

**Town of Horicon  
Zoning Board of Appeals**

**October 23, 2018  
Minutes**

**Present at Meeting:**

Cheryl Erickson, Chairperson  
Scott Olson, Vice-Chairperson  
Pat Farrell  
Gary Frenz  
James Dewar  
Rich Nawrot, Alternate # 1  
Ross Schoembs, Alternate # 2

**Also Present:** Town Legal Counsel Mark Schachner, Town Councilman Bob Olson, Tim Barber, Carrie Barber, Attorney Melissa Lescault, Attorney Michael J. O' Connor, Donald Butler, Dave King and Zoning Administrator Jim Steen.

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

**Pledge**

**Review of Minutes:** Pat Farrell made a motion to accept the September 25, 2018 minutes as written. Second by Scott Olson. **ALL AYES.**

**PUBLIC HEARING:  
Continued**

**File 2018-14 AV  
Tax Map #: 39.13-1-4.2**  
Tim Barber  
22 Horicon Birches Extension  
Brant Lake, NY 12815

Requesting after the fact variances from **Zoning Code 6.10** for a Shoreline setback for a retaining wall and patio to sit 6' from the shoreline where 50' is required and a side yard setback for a wall to sit 4' from the side yard where 15' is required.

Tim Barber had his attorney, Melissa Lescault present to speak about the proposed project. They submitted an amended application with a landscape plan to shield the retaining wall from the lake and other plantings as requested by the Board at the September 25, 2018 meeting; however, they did not move the wall in eleven (11') feet to meet the fifteen (15') feet side yard setback as requested by the Board members at the previous ZBA meeting on September 25, 2018. The new amended application packet was presented to the Board members for review. A survey was done and the new survey shows the wall is eight (8') feet from the side yard and not four (4') feet as originally stated; therefore, they are asking for a 7' variance from the side yard.

Attorney Melissa Lescault continued on and stated that she read the original application and minutes and she was confused as well about what was being requested by her client. A survey was done and the new survey shows the wall is eight (8') feet from the side yard and not four (4') feet as originally stated. So they are only asking for a variance of seven (7') feet. The structure square footage requirement is 100 square feet. The shed is no longer part of the application. The square footage of the structure is 338 square feet. They are requesting a variance of 238 square feet. The Barber's purchased this property in 2017. From her understanding years before there was a macro burst which destroyed several trees on the shoreline. The Barber's have not removed any trees within the 35' of the shoreline except for one dead tree.\*When I read through the previous minutes there were questions about them clear cutting and it was stated by Mr. Steen the Zoning Administrator that back in 2013 there was proof that those trees had been destroyed by the macro burst and not by clear cutting by the Barbers or the previous owner. **\*(For clarification, the minutes from September 25, 2018 stated that the Zoning Administrator stated that the 2013 photo shows that there was quite a bit of clearing already at the shorefront.)**

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At the September 25, 2018 Board meeting it was requested that the Barbers submit a landscape plan which was done and it is Exhibit B. The red area on the map is where the house is proposed. The orange area is where blue rug juniper will be planted and be about 4-6 inches tall and spread five (5') feet to seven (7') feet. The green area closest to the shoreline will be evergreen myrtle or periwinkle and will cascade over the rocks of the wall. If you look at the photos behind the landscape descriptions there are pictures of what the property looks like.

Chairperson Cheryl Erickson asked if it will come over the upper wall.

Attorney Melissa Lescault stated yes the upper wall and will cascade over the wall. The next exhibit C shows 77 homes along the lake that have similar shorelines as the Barbers with stone rock walls. They took pictures of 11 homes in the next Exhibit D showing examples of homes that have similar stone walls as the Barber's. The last Exhibit is the email from the Martin's who are neighbors of the Barber's that approve of the work done and are very pleased with the work that was done. The wall does not obstruct the neighbors view to the lake and it is not a typical retaining wall, it will be below the soil.

Chairperson Cheryl Erickson asked if the survey presented tonight was done four days ago.

