

**Town of Horicon
Zoning Board of Appeals**

**September 25, 2018
Minutes**

Present at Meeting:

Cheryl Erickson, Chairperson
Scott Olson, Vice-Chairperson
Pat Farrell
Rich Nawrot, Alternate # 1

Also Present: Town Attorney, Mark Schachner, Bob Olson, Tim Barber, and Zoning Administrator Jim Steen.

Chairperson Cheryl Erickson called the meeting to order at 7:03 p.m.

Pledge

Review of Minutes: Pat Farrell made a motion to accept the August 28, 2018 minutes as corrected. 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 was present and gave a brief overview of the proposed project. He stated that he did get a chance to clarify the one ambiguous area regarding the shed down by the lake. His neighbor Ed Martin sent an email clarifying the size of the shed and to state that he was in favor of the proposed project. He stated that it was a shed of the former owner of McDermott's property that stored canoes and it did have a concrete floor. Tim Barber went up to the Isachsen's and he talked to Kitt Isachsen and she stated that she saw something in the woods prior to Tim purchasing the property. Tim purchased the property in November or December of 2017. Tim mentioned the pictures that the Zoning Administrator Jim Steen had provided to him and he thinks they are from 2008.

Chairperson Cheryl Erickson stated the pictures provided are from 2013.

Scott Olson asked Tim Barber when the stone wall was built. The one on the property line.

Tim Barber stated part of it was there and he removed about four feet of it and then did the bend of it. He built it in April of 2018.

Scott Olson stated that it is a tall wall.

Tim Barber responded yes about 15' tall.

Scott Olson stated that none of the pictures show the shed.

Chairperson Cheryl Erickson referenced one of the pictures and showed it to the Board that shows part of the shed in the lower right corner. When Jim and I spoke with Chris McDermott he did not think it was more than 4 or 5 feet wide.

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Tim Barber stated that when he talked to Chris McDermott he did not seem to know it was there and I did not know it was there when I purchased the property. I think it had blown down prior to McDermott's owning the property.

Scott Olson referenced one of the pictures with the "Gallo sign" to Tim Barber and Tim showed the Board members where on that picture he thinks the shed was located and he did not know that was there when he purchased the property.

The Board members discussed the pictures and there was confusion about a shed ever existing on that site.

Scott Olson asked if the Board was being asked to "grandfather" and then grant variances for a shed that may or may not have existed.

Town Attorney Mark Schachner stated that they are not being asked to "grandfather" anything, he is just asking for a variance for the wall.

A discussion ensued regarding the variance that was requested and the fact that there was no proof a shed ever existed on the property. If you want to replace an existing shed then you build a shed not a wall. The Board decided to go forward with not considering the shed.

Tim Barber is asking for 338 square feet variance for the wall. He had no previous pictures to verify the shed was there.

Chairperson Cheryl Erickson stated to Tim Barber that when you are talking about the shed and using that square footage down near the water and you want to replace that shed with another similar structure that is called "grandfathering". It would be in the same location, but when you talk about a shed and square footage and then say, "I should just be given that square footage for a wall" then you are talking apples and oranges and not talking about the same thing. The shed is not important to the discussion. I think where the confusion comes from is you have a proposed shed in addition to all of the other requests. That's not part of this request is it?

Tim Barber stated that he was going to use that wall as a back wall for the new shed. Then he read to the Board members from the engineer's plans regarding the construction of the wall and the new proposed shed. "It was discovered that there was an old foundation wall. That foundation wall acted as a retaining wall to allow for a level area near the lake. That old wall was removed and a boulder wall was constructed to hold that slope. The wall was constructed of large boulders set along the slope to hold the slope in place, which creates a generally level area of approximately 19' wide by 26' long. It is proposed to construct an approximately 8' x 10' structure in the corner of the wall. With the proposed shed, the resultant walls on each side of the shed will be approximately 52 square feet and 186 square feet. However, since these walls will be adjacent to the shed, and not 5' off the shed, the entire wall area will still be 338 square feet".

Chairperson Cheryl Erickson stated that it has to be on the same location and you have no proof that it is in the same location. The Chairperson went on to state that there is no level land in that area from looking at the pictures.

