Town of Horicon
Zoning Board of Appeals
Minutes of February 28, 2012

Members Present: Gary Frenz, Cheryl Erickson, Curt Castner Alternate: Carl Heilman and Bob Miller

Members Absent: Priscilla Remington, Thad Smith

.

Others Present: Zoning Administrator Gary McMeekin, Deputy Zoning Administrator Jim Steen, Planning Board Member Bill McGhie

Guests Present: Tom Johansen, Matt Fuller, Julie Cochran, Maclane Hadden, Matt Steves, Steve Alheim Teri Schuerlein

Pledge

The regular meeting was called to order by Chair, Gary Frenz. Gary Frenz stated that Carl Heilman and Bob Miller will be a voting member due to the absence of Priscilla Remington and Thad Smith.

NEW BUSINESS:

File # 2012-03Av Tax Map 70.15-1-12 Maclaine Hadden seeking a 104.8' shoreline setback variance to build a 28' x 58' home on parcel located at 3519 East Schroon River Road. Matt Steves, representing the applicant stated that the mobile home will be replaced by a single story 28' x 58' home 45' away from the shoreline, the existing mobile home now sits 30' from the shoreline, a new septic will be installed and in compliance with all regulations.
Cheryl Erickson asked if this new home will be in the flood zone.
Matt Steves stated the the 811' flood zone is depicted on the map, there is a concrete retaining wall on the property and the new home will be inside the area protected from any flooding, the finished floor will be at the 812' line, with a 2' crawl space above the flood elevation, the home will not be obtrusive to the neighbors. Cheryl Erickson asked about the proposed setback from the road and the reason why the applicant is not moving the new home closer to the road.
Matt Steves stated that this proposal will have the minimum land disturbance, utilizing the existing driveway, no need for curb cuts, moving closer to the road would be away from the retaining wall, interfere with the driveway and septic area, there is a barrier of trees that would need to be removed and a feeder power pole for service off of the main power.
Gary McMeekin clarified for the board that the retaining wall will keep the new home away from the flood plane.
Matt Steves stated that the applicant would prefer to obtain a road setback variance rather than a shoreline variance but the property is not conducive to that placement adding that the water is being obtained from the river, a well is not planned at this time but the new septic placement will benefit if a well is drilled in the future. Matt Steves continued to state that the neighboring wells are located on the map provided
Being no further comments or questions, Cheryl Erickson made a motion to deem the application complete and schedule a public hearing for March 27th, 2012, 2nd by Curt Castner. All Ayes.

PUBLIC HEARING:

File #2012-02 Tax Map 19.4.-23-3 Peter Oberdorf seeking a 34' shoreline setback variance and a 43'4" roadway setback variance to build a two story addition to home located at 619 East Shore Drive. The applicant is being represented by Eric & Eric Inc. Steve Alheim handed out a drawing showing the old building along with the new proposed additions indicating the square footages as requested, stating that there is a total of 320 square foot increase, the additions are not encroaching on the lake anymore than what exists.
Gary McMeekin stated that the rear structure from the road is non-conforming but the entire structure must come before the board for all required variances. Cheryl Erickson asked if a APA permit is required. Steve Alheim stated no. Gary Frenz asked if anyone in the audience had any questions or comments. Being no questions or comments, Cheryl Erickson made a motion to close the public hearing, 2nd by Curt Castner. All Ayes.

UNFINISHED BUSINESS:

File #2012-02 Tax Map 19.4.-23-3 Peter Oberdorf seeking a 34' shoreline setback variance and a 43'4" roadway setback variance to build a two story addition to home located at 619 East Shore Drive. The applicant is being represented by Eric & Eric Inc. Gary Frenz stated that the board will review the variances individually.

34' Shoreline setback variance:
1) Whether the benefit can be achieved by other means feasible to the applicant: The property is pre-existing, non-conforming and not moving closer to the shoreline than what exists.
2) Undesirable change in the neighborhood character or to nearby properties: the changes are in keeping with the existing structure and will not affect the character of the neighborhood and is in keeping with the homes on the lakeside.
3) Whether request is substantial: The request of substantial, but already pre-existing, non-conforming, the home is already in place.
4)Whether request will have an adverse physical or environmental effects: No effects on the lake as the proposal will not change the roof lines.
5) Whether alleged difficulty is self-created: Pre-existing, non-conforming.
6) Is this the minimum variance necessary: The board agreed that this is the minimum variance necessary.

Cheryl Erickson made a motion to approve the 34' Shoreline setback variance per the discussion, 2nd by Carl Heilman. All Ayes.

