

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING
Tuesday, July 9, 2013
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: Phil Albert, “here”, Bob Rossi, “here”, Harland Lee, “here”, Guy Hansen, “here”, Alternate Norris Ross, “here”, John Bloom, “here”, Alternate John Young, “here”.

County staff members present: Peter S. Wegner, Assistant Zoning Director and Julie Petraitis, Secretary II.

Other individuals present: Justin Barchfeld, Ruth Barchfeld and Attorney John Schiek.

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 Justin Barchfeld, Ruth Barchfeld and Peter Wegner.

Secretary, Phil Albert read the Notice of Public Hearing for Appeal No 13-005 of Justin and Ruth Barchfeld, 861 Suffield Terrace, Schaumburg IL 60193, to allow an 8'x12' addition and an 8' x 10' deck located three (3) feet from the adjoining property line to remain as built pursuant to the “Americans With Disabilities Act (ADA) 42 USCA Section s 12131 to12134. The property is located at 6861 Drury Lane Loop, Deer Lake Resort Condo, Unit 4, Section 10, T38N, R11E, PIN TL 3454, Town of Three Lakes, Oneida County, Wisconsin.

The Notice of Public Hearing was published in the Northwoods River News on

Secretary, Phil Albert stated that an onsite inspection was conducted on this date at approximately 9:50 a.m. for appeal #13-005 on July 7, 2013. The location was 6861 Drury Lane Loop, Deer Lake Resort Condo, Unit 4, property owners Justin and Ruth Barchfeld, Three Lakes, Wisconsin, who are also the appellants. Persons present at the inspection were the Board members with Alternates present, Diann Koshuta of the Zoning Staff and the appellant representative, Attorney, John Schiek. Also, an additional public member, Tony Hanson. Observations: the property boundaries were not properly marked other than a metal pipe at the property shoreline. The highway and right-of-way were not adequately marked but not necessary. Well and sanitary facilities were located as they were common facilities in the Condo development. Outline of proposed construction was adequately marked. It existed and was mostly completed so it was easily detectable. The existing structure in question was approximately 3' from the fence line or 4.4' 10" to the property line, although the property line was unmarked. 10' from the approximate property line it intruded into about mid-point of the new deck. Topography and condition of the land surface: typical garden and vegetation with sloping lot line, sloping lot from the structure down to the Ordinary High Water Mark of the shoreline. No erosion was present or detectable. The existing structures are the house and the deck structures that existed, with a tall fence directly adjacent to the structures and the new unpermitted storage shelter / deck directly adjacent to the existing structures. The front face of the deck (new existing) was approximately 75' from the high water mark. That is the conclusion of the onsite.

Chairman Lee explained that the procedure for the Hearing would be that the appellant will have an opportunity to present their case/views. The County will respond. After everything has been presented the Hearing will be closed and the Board Members will debate the case and come up with a motion and final decision. The Appellant and their representative are welcome to stay.

Attorney Schiek explained that he filed the appeal with necessary information he felt was important, which includes the medical records of Mrs. Barchfeld. Attorney Schiek stated that he is hoping the Board will apply the Americans with Disabilities Act, 9.19 of the Code to this case. Attorney Schiek also stated that he included a legal case, which is a case close to this appeal on some various facts. A Mother and Daughter with muscular dystrophy wanted to put a parking lot next to the front door of their residence, which didn't meet setbacks. They had other options, but they applied for this. They applied to the City of Manchester, NH. They were denied the permit application. The denial went to Appellate Court in which the Appellate Court said they made a mistake. Some type of reasonable accommodations should have been made for the women under the ADA. This case clearly shows that zoning laws must take into effect what the Federal rules are. Section 1.19 of the Oneida County Zoning and Shoreland Protection Ordinance recognizes that. Attorney Schiek feels the Barchfeld's meet the criteria. The shed is to accommodate the Barchfeld's. In the case of the parking lot the Court felt it was important that the appellants have an equal opportunity to enjoy their housing and the law is designed

to give people all their human rights and fundamental freedoms. Section 9.19 also indicates that the junction shall terminate if and when the facility is no longer in use by a disabled person. The Barchfeld's recognize the fact that if the shed is allowed to be completed and stay in its present location it will be removed and put into compliance when it is no longer being used for Mrs. Barchfeld. They are hoping the Board will consider this.

Attorney Schiek: State your name please.

Mrs. Barchfeld: Ruth Barchfeld

Attorney Schiek: Where do you live?

Mrs. Barchfeld: The summer I live up here in the winter I live down in Illinois.

Attorney Schiek: Give the Board a brief sketch of your educational background.

Mrs. Barchfeld: I have a BS in Nursing and a Masters Degree, basically, in School Nursing. I went into the schools and took care of kids. I worked 23 years in a general hospital, on the floors. When I couldn't handle that anymore so I had to modify it then I went to the schools. And then that was even too much and they put me on permanent disability.

Attorney Schiek: Would you please explain to the Board the nature of your disability?

Mrs. Barchfeld: The big nature of my disability is limited motion, limited ability to get around due to fusions, pain. I also have systemic diseases, loopis, so I fatigue easily; fibro mialgia, rheumatoid arthritis, osteo arthritis and with my back being bent just to hold it up takes extra energy.

Attorney Schiek: Do you have any hardware in your back?

Mrs. Barchfeld: I am fused the cervical through thoracic and my lumbar in the bottom is totally bone on bone now. They want to fuse that but they are reluctant because then I won't have any motion. That is down at Rusch through Dr. DeWalt.

Attorney Schiek: How about your knees and ankles?

Mrs. Barchfeld: My knees are bone on bone from the osteo and the rheumatoid.

Attorney Schiek: And your ankles?

Mrs. Barchfeld: My right ankle had spontaneous; I woke up one day and because of all the different disease processes this can happen. It doesn't happen very often but

it can happen, I had spontaneous rupture of the postural tibia tendon. And when that ruptured I had an automatic collapse of my arch. The bones all went down and I was literally walking on the outside bone. I had a fusion done and the fusion went wrong and sometimes I just have to drag my foot. That was at Loyola University.

