

**Town of Horicon
Zoning Board of Appeals**

**August 28, 2018
Minutes**

Present at Meeting:

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

Also Present: Town Attorney, Justin Grassi, Rob Simon, Bob Olson, Carol and Tim Barber, Carrie Speshock, David Smith, Doug Henshaw, David Smith and Zoning Administrator Jim Steen.

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

Pledge

Review of Minutes: Gary Frenz made a motion to accept the July 24, 2018 minutes. Second by James Dewar. **ALL AYES.**

PUBLIC HEARING:

File 2018-13- AV
Tax Map #: 54.3-1-2
Tax Map #: 54.-1-58
Walter John McCullough Family Trust
Karen Sue McCullough Family Trust
Valentine Pond Road

Requesting variances from **Zoning Code 6.10** for Road frontage variances for each lot. Lot 1, currently Tax Map # 54.-1-58 is requesting a variance of 34' for road frontage of 216' where 250' is required and Lot 2, currently Tax Map # 54.3-1-2 is requesting a variance of 18.5' for road frontage of 231.5' where 250' is required.

Rob Simon was present to speak about this proposal as he is representing the McCullough Family Trusts and he refreshed the Boards memory on the proposed project. There are two lots owned by the Walter John McCullough Family Trust tax map # 54.3-1-2 which h is a one acre parcel with approximately 171' on the shoreline of Valentine Ponds located in the R1A-3.2 acre zone. Both of the trusts, as tenants in common own, Tax Map # 54.-1-58, a 26.99 acre parcel adjoining parcel 54.3-1-2, with approximately 210' of shoreline on Valentine Pond portions of which are located in R1A-3.2 acre zone and the LC 10 acre zone. Both lots are vacant. This proposal is for a subdivision to combine and reconfigure the two lots creating two lots alongside each other. He stated that the parents want to divide the property and give it the kids so they will have equal lots. There is non-jurisdiction to the APA as evidenced by their letter of non-jurisdiction. They are both in need of road frontage variances. It meets all the density and shoreline requirements.

Pat Farrell stated that the proposal is pretty much straightforward and he sees no problem with the request.

Chairperson Cheryl Erickson asked if the road frontages are enough for the two lots.

Rob Simon stated that lot 1 (tax map # 54.-1-58) is requesting a variance of 34' for road frontage of 216' where 250' is required and lot 2 (tax map # 54.3-1-2) is requesting a variance of 18.5' for road frontage of 231.5' where 250' is required.

Chairperson Cheryl Erickson stated that the Warren County Planning Project Review was received and indicated no county impacts from this proposed project.

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

UNFINISHED BUSINESS: **File 2018-13- AV**
 Tax Map #: 54.3-1-2
 Tax Map #: 54.-1-58
 Walter John McCullough Family Trust
 Karen Sue McCullough Family Trust
 Valentine Pond Road

Requesting variances from **Zoning Code 6.10** for Road frontage variances for each lot. Lot 1, currently Tax Map # 54.-1-58 is requesting a variance of 34' for road frontage of 216' where 250' is required and Lot 2, currently Tax Map # 54.3-1-2 is requesting a variance of 18.5' for road frontage of 231.5' where 250' 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 he is taking a one acre lot and a 26 acre lot and combining and dividing them into two lots that will be more conforming and much nicer.
2. There will be no undesirable change in neighborhood character or undesirable change to nearby properties because most of the lots in the area are pre-existing non-conforming lots. This will be a lot line adjustment and will not see any changes at all in the neighborhood.
3. This is not substantial.
4. This request will have no adverse physical or environmental effects on the property or to neighboring properties because it's all on paper.
5. This proposed project is self-created because he wants to evenly split up the family property and make them more conforming.
6. This is the minimum variance necessary and there are no conditions or restrictions.

