

**TOWN OF HORICON ZONING BOARD OF APPEALS
Minutes of June 20, 2012**

Members Present: Gary Frenz, Cheryl Erickson, Priscilla Remington, Thad Smith, Curt Castner,
Alternates: Carl Heilman and Bob Miller

Members Absent: None

Others Present: Zoning Administrator Gary McMeeKin, Town Attorney Mike Hill, Matt Simpson and Bob Olson Town Board Members, Doug Paton Planning Board Chair, Paul Holmes, Mike Raymond, Jim Remington, Bill McGhie, Georgia McMeeKin Planning Board Members

Guests Present: Harvey & Herta Leidy, Matt Fuller, Teri & Paul Schuerlein, Claudia Braymer, Robert LeBlanc, Donna Noon, Valerie Olin, Peter Chochi, Kelli Dougan, Maureen Dwyer, Robert Pickering, Gerald & Gerry Norlander, Christine Webster, Steve Hammond

Pledge

The regular meeting was called to order at 8:10 by Chair, Gary Frenz. The board reviewed the May meeting minutes and corrected the Board Privilege regarding the roll call vote. Cheryl Erickson made a motion to approved the May meeting minutes as printed, 2nd by Priscilla Remington. All Ayes.

PUBLIC HEARING:

File # 2012-13 AV
Tax Map # 22.-1-5
Parcel Location: 1377 Palisades Road
Property Owner: Westchester-Putnam Council BSA
Application: 25' 11" Height Variance where 40' is allowed, to construct a 65'11" high climbing tower.

Peter Choci explained the project stating that the structure would be enticing to older children at the requested height of 65 feet.

Gary Frenz asked if anyone in the audience had any comments or questions.

Paul Holmes stated that he is a Planning Board member, lives on Grassville Road and fully supports the Boys Scouts of America and is concerned with the granting of this variance regarding the criteria of need versus want reading Section 576.1 B). Discussion ensued regarding the Fire Company ability to reach the top of the structure.

Gary Frenz stated that the Pottersville Fire Company has a snorkel truck.

Roger Daby stated that the Fire Company could not drive the truck through the road so the ability to reach the structure is irrelevant.

Gary Frenz stated that the BSA have trained people for entanglement.

Cheryl Erickson asked if this is a standard height.

Peter Choci stated that it would be the tallest in Brant Lake and the Boy Scouts are moving toward high adventure sports to attract older kids, there is a 20 foot tall climbing wall in the property but it is not enticing to the older kids.

Cheryl Erickson asked if this would be the tallest in New York.

Peter Choci stated that the Army has one similar in height, this would be constructed on site, there is 51 feet to the platform outside and the inside could be used as a climbing surface also.

Cheryl Erickson asked if this could be accomplished with a structure only 40 feet tall.

Peter Choci stated that with the roof structure, the actual climbing surface would be significantly reduced and would not attract the older kids at least 14 years of age, and with the open window design, this could be used by the local fire company for training purposes.

Cheryl Erickson ask if this was built without a roof structure but a weather proof deck, would the BSA still achieve their objective.

Peter Choci stated that the staff will be at the top with safety ropes etc. and there would be a safety issue for the staff, the enclosed structure is the safest way to conduct this type of activity.

Gary Frenz asked if there were any more comments or questions.

Jim Sidford stated that the board should consider that the structure will not be visible at 65 feet high, this is a 60% increase over what is allowed.

Being no further comments or questions, Priscilla Remington made a motion to close the public hearing, 2nd by Thad Smith. All Ayes.

UNFINISHED BUSINESS:

File Number	2012-13 AV
Tax Map Number	22.-1-5
Parcel Location:	1377 Palisades Road
Property Owner:	Westchester-Putnam Council BSA
Application:	25' 11" Height Variance where 40' is allowed, to construct a 65'11" high climbing tower.

