

ONEIDA COUNTY BOARD OF ADJUSTMENT
PUBLIC HEARING SUMMARY
NOVEMBER 4, 2021
COMMITTEE ROOM #1, 2ND FLOOR
ONEIDA COUNTY COURTHOUSE
1:00 PM

Chairman 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; Todd Troskey, Assistant Zoning Director; and Julie Petraitis, Program Assistant

Other individuals present: See Sign in Sheet.

Chairman Harland 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 Erik and Barbara Bergman, Brian Knutson, Karl Jennrich and Todd Troskey. 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.

Secretary, Phil Albert, read the notice of public hearing for Appeal No. 21-005 of Bergman Family Trust, appealing the denial of a permit to remove an existing dwelling and replace it within the same footprint with a deck closer to the Ordinary High Water Mark (OHWM) than the existing dwelling. The property is located at 4058 Shady Point Dr. further described as Government Lot 14, Section 29, T37N, R9E, PIN PL 609-5, Town of Pine Lake, Oneida County, Wisconsin.

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.

All appropriate media outlets were notified and the inspection was conducted between 10:00 and 10:20 a.m. this morning, November 4, 2021 at property located at 4058 Shady Point Dr. further described as Section 29, T37N, R9E, PIN PL 609-5, Town of Pine Lake, Oneida County, Wisconsin. All Board members, Member of the Bergman Family Trust along with neighbor, Allan Seabloom, and Todd Troskey of the Planning & Zoning Department were present at the onsite. Observations by the Board: The property boundaries were not properly marked. There was a question as to where the boundaries were. The existing fence and tree line were pointed out as the boundary lines. The road through the property is a private road; no right-of-way issues are a concern. The well and sanitary facilities were visibly apparent. The outline of the proposed construction was adequately marked by the structure of the footings in place. In terms of the observations: the structures were no longer present. The proposed structures were visibly apparent by the footings and placement of the new footings for the new structures. Topography and condition of the land surface: the surface of the property had been modified by dirt, fill and foundation filling. Erosion: there was possible erosion of the sand fill that has been placed on the site and existing structures had been raised. Other observations: there is a steep drop-off from unit #4 to the ordinary high water mark. Questions: In terms of the existing structures, the site already was cleared and foundations constructed.

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. After the appellant is done with his presentation, the County will present their case. Each side will have another chance to speak and the Bergman's will have a final chance to present their case. The Board will then close the public portion of the hearing and the Board will deliberate and reach a conclusion.

Erik Bergman began his testimony by stating that with respect to Unit four (4), 4058, they are seeking a lateral expansion of a non-conforming structure. Oneida County granted them the ability to have twelve (12) inch eaves on the lake-facing side of that unit. They are seeking an additional foot of the eaves on that lake-facing side of that

same unit that the Board visited this morning. The second exception is being granted the ability to have a walkout over the existing deck. The previous deck did have a roof on it and they wish to put that roof on it but have the ability to walk out from the second floor, of that same unit, onto the deck and have a roof over that deck. As far as the justifications, on the hardship side they have argued in favor of a couple of things. They contend that the twelve-inch eave would be a bit insufficient. The twenty-four inch eave would provide a better moisture protection on the lake-facing side. Twenty-four inch eave also, if you can imagine from that structure, it is a fairly narrow structure, The facade is very monolithic looking and it does not look right if you shorten the eave on that one side of the structure versus all other sides of the structure. The shed style roof lends itself to having that extended roofline.

