

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING
Wednesday, November 28, 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: Dennis Simons

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 Dennis Simons and Peter S Wegner, Assistant Zoning Director.

Secretary Phil Albert read the notice of public hearing for Appeal No. 12-009 of Dennis P Simons, 520 Dorn Drive, Waunakee, WI 53597, , requesting an area variance to allow construction of an irregularly shaped 28’ X 38’ garage approximately 25 feet from the ordinary high water mark (OHWM) of Long Lake. The proposed project is contrary to Section 9.94 A (1) OHWM Setbacks, Chapter 9, Oneida County Code of Ordinances. The property is located at 8066 S Long Lake Road, Harshaw WI, being part of the SE NW, Section 10, T37N, R7E, PIN CA 676-4, Town of Cassian, Oneida County, Wisconsin.

The Notice of Public Hearing was published in the Northwoods River News on November 17 & 24, 2012; and was posted on the Oneida County Courthouse bulletin board on November 6, 2012. Phil Albert read the certified and first class mailing distribution list into the record.

Phil 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; Peter S Wegner, Assistant Zoning Director; and the appellant Dennis Simons. The site was snow covered; the property boundaries were not marked. The highway right-of-way was not marked. The well and sanitary facilities were located. The existing structure is 15 X 26 and used for storage and is where the proposed structure would also be located. Driveway is gravel with a concrete apron. There is vegetation, brush and trees on the lot and in back of the existing structure. The existing structure is irregularly shaped, approximately 816 square feet. The proposed structure will be 912 square feet.

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.

Dennis Simons: We purchased the property in June, 2007 from the Brady Family. We occupied it a month later in July. After two years we built a new house that was commenced in the Fall of 2009. What was there was a 16 X 68 manufactured home that was well within the 75 feet; and after talking to Jeff Krueger, we decided to move the house back.....the slab under the lean-to was done in the spring of 2010. The lean-to itself...was built about 15-18 years ago and added to the garage.

Harland Lee: Was a permit obtained for the slab?

Dennis Simons: I didn't know I needed one. I figured it wasn't adding any impervious...the roof is over it, and if something is underneath it, I didn't know that was going to create an issue. The lot was surveyed in June, 1969. That refers to the "lakebed" simply as marsh.

Harland Lee: Is it wet in there, or is it dry all the time?

Dennis Simons: I saw standing water in there once and that was 24-48 hours after a monsoon that it we had a few years ago.

Harland Lee: So basically 99.99% of the time it is dry?

Dennis Simons: Yes.

Dennis Simons: What we would like to do is...I was initially thinking of raising the walls, but I'm told that anything that I do other than repair a window or replace a shingle is considered a change of use. So we may as well take down what is there, because it does need some repairing, and build a new one. And as the example shows, intent is to leave the footprint of the lean-to the same, but it would be enclosed or at least partially enclosed for a shop in the back, to repair stuff that breaks. And then the other side would be for the boat, ATV, log splitter. So what I'm asking to do, is on the footprint on the existing garage, is to extend it out four feet out the back and out the side.

Harland Lee: How essential do you think the four feet to the back is?

Dennis Simons: I looked at it...the challenge there is that the boat, 16 ft. By the time you put it on the trailer; that is a tight fit. I'm looking for a few extra feet for maneuverability. If the bring the front out, because of the rock wall, that starts some issues of getting the boat around and get the trailer cocked in there. The other issue, if I go too far out the front, I start cutting off that turn-a-round. And I don't want to restrict the free flow of traffic there, with emergency vehicles and so forth.

Harland Lee: There is an existing concrete floor in the garage part now?

Dennis Simons: Yes.

Harland Lee: So your plan is to leave the whole concrete deal, but expand it on two sides.

Dennis Simons: I talked to John Otteson from Everest Builders and that question arose because of not knowing the age of the concrete. I'd have concrete of 3 different ages. The thought was to look at removing all that concrete and starting over so everything is of the same age. The existing part under the garage, how thick that is, I don't know. I have dug down in the back of it and there is no footing that I can tell.

Harland Lee: So your plan is to replace all of the concrete with new concrete.

Dennis Simons: That is one of the options. If they tell me they can realistically salvage this new piece, the possibility would be just to replace the slab that is there, because I don't know what is there. If you go to the rear of the garage, that gets confusing. There is some concrete and some concrete block, but if you go into the garage, there is no visibility of the concrete block. Not knowing who did it, I can't go back and ask what that substructure is. But I don't want to build a garage and then find out the slab that it is sitting on, is insufficient. I guess the only way to guarantee that is to remove the unknown and put in something of a known factor.

Bob Rossi: The garage that you are proposing, is it going to be higher?

