

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, June 9, 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: Mary E. Finet, Senior Land Use Specialist
Town of Merton Board of Adjustment
Chris and Cathy Graham, BA10:013, owners
David Sanborn, CamShawn Builders, Inc., BA10:013, builder
Glenn and Kirsten Benidt, BA10:014, owners
Rick Bayer, Bayer Homes, Inc.
Jeff Schaf, BA08:041, 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. Bartholomew *I move to approve the Summary of the Meeting of April 14, 2010, with the following modifications:*

The first sentence at the top of page 9 shall be changed to read "Verbal Testimony from both adjacent neighbors (Charles Stelter and Ronald Borowski) at the public hearing on August 27, 2008, indicated that the building had not been utilized as a separate living unit or guesthouse for as long as either of them has lived there."(Change is underlined.)

A transcript of the proceedings shall be attached as an addendum.

The motion was seconded by Mr. Day and carried with four yes votes. Walter Schmidt abstained because he was not present at the meeting of April 14, 2010.

Mr. Day *I move to approve the Summary of the Meeting of May 12, 2010.*

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

NEW BUSINESS:

BA10:013 CHRIS AND CATHY GRAHAM (Ox & Cat's Sports Bar & Grill):

Mr. Bartholomew *I make a motion to **approve** the request, with the four conditions recommended in the Staff Report, for the reasons stated in the Staff Report and because the replacement of the porch will restore the historic value of a building that has been there for many many years.*

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 variances from the road setback requirement and from the remodeling a non-conforming structure in excess of 50% of its fair market value provision of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the two-story porch, extending across the road side of the tavern/restaurant building, to be rebuilt, subject to the following conditions:

1. The replacement porch may extend no closer to the road than the existing porch.
2. As required by Section 3 (h) (1) (F) of the Waukesha County Shoreland and Floodland Protection Ordinance, the Merton Town Board must approve the reconstruction of the porch partially within the established road right-of-way of C.T.H. "E" and evidence of that approval must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
3. As required by Section 3 (h) (1) (F) of the Waukesha County Shoreland and Floodland Protection Ordinance, a Declaration of Restrictions, stating that the replacement porch is located partially within the established road right-of-way and if, in the future, any portion of the replacement porch located within the established road right-of-way should interfere with necessary road improvements, that portion of the replacement porch must be removed at the owners' expense, shall be signed by the owners and recorded in the Waukesha County Register of Deed's Office. Prior to the issuance of a Zoning Permit, a copy of the recorded Declaration of Restrictions must be furnished to the Planning and Zoning Division staff.
4. Prior to the issuance of a Zoning Permit, all necessary approvals and/or permits must be obtained from the Waukesha County Department of Public Works.

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. The tavern/restaurant building is an historic structure that is an integral part of the community and deserving of preservation. Denial of the requested variations would be unnecessarily burdensome because it would prevent replacement of the unsafe, deteriorated porch, with a new porch of the same size and style and prohibit restoration of the front facade of an historic building.

The building is a unique property feature that has existed in its present location for many years and, although it has an extremely non-conforming road setback, it does not appear to pose a safety hazard. The proposed rebuilding of the porch will not change the size or footprint of the structure and will not increase the degree of non-conformity. The two-story porch is an integral architectural feature of this historic structure and its restoration is in the public interest. Therefore, the approval of variances from the road setback requirement and from the remodeling of a non-conforming structure in excess of 50% of its fair market value provision, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA10:014 GLENN H. BENIDT:

Mr. Day

*I move to **approve** a floodplain setback variance and a building height variance for a detached garage, subject to the conditions recommended in the Staff Report, with Condition No. 1 revised to read as follows:*

“The detached garage shall be constructed in the proposed location, as set forth in the plans submitted with the application and presented at the public hearing, but it cannot be located less than 55 ft. from the 100-year floodplain. The 100-year flood elevation shall be assumed to be 880 ft. amsl, until and unless, prior to the issuance of a Zoning Permit, a different 100-year flood elevation is determined by a Hydrologic and Hydraulic Analysis of the unnamed tributary to Scuppernong Creek or the FEMA Flood Insurance Rate Map (FIRM) is revised to indicate a different 100-year flood elevation.”

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff’s recommendation was for **denial** of a floodplain setback variance for the proposed detached garage, but **approval** of a variance from the building height requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a detached garage, with two stories plus an exposed basement level, subject to the following conditions:

1. The garage must be located in conformance with the minimum required setback of 75 ft. from the 100-year floodplain, as measured to the outer of the overhang, or to the outer edge of the wall if there is no overhang. The 100-year flood elevation shall be assumed to be 880 ft. amsl, until and unless a different 100-year flood elevation is determined by a Hydrologic and Hydraulic Analysis of the unnamed tributary to Scuppernong Creek or the FEMA Flood Insurance Rate Map (FIRM) is revised to indicate a different 100-year flood elevation.
2. The lowest floor of the garage must have an elevation of at least one (1) ft. above the 100-year flood elevation.
3. The 13 ft. 3 in. x 13 ft. 3 in. shed that is currently located in or very near to the 100-year floodplain must either be removed from the property or relocated to a conforming location, at

least 75 ft. from the 100-year floodplain, prior to the expiration date of the Zoning Permit for the garage.

