

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING

Tuesday, May 14, 2013

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

Oneida County Courthouse, Rhinelander WI 54501

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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”, Alternate Jack Young, “here.” John Bloom is excused.

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

Other individuals present: Dennis Ragan, Custom Landscaping of Eagle River, Inc.

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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. 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 regular member is excused today; Jack Young will be acting as a regular member 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 Dennis Ragan and Peter Wegner, Assistant Zoning Director.

Secretary Phil Albert read the Notice of Public Hearing for Appeal No 13-003 of Joseph & Margie Massarelli, owner, 1235 Anderson Drive, Green Oaks IL 60048 requesting an area variance to allow placement of an extended deck on the south side of the home, approximately 390 square feet in size; in addition to 1,876 square feet of permeable pavers, all located within 75 feet of the ordinary high water mark (OHWM) of Lake Minocqua. This is contrary to the Oneida County Zoning and Shoreland Protection Ordinance (as amended September 28, 2012), Section 9.94 A (1) Setback of 75 feet. The property is located at 8339 Dr Pink Drive, being part of Government Lot 5, Section 15, T39N, R6E, PIN #MI 2215-3A, Town of Minocqua, Oneida County, Wisconsin.

The Notice of Public Hearing was published in the Northwoods River News on April 30 & May 7, 2013; and was posted on the Oneida County Courthouse bulletin board on April

26, 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 10:20 a.m. for appeal #13-003. The location for the inspection is 8339 Dr. Pink Road, being owned by Joseph and Margie Massarelli. Dennis Ragan, agent for the appellant, was present. Other persons present at the inspection were Diann Koshuta of the Zoning Staff; and the Board members with the exception of John Bloom. Observations: The property was extensively marked. The right-of-way was adequately marked. Well and Sanitary facilities were identified. Outline of the proposed construction was adequately marked. Distances were measured. The construction of the house placement is 56-57 feet from the OHWM (averaged setback). The structure was adequately setback from the side lot lines. The building to the OHWM is 56-57 feet. The lot has 225 of shoreline and goes in a triangle shape to a point. Other observations were that the property is adjacent to the Bearskin Trail. The topography is somewhat rolling toward the shoreline and is currently under construction with sandy soils. The site is primarily excavated and showed no other soil other than sand. Erosion precautions were being taken. The lot had been logged back to the construction of the home. There is the home being under construction. The buffer zone was voluntarily extended 10 feet (from 35 to 45 feet). There is a pier in the left view corridor. Vegetation such as trees and bushes were left within the 0-35 ft setback area. This is an irregularly shaped lot, long and narrow. Joe Patrone informed the Board that there was a structure in the same area where the proposed garage is to be built. There is a concrete drive on the left side of the cottage that reaches from the roadway to the back edge of the cottage within 15-20 feet from the OHWM.

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 Sworn Testimony.

Dennis Ragan: I made some notes to summarize what our case would be as far as asking for this appeal. I am representing the owner, Joseph and Margie Massarelli. I am the one that put together the landscape plan for this project and the mitigation plan. As strange as it sounds, Joe and Margie are asking for a variance to create a landscape on their property that in many ways is more restrictive than the Oneida County Ordinance that is currently recognized. They are asking for an area variance to allow placement of a laterally extended deck on the south side of the home. And an area of permeable

pavers that would be located within the 75 ft setback area of the OHWM of Minocqua Lake. The overhead footprint of the above mentioned areas is approximately 1035 square feet. The owners would like to create and maintain a natural landscape that can be used as a model for ecological, responsible land use. They are proposing a comprehensive mitigation plan that will offset the extra square footage being asked for. The amount of square footage the owners are volunteering to mitigate along the lakeshore as planned would be approximately 4,333 square feet. That is a little over 4 times the square footage of the deck and paver areas that are being messed with. None of the newly proposed structures would be installed within the 56 foot setback of house that was already granted a zoning permit. As you can see as you were out doing your site visit, the minimum amount of trees and vegetation were removed in the process of building the house. The owners are interested in maintaining as much of the shoreline buffer as possible. If the appeal is granted, they would expand the required shoreline buffer zone from 35 to 45 feet. And give back all of the permitted 30 ft viewing corridors that are currently allowed by Oneida County Zoning. The owners believe that by thoughtfully incorporating ecological design principles of erosion control, rain water harvesting, water filtration and land restoration into the design as well as the voluntary mitigation that we talked about, that it is possible to create a natural sustainable landscape that is much more protective of the environment and has more positive impact on Minocqua Lake when compared with what the Oneida County Zoning Ordinance allows for. We believe that this type of collaboration between homeowners and zoning officials benefits both groups and is really the future of responsible land use. The specific details of the appeal justification are included in the appeal as well as in their landscape and mitigation plan. To summarize those design features voluntarily reducing the two allowable view corridors from 30 foot wide to only 8 foot wide or less. As we looked when we were out there, we probably will end up with no view corridors. Just a path through the woods. Voluntarily increasing the required shoreland buffer zone parallel to the shoreline from 35 to 45 feet which effectively will reduce the number of trees being removed from approximately 74 according to the current zoning permit to 5. And planting an additional 24 trees as a buffer zone along the side lots according to the proposed mitigation plan. Also talking about voluntarily abandoning plans to construct a future 300 square foot shoreline boathouse in the north view corridor in exchange for the proposed deck extension and the permeable paver areas that are outlined in the plans for a total of 4,433 total square feet of mitigation in exchange for 1,035 square feet of additional structures that would fall between 56 and 75 feet of the ordinary high water mark (OHWM). Also, talking about utilizing areas of eco-friendly permeable pavers, that absorb 10-20 times more runoff than grass or other surfaces. Rainwater harvesting, filtration and re-use made of rain gardens that capture storm and roof water before it ever reaches the lake. Additional no-mow and restoration areas and native plantings than that are required by the zoning ordinance. Living vegetative boulder retaining walls that stabilize the slopes and prevent erosion. Similar innovative practices of controlling runoff reuse and restoration are being used in a variety of applications in different communities around the country. For example, in the April 28<sup>th</sup> edition of the Milwaukee Journal/Sentinel an article titled "A Vision

beyond Tunnels.” The Milwaukee Metropolitan Sewer District set a goal of preventing all of the sewer overflows in their deep tunnel system. Instead of attempting to contain and treat all that wastewater that flows into regional sewers, which is a near impossible task, their new strategy is to keep stormwater out of sanitary sewers so there is less need for building more and more storage and treatment plants. Some of the key ways they are going to do that is to work with land owners to reduce runoff by planting specially designed rain gardens, installation of permeable paver surfaces that absorb stormwater runoff and returning it to the local aquifers and using rain barrels to recycle roof water and by replacing traditional turf grass lawns with native plants that are capable of absorbing more stormwater. These same strategies are all being utilized in the Massarelli Plan and can be instrumental in preventing harmful runoff into our lakes, rivers and streams. Also, included in the appeal justification there was a 2013 report from the Wisconsin Lakeshore Restoration Project. The goal of that long term inventory and monitoring project that was conducted in Vilas County finished last year was to assess whether wildlife populations, native plants diversity increases on restored lakeshores and whether the restored habitat approximates that found in paired reference lakes. While the project is still ongoing, the preliminary results indicate that restoration projects do have a positive on shoreland eco-systems. And just to quote a few excerpts regarding the lessons that were learned in that study:

*Landowners are essential to any restoration strategy; without willing lakeshore property owners, opportunities for rehabilitating lakeshore habitat are minimal. Finding local, on-lake champions of lakeshore rehabilitation work like lake association officers or master gardeners can make for effective peer-to-peer learning and project buy-in.*

*Incorporating ecological design principles of water infiltration, retention, reuse and flow control into our strategies with landowners pay dividends. This includes low impact development approaches and practices that are targeted to reduce runoff of water and pollutants like rain gardens and barrels, permeable pavements, green roofs, living walls, infiltration planters and drain systems.*

*Finding erosion control solutions for landowners to these challenges are critical to success. This fact often brings willing landowners to the table for doing shoreland rehabilitation so we need to make sure we address these concerns effectively. Innovative advances in erosion control materials that meet state standards and codes can be found by partnering with land and water conservation departments, consultants, and others.*

*Shoreland Zoning and other regulatory instruments alone are not enough to protect lakeshore habitat.*

*Holistic and inclusive lake community partnerships can support lakeshore restoration work of all kinds.*

*Lakeshore rehabilitation projects are good for local economies and small business owners.*

*Degradation of lakeshore habitat cover is the most important stressor of lakes.*

*At present, voluntary restoration of lakeshore habitat will likely have only a modest influence on watershed health. Even mandatory mitigation requirements wrapped up in local shoreland rules may only marginally increase participation. But when politically possible, shoreland rules or zoning that requires lakeshore habitat conservation and restoration can perhaps provide the greatest benefit in the long term. Understanding more deeply and clearly the barriers landowners confront in accepting the practice of lakeshore habitat restoration and devising marketing strategies that utilize this information may also pay dividend in the future.*

This article is pertinent to this case. This case isn't really about this rule or that rule, it is about responsible landowners working together to find creative solutions to problems that result in benefit for all. We believe that partnering with shoreland zoning and other regulatory agencies, thoughtful plans such as the Massarelli's which provides for responsible land use benefits not only the landowner, but the general public as a whole.

With the regards to the 3 criteria.

Unique Physical Property Limitations: Because of the lot shape limitations, averaging was used by Zoning to allow the positioning of the house at 56 feet from the OHWM of Minocqua Lake. Positioning the house farther back on the lot, beyond the standard 75' setback, was not a feasible option because of side lot setback requirements. Since only one corner of the house was actually positioned at the 56 ft allowed setback, the open deck and pavers being proposed in this appeal can all be positioned behind the 56' setback that was allowed in the original Zoning Permit.

No harm to Public Interest: By thoughtfully incorporating ecological design principles of erosion control, rain water harvesting and reuse, water filtration, and land restoration in to this design, as well as voluntary mitigation by the property's owners, it is possible to create a natural landscape that is actually much more protective of the environment and has a most positive impact on the lake when compared with what the Oneida County Ordinance allows. Therefore, it is in the Public's Interest to allow this plan.

Unnecessary Hardship:

In this particular case, compliance with the Zoning Ordinance would render conformity with such restrictions unnecessarily burdensome, by not allowing the owners the use of these proposed lakeside recreation areas, even though no part of the structures would be positioned within the 56 ft setback, designated by Zoning. This is especially true

when considering the positive short-term, long-term and cumulative impact the granting of this variance would have, given the additional mitigation being offered by the owners in exchange for the additional structures.

County Sworn Testimony.

Peter Wegner: As Dennis mentioned, we started working on this back in February. And the permits were already issued for the home. They were basically asking to have something beyond what the ordinance would permit. He put together this plan showing his thoughts as far as what he could do to off set him adding additional impervious surfaces or permeable pavers; and also the deck itself. I told him that I have never really had one of these go to the Board of Adjustment where they were doing a mitigation project in lieu of being able to construct additional square footage. We talked about how NR 115 is going that way, where you are able to increase your impervious surfaces if you are mitigating and that mitigation has to equal the impacts of the surfaces that you are adding. The same holds true for an expansion of a nonconforming structure. So, he decided to put this project together, after talking to his client. The County can argue a list of things of why it shouldn't be permitted, but I guess I would say there isn't any mechanism in the ordinance that allows me to issue a permit because he is giving something up here in exchange for a pervious surface. I will just go through the list. As far as the setbacks, he did average. They weren't required to average, but they did. They could have placed the home beyond 75 feet which would have allowed them impervious surface area. You could see today when you were on the property; if he was back further he'd be more on the impacts of the slope probably. They already have a deck. If you look at that photo, they already have an open deck. So the County could argue that they have reasonable use. Reasonable use does not say he has to have a fire pit in that location. There are other locations where he could place a fire pit. He doesn't need to have two walkways; although the ordinance permits it. He could have one walkway which may eliminate the need for the extra permeable pavers. They could have purchase a bigger lot, although that is really a nice lot. There are just many alternatives. And I talked to Karl before this just to let him know what could possibly happen here, because this is new water for us. If you were to grant a variance for some crazy reason, I would hope that he would be held to and maybe a recorded document to those criteria that he listed in his appeal which is the smaller view corridors or no view corridor; so he is not opening up his view corridors; a 45 ft buffer; no boathouse. If you look, if that was put on some kind of recordable document, other than the three things I just mentioned, the process in which this is being developed, it far exceeds what we require for mitigation, and some of the steps he is insisting they will be taking in the process, far exceeds what we normally would see on a zoning permit or a shoreland alteration permit. The rain gardens—that's not required, yet at an extra expense, they put that in there. The way he is putting in the paver system it is probably 3 layers beyond what we normally see. I don't know what else to say. The ordinance doesn't permit it; it has to meet a setback. We look at a permeable paver as a structure. The ordinance is clear on that. Unfortunately, some of these things, if you were to put a roof

over it, I could permit. Like this extended deck. If you had a roof over that, it would have been approved. Dennis and I kind of chuckled about that because if he were to put a roof over the whole thing, which is more obtuse looking from the water, that would be permissible. So it is....he is very detailed and this plan goes above and beyond. Other than saying the ordinance doesn't allow it, I am kind of in a pickle.

Mr. Rossi: Pete, if he had one walkway, he's going to have two piers there.

Mr. Lee: But he is allowed that.

Mr. Rossi: I know, but if you went to only one walkway, you would actually be disturbing more of the shoreline going from one pier to the other pier.

Mr. Wegner: I was just putting together my list of arguments. Because that is what I do. My point was that he doesn't have to have another pier or walkway. Just go on from here and not have that paved area or permeable pavers on that side. There are tons of options. The house could be the size of the garage and none of this would be needed. But this is different because he is proposing to give a lot for what he is asking for. Especially since these are permeable.

Mr. Ross: How do you ear mark the things you said should be in a recordable thing and what actually is recordable and not. Say, "I'm not going to have a boathouse." Can you restrict this into the future? The other thing is, some one buys it and then they just make view corridors. They get out the chain saw....future owners. I'm not questioning the current owner.

Mr. Wegner: The two things that hold them to it, if you are to grant a variance, that goes with the property forever.

Mr. Lee: But if there are stipulations with the variance, those also go with the property.

Mr. Wegner: But in addition to that, so a future property owner would know. People buy properties and don't realize that they had a variance on the property. If it was put in a recordable document, it puts the future owner on notice that this property is not permitted a boathouse, it's not permitted to expand the view corridors. All those things can be put in it.

Mr. Rossi: The County doesn't require variances to be registered.

Mr. Wegner: Not anymore. But it used to be required, as far as mitigation across the board.

Mr. Lee: In the one we considered this morning, there was a stipulation in there that he not build a boathouse. Is that recorded anywhere? Other than in our decision?

Mr. Wegner: That was recorded on the permit itself, with the Board of Adjustment. If someone came in for a permit for a boathouse, just because of where everything is located, it wouldn't be permitted.

Mr. Lee: So it is.

Mr. Wegner: Yes, but not on his deed. But just because of the limitations of the property. That's kind of a bad example.

Mr. Albert: It isn't officially recorded, but it is left in the property's file for whoever the owner is. If someone comes in and asks for some modification to that property's layout or boathouse or whatever, you would go to that file. Not based on owner, but based on location of the property.

Mr. Wegner: No.

Mr. Ross: What is your tickler to know this is on there. A new owner, five years from now, and wants to do a boathouse. They get an application for a boathouse, what's the tip that you can't do that.

Mr. Wegner: That other appeal, it's because they don't meet the requirements. But on this property, they come in for a boathouse permit; the tickler would be recorded on the deed. There is a form, they would fill it out and have it recorded with the Register Deeds. Probably why they got rid of it, having to record your mitigation plan is because there wasn't a tickler so to speak. In this case, the permit, the existing property, the Board of Adjustment, those are the kind of things that make it known, so to speak.

Mr. Albert: How does it come back five or ten years later, when something wants to be modified again on that property, how do you know...or the zoning department know that there has been some action taken on that specific property; a restriction taken on that property.

Mr. Wegner: It's something we need to address. Right now, if there is a complaint on a property it pops up for 3 years. But there really isn't a mechanism in our computer to track properties that have been given variances. Or track deed restrictions. Another example, Section 9.19, we issue permits for ADA. And when that person passes away, the property is sold, that ADA structure is supposed to be removed. There is no document other than recording it on the deed. At least it is on the deed, so someone is going to see it at some point, maybe when they sell the property.

Mr. Hansen: I'm still confused.

Mr. Wegner: Who's going to find it? Who's going to check it? A new owner.

Mr. Lee: We get so many of these after-the fact things. Which indicates they didn't check a thing.

Mr. Wegner: There is no 100% method that we have in place. Nothing even close, technically, other than the fact that it is registered on the deed.

Mr. Lee: What I am hearing is that we don't have anything. And we should have at least something.

Mr. Rossi: Well, a title company is going to check the courthouse and they would list restrictions.

Mr. Albert: Not if it doesn't get there.

Mr. Rossi: Well, it goes through wherever the money is coming from, they insist on a title search or a deed; and when they look at this thing.

Mr. Albert: But I hear Pete saying that they give the property owner a form that they are supposed to fill out and turn in, but what assurances are there that it is either filled out or given to the proper authorities.

Mr. Wegner: We would make that a part of the issuance of the permit.

Mr. Albert: Do you then get a copy back or do you record it.

Mr. Wegner: It is recorded and we take a copy for the Board of Adjustment file. That is the only safe measure.

Mr. Hansen: I am still confused as far as what gets recorded. In this instance will whatever requirements we stipulate be recorded on the deed or just in your file.

Mr. Wegner: On the deed. It will cite the Board of Adjustment file; it will cite those key items. And it will be recorded. I will get a copy and put it in the Board of Adjustment file. Then it is locked in with the property.

Mr. Hansen: So when a future buyer makes a title search that certainly should show up.

Mr. Wegner: Yes.

Mr. Hansen: The previous example where we required mitigation, where the guy wanted to build a boathouse, the next owner can come in and if he mitigates the next owner could come in and cut all that down and nobody will ever know.

Mr. Ross: That happens all the time.

Mr. Wegner: It also used to be recorded with the property, all the mitigation plans.

Mr. Hansen: And the reason that the Planning and Zoning Committee decided not to do that?

Mr. Young: Doesn't the owner have an obligation to disclose all this when he is selling?

Mr. Wegner: Yes, but I don't trust them. Underground storage tanks....

Mr. Rossi: They didn't have an obligation to disclose when people are buying a lot to build on and the place next door is listed as single family residential, but it was State Sanctioned Home of Children. There are lawsuits today yet. Because they bought this. There are no longer kids living there, but at that time. The realtors said they checked with Madison—the Realtors Association. Well, what do you expect to get back from them?

