

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, February 27, 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

BOARD MEMBERS ABSENT: Walter Schmidt

SECRETARY TO THE BOARD: Peggy Tilley
Mary Finet

OTHERS PRESENT: Richard L. Mace, Planning and Zoning Division Manager
Atty. Debbie Price, Waukesha County Corporation Counsel
David Schmidt, BA08:001, neighbor
Gary Panka, BA08:001, neighbor
Joe Igl, BA08:001, petitioner
Jeff Stoll, BA08:003, owner
Dennis Becker, BA08:002, petitioner
Torri Becker, BA08:002, owner
Pat Seegers, BA08:001, neighbor
Kent Brooks, BA08:003, neighbor
Karen Brooks, BA08:003, neighbor
Mark Cartwright, BA08:004, petitioner
Daniel Mervin, BA08:003, neighbor
Bob Sokolowicz
Atty. Dean Richards, BA07:024, petitioners' attorney
Charles Keepman, BA07:075, owner
Constance L. Bauer, BA07:024, court reporter
Peter Davis, BA08:003, petitioner
Mike Iverson, BA07:024, petitioners' carpenter
Richard Larkin, BA07:024, petitioners' appraiser
Tom Sadowske, BA07:024, petitioners' mason
Peter McCormick, BA07:024, 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 January 23, 2008, with the following modifications:*

1. *The detail on the roll call to go into and come out of closed session for BA07:024 be added.*
2. *The first sentence of Condition No. 2 under BA07:092 shall be modified to read "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."*
3. *Line 16 of the reasons for BA07:093 shall be modified to read "...and detached garage can be easily redesigned..."*

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

NEW BUSINESS:

BA08:001 IH WAUKESHA, LLC., C/O BERG MANAGEMENT CO (OWNERS) JOSEPH AND SHARON IGL (PETITIONERS)

Mr. Day *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. Dwyer and failed with two yes votes and two no votes.

Mr. Bartholomew *I make a motion to approve the request with the condition that a deed restriction be prepared and accepted by the Waukesha County Corporation Counsel's Office that Lots 4 and 5 not be sold separately unless the accessory structures are removed or a residence is constructed on Lot 5.*

The motion was seconded by Mr. Ward and failed with two yes votes and two no votes.

Since the Board was equally divided on both votes, the request for a variance was not approved.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for a variance from the accessory building without a principal residence provision of the Waukesha County Zoning Code.

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

A variance requires a demonstration that denial of the requested variances 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. The petitioner could combine, by Certified Survey Map, the subject property with the adjacent property which they also own and which contains a single-family residence thus eliminating the need for the variance. Alternatively, the petitioner could construct a single-family residence on the subject property. It should be noted that the

petitioner would still need to obtain approval from the Town Plan Commission for more than two accessory buildings.

It has not been demonstrated that the denial of the requested variance would result in an unnecessary hardship. Furthermore, it has not been demonstrated that there are unique physical conditions on the property which prevent compliance with the Ordinance. Therefore, the approval of this request would not be within the purpose and intent of the Ordinance.

BA08:002 TORRI AND DENNIS BECKER

Mr. Day *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. Dwyer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for variances from the road setback, 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:

The Staff feels that the Board should uphold their two previous decisions on similar requests for an attached garage on the subject property. There is ample area for parking between the house and the roadway. The lot is extremely small and does not have enough room to construct an attached garage. The proposed garage is located entirely within the established road right-of-way of Geitzen Drive and the staff feels that it will adversely affect the public's right to the safe use of the roadway. The petitioner currently has reasonable use of the property with a two-story residence with a deck and a fully-exposed basement. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances 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. The approval of this request would not be within the purpose and intent of the Ordinance.

BA08:003 JEFF STOLL (OWNER) PETER DAVIS (PETITIONER)

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 and with the following additional reasons: The structure is located in the floodway according to current FEMA maps and the proposed project will exceed 50% of the fair market value of the non-conforming building.*

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

The Planning and Zoning Division staff's recommendation was for **denial** of the request for variances from the shore and floodplain setback, floor area ratio, remodeling a non-conforming structure in excess of 50% of its fair market value, parking and C-1 Existing Floodplain Overlay District requirements as well as a special exception from the road setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance.

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

The new entryway addition will meet the required road setback from Venice Beach Road but neither of the proposed additions will meet the 35 ft. road setback requirement from Delafield Road. The additions will not be closer to the road than the existing structure; however, they will increase the bulk of a structure that is already too close to the road rights-of-way. The proposed addition will be located slightly closer to the shore than the existing residence and the staff does not feel that it is appropriate to make the existing structure even more non-conforming due to shore setback. The adjacent property to the north is vacant and the adjacent property to the east contains a residence, which is not considered a similar use to the tavern/restaurant structure on the subject property; therefore, the shore and road setback averaging provisions of the Ordinance do not apply. The property is currently non-conforming due to floor area ratio and the current floor area of 4,505 sq. ft. more than provides a reasonable use of the property. Allowing the additions will only increase the severity of the non-conforming situation on the property.