Being no further questions or comments Pat Farrell mad a motion to approve the request from **Zoning Code 6.10** for Road frontage variances for each lot. Lot 1, currently Tax Map # 54.-1-58 is requesting a variance of 34' for road frontage of 216' where 250' is required and Lot 2, currently Tax Map # 54.3-1-2 is requesting a variance of 18.5' for road frontage of 231.5' where 250' is required. Second by Gary Frenz. **ALL AYES.**

PUBLIC HEARING: **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.

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Tim Barber was present to speak about the proposed project.

Chairperson Cheryl Erickson asked Tim Barber to fill the Board members in on the project and asked him why he is seeking an after the fact variance.

Tim Barber stated that as he was constructing there was an existing structure in the corner where the wall is now and he did not realize a new retaining wall within the 50' setback was not allowed.

Chairperson Cheryl Erickson asked Tim Barber if he was employed in construction why did he not realize he needed a variance.

Tim Barber responded that because there was a structure in the corner that was all grown over and not evident until they started to work on the property they saw a dilapidated cut in the bank and after cleaning it out (what they call the nook) all the wood was falling in and they took down the smaller rocks and debris and put in larger boulders.

Scott Olson asked if there are any pictures of it before you started excavating.

Tim Barber responded no but they did have about a dozen photos but because his server was hit with malware they do not have a single photo left from that area. In talking to the neighbors, (the Martins) and the Isachen's and McDermott's they seem to think it was a well house from times past which was part of the Mc Dermott property at one point. To access the lake from a road on the McDermott's property there was an old 16" diameter well pipe under a hemlock tree and that's why they think there was a well house there at some point.

Chairperson Cheryl Erickson asked if there was a house on this property and whose well house would it be.

Time Barber responded in times past the previous owner or McDermott's used that access road to the lakefront.

Chairperson Cheryl Erickson stated that the well house may not have been for any structure on your property but possibly the McDermott's.

Tim Barber responded that he asked the McDermott's, Martin's and they said that there were no houses on their properties and this had nothing to do with their properties. The pipe found under the hemlock that shoots right to that structure. When they walked the parcel it was not evident this was there until they started digging.

Chairperson Cheryl Erickson what kind of construction do you do.

Tim Barber responded heavy industrial.

Chairperson Cheryl Erickson said, "I am having a real hard time that you did not realize you would need a variance because that is your business". You substantially altered your property with a side retaining wall and the rock wall going down and the flagstone platform.

Tim Barber responded he was misinterpreting the Zoning Law and was interpreting as an existing structure and replaced it in the same proximity and extended it a little on the south side.

Chairperson Cheryl Erickson stated you did not put a well pump structure, up you put up a patio, a deck and a wall. Those are different structures.

Tim Barber stated that the well house structure went back into the land and a six foot structure with no floor, sandy loam, in a deteriorated condition and I misinterpreted what was needed.

Pat Farrell stated that he was up there and it is very nicely done. He just manipulated what was there for the lakefront.

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Tim Barber stated he is not obstructing any neighbors view to the lake and is in keeping with the character of the neighborhood.

Zoning Administrator Jim Steen stated when Mr. Barber first approached him he had come in to the office for a Zoning Compliance Certificate. I live close by to the property and could hear a lot of construction going on. So I went over to the property to see what was going on and I told Mr. Barber that anything from this 50' point to the lake you would need to come see me first because he could not do anything within the 50' setback from the shoreline. He said, "No problem" then three weeks later he was out on his boat and saw the retaining wall. I also could not make a definitive determination where the previous structure was located. He then revoked Tim Barbers Zoning Compliance Certificate and issued a stop work order.

Chairperson Cheryl Erickson asked Tim Barber to confirm Jim Steen told you specifically that you need to be 50' from the lake to build anything and you would need to come see Jim for a variance and then you just kept going.

Tim Barber stated yes but they did not change the topography of the shore and he protected the lake. He thought any structure under 100 square feet was exempt so he did not deem it necessary to come for the variance.

Gary Frenz asked what happened to all the trees over 4" in diameter on this property because he knows that there were a lot of trees taken down.

