

ONEIDA COUNTY BOARD OF ADJUSTMENT
PUBLIC HEARING SUMMARY
MAY 18, 2023, 1:00 PM
COMMITTEE ROOM #2, 2ND FLOOR
ONEIDA COUNTY COURTHOUSE

Chair Lee called the meeting to order at 1:00 PM in accordance with the Wisconsin Open Meeting Law.

Roll call of Board members present: Mr. Hansen, “here”; Mr. Ross, “here”; Mr. Pazdernik, “here”; Mr. Viegut, “here” and Mr. Lee, “here”

Members absent: Mr. Albert

County staff members present: Karl Jennrich, Zoning Director and Julie Petraitis, Program Assistant

Other individuals present: See Sign in Sheet.

Chair Lee stated that the meeting will be held in accordance with Wisconsin open meeting law and will be tape-recorded and sworn testimony will be transcribed. The Board of Adjustment asks that only one person speak at a time because of the difficulty in transcribing when several people are talking at once. The Board of Adjustment consists of five regular members and two alternates. Anyone wishing to testify must identify themselves by name, address, and interest in the appeal and shall be placed under oath.

Chair Lee swore in Karl Jennrich, Ms. Waring, Mathew Waring and Michelle Katsma.

Mr. Lee stated the procedure for the hearing would be testimony from the Appellant(s), then the County, any public comment; back to the Appellant (s), County and then close the meeting from any further testimony. The Board will then deliberate. If they have any questions they will ask them and ask that only address that question. The Appellant(s) may stay for the deliberation.

The Board of Adjustment will conduct an onsite inspection of the property involved in this appeal beginning at approximately 10:00 am prior to the hearing. Pertinent property boundaries and locations of existing and proposed structures shall be clearly identified. A representative or the appellant must be present. The inspection shall be open to the public. Following the adjournment of the public hearing, the Board will vote in open session for a decision on this appeal. Information on the decision can be had by calling or visiting the Planning and Zoning Office during normal business hours on or after the next or a later day set by the Board at the hearing. The appellant will be notified of the decision via certified mail.

Copies of appeals and related documents are available for public inspection during normal business hours at the Planning and Zoning Office, Oneida County Courthouse, Rhinelander, WI 54501. The Oneida County Zoning & Shoreland Protection Ordinance is available on the internet at www.co.oneida.wi.us. All appropriate media outlets were notified and the inspection was conducted at 10:00 a.m. this morning, May 18, 2023, at 3766 Lakewood Rd., further described as part SE SE, Section 36, T37N, R6E, PIN CA 562-2A, Town of Cassian, Oneida County, Wisconsin. Board members were present at the onsite along with Karl Jennrich of the Planning and Zoning Department; property owner, Cynthia Waring, John Schaub, Patty Francoeur, Richard Lueth, Mathew Waring and Michelle Katsma. Observations by the Board: property boundaries were adequately marked by flagging as well as an iron post found in the NW corner of the property. The distance to the highway right-of-way was not applicable, well and holding tank were easily located; the construction was completed so was not flagged. Measured distances were as on the survey and presented to the Board. The topography was generally sloping up away from the road and there was no evidence of significant erosion. The structures on the property consist of a dwelling directly adjacent to the north property line and a shed to the east of that. That concludes the observations at the site inspection.

Chair Lee informed the Appellant (s) how the hearing will be handled. He stated that the Board has to consider the three criteria, in which all three need to be met in order to grant a variance and the Appellant should be sure to address those in their testimony.

Before the testimony began, Chair Lee informed Attorney O'Connor that the appeal was not submitted in a timely fashion and the Board has the ability to not hear the appeal today.

Mr. O'Connor began his testimony by stating that his office sent a letter earlier in the week with exhibits. He stated that what happened is that in 1980 Ms. Waring's former spouse built a structure on the land that Ms. Waring currently owns. It sounds like that it was more of a structure not meant for a dwelling. As part of Ms. Waring's divorce she purchased the real estate from her former spouse, in 2020. At that time, it was believed that the lot lines, based on a 1920's survey, were legitimate and her property, or the structure as it stood, was about 18 feet away from the owners to the north. What she did, since it was of no use to her, turned it into a dwelling for a place she could potentially vacation and stay at. She put in sizable expense into converting the structure. A permit was granted to convert the property into a dwelling. They were going to be allowed to have it as a dwelling and they were good to go.

However, at some point, looks like about November 2020, there was a survey drawn showing that what everybody believed to be the lot lines weren't actually the lot lines. As it turns out, from the survey, the structure is actually only two (2) feet from the real estate to the north of the Waring's. The tank they were using actually goes onto that property to the north. They do not want the tank to be a reason why a variance is not

granted. If a variance would be granted on the structure the owner would figure out a way to move the tank.

