

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING

Tuesday, June 19, 2012

1:00 P.M. – Committee Room 2, Second Floor

Oneida County Courthouse, Rhinelander WI 54501

Chairman Harland Lee called the meeting to order at 1:00 p.m. in accordance with the Wisconsin Open Meeting Law.

Roll call of Board members present: Guy Hansen, “here”, Harland Lee, “here”, Phil Albert, “here”, John Young, “here.” Bob Rossi & John Bloom are excused from the meeting today.

County staff members present: Peter S Wegner, Assistant Zoning Director; Lila Dumar, Secretary III.

Other individuals present: Michael Krohn

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 today is made up of two regular members and two alternates who will serve as active board of adjustment members and take part in the hearing and deliberation. Anyone wishing to testify must identify themselves by name, address and interest in the appeal and shall be placed under oath.

Chairman Harland Lee swore in Michael Krohn and Peter S Wegner, Assistant Zoning Director.

Acting Secretary Phil Albert read the notice of public hearing for Appeal No. 12-004 of Michael Krohn, 9056 Aden Lane, Marshfield, WI 54449, requesting an area variance to allow construction of a 171' x 9' retaining wall, 4' x 9' stairs, and 6' x 9' wheelchair ramp, all within 40' to 75' of the ordinary high water mark (OHWM) of Crescent Lake, but not in compliance with Section 9.96, Shoreland Mitigation Plan, Chapter 9, Oneida County Code of Ordinances.

The Notice of Public Hearing was published in the Northwoods River News on April 10 & 14, 2012; and was posted on the Oneida County Courthouse bulletin board on April 5, 2012. The certified and first class mailing distribution list is contained in the appeal file and is part of the record of today's public hearing.

Mr. Albert stated that an onsite inspection was conducted on this date at approximately 10:00 am. Present at the onsite inspection were the members of the

Board of Adjustment: Harland Lee, Phil Albert, Guy Hansen, and Jack Young; Peter S Wegner, Assistant Zoning Director; and the Appellant Michael Krohn. Observations by the Board included an existing single family residence, boathouse, wheelchair ramp, stairs to the lake and retaining walls. The lot has a steep slope toward the lake from the house up to the driveway with limited vegetation, as is true of the adjacent lot to the right. There are retaining walls located near the residence and approximately 40-45 feet from the OHWM. Those situated 40-45 feet from the OHWM consists of two tiers of block, 3 blocks high at each level. The lot is clear and level from the house to the lakeshore. There is continued construction on the lot.

Mr. Albert stated that there is no correspondence received by the public.

Peter Wegner, Assistant Zoning Director, submitted photos for the record, to be made part of the file. (Exhibit #1 & #2).

Chairman Harland Lee stated that the Board will hear testimony from the appellant/agent first and then the opposition. Following that, the appellant and opposition will have an opportunity for rebuttal and then closing statements. The public hearing will then be closed from further testimony. Consideration and additional questions can be asked by the Board members of the appellant or the opposition during deliberations. You may stay for the disposition of the appeal. Upon conclusion of the deliberation of the Board, the Chair will call for a motion and a second, and a roll call vote will be taken for the decision of the Board.

Michael Krohn: I want to thank you for taking the time to come out this morning. We started this construction. When we started it, we knew that this erosion was an ongoing issue and you could see from the pictures of the old cabin. There was an issue of the slope of the land. So we wanted to try to control that, so we built a retaining wall. And what was in there, you were correct, it was old railroad ties behind the boathouse and over from the boathouse around past where the steps are there, the fellow I bought this property from, owned Wausau Marble and Granite. On the top of the hill when you go off the driveway there, was several slabs of granite. There were also pieces of cement, like sidewalk blocks. That's what was there and a lot of that had been silted over. It has been a problem since we owned it, since 1974. We didn't do much about it. We knew at some point we would end up building and that would be the time to take that out. So we built this retaining wall and we had that silt fence. We actually had water come down. We had a storm in July or August last summer, where the water was up to the top of that silt fence. It was a good thing that we had it there. And there was a lot of dirt there. I did bury some of that dirt out of there because that silt fence was probably up that high and dirt was piled up about that high. There was a lot of stuff going on there. We built the retaining wall and you saw that. It is what it is. We tried to do it right. We got a lot of input as to how to do it. And I think we did a good job. As far as the frontage goes, when we bought this property, we bought it for the view of the lake. It's an area...our kids spend a lot of time out there. They play

volleyball down there. Now we have grandkids and I really don't want to close that up. I just think it would be a problem for us to have that closed up. We want to keep it mowed and I don't think we are hurting any of our neighbors. I talked to the neighbors before we built this. They were all in favor. I guess that's all I really have to say.

