

CITY OF HORICON  
ZONING BOARD OF APPEALS

CASE NO. 182-2 DECISION

Requested by Hayley Malone, Happy House Renovations, to tear down and reconstruct the East portion of the home facing Gay Steet creating -7.3 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 deny the request for a variance to tear down and reconstruct the East portion of the home facing Gray Street creating a -7.3 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.

Chairman Levenhagen announced this meeting is being recorded for transcription purpose only. He also announced the correct spelling of Hayley Malone's name and Happy House Renovations not Happy Home Renovations.

Levenhagen stated this was not a public hearing and there is also not public appearance listed on the agenda.

Levenhagen said everyone should have received additional information to include a copy of Ordinance 13-1-82, Existing Nonconforming Structures, copy of Ordinance 13-1-190, Appeals to the Zoning Board of Appeals, and copies of sections of the Zoning Board of Appeals Handbook as a guide per Halsema's request from the last meeting.

Levenhagen read aloud item #3 on the agenda; act on variance application 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 LLC.

Motion by Magnussen, second by Raue, to approve the variance application 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.

Levenhagen stated he is asking for only Board participation. He said he realizes this is a tough discussion and that it is emotional for some people, but he wanted to note the reality that this Board will not be able to give all the house renovations being requested.

Cody Vanderhei, Director of Public Works-Utilities asked if he could provide information. Levenhagen denied his request to speak before the Board.

Levenhagen explained there was a public hearing at the last meeting when there was input and discussion from all interested parties.

Magnussen stated he was thankful for the additional information provided for this meeting and it helped with him make a more informed decision for this meeting. Magnussen said he was okay with allowing the variance.

Raue stated he wanted it to occupy the same footprint it is currently in and he is also okay with it.

Berggren stated he agreed with Levenhagen that this has been a tough variance to review and also said he took a ride around the City and thinks this type of situation will come up again. He also added the Council is going to have to address places like this in the ordinances. Berggren said there are places all over the City where people will not be able to move a porch or corners and garages on top of lot lines. Berggren said he wants the Council to have ordinances that are a little more forgiving to homes that have been in place for over 100 years.

Magnussen stated he did not think the ordinances are up to date or modern with the times. He added these ordinances were copied and adopted from Oconto Falls and are very old. He further said the ordinances have not been recodified in many years.

Berggren agreed he believes the ordinances are out of date.

Raue stated these types of non-conforming structures are from the 50's, 60's, and 70's when Rice Street, Gray Street, and Minerva Street did not even exist. He said the ordinances we are dealing with today are for new construction and we still had the old Horicon already established long before these ordinances were in place and therefore these cannot apply.

Berggren stated he again feels this is going to come up again and there has to be a loophole to fix up and save the older homes without going through such a lengthy process.

Raue stated a lot of properties are going to be torn down and nothing is going to replace them if something does not change.

Levenhagen stated this is why the Board looks at each property individually because they all have their own circumstances and this committee does not change ordinances.

Raue stated this will continue to keep coming up and the last thing the City wants to do is decrease housing for single families.

Halsema stated he was thankful for the background information and read aloud Chapter 15, Variances, Section 2 Hardship Due to Unique Property Limitations stating unnecessary hardship must be due to unique physical limitations of the property that prevent compliance with the ordinance. Halsema said this makes the points being presented and while this Board does not make changes to ordinances this Board can make a recommendation for review regarding these types of properties.

Levenhagen stated right now we have to deal the ordinances the City currently has established.

Levenhagen stated he is thinking the Board would approve the variance.

Secretary Chris Spilker asked Magnussen to state his motion again to be clear this is only for the 1 foot variance.

Magnussen read aloud item #3, and stated this was his motion to approve.

Halsema thanked the secretary for clarification because he explained there was a 2 step process to get here today, adding this goes back to January when a permit application was originally filed and then there was a second permit application filed regarding the footings for the structure that need to be addressed.

Spilker stated today's variances is regarding the setbacks only.

Magnussen stated he agreed and wanted to be clear this is not about any additions or anything else only the setback as described in item #3 of the agenda.

Levenhagen read aloud the application written was to tear down and reconstruct.

Halsema stated the motion was for item #3 on the agenda.

Magnussen asked if the second story would require another meeting.

Spilker stated the changes discussed in last month's meeting with the second story may require another meeting depending on what is decided at this meeting.

Magnussen asked if the Board is voting per the plans of the last meeting or the original plans.

Levenhagen said the vote is for a tear down and reconstruction with a 1 foot set back.

Levenhagen stated the application refers to plans that have a second story in the City's right of way which he feels cannot be done.

Magnussen stated the side of the house facing Gray Street does not have an abandoned right of way.

Levenhagen stated he wanted to just deal with item #3 on the agenda.

Magnussen said regarding item #3 the City vacated the right of way and therefore the issue is, the plan does not meet the setback requirements.

Berggren questioned if a second story is constructed would it stay in the same footprint. Berggren said this is for the footings to be done because it needs footings to have a second story.

Malone said the original plans submitted would be what the plan is today.

Levenhagen said the second story is going to be in the right of way and no one can build in the right of way because that is City property. Levenhagen further stated this was discussed at last meeting.