Attorney Melissa Lescault stated that the prior measurement taken by Tom Andress ABD Engineers (now deceased) was from the silt fence and not from the property line. He also included the shed in the square footage which is now omitted with consent from the Barber's and myself, their attorney.

Chairperson Cheryl Erickson asked if there are any further questions or comments by anyone present.

Donny Butler a resident of the Town of Horicon that lives at 7066 State Route 8 and he stated that he had met the Barber's a while ago and he has seen them at a couple functions to support the community. He builds houses around the lake and the longer these people are held up it will cost them into the thousands. He went over to look at the site and he thinks it is very well done and would like to see the Board move forward with this project.

Dave King a neighbor across the lake from the Barber's stated that it looks pretty ugly and unnatural. He has had guests comment on the looks of the property as well. He would like to see more trees on the property as a way to correct the clear cut of the property.

Zoning Administrator Jim Steen asked a question about the amended application. He said that "The total structures in our code states there is an exemption for structures at the shoreline of 100 square feet and you don't get to subtract the 100 square feet from the 338 square feet of the current structure".

Attorney Melissa Lescault stated that she agreed with that.

Zoning Administrator Jim Steen asked if the patio is shown on the survey.

Scott Olson stated it is shown but not measured.

Zoning Administrator Jim Steen looked at the measurements.

Zoning Administrator Jim Steen asked what the octagon will be planted with.

Attorney Melissa Lescault stated the myrtle.

Scott Olson asked about the Hexagon plantings.

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Attorney Melissa Lescault stated the juniper. It is shown in the green on the landscape plan.

Chairperson Cheryl Erickson asked if anyone knows the exact year of the macro burst.

Gary Frenz stated that he looked at street views of that property from 2014 it shows trees were growing there.

Attorney Melissa Lescault stated that they have a 2013 map provided by Zoning Administrator Jim Steen that shows the trees there at that time.

Chairperson Cheryl Erickson asked Mr. King when he noticed the clear cut.

Mr. King stated that it was this past season that he noticed the clear cut.

Chairperson Cheryl Erickson asked if there are any further comments or questions.

Being no further questions or comments, Gary Frenz made a motion to close the Public Hearing. Second by Pat Farrell. **ALL AYES.**

Scott Olson asked if they should go through the Balancing test again.

Town Legal Counsel Mark Schachner stated yes because it is an amended application.

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.

Before continuing with the Balancing Test the Board members discussed whether to look at each variance separately or do it as one.

The Board decided to look at the Balancing Test for each variance request as one.

Upon further discussion the Board members decided to look at each variance request separately because if the side yard setback is moved in to seven (7') where fifteen (15') feet is required it will make all of the other requests slightly smaller.

The Board discussed the side yard setback of seven (7') where fifteen (15') feet is required.

The ZBA further finds:

1. The benefit to the applicant can be achieved by other means feasible to the applicant if he moves the side yard setback to a 15' set back as required which would reduce the other requests. The applicant would still be able to enjoy the lake from his patio.
2. There will not be an undesirable change in the neighborhood character or undesirable change to nearby properties because most of the shoreline in that area has boulders at the shoreline and would not create an eyesore.
3. The request is substantial. It is approximately a 50% request and the applicant was previously asked to conform to the 15' side yard setback and this is still not conforming to the request.
4. This request will have no adverse physical or environmental effects on the property or to neighboring properties.
5. The proposed project is self-created. It was an after the fact variance.
6. This is not the minimum variance necessary for the side yard setback because he could conform to the 15' side yard setback.

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Being no further questions or comments Scott Olson made a motion to **deny** the 7' side yard requested variance where 15' is required on **File 2018-14 AV, Tax Map # 39.13-1-4.2 for** Tim Barber for all the reasons as just stated. Second by Pat Farrell. **ALL AYES.**

The Board now went on to discuss the shoreline setback for the wall and patio structure to sit six (6') feet from the shoreline where fifty (50') feet is required.

