ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING
Tuesday, April 2, 2013
1:00 P.M. – Committee Room 1, 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: Bob Rossi, "here", Harland Lee, "here", Phil Albert, "here", Guy Hansen, "here", Alternate Norris Ross, "here", John Bloom , "here," Alternate Jack Young is excused.

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

Other individuals present: Joe Patrone, agent for Mark Patrone

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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 alternate member is excused today. 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 Joe Patrone, agent and Peter Wegner, Assistant Zoning Director.

Secretary Phil Albert read the Notice of Public Hearing for Appeal No 13-002 of Mark Patrone, owner, PO Box 393, Okauachee WI; Joe Patrone, agent, 375 Hillside Road, Rhinelander, WI requesting an area variance to allow construction of a 26' X 24' garage 15 feet from the ordinary high water mark (OHWM) of the Wisconsin River and 10 feet from the right-of-way of Grill's Landing Road contrary to Section 9.70 A Highway Setbacks and Section 9.94 A (1) OHWM Setbacks of the Oneida County Zoning and Shoreland Protection Ordinance as amended September 28, 2012. The property is located at 5785 Grill's Landing Road, being part of Government Lot 6, Section 36, T37N, R8E, PIN #NE 401-2, Town of Newbold, Oneida County, Wisconsin.

The Notice of Public Hearing was published in the Northwoods River News on March 19 & 26, 2013; and was posted on the Oneida County Courthouse bulletin board on March 14, 2013. Mr. Albert noted that the proof of publication is in the appeal file; and noted

that the media was properly notified.

Secretary Phil Albert stated that an onsite inspection was conducted on this date at approximately 10:15 a.m. for appeal #13-002. The location for the inspection is 5785 Grill's Landing Road, being owned by Mark Patrone. Joe Patrone, agent for the appellant, was present. Other persons present at the inspection were the Board members and Diann Koshuta of the Zoning Staff. Observations: The property is an irregularly shaped lot, long and narrow. Joe Patrone informed the Board that there was a structure in the same area where the proposed garage is to be built. There is a concrete drive on the left side of the cottage that reaches from the roadway to the back edge of the cottage within 15-20 feet from the OHWM.

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. The public 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.

<u>Appellant Testimony.</u>

Mr. Patrone: The original structure that was there was very dangerous. It was on a 45 degree angle and we had a contractor come in.

Mr. Lee: How long have you owned this property?

Mr. Patrone: 1995. And in the papers here it says that the shed wasn't in good condition when they sold it. So its 2013 and it only got worse. As far as that goes, he said we could tear it down; so we took his approach without getting anything, being he was a contractor. But he steered us the wrong way. So we ripped it down and now that's where we are at. I feel that it is a seasonal place; we need a place to store things as far as wave runners and things like that. Lawn furniture and our water pump was going to be in there.

Mr. Lee: Is this more of a storage facility than a garage for a car?

Mr. Patrone: Yes. We'll storage snowmobiles and that type of thing too.

Mr. Lee: So it's not year-round.

Mr. Patrone: It's seasonal. I live here in town, in Rhinelander. It's my brother's cottage and stuff, toys. They need to be stored.
Mr. Lee: You don't intend to put a car in there?

Mr. Patrone: No. Just basically storage. Winter stuff in the summer, to keep things out of the elements.

Mr. Rossi: Would you put the pontoon in there?

Mr. Patrone: No. The pontoon would stay where it is at. It's way too big. It's for smaller things like wave runners, snowmobiles, lawn furniture, things like that.

Mr. Lee: The criteria that we need to follow—there are 3 criteria that must be met in order for us to grant a variance, which is what you are seeking. The first of those is unique physical property limitations. The second is no harm to public interest. And the third is unnecessary hardship. The appeal sheet that you filled out had those three items on it. Would you care to address those three and tell us why your situation satisfies those requirements?

Mr. Patrone: The unique physical property limitations are the setback to the road and to the OHWM. No harm to public interest. No harm due to unique physical property limitation. Placing it in an area where the previous garage was located. The former building blew down in wind storm in July, 2011. There is no practical space remaining on the property that is not within 75 feet of the OHWM or 20 feet from the road right-of-way.

Mr. Lee: Would you like to elaborate on any of those or does that sum it up?

Mr. Patrone: As far as that goes, it wasn't really blown over. We tore it down.

Mr. Lee: On bad advice.

Mr. Patrone: He is a contractor in town here and lives right down the road from us, and we figured we'd give him the work. He said he would take care of it. He said he came in here (maybe he did and maybe he didn't) and came back a day or two later and said "Go ahead and tear it down." So I called my brother, and we tore it down.

Mr. Lee: Anything else you want to add to those three points?

Mr. Patrone: No.

Mr. Ross: Where they tore it down, is there a slab there?

Mr. Patrone: No.

Mr. Bloom: What was the size of the original?

Mr. Patrone: The original size was 20 X 10.

Mr. Albert: You said you had pictures?

Mr. Patrone: Yes.

[Pictures were marked as an exhibit.]

Mr. Lee: How old is the house?

Mr. Patrone: We bought it in 1995.

Mr. Wegner: It showed up on a 1974 survey.

