

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, May 28, 2008, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha, Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Ray Dwyer
Walter Schmidt
Tom Day

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Sheri Mount

OTHERS PRESENT: Town of Merton Board of Adjustment
Don Sebastian, BA08:021, agent
Jeff Detro, BA08:022, engineer
Robert and Leah Damron, BA08:019, owners
Art Mitchel, BA08:023, owner
Tom Sellhausen, BA06:0047, neighbor
Jim and Becky Carroll, BA08:047, neighbors
Sabine Schwark, BA08:020, neighbor
Dale Kolbeck, BA08:020, architect
Hans Schwark, BA08:020, neighbor
Michael and Marie O'Brien, BA08:020, owners
Paul Schultz, BA06:047, architect
Bert Butterfield, BA06:047, builder
Brian and Kay Cullen, BA06:047, owners
Steve Berg, BA06:047, landscape architect
Kristine Spinelli, BA06:047, neighbor
Jeff Franks, BA08:022, neighbor

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 May 14, 2008.*

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

NEW BUSINESS:

BA08:001 Joseph & Sharon Igl

Mr. Day *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 Joseph Igl and Sharon Igl v. Waukesha County Board of Adjustment, Wisconsin Circuit Court Case No. 08-CV-1036.*

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

A roll call vote was taken.

Tom Day: *Aye.*
Walter Schmidt: *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.

Tom Day: *Aye.*
Walter Schmidt: *Aye.*
Ray Dwyer: *Aye.*
Bob Bartholomew: *Aye.*
James Ward: *Aye.*

BA08:019 ROBERT AND LEAH DAMRON

Mr. Schmidt *I make a motion to approve the request for after-the-fact shore and floodplain setback variances to allow the owners to retain the deck for the following reasons:*

“There will be no adverse impacts in allowing the deck to remain to either the natural resources in the area or adjacent properties. The deck was replaced in the same footprint as the old deck, and therefore

there is no increase in the impact from before. The deck has been there for many years and this is a simple repair/replacement of the pre-existing deck. It would be an unnecessary hardship to the owners to deny the repair of the deck on this wet lot. It would also be a hardship to require them to remove a deck that has been in place for a long time. It is not against the spirit and intent of the Ordinance to allow the repair/replacement of the deck.”

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

The Planning and Zoning Division staff’s recommendation was for **denial** of the requested after-the-fact variances from the shore setback and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance. Please note that this means that the deck must be removed.

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

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 can be used for a permitted purpose without the need for the deck. The construction of any accessory structure, such as this deck, is not necessary to provide a reasonable use of any residential property. There are also no unique property features specific to this site to justify the granting of the requested variances. All of the properties in this area are zoned C-1(EFD) and are located substantially within the floodplain, with the exception of the property to the west which is located substantially outside of the floodplain. The Conservancy/Existing Floodplain Development Overlay district allows for limited single family residential uses under very specific conditions. The petitioners bought a property that is located entirely within the floodplain of the lake. It should be expected that this type of property will be subject to flooding and will be wet and/or muddy fairly often. The property owners have several options to remedy the situation. They can construct stairs from the existing doorway for access down to the yard instead of constructing a large deck within the floodplain; they could raise the existing house and yard to get out of the floodplain; or they can construct a new residence that will conform to the C-1 (EFD) requirements. All of these options require separate permits and approvals. In addition, the fact that the deck is already partially constructed is a self-created hardship and does not justify the granting of a variance. Finally, it would be contrary to the public interest to grant the requested variances for shore and floodplain setback for an accessory structure such as a deck. 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.

BA08:021 RESTORATION FELLOWSHIP

Mr. Schmidt

*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 requested variance from the road setback requirements of the Waukesha County Zoning Code ordinance, to permit them to construct a steeple and change the roofline of the existing porch, with the following conditions:

1. Prior to the issuance of a Zoning Permit, Town Board approval must be obtained to allow the porch to be rebuilt/remodeled within the town road right-of-way. If Town Board approval is obtained, a Declaration of Restrictions shall be prepared by the Planning and Zoning Division Staff, stating the building is located within the established road right-of-way and if, in the future, any portion of the building should interfere with necessary road improvements, that portion of the building must be removed at the owner's expense. Prior to the issuance of a Zoning Permit, the Declaration of Restrictions must be signed by the owner, notarized, and recorded with the Waukesha County Register of Deed's Office, and a copy furnished to the Planning and Zoning Division Staff and the Town.
2. Subject to the applicant receiving Plan of Operation Permit approval from the Town of Oconomowoc and Waukesha County. All conditions therein shall be adhered to as an integral part of this approval.
3. The rebuilt porch shall encroach no further into the right-of-way than the existing porch.