Attorney Schiek: Relative to all your problems medically, how does that affect you physically as to your ability to do things?

Mrs. Barchfeld: I have to find alternate and easier ways to enjoy myself. I can't really do much of anything without assistance. If I am up here by myself I'm limited to the house and the porch to enjoy the Northwoods.

Attorney Schiek: How about your ability to squat and bend and lift and those kinds of things?

Mrs. Barchfeld: Very limited, 5lbs.

Attorney Schiek: And what about up and down stairs?

Mrs. Barchfeld: What I do...once in a while I can do it and I have to hold on with 2 hands to the railing and I have to go down with my good foot first so I don't put any pressure on the bad foot. On the days that it's really bad I sit and I have to go down on my bottom. And I sit and come up. I won't, one thing I've learned is that I'm not going to let it... I have to do the best that I can do.

Attorney Schiek: How about you're living quarters when you're up at the place that we visited today, where are your living quarters as far as your kitchen, living room, bedroom and so forth?

Mrs. Barchfeld: I'm very limited to the bedroom and then the chair I was sitting in when you saw me and I do get up with a cane or the wheel chair if I have to and go over and make myself something to eat and then go back there unless I have a friend over to help me.

Attorney Schiek: And your bedroom is on the same level?

Mrs. Barchfeld: Yes.

Attorney Schiek: And when you come up here do you just stay on the same level?

Mrs. Barchfeld: Yes. Unless I do have to go downstairs and, like I said if I do, if there's something pressing I have to get down there for, I sit on my bottom - I can't carry anything on a stairway- then I have to come up. It's very difficult on the wood steps.

Attorney Schiek: But you are able to get up the steps?

Mrs. Barchfeld: If I'm sitting.

Attorney Schiek: I was envisioning you coming down on your butt...

Mrs. Barchfeld: Very often I have, if it's a real bad day I have to come up on my butt, too. So it just depends on the day.

Attorney Schiek: You understand we're asking this Board to approve the shed that's up by the deck, correct?

Mrs. Barchfeld: Correct.

Attorney Schiek: And you understand that there is a violation there as far as the setback, meaning it's too close to your side lot. Correct?

Mrs. Barchfeld: Correct.

Attorney Schiek: Why do you think that they should approve this and let you leave the shed? Why is that important to you?

Mrs. Barchfeld: So that I can enjoy the Northwoods and get out there. If there's a problem with an article that's out there I have a way of taking care of it. It's on the same floor. I can be in the wheelchair, push it or...a women's center of gravity is here (core). We're built like that to have babies. So if I do lean on it and hold it and use it as my support I can push it with my body so I can move it. So I'm using the object as my support and I push it with my stomach area. If it has wheels it's like having a walker with wheels. So I can walk it in there.

Attorney Schiek: One of the reasons they stated that they denied your permit, the Zoning Office did, is that you could leave the furniture in question on the deck and provide covers to protect it.

Mrs. Barchfeld: I don't bend. I don't bend.

Attorney Schiek: Explain why that is not a reasonable alternative as far as you're concerned.

Mrs. Barchfeld: If it is a long cover and I have to reach/bend to do it, I don't bend like people. I don't bend. I'm fused.

Attorney Schiek: Ok, but you indicated you can move furniture on the deck to the storage area.

Mrs. Barchfeld: Straight and I use it like a walker. Like stuff at home has wheels on it and I rest my body against like a walker with wheels. And that's how you can handle that situation. But for me to pick something up it's an impossibility. To reach over and try to put it...I don't bend so that means I have to keep taking steps around it to try to get it on. If the wind blows, I'm done.

Attorney Schiek: One of the other things they indicated is that you could store the furniture inside the house in a location that would not take away the use of your main living space. What would you respond to that?

Mrs. Barchfeld: We have quite large door jams, if you saw coming in, the metal ones. It's very hard to go over those so we're making it flat to go into the shed so that I don't have that problem.

Attorney Schiek: What affect would that have on your living space if you had your...

Mrs. Barchfeld: I couldn't enjoy it or friends couldn't come over 'cuz it would be all in the middle of us.

Attorney Schiek: That's all the questions I had for her and I'm sure that if you have any questions she'd be more than happy to answer.

Mr. Lee: Does the Board have questions of either John or Mrs. Barchfeld?

Mr. Ross: Do you come up and are you there alone a lot?

Mrs. Barchfeld: I am alone. My husband works a lot. So, yes I am.

Mr. Ross: And not from there?

Mrs. Barchfeld: No he works from home. He has his own Company at home. His time up here is the weekends. So I'm alone during the week.

Attorney Schiek: Explain how long you're up here and how much time your husband spends.

Mrs. Barchfeld: I usually come up in May and I usually stay until September. This year it will be through September.

Attorney Schiek: In that time frame how often is your husband here?

Mrs. Barchfeld: Sometimes...there's been times he hasn't gotten up there for a month and there's other times. Because he owns his own business it's very...I can't tell. He can maybe come up for three weeks. He can come up maybe twice in a week for a day and go back.

Attorney Schiek: And when you say his business back home you're talking in Illinois.

Mrs. Barchfeld: Correct.

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

Mrs. Barchfeld: I'd have to refer to my husband for that. It was I think 9 or 10 years.

Mr. Lee: Nine or 10 years. You've had outdoor furniture on the deck all that time, is that correct?

Mrs. Barchfeld: I was in much better shape. I applied for disability and was unable to work anymore starting January...I the surgery in June on my foot and now my arthritis got worse and it was in November before that. So, June 5 of last year I had the surgery on my foot that went bad and the spontaneous rupture they tried to heal with other things and they couldn't. That happened in November, so the records would show at the school district I worked at since November it will be 2 years that my limitations has gotten...

Mr. Lee: I don't think the Board disputes your disability nor is the Board un-sensitive to that. My question is if you have lived here or had the place for nine years or so I'm assuming that you had deck furniture out there all of this time. Is that correct?

Mrs. Barchfeld: Right.

