

Town of Horicon

ZONING BOARD OF APPEALS

Minutes of December 22, 2009

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

Members Absent: None

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

Guests Present: Ralph Bartlett, Tom Johansen, Chris Bedell, Donald Ford, Vinette Tosti Dean, Donald Tosti, Edward Kowalewski, Jr. John (Jack) and Denise Reifenburg, Thomas Turcotte, Wesley Butler Sr.

Pledge

Regular Meeting called to order by Priscilla Remington, Chairperson

NEW BUSINESS:

File # 2009-35 AV Tax Map 89.5-1-11 Dan and Deanne Paull seeking a .19 acre density variance to keep animals (goats) 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. Dan Paull stated that he has been taxed for 1 acre of land since 1987 and has 2 dogs, 4 goats, 2 adults and 2 kids along with chickens. Discussion ensued regarding the noise complaint, the tax map, recent survey done by neighbors, survey copy of current gis map showing neighbors homes. Dan Smith made a motion to deem the application complete requesting the applicant submit a drawing of the properties showing the neighbors home along with the applicants home and sheds two weeks prior to the next meeting and schedule a public hearing, 2nd by Cheryl Erickson. All Ayes

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 this is a canvas type of garage to store a mobile home under. Cheryl Erickson asked if there would be a cement pad under the garage. Betty Marriott stated no cement pad. Cheryl Erickson made a motion to deem the application complete and schedule a public hearing, 2nd by Dan Smith. All Ayes.

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. Applicant is being represented by Ralph Bartlett of Stock Farm Construction. Ralph Bartlett stated that the applicants are trying to clear up the title for the parcel and need to obtain the proper variance and permits in order for the family to sell the parcel, adding that the deck and wall have been in existence prior to 1999. After a brief discussion, Cheryl Erickson made a motion to deem the application complete and schedule a public hearing, 2nd by Gary Frenz. All Ayes.

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. Chris Bedell stated that the applicants wish to add a 22' x 24' screen porch onto home and due to the septic placement and driveway the porch can only go on the south side of the home. Cheryl Erickson asked if the applicant is removing the old porch. Chris Bedell stated that the applicant would be leaving the old porch in tact. Dan Smith asked if this would be used as an additional living room. Chris Bedell stated that this would be a seating area off the living room. Cheryl Erickson asked if the once this is built if the wall will eventually be knocked out. Chris Bedell stated that this would be a porch. Dan Smith made motion to deem the application complete and schedule a public hearing, 2nd by Cheryl Erickson. All Ayes.

Public Hearing:

File # 2009-31 AV Tax Map 38.20-1-9.1 Thomas Monaco seeking an area variance to build a 24' x 24' garage with 2nd story apartment (Guest Cottage). A 276 square foot density variance is needed as the guest cottage exceed 50% square footage of the main house. The project is located on 9 Horicon Birches Road Brant Lake. The applicant is being represented by Chris Bedell of Bedell Builders. Gary McMeekin stated that the applicants own two lots adjoining each other. Chris Bedell stated that the applicants do not want to ruin another lot, this lot has a new septic that would accept three bedrooms and the regulations would require the guest cottage to be 300 square feet, not enough room to house the applicants family, reiterating that if this is built on the adjoining vacant lot then the applicants would find themselves in the same situation in the future. Gary Frenz stated that these are pre-existing non-conforming lots. Brief discussion ensued regarding building on the adjoining lot. Priscilla asked if anyone had any comments or questions. Donald Tosti stated that he is a relative of the applicant and the home that exists on the parcel was built in the 1950's and the applicant would like to leave it in tact, the septic system has been recently updated. Vinette Tosti Dean stated that she is also a relative and the applicants reside in Ohio and need the room to house visitors, friends and grandchildren. Being no further comments or questions Cheryl Erickson made a motion to close the public hearing, 2nd by Dan Smith.

