ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING
Tuesday, June 2, 2015
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 Members: Phil Albert, "here"; Harland Lee, "here"; Norris Ross, "here"; John Bloom, "here"; Guy Hansen, "here"; Ed Hammer, "here".

Members Absent: Bob Rossi

County Staff members present: Pete Wegner, Assistant Zoning Director, and Julie Petraitis, Program Assistant

Guests present: See Sign in sheet

Approve the agenda. Motion by Guy Hansen, second by Norris Ross to approve the agenda as posted. With all members present voting "aye", the motion carried.

Continuation of Appeal No. 15-003 of Duane and Judy Domaszek, owners, requesting relief from a discretionary enforcement letter dated October 20, 2014 from Karl Jennrich, Zoning Director regarding steps to be taken to comply with Section 9.70, Highway Setbacks. These activities are contrary to the Oneida County Zoning and Shoreland Protection Ordinance, as amended October 12, 2014. The property is located at 10094 Hwy 70 further described as part SW NE and part SE NE, Section 9, T39N, R6E, PIN MI 2141, Town of Minocqua, Oneida County, Wisconsin.

Chairman Lee stated that this is a continuation of Appeal #15-003 of Duane and Judy Domaszek. The original hearing was held on March 10, 2015. The hearing on March 10, 2015 concluded with the following motion: **Motion by Mr. Albert, second by Mr. Rossi that this decision be tabled at this time until we receive correspondence from the County and an official correspondence from the Wisconsin Department of Transportation regarding the structures relation to the Highway 70 W right-of-way. With all members voting "aye" the motion carried.**

The Board received correspondence from Karl Jennrich indicating those measurements. Mr. Domaszek also received a copy of Karl's correspondence at the beginning of the meeting.

Mr. Lee stated that his intention is to not go through everything that was discussed at the last hearing. He invited Mr. Domaszek to speak and/or hand out any materials he may have at this time.

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SWORN TESTIMONY-APPELLANT.

Mr. Domaszek gave the Board members a letter with some pictures of the planter (exhibit A).

Mr. Domaszek: I just want to let you know that when this all happened, it's in there, that there was never a written complaint about my planter. My planter was designed for not only the beauty but also the safety of over 100,000 people that come to the park. I've got eight (8) busses in the parking lot right now, as we speak. With all the braces and pipes; kids were jumping around all over. As I was pulling out, I just want to let you guys know, I was pulling out and there's a teacher with a whole class wrapped around the planter taking pictures of where they'd been for their field trip. That happens every single day. And, again, if there's exposed poles and braces and irons that is a safety issue that we tried to hide, so to speak and thinking of the beauty that's going on in the Town and County. Not only that, through the years we've had snowmobiles actually, because the snowmobile trail goes by our place, they go right between the poles. If there's irons and braces and whatever; I cannot touch that sign and that sign has been there for fifty-years, over fifty-years. Anyway, I don't want a snowmobiler having a 2 x 4 through his helmet. Because, they do, they try to skip the water they do everything by us. Trust me, they don't stay on the snowmobile trail. Again, it's a unique situation because it's not just a planter for the beauty it's also a safety issue for the park. Again, like I said I had to hide all that stuff yet keep in mind I had to keep it off the right-of-way; which I did. I know it got kind of close to the right-of-way because my volunteer that put it up…the blueprint was one thing but then they put rock around the block and, again, from the beginning one person had verbal concerns but there was never an issue on it. With that, I'm asking you for the consideration of a variance, since it is off the road right-of-way, so I could keep my planter, please.

Mr. Lee: That's it? Pete, do you have any comments at this point?

Mr. Wegner: No. Other than you've got the copy of the survey and the photo showing the setback of 4.5 inches from the right-of-way.

Mr. Lee: Okay. As I understand this e-mail from Karl the right-of-way on Hwy 70 was measured and that's, if you look at the pictures it's marked with the pinkish mark. It shows that the planter/structure is 4 ½ inches from that right-of-way. Now, it's not in violation of the State road right-of-way but it is in violation of the County which says that anything needs to be twenty-feet back from that right-of-way.

Mr. Domaszek: One thing, yes I understand the County with the 20 feet but if I took the 20 feet it would put me in the parking lot.

