

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, April 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: Robert Bartholomew
Ray Dwyer
Tom Day
Walter Schmidt

BOARD MEMBERS ABSENT: James Ward, Chairman

SECRETARY TO THE BOARD: Peggy S. Tilley

OTHERS PRESENT: Town of Merton Board of Adjustment
Kevin Bradley, BA08:014, owner
Sue Maerder, BA08:010, owner
Dennis Becker, BA08:002, applicant
Ken Wyderka, BA08:013, owner
Wade Balson, BA08:010, builder
Thomas and Barbara Hansinger, BA08:009, owners
Bob Tarantino, BA08:009, neighbor
Kevin Esser, BA08:009, neighbor
Eric Faybian, BA08:002, attorney
Keith Koppen, BA08:002, surveyor

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 April 9, 2008.*

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

NEW BUSINESS:

BA08:013 KENNETH S. WYDERKA

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 for a variance to remodel a non-conforming residence in excess of 50% of its fair market value of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the proposed interior remodeling of the residence without increasing the building's footprint.

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

The petitioner is proposing minor interior modifications to a substantial structure that has been remodeled and added to several times in the past. Although the structure is non-conforming, due to the shape of the lot, the structure could not be relocated to a conforming location. Therefore, the approval of this request would be within the purpose and intent of the Ordinance.

BA08:014 KEVIN C. BRADLEY

Mr. Schmidt

*I make a motion to **approve** the request, in accordance with the Staff's recommendation, for the reasons set forth in the Staff Report and with the conditions set forth in the Staff Report except that Condition No. 1 shall be amended to read "The accessory building floor area ratio on the property shall not exceed 3.93%" which is the proposed amount by the petitioner. I'm impressed by the fact that the petitioner is bringing a non-conforming, too close garage which is an eye-sore and bringing it into total conformity with the setbacks. That impresses me and I think that there should be some quid-pro-quo here and that is to give him a little additional space. The amount of additional space is so minuscule that it's hardly worth mentioning. The shed at the front of the lot is indispensable for anybody that owns lake property and I can understand that. So I think that it meets the criteria of public good and public welfare. I think that he's shown a good effort here in all other respects to bring the garage into conformity.*

The motion was seconded by Mr. Dwyer and indicated that he agreed whole-heartedly with everything in the motion and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a special exception from the accessory building floor area ratio requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a new detached garage on the property subject to the following conditions:

1. The accessory building floor area ratio on the property shall not exceed 3.57% (the same as existing).
2. The proposed garage must be located at least 17 ft. from the established road right-of-way and 6.4 from the side lot lines 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 with the offset and setback requirements.

3. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft. The proposed garage may contain an upper-level storage area only if the garage conforms with the height requirement noted above and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.
4. Prior to the issuance of a Zoning Permit, a complete set of building plans for the proposed garage, 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, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed garage, 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. If any changes to the existing grade are proposed, 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 the construction of the proposed 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. 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 plan may be combined with the survey required in Condition No. 5 above.

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

The approval of this request, as conditioned, will allow the construction of a new detached garage, the same size as the existing garage but in a more conforming location. It should be noted that the petitioner may be able to construct a larger detached garage if the shed near the lake is removed. The approval of this request will create a more conforming situation on the property while not increasing the total floor area on the property. In addition, the construction of the garage, as conditioned, will provide adequate storage on the property. Therefore, the approval of this request would be within the purpose and intent of the Ordinance.

BA08:009 THOMAS AND BARBARA HANSINGER

Mr. Schmidt

*I would **deny** the application to divide the conforming lot into three nonconforming lots to be added to the lots across the street on Florencetta Heights numbers 13, 14, and 15 as set forth in the petitioner's application. I would deny that based on the fact that there is absolutely no hardship shown. They presently have, on their Florencetta Heights property that front on Lake Keesus, a reasonable use of the property and there has been no hardship shown whatsoever other than personal hardship so that they could experience larger garages and larger structures, by the testimony. Failing to show any hardship and thinking that dividing a conforming lot is bad planning and failing to show any unique characteristics of the property which would undermine the reason to divide that as requested. Therefore, I feel and move that the petition be denied.*

The motion was seconded by Mr. Dwyer and after discussion carried with three yes votes. Mr. Bartholomew voted no.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the lot size and lot width requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit them to divide their property into three parcels and attach them to the three existing parcels immediately across Florencetta Heights, subject to the following conditions:

1. A Certified Survey Map dividing the existing parcel into three parcels and attaching them to the three existing lakefront parcels, as proposed, must be approved by the Town of Merton and Waukesha County and recorded in the Waukesha County Register of Deeds. The Certified Survey Map should also include the three existing platted lots east of the road.
2. There shall be a statement on the Certified Survey Map which indicates that the parcels on the east side of Florencetta Heights and the parcels on the west side of Florencetta Heights shall not be sold separately.
3. There shall be a statement on the Certified Survey Map which indicates that the area on the west side of Florencetta Heights shall not be used when calculating open space or floor area ratio for the construction of buildings or additions to existing buildings on the parcels on the east side of Florencetta Heights.

