

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, July 14, 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  
Nancy Bonniwell  
Linda Weber

**BOARD MEMBERS ABSENT:** Tom Day

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

**OTHERS PRESENT:** Peggy S. Tilley, Senior Land Use Specialist  
Town of Merton Board of Adjustment  
Tyler Morse, BA10:016, owner  
Dave Hoffman, BA10:016, agent  
Dave Mirsberger, BA10:017, owner  
Paul Schultz, BA10:017 and BA10:018, agent  
Arthur & Karen Dietrich, BA10:015, owners  
Dorothy Gartzke, BA10:018, owner  
Cindy Heim, BA10:018, daughter of owner  
Robbie Heim, BA10:018, grandson of owner  
James Kueht, BA10:019, owner  
Christine Binn, BA10:019, owner  
Martin Binn, BA10:019, brother of owner  
Tim Richer, BA10:019, neighbor  
Dan & Libby Cleary, BA10:018, neighbors  
Steve Kundrow, BA10:015, coworker of owner  
Wayne Pett, BA10:015, contractor

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 June 9, 2010.*

The motion was seconded by Mr. Schmidt and carried with four yes votes. Ms. Weber abstained.

**ELECTION OF OFFICERS:**

Mr. Bartholomew                    *I make a motion to nominate and elect Mr. Dwyer for Chairperson.*

The motion was seconded by Ms. Bonniwell.

Mr. Dwyer asked if there were any other nominations. There were no additional nominations.

The motion carried with five yes votes.

Mr. Dwyer                            *I make a motion to nominate and elect Mr. Bartholomew for Vice Chairperson.*

The motion was seconded by Mr. Schmidt.

Mr. Dwyer asked if there were any other nominations. There were no additional nominations.

The motion carried with five yes votes.

Mr. Bartholomew                    *I make a motion to nominate and elect Ms. Bonniwell for Secretary.*

The motion was seconded by Ms. Weber.

Mr. Dwyer asked if there were any other nominations. There were no additional nominations.

The motion carried with five yes votes.

**NEW BUSINESS:**

**BA10:015 DIETRICH FAMILY TRUST:**

Ms. Weber                            *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 request for variances from the road setback, offset, and open space requirements of the Ordinance as well as a **approval** of a special exception from the accessory building floor area ratio requirements of the Ordinance to allow the construction of a new detached garage on the property, subject to the following conditions:

1. The proposed garage shall not exceed 22 ft. by 28 ft. (616 sq. ft.) in size.

2. The proposed garage must be located no closer to the road right-of-way than the existing garage (9.32 ft.) and no closer to the west lot line than the existing garage (5.8 ft.), 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 contained herein.
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.
4. 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.
5. 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.
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 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. The 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:

As conditioned, the proposed garage will be located no closer to the road right-of-way and no closer to the west lot line than the existing garage. It should be noted that the Board previously granted variances to allow the construction of the existing detached garage in its current location. Due to the size of the lot, no structure could be constructed without the

need for some relief from the open space requirements of the Ordinance. The property will still conform with the total allowable floor area ratio requirements of the Ordinance and the recommended garage, although slightly larger than the existing garage, is still reasonably sized for the lot. The residence is modestly sized and does not comply with the minimum first floor area requirements of the Ordinance. Therefore, it is reasonable to allow some relief from the accessory building floor area ratio requirements of the Ordinance to allow the construction of a new detached garage for additional storage space. The approval of this request, as conditioned, will allow the construction of a new detached garage on the subject property that will be reasonably sized for the lot and will be in keeping with the characteristics of the neighborhood. The approval of this request will not be detrimental to the public interest or welfare and will be within the purpose and intent of the Ordinance.

**BA10:016 TYLER MORSE:**

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.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the floor area ratio, and shore and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, as well as **approval** of a special exception from the offset requirements of the Ordinance to allow the construction of two additions to the second floor of the residence, subject to the following conditions:

1. The proposed additions shall not be located any closer to the lake or the side lot lines than the existing residence.
2. Prior to the issuance of a Zoning Permit, a complete set of house plans with accurate dimensions that match the plat of survey, must be submitted to the Planning and Zoning Division staff for review and approval.