Mr. Lee: I understand that. But that's what the Ordinance says. The question is not about the sign, itself. The sign is grandfathered. It's the thing that you've built around it, which some may call a planter; some may call a structure. I think what it is is a planter within a structure if that makes any sense. As it is right now it is in violation of the County's ordinance; the structure part, not your sign. That's the issue before us. In order for us to grant a variance there are three things that we have to measure up to. I think we discussed this a little bit the last time. It's really up to you to defend your situation compared to these variance criteria.

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One is an unnecessary hardship and different rulings that have been made, in the Courts, sort of help us define what that means. Compliance of standards would be unreasonably burdensome. Hardship may not be self created. You created this situation yourself. Property as a whole must be considered, not just a portion of it. Economic or financial hardship is not a justification.

The second criteria is unique property limitations. Limitations such as steep slope, wetland, shape or size are not shared by other properties and prevent compliance with the ordinance. There really are no unique property limitations there. Circumstances such as a growing family or the need for a larger garage are not a factor in considering variances. Alternative designs and locations on the property have been investigated.

No harm to the public interest. The ordinance's purpose and intent may not harm the public interest. Short term, long term and accumulative effects on the public interest in the neighborhood, community and even the State only allow minimal relief for use of property that may include conditions. I don't think you've really addressed any of those and we really need to and we need to find an answer of "yes" to all of them. If we have a problem with even one of them, that it doesn't meet that, we can't do it. So, go ahead.

Mr. Domaszek: The hardship. It is definitely a hardship on my business, to be honest, because to have something there for the safety of over 100,000 people because I have no other way to hide the poles. At one time, yes, there were some shrubs around there that died from the salt from the road. I went to the Town and asked them and they said there is no problem with the planter and there is no measurements…

Mr. Lee: How long has the sign been there?

Mr. Domaszek: Over 50 years.

Mr. Lee: And for at least 48 or 49 years there was nothing around that and…

Mr. Domaszek: There was.

Mr. Lee: There was no big planter around it.

Mr. Domaszek: There were shrubs and stuff, there were shrubs around it.

Mr. Lee: There was no structure around, per say. Shrubs aren't really a structure.

Mr. Domaszek: Okay.

Mr. Lee: Right? So you had use of that property for 40 some years without this planter/structure.

Mr. Domaszek: But the shrubs died so I had to do something.

Mr. Lee: Any other comments? You talked about the hardship, are there any limitations on the property – unique property situations?

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Mr. Domaszek: Yes, because of how it is located; the way my parking lot is it's like a diamond shape. Because of where it's located it is a hardship. I couldn't have my sign any other place. That's the widest part of my parking lot. So there is no other place I could have it to be honest. Yes, there are a lot of hardships.

Mr. Lee: Any other questions from the Board?

Mr. Ross: First of all, the last time we met we weren't even sure we could even consider a variance because we didn't know the details. Now we know the details we're really being asked to consider a variance from 20' down to 4 ½ inches, if I have the numbers straight. We could grant a variance now because we know where the line is. My first, most important, question is can we grant a variance in a road right-of-way situation, that is the 20'. I assume the 20' was in there originally, in the ordinance, for safety purposes. My question is 'what is the liability that we create by granting a variance if someone plows into that, to the County because the County would have allowed it where normally it would not be allowed'?

Mr. Albert: It's probably less liability rather than hitting the sign and knocking it down than wrecking their car when they hit the brick wall.

Mr. Domaszek: Or getting a 2x4 or piece of steel through the windshield.

Mr. Ross: I was just curious. That's the obvious question.

Mr. Lee: Does your parking lot extend, it would be south in this case, south of that sign? Do cars park south of that?

Mr. Domaszek: On overflow days they do park there.

Mr. Lee: So they are actually in the State Highway right-of-way

Mr. Domaszek: Yes, I have no control over that. We try to keep them over there but sometimes they do, you know.

Mr. Ross: I have one other question. Looking at the property, which we really don't have a survey of the property, what is the closest spot on the property that could be 20' from the road right-of-way and put up a new sign?

Mr. Domaszek: There is none.

Mr. Ross: There has to be.

Mr. Domaszek: In my pond.

Mr. Ross: Okay, I'm asking.

Mr. Domaszek: I'm sorry, in my pond.

Mr. Ross: It would end up in the water?

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Mr. Domaszek: Yes.

Mr. Bloom: But that is navigable water.

Mr. Ross: Okay, you can't, on that spot, get 20 ' from the road right-of-way on land.

Mr. Albert: If you moved it to the other side of the driveway where they have the entryway and moved it over, which would be farther west…

Mr. Domaszek: But again, I really didn't want the planter but because the sign has been there I'm just trying to protect the sign.