As far as the physical limitation, they did offer to move the structure to the southwest or move it one foot in but that request was not allowed, so they do not have anywhere to put it within the thirty-five foot of the ordinary high water mark. It would be very tenuous to shrink the profile of the building by one foot. As far as the public interest is concerned, they have spoken with both neighbors abutting the property. Both have included an affidavit that this would not cause any undue hardship to them, being so close to the property itself. They think the design of the structure, the design of all structures, is a market improvement in the public interest. One element of the public interest is that they have already implemented some of the shoreline mitigation strategies, including the removal of a shed that was adjacent to unit three (3) and they have implemented the POWTS to try to mitigate the shoreland protection strategy. For many of the same reasons that they have cited for the first exception, many of them also applied to the request on the second exception. The utility to having a second floor walkout is beneficial for a number of reasons. He thinks that it provides a safety profile; reduces the stark, monolithic side of the lake facing side; and as narrow as the principal structure is, is somewhat compromised. There is not a lot of livable space, so they anticipate that it would be somewhat limiting to tenants to not have the ability to walkout on the second floor. Mr. Bergman reiterated the three criteria.

Mr. Knutson pointed out that in their application they cited section 9.99 C, after looking at it further, for the second story deck, he would point the Board's attention to section 9.99 B, which seems to allow a vertical expansion of an existing structure; an existing non-conforming structure.

Mr. Lee stated that they had some negotiations with the Planning and Zoning staff and some things have been worked out in that process. Mr. Lee asked Mr. Jennrich why Planning and Zoning denied them to move the structure back toward the private easement road.

Mr. Jennrich replied that he has been working primarily with Mr. Knutson on this project for over a year now. The parcel is tight. It is a legal pre-existing lot. They have three legal pre-existing buildings. The owners have architectural desires of what they would like to do with the property. They proposed to move the structure back, using section 9.99 E, Relocation of Non-conforming Principal Structures. Mr. Jennrich stated that it relates to the eaves. They are talking about twelve-inches. Mr. Jennrich would have liked to allow it, but under that section (9.99 E) of the ordinance, an existing principle

structure that was lawfully placed when constructed but that does not comply with required building setback per section 9.94, (which is 75') may be relocated on the property provided all the following requirements are met:

1. The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.

Mr. Jennrich stated that this building met that requirement. When they started this project, he believes the three buildings, which may not have been in the best shape, were still being used as structures and habitable residences. One or two of them were being rented out.

3. No portion of the relocated structure is located any closer to the ordinary high water mark than the closest point of the existing principal structure.

Mr. Jennrich stated that would meet this.

4. The county determines that no other location is available on the property to build a principal structure.

Mr. Jennrich stated that this is a site that is constrained by that private easement road, so this specific structure is pinched between the private easement road and the road. The problem is that the existing principal structure is at least 35' from the ordinary high water mark. So if you have a structure that is closer than 35', you cannot use the provisions of section 9.99 E, which this follows State Administrative Code. What they are saying is you can relocate a principal structure but the structure, before you can relocate it, has to be at least further than 35' from the ordinary high water mark. So, he could not negotiate that ordinance provision. What they are proposing, due to the architecture, they would like a 24" eave. Mr. Jennrich allowed them twelve-inch, even though it may encroach closer to the water because most structures do have twelve-inch eaves. So, they proposed keeping the same setback but moving the structure.

Mr. Knutson stated they are looking for a variance from the setback, so they are looking for a twelve-inch encroachment at the eave.

Mr. Lee stated there are two overhangs. The one on the top and the one on the deck.

Mr. Knutson stated that the existing deck had a roof on it and as an existing structure; they are seeking the ability to use it, the roof of the structure that existed, as a deck and allow a walkout from the second story. They want a 24" eave on the primary structure.

Mr. Lee asked if they are okay with twelve inches on the deck.

Mr. Knutson said on the open side of the second story deck. He said twelve inches is fine there.

Mr. Lee asked if they were more interested in the one at the top.

Mr. Knutson said that from an aesthetic standpoint on the primary structure, yes. That is where the 24” overhang became an issue. It started on Unit 3, when they started this appeal process, and then for mitigation they decided to chop a foot off the whole front of that structure just to allow it. Now they are going to have that building over there with 24” eaves and they are proposing that Unit 4 has 24” eaves as well. On the second story deck, it would still look appropriate to have twelve-inch eave.

Mr. Bergman said he would be satisfied with it being flush with the deck below.

Mr. Jennrich asked if they are talking about Unit 3.

