

ONEIDA COUNTY BOARD OF ADJUSTMENT  
PUBLIC HEARING SUMMARY  
JULY 28, 2022  
COMMITTEE ROOM #2, 2<sup>ND</sup> FLOOR  
ONEIDA COUNTY COURTHOUSE  
1:00 PM

Chair Harland 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. Albert, “here”; Mr. Ross, “here”; Mr. Pazdernik, “here”; Mr. Viegut, “here”; and Mr. Lee, “here”

Members absent: None

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

Other individuals present: See Sign in Sheet.

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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 Mark Riggsby and Karl Jennrich.

Chair 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 Oneida County Board of Adjustment Rules of Procedure, Section 178.05(12), Chapter 17, Oneida County Code of Ordinance, provide that a timely appeal shall stay all proceedings and furtherance of the action appealed from, unless such stay would cause imminent peril to life or property.

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](http://www.co.oneida.wi.us). All appropriate media outlets were notified.

The onsite inspection was conducted between 10:00 a.m. and 10:20 a.m. this morning, July 28, 2022 at property located at 1018 Hwy 32 further described as Government Lot 6, Section 9, T38N, R11E, PIN TL 48-1A, Town of Three Lakes, Oneida County, Wisconsin. Board members were present at the onsite along with Karl Jennrich of the Planning and Zoning Department, and Mark Riggsby, Owner. Observations by the Board: This is a commercial facility; the highway right-of-way was obvious, but not marked. The well and sanitary facilities were laid out on the survey map as was the various linear distance of the structures. The survey map shows that the tank is 21' from the ordinary high water mark whereas they were told that the concrete base for the tank was 18' from the ordinary high water mark. It appears that the ordinary high water mark distance from the tank is 18'. The difference may be that one is the base and one is from the tank, itself.

Topography of the property is a parking lot for the marina and the retail store that is adjacent. Erosion, there really was no site of erosion. The elevation actually drains down towards the above ground tank and there is a barrier under the gravel that surrounds the above ground tank. In terms of the existing structures, there are a number of buildings that have all been replaced recently and the property is very well maintained and is obvious the structures surrounding the tank are new.

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.

Mr. Riggsby, owner, began his testimony by stating that he is going for a variance for the above-ground gas tank that was installed without County permits. He stated they did get a State permit for it, he assumes the installer got one. It was mentioned that there was a 75' setback according to...

Mr. Lee asked if there was a DNR permit.

Mr. Riggsby said the DNR was not involved with it, not with a double wall tank. He was told the double wall tank supersedes having to get the DNR involved. The tank was placed where Walt's (Walt's Petroleum Service) suggested and the pumps also. Then Mr. Riggsby was told he had to have the 75' setback and that is why he is here today. He said even if they put the tank someplace else on the property, there really is no other feasible spot for it. If they put it up on top (by the Highway), where it was suggested, it

would be too close to the road, to the right-of-way, therefore trucks or something could go off the road and hit the tank.

Mr. Lee asked if there was a tank there before.

Mr. Riggsby replied that there was but it was underground. That caused a problem. There was leakage 22 years ago. It has all been cleaned up. It was \$1.4 million clean-up and it took five (5) years. Mr. Riggsby said if they had to put the tank anywhere else on the property, it would be sitting in the middle and it would be in the way of anybody pulling in and out of the facility. This was the safest spot to put the tank and it works out better there. That is why it went there. If they did put a tank above (by the road) they would have to go underground with all the piping and the water from across the way that drains under the road, there is water about a foot or two under the whole site. All the piping would be sitting in water. For safety, that is the best spot for the tank and it is the most feasible for filling.

Mr. Ross asked who Walt is.

Mr. Riggsby replied that Walt's Petroleum is the company that sold him and installed the gas tank.

Mr. Albert asked if they took care of the State approval.

Mr. Riggsby stated that they did.

Mr. Hansen commented that the State approval required the setback be ten feet from the OHWM.

Mr. Riggsby said that is true but that he does not have an OHWM. He said the high water mark was removed because of the dam. He corrected himself that it was the floodplain that was removed.

Mr. Hansen said that the other question is that if they own the lot next door the tank could have gone there.

Mr. Riggsby said if the tank had gone there, he would not have been able to build the buildings the way he did. He had too much impervious surface, that is why he spent the time and money to keep the lots separate. He wanted everything on the one site. This way he can sell the lot separately if he wanted to.

Mr. Hansen asked what is on the second lot.

Mr. Riggsby said it is vacant but that he just received State approved plans for the new building that is going there. He is going to build a 13,000 square foot marina where he can sell boats and snowmobiles and have rentals. He will be applying for a zoning permit for that.