Mr. Lee: Pete, is the parking lot itself considered a structure?

Mr. Wegner: Ummm…

Mr. Lee: The parking lot itself is actually within the 20' setback from the right-of-way.

Mr. Wegner: But there are exceptions for that in the Ordinance under 9.7 for parking lots.

Mr. Lee: I'm just asking.

Mr. Ross: I'm going to ask a question, if you look at the lot is there a place to legally do what they want to do?

Mr. Wegner: There definitely is. It may not be where he wants it but per the ordinance there is a place where they could put that structure meeting the appropriate setbacks.

Mr. Hansen: The structure meaning the sign?

Mr. Wegner: Yes, both the sign and wall.

Mr. Bloom: I have a couple of questions for Pete. The first one is if this were a planter and you wouldn't deem it as a structure would they need a permit to put it up in that location.

Mr. Wegner: It's not whether it's a structure or not…

Mr. Bloom: No, if they had a planter?

Mr. Wegner: Would they need a permit? Probably not, based on the square footage. If it was just the planter portion of it, where the plants are but it does not mean that it wouldn't have to meet the applicable setbacks.

Mr. Bloom: Okay. Because they went to Kathy and she said it was okay for a planter. Then when Karl wrote his initial letter he said this is a structure. Then they went and measured after our last meeting, for the right-of-way, and when Karl wrote his brief letter here he referred to the setback of the planter 'the planter is not in the road'. He used the term planter twice,

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nothing to say a structure. In my opinion he has now agreed that this now is a planter and that they wouldn't have to permit and we wouldn't have to be here going over an appeal.

Mr. Lee: Let Pete respond to that.

Mr. Wegner: That's your opinion and you're welcome to an opinion but I think that a definition of a structure would include a planter and the idea of whether it needs a permit or not is based on the square footage and the dollar amount. Regardless, it still has to meet the applicable setbacks.

Mr. Bloom: Why would he refer to it just as a planter then?

Mr. Wegner: I think that is because that's what the Appellant has been calling it.

Mr. Lee: Did you have another question, John?

Mr. Bloom: No.

Mr. Lee: Okay. I want to let Mr. Domaszek speak.

Mr. Domaszek: I just want to say that when I received everything, I guess there was a meeting and I wasn't even invited to it to show the people and explain that it was a planter; all of a sudden I got a letter saying that it was supposedly a structure. Again, I was never invited to a meeting to explain myself. Am I right or wrong?

Mr. Wegner: I believe you're right. That's not uncommon though when we're dealing with…

Mr. Domaszek: I don't know but all of a sudden, so somebody says it's a structure and we're thinking it's been a planter all the time. All the sudden they were on a witch hunt and we're defending ourselves that it's a planter.

Mr. Hammer: It revolves around this planter, your structure issue. It's my opinion that this is a structure, you call it a planter but a planter can be a structure. I think the thing that I'm concerned about too is the size as originally proposed wouldn't have needed a permit. The structure as originally proposed wouldn't need a permit but as we measured it it's bigger and I think it needs a permit. Am I right, Pete?

Mr. Wegner: Correct.

Mr. Hammer: So…

Mr. Wegner: Not just based on the size but on the dollar amount.

Mr. Hammer: I'm dealing with docents, volunteers, I gave them what I wanted and that's what's in there. The cement block is exactly under the amount of footage so I didn't need a permit. But then he put the rock on, that's the only reason; not thinking it was going to go a little bigger, that's where the extra came in is with the rock. I gave you all the bills with the materials and it was under what was allowed, just so you know. It was under the dollar amount.

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Mr. Wegner: The County wouldn't agree because we'd give it some kind of labor value, not just free labor.

Mr. Domaszek: I wasn't told that. I'm sorry.

Mr. Wegner: Again, it's not really the dollar amount; it's not really the square footage, regardless it's still a structure and it doesn't meet the setback. That's the biggest issue.

Mr. Lee: Pete, its true there is no dimensional requirement for a planter in the ordinance, is there?

Mr. Wegner: No.

Mr. Lee: You're talking about the size of this "thing". Is it the rectangular size of it or is it the height of it.

Mr. Wegner: It is measured based on the footprint.

Mr. Lee: It's the footprint. Even if the footprint were the same and it were lowered to some degree that wouldn't change anything?

Mr. Wegner: No.

Mr. Lee: The actual planter part of it is about, maybe half way up the structure or a third of the way up or…

Mr. Domaszek: That was for the grasses to grow.

