

ONEIDA COUNTY BOARD OF ADJUSTMENT
PUBLIC HEARING SUMMARY
3RD FLOOR CONFERENCE ROOM
MINOCQUA CENTER
MINOCQUA, WI 54548
OCTOBER 8, 2020
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: Phil Albert, “here”; Guy Hansen, “here”; Norris Ross, “here”; Mike Pazdernik, “here”; and Harland Lee, “here”.

Members absent: None.

County staff members present: Peter Wegner, Assistant Zoning Director; Keith Cohrs, Zoning Technician; 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 is made up of five regular members at this time. 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 Pete Wegner, Keith Cohrs, David Reynolds, William Steiger, Gami Miller, Michael Heesaker, and Gary Scovel. Mr. Lee stated the procedure for the hearing will 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 that question be addressed. The Appellant(s) may stay for the deliberation.

Secretary Phil Albert read the notice of public hearing for Appeal No.20-004 of William Steiger, appealing the denial of a Zoning Permit Application for the placement of a 30’ x 40’ garage, 12 feet from the Ordinary High Water Mark (lakebed) of Unnamed Lake and approximately 150’ from the edge of open water of Unnamed Lake. The property is described as Plat of Ellen Bee, Outlot A, Section 12, T39N, R6E, PIN MI 3148, Town of Minocqua, Oneida County, Wisconsin.

The Notice of Public Hearing was published in the Northwoods River News on October September 22 and September 29, 2020. Proof of publication is contained in the file and Mr. Albert noted that the media was properly notified.

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.

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 and Shoreland Protection Ordinance is available on the Internet at <http://ww.co.oneida.wi.gov/>.

Secretary Albert stated that all media outlets were notified of the public hearing and the onsite inspection was conducted at approximately 9:50 and 10:20 a.m. on October 8, 2020 at property described as Plat of Ellen Bee, Outlot A, Section 12, T39N, R6E, PIN MI 3148, Town of Minocqua, Oneida County, Wisconsin. William Steiger was present as well as all Board of Adjustment members along with Zoning Staff Pete Wegner and Keith Cohrs. Observations by the Board: The property boundaries were adequately marked with pink stakes. The highway right-of-way was marked as well as the location of the proposed property beyond the right-of-way. The well and septic location is not applicable in this case. Outline of the proposed construction was adequately marked. The proposed construction is a garage, 30' x 40', as shown in the drawing in the appeal documents. The topography of the location was treed and heavily vegetated, falling away from the road and right-of-way. There was no erosion visible from the road or the wooded area. There are no existing structures. Other observations by the Board was that the lot was heavily treed away from Brunswick Road to a swampy area of the Unnamed Lake or WVIC. Apparently the Unnamed Lake has been given a water body identification number by the State, which the Board is not familiar with or has the number. The proposed structure is 30 to 40 feet wide and approximately 1200 square feet.

Chair Lee stated that the DNR sent a letter regarding this appeal. The letter indicated it is part of the record and provided the parties involved a copy of the letter.

SWORN TESTIMONY-APPELLANT.

Mr. Reynolds began his testimony by stating that the purchase of the property is contingent upon being able to construct a garage on the property. Mr. Reynolds had the property surveyed. There was a question as to whether there was wetland/ordinary high water mark or lakebed on the property. Mr. Reynolds applied for and was issued a zoning permit on August 6, 2020. On August 12, 2020, Assistant Zoning Director, Peter Wegner, contacted Mr. Reynolds regarding a complaint received by an adjacent landowner regarding the classification of the property being wetland vs. Ordinary High Water Mark (OHWM) or lakebed. Mr. Wegner and Zoning Staff reevaluated the property determining that it is OHWM/lakebed vs. wetland. The Zoning Department

suggested Mr. Reynolds re-apply for a Zoning Permit which would be denied and he could appeal the denial and a variance could be evaluated. Mr. Reynolds understands that there are three (3) criteria that must be met in order for a variance to be granted. Mr. Reynolds addressed the three criteria.

