

ONEIDA COUNTY BOARD OF ADJUSTMENT
PUBLIC HEARING SUMMARY
COMMITTEE ROOM #2, 2ND FLOOR
ONEIDA COUNTY COURTHOUSE
AUGUST 3, 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: Harland Lee, Phil Albert, Guy Hansen, Norris Ross and Mike Pazdernik

Members absent: None.

County staff members present: Pete Wegner, Assistant 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 is made up 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 Peter Wegner, Assistant Zoning Director; Mr. and Mrs. Ehmann; Jim Van Strydonk, Builder and (later) Igne Van Kampen, Pine Lake Town Chair.

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.

Mr. Ehmann began his testimony by apologizing to the Board for the confusion at the onsite visit. He stated that he and his wife have talked it over and they would like to go with the original placement that the builder had set out, with pushing it back further toward the westerly property line. They are asking for a variance from the 75' setback.

Chair Lee confirmed that their position right now is to go with the original plan.

Mr. Ehmann said yes, the stakes with the green ribbons. His wife prepared a drawing that she provided to the Board (Exhibit A) which shows a 24' x24' garage five feet from the property line and 57' from the ordinary high water mark. They would have to do the

variance from the ordinary high water mark because, either way, they wouldn't be able to do it.

Mr. Albert confirmed that it is further from the property line than the stakes with green ribbons. Mrs. Ehmann said that is correct. It is five feet from the property line.

Mr. Hansen confirmed that it is 57 feet from the ordinary high water mark. Mrs. Ehmann stated that is what the lady (Diann Koshuta) measure at the onsite visit.

Chair Lee asked if these are new dimensions or the ones that were on the appeal form. Mrs. Ehmann stated that the green ribbons stakes are moved closer to the neighbor's property line, five feet from the property line. So, yes, they are new measurements. The Ehmann's stated that the dimensions of the garage are still 24' x 24'.

Mr. Hansen confirmed that the location, relative to the lake, from what was staked just changed the distance from the lake based on the measurement this morning and moved the structure 17' to the west – five feet from the lot line. The Ehmann's confirmed that is correct.

Chair Lee told the Ehmann's that the Appeal Form indicates three criteria that the Board needs to look at. He asked if they had anything to add to the written response they had to them.

Mrs. Ehmann said that in regard to the Public Interest, she has a letter from their neighbor, Lesley Byrne's, stating they have no problem with it. It is just verbal, but Mrs. Ehmann spoke with Terry McKnight and they said they are neutral on the matter. Mel Davidson has not said anything.

Chair Lee stated that the DNR has submitted a letter and in looking at the letter when they talk about no harm to the public interest it goes beyond just what your neighbors might say. It deals with the ordinance itself and the purpose of the ordinance. Mr. Lee stated that that is really the public interest. It is more than just your neighbors. It is everybody around the lake. It is the general public and whatever you or anybody does in building near the water, what it does to the lake. That is really the major point of public interest. He just wanted to point that out and wanted the Ehmann's to be aware of that.

Mrs. Ehmann stated that they tried to be mindful of that when they built their house because they did use a storage tank rather than a septic system. There is no runoff in that regard to the septic. Obviously the garage wouldn't have any kind of water run to it. It is basically just the runoff from the roofline. They tried to limit cutting down whatever trees that are on the property. They like the natural shoreline as it is and intend to leave it that way.

Mr. Ehmann stated that their lot is one of the last ones to be built on, on the peninsula. It has been in the family for over 60 years. You can see that some of the neighbor's property has buildings closer to the water but that is grandfathered in. They can see there

have been exceptions made over the years because the reality is a lot of the structures out there existed before the laws were changed, like the 75' setback.

Mrs. Ehmann said that in terms of a hardship...Mr. Ehmann stated they are only part-time residents now but they are planning to be full-time in the future and will be up here more often. Mrs. Ehmann stated that the winters are long and they would like to be able to store their equipment under a proper garage. Mr. Ehmann stated they are limited to a 4' crawl space now and that is not practical to try to store paddle boards, canoes or anything like that. That is another reason they are looking forward to the garage, besides the protection for the vehicles.

Mrs. Ehmann stated they would rather have a garage which would be aesthetically more pleasing to the neighbors than a make-shift storage or tarp or whatever. They want to enhance the property, not detract from it. Mr. Ehmann said they don't want to detract from the neighbor's property either.