Mr. Lee: I understand that. But the actual planter thing is about …

More than one person talking.

Mr. Wegner: The ordinance just says square foot. Two-hundred square foot in size.

Mr. Albert: It has no height? What is the ordinances formal or official definition of a structure?

Mr. Wegner: Anything constructed or erected, the use of which requires permanent or temporary location on the ground, including but not limited to any building, dwelling, manufactured building, manufactured home, mobile home, house trailer, recreational vehicle, boathouse, boat shelter, advertising sign, deck, patios, driveways, fences, retaining walls, or other improvements or any part of such structure. A structure includes any permanent or temporary appurtenance attached thereto, including but not limited to awnings and advertising signs. So definitely this would be covered as a structure.

Mr. Albert: Yes.

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Mr. Hansen: Did I understand that if it were much smaller and a planter it still would have to be greater than 200' from the right-of-way regardless of how big it is?

Mr. Wegner: Twenty feet.

Mr. Hansen: Twenty feet, I'm sorry.

Mr. Wegner: Yes, regardless of the size it would still have to meet the setback to the right-of-way. A lot of these that they have shown as examples and comparables that have been there. They are grandfathered in, basically. He is adding to an existing grandfathered sign.

Mr. Hansen: So regardless of the size it has to be 20' from the right-of-way.

Mr. Wegner: Sure.

Mr. Domaszek: But, that's when I went and asked Kathy at the Zoning, I asked her if there were any requirements on planters and she said 'no, as long as you're off the right-of-way'. And that's why I kept it off the right-of-way. So, I'm giving you a scenario, if I was to take it down I can't even put anything underneath it, supposedly, as in any kind of a planter because it's at 20 feet.

Mr. Wegner: When it was originally built wasn't it over the right-of-way?

Mr. Domaszek: No.

Mr. Wegner: I thought you had to take one wall down.

Mr. Domaszek: Nope.

Mr. Albert: When you spoke with Kathy and asked her the question regarding a permit how did you described the planter/structure; structure/planter that you were going to erect?

Mr. Domaszek: When I went and talked to her I explained to her that my shrubs had died, around my sign, and I said 'Kathy, I would like to put a planter around my sign'. I said, 'is there any, do I need a permit?' I asked if I needed a permit. She said as long as you keep it underneath that dollar amount and you keep it underneath the size; well the size went over by mistake, and as long as you keep it off the right-of-way. I said 'okay'. So I did this and I did this and this.

Mr. Albert: She told you both square footage and also monetary value were two restrictions to what that planter could be?

Mr. Wegner: Or whether a permit was required.

Mr. Domaszek: Right, if I needed a permit and she said no.

Mr. Albert: But she said to you, as part of that explanation, that in fact it had to be under a certain size and under a certain dollar amount.

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Mr. Domaszek: No, there was no size because there is no size on a planter. I told her I'm putting up a planter…

Mr. Albert: Your statement was that in her response she told you that the planter did not need a permit as long as it was under a certain size and under a certain dollar amount.

Mr. Domaszek: Yes. That's exactly what she said.

Mr. Albert: She told you that?

Mr. Domaszek: Yep.

Mr. Albert: You didn't meet either then because it's over the value and it's over the size.

Mr. Domaszek: I agree it went over the size, without my control I agree there but the dollar amount is still underneath.

Mr. Albert: No by the way the County…

Mr. Domaszek: But I didn't know that. I'm sorry.

Mr. Albert: It's your responsibility to know that; both size and dollar amount.

Mr. Lee: Any other questions or comments from the Board?

Can't understand what is being said here.

Mr. Domaszek: Excuse me; did you see any of the other planters along there? That's where I got my ideas, from the other people down the road. Again, they're not 100' off the road right-of-way they're only like 30' or 20'. Wal-Mart's is even within a couple feet of the road and I'm over 100 foot.

Mr. Albert: I do believe they received a variance, though.

Mr. Wegner: Yes, two of those received variances.

Mr. Domaszek: That's all I'm asking is for a variance of my planter.

Mr. Lee: Let me poll the Board at this point. You all know from past experience and so forth what the criteria are. Taking number 1: Unnecessary hardship. Do you think it meets that or not.

Mr. Bloom: I think it does and I think because he's hemmed in by the wetland, the right-of-way and the parking lot I think it is a unique situation.

Mr. Hansen: I don't see how it can. The uniqueness falls under category 2, unique property limitations.

