

**ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING**  
**Tuesday, April 24, 2012**  
**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: Robert Rossi “here”, Elmer Goetsch, “here”, Harland Lee, “here”, John Bloom, “here”, Guy Hansen, “here”, Alternate Phil Albert, “here.”

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

Other individuals present: Kim Owens, Margaret Vrastrak, Susan Nimz Goulet, Shawn McGuire, Phil Albert.

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Chairman Harland Lee stated that the meeting will be held in accordance with Wisconsin open meeting law and will be tape-recorded and sworn testimony will be transcribed. It is the practice of this board that the door of the board room must stay open and if anyone has difficulty hearing they may move closer to the front. Anyone wishing to testify must identify themselves by name, address and interest in the appeal and shall be placed under oath. 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.

Phil Albert, BOA Alternate, recused himself from the public hearing to avoid any perception of a conflict of interest due to the close proximity of his property to the property that is the subject of today’s appeal. Mr. Albert is also an officer of the Squirrel Lake Homeowners Association.

Chairman Harland Lee swore in Kim Owens, Appellant; Peter S Wegner, Oneida County, Margaret Vrastrak, Susan Nimz Goulet, Shawn McGuire and Phil Albert.

Secretary Elmer Goetsch read the notice of public hearing for appeal #12-001 of Kim Owens, 684 Greenway Terrace, Hartland, WI 53029, requesting an area variance to allow placement of a pier on a parcel that is only 16 feet wide at the ordinary high water mark, therefore being contrary to Section 9.98(E)(1), Chapter 9, Oneida County Zoning and Shoreland Protection Ordinance, which requires that “Berth structures must be set back a minimum of 10 feet from side lot lines extended waterward and

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any additional distance required to confine approach and docking of the boat to the owner's riparian zone." The property is located at 7946 Owens Road on Squirrel Lake in Gov't Lot 6, Section 19, T39N, R5E, and is identified as Parcel #MI 1815-16, Town of Minocqua.

The Notice of Public Hearing was published in the Northwoods River News on April 10 & 14, 2012; and was posted on the Oneida County Courthouse bulletin board on April 5, 2012. Mr. Goetsch read the certified and first class mailing distribution list into the record.

Mr. Goetsch stated that an onsite inspection was conducted on this date at approximately 10:00 am. Present at the onsite inspection were the members of the Board of Adjustment; Peter S Wegner, Assistant Zoning Director; Appellants Kim Owens and Margaret Vrastrak; members of the public, Susan Nimz, Joe Pangburn, Shawn McGuire. Property boundaries were adequately marked. There are no structures involved in this appeal. Measurement of the shoreline was 20 feet. Property is flat, slightly sloping toward the water; tree covered; undeveloped.

Mr. Goetsch stated that there are numerous correspondences received from the public in the appeal file and are part of today's appeal.

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. You 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.

Kim Owens testified on behalf of herself and sister, Margaret Vrastrak.

Kim Owens: I think most of the materials speak for themselves. What my sister and I were looking for is to see if it would be possible to have a variance for pier placement to use the property for access... [inaudible]...increase the sale of the property and for our own use. We haven't used the property much. The biggest thing is trying to, as intentioned by our family history, to have a pier. That's about it. I am leaving it up to you.

QUESTIONS FROM THE BOARD.

Elmer Goetsch: What is the problem? Explain what the problem is.

Kim Owens: Based upon what I understood, is that the 16 feet width is too narrow to put a pier in. So that's why I went for a variance. To see if that's even possible. We fully acknowledge that we understand that as of right now, we can't put anything in.

Harland Lee: You and Margaret own this together? Is that correct? You each own a separate back lot? Is that correct?

Kim Owens: Yes. Margaret is actually a year-round resident. I am not.

Harland Lee: Are either one of your properties for sale at this time?

Kim Owens: Not at this time.

Elmer Goetsch: First.....the ownership...?

Kim Owens: It's a joint ownership.

Elmer Goetsch: How long has it been that? When was the deed recorded?

Kim Owens: August 1995. It was originally 24 feet. It was originally owned by me, and my sisters Lynn & Margaret. Lynn wanted to sell off her back lot, so we decided to subdivide out eight feet for her, and that went to Barbian's leaving Margaret and I 16 feet.

Elmer Goetsch: When was that done?

Kim Owens: 1995.

