

Town of Horicon

ZONING BOARD OF APPEALS

Minutes of March 24, 2009

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

Members Absent: none

Note: Cheryl Erickson in place for Marion Luce who has submitted a resignation letter.

Others Present: Counsel to Boards Mike Hill, Town Board Member Bob Olson, Planning Board Member Harry Balz and Jim Remington

Guests Present: Erin, Bernie Hill, Cynthia, Nathan and Bernie Hill, Tom Johanson, Bill McGhie, Charles Jelenick, Jeanne and Jack Haggerty, Roscoe Chase, Peter Beletti, Elaine Tear, JoAnn and Lee Flamer, Harry Katsch, Jane and Thad Smith, Teri Schuerlein, Gerry Beelb, Jean Vanderzee.

PUBLIC HEARINGS:

File #2008-44 Tax Map 55.14-1-5 James Fisher seeking area variance to construct a boathouse with attached permanent dock on parcel located on Palisades Rd. Erin Hayes, representing the applicant stated that she has been in contact with the DEC and they will not issue their permit until the variance process is completed. Discussion ensued regarding the Warren County DPS concerns of the location of the boathouse. George Van Dusen's correspondence stated that the County is waiting to receive more information from the applicant's representative regarding the location of the boathouse. Erin Hayes stated that she has provided additional materials to George Van Dusen and has no objection to continuing this matter and will confirm with George Van Dusen regarding the needed information. Jack Haggerty, neighbor stated that he is disappointed that the additional information has not been provided regarding the details of the proposed location. Erin Hayes stated that the boathouse structure is proposed to be 18' from the roadway and the walkway access could be as close as 5' from the roadway. Mike Hill asked the board what additional information the board needs from the applicant. Priscilla Remington asked if anyone had any further comments or questions. Being no comments or questions Gary Frenz made a motion to table this application until the April 28th ZBA meeting, 2nd by Dan Smith. All Ayes.

File # 2009-03 Tax Map 55.-1-6Roscoe and Nancy Chase seeking a 326.58' and a 231.52' roadway frontage variances to subdivide parcel located at 248 S. Ike Hayes Rd in the LC-10 acre zone. Roscoe Chase explained the project stating that he and his wife would like to downsize. Lengthy discussion ensued regarding the road or abandoned road. Dan Smith asked the applicant if the town would be willing to take over more of the road for maintenance. Roscoe Chase stated that he would contact Town officials. Dan Smith asked the applicant why he is not subdividing this parcel into three (3) equal parcels giving more road frontage making the variances less extreme. Roscoe Chase stated that there are power lines that cross the parcels and would prefer that any new buildings not be built on both sides of his home. Discussion ensued regarding possibly designing the subdivision to allow for the minimum variances regarding road frontage. Roscoe Chase stated that he would approach the town regarding extending the town road and review his proposal. Being no further comments or questions, Priscilla Remington made a motion to continue the public hearing, 2nd by Gary Frenz. All Ayes.

File #2009-01 AV Pine Tree Properties LLC and Hayes seeking 150' and 98' roadway frontage variances to adjust the Boundary lines of parcels located on Palisades Rd and off Pease Hill Rd in the R1-3.2 acre zones. Erin Hayes stated that she is representing herself and Pine Tree Properties LLC and explained the project in length. Peter Beletti, neighbor asked the board how much usage the proposed access road would have. Erin Hayes responded by stating that the access road to the lot in the back would give access for a home to be built since the only access currently is a logging road off Pease Hill Rd and there are no plans to improve the road and no intent to connect any roads to the Brant Wood Heights Development. Tom Johanson, neighbor stated that he has no objections to the project. Dan Smith asked the applicant about the 5' strip of land connecting the front part of the proposed map lot #29 with the rear part of tax map lot #26. Erin Hayes stated that the purpose of the 5' strip is in order to obtain the required minimum lot size but also limit future development of the rear portion of the lot as that area is steep and could only be used as a walking path, no ability to build any type of accessory structure. Erin Hayes also stated that the subdivision retains the wetlands on the larger parcel and makes both parcels more conforming. Peter Beletti requested that the board place restrictions on the usage of the driveway. Cheryl Erickson asked the applicant if tax amp lot #26 and #29 will share a driveway. Erin Hayes stated that there will be an easement to access tax map #29 in the deed. Dan Smith stated that he does not see a need for restrictions being placed on the usage of the driveway. Priscilla Remington stated that the Warren County Planning Board recommendation No County Impact. Being no further comments or questions, Gary Frenz made a motion to close the public hearing, 2nd by Curt Castner. All Ayes.