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Mr. Lee: The hardship you say no?

Mr. Hansen: I don't see how it can because it is not unreasonably burdensome if it's not there.

Mr. Lee: Norris?

Mr. Ross: I would agree. That's why I asked the question that I did; whether they could have a nice sign somewhere on that property and not get into this pickle and the answer I got from the County was they could. So, I don't think it's a hardship.

Mr. Bloom: Are we talking hardship or are we talking unique?

Mr. Ross: Hardship. That's what you asked, right?

Mr. Lee: Right.

Mr. Bloom: I'm sorry then I mis-commented. I told you why it's unique but I think it also met hardship because the initial question to Kathy in zoning was 'is it okay to put it' and it was. She answered 'if it's not in the right-of-way' and it's not in the right-of-way. They went forward with the project under that assumption, from what Kathy Ray said, and it would be definitely a hardship now to reverse what was approved previously.

Mr. Lee: So you're still a "yes" on the hardship, John?

Mr. Bloom: I am.

Mr. Lee: Okay. Phil?

Mr. Albert: Just a comment to John's logic. We don't know exactly what was said in that conversation. It did include the words both size and cost factors not requiring a permit. He was made aware of those factors and described it as a planter rather than a structure probably also influenced her response. Just in terms of hardship, economic and financial hardship is not a justification, based by case law. The hang up I have is that the safety issue surrounding that grandfathered sign I think there is justification, there is reason for surrounding that sign with some sort of barrier but I don't think it has to be a structure that is made out of cement block and stone. Again, in terms of the hardship I don't think the hardship can justify that you can answer yes to the hardship so my ultimate answer is no I don't believe it meets the hardship.

Mr. Lee: I also am a no. I'm not going to elaborate further on that but I think to the issue that you raised about the safety I think that could go under the public interest issue. We can get to that at that point.
Number 2 is the unique property limitations. Guy, do you want to lead us with your thoughts on that?

Mr. Hansen: I do think that there are some unique property limitations because the planter, or whatever it is, is going around the sign and the property is such that it would be difficult to do it

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another way. The sign is where it is otherwise you'd have to move the sign. I guess I will say there are some unique property limitations.

Mr. Lee: You're saying yes?

Mr. Hansen: Yes.

Mr. Lee: John?

Mr. Bloom: I said yes before.

Mr. Lee: Norris?

Mr. Ross: I'll resort back to the fact that, at least according to the County representative, that a sign can be placed on the property to perform the function they want and have it be outside the 20' area. If that's the case, we've used that criteria a lot that there's nothing preventing… now that would require moving the sign yet we know there are some…the river, the wetlands are. But on the final analysis, I would vote no.

Mr. Bloom: Where could it be placed, Pete?

Mr. Lee: So that's a no. Phil?

Mr. Albert: Well, the sign, the existing grandfathered sign is what makes it unique. Its yes and no. But, did you also look at some of the criteria under unique property limitations; alternative designs and locations on the property have been investigated. That doesn't seem to be the case. Whether there are or aren't for us to sit here today and say they are or are not I think there are a number of factors that would have to go into such a decision in terms of where it could be located based on the wetlands, the river, the right-of-way all of those issues. I guess again, multiple factors, I would say it does meet some unique property limitations.

Mr. Lee: You're a yes? I'm a no. No harm to the public interest? Again, Guy?

Mr. Hansen: I don't really think it's a harm to public interest. And as discussed before, it may be some amount of benefit if it makes that area a little safer. But like Phil said before it would be easy enough to put enough planting around it so that it would still be safe. I don't see that it's a harm to public interest. No. I'm a yes.

Mr. Bloom: I am definitely a yes to no harm to public because it actually enhances the area. It beautifies the area and is a safety factor for it and there's no question.

Mr. Ross: I'll say yes.

Mr. Albert: As you define public interest it is the ordinance's purpose and intent, the variance may not harm the public interest which is the ordinance's purpose and intent. The same condition comes into play here because for the public interest some barrier around that sign could be a factor in terms of safety but it doesn't have to be, again, cement block and rock

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structure. It could have been something else. Based on the ruling of the ordinance purpose and intent I say no, it can't be met because other alternatives exist.

Mr. Lee: Okay, you're a no?

Mr. Albert: Yes.

Mr. Lee: I agree, the ordinance itself is created to protect the public interest, I agree with that. However, I think in this particular case the safety issue probably overcomes that even though for forty some odd years there were not a huge structure there and things got along okay. I guess having said that I would be a yes.