Dennis Simons: Yes. It would be higher. It would match the house. The house pitch is 7:12. I measured from the east side of my garage that is attached to the house; from that peak to the ground, that is 17 feet.

Harland Lee: What would you estimate the peak to the ground with your current garage connected to the house?

Dennis Simons: That's what I'm talking about. 17 feet. The one that is connected to the house.

Harland Lee: What would you estimate on your new garage that you are proposing?

Dennis Simons: 17 or 18 feet. Depending on...part of the issue we have is the service door, the way that ground is sloped, springtime causes the issue. The ground is still frozen and either melting snow or rainwater comes and the water comes underneath and inside the garage. Talking to the excavator and builder, what do we have to do to lift this slab so we don't replicate that problem?

Harland Lee: One of the forms that you filled out in making your appeal listed three areas which need to be addressed before we can grant a variance: (1) unique physical property limitations; (2) no harm to public interest; (3) unnecessary hardship. Could you review for us your thoughts and reasoning relative to those three points?

Dennis Simons: {Presented Exhibit A}. I took a compass and marked 75 feet and just tried to find where on that property is not within 75 feet and if you then overlay the house, the existing house occupies the majority of what is not within 75 feet. There are two pieces left...from the east boundary to the driveway, which is about 10 feet, and the rock wall with the incline.

Dennis Simons: I did this basically for my purpose. But thought it might be of interest. The structure shown here under that shaded area, that was the original manufactured home plus a stick built add on that was there when we purchased it. It does not reflect my current home.

Harland Lee: If we look at this document, that does reflect your current home.

Dennis Simons: Yes.

Harland Lee: I guess if you look at those two, you can see the difference.

Guy Hansen: Which would fall in the shaded area, that's what you are saying?

Dennis Simons: Yes. Now the only other area, this peninsula if you will, I'm either 75 feet from what they are saying is lake bed to just south of the garage. My land, at least when I bought it, it does have a piece on this hill top.

Harland Lee: That is your property too?

Dennis Simons: Yes sir. In essence, once I find out what the town has for right-of-way for the town road and what's considered not mine and if it's lake bed it belongs to the State of Wisconsin. And I really have two parcels, because there is really no way to get from one to the other without going on to somebody's property. Either the Town's right-of-way or the State's lakebed. This being the hilltop for me to build on there, I marked off that shaded area to reference the only spot not within 75 feet. Then you have the setback from the centerline of the roadway. And the only way to get in there would be right along in here....there is the lowest spot. Everything from this direction goes up hill. Then I'm cutting into the bank of what they are saying is lakebed. It would take a lot more trees a lot more dirt, a lot more destruction of Mother Nature and I can't even see if from there.

Harland Lee: So what you are showing us Dennis Simons is the unique physical limitations of the property.

Dennis Simons: Yes.

Harland Lee: Now #2, no harm to the public interest.

Dennis Simons: I take that to mean what anyone else would see. From the lake, that's not even visible. The bay, you can't hardly get into it. It is very shallow. None the less, if you are in the bay you might be able to see a little bit of it. The neighbor to the left, Audrey Bozich, can't even see it because of the vegetation. Across the street, in the winter he might be able to see the outline of the garage, but in the summer, absolutely not. Mr. Bauman, right next to me to the east, he could see it because we are in close proximity. He tells me he has no objection. I guess the only way you can see it if you drive down Long Lake Road is you would have to look down my driveway as you go by. Other than that it is not visible to anybody. For that reason, it does no harm to the aesthetics.

Harland Lee: I think no harm to public is not only the aesthetics involved, but if this were on an open water body rather than a dry lake, there would be the question of erosion or contamination to the lake from runoff and all of those other kinds of things. There are other public interest items other than just aesthetics.

Dennis Simons: The County regulation refers numerous times to the navigable waterway. I submit that the closest navigable thing would be 200 feet away. I went back on the...some office's online mapping. I've gone back on aerial photos and that

thing never gets that large. It's...and with the vegetation I have, and tag alders, they tolerate wetland, but notthose trees have been there. They are very tall. There is also birch in there that is established. I still question whether it is wetland or lakebed.

Phil Albert: Your 200 feet is from where to where? From this structure to somewhere out here? 200 feet this way?

Dennis Simons: Correct. I don't know how you would get a boat in there. From what he identified lakebed, I submit that would be less than six inches deep and may be navigable to a duck. And I'm not sure that is what the DNR intended when they said navigable waterway.

Phil Albert: Then you are talking about this bay?

Dennis Simons: Yes. That whole bay there, they said is lakebed. Mr. Foltz, when I was unsatisfied with this survey, he did another one, he defined that area as wetland/possible lakebed. He said in order to define it, we would have to have the DNR right next to us and it would cost thousands. Because the shoreline is so irregular, it would not be just a straight line. It's high ground here, low ground, then high ground, etc. I didn't need to spend thousands of dollars to find that out. I believe with all the vegetation back there.....I think there is enough filtration there for any kind of rain runoff and other than that I'm sure what environmental harm there would really be. Does that answer the no harm to public interest? Any questions there?

