

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING

Tuesday, July 30, 2013

1:00 P.M. – Committee Room 2, Second Floor

Oneida County Courthouse, Rhineland 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.” Jack Young is excused.

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

Other individuals present: Andrea Gregory

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 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 Andrea Gregory and Peter Wegner, Assistant Zoning Director.

Secretary Phil Albert read the Notice of Public Hearing for Appeal No. 13-006 of Andrea Gregory, 8124 Rainbow Road, Lake Tomahawk WI 54539, requesting an area variance to allow construction of a 24' X 20' attached garage located approximately 12 feet from the right-of-way of Rainbow Road, contrary to Section 9.70 (A) (1) Chapter 9, Oneida County Code of Ordinances. The property is located at 8124 Rainbow Road, being part of the NWSW, Section 3, T38N, R7E, PIN LT 38-9, Town of Lake Tomahawk, Oneida County, Wisconsin.

The Notice of Public Hearing was published in the Northwoods River News on July 16 & 23, 2013; and was posted on the Oneida County Courthouse bulletin board on June 27, 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 10:00 a.m. for appeal #13-006. The location for the inspection is 8124 Rainbow Road, Lake Tomahawk, Wisconsin. Present at the onsite inspection were the members of the Board of Adjustment and Diann Koshuta, Zoning Technician; and the mother of the appellant. Observations: Property boundaries were adequately marked. Side lot boundaries were tagged. The road right-of-way, well and septic was not marked. The proposed construction was not marked. This is an irregular spaced lot adjacent to wetland. Lot falls back to wetland on both right and back side of lot. Existing structures consist of home with gravel driveway on right side of the lot. Other observations: Determination on proposed structure could not be made without proper boundaries and structure markings.

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.

Appellant Testimony.

Ms. Gregory: I would like to attach a one stall garage to my home for convenience and for storing items. I feel it is an appropriate location because of the size of the lot. It is the only location to put it. I really have no other options. The lot being so small anything that has been there previously has been there for years. So I am hoping to make some modifications to my home to increase the value and to work for my daughter.

Mr. Lee: Is this a year round home?

Ms. Gregory: Yes, it is.

Mr. Lee: That's your case? That's it?

Ms. Gregory: I think it is an appropriate location.

Mr. Lee: There are three criteria that needed to be met in order for a variance to be granted. Those criteria were the unique physical property limitations. You've already addressed that. No harm to public interest. Maybe you want to address that. And unnecessary hardship. You may expand on that.

Ms. Gregory: There won't be any effect on the public or harm to the road of any sort even though it is encroaching. Hardship? It's the only option other than selling and moving.

Mr. Rossi: How long have you lived there?

Ms. Gregory: I've owned it for six years. I was there prior to getting married and now I'm no longer married and moved back there. And I never felt a need for a garage prior to having child, for safety.

Mr. Albert: The statement that you made that there is no other option. No other location. Why do you feel that way?

Ms. Gregory: With the drive being there, instead of messing with the road, I would be able to keep my driveway in that location and still use the current driveway.

Mr. Hansen: So there will be actually two driveways?

Ms. Gregory: It'll just be the current driveway. I'll actually pull into the side of my garage. It'll be an "L".

Mr. Ross: So you want to put an entrance to the garage there.

Ms. Gregory: So I won't be messing with any of the drive.

Mr. Lee: Is the garage to be attached to the house?

Ms. Gregory: Yes.

Mr. Lee: That was very unclear. Not only in the drawings that you provided, but also the fact that it wasn't marked for us at all.

Ms. Gregory: It had been marked and actually, this is the only letter I have from you and it doesn't say anything about you being there at 10:00 am. It has me coming here at 1:00 pm. Otherwise, I have no other paperwork with a time for the morning. Otherwise it was marked and I assumed it had been marked for a good month and a half. And the man that mows my yard took them up. So I don't know how that was missed.

Mr. Lee: Doesn't she receive notices of the onsite?

Ms. Gregory: This is the only notice that I got. It was a single piece of paper in an envelope.

Ms. Dumar: That is what we send, a notice of the public hearing, but I believe that there usually is a paragraph in there that describes the onsite inspection. And it's not in there.

Ms. Gregory: So I'm not crazy?

Mr. Wegner: You might be crazy, but it's not in there.

