

**Town of Horicon
Zoning Board of Appeals**

**November 15, 2016
Minutes**

Present at Meeting:

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

Also Present: Town Attorney Leah Everhart, Paul Davies, Jamie Davies, Town Board member Bob Olson, Planning Board Chairman Bill McGhie

Agenda Items: **File # 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 7:10 p.m.

Review of Minutes: October 25, 2016 minutes need to be revised and reviewed for approval at December 20, 2016 meeting.

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.

While reading the minutes the applicant Jamie Davies asked that a correction be made to the minutes. Town Attorney Leah Everhart stated that we can hold off tonight on the approval of the minutes from the October 25, 2016 meeting until the December 20, 2016 ZBA meeting. The change that Jamie Davies requested will be noted and changed in the October 25, 2016 minutes that will be reviewed at the December 20, 2016 meeting.

Town Attorney Leah Everhart provided background to the Board on this application stating that two meetings ago (September 27, 2016) the Board conducted the necessary Public Hearing and at the last meeting (October 25, 2016) the board had a detailed and long discussion with the applicant. She noted that the decision has to be made tonight.

Thad Smith stated that the Board members have two proposals in front of them, one marked Item #1 and one marked Item #2 which will be read and a decision will be made after discussion and reading those proposals. The Board members read through Item #1.

Gary Frenz asked Town Attorney Leah Everhart if by calling this a structure will this be changing the Zoning law and be setting a precedent if approved. Town Attorney Leah Everhart stated that the Board could never change the Zoning law by a decision. Town Attorney Leah Everhart clarified Gary Frenz's question by restating the question as would a decision of this board have any sort precedent if anyone comes in seeking to have a dock wider than allowed the zoning code, call it a structure, get a setback variance and therefore enlarge the size of docks? Gary Frenz asked what if someone had a home on the water or a home over the water.

**Town of Horicon
Zoning Board of Appeals**

**November 15, 2016
Minutes**

Town Attorney Leah Everhart responded to Gary Frenz's question by stating all of the Boards decisions have precedential value. The Board is not required to grant one variance just because someone got a similar one. There are different types of applications and structures that would have different outcomes.

Scott Olson asked if Chairman Thad Smith is going to read the resolution out loud and then vote on it. Town Attorney Leah Everhart stated to the Board that documents are for the attorney and the Board not for the applicant. Vice Chairperson Cheryl Erickson asked if they want to read the documents and find out which one the Board decides upon and then vote. Everyone agreed to that suggestion.

After the Board read the proposals Vice Chairperson Cheryl Erickson made a motion to deny the application for the reasons stated in the resolution. Second by Pat Farrell. **ALL AYES.**

Chery Erickson read the resolution out loud for the applicants and the Board that denies the application and reasons for denial.

TOWN OF HORICON ZONING BOARD OF APPEALS RESOLUTION DENYING AREA VARIANCE 2016-04 AV:

WHEREAS, Janet and Frederick Longe own property located at 71 Brant Lake Estates Road in the Town of Horicon which is a lakefront property; and

WHEREAS, the Longes wish to install a ten-foot wide dock which exceeds the width set forth in the definition of "Dock" in the Horicon Town Zoning Law; and

WHEREAS, the Zoning Officer noted that the structure was therefore not a "Dock" under the Town Zoning Law; and

WHEREAS, the Longes now seek a variance to permit the 10-foot wide structure to be placed in the water adjacent to their property; and

WHEREAS, the Town Zoning Law Section 11.24 requires that structures not be closer to the shoreline than 50 feet; and

WHEREAS, Applicants propose to place the structure in the water approximately 36 feet past the property line which would result in an eighty-six (86') variance; and

WHEREAS, a Public Hearing was held on September 27, 2016; and

WHEREAS, the Zoning Board of Appeals subsequently met and discussed this Application at length on October 25, 2016, but took no action.

NOW, THEREFORE, BE IT RESOLVED, that the Horicon Zoning Board of Appeals hereby makes the following findings:

1. This setback variance would not be necessary if the structure at issue fell within the definition of "Dock" under the Horicon Zoning Law as Docks are not subject to the setback provision at issue.