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

The approval of this request as recommended will allow the petitioners to construct a steeple on the church as well as rebuild a portion of the roof/porch to accommodate the steeple while not infringing on surrounding properties or uses. It will also not impact the public's safe use of the road. It should be noted that the church is located on a residentially zoned property and is surrounded by residential and agricultural uses. However, the steeple will even be as tall as a residence could be in this zoning district. Therefore, the steeple will not have any adverse impacts on adjoining properties. Further, the reconstruction of the Hwy. 16 bypass severely altered the terrain on the property. In addition, the petitioners had no control over the new right-of-way location, and therefore allowing a portion of the building within the right-of-way to be rebuilt, as conditioned, is reasonable as there isn't a substantially more conforming location in which to rebuild at this point. Further, Lang Road is a dead end street with only one residence being served and if extended in the future, would likely generate a limited amount of traffic. Therefore, approval of this request, as conditioned, would be in conformance with the purpose and intent of the Ordinance.

BA08:022 WAUKESHA WATER UTILITY on lands owned by WAUKESHA COUNTY (OWNER) CHICAGO BRIDGE AND IRON, INC. (AGENT)

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 height limitations of the Waukesha County Airport Height Limitation Ordinance to permit use of the proposed crane for construction of a water tower, subject to the following conditions:

1. The detailed Aeronautical Study for the temporary crane (No. 08-AGL-2964-0E) must be issued by the WI Department of Transportation and a copy of that Study must be furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit for the crane.
2. As recommended by the Waukesha County Airport Commission, the crane must be marked and lighted in conformance with the guidelines for obstruction lighting found in Federal Aviation Administration Advisory Circular AC 70/7460-1K Obstruction Marking and Lighting.
3. As required by the Wisconsin Department of Transportation in correspondence dated April 22, 2008, a "Determination of No Hazard to Air Navigation" for the proposed temporary crane must be issued by the Federal Aviation Administration (FAA) and a copy of that "Determination of No Hazard to Air Navigation" must be furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit for the crane. All conditions of the "Determination of No Hazard to Air Navigation" must be complied with.

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 and the crane is necessary to erect the tower. The approval of a height limitation variance to permit the temporary use of the crane, with the recommended conditions, will allow the existing water tower to be replaced in a manner that will not be a hazard to the safe operation of aircraft. 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, which is in conformance with the purpose and intent of the Waukesha County Airport Height Limitation Ordinance.

BA08:023 ART AND NANCY MITCHEL

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.*

Also note that all references to an elevated deck shall be removed from the staff report and decision sheet as this is a ground-level deck.

The motion was seconded by Mr. Schmidt 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 Shoreland and Floodland Ordinance to allow the construction of a second story deck on the existing residence.

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

The approval of this request will allow the petitioners to construct a deck to the residence. The deck should have been part of the 2007 request, but was overlooked by the petitioner/owner. The deck complies with all other provisions of the Ordinance and not on the side of the residence with the non-conformity. Furthermore, the residence on the adjacent property on the side of the non-conformity is approximately 60 ft. from the subject residence. To deny the variance for the deck after granting previous variances for extensive remodeling and additions would be unnecessarily burdensome on the property owner. The approval of this request would not adversely affect the public interest and welfare and is within the purpose and intent of the Ordinance.

BA08:020 MICHAEL AND MARIE O'BRIEN (OWNERS) ARCHITECTURAL HOMES BY ANDERS, INC. (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 following changes to the conditions:*

Condition No 2. shall be changed to read: "The proposed residence, including the total square footage of the first and second floors of the residence, attached garage, any covered decks, covered patios and/or covered porches, etc, shall not exceed 20.7% of the lot area. This will result in a floor area of approximately 2,191 sq. ft."

The following language shall be added to the reasons:

"The requested 20.7% floor area ratio is reasonable as this will still

result in less floor area and a smaller footprint than exists on the property today. Furthermore, the required offsets and setbacks will all be met with the new structure, which is also a better situation that exists today.”