Mr. Wegner: The bottom line is that other than having a document recorded with the property, is the only mechanism to show that someone has a water property with a variance on it or that there are certain requirements on it.

Mr. Rossi: What you are stating is that we should require it because it is not going to be filed with the Register of Deeds otherwise.

Mr. Wegner: Yes.

Mr. Hansen: Can we require that in other cases? We would require mitigation plans to be recorded with the deed?

Mr. Wegner: Yes. You have the authority. And you have in the past. There have been certain things that you have required.

Mr. Hansen: So on this other one; we couldn't make that a requirement?

Mr. Wegner: You could. I just didn't require it in that instance because there was no way that they could get a boathouse on that property, now that they put the garage up. But you could require recorded mitigation.

Mr. Albert: As with the one this morning and with this one, in cases that we've seen before, when we talked about mitigation, we primarily talked about if we allowed something with a variance, it was primarily mitigating it with required landscaping. But mitigation can be much broader than just adding some trees and bushes. Does the Oneida County Zoning Ordinance allow mitigation where it relates to potentially a trade off of shoreline setbacks for the giving up of a boathouse? I didn't realize there was authority to actually mitigate.

Mr. Wegner: There isn't. The only mitigation that allows us to give or take is the placement of a new boathouse requires mitigation; and expansion of a home less than 40 feet from the OHWM requires mitigation.

Mr. Albert: But mitigation meaning only landscaping. Nothing beyond that.

Mr. Wegner: It's one tree and 3 shrubs for 200 square feet; one inch minimum.

Mr. Albert: Mitigation is much different than just bushes and trees.

Mr. Lee: We have never been in the business of trade offs. That I know of. I think this is a pretty unique situation.

Mr. Wegner: I've never had one like this. Obviously, the County would say that there shouldn't be doing it. You shouldn't grant it.

Mr. Lee: This is an unusual situation. In many respects.

Mr. Albert: I guess the bottom line to that is do we have the authority to accept mitigation of this nature.

Mr. Wegner: No other governing body does, other than you.

Mr. Hansen: Well it's not going to meet all three of these requirements.

Mr. Rossi: It can't.

Mr. Lee: Yes it can.

Mr. Rossi: There is always the...what's good for the world. I looked across the lake when we drove back today and I saw this property and the house is sitting there and it has green siding on it. You can barely see it. Right next door was this God awful open area and this house and grass and thought to myself, I don't know. Common sense or whatever it is.

Mr. Albert: This is well thought out and well done and reasoned out. But it is the technicality of mitigation.

Mr. Lee: We are getting into our deliberation here. Are there any questions of Dennis or Pete? The discussion is appropriate but we are in the wrong portion of our meeting.

Mr. Rossi: This is a lot and there are restrictions on it and it was pre-existing. I can't tell from what I read here when this was a matter of deeded lot. Was it prior to 1972, when the law became effective when you can make exceptions?

Mr. Wegner: I would not define this as a legal pre-existing lot. They could definitely build an average sized home on this property meeting all applicable setbacks. I know what you are asking though,

Mr. Hansen: They have already received a permit to the house where it is. The only thing we are considering is the deck, right?

Mr. Wegner: The deck, the pavers and the pavers underneath the deck.

Mr. Young: I am more into no harm to public interest. I noticed where you are going to plant these trees, along the property line; you must be about three feet higher than your neighbor; are you afraid where his garden is and meets the height of the runoff from the building and whatever you are doing there is going to go down into the neighbors?

Mr. Ragan: It will be a combination of grading. This part up by the driveway which is up here, where the garden is.

Mr. Young: This is by the garage and the new deck.

Mr. Ragan: Right. And that is on this side. It actually, as it comes down the hill it slopes back down towards the front of the property. It is lower up closer to the road coming into the driveway, which is another area that could be absorbed into a rain garden or something like that. To answer your question, through grading and all these other strategies that we've talked about to control erosion, I am not concerned about any the water going on the neighbors property. All of it will be contained.

Mr. Lee: You haven't done all the grading yet either.

Mr. Ragan: We have to wait for the builder to finish with some of their things with the house construction. There is plenty of room on the sides to keep the water on their property and basically filter it into that shoreline buffer and rain gardens.

Mr. Young: Have they shown any concern at all? Ask any questions?

Mr. Ragan: Not that I know of.

Mr. Albert: The deck, was that part of the original permit; this deck on the right side?

Mr. Wegner: This is on the original permit. The deck that he shows in the offset color. That's new.

Mr. Albert: The yellow deck there, it says new deck, was that?

Mr. Wegner: No. It wouldn't have been permitted.

Mr. Albert: So it wasn't even submitted in the plan to get the original construction permit.

Mr. Wegner: That's correct.

Mr. Albert: It does not exceed the 57 ft average setback.

Mr. Wegner: Correct.

Mr. Albert: Does Oneida County Zoning have any concerns about the quantity of impervious surface on this lot size?

Mr. Wegner: I don't have a mechanism that brings up that concern. We don't have impervious surface provisions in our ordinance right now. If we did, this is residential. He could go to 15-30 percent maximum. By our definition, I don't believe we would be considering this stuff impervious. I would assume even down the road, he is going to be fine.

Mr. Ragan: I actually did an impervious surface plan to see where we were. And it came out just under 15% for the entire property.

Mr. Albert: So if NR 115 were in place you would be alright.

Mr. Ragan: It's mostly because of the width of the area down by the lake.

Mr. Albert: Right.

1:45 pm – Chairman Lee closed the public hearing. No further testimony will be accepted.

**Motion by Phil Albert, second by Guy Hansen to grant a variance to allow placement of an extended deck (approx. 390 sq ft) and 1,876 square feet of permeable pavers, all within 75 feet of the ordinary high water mark (OHWM) of Minocqua Lake subject to:**

- 1. Reduce the two (2) allowable *viewing corridors* from 30' wide to 8' wide as per the attached plans – resulting in a positive increase of 2,034 square feet of buffer along the lakeshore where the positive environmental impact is the greatest.**
- 2. Increase the required *buffer zone* parallel to the OHWM from 35' to 45', resulting in another positive increase of 2,099 square feet of buffer along the lake where the environmental impact is the greatest.**
- 3. Abandon plans to construct a 300 square foot shoreline boat house in the north viewing corridor in exchange for the proposed recreation areas above.**
- 4. Record a deed restriction outlining 1-3 above.**

**The motion carried unanimously on a roll call vote.**

**Motion by Harland Lee, second by Bob Rossi, to extend the decision filing date to May 17, 2013. The motion carried unanimously.**

2:07 pm. The meeting was adjourned following a motion by Harland Lee, second by Bob Rossi and with all members present voting "aye."

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING

Tuesday, May 14, 2013

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

Oneida County Courthouse, Rhinelander WI 54501

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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”, Alternate Jack Young, “here.” John Bloom is excused.

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

Other individuals present: Dennis Ragan, Custom Landscaping of Eagle River, Inc.

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Chairman Harland Lee swore in Dennis Ragan and Peter Wegner, Assistant Zoning Director.

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Secretary Phil Albert stated that an onsite inspection was conducted on this date at approximately 10:20 a.m. for appeal #13-003. The location for the inspection is 8339 Dr. Pink Road, being owned by Joseph and Margie Massarelli. Dennis Ragan, agent for the appellant, was present. Other persons present at the inspection were Diann Koshuta of the Zoning Staff; and the Board members with the exception of John Bloom. Observations: The property was extensively marked. The right-of-way was adequately marked. Well and Sanitary facilities were identified. Outline of the proposed construction was adequately marked. Distances were measured. The construction of the house placement is 56-57 feet from the OHWM (averaged setback). The structure was adequately setback from the side lot lines. The building to the OHWM is 56-57 feet. The lot has 225 of shoreline and goes in a triangle shape to a point. Other observations were that the property is adjacent to the Bearskin Trail. The topography is somewhat rolling toward the shoreline and is currently under construction with sandy soils. The site is primarily excavated and showed no other soil other than sand. Erosion precautions were being taken. The lot had been logged back to the construction of the home. There is the home being under construction. The buffer zone was voluntarily extended 10 feet (from 35 to 45 feet). There is a pier in the left view corridor. Vegetation such as trees and bushes were left within the 0-35 ft setback area. This is an irregularly shaped lot, long and narrow. Joe Patrone informed the Board that there was a structure in the same area where the proposed garage is to be built. There is a concrete drive on the left side of the cottage that reaches from the roadway to the back edge of the cottage within 15-20 feet from the OHWM.

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 Sworn Testimony.

Dennis Ragan: I made some notes to summarize what our case would be as far as asking for this appeal. I am representing the owner, Joseph and Margie Massarelli. I am the one that put together the landscape plan for this project and the mitigation plan. As strange as it sounds, Joe and Margie are asking for a variance to create a landscape on their property that in many ways is more restrictive than the Oneida County Ordinance that is currently recognized. They are asking for an area variance to allow placement of a laterally extended deck on the south side of the home. And an area of permeable

pavers that would be located within the 75 ft setback area of the OHWM of Minocqua Lake. The overhead footprint of the above mentioned areas is approximately 1035 square feet. The owners would like to create and maintain a natural landscape that can be used as a model for ecological, responsible land use. They are proposing a comprehensive mitigation plan that will offset the extra square footage being asked for. The amount of square footage the owners are volunteering to mitigate along the lakeshore as planned would be approximately 4,333 square feet. That is a little over 4 times the square footage of the deck and paver areas that are being messed with. None of the newly proposed structures would be installed within the 56 foot setback of house that was already granted a zoning permit. As you can see as you were out doing your site visit, the minimum amount of trees and vegetation were removed in the process of building the house. The owners are interested in maintaining as much of the shoreline buffer as possible. If the appeal is granted, they would expand the required shoreline buffer zone from 35 to 45 feet. And give back all of the permitted 30 ft viewing corridors that are currently allowed by Oneida County Zoning. The owners believe that by thoughtfully incorporating ecological design principles of erosion control, rain water harvesting, water filtration and land restoration into the design as well as the voluntary mitigation that we talked about, that it is possible to create a natural sustainable landscape that is much more protective of the environment and has more positive impact on Minocqua Lake when compared with what the Oneida County Zoning Ordinance allows for. We believe that this type of collaboration between homeowners and zoning officials benefits both groups and is really the future of responsible land use. The specific details of the appeal justification are included in the appeal as well as in their landscape and mitigation plan. To summarize those design features voluntarily reducing the two allowable view corridors from 30 foot wide to only 8 foot wide or less. As we looked when we were out there, we probably will end up with no view corridors. Just a path through the woods. Voluntarily increasing the required shoreland buffer zone parallel to the shoreline from 35 to 45 feet which effectively will reduce the number of trees being removed from approximately 74 according to the current zoning permit to 5. And planting an additional 24 trees as a buffer zone along the side lots according to the proposed mitigation plan. Also talking about voluntarily abandoning plans to construct a future 300 square foot shoreline boathouse in the north view corridor in exchange for the proposed deck extension and the permeable paver areas that are outlined in the plans for a total of 4,433 total square feet of mitigation in exchange for 1,035 square feet of additional structures that would fall between 56 and 75 feet of the ordinary high water mark (OHWM). Also, talking about utilizing areas of eco-friendly permeable pavers, that absorb 10-20 times more runoff than grass or other surfaces. Rainwater harvesting, filtration and re-use made of rain gardens that capture storm and roof water before it ever reaches the lake. Additional no-mow and restoration areas and native plantings than that are required by the zoning ordinance. Living vegetative boulder retaining walls that stabilize the slopes and prevent erosion. Similar innovative practices of controlling runoff reuse and restoration are being used in a variety of applications in different communities around the country. For example, in the April 28<sup>th</sup> edition of the Milwaukee Journal/Sentinel an article titled "A Vision

beyond Tunnels.” The Milwaukee Metropolitan Sewer District set a goal of preventing all of the sewer overflows in their deep tunnel system. Instead of attempting to contain and treat all that wastewater that flows into regional sewers, which is a near impossible task, their new strategy is to keep stormwater out of sanitary sewers so there is less need for building more and more storage and treatment plants. Some of the key ways they are going to do that is to work with land owners to reduce runoff by planting specially designed rain gardens, installation of permeable paver surfaces that absorb stormwater runoff and returning it to the local aquifers and using rain barrels to recycle roof water and by replacing traditional turf grass lawns with native plants that are capable of absorbing more stormwater. These same strategies are all being utilized in the Massarelli Plan and can be instrumental in preventing harmful runoff into our lakes, rivers and streams. Also, included in the appeal justification there was a 2013 report from the Wisconsin Lakeshore Restoration Project. The goal of that long term inventory and monitoring project that was conducted in Vilas County finished last year was to assess whether wildlife populations, native plants diversity increases on restored lakeshores and whether the restored habitat approximates that found in paired reference lakes. While the project is still ongoing, the preliminary results indicate that restoration projects do have a positive on shoreland eco-systems. And just to quote a few excerpts regarding the lessons that were learned in that study:

*Landowners are essential to any restoration strategy; without willing lakeshore property owners, opportunities for rehabilitating lakeshore habitat are minimal. Finding local, on-lake champions of lakeshore rehabilitation work like lake association officers or master gardeners can make for effective peer-to-peer learning and project buy-in.*

*Incorporating ecological design principles of water infiltration, retention, reuse and flow control into our strategies with landowners pay dividends. This includes low impact development approaches and practices that are targeted to reduce runoff of water and pollutants like rain gardens and barrels, permeable pavements, green roofs, living walls, infiltration planters and drain systems.*

*Finding erosion control solutions for landowners to these challenges are critical to success. This fact often brings willing landowners to the table for doing shoreland rehabilitation so we need to make sure we address these concerns effectively. Innovative advances in erosion control materials that meet state standards and codes can be found by partnering with land and water conservation departments, consultants, and others.*

*Shoreland Zoning and other regulatory instruments alone are not enough to protect lakeshore habitat.*

*Holistic and inclusive lake community partnerships can support lakeshore restoration work of all kinds.*

*Lakeshore rehabilitation projects are good for local economies and small business owners.*

*Degradation of lakeshore habitat cover is the most important stressor of lakes.*

*At present, voluntary restoration of lakeshore habitat will likely have only a modest influence on watershed health. Even mandatory mitigation requirements wrapped up in local shoreland rules may only marginally increase participation. But when politically possible, shoreland rules or zoning that requires lakeshore habitat conservation and restoration can perhaps provide the greatest benefit in the long term. Understanding more deeply and clearly the barriers landowners confront in accepting the practice of lakeshore habitat restoration and devising marketing strategies that utilize this information may also pay dividend in the future.*

This article is pertinent to this case. This case isn't really about this rule or that rule, it is about responsible landowners working together to find creative solutions to problems that result in benefit for all. We believe that partnering with shoreland zoning and other regulatory agencies, thoughtful plans such as the Massarelli's which provides for responsible land use benefits not only the landowner, but the general public as a whole.

With the regards to the 3 criteria.

Unique Physical Property Limitations: Because of the lot shape limitations, averaging was used by Zoning to allow the positioning of the house at 56 feet from the OHWM of Minocqua Lake. Positioning the house farther back on the lot, beyond the standard 75' setback, was not a feasible option because of side lot setback requirements. Since only one corner of the house was actually positioned at the 56 ft allowed setback, the open deck and pavers being proposed in this appeal can all be positioned behind the 56' setback that was allowed in the original Zoning Permit.

No harm to Public Interest: By thoughtfully incorporating ecological design principles of erosion control, rain water harvesting and reuse, water filtration, and land restoration in to this design, as well as voluntary mitigation by the property's owners, it is possible to create a natural landscape that is actually much more protective of the environment and has a most positive impact on the lake when compared with what the Oneida County Ordinance allows. Therefore, it is in the Public's Interest to allow this plan.

Unnecessary Hardship:

In this particular case, compliance with the Zoning Ordinance would render conformity with such restrictions unnecessarily burdensome, by not allowing the owners the use of these proposed lakeside recreation areas, even though no part of the structures would be positioned within the 56 ft setback, designated by Zoning. This is especially true

when considering the positive short-term, long-term and cumulative impact the granting of this variance would have, given the additional mitigation being offered by the owners in exchange for the additional structures.

County Sworn Testimony.

Peter Wegner: As Dennis mentioned, we started working on this back in February. And the permits were already issued for the home. They were basically asking to have something beyond what the ordinance would permit. He put together this plan showing his thoughts as far as what he could do to off set him adding additional impervious surfaces or permeable pavers; and also the deck itself. I told him that I have never really had one of these go to the Board of Adjustment where they were doing a mitigation project in lieu of being able to construct additional square footage. We talked about how NR 115 is going that way, where you are able to increase your impervious surfaces if you are mitigating and that mitigation has to equal the impacts of the surfaces that you are adding. The same holds true for an expansion of a nonconforming structure. So, he decided to put this project together, after talking to his client. The County can argue a list of things of why it shouldn't be permitted, but I guess I would say there isn't any mechanism in the ordinance that allows me to issue a permit because he is giving something up here in exchange for a pervious surface. I will just go through the list. As far as the setbacks, he did average. They weren't required to average, but they did. They could have placed the home beyond 75 feet which would have allowed them impervious surface area. You could see today when you were on the property; if he was back further he'd be more on the impacts of the slope probably. They already have a deck. If you look at that photo, they already have an open deck. So the County could argue that they have reasonable use. Reasonable use does not say he has to have a fire pit in that location. There are other locations where he could place a fire pit. He doesn't need to have two walkways; although the ordinance permits it. He could have one walkway which may eliminate the need for the extra permeable pavers. They could have purchase a bigger lot, although that is really a nice lot. There are just many alternatives. And I talked to Karl before this just to let him know what could possibly happen here, because this is new water for us. If you were to grant a variance for some crazy reason, I would hope that he would be held to and maybe a recorded document to those criteria that he listed in his appeal which is the smaller view corridors or no view corridor; so he is not opening up his view corridors; a 45 ft buffer; no boathouse. If you look, if that was put on some kind of recordable document, other than the three things I just mentioned, the process in which this is being developed, it far exceeds what we require for mitigation, and some of the steps he is insisting they will be taking in the process, far exceeds what we normally would see on a zoning permit or a shoreland alteration permit. The rain gardens—that's not required, yet at an extra expense, they put that in there. The way he is putting in the paver system it is probably 3 layers beyond what we normally see. I don't know what else to say. The ordinance doesn't permit it; it has to meet a setback. We look at a permeable paver as a structure. The ordinance is clear on that. Unfortunately, some of these things, if you were to put a roof

over it, I could permit. Like this extended deck. If you had a roof over that, it would have been approved. Dennis and I kind of chuckled about that because if he were to put a roof over the whole thing, which is more obtuse looking from the water, that would be permissible. So it is....he is very detailed and this plan goes above and beyond. Other than saying the ordinance doesn't allow it, I am kind of in a pickle.