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 Board had a discussion about the wall and the flagstone patio being considered one structure and about the previous shed being there and whether there was a flat surface at the shoreline to begin with. The Barber's attorney, Melissa Lescault stated there was a pump house that was about twelve (12') feet long as stated by the Martin's (neighbor). Zoning Administrator Jim Steen stated that the original survey shows the pump house slab to be 3' x 5' and he has to go with the survey over what a neighbor states. The Board members are having a discussion about whether there was a flat surface at the shoreline. Zoning Administrator Jim Steen stated he is not opposed or in favor of this variance and this will be reviewed by the APA and all of the information should be on the record for this file. The wall and the patio is considered one structure. The Board was trying to figure out the square footage of the structure; however, it does not change the shoreline setback at all. So the proposed project cannot be achieved by other means feasible to the applicant.
2. There will not be an undesirable change in the neighborhood character or undesirable change to nearby properties because it is similar to properties on either side and in keeping with the neighborhood. Because the wall is set where it is any erosion problems are alleviated and the applicant can receive the benefit of sitting on the patio by the lake.
3. The request is extremely substantial but part of it is mitigated by the next factor.
4. The request will have no adverse physical or environmental effect on the property or to neighboring properties because the wall does has positive effects from erosion and would prevent natural erosion. There will be no detrimental effects for the shoreline.
5. This difficulty is not self-created because the ground is what the ground is and the applicant has a right to use his property and access the property as he wishes. The property has a substantial slope.
6. Based on the topography it is the minimum variance necessary and if it was back any farther it would create the same problems and the wall would create more of a visual impact.

Scott Olson made a motion based on the previous discussion to approve the variance for the shoreline setback for the structure to sit 6' from the shoreline where 50' is required for **File 2018-14 AV, Tax Map # 39.13-1-4.2 for** Tim Barber with the following condition. Second by Pat Farrell. **ALL AYES.** Because the original landscaping plan did not include trees the following condition is placed on the approval.

**CONDITIONS:**

1. That one stand of at least three (3) white birch trees about four (4') feet to six (6') in height be planted in the center of the property between the walkway and the wall and if they die they must be replaced.

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The Board now went on to discuss the square footage of the wall and patio structure of either 494 +/- square feet **plan view** or 338 +/- square feet **face view** and the applicant approved amending the application with those figures.

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 any other means possible because the applicant had to build a retaining wall for erosion prevention and the patio for enjoyment of the lake.
2. There is no undesirable change in the neighborhood character or undesirable change to nearby properties because it is similar to property on either side and in keeping with other properties in the neighborhood.
3. The request is substantial because is it well over one-hundred (100) square feet.
4. The request will have no adverse physical or environmental effect on the property or to neighboring properties because the wall does has positive effects from erosion and would prevent natural erosion. There will be no detrimental effects for the shoreline.
5. This difficulty is not self-created because the ground is what the ground is and the applicant has a right to use his property and access the property as he wishes. The property has a substantial slope.
6. Based on the topography it is the minimum variance necessary and if it was back any farther it would create the same problems and the wall would create more of a visual impact. No additional conditions are necessary for the structure because the Landscaping plan now includes that one stand of at least three (3) white birch trees about four (4') feet to six (6') in height be planted in the center of the property between the walkway and the wall and if they die they must be replaced.

Gary Frenz made a motion based on the previous discussion to approve the square footage of the wall and patio structure of either 494 +/- square feet **plan view** or 338 +/- square feet **face view** for the structure for **File 2018-14 AV, Tax Map # 39.13-1-4.2 for Tim Barber**. Second by Pat Farrell. **ALL AYES.**

The applicant was instructed that the Town now sends the application to the APA for review which could take up to 30 days from when the APA receives all information it deems necessary.

**UNFINISHED BUSINESS:**           **File 2018-02 AV**  
  **Tax Map # 39.13-2-11**  
  **Fred and Deb Spezza**  
  **1578 Palisades Road**  
  **Brant Lake, NY 12815**

Requesting an Area Variance from Zoning Code 6.10 for a side yard setback of five (5') feet where fifteen (15") is required and a roadway setback to sit forty (40') feet where sixty (60') feet is required in order to enclose a concrete pad. Supreme Court ordered further deliberation by the ZBA on this matter. The Board must address if this is the minimum variance necessary. Board discussion and deliberation only. No public comments. If the applicant wishes to add to the record then a Public Hearing would have to be re-opened.