Ms. Gregory: My mom called and I had this with me. I was working this morning. And I said "It's not in there."

Mr. Wegner: We send this too, don't we?

Ms. Dumar: No. She doesn't get an agenda.

Ms. Dumar: Usually there is a paragraph that describes the onsite.

Mr. Albert: The paragraph that is normally in there, in other public notices, is not in the letter she has.

Mr. Rossi: Yes.

Ms. Gregory: Otherwise I would have had it. It was marked forever.

Mr. Ross: But on the lot, this is where it was marked.

Ms. Gregory: Yes. When I marked the lot lines I marked the garage with my Dad.

Mr. Ross: The septic system that we were not able to find, is that a holding tank?

Ms. Gregory: No it is not. It was grandfathered in as is. I bought it with the septic in it.

Mr. Lee: Where is that located?

Ms. Gregory: To the right of the house, looking at the house.

Mr. Lee: Where?

Ms. Gregory: It's underneath that flower pot. The tank is.

Mr. Hansen: So there really isn't a drainfield.

Mr. Wegner: There probably is, we just don't have anything on record as far as the size and the location. Over the next couple years that is going to have to be addressed.

Mr. Hansen: The only physical place it could be...

Mr. Ross: It is under the flower pot she said.

Ms. Gregory: I'm not sure where the drainfield is.

Mr. Ross: I have a pretty good idea where it is.

Mr. Lee: Any other questions for Andrea?

There were no other questions.

County Testimony.

Mr. Wegner: Just to clarify on the septic system, when Kurt Bloss was out there, for the original onsite and then when Diann was out there today, they both felt that it was about 5 feet off the corner of the building and then 5 feet in. That's the start of the septic system. So I think it is more to the southwest because of the measurement of five feet in and then five feet out. That's probably the start of it.

Mr. Lee: So it's a holding tank?

Mr. Wegner: No. It's a steel tank that has a drainfield.

Mr. Lee: Where is the drainfield?

Mr. Ross: Probably under that fire pit.

Mr. Wegner: I would say that it goes more towards the road, like this because of the slope.

Mr. Lee: Under the driveway?

Mr. Wegner: Very possible. We really don't know.

Ms. Gregory: And I don't have any paperwork.

Mr. Lee: Do you know where the fire ring is that we are referring to? Wouldn't that be a more logical location for where the drainfield would go?

Mr. Wegner: The drainfield, yes.

Mr. Lee: Rather than down the driveway?

Mr. Wegner: Yes. I was thinking the tank. Because that is where it starts, by that flower pot. I would say that it is more to the northwest of the building than it is toward the road.

Mr. Lee: Are there other issues you want to address?

Mr. Wegner: When Kurt was out there originally you mentioned 12 feet from the right-of-way to where the proposed garage was going to be placed. Based on that, and based on the uncertainty where the septic system is located, it was uncertain as far as whether

there was another buildable location. What the County has to look at is if this was just a vacant lot, could you place a garage on that property with the house, regardless of the septic or anything else. I think you could. And the first map shows the home based on the dimensions of the lot and the setbacks from when Kurt was on the property. You can see that there is a discrepancy between that and what you see on the PV Web map. I don't know if that means that it is not in the actual right-of-way. And again, the PV Web map is not 100% accurate, but it gives you a better idea of where the real road is if you saw it versus the survey. And finally, another map I had is showing the approximate buildable area meeting the applicable setbacks. And you will notice the hashed area is the buildable area, but it is not the dimensions that she requests and it doesn't include the eaves. The maximum width is approximately 20 feet with eaves. So the size would be 18 X 30, but at an awkward angle. And it wouldn't be....she'd lose most of her driveway. So I think there is an area that would meet the applicable setbacks, just not even close to the configuration that she is requesting.

Mr. Rossi: Where would that be?

Mr. Lee: Here. That hashed out portion.

Mr. Wegner: And again, that is with the assumption that anything north of the hashed area, five feet beyond that is the septic.

Mr. Lee: Do you see what he is talking about?

Ms. Gregory: Yes.

Mr. Lee: Questions for Pete.

Mr. Hansen: So the buildable area would actually extend under part of what she is proposing to build a garage.

Mr. Wegner: A small portion of it, yes.

Mr. Rossi: You take the approach that there is nothing there and you could put in a holding tank.