Mr. Rossi: Pete, if he had one walkway, he's going to have two piers there.

Mr. Lee: But he is allowed that.

Mr. Rossi: I know, but if you went to only one walkway, you would actually be disturbing more of the shoreline going from one pier to the other pier.

Mr. Wegner: I was just putting together my list of arguments. Because that is what I do. My point was that he doesn't have to have another pier or walkway. Just go on from here and not have that paved area or permeable pavers on that side. There are tons of options. The house could be the size of the garage and none of this would be needed. But this is different because he is proposing to give a lot for what he is asking for. Especially since these are permeable.

Mr. Ross: How do you ear mark the things you said should be in a recordable thing and what actually is recordable and not. Say, "I'm not going to have a boathouse." Can you restrict this into the future? The other thing is, some one buys it and then they just make view corridors. They get out the chain saw....future owners. I'm not questioning the current owner.

Mr. Wegner: The two things that hold them to it, if you are to grant a variance, that goes with the property forever.

Mr. Lee: But if there are stipulations with the variance, those also go with the property.

Mr. Wegner: But in addition to that, so a future property owner would know. People buy properties and don't realize that they had a variance on the property. If it was put in a recordable document, it puts the future owner on notice that this property is not permitted a boathouse, it's not permitted to expand the view corridors. All those things can be put in it.

Mr. Rossi: The County doesn't require variances to be registered.

Mr. Wegner: Not anymore. But it used to be required, as far as mitigation across the board.

Mr. Lee: In the one we considered this morning, there was a stipulation in there that he not build a boathouse. Is that recorded anywhere? Other than in our decision?

Mr. Wegner: That was recorded on the permit itself, with the Board of Adjustment. If someone came in for a permit for a boathouse, just because of where everything is located, it wouldn't be permitted.

Mr. Lee: So it is.

Mr. Wegner: Yes, but not on his deed. But just because of the limitations of the property. That's kind of a bad example.

Mr. Albert: It isn't officially recorded, but it is left in the property's file for whoever the owner is. If someone comes in and asks for some modification to that property's layout or boathouse or whatever, you would go to that file. Not based on owner, but based on location of the property.

Mr. Wegner: No.

Mr. Ross: What is your tickler to know this is on there. A new owner, five years from now, and wants to do a boathouse. They get an application for a boathouse, what's the tip that you can't do that.

Mr. Wegner: That other appeal, it's because they don't meet the requirements. But on this property, they come in for a boathouse permit; the tickler would be recorded on the deed. There is a form, they would fill it out and have it recorded with the Register Deeds. Probably why they got rid of it, having to record your mitigation plan is because there wasn't a tickler so to speak. In this case, the permit, the existing property, the Board of Adjustment, those are the kind of things that make it known, so to speak.

Mr. Albert: How does it come back five or ten years later, when something wants to be modified again on that property, how do you know...or the zoning department know that there has been some action taken on that specific property; a restriction taken on that property.

Mr. Wegner: It's something we need to address. Right now, if there is a complaint on a property it pops up for 3 years. But there really isn't a mechanism in our computer to track properties that have been given variances. Or track deed restrictions. Another example, Section 9.19, we issue permits for ADA. And when that person passes away, the property is sold, that ADA structure is supposed to be removed. There is no document other than recording it on the deed. At least it is on the deed, so someone is going to see it at some point, maybe when they sell the property.

Mr. Hansen: I'm still confused.

Mr. Wegner: Who's going to find it? Who's going to check it? A new owner.

Mr. Lee: We get so many of these after-the fact things. Which indicates they didn't check a thing.

Mr. Wegner: There is no 100% method that we have in place. Nothing even close, technically, other than the fact that it is registered on the deed.

Mr. Lee: What I am hearing is that we don't have anything. And we should have at least something.

Mr. Rossi: Well, a title company is going to check the courthouse and they would list restrictions.

Mr. Albert: Not if it doesn't get there.

Mr. Rossi: Well, it goes through wherever the money is coming from, they insist on a title search or a deed; and when they look at this thing.

Mr. Albert: But I hear Pete saying that they give the property owner a form that they are supposed to fill out and turn in, but what assurances are there that it is either filled out or given to the proper authorities.

Mr. Wegner: We would make that a part of the issuance of the permit.

Mr. Albert: Do you then get a copy back or do you record it.

Mr. Wegner: It is recorded and we take a copy for the Board of Adjustment file. That is the only safe measure.

Mr. Hansen: I am still confused as far as what gets recorded. In this instance will whatever requirements we stipulate be recorded on the deed or just in your file.

Mr. Wegner: On the deed. It will cite the Board of Adjustment file; it will cite those key items. And it will be recorded. I will get a copy and put it in the Board of Adjustment file. Then it is locked in with the property.

Mr. Hansen: So when a future buyer makes a title search that certainly should show up.

Mr. Wegner: Yes.

Mr. Hansen: The previous example where we required mitigation, where the guy wanted to build a boathouse, the next owner can come in and if he mitigates the next owner could come in and cut all that down and nobody will ever know.

Mr. Ross: That happens all the time.

Mr. Wegner: It also used to be recorded with the property, all the mitigation plans.

Mr. Hansen: And the reason that the Planning and Zoning Committee decided not to do that?

Mr. Young: Doesn't the owner have an obligation to disclose all this when he is selling?

Mr. Wegner: Yes, but I don't trust them. Underground storage tanks....

Mr. Rossi: They didn't have an obligation to disclose when people are buying a lot to build on and the place next door is listed as single family residential, but it was State Sanctioned Home of Children. There are lawsuits today yet. Because they bought this. There are no longer kids living there, but at that time. The realtors said they checked with Madison—the Realtors Association. Well, what do you expect to get back from them?

Mr. Wegner: The bottom line is that other than having a document recorded with the property, is the only mechanism to show that someone has a water property with a variance on it or that there are certain requirements on it.

Mr. Rossi: What you are stating is that we should require it because it is not going to be filed with the Register of Deeds otherwise.

Mr. Wegner: Yes.

Mr. Hansen: Can we require that in other cases? We would require mitigation plans to be recorded with the deed?

Mr. Wegner: Yes. You have the authority. And you have in the past. There have been certain things that you have required.

Mr. Hansen: So on this other one; we couldn't make that a requirement?

Mr. Wegner: You could. I just didn't require it in that instance because there was no way that they could get a boathouse on that property, now that they put the garage up. But you could require recorded mitigation.

Mr. Albert: As with the one this morning and with this one, in cases that we've seen before, when we talked about mitigation, we primarily talked about if we allowed something with a variance, it was primarily mitigating it with required landscaping. But mitigation can be much broader than just adding some trees and bushes. Does the Oneida County Zoning Ordinance allow mitigation where it relates to potentially a trade off of shoreline setbacks for the giving up of a boathouse? I didn't realize there was authority to actually mitigate.

Mr. Wegner: There isn't. The only mitigation that allows us to give or take is the placement of a new boathouse requires mitigation; and expansion of a home less than 40 feet from the OHWM requires mitigation.

Mr. Albert: But mitigation meaning only landscaping. Nothing beyond that.

Mr. Wegner: It's one tree and 3 shrubs for 200 square feet; one inch minimum.

Mr. Albert: Mitigation is much different than just bushes and trees.

Mr. Lee: We have never been in the business of trade offs. That I know of. I think this is a pretty unique situation.

Mr. Wegner: I've never had one like this. Obviously, the County would say that there shouldn't be doing it. You shouldn't grant it.

Mr. Lee: This is an unusual situation. In many respects.

Mr. Albert: I guess the bottom line to that is do we have the authority to accept mitigation of this nature.

Mr. Wegner: No other governing body does, other than you.

Mr. Hansen: Well it's not going to meet all three of these requirements.

Mr. Rossi: It can't.

Mr. Lee: Yes it can.

Mr. Rossi: There is always the...what's good for the world. I looked across the lake when we drove back today and I saw this property and the house is sitting there and it has green siding on it. You can barely see it. Right next door was this God awful open area and this house and grass and thought to myself, I don't know. Common sense or whatever it is.

Mr. Albert: This is well thought out and well done and reasoned out. But it is the technicality of mitigation.

Mr. Lee: We are getting into our deliberation here. Are there any questions of Dennis or Pete? The discussion is appropriate but we are in the wrong portion of our meeting.

Mr. Rossi: This is a lot and there are restrictions on it and it was pre-existing. I can't tell from what I read here when this was a matter of deeded lot. Was it prior to 1972, when the law became effective when you can make exceptions?

Mr. Wegner: I would not define this as a legal pre-existing lot. They could definitely build an average sized home on this property meeting all applicable setbacks. I know what you are asking though,

Mr. Hansen: They have already received a permit to the house where it is. The only thing we are considering is the deck, right?

Mr. Wegner: The deck, the pavers and the pavers underneath the deck.

Mr. Young: I am more into no harm to public interest. I noticed where you are going to plant these trees, along the property line; you must be about three feet higher than your neighbor; are you afraid where his garden is and meets the height of the runoff from the building and whatever you are doing there is going to go down into the neighbors?

Mr. Ragan: It will be a combination of grading. This part up by the driveway which is up here, where the garden is.

Mr. Young: This is by the garage and the new deck.

Mr. Ragan: Right. And that is on this side. It actually, as it comes down the hill it slopes back down towards the front of the property. It is lower up closer to the road coming into the driveway, which is another area that could be absorbed into a rain garden or something like that. To answer your question, through grading and all these other strategies that we've talked about to control erosion, I am not concerned about any the water going on the neighbors property. All of it will be contained.

Mr. Lee: You haven't done all the grading yet either.

Mr. Ragan: We have to wait for the builder to finish with some of their things with the house construction. There is plenty of room on the sides to keep the water on their property and basically filter it into that shoreline buffer and rain gardens.

Mr. Young: Have they shown any concern at all? Ask any questions?

Mr. Ragan: Not that I know of.

Mr. Albert: The deck, was that part of the original permit; this deck on the right side?

Mr. Wegner: This is on the original permit. The deck that he shows in the offset color. That's new.

Mr. Albert: The yellow deck there, it says new deck, was that?

Mr. Wegner: No. It wouldn't have been permitted.

Mr. Albert: So it wasn't even submitted in the plan to get the original construction permit.

Mr. Wegner: That's correct.

Mr. Albert: It does not exceed the 57 ft average setback.

Mr. Wegner: Correct.

Mr. Albert: Does Oneida County Zoning have any concerns about the quantity of impervious surface on this lot size?

Mr. Wegner: I don't have a mechanism that brings up that concern. We don't have impervious surface provisions in our ordinance right now. If we did, this is residential. He could go to 15-30 percent maximum. By our definition, I don't believe we would be considering this stuff impervious. I would assume even down the road, he is going to be fine.

Mr. Ragan: I actually did an impervious surface plan to see where we were. And it came out just under 15% for the entire property.

Mr. Albert: So if NR 115 were in place you would be alright.

Mr. Ragan: It's mostly because of the width of the area down by the lake.

Mr. Albert: Right.

1:45 pm – Chairman Lee closed the public hearing. No further testimony will be accepted.

**Motion by Phil Albert, second by Guy Hansen to grant a variance to allow placement of an extended deck (approx. 390 sq ft) and 1,876 square feet of permeable pavers, all within 75 feet of the ordinary high water mark (OHWM) of Minocqua Lake subject to:**

- 1. Reduce the two (2) allowable *viewing corridors* from 30' wide to 8' wide as per the attached plans – resulting in a positive increase of 2,034 square feet of buffer along the lakeshore where the positive environmental impact is the greatest.**
- 2. Increase the required *buffer zone* parallel to the OHWM from 35' to 45', resulting in another positive increase of 2,099 square feet of buffer along the lake where the environmental impact is the greatest.**
- 3. Abandon plans to construct a 300 square foot shoreline boat house in the north viewing corridor in exchange for the proposed recreation areas above.**
- 4. Record a deed restriction outlining 1-3 above.**

**The motion carried unanimously on a roll call vote.**

**Motion by Harland Lee, second by Bob Rossi, to extend the decision filing date to May 17, 2013. The motion carried unanimously.**

2:07 pm. The meeting was adjourned following a motion by Harland Lee, second by Bob Rossi and with all members present voting "aye."

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING

Tuesday, May 14, 2013

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

Oneida County Courthouse, Rhinelander WI 54501

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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”, Alternate Jack Young, “here.” John Bloom is excused.

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

Other individuals present: Dennis Ragan, Custom Landscaping of Eagle River, Inc.

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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. 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 regular member is excused today; Jack Young will be acting as a regular member 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 Dennis Ragan and Peter Wegner, Assistant Zoning Director.

Secretary Phil Albert read the Notice of Public Hearing for Appeal No 13-003 of Joseph & Margie Massarelli, owner, 1235 Anderson Drive, Green Oaks IL 60048 requesting an area variance to allow placement of an extended deck on the south side of the home, approximately 390 square feet in size; in addition to 1,876 square feet of permeable pavers, all located within 75 feet of the ordinary high water mark (OHWM) of Lake Minocqua. This is contrary to the Oneida County Zoning and Shoreland Protection Ordinance (as amended September 28, 2012), Section 9.94 A (1) Setback of 75 feet. The property is located at 8339 Dr Pink Drive, being part of Government Lot 5, Section 15, T39N, R6E, PIN #MI 2215-3A, Town of Minocqua, Oneida County, Wisconsin.

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Appellant Sworn Testimony.

Dennis Ragan: I made some notes to summarize what our case would be as far as asking for this appeal. I am representing the owner, Joseph and Margie Massarelli. I am the one that put together the landscape plan for this project and the mitigation plan. As strange as it sounds, Joe and Margie are asking for a variance to create a landscape on their property that in many ways is more restrictive than the Oneida County Ordinance that is currently recognized. They are asking for an area variance to allow placement of a laterally extended deck on the south side of the home. And an area of permeable

pavers that would be located within the 75 ft setback area of the OHWM of Minocqua Lake. The overhead footprint of the above mentioned areas is approximately 1035 square feet. The owners would like to create and maintain a natural landscape that can be used as a model for ecological, responsible land use. They are proposing a comprehensive mitigation plan that will offset the extra square footage being asked for. The amount of square footage the owners are volunteering to mitigate along the lakeshore as planned would be approximately 4,333 square feet. That is a little over 4 times the square footage of the deck and paver areas that are being messed with. None of the newly proposed structures would be installed within the 56 foot setback of house that was already granted a zoning permit. As you can see as you were out doing your site visit, the minimum amount of trees and vegetation were removed in the process of building the house. The owners are interested in maintaining as much of the shoreline buffer as possible. If the appeal is granted, they would expand the required shoreline buffer zone from 35 to 45 feet. And give back all of the permitted 30 ft viewing corridors that are currently allowed by Oneida County Zoning. The owners believe that by thoughtfully incorporating ecological design principles of erosion control, rain water harvesting, water filtration and land restoration into the design as well as the voluntary mitigation that we talked about, that it is possible to create a natural sustainable landscape that is much more protective of the environment and has more positive impact on Minocqua Lake when compared with what the Oneida County Zoning Ordinance allows for. We believe that this type of collaboration between homeowners and zoning officials benefits both groups and is really the future of responsible land use. The specific details of the appeal justification are included in the appeal as well as in their landscape and mitigation plan. To summarize those design features voluntarily reducing the two allowable view corridors from 30 foot wide to only 8 foot wide or less. As we looked when we were out there, we probably will end up with no view corridors. Just a path through the woods. Voluntarily increasing the required shoreland buffer zone parallel to the shoreline from 35 to 45 feet which effectively will reduce the number of trees being removed from approximately 74 according to the current zoning permit to 5. And planting an additional 24 trees as a buffer zone along the side lots according to the proposed mitigation plan. Also talking about voluntarily abandoning plans to construct a future 300 square foot shoreline boathouse in the north view corridor in exchange for the proposed deck extension and the permeable paver areas that are outlined in the plans for a total of 4,433 total square feet of mitigation in exchange for 1,035 square feet of additional structures that would fall between 56 and 75 feet of the ordinary high water mark (OHWM). Also, talking about utilizing areas of eco-friendly permeable pavers, that absorb 10-20 times more runoff than grass or other surfaces. Rainwater harvesting, filtration and re-use made of rain gardens that capture storm and roof water before it ever reaches the lake. Additional no-mow and restoration areas and native plantings than that are required by the zoning ordinance. Living vegetative boulder retaining walls that stabilize the slopes and prevent erosion. Similar innovative practices of controlling runoff reuse and restoration are being used in a variety of applications in different communities around the country. For example, in the April 28<sup>th</sup> edition of the Milwaukee Journal/Sentinel an article titled "A Vision

beyond Tunnels.” The Milwaukee Metropolitan Sewer District set a goal of preventing all of the sewer overflows in their deep tunnel system. Instead of attempting to contain and treat all that wastewater that flows into regional sewers, which is a near impossible task, their new strategy is to keep stormwater out of sanitary sewers so there is less need for building more and more storage and treatment plants. Some of the key ways they are going to do that is to work with land owners to reduce runoff by planting specially designed rain gardens, installation of permeable paver surfaces that absorb stormwater runoff and returning it to the local aquifers and using rain barrels to recycle roof water and by replacing traditional turf grass lawns with native plants that are capable of absorbing more stormwater. These same strategies are all being utilized in the Massarelli Plan and can be instrumental in preventing harmful runoff into our lakes, rivers and streams. Also, included in the appeal justification there was a 2013 report from the Wisconsin Lakeshore Restoration Project. The goal of that long term inventory and monitoring project that was conducted in Vilas County finished last year was to assess whether wildlife populations, native plants diversity increases on restored lakeshores and whether the restored habitat approximates that found in paired reference lakes. While the project is still ongoing, the preliminary results indicate that restoration projects do have a positive on shoreland eco-systems. And just to quote a few excerpts regarding the lessons that were learned in that study:

*Landowners are essential to any restoration strategy; without willing lakeshore property owners, opportunities for rehabilitating lakeshore habitat are minimal. Finding local, on-lake champions of lakeshore rehabilitation work like lake association officers or master gardeners can make for effective peer-to-peer learning and project buy-in.*

*Incorporating ecological design principles of water infiltration, retention, reuse and flow control into our strategies with landowners pay dividends. This includes low impact development approaches and practices that are targeted to reduce runoff of water and pollutants like rain gardens and barrels, permeable pavements, green roofs, living walls, infiltration planters and drain systems.*

*Finding erosion control solutions for landowners to these challenges are critical to success. This fact often brings willing landowners to the table for doing shoreland rehabilitation so we need to make sure we address these concerns effectively. Innovative advances in erosion control materials that meet state standards and codes can be found by partnering with land and water conservation departments, consultants, and others.*

*Shoreland Zoning and other regulatory instruments alone are not enough to protect lakeshore habitat.*

*Holistic and inclusive lake community partnerships can support lakeshore restoration work of all kinds.*

*Lakeshore rehabilitation projects are good for local economies and small business owners.*

*Degradation of lakeshore habitat cover is the most important stressor of lakes.*

*At present, voluntary restoration of lakeshore habitat will likely have only a modest influence on watershed health. Even mandatory mitigation requirements wrapped up in local shoreland rules may only marginally increase participation. But when politically possible, shoreland rules or zoning that requires lakeshore habitat conservation and restoration can perhaps provide the greatest benefit in the long term. Understanding more deeply and clearly the barriers landowners confront in accepting the practice of lakeshore habitat restoration and devising marketing strategies that utilize this information may also pay dividend in the future.*

This article is pertinent to this case. This case isn't really about this rule or that rule, it is about responsible landowners working together to find creative solutions to problems that result in benefit for all. We believe that partnering with shoreland zoning and other regulatory agencies, thoughtful plans such as the Massarelli's which provides for responsible land use benefits not only the landowner, but the general public as a whole.