4. Prior to the issuance of a Zoning Permit for the garage, a Plat of Survey must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. The Plat of Survey must show all existing structures; the staked out location of the 100-year flood elevation line, as noted above; a staked-out location for the proposed garage, in conformance with Condition No. 1; the elevation of the lowest floor of the garage, in conformance with Condition No. 2; and a staked out location for the relocation of the existing shed (if applicable), in conformance with Condition No. 3.
5. The height of the garage, as measured on the front side, from the floor of the main level to the peak of the roof, must not exceed 25 ft.
6. The garage may contain a bathroom, but it cannot contain a kitchen.
7. Prior to the issuance of a Zoning Permit for the garage, a complete set of plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. A Declaration of Restrictions, stating that no portion of the detached garage may be used as living quarters or for overnight human habitation, shall be signed by the owners and recorded in the Waukesha County Register of Deeds office. Prior to the issuance of a Zoning Permit, a copy of the recorded Declaration of Restrictions must be furnished to the Planning and Zoning Division staff.
9. If there is to be a driveway to the lower level of the garage or any other changes to the existing grades, 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. The Grading and Drainage Plan should include the following: a timetable for completion, the source and type of any 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 Grading and Drainage Plan must be reviewed and approved by the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit for the garage. Upon receipt of the Grading and Drainage Plan, the Planning and Zoning Division staff will determine if the proposed grading can be permitted in conjunction with the Zoning Permit or whether a Minor Grading Permit or a Conditional Use Permit will be required. The Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 4.
10. A "Preliminary Site Evaluation" of the proposed garage and the septic system must be conducted by the Environmental Health Division. Prior to the issuance of a Zoning Permit for the garage, evidence must be submitted to the Planning and Zoning Division staff that the Environmental Health Division has no objection to the proposed garage, and that it meets all required minimum separation distances and will not have an adverse effect on the operation of the private waste disposal system. If that cannot be done, a Sanitary Permit for a new waste disposal system must be issued, and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit for the garage.

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. It has not been demonstrated that the denial of a floodplain setback variance would result in an unnecessary hardship. If the required Plat of Survey indicates the proposed garage location is less than the minimum required 75 ft. from the 100-year floodplain, either the location or the depth of the proposed garage could be modified to bring it into conformance with the floodplain setback requirement. Therefore, the approval of a floodplain setback variance for the proposed detached garage would not be in conformance with the purpose and intent of the Ordinance.

A hardship does exist with respect to building height. Despite the size of the property, the configuration of the residence and driveway and the location of the floodplain combine to limit the area available for the addition of a detached garage. The proposed location is the most practical and aesthetically pleasing location for a detached garage and, due to the topography, a detached garage in that location must either be constructed with an exposed lower level or significant filling would be required. It would be unnecessarily burdensome not to grant some relief from the building height requirement so the exposed lower level of the garage is not included in the maximum permitted building height, since the exposed lower level is dictated by the existing topography. However, variations should be granted only to provide the minimum relief necessary for a reasonable use of the property and the requested variance to permit the proposed garage with a maximum height of 40 ft. in the rear and 31 ft. in the front exceeds minimum relief. The approval of a building height variance to allow the construction of a detached garage with a maximum height of 25 ft., as measured from the main level on the front side of the garage to the peak of the roof, as recommended, is in conformance with the maximum permitted accessory building height that would be permitted if the floodplain setback could be increased to at least 85 ft. Finally, a building height variance, as recommended rather than as requested, is not contrary to the public interest and will not preclude the construction of a garage that is architecturally compatible with the existing residence. Therefore, the approval of an accessory building height variance, as recommended, would be in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA08:041 JEFF AND MAUREEN SCHAF:

Note: Ms. Bonniwell and Mr. Day recused themselves prior to the discussion of this case.

Mr. Schmidt

*I move to **approve** the request for a two-year extension to the time limit for the utilization of the variations granted on July 23, 2008, as recommended in the Staff Memorandum.*

The motion was seconded by Mr. Bartholomew and carried with three yes votes from Mr. Dwyer, Mr. Bartholomew and Mr. Schmidt.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a two-year extension to the time limit for the utilization of variances from the conservancy and floodplain setback requirements and from the open space requirement of the Waukesha County Shoreland and Floodland Protection Ordinance that were granted by the Waukesha County Board of Adjustment on July 23, 2008, for the construction of a new residence with attached garage, decks and patios, subject to the conditions stated in the Decision Sheet dated July 24, 2010.

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

The Ordinance has not changed with respect to the variances approved since the original decision and it is likely that if a new variance request was to be considered, it would be approved, subject to the same conditions. However, it should be noted that we anticipate that the Waukesha County Shoreland and Floodland Protection Ordinance will be amended sometime in the next two years. The owners should be aware that if the Ordinance is amended before the Zoning Permit is obtained, all provisions of the amended Ordinance must be complied with or additional variances will be required.

ADJOURNMENT:

Mr. Bartholomew *I move to adjourn this meeting at 9:04 p.m.*

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

Respectfully submitted,

Nancy M. Bonniwell
Secretary, Board of Adjustment