Mr. Lee: And what did you do with that furniture? Did you take it in and put it out every other day or if it looks like rain or does it sit out there all summer and then in the fall you put it away for the winter?

Mrs. Barchfeld: No, I could put covers on before. Now I'm finding it impossible.

Mr. Lee: Ok. So, you put covers on it when the weather is inclement or something?

Mrs. Barchfeld: If I see a heavy rainstorm coming or something, yeah.

Mr. Lee: Ok. And you envision rather that covering them now pushing this furniture into the shed?

Mrs. Barchfeld: It will all be equipped with wheels. So yeah.

Mr. Lee: So it wouldn't be just for the winter storage it would be for occasional storage during the summer?

Mrs. Barchfeld: Right. If I have good furniture I just take care of it.

Mr. Lee: Ok. When you began to conceptualize this storage shed on the end of the deck did you give any consideration to putting that storage facility on the other end of the deck?

Mrs. Barchfeld: I live mainly on that side of the house. Really most of my time is really spent right there by the TV or right out on the deck right there. So I think we went for the closest.

Mr. Lee: The one thing that I think this Board has difficulty with is after-the-fact permits. I think, Mr. Schiek is well aware of that. I think every builder up here is aware of the fact that they need a building permit to do something. But, as far as the law is concerned that responsibility is the responsibility of the owner not the contractor. I just mention that it is your responsibility to know what the law is before you go with a contractor and build. How much of a problem would it be if the shed were on the other end?

Mrs. Barchfeld: It would be a longer place for me to go. I try to save as many steps a day as I can.

Mr. Lee: I have no further questions.

Mr. Ross: During the time that your husband is not around, 2 weeks – 3 weeks whatever it is, do you have someone come in? Do you drive? How do you get food?

Mrs. Barchfeld: I can drive. I do use my cane. I go to Bob's or Baker's or whatever it is in Town, so it's not a huge store. Those huge box stores are too hard unless I do one of the rider carts. And I get it and I come home. I'm trying to save my energy for those things.

Mr. Hansen: How much of the deck furniture would you actually use? It seems like maybe a chair.

Mrs. Barchfeld: I do. I use those wooden chairs that are out there that were straight out the door. Those are the ones I sit in.

Mr. Hansen: But those would be replaced, right?

Mrs. Barchfeld: Correct.

Mrs. Barchfeld: Thank you.

Attorney Schiek: Would you state your name please?

Mr. Barchfeld: Justin Barchfeld

Attorney Schiek: And where do you live?

Mr. Barchfeld: 861 Suffield Terrace in Schaumburg, IL for the majority of my time.

Attorney Schiek: What is your business or profession?

Mr. Barchfeld: I'm a small business owner. I have a company called Northwest Flyers. We do a little bit of aircraft repair; sell some aviation fuel, some flight instruction and some aircraft charter and aircraft management.

Attorney Schiek: And where is your business located?

Mr. Barchfeld: In Schaumburg Il.

Attorney Schiek: And you have now purchased a place in northern Wisconsin?

Mr. Barchfeld: About 8 or 9 years.

Attorney Schiek: And that's the place we visited today?

Mr. Barchfeld: Yes.

Attorney Schiek: How often are you up here in the summertime? Explain that situation.

Mr. Barchfeld: One of my primary functions, other than managing the business is as a pilot. What I do is I fly managed aircraft and also for the owners and/or charter. We really don't know, quite honestly, when the next flight is going to come. We get a call today we go tomorrow. We get a call today we go out this afternoon. So my time up here is to catch it when you can catch it. I come up whenever I can as much as I can because I like it up here a lot. I try to get up here as often as possible but it's usually for short periods of time. As my wife mentioned, I come up for a day or two. I mean there have been times when I've gotten up here and just gotten settled and ...we had one where literally we unloaded the airplane, I fly up on a little airplane, and I got a call that there was an airplane accident. I literally unloaded my wife and then turned around and flew right back because it was a fatality at my airport. So, that's how crazy my business is.

Attorney Schiek: But you yourself are a pilot?

Mr. Barchfeld: Yes.

Attorney Schiek: So you fly some of these...

Mr. Barchfeld: I fly the all the aircraft that we manage, yes.

Attorney Schiek: You understand we're here on this shed situation and you also understand there was an after-the-fact situation?

Mr. Barchfeld: Yes.

Attorney Schiek: Explain to the Board why you constructed what you did and why it's an after the fact situation.

Mr. Barchfeld: My wife's physical condition started to deteriorating we started trying to come up with ideas on how we could mitigate some of her issues when I'm not around or when she doesn't have help up here. When we first bought the house the kids were smaller and now they're both married and one granddaughter and another one's on the way so they don't come up as much as they used to. So, again, we started trying to think of ways and we came up with this idea of putting this little extension on and wrapping it around the corner of the house and putting this little storage area on there, out of the way and out of everyone's sight so it would be a problem. One of the things that I wanted to do, or make sure that we did, and I think it's obvious when you guys were out there today that we didn't want to put a little shed that looked like hell. We wanted it to look...it was designed to look identical. The exterior was going to be finished the same as the rest of the house. The same color, the same half log construction, everything was going to be very professionally done. We hired a contractor to do it. During our discussions, we never ever had a discussion about permits or and/or setbacks. Quite honestly the setback issue never ever came in my mind only because I look at my garage is sitting right on the property line. My neighbor's garage is sitting right on the property line. It didn't enter my mind. I'm not saying ignorance isn't - what do they say? Ignorance isn't any excuse. Maybe I should have but it the thought never even entered my mind. I just assumed and we all know what assume means. I asked the contractor to build the place and we came up with a size and he went to work on it. Again, no thought or conversations were made.

Mr. Lee: There was never any consideration of the other end of the deck?

Mr. Barchfeld: No, not at all. We thought, quite honestly, that it would be less obtrusive if we just wrapped around that side. There's nothing on that side. The structure cannot be seen from the road, can't be seen from the lake, and can't be seen from any of the other homes in the condo association. The only place it can be seen from is the people next door and we've had discussions with them and they have absolutely no issue with it.