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Gary Frenz recused himself from this discussion because he was not part of any of the previous discussions or public hearings on this application.

Chairperson Cheryl Erickson appointed Rich Nawrot to sit in for Gary Frenz.

Chairperson Cheryl Erickson stated that they will be discussing whether this is the minimum variance necessary for **File 2018-02 AV, Tax Map # 39.13-2-11** for Fred and Deb Spezza. There will be a Board discussion and deliberation only. No public comments. The Chairperson refreshed the Board's memory regarding the original request from the applicant for an **Area Variance from Zoning Code 6.10** for a side yard setback of five (5') feet where fifteen (15") feet is required and a roadway setback to sit forty (40') feet where sixty (60') feet is required in order to enclose a pre-existing non-conforming concrete pad. The Spezza's have a concrete pad on the side of the house that was built in 1963 which is three feet off the ground and it is pre-existing non-conforming in terms of side yard setback and we allowed him to use the concrete pad as the footings to build on an addition.

Scott Olson stated this is the minimum variance necessary because the pad is already there and is already a substantial part of the property and that would be the reason he would say this is the minimum variance necessary.

Town Legal Counsel Mark Schachner referred to the Supreme Court Decision which stated that the applicant had expressed he would be willing to reduce the size of the addition which would reduce the amount of relief from the setback requirements. Therefore, the question is could the applicant reasonably reduce the size of the addition.

Pat Farrell stated that if he cut the pad it would cause problems with the integrity of the slab because it is built up three feet and there is a wall under the end of the pad which if you cut then you don't have support for the pad. If the Spezza's built a structure that was smaller than the existing pad, then water would run in on the pad and inside the building. You could not cut the pad to make it smaller so it is the minimum variance necessary to use the whole pad and not reduce the size of the addition. In my opinion this is the minimum variance necessary.

James Dewar stated that the bedroom and porch are reasonably sized for the request and in keeping with the neighborhood.

Chairperson Cheryl Erickson stated this would be the minimum variance necessary based on the existing structure and what the applicant is trying to achieve. The applicant wanted to build on that pad and make half of it a bedroom and the other half a screened porch. As Pat Farrell indicated cutting the pad creates a variety of problems. There is no way of getting a solid seal to it so the best way is to build on the top of the pad. None of the other options works from a builder's perspective. This would be the minimum variance necessary to build on top of that pad on the condition that the pad is sound enough to support the building.

Chairperson Cheryl Erickson made a motion to further clarify the record that by granting the five (5') feet side yard setback where fifteen (15") feet is required and a roadway setback to sit forty (40') feet where sixty (60') feet is required in order to enclose a pre-existing non-conforming concrete pad, that the ZBA is granting the minimum variance necessary for the project proposed in the application because the project is based on the pre-existing non-conforming pad that will be used as a foundation and any alteration of that pad would compromise the project to the point that he would not be able to do it. Making the pad smaller by cutting off the footings of the pad would then compromise the integrity of the pad as a foundation. Building a smaller structure on top of the pad would create water runoff problems and an unsightly two foot extension on the side of the building. We have the conditions that are still in effect that if upon inspection he does not have the integrity of the pad he is not to change that pad and come back for a revised proposal for the addition. To further add detail to the minimum variance necessary the desired structure on top of the pad dimensions are 15' x 25' feet. Half of the addition will become a bedroom and half will become a screen porch which is in keeping with the homes in the neighborhood. Second by Scott Olson. **ALL AYES.**

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**Communications:** 2019 Schedule of Meetings given to Board members.

**Public Comments:** None

**Board Comments:** Gary Frenz stated he will be submitting a letter to the Town Board requesting that he be moved to an alternate on the Zoning Board of Appeals.

Being no further questions or comments Scott Olson made a motion to adjourn the meeting. Second by Pat Farrell. **ALL AYES.**

**Adjourn:** 8:50 PM

**Next Meeting Date:** November 27, 2018

Respectfully Submitted,  
*Terri Katsch*, Secretary