Now, what we have here is that all three criteria need to be answered in the positive and there is only one where that is the case and if there is any one of these three that ends up with a majority in the "no", then it can't be done. We don't have a motion at this point, this is a feeling of the way things are. You wanted to make a comment as we were talking about this, Mr. Domaszek, I will allow you to go ahead with that but then I am going to close the hearing and we'll wait for a motion.

Mr. Domaszek: Again, I can't move my sign that's been grandfathered there either to the west or to the south I can't move it. It's there and it's been grandfathered for over 50 some years. There is no other place to move it. Again, I go back to…my concern is for the safety of my customers. There is no other problem. I don't know what to do. The other thing is, if you guys decide against me I need to know; do I take off 6 inches, do I take off a foot? What makes it a planter or not? When I've been hearing these comments I basically can't put anything around, on my own property, around the poles to protect the people because I can't do it because it's in the 20' setback off the right-of-way, according to the County. That means including a planter, I don't know. I know it's a unique situation and I appreciate you guys but, again, I'm a very unique business and it's not that you're just going down the road and "oh, there's a planter off the road right-of-way." I am set back over 100' and with our unique piece of property I did what I could and in the right heart. It wasn't creating any problems for anybody. I did what I thought was right. I guess that's all I have to say.

Mr. Lee: In response to one of your questions, Mr. Domaszek. The responsibility of this Board is not to tell you what to do. Our responsibility is to either grant a variance or not grant a variance. If we were to not grant a variance you would have to continue your discussions with the County as to what you could do or could not do. That is not our responsibility. Unfortunately our responsibility is to decide on whether a variance either meets a criteria or doesn't. The criteria is not set by us it is basically set by the Courts. We have to follow that. If we didn't have to do that, I can think of a number of instances where we may have made different decisions. But, unfortunately, that isn't what we have to deal with. We have to do things according to a certain manner of doing them and that is not an easy thing to do, believe me. Having said that I'm going to close the open hearing and we will…

Billy Fried: I'm here to support the zoo, not speaking for the Town of Minocqua but I represent Duane as an elected official for the Town of Minocqua. I just want to say that the hardship and the way you're interpreting the hardships and the property limitations. From the outside sometimes we look at the Highway right-of-way, which is the thing you're talking about, is

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unique in that area. It is slanted way to one side. The other thing is there's a pattern of development on Hwy 70 W. If you granted variances or not you're giving another business an advantage for letting them do something similar or even greater, if you look at the Wal-Mart sign and the other planters. The County ordinance on the planters is no well defined. A pier is a structure, a house is a structure and a planter is a structure. The County says you can have a planter around your sign. That was the intention. I've seen this guy at endless meetings and public hearings for a number of things for his growing business. His intention is to always do things right. I just wanted to speak in support of him.

Mr. Lee: I don't think that anyone on the Board felt that Mr. Domaszek was trying to do anything wrong. I don't think that is an issue here. With that being said I am going to close the hearing. If you want to have further discussion, go to it otherwise we'll entertain a motion and see where it goes.

Mr. Bloom: I have a question. Where is this area that it could be moved with the setback from the river and the setback from the wetlands and the Highway? Where would be the location that would be acceptable?

Mr. Hansen: For the sign?

Mr. Bloom: For anything.

Mr. Wegner: There are numerous locations. The setback to the wetland, assuming it's just excavation, is only 5'.

Mr. Bloom: Five feet from the wetlands for a structure?

Mr. Wegner: Yep, the excavation. If the sign was cantilevered over the wetland that would be permitted as long as the excavation is at least five feet away from the wetland. This whole are here (pointing at the map) if he just moves it back 20' it could be placed. Anything 20' …

Mr. Bloom: And where is the river?

Mr. Wegner: Right here (pointing at the map). Seventy-five feet from there…

Mr. Domaszek: That's the next parking lot. What you just pointed out.

Mr. Wegner: Yep. There are numerous signs that are in parking lots and I have to look at the property itself and there is definitely a location where that can be placed, meeting the appropriate setbacks.

Mr. Bloom: But it would be a hardship for him to do that, would it not?

Mr. Wegner: Not by the definition of a hardship. If it is costly or not an appealing location those are not technically hardships.

Mr. Bloom: And Zoning's criteria for a planter, you don't have any is that correct?

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Mr. Wegner: That's correct. There is no criteria for a planter but…

Mr. Bloom: There's no reason this couldn't be judged a planter, is that correct?

