

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING
Thursday, October 4, 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”, 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: Robert Bucknell.

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 Robert Bucknell, appellant; and Peter S Wegner, Assistant Zoning Director.

Secretary Phil Albert read the notice of public hearing for appeal #12-007 of Robert Bucknell, 1306 E 8th Street, Merrill WI 54452, requesting an area variance to allow a small shed located less than 35 feet from the ordinary high water mark of Brown Lake. This activity is contrary to Section 9.94 A OHWM Setbacks, Chapter 9, Oneida County Code of Ordinances. The property is located at 6435 Pine Point Drive, being part of Government Lot 2, Section 16, T38N, R8E, PIN NE 624-3, Town of Newbold, Oneida County, Wisconsin.

The Notice of Public Hearing was published in the Northwoods River News on September 20 & 27, 2012; and was posted on the Oneida County Courthouse bulletin board on September 18, 2012. Mr. Albert read the certified and first class mailing distribution list into the record.

Mr. Albert stated that prior to the public hearing the Board conducted an onsite inspection at 6435 Pine Point Drive, Rhinelander Wisconsin. Present at the onsite inspection were the Board of Adjustment members, except for John Bloom, who is excused today; Robert Bucknell, appellant. Observations by the Board included an existing single family residence (cottage), an existing 14 X 12 ft storage shed, and an existing 5 X 4 ft shed (to be removed). There is a holding tank and well on site. The viewing corridor is approximately 25 feet wide directly in front of the cottage. There is 250 feet of water frontage on Brown Lake. The topography is rolling with Lake Frontage in front and wetlands to the rear. The property drops off about 15 feet to the ordinary high water mark.

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.

Robert Bucknell presented his case to the Board.

Robert Bucknell: I had just purchased this property in June from William Metter. As you stated there was an old small shed on the property that originally was sitting where the new shed has been constructed, hence the reason I decided to put the shed there. The old shed had already existed in that spot. It seems logical to put it there.

Harland Lee: You did not get a permit for that at that time?

Robert Bucknell: No.

Harland Lee: Did you know a permit was required?

Robert Bucknell: I did not. Again, I just thought it was the logical spot to put it without having to alter the environment at all. The opening was there. I had young children and I didn't really want to have them running 25 yards up the road to put their fishing poles away if it's dark outside or anything like that. As far as the setbacks, I have come to learn being 75 feet from the high water mark, the lot does not allow for that, to meet those requirements anywhere on the property, given the wetlands behind and the width of the buildable areas, it just doesn't allow for it at all, without having to alter anything to maintain it within the viewing corridor, that I found out about as well. I guess my stand on it, I think it's a good spot where it is at, and I don't feel that it is obstructing anyone else's view. The closest dwelling to mine is at least 100 feet away through the woods. They can't see the shed from where they are at. That would be the property to the east of mine. The folks to the west, they have a better view of my

cottage than they do of the shed. I just felt it was the least impact. And it made sense for our use. It's mainly just for yard tools and recreational supplies for boating and so forth.

Harland Lee: Pete, it's my understanding that this situation came to your attention through a complaint.

Peter S. Wegner: That's correct. We got a complaint on June 19, 2012 regarding the construction of a shed less than 75 feet from the OHWM of Brown Lake. Then I sent a letter to Mr. Metter, who at the time, our computer records showed he owned the property. I then received a phone call from Robert Bucknell stating that he owned the property and met him at the site. I found out that there was a variance that was given for this property for the home in 1997, because there are physical property limitations, mainly the 75 foot setback. When I talked to him, the option was to remove it because it wouldn't meet the definition of a boathouse where its current location is. It's not in the view corridor, so to speak. Then we looked at moving it over to the other side of the property, where the kayaks were sitting. And then he would have to remove all that vegetation. So the County doesn't have a real argument or issue after looking at many alternatives where it is now, if you grant a variance mainly because if you put it closer to road, that road is really tight to the wetland and for plowing and stuff, it just...he's got it as far away as he should have it. If he could have farther away from the road, that would be better, but the water is a limiting factor. The rest of his shoreline is well vegetated. And I don't think he could have a boathouse on that area because of the slope being greater 20%. It's possible that he could put a garage or this shed at a further setback, but then you are looking at removing more vegetation, and as it stands now, within 35 feet he really can't touch any of that. He can have one view corridor 70 feet away from the existing view corridor, but then the whole area would have to remain vegetated. In the past, there have been cases where the Board of Adjustment has issued variances for garages due to the northern climate, and he isn't even asked for a garage, he is just asking for a shed. So other than telling him to remove it, and sending him citations, this is the next step to gain compliance. It is odd. I don't have a huge argument with where it is located now if you were to grant a variance, because of the physical property location and the additional land disturbance that would have to occur to locate it and call it a boathouse, if he could meet the slope requirement. I'm sure he could overcome the slope requirement by putting it higher, on the higher ground, but then more trees would have to be removed because there is a distance of 55 feet from the OHWM to the edge of the existing road. It would be a small area to the northeast where he could have something. But then again you would have the road issue and it would be really close to the road.