Phil Albert: There are two tiers. I assume you use the lower tier for volley ball or recreation. What is the use of the upper tier?

Michael Krohn: Well, the upper tier is right outside the windows. They use that to...I don't know.

Phil Albert: Did you put these in first, or did you build the house first?

Harland Lee: You put the retaining wall in before you had a permit, is that right?

Michael Krohn: Yes. That was my fault. I didn't know I needed a permit. It was written, when Diann came out there, so must of written that on the back of the permit. When I got the permit, I read the letter. The letter said to put it up on a tree and that's just what I did. I never looked at the back. I didn't realize anything was written there. When I got this letter, I called Pete. I didn't know that I needed one. I looked down this blue sheet with all the permits, and when I read that sheet, it didn't indicate that a permit was needed. So I didn't get one. I was replacing what was there. I thought I was okay. So that is my fault.

Harland Lee: Peter said he would issue an after the fact permit for the retaining wall, but one of the requirements for that is that you must complete mitigation on that lower area.

Michael Krohn: Correct.

Harland Lee: So in effect, what you are asking for is a variance from that ruling, and there are three things that we need to consider as we decide on this. Unique physical property limitations, No harm to public interest; and unnecessary hardship. So those are the three things that we are going to be looking at.

Guy Hansen: Looking at the photos before the wall and after the wall, it appears to me that actual use of that distance between the house and the lake has been significantly limited by the wall. Playing volleyball or soccer down there, the wall would be a great impediment.

Michael Krohn: It is wide enough for volleyball. But you are right, somebody runs and...

Peter Wegner, Assistant Zoning Director: Just some background. Mr. Krohn came to the office for a permit to build a home and when we went there, part of that permit

included a sanitary permit. When we went there to inspect the sanitary system, staff noticed that there was a retaining wall there. So I sent him a letter citing Section 9.94 Placement of a Structure less than 75 feet from the OHWM. Mr. Krohn called me right away and we looked at ways to gain compliance. The first things we considered is if we could consider it a replacement. Based on the photos before hand there really wasn't an existing retaining wall there. Other than materials that were embedded in that slope. I couldn't allow it under Section 9.99 to be a replacement of an existing retaining wall. Then we measured the total square footage located between 45-75 feet. We discovered that it was less than 200 square feet. The ordinance does say under the Gard Bill – Special Zoning Permission, that you can have up to 200 square feet of structure. It does not say open deck or patio. So we went that route. But one of the requirements is that you have to mitigate. So regardless of whether you are after the fact or not, the requirements would still require mitigation. That is one of the conditions to issue a permit under that section. As far as the other issues, the ramp and the stairs, the ordinance does require that boathouses and stairs be located in the view corridor. In this case, it is not a new boathouse. It is a boathouse that was re-sided. The stairs are in almost the exact location that they were previous to the home being built. So that no longer was an issue. The ramp itself, we can issue a permit through Section 9.19 ADA Requirements. So in the end, we were just left with this wall. He did stabilize everything, but to make it compliant, I had him file a permit and in the process he discovered mitigation. And he wasn't comfortable with it. So then we are here today and he is appealing whether or not he should be ordered to vegetate per the ordinance.

Guy Hansen: First of all, when we are considering the physical property limitations, are we considering the retaining wall or the mitigation?

Peter S. Wegner: Both.

Guy Hansen: In the mitigation plan, there is a copy of a mitigation plan; I don't understand how this relates to the property. I don't see any.

Peter S. Wegner: That's a site plan. He didn't submit a mitigation plan. He submitted a form that says "I will not conform with mitigation."

Peter S Wegner: If we were to draw up a mitigation plan, at a minimum, in that 35 ft buffer, 12 trees and 36 shrubs. These are one inch trees. So it's...if you compare Oneida County's to others, we are weak. And you can't mow within that 35 ft zone. So because of the existing boathouse, if you went over 70 feet basically, that area would be vegetated and we would allow a way to get from the walkway to the water to the pier. Basically that area would be completely vegetated and could not be mowed.