Mr. O'Conner stated that they know the structure is supposed to be ten (10) feet away from the lot line in accordance with the ordinance; right now it is about two (2) feet. What they are asking for, based on all the circumstances, is to grant a variance to allow them to have the building two (2) feet away. If you look at the survey itself, they are not the only ones who have been affected by this. The Warring's are an innocent party here. They did not try to do anything wrong. They tried to do everything within the ordinance as well as within the County's regulations. Unfortunately they were caught in a situation that was out of their control.

The other thing that is important to note is that, while it is only two (2) feet away from the neighbors lot line to the north, the neighbor that owns the real estate to the north has nothing anywhere near the Waring's structure. There is no effect on the neighbor's property. From the Waring's line, you cannot even see where the neighbor's structure is. There is no ill effect on the neighbor to the north. Furthermore, the Waring's have been paying taxes on it. They are not asking the Board to reverse the past or do any giant favors. They are just asking for a variance for a two (2) foot setback rather than the ten (10) foot setback that is required under the ordinance. From what Mr. O'Connor can see, it would bring no ill harm to anybody in the area.

Karl Jennrich began his testimony for the County by stating that the County has been involved with this parcel since approximately 2018. He originally sent some enforcement letters to the previous owner, Timothy Rusk, for a septic system issue. His letter dated February 16, 2021 was to summarize to Ms. Waring what has transpired on this property. There is a zoning permit on record that authorized the construction of a garage. That was permit #7900909. The department believes the garage has been on the property since at least 1980. Looking at the aerial photography going back that far that is what can be seen. The department issued a permit for a privy, a non-plumbing sanitary system. That was good to use for a garage. On December 12, 2018, Rusk conveyed the property to Michael Waring. On June 3, 2020 Michael conveyed the property to Cynthia Waring. The County became aware of a complaint because there was a real estate listing from Redmond Realty that showed that the garage was converted into living quarters. At that time he believes he had correspondence with Mathew Waring. He tried to get the property into compliance. Mr. Jennrich advised him to talk with Rick Clem, Building Inspector, to see if the structure could be used as a habitable dwelling. It appears that they did do that. They also applied for an after-the-fact holding tank permit to convert the privy into a holding tank. Mr. Jennrich stated he could not issue it.

Mr. Lee asked if the Town of Cassian issued a permit for them to occupy the building. Mr. Jennrich stated that it is an inspection report. Zoning looks at the use and placement of structures. The building inspector looks at the "guts". They look at the heating and electrical to make sure it is safe for human habitation. A survey was then done showing the building is only 1.9 feet to the lot line.

Mr. Lee confirmed that the County does not issue a permit to occupy, the Town does. Mr. Jennrich confirmed that is correct. Mr. Lee stated that answers the question that the building can be used as living quarters.

Mr. O'Connor added that the County gave the owner to put the structure up in 1980, which needs to be five (5) feet away from the property line. Even back then the County did not know what the property lines were.

Mr. Jennrich stated that the County does not know. Basically when someone applies for a permit they certify that it meets applicable setbacks.

Mr. O'Connor asked if the County were to discover right now, if they had not done any improvements and the County discovered right now that the structure was supposed to be five (5) feet and it was only 2.1 feet away, what the County would be doing about it.

Mr. Jennrich stated that the County would do nothing because of the Statute of Limitations. The department has a policy that if the structure has been in place or the violation has been in place longer ten years or more, we do not go after compliance.

Mr. O'Connor asked if it were five years, where the County could do something.

Mr. Jennrich replied that the County would require them to comply. That may entail removing part of the structure, moving the entire structure or tear it down.

Mr. Jennrich continued that in his letter he informed Ms. Waring of her options and at that time she hired an Attorney. The County worked with the Attorney's office to complete the permit application so it could be denied and appealed.

Mr. Ross clarified that it is the builder and the property owner's responsibility to build the building on the property.

Mr. O'Connor asked if the County is asking every property owner to have a survey before they build something.

Mr. Ross said that they are, but it is still the landowner's responsibility. You need to put it on the property and the best way to do that is to have a survey.

Mr. Lee asked if when the building was built originally if it was built with a permit. Mr. Jennrich said it was. The permit was issued in 1979. We do not have those images. Our records show a number. The County believes the structure has been there since 1980, at least. However the owner was at the time came in for a permit.

Mr. Lee stated that in the meantime, it is his understanding, from discussions from some of the people that were there this morning that the building was never used as a garage. Is that true?

Mr. Jennrich replied that he did not know.

Mr. Lee asked the Waring's.

Mr. Waring stated that from when it was bought there was never any overhead door for storage or a garage.

Mr. Lee asked what it was used for.

Mr. Waring stated that as far as he knew it was hard to say. When they got it there were a couple interior walls built, some pipes coming out of the ground, and there was a pellet stove in the building. It was down to studs.