Renning stated the second story would be going up from the 1<sup>st</sup> story in the same footprint.

Magnussen stated the discussion does not have anything to do with item #3 on the agenda.

Levenhagen stated the Ordinance 13-1-82 does not allow a person to extend, enlarge, reconstruct, move or structurally alter a structure. He also said he would be ok with some leeway but not a reconstruction of the whole house. He also said the Board cannot redesign the house for them.

Levenhagen asked if the Board wanted to vote or have further discussion.

Magnussen said if the variance is denied the property will not be able to use what it is intended to be used for according to the latest information that was sent.

Levenhagen said an allowance could be made with a condition to stay out of the right of way. He also said they could build stopping at the property line, at minimum and require a frost wall.

Magnussen said the City could also vacate the right of way on Cedar Street. He also said the house cannot be built in the same footprint because of the right of way on Cedar Street.

Magnussen said the 1 foot setback is facing Cedar Street but the other corner of the house facing Gray Street goes into the right of way.

Levenhagen stated the part of the house facing Gray Street is over the property line by 7.3 feet starting at the Southeast corner.

Berggren said the house is in the City right of way all around it. He also stated it's a 25 foot setback requirement and they are asking for 1 foot setback therefore allowing for the house to stay where it is currently.

Raue stated he wants the house to stay in the confines of the original footprint for just that side.

Malone stated if it is approved for the original footprint on South Cedar but then denied for the variance on Gray Street she would then be willing to move that side of the house by 7 feet to get it off City property.

Levenhagen stated that is an entirely different discussion not for this meeting.

Malone said that was not fair to come back to another meeting to discuss this option.

Levenhagen said it is fair because all the plans should have been submitted to the building inspector with this variance application. He added this option has not been discussed and there is no information for looking at this option.

Levenhagen said what can be done today, is the Board can deny the plans submitted and Malone can go back to the Building Inspector and resubmit new plans.

Levenhagen asked Malone if she wants these applications to be denied today.

Malone replied, of course not, she wanted to bring up that option because if she has to move it it's an option, but again stated she wants to keep it in the same footprint.

Halsema stated if the Board denies the variance, they could go back to the Building Inspector with altered plans relocating the house off City property. He also said it will likely still come before the variance board again because of the setback requirements but then Ordinance 13-1-82 and 13-1-84 were put into effect after the house was already established and then there are reasons why a variance decision could be made meaningful to everybody.

Levenhagen stated he would be concerned about ending up in the same spot the Board is in today, because the same chapter 13-1-25, Setbacks, states all dimensional requirements shall be complied with and so far as practical.

Raue stated this property is set up for Ordinance 13-1-84, Substandard Lots.

Levenhagen said he still thinks they need to meet the setbacks. He said it is a substandard lot, but they still need to meet the setbacks.

Magnussen stated the part of the 13-1-25 quoting "so far as practicable".

Levenhagen stated he agrees the house still needs to be a livable house.

Magnussen questioned the Board about denying everything and asking for a new set of plans.

Levenhagen stated he wanted to see the plans for the building they are going to build.

Malone stated the Board does have the plans in front of them of the building they want to build.

Levenhagen questioned the discussion about the plans changing?

Malone said if the variances are not approved then she will be changing the plans.

Don Renning, spouse of Hayley Malone, stated at the last meeting they were looking for a compromise and willing to move the building off City property but there will still be a part on City property.

Levenhagen asked about moving the current house, by picking it up and moving it off City property.

Renning replied the new plans would show a tear down and new construction with the portion currently on City property being moved back off City property.

Levenhagen stated this is now discussion about new plans.

Renning stated this is not what they want to be done, but at the last meeting this was discussion because it still needs to be fixed and it's up to the Board if the plans presented are considered a hardship.

Berggren said at the last meeting there was discussion about chopping off the southern part of the house creating a straight line coming in 4 feet but still being on City property.

Levenhagen said if they are going to redo the plans they need to get off City property.

Renning stated they preferred not to go this route; it was just a suggestion at the last meeting as a compromise but he said again they want to do what's in front of the Board right now.

Renning added he doesn't see much of difference regardless of which plans they are discussing.

Levenhagen added he is still going back to the current ordinances.

Levenhagen stated he wanted more discussion from the Board.

Berggren stated if the Board is going off just the ordinances then the application has to be denied but he said this does not make sense because then it's just wrecking another piece of property.

Levenhagen stated that's why we are having the discussions and it still needs to go to a vote.

Raue stated as the Zoning Board of Appeals this Board has to look at each variance application individually and still use City codes as guidelines but every case is to be treated singular. He also said this is going to keep coming up with other properties in the City of Horicon and he doesn't want to subtract from the housing market. Raue added this house is going to be more affordable to someone and could potentially be someone's dream house. He said his little house is his dream house and there is a market for this house and it will be beneficial to the neighborhood. Raue said while it is the ugly duckling in the neighborhood if we have to follow the ordinances why do we meet as a Zoning Appeals Board.

Levenhagen said the Zoning Appeals Board can tweak plans but in this case they are asking for quite a bit.

