

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, August 11, 2021 at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: Tom Day, Chairman
Richard Bayer
Nancy M. Bonniwell
Stephen Schmidt

BOARD MEMBERS ABSENT: Richard Nawrocki

SECRETARY TO THE BOARD: Richard Bayer (on behalf of Richard Nawrocki)

**TOWN OF MERTON BOARD OF
ADJUSTMENT MEMBERS PRESENT:**

Rick Ray
Jim Schneider
Jim Olsen
Kathy Haberman

PLANNING STAFF MEMBER: Ben Greenberg, Senior Planner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, an audio recording of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and an audio recording is available, at cost, upon request.

SUMMARY OF PREVIOUS MEETING:

Mr. Schmidt *I make a motion to approve the Summary of the Meeting of July 14, 2021.*

The motion was seconded by Mr. Bayer and carried unanimously.

NEW BUSINESS:

BA89: DANIEL AND MARY JO BOXLEY (OWNERS), REDLEAF HOMES (APPLICANT)

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **approval** of a variance from the road setback and shore setback requirements with conditions and **denial** of the request from the offset and maximum building footprint requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to permit the construction of a new single family residence with attached garage and lakeside deck.

Discussion between the petitioners (Bobbie Jo Mleziva & Steve O'Claire of Redleaf Homes), Board and Staff followed.

Sue and Joe Henrichs (W339 N5275 Road O) submitted a letter dated July 26, 2021, to the Board which listed a history of issues related to the subject property. The letter expressed concerns that the proposed home is too big for the lot.

Public Reaction:

- None

Decision and Action:

The Town of Merton Board of Adjustment recommended approval of the petitioner’s request for shore setback and road setback variances and recommended denial of the request for offset and maximum building footprint variances in accordance with the staff recommendation.

Ms. Bonniwell

I make a motion to approve the request for variances from the shore setback and road setback requirements and deny the request for variances from the offset and maximum building footprint requirements of the Ordinance, in accordance with the staff report, with the conditions and reasons stated in the staff report.

The motion was seconded by Mr. Schmidt and carried unanimously.

BA90: ERIK MULLETT (OWNER), BEN OTTEN (APPLICANT)

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff’s recommendation was for **denial** of a variance from the shore setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to permit the construction of a two story addition to the existing single family residence.

Discussion between the petitioner (Pete Davis – Johnson Design Inc.), owner (Erik Mullett), Board and Staff followed. Both petitioner and owner explained that the site presents unique physical limitations due to the dynamic and extensive shoreline. They noted that the house is missing a lot of common amenities found in homes today, like a mudroom and that the home also has very limited storage. They also noted that it would require a complete remodel to achieve the floor plan required if relief is not provided. Lastly the petitioner stated that they would be decreasing the net impervious surface with this project.

The petitioners provided the Board with a number of exhibits from the County GIS which show more recent development of homes on Okauchee at substandard shore setbacks.

Public Reaction: None

Decision and Action:

Mr. Bayer

I make a motion to approve the request with the following conditions and for the following reasons:

Conditions:

1. *The proposed addition shall meet a minimum shore setback of 50 feet from the Ordinary High Water Mark of Okauchee Lake.*
2. *Prior to occupancy of the new improvements, the maximum un-treated impervious surface percentage shall be permanently reduced to a maximum of 26.8% of the lot size.*

Reasons:

There is a hardship present due to the unusual shape of the lot. The extensive shore setback area makes any expansion of the structure impossible without some relief. As conditioned, the proposed improvements will not be any closer to the lake than the existing residence and would not provide a more favorable setback averaging point.

The motion was seconded by Ms. Bonniwell and carried unanimously (Mr. Schmidt recused himself from the vote on this case).

BA93: MICHAEL PAFFENROTH (OWNER)

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **approval** of a variance from the wetland/conservancy setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to permit the construction of a new single-family residence with attached garage,

Discussion between the owners (Mike and Emily Paffenroth), Board and Staff followed.

