

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING
Tuesday, September 11, 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”, Alternate Norris Ross, “here.”

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

Other individuals present: Russell Wadzinski.

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, 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 Russell Wadzinski, appellant; and Peter S Wegner, Assistant Zoning Director.

Secretary Phil Albert read the notice of public hearing for appeal #12-006 of Russell Wadzinski, 2155 The Point Road West, Tomahawk WI 54487, requesting an area variance to allow construction of a 36' X20' boathouse with a flat roof to be used as an open deck with railings and placed on a 25% slope, 0 feet from the ordinary high water mark (OHWM) of Lake Nokomis. These activities are contrary to Section 9.94 A(2)(d)(6), Section 9.94 A (2) (d)(8) and Section 9.94 A(2)(d)(9), OHWM Setbacks and Special Zoning Permission For Structures In Shoreland Setback, Chapter 9, Oneida County Code of Ordinances. The property is located at 2155 The Point Road West, being part of Government Lot 1, Section 33, T36N, R6E, PIN NO 504-4, Town of Nokomis, Oneida County, Wisconsin.

The Notice of Public Hearing was published in the Northwoods River News on August 28, 2012 and September 4, 2012; and was posted on the Oneida County Courthouse bulletin board on August 24, 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 and Diann Koshuta, Zoning Technician. There was no one present to represent the appellant; however, the outlines of the proposed construction were adequately marked to allow the Board to proceed with the public hearing. Well & Septic were identified. The proposed structure as staked was 21 feet from the OHWM; 61 feet from the left lot line; and 28 feet from the right lot line. The topography is a steep slope of approximately 40 feet where the boathouse was to be placed.

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.

Russell Wadzinski started the testimony.

Russell Wadzinski: I'd like to start out with a little history. You have all the information in front of you, letters and so on and so forth. But we bought the property in 1996. When we purchased the property the bank going down to the lake was butchered off. The trees were all cut off. It was eroding from....the south of where our property was, you'll see all the erosion and the trees hanging over the water. That's basically the way my lot was. Except that the trees were all cut off. So my wife and I immediately used...I've been in construction all my life, I worked for Case Construction. So I'm aware of preventing erosion and so on. So we put up silt fences, hay bales, and the following year, we applied for a permit through Oneida County to re-shape the bank. Which we excavated out approximately 200 yards of material, reshaping it down to the existing high water mark, not the previous high water mark. And we replaced that with 300 yards of top soil and shaped it so erosion was at a minimum. At that particular time, we talked with the officials at Oneida County, about building a boathouse in the future. Our plan was that when we got older and we needed to do it to utilize the property longer, we wanted to build a boathouse so I could push a button and the boat would go up and in; and push a button and it goes back out. We are getting to that point where it is very difficult to put all that equipment in and out to protect our boats and our investment in our property. So...now is the time. And we are looking at retirement and we can finally afford to make that move, I went through the processes to apply for a permit, not knowing that things have changed since we originally did this in 1997. So I filled out the permit, to the best of my ability, and sent it in. I did the drawings. They were all done by me, taking the measurements and so forth. And then I found out that

it was denied because of the slope being too steep. I was told it was somewhere around 24-25 % and you have to have 20 % or less. Our original plan was always to build a flat top boathouse. With a bank like that, I had one designed way back then that was much bigger, because you could build them wider back then. And now they are only 20 X 36 maximum. Back then, I think I could go 28 feet. So we re-designed it to work in that steep of a slope to protect the property from erosion. One of the things that I was told was that the reason the County went to a pitched roof was for erosion control. But if you look at the footprint of a 20 X 36 building you are looking at approximately 720 square feet of impervious surface. Impervious surfaces, if I remember back 6-8-10 years ago, when it came out where within 200 feet of the high water mark, you could only have 17% of impervious surfaces. I don't know if that's still the case now.

Peter S. Wegner: No. It's gone now.