The Regular meeting of the ZBA was called to order by Chair Priscilla Remington. Gary Frenz made a motion to accept the February 2009 minutes as corrected, 2nd by Cheryl Erickson. All Ayes except Priscilla Remington who abstained due to her absence from the February meeting.

UNFINISHED BUSINESS:

Jim Steen recused himself and sat in the audience.

Priscilla Remington made a statement to the audience requesting that they respect the board to make their decision and requested that there be no comments made during the boards deliberation process.

File # 2007-36UV Angela Vandermark (EZ Marine and Storage) seeking a Use Variance and Area Variances to establish a Commercial Marina on parcel located on East Schroon River Rd in the RRD-10 acre zone.

Dan Smith submitted to the board members a cost analysis he created presenting a moderate size home approx 1500 sq. ft, Ranch style with garage, porch and no basement adding the land costs to equal approx. \$280,000 to \$330,000. then looked at properties that have recently sold to have an average value of \$254,000. which shows no gain or profit to build a moderately sized home on this parcel.

Cheryl Erickson asked if it is reasonable to assume that a property would sell for the assessed value.

Dan Smith stated that in his experience with the Assessor's office the current market value is the goal in which assessments are made continuing to state that based on this area (128 zip code) there would be enough of a difference in the cost of the land and building a home that a \$30,000. to a \$80,000 loss does not constitute a reasonable return on an investment.

Lengthy Discussion ensued between Dan Smith and Cheryl Erickson regarding the S&P 500 growth, reasonable return, cost of the original investment of the parcel, percentage of applicants errors on financial figures presented, amount the applicant has spent since the purchase of the parcel in 1985.

Dan Smith stated that his figures include the property and building only, no site preparation.

Cheryl Erickson stated that the analysis averages the cost of the home in the RRD area to be approx. \$250 - \$254,000. and the money that has been spent on the parcel to date with regard to taxes etc has been \$75,000. questioned town counsel if reasonable return would be a profit of \$1.

Mike Hill stated that the board is on the right track as to a reasonable return critique, looking at the costs, the average selling prices and the net difference represents the reasonable return on investment, compare to rate of return over holding period.

Dan Smith stated that his research attempted to accomplish this and feels his figures are accurate.

Cheryl Erickson stated that she is understanding the process and discussion ensued between Dan Smith and Cheryl Erickson regarding the analysis done.

Priscilla Remington state that this property has been on the market for years and has not sold.

Cheryl Erickson stated that the average selling price of a home \$254,000 minus \$150,000 (cost to build a home) equals \$100,000 subtracting the \$75,000 costs of the initial investment with taxes etc. leaves \$25,000 profit which is not a reasonable return on the property since 1985 (twenty-four, twenty-five year investment).

Dan Smith stated that the numbers presented are the best case scenario for this parcel, which answers question A that nothing on the list of permitted uses and conditional uses would get a reasonable return, reminding the board that they reviewed a number of items on the conditional use list last month except a moderate single family dwelling 1,000 to 2,000 sq. ft. all other potential uses have been analyzed such as Agricultural Use, Agricultural use structure, Home occupation, multiple access docks, and referring to the February 2009 ZBA minutes giving a submissive regarding Bridges etc. Question B) Alleged hardship is unique and does not apply to substantial portion of the district or neighborhood. Gary Frenz stated that the location and access is a hardship for the owner. Dan Smith referred to the February 2009 minutes regarding the discussion the board had regarding this criteria. Discussion ensued regarding Question C) Requested variance will not alter the essential character of the neighborhood. Dan Smith stated that the boat launch and marina are similar in uses the recreational river is for marina services or recreation uses.

