

Town of Horicon

ZONING BOARD OF APPEALS

Minutes of October 28, 2008 - DRAFT

Members Present: Priscilla Remington, Curt Castner, Gary Frenz, Dan Smith, James Steen
Absent: Marion Luce, Alternate Cheryl Erickson.

Others Present: Counsel to Boards Mark Schachner, Zoning Administrator Gary McMeekin, Town Board member Bob Olson, Planning Board member Jim Remington,

Guests Present: Gail Frenz, Tom Hohanson, Teri Schuerlein, Sawana Smith, Jean and Larry Southworth, Erin and Mike Hayes, Pat and Mickey Butler, Matt Fuller, John Caffry, Peter Belletti, Clark W, John Olin, George & Judy Bertonneau, Keith Wilkinson, Don Butler, Liz and Randy St. Claire, Clark Wilkinson and others

PUBLIC HEARINGS:

File #2008-30AV Tax map 72.-1-57.8 David O'Conner seeking area variances to add deck, steps, install fence and install two (2) deck sections on shore of parcel located at 7131 State Rte 8. David O'Conner explained the project. Priscilla Remington asked if anyone had any comments or questions. Randy St. Claire asked if the deck would extend over the water. David O'Conner stated that the deck would not extend over the water only cover the rocks along the shoreline. Priscilla Remington read the Warren County Planning Board recommendations stating No County Impact with the condition that at the local level information be provided about stormwater and erosion control measures. Dan Smith asked if anyone had any comments on stormwater or erosion control. David O'Conner stated that the structures will make the situation better as there will not be as much run off into the water. Being no further comments or questions Gary Frenz made a motion to close the public hearing, 2nd by Dan Smith. All Ayes.

File #2008-31AV Tax map 36.11-1-9 Weber, Stuadt and Dinger seeking a 50' shoreline setback and a 34' roadway setback variance to build stairs and platform on parcel located at 366 East Shore Dr. Priscilla Remington asked if anyone had any comments or questions. Being no comments or questions, Priscilla Remington read the Warren County Planning Board recommendations stating No County Impact with the condition that at the local level information be provided about stormwater and erosion control measures. Gary Frenz made a motion to close the public hearing, 2nd by Dan Smith stating there this board had no issue with erosion control. All Ayes.

The Regular meeting of the ZBA was called to order by Chair Priscilla Remington Dan Smith made a motion to approve the minutes, 2nd by Gary Frenz. All Ayes.

Priscilla Remington made an announcement that the meeting for December has been changed from the 23rd to the 30th due to the holiday.

UNFINISHED BUSINESS:

File #2008-30AV Tax map 72.-1-57.8 David O'Conner seeking area variances to add deck, steps, install fence and install 2 deck sections on shore of parcel located at 7131 State Rte 8. Priscilla Remington stated that the APA recently overturned a variance for a deck on the shoreline that exceeded 100 sq. ft. that the board may wish to reexamination this application due to the square footage. Dan Smith asked why the APA reversed the Pfeiffer decision.

Mark Schachner gave his opinion regarding the APA's reversal of the Pfeiffer decision that this board did not take into account the APA's review criteria of structures over 100 sq. ft.

Dan Smith continued stating the this application has different reasons for the decks due to access to water (safety issue), preservation of existing vegetation by covering roots of trees to protect them from foot traffic damage. Discussion ensued as to the number and size of deck(s). Gary McMeekin stated that this is basically one deck, as it is connected. Gary Frenz stated that he visited the site and there are rocks, ledge and boulders. Dan Smith asked if anyone could see a feasible alternative way of dealing with the difficulty. The board is advised that SEQRA review is not applicable to this application. After a brief discussion Dan Smith made a motion to approve the variance requests: 30' shoreline setback for the fence, labeled #4 on diagram, a 32' shoreline setback variance for the deck, labeled #3 on diagram and a 50' shoreline setback variance for the deck labeled #5 on diagram as:

- 1) There will be no undesirable change to the character of the neighborhood or detriment to nearby properties.
- 2) The benefits sought by applicant cannot be achieved by other means, this request will alleviate the safety hazard and would be a great detriment to the shoreline if the existing vegetation is removed.
- 3) This request is substantial but it suits the needs of the area for safely accessing the boat dock.
- 4) There will be no adverse effect or impact on the physical or environmental conditions in the neighborhood.
- 5) The alleged difficulty was not self created, the hazards were created by nature and this will make the area safer and protect the vegetation along the shoreline keeping with the town's desire for a natural look on the lake, 2nd by Curt Castner. All Ayes.