Elmer Goetsch: So it was 24 feet until then. Did you consult with zoning on what the impact might be?

Kim Owens: No.

Harland Lee: And you must not have had a pier all that time. Has anything changed? Why do you want a pier now?

Kim Owens: We were looking at what we were going to be doing in the future. We will probably be selling it. It's not for sale yet.

Harland Lee: This would enhance...

Kim Owens: Correct. The property.

Guy Hansen: Apparently, the adjacent property to the south is for sale. According to one document.

Kim Owens: Yes. As far as I understand.

Guy Hansen: So Barbian owns an off water lot as well as a lake lot that the house is on.

Kim Owens: Yes. The one on the lake. I don't think she owns the back lot. But I'm not positive.

Guy Hansen: So there were three people involved and one of them essentially took their eight feet out of that 24 to add to that lot.

Kim Owens: Right. Our other choice at the time was to buy her out. But we couldn't do it at that time. We didn't know if it was even necessary.

Guy Hansen: To buy the 8 feet?

Kim Owens: Yes.

Peter S Wegner, Assistant Zoning Director, testified on behalf of Oneida County.

Peter S. Wegner: This wasn't a formal denial. She was sent a letter. It was a decision of the department, since there was no permit required to put a pier there, we couldn't send a denial, but we sent a letter stating that it does not meet the requirements of the ordinance since the pier would not meet the 10 foot setback to the lot line. That's why she is here today. There are a few things that you should be considering. Keyholing. Oneida County does not allow keyholing. But in review of the documents she gave us, it seems like since 1972 to 1995 the property had back lots that were getting access through this strip of 24 feet. In 1995 they took off an 8 foot chunk which left a 16 foot chunk. Since Oneida County didn't pursue enforcement, we feel that the statute of limitations has run its course where we couldn't enforce or deny them access to this property through Lots B & C.

Harland Lee: Understanding what you just said, but asking the question, it comes to just a point. How would you access it without encroaching on neighboring properties?

Peter S. Wegner: With the assumption that the driveway that is there, that they have access through that driveway. That driveway is actually on her property for a certain distance. I didn't go back to see what the language was on the deeds just to make a decision whether or not they truly have a walking easement or a deeded access to cross that. But just that the road does over that property, it would seem logical.

Harland Lee: So some part of the road then gives access, is that right?

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Peter S. Wegner: Yes, but again, I don't have a deed or a volume and page that say that they have deeded access. I'm just going off of the fact that this drive is on their property right now. So with that assumption, they could continue to have access to the property. As far as the placement of a pier, our ordinance requires that you have a 10 foot setback, and that is measured 10 feet from the side lot lines extended waterward and any additional distance required to confine the approach for the docking of a boat. We take that measurement from the OHWM. The measurement that we took today, where she is calling 16 feet is actually where the stakes are. If you measure from the OHWM it is actually a 20 foot swath. Assuming that they do have access to this, if you were going to grant them a variance to put a 4 foot pier, with any eight foot side lot setback on each side, we would require that cutting in this 35 ft buffer zone does not exceed 4.8 feet because that is what would be a view corridor for that lot, since they have 16-20 feet of frontage. Again, if you were to grant a variance, you would word it such that it allows for the approach of a boat, for the mooring of a boat. If you notice this pier that was to the north of this property is actually 2 feet from the lot line and with the placement of the boat lift or shore station, it is encroaching on the riparian zone of Kim Owens and Margaret Vradiak. I did some research on that and according to the DNR there isn't a statute of limitations when it comes to an encroachment or infringement on somebody else's riparian zone. Another concern raised was that it would be congested. But per statute, if she decides to put something here, this shore station really doesn't have a vested right because its been there for ever and a day. It would have to be relocated if she decided to put a pier there.

Harland Lee: But even if she didn't, it would have to be relocated. Is that correct?

Peter S. Wegner: True. But I didn't receive a formal complaint on it and the direction is that unless we have a written complaint, I'm not chasing it. But you are right, it should be relocated. The access is a question other than the fact that I am just assuming that since this road is on her property that she would continue to have access from that point. Just if you were to decide to grant a variance, that you would word it such that she is limited to a certain view corridor and if she does place a pier there that you allow here enough room for the approach and mooring of a boat. As far as the lot being legal pre-existing, and Board of Adjustment putting it into the category of was it before 1972, I don't know. That's really up to you. You could argue that it doesn't matter if it was split in 1995 or not, its still a legal pre-existing parcel whether it was split in 1995 or not, it doesn't meet the requirements.