Zoning Administrator Jim Steen stated when McDermott brought his lot there were complaints about a lot of trees being taken down but apparently there was a storm years ago and trees were knocked down and by the time I got there they were already down.

Tim Barber stated that when he purchased his property the trees on the shoreline were already taken out prior to his purchase. I only took out a dead birch tree in the southern corner of the property.

Scott Olson said to Mr. Barber that Jim told you to stop and you kept going.

Tim Barber stated no, when he issued a stop work order he stopped.

Zoning Administrator Jim Steen said that when I told him to stop if he got anything closer than 50' of the shoreline he would have to stop and come in to the office to see me to make sure it meets the parameters required. Then three weeks later he saw that Mr. Barber did not stop and that is when he issued the stop work order and revoked the Zoning Compliance Certificate.

Tim Barber said that he did not take it as he needed to stop when Jim came to the property before issuing the stop work order.

Chairperson Cheryl Erickson stated it is very hard for her to imagine that you would not know you needed a variance because of the business you are in and that you kept going after Jim told you to stop.

Tim Barber stated that he only added about 10' from that existing structure and his interpretation of the Zoning Law is that it did not need a variance.

Gary Frenz stated that it did not have a foundation so it needed a variance.

Tim Barber sated that he took 14-16 cubic yards of cobbles out of there and the structure was built into the bank and he just removed debris and put in larger boulders to hold the bank.

Zoning Administrator Jim Steen showed Board members the picture where he was standing when he told Tim Barber to stop.

Tim Barber gave a long explanation of what he did after Jim told him to stop and he stated that they looked at the Horicon Zoning Law and APA regulations and did not determine that they would need to get any variances so they went and replaced the retaining wall.

Scott Olson stated he created this situation by continuing the work after he was told to stop.

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There was a long discussion between the Board members, Tim Barber and Zoning Administrator Jim Steen about what was done to the property that should not have been done without variances.

James Dewar asked Tim Barber what was the date the Zoning Administrator told you to stop and what date did you received the stop work order.

Zoning Administrator Jim Steen stated that the stop work order was issued on June 11, 2018 and Mr. Barber was verbally told to stop three weeks earlier and to not build anything within the 50' shoreline setback.

Chairperson Cheryl Erickson stated that Mr. Barber is very professional, and the job that was done was very professional and that is the reason there should be no excuse why you didn't come in to see Jim once he told you to stop.

Tim Barber stated that they did make an appointment to see Jim in the office after they received the stop work order and they explained their position and then they moved the dock out to be compliant, took the wall down and Jim showed them what to remove and then come back with the variance application. The shoreline in that area is now stabilized and there is no erosion.

Chairperson Cheryl Erickson stated that if you had just come in and gotten your variances right away there would be no problem but you took it upon yourself to become the Zoning Officer for a little while and now it's a problem.

James Dewar asked if this is being treated as a separate project or is the new construction of the home being combined with the stop work order.

Zoning Administrator Jim Steen stated that the stop work order pertains to the whole project right now until we see how the variances play out.

Tim Barber (inaudible) thought we were in compliance.

Chairperson Cheryl Erickson asked if there were any more questions or if there was anyone else present to speak on this proposal.

Chairperson Cheryl Erickson would like to hear from the Martins and how they feel about this project and possibly get information from them on history and background of the property.

Scott Olson asked if the applicant had come to us with a picture of what this would look like we would have been able to work things out, but what the size of the original structure was is critical in order for me to make a determination.

Chairperson Cheryl Erickson stated the problem is it was a pre-existing structure and he could not replace that with a retaining wall without a variance.

Zoning Administrator Jim Steen stated that after he was told to stop and not put anything in within the 50' shoreline setback without coming to the office to meet with me he continued with the walls and the flagstone patio. He finally stopped when the stop work order was issued.

Tim Barber stated he has had no opposition from the neighbors.

James Dewar asked if this is a completed project at this time.