Harland Lee: Hearing no questions, you can move on.

Dennis Simons: For the unnecessary hardship. Just the reasonable expectation to be able to store and secure my property. And I don't think I have anything unusual in the Northwoods being on a lake.

Harland Lee: There are those that might say that you have a 2-car garage attached, why do you need another garage?

Dennis Simons: I have two vehicles.

Harland Lee: As many people do.

Dennis Simons: True.

Harland Lee: But many do not have two garages.

Dennis Simons: I know several on the lake that have a garage and a storage shed. Or a boathouse and put things other than a boat in there, although they aren't supposed to. But basically, if I look...at any kind of space, there is nothing there. I couldn't even take

that garage totally down and take to the east side of the lot line because I'm still within 75 feet. That's just. As I read the zoning provisions now, I question whether if that were to be subdivided today, if that lot would even be approved. The bottom line is I have no place to go with it. I don't want to spend any amount really refurbishing garage. That lean-to is very low. When I was a young guy, maybe, but my back doesn't tolerate being bent over anymore. It would be nice to be able to walk in there without having to crunch over or put scab up the back of my head when I forget that the joists do come down. I would really like to be able to raise that foundation a hair to prevent water from running into the garage. I personally don't think I'm asking for a huge thing. I just want to be able to store the boat, be able to walk around it without taking out my knee caps. Which, even though I know it's there, I do it once a week in the winter. My knee caps don't appreciate that. I have even looked at instead of going four feet deeper, just go two feet out the back and two feet out the front. I staked that out, pulled the boat, if I do that am I going to be clipping my own garage. I can do it with the boat, but I didn't ask the fire department to come out and see if they could navigate it.

Harland Lee: Do you have you boat stored in there now?

Dennis Simons: There is no way you can get it in there now. The boat is stored in the garage that is attached to the house.

Harland Lee: Because it won't fit in there? Because you have other stuff in there?

Dennis Simons: Yes.

Harland Lee: If you took the other stuff out of there, would the boat fit in there?

Dennis Simons: Yes. It would fit by about six inches. It's tight.

Harland Lee: Any questions from Dennis Simons at this point?

Guy Hansen: On the drawing, the existing garage should actually be 34 X 24, not 34 X 14?

Phil Albert: It says, consists of 20 X 24 two stall garage and a 14 X 24 open shed. So you would have to add the two together. The overall garage dimensions would be 34 X 24.

Guy Hansen: They are 24 feet deep, not 14 feet deep.

Dennis Simons: Oh. I see. I looked at that several times.

Guy Hansen: Then on the proposed garage, overall dimensions. You are proposing to have 38 X 28, not 38 X 24, right? Which impacts Phil's description a little bit.

Phil Albert: But the workshop would only be 24. Correct?

Dennis Simons: There's just a room there. I couldn't even walk around that back corner.

Guy Hansen: Then you are going to raise the height of the slab. I've had some experience with....that slab is never going to be high enough. How high are you going to raise that?

Dennis Simons: I hope...just how ever high...I don't want to be pushing a boat up hill. With the truck cocked, with the trailer, it is very hard to see the back wall. I try to get it in just far enough so I can drop it and then push it in the rest of the way. I don't want a hill there.

Guy Hansen: You could fill in there in front to make it level.

Dennis Simons: Yes. But I'm hoping that they can do that with just an increase of 6 inches at the max. Once the slab is down and putting a concrete block, or what ever and then put the silt plate down, that doesn't give the water the opportunity to seep under the silt plate.

Guy Hansen: I have three buildings that I thought I raised high enough, the water runs in.

Bob Rossi: Seeks its own level.

Dennis Simons: I want to keep it as low as I possibly can, but I have to fix that issue.

Guy Hansen: What's in the garage now?

Dennis Simons: One very old snowmobile, an ATV, log splitter, snow blower, your typical yard tools, rakes, shovels.

Phil Albert: When you built your house, was your septic drainfield changed.

Dennis Simons: No. The County...they came and looked at it. They said we could use the same drainfield but we had to change the tank. And that we did.

Phil Albert: There was no question in terms of the distance of the drainfield to the OHWM?

Dennis Simons: No. We were good on the drainfield, we had that all checked.

Phil Albert: Has there ever been an official determination of the high water mark? Either on the side or...?

Dennis Simons: Yes. The County came out on the lake side, yes. They established that based on staining of the rocks, vegetation. I told them what my neighbor had said, the highest he had ever seen it. And they shot transit from that point over and we were within inches.