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

The approval of this request will allow the construction of two small additions to the existing residence on the property. The additions will not increase the footprint of the structure and will not be located closer to the road, side lot lines, shore or floodplain than the existing residence. It should be noted that the property does not contain a garage and the Board of Adjustment has previously denied a request by a previous owner for variances to construct a garage. The amount of square footage requested is consistent with what has been allowed on similarly sized parcels in the immediate area. The approval of this request will not be contrary to the public interest and will be within the purpose and intent of the Ordinance.

**BA10:017 DAVE MIRSBERGER (OWNER) PAUL SCHULTZ (AGENT):**

Mr. Schmidt

*I make a motion to **approve** the request for variances from the road setback, floodplain setback, floor area ratio, and open space requirements in accordance with the Staff recommendation, and also **approve** the request for a variance from the C-1, EFD District requirements and find that the deck does not constitute a lateral expansion into the floodplain. The conditions and the reasons stated in the staff recommendation shall be a part of this decision as modified below:*

*Condition No. 3 shall be modified to read as follows: “The footprint of the residence and attached garage shall not exceed **1376 sq. ft.** This shall consist of a minimum of 850 sq. ft. on the first floor and a minimum of 400 sq. ft. attached garage. All covered decks, patios, covered porches and entryways shall be included in the total footprint.”*

*Condition No. 4 shall be modified to read as follows: “A deck may be permitted on the lakeside of the residence if it complies with the shore setback requirements of the Ordinance and if the total footprint of the residence and attached garage does not exceed **1,376 sq. ft.**”*

*Condition No. 5 shall be modified to read as follows: “The total floor area (not including an uncovered deck) on the property shall not exceed **2,218 sq. ft.** This will result in a floor area ratio of approximately **22.14%.**”*

*Condition No. 11 shall be modified to read as follows: “Fill shall be used to elevate the lowest floor, excluding those basements or crawlspaces, 5 ft. or less in height, so as to meet the above. The fill surrounding the structure (**not including an uncovered deck**) shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation at least fifteen (15) feet beyond the limits of the structure. The fill shall not negatively alter floodwater conveyance or increase flood heights. Where such distance cannot be achieved because of lot lines, elevations of existing streets or sewer lines, flood impacts, or other similar constraints, said fill elevation shall extend as far as is practicable resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties. In addition, where the fifteen (15) feet of fill cannot be achieved as set forth above, the structures shall be floodproofed to the flood protection elevation in accordance with the methods set forth herein and shall be certified as such by an architect or professional engineer*

*registered in the State of Wisconsin and be authorized by the WDNR. Other methods may be used, as long as they are certified as set forth above, which are designed to the flood protection elevation for the particular area in question. All floodproofing measures shall at a minimum provide anchorage to resist flotation and lateral movement, and shall insure that the structural walls and floors are watertight. In order to insure that adequate measures are taken, the applicant shall submit a plan or document certified, as above, that the floodproofing measures are adequately designed to protect the property to the flood protection elevation for the subject area.”*

*Condition No. 13 shall be modified to read as follows: “In addition to the lowest floor elevation and fill requirements of this ordinance, any structure must meet the floodproofing standards set forth in Section 8(c) of the Ordinance. **The uncovered deck shall comply with all applicable floodproofing standards of Section 8(c). These will include but may not be limited to designing the deck to resist flotation and lateral movement and constructing the deck to resist rupture or collapse caused by water pressure or floating debris.”***

*Condition No. 22 shall be modified to read as follows: “The fill area and the fill around the residence shall be in accordance with the final Grading Plan, to be approved by the **Town Building Inspector** and in accordance with the standards of FEMA Technical Bulletin No.10.”*

*The reasons stated in the staff recommendation shall be modified to read as follows: “The conditional approval of this request will allow the replacement of a residence and detached garage with the construction of a new residence with an attached garage and a deck that is appropriately sized for the lot and the particular lot conditions. The entire property is located within the 100-year floodplain of North Lake and there is no conforming location on the lot on which a structure could be constructed without the need for variances. The Ordinance provides that a variance granted on a property located in the floodplain shall meet the following criteria in addition to the three tests for the granting of a variance:*

- a. May not cause any increase in the regional flood elevation.*
- b. May not increase the amount of obstruction to flood flows.*
- c. The variance shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of the Ordinance.*

- d. *The floodproofing measures and EFD Existing Floodplain Development Overlay District standards required in the Ordinance, NR 116, of the Wisconsin Administrative Code, and FEMA regulations must be met.*