There is currently a limited amount of parking on the site. The granting of the variances to allow the expansion of the structure will further reduce the amount of parking on site which may require patrons of the restaurant/tavern to park along the roadways causing a potential hazard to the public's safe use of the roadways. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances 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.

By the petitioner's own admission, the existing structure is in need of repair due to a poorly constructed dining area, leaks, treacherous down slopes and tripping hazards. The petitioner states that the structure may be in danger of mold and water infiltration. The Planning and Zoning Division staff does not feel that it would be within the intent of the C-1 EFD district to grant the requested variances which will prolong the life of an extremely nonconforming structure located mostly in the floodplain and partially within the floodway, where structures for human habitation are otherwise prohibited. The structure being located in the floodway poses a potential hazard to the welfare and safety of the public as the floodway is an area of moving water in which structures may be displaced by floodwaters.

The Planning and Zoning Division staff feels that the restaurant/tavern structure should be removed and the property maintained in permanent open space as indicated in NR 116. The Ordinance provides that the modification or addition to a structure may not decrease floodwater conveyance or storage capacities. The expansion of the structure and/or floodproofing the existing structure will most likely displace more floodwaters potentially impacting the nearby

properties. Therefore, the petitioner must provide adequate flood storage compensation for any lost floodplain storage. The Planning and Zoning Division staff fails to see how or where the floodwater compensation storage area could be achieved and would not recommend approval of the required amendments to the floodplain zoning maps and the floodplain zoning ordinance to allow such modifications to the floodplain.

If the structure were removed from the property, as may result from the denial of the variances as recommended herein, the property would still maintain value as it could be used as a recreational area for the owner of the property. A pier allowing boat storage and direct access to the river and lake would still be allowed. For the reasons stated above, the Planning and Zoning Division Staff feels that the proposed additions and remodeling to the structure would adversely affect the public interest/welfare and would be detrimental to nearby properties/improvements. Therefore, the approval of this request would not be within the purpose or intent of the Ordinance and would violate the requirements of NR116 Wisconsin Administrative Code which specifies that such construction in the floodway cannot be rebuilt, remodeled or added onto as set forth in the Waukesha County Shoreland and Floodland Protection Ordinance, Section 38.

BA08:004 MARK A. CARTWRIGHT (PETITIONER) KENNETH LANG (OWNER)

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. Bartholomew and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the road setback requirements of the Ordinance.

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

The approval of this request will allow the creation of a public road to serve three (3) future single family lots. It is not possible to construct the public road in any other location due to land ownership issues. A public road is necessary to safely and adequately provide public services to these future lots. The barn is located on the opposite side of the proposed road than any of the proposed lots and therefore will not create any vision hazards for future driveways. In addition, there is already a driveway in the location of the future road; the future road for the three (3) lots will not substantially alter the existing situation. Therefore, the approval of this request will be in conformance with the purpose and intent of the Ordinance.

BA07:024 PETER AND DARCY MCCORMICK

Mr. Bartholomew

*I move that the request for variances be **denied**, for the following reasons:*

- *The building that has been reconstructed is an accessory building and not a boathouse.*

- *The non-conforming accessory building and adjacent deck have been enlarged and expanded without Permits.*
- *The reconstruction and remodeling of the non-conforming accessory building constitutes “modernization”, pursuant to the Waukesha County Shoreland and Floodland Protection Ordinance, and total repairs to the point of replacement.*
- *The complete reconstruction and remodeling of the non-conforming accessory building and the reconstruction and reconfiguration of the adjacent deck and stairs exceeds ordinary maintenance and repair and goes beyond repairs necessary to maintain the structure in a safe and healthful manner. Therefore, the majority of those costs should be included in the 50% limit.*
- *The Board of Adjustment finds that a reconstruction cost of approximately \$55,500.00 should be included in the 50% limit.*
- *The Board of Adjustment has considered the appraisal prepared by Larkin Appraisals, Inc. that was submitted by the petitioners, but has not utilized it in establishing the fair market value of the structure because it does not consider the apparent deteriorated condition of the structure prior to its reconstruction and remodeling and significantly inflates the value of the structure as it existed prior to its reconstruction and remodeling.*
- *The fair market value of the accessory building, prior to its reconstruction, was \$36,332, based upon Town assessment records.*
- *The cost of reconstructing and remodeling the non-conforming accessory building and reconstructing and reconfiguring the adjacent deck and stairs, which are subject to the 50% rule, exceed 50% of the fair market value of the structure.*
- *Denial of the requested variances would not result in an unnecessary hardship, which 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 an owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested variances would not be unnecessarily burdensome because the petitioners would still have a reasonable use of the property with the existing residence, which has an attached garage and a deck.*

