

TOWN OF HORIONC ZONING BOARD OF APPEALS
Minutes of July 24, 2012

Members Present: Gary Frenz, Carl Heilman, Thad Smith, Alternates: Carl Heilman and Bob Miller

Members Absent: Priscilla Remington, Curt Castner, Cheryl Erickson,

Others Present: Zoning Administrator Gary McMeekin, Town Attorney Mike Hill, Bob Olson Town Board Members, Bill McGhie Planning Board Member

Guests Present: Harvey Leidy, TeriSchuerlein, Mr Olin, Claudia Braymer, and others.

Pledge

The regular meeting was called to order by Chair, Gary Frenz. Gary Frenz stated that Carl Heilman and Bob Miller will be regular members due to the absence of Priscilla Remington and Cheryl Erickson. Gary Frenz made a motion to table the June minutes' until the August meeting, due to board members' absences, 2nd by Carl Heilman. All Ayes.

UNFINISHED BUSINESS:

File Number: 2012-08A
Tax Map Number: 72.13-2-48
Property Location: State Route 8
Property Owner: Brant Lake Heights Homeowners Association (BLHHOA)
Request: Appeal of the Zoning Administrator's determination dated January 10, 2012.

Gary Frenz stated that Thad Smith recused himself from this application, the public hearing has been closed on this application, this is a meeting for our discussion.

Mike Hill stated that the board can have a discussion about the substance of the appeal or discuss any observations.

Gary Frenz stated that the board is discussing whether the BLHHOA should be going before the Planning Board or just allow the APA and DEC to install the docks on the lake, the Town Board did an adjustment on docks for certain, Section 11.6 the different shapes and sizes of the docks, and also had a 9.70 amendment - special regulations for docks.

Mike Hill: Section 9.70 10B

Gary Frenz: read multiple access dock regulations. This town board stated they wanted control over docks and enacted zoning ordinances to back themselves up, additional zoning ordinances, there were subdivisions that did not have docks in their plats. Places did not have docks, BLHHOA came before us in 2009 requesting they go before the board, now they are requesting they don't go before the board. We made a decision for them to go before the Planning Board.

Carl Heilman: In 2009 that was made back then?

Gary Frenz: yes

Mike Hill: The question at that time, and it is useful to have a discussion about the history, the Town Board has indicated an intent by including provisions in our zoning code, to exert jurisdiction, authority, over boat docks, so when a owner of a property that has a shoreline wants to put in a dock, the town has provisions in its zoning code to address that and require review of dock applications. Clearly, not an unregulated situation. The code has provisions in it that govern docks. This board previously dealt with the question, which section of the codes is applicable in this case because of the age and the time the subdivision was established. Our code provision in Section 9 - Conditional Use section - specifically certain provision apply to docks for subdivision in existence in a particular time.. And there is another section that deals with docks that came into existing in another time. This board decided that Section 9.70 10b applied which is the section that you just read, rather than 9.70 10a, 10b applied and in conjunction with that you also decided that section 11.60 which has specific numerical requirements is not applicable in the case of the BLH subdivision, clarified in Gary McMeekin's letter of January

Page 2 of 4
ZBA Minutes
July 24, 2012

of this year, which is the determination that is being appealed. The basic question is does the town have any jurisdiction, authority to control the installation of boat docks, and if it does, what is the provision of the code that gives them the authority over boat docks. According to the prior determination of this board, it seems like Section 9.70 10 b, that is the provision under which the town, if it has jurisdiction that's the provision in which to exert, not the 9.70 10a and not 11.60 requirements. Consistent with Gary's letter in January. Asked Gary McMeekin - there was as time that the APA indicated they were taking jurisdiction over the entire proposed dock system for the BLHHOA, because they were making application for a different configuration, and additional docks, they were seeking to make a change. The APA looked at the property and based on the existence of some wetland, they were going to take Jurisdiction under their rules and regulations of the proposed dock system as a Class A regional project. Our code says, that where a project is a Class A Regional project under the APA, that no Conditional Use review is required by the Town. So at that point with the APA saying, there are wetlands here, we are taking jurisdiction over as a Class A. Gary, In response to that you wrote a letter to the APA indicating that if it's a Class A then town doesn't have jurisdiction. The APA later, an amount of time later, the APA said, we decided to take jurisdiction over only a portion of the project located in the wetland area, using a water depth. We are limiting our jurisdiction over the project to these docks in the wetlands area. So at that point APA was saying we are exerting jurisdiction over a part, the rest of it we are not taking jurisdiction.

