

ONEIDA COUNTY BOARD OF ADJUSTMENT
PUBLIC HEARING SUMMARY
FEBRUARY 17, 2022
ONEIDA COUNTY COURTHOUSE
1:00 PM

Vice-Chair Guy Hansen called the meeting to order at 1:00 PM in accordance with the Wisconsin Open Meeting Law.

Roll call of Board members present: Mr. Ross, “here”; Mr. Pazdernik, “here”; Mr. Viegut, “here”; Mr. Lee (via ZOOM) and Mr. Hansen, “here”.

Members absent: Phil Albert

County staff members present: Todd Troskey, Assistant Director and Julie Petraitis

Other individuals present: See Sign in Sheet.

Vice-Chair Hansen 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 consists of five regular members and two alternates. Anyone wishing to testify must identify themselves by name, address, and interest in the appeal and shall be placed under oath.

Vice-Chair Hansen swore in Todd Troskey and Greg Schoone.

Mr. Hansen stated the procedure for the hearing would be testimony from the Appellant(s), then the County, any public comment; back to the Appellant (s), County and then close the meeting from any further testimony. The Board will then deliberate. If they have any questions they will ask them and ask that only address that question. The Appellant(s) may stay for the deliberation.

Acting Secretary, Norris Ross, read the notice of public hearing for Appeal No. 22-001 The Oneida County Board of Adjustment Rules of Procedure, Section 178.05(12), Chapter 17, Oneida County Code of Ordinance, provide that a timely appeal shall stay all proceedings and furtherance of the action appealed from, unless such stay would cause imminent peril to life or property.

The Board of Adjustment will conduct an onsite inspection of the property involved in this appeal beginning at approximately 10:00 am prior to the hearing. Pertinent property boundaries and locations of existing and proposed structures shall be clearly identified. A representative or the appellant must be present. The inspection shall be open to the public. Following the adjournment of the public hearing, the Board will vote in open session for a decision on this appeal. Information on the decision can be had by calling or visiting the Planning and Zoning Office during normal business hours on or after the next or a later

day set by the Board at the hearing. The appellant will be notified of the decision via certified mail.

Copies of appeals and related documents are available for public inspection during normal business hours at the Planning and Zoning Office, Oneida County Courthouse, Rhinelander, WI 54501. The Oneida County Zoning & Shoreland Protection Ordinance is available on the internet at www.co.oneida.wi.us. All appropriate media outlets were notified and the inspection was conducted between 10:00 a.m. and 10:20 a.m. this morning, February 17, 2022 at property located at 1962 Robinson Road further described as part SW SE, Section 34, T36N, R6E, PIN NO 521-1B, Town of Nokomis, Oneida County, Wisconsin. Board members Hansen, Ross, Pazdernik and Viegut were present at the onsite along with Todd Troskey of the Planning and Zoning Department, Ben Niffenegger from Wisconsin Valley Improvement Company and Greg Schoone, Contractor. Observations by the Board: Property boundaries were adequately marked. The Highway road right-of-way was plowed. The well and sanitary facilities were located. Outline of proposed construction was adequately marked.

Vice-Chair Hansen informed the Appellant (s) how the hearing will be handled. He stated that the Board has to consider the three criteria, in which all three need to be met in order to grant a variance and the Appellant should be sure to address those in their testimony.

Mr. Schoone began his testimony by stating that the physical hardship is that the home is sitting on the Wisconsin Valley Improvement Company (WVIC) right-of-way, which is a problem within itself. It limits the owners of the property to be able to maintain it and also limits the possibility of them to be able to transfer the property to either a family member or another party. Mr. Schoone stated that it is evident that the owners are constricted by the road, the access driveway to the neighbor. If they were to move across that they would get into the hill, which is a potential for historical issues with Indian burial mounds. Also, there is not enough width for the home to fit between the driveway and lot line.

Mr. Schoone stated there is no harm to the public interest. They are actually enhancing the property from view from the water. The water quality will be improved because the water shed will be further back. This fits the criteria for everything that is being asked.

Mr. Pazdernik added that both neighbors, on each side, are in support of this, as well. So, it is enhancing the whole area.

Mr. Troskey began his testimony by stating that from the County's perspective in a situation like this they would normally want to talk about either using averaging or moving the structure back to the 75' setback. From the averaging perspective, that does not work out because the neighboring property dwellings are less than 35 feet. Moving the structure back to the 75' setback, as Greg stated there are two issues with that in terms of the driveway cutting off some area of the building and also, the septic field on top of the hill.

Other than that, there are no specific issues with the proposal.

Mr. Hansen asked if the Board is hearing this appeal because the home cannot be moved to the 75- foot setback from the water, which is the normal requirement.

Mr. Troskey said that the department is not saying it cannot be moved back, there is obviously issues in trying to do that.

Mr. Schoone added that the other criteria is the averaging. By taking the two alongside the property, one was at 35', one was at 23', so that would be them at 28/29, roughly, and the minimum for new construction is 35', so they cannot fit the averaging criteria. So they have to move back to the 35' setback – that is the closest they can get to the water.

Mr. Ross asked Mr. Troskey to explain what the ordinance states when it comes to pre-existing structures. What is the intent? He asked how the 35' setback became the criteria.

Mr. Troskey explained that basically the 35' setback goes back to the language in NR 115. From 0' to 35' for any structure other than a boathouse and walkway, there are no exemptions for principle dwellings or accessory structures.

