

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, May 12, 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  
Robert Bartholomew  
Walter Schmidt  
Tom Day  
Nancy Bonniwell

**BOARD MEMBERS ABSENT:** None

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

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Peggy S. Tilley, Senior Land Use Specialist  
Andrea Schten, BA10:011, neighbor  
Mike & Sheri Brown, BA10:011, neighbor  
August Barkow, BA10:009, owner  
Dean Achtenhagen, BA10:011, neighbor  
Richard L. Davie, BA10:011, neighbor  
Pamela Meyer, BA10:011, neighbor  
John & Julie Mann, BA10:012, owners  
Greg Reimer, BA10:010, representative for petitioner  
Marie O'Brien, BA08:020, owner  
Carl Spencer, BA10:010, representative for petitioner  
Jeri Mesching, BA10:008, neighbor  
Kevin Coakley, BA10:008, owner  
Steve Hegwood, BA10:011, owner  
Atty. Kathryn Gutenkunst, BA10:011, agent

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 table this matter to the next Board of Adjustment Meeting to allow the staff to make several corrections and additions to the minutes.*

The motion was seconded by Mr. Dwyer and carried unanimously with 4 yes votes. Mr. Schmidt abstained.

**NEW BUSINESS:**

**BA10:008 KEVIN B. AND KATHERINE E. COAKLEY:**

Mr. Day

*I make a motion to **approve** the request, for the following reasons: It will provide a reasonable use of the existing space, there will be no change in the footprint of the residence, and the petitioners will be making additional improvements to the residence that will improve the aesthetics.*

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 floor area ratio requirements of the Ordinance to allow the interior remodeling of the residence and the conversion of attic space to permanent living space.

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

The approval of this request will allow the petitioners to remodel and better utilize the existing space within the residence. No additions to the residence are proposed herein. When the petitioner purchased the property, there was an existing permanent stairway to the second floor and a bedroom in the upper level. It was reasonable for the owner to believe that the upper level could be used for living space. Typically, on a lot of this size the staff would not recommend in favor of variances from the floor area ratio requirements. However, in this instance, where no change to the exterior of the residence is proposed and the owner is simply looking to better utilize the existing space within the house, we feel that a variance is justified. The approval of this request, will not have an adverse impact on the neighboring properties, and is within the purpose and intent of the Ordinance.

**BA10:009 AUGUST BARKOW:**

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 Ms. Bonniwell 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 requirements of the Ordinance to allow the construction of a 780 sq. ft. detached garage, subject to the following conditions:

1. The proposed detached garage shall not exceed 26 ft. by 30 ft. in size as proposed.

2. The proposed detached garage must comply with all of the offset and setback requirements of the Ordinance 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/setback requirements.
3. The garage must contain only one story and it must conform with the height requirements 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. unless an increased height is allowed subject to compliance with Section 3(i)(1) of the Ordinance.
4. The proposed garage may contain an upper-level storage area only if the garage conforms with the height requirements of the Ordinance 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.
5. Prior to the issuance of a Zoning Permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
6. 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 detached 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.
7. 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 Plat of Survey required in Condition No. 6.

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

The approval of this request, with the recommended conditions, will allow the construction of a new detached garage on the property. The property does not currently contain a garage and therefore contains outside storage of boats, and other items. The proposed garage will exceed the allowable accessory building floor area ratio; however, with the garage, the

property will still be within the allowable total floor area and will meet the open space standards. It is important to remember that the petitioner does not need to demonstrate an unnecessary hardship for a special exception. The proposed garage will be located behind the existing residence, will be reasonably sized for the lot, and will not be detrimental to the public health or welfare. The approval of the garage will improve the aesthetics of the area by providing needed storage space for boats and other items that area currently stored outdoors. Therefore, the approval of this request, as conditioned, will be within the purpose and intent of the Ordinance.

**BA10:010 PEWAUKEE YACHT CLUB (OWNER) ROBERT STOLTZ (AGENT):**

Ms. Bonniwell

*I make a motion to **approve** the request, with the conditions stated in the Staff's recommendation, and for the following reasons: The current patio is old, uneven, and unsafe. The proposed replacement patio will reduce the nonconformity of the patio.*

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

The Planning and Zoning Division staff's recommendation was for **approval** of the request variances from the shore and floodplain setback requirements of the Ordinance to allow the petitioner to replace and enlarge the existing patio on the lakeside of the Pewaukee Yacht Club clubhouse, subject to the following conditions:

1. The proposed patio shall be constructed in substantial compliance with the plan submitted dated February 8, 2010.
2. 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 patio, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
3. 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 patio 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 Plat of Survey required in Condition No. 2.