*As conditioned, the applicant will be responsible for proving that these measures are satisfied prior to the issuance of a Zoning Permit for the construction of the residence.*

*This approval, as conditioned, will result in 2,218 sq. ft. of living and storage space. It should be noted that the resultant footprint of the residence and attached garage will be approximately 57 sq. ft. less than the current footprint of the residence and detached garage **and the proposed deck is not to be considered a lateral expansion into the floodplain.** It is reasonable to allow some relief from the floor area ratio and open space requirements of the Ordinance because the residence will have reduced storage space due to a lack of basement and no structure could be constructed without the need for an open space requirements since the property is less than the required 15,000 sq. ft. of open space.*

*A floodplain setback variance is necessary because the entire property is located in the floodplain and no structure could be constructed without a variance from this requirement. The property is near the end of a dead end road and therefore, it is reasonable to allow some relief from the road setback requirements to allow the residence to be constructed further from the lake.*

*The purpose and intent of the EFD District is to provide for the continued use of improved properties that lie within the floodplain and which are otherwise considered prohibited structures and to regulate them in accordance with sound floodplain management practices. It is further the intent of these provisions to regulate and diminish the proliferation of non-conforming structures and uses in floodplain areas and to regulate said reconstruction, remodeling, conversion and repair with the overall intent of lessening the public responsibilities attendant to the continued and expanded development of land and structures which are inherently incompatible with natural floodplains and to lessen the potential danger to life, safety, health and welfare of persons whose lands are subject to the hazards of floods. As conditioned, the approval of this request will be within the purpose and intent of the Ordinance.*

*When a floodplain variance is granted, the Ordinance requires that the Board of Adjustment notify the applicant, in writing, that it may increase flood insurance premiums and risks to life and property. If*

*the Board grants any of the variances requested, the petitioner shall consider this staff report and recommendation such written notification.*

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

The Planning and Zoning Division staff's recommendation was for **denial** of the request for a variance from the C-1, EFD requirements for a lateral expansion in the floodplain but **approval** of the request for variances from the road setback, floodplain setback, floor area ratio, and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the construction of a new single-family residence with an attached garage and a deck on the property, subject to the following conditions:

1. The proposed residence and attached garage shall be located a minimum of 18 ft. from the edge of the established road right-of-way as proposed.
2. The proposed residence, attached garage and deck shall comply with the offset and shore setback requirements of the Ordinance.
3. The footprint of the residence and attached garage shall not exceed 1,350 sq. ft. This shall consist of a minimum 850 sq. ft. first floor and a minimum 400 sq. ft. attached garage. All covered decks, patios, covered porches and entryways shall be included in the total footprint.
4. A deck may be permitted on the lakeside of the residence if it complies with the shore setback requirements of the Ordinance and if the total footprint of the residence attached garage and deck does not exceed 1,433 sq. ft.
5. The total floor area (not including an uncovered deck) on the property shall not exceed 1,700 sq. ft. This will result in a floor area ratio of approximately 22.14%.
6. The residence and attached garage and all other appurtenances must not exceed two stories, as viewed from the lake and the road. The proposed residence and attached garage must conform to the height requirements of the Ordinance.
7. 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 private sewage system and private well shall be floodproofed to the flood protection elevation pursuant to Section 8(c) of the Ordinance and shall conform with the provisions of the Waukesha County Code of Ordinances and Wisconsin Administrative Codes where applicable to such facilities.
8. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all proposed structures (including decks, and walkways) in conformance with all conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division

Staff for review and approval.