Russell Wadzinski: Okay. But I do remember it. But the impervious surfaces of 720 square foot, and you put a pitched roof on it and two foot overhangs, now you are over 960 square feet. That's quite a bit more. Now you have the velocity of water coming off both sides. So you have more water because it's landing on more impervious surface and then you have it coming off at velocity, which you would then have to have erosion control on both sides of the building. So when I realized it was my only chance at doing this, my wife and I really want to build a boathouse. It's been our, one of our goals ever since we've been married, 36 years. And when I realized I had to appeal it, well, it doesn't make any sense to put a pitched roof on a bank like this for erosion control. So that's the reason that I applied for a flat roof. I think there is a four inch pitched slope going to the south side of the property where there would be French drain built into the property to properly drain it off without any erosion problems. It's...Nokomis is a reservoir and I knew that, I've been coming up all my life, ever since I was a kid. I might have even been conceived in that lake. I don't know but my Dad always had a cabin up there. That's where we always wanted to retire, so I had the opportunity to move here, work for Case in Tomahawk in 1996 and we put together a plan of where we wanted to go and got our kids through college and all that kind of stuff. Now we are looking at retirement. That's what we want to do. So, that's why I'm here. I do have from my neighbor, a letter, do you mind if I read the letter?

Harland Lee: Don't read them, but they can be submitted as part of the evidence here. Those would go to Mr. Albert and then they'll become part of the file.

Russell Wadzinski: There is one letter from Andrew and Sherry Lamer, they are right next door and they are 100% in favor of it. And also Rick and Jan Ahrens are also 100% behind the plan that we put together in the appeal. So, we did everything that we could do as property owners to protect the property and worked with WVIC, the DNR, Oneida County, and had I known that rules were going to change, I would have...we had all the equipment and the permits. We could have shaped that however it had to be in

order to comply. We thought that we did that at that particular time and I was quite surprised when it came time to build it that we are not in compliance. So.

Harland Lee: Any questions from the Board?

Phil Albert: You had nothing from the zoning staff at that time; I think I saw something from Steve Osterman, in terms of documenting discussion of a boathouse at that time, or plans at that time?

Russell Wadzinski: No. It was just discussions at that time. We were.... Someday we are going to build a boathouse, we want to build one like across the lake over there with the flat top....is there going to be a problem? And he said no, there wouldn't be a problem.

Harland Lee: How did you determine that the slope, from the top of the stairs down, is a 25% slope?

Russell Wadzinski: I had Van Strydonk Construction shoot it. Actually, when I measured it way back when, I did it myself with a laser that I had available to me at that time. So, we shot the grades and figured out the slope. Per your geometric example you have in your information.

Harland Lee: I don't profess to be an engineer, but that looks like more than a 25% slope to me, and I think we did some measurements today that indicated that it was closer to 40%.

Russell Wadzinski: It's 20 ft high. If you go from the lake side and shoot out, it's 20 feet. And it is back, if you go up it is 36 feet to where it is, but if you go from the back out, it is 40 some feet.

Phil Albert: But if you take your drawing and take that back wall at 15, and the depth of 36 ft for the boathouse, you come up with a 41.6% slope for that area covered by the boathouse itself, and then it flattens out. So it depends also in terms of where you shot the slope from or how far back you considered the total slope.

Russell Wadzinski: We were going from the high water mark.

Peter Wegner, Assistant Zoning Director: I think the difference is on the drawing. We were going from the back of the boathouse, where the existing grade is, down to the lowest exposed point. So you are taking off maybe 2 or 3 feet, but you are right, it could be any where from 25 to 34 percent based on how much they actually do in over dig.

John Bloom: We took a look at it, as far as where the boathouse itself is going to be situated, and there was approximately 14 ½ foot drop in that 36 foot run, which equates to approximately 40% slope.

Russell Wadzinski: According to these drawings that Van Strydonk did when they shot it, the back wall in this particular drawing...is 15 feet 6 inches high and I don't know what the difference is between where the steps are and to the top, but those are the 31 steps that are currently there.

Harland Lee: How many steps?

Multiple People: 25.

Guy Hansen: 25 where the boathouse is and then another 6 or 7.

Jack Young: I have a question, not pertaining to what you are talking about. My question is about the Notice of Public Hearing. In the 4th paragraph, 2nd to last sentence, it says, "A representative of the appellant must be present." And there wasn't anybody there.

Russell Wadzinski: Can I speak?

Harland Lee: I think that is in our rules, and we have the authority to over rule that. I know where you are coming from, but that is our rule. And we have the opportunity to do that unless there is some objection from the Board.

Jack Young: I have no objection.

Harland Lee: I think we got enough information that we can hear this case and dispose of it one way or another.

Jack Young: Well, then I think it has to be in the minutes.

Harland Lee: And it will be.

Russell Wadzinski: I did explain earlier though.

Harland Lee: Yes.