Unique Physical Property Limitations: This is achieved through limited buildable portion of the land in general and the proximity to the wetland/OHWM. The classification of wetland upheld as was granted through the original approved building permit. The proposed new garage would have been constructed five (5) feet from the wetland designation. Tied to the OHWM classification, the erected garage could be 12' from the NW corner and 13' from the NE corner. Based upon existing County regulations, which require a 75' setback from the OHWM it is not possible, given the size and the dimensions of the land. In other words, without this variance, the property is unbuildable.

No Harm to Public Interest: The existing lot is zoned Recreational, not Single Family. It maintains, based upon the topography, buildable land for future development. Additionally, he has attempted to conform to every process and regulation to ensure minimized impact of any construction; maintaining vegetation wherever possible while still being able to do the project. Additionally, as outlined for the process for variance, he provided a list of neighboring landowners outlining their support of the variance with the exception of one.

Unnecessary Hardships: There is no reasonable use of the land that exists without the variance due to the size of the lot, the location of roadways, the surrounding by other owned land and a defined OHWM.

In summary, the variance requested is an adjustment to the OHWM to accommodate the construction of a garage and driveway on the property as outlined in the building permit that was denied.

Mr. Steiger began his testimony by stating that he feels building a garage there is a great thing because it is right across the street from his house. He has no objections. There are two neighbors that have no objections.

Mr. Lee asked if there were any deed restrictions on the property. Mr. Reynolds said there are not any that he is aware of.

Mr. Hansen asked Mr. Reynolds about his property where his home is located, whether he had a garage there. Mr. Reynolds stated he does have a double-car garage there.

Mr. Wegner began his testimony by stating that everything Mr. Reynolds said is "spot on" as far as what happened. There was a misunderstanding or error with the permit that was originally issued thinking it was wetland not lakebed. Mr. Wegner received a call from a concerned citizen. Mr. Wegner sent someone out to the property to shoot elevations. At that time, it was discovered that the property is lakebed. Mr. Wegner explained that

ordinary high water mark can be based on vegetation, not really the elevations in the water or the ordinary high water mark. It was changed to go on elevations alone and now it is going back to vegetation and elevation. The end result was what would be proposed would be 12' from the OHWM. It is a lot of record. He discussed the variance with Mr. Reynolds and Mr. Wegner thought it was one of the cases that could meet the criteria. He is surprised by the letter from the DNR.

He said he has never before heard the DNR talk about this property not being unique to this area in the fact that there is a Shoreland setback from the ordinary high water mark. It is not a feature of the property. A wetland or slope, those are features of the property but maybe not the measurement that is required per the ordinance. What other kinds of physical property limitations could you have if you narrowed it down to just because of the setback required doesn't mean it's unique property.

Also they talk about the science within 75'. He agrees that this is a unique situation because he is 150' or more from open water and he's got a natural filter. You couldn't build a better filter between where he proposes, the ordinary high water mark/lakebed to where the open water is. You couldn't build a better filter. You could also use that same argument for the impervious surface. Yes, he exceeds it but that filter he has between there is going to take up more than a catch basin, which is an approved method to take care of what exceeds impervious surface.

Finally, regarding the letter, it talked about, in this case the Board should also be considering property owned by the applicant and future buyer as a consideration to the hardship. He has never heard of that. If you look at the justification for an appeal not once did they talk about if you own adjacent properties. It is specific to that property. It has nothing to do with anything else.

With that being said, the County does not have a problem if there is a variance that is granted for the placement of the garage because he could argue that it meets the physical property limitation, that there is no harm to public interest in the fact that he can meet the criteria that there is a physical property limitation, setback from the ordinary high water mark. No harm to public interest because right now he is being denied reasonable use without having anything on there. There are garages, whether they are permitted or not, on the west side of the property. If you go around the Lake, there are other garages that were done without permits with similar setbacks to actual open water. If you were to consider a variance, he hopes the Board would look at the size and also how he is entering the garage. Right now he is showing there is one driveway, one single lane off of Brunswick entering the west side of the garage. The amount of fill that would be required for this and the garage is huge. He came up with 177 yards of fill just for the footprint of the 30' x 40' garage and if you add parking in there it is even more and then there is the issue of the erosion of the fill area.

