

Town of Horicon

ZONING BOARD OF APPEALS

Minutes of January 26, 2010

Members Present: Gary Frenz, Curt Castner, Dan Smith, Cheryl Erickson, Alternates: James Steen and Thad Smith

Members Absent: Priscilla Remington

Others Present: Counsel to Boards Mike Hill, Zoning Administrator Gary McMeekin, Planning Board Member Harry Balz.

Guests Present: Ralph Bartlett, Tom Johansen, Chris Bedell, Donald Ford, Edward Kowalewski, Jr. John (Jack) Reifenburg, Wesley Butler Sr. Roscoe Chase, Ann Marie and Henry Pokripinski, Robert and Hilda Duell, Tom and Sally Thurston, Bill McGhie, Herta Leidy, Chris and Chris Burke,

Pledge

Regular Meeting called to order by Gary Frenz, Chairperson

NEW BUSINESS:

File # 2010-01A Tax Map 89.5-1-11 Dan and Deanne Paull seeking an appeal of Zoning Administrator's determination regarding acreage of parcel to keep animals on property where definition of farm, full or part time requires land in excess of one acre. Dan Paull stated that if he had one square foot over the acreage then he could keep the goats on his property, continuing to say that the recent tax bills are wrong. Being no discussion, Dan Smith made a motion to deem the application complete and schedule a public hearing, 2nd by Jim Steen. All Ayes.

File #2010-03AV Tax Map 72.17-1-4 Christopher and Christine Burke seeking a 41'8" roadway setback variance to add an addition onto existing home located at 7 Duell Hill Rd. Dan Smith stated that he wanted the record to reflect that he and these applicants are good friends and go to the same church. Christopher Burke stated that the den extends off the main part of the house and would like to expand but house is very close to the road. Cheryl Erickson stated that the house is already non-conforming. Being no further comments or questions, Cheryl Erickson made a motion to deem the application complete and schedule a public hearing, 2nd by Curt Castner. All Ayes.

File #201004AV Tax Map 55.10-1-9 Anne Vandevander seeking to modify or replace existing home on parcel located at 720 Palisades Road, Brant Lake. The applicant is being represented by Kevin Mulcahy of Eric & Eric. Kevin Mulcahy stated that the house is pre-existing non-conforming and it is more cost effective to remove the house and replace it with a new home 11' off the lake. Discussion ensued regarding the proposed variance request and clarification made that the applicant is requesting a 89' shoreline setback variance. Being no further comments or questions, Curt Castner made a motion to deem the application complete and schedule a public hearing, 2nd by Dan Smith. All Ayes.

PUBLIC HEARING:

File #2009-35AV Tax Map 89.5-1-11 Dan and Deanne Paull seeking a .20 acre density variance to keep animals on property where definition of farm, full or part time requires land in excess of one acre. Parcel located at 130 Duell Hill Rd Brant Lake. Gary Frenz stated that this Application is on hold due to filing of appeal File #2010-01A.

PUBLIC HEARING:

File # 2009-36 AV Tax Map 39.17-1-15 Betty Marriott seeking 26' roadway setback variance to build a 14' x 36' x 15' high portable garage on parcel located at 7833 State Rte 8 Brant Lake. Betty Marriott stated that there would be sixteen achors in the ground and no cement pad. Gary Frenz stated that there is shelf rock behind the area and this could not go back any further. Gary Frenz asked if anyone had any comments or questions. Being no further comments or questions, Cheryl Erickson made a motion to close the public hearing, 2nd by Curt Castner. All Ayes.

UNFINISHED BUSINESS:

File # 2009-36 AV Tax Map 39.17-1-15 Betty Marriott seeking 26' roadway setback variance to build a 14' x 36' x 15' high portable garage on parcel located at 7833 State Rte 8 Brant Lake. Dan Smith stated that in reviewing the criteria that this is not self created as there is rock ledge in the back. Cheryl Erickson agreed together that there would be no undesirable change to the neighborhood looking at the map, it is canvas, non-reflective and there would be no detriment to other properties. Curt Castner added that this is not substantial. Gary Frenz stated that there is no feasible alternative as there is no better location will have minimal impact and no change to the topography, is moderately substantial but can't go back any further due to rock ledges. Curt Castner made a motion to approve the 26' roadway setback variance as there is no undesirable change to the character of the neighborhood or detriment to nearby properties, the benefits sought can not be achieved by any other means, the request is moderately substantial, there will be no adverse effects on the environment and is not self created. 2nd by Cheryl Erickson. All Ayes.

PUBLIC HEARING:

File # 2009-37AV Tax Map 55.17-1-25 Thomas McCann and Jennifer Winton seeking a 100' shoreline setback variance for deck with stairs and a 80' shoreline setback variance for a retaining wall built on shoreline without permits. Parcel is located on 494 Palisades Rd Brant Lake, the applicant is being represented by Ralph Bartlett of Stock Farm Construction. Ralph Bartlett stated that the estate is being required to obtain the permits for the deck and wall in order for the property to be turned over to the children. Lengthy discussion ensued regarding the need to modify the staris to the dock as the water is eroding the land under the deck. Gary Frenz asked when this deck was built. Ralph Bartlett stated that the work was done in 1985 - 1986. Gary Frenz asked if anyone had any comments or questions. Being no further comments or questions, Cheryl Erickson made a motion to close the public hearing, 2nd by Dan Smith. All Ayes.

UNFINISHED BUSINESS:

File # 2009-37AV Tax Map 55.17-1-25 Thomas McCann and Jennifer Winton seeking a 100' shoreline setback variance for deck with stairs and a 80' shoreline setback variance for a retaining wall built on shoreline without permits. Parcel is located on 494 Palisades Rd Brant Lake. Dan Smith stated that character of the neighborhood will not change as this has been part of the property for years and more change would occur with the removal of the deck. The benefits are pre-existing, the requests are substantial but again pre-existing, the physical or environmental effects will be no more than as they already exist with twenty years of use having a minimal impact and was not self created as the new owners inherited the issue. After a brief discussion, Cheryl Erickson made a motion to approve the 100' shoreline setback variance for deck with stairs, a 80' shoreline variance for the retaining wall and a 2' height variance for retaining wall as there will be no undesirable change to the character of the neighborhood or detriment to nearby properties as there is no change due to pre-existence, the benefits sought by the applicant can not be achieved by other means, the requests are substantial, the difficulty was not self created, permits were not obtained by previous owners now looking to bring property into compliance, there will be no adverse physical or environmental effects and allow improvements to be made, 2nd by Dan Smith. Mike Hill reminded the board that feasible alternatives need to be examined. Dan Smith stated that he feels not granting the requests would defeat the objective. Thad Smith stated that this is not self created and moving it would incur a lot of expense. Gary McMeekin stated that the board could reduce the deck to 100 square feet. Lengthy discussion ensued regarding the size of the deck. Cheryl Erickson stated that she would like to withdraw her motion and discuss the 100 square footage possibility. Gary McMeekin stated that the APA will not have a strong opinion if a deck is under 100 square feet. Cheryl Erickson stated that if the board reduces this by half there is still only a 10' setback from the lake. Mike Hill reminded the board to grant the minimum variance necessary and asked if the applicant had plans to modify the size of the deck. Ralph Bartlett stated there are no plans to modify the deck but to re-support the deck and repair stairs to the dock as this is the only access to the water due to ledge and stairs would be removed each year along with the dock. Lengthy discussion ensued as to the extent the deck extends over the mean high water mark, erosion of area, moving the deck back 3' and revision the variance request to 97', reducing the square footage of the deck by 42

