

CITY OF HORICON  
ZONING BOARD OF APPEALS

CASE NO. 182.1 DECISION

Requested by Hayley Malone, Happy House Renovations, to tear down and reconstruct the portion of the home facing South Cedar Street creating a 1-foot front yard setback at 518 S. Cedar Street.


DECISION: In view of the testimony given and the circumstances presented, the following variance was to approve the request for a variance to tear down and reconstruct the portion of the home facing South Cedar Street creating a 1-foot front yard setback at 518 S. Cedar Street, Hayley Malone, Happy House Renovations.

Per Section 13-1-194 of the Municipal Code of the City of Horicon, any person or persons aggrieved by any decision of the Board of Appeals may present to a court of records a petition, duly specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the offices of the Board of Appeals.

Dated this 12<sup>th</sup> day of July 2023.

  
Daryl Levenhagen, Chairman  
City of Horicon  
Zoning Board of Appeals

ATTEST:

  
Chris Spilker, Secretary  
City of Horicon  
Zoning Board of Appeals

Filed: July 12, 2023

c: Hayley Malone, Happy House Renovations  
Rob Froh, Building Inspector

The Horicon Zoning Board of Appeals met in Regular Session with Chairman Daryl Levenhagen presiding. The meeting was called to order at 4:30 p.m.

Members Present: Daryl Levenhagen, Dave Berggren, Craig Halsema, Dave Magnussen and Jeff Raue.

Members Absent: None.

Motion by Halsema, second by Magnussen, to approve the Zoning Board of Appeals minutes from October 5, 2022 with the change of Dave Berggren to Dave Boersma on motion to approve constructing two buildings, creating a front yard setback of 22.45 feet at 980 Van Brunt Drive: 3FI LLC.

Motion carried on a voice vote with no objections.

Chairman Levenhagen announced this was a Public Hearing for 518 S. Cedar Street requesting to tear down and reconstruct the portion of the home facing South Cedar Street creating 1-foot front yard setback; Haley Malone, Happy Home Renovations LLC.

Levenhagen declared the Public Hearing open for 518 S. Cedar Street requesting to tear down and reconstruct the portion of the home facing South Cedar Street creating 1-foot front yard setback; Haley Malone, Happy Home Renovations.

Hayley Malone, property owner, stated the house has two sides, as you can see, needing attention, with the one side on the corner having no foundation and is currently falling apart, sinking, and rotting out. Malone further explained she would like to tear down that entire side completely and rebuild this entire side plus build a second level above it.

Don Renning, spouse of Hayley Malone stated this would be done in the same footprint. Malone confirmed it would be done in the same footprint.

Renning stated we just need to put in a foundation because there is currently not a foundation on that side of the house.

Levenhagen questioned if it would be under that corner where the two sides meet. Renning replied yes.

Levenhagen stated it was open for discussion.

Berggren questioned if the setback is from the center of the road to the curb.

Rob Froh, Building Inspector, stated it was from the lot line for road right of way.

Magnussen stated the dash line on the Certified Survey Map represents the curb. He added it was a lot closer than what the map is showing.

Levenhagen questioned Froh how far from the curb it would be.

Froh stated he was unsure how far from the curb but confirmed the map shows the lot lines and the house facing South Cedar Street is only 1 foot on one side and 1.6 feet on the other end. Froh further stated the part of the house facing Gray Street is over the lot line by 7.35 feet.

Malone stated she wanted to stay within this same footprint, not extending it or moving it, but adding a level up.

Levenhagen questioned Clerk-Treasurer Kristen Jacobson about a new ordinance that should be presented.

Kristen Jacobson, Clerk-Treasurer, stated she had an email letter from City Attorney Doug Plier and read the letter aloud.

Jacobson said it states, "Dear Mrs. Jacobson, you have requested my opinion with respect to the application for variance submitted as to 518 South Cedar Street in Horicon.

1. This request, if granted, would allow for the demolition and reconstruction of the house which currently extends between 3.6 feet and 3.7 feet South of lot 12. Reference to the tax records it appears that the house is currently in the city right of way.
2. Although Wis. Stats. 62.237(h)(b) does limit the authority of the city to control repair, maintenance, renovation, or remodeling of a non-conforming structure that statute does not prohibit the city from controlling the demolition and reconstruction of a non-conforming structure in the event in a case where the structure has not suffered damage in a case by wind, vandalism, fire, ice, snow, mold, or infestation.
3. Therefore, it appears that the application for variance would remain inconsistent with the city code section 13-1-82."