Bob Rossi: Looking at this drawing, and it says that the grade just to where the rail would start, 11 feet, 8 inches. Is that correct?

Russell Wadzinski: That's what he has on the drawing.

Bob Rossi: Then what you are telling me is that rail is going to be about four inches high. And it can't be over 12 feet?

Russell Wadzinski: It looks like.

Peter S. Wegner: We measure that differently. We don't go from the lowest exposed point to the highest exposed point. We go from the lowest exposed point to the highest exposed point; plus the lowest exposed point to the highest exposed point of that eave. And for a flat roof boathouse, we would go to the top of this wall, 15 feet, to the lowest exposed point plus this measurement here. It would be 13.6.

Bob Rossi: And it's not supposed to be more than 12 feet.

Peter S Wegner: But that's not an issue. Jim knows that.

Bob Rossi: I was just curious.

Russell Wadzinski: One of the reasons that I had Van Strydonk draw this up was to make sure that I had everything according to oil. I wasn't trying...my drawings; I'm not a professional architect, so I hired it out.

Peter S. Wegner: Right.

Bob Rossi: There's no entry.

Russell Wadzinski: Into the boathouse?

Bob Rossi: Yes.

Russell Wadzinski: Just from the lake side.

Guy Hansen: Will there be a walkway from the boathouse door to the steps?

Peter S. Wegner: He'll have like a four ft apron and then the walkway will stop just short of that.

Guy Hansen: You'll have a rail system and cogs to get the boat into the boathouse?

Russell Wadzinski: Yes.

Peter S. Wegner: That's something they do commonly over there.

Guy Hansen: So its stand out 15 feet?

Peter S. Wegner: More than that. About 100.

Russell Wadzinski: Right now I have 12 sections of dock out there. It's 84 feet. And it's all about so we can enjoy the lake and the property when we get older. That's why I'm here.

Phil Albert: You said there will be no doorway into the boathouse?

Russell Wadzinski: There isn't in this plan. No Sir.

Phil Albert: But yet, the boathouse as proposed would be between 0-1 ft back from the water mark.

Russell Wadzinski: I guess we could put a service door to get in and out. The problem is the only time you could really use a service door, because the boathouse is only 20 feet wide, and you have an 8 ½ ft boat and an 8 ft boat, that's 16 ½ ft. And then you have to have space in between them for the carts. So they are right out to the inside walls. So I could have a service door to go in there and clean it or whatever, once we get the boats out, but there is really no getting in or out of a 20 ft wide boat house with two boats in it.

Phil Albert: So your pier would likely be directly adjacent to and at the bottom of those stairs.

Russell Wadzinski: Right. My plan would be, if we can make this work, to have two smaller sections of aluminum roll out dock, one coming right off of the bottom of the steps, and the other one on the other side of the boathouse, so you can get into the boats, with the walkway you described across the front. You could walk down, open the door, and go across to either dock.

Phil Albert: What I recall reading is that you did not intend to use the flat roof as any type of patio or deck.

Russell Wadzinski: No.

Phil Albert: Then why the reason for the rail along the top?

Russell Wadzinski: Decorative. Just to make it look like it's finished. There's....gotta be 400 boathouses on this lake. There are 1,000 properties. About 50% of them are flat tops and 50% are pitched roofs and I don't know the exact number, but there are a lot of them. Some have no railings and it just looks like it's not even finished. There are some that are poured concrete. And they didn't put siding on them or stone or anything. Our plan is to make this pleasing to the eye. A nice boathouse that looks like it fits on lake property, nautical and with less impervious surface than 50% of the boathouses around the lake.

Phil Albert: What type of roof covering?

Russell Wadzinski: Rubber membrane. I just looked at one just the other day that Dan-Dee Roofing showed me that they showed me they just put on a place in Minocqua that

looks like...Did you ever see where they have exposed aggregate and they grind it off and it looks like the floors are like ground off flat stone? Little ones? Well, it looks like that. So. But it is actually a rubber roof.

Phil Albert: In this drawing that you were pointing to, it shows a double platform here, double step here, that looks like a platform onto the top of the boathouse.

Russell Wadzinski: That wasn't requested. Jay Cordova, who drew that in there, drew it in there, but it is not necessary.