Phil Albert: How about..?

Dennis Simons: On the back there, yes. He came out. When we originally built, that turn-a-round was not there. It was partly there.

Phil Albert: So when you established this radius, you were going off a high water mark determined by the County?

Dennis Simons: I was going off that black line. Without a transit, I had nothing else to go off of. Whatever Foltz said was high water, I assumed, I had to take that. I didn't have the means to counter it.

John Young: If you were going to build this garage, any trees going to come down?

Dennis Simons: There is one that is leaning so far forward, that has to come down. The roof line is like....it is an inch or two from the shingle, so that would have to go. And it depends on the advice. If I have to move that concrete that is there, they may kill too many roots and the tree is going to be dead in two years. I don't know that. I don't intend to take any down. I can't honestly answer your question, without the excavator and contractor out telling me what has to be done.

John Young: That all looks like it was filled.

Dennis Simons: I would agree.

John Young: With snow on the ground its hard to tell. Is there any washout on the side of the hill?

Dennis Simons: No. Any place that starts to wash out, I have turf grass seed and I just let it grow. I don't cut it. But I haven't had to put any down for a long time.

John Young: Is there runoff from the roof? Are you going to have gutters?

Dennis Simons: I didn't intend to.

John Young: I was just wondering where the water was going to go.

Harland Lee: The same place it goes now. There aren't any gutters now.

John Young: There is one piece of gutter, but I don't think there was a downspout.

Dennis Simons: No. That was just over the service door. I wasn't intending on doing gutters. I figure the good Lord dropped the water on his own land.

Harland Lee: The County?

Peter S Wegner: He originally met with Jeff Krueger in the Minocqua office and wanted to know what he could do with this garage due to some of the concerns he has mentioned. Our ordinance today would consider this an accessory structure less than 75 feet from the ordinary high water mark (OHWM). The OHWM based on the surveyor, is the first dark line labeled wetland/possible lakebed. We had a staff member go out there and he shot elevations where there the OHWM was visible and there was actually open water; and they transferred those elevations to this edge. Most of the time surveyors call us to mark or establish this line and they shoot their elevations off of there. When we went out there recently it matched up pretty closely to what was determined earlier—May, 2009. Due to the configuration of the property we could not issue a permit for a new garage less than 75 feet because it is an accessory structure and we do not allow averaging for an accessory structure or build something less than 75 feet from the OHWM. Then we looked at other possibilities and it basically came down to applying for a variance. There are different ways that this could have been denied or addressed. The first one being the 75 feet setback. As Jack mentioned, if there is tree removal, we could cite 9.95 because he would have been removing trees in the 35 ft buffer zone. We could have cited Section 9.99 because it is an accessory structure and the changes you proposed...we don't allow structural alterations to a nonconforming accessory structure. The County could argue that he has reasonable use because of the home and garage. Then we would look at other options to get what he wants as far as the storage of the boat and a work shop. He could put a second story on the existing garage and get a work shop and continue to use the garage for the storage of the boat that is in the garage right now. He could add on within that shaded area, not that size, but enough to accommodate some of things he wants to store in the garage he is proposing. That would be two options—go up or add on. The other option would be that he could put something that would meet the applicable setbacks. I came up with 28 X 26. So there are options as far as getting something very similar to what he has. It might not be too appealing because he would have to go around to get to this workshop/garage. But using your creative mind, you could put the things that are being stored in the garage now, in Area A and then use that open area for a workshop. If the Board was going to disagree with me and consider a variance. I would hope they would consider reducing the size of what he is proposing, reduce it down to the size that is permitted under the boathouse language. He would be allowed to have a boathouse at numerous locations on the property as long as it stayed in that 30 ft view corridor. With the boathouse language right now, you can't have it wider than 20 feet X 36 feet, so he could put his boat and other boating related items in that and use the extra room that he has in his garage from the removal of the boat for a workshop, lawn mower, wood

splitter storage. So the first thing would be that there are options with the existing footprint; options with meeting the setbacks; an option with having a boathouse. If you didn't agree and were going to allow him to do something with a proposed garage, I would hope that you would reduce the size and try to get it as far back as possible. There are some areas where he could meet a 50 ft setback. Or in the proposed area further over, he may have to do some excavation of an existing stone wall; he could probably move it 10 feet to get it out of the 35 ft buffer and still get access to it. It would require some alterations to the existing slope, but there are options so it is not being expanded toward the OHWM and at best out of the 35 ft buffer zone.

John Bloom: You say there are options for a boathouse. And say it was in the same location, then he could actually build it going back as far as the OHWM is, right?

Peter S Wegner: Yes, except that the slope is greater than 20%. He would basically have to be where he is located.