Mr. Jennrich, Zoning Director, began his testimony by stating that the department has been working with Mr. Riggsby for approximately over a year. There were comments that were made on the site on how those buildings could be constructed the way they are. Mr. Riggsby came into the department, because this was the site of a former marina, the three buildings that you see on parcel TL 478-1B, is where most of the existing businesses were. There were dilapidated buildings on that site. It was used as a repair place and it overflowed onto parcel TL 478-1A, which is currently the vacant parcel. They used that for parking boats and trailers and old snowmobiles etc. When Mr. Riggsby came in staff talked to him about some of the obstacles he may be up against with rebuilding the buildings within the footprint. Mr. Riggsby hired a surveyor to survey the parcels, existing buildings, and existing impervious surface because on TL 478-1B the impervious surface was over the allotted amount. Staff told him if he wanted to keep the footprint he needed to document it. He did that. Mr. Riggsby went through the Administrative Review Permit (ARP) approval for the parcel with the new buildings. He will be going through a Conditional Use Permit (CUP) approval for the vacant parcel to build a sales and service building.

Mr. Jennrich stated that staff and Mr. Riggsby did have discussions regarding the fuel tanks. Staff told him if he wanted them, they believed the County required a 75' setback to the OHWM.

In May Staff was conducting an onsite of the construction, noticed the tank had been installed, and knew it did not meet the setback required by the County. Mr. Jennrich did a rough measurement and came up with approximately 18' from the OHWM. He defers to the Surveyor for the accuracy of their numbers, which are showing, to the pad, is 21' and 25', which is still closer than 75'.

On June 7, 2022 Mr. Jennrich sent Shorewood Venture, LLC a letter articulating that the ARP and Zoning Permit did not show where the fuel tank was.

Staff met with Mr. Riggsby at the site and he stated what he stated to the Board today. He said that he contracted with Walt's Petroleum. Walt's Petroleum installed the tank in a location they believed they could place it based on ATCP (Department of Agriculture, Trade and Consumer Protection) regulations. Mr. Jennrich believes they are the regulatory authority for above-grade fuel storage tanks.

Walt's informed Mr. Jennrich that pursuant to ATCP 93.640, watercraft, snowmobile, and ATV fueling, if it is installed in a certain way, which is a double walled tank, can be up to ten (10) feet of a navigable body water. There are two notes with that, one is that the OHWM is determined by the County Zoning Department or WDNR and the second is that the municipality in which the tank is located may have additional requirements for the setting of the tank.

Section 9.94 of the Oneida County Zoning and Shoreland Protection Ordinance is considered shoreland setbacks. The County mirrors what NR115 requires, which is only exempt structures can go closer than 75'. Everything else has to meet the 75' setback. Mr. Jennrich stated that the gray rock seen at the site is allowed within the 75' setback because devices or systems used to treat runoff from impervious surfaces can be closer than 75'.

Mr. Jennrich reiterated that he sent Mr. Riggsby a letter stating that the 75' setback needs to be met.

Mr. Jennrich said if the Board grants a variance, the department would work with Mr. Riggsby to obtain after-the-fact permits for the tank. If the Board requires putting it up closer or going to Hwy 32 he would like to remind the Board that it will have to be 20' from the right-of-way and that would push it more into the parking lot. In addition, if the Board wants the 75' setback, according to the map, it would probably end up right in the middle of his parking lot, which would make a lot of his parking area unusable. Mr. Jennrich said the other comment he wanted to make is that when Mr. Riggsby was talking about ordinary high water mark he was actually talking about floodplain. When the department initially looked at the project, the floodplain maps noted that the structures and part of the property were in the floodplain. Therefore, Mr. Riggsby applied for and received Letters of Map Amendments (LOMA) so they could rebuild those structures within the footprint. If they were not taken out of the floodplain, they would have only been allowed ordinary maintenance and repair. When Mr. Riggsby received the letter regarding the aboveground fuel tank he immediately responded and asked for a variance.

Mr. Hansen asked that they did have discussions prior to June 7 about the 75' setback. Mr. Jennrich stated that he believed they did. When Mr. Riggsby contacted Walt's he said that pursuant to State they could put it ten-feet.

Mr. Ross stated that the defense from the County is that the tank violates Section 9.94, but there has not been an argument to not grant a variance.

Mr. Jennrich replied that people do not want below grade piping because if it leaks they have a problem.

Mr. Albert asked if the tank was one or divided.

Mr. Riggsby said it is two tanks and it has a wall.

Mr. Albert asked if each tank has an electronic alarm system.

Mr. Riggsby did not know for sure but assumed they do.

Mr. Lee asked if he has two grades of gas.

Mr. Riggsby said he only has one grade of gas but it is two tanks with two pumps.

Chair Lee closed the public hearing.

Mr. Lee stated he feels this is straightforward. It does not meet the County setback but does meet the State setback and it is in a logical position. If he would put the tank in the middle of the driveway, it would create all kinds of havoc. A variance in this case is justified.

Mr. Albert stated that he has the utmost respect for Walt's and the way they do things. If they went through the process with the Department of Agriculture, he thinks it is probably the safest place for the tank. He does not have a problem with the placement. He does not have a problem with a variance.

Motion by Mr. Ross, second by Phil Albert to allow the aboveground gas tank stay where it is with the condition that Mr. Riggsby obtain after-the-fact permits for it.

On roll call vote: Aye – Unanimous. Motion carried.

**1:26 p.m. Vice-Chair Hansen adjourned the meeting.**

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Harland Lee, Chairman

Phil Albert, Secretary