43'4" Roadway Setback variance:

1) Whether the benefit can be achieved by other means feasible to the applicant: there is inadequate space to give the interior access to the upstairs without an addition as the stairs are not accessible by other means.
2) Undesirable change in the neighborhood character or to nearby properties: this will be an improvement and a modest addition in keeping with the neighborhood.
3) Whether request is moderately substantial: the exterior concrete pad is pre-existing.
4)Whether request will have an adverse physical or environmental effects: There will be no tree removal and the roof line will remain the same.
5) Whether alleged difficulty is self-created: pre-existing, non-conforming
6) Is this the minimum variance necessary: The board agreed that this is the minimum variance necessary as there is no major increase in the footprint.

Cheryl Erickson made a motion to approve the 43'4" Roadway setback variance per the discussion, 2nd by Carl Heilman. All Ayes.

PUBLIC HEARING:

File # 2011-16A Tax Map 39.13-1-7.1 G Leon Cochran ETAL seeking an Appeal of Determination. The applicant is being represented by Matt Fuller.

Matt Fuller submitted additional paperwork to the board and restated the history of this boathouse stating that his client received a Zoning Compliance Certificate reiterating his position regarding the 8/31/11 determination from the ZA that the structure does not meet the definition of a boathouse with the attached deck and area variances are required. The August 31, 2011 letter resulted in the remedy of the removal of the bathroom and kitchen. In November the board heard about a boathouse across the lake (Bolton) that received a road setback variance, there were inquiries in 2005 of this boathouse but no action was taken until 2010 when his clients approached the office about adding a dock. The deck attached to the boathouse is the issue with an open question that has not been answered, the DEC applications became in issue, DEC does not review decks or overhangs over the water. The boathouse definition changed in November 2002 removing the ability to have a second story. The old zoning definition applies to this boathouse that allows the second story. A foil request was submitted and 43 properties were identified that required shoreline setback variances and a follow up was done with Gary McMeekin to identify relevant variances prior to 2002 and found two most closely related to this application: Essepian and LeoGrande decks along the shore required area variances). LeoGrande does not support the proposition that variances are necessary along the shore. Essepian boathouse has a deck above the boathouse, not in front and was referred to the ZBA for a Use Variance with no storage and was not before the board for an Area Variance. Matt Fuller continued to state that the Bolton boathouse was treated exactly the same as his clients regarding the setbacks from the road only, there was a lack of plans and specs as discussed and this was consistent with the interaction of his client and the Town did not require plans as it was a DEC issue, the dimensions of 16' x 24' were only specifications used to solicit contractors and interior dimensions only are dated June 2001, there were no changes in 2002, 2003. Dick Silvernail did not request plans or specs and only spoke with his client, contending that the boathouse is a structure and the deck on the front does not need a variance.

Gary McMeekin: Stated that he is confused with the arguments of Matt Fuller as he has submitted three application that required variances. LeoGrande, Essepian and Bolton, the Bolton boathouse, was reviewed by the ZBA, received a variance, zoning compliance, and a Warren County Building permit. The research indicated that the LeoGrande application is for three (3) decks attached to a boathouse, the Essepian is a deck above the boathouse - that required area and use variances and the Bolton variance, per the Planning Board minutes, show that the ZBA overlooked the construction aspect of the boathouse, and presented the board with the Zoning Compliance and building permit that Matt Fuller stated to the board in a previous meeting that Bolton did not receive a Warren County Building Permit, reiterated that Cochran only received a Zoning Compliance Certificate, no Warren County Building Permit and no review from the ZBA. Gary McMeekin continued to state that the LeoGrande and Essepian variances were forwarded to the ZBA by then ZA Curt Castner and the both applications with variances are consistent with ZBA review. Gary McMeekin continued to state that if Section 11.26 is thrown out, this board would relinquish control to review future boathouses, reading the definition of Boathouse to the board "Solely for the storage of boats and associated equipment" a deck/porch is at least required to be reviewed by the ZBA as there is nothing added to the zoning code to exempt them from ZBA review. Matt Fuller is stating that anything added to a boathouse is exempt from review and we do not feel that is the case.

Cheryl Erickson stated that decks required variances back then.

Gary McMeekin submitted a drawing to the board to show what a deck on a boathouse could look like if this board overturns his determination and does not review decks or other structures attached to boathouses as they (the ZBA) has done in the past. Gary McMeekin continued on to state that per Matt Fuller's argument if a deck is attached to a boathouse then a deck or other structure would only need to be 15' off the side yards of a property and a deck/porch could be 100' wide on the shoreline. People can be very creative with their boathouses, Matt Fuller is attacking Section 11.26 stating that it does not pertain to boathouses.