Phil Albert: Clarification on that, you can build a boathouse that is not on shore or on water, but then because it is called a boathouse, he can expand the existing garage in the same location?

Peter S Wegner: We were talking about how it would look based on what he is proposing. The boathouse itself, forget that there is even a garage there, could not be wider than 20 feet facing the OHWM. Even though there is no water here, we would hold him to a 75 ft setback, and we would also allow him to take advantage of that line as far as the placement of a boathouse.

Phil Albert: So it could be as deep as 36 feet.

Peter S Wegner: But he couldn't go much closer than he is proposing because of that slope. You can't have a boathouse on a slope greater than 20%.

Guy Hansen: So he could go 20 feet deep and 36 feet wide. True?

Peter S Wegner: I'd like to call it 20 feet wide and 36 feet deep.

Guy Hansen: The only way it would fit on there would be...

Peter S Wegner: We walked to the back of the garage. There was a four foot pole or stake there. I think he could go another four feet. So its 8 feet he could go back without getting on that crucial slope. And that would add to the existing 28 ft, he'd be at 36 ft right there and not going any closer to his driveway. It would just be of a different dimension and not wider than 20 feet. It would be less square footage.

Dennis Simons: And if I may, according to your regulation, I can't put anything in there that isn't boating related. I can't put the lawn mower, the leaf blower. All I can put in there is the boat and that's it.

Peter S Wegner: That's true.

Harland Lee: If he didn't have a house here and this building we are looking at right now, were a house, he could replace that house on the same footprint. But because it's not a house, it's an accessory structure, you can't replace it. But he could leave it there and do nothing.

Peter S Wegner: That's correct also. He'd be permitted ordinary maintenance and repair.

John Young: Pete, you made a statement saying if this group allowed him to do something you wanted it to be the same structure size as a boathouse. You didn't say it had to be a boathouse. So what you are saying is he could build this, not call it a boathouse and it would be okay.

Peter S Wegner: Yes. I would like that. But I'm going from my best scenario to my worst. And if you were to allow him a variance and allow him a garage with all the uses he has mentioned, I would hope you could keep it the size of a boathouse. Why? Because it is within that 35 ft buffer zone.

John Young: And then he could put anything he wanted to in there.

Peter S Wegner: That's up to you.

Norris Ross: You got an angle problem, right angles, so one solution to a right angle problem is don't make it a right angle any more. Think outside the envelope. Turn something, back straight in, add on to the existing garage & the house out that is still in the grey area. I think there are other options other than what he is suggesting. He may not like them, but I don't think he is without options. If I were building a shop and new storage garage, I'd like to have it all together in the house. I'd like to not walk outside to go to the shop.

John Bloom: You can't do that now. That's the old. The new one takes up this area.

Peter S Wegner: I did an overlay. If you hold it up to the light and trace the line of the shaded, what he has submitted in the appeal, he could have an addition of a shop area there and then have a boathouse for the storage of the boat. And it would give room for the wood splitter. And it could be further over too. There are options. It may not be the same size.

Norris Ross: Tell me what the other regulations are for just putting up a storage shed within the 75 feet.

Peter S Wegner: The only thing you are allowed less than 75 feet is a boathouse or a walkway, not to be greater than 4 feet. And between 35 and 75 feet, 200 square feet of open deck or patio, under Special Zoning Permission.

John Bloom: Say we would give Dennis Simons a variance on this, for a garage, could he not come back and say now I'd like to build a boathouse down by the lake. He could, could he not?

Peter S Wegner: Yes, that is correct,

John Bloom: Why wouldn't you want a boathouse at the lake where you could store your boat at the lake?

Dennis Simons: You gentlemen brought up the word boathouse. I don't want anything to do with a boathouse. I don't want to look at one. If I put in a boathouse, again, I can't put in my lawn mower, leaf blower or log splitter. If it is not directly related to that boat, and maintenance of the boat, I can't have it in there. So I would not have a place to put the ATV....no I don't want a boathouse. Peter S Wegner, I understand you are doing your job, but you make it hard to comply with the rules. You say to add a second floor on the existing garage that is attached to the house. Okay, so I need to do work on my 5 horse Ariens Snow blower? Are you going to help me carry that thing upstairs? How am I going to get it up there to work on it? Other than a bird house, that shop would be worthless unless I'm a painter or as a TV Room. I just don't see that as an option. The hilltop area would require more disturbances, more area in the proximity of the lakebed than I would by doing what I am asking to do. If I were to cut in from South Fawn Lake, all I'm asking for is for my insurance company to drop me every time I try to pull in or out of there, because it is going to be a....blind side. From the top of this hill, which is right next to the road, that's got to be 15 feet higher than the road way, so I would be cutting into the embankment, creating blindsides both ways.