With the regards to the 3 criteria.

Unique Physical Property Limitations: Because of the lot shape limitations, averaging was used by Zoning to allow the positioning of the house at 56 feet from the OHWM of Minocqua Lake. Positioning the house farther back on the lot, beyond the standard 75' setback, was not a feasible option because of side lot setback requirements. Since only one corner of the house was actually positioned at the 56 ft allowed setback, the open deck and pavers being proposed in this appeal can all be positioned behind the 56' setback that was allowed in the original Zoning Permit.

No harm to Public Interest: By thoughtfully incorporating ecological design principles of erosion control, rain water harvesting and reuse, water filtration, and land restoration in to this design, as well as voluntary mitigation by the property's owners, it is possible to create a natural landscape that is actually much more protective of the environment and has a most positive impact on the lake when compared with what the Oneida County Ordinance allows. Therefore, it is in the Public's Interest to allow this plan.

Unnecessary Hardship:

In this particular case, compliance with the Zoning Ordinance would render conformity with such restrictions unnecessarily burdensome, by not allowing the owners the use of these proposed lakeside recreation areas, even though no part of the structures would be positioned within the 56 ft setback, designated by Zoning. This is especially true

when considering the positive short-term, long-term and cumulative impact the granting of this variance would have, given the additional mitigation being offered by the owners in exchange for the additional structures.

County Sworn Testimony.

Peter Wegner: As Dennis mentioned, we started working on this back in February. And the permits were already issued for the home. They were basically asking to have something beyond what the ordinance would permit. He put together this plan showing his thoughts as far as what he could do to off set him adding additional impervious surfaces or permeable pavers; and also the deck itself. I told him that I have never really had one of these go to the Board of Adjustment where they were doing a mitigation project in lieu of being able to construct additional square footage. We talked about how NR 115 is going that way, where you are able to increase your impervious surfaces if you are mitigating and that mitigation has to equal the impacts of the surfaces that you are adding. The same holds true for an expansion of a nonconforming structure. So, he decided to put this project together, after talking to his client. The County can argue a list of things of why it shouldn't be permitted, but I guess I would say there isn't any mechanism in the ordinance that allows me to issue a permit because he is giving something up here in exchange for a pervious surface. I will just go through the list. As far as the setbacks, he did average. They weren't required to average, but they did. They could have placed the home beyond 75 feet which would have allowed them impervious surface area. You could see today when you were on the property; if he was back further he'd be more on the impacts of the slope probably. They already have a deck. If you look at that photo, they already have an open deck. So the County could argue that they have reasonable use. Reasonable use does not say he has to have a fire pit in that location. There are other locations where he could place a fire pit. He doesn't need to have two walkways; although the ordinance permits it. He could have one walkway which may eliminate the need for the extra permeable pavers. They could have purchase a bigger lot, although that is really a nice lot. There are just many alternatives. And I talked to Karl before this just to let him know what could possibly happen here, because this is new water for us. If you were to grant a variance for some crazy reason, I would hope that he would be held to and maybe a recorded document to those criteria that he listed in his appeal which is the smaller view corridors or no view corridor; so he is not opening up his view corridors; a 45 ft buffer; no boathouse. If you look, if that was put on some kind of recordable document, other than the three things I just mentioned, the process in which this is being developed, it far exceeds what we require for mitigation, and some of the steps he is insisting they will be taking in the process, far exceeds what we normally would see on a zoning permit or a shoreland alteration permit. The rain gardens—that's not required, yet at an extra expense, they put that in there. The way he is putting in the paver system it is probably 3 layers beyond what we normally see. I don't know what else to say. The ordinance doesn't permit it; it has to meet a setback. We look at a permeable paver as a structure. The ordinance is clear on that. Unfortunately, some of these things, if you were to put a roof

over it, I could permit. Like this extended deck. If you had a roof over that, it would have been approved. Dennis and I kind of chuckled about that because if he were to put a roof over the whole thing, which is more obtuse looking from the water, that would be permissible. So it is....he is very detailed and this plan goes above and beyond. Other than saying the ordinance doesn't allow it, I am kind of in a pickle.

Mr. Rossi: Pete, if he had one walkway, he's going to have two piers there.

Mr. Lee: But he is allowed that.

Mr. Rossi: I know, but if you went to only one walkway, you would actually be disturbing more of the shoreline going from one pier to the other pier.

Mr. Wegner: I was just putting together my list of arguments. Because that is what I do. My point was that he doesn't have to have another pier or walkway. Just go on from here and not have that paved area or permeable pavers on that side. There are tons of options. The house could be the size of the garage and none of this would be needed. But this is different because he is proposing to give a lot for what he is asking for. Especially since these are permeable.

Mr. Ross: How do you ear mark the things you said should be in a recordable thing and what actually is recordable and not. Say, "I'm not going to have a boathouse." Can you restrict this into the future? The other thing is, some one buys it and then they just make view corridors. They get out the chain saw....future owners. I'm not questioning the current owner.

Mr. Wegner: The two things that hold them to it, if you are to grant a variance, that goes with the property forever.

Mr. Lee: But if there are stipulations with the variance, those also go with the property.

Mr. Wegner: But in addition to that, so a future property owner would know. People buy properties and don't realize that they had a variance on the property. If it was put in a recordable document, it puts the future owner on notice that this property is not permitted a boathouse, it's not permitted to expand the view corridors. All those things can be put in it.

Mr. Rossi: The County doesn't require variances to be registered.

Mr. Wegner: Not anymore. But it used to be required, as far as mitigation across the board.

Mr. Lee: In the one we considered this morning, there was a stipulation in there that he not build a boathouse. Is that recorded anywhere? Other than in our decision?

Mr. Wegner: That was recorded on the permit itself, with the Board of Adjustment. If someone came in for a permit for a boathouse, just because of where everything is located, it wouldn't be permitted.

Mr. Lee: So it is.

Mr. Wegner: Yes, but not on his deed. But just because of the limitations of the property. That's kind of a bad example.

Mr. Albert: It isn't officially recorded, but it is left in the property's file for whoever the owner is. If someone comes in and asks for some modification to that property's layout or boathouse or whatever, you would go to that file. Not based on owner, but based on location of the property.

Mr. Wegner: No.

Mr. Ross: What is your tickler to know this is on there. A new owner, five years from now, and wants to do a boathouse. They get an application for a boathouse, what's the tip that you can't do that.

Mr. Wegner: That other appeal, it's because they don't meet the requirements. But on this property, they come in for a boathouse permit; the tickler would be recorded on the deed. There is a form, they would fill it out and have it recorded with the Register Deeds. Probably why they got rid of it, having to record your mitigation plan is because there wasn't a tickler so to speak. In this case, the permit, the existing property, the Board of Adjustment, those are the kind of things that make it known, so to speak.

Mr. Albert: How does it come back five or ten years later, when something wants to be modified again on that property, how do you know...or the zoning department know that there has been some action taken on that specific property; a restriction taken on that property.

Mr. Wegner: It's something we need to address. Right now, if there is a complaint on a property it pops up for 3 years. But there really isn't a mechanism in our computer to track properties that have been given variances. Or track deed restrictions. Another example, Section 9.19, we issue permits for ADA. And when that person passes away, the property is sold, that ADA structure is supposed to be removed. There is no document other than recording it on the deed. At least it is on the deed, so someone is going to see it at some point, maybe when they sell the property.

Mr. Hansen: I'm still confused.

Mr. Wegner: Who's going to find it? Who's going to check it? A new owner.

Mr. Lee: We get so many of these after-the fact things. Which indicates they didn't check a thing.

Mr. Wegner: There is no 100% method that we have in place. Nothing even close, technically, other than the fact that it is registered on the deed.

Mr. Lee: What I am hearing is that we don't have anything. And we should have at least something.

Mr. Rossi: Well, a title company is going to check the courthouse and they would list restrictions.

Mr. Albert: Not if it doesn't get there.

Mr. Rossi: Well, it goes through wherever the money is coming from, they insist on a title search or a deed; and when they look at this thing.

Mr. Albert: But I hear Pete saying that they give the property owner a form that they are supposed to fill out and turn in, but what assurances are there that it is either filled out or given to the proper authorities.

Mr. Wegner: We would make that a part of the issuance of the permit.

Mr. Albert: Do you then get a copy back or do you record it.

Mr. Wegner: It is recorded and we take a copy for the Board of Adjustment file. That is the only safe measure.

Mr. Hansen: I am still confused as far as what gets recorded. In this instance will whatever requirements we stipulate be recorded on the deed or just in your file.

Mr. Wegner: On the deed. It will cite the Board of Adjustment file; it will cite those key items. And it will be recorded. I will get a copy and put it in the Board of Adjustment file. Then it is locked in with the property.

Mr. Hansen: So when a future buyer makes a title search that certainly should show up.

Mr. Wegner: Yes.

Mr. Hansen: The previous example where we required mitigation, where the guy wanted to build a boathouse, the next owner can come in and if he mitigates the next owner could come in and cut all that down and nobody will ever know.

Mr. Ross: That happens all the time.

Mr. Wegner: It also used to be recorded with the property, all the mitigation plans.

Mr. Hansen: And the reason that the Planning and Zoning Committee decided not to do that?

Mr. Young: Doesn't the owner have an obligation to disclose all this when he is selling?

Mr. Wegner: Yes, but I don't trust them. Underground storage tanks....

Mr. Rossi: They didn't have an obligation to disclose when people are buying a lot to build on and the place next door is listed as single family residential, but it was State Sanctioned Home of Children. There are lawsuits today yet. Because they bought this. There are no longer kids living there, but at that time. The realtors said they checked with Madison—the Realtors Association. Well, what do you expect to get back from them?

Mr. Wegner: The bottom line is that other than having a document recorded with the property, is the only mechanism to show that someone has a water property with a variance on it or that there are certain requirements on it.

Mr. Rossi: What you are stating is that we should require it because it is not going to be filed with the Register of Deeds otherwise.

Mr. Wegner: Yes.

Mr. Hansen: Can we require that in other cases? We would require mitigation plans to be recorded with the deed?

Mr. Wegner: Yes. You have the authority. And you have in the past. There have been certain things that you have required.

Mr. Hansen: So on this other one; we couldn't make that a requirement?

Mr. Wegner: You could. I just didn't require it in that instance because there was no way that they could get a boathouse on that property, now that they put the garage up. But you could require recorded mitigation.

Mr. Albert: As with the one this morning and with this one, in cases that we've seen before, when we talked about mitigation, we primarily talked about if we allowed something with a variance, it was primarily mitigating it with required landscaping. But mitigation can be much broader than just adding some trees and bushes. Does the Oneida County Zoning Ordinance allow mitigation where it relates to potentially a trade off of shoreline setbacks for the giving up of a boathouse? I didn't realize there was authority to actually mitigate.

Mr. Wegner: There isn't. The only mitigation that allows us to give or take is the placement of a new boathouse requires mitigation; and expansion of a home less than 40 feet from the OHWM requires mitigation.

Mr. Albert: But mitigation meaning only landscaping. Nothing beyond that.

Mr. Wegner: It's one tree and 3 shrubs for 200 square feet; one inch minimum.

Mr. Albert: Mitigation is much different than just bushes and trees.

Mr. Lee: We have never been in the business of trade offs. That I know of. I think this is a pretty unique situation.

Mr. Wegner: I've never had one like this. Obviously, the County would say that there shouldn't be doing it. You shouldn't grant it.

Mr. Lee: This is an unusual situation. In many respects.

Mr. Albert: I guess the bottom line to that is do we have the authority to accept mitigation of this nature.

Mr. Wegner: No other governing body does, other than you.

Mr. Hansen: Well it's not going to meet all three of these requirements.

Mr. Rossi: It can't.

Mr. Lee: Yes it can.

Mr. Rossi: There is always the...what's good for the world. I looked across the lake when we drove back today and I saw this property and the house is sitting there and it has green siding on it. You can barely see it. Right next door was this God awful open area and this house and grass and thought to myself, I don't know. Common sense or whatever it is.

Mr. Albert: This is well thought out and well done and reasoned out. But it is the technicality of mitigation.

Mr. Lee: We are getting into our deliberation here. Are there any questions of Dennis or Pete? The discussion is appropriate but we are in the wrong portion of our meeting.

Mr. Rossi: This is a lot and there are restrictions on it and it was pre-existing. I can't tell from what I read here when this was a matter of deeded lot. Was it prior to 1972, when the law became effective when you can make exceptions?

Mr. Wegner: I would not define this as a legal pre-existing lot. They could definitely build an average sized home on this property meeting all applicable setbacks. I know what you are asking though,

Mr. Hansen: They have already received a permit to the house where it is. The only thing we are considering is the deck, right?

Mr. Wegner: The deck, the pavers and the pavers underneath the deck.

Mr. Young: I am more into no harm to public interest. I noticed where you are going to plant these trees, along the property line; you must be about three feet higher than your neighbor; are you afraid where his garden is and meets the height of the runoff from the building and whatever you are doing there is going to go down into the neighbors?

Mr. Ragan: It will be a combination of grading. This part up by the driveway which is up here, where the garden is.

Mr. Young: This is by the garage and the new deck.

Mr. Ragan: Right. And that is on this side. It actually, as it comes down the hill it slopes back down towards the front of the property. It is lower up closer to the road coming into the driveway, which is another area that could be absorbed into a rain garden or something like that. To answer your question, through grading and all these other strategies that we've talked about to control erosion, I am not concerned about any the water going on the neighbors property. All of it will be contained.

Mr. Lee: You haven't done all the grading yet either.

Mr. Ragan: We have to wait for the builder to finish with some of their things with the house construction. There is plenty of room on the sides to keep the water on their property and basically filter it into that shoreline buffer and rain gardens.

Mr. Young: Have they shown any concern at all? Ask any questions?

Mr. Ragan: Not that I know of.

Mr. Albert: The deck, was that part of the original permit; this deck on the right side?

Mr. Wegner: This is on the original permit. The deck that he shows in the offset color. That's new.

Mr. Albert: The yellow deck there, it says new deck, was that?

Mr. Wegner: No. It wouldn't have been permitted.

Mr. Albert: So it wasn't even submitted in the plan to get the original construction permit.

Mr. Wegner: That's correct.

Mr. Albert: It does not exceed the 57 ft average setback.

Mr. Wegner: Correct.

Mr. Albert: Does Oneida County Zoning have any concerns about the quantity of impervious surface on this lot size?

Mr. Wegner: I don't have a mechanism that brings up that concern. We don't have impervious surface provisions in our ordinance right now. If we did, this is residential. He could go to 15-30 percent maximum. By our definition, I don't believe we would be considering this stuff impervious. I would assume even down the road, he is going to be fine.

Mr. Ragan: I actually did an impervious surface plan to see where we were. And it came out just under 15% for the entire property.

Mr. Albert: So if NR 115 were in place you would be alright.

Mr. Ragan: It's mostly because of the width of the area down by the lake.

Mr. Albert: Right.

1:45 pm – Chairman Lee closed the public hearing. No further testimony will be accepted.

**Motion by Phil Albert, second by Guy Hansen to grant a variance to allow placement of an extended deck (approx. 390 sq ft) and 1,876 square feet of permeable pavers, all within 75 feet of the ordinary high water mark (OHWM) of Minocqua Lake subject to:**

- 1. Reduce the two (2) allowable *viewing corridors* from 30' wide to 8' wide as per the attached plans – resulting in a positive increase of 2,034 square feet of buffer along the lakeshore where the positive environmental impact is the greatest.**
- 2. Increase the required *buffer zone* parallel to the OHWM from 35' to 45', resulting in another positive increase of 2,099 square feet of buffer along the lake where the environmental impact is the greatest.**
- 3. Abandon plans to construct a 300 square foot shoreline boat house in the north viewing corridor in exchange for the proposed recreation areas above.**
- 4. Record a deed restriction outlining 1-3 above.**

**The motion carried unanimously on a roll call vote.**

**Motion by Harland Lee, second by Bob Rossi, to extend the decision filing date to May 17, 2013. The motion carried unanimously.**

2:07 pm. The meeting was adjourned following a motion by Harland Lee, second by Bob Rossi and with all members present voting "aye."

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING

Tuesday, May 14, 2013

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

Oneida County Courthouse, Rhinelander WI 54501

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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”, Alternate Jack Young, “here.” John Bloom is excused.

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

Other individuals present: Dennis Ragan, Custom Landscaping of Eagle River, Inc.

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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. 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 regular member is excused today; Jack Young will be acting as a regular member 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 Dennis Ragan and Peter Wegner, Assistant Zoning Director.

Secretary Phil Albert read the Notice of Public Hearing for Appeal No 13-003 of Joseph & Margie Massarelli, owner, 1235 Anderson Drive, Green Oaks IL 60048 requesting an area variance to allow placement of an extended deck on the south side of the home, approximately 390 square feet in size; in addition to 1,876 square feet of permeable pavers, all located within 75 feet of the ordinary high water mark (OHWM) of Lake Minocqua. This is contrary to the Oneida County Zoning and Shoreland Protection Ordinance (as amended September 28, 2012), Section 9.94 A (1) Setback of 75 feet. The property is located at 8339 Dr Pink Drive, being part of Government Lot 5, Section 15, T39N, R6E, PIN #MI 2215-3A, Town of Minocqua, Oneida County, Wisconsin.