Mr. Lee: But it would, in fact, have met all the requirements.

Mr. Barchfeld: Yes, sir.

A few people speaking at once here.

Mr. Lee: If it were done on the other side.

Mr. Barchfeld: Yeah. I can't argue that. You're right. But, again, in my way of thinking at the time that didn't even enter my brain because we were trying to be as unobtrusive as we possible could and that just made sense to us.

Mrs. Barchfeld: That's always where I sat. We came into that.

Mr. Schiek: Mrs. Barchfeld, you aren't supposed to speak.

Mr. Schiek: Now, somewhere along the line you found out there was a problem. Explain that.

Mr. Barchfeld: Yes. We got a notice that there was a violation and we made contact with the contractor and told him to stop everything he was doing. We contact the Zoning board and started trying to figure out who, what, where, why and where we went wrong so to speak and we were told what we did wrong. At that point I asked if there was any relief and I told them the reason why we were doing this and they gave us the appeal process. I felt more comfortable getting a hold of a local Attorney to handle this because I don't know all the ins and outs and I don't know the proper forms of the way to do it and I just ...

Mr. Schiek: What, if any, efforts did you make in getting a hold of the neighbors to see if they had any problems with this structure?

Mr. Barchfeld: Well, there's another little Condo Association south of us. We talked to the two ladies that live there and both of them expressed no problem with it at all. We contacted our Condo Association. There are 10-12 houses or cabins in that area. We contacted the President and asked him for a letter to state that there is no issue. Before he did that he put a broadcast e-mail to all the Condo Association members and asked if any of them had a problem. Nobody responded that they had a problem.

Mr. Lee: So the source of the complaint was not within the Condo Unit?

Mr. Barchfeld: We have no idea.

Mr. Schiek: We were never told who made the complaint. This is a letter from the Condo...

Mr. Barchfeld: I'd like to know.

Mr. Schiek presented the letter from the Condo Association to the Board as an exhibit. Mr. Albert read the letter for the Board.

Mr. Schiek: That is from your Condo Association. What if any efforts did you make to contact the people on the other side of the fence?

Mr. Lee: That's not part of the Condo?

Mr. Barchfeld: No, that's separate. It was a little resort area and they did the same and made it a Condo Association. But anyway, whenever my wife went up in the spring, the first weekend we were up there, there were two ladies that lived in each one of the cabins in that Condo Association and we invited them up to talk to us. We explained the whole situation to them and we asked if they were the ones who had an issue because we wanted to know where the complaint was coming from so we could address any concerns they had. They said they didn't complain and they had no problem with it and they didn't see any issue with it at all. They just wanted to know how we were going to finish it. We told them it would be half log like the rest of the house and you wouldn't even notice it. They said "go for it". And today, Tony Hanson, who was the gentleman on the other side of the property, came and joined the meeting at the house today. He said he didn't have any problems with that.

Mr. Schiek: But the people, just on the other side of the fence...what, if anything, occurred with them?

Mr. Barchfeld: Nothing, other than the fact that they had no objections and told us that they had absolutely no problem with what we had done.

Mr. Schiek: That's the two women you had talked to?

Mr. Barchfeld: That's right.

Mr. Schiek: Now explain to the Board, if you would, the problems you see your wife having to enjoy the property and how that gears into the shed you put up.

Mr. Barchfeld: As I explained, the whole idea behind this was to allow her to take furniture in and out as needed. The wood furniture that you saw up there, as you can see, has deteriorated quite a bit since the fact it hasn't been covered. So the thought process is that, and we've done this in our home in Chicago, we had wood furniture, much like we were planning on buying up here after this was completed which is obviously on hold now. We had caster wheels put on the bottom of the wood furniture to allow her to push it in and out. That's what we were going to do up here that would allow her the ability to at least go out and sit on the deck during the day and get some sun, watch the boats go by. When she's here by herself that's

what she's limited to. We bought a freezer and I stock up whenever I come up. I'm doing a lot of running around when I come up on my short periods of time. I help her with some laundry. I do some shopping for her and get her set up for when I go. Quite honestly, we never know. We may have plans on coming up the following Saturday but if a flight comes up or a problem comes up I don't come up. At least I feel somewhat comfortable that she'll be able to survive up here. We do have friends up here that whenever she needs something she can call upon them. The whole idea behind this was just to allow her to go out and enjoy the back deck. She can't get down the stairs; she can't get out and go out to the lake front. She can't sit out of the dock and enjoy anything down there. When I get her out there we get her down, it takes 15 minutes. We bring the boat up and she can enjoy that a little bit. But none of that she can do by herself. This was our solution. We were trying to make a simple solution as to solve the problem and allow her to enjoy her time up here more.

Mr. Schiek: And you're aware of the letter that was sent by zoning indicating there was other options you had available to you? Correct?

Mr. Barchfeld: I received a letter, yes.

Mr. Schiek: And one of them was leaving the furniture on the deck and provide covers to protect them. What's your response to that?

Mr. Barchfeld: I just don't think in her condition that would be a practical, especially if it's a fast moving storm or something like that with the wind blowing. I don't think she'd be able to handle the covers, to put them on. She can't bend. She just can't move anymore.

Mr. Lee: Was it your practice, before her condition deteriorated to the extent that it is today, to cover all of that furniture and then uncover it?

Mr. Barchfeld: Yes. We try to protect our belongings. Yes, Sir.

Mr. Schiek: But, the concept is that if you're allowed to finish the structure now's she's going to have to take that furniture and rather than cover it she's got to put it in the shed.

Mr. Barchfeld: She'll wheel it into the shed, yes.

Mr. Schiek: Do you see that as an inconsistency that you're presenting to the Board? That she can move the furniture but she can't put a cover on it?

Mr. Barchfeld: I think it'd be much easier using the wheels the way we designed them in Schaumburg. It's almost like a walker for her. She can just wheel it into the shed.

Mr. Schiek: And another criticism was that you could have constructed it on the NE side of the building. What do you have to say to that?