Harland Lee: Let's say that we agree with your point on the 2nd story; and we agree with the hilltop location. What about, just extending your current garage and bringing it forward more, which makes your garage longer, you could probably wheel your boat in there, or you could have your work shop. It would increase the size of your current garage. What are your responses to those?

Dennis Simons: I believe there are setbacks from the house to the well. If I come out, I will have to go to the expense of moving my well. Because it is going to be in the way.

Peter S Wegner: Or get a variance from the State.

Dennis Simons: It's right next to the propane tank. That vicinity. From the existing corner of the current garage, its 20 feet.

Peter S Wegner: It might fit.

Dennis Simons: If I come out forward from the garage that totally eliminates the usefulness of the turn-a-round. There is no turn-a-round. It eliminates it.

John Bloom: How wide is your present garage?

Dennis Simons: The one attached to the house? 24 feet. Coming forward, I just don't see that. That also makes the garage more of predominant than the house. There is another option. I could sell half of what I own. Not worry about storing or securing it.

Harland Lee: I just want to remind the Board, it is not necessarily our responsibility to find alternatives; it is an interesting exercise for us to perhaps look at to see if there are reasonable options, but that is not the issue before us. With that thought, we are here to decide whether we give him a variance to rebuild where he wants to rebuild or not; and if we do if it's restricted in any way, in terms of size or whatever. But that really is our main responsibility.

Dennis Simons: There is nothing I can find within the DNR, Oneida County or the Town of Cassian that restricts me from the number of fish shanties I can have. So I can have 10 fish shanties. Where do I store them in the summer? On my land? There is nothing in your regulations. Talk about roof space. That's going to be a lot more than the garage would be.

Peter S Wegner: It is in the ordinance. It's a structure, it would have to meet a 75 ft setback.

Dennis Simons: It's portable.

Peter S Wegner: Doesn't matter.

Dennis Simons: Are you saying I can't have my fish shanty now? I have to come back again?

Peter S Wegner: I didn't say you couldn't have it.

Mr. Simons: Another thing I'd like to bring up. Section 9.94, which talks about setbacks, subsection A, OHWM, then you go to (2) (a). Existing development pattern. The placement of a proposed principle dwelling unit less than 75 feet is based on existing development pattern. For purposes of this section, the principle dwelling unit

shall not include a boathouse, a storage shed, a detached garage, deck or other accessory structure. So I kept paging through here. So where is the section that does apply to boathouses, storage sheds...well, it talks in depth on boathouses. Never mentions a storage shed. Never mentions a detached garage after that. So it tells me that stuff doesn't apply to this, but nowhere in here does it tell me what does.

Peter S Wegner: A (1) says everything must meet the 75 ft setback. A (2) says here are the exceptions. An exception would be an existing development pattern. When you are going to...

Dennis Simons: So you're telling me there are no exceptions.

Peter S Wegner: No. It says right here, exceptions to 75 ft setback. When you are going to determine what that exception is or what the reduced setback is you cannot include these things when measuring for averaging. What it is saying is that you can't use your boathouse, storage shed, detached garage to average.

Norris Ross: You are not the only one that didn't understand it all in the first reading.

Bob Rossi: Pete, this is a document that I had in this folder of mine. It was directed to you at one time. I'm wondering if this thing ever became law. Senate Bill 472.

Peter S Wegner: It is law. But what this means to me is that when this SB 472 was passed; basically said that you cannot be more restrictive when treating a nonconforming building than the minimum standards that are promulgated by the DNR, which we take that to mean those standards that are in NR 115. NR 115.05(G)(6)(m) doesn't address accessory structures. It only addresses principle structures.

Bob Rossi: But that says also buildings of any kind.

Peter S Wegner: Buildings as they relate to those rules promulgated by the DNR, and those rules are NR 115 and NR 115 only addresses nonconforming principle structures.

Bob Rossi: Okay then he could build this thing.

Norris Ross: No. This is accessory.

Phil Albert: So do you know if Senate Bill 472 was ever enacted in law.

Peter S Wegner: Yes. It was. It's ACT 160, I think it is.

Phil Albert: Because NR 115 has been suspended.

Peter S Wegner: It hasn't been suspended. It's being worked on. And the version you are aware of has to be adopted by 2014, which I don't think is realistic, but it is being worked on anyway. I know what you are getting at. But this talks about nonconforming structures and sub standard lots. So I am only making those comparables to the nonconforming language. Somebody could, if they wanted to, stretch that argument as it relates to nonconforming to say that, if you have impervious surfaces, which we do not have in our ordinance, and he was beyond the impervious surfaces, which I don't think he is, he could possibly argue that he could replace it under NR 115. But he's not in that....

Bob Rossi: That was my thought when I read that. I thought he could replace it, without any question. But I wasn't sure if it was law.

