

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, January 23, 2008, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Ray Dwyer
Tom Day
Rob Schuett

BOARD MEMBERS ABSENT: Walter Schmidt

SECRETARY TO THE BOARD: Sheri Mount

OTHERS PRESENT: Mary Finet, County Planning staff, BA07:086, staff rep.
Town of Merton Board of Adjustment
Harry & Victoria Mazurkiewicz, BA07:086, owners
Jim Nehmer, BA07:092, builder
Dan Connell, BA07:091, owner
Andy Apple, BA07:090, owner
Jonathan LoDuca, BA07:089, owner
Steven Farchmin, BA07:091, neighbor
Gerald & Glenda Dolphin, BA07:093, owners
Fred Storm, BA07:091, neighbor
Gail Strong, BA07:065, owner
Russell Sack, BA07:094, owner
Martin Holzman Sr., BA07:094, owner

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, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Day *I make a motion to approve the Summary of the Meeting of December 12, 2007.*

The motion was seconded by Mr. Bartholomew. Mr. Schuett abstained as he was not present at the meeting of December 12, 2007. The vote carried 4-0.

NEW BUSINESS:

BA07:024 PETER AND DARCY McCORMICK

Mr. Dwyer *I make a motion to convene in closed session pursuant to Section 19.85(1)(g) Wisconsin Statutes to confer with legal counsel from the Waukesha County's Corporation Counsel's office who is rendering oral or legal advice concerning strategy to be adopted by the Waukesha County Board of Adjustment with respect to litigation in which it is involved regarding Peter McCormick and Darcy McCormick v. Waukesha County Board of Adjustment, Wisconsin Circuit Court Case No. 07-CV-1542.*

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

A roll call vote was taken.

Rob Schuett: *Aye.*
Tom Day: *Aye.*
Ray Dwyer: *Aye.*
Bob Bartholomew: *Aye.*
James Ward: *Aye.*

Mr. Bartholomew *I make a motion to reconvene in open session.*

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

A roll call vote was taken.

Rob Schuett: *Aye.*
Tom Day: *Aye.*
Ray Dwyer: *Aye.*
Bob Bartholomew: *Aye.*
James Ward: *Aye.*

BA07:086 HARRY AND VICTORIA MAZURKIEWICZ

Mr. Bartholomew *I make a motion to approve the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

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

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the road setback, offset, open space and off-street parking requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the proposed remodeling and expansion of Victoria's Pub & Grill, subject to the following conditions:

1. The addition must extend no more than 14 ft. from the existing east wall of the building, with an overhang not to exceed 2 ft. in width.
2. The addition may be located no closer to Wisconsin Avenue than the existing building.
3. The floor area of the addition shall not exceed 660 sq. ft., as proposed.
4. Prior to the issuance of a Zoning Permit, a complete set of plans for the proposed addition, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location of the proposed addition, 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.
6. Prior to the issuance of a Zoning Permit, an amendment to the Site Plan/Plan of Operation must be reviewed and approved by the Town of Oconomowoc Plan Commission and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff. All prerequisite conditions of approval of the Site Plan/Plan of Operation must be complied with and the Site Plan/Plan of Operation Permit must be issued, prior to the issuance of a Zoning Permit for the proposed remodeling and expansion.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variations require a demonstration that denial of the variations would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Due to the size and configuration of the lot, hardships exist with respect to the requested variations. Since the lot area is only approximately 9,287 sq. ft., conformance with the open space requirement of 10,500 sq. ft. is impossible. Conformance with the road setback requirement would be unnecessarily burdensome because it would result in an awkward interior layout. Granting the requested road setback variance will result in an addition that is no closer to the road than the existing building, which will not be a safety hazard and which will allow the addition and the existing building to have a continuous building facade, in keeping with other development in this downtown area of Okauchee. The requested offset variance is minor and will allow a more useful interior layout, while still resulting in an expanded building in keeping with other development in the area. Finally, the

parking lot, while not in compliance with the requirements of the Ordinance, provides adequate parking for the business and the apartment. Therefore, the approval of variances from the road setback, offset, open space and off-street parking requirements, with the recommended conditions, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

BA07:089 JONATHON AND JULIE LODUCA

Mr. Dwyer

*I make a motion to **deny** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

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

The Planning and Zoning Division staff's recommendation was for **denial** of the requested variances from the road setback and floor area ratio and **denial** of the requested special exception from the offset requirements of the Waukesha County Shoreland and Floodland Protection Ordinance.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

