

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING

Tuesday, July 10, 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: John Bloom, “here”, Guy Hansen, “here”, Harland Lee, “here”, Phil Albert, “here”, Bob Rossi “here”, and Alternate John Young, “here.”

County staff members present: Karl Jennrich, Zoning Director and Julie Petraitis, Secretary II.

Other individuals present: Scott Rathbun, Tim Thomas and GERALYN THOMAS

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, one of which is present today, who will take part in the hearing until the public hearing is closed, at which time alternates will not take part in the 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 Scott Rathbun, Tim Thomas, GERALYN THOMAS and Karl Jennrich.

- Difficult to hear Mr. Albert.

Secretary Phil Albert read the notice of public hearing for appeal #12-005 Tim and GERALYN THOMAS, 6008 South Mathewson Road, Mazomaine WI 53560, requesting an area variance to allow construction of a 28'x36' single family home located 6 feet from the adjoining lot line and 19 feet from the ordinary high water mark (OHWM) of Burrows Lake contrary to Section 9.71 A Side Yards and Rear Yards and Section 9.94 OHWM Setbacks, Chapter 9, Oneida County Code of Ordinances. The property is located at 11805 North Lake Road, being part of Government Lot 1, Section 3, T36N, R5E, PIN LR 38-15, Town of Little Rice, Oneida County.

The Notice of Public Hearing was published in the Northwoods River News on June 23 and June 30, 2012; and was posted on the Oneida County Courthouse bulletin board on June 19, 2012. Mr. Albert read the certified and first class mailing distribution list into

the record.

Mr. Albert stated that an onsite inspection was conducted on this date at approximately 9:45 am. Present at the onsite inspection were the members of the Board of Adjustment; Diann Koshuta, Zoning Technician; Appellants Tim and Geralyn Thomas and contractor Scott Rathbun. There were pictures taken. Property boundaries were adequately marked. There were measurements from the right-of-way that were adequately marked. The well and sanitary facilities were located. There is an outhouse on the property and a 2600 gallon holding tank will be replacing the outhouse.. There is also a storage building that will be removed after proposed construction.

Measurements were taken of the existing structure and the proposed structure. It was noted that the lake is approximately three inches (3") higher due to recent rains. Mr. Thomas explained his proposed plan and also the existing well will be replaced. There is no garage now nor is one proposed. The lot is proposed to be elevated approximately 20 to 24 inches to the lot line to the adjacent properties. There was no erosion noted. Silt fencing was placed. The topography of the lot is low land. Other observations were storage shed, which will be removed and a gravel pile within 20' of the Ordinary High Water Mark. The proposed structure is to be 28'x 36', where the existing structure is 24'x22'.

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.

*Difficult to hear Mr. Rathbun

Mr. Rathbun started the testimony by stating that the gravel pile was on the property when the Thomas' bought the property. It will be gone when the project is finished.

Mr. Thomas stated that they have been using the gravel to fill in with the silt fencing.

Mr. Rathbun: As far as the improvement of the property, if you remember the neighboring houses are very similar in distance to the water. I feel that if we put in a new sanitary system and eliminate the privy, which was existing, put in a new well, I think, without touching any of the wetlands, the lot size is too restrictive to put the home setback from the lake or setback from the road. We did mitigation also when we're done; the mitigation plan was to plant trees and bushes so to get that back up. It's very level so I don't see a problem with the silt fences.
Can't hear what is being said here

Mr. Thomas: Currently we have a cabin that's not habitable. It's quite an eyesore, actually. The whole thing is. I think, like Scott said, with the outside privy, which is basically polluting the lake indirectly, like they all do. I think we're benefiting the area by getting rid of the privy and improving the land and increasing the tax base. It's kind of a good thing all the way around.

Mr. Rathbun: Did we have any complaints with the adjacent owners?

Mr. Lee: We've received no notice.

Mr. Thomas: They're happy to get rid of, actually, the place that we have now.

Mr. Hansen: Are they seasonal residents on each side?

Mr. Thomas: Yes they are.

Mr. Hansen: Which is what you are?