Peter S Wegner: You can read NR 115 today as it talks about impervious surfaces and in my opinion it says you can replace any impervious surface within the building footprint. That structure has a building footprint. The DNR has said, No, that is just for open decks or patios. And I have said, "Then why did you say building footprint and then define it in NR 115 as three dimensional?"

Harland Lee: I think we are getting a little bit off the subject.

Dennis Simons: I would bring up two more points. One is, I think it was you, asked if any trees had to come down. And then you said you could cite us for tree removal. I am entitled to clear cut 30 feet for every 100 feet of shoreline. Clear cut. Not trim.

Peter S Wegner: So you would be over by 8 feet with just for the size of the proposed garage.

Dennis Simons: The building is already there. My point is that if I left that building alone, and you are saying the area behind the garage lakebed, I want to view my lakebed. I could cut every tree between my house and the back of that garage and I'd have enough lumber because of 30 feet wide. I can have my viewing. I have no intent on doing that because I like the trees.

Peter S Wegner: This is how. Let's say this is all vegetated. You could start here with a 30 ft viewing corridor and then 70 feet of vegetation; another 30 ft corridor and so on and so forth. This is if it was all vegetated. It's not all vegetated. You have a garage here now. So this is your established 30-ft view corridor. You have to have 70 feet of vegetation and that side before you can have another view corridor and 70 feet on this side before you can have another view corridor.

Dennis Simons: Okay.

Peter S Wegner: I understand what you are saying; you could have all these view corridors on your property.

Dennis Simons: The other comment that was made was that I had multiple places to put this boathouse that I never brought up and don't want. And if you look at the lakeside, I have probably 50 feet and then there is a ridge line that when you start getting in to the slope issue and everything else. The other issue that I still question, I understand that the laser went off when you went behind my garage. And I still contest that at some point and time, what if the terrain was such that two miles away through all sorts of swamp-type land, your laser still goes off. Two miles away? Is that still lakebed?

Peter S Wegner: Yes. That has happened.

Dennis Simons: At some point in time that becomes wetland. Wetlands feed many lakes and creeks. So at some point it stops becoming lakebed and its got to be a wetland. And the other thing here, again, it is definitely not navigable water. It keeps referring to that. Determination of navigability and ordinary high water mark. They don't say it is one in the same.

Guy Hansen: I have some questions. So we have some potential issues. One is that you cannot issue a permit for a new garage, which this would be, but ordinary maintenance and repair on the existing structure would be allowed. I know this has been discussed at nausium. If he replaced a wall at a time; would that be allowed on the existing structure?

Peter S Wegner: No a wall would be structural. Ordinary maintenance and repair is just shingles, siding, windows, and doors. Nothing structural.

Guy Hansen: So the whole idea of building it in the existing footprint, that only applies to principle residences. Is that right?

Peter S Wegner: Correct.

Guy Hansen: So whether it is within the footprint or bigger, that doesn't make any difference. We would like to see it a little smaller, if possible.

Peter S Wegner: If you were going to grant a variance to place an accessory structure other than a boathouse less than 75 feet from the OHWM, I hope you would reduce it. I hope you would look at the other options first, but I would hope you would make it as small as possible.

Guy Hansen: And or move it more than 35 feet from the OHWM.

Peter S Wegner: Yes.

Dennis Simons: If I do that gentlemen and move it straight into the other lot line, then the front of the garage sticks out into the existing driveway and now instead of ensuring I don't impede any emergency vehicle, or my own traffic, I am deliberately impeding it.

Harland Lee: Are there any new questions, new issues?

Phil Albert: Clarification on Pete's options. He said, to expand the existing structure within the shaded area of the map, which was this here. With a variance allowing the existing structure to be re-created, there you are suggesting no bigger than the existing structure there?

Peter S Wegner: I would suggest that it would follow the lines as far as dimensions permitted for a boathouse. The idea is to try to get it to comply with as many sections of the ordinance that I can.

Phil Albert: When you say boathouse, and you talk about 20 X 36, if you were to go back towards the OHWM, you then are dealing with not only a slope issue, but the removal of trees. Correct?

Peter S Wegner: I think if you limited it to let's say 8 feet to the OHWM/lake bed, he would not have a slope issue. And the tree issue would be minimal. There are just a few small pines that are on that side.

Phil Albert: Ok.

Bob Rossi: Are you referring to where that little stake or rod was behind there.

Peter S Wegner: Yes.

Bob Rossi: That was 4 feet, so then he could go another 4 feet.

Guy Hansen: Can we do such a thing as if we approve the rebuilding of this structure; place a stipulation that there will not be a boathouse built some time in the future? Can we do such a thing?