The Notice of Public Hearing was published in the Northwoods River News on April 30 & May 7, 2013; and was posted on the Oneida County Courthouse bulletin board on April

26, 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 10:20 a.m. for appeal #13-003. The location for the inspection is 8339 Dr. Pink Road, being owned by Joseph and Margie Massarelli. Dennis Ragan, agent for the appellant, was present. Other persons present at the inspection were Diann Koshuta of the Zoning Staff; and the Board members with the exception of John Bloom. Observations: The property was extensively marked. The right-of-way was adequately marked. Well and Sanitary facilities were identified. Outline of the proposed construction was adequately marked. Distances were measured. The construction of the house placement is 56-57 feet from the OHWM (averaged setback). The structure was adequately setback from the side lot lines. The building to the OHWM is 56-57 feet. The lot has 225 of shoreline and goes in a triangle shape to a point. Other observations were that the property is adjacent to the Bearskin Trail. The topography is somewhat rolling toward the shoreline and is currently under construction with sandy soils. The site is primarily excavated and showed no other soil other than sand. Erosion precautions were being taken. The lot had been logged back to the construction of the home. There is the home being under construction. The buffer zone was voluntarily extended 10 feet (from 35 to 45 feet). There is a pier in the left view corridor. Vegetation such as trees and bushes were left within the 0-35 ft setback area. This is an irregularly shaped lot, long and narrow. Joe Patrone informed the Board that there was a structure in the same area where the proposed garage is to be built. There is a concrete drive on the left side of the cottage that reaches from the roadway to the back edge of the cottage within 15-20 feet from the OHWM.

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 Sworn Testimony.

Dennis Ragan: I made some notes to summarize what our case would be as far as asking for this appeal. I am representing the owner, Joseph and Margie Massarelli. I am the one that put together the landscape plan for this project and the mitigation plan. As strange as it sounds, Joe and Margie are asking for a variance to create a landscape on their property that in many ways is more restrictive than the Oneida County Ordinance that is currently recognized. They are asking for an area variance to allow placement of a laterally extended deck on the south side of the home. And an area of permeable

pavers that would be located within the 75 ft setback area of the OHWM of Minocqua Lake. The overhead footprint of the above mentioned areas is approximately 1035 square feet. The owners would like to create and maintain a natural landscape that can be used as a model for ecological, responsible land use. They are proposing a comprehensive mitigation plan that will offset the extra square footage being asked for. The amount of square footage the owners are volunteering to mitigate along the lakeshore as planned would be approximately 4,333 square feet. That is a little over 4 times the square footage of the deck and paver areas that are being messed with. None of the newly proposed structures would be installed within the 56 foot setback of house that was already granted a zoning permit. As you can see as you were out doing your site visit, the minimum amount of trees and vegetation were removed in the process of building the house. The owners are interested in maintaining as much of the shoreline buffer as possible. If the appeal is granted, they would expand the required shoreline buffer zone from 35 to 45 feet. And give back all of the permitted 30 ft viewing corridors that are currently allowed by Oneida County Zoning. The owners believe that by thoughtfully incorporating ecological design principles of erosion control, rain water harvesting, water filtration and land restoration into the design as well as the voluntary mitigation that we talked about, that it is possible to create a natural sustainable landscape that is much more protective of the environment and has more positive impact on Minocqua Lake when compared with what the Oneida County Zoning Ordinance allows for. We believe that this type of collaboration between homeowners and zoning officials benefits both groups and is really the future of responsible land use. The specific details of the appeal justification are included in the appeal as well as in their landscape and mitigation plan. To summarize those design features voluntarily reducing the two allowable view corridors from 30 foot wide to only 8 foot wide or less. As we looked when we were out there, we probably will end up with no view corridors. Just a path through the woods. Voluntarily increasing the required shoreland buffer zone parallel to the shoreline from 35 to 45 feet which effectively will reduce the number of trees being removed from approximately 74 according to the current zoning permit to 5. And planting an additional 24 trees as a buffer zone along the side lots according to the proposed mitigation plan. Also talking about voluntarily abandoning plans to construct a future 300 square foot shoreline boathouse in the north view corridor in exchange for the proposed deck extension and the permeable paver areas that are outlined in the plans for a total of 4,433 total square feet of mitigation in exchange for 1,035 square feet of additional structures that would fall between 56 and 75 feet of the ordinary high water mark (OHWM). Also, talking about utilizing areas of eco-friendly permeable pavers, that absorb 10-20 times more runoff than grass or other surfaces. Rainwater harvesting, filtration and re-use made of rain gardens that capture storm and roof water before it ever reaches the lake. Additional no-mow and restoration areas and native plantings than that are required by the zoning ordinance. Living vegetative boulder retaining walls that stabilize the slopes and prevent erosion. Similar innovative practices of controlling runoff reuse and restoration are being used in a variety of applications in different communities around the country. For example, in the April 28<sup>th</sup> edition of the Milwaukee Journal/Sentinel an article titled "A Vision

beyond Tunnels.” The Milwaukee Metropolitan Sewer District set a goal of preventing all of the sewer overflows in their deep tunnel system. Instead of attempting to contain and treat all that wastewater that flows into regional sewers, which is a near impossible task, their new strategy is to keep stormwater out of sanitary sewers so there is less need for building more and more storage and treatment plants. Some of the key ways they are going to do that is to work with land owners to reduce runoff by planting specially designed rain gardens, installation of permeable paver surfaces that absorb stormwater runoff and returning it to the local aquifers and using rain barrels to recycle roof water and by replacing traditional turf grass lawns with native plants that are capable of absorbing more stormwater. These same strategies are all being utilized in the Massarelli Plan and can be instrumental in preventing harmful runoff into our lakes, rivers and streams. Also, included in the appeal justification there was a 2013 report from the Wisconsin Lakeshore Restoration Project. The goal of that long term inventory and monitoring project that was conducted in Vilas County finished last year was to assess whether wildlife populations, native plants diversity increases on restored lakeshores and whether the restored habitat approximates that found in paired reference lakes. While the project is still ongoing, the preliminary results indicate that restoration projects do have a positive on shoreland eco-systems. And just to quote a few excerpts regarding the lessons that were learned in that study:

*Landowners are essential to any restoration strategy; without willing lakeshore property owners, opportunities for rehabilitating lakeshore habitat are minimal. Finding local, on-lake champions of lakeshore rehabilitation work like lake association officers or master gardeners can make for effective peer-to-peer learning and project buy-in.*

*Incorporating ecological design principles of water infiltration, retention, reuse and flow control into our strategies with landowners pay dividends. This includes low impact development approaches and practices that are targeted to reduce runoff of water and pollutants like rain gardens and barrels, permeable pavements, green roofs, living walls, infiltration planters and drain systems.*

*Finding erosion control solutions for landowners to these challenges are critical to success. This fact often brings willing landowners to the table for doing shoreland rehabilitation so we need to make sure we address these concerns effectively. Innovative advances in erosion control materials that meet state standards and codes can be found by partnering with land and water conservation departments, consultants, and others.*

*Shoreland Zoning and other regulatory instruments alone are not enough to protect lakeshore habitat.*

*Holistic and inclusive lake community partnerships can support lakeshore restoration work of all kinds.*

*Lakeshore rehabilitation projects are good for local economies and small business owners.*

*Degradation of lakeshore habitat cover is the most important stressor of lakes.*

*At present, voluntary restoration of lakeshore habitat will likely have only a modest influence on watershed health. Even mandatory mitigation requirements wrapped up in local shoreland rules may only marginally increase participation. But when politically possible, shoreland rules or zoning that requires lakeshore habitat conservation and restoration can perhaps provide the greatest benefit in the long term. Understanding more deeply and clearly the barriers landowners confront in accepting the practice of lakeshore habitat restoration and devising marketing strategies that utilize this information may also pay dividend in the future.*

This article is pertinent to this case. This case isn't really about this rule or that rule, it is about responsible landowners working together to find creative solutions to problems that result in benefit for all. We believe that partnering with shoreland zoning and other regulatory agencies, thoughtful plans such as the Massarelli's which provides for responsible land use benefits not only the landowner, but the general public as a whole.

With the regards to the 3 criteria.

Unique Physical Property Limitations: Because of the lot shape limitations, averaging was used by Zoning to allow the positioning of the house at 56 feet from the OHWM of Minocqua Lake. Positioning the house farther back on the lot, beyond the standard 75' setback, was not a feasible option because of side lot setback requirements. Since only one corner of the house was actually positioned at the 56 ft allowed setback, the open deck and pavers being proposed in this appeal can all be positioned behind the 56' setback that was allowed in the original Zoning Permit.

No harm to Public Interest: By thoughtfully incorporating ecological design principles of erosion control, rain water harvesting and reuse, water filtration, and land restoration in to this design, as well as voluntary mitigation by the property's owners, it is possible to create a natural landscape that is actually much more protective of the environment and has a most positive impact on the lake when compared with what the Oneida County Ordinance allows. Therefore, it is in the Public's Interest to allow this plan.

Unnecessary Hardship:

In this particular case, compliance with the Zoning Ordinance would render conformity with such restrictions unnecessarily burdensome, by not allowing the owners the use of these proposed lakeside recreation areas, even though no part of the structures would be positioned within the 56 ft setback, designated by Zoning. This is especially true

when considering the positive short-term, long-term and cumulative impact the granting of this variance would have, given the additional mitigation being offered by the owners in exchange for the additional structures.

County Sworn Testimony.

Peter Wegner: As Dennis mentioned, we started working on this back in February. And the permits were already issued for the home. They were basically asking to have something beyond what the ordinance would permit. He put together this plan showing his thoughts as far as what he could do to off set him adding additional impervious surfaces or permeable pavers; and also the deck itself. I told him that I have never really had one of these go to the Board of Adjustment where they were doing a mitigation project in lieu of being able to construct additional square footage. We talked about how NR 115 is going that way, where you are able to increase your impervious surfaces if you are mitigating and that mitigation has to equal the impacts of the surfaces that you are adding. The same holds true for an expansion of a nonconforming structure. So, he decided to put this project together, after talking to his client. The County can argue a list of things of why it shouldn't be permitted, but I guess I would say there isn't any mechanism in the ordinance that allows me to issue a permit because he is giving something up here in exchange for a pervious surface. I will just go through the list. As far as the setbacks, he did average. They weren't required to average, but they did. They could have placed the home beyond 75 feet which would have allowed them impervious surface area. You could see today when you were on the property; if he was back further he'd be more on the impacts of the slope probably. They already have a deck. If you look at that photo, they already have an open deck. So the County could argue that they have reasonable use. Reasonable use does not say he has to have a fire pit in that location. There are other locations where he could place a fire pit. He doesn't need to have two walkways; although the ordinance permits it. He could have one walkway which may eliminate the need for the extra permeable pavers. They could have purchase a bigger lot, although that is really a nice lot. There are just many alternatives. And I talked to Karl before this just to let him know what could possibly happen here, because this is new water for us. If you were to grant a variance for some crazy reason, I would hope that he would be held to and maybe a recorded document to those criteria that he listed in his appeal which is the smaller view corridors or no view corridor; so he is not opening up his view corridors; a 45 ft buffer; no boathouse. If you look, if that was put on some kind of recordable document, other than the three things I just mentioned, the process in which this is being developed, it far exceeds what we require for mitigation, and some of the steps he is insisting they will be taking in the process, far exceeds what we normally would see on a zoning permit or a shoreland alteration permit. The rain gardens—that's not required, yet at an extra expense, they put that in there. The way he is putting in the paver system it is probably 3 layers beyond what we normally see. I don't know what else to say. The ordinance doesn't permit it; it has to meet a setback. We look at a permeable paver as a structure. The ordinance is clear on that. Unfortunately, some of these things, if you were to put a roof

over it, I could permit. Like this extended deck. If you had a roof over that, it would have been approved. Dennis and I kind of chuckled about that because if he were to put a roof over the whole thing, which is more obtuse looking from the water, that would be permissible. So it is....he is very detailed and this plan goes above and beyond. Other than saying the ordinance doesn't allow it, I am kind of in a pickle.

Mr. Rossi: Pete, if he had one walkway, he's going to have two piers there.

Mr. Lee: But he is allowed that.

Mr. Rossi: I know, but if you went to only one walkway, you would actually be disturbing more of the shoreline going from one pier to the other pier.

Mr. Wegner: I was just putting together my list of arguments. Because that is what I do. My point was that he doesn't have to have another pier or walkway. Just go on from here and not have that paved area or permeable pavers on that side. There are tons of options. The house could be the size of the garage and none of this would be needed. But this is different because he is proposing to give a lot for what he is asking for. Especially since these are permeable.

Mr. Ross: How do you ear mark the things you said should be in a recordable thing and what actually is recordable and not. Say, "I'm not going to have a boathouse." Can you restrict this into the future? The other thing is, some one buys it and then they just make view corridors. They get out the chain saw....future owners. I'm not questioning the current owner.

Mr. Wegner: The two things that hold them to it, if you are to grant a variance, that goes with the property forever.

Mr. Lee: But if there are stipulations with the variance, those also go with the property.

Mr. Wegner: But in addition to that, so a future property owner would know. People buy properties and don't realize that they had a variance on the property. If it was put in a recordable document, it puts the future owner on notice that this property is not permitted a boathouse, it's not permitted to expand the view corridors. All those things can be put in it.

Mr. Rossi: The County doesn't require variances to be registered.

Mr. Wegner: Not anymore. But it used to be required, as far as mitigation across the board.

Mr. Lee: In the one we considered this morning, there was a stipulation in there that he not build a boathouse. Is that recorded anywhere? Other than in our decision?

Mr. Wegner: That was recorded on the permit itself, with the Board of Adjustment. If someone came in for a permit for a boathouse, just because of where everything is located, it wouldn't be permitted.

Mr. Lee: So it is.

Mr. Wegner: Yes, but not on his deed. But just because of the limitations of the property. That's kind of a bad example.

Mr. Albert: It isn't officially recorded, but it is left in the property's file for whoever the owner is. If someone comes in and asks for some modification to that property's layout or boathouse or whatever, you would go to that file. Not based on owner, but based on location of the property.

Mr. Wegner: No.

Mr. Ross: What is your tickler to know this is on there. A new owner, five years from now, and wants to do a boathouse. They get an application for a boathouse, what's the tip that you can't do that.

Mr. Wegner: That other appeal, it's because they don't meet the requirements. But on this property, they come in for a boathouse permit; the tickler would be recorded on the deed. There is a form, they would fill it out and have it recorded with the Register Deeds. Probably why they got rid of it, having to record your mitigation plan is because there wasn't a tickler so to speak. In this case, the permit, the existing property, the Board of Adjustment, those are the kind of things that make it known, so to speak.

Mr. Albert: How does it come back five or ten years later, when something wants to be modified again on that property, how do you know...or the zoning department know that there has been some action taken on that specific property; a restriction taken on that property.

Mr. Wegner: It's something we need to address. Right now, if there is a complaint on a property it pops up for 3 years. But there really isn't a mechanism in our computer to track properties that have been given variances. Or track deed restrictions. Another example, Section 9.19, we issue permits for ADA. And when that person passes away, the property is sold, that ADA structure is supposed to be removed. There is no document other than recording it on the deed. At least it is on the deed, so someone is going to see it at some point, maybe when they sell the property.

Mr. Hansen: I'm still confused.

Mr. Wegner: Who's going to find it? Who's going to check it? A new owner.

Mr. Lee: We get so many of these after-the fact things. Which indicates they didn't check a thing.

Mr. Wegner: There is no 100% method that we have in place. Nothing even close, technically, other than the fact that it is registered on the deed.

Mr. Lee: What I am hearing is that we don't have anything. And we should have at least something.

Mr. Rossi: Well, a title company is going to check the courthouse and they would list restrictions.

Mr. Albert: Not if it doesn't get there.

Mr. Rossi: Well, it goes through wherever the money is coming from, they insist on a title search or a deed; and when they look at this thing.

Mr. Albert: But I hear Pete saying that they give the property owner a form that they are supposed to fill out and turn in, but what assurances are there that it is either filled out or given to the proper authorities.

Mr. Wegner: We would make that a part of the issuance of the permit.

Mr. Albert: Do you then get a copy back or do you record it.

Mr. Wegner: It is recorded and we take a copy for the Board of Adjustment file. That is the only safe measure.

Mr. Hansen: I am still confused as far as what gets recorded. In this instance will whatever requirements we stipulate be recorded on the deed or just in your file.

Mr. Wegner: On the deed. It will cite the Board of Adjustment file; it will cite those key items. And it will be recorded. I will get a copy and put it in the Board of Adjustment file. Then it is locked in with the property.

Mr. Hansen: So when a future buyer makes a title search that certainly should show up.

Mr. Wegner: Yes.

Mr. Hansen: The previous example where we required mitigation, where the guy wanted to build a boathouse, the next owner can come in and if he mitigates the next owner could come in and cut all that down and nobody will ever know.

Mr. Ross: That happens all the time.

Mr. Wegner: It also used to be recorded with the property, all the mitigation plans.

Mr. Hansen: And the reason that the Planning and Zoning Committee decided not to do that?

Mr. Young: Doesn't the owner have an obligation to disclose all this when he is selling?

Mr. Wegner: Yes, but I don't trust them. Underground storage tanks....

Mr. Rossi: They didn't have an obligation to disclose when people are buying a lot to build on and the place next door is listed as single family residential, but it was State Sanctioned Home of Children. There are lawsuits today yet. Because they bought this. There are no longer kids living there, but at that time. The realtors said they checked with Madison—the Realtors Association. Well, what do you expect to get back from them?

Mr. Wegner: The bottom line is that other than having a document recorded with the property, is the only mechanism to show that someone has a water property with a variance on it or that there are certain requirements on it.

Mr. Rossi: What you are stating is that we should require it because it is not going to be filed with the Register of Deeds otherwise.

Mr. Wegner: Yes.

Mr. Hansen: Can we require that in other cases? We would require mitigation plans to be recorded with the deed?

Mr. Wegner: Yes. You have the authority. And you have in the past. There have been certain things that you have required.

Mr. Hansen: So on this other one; we couldn't make that a requirement?

Mr. Wegner: You could. I just didn't require it in that instance because there was no way that they could get a boathouse on that property, now that they put the garage up. But you could require recorded mitigation.

Mr. Albert: As with the one this morning and with this one, in cases that we've seen before, when we talked about mitigation, we primarily talked about if we allowed something with a variance, it was primarily mitigating it with required landscaping. But mitigation can be much broader than just adding some trees and bushes. Does the Oneida County Zoning Ordinance allow mitigation where it relates to potentially a trade off of shoreline setbacks for the giving up of a boathouse? I didn't realize there was authority to actually mitigate.