UNFINISHED BUSINESS (con;t) File # 20 2009-37AV Tax Map 55.17-1-25 Thomas McCann and Jennifer Winton

square feet. Cheryl Erickson made a motion to approve the 97' shoreline setback variance for the deck reducing the square footage from 280 square feet to 238 square feet, the 80' variance request for the retaining wall and the 2' variance request for rock wall height as there would be no undesirable change to the character of the neighborhood or detriment to nearby properties as the undesirable change would occur if the deck is removed or altered, the benefits sought by the applicant can not be achieved by other means as this is the only access to the water, has been in existence for twenty years, the request is very substantial but to a minimum as it exists, there is no physical or environmental effects as removing it would create more of an effect, and this was not self created, but created by prior owner, 2nd by Gary Frenz. All Ayes

PUBLIC HEARING:

File # 2009-34AV Tax Map 55.7-1-4 Thomas and Sarah Thurston seeking a 73' shoreline setback variance to build a 22' x 24' screen porch addition on existing home located at 882 Palisades Rd. The applicant is being represented by Chris Bedell of Bedell Builders. Tom Thurston explained the project. Gary Frenz asked if this porch would be insulated with windows. Tom Thurston stated that this would only be a screen porch. Gary Frenz asked if anyone had any comments or questions. Being no further comments or questions, Dan Smith made a motion to close the public hearing, 2nd by Curt Castner. All Ayes

UNFINISHED BUSINESS:

File # 2009-34AV Tax Map 55.7-1-4 Thomas and Sarah Thurston seeking a 73' shoreline setback variance to build a 22' x 24' screen porch addition on existing home located at 882 Palisades Rd. The applicant is being represented by Chris Bedell of Bedell Builders. Gary Frenz stated that the home is 15' from the shoreline, built in 1946 and is a pre-existing non-conforming structure. Brief discussion ensued stating that the proposed porch is not any closer to the shoreline than the existing structure. Jim Steen stated that the house is barely visible from Palisades Road and no neighbors, and next home is over a quarter of a mile away. Cheryl Erickson stated that a porch placement on this side of the home has the most clearance from the shoreline, this is not near the road, no closer to the water, is a practical option and modest request since the home was built in 1946. Jim Steen asked if there would be a foundation. Chris Bedell stated that there would be a 4' crawl space due to rodents and frost protection. Cheryl Erickson stated that this porch would not work on the other side of the house. Dan Smith stated that there are no feasible alternatives that would require a smaller variance request and this is substantial at 73' but only due to the existing footprint of the home and was not self created as the home as existed since 1946. Gary Frenz stated that there are no physical or environmental effects. Chris Bedell stated that the roof line will match the house. Cheryl Erickson stated that neighbors will not be effected and this will not change anyone's view. Tom Thurston stated that trees would not be removed from the shoreline. Cheryl Erickson stated that there would be no further runoff to effect the lake. Curt Castner made a motion to approve as there is no undesirable change to the character of the neighborhood or detriment to nearby properties as the nearest home is a quarter mile away, the benefits sought can not be achieved by another method, the request is moderately substantial, there is no adverse physical or environment effects and this was not self created. Dan Smith stated that the motion should include the detailed discussion this board has had in reviewing this project. Curt Castner agreed to amend the motion to include the discussions. Motion was 2nd by Dan Smith. All Ayes.

The board took a ten minute break

UNFINISHED BUSINESS:

File # 2009-25 AV Tax Map 55.10-1-22 Golden Pond/Farrell seeking a fifty foot (50') shoreline setback variance a 3' side yard setback variance and a 5' side yard setback variance to build a three thousand two hundred ninety eight square foot (3,298) two (2) story home with walk-out basement on parcel located at 686 Palisades Road Brant Lake. Gary Frenz stated that the Planning Board recommended denial due to size and height of the structure, the storm water runoff effect on the lake and the percentage of the lot being occupied. Gary Frenz asked if there are any further discussion between the board members on this matter. The board discussed the draft resolutions as prepared by board members and **clarified** by town counsel. Mike Hill asked if any board member had any changes to the drafts. Dan Smith read the resolution (as attached) and made a motion to deny the requested 50' shoreline setback variance, the 3' side yard setback variance and the 5' side yard setback variances, 2nd by Cheryl Erickson. The Board was polled: Dan Smith Aye, Cheryl Erickson Aye, Jim Steen Aye, Gary Frenz. Aye Curt Castner Aye. The motion passed.

UNFINISHED BUSINESS:

File # 2009-22 AV Tax Map 72.13-1-17 John Rifenburg per revised plans received 11/18/09 for a proposed boathouse/dock/deck on parcel located at 32 Brant Lake Estates Loop Brant Lake. Variance requests are as follows:

- 1) 50' shoreline setback variance for second story deck,
- 2) 4' dock width variance,
- 3) 4' dock length variance (*limit on distance structures may extend from the shore*)
- 4) 276 square foot dock surface area variance.

Cheryl Erickson stated that there has been a lot of input from the public on this project. Dan Smith stated that his draft was to approve the dock width variance and the draft has changed significantly.

The board began by discussing the draft resolution **approving variance from limit on distance structures may extend from shore: (4' dock length variance)**. Mike Hill read the resolution (as attached) asking if any board member had any changes. Being no changes Gary Frenz made a motion to approve a 2' distance structures may extend from shore, as stated in the resolution, 2nd by Cheryl Erickson. The board was polled: Gary Frenz Aye, Cheryl Erickson Aye, Jim Steen Aye, Curt Castner Aye Dan Smith Aye. The motion passed.

The board discussed the draft resolution **denying request for variance for 50 feet from shoreline setback requirement**. Mike Hill read the resolution (as attached) asking if any board member had any changes. Being no changes Cheryl Erickson made a motion to deny the 50 foot shoreline setback variance, 2nd by Curt Castner. The board was polled: Cheryl Erickson Aye, Curt Castner Aye, Jim Steen Aye, Gary Frenz Aye, Dan Smith Aye. The motion passed.

The board discussed the draft resolution **denying request for variance of four feet from dock width limit**. Mike Hill read the resolution (as attached) asking if any board member had any changes. Being no changes Dan Smith made a motion to deny the 4' dock width variance, 2nd by Cheryl Erickson. The board was polled: Dan Smith Aye, Cheryl Erickson Aye, Curt Castner Aye, Jim Steen Aye, Gary Frenz Aye. The motion passed.