Peter S Wegner: Yes. If that's route you go, I will ask for that and some other conditions to be put on it. I have a list of four that I would hope you would consider if you are going to go that route. And that restriction would be something that would be recorded on his deed. So the Department does not have to look that up every time. That will come up right away.

Harland Lee: Could you itemize those at this point?

Peter S Wegner: If you are going to allow any variance, to allow the reconstruction within that area, beyond making it smaller, if you would require that he mitigates his shoreline that is down by the open water. He has about a 50 ft area. If he would make it 30 feet wide. So mitigation would be key. There wouldn't be much other mitigation other than that area.

Dennis Simons: Where are you talking?

Peter S Wegner: Down by the water here. You have this grassy area that goes 50 feet this way.

Phil Albert: When you talk about mitigation, you are talking about putting vegetation of some sort?

Peter S Wegner: Yes. Within 35 feet. Just to reduce it down to a 30 ft view corridor. No further encroachment that what is existing there today.

Guy Hansen: What does that mean?

Peter S Wegner: He is proposing to put it four feet back towards the ordinary high water mark and parallel too. Preferably he would just stay with the 20 X 24 minus the lean-to.

Phil Albert: Which puts into question the 20 X 36 ft area max. That's one question. Second question is, does it have to be called a boathouse?

Peter S Wegner: I guess I was under the assumption that you would not be calling it a boathouse. But you would be putting the restriction that he would not be permitted a boathouse.

Bob Rossi: Why the view corridor?

Phil Albert: That's just part of the mitigation. A concession.

Peter S Wegner: No boathouse in the future with a deed restriction.

Harland Lee: The shoreline on the water in front of your house. Is that in the state that it was when you bought it? Did you clear out any trees or vegetation on that shore?

Dennis Simons: There was one tree removed. It was a small pine that died. There was on the right hand side facing the water...this dates back to the thing I had mentioned to you that this property, this property and this property were owned by brother, brother, sister. One of the brothers and the sister, had an agreement. They actually had....a

boat....it was a low spot where they could launch. It took me a while to wonder why this is shaped the way it is. And it dawned on me. That then at some point in time, got blocked off with creosote treated railroad ties. I checked with my neighbor, and they agreed and I pulled out those creosote treated things and disposed of them at the Oneida County Landfill.

Harland Lee: So with the exception of the one tree, which you said was dead, the vegetation on the shoreline has basically been that way for some time.

Mr. Simon: Yes. On the slope and on the top part we actually added vegetation because that was nothing but sand and every rain you would get runoff. And part of that we just left alone. No mowing. I don't know what that ground is, but nothing grows there. You don't have to mow. I don't know if it is too acidic from the pines.

Phil Albert: Is the lean-to and the concrete under it currently considered structure?

Peter S Wegner: That's the other reason I wanted it reduced, that concrete would not have been permitted. That's actually a violation because that was a structural alteration to an accessory structure when he added that.

Harland Lee: It is my understanding that the lean-to itself is anywhere from 15-18 years old.

Peter S Wegner: Yes. That's fine. It's just the concrete that was added.

Dennis Simons: anything that I would do that would change its purpose, so that lean-to? I somehow changed its purpose by putting in a concrete floor? If I follow what they are telling me, I can't even enclose that. Right now, it's basically storage. I cannot enclose that to keep the leaves and all the chipmunks who love to nest in my wood piles, I can't enclose that, because it is a change of purpose even though I'm not going to use it for any other purpose than what I have been using it for.

Peter S Wegner: This is the language I am referring to. Existing accessory structures located less than 75 ft from the OHWM. That is this garage. Ordinary maintenance and repair of accessory structures less than 75 ft is permitted. Such accessory structures shall not be structurally altered, improved, replaced or expanded. So adding the concrete was an improvement, alteration, expansion; it falls under one of those. The only time you can do replacement or structural alteration to an accessory structure is an open deck or patio that is located less than 75 ft from the OHWM.

Peter S Wegner: What you are referring to is actually the use of the structure.

2:30 pm - Chairman Lee closed the public hearing from further testimony.

The Board of Adjustment deliberated the case in open session.

Motion by Guy Hansen, second by John Bloom to approve a variance in Appeal 12-009 of Dennis Simons for a new 20' X 24' garage subject to the following conditions: 1) Mitigation of the shoreline; 2) No further encroachment to OHWM; 3) Deed restriction prohibiting construction of a boathouse in the future; 4) Remove lean-to and concrete. On roll call vote: Robert Rossi: "aye", Phil Albert: "nay", Harland Lee: "aye", Guy Hansen: "aye", John Bloom: "aye." The motion carried with a majority vote 4:1.

Motion by Bob Rossi, second by Phil Albert to extend the filing date to Friday, November 30, 2012. With all members voting "aye" the motion carried.

2:50 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