

**Town of Horicon
Zoning Board of Appeals**

**March 26, 2019
Minutes**

Present at Meeting:

Cheryl Erickson, Chairperson
Scott Olson, Vice-Chairperson
James Dewar
Rich Nawrot
Ross Schoembs
Troy Scripture, Alternate #1

Also Present: Town Legal Counsel Justin Grassi, Karen and Jake McCauley, Michael Bird, Melissa Lescault, Jamie Peters, Thom and Sally Thurston, Tim Barber and Carrie Barber, Bob Olson, Bill McGhie and Jim Steen, Zoning Administrator

Chairperson Cheryl Erickson called the meeting to order at 7:00 p.m.

Pledge

Chairperson Cheryl Erickson made a motion to change the date of the April 23, 2019 ZBA meeting to Tuesday, April 30, 2019. Second by Scott Olson. **ALL AYES.**

Review of Minutes: Scott Olson made a motion to accept the February 26, 2019 minutes as written. Second by Jim Dewar. **ALL AYES.**

PUBLIC HEARING:

**File # 2019-01 AV
Tax Map 20.10-1-59
Karen McCauley
1 Church Street
Adirondack, NY 12808**

Requesting an Area Variance from **Zoning Code 6.10** to build a 9' x 12' woodshed for firewood storage to sit 2' from the side yard where 10' is required.

Karen McCauley was present to speak about her proposed project to build a lean to 9' x 12' with a roof and four posts on the sides. They will put railroad ties in the back to hold it up the ground 2' high in the property there to make it look a lot better than it currently is now.

Chairperson Cheryl Erickson asked if there are any more questions or anyone who wants to speak about the project.

Jim Dewar stated that this is a temporary structure and does not have a formal foundation, in fact it looks very nice and matches the landscaping in the area. Jim stated he just wants to make sure that in 20 or 30 years no one will make that a permanent structure and wants it always a temporary structure.

Chairperson Cheryl Erickson stated they can make that a condition on approval.

Scott Olson made a motion to close the Public Hearing. Second by Ross Schoembs. **ALL AYES.**

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UNFINISHED BUSINESS: **File # 2019-01 AV**
 Tax Map 20.10-1-59
 Karen McCauley
 1 Church Street
 Adirondack, NY 12808

Requesting an Area Variance from **Zoning Code 6.10** to build a 9' x 12' woodshed for firewood storage to sit 2' from the side yard where 10' is required.

The Board reviewed the Area Variance criteria:

Chairperson Cheryl Erickson stated that the Board would now go ahead and discuss the Balancing Test to balance the benefit to the applicant with detriment to the health, safety and welfare of the community.

The ZBA further finds:

1. The proposed project cannot be achieved by other means feasible to the applicant because the terrain would make it difficult to put it closer to the garage. Closer to the road is also not an option. The goal is to cover the wood and this is the ideal spot to put the woodshed and to carry the wood into the garage because the door is right there. If it moves forward there is a raised garden bed that is a 15 year old well established garden that should not be disturbed. The requested location is the best location for the woodshed to be placed. The adjoining neighbor also stated she has no problem with the requested wood shed.
2. There will not be an undesirable change in the neighborhood character or undesirable change to the nearby properties. The adjoining neighbor has no problems with the shed and there are already established trees on the property line between the adjoining neighbor and McCauley. Scott Olson asked whether they should consider placing an arborvitae behind the shed between the shed and the property line. Chairperson Cheryl Erickson stated there already are trees and shrubs there and the neighbor has no problem with the requested shed so there is no need to place that condition.
3. The request is substantial; however, they are limited based on the room on the property to move it anywhere else. It is a significantly small property and it is very typical for that neighborhood.
4. There will be no adverse physical environmental effects on the property or to the neighboring properties.
5. The proposed project is self-created but not fatal to the application. Putting up the structure to cover the wood is a very practical request.
6. This is the minimum variance necessary and it is conditioned that a permanent structure with a foundation cannot be created. Restrict it to 3 walls such as lattice or whatever the applicant wants on 3 sides of the shed.