9. Prior to the issuance of a Zoning Permit, the final construction plans for the residence and attached garage, in conformance with all conditions, must be submitted to the Planning and Zoning Division Staff for review and approval.
10. The elevation of the lowest floor of the residence including the attached garage, excluding those basements or crawlspaces that are 5 ft. or less in height, shall be placed at or above the flood protection elevation and reconstruction may only occur on the same foundation or newly construction foundation which represents no greater an encroachment or extension of the previously existing structure other than vertically. Said foundation shall be floodproofed and certified as set forth herein. Note: The Flood protection elevation is defined as the elevation corresponding to two (2) feet of freeboard above the floodplain. Basements or crawlspaces that are 5 ft. or less in height must comply with Condition No. 12 below.
11. Fill shall be used to elevate the lowest floor, excluding those basements or crawlspaces, 5 ft. or less in height, so as to meet the above. The fill surrounding the structure shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation at least fifteen (15) feet beyond the limits of the structure. The fill shall not negatively alter floodwater conveyance or increase flood heights. Where such distance cannot be achieved because of lot lines, elevations of existing streets or sewer lines, flood impacts, or other similar constraints, said fill elevation shall extend as far as is practicable resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties. In addition, where the fifteen (15) feet of fill cannot be achieved as set forth above, the structures shall be floodproofed to the flood protection elevation in accordance with the methods set forth herein and shall be certified as such by an architect or professional engineer registered in the State of Wisconsin and be authorized by the WDNR. Other methods may be used, as long as they are certified as set forth above, which are designed to the flood protection elevation for the particular area in question. All floodproofing measures shall at a minimum provide anchorage to resist flotation and lateral movement, and shall insure that the structural walls and floors are watertight. In order to insure that adequate measures are taken, the applicant shall submit a plan or document certified, as above, that the floodproofing measures are adequately designed to protect the property to the flood protection elevation for the subject area.
12. If the structure has a basement or a crawl space which is 5 ft. in height or less and which is not useable as living area, the surface of the floor of the basement or crawlspace shall be at or above the regional flood elevation. Heating, ventilation, air conditioning, electrical and gas equipment shall be at or above the flood protection elevation. In any case, the basement or crawlspace shall be floodproofed in accordance with section 8(c) of the Ordinance to the flood protection elevation so that floodwater cannot enter directly over the ground surface into such basement and crawlspace.
13. In addition to the lowest floor elevation and fill requirements of this ordinance, any structure must meet the floodproofing standards set forth in Section 8(c) of the Ordinance.

14. There shall be contiguous dry land access to the proposed structure. Dry land access is considered a vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above the regional flood elevation and wide enough for wheeled rescue and relief vehicles. In developments where existing street or sewer line elevations make compliance with this requirement impractical, a permit may be issued where access roads are at or below the regional flood elevation, if the municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure by wheeled vehicles during a regional flood event; or the municipality has a natural disaster plan approved by Wisconsin Emergency Management and the WDNR.
15. No change in the existing topography or drainage courses on any land will be allowed, which will result in adversely altering the drainage or increasing any portion of the existing slope through fill and/or grading to a ratio greater than three (3) horizontal to one (1) vertical. Further, no fill or alterations will be permitted under any circumstances, which will alter the drainage or topography in a way that will adversely affect the surrounding lands.
16. The structure must meet all of the minimum requirements under applicable FEMA regulations (44 CRF part 60), or the regulations promulgated thereunder.
17. The structure shall not have a High Flood Damage Potential (i.e. damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure and its contents).
18. The construction shall not impede drainage, obstruct flood flows (i.e. development which blocks the conveyance of floodwaters by itself or with other development), reduce the flood water storage capacity of the floodland or result in an increased regional flood elevation. Compensatory storage is required for all areas of authorized fill on a minimum of a one to one basis, which equals 100% replacement of any lost floodplain storage capacity. Excavation below the groundwater table is not considered to provide an equal volume of storage. Compensation must be provided in a manner which is not deleterious to other property or the quality of any wetlands. The area of compensatory floodplain storage shall be in close proximity to fill activity and shall not result in an increase in floodplain elevations on upstream or downstream properties. The applicant shall provide the following data to determine the effects of the proposal according to these standards: A cross-section elevation view of the proposal, perpendicular to the watercourse, showing if the proposed development will obstruct flow; or an analysis calculating the effects of this proposal on regional flood height. These standards state that the submitted plans and calculations must demonstrate that the proposed fill of the floodplain does not impede drainage, obstruct flows, or reduce the floodwater storage capacity of the floodland. This analysis must be performed and certified by a Professional Engineer licensed in the State of Wisconsin.
19. In addition to the lowest floor elevation and fill requirements of this ordinance, any structure must meet the floodproofing standards set forth in Section 8(c) of the Ordinance.