The board discussed the draft resolution **denying request for variance of 276 Square feet from limit on dock surface area**. Mike Hill read the resolution (as attached) asking if any board member had any changes. Being no changes, Dan Smith made a motion to deny the 4' dock width variance, 2nd by Cheryl Erickson. The board was polled: Jim Steen Aye, Curt Castner Aye, Cheryl Erickson Aye, Gary Frenz Aye. Dan Smith No. The motion passed.

BOARD PRIVILEGE: Gary Frenz stated the Jim Steen, Curt Castner, Thad Smith and he attended the training session in Saratoga and it was a very informative and well planned.

Gary Frenz nominated Cheryl Frenz as Vice-Chair, 2nd by Jim Steen. All Ayes

There being no further business before the board, Chair Gary Frenz adjourned the meeting a 10:10 PM

DRAFT

Respectfully Submitted.

Christine Smith-Hayes, Secretary

Resolutions attached

**APPLICATION # 2009-25 AV – GOLDEN POND, LLC
RESOLUTION DENYING REQUEST FOR SIDELINE SETBACK VARIANCES**

Introduced by: Dan Smith

Seconded by: Cheryl Erickson

Golden Pond, LLC (“Applicant”) has applied for variances of three feet and five feet from the Town’s 15-foot sideline setback requirement (Section 8.10 of the Zoning Law) in connection with its proposal to construct a new house at 686 Palisades Road. The property is located in the R-1 10-acre Zoning District, which requires a minimum lot size of 10 acres. The lot is a pre-existing, non-conforming lot measuring approximately 0.43 acres. It has shoreline of approximately 71 feet on Brant Lake and road frontage of about 162 feet on Palisades Road. The Tax Map Number of the parcel is 55.10-1-22.

Single-family residential homes are an allowed use within the District, as set forth in Section 8.20 of the Zoning Law. Based on the application form, plans, drawings and other supporting materials submitted by the Applicant, the Zoning Administrator determined that the proposed house would be built 10 feet from the west side-yard property line and 12 feet from the east side-yard property line and would therefore require variances of five and three feet, respectively, from the Town’s 15-foot sideline setback requirement set forth in Section 8.10. The Applicant is seeking the needed variances, along with a required shoreline setback variance.

The application was referred to the Warren County Planning Board, which found that the project would have No County Impact with Stipulation. The County Planning Board recommended No County Impact with the condition storm-water and erosion control measures be included with the project.

The application was referred to the Horicon Planning Board, which recommended denial of the variances due to concern that the proposed house would be oversized and out of proportion for the neighborhood and would detrimentally affect the character of the area.

On December 22, 2009, this Board opened a properly noticed Public Hearing for the purpose of hearing and taking the spoken and/or written comments of anyone wishing to offer comment on the requested sideline setback variances for the proposed house as well as on the shoreline setback variance being sought by the Applicant. [A number of people offered spoken and written comments and materials for the Board’s consideration.] The Public Hearing was closed on December 22, 2009.

The Board has reviewed, considered and deliberated about the Applicant’s request for the sideline setback variances for the proposed house, taking into consideration the recommendation of the Warren County Planning Board, the recommendation of the Horicon Planning Board and all written and spoken comment received in connection with the application through the close of the Public Hearing.

The Applicant’s proposed house, and the requested setback variances for it, would be a Type 2 action under the New York State Environmental Quality Review Act (SEQRA) and is therefore exempt from SEQRA review.

The Board now makes the following findings and determination:

1. The requested sideline setback variances would produce an undesirable change in the character of the neighborhood and create a detriment to nearby properties. The residential properties in the surrounding area are cottage-style “summer camp” type dwellings of modest size, [mostly one story in height] typically about 600 to 1500 square feet in size. The proposed variance would be one of three needed to allow construction of Applicant’s proposed new 3,869-square foot 2-story home with porch, decks and walkout basement on a non-conforming, undersized lot measuring only 18,731 square feet. The proposed house would be very oversized and out of proportion for the lot and thus out of character for the area, creating an undesirable change in area character. The crowded appearance of the proposed house on Applicant’s lot would be a visual intrusion, viewed from both the road and the Lake, that would

be detrimental to area properties and the enjoyment of those properties by their owners. The location of the proposed house so close to the side boundary lines would reduce privacy with adjoining properties and would also be detrimental in that way.

2. The Applicant wants to build a 3,869 square-foot house on an undersized lot that has a relatively small buildable area. The combination of the lot's limited dimensions, along with the 100-foot shoreline setback, 50-foot road setback, and 15-foot side yard setbacks, makes it impossible to locate a 3,869 square-foot house with well and septic on the lot without multiple variances. However, a smaller house could fit on the parcel within the setbacks. Alternatively, the Applicant could propose a smaller house requiring fewer variances and/or variances of lesser magnitude(s).
3. The requested five-foot and three-foot variances would be 33% and 20%, respectively, of the minimum 15-foot sideline setback distance required under the Town Zoning Law. The requested variances are moderately substantial.
4. The proposed variance would have a significant adverse effect or impact on the physical and environmental conditions in the neighborhood. The resulting new house would be oversized relative to other area properties and would be a very large visual intrusion viewed from both the road and from the Lake, as well as from surrounding properties. The requested variances contribute to the large size of the proposed house, which is very large. Overall, there would be relatively little permeable area on the lot for infiltration of storm water. With the proposed house close to the Lake and with the large amount of impermeable area on the lot, there is an increased likelihood that storm water runoff would not be contained on the property and that contaminated with lawn/yard chemicals, residual automobile chemicals, etc., would reach the Lake. Additionally, the privacy of neighbors on adjoining properties will be adversely impacted if the variances are granted due to the proximity of Applicant's house to the side property lines.
5. The Applicant is requesting variances apparently because it does not wish to use the existing house on the property or re-build on the foundation of that house, which it could do without variances. The lot is pre-existing and non-conforming, at 0.43 acre/18,731 square feet in a Zoning District with a minimum lot size of 10 acres. Its small area, together with the 100-foot shoreline setback, 50-foot road setback, and 15-foot side yard setback requirements, along with required well and septic separations, limit the developable area of the property. However, the lot could accommodate a smaller house without variances, or with fewer variances and/or smaller variances. To the extent that Applicant wants the larger proposed house with porch and decks on a small lot, the difficulty in this case is self-created. Although the difficulty is self-created, this fact alone would not bar the granting of the requested variance.
6. If the sideline setback variances being requested by the Applicant are granted, along with the 50-foot shoreline setback variance being requested, the result will be a house that is very oversized and out of scale and proportion with other houses and properties in the surrounding area. The proposed house would not be consistent with the general character of the area. The visual intrusion from it, and its location so close to the boundary lines with adjoining properties, would have a detrimental effect on people, properties, and the environment. As a feasible alternative, the Applicant could build a new house on the foundation "footprint" of the existing house on the property without variances, or it could propose a house elsewhere on the lot not requiring variances, or at least not as many variances and/or smaller variances. The five-foot and three-foot sideline setback variances requested are 33% and 20% of the required setbacks and are moderately substantial, particularly the five-foot variance. The lot is small and the buildable area is limited. However, the difficulty in this case is mainly due to Applicant's desire for a larger home with porch and decks and is therefore self-created to that extent. In light of all of the facts and circumstances relating to this application, and for all of the reasons detailed in this decision, the Board concludes that the benefit to the applicant from the requested sideline setback variances is outweighed by the likely

detriment to the health, safety and welfare of the community. The Board therefore denies the Applicant's request for sideline setback variances of five feet and three feet.