Two letters of support were submitted to the Board. One from Alan Weisman (4790 Catherine Ct.) and the other from Kurt Weisman (4650 Catherine Ct).

Public Reaction:

- Mr. Goss (4690 Cathrine Ct.) noted that he doesn't want a business on the parcel.
- Dave Kowalski (4690 Martha Ln.) was concerned about a sprawling tall residence.
- Steve Popek (21265 Weyer Rd.) noted that the ditch along the west lot line was dug by the original land owner. The lot was originally a family park. He supports the request.
- Bob Zeretzke (4720 Martha Lane) Noted that he has been living in the area for 80 years and helped dig the pond on the subject property. He supports the request
- Don Leaders (4695 Martha Ln.) supports the request.

Decision and Action:

Mr. Bayer

I make a motion to approve the request for a wetland setback variance with the following conditions and for the following reasons:

Conditions:

1. All structures shall be a minimum of 20' from Wetlands A and a minimum of 50' from Wetland B, as depicted on the 2018 Wetlands Map (Exhibit A of Staff Report)
2. All structures shall be a minimum of 75' from Wetland C, as depicted on the 2018 Wetlands Map (Exhibit A of Staff Report)
3. A revised plat of survey in accordance with the above shall be submitted Prior to the issuance of a Zoning Permit, a Plat of Survey showing the field identified wetland boundaries in addition to the staked-out locations of the proposed residence, attached garage, and any decks or patios, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division Staff for review and approval.
4. Two no-mow, no disturbance wetland buffer areas shall be established. One between Wetland B and the residence and the other between Wetland C and the residence. The wetland buffers shall extend from the on-site field located wetland boundary to a minimum depth of twenty-five (25) feet, a minimum width of fifty (50) feet and shall be located between the wetlands and proposed residence to the greatest degree practicable. If invasive species within the wetland buffer area are present, they must be removed, re-sprouts treated with herbicide, and re-seeded with a native prairie species. A Wetland Buffer Implementation Plan, including a timetable for completion, shall be submitted to the Waukesha County Planning and Zoning Division Staff for review and approval. A Shoreland Cutting Permit shall be obtained prior to the removal of any invasive species within the wetland, if applicable.
5. No land altering activity or other land disturbance is permitted within the established wetland buffer area, unless specifically authorized as part of the approved Wetland Buffer Implementation Plan.
6. In order to ensure the construction of the new residence does not result in adverse drainage onto adjacent properties and to ensure the wetland and wetland buffer area are protected from land disturbances, a detailed Grading and Drainage Plan, showing existing and proposed grades as well as the required wetland buffer, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division Staff for review and approval, prior to the issuance of a Zoning Permit.
7. A Declaration of Restrictions must be prepared noting that the Wetland Buffer Implementation Plan required in Condition No. 4 above, be permanently maintained unless modified by the Waukesha County Planning and Zoning Division Staff. The Declaration of Restrictions shall also state that staff members of the Waukesha County Department of Parks and Land Use, or its successor, shall, with ample notice, be permitted to conduct periodic inspections of the property for the purpose of verifying that the required wetland buffer has been implemented and is being maintained. Prior to the issuance of a Zoning Permit, the Declaration of Restrictions must be signed by the owners, notarized, and recorded in the Waukesha County Register of Deed's office, and a copy furnished to the Planning and Zoning Division Staff.

Please note: The required Declaration of Restrictions may be prepared either by the Waukesha County Department of Parks and Land Use – Planning and Zoning Division staff or by you or your attorney. Please contact the Planning and Zoning Division staff if you would like them to draft the Declaration of Restrictions. There is a fee of \$100.00 for this service. If you choose not to have the Declaration of Restrictions prepared by the Planning and Zoning Division staff, please submit a copy of the Declaration of Restrictions to the Planning and Zoning Division staff for review and approval, prior to recording it in the Waukesha County Register of Deed's office.