Mrs. Ehmann said they would also like to make a penned in area off the garage for the dogs.

Mr. Hansen asked which side of the garage.

Mrs. Ehmann stated it would be the lake (South) side.

Mr. Ehmann stated that they had to get a variance to build the house because it is a shallow lot. They were given a 43' setback based on the average between Mel's property and the McKnight's property from the lake. The house is 26' wide, including the overhang, to comply with the 43' setback from the shoreline and the 10' variance into the right-of-way. It was a peculiar set of circumstances to begin with to make it possible to build on the property. Where the garage is proposed is actually the widest area from the road to the shoreline. It still would be to the 75' setback.

Mrs. Ehmann stated that other underlying restrictions are that it is either a variance from the ordinary high water mark or a variance from the right-of-way and the way the lot, as you've seen it, slopes down. Where the house is positioned was the best place to put the house and because it is such a narrow lot it didn't allow as much leeway to put a garage in the design of the house in order to achieve a good look; otherwise it would have been a very, very long space without a place where you could really enjoy the view. The designer worked very hard to make sure it would fit this well and still be pleasing to the eye. That is why they had to pursue getting a garage after the house was built because a functional design with the garage attached wasn't possible for that lot.

Jim VanStrydonk, builder, stated that as far as the position of the garage he just tried to pick the best location that he could to fit within the confines of the land. Obviously no matter where you put the garage it is going to be non-conforming, probably to both sides. He stated he was not aware of the five-foot setback as far as the lot line is concerned. That is why he went with what he did. The further they can push it back to the lot line

the better off it is to try to access the garage from the driveway. As far as the 57 feet versus the 45 feet he was asking for the 45 feet because basically that was the setback for the house.

Mr. Albert asked for a clarification on the comment regarding the location of the garage. Was the patio or patio block that is currently adjacent to the house part of the original design and why couldn't the garage have been added at that time adjacent to the right side of the home?

Mr. VanStrydonk stated he was not involved with the permit process on the house.

Mrs. Ehmann stated that where the patio is right now, that is 10 x 20, so if that was to be where the garage would be then they wouldn't have any kind of space for a porch. It would be, how would you do that. You'd have a garage and then a porch in the middle? It would be hard to envision how you would make that work.

Mr. Albert stated that there was an option between, apparently a patio and a garage and you opted for the patio rather than the garage.

Mrs. Ehmann said the covered porch, as what you see, was included in the original design. She asked if that is what he is referring to.

Chair Lee said what he is asking is 'why didn't you put a garage there instead of a screen porch?', because there is room for it.

Mrs. Ehmann stated that they wanted a screen porch.

Mr. Ehmann stated that they didn't know if they would be able to afford a garage at the same time.

The Ehmann's did not pursue getting a variance for the garage at the same time as the house because they figured they would do one step at a time.

Chair Lee stated that the original application that they have for the house, the comments by the Planning and Zoning Department concerns the approval 'no closer than 35' to the OHWM, no decks or garages issued with this permit'. He thinks what Mr. Albert is asking is why didn't you apply for a garage when you had the original house because you probably could have gotten it.

Mrs. Ehmann stated they were not part of that original process. The designer submitted that proposal. They liked his design of the house and they asked him about how the house would be laid out. His vision was always to have a separate garage. The Ehmann's liked his vision.

Mr. Ehmann stated that they didn't think it would be an issue. They didn't think that far ahead.

Mr. Wegner began his testimony by clarifying that this was not a variance that was granted. At that time there were two types of averaging. One where you would look at the property to the left and to the right, add them together and divide by two and that is your setback.