Being no further discussion Scott Olson made a motion to approve the requested Area Variance from **Zoning Code 6.10** to build a 9' x 12' woodshed for firewood storage to sit 2' from the side yard where 10' is required for **File # 2019-01 AV, Tax Map 20.10-1-59** with the aforementioned conditions on the walls and no foundation. Second by Jim Dewar. **ALL AYES.**

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PUBLIC HEARING: **File # 2019-02 AV AFTER THE FACT VARIANCE**
Tax Map 39.13-1-4.2
Tim Barber
22 Horicon Birches
Brant Lake, NY 12815

Requesting an AFTER THE FACT Area Variance from **Zoning Code 6.10** for a shoreline setback for a 298 square foot retaining wall to sit 14' from the shore where 50' is required.

Attorney Melissa Lescault was there representing the applicants and in addition the engineer Luigi Palleschi from ABD engineers is present to speak as well. She stated that they are there for one variance tonight for the retaining wall that sits 14' from the shoreline. The flagstone patio will be removed and grass will be planted in that area. In addition that retaining wall that we were originally there for the side setback has been removed and now in compliance. A little background on the property: Years ago prior to the property owners' purchase there was a micro blast and a lot of the trees were removed along the shoreline. The Barbers did not clear cut along the shoreline. The slope to the shoreline is steep and in order to stabilize the shoreline a retaining wall was built to prevent erosion. I would like to walk you through the supplement to the application. Exhibit B demonstrates the character of neighboring shorelines on Brant Lake supported by stonescaping walls. Exhibit C demonstrates that there are approximately 77 homes along Brant Lake with similar shorelines supported by stone type retaining walls marked in red. Exhibit D shows the parcel to the south of Barbers is significantly improved with scattered rocks to stabilize the steep slopes of their property. The Landscaping Plan: Exhibit E highlights the plan of the entire shoreline area. The owner shall plant seven (7) four to five feet tall (4' – 5') arborvitae trees evenly spaced along the base of the stonescape wall. Identified in green are the Evergreen Myrtle or Periwinkle that shall cascade over the rocks and shield the wall with greenery. In addition, identified in Orange are Blue Rug Juniper which shall be four to six inches (4-6") tall and spread five to seven feet (5'-7'). They will have the three (3) clump Birch behind the retaining wall as conditioned in the previous application. Exhibit F shows a current photo of the property with the vegetation already growing and it is substantial. Exhibit G is an email from Ed Martin the neighbor to the north and he has no objection, he does not oppose the variance and is very satisfied with what the Barbers' have done and the professional and safe manner it was done.

The engineer Luigi Palleschi from ABD engineers discussed with the Board the alternatives and his certified statement is Exhibit H. According to ABD Engineers in order to gain access to the lake without a retaining wall, a zig zag path through the slope would need to be excavated and the concern with this option is during a storm event, the storm water runoff will become concentrated and flow within the path with increasing velocity that shall cause soil erosion. A staircase down the slope was also considered; however, that would need a variance and concrete steps would likely be a more impervious surface which would increase storm water runoff. The staircase would tend to increase velocity towards the lake. So they installed the retaining wall that makes the slopes become flatter and the storm water runoff becomes sheet flow rather than concentrated flow. Sheet flow across thick vegetation prevents soil erosion on a slope, which reduces the peak storm water runoff discharge rates, reduces velocity and ultimately prevents soil erosion. When water comes down vegetative slope the runoff would be infiltrated. So of all the other methods looked at the retaining wall with vegetation would be the best protection for the lake. This method is favorable by NYSDEC storm water regulations.

Attorney Melissa Lescault spoke again about the whether there would be an adverse physical or environmental effect and she reiterated what Luigi Palleschi from ABD engineers previously discussed. The Barbers' parcel is not as viewshed lot on Brant Lake; and a stonescaping wall fits the purpose and character of the neighborhood. Lastly Attorney Melissa Lescault addressed whether the alleged difficulty was self-created and stated that although the variance was self-created, the slope of the property within the shoreline setback was pre-existing. The stonescape design has a less negative effect on the environment according to the engineer than removal of the stone altogether. With the area being stabilized maintaining the wall shall result with a minimum impact on the lake.

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James Dewar asked for clarification on Exhibit D and is the retaining wall the only thing we are considering tonight?