Gary Frenz stated that the board will review the criteria:

- 1) There will be no undesirable change to the character of the neighborhood or detriment to nearby properties: this property borders State Lane on 600+ acres, is well embedded in a low contoured area.
- 2) The benefits sought by the applicant could not be achieved by any other means as this cannot be accomplished without the benefit of the height, the benefit to the applicant is greater than then any detriment to the public, this will not been seen by nearby properties. The accomplishment of climbing to a higher structure will be significant to older children and to attract the teenagers, providing them with abilities . The sense of accomplishment from 40 to 50 feet is significant, the idea of removing the roof to reduce the height creates a safety issue. Carl Heilman stated that the 80' tall cell tower on Duell Hill Road is not visible and this structure will not be visible from any properties but Steven's Mountain. Peter Choci added that an old water tower which is over 65' is not visible from the top of Steven's Mountain.
- 3) The requested variance is substantial but necessary for the intended purpose. The purpose of the height restriction is to protect negative visual effects and undesirable structures being seen. This structure will not be seen from the lake or nearby properties, will be of natural colors (green roof, brown siding) . This variance request is 60% but needed for the projected purpose, the location of this structure makes this more desirable as it will not be seen.
- 4) There is no effect or impact on the physical or environmental conditions in the neighborhood. There will be no negative visual or environmental effects to the property or neighborhood (green roof, brown siding), this will blend in with the surroundings. Discussion ensued regarding wind. Peter Choci stated that this being designed by a Certified Engineer and wind shear and up drafts are taken into consideration.
- 5) The alleged difficulty was self created as this height is needed to give the kids the effect of climbing to a higher structure that can not be accomplished without a variance. There is a public benefit that offsets any detriment to the health, safety and welfare of the public.

The board noted that this project is exempt from SEQRA as it is a Class A project.

Cheryl Erickson made a motion to approve the 25'11" height variance based on the discussion, on the condition that a Certificate of Occupancy is received in writing, 2nd by Thad Smith. All Ayes.

Curt Castner recused himself from File # 2012-08A Brant Lake Heights HOA as he was the past Zoning Administrator in the 1980's and sat in the audience. Gary Frenz stated that Carl Heilman will be a voting member for this application in Curt Castner's absence.

PUBLIC HEARING:

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

Matt Fuller representing the applicant stated that he presented this board with documentation last month asking for certain members of this board to recuse themselves due to the letter dated 2/23/2010 sent to the APA.

Priscilla Remington stated that she did not participate in the drafting of the letter and did not sign it as she was in Florida at the time.

Matt Fuller requested that the members that participated in the drafting of the letter and signed the letter recuse themselves.

Gary Frenz stated that the letter was in regard to dock installation is not the issue for this board as stated in the letter, the issue before this board whether an application for a conditional use should go before the Planning Board or not and feels he can be objective to this application, and will not recuse himself.

Thad Smith stated that he does not want to participate, left the table and sat in the audience.

Gary Frenz stated that Carl Heilman and Bob Miller will be sitting as regular members of the board.

Cheryl Erickson asked, this appeal that is before us now is just simply to determine whether or not to send this whole issue back to the Planning Board. Is that correct?

Matt Fuller stated that he respectfully disagrees, the issue is Mr. McMeekin's determination. Much like the issue with the boathouse on the other side of the lake. It is not about whether or not this application goes back to the Planning Board, you don't have the ability to make that determination that's not what this is about it's about the Association's appeal of Gary's determination, whether he's right or not that the town has jurisdiction over these docks, that's the issue, it has nothing to do with the Planning Board. I understand that it is a natural effect of where it may end up but it's not the determination that we are asking for.

Mike Hill but it also does not have anything to do with the substance of this application, we are not talking about whether this board approves of the configuration or anything like that.

Matt Fuller it has everything to do with bias and I want to submit a copy of a case Swickler vs Village of Caledonia with letters written in regards to applications pending before boards issued an opinions up front about the substance of an opinion. This issue has to do with a concerted effort by the Town of Horicon to oppose my client's dock application. This is an effort by both boards to make sure this application is not received. That's what this is about.