Mr. Wegner: There isn't. The only mitigation that allows us to give or take is the placement of a new boathouse requires mitigation; and expansion of a home less than 40 feet from the OHWM requires mitigation.

Mr. Albert: But mitigation meaning only landscaping. Nothing beyond that.

Mr. Wegner: It's one tree and 3 shrubs for 200 square feet; one inch minimum.

Mr. Albert: Mitigation is much different than just bushes and trees.

Mr. Lee: We have never been in the business of trade offs. That I know of. I think this is a pretty unique situation.

Mr. Wegner: I've never had one like this. Obviously, the County would say that there shouldn't be doing it. You shouldn't grant it.

Mr. Lee: This is an unusual situation. In many respects.

Mr. Albert: I guess the bottom line to that is do we have the authority to accept mitigation of this nature.

Mr. Wegner: No other governing body does, other than you.

Mr. Hansen: Well it's not going to meet all three of these requirements.

Mr. Rossi: It can't.

Mr. Lee: Yes it can.

Mr. Rossi: There is always the...what's good for the world. I looked across the lake when we drove back today and I saw this property and the house is sitting there and it has green siding on it. You can barely see it. Right next door was this God awful open area and this house and grass and thought to myself, I don't know. Common sense or whatever it is.

Mr. Albert: This is well thought out and well done and reasoned out. But it is the technicality of mitigation.

Mr. Lee: We are getting into our deliberation here. Are there any questions of Dennis or Pete? The discussion is appropriate but we are in the wrong portion of our meeting.

Mr. Rossi: This is a lot and there are restrictions on it and it was pre-existing. I can't tell from what I read here when this was a matter of deeded lot. Was it prior to 1972, when the law became effective when you can make exceptions?

Mr. Wegner: I would not define this as a legal pre-existing lot. They could definitely build an average sized home on this property meeting all applicable setbacks. I know what you are asking though,

Mr. Hansen: They have already received a permit to the house where it is. The only thing we are considering is the deck, right?

Mr. Wegner: The deck, the pavers and the pavers underneath the deck.

Mr. Young: I am more into no harm to public interest. I noticed where you are going to plant these trees, along the property line; you must be about three feet higher than your neighbor; are you afraid where his garden is and meets the height of the runoff from the building and whatever you are doing there is going to go down into the neighbors?

Mr. Ragan: It will be a combination of grading. This part up by the driveway which is up here, where the garden is.

Mr. Young: This is by the garage and the new deck.

Mr. Ragan: Right. And that is on this side. It actually, as it comes down the hill it slopes back down towards the front of the property. It is lower up closer to the road coming into the driveway, which is another area that could be absorbed into a rain garden or something like that. To answer your question, through grading and all these other strategies that we've talked about to control erosion, I am not concerned about any the water going on the neighbors property. All of it will be contained.

Mr. Lee: You haven't done all the grading yet either.

Mr. Ragan: We have to wait for the builder to finish with some of their things with the house construction. There is plenty of room on the sides to keep the water on their property and basically filter it into that shoreline buffer and rain gardens.

Mr. Young: Have they shown any concern at all? Ask any questions?

Mr. Ragan: Not that I know of.

Mr. Albert: The deck, was that part of the original permit; this deck on the right side?

Mr. Wegner: This is on the original permit. The deck that he shows in the offset color. That's new.

Mr. Albert: The yellow deck there, it says new deck, was that?

Mr. Wegner: No. It wouldn't have been permitted.

Mr. Albert: So it wasn't even submitted in the plan to get the original construction permit.

Mr. Wegner: That's correct.

Mr. Albert: It does not exceed the 57 ft average setback.

Mr. Wegner: Correct.

Mr. Albert: Does Oneida County Zoning have any concerns about the quantity of impervious surface on this lot size?

Mr. Wegner: I don't have a mechanism that brings up that concern. We don't have impervious surface provisions in our ordinance right now. If we did, this is residential. He could go to 15-30 percent maximum. By our definition, I don't believe we would be considering this stuff impervious. I would assume even down the road, he is going to be fine.

Mr. Ragan: I actually did an impervious surface plan to see where we were. And it came out just under 15% for the entire property.

Mr. Albert: So if NR 115 were in place you would be alright.

Mr. Ragan: It's mostly because of the width of the area down by the lake.

Mr. Albert: Right.

1:45 pm – Chairman Lee closed the public hearing. No further testimony will be accepted.

**Motion by Phil Albert, second by Guy Hansen to grant a variance to allow placement of an extended deck (approx. 390 sq ft) and 1,876 square feet of permeable pavers, all within 75 feet of the ordinary high water mark (OHWM) of Minocqua Lake subject to:**

- 1. Reduce the two (2) allowable *viewing corridors* from 30' wide to 8' wide as per the attached plans – resulting in a positive increase of 2,034 square feet of buffer along the lakeshore where the positive environmental impact is the greatest.**
- 2. Increase the required *buffer zone* parallel to the OHWM from 35' to 45', resulting in another positive increase of 2,099 square feet of buffer along the lake where the environmental impact is the greatest.**
- 3. Abandon plans to construct a 300 square foot shoreline boat house in the north viewing corridor in exchange for the proposed recreation areas above.**
- 4. Record a deed restriction outlining 1-3 above.**

**The motion carried unanimously on a roll call vote.**

**Motion by Harland Lee, second by Bob Rossi, to extend the decision filing date to May 17, 2013. The motion carried unanimously.**

2:07 pm. The meeting was adjourned following a motion by Harland Lee, second by Bob Rossi and with all members present voting "aye."

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING

Tuesday, May 14, 2013

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

Oneida County Courthouse, Rhinelander WI 54501

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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”, Alternate Jack Young, “here.” John Bloom is excused.

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

Other individuals present: Dennis Ragan, Custom Landscaping of Eagle River, Inc.

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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. 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 regular member is excused today; Jack Young will be acting as a regular member 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 Dennis Ragan and Peter Wegner, Assistant Zoning Director.

Secretary Phil Albert read the Notice of Public Hearing for Appeal No 13-003 of Joseph & Margie Massarelli, owner, 1235 Anderson Drive, Green Oaks IL 60048 requesting an area variance to allow placement of an extended deck on the south side of the home, approximately 390 square feet in size; in addition to 1,876 square feet of permeable pavers, all located within 75 feet of the ordinary high water mark (OHWM) of Lake Minocqua. This is contrary to the Oneida County Zoning and Shoreland Protection Ordinance (as amended September 28, 2012), Section 9.94 A (1) Setback of 75 feet. The property is located at 8339 Dr Pink Drive, being part of Government Lot 5, Section 15, T39N, R6E, PIN #MI 2215-3A, Town of Minocqua, Oneida County, Wisconsin.

The Notice of Public Hearing was published in the Northwoods River News on April 30 & May 7, 2013; and was posted on the Oneida County Courthouse bulletin board on April

26, 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 10:20 a.m. for appeal #13-003. The location for the inspection is 8339 Dr. Pink Road, being owned by Joseph and Margie Massarelli. Dennis Ragan, agent for the appellant, was present. Other persons present at the inspection were Diann Koshuta of the Zoning Staff; and the Board members with the exception of John Bloom. Observations: The property was extensively marked. The right-of-way was adequately marked. Well and Sanitary facilities were identified. Outline of the proposed construction was adequately marked. Distances were measured. The construction of the house placement is 56-57 feet from the OHWM (averaged setback). The structure was adequately setback from the side lot lines. The building to the OHWM is 56-57 feet. The lot has 225 of shoreline and goes in a triangle shape to a point. Other observations were that the property is adjacent to the Bearskin Trail. The topography is somewhat rolling toward the shoreline and is currently under construction with sandy soils. The site is primarily excavated and showed no other soil other than sand. Erosion precautions were being taken. The lot had been logged back to the construction of the home. There is the home being under construction. The buffer zone was voluntarily extended 10 feet (from 35 to 45 feet). There is a pier in the left view corridor. Vegetation such as trees and bushes were left within the 0-35 ft setback area. This is an irregularly shaped lot, long and narrow. Joe Patrone informed the Board that there was a structure in the same area where the proposed garage is to be built. There is a concrete drive on the left side of the cottage that reaches from the roadway to the back edge of the cottage within 15-20 feet from the OHWM.

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 Sworn Testimony.

Dennis Ragan: I made some notes to summarize what our case would be as far as asking for this appeal. I am representing the owner, Joseph and Margie Massarelli. I am the one that put together the landscape plan for this project and the mitigation plan. As strange as it sounds, Joe and Margie are asking for a variance to create a landscape on their property that in many ways is more restrictive than the Oneida County Ordinance that is currently recognized. They are asking for an area variance to allow placement of a laterally extended deck on the south side of the home. And an area of permeable

pavers that would be located within the 75 ft setback area of the OHWM of Minocqua Lake. The overhead footprint of the above mentioned areas is approximately 1035 square feet. The owners would like to create and maintain a natural landscape that can be used as a model for ecological, responsible land use. They are proposing a comprehensive mitigation plan that will offset the extra square footage being asked for. The amount of square footage the owners are volunteering to mitigate along the lakeshore as planned would be approximately 4,333 square feet. That is a little over 4 times the square footage of the deck and paver areas that are being messed with. None of the newly proposed structures would be installed within the 56 foot setback of house that was already granted a zoning permit. As you can see as you were out doing your site visit, the minimum amount of trees and vegetation were removed in the process of building the house. The owners are interested in maintaining as much of the shoreline buffer as possible. If the appeal is granted, they would expand the required shoreline buffer zone from 35 to 45 feet. And give back all of the permitted 30 ft viewing corridors that are currently allowed by Oneida County Zoning. The owners believe that by thoughtfully incorporating ecological design principles of erosion control, rain water harvesting, water filtration and land restoration into the design as well as the voluntary mitigation that we talked about, that it is possible to create a natural sustainable landscape that is much more protective of the environment and has more positive impact on Minocqua Lake when compared with what the Oneida County Zoning Ordinance allows for. We believe that this type of collaboration between homeowners and zoning officials benefits both groups and is really the future of responsible land use. The specific details of the appeal justification are included in the appeal as well as in their landscape and mitigation plan. To summarize those design features voluntarily reducing the two allowable view corridors from 30 foot wide to only 8 foot wide or less. As we looked when we were out there, we probably will end up with no view corridors. Just a path through the woods. Voluntarily increasing the required shoreland buffer zone parallel to the shoreline from 35 to 45 feet which effectively will reduce the number of trees being removed from approximately 74 according to the current zoning permit to 5. And planting an additional 24 trees as a buffer zone along the side lots according to the proposed mitigation plan. Also talking about voluntarily abandoning plans to construct a future 300 square foot shoreline boathouse in the north view corridor in exchange for the proposed deck extension and the permeable paver areas that are outlined in the plans for a total of 4,433 total square feet of mitigation in exchange for 1,035 square feet of additional structures that would fall between 56 and 75 feet of the ordinary high water mark (OHWM). Also, talking about utilizing areas of eco-friendly permeable pavers, that absorb 10-20 times more runoff than grass or other surfaces. Rainwater harvesting, filtration and re-use made of rain gardens that capture storm and roof water before it ever reaches the lake. Additional no-mow and restoration areas and native plantings than that are required by the zoning ordinance. Living vegetative boulder retaining walls that stabilize the slopes and prevent erosion. Similar innovative practices of controlling runoff reuse and restoration are being used in a variety of applications in different communities around the country. For example, in the April 28<sup>th</sup> edition of the Milwaukee Journal/Sentinel an article titled "A Vision

beyond Tunnels.” The Milwaukee Metropolitan Sewer District set a goal of preventing all of the sewer overflows in their deep tunnel system. Instead of attempting to contain and treat all that wastewater that flows into regional sewers, which is a near impossible task, their new strategy is to keep stormwater out of sanitary sewers so there is less need for building more and more storage and treatment plants. Some of the key ways they are going to do that is to work with land owners to reduce runoff by planting specially designed rain gardens, installation of permeable paver surfaces that absorb stormwater runoff and returning it to the local aquifers and using rain barrels to recycle roof water and by replacing traditional turf grass lawns with native plants that are capable of absorbing more stormwater. These same strategies are all being utilized in the Massarelli Plan and can be instrumental in preventing harmful runoff into our lakes, rivers and streams. Also, included in the appeal justification there was a 2013 report from the Wisconsin Lakeshore Restoration Project. The goal of that long term inventory and monitoring project that was conducted in Vilas County finished last year was to assess whether wildlife populations, native plants diversity increases on restored lakeshores and whether the restored habitat approximates that found in paired reference lakes. While the project is still ongoing, the preliminary results indicate that restoration projects do have a positive on shoreland eco-systems. And just to quote a few excerpts regarding the lessons that were learned in that study:

*Landowners are essential to any restoration strategy; without willing lakeshore property owners, opportunities for rehabilitating lakeshore habitat are minimal. Finding local, on-lake champions of lakeshore rehabilitation work like lake association officers or master gardeners can make for effective peer-to-peer learning and project buy-in.*

*Incorporating ecological design principles of water infiltration, retention, reuse and flow control into our strategies with landowners pay dividends. This includes low impact development approaches and practices that are targeted to reduce runoff of water and pollutants like rain gardens and barrels, permeable pavements, green roofs, living walls, infiltration planters and drain systems.*

*Finding erosion control solutions for landowners to these challenges are critical to success. This fact often brings willing landowners to the table for doing shoreland rehabilitation so we need to make sure we address these concerns effectively. Innovative advances in erosion control materials that meet state standards and codes can be found by partnering with land and water conservation departments, consultants, and others.*

*Shoreland Zoning and other regulatory instruments alone are not enough to protect lakeshore habitat.*

*Holistic and inclusive lake community partnerships can support lakeshore restoration work of all kinds.*

*Lakeshore rehabilitation projects are good for local economies and small business owners.*

*Degradation of lakeshore habitat cover is the most important stressor of lakes.*

*At present, voluntary restoration of lakeshore habitat will likely have only a modest influence on watershed health. Even mandatory mitigation requirements wrapped up in local shoreland rules may only marginally increase participation. But when politically possible, shoreland rules or zoning that requires lakeshore habitat conservation and restoration can perhaps provide the greatest benefit in the long term. Understanding more deeply and clearly the barriers landowners confront in accepting the practice of lakeshore habitat restoration and devising marketing strategies that utilize this information may also pay dividend in the future.*

This article is pertinent to this case. This case isn't really about this rule or that rule, it is about responsible landowners working together to find creative solutions to problems that result in benefit for all. We believe that partnering with shoreland zoning and other regulatory agencies, thoughtful plans such as the Massarelli's which provides for responsible land use benefits not only the landowner, but the general public as a whole.

With the regards to the 3 criteria.

Unique Physical Property Limitations: Because of the lot shape limitations, averaging was used by Zoning to allow the positioning of the house at 56 feet from the OHWM of Minocqua Lake. Positioning the house farther back on the lot, beyond the standard 75' setback, was not a feasible option because of side lot setback requirements. Since only one corner of the house was actually positioned at the 56 ft allowed setback, the open deck and pavers being proposed in this appeal can all be positioned behind the 56' setback that was allowed in the original Zoning Permit.

No harm to Public Interest: By thoughtfully incorporating ecological design principles of erosion control, rain water harvesting and reuse, water filtration, and land restoration in to this design, as well as voluntary mitigation by the property's owners, it is possible to create a natural landscape that is actually much more protective of the environment and has a most positive impact on the lake when compared with what the Oneida County Ordinance allows. Therefore, it is in the Public's Interest to allow this plan.

Unnecessary Hardship:

In this particular case, compliance with the Zoning Ordinance would render conformity with such restrictions unnecessarily burdensome, by not allowing the owners the use of these proposed lakeside recreation areas, even though no part of the structures would be positioned within the 56 ft setback, designated by Zoning. This is especially true

when considering the positive short-term, long-term and cumulative impact the granting of this variance would have, given the additional mitigation being offered by the owners in exchange for the additional structures.

County Sworn Testimony.

Peter Wegner: As Dennis mentioned, we started working on this back in February. And the permits were already issued for the home. They were basically asking to have something beyond what the ordinance would permit. He put together this plan showing his thoughts as far as what he could do to off set him adding additional impervious surfaces or permeable pavers; and also the deck itself. I told him that I have never really had one of these go to the Board of Adjustment where they were doing a mitigation project in lieu of being able to construct additional square footage. We talked about how NR 115 is going that way, where you are able to increase your impervious surfaces if you are mitigating and that mitigation has to equal the impacts of the surfaces that you are adding. The same holds true for an expansion of a nonconforming structure. So, he decided to put this project together, after talking to his client. The County can argue a list of things of why it shouldn't be permitted, but I guess I would say there isn't any mechanism in the ordinance that allows me to issue a permit because he is giving something up here in exchange for a pervious surface. I will just go through the list. As far as the setbacks, he did average. They weren't required to average, but they did. They could have placed the home beyond 75 feet which would have allowed them impervious surface area. You could see today when you were on the property; if he was back further he'd be more on the impacts of the slope probably. They already have a deck. If you look at that photo, they already have an open deck. So the County could argue that they have reasonable use. Reasonable use does not say he has to have a fire pit in that location. There are other locations where he could place a fire pit. He doesn't need to have two walkways; although the ordinance permits it. He could have one walkway which may eliminate the need for the extra permeable pavers. They could have purchase a bigger lot, although that is really a nice lot. There are just many alternatives. And I talked to Karl before this just to let him know what could possibly happen here, because this is new water for us. If you were to grant a variance for some crazy reason, I would hope that he would be held to and maybe a recorded document to those criteria that he listed in his appeal which is the smaller view corridors or no view corridor; so he is not opening up his view corridors; a 45 ft buffer; no boathouse. If you look, if that was put on some kind of recordable document, other than the three things I just mentioned, the process in which this is being developed, it far exceeds what we require for mitigation, and some of the steps he is insisting they will be taking in the process, far exceeds what we normally would see on a zoning permit or a shoreland alteration permit. The rain gardens—that's not required, yet at an extra expense, they put that in there. The way he is putting in the paver system it is probably 3 layers beyond what we normally see. I don't know what else to say. The ordinance doesn't permit it; it has to meet a setback. We look at a permeable paver as a structure. The ordinance is clear on that. Unfortunately, some of these things, if you were to put a roof

over it, I could permit. Like this extended deck. If you had a roof over that, it would have been approved. Dennis and I kind of chuckled about that because if he were to put a roof over the whole thing, which is more obtuse looking from the water, that would be permissible. So it is....he is very detailed and this plan goes above and beyond. Other than saying the ordinance doesn't allow it, I am kind of in a pickle.

Mr. Rossi: Pete, if he had one walkway, he's going to have two piers there.