Mr. Barchfeld: The thought never entered by mind. As I stated when you asked the question, we were trying very hard to make it as unobtrusive and have no impact on anybody. Quite honestly on that side of the building there's a tall fence....

Mr. Lee: Would putting it on that NE side be a real large hardship?

Mr. Barchfeld: It would just be a financial hardship. We'd have to remove the deck, the stairs you came up...

Mr. Lee: I know all of that. I'm looking at her situation. Move it 10 feet now you move it 20 feet.

Mr. Barchfeld: Every step she takes is one less...she has, on any given day; she has a number of steps that she takes, that she's able to take. What that number is, I can't tell you. There are a number of steps she can take before her foot gives out. So anything we can reduce that by obviously is a benefit.

Mr. Schiek: The other one is reduce the size of the addition, meeting the applicable setbacks. That would be like almost cutting it in half.

Mr. Barchfeld: Well, on the one end I think the house is only 11' from the property line. It would defeat the purpose of having it.

Mr. Schiek: And the other was to store the furniture inside the home in a location that would not take away from...

Mr. Barchfeld: There is no location on that level, number 1. That's why we asked you to walk through the house. You walk right in to the family room/living room area or dining room area Number 1 I don't know how she would maneuver it around to get it in. Number 2, the doors are standard 1 opening door. I don't know that some of the furniture would fit in there. If you noticed on the shed we were having a double door so that it would be easier for her to wheel everything in and out. It wasn't going to be...I just think it would not be a practical solution.

Mr. Schiek: What is your position if the Board is willing to grant the shed to stay where it is and the way you designed it when you're wife is no longer going to be using it?

Mr. Barchfeld: We have no issues with that. As far as restoring the property back to the way it was before this all took place. I don't have an issue with that. We're not asking to reinvent the wheel; we're just asking if you would have some compassion

and consideration for us. Again, like I said, we're asking for forgiveness. I know we should have asked for permission and that I have to take responsibility for and I don't have any real excuse for that other than the fact that ignorance is sometimes stupid not bliss. We would have no issues at all if you were kind enough to allow us to do it and continue and finish it that whenever we need to sell the property or she no longer were to make the trip up then we would have that area removed. It would be real easy. The one piece of glass was the end of the old deck, existing, swings right on and goes into that area. It could be brought right back and not be an issue at all.

Mr. Rossi: When you come up, you said, when your wife comes up, she doesn't come up by herself, does she?

Mr. Barchfeld: I bring her up in the spring and take her home in the fall.

Mr. Rossi: Ok. And when you do this, when you bring her up, you then bring the furniture out or uncover it?

Mr. Barchfeld: Now she needs help because she can't move it. What I envision happening in the future is that when I come up, nothing is going to change. If she plans to go sit out there we'll wheel the furniture out or if I'm up we'll wheel the furniture out. When I leave, more than likely I would put the majority of it away. But when she has a friend come up or if she's having some people come over she could wheel it out and have it set up. She does like some independence and being able to entertain a little bit. Again, that what this thing up here is about is having friends over and enjoying the sunsets and it's a beautiful piece of property and we love it. We're just trying to make a way that she can enjoy it when I'm not around.

Mr. Schiek: That was all the questions I have unless the Board had some.

Mr. Rossi: All decks are about the same. They have spaces between the boards. I can envision some kind of difficulty pushing, with wheels if the things get stuck in between there.

Mr. Barchfeld: We were going to go with a nomadic wheel. Our spacing on our deck is pretty close, if you noticed that.

Mr. Rossi: That would, to me, cause a problem trying to push it through that stuff.

Mr. Barchfeld: With the nomadic we don't anticipate that problem

Mr. Lee: Any other questions from the Board for Mr. Barchfeld?

Mr. Hansen: Are you considering an automatic garage door on the opening so it's easier to get the shed open?

Mr. Barchfeld: No, it's just going to be 2 doors. Like a barn door. If you noticed right now there's a 2x4 going across the bottom. That was going to come out to make it a flat entrance.

Mr. Lee: Any other questions?

Mr. Wegner: Just to summarize the history of this. We did receive a complaint and it was from the Town of Three Lakes in October 2012. Our policy requires somebody to leave a name. How people get around that is they call the Town and the Town calls it in and we never know who called to complain. So I don't know other than it came from the Town of Three Lakes. So, I sent an enforcement letter and we conducted an onsite. I had a few meetings with Mr. Schiek to discuss what some of the options were. He sent me a proposal that I reviewed. The proposal was similar to what you see now as far as justification for us to issue a permit under 9.19, ADA. I then looked at past cases that I've dealt with and the first thing I do is look at alternatives. He's mentioned a few of the alternatives. In the end, because of those alternatives I didn't feel comfortable issuing a permit under Section 1.19. The reason for that is basically other than the fact that they could cover the furniture. They could furniture that could withstand the summer weather. They could have put the addition on the opposite side of the home meeting the applicable setbacks with Condo approval. The deck is approximately 8x10, with the storage area that is 8x12. The really is not an issue. The storage shed, which does not meet the setbacks, is approximately 8x12. If you just take that area, there is a different location on the NE corner of the home where this could be constructed and they could get the same use out of it in that location meeting all the applicable setbacks? Again, with Condo approval. My letter also mentioned that they could reduce the size of the addition don't know how practical that is. That is just one other alternative that I brought to their attention. Also the fact that they could store it inside. There's a sunroom on one side, there's large doors in the front

Mr. Barchfeld: That is just a standard door. And that is a bedroom, not a sunroom on the side.

Mr. Wegner: I guess the bottom line is there are numerous alternatives they could pursue that would give them reasonable use or take care of their concerns for storage of the lawn furniture. I also looked at the case law, I can see that there's some of the language that would be applicable. But there is also language that is not applicable. Since there are alternatives to accommodate their needs granting a variance would alter the purpose of the Zoning Ordinance. That is why the letter of denial was sent of granting a permit under Section 9.19. If the Board were to grant a variance, the County would strongly object. If the variance were granted I'd want an affidavit filed stating that when the use of the property or the facility is no longer needed that they would remove that portion, which Skip has already agreed to do.