Mr. Ross asked Mr. Niffenegger if there were a building on WVIC property would they be opposed to them fixing it up or remodeling it. Do they not allow anything on the WVIC property?

Vice-chair Hansen swore Mr. Niffenegger in at this time.

Mr. Niffenegger stated that WVIC is regulated by the Federal Energy Regulatory Commission (FERC) and as part of the Federal license, they are supposed to be managing their property for three things:

1. Public recreation.
2. Environmental values.
3. Scenic beauty.

In 2013, a moratorium was implemented on any new structures on WVIC property. They have not required people remove structures but when they come to the end of their usable life that is when they would like to see the structure removed. The only structures they allow are stairways to get access to the water and a dock or pier in the water. WVIC is in support of this project, moving the home back. That is in the public interest. By moving it back there will be increased public recreation, additional vegetation planted and infiltration from runoff coming from the roof and other impervious surface, which will help with water quality and fish and wildlife habitat. From a scenic standpoint, the structure farther away from the water.

Mr. Ross asked if there was a restriction on the current owner selling or passing the property to a family member.

Mr. Niffenegger said that WVIC does not have any restriction on that.

Vice-Chair Hansen closed the public portion of the public hearing.

Mr. Ross stated that in the past the County has made suggestions, when possible, where a building could be placed 75' from the water or even further away. He asked if there was any area where it could be placed other than where it is proposed.

Mr. Schoone stated that there is a garage that was dug into the hill, and there is a force main that goes up to the septic. When you go to the 75' mark and measure the current width of the building and add ten to the eave from the side lot lines, they do not have the width to fit the building in that area. The other thing is historical/cultural limitations on the property.

Mr. Ross asked if they could discuss the historical/cultural issues of the properties in this area.

Vice-Chair Hansen re-opened the public portion of the public hearing.

Mr. Troskey replied that Mr. Niffenegger would be better to address the historical/cultural information/issues about the property. He believes that it is lot specific.

Mr. Niffenegger stated that the exact boundaries of properties that have cultural/historic resources are not publicly available or known. The Wisconsin Historical Society (WHS) is the statewide clearinghouse for all known historical/cultural sites. This could include old logging camps, European/Native American burial sites and things of that nature. The requirement to having an Archeologist on site is not unique to WVIC property, it is not something that is required County wide, but it is something that is required if there is a known cultural resource site there. The Robinson Road area has a high concentration of cultural or historical significant sites present. That is something that would apply to that area. Which parcels it ends and begins at is not public information. Any ground disturbance would have to get prior clearance from the WHS.

Mr. Hansen asked Mr. Schoone about the drawing that was submitted. Mr. Schoone explained the drawing to him.

Mr. Schoone added that he was asked to look into the historical/cultural resources for the property. There are no cataloged burial sites on this property. He has included a letter from the WHS. He will have to hire an archeologist to be onsite when they break ground to monitor the property.

Mr. Hansen asked if they have to do it that way if they move the building, the way they are planning.

Mr. Schoone said the archeologist would still be involved, but only for the top-dirt scraping. The rest is existing dirt and typically, the burial sites or that type of interest is

not down by the water. Mr. Schoone said all the property along the ridge had been a campsite at one time, so the ground had already been disturbed.

Mr. Lee asked Mr. Niffenegger if there were any circumstances, in which the home could be torn down and moved back.

Mr. Niffenegger stated that is what they are talking about today.

Mr. Lee stated he wanted Mr. Niffenegger to clarify that.

Mr. Niffenegger stated that it can be torn down and rebuilt it just cannot be rebuilt within 30' of the water.

Mr. Lee confirmed that they can tear down and rebuild anywhere beyond the 30' mark. They recommend people be as far back as possible because in the future you never know where erosion may take the ordinary high water mark.

Mr. Hansen confirmed with Mr. Troskey that it is the County ordinance that would not allow the building to be any larger than it currently is. The same footprint but moved back.

Mr. Troskey confirmed that there could be no expansion above and beyond the existing footprint.

Mr. Ross stated that since it is already two stories they would not be able to go up. He asked Mr. Troskey if it could be three stories.

Mr. Troskey said that as long as it is not over 35'.

Mr. Schoone said that as he understands it; if that were a vacant lot and he averaged he could build at 35' and not be restricted by square footage footprint.

Mr. Troskey said that was correct.

Vice-Chair Hansen stated that the hearing is closed and asked what the discussion is to make a decision. He said it is all relative. The decision will enhance the property some, but it would not enhance it as much as if it were not there at all. The other side of it is, if it were a vacant lot it could be even closer.

Motion by Mr. Pazdernik, second by Mr. Viegut to approve the variance as requested.

Mr. Ross asked that they go through the three criteria for a variance.

Mr. Pazdernik stated that there is a hardship and it does enhance the area it there is no harm to the public.

Mr. Hansen added that one hardship is that there is no place to put this building 75' from the water. It will be less harmful to the public than what is there now.

On roll call vote: Mr. Lee, “aye”; Mr. Ross, “aye”; Mr. Pazdernik, “aye”; Mr. Viegut, “aye”; and Mr. Hansen, “aye”.

With all members present voting “aye”, the motion carried.

1:45 p.m. Vice-Chair Hansen adjourned the meeting.

Harland Lee, Chairman

Phil Albert, Secretary