Mr. Thomas: Yes, and there is just a small handful of people that live there year round. Like I said before, we've, my Grandfather and Father built our family cabin in the early 50's. We were one of the first people that first moved to that Lake basically, when they were still backfilling around the Lake. So we've been there for over 50 years.

Mr. Lee: So, essentially what you want to do is build a slightly larger cottage than is there and actually build a little bit further from the Lake.

Mr. Thomas: Right.

Mr. Lee: You're kind of restricted in what you can do on that lot, but as I understand it you're trying to do the best you can. Questions?

Mr. Rossi: How long have you owned the property?

Mr. & Mrs. Thomas: 5 or 6 years.

Mr. Rossi: You don't use it?

Mr. Thomas: No, it's completely inhabitable. You don't even want to walk inside. I used to leave my deer stands inside, but I don't even do that anymore because the roof is in such bad shape, it's ready to cave in.

Mr. Albert: When was it last occupied?

Mr. Thomas: You know, when we bought it I bet you it had been 3 years before that. I'm not positive, but from what it looked like when we bought it, it didn't look like anybody had lived there. The gentleman that owned it, we very rarely saw him. We just happen to see him mowing the yard the day we seen the "For Sale" sign go up. We usually make it up 5 to 6 times a summer.

Mr. Albert: I'm sure the wetland has been affected by this year's rain. In an ordinary season what happens with those wetlands?

Mr. Thomas: The area to the right of the driveway, when you drive in the driveway on the right, that's completely dry, that whole area. And the area on the left usually has a little bit of water in it.

Mr. Albert: You're filling, I would assume, would be outside those two areas?

Mr. Thomas: Correct. Yes.

Mr. Rathbun: We would propose straw bales. That way when it fills up to it, it's the straw bales and the silt fence. In time the straw bale would decompose and that would be growing grass or whatever vegetation will come up there. And then what I'm thinking in a year or two ...can't hear what is being said.

Mr. Thomas: We can't put anything permanent there. No retaining walls or anything.

Mr. Hansen: I see there are several issues with the lot. One is the distance to the lake and one is the distance to the lot line, and that's six (6) feet. If you move that building four (4) feet to comply with that one, would that...is there a reason you haven't?

Mr. Rathbun: The distance between...can't hear what is being said.

Mr. Lee: That's what, 17 feet?

Mr. Thomas: Yes, and walking out of my front door of the cabin, basically right into that holding tank. So, I need some area to be able to walk out of the house without walking right into that holding tank.

Can't hear what's being said here.

Mr. Lee: You're moving it out about 4 feet.

Mr. Albert: Do you intend to extend the driveway between the tank and the house?

Mr. Thomas: No. Yep, the driveway will stop right at the house, basically. Like I said, we've talked to the neighbors on that side and they have absolutely no problem with the house location where we have it.

Mr. Rathbun: The big reason we pushed the home back, too was to have a little more room off the lot line.

Mr. Albert: That same question turns up pushing it back. And that, as I understand it, designated...it's farther back, the silt fence. Is there any chance of any...can't hear what is being said.

Mr. Rathbun: No, we're at that corner again. If we're six feet off the side lot line and six to eight feet off that back corner...more than one person talking here. Can't hear what's being said.

Mr. Lee: You also want to sink a well in there.

Mr. Thomas: Yes, I need to get a well in and keep my distances from the septic, the holding tank, and the wetlands. Right now, actually it's been a challenge to find a location for the well. Which we're right where we're at now we have the clearances we need for everything. The well has been kind of difficult to find a spot.

Mr. Hansen: The well is only 33 feet...

Mr. Thomas: 25 feet is the criteria.

Mr. Bloom: Mr. Thomas, if we would say, approve this would you consider making a ten foot distance between the lot lines and making instead of 36 feet 32 feet?

Mr. Thomas: We're kind of limited on...we end up with a bedroom on that side of the house that's actually under, it's about 9 feet wide now and we'd be taking out of that bedroom that distance, we'd be down to, with only two bedrooms we'd be down to almost an un-useable bedroom at that end of the house that's closest to the lot line. I mean, after laying it out, the mechanical room I have that down to a minimum size. We have a bathroom on that side of the house and then the kitchen, so we're kind of; we have the house down to a fairly small size bedroom with it only being a two bedroom. We have some fairly small bedrooms as it is. But that would be taking out of this back bedroom right here. Ideally I would not like to.