Mr. O'Connor asked if a workshop would be fair.

Mr. Waring said it was possible.

Mr. Lee stated that somewhere along the line, 10/27/2020, a permit was issued from the Town of Cassian to have the plumbing put in and they said it is okay to live there. Right?

Mr. Jennrich agreed that was correct. He believes on September 21, 2020, he spoke with Matt to start off with Clem to see if he can get an after-the-fact UDC. Talk with the neighbor to see if they will sell enough property to meet the ten (10) foot setback. Come to the Planning and Zoning Department to get a change-of-use, after-the-fact, could not get an after-the-fact holding tank permit. The department looked at the GIS and discovered that the building was very close to the north lot line.

Mr. Lee stated that the lot line became the issue and the occupancy is no more.

Mr. Jennrich stated that he cannot allow the change from cold storage to a living quarters because it does not meet the ten foot side yard setback.

Mr. Lee stated that the Town of Cassian did.

Mr. Jennrich stated that Cassian looks at occupancy. They do not look at setbacks. They look at the "guts" of the building.

Mr. Lee stated that it would seem to be that the issue of occupancy vs non-occupancy and plumbing, etc., is not an issue anymore because Cassian has cleared it up. So the issue now is the lot line.

Mr. Jennrich agreed.

Mr. Lee added the lot line as far as the holding tank is also an issue.

Mr. Jennrich stated that he does not believe there is a magic wand that the Board of Adjustment can wave to make the holding tank issue go away because it is over the lot line.

Mr. O'Conner stated that the Waring's would not have a problem moving the holding tank if the variance was granted.

Mr. Hansen stated that he is confused on the timing. There was a statement that the structure was built in 2018. Is that not correct?

Mr. Jennrich said that was the non-plumbing sanitary permit. During the process the department discovered that it was not a vault privy, it was being used as a holding tank.

Mr. Hansen asked if there was an enforcement letter in 2018.

Mr. Jennrich said there was.

Mr. Hansen asked what it was based on.

Mr. Jennrich stated that his 2018 letter was directed to the Rusk Family Trust, who was the previous owners. The department received a report that concerning that there was a collapsed septic tank and Mr. Jennrich issued orders to have it replaced. And then the department got the complaint regarding something converted to a dwelling unit. That is when Mr. Jennrich corresponded with Matthew Waring, mostly.

Mr. Pazdernik asked if it was safe to say that they had an operating bathroom in that building from day one.

Mr. Jennrich said he did not know.

Mr. Pazdernik stated it did not collapse overnight, it had to have been there a long time.

Mr. Lee asked Mr. O'Connor if he had anything else to add.

Mr. O'Connor stated that it was not the Waring's that were using the holding tank.

Mr. Pazdernik said he was just making a point that it was there.

He added that he thinks the problem is that the survey markers in place that everybody thought was the marker, even going to the point of allowing them to have a structure

there, back in 1979/1980 that did not work with the ordinance. It was supposed to be five (5) feet and it turns out it was two point one (2.1), based on a survey that was done well after- the-fact. By all indications, they have a good structure that can be used as a dwelling and now it is even further away. It is supposed to be ten feet and it is only two point 1 (2.1) but again, people should be able to stay with survey's that are in place. They haven't done anything wrong here. Again, your job is to follow the laws, but it is also to help people. He does not see how a County is supposed to also be a hindrance for hindrance's sake. These people put in time and a ton of money, nearly six figures, to get this place into a proper working structure and to deny them the ability and to take away all this money and time and effort and have them lose all this because of eight (8) feet that has no effect on anybody around them at all, seems harsh at best but absurd. It is difficult to comprehend.

Mr. Hansen stated that you can argue survey's all you want, but this happens over and over again and it happens to the County a lot. People build structures on County property and they have to rectify that. They have to buy property. If they want to keep that building, they have to buy enough property to accommodate that. This is not a unique situation. A survey is a survey

Mr. O'Connor added that they have tried to do every remedy they could, short of stripping all the work and money they have put into the structure, before they got to this point. They are at the Board of Adjustment as a last possible resort. He wants to make that very, very clear. They are asking the Board for their help today.

Mr. Jennrich added that his discussion with Matt, he did tell him that there is not a possibility of easement. He told him to contact the neighbor to try to purchase enough and his understanding is that the Waring's did and the neighbor would not budge.

Mr. Lee informed Mr. O'Connor that the problem the Board constantly runs into is that they are seeking sympathy with the Board and he wants Mr. O'Connor to understand where the Board is coming from. The Board has many contractors coming in that are not local, they build without permits and then ask for forgiveness. It is appealed and if the Board does not give them a variance then the Board is the bad guy. The Board is not the bad guy. The Board is a little sensitive to these types of issues.