Mr. Lee: Mr. Barchfeld, taking that point under consideration it would seem that, you had mentioned that it would be a financial burden to remove the construction that you started with now and put it on the other side. The point I'm getting at is that if you're no longer there and are going to sell this property that has to come off anyway. Would it be much different to do it now rather than later? Do you get where I'm coming from?

Mr. Barchfeld: We're probably 70-75% complete already. I would have to repay... More than 1 person speaking at this time.

Mr. Barchfeld: I don't have any assurance at all that the Condo Association would allow such a structure on that side because we'd go into the common area if we were to do that. As it is now, they have no objection...

Mr. Lee: You understand where I'm coming from?

Mr. Barchfeld: Yes I do. The difference is we would just take it down. It would be the cost of removal not the cost of reconstruction.

Mr. Hansen: I have a question for Pete. If we allow the structure to stay there and be removed when they no longer need it, how would that be guaranteed? How can you track that so you make sure that it comes off?

Mr. Wegner: Doing title work on the change of ownership, I would hope that would come up because it would be attached to the deed.

Mr. Hansen: Well, very conceivably it would be long before change of ownership.

Mr. Schiek: If for whatever reason she wasn't up here using it anymore or what have you as opposed to change of ownership.

Mr. Wegner: I don't know what the correct legal route would be to make sure that occurs.

Mr. Albert: As I measured from approximately where we think or thought the property line would be on the other side of the fence, in 10', which is the code, correct? Ten feet from the property line?

Mr. Wegner: Yes.

Mr. Albert: You pretty much split that addition almost in half. If they now were to apply for a permit and modify this structure, cutting down part of what has been erected, building this storage area, cutting the storage area off wherever that legal line is and then potentially building into or onto part of the existing deck – they

could get the same square footage in terms of storage area, not encroach onto or into the 10' area.

Mr. Wegner: Yes

Mr. Albert: It would potentially be legal if they were to get the permit. Could that not be possible?

Mr. Wegner: That's definitely another alternative.

Mr. Lee: Do you understand what that is?

Mr. Schiek: No.

Mr. Barchfeld: I think so.

Mr. Schiek: Are you taking the eve into account?

Mr. Albert: Yes. It would have to be taken into account if you want to stay within the 10 foot. What I measured was, what I thought, on the other side of the fence about a foot to 18" on the other side of the fence in 10' it came somewhere in the middle of this new construction which would allow you to keep the majority of the new constructed area. There doesn't necessarily have to be 24" eve. In fact there could be as little as a 6" eve. There may not have to be eves at all. But you would retain not only a majority of the newly erected but you could build a storage area into that existing part of the deck. You really have no vision or scenery over there anyway because of the fence and the neighbor next door. I don't see that it would be much of a hardship to give up part of that existing deck. In fact, it would actually make it easier to push that furniture into a storage area rather than around the corner. You'd have to modify what was done with however it tied into the roofline but you could certainly keep it, not only on the side where you want it an adequate area for storage of furniture, possibly re-sink your pilings down next to the post fence behind the Jacuzzi, but I think you'd be able to retain at least the majority of what you desire to gain.

Mrs. Barchfeld: I don't understand.

Mr. Lee: If you did what Mr. Albert is suggesting that also would not have to be removed when you sold the place because it would meet code.

Mr. Schiek: I think I understand what you said, but I don't want to misstate what you said either.

Mr. Ross: It's great that we can solve problems but I think our purpose again, is to consider...

Mr. Lee: That's true, but I want us to be able to consider all alternatives under the circumstances.

Mr. Albert showed Mrs. Barchfeld, on paper, what alternative he was suggesting.

Mr. Ross: If you had known the 10' setback ahead of time I wonder what other alternatives on that building are possible for a storage area on a deck. There are really 2 things that happened there. You built a storage area and expanded a deck which hasn't been mentioned. If you take some on the expansion back and enclose it you make a storage area.

Mr. Barchfeld: My comment to that is, you're exactly correct, by not considering the setback and being ignorant of the setback we violated your zoning laws and there's absolutely no question about that. By doing what he suggested it takes away the view out of that window which is when she sits in our little living room area...

Mr. Albert: There's no window there.

Mr. Lee: So it doesn't block the window?

Mr. Albert: There's no window there.

Mr. Barchfeld: It depends how far in you go.

Mrs. Barchfeld: Is there a turn I have to make in that structure?

Mr. Rossi: No, that's straight in.

Mr. Albert: Straight in.

Mrs. Barchfeld: He was saying leave the little bit on the side and then I would have to make a turn to go in at that point.

Mr. Albert: you do now with what you have, right?

Mrs. Barchfeld: In a double door area, in a big area. Which is different than a small area when you're handicapped?

Mr. Young: Pete, I have a couple questions for you. Do we still have setback averaging?

Mr. Wegner: To the Ordinary High Water Mark but not to lot lines.

Mr. Young: Have they ever thought about lot lines? If you look at this picture you've got a garage from the opposite side on the property line and you've got a garage very close to the property line and then you have the building that we're talking about today.

Mr. Lee: Those are all grandfathered, is that correct?

Mr. Wegner: Yes.

Mr. Albert: Those are encroachments.

Mr. Young: Yes, but so is grandfathered on shorelines.

Mr. Wegner: There isn't any language in the Ordinance that would allow a reduced setback to a lot line other than a Town can request a reduced setback to the right-of-way. Or we can allow a reduced setback to the ordinary high water mark. There isn't one between properties.

Mr. Young: Just wondering.

Mr. Schiek: Can I ask Mr. Wegner some questions?

Mr. Lee: I just want to make sure we're done with Pete. Any other questions?

Mr. Schiek: Assuming that they are allowed to build it the way that they would like to build it, that would not disrupt the character of the neighborhood in any fashion, would it?

Mr. Wegner: I did receive a call, from I don't know which neighbor that had concerns regarding of the blocking of the view with the addition. But they didn't leave a name. So I don't know for sure.