Mr. Knutson said it is one of the units they are talking about. Obviously with Unit 3, they moved the lakeside wall back, they shrunk the footprint by one foot so that allowed them to have the 24” eave.

Mr. Jennrich stated that there are three buildings and they are going to call them four units. Unit 3 is not the subject of the appeal but they wanted a 24” overhang on that structure. They decreased the footprint of that structure so they can get the 24” eave. With this structure, they were thinking about doing the same thing. If you take a look at the plans, in detail, this is a very small structure.

Mr. Lee asked why they could not move the whole thing back.

Mr. Knutson said they offered to do that.

Mr. Jennrich said that is where the Board of Adjustment comes in. If the structure was not closer than 35’ to the ordinary high water mark, he believes they would not be in front of the Board of Adjustment. Because it is partially closer than 35’ to the ordinary high water mark, he cannot use section 9.99 E. The Board of Adjustment can.

Mr. Lee stated that the foundation is already in.

Mr. Jennrich replied that the foundation is in for the building, but not the eave.

Mr. Pazdernik asked what the magic is of having a 24” overhang. Why is that necessary?

Mr. Knutson replied that if you look at the design for all the structures, they all that eave extension. If you look at the proportionality between the height of the structure, if you put short eaves on that it begins to look like...

Mr. Bergman said it looks very stark.

Mr. Knutson finished ...that is one part of it. It is also a moisture protection because we’ve got such a tall wall. Those windows are going to be all full of raindrops every time. They also have the outriggers that are mounted that simulate the beams coming

through the roof and if they shorten it down to 12” inches there is no point in putting them on there.

Mr. Pazdernik asked if they drew the plans knowing they were going to run into the setback issue.

Mr. Knutson replied that they designed it with full knowledge of what the setbacks were. They had the property surveyed to start with so they knew exactly where all the structures were and exactly where they would be after they demolished them and put them back in.

Mr. Pazdernik asked that they knew they were going to have a one-foot problem right away.

Mr. Knutson replied no, that there had been quite a bit of discussion as to what the existing structures were. The existing was encroaching as well.

Mr. Bergman stated there was a tremendous amount of variation around that structure in terms of the eaves. One side was six inches; one side was eight inches, so...

Mr. Knutson stated there were 20” eaves on the other one. Which ones do they match? He said he would tend towards the more conservative construction.

Mr. Pazdernik said it seems like it is highly unusual for somebody to build a structure and sacrifice building area for looks.

Mr. Knutson said it did not impact Unit 3, greatly. While they were going through the process, they offered to move Unit 4 back and thereby allow the same look on the buildings and maintain the same square footage. Karl was not able to do that, so that is why they are here today.

Mr. Jennrich summarized the last correspondence he had with Mr. Knutson into the record.

Mr. Lee asked Karl if he was saying if they moved the foundation back toward the road, would that have solved the problem.

Mr. Jennrich stated that he would need a variance to do that.

Mr. Lee said he is saying to build it outside the existing footprint.

Mr. Jennrich said he would still have to come before the Board to get the variance because the original structure was closer than 35’ to the ordinary high water mark. Karl is not able to allow the relocation provisions because of that.

Mr. Ross said that they did not know where the original deck was. They have two issues, the overhang and the walkout deck.

Mr. Jennrich provided a drawing/pictures as to where the original buildings/decks were. Mr. Jennrich stated that staff did not know what was there. They had a covered deck and he said they could replace it. He just could not support the second level deck/walkout with roof.

Mr. Knutson stated that they contend that if it can have a roof on it why can't they walk on it. It is the same impervious surface.

Mr. Lee stated that this case is unusual in a couple standpoints. Some of the things have already been decided and the building has been razed. Normally when the Board goes to an onsite, they are looking at the structures they are talking about. Not only has it been razed but also the foundation for the proposed building is already in, which rather limits things in itself. It takes away the option for the variance of moving the whole building back from the water. So the two issues are: would there be a walkout on the second level and would it be covered and would it be 12" overhang or would it be 24" overhang.