20. Upon completion, the applicant shall submit a certification signed by a registered professional engineer, architect or land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or architect that floodproofing measures meet the requirements of Section 8(c) of the Ordinance. A copy of that certification must be submitted to the Town of Merton Building Inspector and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff, prior to proceeding with construction.
21. Upon completion of the foundations of the residence and attached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions.
22. The fill area and the fill around the residence shall be in accordance with the final Grading Plan, to be approved by the Town Engineer and in accordance with the standards of FEMA Technical Bulletin No.10.
23. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, 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. 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. 8.
24. Upon completion of the project, an “As-Built” Grading Plan, showing the finished grades on the property must be prepared by a registered land surveyor and submitted to the Town Engineer and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff. If that “as-built” Grading Plan indicates that the property has not been filled in accordance with the approved Grading Plan, the petitioners shall make whatever changes are necessary to bring the property into conformance with the approved Grading Plan. The final plans and fill and floor elevations shall be submitted to FEMA to obtain LOMR-F certification if flood insurance is to be avoided.
25. Floodplain Certificate of Compliance: No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a Floodplain Certificate of Compliance is issued by the Zoning Administrator. The Floodplain Certificate of Compliance shall show that the building or premises or part thereof, and the proposed use, conform to the floodplain provisions of this

ordinance. If all provisions are met, the Floodplain Certificate of Compliance shall be issued within 10 days after written notification that the permitted work was completed. The Zoning Administrator shall issue the Floodplain Certificate of Compliance to the Town Building Inspector and a copy of the Floodplain Certificate of Compliance to the applicant.

26. Notwithstanding the above, compliance with any other provisions or requirements of the Waukesha County Shoreland and Floodland Protection Ordinance is required.

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

It should be noted that since the staff recommendation is to reduce the overall footprint of the home, it is recommended that the road setback be increased to better meet the requirements of the Ordinance.

The conditional approval of this request will allow the replacement of a residence and detached garage with the construction of a new residence with an attached garage and a deck that is appropriately sized for the lot and the particular lot conditions. The entire property is located within the 100-year floodplain of North Lake and there is no conforming location on the lot on which a structure could be constructed without the need for variances. The Ordinance provides that a variance granted on a property located in the floodplain shall meet the following criteria in addition to the three tests for the granting of a variance:

- a. May not cause any increase in the regional flood elevation.
- b. May not increase the amount of obstruction to flood flows.
- c. The variance shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of the Ordinance.
- d. The floodproofing measures and EFD Existing Floodplain Development Overlay District standards required in the Ordinance, NR 116, of the Wisconsin Administrative Code, and FEMA regulations must be met.

As conditioned, the applicant will be responsible for proving that these measures are satisfied prior to the issuance of a Zoning Permit for the construction of the residence.

This approval, as conditioned, will result in 1,700 sq. ft. of living and storage space. It should be noted that the resultant footprint of the residence and attached garage will be approximately 57 sq. ft. less than the current footprint of the residence and detached garage. The proposed deck will increase the area but, as conditioned, the footprint of the structures will not exceed the footprint of the existing structures. It is reasonable to allow some relief from the floor area ratio and open space requirements of the Ordinance because the residence will have reduced storage space due to a lack of basement and no structure could be constructed without the need for an open space requirements since the property is less than the required 15,000 sq. ft. of open space.

A floodplain setback variance is necessary because the entire property is located in the floodplain

and no structure could be constructed without a variance from this requirement. The property is near the end of a dead end road and therefore, it is reasonable to allow some relief from the road setback requirements to allow the residence to be constructed further from the lake.

The purpose and intent of the EFD District is to provide for the continued use of improved properties that lie within the floodplain and which are otherwise considered prohibited structures and to regulate them in accordance with sound floodplain management practices. It is further the intent of these provisions to regulate and diminish the proliferation of non-conforming structures and uses in floodplain areas and to regulate said reconstruction, remodeling, conversion and repair with the overall intent of lessening the public responsibilities attendant to the continued and expanded development of land and structures which are inherently incompatible with natural floodplains and to lessen the potential danger to life, safety, health and welfare of persons whose lands are subject to the hazards of floods. As conditioned, the approval of this request will be within the purpose and intent of the Ordinance.

When a floodplain variance is granted, the Ordinance requires that the Board of Adjustment notify the applicant, in writing, that it may increase flood insurance premiums and risks to life and property. If the Board grants any of the variances requested, the petitioner shall consider this staff report and recommendation such written notification.