Harland Lee: That would leave the upper area open.

Guy Hansen: So the shoreland mitigation plan, which has Mike's name on it, this is actually what you wrote up as far as a permit.

Peter S. Wegner: No. This is a boiler plate form that we have in our office. There are two types of mitigation that we would use this for. One is for additions to a home less than 40 feet from the OHWM. That requires mitigation A-E. Mitigation that is required for the Gard Bill is just E. Just the 35 foot buffer.

Guy Hansen: So D & E which look like they would also apply here really don't.

Peter S. Wegner: Yes.

Guy Hansen: So the buffer zone would be from the water—OHWM and 35 feet. Not 35 feet to 75 feet.

Peter S. Wegner: 0 to 35 feet is the buffer.

Guy Hansen: And it would extend then on this site map from the boathouse, the full width of the lot, because the boathouse already takes....

Peter S. Wegner: The boathouse is 16 feet. We talk evenly spaced. Look on his site plan, there would be somewhere like 4-5 feet from the edge of the boathouse that would be vegetated. Then leave a little area for the walkway. Yes, it would be that entire 70 foot swath, 35 feet back, which is basically right up to the wall.

Guy Hansen: Could the viewing area be broken up into several sections.

Peter S. Wegner: No it would have to be continuous.

Guy Hansen: But you are allowing a walkway.

Peter S. Wegner: I am allowing a space for a walkway because it was existing and there is language in the ordinance that a walkway can be put in an inconspicuous location. How you define that at this location, I don't know. But since it was done before 1999, we can allow it to remain in that location and allow replacement.

Guy Hansen: So the 30 ft viewing corridor is mostly taken up by the boathouse and the space on the other side.

Peter S. Wegner: Correct.

Harland Lee: If we did not grant a variance and Mr. Krohn did not agree to the mitigation, what would be the result of that decision?

Peter S. Wegner: He would have to remove the retaining wall. And if he didn't, we would file a long-form complaint. That gives us injunctive relief. It allows us to have the Judge order him to remove it. With a citation, I can't tell him to remove it or relocate it.

Phil Albert: The vegetation, the trees and the bushes you are talking about. They have to be in this 35 ft area between the water and the retaining wall? They couldn't be above that?

Peter S. Wegner: No they couldn't. They have to be in the 35 ft buffer, evenly spaced. In this case it's easier to decide how it should be, because there is nothing there. It is more difficult when you have existing vegetation with that 35 ft buffer. This is pretty cut and dry.

Phil Albert: The view corridor has to be determined, has to include the boathouse. That is decided by the existence of the boathouse? Is that right?

Peter S. Wegner: And/or walkway. We chose the boathouse because it is larger.

Guy Hansen: So if the boathouse were removed for some reason, that viewing corridor could be any place on the lot.

Peter S. Wegner: If the boathouse was not there all we would have left would be the stairs and we would call that the view corridor.

Michael Krohn: We went through this exercise with the boathouse. I was going to build a new boathouse and applied for a permit and I found out I had to mitigate the shoreline. I found out what my options were. That's why we remodeled the boathouse. I did not want to mitigate. I think planting a few shrubs maybe is okay. But when Pete told me what I had to do, I drew it out. To me, it's way overboard. I know other people who have built on the lake and I can show you there was no shoreland mitigation. I guess when he told me I couldn't mow, I don't want to live with mosquitoes and that is what you are going to have. We built this place so we could see the lake. I don't want to do it.

Phil Albert: If you were to use dwarf crab apple, and put them inside these planters, in the wall? That could be met?

Peter S. Wegner: No. That would be greater than 35 feet.

Harland Lee: The planting has to be in that 35 feet.

Guy Hansen: Yes. "The vegetation buffer will cover up to 70 % of the half of the 75 ft setback area." So essentially that is the 35 ft buffer.

Guy Hansen: And in addition, we are really sliding this into an existing variance because it is less than 200 square feet of structure. Isn't that what you said?

Peter S. Wegner: Yes. The retaining walls, if the total square footage looking down were greater than 200 square feet, some of that would have to be removed regardless. You are only allowed 200 square feet of structure within 35 feet, excluding boathouses and walkways.

Michael Krohn: If I don't get the variance, I have to take the wall off. What is the suggestion at that point? I don't want to do that. What does the DNR want me to do?