Robert Rossi: Is that not a boathouse? It doesn't take much. He has kayaks.

Peter S. Wegner: I don't want to call it a boathouse. Because he'd be deviating further from the ordinance. This way, if it is just a shed less than 75 feet that is one variance.

Otherwise, if it's a boathouse, it's not in the view corridor, there could be more arguments.

Guy Hansen: If it were a boathouse, it would have to be in the view corridor and it would be allowed? Is that what I understand?

Peter S Wegner: Yes, he could have two because he has more than 200 feet of frontage. The first one would be on either side of the existing stairs. That is the most open area and there are stairs there. Or it could be located further down by the opposite lot line.

Guy Hansen: The only other wide area in the lot to the east.

Peter S. Wegner: Yes.

Phil Albert: But then wouldn't you run into slope issues?

Peter S. Wegner: That's correct.

Harland Lee: Who plows that road. Is it a private plower or the town?

Robert Bucknell: Private. Jeff Bowen, he lives on the lake on the opposite side.

Harland Lee: So it's not the town.

Robert Bucknell: No. Not that I'm aware of.

Norris Ross: What does....if a variance is granted for this shed what does that do for any future requests for building on the property where it is wider? In other words, do we go from variance for the house, variance for the shed to variance on the garage...?

Peter S Wegner, Assistant Zoning Director: No, I would strongly argue from past experience, obviously a variance for a dwelling because it is zoned residential and then whether I agree with it or not, the Board of Adjustment has in the past granted a variance for a garage due to the northern climate, garage or shed. That's where it would stop. I don't know how he would justify anything beyond that. That is why I feel it is more than reasonable for what he is asking because in the past we have had garages that were much larger than that. 24 X 20, 24 X 24.

Robert Rossi: What size is that shed?

Phil Albert: 14 X 12, is what I stepped off.

Robert Bucknell: 10 X 12 is what I built it at.

Phil Albert: OK.

Guy Hansen: On the diagram we have boat shed 10 X 12. That's the old one or the new one?

Robert Bucknell: The new one.

Guy Hansen: So the old one was only 6 X 10.

Peter S. Wegner: Not even that.

Robert Rossi: What did it cost to put up? Did you put it up yourself?

Robert Bucknell: Yes I did. I have a friend that owns a saw mill so I got the materials very reasonably.

Robert Rossi: So less than \$2,000.00.

Robert Bucknell: Easily.

Harland Lee: So we can't really consider this a boathouse?

Robert Rossi: No.

Peter S. Wegner: You could. I don't think it matters either way. I just thought it would be cleaner to just call it a shed or garage, because some time down the road, I'm not having a battle with, in that particular location, another variance for a garage.

Guy Hansen: Back to that question. If he came back for a variance for a garage on the east side of the property, what would you say?

Peter S. Wegner: If he was at the same point he is today, down the road, for a garage, I would say no if you grant a variance for a shed. If you call it a boathouse, then I don't really have an argument because you are permitted a boathouse. But not in that location; if you moved the shed over and call it a boathouse and then down the road come in for a garage.

Harland Lee: As long as you are using this for seasonal use, the need for a garage isn't really there.

Robert Bucknell: Not that I can see.

Harland Lee: That's not in your plans?

Robert Bucknell: No.

Harland Lee: If you lived there year round, this would be different.

Robert Bucknell: Exactly.

Peter S. Wegner: That's something he needs to consider.

Norris Ross: I think it's something for him to think about. That's why I asked. If it was my property, I'd want to put a big garage down on the wide part eventually.

Robert Bucknell: If that came to be in my view, the shed would be gotten rid of and those items would go into the garage.

Robert Rossi: Actually, what you have there, if it weren't for the 75 ft setback, you wouldn't need a permit at all.

Peter S. Wegner: Because it is less than 200 square feet & less than 2,000.00. But you are up against the 75 ft setback.

Robert Bucknell: Again, the property dimensions don't allow for it.