Mr. Ross asked that the Appellant have a chance to address the three criteria.

Mr. Lee asked Mr. O'Connor if he knew the three criteria.

Mr. O'Connor said he did and asked that they read them to him and give him an idea of what the problems are and he could address them.

Mr. Ross said that one of them is if they could use the property if the variance is not granted. The answer would probably be yes. Just looking ahead, does the property have a unique quality that make the variance requiring it? There is nothing unique about this property.

Mr. Lee asked Ms. Waring if she wanted to say anything.

Ms. Waring stated that everything was said and done when she acquired the property. She had no idea about any of it. This is an existing structure and has been existing. She acquired the property from her ex-husband without knowing any of this. She was going to try to sell it, and the buyer wanted a survey and that is how all this came about. She would please ask that they Board help with this.

Mr. O'Connor added that the County wants a survey before a structure is built but when there is already an existing structure there that was approved by the County, why should the buyer have to get a new survey? The structure was already approved, so he does not understand why they should have gotten a new survey.

Mr. Pazdernik stated that he believes they mean going forward. Obviously it has been there for 43 years and built incorrectly in the first place. The Board's contention is going forward. That is why people should have surveys. Surveys are protection for what you people own. The Board is running into this monthly now, where people are coming back to the Board, after-the-fact, when it all could have been prevented if there would have been a survey done. The excuse is that it costs too much. There is no price paid for accuracy but it does pay a huge price when it is done wrong. That is what was meant. Everyone knows it happened 43 years ago. A new survey is not going to fix it.

Mr. Hansen stated that is precisely why the proposed buyer wanted a survey. He continued that they have one statement that says the building has been there for 40 years but Mr. O'Connor's letter says that the building was built in 2018.

Mr. O'Connor stated that his letter was in error. What he was saying that it was acquired, Ms. Waring's ex-husband was the owner in 2018 and she acquired it as a buy out in the divorce in 2020.

Mr. Lee asked if Mr. Jennrich had anything to add at this time. He does not.

Mr. Lee asked if the Appellant had anything to add.

Matthew Waring stated that they did not try to do anything under the radar. They got the permits when they saw what was coming up. They just hope for the best.

Mr. Lee asked the neighbor if he wanted to say anything. He did not.

Ms. Katsma added that here is a lot of sweat equity put into this by all of them and she thinks it should be known that there wasn't any intention or ill harm with not getting the proper survey done. If they would have known to do that they would have done that. Sometimes in life people realize that through doing the hard work is when they learn.

Mr. Lee closed the public portion of the public hearing from further testimony.

Discussion was held on the differences in setback requirements between an accessory structure and dwelling.

Mr. Viegut confirmed that here was never a permit to convert from a garage to a living quarters.

Mr. Jennrich said that is correct, from the County.

Mr. Lee stated he does not know why the Town can grant a permit to occupy something when the County does not authorize it to be a living quarters.

Mr. Jennrich stated that it is two different things. The Town looks at codes for heating, electrical, plumbing. The County looks at setbacks and septic systems.

Mr. Ross stated that the permit from the Town does not give them the permission to change the garage or shed to a living quarters. It should have come to the County.

Mr. Lee replied that if you look at it from the appellant's standpoint. If the Town tells you that you can live in the place; you can have the water and septic and so forth, what are you going to do?

Mr. Ross agreed.

Mr. Hansen said that it was after-the-fact. They should have had approval before they started.

Mr. Lee said she got approval from the Town.

Mr. Hansen said that it was after-the-fact.

Mr. Lee said she did not know that.

Mr. Pazdernik stated that when you put in a septic system it is pretty obvious you are going to have a toilet facility and if you have electricity it is pretty obvious that you can plug in a frying pan. All the signs are there for occupancy.

Mr. Ross asked what the excuse is for a person that does not know they have to go to the County for a change-of-use permit.

Mr. Hansen suggested that it goes back to the contractor. Before they start the contractor should ask if they have permits.

Mr. Ross replied that maybe the owner was the contractor.

Mr. Pazdernik stated that part of the problem is that the parties were not involved 40 some years ago. It is after-the-fact no matter how you look at it.

Mr. Lee stated that his feeling is that it is hard to think unkindly of a person who built something according to one survey and then another survey is done and they are caught in the middle of it.

Because of this occupancy thing from the Town of Cassian, in his mind it resolves the occupancy issue. It boils down to one issue, which is the lot line. He can see the Board giving a variance for the building but not for the septic system.

Motion by Mr. Ross, second by Mike Pazdernik that the lot line variance for the dwelling with the condition that the septic that is currently over the lot line be moved onto the lot somewhere to comply with the setbacks.

With all members voting “aye” on a roll call vote the motion carried.

2:00 p.m. Chair Lee adjourned the meeting.

Harland Lee, Chairperson

Phil Albert, Secretary