Carl Heilman: How much of the shoreline was included in that, what percentage of shoreline frontage?

Gary McMeekin: According to the APA biologists, approximately fifty (50) feet from mean high water mark, out into the lake the first fifty (50) feet of the proposal. There were four (4) proposals from one hundred sixty (160) feet to one hundred ninety (190) feet. They are taking jurisdiction of the first fifty (50), and the main jurisdiction will fall under the jurisdiction of the town code.

Mike Hill: From dry land out to a distance of approximately fifty (50) feet, where the water depth becomes six (6) feet or so, they said, we are taking jurisdiction in that area, whatever goes beyond that area, we are not taking jurisdiction of. In response to that determination by the APA - Gary issued a new letter stating that if the APA is taking jurisdiction over only a limited part of the proposed project, because the docks, as proposed will extend well beyond their (APA) jurisdiction, the town would have jurisdiction over any portion where the APA is not taking jurisdiction over, where the APA's jurisdiction ends the town's jurisdiction would begin and extend out further out from the shoreline in deeper water. That letter of Gary's saying that the town has jurisdiction over the remaining portion of the proposed project, that determination is what is being appealed by the BLHHOA, they are saying, the town doesn't have jurisdiction over the remainder of the project stating their reasons why, two reasons #1) Gary previously issued his first letter about the project where the town does not have Conditional Use review because the APA is taking jurisdiction over the entire project. Then APA issued a new letter, a new letter stating that they are taking jurisdiction over only part of the project.

Carl Heilman: At this point the APA is still exerting their right to control the docks within the wetlands zone.

Mike Hill: Originally they said they were taking jurisdiction over all of the project then

Carl Heilman: Now its out to about 6 feet and they are holding on to that.

Mike Hill: right, so chronologically, they said we are going to exert jurisdiction over the entire project, in response Gary issues a letter saying, ok, if you are taking jurisdiction as a Class A Regional Project then the town does not have jurisdiction, its not subject to Conditional Use review by the town, then the APA issues a new letter, saying it's going to take jurisdiction over only part of it, out to the six (6) foot depth, then Gary issues a new letter after that saying that if you are taking jurisdiction over a part of it then the town is taking jurisdiction over the remaining portion. THE HOA has appealed that letter of January of this year, that the town has jurisdiction over the remaining part. For two reasons 1) Gary's first letter, the 2nd point the town jurisdiction is pre-empted by State Law, New York State law, the sections of the navigation law and case law. Recently the Appellant division has said that those provisions of the navigation law and the case law cited by the HOA, they do not apply in a way that would have applied recently, there is new case law, those are the two main reasons, they also are challenge, the boards have a, due to letters that were previously sent by the Planning Board and the ZBA to the APA, the Association believes the ZBA cannot render an impartial determination in regard to the Appeal. So what you are dealing with on appeal is the Homeowners Association's contention that the town does not have jurisdiction over the remaining portion of the proposed dock system the portion that is not under the APA jurisdiction. Goes back to the letter in January, it's Gary's job as Zoning Administrator to make initial interpretations of the Zoning Code. So when APA issued their revised jurisdictional determination over part of the project, Gary then made a determination that the town would have jurisdiction over the remaining part of the project that is proposed for deeper water. That is what is being appealed from, Gary's determination. As discussed earlier there are a number of provisions in the zoning code relating to

Page 3 of 4
ZBA Minutes
July 24, 2012

boat docks, this board determined 9.70 10 B is the portion that applies for boat docks to the BLHHA based on the time period on which in that subdivision falls under the the Conditional Use of our zoning code. If anyone has any questions.

Bob Miller: in 1988 it says that they were granted allowed 18 docks in, in 1989 they put in 18 plus docks and they had to remove the extra ones. Where are those docks now, are they still there?