Attorney Melissa Lescault responded that the only thing that will remain there is the retaining wall. The flagstone patio will be coming out and planted with grass and the side has come off a little bit because that had the original retaining wall that went a little too far towards the side yard and that has been removed.

Chairperson Cheryl Erickson asked why they only removed two or three of those stones.

Attorney Melissa Lescault stated that he could only remove it with keeping the slope stabilized and that was the portion that would need the side setback.

Zoning Administrator Jim Steen stated that there is still a course of stone along the bottom that will need to be removed.

Chairperson Cheryl Erickson stated that she wanted to make sure that the side yard setback in the application was accurate, but while she was out at the property, she could not find the surveyor's pin that is identified on the survey.

Tim Barber stated the pin is under the ice at this point.

Zoning Administrator Jim Steen stated that the next pin is about 300' up the sideline and when standing down at the shoreline there is no way to see the other pin and determine where the side line of the property is located.

Chairperson Cheryl Erickson stated that an engineer plan is nice but they will need a survey to accurately determine the side yard setback.

Engineer Luigi Palleschi from ABD engineers stated they are surveyors as well and the pins were there but they did not place the pins.

Scott Olson stated that it is the Board's job to verify the plan is acceptable and Zoning Administrator Jim Steen would verify where the pin is located.

Tim Barber stated that when he and Jim Steen originally went out to the property they could see the pin and the side line was discernable. Tim Barber also stated that they are now 16' from the side yard.

Zoning Administrator Jim Steen stated he could not see the pin and if it's in the water than the mean high water mark would be higher.

Chairperson Cheryl Erickson stated that she was there over the weekend and could not find the pin. She stated she would like to make sure that the retaining wall does not need a side yard setback variance as it has been removed from this application and very little has changed on the wall.

Zoning Administrator Jim Steen asked that the applicant's surveyor would place a pin on the property line near the wall in order for him to measure the side property line to the wall and verify the side yard setback.

Luigi Palleschi from ABD Engineers stated that they are surveyors as well as engineers and will place the pin as requested.

Discussion ensued regarding the retaining wall to the lake, the staircase and the bottom rocks. That a new pin needs to be placed for verification of the side yard setback by the Zoning Administrator and rocks need to be removed so there is at least five feet (5')

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between the wall and the staircase in order for the staircase to meet the 100 square foot exemption from the shoreline. There will be grass now from the retaining wall to the side yard and grass between the staircase and the retaining wall.

Jim Dewar asked if the impervious patio blocks are going to be removed.

Tim Barber stated he will pop some of them out and put sandy loam soil down and roll out sod on top. Can't put topsoil down there because there are too many organics and will run into the water. So it's best to use sandy loam mixture and sod.

Chairperson Cheryl Erickson asked what he means by popping out only some of the stone.

Tim Barber said that he will pop some of them out in front of the retaining wall. They have big gaps between the stones and they are randomly laid.

Chairperson Cheryl Erickson stated that there are not big gaps between the stones and that the patio stones look pretty tight.

Chairperson Cheryl Erickson asked if Mr. Barber will be removing all of the flagstones.

Tim Barber responded by stating no he will remove a bunch of them. They will take out what they have to take out but there will be some left there. Right now there is a sand bed under there and they want to keep that separation and if removed it will be too soft. Time stated he will be placing the sandy loam soil over the flagstones and roll sod over that. The engineer stated that it allows the infiltration of the storm water runoff coming down the slope. They will keep some layer to keep the firmness with the impervious material and sandy loam soil and sod on top of that.

Rich Nawrot asked if the sod will grow over that sandy loam soil.

Tim Barber responded yes.

Rich Nawrot asked how much layer of soil will be placed.

Tim Barber stated about 3 inches (3").

Rich Nawrot asked if there would be a problem with water pooling between the flagstone and the three inches of sod that will be placed on top of it.

Luigi Pallechi stated that no because the stone is sitting in a sand bed. So the water if infiltrated all the way through the sandy loam and the sand bed under the stones.

Rich Nawrot stated he thinks the joints are very tight. So how is the water going to go through that surface? They look like they are butted up very tight.

Tim Barber stated that's a great compliment but he does not think they are that tight. That is a very random joint in the land of masonry.