File #2008-31AV Tax map 36.11-1-9 Weber, Stuart and Dinger seeking a 50' shoreline setback and a 34' roadway setback variance to build stairs and platform on parcel located at 366 East Shore Dr. Dan Smith stated that this deck is under 100 sq. ft. 5'5" x 11'. Gary McMeekin stated that this proposed deck is at the mean high water mark as it requires a 50' shoreline setback variance. The board is advised that SEQRA review is not applicable to this application. After a brief discussion, Gary Frenz made a motion to approve the 50' shoreline setback and the 34' roadway setback variances as:

- 1) There will be no undesirable change to the character of the neighborhood or detriment to nearby properties.
- 2) The benefits sought by applicant cannot be achieved by other means.
- 3) This request is substantial but not out of line along East Shore Dr.
- 4) There will be no adverse effect or impact on the physical or environmental conditions in the neighborhood.
- 5) The alleged difficulty was not self created. With the condition that the Authority to Act as Agent is received by all owners. 2nd by Dan Smith. All Ayes.

File #2008-20 AV Tax Map 71.12-1-29 Pine Tree Properties LLC seeking a area variance for density to construct a multi-family townhouse unit on existing footprint located at 233 Palisades Rd. The board reviewed both drafts making necessary corrections. Dan Smith stated that the board did not receive any information regarding dates of use and an approval of this variance would result in a less desirable change to the character of the neighborhood. Gary Frenz made a motion to denying the variance request as:

The requested variance would produce an undesirable change in the character of the neighborhood and create a detriment to nearby properties. The surrounding area is predominantly residential in character, consisting of single-family homes on conforming / larger lots. The lot-size variance being sought would enable the construction of four townhouses on a very small, undersized, pre-existing, non-conforming parcel. As a result, the intensity of use on the parcel would be very high. Although the parcel was previously the site of a single family home in recent years was only rarely occupied. Consequently, there was little traffic, noise or nighttime lighting associated with it. Granting the requested variance would significantly intensify the use of the site on a continuous and permanent basis. The variance would create a detriment to nearby properties by causing

overcrowding and excessive intensity of development and land use along with the negative effects of increased traffic, noise, obtrusive lighting and reduction in privacy. The new structure would be prominently visible from both Brant Lake and Palisades Road. Additionally, the increased traffic to and from the property would increase the likelihood of collisions with traffic on Palisades Road, due to the parcel's close proximity to the sharp curve on Palisades Road to the east and limited sight distances for motorists. The negative effects of development would be considerable to a significantly greater degree than in the surrounding neighborhood, producing an undesirable change in the peace and quiet of the neighborhood. The resulting change in neighborhood character would be detrimental to nearby properties. The proposed development would be excessive for the area, with serious negative effects on the surrounding neighborhood and properties, producing an undesirable change in the character of the neighborhood. In addition, the increased density on the lot would likely lead to more intensive use of Brant Lake, with detrimental effects from increased boat traffic. Also, granting the variances might encourage owners of other non-compliant properties to seek similar variances and could serve as a precedent for granting other variance requests, thereby promoting a trend of greater density and further undesirable change in the character of the neighborhood and further detriment to nearby properties as well as to Brant Lake itself. The benefit sought by the applicants (construction of four townhome units) is not achievable at this location without the requested area variance.

