting a variance. Based on all of the material submitted and the Board’s knowledge of the property, Lake and surrounding area, the consensus of the board was that the benefit to the applicant from granting the variance would outweigh any detriment to the health, safety and welfare of the community.

Scott Olson made a motion to approve the applicant’s request for a dock surface area variance of 375 square feet as set forth in the application, based on the reasons stated in the materials provided by the applicant’s engineers, as supplemented and amended by the Board’s discussions of the criteria for granting the variance, with the ZBA’s approval to be conditioned on the applicant receiving an APA Permit approval. 2nd by Pat Farrell. **ALL AYES.**

Conditions: APA permit approval.

Noting that this project is exempt from SEQRA.

PUBLIC COMMENTS: NONE

BOARD COMMENTS: The Board requested that the file on the Lebowitz dock variance, which the Board considered as it reviewed the Greenwald application, be included along with the ZBA’s decision on the Greenwald application when it is sent to the APA for review.

Being no further comments or questions, Pat Farrell made a motion to adjourn the meeting at 8:25 PM, 2nd by Scott Olson. ALL AYES.

NEXT MEETING: April 28, 2015

Respectfully Submitted,
Theresa Katsch
Secretary