

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, March 26, 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:** Mary E. Finet

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Kurt and Erin Drier, BA07:081, petitioners  
Bob Simandl, BA08:007, petitioner  
Ron Konieczka, BA08:006, The Evergreens Condominium  
Board Member/petitioner  
Bill MacLachlan, Hill Hiker, Inc., BA08:006, contractor  
Chris Schmidt, BA08:006, The Evergreens Condominium  
Board Member  
Carol Konieczka, BA08:006, The Evergreens Condominium  
Unit Owner  
Judith Murel, BA08:006, The Evergreens Condominium Unit  
Owner  
Jerry and Mary Hegarty, BA08:008, petitioners  
Michael Casper, BA08:008, architect  
Sheri Mount, Waukesha County Dept. of Parks and Land Use

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. Bartholomew                      *I move to approve the Summary of the Meeting of February 27, 2008.*

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

**NEW BUSINESS:**

**BA08:007 BOB AND PEGGY SIMANDL (petitioners)**  
**JOAN SWEET (architect)**

Mr. Bartholomew                      *I move to approve the request, in accordance with the staff's recommendation, with the conditions set forth 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 to remodel a non-conforming residence in excess of 50% of its fair market value and from the floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the proposed remodeling and expansion of the residence, the proposed addition to the attached garage, the proposed rebuilding and reconfiguration of an elevated wooden deck on the main level of the residence, and the proposed replacement of a ground level wooden deck adjacent to the exposed basement of the residence with a concrete patio, subject to the following conditions:

1. The Certified Survey Map combining the four parcels into one lot must receive preliminary approval from the Town of Ottawa and from the Waukesha County Department of Parks and Land Use - Planning and Zoning Division, prior to the issuance of a Zoning Permit for the proposed remodeling and expansion of the residence, the proposed rebuilding and reconfiguration of the elevated wooden deck on the main level of the residence, or the proposed replacement of the ground level wooden deck adjacent to the exposed basement of the residence with a concrete patio.
2. The proposed attached garage addition will not conform with the minimum offset requirement of 30 ft. until the parcels have been combined. Therefore, the Certified Survey Map combining the four parcels into one lot must be recorded in the Waukesha County Register of Deeds office, prior to the issuance of a Zoning Permit for the attached garage addition.
3. The proposed concrete patio adjacent to the basement level of the residence and the proposed reconfigured elevated wooden deck shall not extend any closer to the lake than the existing ground level wooden deck on the lake side of the residence.
4. Prior to the issuance of a Zoning Permit, a Plat of Survey including all four parcels and showing the location of all existing structures, the proposed additions to the residence, the proposed reconfigured deck on the main level of the residence, and the proposed patio, in conformance with the condition noted above, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades, 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. This is to ensure that the proposed construction does not result in adverse drainage onto adjacent properties. 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. The following information must also be submitted along with the Grading and Drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 4.

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. Denial of the requested variance to remodel a non-conforming structure in excess of 50% of its fair market value would place limits on the cost of remodeling that would be unnecessarily burdensome and serve no useful purpose, since the residence is a substantial structure that is likely to remain in its non-conforming location for the foreseeable future. It would also be unnecessarily burdensome to deny the request for a floodplain setback variance, as that would prohibit any rebuilding or reconfiguration of the two existing wooden decks. The proposed replacement and reconfiguration of the two existing wooden decks will result in an elevated deck, with a small screen porch, and a ground level patio that will extend no closer to the floodplain than the existing ground level wooden deck adjacent to the exposed basement of the residence. Both the proposed reconfigured elevated deck on the main level of the residence and the proposed replacement patio conform with all locational requirements, except for floodplain setback. The elevated main level deck is elevated significantly above the 100-year flood elevation and both the proposed reconfigured main level deck the proposed replacement patio will extend no closer to the floodplain than the existing ground level wooden deck. Therefore, the proposed improvements are not contrary to the public interest and the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA08:006 THE EVERGREENS CONDOMINIUMS c/o Ron Konieczka, Board Member and petitioner), Bill MacLachlan, Hill Hiker, Inc. (contractor)**

Mr. Day

*I move to **approve** the request, in accordance with the staff's recommendation, with the conditions set forth 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 variations to permit a second access to the lake and from the shore and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the installation of an inclined elevator system at "The Evergreens Condominiums", subject to the following conditions:

1. No trees more than six (6) inches in diameter shall be removed to accommodate the installation of the inclined elevator system.
2. The exit/entry platforms for the inclined elevator system shall be the minimum size necessary for safe entry and exit to the inclined elevator.