Peter S. Wegner: I would agree with most of the things, but not everything, that he said. He met with our Department in late March and discussed proposals for a boat house. When we first met with him, we talked about the pitched roof. I think that is why you see on the plan that he did submit on the permits that were actually denied, it shows a pitched roof. That was something that he was able to overcome, I guess. But the biggest issue was the slope. So, I had to deny his permit application based on it was located on a slope that was greater than 20%. When staff was out there and measured, I believe Jeff came up with 28%. It all depends where your starting point is and ending point is and how far you are away from the existing stairs. If you look at the plans, there are some plans that show the boathouse abutting the existing stairs. And there are some plans that show the boathouse 8 feet from the existing stairs. The other issue is the flat roof. And our ordinance does not allow a flat roof. We require them to be pitched mainly because historically, most flat roofs become open decks or patios; and the DNR, the last time we changed our ordinance, which has been 43 times since 1997, and 10 times just dealing with just this section. There are rules that don't allow any other structure on the boathouse that is not necessary for the berthing of boats. It's in our ordinance. So I denied it based on three different sections of 9.94. Other things that I discovered later, with the plans and the appeal, is this height issue. I think he could easily resolve by reducing this back wall slightly. Also, there was a difference in the plans that show the boathouse and walkway wider than 30 feet. As you know, we require all these structures to be within your 30 foot view corridor. And on one of the proposals it shows a 3 ft wide walkway, 8 feet space between the walkway and the boathouse and then a 20 foot boathouse. 31 feet. And it can't be greater than 30 feet. That's assuming there is no over excavation. I do realize there was a CUP back in 1997 where, I think at that time, it's a true statement that he probably could have taken it and made it a 20% slope. If you look at the conditions and some of the discussions that occurred at that time, I think I saw discussions about a boathouse in the minutes. That it was something he was going to be doing somewhere down the road. It was something that he was definitely proposing. It all goes back, in this case, to the slope, whether it's 25 or 20.5, it's above 20% and I can't issue a permit because of that. I just want to pass around, as an example, some photos of a permit that was issued. That was measured to be a 17% slope, so we issued a permit for a boathouse; almost identical to the one he is proposing. Right down to the walkway. I'm just showing you these as an example. Nokomis is notorious and I think if you look at some of his comments in his appeal, for

the sugar sand, and trying to stabilize it. This property that I have marked the slope at 17%; now I'm going to show you a few pictures of what happened. Granted, there are more violations here than just the location. But concentrate on the location and all the problems he had on something that was actually permitted based the percent slope, we could issue a permit, and it was a never ending fight. This is a current enforcement case. I just wanted to show you that even on a 17% slope, which would be permitted, on Lake Nokomis, it's...

Russell Wadzinski: It's not done properly.

Peter S. Wegner: Yes, that could be true too. I agree with what Mr. Wadzinski just said that some of it has to do with just not being done properly. So as you read in the Notice of Public Hearing, the Sections it was denied under, he has been working with staff back since March, trying to come up with an idea. And it really came down to the fact that I couldn't issue a permit because it was contrary to the ordinance. That's why he is here today. Looking at his appeal, and the three criteria, one of the things that is a response from the County, when you look at the physical property limitations, yes, it says steep slope, but in a case like this, there is a requirement that you are not greater than 20%. And the idea behind that is that not all properties are going to be able to have a boathouse because of a steep slope. In the past, when we look at physical property limitations due to a slope, it could be a setback issue also, where there is no alternative. And the County would have to argue that he has proven for 15 years that he has had reasonable use of the property without the boathouse. Finally, as far as being contrary to public interest, it would be contrary to public interest because there is not a unique physical property limitation and he has defined reasonable use of the property for over 15 years. That being said, I have had experiences with you gentlemen before where you disagree with me. Ironically. And if you were to grant a permit for a boathouse, the County would request the following: That he combines his walkway and boathouse and piers so that it has to be within that 30 ft view corridor. If you are giving him a variance, it should be for the slope alone, not for these other things that are within the permit, because that wasn't our biggest concern at the time. He resolved the height issue. The biggest thing, for you to require, goes back to him saying it wasn't done properly, is to use sheet pilings so it can't go outside of the boundaries that he pounds in with sheet pilings and the excavation. Finally, it must be a pitched roof, similar to what was on one of his plans. I think it is on page 2, where he is able to put a slightly pitched roof on there. Other than that, I think the ordinance speaks for itself. And if you were granting a variance, I would just request that you have those limitations on the variance itself. That's all the County has at this time.

John Bloom: Wouldn't a pitched roof necessitate a smaller than a 20 X 36 maximum boathouse?