Mr. Wegner: Yes. When she came in, this is the logical area to put it. Not meeting the setbacks and we knew it was questionable whether there was an alternative location that would have been somewhat similar size where she could add it on, a bigger attached garage. In addition, the layout of the home with this as it is proposed versus any alternative option may not be to her benefit or to her liking, I should say.

Mr. Hansen: So when we measured that, was the distance between the proposed garage and the road right-of-way actually 12 feet. Or did it actually come out to be 7 feet?

Mr. Albert: Being there was no marking...we had to work off the corner of the house, because that was the only existing structure that was marked by the fact that it is present. There was no marking for where the proposed corner of the garage would be so in terms of measurements...

Ms. Gregory: If I had gotten the right document, I would have marked it.

Mr. Lee: But the point is that it wasn't there. We had no markings to go by.

Ms. Gregory: And it had been there.

Mr. Lee: I'm not disputing that, but it was not there for us this morning.

Mr. Albert: In terms of 12 ft, when you measure to the centerline of the road, and the 12 ft that you have here, basically you took 45 feet off the center and then you are saying there was another 12. Is that as proposed that you are saying there? It's 12 ft as proposed, so with the 20 ft width of the garage.

Mr. Wegner: Correct.

Mr. Albert: You've got a house with a slant and a road that curves; at what point do you measure to the center point of the road or to that structure. It's pretty variable.

Mr. Wegner: It is, but it has to be the closest point and then I know our starting point was the stake across the road, 66 feet. But you are right, that's why if it was up to me every permit would have a survey because if you compare what she submitted and overlay her dimensions onto the survey that was in her appeal compared to PV Web, you've got 3 different scenarios.

Mr. Ross: You certainly can't go by where the road is.

Mr. Wegner: Something doesn't seem to match up. That could be just because PV Web is not accurate. When I did the schematic using the measurements from Kurt, compared to the dimensions of the lot, I came up pretty close. But as you said, it's based on measuring from the exact corner at an angle.

Mr. Albert: And you are showing the house to be at a slant. It is a very slight slant if there is a slant.

Mr. Wegner: Look at that PV Web map and you can see the approximate slant that it is at.

Mr. Albert: And there are no issues with the side boundary line in terms of the 10 ft?

Mr. Wegner: Nope. Since she is going to square up the existing home, I know that was 15 to 18 feet from the lot line.

Mr. Hansen: The garage is further east, closer to the wetland. Is there ever going to be an issue of whether that is a wetland or a lakebed?

Mr. Wegner: That's a terrible question. No, that is a good question. As far as the County is concerned, if I looked at it as worst case scenario, I think I would have it on that PV Web map. Worst case scenario just by vegetation which is in this case matches right up to the wetland delineation that is shown on here. If I were to use that point, and call that the ordinary high water mark (OHWM), the majority of this home would fall beyond 40 feet. So any addition that you could propose would be beyond the 40 feet and would be permitted.

Mr. Hansen: So it is not an issue.

Mr. Wegner: Right. It is not an issue.

Mr. Wegner: As far as the mitigation that would be required, where does it start? I mean all this is natural vegetation and some of it isn't even on her property. So I'm not concerned about that, but that is a very good question.

Mr. Ross: Did someone, a builder, suggest this spot because of the ease of adding to the house as opposed to having it further to the right?

Ms. Gregory: My father and I talked it over and my father will be the one who is building it. He is a general contractor. So a lot of it was just with design, I guess. And what I felt would work for myself.

Mr. Albert: Was the right side of the house once the garage?

Ms. Gregory: Yes. It was. Prior to my purchasing it.

Mr. Lee: Is there anything further you want to say, Andrea?

Ms. Gregory: No, it just with the design of the lot and the road cuts through it, it is pretty much my only option for this addition. I hope that it works.

Mr. Wegner: If you were to grant a variance, I don't know that this is a huge garage, maybe reduce it slightly. But other than not knowing the exact location of the septic system, I don't think the County would have too big of a problem if you were to grant a variance, even though there is an odd shaped alternate location where she could add on the garage.

Mr. Lee: That would meet the specifications.

Mr. Wegner: The only reason the County would have an issue with it, is because of the uncertainty where that septic system is and how far it comes back this way.

