

ONEIDA COUNTY BOARD OF ADJUSTMENT
PUBLIC HEARING SUMMARY
NOVEMBER 2, 2023 1:00 PM
HAZELHURST TOWN HALL
7020 STH 51 HAZELHURST, WI 54531

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”; Mr. Chronister, “here”; Mr. Petersen, “here”; and Mr. Lee, “here”.

Members absent: None

County staff members present: Todd Troskey, Assistant 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 Todd Troskey, Mr. Di Piazza, Ms. Dale, and Mr. and Mrs. Clementi.

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.

An onsite inspection was conducted at approximately 10:00 a.m. this morning, November 2, 2023, at property located at 9860 Cedar Falls Rd., further described as part NW NW, Section 10, T38N, R6E, PIN HA 116-3, Town of Hazelhurst, Oneida County, Wisconsin. Board members were present at the onsite along with the owners and Todd Troskey of the Planning and Zoning Department; Observations by the Board: The property boundaries were adequately marked; the road and right-of-way was marked; the sanitary facilities were located; the construction is existing. The distance from the proposed structure to the ordinary high water mark was approximately 50 feet. The topography and condition of the land was extremely steep to the lake and there was no visible erosion.

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. Di Piazza began his testimony by highlighting the variance criteria issues that he previously included in his written appeal. He indicated they had a substantial investment (\$26,000.00) in the enclosed porch. Their grandchildren sleep in there when they come up. Other than that, it is used for storage. As far as impact, they do not feel there is any impact. The structure cannot be seen from either neighbor. It cannot be seen from the road and it does not generate any negative aspects to the neighborhood. As was pointed out, their lot is a triangle with a steep slope and they really did not have anywhere else to put the addition. Obviously, in hindsight, they wish their contractor would have said they couldn't do that there. He didn't and they did not pursue it. They feel there is enough latitude in the Statutes and Ordinances that the Board can grant a variance.

Ms. Dale began her testimony by stating that the Board granting the variance is what they are hoping for. As far as the slope, you cannot tell because of the snow, but you can see it has been left rough. They do not mow it, it provides a barrier from any kind of runoff. The whole lot is pretty much functioning that way. In terms of the spirit of the law, in terms of being close to the water, part of it is the impervious surface it is pretty much mitigated. Also, the fact that it is not heated and there is no plumbing, it is a very limited use structure.

Mr. Lee asked if the garage was there when they purchased the home.

Mr. Di Piazza said it was.

Mr. Lee asked if there was a deck on the back of the garage.

Mr. Di Piazza said there was.

Mr. Lee asked if they demolished the deck and replaced it with this screen porch, which is a little bit bigger than what the deck was.

Mr. Di Piazza said it is different dimensions, but yes. The contractor ripped out most of the deck.

Mr. Lee stated that the information he has is that the deck was built in 1995.

Ms. Dale said that they do not really know.

Mr. Di Piazza stated that the seller, when they bought nine (9) years ago, has passed.

Mr. Lee asked when they added the screen porch.

Discussion was held on when the room was built.

Mr. Troskey began his testimony by stating that this was a situation where the owner's applied for a permit to add on the screen porch off the side of the house. Scott

Ridderbusch, from our department, was at the site and noted that this three-season room had been constructed somewhat recently. We then found out it was 2018/2020, somewhere in that time frame. If the owners would have come in for a Zoning Permit, we would not have been able to approve it based on both Section 9.94 A (2) and Section 9.99 C. As the department has looked at similar situations before, this would be a situation where the County would be normally requiring removal of the structure, which is one of the option talked about previously.

Mr. Pazdernik asked how the contractor built the addition without a permit. He asked if the question ever came up.

Mr. Di Piazza said he asked the contractor if they did or did not need a permit. The contractor did not respond and Mr. Di Piazza did not follow up.

Mr. Ross asked what the County might do, at this point or once it was discovered, to the person who did it without a permit or is it strictly between the property owner and the County. Where does the contractor fit into the picture?

Mr. Troskey said that instead of going for a variance, if the owner would have voluntarily removed the structure the County probably wouldn't issue citations to the contractor or the owner. The Planning and Development Committee has told staff that whenever confronted with a situation where a contractor does something without a permit, etc., that staff has the ability to issue citations to both the contractor as well as the owner. That typically isn't done if they achieve voluntary compliance.

Mr. Pazdernik asked what a citation entails.