Duly adopted this 26th day of January, 2010, by the following vote:

AYES: Dan Smith, Cheryl Erickson, Curt Castner, Jim Steen, Gary Frenz

NOES: None

ABSENT: Priscilla Remington

**APPLICATION # 2009-25 AV – GOLDEN POND, LLC
RESOLUTION DENYING REQUEST FOR VARIANCE OF 50 FEET FROM SHORELINE SETBACK
REQUIREMENT**

Introduced by: Dan Smith

Seconded by: Cheryl Erickson

Golden Pond, LLC ("Applicant") has applied for a variance of 50 feet from the Town's 100-foot shoreline setback requirement (Section 11.24 of the Zoning Law) in connection with its proposal to construct a new house at 686 Palisades Road. The property is located in the R-1 10-acre Zoning District, which requires a minimum lot size of 10 acres. The lot is a pre-existing, non-conforming lot measuring approximately 0.43 acres. It has shoreline of approximately 71 feet on Brant Lake and road frontage of about 162 feet on Palisades Road. The Tax Map Number of the parcel is 55.10-1-22.

Single-family residential homes are an allowed use within the District, as set forth in Section 8.20 of the Zoning Law. Based on the application form, plans, drawings and other supporting materials submitted by the Applicant, the Zoning Administrator determined that the proposed house would be built 50 feet from the shoreline of Brant Lake and would therefore require a variance of 50 feet from the required 100-foot shoreline setback set forth in Section 11.24. The Applicant is seeking a 50-foot shoreline setback variance, along with sideline setback variances.

The application was referred to the Warren County Planning Board, which found that the project would have No County Impact with Stipulation. The County Planning Board recommended No County Impact with condition storm-water and erosion control measures be included with the project.

The application was referred to the Horicon Planning Board, which recommended denial of the variances due to concern that the proposed house would be oversized and out of proportion for the neighborhood and would detrimentally affect the character of the area.

On December 22, 2009, this Board opened a properly-noticed Public Hearing for the purpose of hearing and taking the spoken and/or written comments of anyone wishing to offer comment on the 50-foot setback variance for the proposed house as well as on the sideline setback variances being sought by the Applicant. [A number of people offered spoken and written comments and materials for the Board's consideration.] The Public Hearing was closed on December 22, 2009.

The Board has reviewed, considered and deliberated about the Applicant's request for a 50-foot setback variance for the proposed house, taking into consideration the recommendation of the Warren County Planning Board, the recommendation of the Horicon Planning Board and all written and spoken comment received in connection with the application through the close of the Public Hearing.

The Applicant's proposed house, and the requested setback variance for it, would be a Type 2 action under the New York State Environmental Quality Review Act (SEQRA) and is therefore exempt from SEQRA review.

The Board now makes the following findings and determination:

1. The requested variance would produce an undesirable change in the character of the neighborhood and create a detriment to nearby properties. The residential properties in the surrounding area are cottage-style "summer camp" type dwellings of modest size, [mostly one story in height] typically about 600 to 1500 square feet in size. The proposed variance would be one of three needed to allow construction of Applicant's proposed new 3,869-square foot 2-story home with porch, decks and walkout basement on a non-conforming, undersized lot measuring only 18,731 square feet. The proposed house would be very oversized and out of proportion for the lot and thus out of character for the area, creating an undesirable change in area character. The crowded appearance of the proposed house on Applicant's lot would be a visual intrusion, viewed from both the road and the Lake, that would be detrimental to area properties and the enjoyment of those properties by their owners.
2. The Applicant wants to build a 3,869 square-foot house on an undersized lot that has a relatively small buildable area. The combination of the lot's limited dimensions, along with the 100-foot shoreline setback, 50-foot road setback, and 15-foot side yard setbacks, makes it impossible to locate a 3,869 square-foot house with well and septic on the lot without multiple variances. However, a smaller house could fit on the parcel within the setbacks. Alternatively, the Applicant could propose a smaller house requiring fewer variances and/or variances of lesser magnitude(s).
3. The requested 50-foot variance is 50% of the 100-foot setback distance required under the Town Zoning Law. The requested variance is definitely substantial.
4. The proposed variance would have a significant adverse effect or impact on the physical and environmental conditions in the neighborhood. The resulting new house would be oversized relative to other area properties and would be a very large visual intrusion viewed from both the road and from the Lake, as well as from surrounding properties. The proposed house is very large. Overall, there would be relatively little permeable area on the lot for infiltration of storm water. With the proposed house close to the Lake and with the large amount of impermeable area on the lot, there is an increased likelihood that storm water runoff would not be contained on the property and that contaminated with lawn/yard chemicals, residual automobile chemicals, etc., would reach the Lake.
5. The Applicant is requesting variances apparently because it does not wish to use the existing house on the property or re-build on the foundation of that house, which it could do without variances. The lot is pre-existing and non-conforming, at 0.43 acre/18,731 square feet in a Zoning District with a minimum lot size of 10 acres. Its small area, together with the 100-foot shoreline setback, 50-foot road setback, and 15-foot side yard setback requirements, along with required well and septic separations, limit the developable area of the property. However, the lot could accommodate a smaller house without variances, or with fewer variances and/or smaller variances. To the extent that Applicant wants the larger proposed house with porch and decks on a small lot, the difficulty in this case is self-created. Although the difficulty is self-created, this fact alone would not bar the granting of the requested variance.
6. If the 50-foot shoreline setback variance being requested by the Applicant is granted, along with the sideline setback variances being requested, the result will be a house that is very oversized and out of scale and proportion with other houses and properties in the surrounding area. The proposed house would not be consistent with the general character of the area. The visual intrusion from it,

and its location so close to the boundary lines with adjoining properties, would have a detrimental effect on people, properties, and the environment. As a feasible alternative, the Applicant could build a new house on the foundation “footprint” of the existing house on the property without variances, or it could propose a house elsewhere on the lot not requiring variances, or at least not as many variances and/or smaller variances. The shoreline setback variance requested is 50% of the required setback and is therefore very substantial. The lot is small and the buildable area is limited. However, the difficulty in this case is mainly due to Applicant’s desire for a larger home with porch and decks and is therefore self-created to that extent. In light of all of the facts and circumstances relating to this application, and for all of the reasons detailed in this decision, the Board concludes that the benefit to the applicant from the requested variance is outweighed by the likely detriment to the health, safety and welfare of the community. The Board therefore denies the Applicant’s request for a 50-foot shoreline setback variance.