Gary McMeekin: eighteen (18) now - ten (10) for Butler Loop and eight (8) for the HOA there were eighteen (18) put in, in the late 1980's that the Zoning Administrator corrected that, some were removed. There was a court decision made of the original made of eighteen (18) docks.

Mike Hill: HOA is seeking to apply for more than the eighteen (18) allowed, to have some greater number of docks. None of that, you are not being asked to approve a dock configuration, you are not being asked to approve docks or anything about that at all. The only question, is whether BLHHA is subject to the town's jurisdiction in regards to the portion of the docking system the APA is not taking jurisdiction over. Is this subject to the town's jurisdiction,

Gary McMeekin: and to go to the Planning Board.

Mike Hill: If you uphold Gary's determination. Then if you do that, they will be subject to the Planning Board for Conditional Use approval for whatever they are proposing out into the waters.

Bob Olson; Can you explain where DEC component comes in?

Mike Hill: Stated that he would not attempt to speak for the DEC.

Gary McMeekin: The Planning Board is the only board in town that can approve or deny multiple access docks or any additions to them, unless they go beyond certain criteria. The Town Board, the ZBA does not have that right

Mike Hill: If an applicant is making an application in some way that the configuration does not meet town code or the dimensions, then the applicant would go to the ZBA before the Planning board, but the Planning Board review would still be required. You are not being asked about number of docks, configurations, dimensions, or setbacks, none of that is before you, your only question is whether the town has jurisdiction.

Carl Heilman: Is this being tabled til next time?

Mike Hill: Right now you are in a mode where at the last meeting, is to allow the members to review and consider the appeal, review town code, review any materials, and think about how you want to decide this issue. For this meeting, some members have prepared some notes on their thoughts, just to further inform your own thought process, you can prepare similar notes to provide to other members to what your decision is on this appeal. Is the board looking for counsel to prepare some sort of draft?

Gary Frenz: I believe so.

Mike Hill: If so, suggested that a motion be made to that effect for that direction.

Carl H: Without APA involved, the town would be exerting control over the docks once the APA got involved, Gary relinquished control, then that APA dropped back except for the wetlands, so we need to decide who is taking control. Whether we feel if the town's zoning code shows there are rules

Mike Hill: Whether there is a basis for the town to exert jurisdiction over the remaining portion

Carl Heilman: If so, then it would go to the Planning Board.

Mike Hill: Question is does the town have jurisdiction over the remaining.

Carl Heilman: and then at the PB then everything else would come into play.

Mike Hill; Assuming you uphold Gary's determination then the Planning Board would be review it under 9.70 10 b under the zoning code.

Gary Frenz: I will entertain a motion to have counsel.

Page 4 of 4
ZBA Minutes
July 24, 2012

Carl Heilman: I make a motion to have counsel draw up a draft decision in regard to the BLHHOA appeal, 2nd by Bill McGhie

Gary Frenz: we have a motion and a 2nd, all ayes?

Board Members; Ayes.

Gary Frenz: Requested the board members to draw up their thoughts and get them to Christine to forward them to counsel, we need them a couple of weeks earlier, and will review them in the next two weeks.

Mike Hill: Suggested that the board jot down their thoughts, all input will be helpful and review the notes from your colleagues that you received here tonight and we will have a draft decision and the board can decide on how they want to proceed on this.

Gary Frenz asked for a motion to table this until the next meeting on August 21st meeting.

Carl Heilman made a motion to table this until the August 21st meeting, 2nd by Gary Frenz. All Ayes.

Gary Frenz: this is a five (5) member board, we only need three (3) members for a quorum and all three (3) members would have to vote the same in order for a motion to carry and in order to have a meeting. Any thing on board privilege, would anyone like to speak? Our next meeting is August 21, 2012.

Carl Heliman made a motion to adjourn the meeting, 2nd by Gary Frenz, All Ayes

There being no further business before the board, Chair Gary Frenz adjourned the meeting at 7:50 PM

Respectfully Submitted.
Christine Smith-Hayes, Secretary