Mr. Ross stated that he thinks it is important for the people who are asking for the variance to defend the three criteria in more detail. He would like to know what the physical property limitations are and what their unnecessary hardship is. Without a reasonable answer, the Board is obligated to not approve a variance unless all three criteria are met. He said he has not heard the appellant explain why this would be an unnecessary hardship.

Mr. Bergman said that it is somewhat relative. The Board may not consider it an unnecessary hardship but from their perspective, looking at some of the old structures; are they acting in the best interest of the community by rehabilitating that entire property. They want to rent the place out to people who can enjoy the Northwoods. He thinks that the structures they have envisioned do that. From an aesthetic perspective, removing some of the features that have been designed into them, from their perspective is a hardship. The narrow footprint of Unit 4, the access to the second floor is limited by a bit of a very steep ladder. It would be of comfort to know that you have a safety egress on the second floor. Without those features, it limits their ability to rent the place out. So, that is a hardship, from their perspective.

Mr. Knutson added that they are looking at Section 9.99 B, which allows vertical expansion. Is it a hardship that they are not allowed a vertical expansion, per the ordinance?

Discussion was held on existing footprint and decks being allowed in the existing footprint.

Mr. Hansen said he personally does not see a reason to have the deck or the 24" overhang. That is aesthetics and convenience that is not hardship.

Mr. Albert stated that according to variance criteria, in terms of unnecessary hardship, there are two factors. One, there is use of the property. This does not limit use of the property. And, economic and financial hardship, if you were going to rent this out, is not a justification for it being a hardship.

Mr. Pazdernik asked about the access to the second floor, which is a ships ladder. Mr. Knutson stated that having the open balcony enhances the safety of the building. According to Section 9.99 B, they are allowed a vertical expansion.

Mr. Albert said that a vertical expansion is not automatic, without other things being considered.

Mr. Knutson replied that Section 9.94 specifically identifies non-conforming structures, which this is. He also added that they have implemented several of the mitigation strategies, even though they do not have to.

Mr. Ross stated that the Board is under statutes to follow what they can do to grant a variance. They have to make sure they can justify, in writing, in a court of law that all three of those criteria are met. That is why he wanted to hear their justification as to why this is an unnecessary hardship if a variance is not allowed.

Mr. Bergman replied that they struggle to understand how the request they are putting before the Board has any more redeeming value than them constructing a boathouse right on the water. He thinks the Board is charged with looking at the intent of the code, as well. If it better serves the public interest than building a 400 square foot boathouse right on the water, he would think that would be the lesser of two evils.

Mr. Ross replied that is not the choice the Board is faced with.

Chair Lee asked Mrs. Bergman if she wanted to make any comments.

Mrs. Bergman stated that the money involved in this whole program and the delays and now with the administration they are under, they are going to be under water. You need to have aesthetics. People from Chicago, Milwaukee, wherever, they want to look at something and walk out to the lake. She does not think they are asking for too much, for 24”.

Mr. Albert replied that according to the criteria they have to go by, use of the property is one of the considerations for hardship. You have use of the property. Another one is economic or financial hardship is not a justification for the variance. In the criteria, the Board has to follow and are required to follow, that argument does not fit.

Mr. Knutson asked about consideration of all the improvements to the site.

Mr. Albert said that is not a consideration that the Board can take into account.

Mr. Bergman said he would be interested to better understand what use hardship is acceptable. You could put a 5x5 structure there and you could argue you have use of the structure but what is the quality of the use.

Mr. Albert replied that it does not say quality; it just says use of the property. You are not restricted. There is not a hardship in terms of the use of the property.

Mr. Bergman said as a property owner he would contend that meeting that definition is almost impossible.

Mr. Albert said he disagrees. Use is use. From earlier comments to lease it out or use it as a rental property you have use of that property regardless of whether it is 12" or 24".

Mr. Hansen stated that when it is done it is going to be a building that is about 14' away from the water and it is supposed to be 75'. He realizes it is a legal pre-existing building but it is still 14' from the water instead of 75'.