Mr. Lee: So it's been there for quite awhile.

Mr. Patrone: I do have information on that when we bought the place, it said that it wasn't in good condition at the time. 1995.

Mr. Lee: Have you considered any other locations on your property?

Mr. Patrone: Not really. Because where it is at….I just feel that it was there. So we are going to put it in the same spot. On the other side, you are talking about tearing trees down. More money.

Mr. Lee: Other questions from the Board?

<u>County Testimony</u>.

Mr. Wegner: I have photos; the ones that were taken today and the second set of photos are from 8/23/11. It shows the scrape on the ground and the footprint of the garage that was there. The carpet is covering the pump that was inside the garage. The map itself, I put together an area that meets all the applicable setbacks and added five feet because when it comes to a private road, it is always a good idea to leave at least 10 feet for snow fall and that type of thing. We came up with a small sliver of property. To me, Option A is what he proposes and Option B is something in this hashed area, not to be closer than 50 feet. It is probably a wash. The further we can get back from the water is better, but again, you would be removing trees in that area; and this area is already grubbed out for it. So if you are going to grant a variance, in either location, we will hope that we can add to it that he has to mitigate with the exception of the view corridor in front of the house. Other than that, it seems like he meets the criteria. It is just a matter of the location that best suits his needs.

Mr. Ross: How would you mitigate on that site?

Mr. Wegner: We would have them add trees and shrubs in the open areas along the east and west side; depending where this garage is place depending on a variance. Looking at the sanitary permit that was issued in 1997, it is obvious that it was there. I thought it was a storm damage type situation, but they took it down themselves. There isn't anything in the ordinance that would allow them to replace an accessory structure. They are held to ordinary maintenance and repair. So some type of relief is going to be required if you are going to allow him to place a garage in either location.

Mr. Lee: What is the county looking at as an alternative?

Mr. Wegner: To get it further from the water…placing it on the west side you would be removing trees versus "A" where it is already open space.

Mr. Hansen: You denied the permit because he is not allowed to reconstruct the out building.

Mr. Wegner: I denied it based on new placement. He couldn't meet the applicable setbacks to the right-of-way and to the OHWM in any location on the property.

Mr. Lee: Even if he put on…..if you are standing by the house and where he is proposing that, if you are talking on the left, there isn't a spot that really meets all of the requirements.

Mr. Wegner: Correct. It's just that B would be further back, but then you would be removing some rather large trees.

Mr. Lee: Well, depending on the size of the building. 18 X 10 and he still has a huge pontoon there. There is a concrete slab there. If you angled the building I suspect not more than some of the smaller trees would have to go out.

Mr. Wegner: That's right. I was thinking 24 X 26.

Mr. Lee: He wouldn't have to take out any of the big ones.

Mr. Ross: What can you do to the house?

Mr. Wegner: Under today's ordinance you could replace it in its footprint and go up or down in that footprint.

Mr. Ross: You couldn't build an attached storage facility?

Mr. Wegner: No. Because he is less than 40 feet from the OHWM.

Mr. Bloom: How about a detached on the slab, was that ever considered?

Mr. Wegner: No, because it wouldn't meet the OHWM setback of 75 feet.

Mr. Bloom: That would be no different then. Only you've got a slab there already.

Mr. Wegner: Yes.

Mr. Ross: You could also take the driveway out.

Mr. Bloom: That's what I am talking about.

Mr. Patrone: Then we would lose all our parking.

Mr. Rossi: You could park where the shed was.

Mr. Lee: The well pump is in that location. Currently has like a plywood structure around it. Would it be permitted for him to enclose that structure in some kind of a small little thing? Your intention now is to have that included in the proposed shed.

Mr. Wegner: The ordinance would treat it as a structure. But there are two scenarios where the Department has looked the other way, so to speak. One is a 4 X 4 stoop for ingress/egress that is within a setback. The other is the pump house.

Mr. Hansen: The code does not allow replacing an out building which this would have been.

Mr. Wegner: Yes. Correct.

Mr. Hansen: But you said something about meeting the criteria. What criteria are you referring to?

Mr. Wegner: Neither location meets the criteria—setbacks.

Mr. Lee: It would require a variance regardless of whether this is right or left. It's a matter of what is more….

Mr. Bloom: If the wind had blown this down, then he could have replaced it.

Mr. Wegner: Yes. We do have a provision in the ordinance that under 9.99.

Mr. Hansen: Then it would have been allowed to be replaced?

Mr. Wegner: Correct.

Mr. Ross: Wind, fire….

Mr. Rossi: If it was existing prior to.

Mr. Albert: Based on the depth of the lot, and being wider at the left, it is deeper on this side than it is the location that they have identified. I am assuming that the Department would prefer it then because of your ability to get farther from the high water mark and farther from the road setbacks, you would prefer it on that side.

Mr. Wegner: Definitely.

Mr. Albert: Your concern there is the trees and the holding tank.

Mr. Wegner: Trees and parking could be an issue too. And also the fact that he has to have something constructed over that well pump. I would think that B would be better. But I think you could argue both ways. Two structures versus one. Parking. More disturbance. Less disturbance. It's a horse a piece.