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

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the floor area ratio and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to permit the owner to remove the existing house, detached garage, screen porch, and shed and construct a new residence, attached garage, deck, patio, and retaining walls, with the following conditions:

1. Prior to the issuance of a Zoning Permit, all existing structures, including the residence, detached garage, detached screen porch, shed, and detached deck at the shoreline, must be removed from the property.
2. The proposed residence, including the total square footage of the first and second floors of the residence, attached garage, any covered decks, covered patios and/or covered porches, etc, shall not exceed 19.5% of the lot area. This will result in a floor area of approximately 2,065 sq. ft.
3. The attached garage must be a minimum of 400 sq. ft. in size as measured from outside wall to outside wall with overhangs not to exceed two feet.
4. The footprint of the proposed residence and attached garage, including any covered porches, covered decks, covered patios etc shall not exceed 1,419 sq. ft. in size. This will result in 9,173 sq. ft. of open space on the property.
5. The residence and all other appurtenances must be at least 10 ft. from the east and west lot lines, as measured to the outer edges of the walls and any windows/bump outs, fireplaces, etc. that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width. Any sidewalks, stairs, or walkways along the sides of the residence must be located at least three (3) ft. from the side lot lines.
6. The proposed residence must not exceed three stories (including any exposed basement level), as viewed from the lake. The proposed residence must also conform to the height requirements of the Ordinance.
7. No retaining walls are permitted within 75 ft. of the shore. 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.
8. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions must be submitted to the Planning and Zoning Division staff for review and approval.

9. Prior to the issuance of a Zoning Permit, a Stake-Out Survey showing the location of the proposed residence, detached garage, any decks or patios, as well as any newly proposed sidewalks, stairs, and walkways, 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.
10. 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.

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

The approval of the requested floor area ratio and open space variances is justified because the overall lot size is only a little over half of what the district requires. The conditioned approval of this request will allow a reasonable use of the property that is not unnecessarily burdensome. It has been demonstrated, as required for a variance, that denial of the requested variances from the floor area ratio and open space requirements 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 property is very non-conforming to the required size and width making strict adherence to the district regulations impossible. However, variances should be granted only to provide the minimum relief necessary for a reasonable use of the property. In addition, variances should only be granted to accommodate physical limitations on the property and not the personal preferences or needs of the current property owner. It is not necessary to approve the requested 20.7% floor area ratio (2,191 sq. ft.) to provide minimum relief from the Ordinance requirements and a reasonable use of the property. While the current allowable floor area ratio on this property is 15% (1,691 sq. ft.), once the property is sewerred, a floor area ratio of 19.5% (2,065 sq. ft.) will be permitted. Therefore, the recommended floor area ratio variance is essentially temporary, as the structure will be conforming to this provision once the property is sewerred. It will be impossible at any point in the future to adhere to the open space requirements under current zoning regulations. As recommended, a total footprint of 1,419 sq. ft. and a total floor area of 2,065 (not including the basement square footage) provides a reasonable use of the property, is not unnecessarily burdensome and will permit the construction of a residence and attached garage that will be appropriately sized for the lot, not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA06:047 BRIAN AND KAY CULLEN

Mr. Schmidt *I make a motion to reconsider our conditions of approval from August 23, 2006.*

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

Mr. Day *I make a motion to reaffirm our decision of August 23, 2006 requiring the 3 ft. offset for the path for the following reasons:*

“There is no hardship that would justify modifying the conditions of approval from the original decision. The currently requested path offset would not have been approved ahead of time, and specifically wasn’t approved, and therefore should not be approved after-the-fact. Although the owner and the contractor indicate that there is adequate room to accommodate drainage and allow maintenance of these areas without adversely impacting the adjacent property, the Board does not feel this is the case. Further, granting after-the-fact approvals for individuals who have violated the Board’s conditions of approval sets a bad precedent for future applicants. The approval of this request would not be within the purpose and intent of the Ordinance or of the Board’s previous decision.”

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

The Planning and Zoning Division staff’s recommendation was to **modify** Condition #5 to read as follows:

“Any sidewalks, stairs, or walkways along the sides of the of the residence must be located at least 3 ft. from the north lot line and 2.1 ft. from the south lot line. All drainage must remain on the property or drain to the lake, and not to the neighboring properties or the road.”

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

The intent of the original condition was largely to ensure adequate drainage along the lot lines. The reason for this recommendation is that it is not necessary in this particular case to require the walkway to be removed and moved over 10 inches in order to accomplish a swale along the south property line to contain the drainage on the property. There is still enough room in which to construct a properly functioning swale. The approval of the request to amend Condition No. 5 of the Board’s August 23, 2006 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. Dwyer *I make a motion to adjourn this meeting at 9:20 p.m.*

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

Respectfully submitted,

Sheri Mount
Secretary, Board of Adjustment