Chairperson Cheryl Erickson asked Tim Barber if the shed is still part of the application and what is your intention.

Tim Barber stated he would like to put a shed there, if he can, in order to keep his lake stuff in it. The shed would be located in the corner and Tim approached the Board to show them exactly where it would be located on the picture and on the site plan.

Zoning Administrator Jim Steen stated that we have an exemption for structures of up to 100 square feet within the shoreline setback in accordance with the APA; however, it must be separated by 5' to be considered separately if it is within 5' it is considered connected and it has to be considered one structure. Even if a shed is put in the corner it has to be considered one structure.

Scott Olson stated that in terms of the variance are we looking at it as all part of the wall.

Pat Farrell stated if so, then it has to be considered as one.

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Mark Schachner stated that the confusion is coming from the application itself because it is completed in a very confusing manner. On the application where it asks to briefly explain your proposal a shed is not mentioned. Then where the application asks to list all structures that are present on this parcel today, the shed is not mentioned. In the following question on the application it asks to describe what will be done with any and all structures that are currently present on this parcel today and it states a "structure modification to accommodate a storage shed". It is understandable that the Board is having a hard time with this request.

Chairperson Cheryl Erickson asked Tim Barber what is the size of your wall.

Tim Barber stated that it is 338 square feet.

Chairperson Cheryl Erickson asked if you want to add an 8'x10' shed to that wall.

Tim Barber stated yes and that it would be 370 square feet when you take the shed into account.

Scott Olson stated that as far as he is concerned the shed is not part of this application and would require another variance.

Chairperson Cheryl Erickson stated that Board will be considering the wall, the patio and the side yard setback for this proposal.

Rich Nawrot asked for clarification on which wall they are talking about, the one near the water or the one above?

Tim Barber stated that they shortened the wall near the shoreline down just under the 100 square foot exemption from the shoreline setback and are talking about the upper wall.

Chairperson Cheryl Erickson stated that she was looking at the property from across the lake and all of the trees are gone. It is clear cut. What happened to all the trees?

Tim Barber responded that he took one dead tree down that was within the 35' of the shoreline setback and everything else he took down was beyond the 35' of the shoreline.

Zoning Administrator stated that the 2013 photo shows that there was quite a bit of clearing already at the shorefront.

Tim Barber stated that once the house is up it won't seem so vacant.

Chairperson Cheryl Erickson stated for the record that the real problem with this after the fact variance is you were told to cease and desist and not to do any more work within 50' of the shoreline by Jim Steen the Zoning Administrator and you did it anyway.

Tim Barber asked to correct that statement and explained that after taking out the rock wall and replacing it with boulders he did not think he needed to ask for permission for that because according to the Town of Horicon Zoning Code you can replace a structure with a structure.

Zoning Administrator Jim Steen said if you are insinuating that it was 8 x 10 structure and you replaced it with an 8 x 10 structure then that would be correct you would not have to get a variance for that.

Tim Barber read the part of the Zoning Law to the Board which he took to mean he did not need to ask permission for the wall.

Chairperson Cheryl Erickson stated that Tim Barber's structure does not meet that requirement.

Chairperson Cheryl Erickson stated that at the last meeting Mr. Barber stated that Zoning Administrator Jim Steen was on the property with him and stood 50' from the shoreline and Jim said, "don't do anything beyond this 50' shoreline setback point without coming into the office for a Zoning Compliance Certificate and talking to me first". And you did it anyway.

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Zoning Administrator Jim Steen explained to Tim Barber that any structure 2' in height above the High Water Mark is supposed to be to correct the ongoing erosion problem which cannot be determined at this point because you had already altered it.

The Board members looked at all the pictures and a discussion ensued regarding a flat area at the lakeside that Tim Barber insisted was there; however, from the pictures presented the Board could not agree with him and do not see any flat area at the shoreline.

Tim Barber responded that his business network was hit by malware and that is why he has no pictures of before he did the excavating.

Pat Farrell stated that you cannot tell if there is flat area there because of the vegetation.

Rich Nawrot stated he did not see any flat area on the pictures.