Peter S. Wegner: I looked at the options and Robert & I measured it out. Other than where it is now, you are going to be removing trees to relocate it or even in that vicinity so to speak. Let's say from the west where his driveway starts.

Norris Ross: Of course, it's more convenient to be close to the house too.

Guy Hansen: Looking at the three questions we have to answer, it probably does not meet the third requirement that you can't make use of the property without it. But the fact that he could move it over 30 feet and call it a boathouse and it would be okay, defies logic for me. I'd rather have it there and call it a shed from an environmental and every other stand point.

Peter S Wegner: I didn't know that he owned this other stuff until today. And luckily the slope and setbacks that were measured wouldn't have worked for him anyway. It's all what you call it.

John Young: If you moved it over to where the steps are, the viewing area. That would be more prominent from the lake.

Peter S. Wegner: That's true too.

Harland Lee: It actually would.

Phil Albert: And the neighbors.

Jack Young: It's more prominent from the house but more secluded from the lake.

Peter S. Wegner: Yes.

Jack Young: It's on a private road, not a public road.

Norris Ross: You have to wonder who it irritated in the first place and why. Did they see it from the lake, did they...? It came to our attention in the first place because somebody didn't like it.

Guy Hansen: Also, it was built without a permit, which....but was it needed?

Phil Albert: Was there a grandfather to the old storage? I mean, it's a difference of 6 feet. The old shed versus the new shed. Was there any potential of that?

Peter S. Wegner: Even if there was, an accessory structure less than 75 feet from the OHWM cannot be replaced.

Phil Albert: If he were granted a variance for the shed with the condition that if he built a garage in the future, the shed would have to be removed, would that be possible?

Peter S. Wegner: That would be a good motion to make. That would be the easiest thing. At that time he would have to apply for a permit, but at least it is well known that he is going to have one or the other, not both.

Guy Hansen: Had he come to Planning and Zoning for a permit to build this shed, in that location, you would have denied it. We would probably be here anyway except the shed wouldn't be built yet.

Peter S. Wegner: That's true.

Harland Lee: But he didn't need a permit.

Peter S. Wegner: That's the hang up. Yes. But it still has to meet the requirements of the ordinance.

Guy Hansen: It is within 75 feet of the OHWM.

Peter S. Wegner: A permit is not required; but it still has to meet the requirements of the ordinance.

Robert Rossi: Yes.

Peter S. Wegner: This happens often.

Phil Albert: I recall a similar property, a peninsula going out into the lake. It was an electrician who was going to move his business up here and needed a garage. I guess I look at this, in some degree, as a similarity in terms of the hardship and the confines of the property—the restrictions of the property.

Harland Lee: If we look at the three, as Guy has mentioned, the three requirements, meeting the first two probably aren't that hard. We'd have to do a little wordsmithing on the last one. On the hardship.

Guy Hansen: And there again, the fact that he could move it 30 feet to the west and call it a boathouse and it would be okay, just doesn't make sense.

Harland Lee: Whatever you call it, it's in a better location now, as Jack has pointed out.

Guy Hansen: So call it a shed and leave it there.

Jack Young: What's the difference between a boathouse and a boat shed?

Peter S Wegner: The spelling.

Norris Ross: Well, I don't know how you define hardship, but anyone that is going to spend a lot of time there, even part time of the year, storing stuff on such a confined lot with a reasonably small building there, it would be a problem.

Jack Young: The home doesn't have a basement does it?

Robert Bucknell: No.

Jack Young: Crawlspace.

Phil Albert: And not much of a crawl space by the look of it. What is that foundation? Is that treated wood?

Robert Bucknell: The exterior is yes, but it is on a concrete slab.

Guy Hansen: So if we approve the shed where it is, he's done. He doesn't need a permit or anything.

Peter S. Wegner: That is correct.

Harland Lee: But if we do that, I think it would be prudent to maybe tack on a stipulation, that if in the future decides to put a garage up, that the shed has to go.

Phil Albert: Another structure of any kind.

Peter S. Wegner: So if he comes in for a boathouse down the road...yes, that's a good idea.

1:26 pm - Harland Lee, Chairman, closed the public hearing 12-007 of Robert Bucknell.

The Board deliberated in open session.

Motion by Phil Albert, second by Robert Rossi to approve a variance in Appeal 12-007 of Robert Bucknell for the retention of the storage shed, with the restriction that if Mr. Bucknell or other owner of the property ever comes back for additional structures on the property, he will be required to remove the current storage shed. The motion carried unanimously on a roll call vote.

Motion by Bob Rossi, second by Phil Albert 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