2. When this review process started, the definition of "Dock" expressly limited the width of such structures to 6 feet. However, the Town Board amended the Town Zoning Law, increasing the width of "Docks" to 8 feet.

3. On October 25, 2016, the Board and Applicants discussed at length the different configurations available to the Applicants which would result in a fully lawful structure and obviate the need for any variance. The Board and Applicants also discussed at length whether there was any hardship which supported having a 10-foot structure.

RESOLVED, that the Application constitutes a Type II Action pursuant to the State Environmental Quality Review Act (SEQRA). As such, this project is not subject to SEQRA review; and be it further

**Town of Horicon
Zoning Board of Appeals**

**November 15, 2016
Minutes**

RESOLVED, that 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 Applicants identify no hardship. They may lawfully have an 8-foot wide Dock and the only reasons offered in support of a 10-foot structure are that they previously purchased a 10-foot wide structure without having knowledge of the applicable zoning limitation and that they want to increase the surface area of the structure to permit a safer environment for children who are on the structure. However, the Board has been presented with no evidence that the current structure predates the zoning limitation at issue or that the previous purchase of a structure has some bearing on this review. While the desire to increase the width of the structure to facilitate child safety was a stated goal, there is no evidence or reason to believe that an 8-foot Dock is not adequate from a safety perspective.
2. The structure will not create any undesirable changes to the character of the neighborhood or the nearby community. The structure itself will be viewed by the public as a dock. However, the Board is concerned that issuing a variance under these facts could ultimately have the impact of effectively nullifying the definition of "Dock" in the Horicon Zoning Law as any person wishing to exceed the 8-foot limitation could simply identify it as a structure and seek variance from the applicable setback. While any individual structure may not have an undesirable change on the character of the neighborhood or to nearby communities, the combined impact certainly would.
3. The variance is substantial as the Setback requires that structure be set back from the water by at least 50 feet. This structure would be past the property line and extend into the water by 36 feet.
4. Despite being wider than allowed under the Town Zoning Law, the structure would not alone have any physical or environmental effects.
5. The hardship is self-created. The zoning limitation at issue predates the presence of the structure. The structure can be configured in a manner which complies with the Horicon Zoning Law and no adequate basis has been offered by Applicants for not doing so.
6. It would be impractical to move this structure closer to the shore given the shallow and rocky nature of this area and, in any event, even if the variance were minimized to some extent, it would remain a substantial variance. However, the Applicant could easily decrease the width of the structure so that it met the definition of "Dock" in which case, the setback provision would not apply and no variance would be necessary.

RESOLVED, the Applicants fail to identify any hardship that is not entirely self-created. The Applicants could position their structure in a way to comply with the definition of "Dock" and obviate the need for a variance altogether. The Applicants only stated reason for not doing so is their desire to have a 10-foot dock. However, this would create a "loophole" to the Town's detailed and well-considered Dock regulations. If this Board were to grant the Variance requested based upon this record, nothing would prevent any other lakefront property owner from expecting the same outcome. This would undermine the purpose of dock regulations and the Town Board's legislative decision to define Docks, in part, by their width. For these reasons, Variance 2016-04 AV is denied.

Town Attorney Leah Everhart asked the Board members if they wanted any changes to the above resolution. Chairperson Thad Smith indicated he would like a change on page 1 of Item # 1 to indicate the true amount of the variance which is 86' variance which is substantial. The resolution was changed where indicated and voted upon.

The Board members voted to make that change noted by Chairperson Thad Smith. **ALL AYES.**

Being no further questions or comments Pat Farrell made a motion to adjourn the meeting. Second by Vice-Chairperson Cheryl Erickson. **ALL AYES.**

**Town of Horicon
Zoning Board of Appeals**

**November 15, 2016
Minutes**

PUBLIC COMMENTS: None

BOARD COMMENTS: None

Meeting adjourned 7:35 pm.

Next meeting: December 20, 2016

Respectfully Submitted,
Theresa Katsch, Secretary