Tim Barber stated yes this is completely done already. The next step is to build the house which will not need any variances.

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Chairperson Cheryl Erickson stated she would like to leave the Public Hearing open and reach out the Martin's, McDermott's and Isachsen's to find out what that structure was and when those trees were removed. You were told by the Zoning Administrator to stop and you just kept going.

Gary Frenz stated that being familiar with older excavators in the area he could speak with them and maybe they have some information on what was originally done on that lakefront.

Town Attorney Justin Grassi said that any relevant information from any credible sources can help in making the determination on this project.

Discussion ensued with Tim Barber, Board members and Town attorney about what actions to take regarding this proposed project.

Zoning Administrator Jim Steen asked Secretary Terri Katsch if we had received any correspondence from any of the adjoining neighbors and she responded no.

Gary Frenz stated that he would go to the County to look at these property records to see if he can find additional information as well.

Chairperson Cheryl Erickson stated that she would like to leave this Public Hearing open and request that letters be sent to three adjoining owners asking for opinions on how they feel about this construction, whether if it effects their privacy and if they have any history of the property or old photos that show what was existing on that property.

Gary Frenz requested that Terri Katsch reach out to Christine Hayes the Town Assessor because she may have some pictures of the property as well.

Scott Olson asked Zoning Administrator Jim Steen if he could consult his records to find out the date he told Tim Barber not to build within the 50' shoreline setback without coming in to the Zoning Office for a variance.

Scott Olson made a motion to keep the Public Hearing open until the September 25 2018. Second by Gary Frenz. **ALL AYES.**

PUBLIC HEARING:

File # 2018-09
Tax Map # 55.10-1-12
Douglas and Marilyn Henshaw
18 Sand Beach Way 12815

Requesting an Area Variances from **Zoning Code 6.10** for a shoreline setback of 18.5' where 100' is required in order to build a staircase, patio, retaining wall and house. A Roadway setback on Sand Beach Way Road for a garage to sit 49.3' where 60' is required, a Roadway setback on Sand Beach Point Road of 40.4' where 60' is required, a Northwest side yard setback for a retaining wall of 10' where 15' is required and a Northeast side yard setback for a retaining wall and garage overhang of 10.1' where 15' is required.

Douglas Henshaw was present to update his proposal to the Board. He stated that there is a revised plan presented tonight. It includes separation of the garage to the right of way to the east and the separation of the retaining wall from property line to the west property line. He stated that the garage was made smaller and moved further to the south as requested by the Board at the previous meeting and now sits 10' away from the retaining wall to the west property line and 10.1' away to the east. He has gotten greater conformity to the setbacks.

Chairperson Cheryl Erickson asked what the new dimensions to the garage.

Doug Henshaw responded that it is now 23.9' x 25.9'. Went from two garage doors to one door.

Scott Olson asked Mr. Henshaw if he changed the distance of the garage to the house.

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James Dewar brought up the emails that were received by Mike Raymond who owns the property next to Doug Henshaw. He wanted to know if it is a Right of Way or Mike Raymond's property.

Scott Olson stated that it is a Right of Way and Mike Raymond owns that Right of Way.

James Dewar said that Mike Raymond stated he has a problem with the 10' setback proposed.

Chairperson Cheryl Erickson stated that at the last meeting the Board stated that a 10' setback would be a more reasonable request for the setback.

Scott Olson stated that Mike Raymond's concern is not with the retaining wall having the 10' setback from his property but the garage itself which he thinks should meet the required 15' setback as indicated in the Zoning Law.

James Dewar asked if we are concerned about the septic system on the property.

Gary Frenz stated that this Board is not concerned with the septic system that is for the Town Board to decide.

Chairperson Cheryl Erickson stated we are concerned with the Speshock well on Mike Raymond's Right of Way.

Doug Henshaw stated that Carrie Speshock is present here tonight and he heard from her attorney who requested a written proposal which he sent to them and they are reviewing the proposal.

