

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, April 9, 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:** Hans Meyer, BA08:011, owner  
John Mann, BA08:005, neighbor  
Robert Holly, BA08:005, contractor  
Jake Schlafer, BA06:034, owner  
Susan Maerder, BA08:010, owner  
Dan Butler, BA08:012, engineer  
Magdelene Wagner, BA08:012, owner (City)  
Wade Balson, BA08:010, builder  
Rod Fritts, BA08:005, 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. Dwyer: *I make a motion to approve the Summary of the Meeting of March 26, 2008.*

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

**NEW BUSINESS:**

**BA08:005 RODNEY FRITTS (OWNER) BRET ACHTENHAGEN'S SEASONAL SERVICES (CONTRACTOR):**

Mr. Day recused himself from the hearing and left the table.

Mr. Dwyer *I make a motion to **deny** the request for the after the fact shore setback variance for the illegally constructed retaining wall, as well as denial of the request for a shore setback variance for additional proposed retaining walls in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons*

*stated in the Staff Report, as well as the reasons stated in the correspondence received from the Wisconsin Department of Natural Resources.*

The motion was seconded by Mr. Bartholomew and carried 4-0.

The Planning and Zoning Division staff's recommendation was for **denial** of the requested variance from the shore setback requirements of the Ordinance for the retaining walls and that the following actions are taken:

1. A detailed Restoration Plan, showing existing and proposed grades and any proposed remediation measures 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 undertaking any work on the property. This is to ensure the removal of the illegal structures and subsequent restoration of these areas does not result in adverse drainage onto adjacent properties or into the lake. The intent is that the project proceeds according to the approved plan and also to provide adequate erosion controls. The following information must also be submitted along with the Restoration Plan: a timetable for completion, a complete Vegetative Plan including plantings, seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan and the impact of any grading on surface runoff and drainage. Note that the Ordinance allows for a 30% "view corridor" for areas within 35 ft. of the shoreline. The remainder of the areas outside of the selected view corridor must be restored with native vegetation.
2. The partially constructed retaining wall must be removed and the area restored and stabilized by June 1, 2008.

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

The property can be used for a permitted purpose without the need for the retaining walls. The fact that one of the retaining walls is already partially constructed is a self-created hardship and does not justify the granting of a variance. Further, the construction of a revised/new access to the lake is not necessary to provide a reasonable use of the property. 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. There are no unique property features specific to this site to justify the granting of the requested variances. Furthermore, there are ways to construct the walkway and to stabilize this slope with methods other than retaining walls. Finally, it would be contrary to the public interest to grant the requested variances for all of the above reasons and because approval of the variances would directly conflict with the purpose and intent of the Shoreland and Floodland Protection Ordinance. The Ordinance is intended to preserve shore cover, protect natural beauty, preserve wildlife habitat and protect spawning areas, control erosion and reduce the flow of effluents, sediments and nutrients from the shoreland area. Allowing substantial grading, multiple

retaining walls, and vegetation removal on lands immediately adjacent to the lake is in direct conflict with these goals. Therefore, the denial of these requests is in conformance with the purpose and intent of the Ordinance.

**BA08:010 SUSAN K. BJUR (OWNER) WADE BALSON (BUILDER)**

Mr. Dwyer

*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 with the exception of the following change to the conditions:*

*Condition No. 4 shall be amended to read: "The total floor area ratio on the property, including the first and second floors of the residence and garage, any covered decks, covered patios and/or covered porches, and the existing shed shall not exceed 22% of the lot area. This will result in a floor area of approximately 2,640 sq. ft."*

*Condition No. 7 shall be amended to read: "The addition to the residence and all other appurtenances must be at least 27 ft. from the right-of-way of Madison Street, as measured to the outer edges of the walls and any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width."*

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

The Planning and Zoning Division staff's recommendation was for **approval** of the requested variances from the road setback, floor area ratio, open space, and 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. The existing one car garage must be removed.
2. The newly proposed attached garage shall not exceed 484 sq. ft. and must be at least 400 sq. ft. in size.
3. No other additions to the first floor are permitted.
4. The total floor area ratio on the property, including the first and second floors of the residence and garage, any covered decks, covered patios and/or covered porches, and the existing shed shall not exceed 21% of the lot area. This will result in a floor area of approximately 2,540 sq. ft.
5. No retaining walls are permitted.
6. No new detached structures are permitted.

7. The residence and attached garage and all other appurtenances must be at least 27 ft. from the right-of-way of Madison Street, as measured to the outer edges of the walls and any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width.
8. Prior to the issuance of a Zoning Permit, 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.
9. Prior to the issuance of a Zoning Permit, a complete set of scaled house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
10. 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 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.