Duly adopted this 26th day of January, 2010, by the following vote:

AYES: Dan Smith, Cheryl Erickson, Curt Castner, Jim Steen, Gary Frenz

NOES: None

ABSENT: Priscilla Remington

**APPLICATION # 2009-22 AV - RIFENBURG
RESOLUTION APPROVING VARIANCE FROM LIMIT ON DISTANCE STRUCTURES MAY EXTEND FROM SHORE**

Introduced by: Gary Frenz

Seconded by: Cheryl Erickson

John Rifenburg (“Applicant”) has applied for a variance of four feet from the Town’s 40-foot limit on the distance which structures may extend from shoreline in connection with his proposal to construct a boathouse and dock system in the water along the shore of his property on Brant Lake. The property consists of two pre-existing, non-conforming parcels (Tax Map # 72.13-1-16 and Tax Map # 72.13-1-17) which he has agreed as part of his application to merge into a single unified parcel. As one combined parcel, the property measures approximately 0.97 acre, has approximately 228 feet of shoreline and is located at 32 Brant Lake Estates Loop.

The combined parcel is in the Town’s R-1 Zoning District. A boathouse is a use allowed by right within the District, as set forth in Section 8.20 of the Zoning Law. The Zoning Law provides that no dock, docking facility or obstacle to navigation, which includes boathouses may extend no more than 40 feet from the shoreline, per Section 11.60. Based on the application form, drawings and other supporting materials submitted by the Applicant, the Zoning Administrator determined that the proposed boathouse, including its surrounding perimeter dock walkway, and dock system would extend 44 feet from shore and would therefore require a variance of four feet from the limit in Section 11.60. The Applicant is therefore seeking a four-foot variance.

On September 22, 2009, this Board opened a properly-noticed Public Hearing for the purpose of hearing and taking the spoken and/or written comments of anyone wishing to offer comment on the requested four foot variance for the extension of the proposed boathouse and dock system from the shoreline of Brant Lake as well as on other related variances being sought by the Applicant. A number of people offered spoken and written comments and materials for the Board’s consideration. The Public Hearing was closed on December 22, 2009.

The Board has reviewed, considered and deliberated about the Applicant's four-foot variance application to allow the proposed dock system and boathouse to extend 44 feet from the shoreline, taking into consideration all written and spoken comment received in connection with the application through the close of the Public Hearing.

The Applicant's proposed boathouse, dock system and deck would be a Type 2 action under the New York State Environmental Quality Review Act (SEQRA) and is therefore exempt from SEQRA review.

The Board now makes the following findings and determination:

1. The requested variance would not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties. Recreational boating is very popular in the area. Boathouses and boat docks and dock systems to house and moor boats are common and typical on properties along the shoreline of Brant Lake. The relatively small size of the variance being requested would not result in a structure extending significantly farther from the shoreline than other allowed docks and boathouses. Navigation to and from neighboring properties will not be affected to any significantly greater degree than it would from structures at a compliant distance, 40 feet from shore. The Applicant has agreed to merge his shoreline parcels into one parcel and has moved the location of the proposed boathouse and dock system toward the center of the shoreline of his combined parcels. This eliminated the need for a sideline variance and reduces the possibility of interference with activities of neighbors on the shoreline and in the water in front of their properties.
2. The benefit sought by the Applicant cannot be achieved by any method feasible for the Applicant to pursue other than an area variance. The Applicant plans to berth a 28-foot long boat in the boathouse and anticipates mooring large boats along the proposed dock system. Given the size of the boat to be stored in the boathouse, the shallow end of the boathouse for berthing. The depth of water at the shore is only approximately 2 feet. The NYS DEC limits dredging near the shoreline. The required distance from shore, in addition to the length of the boathouse as proposed, means that the boathouse would extend 44 feet from the shoreline, resulting in Applicant's request for a four-foot variance. The 44-foot distance includes a perimeter walkway two feet wide at the open end of the boathouse, contributing two feet to the overall 44-foot distance. The Applicant desires the walkway for convenience in performing maintenance work on the exterior of the boathouse. However, the maintenance could be done using a scaffold, or by attaching a temporary walkway to the boathouse during the work and removing it when maintenance is completed. Therefore, there are feasible alternatives to the portion of the requested variance applicable to the proposed walkway. Eliminating the walkway would reduce the needed variance from four feet to two feet while still allowing a fully functional boathouse and dock system. Considering the depth of water needed for the applicant's boat and the size of the boathouse required, the Board finds that it would not be feasible for the Applicant to pursue any method, other than obtaining a variance of two feet from the 40-foot limit on the distance that structures may extend from the shoreline, in order to locate a boathouse and dock system large enough for his boat along the shoreline of his property.
3. A two-foot variance is 5% of the 40-foot distance which a structure may, under the Zoning Law, extend out into the water away from the shoreline. The variance is minimal and is not substantial.
4. The proposed variance will not have any significant adverse effect or impact on the physical and environmental conditions in the neighborhood. The Zoning Law allows structures to extend 40 feet from shore. The additional two

feet in this case, necessitating the variance is for the additional distance from shore needed for the boathouse and dock system to be located over water deep enough to berth Applicant's boat. The variance is not for the size of the structure housing the boat. The boathouse itself would be the same size even if it could be located closer to shore, and the cribs supporting the boathouse would be located in the same positions even if the variance were not granted. The variance would simply permit the boathouse structure to be positioned only two feet farther from shore than allowed under the Zoning Law. Any additional impact from the boathouse on visibility and aesthetics would be minimal as compared with locating the boathouse a compliant distance of 40 feet from the shore. The same is true of the dock system that would be adjacent to the open boat berth. In addition, the position of any footings for the dock system would not be significantly different than if located within the 40-foot distance from shore allowed by right, without need for any variances, under the Zoning Law.

5. The variance is required because of the shallowness of the Lake near the shore and because of the size of the Applicant's boats. The difficulty in this instance is therefore partially due to the underwater topography and partially due to the Applicant's desire to have larger boats. To the extent the difficulty is partially self-created, this does not bar the granting of the variance requested.