Mr. Schiek: So, if he builds it the way he's proposing and makes sure the color is right and the slope and all that other stuff, it's going to fit right in with his home as well as the entire neighborhood. Wouldn't you agree with that?

Mr. Wegner: Sure.

Mr. Schiek: If he's allowed to do it and put it the way he would like to put it that's not going to create any financial on the County, would it?

Mr. Wegner: No.

Mr. Schiek: It wouldn't create any administrative burden of any amount on the County, would it?

Mr. Wegner: What do you mean by administrative burden?

Mr. Schiek: Whatever administration you have to do to allow him just to leave it there.

Mr. Wegner: Just the consistency of how we've handled in the past but if the Board, like you said, issued a variance that would relieve me of any concerns regarding that.

Mr. Schiek: So there would be no administrative burden?

Mr. Wegner: If they were granted a variance. Yes.

Mr. Schiek: Really, it's not a variance per say it's a variance taking into account the Americans With Disabilities Act? Correct?

Mr. Wegner: Well, the way I read it in the appeal was requesting the storage shed to be closer than 10' from the side yard lot line. I didn't think we could issue variances under the Disability Act because the circumstances of the applicant is not justification for a variance like the financial burden or handicap or physical issue is not something that should be used in deciding a variance. So I don't know if that is something they can actually even do.

Mr. Schiek: Do you agree or disagree the Zoning laws must take into effect the Federal Law as to the American's With Disabilities Act?

Mr. Wegner: I agree.

Mr. Schiek: And that's part of 9.19 is to take the Americans With Disabilities Act into account in granting uses of the property. Correct?

Mr. Wegner: Correct.

Mr. Schiek: You made reference to the fact that there were other uses of the property. In this case you said page 4 of 9. I would point out to the Board on page 5 of 9 they talk about preference and what the people that put the paved parking right next to the front door – was there a preference. They had other alternatives. They could go around to the back door. They could have gone around to the side but they had a preference. The reason I'm pointing that out, and I the reason I'm pointing that out and I think it's important that the case points out that zoning is considered an activity that is covered by the Americans With Disabilities Act that people are supposed to be able to enjoy their property as much as anybody else can enjoy their property. If I was here trying to convince you before they built it, because I know after-the-fact is a bad thing and it's hard to overcome, but if I was here trying to

convince you to let them do this from the get go I would have just as good an argument right now because that is their preference and it makes it easier for them and it makes them have the ability to enjoy their property in northern Wisconsin, which is why they're up here. They should be able to enjoy it just like everybody else.

Mr. Lee: Let me just respond to that. You are familiar with ARLUPA? The Federal Law having to do with religious freedom to do such and so.

Mr. Schiek: I'm not fully familiar with it but I know the general concept.

Mr. Lee: There have been rulings made in that case that simply because a religious group wants to do something doesn't give them the right to do what they want to do. And I think you can take that same argument and apply it here. Just because somebody wants to do something a certain way doesn't necessarily give them the right to do what they want to do. Would you agree with that?

Mr. Schiek: As long as it's reasonable. And that's why there are a lot of Lawyers to say what is reasonable and what isn't.

Mr. Lee: There are judicial bodies or semi-judicial bodies who can rule on that.

Mr. Schiek: Like this one.

Mr. Lee: That's correct.

Mr. Schiek: But you do, in fact, have the authority and the discretion to allow it should you deem it appropriate.

Mr. Lee: Yes. That's true also.

Mr. Schiek: I would agree with that.

Mr. Albert: I think that language in terms of deems appropriate is also important when in fact there are options that can accomplish the same objectives in full recognition of the disabilities act.

Mr. Norris: That's the question I had and you just answered it. "What is reasonable use of a facility by a disabled person"? I think we could sit here for days arguing that one.

Mr. Schiek: And to that I say allow these folks to use their property the way they see fit. You've got a good reason to do it under the Disabilities Act and they're going to remove it when it's not in use anymore. So why not allow them to do it? That's a

common sense way of approaching it. Nobody is harmed and nobody is here to object.

Mr. Lee: What is your response to Mr. Albert's suggestion of an alternative that wouldn't have to be removed after but it would meet all the requirements of the Ordinance.

Mr. Schiek: Again, I don't know how much into construction Mr. Albert is, I'm not into it at all. It seems like a reasonable approach and my response to that, however, would be because they've gone as far as they've gone and there is language in that case that talks about preference, what you and I were just talking about, just because they prefer it they shouldn't be able to do whatever they want. I think the general rule is if I buy a piece of property I should be able to use that in a reasonable fashion. And I also understand there's zoning laws that if those are reasonable to put certain rules and regulations

Mr. Lee: Reasonable within reason.

Mr. Schiek: And there we get right back to the same idea and when I say under this case that I've presented to you that they did talk about preference being ok. This is quite a bit different than a religion saying they can do whatever they want to do. I just think this board has the ability to allow them to do this and we would pray that the Board would allow that and as I say they are going to remove it after it's done. I don't see any harm to doing it so, I think the Board has the discretion to allow that.

Mr. Lee: Has the Board heard enough?

Mr. Rossi: The Board also has a responsibility of enforcing the Ordinance. If it can be done, as Mr. Albert's suggestion I don't see why it would cause a problem

MR. Hansen: I have a question for Pete. Back on how to track the, if we allow this structure to stay, back on how to track the use of it. If we required a letter to go one direction or the other, say annually, would be sort of a clerical check off. If zoning would send a letter to Barchfeld's to indicate if it's still in use or the letter would go the other way saying they do or don't need it anymore. Would that be a way of tracking it?

Mr. Wegner: I would probably check with Corporation Counsel to see what the best way to track that would be.

Mr. Lee: I would think there would be other ways. It creates quite a burden on the staff to keep up with that and you could apply that to lots of other situations as well. I think there's better ways to do it.

Mr. Barchfeld: I would have no problem for Mr. Schiek or myself submitting an annual...

Mrs. Barchfeld: I have to submit an annual report for disability for the Doctor's. For me just to send a copy of that up every year, because I don't stay on disability if I don't get a letter and it would be all my medical reports every year.