Mr. Bloom: So the answer is no, I take it?

Mr. Thomas: Ideally I would not like to.

Mr. Bloom: Would you or would you not like to?

Mr. Thomas: I would say no. It would be an unusable bedroom.

Mr. Rathbun: The bathroom is minimum size. You have to get a door.

Mr. Thomas: The mechanical room now is minimum size. I have to get all the things I need to get in there.

Mr. Rathbun: Can't understand what's being said.

Mr. Rossi: I'd like to ask Mr. Rathbun, if you built on the present footprint...

Mr. Rathbun: We talked about it. But if you retire, most people don't like stairs. One of the concerns we had was to get up and down the stairs. Tim and Geralyn both want...

Mr. Thomas: The footprint is so small; we would never get two bedrooms.

Mr. Rossi: How much smaller is it?

More than one person talking here.

Mr. Rossi: 22 x 24

Mr. Lee: It also would be closer to the lake.

Mr. Thomas: And basically my wife has a lot of trouble walking stairs now. She has a lot of medical problems with her legs as it is. So we would never be able to do a two story house.

Mr. Albert: A follow-up on that question, building on the current footprint you can expand it away. It's possible and restrictions apply.

Mr. Rossi: You could go landward.

Mr. Thomas: Right.

Mr. Lee: We can always come back to this. If there are no further questions as this point we'll ask Karl to address this from the County.

Mr. Jennrich: Pete did talk with Mr. Rathbun on numerous occasions regarding this project. We did give our positions that we'd have to deny any permits and have him come to the Board of Adjustment. At least from the County's perspective we'd like to see the 75' setback. In this case it's impractical. You can't meet it because of the wetlands between the road and Burrows Lake. They have difficulty meeting the side

yard setback. Actually, with this proposal it's coming a little bit further from the side lot line and actually going back further from Burrows Lake. Also, we have a provision under 9.92 that you can't have any land disturbance within 5' of a wetland and that's why the back corner is set 6' off that existing wetland between the road and the proposed home. So again, it's a horse a piece. We'd really like to see, as much as possible, to seek a 10' side yard setback. But the proposal that is before you today is at least getting a little bit further away from the wetland. Prior to the Ordinance revision we did have minimum size restrictions of 720 square feet, which the County thought was reasonable in Single Family Residential. That restriction no longer applies. If I had up this 28 x 36 it's 1008 square feet, which is what we require for a minimum size for a garage in Single Family Residential. I don't know what else to tell you. The only thing I can say to clarify things is that it would be a 25' setback to the holding tank. The holding tank could be within 5' of the structure. It's a lot that was created in 1958 and it does allow single family residential homes.

- Can't hear Mr. Jennrich here.

Mr. Lee: With respect to that holding tank and the house closer to that, my understanding is that the holding tank area is going to be elevated and if you move the house closer to that you're potentially stepping out your front door into a bank. Not steep, but nevertheless there.

*Can't hear what Mr. Rathbun is saying here.

Mr. Rossi: Although that is a pattern it doesn't create ...

Mr. Lee: The impression that I get, and correct me if I'm wrong, Karl, is that in the discussions you had, they have done about as they can do to provide something reasonable on that lot.

Mr. Jennrich: Yes. The County is happy, again, pulling away from the Ordinary High Water Mark of Burrows Lake. Again, if the Board did grant a variance we would like to see, for sure the privy removed.

Mr. Lee: I think it is imperative that those two things are...

Mr. Thomas: I want to leave the shed until we're done building so I have a place to put my tools and everything else while we're building the structure. Then that shed will leave. That privy definitely will be leaving right away.

Mr. Albert: It appears that there have been structure built on both sides of this lot that are closer than 75'.

Mr. Jennrich: Even through averaging you couldn't build closer than 40'.

Mr. Hansen: You cannot?

Mr. Rossi: You cannot.