Peter S Wegner: There are numerous things that you can do. If you didn't mow it, that would control erosion. There is coconut matting, bio-logs, earthen walls. It won't look as appealing as this does the first year out, but it definitely will do the job.

Mike Krohn: I didn't know that.

Harland Lee: And if you did that, he wouldn't have to mitigate. Is that right?

Peter Wegner: Right. We don't consider bio logs a structure. Another thing we have allowed is an earthen wall. That would be another option.

Guy Hansen: That existing slope on the pre-pictures, that slope with some shrubbery and rocks in there, does that qualify for what you just said, the earthen wall?

Peter S Wegner: Yes. Definitely.

Phil Albert: Can I ask you to go back to why that wall can't be permitted as a replacement wall? There was not evidence of...

Peter S. Wegner: I'll read this: *Section 9.99 D (3) (d): Replacement of retaining structures, essential for the control of severe erosion problems, due to steep slopes, or unstable soils shall be permitted.* Our interpretation of that is that there has to be an existing wall there. And even then, it's a determination by the Department whether it can be replaced or graded out. It is very rare that we allow it, but if this wall was taller and it was there with railroad ties so close to the water, we probably would have allowed replacement if there was a structured wall there.

Guy Hansen: So if someone comes into your office and applies for a permit, and you know there is a situation like this, do you provide the individual with these options like we just talked about? The living wall and the bio logs as options other than grading?

Peter S. Wegner: For the most part we do. Like in this case, it was already done. Yes. I shouldn't say for the most part. Yes. We do. If it is less than 75 feet from the OHWM

it is not permitted. Even this has been a stretch. But our Committee has given us direction to allow in after-the-fact situations to be in compliance. Technically, in spirit of our special zoning permission language, it should really be just for open decks or patios. But it says structure, so the direction that the Committee went is that for walk outs and for situations like this, we are allowed to include that in the 200 square feet. If it was less than 75 feet and they already had structures, we would be talking about earthen walls for sure. Every year I probably get 6-12 of these types of complaints. Most of them are removal. And of those removed, most of them end up with an earthen wall of some sort.

Guy Hansen: So if removal were required, there would still be some sort of mitigation.

Peter S. Wegner: We would require that he add vegetation to stabilize the area.

Guy Hansen: Kind of like it was before?

Peter S. Wegner: Yes.

Phil Albert: You've determined the 12 trees and so many shrubs and bushes based on the formula of the square footage and area. There's no trade off for trees for bushes.....

Peter S. Wegner: Nope.

Guy Hansen: Is there any emphasis on natural vegetation?

Peter S Wegner: It has to be native vegetation.

Guy Hansen: Some blueberry bushes, are they native vegetation?

Peter Wegner: I don't know, are they?

Phil Albert: Yes.

Michael Krohn: I really question whether planted grass would really...that soil is thin, it moves. If we have to take that retaining wall out of there, it would be...I know how it was before.

Phil Albert: But with the new retaining walls up by the house, I'm assuming you have lessened that by some degree just by the way you...with the down spouts.

Michael Krohn: You know that retaining wall when you walk down to the lake, on your right? When that house was built, I don't know if there were any zoning regulations at that time, they pushed...right over the edge and they had a silt fence that was...all that stuff came down on our lot. I didn't say anything about it. They are nice people. That's

why we did that along on the side there, because, even though they have big stones embedded in there now and silted in there from all the erosion that has taken place, it was a big problem. I know how that ground moves out there. It moves.

1:33 pm - Harland Lee, Chairman, closed the public hearing 12-004 of Michael Krohn.

The Board deliberated in open session.

Motion by Harland Lee, second by Guy Hansen, to deny appeal #12-004 of Michael Krohn, appealing the decision of the Planning and Zoning Department requiring mitigation in order to keep the retaining wall. Roll call vote: Harland Lee "aye", Guy Hansen "aye," , Phil Albert "aye", Jack Young "aye." The motion carried.

Mr. Lee: Do we want to extend the time limit for filing the decision until Friday?

Motion by Phil Albert, second by Harland Lee to extend the time limit to file the decision until Friday, June 22, 2012. With all members voting aye, the motion carried.

1:39 pm - The meeting was adjourned.

Harland Lee, Chairperson

Phil Albert, Secretary