Jacobson read Zoning Code 13-1-82, Existing Nonconforming Structures, the lawful nonconforming structure existing at the time of the adoption or amendment of this chapter may be continued although it size or location does not conform with the lot width, lot area, yard, height, parking and loading, and access provisions to this chapter. However, it shall not be extended, enlarged, reconstructed, moved, or structurally altered except when required to do so by law or order so as to comply with the provisions of this chapter.

Levenhagen asked for comments.

Berggren questioned when this was done. Levenhagen stated this is not a new ordinance however it was being brought to light today.

Jacobson stated this is not a new ordinance and it has not just been brought to light today.

Jacobson stated the City Attorney letter was hot off the press today sent at 4:20 p.m. today and references city code section 13-1-82.

Froh stated when Malone first came to him, they discussed the second story. Froh further stated, assuming there was a foundation, he told Malone to go ahead with the second story.

Froh stated today we all now know there is no foundation so now it's basically tearing it all apart and creating a foundation, because she must have a foundation.

Froh further stated now it all becomes null and void because as it reads reconstructing is not allowed.

Malone stated there should be some common sense to the rules because what would be the benefit of leaving the house not being used.

Froh stated there are other options. Froh added he told Malone while out there they could add onto the other side.

Malone replied that was not a realistic option.

Froh said that is not an option Malone wants but there are other options to meet the setbacks.

Berggren questioned if there is a grandfather clause for something like this. He added the house has been sitting there for a long time.

Jacobson stated that as it exists it can be remodeled but it cannot be torn down and reconstructed.

Froh confirmed it can be remodeled but it cannot be torn down and reconstructed. Froh stated if the house had a good foundation a second story could have been added but because there is no foundation and it is rotted out it will all need to be torn down and started over.

Froh further stated at the time he knew it was close to the lot lines but he did not know it was that far over on Gray Street.

Froh added legally someone cannot build on City property.

Malone stated but at one point the house was already put there.

Froh replied he did not know how the house got to this point in placement on City property nor does anyone else in this room know that answer.

Magnussen questioned the value of the house currently.

Malone stated she purchased the house for \$30,000.

Magnussen questioned how much for the repairs will there be?

Malone stated she does not have specific numbers because she first needs to know what she is allowed to do.

Magnussen asked Froh as the Building Inspector if he would have an idea of what the cost of the repairs would be to bring it into conformity.

Froh stated without the addition, just to bring it into conformity, it would be more than \$30,000.

Magnussen stated the repairs exceed 100% of the value of the house which puts it in the category of condemnation because the repairs are more than 50% of the value of the home.

Froh confirmed that was correct and stated he tried not to seek that route.

Malone agreed not to seek that route because it would be beneficial to improve the neighborhood and bring another family to the area.

Halsema questioned if there is not an engineered means to place a foundation under the existing framed structure or if there is no legal means.

Froh stated legal means.

Magnussen questioned if remodeling is ok under the current ordinances, but an addition is not ok.

Froh stated you're building a whole new structure.

Magnussen questioned if the lot was big enough for a house on another location.

Levenhagen stated the lot is 42 feet wide.

Froh stated it is a non-conforming lot. Froh also stated it's a long lot, 120 feet, therefore one could stick a house on the lot but you would have to relocate the entire house.

Malone stated a variance would be needed anyway you go with an addition to get past the current laws.

Froh said he did not look into this option because this is not why we are here.

Raue stated if you take down the structure you're still left with a non-conforming lot which you potentially cannot build on.

Berggren said this town already has non-conforming lots.

Raue said he lives on a non-conforming lot therefore he is somewhat sympathetic to the situation.

Renning said the intention is not to expand but just to lay a foundation and build it back up.

Raue stated the land has no value if you cannot build on it.

Levenhagen questioned the corner, that has a porch, on the East corner, the only area that has a foundation.

Renning stated the area by the porch has a concrete foundation. Renning added it's the area next to it going North. Renning referenced the picture with two windows already having a cement foundation. Renning stated everything over from that point does not have a cement foundation.