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

The approval of this request, as conditioned, will allow the division of a parcel of land into three parcels which will be attached to the three developed parcels directly across the road. As conditioned, the property owners will not be allowed to use the added land area when calculating open space or floor area ratio for the construction of buildings or additions to existing buildings on the parcels on the lakeside of Florencetta Heights. The Planning and

Zoning Division staff does not feel that it is appropriate to allow an increase in the bulk of structures and the amount of impervious surface on the lakeside of the road because of additional land area obtained on the opposite side of the road. It should be noted that the Planning and Zoning Division staff does not object to the property owners using the land area on the lakeside of the road when calculating floor area ratio and open space for the construction of a detached garage or storage building on the west side of the road. No application has been made for the construction of detached garages or sheds and the property owner(s) should be aware that a Zoning Permit and/or possible variances will be required prior to the construction of any said structure. The construction of detached garages and or sheds on the newly created parcels would be consistent with the development pattern in the area. Therefore, the approval of this request would be within the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA08:002 TORRI BECKER (Owner) TORRI AND DENNIS BECKER (Applicants)

Mr. Day *I make a motion that we **reconsider** the previous decision of the Board as requested by the petitioner.*

The motion was seconded by Mr. Dwyer and carried with three yes votes. Mr. Schmidt abstained as he was not in attendance at the original hearing on this matter. After discussion, the following motion was made:

Mr. Dwyer *I make a motion to **uphold the staff's original recommendation to deny** for the reasons stated earlier other than adjusted square footages that were not available to the staff because the first survey that was submitted wasn't accurate or complete enough compared to the one that's been presented tonight.*

The motion failed for lack of a second. More discussion ensued and the following motion was made.

Mr. Dwyer *I repeat my motion to **accept the staff's recommendation for denial** subject to the corrections of the square footages and percentages that the staff agrees with.*

The motion was seconded by Mr. Bartholomew and carried unanimously with three yes votes. Mr. Schmidt abstained.

The Planning and Zoning Division staff's recommendation was as follows:

Therefore, in light of the updated survey provided by the petitioner, the Planning and Zoning Division Staff recommends that the Board **reconsider** their decision. However, the staff continues to recommend **denial** of the request for variances from the road setback, offset, floor area ratio, and open space requirements of the Ordinance. The petitioner has reasonable use of the property with the existing two-story single-family residence and deck on the

property. The lot is extremely non-conforming due to lot size and does not provide enough space for the construction of an attached garage. As noted above, the petitioner could utilize the exposed basement level of the residence for storage or store items in an off-site storage area. The proposed garage will be located 3 ft. from the platted road right-of-way; however, it will be located approximately 2 ft. from the asphalt roadway since the road was not paved in the center of the right-of-way. The staff feels that the construction of the garage would affect the public's safe use of the roadway. 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. Furthermore, two previous requests for variances for the construction of an attached garage on this particular property have been denied by the Board. In 1995, a previous owner requested variances for the construction of a new residence with an attached garage. The variances were approved with the condition that the attached garage shall not be allowed. Subsequently, in 1996, a new owner requested similar variances for the construction of an attached garage to the newly constructed residence. Again, the Board denied the request for the attached garage. The staff does not feel that the circumstances on the property have substantially changed since the previous variance requests to warrant the approval of the construction of an attached garage.

Section 1(b) of the Waukesha County Shoreland and Floodland Protection Ordinance describes the purpose and intent of the Ordinance and states that the ordinance has been established to "Provide for convenience of access...[and to] promote the safety and efficiency of the public streets and highways..." The approval of this request would compromise or undermine the stated purpose and is therefore contrary to the purpose and intent of the Ordinance.

BA08:010 SUSAN BJUR (Owner) WADE BALSON (Builder)

Mr. Dwyer

*I make a motion that we **reconsider** the previous decision of the Board as requested by the petitioner.*

The motion was seconded by Mr. Day and passed with three yes votes. Mr. Schmidt abstained because he was not in attendance at the original hearing on this matter. After discussion, the following motion was made:

Mr. Dwyer

*I make a motion to **clarify the decision**, by making the following modifications to the conditions of approval:*

Condition No. 2 shall read as follows: The newly proposed attached garage shall not exceed 647 sq. ft. and must be at least 400 sq. ft. in size.

Condition No. 3 shall read as follows: No other additions to the first floor, other than proposed herein, are permitted.

The motion was seconded by Mr. Day and carried unanimously with three yes votes. Mr. Schmidt abstained.

The Planning and Zoning Division staff's recommendation was as follows:

After much discussion, the Board ultimately adopted the staff recommendation with the exception of Condition No. 4, which they increased from the recommended 21% floor area ratio to 22%. The intent of Conditions No. 2 and Condition No.3 was to prohibit any expansion of the structure's footprint beyond that for the recommended attached garage. The staff recommends that these conditions be clarified by being combined to read: *"The newly proposed attached garage shall not exceed 484 sq. ft. and must be at least 400 sq. ft. in size. No other additions to the first floor are permitted."*

Although the Board increased the allowable floor area ratio to 22%, they indicated during their deliberations that this was done to allow for additional design flexibility. Furthermore, in any case where a floor area ratio variance is granted, the granted floor area ratio is a permitted maximum. However, all other conditions of the approval must be met. If the maximum floor area ratio granted through the variance is not possible to achieve while also adhering to all other conditions of approval, then the actual floor area ratio may have to be less than the maximum approved. This is often the case and is not a unique situation to this property. Therefore, the staff feels that Condition No. 4 is clear and does not need to be modified or clarified.

ADJOURNMENT:

Mr. Schmidt *I make a motion to adjourn this meeting at 9:06 p.m.*

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

Respectfully submitted,

Peggy S. Tilley
Secretary, Board of Adjustment