Mr. Lee: Is there mitigation involved with this?

* Can't hear who is talking and what is said.

Mr. Hansen: Is it required?

Mr. Jennrich: Yes, it would be required – mitigation.

Mr. Rossi: Well, you saw the mitigation plan.

Mr. Bloom: How do you address this, Karl, because on your mitigation buffer zone it says no vegetation exists within 35' of buffer zone or 10 feet of the side lot buffer zone. So you're saying you have to have a 35 and 10 or if we approve this then it will go back to 20 and 6?

Mr. Jennrich: Well, they don't have a boathouse but they still would be allowed a view corridor in the front of the structure. Yes, they can mitigate, I'm assuming, as much as they can to within 35' of the high water mark.

Mr. Bloom: I'm talking about the buffer zone?

Mr. Jennrich: You mean the side yard?

Mr. Bloom: 10 feet side lot. It says, I'm reading the buffer zone here and it's kind of a conflict of what they want.

Mr. Jennrich: On the one side, yes.

Mr. Hansen: It requires mitigation on each side of the line.

Mr. Jennrich: It's my understanding if you face Burrows Lake, on the right hand side of the property they do have a buffer, correct? A side yard?

*More than one person talking here.

Mr. Thomas: On the right side of the driveway? Yes.

Mr. Jennrich: On the left side, they'd be able to get some mitigation. But yes, technically on that one corner they're not (can't hear) and then on the Lake they may be able to, they would be allowed a viewing corridor, 30 foot wide, but their home is only

32' wide so basically off the front of the structure it could be somewhat open but they can mitigate yet 35 feet back. Except for that holding tank is 14 feet, which again that's not my problem it's the State of Wisconsin. Even with that, there's nowhere else to put the holding tank.

Mr. Thomas: We struggled with that too, trying to find a place for that.

Mr. Jennrich: What are you putting in?

Mr. Rathbun: There are two 1350's and the reason we're going with the two because they're lower profile, so we don't have to raise them as high. It means less fill.

Mr. Jennrich: How long?

Mr. Rathbun: All together we did 32.

Mr. Hansen: So the mitigation plan isn't going to look, probably isn't going to look like it's presented?

Mr. Rathbun: When I did this mitigation plan, I talked with Pete that day, on some of the bushes and they're probably going to do some landscaping.

Mr. Thomas: We're going to put some bushes on the front of the property across the lake.

Mr. Rathbun: There are trees on the lakeside. There's only a certain amount of trees that are going to have to be cut.

Mr. Thomas: There are also roots along the whole front. It's just solid.

Mr. Rathbun: But if you plant a certain species, they're going to die. They will not live. A lot of Tamarac.

Mr. Hansen: When you measured, Phil, the setbacks of the existing cabin, what were those?

Mr. Albert: To the Ordinary High Water Mark on the left, 19 the right corner is 16.

Mr. Hansen: And to the lot line?

Mr. Albert: The front was 11'8 vs. 10'6. The back corner was 5'6 vs. 6'.

Mr. Lee: That's the new dimensions?

Mr. Thomas: That's the new stuff. The old one was 2'6, I think.

Mr. Lee: Any other questions?

Mr. Hansen: Under what rules or conditions would help us on either side, the left side specifically.

Mr. Jennrich: I'm assuming there could have been a tear down rebuild provisions.

Mr. Hansen: It's obviously built and it's obviously good sized. Can't hear what's being said here.

Mr. Jennrich: That I can take a look at but right now since 2002, 2003 (can't hear what he's saying) that new, tear down rebuild. If it's further than 40' there's also expansion rules.

Mr. Hansen: Tear down, rebuild on the same footprint?

Mr. Jennrich: Yes.

Mr. Rossi: But you can go farther away? You can go deeper in the lot?

Mr. Jennrich: We discussed that with Committee a little bit. Yes, you have the ability to get further away from the Ordinary High Water Mark, it's a complicated issue. Getting further away from the Ordinary High Water Mark may not allow you to use that square footage that you removed and add it to the landward side of your structure. If that makes sense. We just like to say to stay within your teardown footprint.

Mr. Lee: If there are no further questions.