Mike Hill stated that he respectfully disagrees, what is before this board does not relate to the substance of the application that was commented upon in the letter.

Matt Fuller: My conclusion is that it paves the way for the ultimate goal which is to get it before the Planning Board so it can be denied.

Gary McMeekin stated that his interpretation is that this application belongs before the Town Planning Board that's what my interpretation.

Cheryl Erickson: So we are not approving or disapproving of the docks, at all.

Gary McMeekin: Absolutely not this is application be forwarded to the Planning Board that Mr Fuller wanted in July 2009. That's what he came before you for .

Matt Fuller: It does not what it says at all, I'll read it, Matt Fuller then proceeded to read a letter dated January 10, 2012 to Matt Fuller cc'd to Colleen Parker, referenced to July 14, 2011-letter from the APA. Matt continued to state that that letter does not discuss the Planning Board at all, that's the next step, we'll be back here, when we ultimately get to the determination of which section applies.

Gary McMeekin: The next step of the is town and this project that you insisted on in 2009.

Cheryl Erickson: Stated that she drafted the letter and did not have help.

Mike Hill stated that the question before this board is not whether to approve or deny an application but a procedural question as to move forward to the Planning Board or not.

Cheryl Erickson stated that she can be objective on procedural issues, asked if there is a lot of grey areas. Cheryl Erickson continued to state that she can be objective on procedural issues, they are going to think that I am against this, so no matter what I say will be taken poorly. Is there a provision of the code that I can follow without prior bias. Is there a clear enough procedure that I can follow? And if so I can follow it and be objective. If it's in the code, I can follow the code. I can be fairly objective on that.

Priscilla Remington stated that they are here for the appeal only.

Cheryl Erickson: It is different issue than the docks. Since it's a different issue, I can be objective on that as to what is written in the Town Code.

Mike Hill stated that Mr. Frenz and Mrs. Erickson will be participating in this matter.

Matt Fuller stated that his client objects.

Matt Fuller continued and handed out documents to the board 1) 11/30/10 letter to the APA from Gary McMeekin regarding (August 2009) area, bulk Section 11.60 zoning law - the board indicated to the APA about the ZBA determination (2010) second feelings about their determination in 2009. Section 11.60 does not apply, and the ZA could have challenged 11.60. 2) Reference to Section 11.60 of the Town Zoning Law. 7/6/11 fax to the APA from Gary McMeekin - with an effort on the Town's part to stop the project. Have not gotten to full review yet, haven't gotten to the DEC or the APA to complete their review process. Nothing that shows that any part of the project is in land that is jurisdictional to the Town of Horicon, docks are in the waters of State of New York - sent letter regarding Lake George docks case decided by Judge Krogman which applies here as well. This town is pre-empted from enforcing any regulations out into the waters . If you want to talk about upland of mean high water, you don't have jurisdiction out into the lake. And the fact that the town is continuing to push for jurisdiction, where it clearly has none, is growing tiresome with my clients. we are going to enforce their rights, we are not going back to the Planning Board. I'll challenge that. This matter has been pre-determination, you can't say it hasn't. These actions are mounting and continuing to mount year after year. Last paragraph was read: This has everything to do with a feud with the developer, Olson Development, nothing to do with BLHHA. This has everything to do with innocent people who bought dock rights. All you have before you is the determination that says "we have jurisdiction", with nothing else, those docks are out into the waters of the State of New York, we have to deal with DEC and that APA and unfortunately not this town.

Matt Fuller: Reiterated his client's objection to the law firm representing the Town on this matter.

Mike Hill stated that Mr. Fuller has referred to an allegation that our law firm has a prohibitive conflict in this matter and just for the record we have reviewed our files, we do not believe that is the case and believe we can continue to advise the board on this matter and will communicate with Matt Fuller separately and we will copy the board on this matter. Mike Hill then referred to letters submitted tonight dated 11/30/2010 and 7/6/2011 that refer to Section 11.60, the code, if I recall correctly that the Zoning Administrator has issued a letter subsequent that a different Section would be applicable. Is that correct Gary?