Chair Lee confirmed that the ordinance does not have that language now. Mr. Wegner replied that the ordinance has that now, in a form, but this was the type of reduced setback where you start at ten-feet from the right-of-way, build a 30' envelope toward the water and that is the setback. However, you need Town approval. In part of the Town Approval they wanted it, for some reason, in that location versus closer to the lot line, where they are proposing the garage. He cannot remember why but they were adamant that they wanted a 20' setback, if they did push it toward that line, for the house. What they submitted and what they were approved in 2017, they put it way over here (pointing at a picture) because the Town wanted them at least 20 feet from the line. The issue of why they didn't build a garage, he is 99% sure the issue of a garage was discussed back then and that is why you see it as a condition. Mr. Wegner stated they always told people at that time that it is their first and last kick at this. Once you use the shallow lot language, which no longer in the ordinance, you cannot add on to that structure after you build it. So, build it the way you want it the first time. It is very common for the department to put on there no decks, because it doesn't include an accessory structure, but no garages if they were proposing it because you can never add on to it again. What you have is what you have. Again, it wasn't a variance, it was something that was permitted by the Town. He doesn't know the ramifications if they did or did not get a variance to be five-feet from that lot line how that would affect the conditions of this permit, especially since the language doesn't exist anymore. One of the big questions is 'where is the right-of-way'? When you have on this map 45' from the OHWM and then to scale this garage is 18'x20', he understands they are looking at a 24' x 24'. If you do that, what is the setback to the right-of-way? It appears that if you slide it over, maintaining the setback of 57', or if it is 45' that a 30' setback to the right-of-way is able to be maintained. Now that it is measured at 57', if you finish the rest of the measurement off, going 24' toward the road what is the resulting setback to the right-of-way? It is his understanding that was not marked. That is very crucial. They are proposing it to be 30', but it that exactly the setback to the right-of-way? There is no way of knowing that since it was not marked. Even if he was able to show alternatives to get it further from the lake, so it is five feet to the lot line and 20' to the right-of-way, without knowing that setback to the right-of-way location you can't predict what size of garage you could place there.

As far as the penned in area for the dogs, that would be something you'd have to come back for another variance. It is not included in part of the denial and it is not in the appeal. If that is a proposal you would pursue down the road, I would think the comments from the DNR would be similar. The County would look at this as a self-created hardship because they had the opportunity to add on, and for the contractor at that time to think a garage would come down the road later, that is disturbing because it was well know that this was your first and last kick. You put down on the permit exactly what you want because you will never be able to add on to it. It's a self-created hardship because you chose a patio over a garage at that time.

Chair Lee confirmed that this is a two-car garage. He asked if a one car garage would fit in there.

Mr. Wegner said that is the other thing. He always looks at options. One of the options is, under the ordinance today, they could actually add on to this building at a setback of 20' to the right-of-way, maintaining a 43' setback from the OHWM in compliance with Section 9.99. He shows this to the Board because in looking at reasonable use and if there is another alternative where they could get something close to what they are requesting or even a single car garage in compliance with the ordinance we have to hope that would be pursued first. Mr. Wegner provided a drawing to the Board (Exhibit C).

Mr. Wegner stated when he had staff go out to the property in October, 2019, they measured the existing home to be at 52' from the OHWM versus what they have on the permit from 2017 at 43' from the OHWM. There is some room there to play. That additional room is contingent upon where they right-of-way line really is. He feels that if they knew where that was they would have a better opportunity to look at what the maximum setback that could be accomplished if you were to grant a variance.

Chair Lee asked if where the 20' is marked is the right-of-way.

Mr. Wegner stated it is. The line that is right above the 20' is the 10' setback from the right-of-way.

Mr. Ross stated that the red area (on Mr. Wegner's drawing) the garage is within the red area.

Mr. Wegner responded that is correct but the difference is an accessory versus an addition to a principle structure. We do not allow additions to accessory structures or replacement of accessory structures, other than a boathouse, less than 75' to the OHWM. But you can expand a principle structure located with 35' and 75'.

Mr. Ross said that they can build in that area if they attached it to the house.

Mr. Wegner corrected himself. He said that language has changed. He would be limited to 200 square feet. His thought is, they have a 20' x 12' patio. If they were to convert that to garage and add 200 square feet more they would be able to obtain a maybe, stall and a half garage in that area. He stated that if they do something with the existing square foot, that is patio, and add 200 square feet that is permitted under the ordinance of lateral expansion, the remaining would be 440 square feet, which would be about a car and a half.

Chair Lee asked if he was suggesting they got rid of the patio and attached a 1 or 1 ½ car garage to the screen porch...

Mr. Wegner said to convert the patio to garage square footage and add on another 200 square feet to that.

Mr. Lee stated that there is an alternative then.

Mr. Albert asked if it was a combination of garage and patio. Facing it the garage could be on the left and patio could be on the left side still facing the lake

Pete Wegner replied it could, depending on the size of the garage. He was just trying to come up with something close to the square footage of what they are proposing. They can replace that patio within its footprint because it is part of the principle structure and then add on another 200 square feet, per the ordinance, you'd get 440 square feet you could essentially use as a garage area.

Mr. Albert asked if there were any limitations as to how close they could go to the holding tank.