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

The approval of the request for variances from the road setback, floor area ratio, open space and remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Waukesha County Zoning Code is reasonable as conditioned. It will also result in making the structure completely conforming to the offset requirements by removing the existing attached garage. However, variances should be granted only to provide the minimum relief necessary for a reasonable use of the property and only 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 property is nonconforming to the minimum size requirements; therefore, some relief from the floor area ratio and open space requirements is justified. The residence is already nonconforming to the road setback and the addition will be further from the road than the existing structure. The recommended structure provides a reasonable use of this property that is not unnecessarily burdensome, will permit the construction of a residence and attached garage that will be appropriately sized for the lot, and not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the recommended conditional approval is in conformance with the purpose and intent of the Ordinance.

**BA08:011 JOHN F. MEYER:**

Mr. Day recused himself from the hearing and left the table.

Mr. Bartholomew

*I make a motion to **deny** the appeal of the Parks and Land Use staff accessory building floor area ratio and **approve** the request for a special exception from the accessory building floor area ratio requirements, 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 4-0.

The Planning and Zoning Division staff's recommendation was for **denial** of the appeal of the Parks and Land Use staff definition of accessory building floor area ratio and **approval** of the request for a 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. The footprint of the garage shall not exceed 720 sq. ft. (as measured from outside wall to outside wall, with overhangs not to exceed 2 ft.) and the second story must be built within the footprint.
2. Prior to the issuance of a Zoning Permit, a complete set of building plans, in conformance with all conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
3. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the final staked-out location of the detached garage, and any proposed retaining walls, in conformance with the all conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. 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. This is to ensure that the construction of the detached garage 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. This Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 3.

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. The area of the proposed garage is conducive to an exposure and therefore a second story. Therefore, there will not be excessive grading or excavation to create the second level. Furthermore, even with the two-story garage, the total floor area on the property is well below that which is permitted. The garage will meet all other requirements of the Ordinance and there is still plenty of room in which to build a conforming residence in the future, if necessary. The garage will in no way be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects. Therefore, the approval of this request for a special exception from the accessory building floor area ratio requirements, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA08:012 CITY OF PEWAUKEE & WISCONSIN ELECTRIC POWER CO. (OWNERS)  
DANIEL BUTLER, P.E. (ENGINEER):**

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 height limitations of the Waukesha County Airport Height Limitation Ordinance to permit the installation of the proposed water tower, subject to the following conditions:

1. Prior to construction of the new water tower, a Zoning Permit must be issued by the Waukesha County Department of Parks and Land Use - Planning and Zoning Division.
2. As recommended by the Waukesha County Airport Commission and required by the FAA, an obstruction light must be mounted on the water tower, in conformance with the guidelines for obstruction lighting found in Federal Aviation Administration Advisory Circular AC 70/7460-1K Obstruction Marking and Lighting.

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

The proposed water tower is needed to provide a safe and reliable water supply to the community. The approval of a height limitation variance to permit the construction of the proposed water tower, with the recommended conditions, will not be a hazard to the safe operation of aircraft. Based on determinations made by the FAA and the Waukesha County Airport Commission, this will protect the people living in the vicinity of the Waukesha County Airport and the aircraft taking off from or landing at the Waukesha County Airport. Therefore, the approval of this request, as conditioned, is in conformance with the purpose and intent of the Waukesha County Airport Height Limitation Ordinance.

**OTHER ITEMS REQUIRING BOARD ACTION:**

**BA06:034 JAKE AND JODY SCHLAFER**

Mr. Bartholomew *I make a motion to reconsider the conditions of approval for BA06:034 for Jake and Jody Schlafer.*

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

Mr. Day *I make a motion to **deny** the request to remove condition No. 7 from the Board's June 14, 2006 decision based on the fact that the circumstances on the property have not changed to warrant the altering of the original decision.*

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

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

The Planning and Zoning Division Staff does not feel any circumstances on the property have changed to warrant the reconsideration of the previous conditions of approval. Therefore, the Planning and Zoning Division Staff recommends that the request to reconsider Condition No. 7 of the Board's June 14, 2006, decision be denied and that the conditions of approval remain as is. It should be noted that this will require that the petitioner remove the shed from the property. If the shed is not promptly removed from the property, the Planning and Zoning Division Staff will be authorized under Section 41(c) of the Waukesha County Shoreland and Floodland Protection Ordinance to issue a citation for each day the property remains in non-compliance. In addition to collecting forfeitures in the form of a cash deposit, a court appearance may be required, additional fines imposed and further legal action or enforcement methods may be used to bring the property into compliance.

**ADJOURNMENT:**

Mr. Day                      *I make a motion to adjourn this meeting at 9:05 p.m.*

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

Respectfully submitted,

Sheri Mount  
Secretary, Board of Adjustment