Mr. Albert: Some sort of cover structure, protective structure, an insulated structure over the well head is a lot different than a 20 X 18 or 20 X 12 shed.

Mr. Wegner: I am talking out of both sides of my mouth. I would rather have it here, but I am anticipating that you sometimes disagree with me. And I am not going to kick and scream if you put it where he is proposing it. As long as I can get mitigation and attach something to it where he couldn't have a boathouse down the road.

Mr. Ross: Another variable. Now you raise another question. He could build a boathouse there.

Mr. Wegner: But it would have to be directly in front of his home in his view corridor.

Mr. Ross: That's the end. We are talking about a structure that is going to be 7 feet from the water.

Mr. Hansen: It's just a terrible place for a building.

Mr. Ross: Well this is an impervious surface. If we had impervious surface guidelines right now this would be blocked.

Mr. Wegner: We had the impervious surface language similar to what is in NR 115 right now. He could have replaced that garage.

Mr. Hansen: He wouldn't have exceeded the impervious surface limit?

Mr. Wegner: There is language that existing impervious surfaces can be replaced and I have argued.

Mr. Rossi: Regardless of when it came down?

Mr. Albert: Wouldn't a 20 X 12 structure that's in the area where the pontoon boat is now stored in front of the holding tank….you'd have to put the doors on the side towards the driveway.

Mr. Wegner: It would fit there. It would be less than 75 feet from the OHWM still. But it would be greater than 7 feet.

Mr. Ross: And he might lose a tree or two.

Mr. Lee: It isn't a garage, so you don't have to have direct access to it.

Mr. Albert: You could save the parking as long as it was left to the left.

Mr. Wegner: You are correct.

Mr. Albert: I think from the standpoint of the road, the closeness to the road, it seems that it would be a better placement all around, if it can be put in there, based on the holding tank location and the one front pine tree, which may be in jeopardy. But that's about it.

Mr. Hansen: It's so close to the road.

Mr. Bloom: I think a lot are right up tight (to the road). Seeing that it had an original footprint from the other shed, and it could have been, if it was a natural disaster, been replaced. I think it is logically to put it right back on that footprint. Not any larger than the original footprint. He's got the well covered. He doesn't have to cut trees.

Mr. Lee: Gentlemen, I think many of the comments you are making are certainly appropriate, but probably more appropriate for deliberations than now. We should confine our questions.

Mr. Hansen: If we deny the garage in that location and he decided to put it someplace else, then he needs to come back for another permit, or how does that work?

Mr. Wegner: You would have a motion stating that it should be in this other location that you talked about. Then he would file a new permit for that.

Mr. Hansen: We can't dictate where it can go, but we can dictate where it is not going to go. Right?

Mr. Wegner: You can dictate what kind of relaxation of the ordinance you are going to give.

Mr. Ross: Ahead of time? Or would he apply again.

Mr. Wegner: You would say in the motion that it should be placed on the left side of the home beginning 10 feet from the right-of-way or lot line of the road, not to be any deeper than 20 feet and ending at "X", wherever that setback is. And I am guessing it will be right around 50-55 feet from the OHWM.

Mr. Hansen: And we could still require mitigation. Because it is closer than 75 feet.

Mr. Wegner: You could require mitigation.

Mr. Ross: Well, if you didn't put it on the right side, you could certainly require mitigation and make them plant that whole area.

Mr. Wegner: The County would also request if you are going to grant a variance, that there is a stipulation that there will be no boathouse down the road.

Mr. Ross: Any neighbors have any comments about having your garage one place or the other?

Mr. Wegner: I haven't received anything.

Mr. Lee: They were notified?

Mr. Wegner: Yes.

Mr. Albert: If it were to go on the left of the driveway, there is not an issue with putting some sort of protective structure around the well pump?

Mr. Wegner: No.

Mr. Lee: Any further questions?

Mr. Lee: Anything Joe that you want to add to what has been said?

Mr. Patrone: I guess I understand where you guys are coming from as far as the high water mark and things like that. But, I just feel that to me this would be the best place. But it's not my decision to make. But it is open and….

Mr. Ross: Just in general, we are here to consider what has been denied. We don't necessarily solve your problem, although we might.

Mr. Lee: Pete, anything further?

Mr. Wegner: No sir.

1:30 pm - Chairman Lee closed the public hearing. No further testimony will be accepted.

Motion by John Bloom, to grant a variance for placement of a shed in the original footprint, with mitigation at the discretion of zoning and that no boathouse is permitted in the future. There was no second to the motion. The motion died.

Motion by Guy Hansen, second by Phil Albert to allow the construction of a storage shed the same size as the original shed but to the left of the cottage, with mitigation at the discretion of zoning; that no boathouse be permitted in the future and a small protective structure be permitted for the well pump. The motion carried with a majority vote of 4:1.

Motion by Phil Albert, second by Guy Hansen, to extend the decision filing date to April 5, 2013. The motion carried unanimously.

1:40 pm. The meeting was adjourned following a motion by Guy Hansen, second by Norris Ross and with all members present voting "aye."

Harland Lee, Chair Phil Albert, Secretary