Mr. Wegner: Numerous reasons why you couldn't call it a planter.

Mr. Bloom: Or you could. It holds plants, right? It's got ground in it, right?

Mr. Wegner: So does a car when he's bringing plants to the…

Mr. Bloom: No, my question is this. You go around a lake, say Lake Tomahawk and you see boathouses that aren't boathouses but you said 'well, as long as you can call it a boathouse you can use it for a storage shed or whatever as long as you don't sleep in it is that correct?

Mr. Wegner: No.

Mr. Bloom: This is no different, I don't think.

Mr. Albert: But John, the size and the value of this structure don't adhere to the criteria that was supposed to be met. How do you grant a planter if it doesn't meet either of those criteria?

Mr. Hansen: As I understand it the size doesn't have any relevance as to whether it has to be 20' from the right-of-way or not. If it was one foot tall it would have to be 20' from the right-of-way. Unfortunately when you get to this point we have to follow these three criteria.

Mr. Albert: If we are going to consider a denial and Mr. Domaszek then comes in with a request, a permit application for a planter and it is such that it could be redesigned and downsized how would, I hate to work in hypothetical's but, is there an opportunity for that structure to stay in some shape or size to meet the criteria in terms of cost value and size would it then need a variance?

Mr. Wegner: I think any structure…

Mr. Albert: Anything within the 20 feet?

Mr. Wegner: Yes. It's 20'. Like these other ones were done as required, they have met the setback and it's been part of the sign. The whole issue is the setback. What the County would recommend, when he asked the question how much would he have to leave, none of it. Just plant vegetation around it like it was for the last 40 years.

Mr. Hansen: A variance, if requested, would come from the Planning and Zoning Committee not us right?

Mr. Ross: If Planning and Zoning passed it on to us like they always do.

Mr. Fried: I tried not to on this one.

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Mr. Bloom: I think we're throwing common sense right out the window and nit picking on this myself.

Mr. Albert: The criteria is the criteria, John. That's the…

Mr. Bloom: You have to have flexibility, too.

Mr. Albert: Well, it could throw it right back into the Courts if the County decided that the criteria hadn't been met for a variance.
Your tally is that it does not meet all three criteria, correct?

Mr. Lee: No, according to the tallies it met the Unique Property Limitations and No Harm to the Public Interest but it did not meet the Hardship.

Mr. Albert: Based on the definition of hardship.

Mr. Ross: Since the sign is grandfathered in, and I know we probably don't have to solve the problem but if they decided to stack rubber tires up around the poles or whatever it takes to protect people from getting hurt what would the County's reaction been to that versus a nice brick wall?

Mr. Wegner: It would have to follow the ordinance and the ordinance talks about 50% of the value that they could do maintenance to it.

Mr. Ross: Fifty percent of the value.

Mr. Hansen / Mr. Albert: Of the sign?

Mr. Wegner: Yes.

Mr. Hansen: So if there were a barbed wire fence around it that would be allowable?

Mr. Wegner: I'm looking more at you saying stacking. Something attached to the sign.

Mr. Ross: I'm saying safety is the major issue. Is there some way to stop the safety issue? What would happen if there had been a narrow planter suggested? It would still need a variance is what you're saying, in the middle and grow the grass up under the tree? In other words, the thing that is overwhelming is the fact that it's a cinder block building.

Mr. Wegner: You could argue that it's a bigger safety issue now than it was before.

Mr. Ross: If a car hit the pole it would shear him off and hit him down. That's why I go back to my question originally is 'what is the liability if we grant a variance?' None, huh?

Mr. Wegner: I have no clue.

Mr. Albert: We didn't build it.

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Mr. Ross: If we granted a variance saying it's okay to be there…

Mr. Wegner: It could be, I don't know.

Mr. Lee: The hearing is closed now. If you planted large arbor vitae trees around that, those aren't structures are they?

Mr. Wegner: No.

Mr. Lee: And those things are pretty big and full and grow tall.

Mr. Wegner: What are you getting at?

Mr. Lee: That would pretty much block it.

Mr. Wegner: Camouflage it, you're saying?

Mr. Lee: Yes.

Mr. Hansen: When you say around "it", you're saying around the sign or around the rock structure?

Mr. Lee: No, no. Around the sign.

Mr. Wegner: Oh, I thought you meant the rock structure.

Mr. Lee: In place of, is what I'm saying. It's not our responsibility to come up with a solution. We're here to grant a variance but I'm just asking a question. Mr. Assistant Director?