Chairperson Cheryl Erickson asked if there are any more questions or comments regarding this proposal.

Rich Nawrot asked about the location of the driveway from the pictures presented.

Tim Barber showed Rich Nawrot where the driveway is to be located.

Chairperson Cheryl Erickson introduced the Martin's email in support of this proposed project.

Chairperson Cheryl Erickson stated that what the Board will be looking at when making their decision is the side yard setback, the shoreline setback and the square footage of the one retaining wall that is less than 50' from the MHW mark and asked the Town Attorney if we can state that the retaining wall structures are not to include the shed?

Town Attorney Mark Schachner responded that the Board cannot change the form; however, the applicant can change the form and the Board when they make their decision should be very clear to state in the decision that you are looking at the retaining wall only and not the shed.

Tim Barber stated that he agrees with that request.

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

Chairperson Cheryl Erickson stated that we received the Warren County Planning Department review and this project will have no county impacts.

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 can be achieved by other means feasible to the applicant because he could use decks or docks that would be less impactful on the environment. By not coming in advance for the variance request he went ahead and created the area which created the problem.
2. There is an undesirable change to the neighborhood character and/or change to the nearby properties right now because all of the trees have been cleared from the property. Once the house is built there will be less of an impact and the Board will condition the request by making suggestions for improving this problem and having the applicant present a landscaping plan.

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3. The request is substantial. They are looking at three separate variances. The shoreline setback request is 6' away from the shore where 50' is required, the side yard is only 4' from the side yard where 15' is required and the structure is over 100 square feet and you have 270 square feet of the structure from the shoreline which is substantial as well. In scope the project is not large but the requests are substantial and the structures are three times over what is usual.
4. The request will not have adverse physical or environmental effects on the property or to neighboring properties because he has done quality work that is done well, created less runoff and is environmentally better. He mitigated the runoff with the proper blocks to mitigate runoff which are turf blocks.
5. The proposed project is absolutely self-created and is an after the fact variance.
6. Before deciding if this is the minimum variance necessary the Board members had a lengthy discussion on whether or not to have the applicant restore the property to its original appearance and how that would cause more environmental effects. They also discussed whether or not to approve this application as is or for the applicant to make changes. They would not vote tonight and re-open the Public Hearing.

Town Attorney Mark Schachner advised the Board that they have to be careful about changing the variance requested and their only choices are to either deny the application as applied for or to cut back on what is requested with conditions.

A lengthy discussion ensued regarding the decision the Board members will make regarding approving or not approving this application request as it is presented. They discussed which parts of this requested proposal can be changed with the applicant's approval in order to approve this variance request.

The Board decided that they will ask the applicant to move the retaining wall in 11' to meet the sideline setback of the 15' requirement. They also want to have the applicant submit a landscaping plan to shield the retaining wall from the lake and plantings beyond the 35' lake setback for plantings.

Town Attorney Mark Schachner stated that no new application would need to be submitted. The Board would just be denying a portion of the request. If the Board wants to ask the applicant for additional information then they should re-open the Public Hearing and have the applicant come back next month with the landscaping plan to shield the retaining wall from the lake and move the side yard setback from 4' to the 15' required side yard setback.

Chairperson Cheryl Erickson made a motion to re-open the Public Hearing in anticipation of requested additional information materials to be presented at the October 23, 2018 ZBA meeting. Second by Scott Olson. **ALL AYES.**

There was a motion made to go into Executive Session to discuss a pending litigation by Pat Farrell. Second by Scott Olson. **ALL AYES.**

Scott Olson made a motion to close the Executive Session and adjourn the meeting. Second by Pat Farrell. **ALL AYES.**

Communications: None

Public Comments: None

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Board Comments: Scott Olson asked to be provided with a copy of the Fred Spezza variance application and to provide the Board members with the February 27, 2018 ZBA minutes and the March 27, 2018 minutes regarding the Spezza request for variances to be presented at the ZBA meeting on October 23, 2018.

Adjourn: 8:40 PM

Next Meeting Date: October 23, 2018

Respectfully Submitted,
Terri Katsch, Secretary