Carrie Speshock indicated that they did receive all of the plans to relocate the well and she is consulting with her attorney.

Chairperson Cheryl Erickson is concerned with the excavation on the property and feels it will disturb the current well and could cause a problem.

Gary Frenz wanted to know the depth of that well.

Pat Farrell stated that Mike Raymond indicated at the last meeting it was about 300'.

Scott Olson stated that he would like to look at the variance requests for the retaining wall and the garage itself separately that they discussed at the previous meeting.

Discussion ensued regarding the details of the setbacks of both the retaining wall and the garage.

Zoning Administrator Jim Steen placed the renderings of the project on the board for the Board members to review which they then discussed.

Chairperson Cheryl Erickson asked if Mr. Henshaw will be rebuilding the deck.

Doug Henshaw responded no he will leave it and it was permitted when built. He has no plans to change that deck it will remain as is.

James Dewar asked for clarification from Mr. Henshaw regarding the rights to trespass are the only rights he has to cross the Right of Way.

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Town Attorney Justin Grassi stated that being there is no written recorded agreement for an easement over the Right of Way this is what is known as a prescriptive easement. Anyone that historically has had those rights can continue to utilize those rights according to what the historical use has been.

Chairperson Cheryl Erickson asked the Town Attorney about the excavating for the garage which will affect the neighbors well and it is between lawyers right now so does this have a bearing on any decision.

Town Attorney Justin Grassi stated that if it's being worked out by the attorney's it is up to the Board what they would want to do. It is a property right that can be litigated. If it is being worked out the Board could leave it to a private property matter.

Discussion ensued regarding the impact of the excavation that could possibly affect the Speshock well and alternate places to build another well if need be.

Doug Henshaw indicated that there are two alternate places for a new well to be drilled if need be.

Carrie Speshock stated that she has reached out to her attorney and they are looking at the proposal from Mr. Henshaw and that she is working together with Mr. Henshaw on this situation.

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

UNFINISHED BUSINESS:

**File # 2018-09
Tax Map # 55.10-1-12
Douglas and Marilyn Henshaw
18 Sand Beach Way 12815**

Requesting an Area Variance from **Zoning Code 6.10** for a shoreline setback of 18.5' where 100' is required in order to build a staircase, patio, retaining wall and house. A Roadway setback on Sand Beach Way Road for a garage to sit 49.3' where 60' is required, a Roadway setback on Sand Beach Point Road of 40.4' where 60' is required, a Northwest side yard setback for a retaining wall of 10' where 15' is required and a Northeast side yard setback for a retaining wall and garage overhang of 10.1' where 15' is required.

Chairperson Cheryl Erickson stated that the Warren County Planning Review was received and indicates there will be no county impact from this proposed project.

Chairperson Cheryl Erickson stated The Board will decide each variance separately in their review.

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 for the Shoreline setback for the structure to sit 18.5' from the shoreline where 100' is required.

The ZBA further finds:

1. The proposed project cannot be achieved by other means feasible to the applicant because it is on the footprint of the pre-existing non-conforming structure and the house cannot move back due to the restrictions on the garage and the septic.
2. There will be no undesirable change in the neighborhood character or undesirable change to nearby properties because all the houses along the shoreline in that area are pre-existing non-conforming homes that are located close to the shoreline.

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3. The request is substantial however, it is on the same footprint of the pre-existing non-conforming house and in keeping with the neighborhood.
4. There will be no adverse physical or environmental effect on the property or the neighboring properties because there is already a house there. There will be a new septic system installed that will be a big improvement. No trees will be taken down only trees that could cause damage if it fell on the house.
5. This proposed project is self-created.
6. This is the minimum variance necessary.

A condition is to be placed on this proposal that an arborist certify which trees need to come down between the lake and the house and that any trees taken down will be replaced with new trees not less than ten feet in height that the arborist will recommend. If any of the trees die they will be replaced.

Town Attorney Justin Grassi reviewed the SEQRA form with the Board members.