Robert Rossi: What does it matter if it is pre-existing or not, if it can't meet the side lot setback?

Peter S. Wegner: Well, the Board of Adjustment has granted variances in the past. Looking at when the lot was created, if it was created before 1972....in this case it was

1963, 1972...but it was recently subdivided in 1995, so you could argue that it's a self-created hardship.

Robert Rossi: But even if the Board did say that it's grandfathered. What would that do if the pier doesn't meet the setback to the lot lines?

Peter S. Wegner: It's just that you can justify granting a variance if it was created before 1972.

Robert Rossi: My question is with the DNR, you cannot interfere with the rights of riparian owners out into the water. That's all I'm saying.

Elmer Goetsch: Why does keyholing value remain when the lot was subdivided?

Peter S. Wegner: Mainly because it was in 1995, and for us to go back and enforce it, it was more than 10 years. The statute of limitations has expired. So I don't think we have the right to enforce it.

Elmer Goetsch: Let us say then, that it is still a keyhole lot. But why...keyhole doesn't mean that you get a pier to go with it. It just gives you access to the shoreline.

Harland Lee: The issue isn't the keyholing. The issue is the pier and the side lot issue. This is interesting, but it superfluous as far as the main issue. Right?

Peter S. Wegner: Yes.

Guy Hansen: When you measure the setback to the pier, where do you measure it to, the edge of the pier, the center...?

Peter S. Wegner: To the closest point of the pier, right to the edge.

Guy Hansen: So if you had a 4 foot pier, you would need 24 feet.

Peter S. Wegner: Correct.

Robert Rossi: So you couldn't.... [Inaudible].

Elmer Goetsch: I understood that there was no consultation before the subdivision.

Guy Hansen: How does a keyhole lot like this get established in the first place?

Peter S. Wegner: At that time, in 1972, there was no ordinance that regulated it. So that's how it occurred.

Kim Owens: Can I ask what keyholing is?

Harland Lee: It basically addresses the issue of back lots accessing riparian rights.

Peter S. Wegner: The definition of keyhole development is : The creation of a lot, outlot or parcel of land, by any type of recorded instrument, that provides access to a navigable water body for more than one non-riparian lot, outlot or parcel of land and where the ownership of the riparian and non-riparian lots are not the same. Keyhole development shall also include dredging of a channel for the purpose of navigational access to a water body from one or more lots, outlots or parcels of land. Keyhole development shall not include public boat ramps or marinas permitted under this ordinance.

Kim Owens: Thank you.

Harland Lee: A little bit of history...this began down in the Lake Geneva area, where there were some back lots and they bought a piece, a narrow piece, similar to what you have here. And then all these back lots used that piece in a keyhole fashion so to speak. And that became a big issue here in Wisconsin and thus all of these ordinances came about. That was in the early 1970's.

Guy Hansen: In addition to this being a keyhole, it comes to a point, so in theory it is access for an existing easement.

Harland Lee: This really isn't the issue. But in answer to your question, what Pete is saying is that the driveway crosses this narrow...at some point. And you could access it from the driveway. Going back to the point would be a problem, which you have identified, but you go up so many feet, to where the driveway crosses it, then you could, without encroaching on someone else's property.

Peter S. Wegner: Yes. It's a question mark. We don't have any documentation to show that they have an easement. Of course, they could move the road and then she'd be jumping across until it was wide enough to walk on.

Guy Hansen: So there is no legal easement on that other driveway.

Kim Owens: According to the document I have, #196268, when our parents sold, this property...this was the only road.

Harland Lee: I think what you are saying is that they created this with the idea of actually creating a keyhole for the back lots. And it says that in there.

Kim Owens: There were five lots back here, and five kids. Each lot was offered to the kids. Three of us took the back lots.

Harland Lee: Created expressly for the keyhole purpose.

Kim Owens: Thinking that my parents would hold on to the property. That was the only access point to our cottage for years. When our father retired up here, he put the secondary road in. That's where the secondary road. According to what this says, "It is understood that the parties of the first part (my parents) are reserving the right to use the road that crosses this property as a matter of ingress and egress to the town road, for themselves, their heirs and assigns."

Peter S. Wegner: The only thing the County would say is, this is in 1963. We don't know what has happened since then. This language could have been taken out or it could be interpreted a different way, even though it's black and white.