To clarify a few things, if a variance is granted a comment about the 35' buffer should be made because he is going to have to be within that 35' buffer, based on lakebed measurement. Based on actual vegetation between that and open water he's got 150' buffer. There should be comment in any decision, regarding that. Also, he cannot be any closer than five (5) feet with any excavation to that wetland.

The County would not appeal a reasonable variance granted. Mr. Wegner feels the request meets the criteria it is just a matter of size and location of the entrance to the garage.

Mr. Ross asked for an explanation between wetland and lakebed. Mr. Wegner stated that wetland is wetland but some wetland can also be lakebed based on the elevation. If you take the elevation that is in the water, the standing water, it gives you the actual elevation of the OHWM based on staining and where the roots are going. You can transfer that back and if it is at or below then it is also lakebed.

Mr. Ross asked that you have to be five (5) feet from a wetland if it is not lakebed. Mr. Wegner confirmed that is correct.

Mr. Hansen asked if the Impervious Surface area was calculated and how it relates to the lot. Mr. Wegner stated that it would exceed the amount allowed but that there are things could do to make everything (structures) on the property exempt.

Mr. Ross asked if they are requesting a variance for a 5' setback from the OHWM, not 12 or 13 feet? Mr. Wegner stated that in this case the upland/wetland interface is the lakebed, so it is 12'.

Mr. Albert asked Mr. Reynolds to clarify the hardship, if you are not able to erect the garage. Mr. Reynolds stated that there is no functional use of the property that exists at all. Mr. Albert asked if he owned the property. Mr. Reynolds stated that he has a contingent purchase agreement with Mr. Steiger. Mr. Albert asked Mr. Steiger if the hardship is retaining that property with no potential use to it.

Mr. Steiger said when he bought it he thought it was buildable. He thought it was wetlands. Everything said it was wetlands and now its lakebed.

Chair Lee opened the hearing to public testimony.

Michael Heesakker spoke in opposition to the variance request.

Gary Scovel expressed his concern with the variance request.

Gami Miller spoke in opposition to the variance request.

Steve Gilbert spoke in opposition to the variance request.

Mr. Steiger replied that nobody can see his property from their properties.

Mr. Reynolds replied that he never could have imagined the difficulty he's encountered with going through the process of trying to purchase land and build a garage. He feels sad to hear that there are those neighbors in opposition to that. He believes as far as aesthetics, there are no covenants which exist for the property. The lot is zoned Recreational, not Single Family. The building proposed conforms to all known codes. There are similar structures that exist on surrounding lots. As far as concerns regarding the environmental impact or distance to wetland/lakebed, as previously referenced the proposed variance would maintain maximum distance from the OHWM, that 12' and 13'. Again, that is all that is possible given the other required setbacks.

It does achieve the minimum distance to conform to wetland regulations. The lot was platted in 1962 and it doesn't offer any other functional use. He is attempting to minimize the impact on wildlife and maintain vegetation wherever possible.

Mr. Ross asked if there was any consideration to build a different shape garage to solve the problems on the property.

Mr. Reynolds said they did look at that but what they are trying to put into the garage requires the footprint proposed.

Mr. Hansen asked Mr. Steiger if he has a garage on his property. Mr. Steiger said he does.

Mr. Wegner stated the comment about a larger garage is on a parcel that already has a garage. This is a vacant property, so to say that it is not reasonable use to want to expand a garage; there is not a garage there to expand. There is nothing there. The other thing is that you could put a boathouse on this parcel, closer to what is called the Ordinary High Water Mark/Lakebed with a walkway that could go all the way out to the open water. He is not requesting that he is requesting to put a pole barn, which is considerably larger than the boathouse that would be permitted. The fact that it would be at the OHWM vs. 13' away. The comment regarding the use vs. the area variance. He looks at a use variance as, say it is zoned Single Family, that would be a smaller structure, a smaller impact to that parcel. An area variance, it could be an addition it could be a structure being placed on a vacant property that needs an area variance because it cannot meet an applicable setback, OHWM, right-of-way, that sort of thing; that is different. He feels that this property does meet the criteria which gives the Board the ability to grant a variance.

Mr. Lee asked if they were to grant a variance if Mr. Wegner would see any restrictions attached to it.