A variance requires a demonstration that a denial of the variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It has not been demonstrated that denial of the requested variances would result in an unnecessary hardship. Variances should only be granted to accommodate physical limitations on a property that prevent a reasonable use of the property; not to accommodate the personal preferences or needs of the current property owner. Further, strict adherence to the district regulations does not prevent a reasonable use of the property. Case law has repeatedly held that petitioners are not entitled to the "highest and best use" of a property, but only reasonable use. This property could accommodate a floor area of almost 2,400 sq. ft. without the need for a floor area ratio variance; 2,400 sq. ft. is a reasonable use for this non-conforming property. It is not necessary to have 2,613 sq. ft. of floor area (not including the exposed basement level), the residence located 2.3 ft. from the lot line and within the road-right-of-way to have a reasonable use of this property. There is ample opportunity to build a structure on this property in a completely conforming location and that will meet the floor area requirements. Furthermore, the existing structures on the property already provide a reasonable use that is not unnecessarily burdensome. There are no unique property features to justify granting of the requested variances for the proposed addition. In addition, allowing the floor area to be increased to 2,613 sq. ft. on a lot of this size would be detrimental to the surrounding properties and to the natural resources in the area. A special exception from the offset requirements has also been requested. A special exception differs from a variance in that a special exception does not necessarily require the

demonstration of an unnecessary hardship. However, when granting special exceptions, the Board must still consider whether the proposed special exception would be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects and the Board may impose such restrictions or conditions as they deem necessary for the protection of adjacent properties and the public interest and welfare. This addition is going to take an already extremely non-conforming structure and make it even more non-conforming. This will have the effect, especially when viewed in light of cumulative impacts, to be hazardous, harmful and noxious to the surrounding neighborhood. This is an extremely dangerous road due to the proliferation of structures in and near the road right-of-way. This structure is already located within the road right-of-way and allowing it to be increased in size is contrary to the purpose and intent of the Ordinance. This is especially true as the existing conditions already provide a reasonable use of the property and there is plenty of room to build a completely conforming structure on this property. The request does not meet any of the legal standards for the granting of a variance or a special exception and therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

BA07:090 ANDY APPLE

Mr. Bartholomew

*I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

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

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Waukesha County Zoning Code, subject to the following conditions:

1. There shall be no expansion of the footprint of the building.
2. The Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
3. Prior to the issuance of a Zoning Permit, a complete set of final house plans, in conformance with all conditions, must be submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will permit a reasonable use of the property. As the existing structure is only slightly non-conforming to the wetland setback requirements, allowing a renovation and remodel within the existing footprint of the

building will not be detrimental to the surrounding neighborhood or the natural resources in the area. Furthermore, it is within the public interest to preserve historic agricultural buildings where practical. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA07:091 CONNELL REVOCABLE LIVING TRUST

Mr. Dwyer *I make a motion to **deny** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

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

The Planning and Zoning Division staff's recommendation was for **denial** of the requested variances from the offset, floor area ratio and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

A variance requires a demonstration that a denial of the variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It has not been demonstrated that denial of the requested variances would result in an unnecessary hardship. Variances should only be granted to accommodate physical limitations on a property that prevent a reasonable use of the property; not to accommodate the personal preferences or needs of the current property owner. The fact that the house was designed before the applicant learned of the regulations is not justification for granting of the variance. A 3,097 sq. ft. house, 10.2 ft. from lot line with a footprint of 2,704 sq. ft. is not necessary to provide a reasonable use of this property. Further, strict adherence to the district regulations does not prevent a reasonable use of the property. Case law has repeatedly held that petitioners are not entitled to the "highest and best use" of a property, but only reasonable use. The house can be easily redesigned to accommodate the district regulations that would allow for a 2,535 sq. ft. structure, located 10.7 sq. ft. from the lot lines, with a footprint of 1,902 sq. ft, which clearly provides a reasonable use of this property and is not unnecessarily burdensome. Further, there are no unique property features to justify granting of the requested variances for the proposed structures. In addition, allowing a structure this large on a lot of this size would be detrimental to the surrounding properties and to the natural resources in the area. The request does not meet any of the legal standards for the granting of a variance and therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

BA07:092 RICHARD AND LEIGH TRAVIS (OWNERS) PATRICK FALVEY (PETITIONER)