Zoning Administrator Jim Steen asked if everyone has the new photos taken by Chairperson Cheryl Erickson and they did not have those photos so the new pictures were passed around by Zoning Administrator Jim Steen for the Board member's to review in order to see the flagstones under the table that are currently existing and how they are installed. They were able to get an idea of how tight the joints are by viewing the pictures.

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The Board members had questions and discussion with Attorney Melissa Lescault about the square footage of the retaining wall and she stated that the engineer determined the square footage of the retaining wall and based on her conversation with the Zoning Administrator Jim Steen a variance is not needed for square footage. That is why they only need the one shoreline variance for 14' from the shoreline. The original application (2018-14AV) was for a 498 Square foot patio and 370 Square foot retaining wall. The patio is going to be removed and the portion of the retaining wall within the side yard setback is going to be removed thereby reducing it by 72 square feet so the current application (2019-02AV) is for a 298 square foot wall (370-72 =298) to sit 14 'from shoreline.

Rich Nawrot stated that he was a little confused and asked Attorney Melissa Lescault if the corner of the retaining wall was removed.

Tim Barber responded that the three (3) bottom boulders still need to be removed. The land will be graded down to the side line which must be 15' from the side line. Tim showed the Board members on the pictures what still needs to come out and that a pin will be placed in order for the Zoning Administrator to measure to the sideline.

Zoning Administrator told the Board members that once the other stones are removed he will verify that there is a five foot (5') separation between the staircase and the retaining wall. Once the pin is placed he will verify the fifteen feet (15') to the side line from the retaining wall.

Chairperson Cheryl Erickson asked Tim Barber if he will be removing the stones in front of the retaining wall to plant the arborvitae.

Tim Barer responded yes he will put the sandy lam back it and roll sod out on top of it.

Chairperson Chery Erickson asked if there were any more questions.

Scott Olson stated for clarification that they were only looking at the variance request for the fourteen fee (14') from the lake where the 50' is required.

Chairperson Cheryl Erickson discussed with the Board the different ways to handle going forward with this requested variance. They can condition this request if needed.

After a discussion the Board members decided to go forward with the Balancing Test at this time.

Scott Olson made a motion to close the Public Hearing. Second by James Dewar. **ALL AYES.**

Town Legal Counsel Justin Grassi went over Part II of the SEQRA form with the Board members.

Scott Olson made a motion to adopt a SEQRA negative impact declaration as there are no significant adverse environmental impacts likely to result from this project. Second by James Dewar. **ALL AYES.**

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Chairperson Cheryl Erickson stated that the Board would now go ahead and discuss the Balancing Test to balance the benefit to the applicant with detriment to the health, safety and welfare of the community.

The ZBA further finds:

1. The proposed project cannot be achieved by other means feasible to the applicant because as discussed by the Engineer in Exhibit H the other options for this terrain are not practical. Although full remediation has not been completed because of the weather the Board will make it a condition of the approval that full remediation must be completed to the Zoning Administrator's satisfaction. This new plan has reduced the original variance request and removes two prior variance requests. The patio will no longer be there once full remediation has been completed. The applicant still has access to the water via dock and stone steps. This application is a good alternative to the original plan.
2. There will be no undesirable change in the neighborhood character or undesirable change to nearby properties because this fits in with the properties on either side Tim Barber's property and other properties all around the lake that have retaining walls.
3. The request is very substantial. The structures are large and close to the shoreline. The request is now somewhat lessened because the side yard setback variance is not needed and the shoreline variance request has been reduced.
4. The request will have no adverse physical or environmental effects because the overall construction is environmentally better than the raw bank. The erosion is eliminated. The engineering plan to remediate erosion into the lake avoids the channeling versus the flat flow. The engineer was asked to provide a storm water plan with the calculations which he will comply with the request.
5. The proposed project is self-created; however it is not fatal to the application.
6. This is the minimum variance necessary because as stated by Luigi Pelleschi pushing the side wall of the retaining wall back further would make the erosion worse it would make the natural slope steeper. The original application (2018-14AV) was for a 498 square foot patio and 370 square foot retaining wall. The patio is going to be removed and the portion of the retaining wall within the side yard setback is going to be removed thereby reducing it by 72 square feet so the current application (2019-02AV) is for a 298 square foot wall (370-72 =298) to sit 14' from shoreline.