Unfinished Business:

File # 2009-31 AV Tax Map 38.20-1-9.1 Thomas Monaco seeking an area variance to build a 24' x 24' garage with 2nd story apartment (Guest Cottage). A 276 square foot density variance is needed as the guest cottage exceed 50% square footage of the main house. The project is located on 9 Horicon Birches Road Brant Lake. The applicant is being represented by Chris Bedell of Bedell Builders. Cheryl Erickson stated that this is in keeping in character of the neighborhood as this is not an enormous house, will not have a kitchen, there will be no impact on the waterfront and provides a need and is a reasonable request. Jim Steen stated that this is a modest cottage and not a 4,000 square foot home. Dan Smith stated that this is a unique situation as it would have less impact, benefit sought by other method impacting the character of the neighborhood and physical and environmental conditions. Cheryl Erickson stated that this is not self created as 600 square feet with one bedroom to accommodate additional family. Dan Smith made a motion to approve the 276 square foot density variance as the benefits sought by the applicant cannot be achieved by other means as this is the minimum size for additional living space, there is no other feasible alternative as demolishing the existing home and building a larger home would disturbed land, the request is substantial but is the minimum needed to meet an average families needs and this will have the minimum impact on the environment and is not self created, 2nd by Cheryl Erickson. All Ayes.

Public Hearing:

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: A 50' shoreline setback variance for second story deck, a 4' dock width variance, a 4' dock length variance and a 276 square foot dock surface area variance. Don Ford stated that he submitted a letter to the board. Ed Kowalewski stated that he would like a copy of the letters that were submitted to the board. Brief discussion ensued regarding a use variance as prohibited use versus an area variance. Cheryl Erickson made a motion to close the public hearing. Gary Frenz reminded the board that if the public hearing is closed this board has 62 days to make a determination. Dan Smith stated that the board has the final plan in hand, motion was 2nd by Gary Frenz. All Ayes.

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) A 50' shoreline setback variance for second story deck, 2) 4' dock width variance, 3) a 4' dock length variance and 4) a 276 square foot dock surface area variance.

Cheryl Erickson stated that there are five considerations and the one most talked about is the character of the neighborhood as there is a minimum of seven people concerned with the scale of the project as if this is approved this would be the largest structure on the lake, there could be noise problems across the lake, this is near the Association's beach, this is in a marshy area, no one in that area has challenged the deed covenants in building a structure with sides on the water.

Ed Kowalewski stated that there is no size restrictions on boathouses and this applicant could build a boathouse 100' to 150' wide.

Unfinished Business: (con't) File # 2009-22 AV Tax Map 72.13-1-17 John Rifenburg

John Rifenburg asked that if he built a two bay boathouse then he would not need any variances. Lengthy discussion ensued regarding the size and height of the proposed structure, the number of boat slips allowed per parcel, the docking system, noise issues, the potential blockages of neighbors view, the character of Brant Lake, the number of boathouses and boat shelters existing on Brant Lake their sizes and year built.

Cheryl Erickson stated that the whole project would be out of scale on a lake of this size.

Dan Smith stated that he would agree that this would have an impact on the neighborhood but the applicant is willing to combine the two lots and place this in a more desirable location further away from the beach which improves the character of the neighborhood for future density by eliminating the number of homes in the area.

Cheryl Erickson stated that the whole project creates problems as the only other boathouse in the subdivision was built in 1930.

Lengthy discussion ensued regarding the walkway (dock area) around the boathouse and the need for that area, the granting of minimum variances to alleviate the practical difficulty.

The board began discussing the 276 square feet from limit on dock surface area request:

Jim Steen stated that adding 276-square foot of dock surface area would set a precedence for everyone requesting this same type of structure that could potentially dock six or more boats which would not be good around the lake.

Sal Renda stated that the applicant was not proposing a marina and would keep with the four dock spaces.

Jim Steen stated that the decision would set a precedence.

Sal Renda stated that what is being proposed now is not as large as the original proposal.

Cheryl Erickson stated that this still sets a precedence.

Discussion ensued regarding the fax that was sent to Gary McMeekin requesting the certain dock surface area not be counted towards dock surface area.

Gary McMeekin stated that dock surface area calculations are frequently requested and for consistency all calculations are done the same but if the applicant wishes to appeal that determination an appeal application would need to be filed.

Dan Smith stated that he agrees with Jim Steen regarding the dock surface area as it is an increase of over 50%.

Lengthy discussion ensued regarding the dock length and the ability to reduce the dock surface area in the back to comply with the 40' maximum dock length requirement, the purpose and ability of the number of boats to be docked and the ability or need to use that portion of the dock for walkway and the size of boats.

Cheryl Erickson stated that the benefits can be achieved by other methods as in removing the deck as it is a 100% variance request and a deck could be attached to the house for entertaining, the noise from the lake could be reduced if the deck is built on the house.

Gary Frenz stated that the board is now discussing the deck and would like to go back to the dock surface area request.