Harland Lee: I think that since this has been divided, changes it. That's my interpretation.

Elmer Goetsch: The application does not make clear what the zoning is [inaudible] so could they use it for other purposes?

Elmer Goetsch: My concern is that it was subdivided...[inaudible]whatever benefit there was from grandfathering is lost.

Robert Rossi: But I don't think it would make any difference whether keyholing is valid today or not, we have to go by the setbacks.

TESTIMONY FROM OTHERS.

Susan Nimz Goulet, 7953 Owens Road, Minocqua.

Susan Nimz Goulet: I did send an email expressing my objections to this. I also have the objections from Jane Barbian. In the 23 years that my family has owned this property, we have never seen any of the Owens heirs use that strip of land for any reason whatsoever. Now that there is intent on their part, to sell the back lots, and adjoin those to the lake lot, I believe this is being done for financial gain. And while I understand that, I object to it because it is causing harm to my family in our attempt to sell our property. A potential buyer is here with us. I believe any pier that is erected there would cause undo congestion and does not conform to the ordinances. Could I also read the objections from Jane Barbian?

Harland Lee: We have her email. If there is some additional information, go ahead.

Susan Nimz Goulet: Quickly, the points she makes are: The proposed pier does not conform to the required 10 foot setback. The high density of piers in the small area

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would be dangerous for boats and swimming. The property in question with 16 feet of frontage is pie shaped and comes to a point on a public road. The shape of the lot does not allow access to the property without trespassing onto adjoining properties. In 1995 the owners of the property created this situation by selling frontage. The creation of a pier and the supporting tasks would require removal of many of the protected trees on this property.

Shawn McGuire, potential buyer of Nimz property.

Shawn McGuire: I put my offer on hold due to this situation. I'm still trying to get an answer on the deeded access down the driveway that I would own if I bought this. I also had the land surveyed because of that question. The survey comes to a point on the road, where you would have to go at least 8-10 feet to get to 12 inches wide. So it would be a long jump to get to the land. It does cross, about 40-50 feet down the road and the parcel that Kim owns crosses the road, actually goes into the woods and part of the road becomes Jane's land and then it veers back and the easement goes down 30-40 feet from the house before you would pull back into the woods. So I know this isn't specifically set up for that, but this is why I am holding back. Where is the deeded access to this property? If the land was sold, would I all of a sudden have strangers coming down the road that bought the land for the access? So that's where I'm coming from. The question of the land being for sale, I'm a little bit confused. I actually pulled in the driveway last week and saw a for sale sign. So I don't know if that's old...

Kim Owens: Yes.

Shawn McGuire: So the land was for sale?

Kim Owens: Not the frontage. Her home, the back lot.

Shawn McGuire: The back lot....are they different lots then?

Kim Owens: The back lots, Margaret owns....[inaudible].

Shawn McGuire: So the back lots don't have anything to do with that lot going down to the lake?

Kim Owens: Except that it is owned jointly. That strip is all owned jointly.

Shawn McGuire: Would that go with it?

Elmer Goetsch: Not automatically.

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Shawn McGuire: So you could sell the back lots and keep that separate. So that's why Jane wanted to buy it....that's make sense then.

Shawn McGuire: So that's the reason I am here. I want to find out if indeed that is going to be sold or not and if people can put a pier in there. The location of the pier that I would be putting in is cut out, a swath that is approximately 15-20 feet from the lot line. But there's woods and brush in there anyways. But, going forward, when you guys were down there, that was 24 feet at one time. And you kids used to go down there, down the Nimz driveway to access the water. It sounds like in 1989, your dad made another road on Jane's to access the cabin down there, which was part of this 8 feet that your sister had. When I went down there after you guys left, I found the original foundation for the pier. So I can see where they used to have that pier access and why there was a road going down Jane's to this property. Now, when your sister sold that off, that pier portion, Jane thought was hers and that's why she continued to use it. So that pier has been there for probably 30-40 years based on the pictures we took and looked at. So when they sold that land, they sold where that original pier was. That's why Jane thought she could use it. And she has been using it for 23 years. I have a picture if you want. I was surprised that this hasn't had any access in 23 years. But I talked to Wendy, from the DNR. Based on the information I gave her, she said that through the DNR there wouldn't be access to put a pier in because of the neighbors and the round-a-bout way you'd bring a boat in. Basically when they sold that to Jane, they put that other road in and that 8 feet that was down there for their pier from 1989 was sold off in 1996 to Jane. So now there is no place for a pier down there except if you cut....vegetation to give yourself leeway to get a pier in there, which would have to be in the center. And in the center of it there is a tree, so basically take that down and move the pier closer to the...[inaudible.] There was an original pier there that they owned, but they sold it in 1996 to Jane.