Mr. Albert: I have one. In terms of hardship. What would you do with this lot if you couldn't build?

Mr. Thomas: I don't know. I wasted a lot of money, I guess, on it. Which is kind of frustrating. Five years ago, before I purchased the land we had Oneida County Come out and (can't hear here) and that was one of the reasons I purchased the land. Was for future selling if things didn't work out, we didn't build on it that I was assured this was a buildable property. And since then I've lost at least a quarter of the property, if not more, to wetlands. So, I would end up probably having to sell it for a fair amount of loss, I guess. Which is kind of frustrating considering it was buildable before I purchased it. I basically just want to improve the site. That's what I'm trying to do and I think overall all this is going to be the best for the lake it's going to be the best for the area. Instead of having a dilapidated, falling down cabin there with an outside privy that's polluting the lake, I think we're doing something that's very good here.

Mr. Hansen: Karl?

Mr. Jennrich: Yes.

Mr. Hansen: This would be totally buildable if they stayed within the original footprint, right?

Mr. Jennrich: They can tear down and rebuild, if I'm not mistaken, 6' from the lot line, yes they could totally rebuild.

Mr. Hansen: We'd allow them to build a two-story structure?

Mr. Jennrich: It can be done.

More than 1 person talking here.

Mr. Lee: Any further questions? Now we will close the testimony at this time and go into our deliberation. You're welcome to stay here and listen to what we're talking about. If we have any questions, we'll ask you to address that question only, not go off on a tangent somewhere.

Mr. Hansen: Karl? We'd allow them to put that holding tank in if they didn't build a dwelling unit, wouldn't we?

Mr. Jennrich: Yes. We sort of have "laxed" camping regulations. They can park and RV or bring an RV in and out.

Mr. Rossi: They're limited to time, though? For camping?

Mr. Jennrich: No.

Mr. Lee: Ok, the testimony is closed and we'll go into our discussion. I think if we are agreeable on allowing a permit here, it would have to comply with the three things as known. Unique physical property limitations, no harm to public interest and unnecessary hardship. So, we'll address our concerns along those lines.

Can't hear what's being said here.

Mr. Lee: I guess the way I look at that Phil, is there actually a proven situation and I think there needs to be some consideration for that. I think if they were complying to that existing dimension. Not only would that be somewhat of a hardship for them but it would also be bad for the public in terms of getting closer to the lake, closer to the lot line – those kinds of things.

Mr. Rossi: And I think a two-story would create this.

Mr. Bloom: I'm in favor. I think it is unique for them. I think it's an unnecessary hardship in the three areas and it would be an improvement.

Mr. Hansen: It certainly is a unique physical property limitation. The lot is very marginal. No harm to public interest. I had trouble with the unnecessary hardship because I do think a reasonable use could be made of the property if you have a holding tank (can't hear). However, you could also allow them to build on the footprint where they are now, which would be worse than what they're proposing. I'm not sure we can prove #3.

Mr. Lee: To move this thing along I'm going to make a motion that we approve the appeal as requested and discussed here today with the idea in mind that it does meet the requirements of the appeal: unique physical property limitations, no harm to public interest and unnecessary hardship. Second by Mr. Rossi.

Mr. Hansen: Do we need to include the removal of the shed and privy or is that ...

Mr. Jennrich: I'd like to see removal of the shed. It's not a requirement.

Mr. Lee: If it clarifies the situation as far as the County is concerned I'll amend my motion to include the removal of the shed, the privy and mitigation. Second ok with that?

Mr. Rossi: Second.

Mr. Lee: We'll have a roll call vote on the motion:

John Bloom "aye", Guy Hansen "aye", Harland Lee "aye", Phil Albert "aye", Bob Rossi "aye". The appeal is granted with the conditions you've heard.

Mr. Thomas: So, the shed can stay until I get the building built?

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

Motion by Guy Hansen second by Bob Rossi to extend the time limit to file the decision until Friday, July 13, 2012. With all members voting aye, the motion carried.

1:47 p.m. Motion by Bob Rossi second by Guy Hansen/John Bloom to adjourn. With all members present voting aye, the motion carried.