Scott Olson made a motion to find a negative SEQRA declaration as there will be no significant environmental impacts. Second by Gary Frenz. **ALL AYES.**

Scott Olson made a motion to approve File # 2018-09 AV for a variance from **Zoning Code 6.10** for a shoreline setback of 18.5' where 100' is required in order to build a staircase, patio, retaining wall and house with the following conditions:

1. That an arborist certify which trees need to come down between the lake and the house and that any trees taken down will be replaced with new trees not less than ten feet in height that the arborist will recommend. If any of the trees die they will be replaced.

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 for the North West corner setback for the retaining wall to sit 33.8' from Sand Beach Way Road where 60' is required and retaining wall to sit 10' from the side yard where 15' is required and a Roadway setback for the garage to sit 49.3' away from Sand Beach Way Road where 60' is required.

The ZBA further finds:

1. The proposed project cannot be achieved by other means feasible because based on the topography it would be the minimum variance necessary due to the drop in elevation and it would be too close to the foundation as well.
2. There will be no undesirable change in the neighborhood character or undesirable change to nearby properties.
3. The request is substantial however, the garage is further out and more in keeping with our code.
4. There will be no adverse physical or environmental effect on the property or the neighboring properties because it is a retaining wall.
5. This proposed project is self-created.
6. This is the minimum variance necessary because Mr. Henshaw will be the only one who sees it. It won't be an eyesore because it cannot be seen only from Mr. Henshaw's driveway.

Scott Olson made a motion to approve the variance for the northwest side of the project for a Roadway setback for the retaining wall to sit 33.8' from Sand Beach Way where 60' is required. A Roadway setback for the garage on the northwest to sit 49.3' away from Sand Beach Way Road where 60' is required. Second by Jim Dewar. **ALL AYES.**

Based on the previous discussion Scott Olson made a motion to approve the variance for the retaining wall side yard setback of 10' where 15' is required on the Northwest corner of the property. Second by Pat Farrell. **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 for the North East side of the garage overhang from Sand Beach Point Road to sit 40.4' where 60' is required and a retaining wall from Sand Beach Point Road side yard setback for the retaining wall to sit 10.1' where 15' is required.

The ZBA further finds:

1. The proposed project cannot be achieved by the other means feasible because this is a reasonable plan and the garage has been moved as requested. It is a small lot but has met the suggestions by the Board to move the garage and make it smaller. Because he reduced the size of the garage and the size of the retaining wall he has gone from a 3' side yard request to a 10.1' request.
2. There will be no undesirable change in the neighborhood character or undesirable change to nearby properties as this will be an improvement to the area.
3. The request is substantial however, the request is now reduced to a 66% from a 90% request that shows goodwill on the part of the homeowner.
4. The request will not have any adverse physical or environmental effects on the property or to the neighboring properties, but it could affect the neighbors well which will be addressed by conditions.
5. This proposed project is self-created.
6. These are the minimum variances necessary. The roadway setback for the retaining wall and garage overhang on the North East will be 40.4'. The side yard setback for the Northeast for the retaining wall will be 10.1' and for the garage 12' but with the overhang will be 10.1'.

Based on the previous discussion Scott Olson made a motion to approve the variances for the east side of the property for the garage and the retaining wall. The roadway setback for the retaining wall and garage on the North East from Sand Beach Point Road will be 40.4'. The side yard setback for the North East for the retaining wall will be 10.1' and for the garage 12' but with the overhang will be 10.1'. Second by James Dewar. **ALL AYES.**

The following conditions are imposed:

1. Any impact from construction that degrades Carrie Speshock's well, Mr. Henshaw will relocate and replace the well at his own cost for 1 year after the Certificate of Occupancy is issued.
2. The overhang from the garage does not exceed the 10.1' of the retaining wall.

Communications: None

Public Comments: None

Board Comments: None

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

Adjourn: 9:30 PM

Next Meeting Date: September 25, 2018

Respectfully Submitted,
Terri Katsch, Secretary