Gary McMeekin: Just to clarify what the APA requested, the APA was discussing what the PB's review would be under Conditional Use. Under Section 9.61 1 states: The use complies with all other requirements of this ordinance including the dimensional regulations of the zoning district in which it is proposed to be located except in that zone that what the code under 11.60 applies under Section 9.61

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Mike Hill subsequent conversation and letter that dealt with this issue - refers to different section making reference to section 9.70. 10 B multiple access docks 5/3/63 to 1987, consistent with prior determination made by this Zoning Board. Subsequent commination that a different provisions of the code that would be applicable

Gary McMeekin - yes, under review of the Planning Board - yes

Matt Fuller - The APA does not have that letter. I FOIL(ed) for every letter on file.

Gary McMeekin stated that the same letter was sent to Matt Fuller for requirements in that zone. 9.70 10 B applies to your application because it's in that zone. The APA wanted what the requirements are in that zone.

Matt Fuller; ask what zone applies to this project.

Gary McMeekin: Stated that 9.70.(B) applies to your application. The APA only asked what was applicable to that zone.

Mike Hill: Most recent letter to Matt Fuller. Section 9. 70 10 (B) copy of that letter was not sent to the APA, but to Matt Fuller.

Doug Paton: last letter to Matt Fuller was cc'd to Colleen Parker - the APA received it.

Mike Hill: With reference to the Hart Family case and the Town of Lake George, and Judge Krogman's decision, it deals with the Town of Lake George and Lake George itself, it obviously does not speak directly to the Town of Horicon or to Brant Lake. Judge Krogman's decision is going to be appealed and the Appellate Division currently has a case pending before it (North Elba vs Grimditch) which the decision may be issued at anytime, the Appellate division may take the opportunity to address this issue of the navigation law.

Matt Fuller: The Grimditch concern is going to deal with the building code.

Mike Hill: It may, but just as the Beneke vs the Town of Santa Clara decision did before if. But if Grimditch doesn't deal with it, it will be dealt with, in the Town of Lake George appeal.

Matt Fuller: We are fully aware of the Grimditch case.

Mike Hill; It is an interesting and evolving area of the law right now, and frustrating for applicants.

Bob Olson: Stated that he is a Town Board member and does not speak for the Town Board, owns a lot in the BLHHOA along with his son and is a member of the HOA, feels that this has gone on too long, the subdivision was approved in June, 1972 (40 years ago) and was before the Planning Board and ZBA numerous times with mixed decisions, folks that want to have a dock to put their boat on and have been kicked around by this town, been before the APA and are received mixed messages, the docks were in the water for 16 years, during those 16 years 5 different Zoning Administrator's that never took exception to this, the Webster's did not take exception, these folks would like to use the lake in peace, this is in a cove and will not have an effect on navigation.

Claudia Braymer: Caffrey and Flower law firm, Webster Family representative read the January 10th 2012 letter from Gary McMeekin "any dock structure or portions of dock structure, to be located outside the areas under APA's Class A jurisdiction would be under the jurisdiction of the Town and would be subject to review and approved under the Town Code" that is the determination you have to make, Our position is that this is under the jurisdiction of the Town. Referred to Section 8 of the Town Code - list of uses requiring a Conditional Use permit - multiple-access dock and Section 9 has the procedural requirements for the exemption for the portion of the dock covered by the APA. Not cutting off the Town's jurisdiction just because the shallow water portions are covered by the APA. The Town's jurisdiction is not pre-empted by DEC that the town has current jurisdiction over the deeper water portions of the dock system. The law in evolving and could be changing under the case law and supports the towns position.

Donna Noon stated that she is a member of the BLHHOA, husband is president of the HOA is a retired person and learned that it is a nice place to visit but you don't want to live here, told the board that they are not nice people.

