

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, February 10, 2010, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** Ray Dwyer, Chairman  
Robert Bartholomew  
Tom Day  
Nancy Bonniwell  
Rob Schuett

**BOARD MEMBERS ABSENT:** Walter Schmidt

**SECRETARY TO THE BOARD:** Nancy M. Bonniwell

**OTHERS PRESENT:** Mary E. Finet, Senior Land Use Specialist  
Deborah B. Price, Principal Assistant Corporation Counsel  
Town of Merton Board of Adjustment  
John McCoy, BA09:053, petitioner  
Glen and Diane Darton, BA09:053, neighbors  
Mark Williamson, BA09:046, builder

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 make a motion to approve the Summary of the Meeting of December 9, 2009.*

The motion was seconded by Mr. Dwyer and carried with three yes votes from Mr. Dwyer, Mr. Bartholomew and Ms. Bonniwell. Mr. Day and Mr. Schuett abstained because they were not present at the meeting of December 9, 2009.

Ms. Bonniwell                              *I make a motion to approve the Summary of the Meeting of January 13, 2010, with the following corrections on Page 6:*

*The last sentence of the motion made by Mr. Day in the case of BA09:049 BSMP, LLC, shall be changed to read "In addition, in order to have reasonable use of the commercial property and to attract business, a better identifying sign is needed."*

*It shall note that the motion made by Mr. Day in the case of BA09:049 BSMP, LLC, was seconded by Ms. Bonniwell, not Mr. Bonniwell.*

The motion was seconded by Mr. Day and carried with three yes votes from Mr. Dwyer, Mr. Day, and Ms. Bonniwell. Mr. Bartholomew and Mr. Schuett abstained because they were not present at the meeting of January 13, 2010.

**CLOSED SESSION:**

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 Corporation Counsel's Office who is rendering oral or written legal advice concerning strategy to be adopted by the Waukesha County Board of Adjustment with respect to litigation in which it is involved, specifically concerning the following case:*

*Donald and Susanne Dysland vs. Waukesha County Board of Adjustment, Waukesha County Circuit Court Case No. 08-CV-3387.*

The motion was seconded by Mr. Bartholomew and carried with a roll call vote as follows:

Rob Schuett: Aye.  
Nancy Bonniwell: Aye.  
Tom Day: Aye.  
Bob Bartholomew: Aye.  
Ray Dwyer: Aye.

**OPEN SESSION:**

Mr. Bartholomew *I make a motion to reconvene in open session.*

The motion was seconded by Mr. Day and carried with a roll call vote as follows:

Rob Schuett: Aye.  
Nancy Bonniwell: Aye.  
Tom Day: Aye.  
Bob Bartholomew: Aye.  
Ray Dwyer: Aye.

**NEW BUSINESS:**

**BA09:053 JOHN AND SHELLEY McCOY:**

Mr. Day *I move to **approve** the request for a special exception from the offset requirement to permit the construction of a laundry room and bathroom addition on the east side of the residence and to **approve** the request for a special exception from the accessory building floor area ratio requirement to permit the construction of an addition on the west side of the existing detached garage, with the conditions recommended in the Staff Report and for the reasons stated in the Staff Report.*

*It shall be noted that the Board took no action on the request for variances to remodel a non-conforming structure in excess of 50% of*

*its fair market value and from the road setback requirement, which the application and the Notice of Public Hearing indicated would be required for the proposed addition to the detached garage, because upon further review, it was determined that when the road setback averaging provision of the Ordinance is utilized, the existing garage and the proposed garage addition are in conformance with the road setback requirement. Therefore, the proposed addition to the garage does not require a variance to remodel a non-conforming structure in excess of 50% of its fair market value or a variance from the road setback requirement.*

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 of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a laundry room and bathroom addition on the east side of the residence and **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 an addition on the west side of the existing detached garage, subject to the following conditions:

1. The two Tax Key Numbers for the subject property, which each describe one-half of Lot 3, Becker's Lake View Park, shall be combined into one Tax Key Number. Prior to the issuance of a Zoning Permit, documentation from the Waukesha County Register of Deed's Office that this will occur must be submitted to the Planning and Zoning Division staff.
2. The additions to the residence and detached garage must be in substantial conformance with the plans submitted with the application.
3. 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 the construction of the proposed additions 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:

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. Special exceptions differ from variations in that special exceptions do not necessarily require the

demonstration of an unnecessary hardship. However, when granting special exceptions, the Board must still consider whether the proposed special exception would be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare.