Mr. Wegner: What? Is there a question in that?

Mr. Ross: I personally have thought about this.

Mr. Wegner: Back to that arbor vitae. Yes, plant vegetation around it.

Mr. Lee: If you planted trees there or shrubs, I don't know what you call an arbor vitae, but I know they grow.

Mr. Hansen: Instead of the rock?

Mr. Wegner: Yes, definitely. Rock gone plant vegetation as a barrier.

Mr. Lee: That's one alternative.

Mr. Wegner: Sure.

Mr. Hansen: It could be oak trees.

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Mr. Wegner: Yes, it could be oak trees it could be purple loose strife. I don't know. You guys have a tough decision.

Mr. Bloom: They wanted tall safari grass because of the zoo. That gives the background.

Mr.Ross: I thought about this case a lot before we came today and I said to my wife 'I hope Rossi is there because I don't want to vote'.

Mr. Wegner: Oh I know. I went there when I was a kid and I brought my son there and it's just…

Mr. Ross: When you drive down there…

Mr. Wegner: It fits.

Mr. Ross: It fits. It's not out of the…

Mr. Bloom: And you go by all of the rest of them and I'm not saying its right or wrong but it fits. I think we can justify hardship if we work on it a little bit.

Mr. Hansen: I think we all agree that what we are about to decide maybe doesn't make common sense but we still have these criteria that we need to meet and we do this every time. If we don't have some standards we don't have anything we might as well not meet.

Mr. Bloom: We've been flexible before.

Mr. Albert: Not outside the criteria, John.

Mr. Lee: Is it flexible or is it total disregard for the standards?

Mr. Bloom: If you want an example I can give you an example. Take a look at the two concrete drives down to the lake that were identical. We approved one and we denied another one. And they were almost exactly alike.

Mr. Hansen: I remember sitting here and saying 'environmentally this is a better issue than if we make them take it out' and you guys say 'no' we have these criteria we need to meet. So…

Mr. Ross: The tough ones are always the same. You put something in and it's a structure; it's concrete, it's brick, we've had so many of these concrete without a permit and now you're saying it turned out not so bad but it's wrong, by the criteria. Take it out. Those are the toughest calls.

Mr. Lee: I think the County Board needs to improve it's definitions a little bit.

Mr. Hansen: Of a structure?

Mr. Wegner: Definitely. It's been changed numerous times already.

Mr. Lee: It would help us a great deal in not facing these difficult situations, Billy.

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Mr. Fried: I agree.

Mr. Lee: We need to make a decision one way or another here, gentlemen.

Mr. Hansen: I'll make a motion, and you can modify it, I will make a motion that we deny the request for a variance because it will not meet the unnecessary hardship criteria; the problem is largely self-created; it would not be unreasonably burdensome to comply with the standards; it may or may not meet unique property limitations and for those reasons I make that motion.

Mr. Albert: I will second that based on your justifications and also knowing that Mr. Domaszek was asked to stop half-way through or part of the way through and continued on. It doesn't meet the criteria we are faced with responding to. I second the motion.

Mr. Lee: It has been moved and second, if you want to have further discussion you are welcome to it otherwise I will call the question. I will wait to see if there is any further discussion. Hearing no further discussion I will poll the Board beginning with Guy: Guy Hansen, "aye"; John Bloom, "nay"; Norris Ross, "aye"; Phil Albert, "aye" and Harland Lee, "aye". The motion is carried, the variance is denied. The hearing itself is closed.

Mr. Lee: You may want to wait around a few minutes and talk to Pete about the results and what alternatives might be available.

Mr. Albert: I raise one issue related to it. He now is in the midst of going into his busiest season. Any alteration, dismantling or whatever is definitely an issue in terms of both safety but also construction in the area. In terms of our motion how much leeway can be given to him either to try and correct it with some sort of permit application to see what could be allowed or how it could be modified or some delay in dealing with the potential of dismantling it.

Mr. Wegner: I'll work with him with that thought in mind. It's a bad time of year to be messing with that thing.

Mr. Lee: We certainly would agree with that, Pete.

Old Business:

a. Consider current and pending appeals to BOA.
There is one appeal to schedule.

b. Review/revise meeting /hearing calendar. June 29, 2015 at9:00 a.m.

2:07 p.m. - The meeting was adjourned on a motion by John Bloom and second by Ed Hammer; and all members voting aye.

Harland Lee, Chairman Phil Albert, Secretary

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