Christine Webster, stated that she is adjacent to the docks and the beach, bought the property in 1970/71. Reason why this was not addressed in earlier years as her father was not living here consistently, saw the activity grow over the years and there are 10 to 12 water craft 20 to 22 boats with the appeal to put in 30 or more boats. There is a safety issue of guests in the swimming area and the boat traffic has tripled since 1971, devaluing our property and unsafe for Brant Lake,

The amount of boats being requested for this property is setting a precedence for the entire lake and becoming oppressive.

Gary McMeekin stated that there are past Conditional Use applications the most recent in May 2009 and the ZBA decision dated July 2009. Gary stated that Matt Fuller requested the Planning Board review this application and is now feels it is not review able. On 7/14/11 the APA revised their position on jurisdiction the proposal is for a dock system 155' to 190' out into Brant Lake, there are navigation issues and lake bottom conditions, requesting the ZBA uphold his determination and send the application to the Planning Board for their review.

Matt Fuller stated that this is not an emotional argument, it's words on paper. It's what the town board adopted. Whether something should or should not go is not for you to determine. It is a smoke and mirrors attempt to shield away what is the exact issue. The exact issue is - with this letter of 1/10/12, is there anything in here that tells you that the town horizon zoning law applies to this application. There is not, it begins and ends right there, there is nothing before you to dictate or reference before you. Metro effect as to what happens #1) no law that prohibits anybody from berthing a boat on the shores anywhere, in the Adirondack Park, boat sitting in that wetland, nothing changes the review of the APA, no law that dictates the number on boats on the lake, safest way to deal it is to put boats into deeper water, where they are not impacting the environment. Reality that the boats tying to each other off the shore of the property, sitting on the beach. This does not apply, the town does not have jurisdiction over the docks. Your time, effort, energy is doing exactly what you did, getting your concerns to the APA/DEC, doesn't matter that Bob Olson sold too many dock rights, is irrelevant, this needs to be reviewed by the APA/DEC, not the town. The law is not there and the zoning is not worded to give the Town jurisdiction.

Priscilla Remington made a motion to close the public hearing, 2nd by Bob Miller. All Ayes.

Gary Frenz stated that the Public hearing is now closed, we have 62 days to come to a decision on this, what does the schedule look like?

Discussion: meeting dates.

Gary Frenz stated that the next meeting will be July 24th.

Cheryl Erickson stated that Matt Fuller referred to a June 2012 letter.

Mike Hill stated there is a January 2012 letter.

Cheryl Erickson stated that she wants a copy of the determination as well.

Discussion between Mike Hill and Gary Frenz regarding the August meeting date and the 62 day time limit with Mike Hill recommending the the 1/10/12 letter be forwarded to the board members and possibly having a special meeting to discuss their thoughts and writings. And recommend that the board work off a written decision.

Gary Frenz made the announcement that the public hearing is closed and asked of the board if they wanted to discuss this or the other thing they could do is submit their thoughts on paper (illegible).

Carl Heilman requested a dated history of the events, seen and heard and reading in the zoning law, 9.70 of May 63 and 1987, it is in the zoning law and would seem to apply in this situation.

Matt Fuller: Will gladly give the board the history over the years.

Claudia Braymer requesting that someone else give the board the history.

Carl Heilman just looking for time line.

Gary McMeekin stated that the zoning office has all of the history in the office.

Gary Frenz stated that this board should not be concerned with the time-line of the Association this is an Appeal only of the Zoning Administrator's decision, what happened 5, 10 years ago has no impact on our decision, the docks not under the APA jurisdiction and if the town has jurisdiction over the rest of the docks. Mr. Fuller and the BLHHA feels that the APA and the DEC only have jurisdiction, the ZA's view is that the Town should have jurisdiction over the area of the dock that the APA does not have jurisdiction over.

Gary McMeekin: In conjunction with DEC , not eliminating DEC, stated that he feels the town has jurisdiction and my decision is that this must go before the Planning Board.

Carl Heilman: These zoning laws have been in effect since this has been going on.

Gary Frenz: Part of it, Section 9.70 10 B

Matt Fuller: November 2002 is the current zoning.

Gary Frenz: The whole thing started pre-dating zoning.