6. Boathouses and dock systems are common to properties around the Lake and are in keeping with the character of the area. The additional two feet of distance that the proposed boathouse would project from the shoreline would not interfere with navigation to any significantly greater degree than structures located at a compliant distance (40 feet). As addressed above, there is no feasible alternative that would enable the Applicant to store and moor his boats as proposed other than a two-foot variance, which is minimal and not substantial. The visibility of the boathouse would be virtually the same as it would be if positioned 40 feet from shore, which would not require a variance. The position of the cribs supporting the boat house would be the same if the boathouse was located a compliant distance from the shore, and footing locations for the dock system would not be significantly different than for a compliant dock system. Granting the two-foot variance would not result in any environmental impacts significantly different from those that might result from a compliant boathouse and dock system. The difficulty in this case is partly due to Applicant's desire to keep large boats, but is also due in part to the depth of water near the shore and the inability to dredge any more to gain greater water depth at the shore. In light of all of the facts and circumstances relating to this application, the Board concludes that the benefit to the applicant from granting a two-foot variance outweighs the possible detriment to the health, safety and welfare of the community. The Board also concludes that a variance of two feet is the minimum variance necessary to achieve the Applicant's goals while still preserving and protecting the health, safety and welfare of the community. The Board therefore grants a variance of two feet from the 40-foot limit on the distance that structures may extend from the shoreline, for the purpose of locating a boathouse and dock system along the shoreline of Applicant's property, as otherwise shown and set forth in his application materials. The variance is granted on the condition that Applicant merge his two parcels by deed into one, single unified parcel.

Duly adopted this 26th day of January, 2010, by the following vote:

AYES: Gary Frenz, Cheryl Erickson, Curt Castner, Jim Steen, Dan Smith

NOES: None

ABSENT: Priscilla Remington

APPLICATION # 2009-22 AV - RIFENBURG

RESOLUTION DENYING REQUEST FOR VARIANCE OF 50 FEET FROM SHORELINE SETBACK REQUIREMENT

Introduced by: Cheryl Erickson

Seconded by: Curt Castner

John Rifenburg ("Applicant") has applied for a variance of 50 feet from the Town's 50-foot shoreline setback requirement (Section 11.24 of the Zoning Law) in connection with his proposal to construct an elevated deck over a boat slip and dock system in the water along the shore of his property on Brant Lake. The property consists of two pre-existing, non-conforming parcels (Tax Map # 72.13-1-16 and Tax Map # 72.13-1-17) which he has agreed as part of his application to merge into a single unified parcel. As one combined parcel, the property measures approximately 0.97 acre, has approximately 228 feet of shoreline and is located at 32 Brant lake Estates Loop.

The combined parcel is in the Town's R-1 Zoning District. Decks are an accessory use allowed by right within the District, as set forth in Section 11.24 of the Zoning Law. Based on the application form, drawings and other supporting materials submitted by the Applicant, the Zoning Administrator determined that the proposed deck would be built over the water, beyond the edge of the Lake, and would require a variance of 50 feet from the 50-foot setback requirement set forth in Section 11.24. The Applicant is seeking a 50-foot setback variance.

On September 22, 2009, this Board opened a properly-noticed Public Hearing for the purpose of hearing and taking the spoken and/or written comments of anyone wishing to offer comment on the 50-foot setback variance for the proposed deck as well as on other related variances being sought by the Applicant. A number of people offered spoken and written comments and materials for the Board's consideration. The Public Hearing was closed on December 22, 2009.

The Board has reviewed, considered and deliberated about the Applicant's request for a 50-foot setback variance for the proposed deck, taking into consideration all written and spoken comment received in connection with the application through the close of the Public Hearing.

The Applicant's proposed boathouse, dock system and deck would be a Type 2 action under the New York State Environmental Quality Review Act (SEQRA) and is therefore exempt from SEQRA review.

The Board now makes the following findings and determination:

1. The requested variance would produce an undesirable change in the character of the neighborhood and create a detriment to nearby properties. Raised decks located over boat slips are not typical or consistent with the general character of the neighborhood. Rather, decks are typically located on shore and attached to houses. An elevated deck positioned over a boat slip would be an unwelcome visual intrusion itself. In addition, locating the proposed deck at the shoreline and over the water will result in noise from entertainment and parties on the deck being projected over the water, detracting from the quiet enjoyment of the Lake by neighbors, swimmers, boaters, beachgoers and other users of the Lake. The neighborhood is quiet in nature; noise from use and entertaining on an elevated deck over the water would be in stark contrast to the quiet nature of the surrounding area. Similarly, visual intrusion from activities on the deck would be detrimental to the enjoyment of the Lake and nearby properties. This would be true both during the daytime as well as at night when there would likely be noise and glare from lights used on the deck in connection with entertaining.

2. The benefit sought by the Applicant can be achieved by another method feasible for the Applicant to pursue other than the requested area variance. The Applicant could build the deck on land, attached to his house and outside the shoreline setback. Applicant's property has ample area for such an attached deck, which would still afford views of the Lake and completely eliminate any need for the requested setback variance.
3. The requested 50-foot variance is 100% of the 50-foot setback distance required under the Town Zoning Law. The requested variance is the maximum variance possible and is definitely very substantial. As an additional consideration, the purpose of the shoreline setback is to maintain separation between structures and the Lake. However, in this case, the variance would not merely allow a structure to be built on land beginning at the water's edge. Instead, the proposed deck would extend out over the water itself.
4. The proposed variance would have a significant adverse effect or impact on the physical and environmental conditions in the neighborhood. The deck itself would be a visual intrusion, and its likely use for entertainment purposes would result in excess noise and visual intrusion onto the Lake and nearby properties, definitely negative impacts on the surrounding environment.
5. The variance is apparently being requested solely because of the Applicant's desire to have a deck over the water. There are no known physical or topographic features of his property which would prevent a deck from being located on shore, away from the Lake, outside of and in compliance with the 50-foot shoreline setback. The difficulty in this instance is therefore due entirely to the Applicant's desire to have a deck over the water, not any constraint imposed by the site. Although the difficulty is self-created, this fact alone would not bar the granting of the requested variance.
6. The variance would result in a deck that would not be consistent with the general character of the area. The visual intrusion from the proposed deck and its use, and the noise from its use, would have a detrimental effect on people, properties, and the environment. Most important to our decision, there is a feasible alternative to the variance: the Applicant can build a deck on shore, adjacent to his house, outside of the shoreline setback, thereby eliminating any need for the variance. The variance requested is 100% of the required setback – the maximum possible - and is therefore very substantial. There are no physical conditions or features of the property causing any need for a variance. The difficulty is self-created by the Applicant. In light of all of the facts and circumstances relating to this application, and for all of the reasons detailed in this decision, most importantly that there is a feasible alternative, the Board concludes that the benefit to the applicant from the requested variance is outweighed by the likely detriment to the health, safety and welfare of the community. The Board therefore denies the Applicant's request for a 50-foot shoreline setback variance for a deck.