Jacobson said the ordinance states, shall not be extended, enlarged, or reconstructed. Jacobson further stated that putting a second story would not be allowed because that is enlarging the house.

Malone stated in looking at it, it is currently listed as a two bedroom, because upstairs has two little, tiny bedrooms that you can fit a twin-size bed in and that's it. Malone further stated making those just one realistic size bedroom, and not being able to add more to the upstairs, a one bedroom house is not going to bring a family into the area or really benefit the area as much as being able to put up a three bedroom house.

Jacobson stated one of the reasons you cannot consider a variance is the value it will bring to the property. Jacobson further stated that is not one of the considerations when granting a variance.

Malone stated the value of the house benefits the city.

Jacobson stated she does not make the laws.

Berggren questioned if the house has a basement.

Malone stated the left side of the house has a basement.

Levenhagen confirmed the left side is the West side.

Halsema said looking at the house last night, what was the original structure, he believes it's the two story North and South.

Malone stated she would agree because it has the basement underneath that area. She added she believes the porch area may have been put in later.

Levenhagen stated he remembered when Gray Street did not go through that area.

Magnussen questioned the clarification of the construction of an addition.

Malone stated she was requesting a second story.

Magnussen stated that cannot be done.

Froh confirmed it would need to be demolished because they cannot repair what it currently there.

Magnussen stated on the agenda it does not list anything about an addition.

Magnussen read aloud the agenda explaining each item was listed as a tear down and reconstruct a portion of the home.

Berggren stated if this were allowed then we might as well throw the book out the door.

Levenhagen stated the -7.3 feet onto city property is an issue.

Berggren questioned if sticking a lot of money into the house and possibly moving the house onto a new foundation and making it work on the lot and if it's worth it.

Renning stated they could move the part on the city property back to the lot line, but they would be running into the same issue of filing for other variances.

Malone stated if the biggest issue is rebuilding on the city property she would be willing to move it back but would still need the variance approval because it would be right on the lot line.

Jacobson stated you're still altering a non-conforming structure.

Levenhagen questioned if it makes a difference if it's on the lot line.

Froh stated you cannot issue a variance.

Jacobson stated regardless if it is over the lot line or on the lot line its still a non-conforming structure that cannot be altered.

Magnussen stated, as a Plan Commission member, the Plan Commission handles variances for lot lines and in his opinion he would be inclined to provide a variance to build a new partial on the lot line.

Jacobson stated the Plan Commission does not do variances for lot lines.

Froh stated the Zoning Board of Appeals is for variances.

Magnussen stated he would be more inclined to grant a variance to encroach on the lot line with a new structure in a different location on the lot.

Renning questioned if the Board just wants the house to sit and rot on the property?

Levenhagen stated he does not want that, and he wants to work with property owners but also stated there are ordinances in place too.

Levenhagen stated variances are granted to give a little leeway but not that much.

Levenhagen questioned if they could build a new building.

Froh stated if they met the setbacks then they could build a new house.

Malone stated the setback is 25 feet therefore with the lot size width of 42 feet it could not work.

Renning stated it would cost \$20,000 to \$30,000 to cut down an enormous tree on the lot.

Magnussen questioned the setback for a side yard.

Froh stated it is a minimum of 6 feet on one side and an aggregate 15 feet total or 6 feet and 9 feet on the other side yard.

Magnussen stated this lot is a corner lot.

Froh stated for a corner lot there are two street yards therefore South Cedar and Gray Street would both be front yards therefore that would be a 25 feet set back. Froh further stated North of the house would be side yard and the West would be their rear yard.

Levenhagen asked for any other comments. There were none.

Levenhagen asked for any other comments again.



Malone stated to her understanding the variance is not going to be approved for either side and she would have to relook at moving the gigantic tree and shed and try to add a small room on top that would have to be twenty five feet from both roads and 6 feet from the other side.

Malone stated this is not a realistic plan to build it like this in her opinion.

Levenhagen stated there has not been a vote at this point.

Malone said she is asking for an exception to the rule.

Levenhagen stated this is what they are trying to do.