Sal Renda stated since the applicant owns two separate lots than they could build two boathouses with 345 square feet of docks on each lot resulting in a total of 690 square feet of dock surface area continuing that the project proposed is aesthetically more pleasing, the applicant has reduced the size of the project into one large boathouse.

Cheryl Erickson stated that she feels she is being threatened and returned to the criteria for dock surface area request stating that the request is substantial 69%, that this would have a major adverse impact on the environment as the current will be interrupted.

Dan Smith stated that there would be no change related to the bottom of the lake and no change in water flow.

Cheryl Erickson continued to state that the additional dock surface is self created as it is in excess of what is needed.

The board reviewed the 276 square feet from limit on dock surface area request criteria:

- 1) The board could not come to a consensus as to the undesirable change in the neighborhood character or to nearby properties
- 2) The board agreed that this could not be achieved by another method agreeable to the applicant.
- 3) The board agreed that the requested variance is substantial.
- 4) The board agreed that there would be no adverse physical or environmental effects.
- 5) The board agreed that this is self created.

The board began discussing the limit on distances structures may extend from shore request:

Cheryl Erickson stated that this is out of character

Dan Smith stated that the request is 10% beyond the maximum allowance

Sal Renda stated that this project is measured at the mean low water mark of 32 to 35 and could be out more than 40'

Cheryl Erickson asked Gary McMeekin for guidance

Gary McMeekin stated that the Fisher boathouse is no more than 30' out from mean low water mark

Brief discussion ensued regarding the shoreline and mean low water mark

Dan Smith stated that the 4' would not produce a change in the character of the neighborhood.

Jim Steen stated that the length may not be detrimental to the neighborhood but a problem separating out the individual variances from one another.

Cheryl Erickson stated that there is a lot of opposition to this project.

Dan Smith stated that the benefit could be achieved by reducing the dock length to 40', after further discussion stated that the benefit could not be achieved.

Gary Frenz agreed stating that 2' could be taken off the back and 2' off the front.

Discussion ensued as to the length of the boat to be utilized and the information that there will be dredging.

Jim Steen stated that the 2' on the front of the boathouse has nothing to do with the length of the boat in the boathouse and could be eliminated without effecting the boat and is not being used for docking space.

Sal Renda stated that 31'6" for a 28' boat is not big enough.

Discussion ensued again regarding the portion of the boathouse being used to house the boat.

Sal Renda stated that the timber cribs are tied together and needed the length and width as stated.

Jim Steen asked if the timber crib system is absolutely necessary.

Sal Renda stated that the timber cribs would have a minimum impact on the lake.

Jim Steen stated that the 2' could be taken off

The board reviewed the limit on distance structures may extend from shore request criteria:

- 1) The board could not come to a consensus as to the undesirable change in the neighborhood character or to nearby properties
- 2) The board could not come to a consensus as to the benefit can be achieved by other means feasible to the applicant.
- 3) The board agreed that the variance request is not substantial
- 4) The board agreed that the number of cribs would not have an adverse physical or environmental effect
- 5) The board agreed that the request is self created by the applicant's desire.

The board began discussing the four feet from dock width limit request:

Dan Smith stated that the request is the part of the dock under the staircase and is a cohesive unit continuing that the width is the minimum in character of the neighborhood, the benefit cannot be achieved by another means as there is no clear alternative for stairway access.

Discussion ensued regarding the placement of the timber cribs

Dan Smith stated that the request is substantial, there is no adverse environmental effect and this is self created as the applicant wants a dock with a roof deck structure.

At this point Sal Renda began drawing the timber cribs on the board members paperwork illustrating the location of the timber cribs. The board requested that the architect provide the board with the plan that shows the crib locations.

The board reviewed the four feet from dock width limit request:

- 1) The board agreed that this is the minimum in character of the neighborhood, all interior
- 2) The board agreed that benefit cannot be achieved by another means as there is no clear alternative for stairway access.
- 3) The board agreed that the request is substantial at 66%.
- 4) The board agreed that there is no adverse environmental effect
- 5) The board agreed that this is self created as the applicant wants a second story deck that would need the extra dock width for stairway access.

The board began discussing the 50 feet from shoreline setback requirement request:

Cheryl Erickson stated that the deck is for entertaining purposes only and a deck could be built on the house.

Thad Smith stated that 20 people dancing on the deck would dramatically change the character of the neighborhood.

Dan Smith agreed that this would be an undesirable change to the character of the neighborhood

Sal Renda ask how many boathouse with decks exist.

Gary Frenz stated that there are boat house and boat shelters with decks, one built in 1940 and one in 2007.