The requested variance is substantial. The applicant is seeking a 5.3 acre variance from the 6.4-acre lot size requirement. In percentage terms the variance being sought is over 83%. The variance from the minimum lot size requirement would result in crowding on the site, with other related negative effects as noted above. Thus, the variance sought is substantial in mathematical terms and would be substantial in its practical effects as well. The proposed variances would have a significant adverse effect or impact on the physical and environmental conditions in the neighborhood. Granting the variance would result in the very intensive development of a small parcel in close proximity to neighboring properties and homes. Such development would constitute excessive intensity of land use and development and result in crowding and other negative effects associated with over development, including increased traffic, noise, lights at night, and general negative effects on the aesthetics of the area.

The difficulty here is self-created in that the Applicant was aware, or should have been aware of the fact that the lot is undersized before the Applicant purchased it.

Granting the requested variance would result in a much higher density of development in close proximity to neighbors. The large magnitude of the requested variance would be inconsistent with the Town's plans and goals for the area, as expressed in the Town's Zoning Code, which are to spread out development over larger lots. The requested variance would therefore be inconsistent with community-welfare concerns in limiting non-compliant growth. While the Applicant would benefit from being able to construct four townhomes on the property, the community would suffer from the increased density of use, intensified traffic and noise, loss of privacy and adverse aesthetic effects. Therefore, the Board concludes that the benefit to the Applicant if the variances were granted would be outweighed by the detriments to the health, safety and welfare of the community. The Board therefore denies the Applicant's 5.3-acre area variance request for the purpose of constructing two two-unit townhouses on the parcel located at 233 Palisades Road, the parcel more specifically identified as Tax Map Parcel Number 71.12-1-29. The board was polled:

AYES: Gary Frenz, Dan Smith, Curt Castner, Jim Steen, Priscilla Remington ABSENT: Marion Luce

NEW BUSINESS:

File # 2008-33AV Tax Map 19.4-2-4 Roger, Linda, Brian and Jennifer Pfeiffer seeking a 50' shoreline setback variance and a 43' roadway setback variance to build a 12' x 8' (96 sq. ft) deck on parcel located at 612 East Shore Dr. Priscilla Remington stated that the applicants are now applying for a 12' x 8' (96 sq. ft) along the shoreline as their original variance request was reversed by the APA. Dan Smith made a motion to deem the application complete and schedule a public hearing, 2nd by Gary Frenz. All Ayes

File # 2008-34 AV Tax Map 72.13-2-52 and 72.13-2-53 Larry and Judy Long seeking shoreline setback variance from streams on side of parcel located on State Rte 8 in the R1-1.3 acre zone. Clark Wilkinson, Civil Engineer for the Longs stated that variances are necessary for the setbacks to the streams, a NORWECCO system is proposed. Dan Smith stated that the board would like the measurements shown on the scaled drawing. Gary Frenz asked if the driveway would be dirt, gravel or blacktop in regards to stormwater runoff. Clark Wilkinson stated that the garage will be located in the basement and the first floor would be four foot higher than the road, there will be 60' of grassy area to the lake and the backyard would be depressed in the center for water to pond. Gary Frenz then made a motion to deem the application complete and schedule a public hearing, adding that the board would like a scaled drawing with measurements, 2nd by Curt Castner. All Ayes.

Curt Castner recused himself from the from the Brant Lake Heights HOA application as he was the Zoning Administrator in the late 1980's and early 1990's. Curt Castner then got up and sat in the audience.

File # 2008-35A Tax Map 72.13-2-48 Brant Lake Heights HOA seeking an appeal from the Zoning Administrators Order to Remedy Violation to remove ten existing dock slips, issued July 31, 2008. Mark Schachner explained the appeal process to the board. Matt Fuller, representing the applicants stated that he does not represent Bob Olson, Olson Development Inc or the principles of the corporations and explained the details of the appeal. Lengthy discussion ensued regarding this projects history and the boards duty. Dan Smith then made a motion to deem the application complete and schedule a public hearing, 2nd by Gary Frenz. All Ayes.

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

Respectfully Submitted.

Christine Smith-Hayes, Secretary