Cheryl Erickson asked the definition of Recreational River District. The board was referred to page 31 of the Town of Horicon Zoning Project and Review.

Dan Smith stated that the essential character in that area is a boat launch.

Gary Frenz stated that the beach area, legal or illegal is used by residents and non-residents.

Mike Hill was asked if a SEQRA review would be required for the Use variance. Mike Hill responded that this is a Class A project and the applicant will need an APA permit and as part of their process and the APA will conduct a review for potential environmental impacts.

Dan Smith stated that he has considered the impact of the character of the neighborhood as to the increase usage and this project would not change the character of the neighborhood as people are using the boat launch and the increase in boat usage and boat access would not alter the essential character of the neighborhood verses a Dr's office of office building use would change the essential character of the neighborhood.

Curt Castner stated that the State boat launch has no enforcement whereas a Commercial Mariana will be controlled. Gary Frenz agreed with Curt Castner's statement regarding control.

Cheryl Erickson stated that this parcel is not in a residential area and a single family dwelling would not be a desirable use as it is close to the boat launch.

Dan Smith continued on to review the last criteria D) Alleged hardship has not been self-created. Dan Smith stated that the draft decision prepared for the board gave a very clear way to reflect the thoughts and read page 4 #4 of the draft decision.

Cheryl Erickson stated that the present owners purchased the property for the intent of some type of marina not for a single family dwelling.

Priscilla Remington stated that the present owners have tried to find a use for this parcel.

Cheryl Erickson stated that this alleged hardship was not self created, asking if the parcel was over valued.

Gary Frenz stated that at the time the owners were trying to sell this parcel, other parcels were selling for more money as after September 11th the market rose.

Cheryl Erickson stated that this parcel has been on the market for four years and the asking price has dropped from \$399,000 to \$199,000 and still has not sold.

Dan Smith responded by stating that something is wrong with the site.

Gary Frenz agreed that four years is a long time for a parcel to be on the market.

Dan Smith stated that the discussions held have substantiated all four criteria for granting the Use Variance but this board must still deal with the requested Area Variances.

Discussion ensued regarding number of boat slips and parking spaces. Suggestion was made to add to the draft decision on Page 3 #1 after the wording swimming area "Additionally the board finds that the sale of a typical 1,500 square foot single family dwelling for approximately \$250,000 as supported by a review of market information, would not yield a reasonable return". After reviewing the Resolution Granting Application for Use Variance and making all necessary corrections Dan Smith made a motion to adopt the Resolution Granting Application for Use Variance, referring to the draft resolution as amended, 2nd by Curt Castner.

The board was polled. Dan Smith Aye, Curt Castner Aye, Gary Frenz Aye, Cheryl Erickson Aye, Priscilla Remington Aye.

Discussion ensued regarding the requested area variances.

Priscilla Remington stated that this is a very ambitious project and asked the applicant if he would consider less boat slips and less parking spaces.

Bernie Hill stated that he is agreeable to less parking spaces.

Mike Hill stated that the zoning project and review requires a minimum number of parking spaces per boat slips and if the applicant would like to amend the application for fewer parking spaces a variance may be required.

Lengthy discussion ensued regarding trailers on property, flagged wetlands and swales, amending the number of boat slips, excavation of parcel and culvert placement. The applicant was asked if he would have any objections to board members visiting the site. Bernie Hill responded that he has no objections.

Gary Frenz made a motion to continue deliberations of the Area Variance until the next months regular meeting on April 28th, 2009 in which the applicant has consented, 2nd by Dan Smith. All Ayes.

Jim Steen returned to the board.

Leroy Flammer asked to address the board questioning why the vote on the Area Variance has been delayed past the

sixty-two day limit. Mike Hill explained the process asking the board if they would like to re-open the public hearing.

Priscilla Remington stated that this board has heard all parties over and over and if the applicant is going to amend the application for a reduction, then she is not in favor of re-opening the public hearing polling the board as to their thoughts.