Malone stated she wants to improve the neighborhood and is sure the Board has driven past the house and has seen its a huge eye sore bringing down everyone's property value. Malone added she wants to help this house with the board's permission.

Levenhagen stated the ordinance has been on the books and that it is not a new ordinance. He added it was pointed out to the Board today and it clearly states the structure cannot be changed.

Renning questioned if there have ever been any exceptions made to ordinances in the past.

Jacobson stated there have been exceptions made and provided an example of a property owner who wanted to build a fence one foot off the lot line.

Renning stated exceptions to the rules can be made.

Jacobson stated the exception to her example is the property owner filing a variance to have a fence one foot off the lot line versus three feet off the line.

Levenhagen stated the Zoning Board has denied variances in the past and this would not be the first if it was denied.

Berggren stated this plan is turning out to be a large project and it's about squeezing too much in a small area.

Berggren questioned the twenty 25 feet set back.

Froh stated corner lots are considered to have two front yards therefore they have a 25 feet set back therefore it would be very difficult to put something on this property.

Malone said it would make sense to approve the variance because of the way this particular property is laid out.

Magnussen said he wanted something done to the property. He added it cannot continue to sit in disrepair the way it is in the neighborhood.

Froh stated a hardship would need to be proven to approve the variance.

Raue questioned if this was an unbuildable lot.

Froh stated he has not reviewed all the specs but if the setbacks cannot be met then it's possible it's an unbuildable lot.

Raue questioned if the property has any value.

Froh stated the neighboring property owners could absorb the property into their lot but he was unsure if this was an option.

Julie Tuttle, 514 S. Cedar Street, stated she was not interested in purchasing the property.

Jacobson stated the Zoning Board is to take action for the purpose of a variance not to be based on a desire to increase the value of the property.

Malone stated any property improvements would increase the value of the property and everyone wants the value of their property to increase.

Froh stated increasing the value of the property cannot be the reason a variance can be approved.

Malone stated any improvements would just naturally increase the value because there is such a small value to it in its current condition.

Levenhagen asked for any other discussion regarding the two variances being presented.

Halsema asked Jacobson to read the guidance from City Attorney, Doug Plier.

Jacobson read the correspondence and provided copies of the correspondence to the Zoning Board Members.

Froh stated Wis. Stats. 62.237(h)(b) was put in specifically for non-conforming structures so if there is, for example a fire, it can be rebuilt.

Renning stated in his understanding if it gets struck by lightning and burns to the ground then it can be rebuilt.

Malone stated she wanted to one more time bring to the Board's attention the structure is already on that spot and has been there for over one hundred years and

she does not plan to move it. Malone further stated a plan can be done to make adjustments to work better if needed, but if this is not approved it's still there.

Berggren stated a few years ago a house had burned down and they could not rebuild. He added the lot cannot have a house or a garage, it's just a vacant lot the property owner must pay taxes on.

Raue stated he would contend the land has no value.

Berggren said he believes if the house was moved away from the corner he could agree to grant a variance for the 25 feet set back but the entire structure would need to be moved. He added he would not allow a variance at this time because it cannot be rebuilt on City property.

Renning stated they could move it off City property.

Magnussen questioned the property owner about leaving the two story structure but moving everything else and flipping it around.

Malone stated she wouldn't be flipping it around but she could move the structure by 7.3 feet to get it off the City's property.

Levenhagen asked Froh if that's a possibility.

Froh stated that the ordinance would not allow for this and he must follow the ordinance which is why it's here because he has to deny the permits per the ordinance.

Raue stated he is a new member but asked if this Board is here to make the exemption to the rule with the ordinance being the guideline.

Jacobson stated there are also guidelines of how the Board can grant an exception to the rule. She added the Board cannot just grant exceptions because they "feel like it" or "I think".

Raue said he understood about not using economics in making a decision but he also stated common sense could dictate a decision as it harms no one.

Raue further stated he lives in a non-conforming lot and is sympathetic to the situation.

Raue questioned if they moved it off City property and squeezed it in a bit if this would work.

Levenhagen stated this would still be an issue because now they are touching it and according to the ordinance they cannot move it.

Jacobson stated the structure shall not be extended, enlarged, reconstructed, moved or structurally altered.

Magnussen said the only options are to allow total reconstruction or nothing at all.