3. The entry/exit platform at the bottom of the incline elevator system shall be installed outside of the 100-year floodplain (100-year flood elevation = 899.9 ft. above mean sea level) and as far from the lake as possible.
4. No fill shall be permitted to be placed within the 100-year floodplain to accommodate the installation of the inclined elevator system.
5. Prior to the issuance of a Zoning Permit, a detailed Site Plan of that portion of the property where the inclined elevator system will be installed, in conformance with the above conditions, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval. The Site Plan must be drawn to scale and must show, at a minimum, the proposed location of the inclined elevator system and all appurtenances, the 100-year flood elevation line, two (2) ft. interval contour lines, the location of the existing concrete stairs, the location of the existing boathouse, and the location, size and species of any trees over six (6) inches in diameter within twenty (20) ft. of the inclined elevator system.

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. Denial of the requested variance to permit a second access to the lake would be unnecessarily burdensome because it would preclude the installation of an inclined elevator system without removal of the existing concrete stairs. Further, given the location of the steep slopes, it would be impossible to install an incline elevator system in compliance with the shore and floodplain setback requirements. The proposed inclined elevator system will be ADA (Americans with Disability Act) compliant and will provide a safer access to the lake, down an extremely steep slope. Therefore, the approval of this request, with the recommended conditions, will not adversely affect the lake, is not contrary to the public interest, and is in conformance with the purpose and intent of the Ordinance.

**BA08:008 JERRY AND MARY HEGARTY (petitioners)**  
**MICHAEL CASPER (architect)**

Mr. Dwyer

*I move 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 special exception from the offset requirement and a variance 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 permit the proposed remodeling and expansion of the Hegarty residence, subject to the following conditions:

1. The additions to the residence shall extend no closer to the north lot line than the existing residence.
2. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades, 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. This is to ensure that the proposed construction does not result in adverse drainage onto adjacent properties. 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. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage.

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

Variances require a demonstration that denial of the requested 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. Denial of the requested variance to remodel a non-conforming structure in excess of 50% of its fair market value would place limits on the cost of remodeling that would be unnecessary burdensome and serve no useful purpose.

Further, the residence is a substantial structure that, when the three (3) ft. wide overhangs are not included, is only slightly non-conforming with respect to the minimum offset requirement from the north lot line (17 ft. whereas a minimum of 20 ft. is required). Assuming the overhangs of the remodeled residence would remain three (3) ft. wide, denial of the requested special exception would require the proposed second floor and basement additions to be setback six (6) ft. from the existing north wall of the residence. Even if the overhangs of the remodeled residence are reduced to two (2) ft., which is not recommended because it is felt the three (3) ft. overhangs are an important design feature that is desirable to retain in the remodeled residence, denial of the requested special exception would require the proposed second floor and basement additions to be setback three (3) ft. from the existing north wall of the residence. Either option would be awkward and aesthetically unappealing and not in conformance with the purpose and intent of the Ordinance. Finally, approval of the requested special exception from the offset requirement and of a variance to remodel a non-conforming structure in excess of 50% of its fair market value will not increase the degree of non-conformity, will not adversely affect the adjacent property, and is not contrary to the public interest. Therefore, the approval of this request is in conformance with the purpose and intent of the Ordinance.

**OTHER ITEMS REQUIRING BOARD ACTION:**

**BA08:07:081 KURT DRIER**

Mr. Bartholomew                    *I move to reconsider the conditions of our approval of November 14, 2007.*

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

Mr. Bartholomew                    *I move to amend our approval of November 14, 2007, to eliminate Condition No. 1 and amend Condition No. 5 to read as follows: "The residence must be removed prior to the issuance of a Zoning Permit for the new residence and attached garage. The detached garage must be removed no later than twelve (12) months after the issuance of a Zoning Permit for the new residence and attached garage."*

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

The reasons for the revised conditions, as stated by the Board at the hearing, are as follows:

The intent of Condition No. 1 of the original decision, ("A full basement exposure is prohibited") was to control the amount of grading on the property. Since the revised plans now propose minimal grading and the structure meets all other provisions of the Board's original decision, the current plans meet the intent of the Board's decision. It is also reasonable to allow the existing detached garage to remain for six additional months so it can be used for storage purposes during construction of the new residence and attached garage. The approval of the request to amend Conditions No. 1 and No. 5 of the Board's November 14, 2007 decision does not alter the spirit and intent of the Board's original decision. Therefore, the approval of the request to revise the conditions of approval is in conformance with the purpose and intent of the Ordinance.

**DISCUSSION OF PROCEDURE**

The Board discussed procedure regarding petitioners or other interested parties contacting them prior to a public hearing. The Board determined that the Planning and Zoning Division staff could not refuse a request for phone numbers of the Board members, as that information is public record, but that the staff should discourage such contact. The Board members were reminded that if they have any contact with a petitioner or interested party prior a public hearing, that contact must be disclosed at the public hearing.

**ADJOURNMENT:**

Mr. Dwyer                            *I move to adjourn this meeting at 8:05 p.m.*

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

Respectfully submitted,

Mary E. Finet  
Secretary, Board of Adjustment