Mike Hill: The point in that regard is that the Association is now proposing to make some changes to the docks, this is not a pre-existing, non-conforming situation, the Association is proposing to do, though the details are not critical, the applicant is proposing a change and now are different to what has existed in the past. Current zoning would apply in general principals.

Bob Olson: Wanted to be heard on that issue. After Judge Dier 's decision was rendered useless by the town board adopting 9.7 - 26 docks were put in and they remained in for 16 years, actually they were reduced once because the ice took them out, but this was pre-existing, the original subdivision was approved with the common waterfront lot for beach boating and appurtenant uses. No one has argued that appurtenant use to a boat is not a dock and as I see it, I am a Carpenter, I'm not an attorney - as I understand it the legal term of appurtenant use, it goes with the land, it does not expire, there was no dock ordinances back in 1972, you bought your lot and put your dock in, that's just what we did. So they were pre-existing, there were there for 16 years.

Mike Hill stated that it was his understanding that the HOA is applying for some number of docks that is in excess of any number that has never there before.

Bob Olson: No they are not, they are applying for a number of docks that were there, the 26 plus 10 of the butler's that were in the water, and five different Zoning Administrator's never bothered them. The reason why they are not there now is because Gary beat up the HOA, threatened them and served them with cease and desist order and in order to abide by the Zoning Administrator told them, they took the docks out.

Carl Heilman: so Bob you say there were 36 dock spaces at one time?

Bob Olson: Yes, because of the Butler's and the HOA.

Christine Webster: I have photographs going back then, over the years, there were never 36 docks there, That is a lie.

Gary McMeekin: Bob made a statement to me in the zoning office, we had 28 docks there last year. I took photos prior to that he told me they were lost down the lake due to ice. The HOA never had that many docks in the water. The HOA had eighteen (18) docks and the Butler's have ten (10) for a total of 28 dock slips. They are changing up the configuration and the size of the docks system now which puts it into today codes. There are photographs into the mid 80's there was never that many docks there.

Mike Hill: Even if all that was being changed was the configuration, current zoning will apply, as this is not being replaced in kind in the same configuration on the same footprint. I was not trying to get particular with exact numbers.

Bob Olson: Stated that he understands the basic premise of all land use, once a project sponsor has an approval, subdivision approval of 1972, that ordinances cannot be constructed to take those rights back and that in my view is what is happening here.

Gary Frenz: It's now 10:30PM, we need to talk about procedure, requesting that the members of this board write down their thoughts and forward them to Christine, they will be internal amongst ourselves, no discussing it, and we will compile them all, and next month and we will come up with a draft decision.

Mike Hill: Are you saying at next months meeting, everybody will discuss and then a draft will come after that? Or are you saying..

Gary Frenz: unless we are going to have a special meeting to discuss it.

Mike Hill: To talk about procedure and timing, you have 62 days in which to render a decision. Our meeting this month is about a week earlier than it would have been, 62 days would put you out to the 3rd Tuesday in August, the meeting would have normally been on the 4th Tuesday in August - so that means that you would not have a full two meeting cycles in which to render a decision. If you don't have a special meeting, you would need to render your decision at your July meeting. So that's where we are.

Gary Frenz: Is August 24th would be 62 days?

Mike Hill: I believe August 21st would be 62 days. Your normal meeting date in August 28th would fall beyond the 62 days.

Gary Frenz: I think we should change our meeting date to August 21st. I will be here 1st thing tomorrow to reserve this room, for August 21st would be our August Zoning Board meeting. It's a Tuesday, a week early. Is that agreeable with everybody here?

Priscilla Remington stated that she would be out of town for the July meeting.

Cheryl Erickson: If we could get a copy of the determination so we can look at it and the applicable Section is 9.70 10B.

Gary Frenz made a motion to adjourn the meeting, 2nd by Cheryl Erickson, All Ayes

There being no further business before the board, Chair Gary Frenz adjourned the meeting at 10:35 PM

Respectfully Submitted.
Christine Smith-Hayes, Secretary