- *Section 59.69 (10 m) of the Wisconsin State Statutes is not applicable in this case because there is no evidence that the structure was damaged due to “violent wind, vandalism, fire, flood, ice, snow, mold, or infestation” on or after March 2, 2006.*
- *Granting the requested after-the-fact variances to authorize reconstruction of the non-conforming accessory building would only serve to prolong the existence of a severely non-conforming structure, whereas it is the intent of the 50% limit that non-conforming structures should be eliminated over time, not that they be rebuilt in stages.*
- *There are no unique property features that justify granting the requested variances.*
- *Permitting the reconstructed accessory building and deck to remain in the shore setback area is not conducive to protecting the water quality of the lake and is contrary to the public interest and to the purpose and intent of the Ordinance.*

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

The Planning and Zoning Division staff’s recommendation was for **denial** of the request for after-the-fact variances from the shore and floodplain setback requirements and from the remodeling a non-conforming structure in excess of 50% of its fair market value provision of the Waukesha County Shoreland and Floodland Protection Ordinance, to authorize the reconstruction and remodeling of a non-conforming accessory building and the reconstruction and reconfiguration of a non-conforming wrap around wooden deck and stairs adjacent to that structure. The Planning and Zoning Division staff also recommended that the Waukesha County Board of Adjustment make the following findings when denying the request for variances:

- The building that has been reconstructed is an accessory building and not a boathouse.
- The non-conforming accessory building and adjacent deck have been enlarged and expanded without Permits.
- The reconstruction and remodeling of the non-conforming accessory building constitutes “modernization” and total repairs to the point of replacement.
- The complete reconstruction and remodeling of the non-conforming accessory building and the reconstruction and reconfiguration of the adjacent deck and stairs exceeds ordinary maintenance and repair and goes beyond repairs necessary to maintain the structure in a safe and healthful manner. Therefore, the majority of those costs should be included in the 50% limit.
- The Board of Adjustment adopts the staff’s analysis of what items should be included in the 50% limit, as set forth in the Memorandum dated February 27, 2008, and finds that a

reconstruction cost of \$61,400.00 should be included in the 50% limit.

- The Board of Adjustment has considered the appraisal prepared by Larkin Appraisals, Inc. that was submitted by the petitioners, but has not utilized it in establishing the fair market value of the structure because it mischaracterizes the structure as a boathouse, does not consider the apparent deteriorated condition of the structure prior to its reconstruction and remodeling, and significantly inflates the value of the structure as it existed prior to its reconstruction and remodeling.
- The fair market value of the accessory building, prior to its reconstruction, was \$36,332, based upon Town assessment records.
- The cost of reconstructing and remodeling the non-conforming accessory building and reconstructing and reconfiguring the adjacent deck and stairs, which are subject to the 50% rule, exceed 50% of the fair market value of the structure.
- Denial of the requested variances would not result in an unnecessary hardship, which 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 an owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested variances would not be unnecessarily burdensome because the petitioners would still have a reasonable use of the property with the existing residence, which has an attached garage and a deck.
- Section 59.69 (10 m) of the Wisconsin State Statutes is not applicable in this case because there is no evidence that the structure was damaged due to “violent wind, vandalism, fire, flood, ice, snow, mold, or infestation” on or after March 2, 2006.
- Granting the requested after-the-fact variances to authorize reconstruction of the non-conforming accessory building would only serve to prolong the existence of a severely non-conforming structure, whereas it is the intent of the 50% limit that non-conforming structures should be eliminated over time, not that they be rebuilt in stages.
- There are no unique property features that justify granting the requested variances.
- Permitting the reconstructed accessory building and deck to remain in the shore setback area is not conducive to protecting the water quality of the lake and is contrary to the public interest and to the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA07:045 CHARLES AND PATRICIA KEEPMAN

Mr. Bartholomew

I move to reconsider our approval of October 24, 2007.

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

Mr. Dwyer *I move to amend our approval of October 24, 2007, to allow the petitioners to eliminate a proposed attached garage that was part of the original proposal and replace that area with living space, as recommended by the Planning and Zoning Division staff in the Memorandum dated February 27, 2008.*

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

The Planning and Zoning Division staff's recommendation was for **approval** of the petitioners' request to eliminate a proposed attached garage that was part of the original proposal and replace that area with living space.

The reasons for the recommendation, as stated in the Memorandum dated February 27, 2008, are as follows:

The proposed modification to eliminate the originally proposed attached garage and replace that area with living space does not change size and location of the approved structure and the existing detached garage will provide adequate garage space on the property.

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 12:28 a.m.*

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

Respectfully submitted,

Peggy S. Tilley
Secretary, Board of Adjustment