Harland Lee: Not on the parcel in question. The original parcel, yes.

Shawn McGuire: Again, my point from my understanding of the discussion, is that there was a conversation between Jane and Margaret about selling that portion. But based on seeing the old for sale sign, I base this primarily and I can see her point of view that lot will be worth a lot more across the street if they have lake access. But again, I don't know how you can put a pier in, when there is no access that I know of.

Guy Hansen: You stated that there is deeded access along your driveway?

Shawn McGuire: I think there is deeded access. Again, I am only getting this from talking to a surveyor that there was access when they put in the other road on the other side. But in 1963 it was like that, there was. The confusion comes in, okay, that access aside, they still have 8 feet of frontage, does it automatically continue on the nearest land or does it last forever? Right now I can't see anything that says there is

deeded access to the property to allow them to walk down the road across to Jane's and back to mine... and then go onto the land.

Phil Albert, 7961 Owens Road, Minocqua WI 54548

Phil Albert: For the record, I am Phil Albert, speaking as a private citizen. I have given written statements, which I assume are part of the record. But what I would like to draw attention to specifically are...the ordinances which relate to variances, when they should be considered, how they should be considered. That paragraph starts out: No variance from the terms of this ordinance shall be granted which is contrary to the public interest. You are hearing from me, and you have heard from others that granting this variance will be contrary to the public interest. So much so, that the Squirrel Lake Owners Association, which is an association of about 100 members, are objecting to granting of this variance. Also, under the conditions of A-G, there are two specific that I'd like to point to. One is ( C) The purpose of the variance is not based exclusively on a desire for economic or material gain by the applicant or owner. I think you have heard already today and I know that the property is intended to be for sale. The only reason for this variance is to make the property more attractive and more valuable, which would be material gain. The other one is (G) The Board of Adjustment may impose such conditions and restrictions upon the premises benefited by the variance. If you were to grant a variance, it would have to have conditions on the trees, vegetation and still the question of access to the property. So with that, I personally and the Squirrel Lake Owners Association object to granting a variance.

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Susan Nimz Goulet: To the best of my knowledge, there is no easement between my father, Wilber Nimz, and any of the Owens family to access that property.

Kim Owens: The sale of the 8 feet of property was not at all in cooperation with putting in the second driveway. It was two separate transactions. My father's road was on his property. The selling of that 8 feet was my sister Lynn's. But those were two separate transactions. They were not together. And there has always been a knowledge of this road reservation and easement and it is off of document 400776, where Jane Barbian quit claimed to Wilbur Nimz and Nancy Nimz, husband and wife, and in joint tenancy, not as tenants in common, reservation and easement granted pursuant to Document No 196268 dated July 1, 1963 and recorded July 8, 1963 in Vol. 257 of Deeds on page 460. So, they have been aware that there is an easement, which has nothing to do with why we're here.

Harland Lee: You are saying there is an easement...

Kim Owens: When Jane bought the property, the 8 feet, she then had access over the road, which she quit claimed back.

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Harland Lee: Whether or not there is an easement there does not really....it's interesting from historical background as to how this whole situation came about, but I don't think it's really the nuts and bolts of what's in front of us. Any other comments you would like to make at this time?

Kim Owens: No.

Peter S. Wegner: No sir.

1:55 pm - Harland Lee, Chairman, closed the public hearing.

The Board deliberated Appeal #12-001 of Kim Owens.

**Motion by Elmer Goetsch, second by John Bloom, to deny appeal #12-001 of Kim Owens as it does not meet 2 of the 3 criteria necessary to grant a variance. Roll call vote: Robert Rossi "aye", Elmer Goetsch, "aye", Harland Lee "aye", Guy Hansen "aye," John Bloom "aye." The motion carried.**

2:00 pm - The meeting was adjourned on a motion by Guy Hansen, second by John Bloom and all members voting "aye."

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Harland Lee, Chairman

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Elmer Goetsch, Secretary