Mr. Hansen: The garage, as proposed, is 20 feet wide, so if it were 12 feet, that gives and extra 8 feet. If it were 12 feet wide it would meet all of the requirements.

Mr. Wegner: Based on that yes, measured to the eave.

Ms. Gregory: So it would be 10 ft?

Mr. Albert: Guy, what you are suggesting is coming a lesser distance towards the road out from the house. And Pete, then no variance would be needed. Correct?

Mr. Wegner: There would be a 20 ft setback from the right-of-way; 10 ft from the lot line.

Ms. Gregory: What would I need to take off?

Mr. Lee: You'd be covering almost the whole front of the house with the garage.

Mr. Hansen: The drawing doesn't represent.

Mr. Lee: The drawing is useless.

Mr. Wegner: I'd say you are looking at 11 feet from the corner of the home.

Ms. Gregory: Does that include the eaves?

Mr. Wegner: Yes.

Mr. Wegner: You had 12 feet?

Mr. Hansen: Your letter said 12 feet.

Mr. Wegner: But it is at this angle. It is approximately 11 feet. So with a 1 ft eave they would have a 10 foot entrance. The further you go to the northeast, the wider it gets.

Mr. Ross: So don't build a square garage.

Mr. Wegner: Which is not uncommon.

Ms. Gregory: Which way does it angle though?

Mr. Bloom: If you built a 16 X 24 instead of a 20 X 24, you could put a 12 ft garage with 2 ft overhangs.

Mr. Wegner: It's do-able though.

Ms. Gregory: It is do-able. But it will come right in the middle of my living room. Which I may as well sell and make my money off of it and let someone else deal with it.

Mr. Hansen: You could build it over where there is room further east, to the right. Conceivably it would be on the existing or potential future drainfield and would limit access to the holding tank.

Mr. Lee: I should remind you that it is not necessarily our responsibility to redesign the whole thing. Our issue is to decide whether this is appropriate or not, given the ordinances that we have. One of the decisions that we could make would be that there is an alternative location. We don't need to define that or give you plans or drawings or whatever to do that. Just simply identify that there is an alternative location. That is one option that we have.

Mr. Hansen: Pete, you have 3 representations of where the road is, do you know which one you would like to use?

Mr. Wegner: That's really your decision. You guys are the final final, regardless of what I find or any other staff member or even a surveyor.

Mr. Albert: But you say you worked off the stake across the street, so working off that stake, should give you at least...well it doesn't.

Mr. Wegner: It does on this corner. It does on a straight line, but then when you go over to where you need the measurement, I don't know what that part is. I could guess. I would say my measurements, based on the site, my understanding of the road, there could be anywhere from a 2-3 variation in feet.

Mr. Hansen: Someone has to draw the line somewhere.

Mr. Wegner: I could or you go based on the measurement...oh, we didn't take a measurement.

Mr. Albert: We took a measurement, but it was only from the corner of the house, which didn't really establish much of anything without knowing the center point of the road or where the garage would be.

Mr. Wegner: Usually what happens, like for OHWM or lot lines, you guys go to the site, you measure that staked proposed area to what is being represented and that is gospel.

Mr. Wegner: I think that between Kurt's measurements from his original onsite and my measurements, we have to be pretty close, regardless of what the PV Web map shows. I'm not trying to not take responsibility, but you guys also have that ability.

Mr. Lee: Any further questions?

1:33 pm - Chairman Lee closed the public hearing. No further testimony will be accepted.

The Board deliberated the matter in open session.

Motion by John Bloom, second by Bob Rossi to grant a variance in Appeal #13-006 of Andrea Gregory, to construct a 16 ft X 24 ft garage (including overhangs) 15 feet from the right-of-way of Rainbow Road. All three criteria required for granting a variance have been met. On roll call vote: Bob Rossi, "aye", Harland Lee, "aye", Phil Albert, "aye", Guy Hansen, "nay", John Bloom, "aye." The motion carried with a 4:1 vote.

Motion by Harland Lee, second by Guy Hansen, to extend the decision filing date to Friday, August 1, 2013. The motion carried unanimously.

1: 48 pm The meeting was adjourned following a motion by Guy Hansen, second by Robert Rossi and with all members present voting "aye."

Harland Lee, Chairperson

Phil Albert, Secretary