Being no further comments or questions Scott Olson made a motion to approve the **after the fact variance** for **File 2019-02 AV, Tax Map # 39.13-1-4.2 from Zoning Code 6.10** for a shoreline setback for a 298 square foot retaining wall to sit 14' from the shore where 50' is required with the following conditions:

1. Several additional boundary line surveyors' pins will be placed along the property line so that the side yard setback can be accurately determined by the Zoning Administrator.
2. Evidence satisfactory to the Zoning Administrator Jim Steen that no further variances are required and otherwise compliant with the code and plans as submitted.
3. If any proposed screening, plants, trees or sod covering were to die, they will be replaced by the applicant. Second by Ross Schoembs. **ALL AYES.**

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UNFINISHED BUSINESS: **File # 2018-16 AV**
 Tax Map # 55.7-1-4
 Thomas and Sarah Thurston
 882 Palisades Road
 Brant Lake, NY 12815

Requesting an Area Variance from **Zoning Code 6.10** for a shoreline setback for the addition to sit 14' from the shoreline where 100' is required.

Architect Michael Bird was present to speak about the Thurston project. The Thurston's submitted a revised application tonight that has been downsized from the previous application dimensions. Significant changes were made. The existing square footage is 2990 square feet and the new addition is now 2647 square feet, a reduction of 1111 square feet. So they have taken one third of the earlier proposal away. The previous additional expansion along the shore was cut 2'7" away from the addition to front of house. They cut 4'9" off of what was the pub which reduced it to 7'3" in width. They moved the deck back 4' back by doing that moved the screened porch back 4'. The original addition was moved back. They tried to reduce the overall impact of the structure on the shoreline.

The new addition will only require seven (7) trees to be cut and they are proposing to plant eight (8) new trees. The rendering of the addition is making the impact on the shoreline wider but not as significant as previously shown in the original request. It is pushed further back.

They are going to try to put the mechanical room in the basement that they are now planning on building a basement because they want to winterize the house.

Zoning Administrator Jim Steen that would depend on bedrock or water correct.

Architect Michael Bird responded yes.

Zoning Administrator Jim Steen will the basement be under the entire structure.

Architect Michael Bird no, they will not put a basement under the decks or porches.

Zoning Administrator Jim Steen asked if the height will remain the 38'.

Architect Michael Bird responded yes. A lot of changes were made in order to get the addition closer to compliance with the setback.

Zoning Administrator Jim Steen asked if the existing outdoor shower will have a roof over it and is the water being dispensed onto the ground. Because now the town is requesting it be drained into the septic system which will not affect the size of the septic system.

Architect Michael Bird stated that is no problem and have done it numerous times.

Chairperson Cheryl Erickson asked if you eliminated a bathroom.

Thurston stated they eliminated a full bath on the second floor and made the existing powder room downstairs was made into a full bath.

Chairperson Cheryl Erickson asked if the stakes are there from the original plan.

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Thomas Thurston responded yes.

Chairperson Cheryl Erickson asked are you drilling a well.

Thomas Thurston stated yes after the upgraded septic system is planned.

Chairperson Cheryl Erickson asked if the well is on the new site plan.

Thomas Thurston responded yes and showed the Board members where it will be located.

Zoning Administrator Jim Steen asked if the existing structure will be taken down.

Architect Michael Bird responded no they will bring it up to code and adding the new addition.

Jim Dewar stated that the existing structure blends well into the environment and wanted to know if the addition will maintain the same colors.

Thomas Thurston responded that they may be gray or red which will blend nicely into the environment.

Being no further questions or comments Scott Olson made a motion to deem the application complete and set a Public Hearing for April 30, 2019. Second by Jim Dewar. **ALL AYES.**

Chairperson Cheryl Erickson stated for the record the applicant has agreed to the shoreline setback of 14'.

Reminder: none

Correspondence: none

Public Comments: none

Board Comments: none

Being no further comments Scott Olson made a motion to adjourn the meeting. Second by Rich Nawrot. **ALL AYES.**

Adjourn: 8:48 PM

Next meeting date: *April 30, 2019*

Respectfully Submitted,
Terri Katsch, Secretary