Mr. Lee: But he is allowed that.

Mr. Rossi: I know, but if you went to only one walkway, you would actually be disturbing more of the shoreline going from one pier to the other pier.

Mr. Wegner: I was just putting together my list of arguments. Because that is what I do. My point was that he doesn't have to have another pier or walkway. Just go on from here and not have that paved area or permeable pavers on that side. There are tons of options. The house could be the size of the garage and none of this would be needed. But this is different because he is proposing to give a lot for what he is asking for. Especially since these are permeable.

Mr. Ross: How do you ear mark the things you said should be in a recordable thing and what actually is recordable and not. Say, "I'm not going to have a boathouse." Can you restrict this into the future? The other thing is, some one buys it and then they just make view corridors. They get out the chain saw....future owners. I'm not questioning the current owner.

Mr. Wegner: The two things that hold them to it, if you are to grant a variance, that goes with the property forever.

Mr. Lee: But if there are stipulations with the variance, those also go with the property.

Mr. Wegner: But in addition to that, so a future property owner would know. People buy properties and don't realize that they had a variance on the property. If it was put in a recordable document, it puts the future owner on notice that this property is not permitted a boathouse, it's not permitted to expand the view corridors. All those things can be put in it.

Mr. Rossi: The County doesn't require variances to be registered.

Mr. Wegner: Not anymore. But it used to be required, as far as mitigation across the board.

Mr. Lee: In the one we considered this morning, there was a stipulation in there that he not build a boathouse. Is that recorded anywhere? Other than in our decision?

Mr. Wegner: That was recorded on the permit itself, with the Board of Adjustment. If someone came in for a permit for a boathouse, just because of where everything is located, it wouldn't be permitted.

Mr. Lee: So it is.

Mr. Wegner: Yes, but not on his deed. But just because of the limitations of the property. That's kind of a bad example.

Mr. Albert: It isn't officially recorded, but it is left in the property's file for whoever the owner is. If someone comes in and asks for some modification to that property's layout or boathouse or whatever, you would go to that file. Not based on owner, but based on location of the property.

Mr. Wegner: No.

Mr. Ross: What is your tickler to know this is on there. A new owner, five years from now, and wants to do a boathouse. They get an application for a boathouse, what's the tip that you can't do that.

Mr. Wegner: That other appeal, it's because they don't meet the requirements. But on this property, they come in for a boathouse permit; the tickler would be recorded on the deed. There is a form, they would fill it out and have it recorded with the Register Deeds. Probably why they got rid of it, having to record your mitigation plan is because there wasn't a tickler so to speak. In this case, the permit, the existing property, the Board of Adjustment, those are the kind of things that make it known, so to speak.

Mr. Albert: How does it come back five or ten years later, when something wants to be modified again on that property, how do you know...or the zoning department know that there has been some action taken on that specific property; a restriction taken on that property.

Mr. Wegner: It's something we need to address. Right now, if there is a complaint on a property it pops up for 3 years. But there really isn't a mechanism in our computer to track properties that have been given variances. Or track deed restrictions. Another example, Section 9.19, we issue permits for ADA. And when that person passes away, the property is sold, that ADA structure is supposed to be removed. There is no document other than recording it on the deed. At least it is on the deed, so someone is going to see it at some point, maybe when they sell the property.

Mr. Hansen: I'm still confused.

Mr. Wegner: Who's going to find it? Who's going to check it? A new owner.

Mr. Lee: We get so many of these after-the fact things. Which indicates they didn't check a thing.

Mr. Wegner: There is no 100% method that we have in place. Nothing even close, technically, other than the fact that it is registered on the deed.

Mr. Lee: What I am hearing is that we don't have anything. And we should have at least something.

Mr. Rossi: Well, a title company is going to check the courthouse and they would list restrictions.

Mr. Albert: Not if it doesn't get there.

Mr. Rossi: Well, it goes through wherever the money is coming from, they insist on a title search or a deed; and when they look at this thing.

Mr. Albert: But I hear Pete saying that they give the property owner a form that they are supposed to fill out and turn in, but what assurances are there that it is either filled out or given to the proper authorities.

Mr. Wegner: We would make that a part of the issuance of the permit.

Mr. Albert: Do you then get a copy back or do you record it.

Mr. Wegner: It is recorded and we take a copy for the Board of Adjustment file. That is the only safe measure.

Mr. Hansen: I am still confused as far as what gets recorded. In this instance will whatever requirements we stipulate be recorded on the deed or just in your file.

Mr. Wegner: On the deed. It will cite the Board of Adjustment file; it will cite those key items. And it will be recorded. I will get a copy and put it in the Board of Adjustment file. Then it is locked in with the property.

Mr. Hansen: So when a future buyer makes a title search that certainly should show up.

Mr. Wegner: Yes.

Mr. Hansen: The previous example where we required mitigation, where the guy wanted to build a boathouse, the next owner can come in and if he mitigates the next owner could come in and cut all that down and nobody will ever know.

Mr. Ross: That happens all the time.

Mr. Wegner: It also used to be recorded with the property, all the mitigation plans.

Mr. Hansen: And the reason that the Planning and Zoning Committee decided not to do that?

Mr. Young: Doesn't the owner have an obligation to disclose all this when he is selling?

Mr. Wegner: Yes, but I don't trust them. Underground storage tanks....

Mr. Rossi: They didn't have an obligation to disclose when people are buying a lot to build on and the place next door is listed as single family residential, but it was State Sanctioned Home of Children. There are lawsuits today yet. Because they bought this. There are no longer kids living there, but at that time. The realtors said they checked with Madison—the Realtors Association. Well, what do you expect to get back from them?

Mr. Wegner: The bottom line is that other than having a document recorded with the property, is the only mechanism to show that someone has a water property with a variance on it or that there are certain requirements on it.

Mr. Rossi: What you are stating is that we should require it because it is not going to be filed with the Register of Deeds otherwise.

Mr. Wegner: Yes.

Mr. Hansen: Can we require that in other cases? We would require mitigation plans to be recorded with the deed?

Mr. Wegner: Yes. You have the authority. And you have in the past. There have been certain things that you have required.

Mr. Hansen: So on this other one; we couldn't make that a requirement?

Mr. Wegner: You could. I just didn't require it in that instance because there was no way that they could get a boathouse on that property, now that they put the garage up. But you could require recorded mitigation.

Mr. Albert: As with the one this morning and with this one, in cases that we've seen before, when we talked about mitigation, we primarily talked about if we allowed something with a variance, it was primarily mitigating it with required landscaping. But mitigation can be much broader than just adding some trees and bushes. Does the Oneida County Zoning Ordinance allow mitigation where it relates to potentially a trade off of shoreline setbacks for the giving up of a boathouse? I didn't realize there was authority to actually mitigate.

Mr. Wegner: There isn't. The only mitigation that allows us to give or take is the placement of a new boathouse requires mitigation; and expansion of a home less than 40 feet from the OHWM requires mitigation.

Mr. Albert: But mitigation meaning only landscaping. Nothing beyond that.

Mr. Wegner: It's one tree and 3 shrubs for 200 square feet; one inch minimum.

Mr. Albert: Mitigation is much different than just bushes and trees.

Mr. Lee: We have never been in the business of trade offs. That I know of. I think this is a pretty unique situation.

Mr. Wegner: I've never had one like this. Obviously, the County would say that there shouldn't be doing it. You shouldn't grant it.

Mr. Lee: This is an unusual situation. In many respects.

Mr. Albert: I guess the bottom line to that is do we have the authority to accept mitigation of this nature.

Mr. Wegner: No other governing body does, other than you.

Mr. Hansen: Well it's not going to meet all three of these requirements.

Mr. Rossi: It can't.

Mr. Lee: Yes it can.

Mr. Rossi: There is always the...what's good for the world. I looked across the lake when we drove back today and I saw this property and the house is sitting there and it has green siding on it. You can barely see it. Right next door was this God awful open area and this house and grass and thought to myself, I don't know. Common sense or whatever it is.

Mr. Albert: This is well thought out and well done and reasoned out. But it is the technicality of mitigation.

Mr. Lee: We are getting into our deliberation here. Are there any questions of Dennis or Pete? The discussion is appropriate but we are in the wrong portion of our meeting.

Mr. Rossi: This is a lot and there are restrictions on it and it was pre-existing. I can't tell from what I read here when this was a matter of deeded lot. Was it prior to 1972, when the law became effective when you can make exceptions?

Mr. Wegner: I would not define this as a legal pre-existing lot. They could definitely build an average sized home on this property meeting all applicable setbacks. I know what you are asking though,

Mr. Hansen: They have already received a permit to the house where it is. The only thing we are considering is the deck, right?

Mr. Wegner: The deck, the pavers and the pavers underneath the deck.

Mr. Young: I am more into no harm to public interest. I noticed where you are going to plant these trees, along the property line; you must be about three feet higher than your neighbor; are you afraid where his garden is and meets the height of the runoff from the building and whatever you are doing there is going to go down into the neighbors?

Mr. Ragan: It will be a combination of grading. This part up by the driveway which is up here, where the garden is.

Mr. Young: This is by the garage and the new deck.

Mr. Ragan: Right. And that is on this side. It actually, as it comes down the hill it slopes back down towards the front of the property. It is lower up closer to the road coming into the driveway, which is another area that could be absorbed into a rain garden or something like that. To answer your question, through grading and all these other strategies that we've talked about to control erosion, I am not concerned about any the water going on the neighbors property. All of it will be contained.

Mr. Lee: You haven't done all the grading yet either.

Mr. Ragan: We have to wait for the builder to finish with some of their things with the house construction. There is plenty of room on the sides to keep the water on their property and basically filter it into that shoreline buffer and rain gardens.

Mr. Young: Have they shown any concern at all? Ask any questions?

Mr. Ragan: Not that I know of.

Mr. Albert: The deck, was that part of the original permit; this deck on the right side?

Mr. Wegner: This is on the original permit. The deck that he shows in the offset color. That's new.

Mr. Albert: The yellow deck there, it says new deck, was that?

Mr. Wegner: No. It wouldn't have been permitted.

Mr. Albert: So it wasn't even submitted in the plan to get the original construction permit.

Mr. Wegner: That's correct.

Mr. Albert: It does not exceed the 57 ft average setback.

Mr. Wegner: Correct.

Mr. Albert: Does Oneida County Zoning have any concerns about the quantity of impervious surface on this lot size?

Mr. Wegner: I don't have a mechanism that brings up that concern. We don't have impervious surface provisions in our ordinance right now. If we did, this is residential. He could go to 15-30 percent maximum. By our definition, I don't believe we would be considering this stuff impervious. I would assume even down the road, he is going to be fine.

Mr. Ragan: I actually did an impervious surface plan to see where we were. And it came out just under 15% for the entire property.

Mr. Albert: So if NR 115 were in place you would be alright.

Mr. Ragan: It's mostly because of the width of the area down by the lake.

Mr. Albert: Right.

1:45 pm – Chairman Lee closed the public hearing. No further testimony will be accepted.

**Motion by Phil Albert, second by Guy Hansen to grant a variance to allow placement of an extended deck (approx. 390 sq ft) and 1,876 square feet of permeable pavers, all within 75 feet of the ordinary high water mark (OHWM) of Minocqua Lake subject to:**

- 1. Reduce the two (2) allowable *viewing corridors* from 30' wide to 8' wide as per the attached plans – resulting in a positive increase of 2,034 square feet of buffer along the lakeshore where the positive environmental impact is the greatest.**
- 2. Increase the required *buffer zone* parallel to the OHWM from 35' to 45', resulting in another positive increase of 2,099 square feet of buffer along the lake where the environmental impact is the greatest.**
- 3. Abandon plans to construct a 300 square foot shoreline boat house in the north viewing corridor in exchange for the proposed recreation areas above.**
- 4. Record a deed restriction outlining 1-3 above.**

**The motion carried unanimously on a roll call vote.**

**Motion by Harland Lee, second by Bob Rossi, to extend the decision filing date to May 17, 2013. The motion carried unanimously.**

2:07 pm. The meeting was adjourned following a motion by Harland Lee, second by Bob Rossi and with all members present voting "aye."

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING

Tuesday, May 14, 2013

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

Oneida County Courthouse, Rhinelander WI 54501

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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”, Alternate Jack Young, “here.” John Bloom is excused.

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

Other individuals present: Dennis Ragan, Custom Landscaping of Eagle River, Inc.

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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. 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 regular member is excused today; Jack Young will be acting as a regular member 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 Dennis Ragan and Peter Wegner, Assistant Zoning Director.

Secretary Phil Albert read the Notice of Public Hearing for Appeal No 13-003 of Joseph & Margie Massarelli, owner, 1235 Anderson Drive, Green Oaks IL 60048 requesting an area variance to allow placement of an extended deck on the south side of the home, approximately 390 square feet in size; in addition to 1,876 square feet of permeable pavers, all located within 75 feet of the ordinary high water mark (OHWM) of Lake Minocqua. This is contrary to the Oneida County Zoning and Shoreland Protection Ordinance (as amended September 28, 2012), Section 9.94 A (1) Setback of 75 feet. The property is located at 8339 Dr Pink Drive, being part of Government Lot 5, Section 15, T39N, R6E, PIN #MI 2215-3A, Town of Minocqua, Oneida County, Wisconsin.

The Notice of Public Hearing was published in the Northwoods River News on April 30 & May 7, 2013; and was posted on the Oneida County Courthouse bulletin board on April

26, 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 10:20 a.m. for appeal #13-003. The location for the inspection is 8339 Dr. Pink Road, being owned by Joseph and Margie Massarelli. Dennis Ragan, agent for the appellant, was present. Other persons present at the inspection were Diann Koshuta of the Zoning Staff; and the Board members with the exception of John Bloom. Observations: The property was extensively marked. The right-of-way was adequately marked. Well and Sanitary facilities were identified. Outline of the proposed construction was adequately marked. Distances were measured. The construction of the house placement is 56-57 feet from the OHWM (averaged setback). The structure was adequately setback from the side lot lines. The building to the OHWM is 56-57 feet. The lot has 225 of shoreline and goes in a triangle shape to a point. Other observations were that the property is adjacent to the Bearskin Trail. The topography is somewhat rolling toward the shoreline and is currently under construction with sandy soils. The site is primarily excavated and showed no other soil other than sand. Erosion precautions were being taken. The lot had been logged back to the construction of the home. There is the home being under construction. The buffer zone was voluntarily extended 10 feet (from 35 to 45 feet). There is a pier in the left view corridor. Vegetation such as trees and bushes were left within the 0-35 ft setback area. This is an irregularly shaped lot, long and narrow. Joe Patrone informed the Board that there was a structure in the same area where the proposed garage is to be built. There is a concrete drive on the left side of the cottage that reaches from the roadway to the back edge of the cottage within 15-20 feet from the OHWM.

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 Sworn Testimony.

Dennis Ragan: I made some notes to summarize what our case would be as far as asking for this appeal. I am representing the owner, Joseph and Margie Massarelli. I am the one that put together the landscape plan for this project and the mitigation plan. As strange as it sounds, Joe and Margie are asking for a variance to create a landscape on their property that in many ways is more restrictive than the Oneida County Ordinance that is currently recognized. They are asking for an area variance to allow placement of a laterally extended deck on the south side of the home. And an area of permeable

pavers that would be located within the 75 ft setback area of the OHWM of Minocqua Lake. The overhead footprint of the above mentioned areas is approximately 1035 square feet. The owners would like to create and maintain a natural landscape that can be used as a model for ecological, responsible land use. They are proposing a comprehensive mitigation plan that will offset the extra square footage being asked for. The amount of square footage the owners are volunteering to mitigate along the lakeshore as planned would be approximately 4,333 square feet. That is a little over 4 times the square footage of the deck and paver areas that are being messed with. None of the newly proposed structures would be installed within the 56 foot setback of house that was already granted a zoning permit. As you can see as you were out doing your site visit, the minimum amount of trees and vegetation were removed in the process of building the house. The owners are interested in maintaining as much of the shoreline buffer as possible. If the appeal is granted, they would expand the required shoreline buffer zone from 35 to 45 feet. And give back all of the permitted 30 ft viewing corridors that are currently allowed by Oneida County Zoning. The owners believe that by thoughtfully incorporating ecological design principles of erosion control, rain water harvesting, water filtration and land restoration into the design as well as the voluntary mitigation that we talked about, that it is possible to create a natural sustainable landscape that is much more protective of the environment and has more positive impact on Minocqua Lake when compared with what the Oneida County Zoning Ordinance allows for. We believe that this type of collaboration between homeowners and zoning officials benefits both groups and is really the future of responsible land use. The specific details of the appeal justification are included in the appeal as well as in their landscape and mitigation plan. To summarize those design features voluntarily reducing the two allowable view corridors from 30 foot wide to only 8 foot wide or less. As we looked when we were out there, we probably will end up with no view corridors. Just a path through the woods. Voluntarily increasing the required shoreland buffer zone parallel to the shoreline from 35 to 45 feet which effectively will reduce the number of trees being removed from approximately 74 according to the current zoning permit to 5. And planting an additional 24 trees as a buffer zone along the side lots according to the proposed mitigation plan. Also talking about voluntarily abandoning plans to construct a future 300 square foot shoreline boathouse in the north view corridor in exchange for the proposed deck extension and the permeable paver areas that are outlined in the plans for a total of 4,433 total square feet of mitigation in exchange for 1,035 square feet of additional structures that would fall between 56 and 75 feet of the ordinary high water mark (OHWM). Also, talking about utilizing areas of eco-friendly permeable pavers, that absorb 10-20 times more runoff than grass or other surfaces. Rainwater harvesting, filtration and re-use made of rain gardens that capture storm and roof water before it ever reaches the lake. Additional no-mow and restoration areas and native plantings than that are required by the zoning ordinance. Living vegetative boulder retaining walls that stabilize the slopes and prevent erosion. Similar innovative practices of controlling runoff reuse and restoration are being used in a variety of applications in different communities around the country. For example, in the April 28<sup>th</sup> edition of the Milwaukee Journal/Sentinel an article titled "A Vision

beyond Tunnels.” The Milwaukee Metropolitan Sewer District set a goal of preventing all of the sewer overflows in their deep tunnel system. Instead of attempting to contain and treat all that wastewater that flows into regional sewers, which is a near impossible task, their new strategy is to keep stormwater out of sanitary sewers so there is less need for building more and more storage and treatment plants. Some of the key ways they are going to do that is to work with land owners to reduce runoff by planting specially designed rain gardens, installation of permeable paver surfaces that absorb stormwater runoff and returning it to the local aquifers and using rain barrels to recycle roof water and by replacing traditional turf grass lawns with native plants that are capable of absorbing more stormwater. These same strategies are all being utilized in the Massarelli Plan and can be instrumental in preventing harmful runoff into our lakes, rivers and streams. Also, included in the appeal justification there was a 2013 report from the Wisconsin Lakeshore Restoration Project. The goal of that long term inventory and monitoring project that was conducted in Vilas County finished last year was to assess whether wildlife populations, native plants diversity increases on restored lakeshores and whether the restored habitat approximates that found in paired reference lakes. While the project is still ongoing, the preliminary results indicate that restoration projects do have a positive on shoreland eco-systems. And just to quote a few excerpts regarding the lessons that were learned in that study:

*Landowners are essential to any restoration strategy; without willing lakeshore property owners, opportunities for rehabilitating lakeshore habitat are minimal. Finding local, on-lake champions of lakeshore rehabilitation work like lake association officers or master gardeners can make for effective peer-to-peer learning and project buy-in.*

*Incorporating ecological design principles of water infiltration, retention, reuse and flow control into our strategies with landowners pay dividends. This includes low impact development approaches and practices that are targeted to reduce runoff of water and pollutants like rain gardens and barrels, permeable pavements, green roofs, living walls, infiltration planters and drain systems.*

*Finding erosion control solutions for landowners to these challenges are critical to success. This fact often brings willing landowners to the table for doing shoreland rehabilitation so we need to make sure we address these concerns effectively. Innovative advances in erosion control materials that meet state standards and codes can be found by partnering with land and water conservation departments, consultants, and others.*

*Shoreland Zoning and other regulatory instruments alone are not enough to protect lakeshore habitat.*

*Holistic and inclusive lake community partnerships can support lakeshore restoration work of all kinds.*

*Lakeshore rehabilitation projects are good for local economies and small business owners.*

*Degradation of lakeshore habitat cover is the most important stressor of lakes.*

*At present, voluntary restoration of lakeshore habitat will likely have only a modest influence on watershed health. Even mandatory mitigation requirements wrapped up in local shoreland rules may only marginally increase participation. But when politically possible, shoreland rules or zoning that requires lakeshore habitat conservation and restoration can perhaps provide the greatest benefit in the long term. Understanding more deeply and clearly the barriers landowners confront in accepting the practice of lakeshore habitat restoration and devising marketing strategies that utilize this information may also pay dividend in the future.*

This article is pertinent to this case. This case isn't really about this rule or that rule, it is about responsible landowners working together to find creative solutions to problems that result in benefit for all. We believe that partnering with shoreland zoning and other regulatory agencies, thoughtful plans such as the Massarelli's which provides for responsible land use benefits not only the landowner, but the general public as a whole.