2:25 p.m. Chairman Lee closed the Public Hearing portion of the meeting for the Board to deliberate the case.

Mr. Lee: I would just like to say to the Barchfeld's that I don't know what we're going to decide, yet but I want you to know that this Board understands Mrs. Barchfeld's disability and is sensitive to her disability and wants to accommodate you in the best way that we can.

Mr. Barchfeld: I want to thank you all for taking the time for coming out this morning and again I apologize for my ignorance. I would only like to ask that you allow us to finish this project it's not that far from completion. We tried to, the minute we got the letter we stopped everything and tried to comply, after-the-fact, do what it is necessary and do the best we can. I would ask that you have some compassion and some consideration for my wife. She struggles everyday and quite honestly it gets depressing for her. If we would be allowed to do this you would have our word that whatever we need to do to keep informed of what is going on and when the time comes the structure is removed and the house is put back to the way it was beforehand. That would be spectacular. We would only thank you for that consideration.

Mr. Lee: I just want you to know that we're not insensitive to the situation and we have a responsibility also here to do what is in the interest of the County and if we can work within all of these responsibilities and sensitivities to come up with what we hope is a satisfactory solution that's what our desire is. We may have some questions during our deliberations and we may come back to you. If we do, we'd like to define your answers to that specific question and not get off track.

Mr. Bloom: I know we have an appreciation, a compassion for Mrs. Barchfeld's disability however, we're charged with 3 criteria. I think before we go on we should go over these and see if we meet the 3 criteria.

Mr. Lee: Would you like to lead the discussion?

Mr. Bloom: The first one is the unique physical property limitations. As far as lot dimensions, I don't see any steep slopes, wetlands; I don't see any unique property limitations on their property. I don't know how, we're not talking about physical limitations physically as a person we're talking about the physical property

limitations. That one I don't think is met. Public Interest: You've had complaints but yet you've had people saying its ok. So, I don't know how the rest of the Board feels and I'm not too sure how I do. When we come to unnecessary hardship, can you have reasonable use of the property without the variance? From what I saw I think they have got very good reasonable use of the property. I don't think that is met. That's just my input.

Mr. Albert: In light of what we've heard and what we've seen, I concur with John's evaluation of the 3 components that we need to answer, I would even go so far as to make a motion to direct that the appellant submit a permit application and work with Pete to see how the existing structure can be modified to meet their needs and stay within the Ordinance in terms of the 10' side yard lot line requirement. Assuming that their goal can be met in terms of a storage area on part of both the new deck and the old deck that will accomplish the purpose at hand and not put anyone at any hardship in terms of the use of the property.

Mr. Lee: Is that a motion?

Mr. Albert: Yes.

Mr. Bloom: Don't we have to either approve or deny it? You're not approving or denying.

Mr. Albert: I'm not approving it. I'm concurring with your evaluation of the 3 components of the test that in fact it does not meet them.

Mr. Bloom: So, if we deny it they can go back to Zoning and talk to Zoning about it?

Mr. Hansen: I'll second that just so we can discuss it.

Mr. Lee: Alright, it's been moved and seconded. I guess the effect of your motion is to deny the application and to direct the appellant to reapply and work with the Zoning Department in terms of modifying their request and satisfying the need. Is that what you're saying?

Mr. Albert: Yes, that's correct.

Mr. Lee: It's been moved and seconded, is there some discussion?

Mr. Hansen: Yes. I would agree that I don't see how it fits the criteria either 1 or 3. However, we are being asked to relax that with this virtue of 9.19 Code for Americans With Disabilities Act. I think we can probably relax that. In the strictest interpretation of this we would ask them to simply remove the structure. If we allow it and they remove it when they no longer need it that's the same except that it delays the removal. I would be comfortable with that as long as there is an iron clad

way to make sure that is removed in the future. I don't know exactly how to do that but I think there would be a way. That would be another alternative.

Mr. Rossi: There is an alternative and that has been suggested by Phil. I believe it would be even more practical for Mrs. Barchfeld because she'd have a straight shot in there. The doors would be the same as they were proposing and you'd have approximately the same space. You would not have to remove anything because you wouldn't be in violation of anything. That would be my opinion.

Mr. Hansen: You'd agree with Phil.

Mr. Rossi: I agree with Phil.

Mr. Lee: Further discussion?

The motion was read into the record.

Mr. Lee: Pete, is there is there a fee for re-applying?

Mr. Wegner: Yes.

Board: They never paid a fee.

Mr. Wegner: They did for the after-the-fact that was denied. Now if they come in with a new project, unless it's identical which it doesn't like it is, they would be required to pay a new fee which would probably be \$75.

Mr. Lee: Ok.

Mr. Ross: It would be after-the-fact again.

Mr. Wegner: I wouldn't have a problem with them paying \$75 to file a permit to meet the applicable setbacks.

Mr. Lee: Any other discussion on the motion?

Mr. Lee called for the question.

Phil Albert "aye", Bob Rossi "aye", Harland Lee "no", Guy Hansen "aye", John Bloom "aye". Motion carried.

Mr. Lee: You've heard the decision.

Mr., Wegner: Regarding the time. Is it possible to extend it until next week Wednesday? Lila is not here and she's got it all on the computer.

Mr. Lee: Certainly. Will Wednesday work? That will be the 17th.

Motion by Mr. Lee second by Mr. Albert to delay the writing of the final decision until the 17th of July. With all members voting aye the motion carried.

Mrs. Barchfeld asked if she could make a comment.

Mr. Lee allowed 1 comment.

Mrs. Barchfeld: How I found out that the neighbors didn't mind us putting up the shed there is that is glass there. The end of the deck is a glass panel. So I would lose the end of the deck. That's part of my socialization. I talk to those people. If you move that I don't have that side to look out and talk to people. I'd lose that.

Mr. Lee: The decision has been made. I would ask for a motion to adjourn.

2:35 P.m. Motion by Hansen, second by Ross to adjourn. With all members present voting "aye" the motion carried.

Harland Lee, Chair

Phil Albert, Secretary