The proposed addition to the residence would have an offset from the east lot line that ranges from 14.9 ft. to 19.4 ft. As measured to the closest point, this would be approximately 3.4 ft. farther from the lot line than the closest point of the existing residence. Since the proposed addition would be no closer to the lot line than the existing residence, it requires a special exception, rather than a variance, from the minimum offset requirement of 20 ft. Since the proposed addition is minimal in size and would be farther from the lot line than the existing residence, it will not be hazardous, harmful, noxious, offensive, or a nuisance to adjacent property owners or the surrounding neighborhood.

The proposed addition to the detached garage conforms with all locational requirements of the Ordinance and requires only a special exception from the accessory building floor area ratio limit of 3%. The existing detached garage is small by today's standards, with a depth of only 22.2 ft., and because the residence does not have a basement, it must also provide storage for items that would normally be stored in the basement of the residence. Without a special exception from the maximum permitted accessory building floor area ratio of 3%, the garage could only be expanded by 48 sq. ft. Removal of the 8.4 ft. x 10.3 ft. shed, which the Planning and Zoning Division staff is not recommending, would allow the detached garage to be expanded by approximately 135 sq. ft., without a special exception from the maximum permitted accessory building floor area ratio, but even that would limit an addition on the west side of the garage to a width of approximately 4.7 ft., which is not a viable alternative. It is felt that the proposed 10 ft. wide garage addition will result in a reasonably-sized garage, in keeping with the neighborhood, that will not be hazardous, harmful, noxious, offensive, or a nuisance to adjacent property owners or the surrounding neighborhood. Therefore, the approval of a special exception from the offset requirement to permit the construction of the proposed addition to the residence and the approval of a special exception from the accessory building floor area ratio to permit the construction of the proposed addition to the existing detached garage, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

#### **OTHER ITEMS REQUIRING BOARD ACTION:**

##### **BA09:046 JOHN AND CHRISTINE LESKO TRUST:**

Ms. Bonniwell

*I move that the applicants be permitted to change the roofline on the northwest corner of the home, as proposed, from a hip roof to a gable roof and, in addition, I move that Condition No. 1 placed on the variances granted at the hearing of December 9, 2009, as set forth in the Decision sheet dated December 15, 2009, be changed as recommended by the staff in the Memorandum dated February 10, 2010, for the reasons stated in the Memorandum, with the following additional reasons:*

*It appears, based on our evaluation of the proposal and based on the testimony today, that the proposed change to the roofline on the*

*northwest corner of the home will not add any additional living space, but will make better use of the space that exists right now and will also make the house more aesthetically pleasing, which will impact favorably on the whole neighborhood.*

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

The Planning and Zoning Division staff's recommendation was to amend Condition No. 1 to read "No increase in the existing floor area on the property is permitted. No additional square footage may be added to the first or second floor. No change to the second story roofline is permitted that will add living area (as defined by the Waukesha County Shoreland & Floodland Protection Ordinance) to the structure."

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

It is the staff's understanding that the intent of that condition (Condition No. 1) was to ensure that no additional square footage was added to any portion of the second floor. The portion of the second floor where the new roofline is now proposed will add no height or additional square footage that isn't already being calculated to the structure. Furthermore, the petitioner's statement that the impact of the change to the first floor roofline without the originally proposed changes to the second story could not be completely known and understood at the time of the original hearing is correct. Therefore, the reconsidered condition is within the purpose and intent of the Board's original decision and of the Ordinance.

**BOARD OF ADJUSTMENT WORKSHOP:**

Mr. Day *I move to approve the attendance of Board of Adjustment members at the Zoning Workshop for Boards of Adjustment/Appeals sponsored by the Center for Land Use Education, Dane County, the Wisconsin County Code Administrators, and the Wisconsin Department of Natural Resources, to be held in Madison, Wisconsin, on February 18, 2010.*

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

**ADJOURNMENT:**

Mr. Bartholomew *I make a motion to adjourn this meeting at 8:07 p.m.*

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

Respectfully submitted,

Nancy M. Bonniwell  
Secretary, Board of Adjustment