Mr. Wegner said they could be five-feet.

Mr. Hansen asked to be reminded about the 20' required setback from the road right-of-way.

Mr. Wegner said yes. When you look at the structure that is now 10', today that language does not apply to be 10' so if you expand an addition has to meet the applicable setbacks. So, it is saying you can add on to a structure that is 10' as long as the addition starts 20' from the right-of-way. That is why Mr. Wegner is stating you really have to use that original square footage for the patio as part of the garage because you can go up or down or replace that square footage and then add on 200 square feet inside the red lines (referring to his drawing).

Mr. Ross stated that he is making the assumption that the current patio is twenty-feet or more from the road right-of-way.

Mr. Wegner said he is making the assumption that part of it is within twenty-feet. He is just guessing, but you can replace that square footage at that setback as long as it is not over the right-of-way.

Mr. Albert asked if it makes any difference in terms of the shallow lot provision that existed at the time the house was built, cannot be applied at this time.

Mr. Wegner said he does not believe it can.

Mr. Wegner stated that he does not believe it can.

Mr. Albert asked if there was grandfathering.

Mr. Wegner said there is not.

Mr. Hansen has questions going back to the idea of having a separate garage. Back in 2016 they got approval from the Town of Pine Lake for 10' setback from the right-of-way and requiring no closer than 20' from the westerly lot line. If they went closer than 20' to the westerly lot line do you think they would have to go back to the Town and get this changed?

Mr. Wegner said that is a good question. This proposal was for a principle structure. That is what they were looking at. He does not know if the Town has a different opinion because it is a garage. The Town was sent a notice of this appeal but did not respond.

Inge Van Kampen, Town Lake Chair, was sworn in. Ms. Van Kampen stated that she was on the Town Board when the Ehmann's were granted the reduced setback. She stated that they looked at it and the big problem comes in with the snowplowing. She stated she was not sure if the Town Board would want to go less than the 20'. The Board did not receive the appeal until after their last meeting, that is why they have not given an opinion on it.

Mr. Hansen stated that the approval in the March 17, 2016 letter from the Town of Pine Lake approves a 10' setback but requires a 20' setback to from the westerly lot line.

Mr. Wegner responded that there was a reason for that but he cannot remember what it was.

Ms. Van Kampen said she would have to look at the minutes.

Mr. Hansen asked if they propose maintaining a 10' setback for the garage would the Town want a re-approval of that structure?

Ms. Van Kampen said she could not answer for the Town Board.

Mr. Hanse stated that when they were at the onsite visit he thought Diann measured the distance from the south side of the proposed garage, where that stake was, to the 10' setback line.

Mr. Albert replied that in terms of the proposed structure and measurement that was taken at the time; as you are facing the proposed structure the stakes that were there, on the left side she measures it 57' from the OHWM and from the right-of-way it was approximately 20'. But that couldn't really be determined because you didn't know where the right-of-way technically was. It would be 20 plus 24, would have been 44 to that same stake, which was the left side of the proposed garage. So, potentially 33' on the right corner and they didn't measure how far it was from the right-of-way. Potentially it could have been ten-feet/thirteen-feet. They didn't determine where the center of the road was for the right-of-way. There were only the stakes that were there that were looked at.

Mr. Hansen asked again what the measurement was from the stake where it was 57' to the OHWM toward the – the distance from that stake to the 10' setback was?

Mr. Albert answered the 57' plus the 24', that would have been 81.

Mr. Ross asked Mr. Van Strydonk when he put in his four stakes, when you are looking west (the right side of the structure) your stake would be the closest to the house and closest to the road, on what basis did he put that down and did he have any idea that was 20' from the right-of-way.

Mr. Van Strydonk replied that the one thing that he wanted to make sure of, especially on road side was that he started the garage at least further back from where the house is.

Mr. Ross said that doesn't answer his question. The big concern today was where is the road right-of-way. It wasn't marked and the Board couldn't exactly determine where it was. It looked like the stake the builder set was 20'.

Mr. Van Strydonk said he could not remember which one he used.

Mr. Wegner went back to the question that was mentioned earlier regarding the Town he said he would hope if the Board were to grant or consider granting a variance make it contingent upon Town approval with the side lot if it is reduced to the center line. In the past the Town has always been involved. With the COVID maybe they didn't have a chance to respond. They have a lot of time invested in the placement of this house in 2016/2017. If the Board would just keep that in mind.