Duly adopted this 26th day of January, 2010, by the following vote:

AYES: Cheryl Erickson, Curt Castner, Jim Steen, Gary Frenz, Dan Smith

NOES: None

ABSENT: Priscilla Remington

APPLICATION # 2009-22 AV - RIFENBURG

RESOLUTION DENYING REQUEST FOR VARIANCE OF FOUR FEET FROM DOCK WIDTH LIMIT

Introduced by: Dan Smith

Seconded by: Cheryl Erickson

John Rifenburg ("Applicant") has applied for a variance of four feet from the Town's 6-foot dock width limit (Section 11.60 of the Zoning Law) in connection with his proposal to construct a dock system in the water along the shore of his property on Brant Lake. The property consists of two pre-existing, non-conforming parcels (Tax Map # 72.13-1-16 and Tax Map # 72.13-1-17) which he has agreed as part of his application to merge into a single unified parcel. As one combined parcel, the property measures approximately 0.97 acre, has approximately 228 feet of shoreline and is located at 32 Brant lake Estates Loop.

Under the Town's Zoning Law, the combined parcel is in the R-1 Zoning District. Docks are an accessory use allowed by right within the District, as set forth in Section 11.60 of the Zoning Law. Under Section 11.60, the width of docks is limited to six feet. Based on the application form, drawings and other supporting materials submitted by the Applicant, the Zoning Administrator determined that a portion of the proposed dock system would be 10 feet wide and therefore would require a variance of four feet from the six-foot dock width limit set forth in Section 11.60. The Applicant is seeking a four-foot dock width variance.

On December 22, 2009, this Board opened a properly-noticed Public Hearing for the purpose of hearing and taking the spoken and/or written comments of anyone wishing to offer comment on the 50-foot setback variance for the proposed deck as well as on other related variances being sought by the Applicant. A number of people offered spoken and written comments and materials for the Board's consideration. The Public Hearing was closed on December 22, 2009.

The Board has reviewed, considered and deliberated about the Applicant's request for a four-foot dock width variance for the proposed dock system, taking into consideration all written and spoken comment received in connection with the application through the close of the Public Hearing.

The Applicant's proposed dock system, boathouse and deck would be a Type 2 action under the New York State Environmental Quality Review Act (SEQRA) and is therefore exempt from SEQRA review.

The Board now makes the following findings and determination:

1. The requested variance would produce an undesirable change in the character of the neighborhood and create a likely detriment to nearby properties. Although numerous properties around the Lake have boat docks, [virtually] all of them comply with the six-foot width limit in the Zoning Law. Docks wider than six feet would be [highly unusual and] inconsistent with the general character of the neighborhood. The Applicant's apparent purpose in seeking the dock-width variance is to provide extra width on the dock system to accommodate a stairway leading to a proposed elevated deck above a planned boat slip. This Board has separately denied the 50-foot shoreline setback variance that would have been needed for the proposed deck. Without the deck, there is no need for the stairway that would have provided access to the deck. Since there is no need for the stairway, there is also no need for any additional dock width for placement of the stairway. If the variance for dock width were granted in the absence of the stairway, it would result in a large section of dock running along the shoreline and extending 10 feet from the shore, effectively creating a deck over the water. This could permit gatherings of people on the wide section of dock. This would be inconsistent with the purposes of a boat dock, which are to provide a place for the mooring of boats and a means to go to and from the shoreline and the boats. A wider dock system that would allow gatherings of people on it could

result in greater noise and visual intrusion, including lights at night, along the shoreline and over the water. This would be detrimental to the neighbors' enjoyment of their properties and would detract from the quiet enjoyment of the Lake by neighbors, swimmers, boaters, beachgoers and other users of the Lake.

2. The benefit sought by the Applicant, a wider section of dock to accommodate a proposed stairway leading to a planned elevated deck, is no longer needed due to this Board's separate denial of the shoreline setback variance requested for the elevated deck. As a result, the question of whether there is a feasible alternative to the variance no longer applies.
3. The requested 4-foot variance would be a 66% increase over the 6-foot dock width limit under the Town Zoning Law. The requested variance is very substantial and would potentially allow use of a portion of dock as a deck over the water.
4. The proposed variance would have a significant adverse effect or impact on the physical and environmental conditions in the neighborhood. Since the variance is no longer needed for an area to support a stairway, the wide section of dock is likely to result in gatherings of people on it and, potentially, placement of tables, chairs, etc. It could effectively become a deck used for entertainment purposes and, as such, would result in excess noise and visual intrusion onto the Lake and nearby properties, constituting negative impacts on the surrounding environment.
5. The Applicant desires to have an elevated deck located over his proposed boat slip. The dock-width variance is being requested to accommodate a planned set of stairs that would lead to the deck. However, the shoreline setback variance needed for the deck has been separately denied, making the stairway unnecessary. As a result, there is no need for a wider dock on which to build the stairway. No other reason or justification has been provided by the Applicant for the requested dock-width variance. There do not appear to be any physical features of the property which would require a dock wider than the allowed six feet at any point. The difficulty in this instance is due to Applicant's desire for an elevated deck and a stairway to reach it and is therefore self-created. The difficulty is not due to any characteristic of the site. As noted, the variance is no longer needed for the stairs because the setback variance for the proposed deck has been denied. Therefore, the question of whether the difficulty is self created does not seem to apply any longer. However, the difficulty in this instance is self-created, but this fact alone would not prevent the granting of the requested variance.

6. The requested dock-width variance is no longer needed because the variance for the elevated deck has been denied and the proposed stairway to reach the deck is therefore unnecessary. If the variance is granted even though the stairs are no longer needed, the wider dock area seems likely to be used as a deck. There is no apparent need for a wider dock if the stairs are no longer necessary. The variance would result in a wider dock system that would not be consistent with the general character of the area. The noise and visual intrusion from the likely use of the wider dock as a deck area would have a detrimental effect on people, properties, and the environment. The need for a wider dock to accommodate stairs leading to a proposed elevated deck was eliminated with this Board's prior denial of a requested shoreline setback for the proposed elevated deck. The question of whether there is a feasible alternative to the requested dock-width variance is therefore irrelevant. The variance requested is 66% of the dock width limit and is therefore very substantial. There are no physical conditions or features of the

property causing any need for the variance. The difficulty is self-created by the Applicant. In light of all of the facts and circumstances relating to this application, and for all of the reasons detailed in this decision, the Board concludes that the benefit to the applicant from the requested variance is outweighed by the likely detriment to the health, safety and welfare of the community. The Board therefore denies the Applicant's request for a 4-foot width variance for the proposed dock system.

Duly adopted this 26th day of January, 2010, by the following vote:

AYES: Dan Smith, Cheryl Erickson, Curt Castner, Jim Steen, Gary Frenz

NOES: None

ABSENT: Priscilla Remington

APPLICATION # 2009-22 AV - RIFENBURG
RESOLUTION DENYING REQUEST FOR VARIANCE OF 276 SQUARE FEET FROM LIMIT ON DOCK
SURFACE AREA

Introduced by: Jim Steen

Seconded by: Curt Castner

John Rifenburg ("Applicant") has applied for a variance of 276 square feet from the 400 square-foot dock area limit, set forth in Section 11.60 of the Zoning Law, in connection with his proposal to construct a dock system in the water along the shore of his property on Brant Lake. The property consists of two pre-existing, non-conforming parcels (Tax Map # 72.13-1-16 and Tax Map # 72.13-1-17 which he has agreed as part of his application to merge into a single unified parcel. As one combined parcel, the property measures approximately 0.97 acre, has approximately 228 feet of shoreline and is located at 32 Brant lake Estates Loop.