Carl Heilman referred to Section 11.26 and asked Gary McMeekin if a deck is added to the side of a boathouse would it require a variance? The new Zoning Ordinance adopted November 14, 2002 contains Section 11.26 Structures Subject to Building Setback Regulations: Essentially if it was considered a boathouse, it needed a variance to have a deck attached to it probably on any side?

Gary McMeekin: It would require your review, it is outside the definition of a true boathouse, Yes, It would at least be required to be reviewed by the ZBA, as done in the past, and stating, of those that have been reviewed in the past, some have been approved, some have been denied, some were asked to make them a little smaller. If the ZBA relinquishes their authority over review of boathouses, then what is the need for a ZBA. If this board determines that Section 11.26 does not pertain to boathouses then you have relinquished your responsibility over boathouses.

Carl Heilman: Regardless of what happened with other boathouses on the lake it looks like this should have gone for a variance when it was being built.

Matt Fuller asked under what justification?

Carl Heilman: Because it's a deck/porch attached to the front of the boathouse that was not in the original parameters of the structure, with what was given to the contractor and the inside dimensions does not refer to anything on the of exterior structure

Matt Fuller: the deck's on there, it's in the stuff I gave you today, it was spec'd (sic) out as a cost.

Gary McMeekin: That is an assumption as to what Mr Fuller is giving you as to what the contractor was given as a proposal. We don't know who saw the proposals. We do see the original plans are without a deck, the changes came after that in 2003/2004. The lead sheets to the contractors don't mean anything.

Carl Heilman: There are other boathouses during the same time that had applied for variances to have a deck in the past.

Matt Fuller: I'll take one, give me one.

Gary McMeekin: Right here, there's a three-tier deck attached to a boathouse.

Matt Fuller: on the shore, no where near the water.
Gary McMeekin: Attached to the boathouse.

Matt Fuller: The Essepian was reviewed by the ZBA but there was no discussion with the ZBA for Area Variances, a Use Variance only and challenged the board to find a discussion regarding an Area Variance discussion for the Essepian boathouse and the Bolton boathouse was an setback variance from the road, the deck is identical and attached to the structure zero (0) setback from the shoreline. This is under the old zoning, there are no more applications to come back, so saying that this board would never get to review boathouses. The town changed the definition, you can't have a second story. Things attached to a boathouse does not need shoreline setbacks. Citing Otto vs APA July 84' - 3rd Department, APA, DEC and Army Corps do not regulate decks. The reason we are here is for a building permit.

Gary McMeekin: The zoning has not changed at all, the definition of a boathouse changed only to now state "single story structure", reiterating to the board that the Zoning Ordinance has not changed from the time this boathouse went up til today. Understand the ramifications to what Mr Fuller just said "things attached to a boathouse do not need shoreline setbacks". We are any APA approved town and APA approves our local laws.

Discussion ensued regarding Old Zoning Section 11.36 and New Zoning Section11.26

Carl Heilman: Question regarding the packet received Oct 5th, Warren County application for building permit with no date.

Matt Fuller; that is what triggered this application, The ZA needs to sign off on the Zoning Compliance to get the building permit.

Matt Fuller: It is not 11.26 - that is the new zoning 11.36 is the old zoning.

Gary McMeekin: Section 11.26 wording is the same as Section 11.36.

Matt Fuller: Decks. Porches or other structures which are attached to single family dwellings or other structure shall be considered part of the structure for the purposes of complying with all setback restrictions. That deck is attached to that structure, it's not separate and does not need a variance.

Curt Castner: Asked Gary, What is wrong with this?

Gary McMeekin: I want this to come to you (ZBA) for a variance. Mr Fuller's position is that this does not need a variance and my position is that the deck needs a shoreline variance. You as the ZA and put these through to the ZBA along with Lee Smith and we have done so in the past couple of years as far as boathouses and decks and things attached to them. Mr Fuller is trying to turn this around. He is reading Section 2 , Section 1 deals with boathouses. #2 Decks. Porches or other structures which are attached to single family dwellings or other structure shall be considered part of the structure for the purpose of complying with all setback restrictions. Decks and patios which are not attached to other structures shall comply with all setback restrictions. #1 is the one that deals with boathouses. I'm trying to get a determination that this boathouse with the deck belongs before the ZBA for a variance.

Curt Castner: When I was the ZA but can't remember this is so long ago, I can't remember all of the details.

Gary McMeekin: The minutes prove that it did come before the ZBA.