Mr. Troskey stated that citations are basically around \$280.00. It is a lot of work on staff's behalf. There are forms to fill out, Corporation Counsel has to approve it prior to the citation being sent out. The number of citations is discussed as far as what type of violation it is. Those citations are sent to the Court. The Planning and Zoning Department does not receive any of the money that comes from the citation, which is why after-the-fact fees are charged on the Zoning Permit itself if the project is approved. We can recover our costs more efficiently with after-the fact fees than we can by issuing citations.

Mr. Lee asked what the after-the-fact fees would be.

Mr. Troskey said they are triple the cost of the original permit.

Mr. Viegut asked if they would have to get a permit for being after-the-fact, if the variance is granted.

Mr. Troskey answered they would. They would have to apply for the after-the-fact zoning permit which makes it official, part of the record. It is part of our data base at that point which makes it 100% legitimate.

Mr. Hansen asked that the after-the-fact fee would only be requested if the Board approves the structure to remain.

Mr. Pazdernik asked if they would request the fee from the builder and the owner.

Mr. Troskey stated that he believes that would be more of a citation issue. There is only one fee for the structure that would be required. Anything above and beyond that would be in the form of a citation or citations that would have to be issued to the contractor or property owner. Typically if we are achieving voluntary compliance we do not pursue the citation route.

Mr. Pazdernik stated that in this case he sees the contractor as definitely being at fault. They know better.

Mr. Lee stated that it seems to be that if a variance were granted they would apply for the after-the-fact permit and it would be up to the owner to go to the contractor and try to get that back.

Mr. Hansen stated that is the after-the-fact fee in addition you are talking about a citation to the builder because he hasn't done right by the owner.

Mr. Troskey stated that the eventuality of that is that he would have to take that to Corporation Counsel and they would have to make the decision as to whether we would pursue citations.

Discussion was held on citations and after-the-fact fees.

Mr. Hansen asked Mr. Troskey that the reason Planning and Zoning Staff was there in the first place was for a screen porch on the house.

Mr. Troskey confirmed that.

Mr. Hansen asked where the screen porch is on the house.

Mr. Troskey showed the Board the location on the drawing.

Mr. Hansen confirmed that the difference between that structure and the one the Board is discussing is that the screen porch is to the side of the home and the one they are discussing is toward the lake.

Mr. Troskey said that is correct.

Mr. Di Piazza stated that the structure in question was put where it is because they had nowhere else to put it. If they had put it to the side of the garage, it would have encroached on the side lot line.

Michael Clementi, neighbor, stated that they knew the previous owner. The garage was there and the deck was on the back of the garage. He said he is a little confused that the Board said the addition faces the lake.

Mr. Lee informed him that is the distance from the lake to the structure, no matter what way it “faces”.

Mr. Clementi asked if the previous owner would have had to have a permit for the deck.

Mr. Troskey said it depends on how old the deck is but likely he would have needed a permit.

Mr. Clementi then asked if the deck was there and then they enclosed it if a second permit was required.

Mr. Troskey stated that if it were allowed they would need a permit. The deck, anything that is greater than ten years old that is non-conforming can be replaced in its exact footprint but cannot be expanded upon.

Mr. Clementi stated he is not familiar with the sections the Board is referencing, but he knows the department has to do what they have to do, but there are so many different violations on that lake and this is something that doesn't really fit in that box, in his estimation. It is not as bad of a nuisance as some of the other things. They are the closest ones to the Di Piazza/Dale house and they cannot even see it.

Mr. Di Piazza stated, as clarification, that the 1995 date of the deck is an estimation.

Ms. Dale stated that they tried to do their due diligence. For the contractor to tell them they didn't need a permit they felt he knew what he was talking about.

Ms. Dale thanked the Board for their time. They could have saved everyone some grief if they had questioned their contractor. They would be grateful if the Board would consider the following:

- It is inconspicuous.
- It has not caused any harm to the public. None of the neighbors have questioned its existence.
- Most of the time it is used for storage. It is designed for sleeping and storage. There is no plumbing or HVAC.
- Replaced a deck of almost the same size, so it has created very little additional impervious surface.
- It is a quality structure that would not devalue the neighbor's property values and it has had no impact on the neighborhood.
- They really had no choice on where to build it because of their wooded triangular lot, the septic system and the steep slope of the property.
- They certainly would not have built the structure if they had known it was in violation.

1:34 pm. Chair Lee closed the public portion of the public hearing.

Motion by Harland Lee, second by Jeff Viegut to grant the variance with the condition that the owners get an after-the-fact permit. Aye: Unanimous.

1:40 p.m. Chair Lee adjourned the meeting.

Harland Lee, Chairperson

DRAFT