Chair Lee asked Mr. Wegner to review what he thought is possible.

Mr. Wegner stated that if you look at the house itself and the area that is the covered patio. That is approximately 20' x 12'. That area that extends off the edge of the existing patio would meet the applicable setback and if you square it off and add on another 200 square feet you could come up with a total of 440 square feet for a garage; utilizing the existing square footage of the existing patio and adding on 200 square foot additional, lateral, according to the ordinance today.

Chair Lee asked if that would meet the setback from the lake.

Mr. Wegner said it would.

Chair Lee asked the appellant to respond to what the County has said and suggested would fit without any variances.

Mrs. Ehmann said that with the red line (drawing submitted by Pete Wegner to the Board) he said it would meet the square footage of 440. She asked if it had to be attached or could it be separate.

Mr. Wegner replied that the red line is showing the areas that meet the applicable setback. They would have to add on to that existing porch up to 200 square feet, staying within the red lines, and it would have to be attached. The language he is referring to is the expansion of an existing principle structure.

Mrs. Ehmann then asked if it could be attached in a creative way; meaning they have a garage separate but they have a walkway with a shelter attached to the porch. Could it be attached 200 square feet somehow with a long walkway of three feet?

Mr. Wegner said they could, but the creativity is going to eat up the 200 square feet.

Chair Lee closed the public portion of the public hearing.

Mr. Hansen stated he felt the Ehmann's did a great job of preserving the shoreline.

Mr. Ross stated he believes it is possible to get a garage in there without the porch.

Mr. Pazdernik stated that one thing to consider is why the Town had the 20' setback from the lot line to the rear. Ideally the owners wanted a 24'x24' garage but since they are entering into an offset it wouldn't be unreasonable to make it 24'x20'. There is still plenty of space for toys and whatever. Aesthetically it will still be in a good spot. He feels with modifications it is possible.

Mr. Albert stated that there are three criteria for the variance and the unnecessary hardship was commented that in fact there was as self-imposed hardship because they elected to build the porch at the time they could have elected the garage; an attached garage to the structure. In terms of unique property limitations, yes it is a narrow and shallow lot, but they were given provision for that when they built the structure. In terms of harm to public, it isn't just a matter of a neighbor as it was stated it is a matter of the public benefit or lack of benefit that has to be considered. As he sees it, there is a no, a yes and a no to the three criteria that the Board has to look at. The other comment to that is that there is an alternative.

Mr. Lee stated that this is his feeling as well. He feels the three criteria that they need to meet the unique physical limitations, yes there are but it is possible to build a garage smaller – there are alternatives. The public interest, he thinks Mr. Albert covered and he mentioned in his comments earlier the hardship is self-created. The garage could have been built in the beginning and he feels that has a solution as well. It maybe is not the most desirable solution. He said he would have to say no to all three of the criteria. What the Board is looking at is the original proposal and need to vote that up or down. The alternatives, which have been noted, have to be discussed with the Planning and Zoning staff and he feels they can get something there. It may not be exactly what they want, but it can be done. He stated he is looking at what they have proposed and cannot grant a variance on either side.

Mr. Ross stated that in a nutshell they are asking for a variance to build a 24'x 24' garage 45'...

Mr. Lee stated he is not prepared to grant that variance to do that.

Mr. Ross stated he is just clarifying what they are asking for. He asked if the Board would grant a variance, instead of the normal 75' of the 45' to build a garage? All the rest of it can fit. The question is whether the three criteria that the Board needs to follow for a variance are met to provided that variance. He would suspect that all three are not met.

Mr. Hansen verified with Mr. Wegner that if there is any reason they can fit a legal garage, separate from their home, they would be allowed to do it.

Mr. Wegner said they couldn't do it without a variance.

Mr. Albert stated that based on what the Board is looking at, in terms of what is currently proposed and requested in the variance, he would move that it be denied based on the circumstances of what the Board has reviewed and discussed. Based on the three criteria, only one of which can be met for a variance. The one that can be met is unique property limitations – shallow/narrow lot. Second to the motion by Mr. Pazdernik.

Chair Lee reiterated that the motion is to deny the location of the garage as proposed. On roll call vote: Aye: Unanimous. The appeal is denied.

The decision is to be written by August 13, 2020.

2:15 P.M. the meeting was adjourned by Chair Lee.

Harland Lee, Chairman

Phil Albert, Secretary