Froh stated nothing at all isn't really an option to the property owner.

Magnussen stated he agrees with Raue that the Board is an outlet for exceptions to the rules.

Raue stated that he realizes this would be to a point and at some point the owners may have to come back and seek a different plan but the original structure is already there and it harms no one.

Magnussen said the structure cannot be left as it is.

Froh confirmed it cannot be left as it is.

Magnussen said it would be torn down or condemned.

Froh stated at least one portion of the structure could be left unaltered.

Raue questioned if this property then becomes a vacant unbuildable lot?

Froh stated there could be a portion of the house that is left in place.

Malone confirmed that would only be about 500 square feet of house.

Raue stated there has to be a middle ground.

Tuttle questioned if the property owners could take down what was once the front porch on the side towards Gray Street; would that put them within the boundaries.

Levenhagen stated the West portion is still on city property by 3.6 feet.

Renning stated there is nothing they can do about that other than tear the entire house down.

Berggren questioned if the City gained that footage when the road was constructed.

Levenhagen questioned if it's City property because it's the road right of way.

Froh acknowledged he was not sure how the City gained footage on this property.

Froh said he could only confirm there were no ordinances in place at the time this was done. He added that with having ordinances in place today this is what creates non-conforming properties and they are grandfathered in.

Froh stated according to 13-1-82 of the zoning code they cannot touch it.

Magnussen questioned if they don't act on it, could the Board reconvene in a month with more information and the City Attorney present.

Jacobson questioned why it could not be acted upon.

Magnussen stated he does not feel comfortable acting on a decision tonight.

Magnussen stated he is not clear because Jacobson is saying they cannot do anything per the ordinance however these property owners are here because they want a variance.

Magnussen further stated if it is a clear cut and dry position to follow the ordinance then the Zoning Board would not be in place.

Froh stated the property owners need to claim a hardship.

Magnussen stated there is a hardship.

Froh stated that is for the Zoning Board to determine as there is not a list of hardships.

Raue questioned if a hardship constitutes paying \$30,000 for a property that cannot be built upon and still must pay taxes.

Froh stated a hardship cannot be because of monetary value.

Jacobson stated no one made Malone purchase the property. Froh confirmed it was Malone's choice to purchase the property.

Malone stated there is a benefit to having the house completed to a livable condition rather than sitting there just falling apart.

Magnussen questioned if the staff report was done by Froh.

Froh stated the staff report was not updated as more information became available.

Magnussen stated the staff report states the hardship is the lot is non-conforming in size.

Froh stated further down on the staff report it goes through the action of the Board of Appeals.

Levenhagen allowed time for the Zoning Board of Appeals to read over the staff report.

Berggren questioned the staff report having a recommendation the building is grandfathered in for current location therefore allowing owner to demo and rebuild same size as current building (addition only), hardship, lot is non-conforming in size, house in current condition is not structurally sound. The building is grandfathered in for current location.

Froh stated the staff report was completed in January of 2023 before he was made aware of zoning code 13-1-82.

Froh questioned the Board if a non-conforming is a hardship because there is not a list of what is considered a hardship.

Halsema questioned if Gray Street, at one time, did not go past the house as it does today.

Levenhagen replied Gray Street did not at one time go all the way through to Cedar Street.

Berggren said he used to rabbit hunt when he was younger before Gray Street was done into Cedar Street and he knew, at that time, the road did not have curb and gutter.

Halsema continued confirming that it's safe to say sometimes in the City's development the setback hardship was created.

Magnussen stated the city vacated the other side right of way but Gray Street's right of way was not vacated.

Magnussen questioned if neighboring property owners were notified.

Tuttle confirmed the neighbors were notified and Levenhagen confirmed this by pointing out the Public Hearing notice with a list of all the people that were notified.

Tuttle stated the neighbors did not have an issue as long as they stay within the same footprint.

Magnussen stated something needs to be done.

Tuttle stated the previous owners allowed their animals to live down by the dirt floor and not allowing them out. Tuttle added another family member then moved in and

created a stairway but did not get any permits and questioned how strong they are today. Tuttle said the Northeast corner to the Southwest corner had uneven floors.

Renning said there were six layers of tile on the floors when Malone purchased the property.

Levenhagen said he had one neighbor call him questioning the cost of how much they were going to spend for improvements.