Mr. Day

*I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

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

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a special exception from the offset requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, subject to the following conditions:

1. The second story shall be built within the existing footprint of the building.
2. If the cost of the project exceeds the estimate, the actual cost must be disclosed to the Waukesha County Department of Parks and Land Use. If the cost will exceed 50% of the value of the building, a variance will be required at that time.
3. The Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
4. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with all conditions, must be submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will permit a reasonable use of the property. As the existing residence is only slightly nonconforming to the offset requirements, allowing a second story addition within the existing footprint of the building will not be detrimental to the surrounding neighborhood or the natural resources in the areas and does not further encroach on the side lot line than what presently exists. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA07:093 GERALD DOLPHIN LIVING TRUST

Mr. Bartholomew

*I make a motion to **approve** the request for variances from the road setback, offset, and floor area ratio requirements and **denial** of the request for a special exception from the accessory building floor area ratio requirements of the Waukesha County Shoreland and Floodland*

Protection Ordinance, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report, with the following changes to the conditions:

Condition No 1. shall be corrected to read: "A Certified Survey Map must be prepared by a registered land surveyor and submitted to the Town of Merton and the Planning and Zoning Division staff for review and approval to legally combine the parcels. The Certified Survey Map must indicate that the three lots shall remain together and shall not be sold separately. The Certified Survey Map must be recorded in the Waukesha County Register of Deed's office, prior to the issuance of a Zoning Permit for the new residence and detached garage."

Condition No. 4 and 6 shall be removed and replaced with the following condition: "The detached garage must remain "as is". It shall not be removed or enlarged."

Condition No. 5 shall be amended to read: "The total floor area on the property shall not exceed 15.2% of the combined lot area. This will result in a total floor area of approximately 2,780 sq. ft."

All references to the construction of an attached or detached garage shall be removed from all conditions.

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

The Planning and Zoning Division staff's recommendation was for **approval** of the requested variances from the road setback and offset requirements, **denial** of the requested variance from the floor area ratio requirements and **approval** of the requested special exception from the accessory building floor area ratio requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, subject to the following conditions:

1. A Certified Survey Map must be prepared by a registered land surveyor and submitted to the Town of Merton and the Planning and Zoning Division staff for review and approval to legally combine the parcels. The Certified Survey Map must indicate that the two lots shall remain together and shall not be sold separately. The Certified Survey Map must be recorded in the Waukesha County Register of Deed's office, prior to the issuance of a Zoning Permit for the new residence and detached garage.
2. All existing structures must be removed within 60 days of the issuance of a Zoning Permit for the new residence and detached garage.