Cheryl Erickson stated that the APA is reviewing the boathouse definition and possibly changing the allowed rooftop decks.

Jim Steen stated that there are 11 boat houses/boat shelters on the lake all smaller that this project with minimal decks.

Dan Smith stated that a deck for sitting verses to the ability for a large number of people to occupy the deck is more desirable.

Jim Steen suggested that the applicant reduce the deck size.

Thad Smith stated that if the aim is to cover the boat then a roof over the dock would accomplish the objective.

Lengthy discussion ensued regarding boat houses versus boat shelters, the number and sizes of boathouse/shelters on the lake.

The board reviewed the 50 feet from shoreline setback requirement request criteria:

- 1) The board agreed that this would be an undesirable change in the neighborhood character and to nearby properties as there could be 20 to 30 people 8' above the lake that would create a negative visual impact and noise impact as reflected in the letters received.
- 2) The board agreed that the benefits sought by the applicant can be achieved by other means as the deck could be built on the house and reducing the need for the dock width variance request by eliminating the stairs and if the intent is to cover the boat then no variances would be necessary in order to accomplish that objective.
- 3) The board agreed that the request is substantial 100%
- 4) The board agreed that there would be no adverse environmental effects but could be an adverse physical effect of noise and lights and people.
- 5) The board agreed that the request is self created

At this point Mike Hill suggested that the board review all four variances and work off written draft decisions, then the board could review them and arrive at a consensus. The board agreed which members would write drafts for the four variance requests. Mike Hill asked that the drafts be submitted to town counsel by January 16th.

Priscilla Remington made a motion to continue this application until January 26th, 2nd by Gary Frenz. All Ayes.

Cheryl Erickson left the meeting Jim Steen replaced her as a voting member.

Public Hearing:

File #2009-27 AV Tax Map 39.17-1-10 Stanley Rusak seeking a 11' roadway setback variance and a 35' shoreline setback variance to build a 10' x 14' storage shed on parcel located at 78-9 State Rte 8 Brant Lake. Priscilla Remington asked if anyone had any comments or questions. Being no comments or questions, Dan Smith made a motion to close the public hearing, 2nd by Gary Frenz. All Ayes.

Unfinished Business:

File #2009-27 AV Tax Map 39.17-1-10 Stanley Rusak seeking a 11' roadway setback variance and a 35' shoreline setback variance to build a 10' x 14' storage shed on parcel located at 78-9 State Rte 8 Brant Lake. Brief discussion ensued regarding the information submitted from the applicant regarding the placement of the shed on the other side of the property. Dan Smith made a motion to approve the 11' roadway setback variance and a 35' shoreline setback variance as there would be no change to the character of the neighborhood, the benefit cannot be achieved by other methods as this is the best location, one variance request is substantial, one variance request is not substantial, there is no adverse environmental impact and the request is self created, 2nd by Priscilla Remington. All Ayes.

Public Hearing:

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. Priscilla Remington stated that the Planning Board recommended the variance be denied due to storm water runoff effects, size of the home on lot. Brief discussion ensued regarding getting further information from the applicant, requesting the applicant appear before the board, a draft decision be written by a ZBA member. Dan Smith made a motion to close the public hearing, 2nd by Gary Frenz. All Ayes.

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. Brief discussion ensued regarding Dan Smith writing a draft decision to deny the requested variances. Dan Smith made a motion to table this application for discussion next month on the draft decision, 2nd by Gary Frenz. All Ayes.

Unfinished Business:

File #2009-13AV Tax Map 72.5-1-6 Paul and Randi Nolan seeking a four hundred (400) square foot dock surface variance and a one hundred sixty foot (160') dock length variance to construct a one hundred foot (100') by four foot (4') wetlands walkway with attached one hundred foot (100') by four foot (4') floating dock on parcel located at 339 Palisades Rd. Gary Frenz made a motion to table the application until further information is received from the applicant or a representative, 2nd by Dan Smith. All Ayes

BOARD PRIVILEGE: Training January 25, 2010 in Saratoga - Jim Steen, Gary Frenz, Thad Smith and Curt Castner stated they would like to attend.

Priscilla Remington asked if she could send a letter to the board as a citizen. Mike Hill stated that if someone is not participating as a board member on an application then a letter as a citizen is allowed.

There being no further business before the board, Chair Priscilla Remington adjourned the meeting at 12:00 AM

Respectfully Submitted.

Christine Smith-Hayes, Secretary