Malone said she is willing to put the time, money, and effort into the house if the variance is granted.

Berggren stated if this was allowed he refers back to when the Zoning Board denied a new house because of fire and if this is opening up more issues from past decisions.

Magnussen stated the property owner at the time demoed the house within a week of the fire. Magnussen added he explained to the property owner there were different avenues at the time to go through however it was still torn down within a week of the fire.

Jacobson stated in any situation for anything in life there is always a question if more issues will arise. Jacobson added as a person not believing in past practice it does not mean it does not need to be done again.

Levenhagen asked for any other comments or questions.

Tuttle questioned if Malone left one wall and not completely destroyed the house, would this work.

Froh stated this would still not work.

Carolyn Blohowiak, 414 N. Finch Street, stated in the fall of 2003, they along with a realtor, drove past a quonset hut thinking who would buy that. She added, fast forward to January and after looking at dozens of others houses they put an offer on the quonset hut because of the amount of effort put in on improvements from the previous property owners. Blohowiak further stated she is here to support Malone and hopes the Zoning Board sees the value in improving these homes that really need it.

Magnussen read aloud Attorney Doug Plier's letter in reference to #3 stating he has not seen the zoning code being referenced 13-1-82.

Jacobson stated she had read it twice to the zoning board.  
Jacobson read aloud the zoning code 13-1-82 for a third time.

Magnussen stated he did not think anything could be done.

Levenhagen asked for any more discussion.

All interested individuals and/or their representatives were given an opportunity to be heard.

Levenhagen declared the Public Hearing closed for 518 S. Cedar Street requesting to tear down and reconstruct the portion of the home facing South Cedar Street creating 1-foot front yard setback; Haley Malone, Happy Home Renovations.

Levenhagen asked for a motion. Levenhagen asked again for a motion.  
Levenhagen asked again for a motion.

There was no motion made.

Berggren stated there are too many questions and at this time he needs to think about to make a motion.

Magnussen stated he is comfortable reconvening at another time and not making any motion tonight.

Magnussen stated he does not have everything in front of him to make a decision tonight.

Levenhagen declared the Public Hearing open for 518 S. Cedar Street requesting to tear down and reconstruct the portion of the home facing Grey Street creating a -7.3 foot front yard setback, Haley Malone, Happy Home Renovations LLC.

Levenhagen asked for any more discussion.

All interested individuals and/or their representatives were given an opportunity to be heard.

Levenhagen declared the Public Hearing closed for 518 S. Cedar Street requesting to tear down and reconstruct the portion of the home facing Grey Street creating a -7.3 foot front yard setback, Haley Malone, Happy Home Renovations LLC.

Levenhagen asked for a motion. Levenhagen asked again for a motion.

There was no motion made.

Malone questioned the time frame for when a decision will be made.

Non-Action Discussion:



Magnussen asked what else is needed for the next meeting. Levenhagen would like a copy of ordinance 13-1-82 and also wanted to review the copy of Attorney Doug Plier's letter.

Halsema reiterated as it stands right now, permits and application were denied by building inspector, no action taken, but will reconvene at a later date.

Magnussen wants to know if the Zoning Board of Appeals can grant a house on the property with wiggle room to the ordinances.

Raue also wants to know if there is wiggle room to approve a variance versus the zoning code.

Halsema stated a sizable tree may be an issue in relocating the house on the property.

Malone welcomed the Zoning Board of Appeals members to come and visit the property and to let her know so she can provide access to tour the house and property.

Berggren stated he wanted a copy of zoning code 13-1-82.

Discussion was held about posting requirements.

Discussion was held on a meeting date.

Levenhagen asked the Zoning Board if June 19<sup>th</sup> would work for the next meeting date at the same time, 4:30 p.m.

Halsema questioned if a flow chart could be done by the City Attorney or the Building Inspector explaining what could and could not be done to essentially lay out options if the Zoning Board is allowed to do this.

Berggren asked the intentions of Malone with the property. Malone stated she would like to fix it up and put it on the market.

Motion by Magnussen, second by Halsema, to adjourn.  
Motion carried on a voice vote with no objections.

Meeting adjourned at 5:40 p.m.



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Christine A. Spilker, Secretary