3. The proposed residence must be constructed utilizing the existing foundation. The residence and all other appurtenances shall be no closer to the north and south lot lines and the edge of the road right-of-way than the existing structure.
4. The detached garage must be located at least 10 ft. from the north and south lot lines and 28.5 ft. from the edge of the road right-of-way.
5. The total floor area on the property shall not exceed 15% of the combined lot area. This will result in a total floor area of approximately 2,736 sq. ft.
6. There must be a garage constructed and it must be at least 400 sq. ft. in size.
7. The structure and all appurtenances must be located a minimum of 75 ft. from the Ordinary High Water Mark of Moose Lake.
8. No retaining walls are permitted within 75 ft. of the Ordinary High Water Mark of Moose Lake.
9. No retaining walls will be permitted within 5 ft. of the side lot lines, without approval from the Town of Merton Plan Commission and the Waukesha County Park and Planning Commission.
10. Prior to the issuance of a Zoning Permit, a complete set of building plans (including the residence and detached garage), in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
11. Prior to the issuance of a Zoning Permit, a Stake-Out Survey showing the location of the proposed residence, attached garage, any proposed decks or patios, as well as any proposed sidewalks, stairs, walkways and/or retaining walls, 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.
12. In order to ensure the construction of a new residence and attached garage does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, 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. The intent is that the property be graded according to the approved plan and also to provide that the drainage remain on the property or drain to the lake and not to the neighboring properties or the road. This Grading Plan may be combined with the Plat of Survey required in Condition No. 12.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The conditional approval of this request, with the recommended conditions, will permit a reasonable use of the property. A variance requires a demonstration that a denial of the variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It has not been demonstrated that denial of the requested floor area ratio variance would result in an unnecessary hardship. Variances should only be granted to accommodate physical limitations on a property that prevent a reasonable use of the property; not to accommodate the personal preferences or needs of the current property owner. It is not necessary to have 3,045 sq. ft. of living and storage space (not including the fully exposed basement level) to provide a reasonable use of this non-conforming property. Further, strict adherence to the district regulations does not prevent a reasonable use of the property. Case law has repeatedly held that petitioners are not entitled to the “highest and best use” of a property, but only reasonable use. The house and detached garage can be easily redesigned to accommodate the district regulations that would allow for a 2,736 sq. ft. of living and storage space, which provides a reasonable use of this property and is not unnecessarily burdensome. Further, there are no unique property features to justify granting of the requested variances for the proposed structures. It is necessary to consider the cumulative effects of granting similar requests; with this in mind, allowing a structure as large as requested on a lot of this size would be detrimental to the surrounding properties and to the natural resources in the area. The conditional approval allows for the existing foundation of the residence to be utilized in an effort to minimize land disturbance and waste of resources; however, the offset variance for the garage is not justified. The area of the garage is very flat and the garage can be easily rebuilt in a completely conforming location. The Planning staff recommends approval of the special exception from the accessory building floor area ratio requirements. A special exception differs from a variance in that a special exception does not necessarily require the demonstration of an unnecessary hardship. However, when granting special exceptions, the Board must still consider whether the proposed special exception would be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects and the Board may impose such restrictions or conditions as they deem necessary for the protection of adjacent properties and the public interest and welfare. This property can accommodate a 547 sq. ft. garage without a special exception; however the other garages in the immediate area all encompass slightly more than 3% of their respective lot areas. By restricting the total floor area to 15% of the lot area and requiring the garage to be a minimum of 400 sq. ft., this allows the owners to decide how to best allocate their square footages, while still providing for a small two-car garage. This ensures that additional approvals will not be necessary in the future to accommodate construction of a garage. Therefore, based on all preceding information, the conditional approval and partial denial of this request is in conformance with the purpose and intent of the Ordinance.

BA07:094 RUSSELL & KATHLEEN SACK AND MARTIN E. HOLZMAN SR.

Mr. Bartholomew *I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

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

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the lot size, lot width and lake frontage requirements for the Sack property and **approval** of the request for variances from the lot width and lake frontage requirements for the Holzman property to allow the owners to adjust the lot line as proposed, subject to the following conditions:

1. The lot line adjustment must be accomplished by a Certified Survey Map. The Certified Survey Map will need to be approved by the Town of Eagle and the Waukesha County Planning and Zoning Division Staff and recorded in the Waukesha County Register of Deeds office.
2. The lot line adjustment must be as depicted on Exhibit A.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

As conditioned, the approval of this request will result in a better situation for both properties and it eliminates the encroachment of two structures (boathouse on the Sack property and the fence on the Holzman property) and does not significantly alter the dimensional requirements of either. In addition, a Certified Survey Map will clear up the existing legal description for both properties. The approval of this request, as conditioned, would not be contrary to the public interest. The approval of this request would be in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:**BA07:065 GAIL STRONG**

Mr. Day *I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

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

The Planning and Zoning Division staff's recommendation was for **approval** of the request to amend Condition No. 2 of the Board's October 24, 2007, decision. The recommended revised condition is as follows:

The new garage shall be at least seven (7) ft. from the east and west lot lines, a minimum of five (5) ft. from the north lot line, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform to the offset/setback requirements. The now existing garage foundation may remain in its current location (4 ft. 8 in. from the road right-of way at the southeast corner and 4 ft. 3 in. from the road right-of-way at the southwest corner per the Plat of Survey dated 12/1/2007).

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

The reason for this recommendation is that the foundation has already been certified at the required one foot above the floodplain elevation and to achieve this required cement footings. It is not necessary to require this substantial foundation to be removed and poured again to gain the previously required 8-9 inches since the foundation is located over 25 ft. from the traveled road. The approval of the request to amend Condition No. 2 of the Board's October 24, 2007, decision as recommended, does not appear to alter the spirit and intent of the Board's original decision. Therefore, the approval of this request, as recommended, is in conformance with the purpose and intent of the Ordinance.

ADJOURNMENT:

Mr. Day *I make a motion to adjourn the meeting at 9:45 p.m.*

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

Respectfully submitted,

Sheri Mount
Secretary, Board of Adjustment