With the regards to the 3 criteria.

Unique Physical Property Limitations: Because of the lot shape limitations, averaging was used by Zoning to allow the positioning of the house at 56 feet from the OHWM of Minocqua Lake. Positioning the house farther back on the lot, beyond the standard 75' setback, was not a feasible option because of side lot setback requirements. Since only one corner of the house was actually positioned at the 56 ft allowed setback, the open deck and pavers being proposed in this appeal can all be positioned behind the 56' setback that was allowed in the original Zoning Permit.

No harm to Public Interest: By thoughtfully incorporating ecological design principles of erosion control, rain water harvesting and reuse, water filtration, and land restoration in to this design, as well as voluntary mitigation by the property's owners, it is possible to create a natural landscape that is actually much more protective of the environment and has a most positive impact on the lake when compared with what the Oneida County Ordinance allows. Therefore, it is in the Public's Interest to allow this plan.

Unnecessary Hardship:

In this particular case, compliance with the Zoning Ordinance would render conformity with such restrictions unnecessarily burdensome, by not allowing the owners the use of these proposed lakeside recreation areas, even though no part of the structures would be positioned within the 56 ft setback, designated by Zoning. This is especially true

when considering the positive short-term, long-term and cumulative impact the granting of this variance would have, given the additional mitigation being offered by the owners in exchange for the additional structures.

County Sworn Testimony.

Peter Wegner: As Dennis mentioned, we started working on this back in February. And the permits were already issued for the home. They were basically asking to have something beyond what the ordinance would permit. He put together this plan showing his thoughts as far as what he could do to off set him adding additional impervious surfaces or permeable pavers; and also the deck itself. I told him that I have never really had one of these go to the Board of Adjustment where they were doing a mitigation project in lieu of being able to construct additional square footage. We talked about how NR 115 is going that way, where you are able to increase your impervious surfaces if you are mitigating and that mitigation has to equal the impacts of the surfaces that you are adding. The same holds true for an expansion of a nonconforming structure. So, he decided to put this project together, after talking to his client. The County can argue a list of things of why it shouldn't be permitted, but I guess I would say there isn't any mechanism in the ordinance that allows me to issue a permit because he is giving something up here in exchange for a pervious surface. I will just go through the list. As far as the setbacks, he did average. They weren't required to average, but they did. They could have placed the home beyond 75 feet which would have allowed them impervious surface area. You could see today when you were on the property; if he was back further he'd be more on the impacts of the slope probably. They already have a deck. If you look at that photo, they already have an open deck. So the County could argue that they have reasonable use. Reasonable use does not say he has to have a fire pit in that location. There are other locations where he could place a fire pit. He doesn't need to have two walkways; although the ordinance permits it. He could have one walkway which may eliminate the need for the extra permeable pavers. They could have purchase a bigger lot, although that is really a nice lot. There are just many alternatives. And I talked to Karl before this just to let him know what could possibly happen here, because this is new water for us. If you were to grant a variance for some crazy reason, I would hope that he would be held to and maybe a recorded document to those criteria that he listed in his appeal which is the smaller view corridors or no view corridor; so he is not opening up his view corridors; a 45 ft buffer; no boathouse. If you look, if that was put on some kind of recordable document, other than the three things I just mentioned, the process in which this is being developed, it far exceeds what we require for mitigation, and some of the steps he is insisting they will be taking in the process, far exceeds what we normally would see on a zoning permit or a shoreland alteration permit. The rain gardens—that's not required, yet at an extra expense, they put that in there. The way he is putting in the paver system it is probably 3 layers beyond what we normally see. I don't know what else to say. The ordinance doesn't permit it; it has to meet a setback. We look at a permeable paver as a structure. The ordinance is clear on that. Unfortunately, some of these things, if you were to put a roof

over it, I could permit. Like this extended deck. If you had a roof over that, it would have been approved. Dennis and I kind of chuckled about that because if he were to put a roof over the whole thing, which is more obtuse looking from the water, that would be permissible. So it is....he is very detailed and this plan goes above and beyond. Other than saying the ordinance doesn't allow it, I am kind of in a pickle.

Mr. Rossi: Pete, if he had one walkway, he's going to have two piers there.

Mr. Lee: But he is allowed that.

Mr. Rossi: I know, but if you went to only one walkway, you would actually be disturbing more of the shoreline going from one pier to the other pier.

Mr. Wegner: I was just putting together my list of arguments. Because that is what I do. My point was that he doesn't have to have another pier or walkway. Just go on from here and not have that paved area or permeable pavers on that side. There are tons of options. The house could be the size of the garage and none of this would be needed. But this is different because he is proposing to give a lot for what he is asking for. Especially since these are permeable.

Mr. Ross: How do you ear mark the things you said should be in a recordable thing and what actually is recordable and not. Say, "I'm not going to have a boathouse." Can you restrict this into the future? The other thing is, some one buys it and then they just make view corridors. They get out the chain saw....future owners. I'm not questioning the current owner.

Mr. Wegner: The two things that hold them to it, if you are to grant a variance, that goes with the property forever.

Mr. Lee: But if there are stipulations with the variance, those also go with the property.

Mr. Wegner: But in addition to that, so a future property owner would know. People buy properties and don't realize that they had a variance on the property. If it was put in a recordable document, it puts the future owner on notice that this property is not permitted a boathouse, it's not permitted to expand the view corridors. All those things can be put in it.

Mr. Rossi: The County doesn't require variances to be registered.

Mr. Wegner: Not anymore. But it used to be required, as far as mitigation across the board.

Mr. Lee: In the one we considered this morning, there was a stipulation in there that he not build a boathouse. Is that recorded anywhere? Other than in our decision?

Mr. Wegner: That was recorded on the permit itself, with the Board of Adjustment. If someone came in for a permit for a boathouse, just because of where everything is located, it wouldn't be permitted.

Mr. Lee: So it is.

Mr. Wegner: Yes, but not on his deed. But just because of the limitations of the property. That's kind of a bad example.

Mr. Albert: It isn't officially recorded, but it is left in the property's file for whoever the owner is. If someone comes in and asks for some modification to that property's layout or boathouse or whatever, you would go to that file. Not based on owner, but based on location of the property.

Mr. Wegner: No.

Mr. Ross: What is your tickler to know this is on there. A new owner, five years from now, and wants to do a boathouse. They get an application for a boathouse, what's the tip that you can't do that.

Mr. Wegner: That other appeal, it's because they don't meet the requirements. But on this property, they come in for a boathouse permit; the tickler would be recorded on the deed. There is a form, they would fill it out and have it recorded with the Register Deeds. Probably why they got rid of it, having to record your mitigation plan is because there wasn't a tickler so to speak. In this case, the permit, the existing property, the Board of Adjustment, those are the kind of things that make it known, so to speak.

Mr. Albert: How does it come back five or ten years later, when something wants to be modified again on that property, how do you know...or the zoning department know that there has been some action taken on that specific property; a restriction taken on that property.

Mr. Wegner: It's something we need to address. Right now, if there is a complaint on a property it pops up for 3 years. But there really isn't a mechanism in our computer to track properties that have been given variances. Or track deed restrictions. Another example, Section 9.19, we issue permits for ADA. And when that person passes away, the property is sold, that ADA structure is supposed to be removed. There is no document other than recording it on the deed. At least it is on the deed, so someone is going to see it at some point, maybe when they sell the property.

Mr. Hansen: I'm still confused.

Mr. Wegner: Who's going to find it? Who's going to check it? A new owner.

Mr. Lee: We get so many of these after-the fact things. Which indicates they didn't check a thing.

Mr. Wegner: There is no 100% method that we have in place. Nothing even close, technically, other than the fact that it is registered on the deed.

Mr. Lee: What I am hearing is that we don't have anything. And we should have at least something.

Mr. Rossi: Well, a title company is going to check the courthouse and they would list restrictions.

Mr. Albert: Not if it doesn't get there.

Mr. Rossi: Well, it goes through wherever the money is coming from, they insist on a title search or a deed; and when they look at this thing.

Mr. Albert: But I hear Pete saying that they give the property owner a form that they are supposed to fill out and turn in, but what assurances are there that it is either filled out or given to the proper authorities.

Mr. Wegner: We would make that a part of the issuance of the permit.

Mr. Albert: Do you then get a copy back or do you record it.

Mr. Wegner: It is recorded and we take a copy for the Board of Adjustment file. That is the only safe measure.

Mr. Hansen: I am still confused as far as what gets recorded. In this instance will whatever requirements we stipulate be recorded on the deed or just in your file.

Mr. Wegner: On the deed. It will cite the Board of Adjustment file; it will cite those key items. And it will be recorded. I will get a copy and put it in the Board of Adjustment file. Then it is locked in with the property.

Mr. Hansen: So when a future buyer makes a title search that certainly should show up.

Mr. Wegner: Yes.

Mr. Hansen: The previous example where we required mitigation, where the guy wanted to build a boathouse, the next owner can come in and if he mitigates the next owner could come in and cut all that down and nobody will ever know.

Mr. Ross: That happens all the time.

Mr. Wegner: It also used to be recorded with the property, all the mitigation plans.

Mr. Hansen: And the reason that the Planning and Zoning Committee decided not to do that?

Mr. Young: Doesn't the owner have an obligation to disclose all this when he is selling?

Mr. Wegner: Yes, but I don't trust them. Underground storage tanks....

Mr. Rossi: They didn't have an obligation to disclose when people are buying a lot to build on and the place next door is listed as single family residential, but it was State Sanctioned Home of Children. There are lawsuits today yet. Because they bought this. There are no longer kids living there, but at that time. The realtors said they checked with Madison—the Realtors Association. Well, what do you expect to get back from them?

Mr. Wegner: The bottom line is that other than having a document recorded with the property, is the only mechanism to show that someone has a water property with a variance on it or that there are certain requirements on it.

Mr. Rossi: What you are stating is that we should require it because it is not going to be filed with the Register of Deeds otherwise.

Mr. Wegner: Yes.

Mr. Hansen: Can we require that in other cases? We would require mitigation plans to be recorded with the deed?

Mr. Wegner: Yes. You have the authority. And you have in the past. There have been certain things that you have required.

Mr. Hansen: So on this other one; we couldn't make that a requirement?

Mr. Wegner: You could. I just didn't require it in that instance because there was no way that they could get a boathouse on that property, now that they put the garage up. But you could require recorded mitigation.

Mr. Albert: As with the one this morning and with this one, in cases that we've seen before, when we talked about mitigation, we primarily talked about if we allowed something with a variance, it was primarily mitigating it with required landscaping. But mitigation can be much broader than just adding some trees and bushes. Does the Oneida County Zoning Ordinance allow mitigation where it relates to potentially a trade off of shoreline setbacks for the giving up of a boathouse? I didn't realize there was authority to actually mitigate.

Mr. Wegner: There isn't. The only mitigation that allows us to give or take is the placement of a new boathouse requires mitigation; and expansion of a home less than 40 feet from the OHWM requires mitigation.

Mr. Albert: But mitigation meaning only landscaping. Nothing beyond that.

Mr. Wegner: It's one tree and 3 shrubs for 200 square feet; one inch minimum.

Mr. Albert: Mitigation is much different than just bushes and trees.

Mr. Lee: We have never been in the business of trade offs. That I know of. I think this is a pretty unique situation.

Mr. Wegner: I've never had one like this. Obviously, the County would say that there shouldn't be doing it. You shouldn't grant it.

Mr. Lee: This is an unusual situation. In many respects.

Mr. Albert: I guess the bottom line to that is do we have the authority to accept mitigation of this nature.

Mr. Wegner: No other governing body does, other than you.

Mr. Hansen: Well it's not going to meet all three of these requirements.

Mr. Rossi: It can't.

Mr. Lee: Yes it can.

Mr. Rossi: There is always the...what's good for the world. I looked across the lake when we drove back today and I saw this property and the house is sitting there and it has green siding on it. You can barely see it. Right next door was this God awful open area and this house and grass and thought to myself, I don't know. Common sense or whatever it is.

Mr. Albert: This is well thought out and well done and reasoned out. But it is the technicality of mitigation.

Mr. Lee: We are getting into our deliberation here. Are there any questions of Dennis or Pete? The discussion is appropriate but we are in the wrong portion of our meeting.

Mr. Rossi: This is a lot and there are restrictions on it and it was pre-existing. I can't tell from what I read here when this was a matter of deeded lot. Was it prior to 1972, when the law became effective when you can make exceptions?

Mr. Wegner: I would not define this as a legal pre-existing lot. They could definitely build an average sized home on this property meeting all applicable setbacks. I know what you are asking though,

Mr. Hansen: They have already received a permit to the house where it is. The only thing we are considering is the deck, right?

Mr. Wegner: The deck, the pavers and the pavers underneath the deck.

Mr. Young: I am more into no harm to public interest. I noticed where you are going to plant these trees, along the property line; you must be about three feet higher than your neighbor; are you afraid where his garden is and meets the height of the runoff from the building and whatever you are doing there is going to go down into the neighbors?

Mr. Ragan: It will be a combination of grading. This part up by the driveway which is up here, where the garden is.

Mr. Young: This is by the garage and the new deck.

Mr. Ragan: Right. And that is on this side. It actually, as it comes down the hill it slopes back down towards the front of the property. It is lower up closer to the road coming into the driveway, which is another area that could be absorbed into a rain garden or something like that. To answer your question, through grading and all these other strategies that we've talked about to control erosion, I am not concerned about any the water going on the neighbors property. All of it will be contained.

Mr. Lee: You haven't done all the grading yet either.

Mr. Ragan: We have to wait for the builder to finish with some of their things with the house construction. There is plenty of room on the sides to keep the water on their property and basically filter it into that shoreline buffer and rain gardens.

Mr. Young: Have they shown any concern at all? Ask any questions?

Mr. Ragan: Not that I know of.

Mr. Albert: The deck, was that part of the original permit; this deck on the right side?

Mr. Wegner: This is on the original permit. The deck that he shows in the offset color. That's new.

Mr. Albert: The yellow deck there, it says new deck, was that?

Mr. Wegner: No. It wouldn't have been permitted.

Mr. Albert: So it wasn't even submitted in the plan to get the original construction permit.

Mr. Wegner: That's correct.

Mr. Albert: It does not exceed the 57 ft average setback.

Mr. Wegner: Correct.

Mr. Albert: Does Oneida County Zoning have any concerns about the quantity of impervious surface on this lot size?

Mr. Wegner: I don't have a mechanism that brings up that concern. We don't have impervious surface provisions in our ordinance right now. If we did, this is residential. He could go to 15-30 percent maximum. By our definition, I don't believe we would be considering this stuff impervious. I would assume even down the road, he is going to be fine.

Mr. Ragan: I actually did an impervious surface plan to see where we were. And it came out just under 15% for the entire property.

Mr. Albert: So if NR 115 were in place you would be alright.

Mr. Ragan: It's mostly because of the width of the area down by the lake.

Mr. Albert: Right.

1:45 pm – Chairman Lee closed the public hearing. No further testimony will be accepted.

**Motion by Phil Albert, second by Guy Hansen to grant a variance to allow placement of an extended deck (approx. 390 sq ft) and 1,876 square feet of permeable pavers, all within 75 feet of the ordinary high water mark (OHWM) of Minocqua Lake subject to:**

- 1. Reduce the two (2) allowable *viewing corridors* from 30' wide to 8' wide as per the attached plans – resulting in a positive increase of 2,034 square feet of buffer along the lakeshore where the positive environmental impact is the greatest.**
- 2. Increase the required *buffer zone* parallel to the OHWM from 35' to 45', resulting in another positive increase of 2,099 square feet of buffer along the lake where the environmental impact is the greatest.**
- 3. Abandon plans to construct a 300 square foot shoreline boat house in the north viewing corridor in exchange for the proposed recreation areas above.**
- 4. Record a deed restriction outlining 1-3 above.**

**The motion carried unanimously on a roll call vote.**

**Motion by Harland Lee, second by Bob Rossi, to extend the decision filing date to May 17, 2013. The motion carried unanimously.**

2:07 pm. The meeting was adjourned following a motion by Harland Lee, second by Bob Rossi and with all members present voting "aye."