8. All wetlands must be staked with orange construction fence in addition to an erosion control barrier to ensure their protection from grading and fill activities. Waukesha County Planning and Zoning Staff must be notified that the protective fencing is in place prior to any grading activities commencing.

Reasons:

This is a unique parcel with a history as a former land fill site. There are a number of physical limitations including multiple isolated wetlands which have grown over time. A drainage ditch was installed to address drainage issues on adjacent yards as a result of the approved fill in 2010. This ditching activity has elongated the shape of Wetland A. Wetland B has also grown over time due to depressions from the removal of large trees as well as other land disturbances. When the required setbacks are applied, the multiple wetland setbacks provide an irregularly shaped building envelope and making strict compliance unnecessarily burdensome.

With the relief as prescribed above, the petitioner would have at least a 100' x 90' building envelope with which to locate improvements and would allow the petitioner to utilize the property for its permitted purpose. The setback relief takes into direct consideration the artificial nature of the wetlands onsite. Though some relief is warranted, the petitioner's current site plan and setback request exceed what staff believes is the minimum relief necessary. Having said that, the petitioner's failure to inquire about wetland setbacks prior to developing building and site plans does not constitute an unnecessary hardship.

Approval of this request would allow the owner to construct a single-family residence in a more practicably shaped building envelope. Additionally, by requiring wetland buffer areas as a condition of this approval, the reduced wetland setback should not have an adverse impact to the wetlands. Staff will review grading and drainage plan to ensure adjacent property owners aren't adversely impacted. As conditioned this approval meets the purpose and intent of the Ordinance.

The motion was seconded by Mr. Schmidt and carried unanimously.

BA94: TIMOTHY AND JULIE O’MALLEY (OWNERS)

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff offered no formal recommendation for the request for an after-the-fact variance from the offset requirements of the Waukesha County Shoreland and Protection Ordinance to legalize the construction of a two story addition with a garage addition to an existing single family residence.

Discussion between the owners (Tim and Julie O’Malley), Board and Staff followed.

The owner stated that he regretted not communicating better with his neighbors regarding the project and the changes that were made. He said that they modified the plan because the approved stair/access plan to the second level of his addition was unworkable and needed to be changed. He also said that the dormers were added to mitigate concerns large snow falls dropping off the metal roof.

A letter from Deb Krech (W285 N3116 Lakeside Rd.) was submitted to the Board.

Public Reaction:

- Deb Krech (W285 N3116 Lakeside Rd) noted that she has been frustrated with the disruption to her gardens and landscaping and was experiencing adverse drainage until the O’Malley’s fixed the grading issues.

Decision and Action:

Mr. Bayer *I make a motion to approve the request for an after-the-fact variance from the offset requirements of the Ordinance with the following conditions and for the following reasons.*

Conditions:

1. An as-built grading and drainage plan shall be submitted to the Waukesha County Planning and Zoning Division for review and approval.
2. Ice breaks shall be installed to the west side of the roof.

Reasons:

The existing detached garage currently causes drainage problems. By attaching the garage to the house with a 10 ft. offset, the drainage and overall site conditions of the property will be improved for both the property owner and their neighbor to the west. Safety is also a concern from the detached garage to the residence given our winter climate. The approved plan did indicate stairs, so it is reasonable to assume upper level space was considered with the prior approvals.

The motion was seconded by Mr. Schmidt and carried unanimously (Ms. Bonniwell recused herself from the hearing).

OTHER ITEMS REQUIRING BOARD ACTION: None

ADJOURNMENT:

Mr. Schmidt

I make a motion to adjourn this meeting at 8:52 p.m.

The motion was seconded by Mr. Bayer and carried unanimously.

Respectfully submitted,

A handwritten signature in black ink that reads "Richard Bayer". The signature is written in a cursive, flowing style.

Richard Bayer (on behalf of Richard Nawrocki)
Secretary, Board of Adjustment