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

The approval of this request will allow the proposed patio to be replaced and slightly enlarged. It should be noted that on the northwest side of the patio, where it will be enlarged, the patio will comply with the shore and floodplain setback requirements. On the northeast side of the patio, where the existing patio does not comply with the setbacks, the proposed patio will be located further back from the shore and floodplain. Furthermore, the northeast side of the patio that will be slightly too close to the shore and floodplain is also where the main patio doors are located on the clubhouse. To require that the patio be modified to meet the shore and floodplain setback requirements would be unnecessarily burdensome on the property owner as it will require the remodeling of the clubhouse structure to relocate the patio doors. The existing patio has been on the property for many years and the new patio will be brought further into compliance with the setback requirements than the existing patio. The property is located in the middle of a commercial area and the replacement and enlargement of the patio will not have an adverse impact on the general public. Therefore, the approval of this request, with the recommended conditions is in conformance with the purpose and intent of the Ordinance.

**BA10:011 STEVE HEGWOOD (OWNER) KATHRYN GUTENKUNST (AGENT):**

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 with 4 yes votes. Mr. Day had recused himself prior to the public hearing on this matter.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the lot size and lot width requirements to allow the petitioner to purchase an 8 ft. by 45 ft. piece of land from the adjacent lot to the east and **approval** of the request for an after-the-fact variance from the offset requirements to allow the patio on the east side of the residence that was constructed without permits to remain, subject to the following conditions:

1. An after-the-fact Zoning Permit shall be submitted for the patio.
2. The patio shall be reduced in size so that it does not encroach into the existing pedestrian easement. Alternatively, the issue of the easement restriction which prohibits structures or obstructions in the easement shall be resolved to the satisfaction of the Planning and Zoning Division Staff prior to the issuance of a Zoning Permit for the patio.
3. Documentation shall be provided that the land transfer has been properly recorded with the Waukesha County Register of Deeds Office prior to the issuance of an after-the-fact Zoning Permit for the patio.

4. The roofed garden gate structure, the roofed shade structure, and the brick fireplace shall be removed from the property by October 31, 2010. In addition, the walkway and deck on the lakeside of the property shall be brought into compliance by October 31, 2010. These deadlines may be extended by the Planning and Zoning Division Staff upon finding of just cause.

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

The approval of this request will allow the petitioner to purchase lands from the adjacent property to the east that will recognize the as-used property boundaries. When the current owner purchased the property, a fence was in place. It is easy to understand why the owner assumed that the existing fence recognized his property line. He then proceeded to replace the fence and add additional improvements to the area, again under the assumption that he was working on his own property. The approval of the request for variances from the lot size and lot width requirements will bring the property further into compliance with the lot size and lot width requirements. Therefore, it is reasonable to grant the requested variances.

The property owner has agreed to voluntarily remove the brick fireplace, the roofed garden gate, and the shade structure. The request for an after-the-fact variance from the offset requirements to allow the patio to remain as is reasonable. The patio is completely contained within the existing fence that, if approved, will be located on the owner's property. The patio will not be visible from the lake or the adjacent property to the west. Therefore, the approval of this request, as conditioned, would not be detrimental to the public interest or welfare and would be within the purpose and intent of the Ordinance.

**BA10:012 MANN REVOCABLE TRUST:**

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. Schmidt and carried unanimously with 4 yes votes. Mr. Day had recused himself prior to the public hearing in this matter.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the lot size requirements of the Ordinance to allow the petitioner to sell an 8 ft. by 45 ft. piece of land from to the adjacent lot to the west.

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

The approval of this request will allow the petitioner to sell lands to the adjacent property to the west that will recognize the as-used property boundaries. There has been a fence in place since before the property owner to the west purchased the property. Although the subject

property will be slightly reduced in size, the property will still be over 2 acres in size, which greatly exceeds the normal lot size requirements for lots in the R-3 zoning district that front on a public road. The subject property is one of the largest lots in the immediate area and the proposed land transfer will not have an adverse effect on the public interest and welfare. Therefore, the approval of this request would be within the purpose and intent of the Ordinance.

**OTHER ITEMS REQUIRING BOARD ACTION:**

**BA08:020 MICHAEL AND MARIE O'BRIEN:**

Mr. Bartholomew *I make a motion to **approve** the request to allow a 2-year extension, 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 with 3 yes votes. Mr. Schmidt and Mr. Dwyer voted no.

The Planning and Zoning Division staff's recommendation was for **approval** of a 2-year extension to the deadline for obtaining a Zoning Permit; therefore the Zoning Permit must be obtained by May 29, 2012. However, the owners should be aware that if the Ordinance is amended before the Zoning Permit is obtained, all provisions of the amended Ordinance (including, but not limited to floor area ratio and open space) must be complied with or additional variances will be required.

**ADJOURNMENT:**

Mr. Day *I make a motion to adjourn this meeting at 9:01 p.m.*

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

Respectfully submitted,

Nancy M. Bonniwell  
Secretary, Board of Adjustment