Mr. Wegner said he would hope they would come up with an alternative so there wouldn't be additional fill, just limiting the fill to the garage itself and use the existing elevation to grant access to the garage. Otherwise you are going to be adding a lot of fill and he doesn't know how you would maintain that height of fill without more structure or retaining wall.

Mr. Lee asked why he cannot come into the garage straight on. Mr. Reynolds stated that the dimensions do not allow for what they want to put in the garage.

Mr. Pazdernik asked about the location of the garage doors and if the doors could be moved closer to the road.

Mr. Reynolds said that he would still need to make structural changes to meet the clearance he needs.

Mr. Ross asked how tall the structure is, on top of the retaining wall. Mr. Reynolds stated that it is just over 22 feet.

Mr. Albert asked Mr. Wegner if when he said he believes the criteria is met if he is referring to the three variance criteria or some other criteria. Mr. Wegner stated that in his opinion it meets the three variance criteria. It meets the physical property limitations due to the setbacks to the road, to the Lakebed. Since there isn't a current use or a current structure on the property, looking at the use that would be permitted by the ordinance in that zoning district you could say that he is denied reasonable use for about anything and he does not

know how it could be contrary to public interest because he has a physical property limitation, and technically he's been denied reasonable use. Again, if the Board were to grant a variance Mr. Wegner would like the Board to address the door.

Mr. Reynolds reiterated his earlier testimony.

Chair Lee closed the public portion of the public hearing.

Mr. Hansen stated that he does not agree with Mr. Wegner in that he does not feel any of the three variance criteria are met. It is not unique physical limitations due to consider that it has unique to the property in question and not generally shared by other properties in the area. The property on either side have the steep banks and high water mark adjacent to the lot. So it is not unique physical limitation. It does harm public interest. The impervious surface calculation exceeds the limit. The Board is also required to consider the protection of fish and wildlife and preservation of natural scenic beauty. To build this it is going to take about 177 yards of fill and a lot of concrete just to put a garage on this lot, which is unacceptable. And unnecessary hardship, both Mr. Steiger and Mr. Reynolds already have a garage.

Mr. Ross stated that he doesn't see how they can issue a variance with stipulations since they haven't seen the building plans. He said he agrees with Mr. Hansen.

Mr. Pazdernik believes every property owner has the right to have some use for their property. He questions the size of the garage, somewhat. Most of the neighbors cannot see it. Like Mr. Wegner stated, Mr. Reynolds could build a boathouse.

Mr. Albert said he agrees with Mr. Pazdernik, but as he looks at the criteria for the variance he cannot say it meets all three without question.

In terms of unique physical property limitations, it is unique but it is not one of a kind. In terms of public interest, it isn't just the neighbors who want or don't want it. It is the broader public interest of the State in terms of why the ordinance or why the criteria is what it is. In summary, he does not see where it can meet all three of the variance criteria. He cannot agree that it meets all three of the criteria.

Motion by Guy Hansen to deny the variance because it does not meet any of the criteria that need to be considered. Phil Albert second the motion for discussion. He disagrees with it not meeting all three criteria.

Chair Lee asked Mr. Albert which criteria he feels it does not meet. It only has to be based on not meeting all three.

Motion by Guy Hansen, second by Phil Albert to deny the variance request because it does not meet all three variance criteria.

On roll call vote:

Norris Ross, "aye"

Mike Pazdernik, "nay"

Guy Hansen, "aye"

Phil Albert, “aye”
Harland Lee, “aye”.

The Appeal request is denied based on the following:

Unique physical property limitations: Not Met – Limitations such as slope and / or wetland that are shared by other properties and prevent compliance with ordinance are not to be considered unique.

No harm to public interest: No Met – Immediate neighbor’s comments are not the only interest to be considered. The ordinance purpose and intent are the broader issues when evaluating impact on the public interest of the general public.

Unnecessary hardship: Met – If there is a hardship it would be that Mr. Steiger is not able to sell his property to Mr. Reynolds. However, based on past case law an economic or financial hardship is not a justification.

The decision will be completed by October 15, 2020.

3:00 p.m. The meeting was adjourned by Chair Lee.

Harland Lee, Chairman

Phil Albert, Secretary