Peter S. Wegner: No. Because in the ordinance, under Section 9.94, it basically talks about a footprint 20 X 36 and it has 2 ft overhangs.

Jack Young: What about gutters at that point?

Peter S. Wegner: We have been measuring based on the actual footprint.

Jack Young: Do you require gutters?

Peter S. Wegner: No we don't. But that is something that now that you bring it up, as another condition that would be a good idea. On his plans he shows a French drain, which is excellent. Even better than rain gutters.

Jack Young: Right.

Bob Rossi: The pitched roof would have been as designated in the ordinance, right?

John Bloom: What degree pitch is it?

Peter S. Wegner: Per his permit, he has 2.3:12. I think the idea was, when we discussed it, it was...Jeff was working with him also and if he was going to appeal, and you originally wanted a flat boathouse, put that on there as part of the appeal. What can it hurt?

Phil Albert: The way he has it laid out on his map here, does it conform to your restrictions in terms of being within the 30 ft corridor or would it have to be moved?

Peter S. Wegner: On one drawing, it would have to be moved over, another drawing....2 out of 3 of the drawings shows it adjacent to, but one of the drawings shows that it is 8 feet over, so it could go with a 3 foot walkway, 8 foot space, and then the boathouse without any over excavation, you are at 31 feet.

Phil Albert: The view corridor comes off center of the main structure?

Peter S. Wegner: The definition of a view corridor is an unobstructed view from your principle dwelling to the water. On a property like his, there are two things we could use to help define it. One is the walkway which is existing. Because all structures have to be within the view corridor. The other thing is that it is open. So in a sense he could pick a location of that view corridor for the placement of the boathouse, either on left or right. Usually they go where the slope is less obviously. But they have a choice because it is open. The rest of it he would have to vegetate, which he has submitted a mitigation plan.

Phil Albert: There shouldn't be any problem with the vegetation that is there. He doesn't have to cut down any trees that are there.

Peter S. Wegner: That's true.

Russell Wadzinski: Only one thing I would like to comment on. And I agree with Pete on a lot of this stuff. But as he said, when I found out that I had to appeal this, and then I thought if I was going to spend \$500.00, I would appeal it the way we wanted to build it in the first place. This was legal to do back when we did the excavation. And that was with a flat roof. That would have been my first choice before I presented the initial plan, and the more that you take a look at runoff and the square footage versus the pitched roof, there is a big difference in a big rain storm of how much water is going to be coming off that roof. So I would ask the Board to please consider a flat top boathouse in this particular case. To please consider it. It's not a deal breaker, but please consider it for two reasons. One, it was part of our original plan and it does have less impervious surface, or runoff to the water for erosion control.

Norris Ross: What are the elements of the mitigation plan now that we have visited the spot?

Peter S. Wegner: What the ordinance requires is that he vegetate his 35 ft buffer zone, with the exception of his 30 ft view corridor. And also 75 feet back, 10 feet wide on his property lines. We look at the septic, which is not a concern because it is a newer septic. And all excavation upon completion is back beyond 75 feet, which obviously he will have taken care of if he gets a variance. The minimum density is 1 tree per 200 square feet, and 3 shrubs.

John Bloom: You said there is over 1,000 private lots on Lake Nokomis and about 400 boathouses; and of those 50% are flat.

Russell Wadzinski: That's just my guess. That's an estimate.

John Bloom: How many are built into a steep hill like you are proposing.

Russell Wadzinski: I'd say 75-100.

Peter S. Wegner: I wouldn't disagree with that.

Phil Albert: Has slope ever been considered before as a hardship?

Peter S. Wegner: I have one that was for the placement of a dwelling. The whole property was a slope. There was no alternative but to build on this slope.

1:43 pm - Harland Lee, Chairman, closed the public hearing 12-006 of Russell Wadzinski.

The Board deliberated in open session.

Motion by Guy Hansen, second by Phil Albert to deny Appeal 12-006 of Russ Wadzinski as all three criteria have not been met. The motion carried unanimously on a roll call vote.

Motion by Harland Lee, second by Bob Rossi to extend the filing date to Friday, September 14, 2012. With all members voting "aye" the motion carried.

2:00 pm. Motion by Bob Rossi second by Guy Hansen to adjourn. With all members present voting aye, the motion carried.

Harland Lee, Chairperson

Phil Albert, Secretary