Chair Lee stated it is a non-conforming structure and certain things can be done to it. It is still going to be where it is, whether we like it or not.

Mr. Ross stated that when the hearing is closed and the Board has their discussion they are going to be zeroing in on the three criteria. If one of the criteria cannot be met then you do not get the variance.

Chair Lee asked Mr. Ross what he thought the variance would be.

Mr. Ross said he thought it would be allowing the two-foot overhang because it is going off the footprint and the fact that the criteria Karl described is that the thing you are going to build, because it is pre-existing, would have the same function or form and he thinks having the walk-out/double decker is a question as to whether it should be allowed or not because it is not clear cut. From what has been said, they are allowed to have one. He thinks they have to decide about the overhangs and whether they want to allow them to put that second story on the deck.

Mr. Lee asked if the Board had any more questions.

Mr. Albert asked if the size of the porch/deck was strictly within the footprint of what was there before.

Mr. Knutson said it was.

Mr. Albert reiterated that the structure was a one-story structure with a roof.

Mr. Knutson said it was.

Mr. Albert said that now it is a two-story structure with a roof with an overhang of 24” instead of 12”. He asked what the overhang was before.

Mr. Knutson said the roof structure could be backed off. The idea is to keep the snow off.

Mr. Jennrich said that staff went over the permit looking at the square footage. It is complicated, but they believe what is proposed is within the existing footprint.

Chair Lee closed the public portion of the public hearing.

Mr. Lee stated that in his view, any variance would have to do with allowing a 24” overhang rather than a 12” overhang and secondly whether there would be a second story to the deck with a roof on it.

Mr. Hansen asked Mr. Jennrich if them expanding the envelope is an issue.

Mr. Jennrich said it is not an issue. He said the way they look at building footprint is the area enclosed by the lines formed by connecting all the points where the building’s walls, or the foundation supporting the walls, meet the ground. For the purpose of this definition, decks, patios or other appurtenances shall not be considered as part of the building footprint. Where the footings hit the ground that was the building footprint. The building envelope is the three dimensional space in which the structure is built. When he originally talked to the appellant, he did not have an issue if they kept the same footprint and had 24” eaves on the non-water side as long as those eaves did not enclose to any applicable setbacks ten (10) feet to the side yard lot line; twenty feet to the right-of-way, which is not involved in this case.

Mr. Pazdernik asked if they made the eaves 18” instead of 24” if it would be conforming. Mr. Jennrich said it would not.

Mr. Albert went back to the definition of footprint. He asked that if it says it excludes decks why is the Board considering the deck or what was supposedly a deck to part of the footprint.

Mr. Jennrich said they really are not. They had a deck that was there and covered. Staff questioned if it was or was not attached. When they originally talked the appellant asked if they could attach it and he told them they could. Technically, it should not be part of the footprint. That is where he is in a conundrum because you cannot expand the footprint vertically because it was not originally part of the footprint.

Mr. Jennrich said he does not have a problem if they cover the deck. They cannot cover the portion that is concrete or patios, because there was no roof over that.

Mr. Ross stated that this is why it is important to know what the footprint is. It comes down to the footprint.

Mr. Albert said the other clarification is there is a private easement road that runs down the middle of the property. If you wanted to, prior to having a foundation there, you could have moved it closer to the private easement road.

Mr. Jennrich stated there are no setbacks to private easement roads. We recommend you stay as far off just because of snow plowing.

Mr. Lee stated that an option that they could have had is not achievable.

Motion by Guy Hansen, second by Phil Albert to deny both variance requests; the 24” overhang and the second story covered deck, as the three criteria cannot be met. On roll call vote: Mr. Hansen, “aye”; Mr. Albert, “aye”; Mr. Ross, “aye”; Mr. Pazdernik, “nay”; Mr. Viegut, “aye”; and Mr. Lee, “aye”. Motion carried.

2:18 p.m. Chair Lee adjourned the meeting.

Harland Lee, Chairman

Phil Albert, Secretary