Mike Hill: Describing the two fundamental differing points of the ZA Gary McMeekin and the applicant's representative Matt Fuller. Gary McMeekin's point is that the boathouse because this structure has a deck it does not meet the definition of a boathouse and therefore it must comply with shoreline setback requirements and needs a variance. Mr Fuller is maintaining that the structure is a boathouse and therefore since boathouses are exempt from shoreline setbacks does not need a variance. Mr Fuller is proceeding that this is a boathouse Gary is taking the position that this is not a boathouse because of the definition because a boathouse is for storage only. Gary states the addition of a deck on the structure leads to other uses.

Matt Fuller: I'm not the one that said it's a boathouse, Gary's said it was a boathouse and told us to remove the bathroom. If is wasn't a boathouse we would not have had to remove the bathroom and kitchen.

Discussion between Mike Hill and Matt Fuller ensued regarding the boathouse and the removal of the bathroom and kitchen.

Mike Hill: For your structure to have any chance of being considered a boathouse the bathroom and kitchen had to come out per the definition of a boathouse.

Matt Fuller: He is saying that the deck on there is not a boathouse. So now those setbacks apply
If it's not a boathouse, the setbacks apply. I could have a bathroom.

Mike Hill: Your client cannot maintain that structure in that current position without it either being a boathouse or getting the necessary shoreline setback variances.

Curt Castner: Gary, am I right that bathrooms and things of that type are not allowed in boathouses?

Mike Hill; does not mean your structure constitutes a boathouse, it's necessary by not sufficient.

Cheryl Erickson: Definition of a boathouse: Section 4

Matt Fuller: New Zoning - Section 4 definition does not apply.

Board Members: Single story versus two story only change in the two definitions.

Mike Hill: The Bolton boathouse is irrelevant to this application. If the Bolton's were here then modifying their boathouse then - you are adding docks.

Matt Fuller: No, that's not why we are here, we are here to get a building permit application so we can remedy that defect and agree, we can't have a bathroom.

Gary McMeekin: What was your initial request?

Matt Fuller: Years ago? Docks, was the initial request. My client is being singled out. Setbacks do not apply to boathouses.

Mike Hill: Your client's are not being singled out.

Julie Cochran presented the board with pictures of the Bolton boathouse. No disagreement that this is a boathouse as we needed a place to store the boat.

Gary McMeekin: my point is to go through the variance procedure

Julie Cochran; We did the research, no plans were reviewed. Clarify this deck which is part of the boathouse does not require a variance. We made a mistake, we put a bathroom in and had a refrigerator, we took it out. My father never submitted plans to Richard Silvernail, these issues are distressing and feels she is being singled out.

Gary Frenz: Does the building permit process require the building to meet current codes and regulations?

Mike Hill: Not sure if the County will require.

Matt Fuller; Things like this happens and we have to prove when this was built etc.

Curt Castner: I agree with Gary and have sent similar applications to the ZBA for review.

Gary McMeekin stated that he can see the future ramifications if determination is not upheld, and feels variances are needed to put decks on boathouses and the town can maintain authority over such structures. What Ms. Cochran says is the proof that should be brought up to you during the variance application regarding having the deck on the boathouse.

Gary Frenz: This is what we are talking about, are we going to give up our authority to look at what is built on the lake, we have to maintain our authority.

Matt Fuller: This board would not be giving up their authority by overturning the determination and this would not have a huge effect on the code.

Gary Frenz reminded the board that Gary McMeekin would not be present until the May meeting and he will not be here for the March meeting.

Matt Fuller: The board has by law 62 days.

Gary Frenz stated that the public hearing has not been closed and requested the applicants representative to allow the board to extend past the required 62 days for a decision.

Matt Fuller requested that the public hearing be closed and agreed to allow the board to extend their decision until the May 22nd,

2012 regular meeting.

Jim Steen, as a past member of the ZBA feels that the board should look at the intent of the law (Section 11.26) at the time it was written.

Gary Frenz made a motion to close the public hearing and extend the decision until May 22nd with the approval of Ms. Cochran and Mr. Fuller. A decision will be rendered at the May 22nd, 2012 ZBA regular monthly meeting, 2nd by Cheryl Erickson. All Ayes

BOARD PRIVILEGE:

Due to primaries being held in April and June the board discussed changing the meeting dates. The April ZBA meeting will be held on the 17th, instead of the 24th and the June ZBA meeting will be held on the 19th, instead of the 26th.

APA local government review board conference is being held March 20th and 21st in Lake Placid

There being no further business before the board, Chair Gary Frenz adjourned the meeting at 8:50 PM

Respectfully Submitted.
Christine Smith-Hayes, Secretary