Under the Town's Zoning Law, the combined parcel is in the R-1 Zoning District. Docks are an accessory use allowed by right within the District, under Section 8.20 of the Zoning Law. Under Section 11.60, the total surface area of docks for Applicant's property is limited to 400 square feet. Based on the application form, drawings and other supporting materials submitted by the Applicant, the Zoning Administrator determined that the surface area of the proposed dock system would measure 676 square feet and therefore would require a dock area variance of 276 square feet. The Applicant is seeking a 276 square foot variance.

On December 22, 2009, this Board opened a properly-noticed Public Hearing for the purpose of hearing and taking the spoken and/or written comments of anyone wishing to offer comment on the requested 276 square-foot dock area variance as well as on other related variances being sought by the Applicant. A number of people offered spoken and written comments and materials for the Board's consideration. The Public Hearing was closed on December 22, 2009.

The Board has reviewed, considered and deliberated about the Applicant's request for a 276 square-foot dock area variance for the proposed dock system, taking into consideration all written and spoken comment received in connection with the application through the close of the Public Hearing.

The Applicant's proposed dock system, boathouse and deck would be a Type 2 action under the New York State Environmental Quality Review Act (SEQRA) and is therefore exempt from SEQRA review.

The Board now makes the following findings and determination:

1. The requested variance would produce an undesirable change in the character of the neighborhood and create a likely detriment to nearby properties. Although numerous properties around the Lake have boat docks, virtually all of the

docks are smaller than 400 square feet and comply with the surface area limits of the Zoning Law. Docks, larger than 400 square feet, exceeding the surface area limits in the Zoning Law would be inconsistent with the general character of other properties in the area. Proposed larger docks provide increased area for the mooring of more and larger boats, resulting in greater visual and noise impacts. This would be detrimental to the neighbors' enjoyment of their properties and would detract from the quiet enjoyment of the Lake by neighbors, swimmers, boaters, beach goers and other users of the Lake.

2. The benefit sought by the Applicant can be achieved by another method feasible for the Applicant to pursue other than the requested area variance. Of the 276 square feet of extra dock area being requested, 114 square feet is for walkways around the south, west and north sides of the proposed boathouse. The purpose of the walkways is to provide support for cleaning, painting and exterior maintenance of the boathouse. These walkways are not needed for access to the boathouse. Cleaning, painting and other maintenance could be done from scaffolding, or temporary walkways could be attached to the boathouse when needed for such work and be removed when the work is completed. These are feasible alternatives to the proposed perimeter walkways on the south, west and north sides of the boathouse and would eliminate the need for 114 square feet of the requested variance. Additionally, part of the benefit sought by the Applicant is extra dock area to accommodate a proposed stairway leading to a planned elevated deck, is no longer needed due to this Board's separate denial of the shoreline setback variance requested for the elevated deck and denial of the dock-width variance needed for the stairs. The elimination of the stairway also eliminates the need for the area under it of approximately 68 square feet. A further 34 square feet of proposed dock area, a strip two feet wide extending from the southwest corner of the boathouse 17 feet to the north, would be rendered unnecessary by the elimination of the walkway behind (on the south side) of the boathouse as discussed above. Taken together, eliminating these unnecessary dock areas of 114, 68 and 34 square feet would reduce the requested variance by 216 square feet, from 276 square feet to 60 square feet. The remaining 60 square feet of variance area could be eliminated by: 1) narrowing the dock on the west side of the proposed open boat slip, 2) by shortening and/or narrowing the dock area on the east side of the boathouse, or 3) some combination of 1 and 2. A door could be added to the east side of the boathouse to provide access to the outside dock area on that side. These are feasible alternatives that would provide the Applicant with the benefit a functional dock system and boathouse while eliminating the need for a dock surface area variance.
3. The requested 276 square foot area variance, to allow a dock surface area of 676 square feet, would be a 69% increase over the 400 square feet allowed under the Zoning Law. The requested variance is very substantial.
4. The proposed variance would have a significant adverse effect or impact on the physical and environmental conditions in the neighborhood. The additional dock area that would result from granting the variance would be an unnecessary visual intrusion and would, in part, allow for the mooring of more and larger boats, with the extra noise and disturbance that would accompany them. These would constitute negative impacts on the surrounding environment that would detract from the enjoyment of the Lake and nearby properties by neighbors, swimmers, boaters and other users of the Lake. The extra dock area being requested would also cause blockage of sunlight, which would likely have an adverse effect on the growth of underwater plants.

5. The Applicant desires to have additional dock area, in excess of the 400 square feet allowed under the Zoning Law, for purposes of: 1) walkways for convenience in performing exterior maintenance on the proposed boathouse, 2) to support a stairway to a proposed elevated deck, and 3) for additional area for walking upon and for docking of boats. (As noted, other variance requests, for relief from the 50-foot shoreline setback requirement and from the 6-foot dock width limitation, have been separately denied, eliminating the proposed elevated deck and the stairway that would have led up to it. As a result, the Applicant has no need for extra dock surface area for the stairway.) There is no provision of the Zoning Law entitling Lake-front property owners to dock any minimum boat size, and there are no physical features of the property which would require extra dock surface area above the 400 square feet allowed under the Zoning Law. The difficulty in this instance is due to Applicant's desire for extra dock surface area for the purposes enumerated above. The difficulty was therefore self-created and not due to any characteristic of the site. However, this fact alone would not prevent the granting of the requested variance.
6. The variance would result in a dock system with a much larger (69% larger) surface area that would not be consistent with the other docks in the area. The visual intrusion of the larger dock surface and the noise and disturbance from its use to dock more and larger boats would have a negative impact on people, properties, and the environment. There are feasible alternatives that would eliminate the need for the dock surface area variance while still allowing the Applicant to have a functional boathouse and dock system. The variance requested is 69% of the dock surface area limit under the Zoning Law and is therefore very substantial. There are no physical conditions or features of the property from which relief is required. The difficulty is self-created by the Applicant. In light of all of the facts and circumstances relating to this application, and for all of the reasons detailed in this decision, the Board concludes that the benefit to the applicant from the requested variance is outweighed by the likely detriment to the health, safety and welfare of the community. The Board therefore denies the Applicant's request for a 276 square foot dock surface area variance for the proposed dock system.

Duly adopted this 26th day of January, 2010, by the following vote:

AYES: Jim Steen, Curt Castner, Cheryl Erickson, Gary Frenz

NOES: Dan Smith

ABSENT: Priscilla Remington

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