Gary Frenz responded no to re-opening the public hearing as did Curt Castner, Dan Smith, Cheryl Erickson, Priscilla Remington reiterated that everyone has had ample opportunity to speak and now it is time for the board to deliberate.

Gary Frenz then made a motion to no re-open the public hearing, 2nd by Curt Castner, All Ayes except Cheryl Erickson.

Motion passed by majority vote.

File # 2009-01 AV Pine Tree Properties LLC and Hayes seeking 150' and 98' roadway frontage variances to adjust Boundary lines of parcels located on Palisades Rd and off Pease Hill Rd in the R1-3.2 acre zones. After a brief discussion, the SEQRA form was reviewed by the board. Priscilla Remington made a motion to declare a negative declaration, 2^{dn} by Dan Smith. All Ayes. Cheryl Erickson stated that this would be a desirable change to the neighborhood as this is providing a land locked parcel with access, the lot configuration limits development in the rear of the parcel and leaves the area as open forest which is desirable providing for any development closer to the road, acknowledging that one variance is substantial, more than 50% but justified and it is improving Lot #26 reducing the lack of conformability in the situation, there is no adverse physical or environmental effects as the parcel already has a structure on it and the requested variances for a boundary line adjustment does not adversely impact the environment, and this is not self created but now allows the parcels to meet the minimum density requirements for the area. Dan Smith then made a motion to approve the variances for **98' roadway frontage variance for lot #29 and a 150' roadway frontage variance for lot #26** as there will be no undesirable change to the character of the neighborhood or detriment to nearby properties as this fits within the character of the neighborhood. The requested variances is a desirable change to allow non-conforming parcels to become more conforming, in essence a land locked parcel will now have road frontage access and a non-conforming lot due to density becomes conforming. The benefits sought be applicant could not be achieved by an other means as to the way in which the lots are configured to limit development in the rear of the proposed 3.2 acre lot and keep the area as open forest. This configuration is the best case division of the property in order to achieve access to a land locked parcel and limit development in the rear of the proposed 3.2 acre parcel. One of the requested variances is substantial but warranted to improve Lot #26 with road frontage as it does not currently have any road frontage, an increase from zero road frontage to 100' of road frontage. There is no effect or impact on the physical or environmental conditions in the neighborhood as lot #29 has an existing building and the boundary line adjustment of the parcels allows for open space use. The alleged difficulty was not self created as these are pre-existing lots prior to zoning,.

Gary Frenz stated that he would like to add a condition to the motion that a single family dwelling to be built on Lot #26 as opposed to a town-home. Priscilla Remington stated that the requested road frontage variances have nothing to do with such a condition. Mike Hill stated that the board can place conditions on a variance request but advises the board that such a condition us not justified in this case. Gary Frenz withdrew the condition. After a brief discussion Dan Smith stated his motion stands, 2nd by Cheryl Erickson. All Ayes.

NEW BUSINESS:

File # 2009-09AV Nicholas Chervinsky seeking and Area Variance to replace existing boat storage building on parcel located at 7635 State Rte 8. Michael Hoff, Morse Construction representing the applicant explained the requested variances to the board stating that the new boat storage structure would be 12' x 24' the existing structure is 10' x 24'.

Priscilla Remington asked if the new structure would be closer to the lake or the side yard. Michael Hoff responded that the new structure would be closer to the middle and rear of the property. Gary Frenz asked if the new structure would be built on a slab. Michael Hoff responded that the existing structure sits on a 2' thick slab but the new structure would be built on a 4' slab with minimum excavation done on the site. Dan Smith stated that he would like to see a scaled drawing with the setbacks shown and requested the applicant submit the information before the next meeting. After a brief discussion, Gary Frenz made a motion deem the application complete and schedule a public hearing for April 28th requesting the applicant submit a scaled plot plan showing the new structure and the setback information, 2nd by Dan Smith. All Ayes.

Board Privilege: Training reminder March 30th 6 - 8 PM Warren County.

There being no further business before the board, Chair Priscilla Remington adjourned the meeting at 11:05 PM

Respectfully Submitted.
Christine Smith-Hayes, Secretary