Raue said he understood we cannot re write the ordinance book but there has to be a compromise.

Renning said he isn't asking to change anything. He also said they just want to build a foundation and build it up exactly where it is.

Levenhagen said you're asking for a second story and the setbacks are not complying with the ordinances.

Renning stated the setbacks are in the exact same spot they are currently.

Levenhagen stated this is a nonconforming lot and therefore falls under certain standards with the ordinances.

Renning stated the Board can override the ordinances.

Levenhagen said the Board cannot overrule the ordinances they can only tweak here and there.

Renning said but the Board can also declare a hardship otherwise then the property is worthless.

Levenhagen asked for discussion with the Board.

Levenhagen asked again for any more discussion from the Board.

There was no more discussion from the Board.

Levenhagen asked Spilker to read the motion on the floor.



Spilker read the motion.

Motion by Magnussen, second by Raue, to approve the variance application 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 Malon, Happy House Renovations LLC.

All voting AYE. Motion carried.

Levenhagen read aloud item #4 on the agenda. Act on variance application to tear down and reconstruct the East portion of the home facing Gray Street creating a -7.3 foot front yard setback at 518 S. Cedar Street: Hayley Malone, Happy House Renovations LLC.

Motion by Magnusen, second by Raue, to approve the variance application to tear down and reconstruct the East portion of the home facing Gray Street creating a -7.3 foot front yard setback at 518 S. Cedar Street: Hayley Malone, Happy House Renovations LLC.

Levenhagen asked for discussion.

Levenhagen said the current position of the house is in the City's right of way and they cannot build it on the City right of way. He further said the South wall of the East portion has to be at a minimum backed up to the lot line.

Berggren said we are cutting off 8 feet from one side of the house and 3 feet from the other side.

Levenhagen said the discussion is for the East portion only where it is a -7.3 foot setback not the portion having a basement.

Halsema asked for clarification on voting no on the same footprint because the Southern wall is still on the City property. He further said any new building would have to be slightly North of the remaining South wall from the original 2 story structure.

Levehagen stated this is correct per the Certified Survey Map.

Berggren questioned if the Board would approve the plan if they cut this portion off taking it off the City right of way.

Halsema stated the plan was to rebuild onto City property.

Berggren stated the plan was to rebuild off city property.

Levenhagen said the variance application reads the East portion of the home facing Gray Street creating a -7.3 foot front yard setback.

Magnussen stated he is in agreement the building should be out of the City's right of way. He also said there are other ways to get it out of the road right of way that are not all physical.

Levenhagen stated the variance is not requesting anything more with the basement portion and a -3.6 foot setback.

Levenhagen asked for any other discussion.

Berggren said even if the rebuild is done, the portion with a -3.6 foot setback is still going to be in the City's right of way.

Levenhagen said the -7.3 foot is the only part to talk about and that will need to be brought back to the property line.

Berggren said the Board intends to take 7 feet off that side of the house and take 3.6 feet off the other section to get it off the city's property.

Levenhagen stated we can only talk about the -7.3 feet on the agenda and therefore the other section of -3.6 will continue to be in the City's right of way.

Berggren said the Southwest part of the house is going to be sticking out.

Levenhagen said we can only make a decision on the variance they are requesting and there is not a request for the -3.6 feet portion.

Berggren said they are asking for a variance to keep it where it is, not to move it and now questions if we are supposed to do a stipulation with moving it.

Levenhagen said the Board cannot allow for them to build on someone else's property, which in this case is the City's right of way.

Raue said they cannot build on the City's right of way, but the existing structure can continue to exist on the on the City's right of way.

Levenhagen said there is not a variance in front of us for anything else and therefore this is all we can concentrate on is what is front of us.

Levenhagen asked for any other discussion. There was no other discussion.

Levenhagen asked for the motion to be read aloud.

Spilker read the motion on the floor.

Motion by Magnussen, second by Raue, to approve the variance application to tear down the reconstruct the East portion of the home facing Gray Street creating a -7.3

foot front yard setback at 518 S. Cedar Street, Hayley Malone, Happy House Renovations.

Berggren said if we vote in favor of this motion we are allowing them to build in the same footprint on City property.

Magnussen replied that is correct.

Raue stated nothing changes.

Levenhagen said if you vote yes that is correct and you agree with the motion.

Vote on above motion.

Voting Aye: Raue, Berggren.

Voting Nay: Magnussen, Halsema, Levenhagen.

Motion denied.

Levenhagen said anything going forward will have to go back to the Building Inspector.

Malone questioned the one side being approved and the other side that is not approved needing to be circled back to meet with the Variance Board again to be built back by the property line and if discussion can happen now rather than wait another 2 months.

Levenhagen said the new plans have to be submitted to the Building Inspector.

Magnussen said there are other ways to take it out of the City right of way and not all of them are physical.

Malone stated she does not know what this other way would be.

Magnussen said it's the same as the other side of the house is not in the City's right of way because the City vacated the right of way on Cedar Street.

Motion by Berggren, second by Magnussen, to adjourn at 5:09 p.m.

All voting Aye, motion carried.

Meeting adjourned at 5:09 p.m.



Christine A. Spilker, Secretary