**BA10:018 DOROTHY R. GARTZKE (OWNER) PAUL SCHULTZ (AGENT):**

Ms. Bonniwell

*I make a motion to **approve** the request for variances from the floodplain setback, floor area ratio, and open space requirements in accordance with the Staff recommendation. Finding, however, that the proposed deck is not considered a lateral expansion into the floodplain but shall be anchored to resist floatation and lateral movement. The conditions and the reasons stated in the staff recommendation shall be a part of this decision as modified below:*

*Condition No. 3 shall be modified to read as follows: “A deck may be permitted on the lakeside of the residence if it does not extend beyond 15 ft. of the footprint of the residence.”*

*Condition No. 10 shall be modified to read as follows: “Fill shall be used to elevate the lowest floor, excluding those basements or crawlspaces, 5 ft. or less in height, so as to meet the above. The fill surrounding the structure (**not including an uncovered deck**) shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation at least fifteen (15) feet beyond the limits of the structure. The fill shall not negatively alter floodwater conveyance or increase flood heights. Where such distance cannot be achieved because of lot lines, elevations of existing streets or sewer lines, flood impacts, or other*

*similar constraints, said fill elevation shall extend as far as is practicable resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties. In addition, where the fifteen (15) feet of fill cannot be achieved as set forth above, the structures shall be floodproofed to the flood protection elevation in accordance with the methods set forth herein and shall be certified as such by an architect or professional engineer registered in the State of Wisconsin and be authorized by the WDNR.*

*Other methods may be used, as long as they are certified as set forth above, which are designed to the flood protection elevation for the particular area in question. All floodproofing measures shall at a minimum provide anchorage to resist flotation and lateral movement, and shall insure that the structural walls and floors are watertight. In order to insure that adequate measures are taken, the applicant shall submit a plan or document certified, as above, that the floodproofing measures are adequately designed to protect the property to the flood protection elevation for the subject area.”*

*Condition No. 12 shall be modified to read as follows: “In addition to the lowest floor elevation and fill requirements of this ordinance, any structure must meet the floodproofing standards set forth in Section 8(c) of the Ordinance. **The uncovered deck shall comply with all applicable floodproofing standards of Section 8(c). These will include but may not be limited to designing the deck to resist flotation and lateral movement and constructing the deck to resist rupture or collapse caused by water pressure or floating debris.**”*

*The reasons stated in the staff recommendation shall be modified to read as follows: “The conditional approval of this request will allow the replacement of a flood damaged residence and detached garage with the construction of a new residence with an attached garage and a deck that is appropriately sized for the lot and the particular lot conditions. The entire property is located within the estimated 100-year floodplain of Lower Genesee Lake and there is no conforming location on the lot on which a structure could be constructed without the need for variances. The Ordinance provides that a variance granted on a property located in the floodplain shall meet the following criteria in addition to the three tests for the granting of a variance:*

- a. May not cause any increase in the regional flood elevation.*
- b. May not increase the amount of obstruction to flood flows.*
- c. The variance shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of the Ordinance.*

- d. *The floodproofing measures and EFD Existing Floodplain Development Overlay District standards required in the Ordinance, NR 116, of the Wisconsin Administrative Code, and FEMA regulations must be met.*

*As conditioned, the applicant will be responsible for proving that these measures are satisfied prior to the issuance of a Zoning Permit for the construction of the residence.*

*As stated above, the property is located entirely below the estimated floodplain elevation of Lower Genesee Lake (870.0 above mean sea level (amsl). It is important to note that the floodplain elevation for Lower Genesee Lake is unstudied at this time. However, the C-1 (EFD) District requires that the first floor of all structures must be floodproofed to the flood protection elevation (2 ft. above the floodplain). Although the floodplain is unstudied for this lake, updated FEMA mapping indicates that the floodplain elevation is approximately 868.0-870.0 amsl. In addition, survey information taken by Waukesha County after the 2008 floods indicates that the flood elevation in June of 2008 was 869.5, and a preliminary flood study done by Welch Hansen dated April 6, 1978 placed the flood elevation at 869.6. Therefore, the County Zoning Administrator has determined that it is a reasonable assumption to regulate the floodplain of Lower Genesee Lake as 870.0 amsl.*

*This approval, as conditioned, will result in 1,957 sq. ft. of living and storage space. It should be noted that the resultant footprint of the residence, and attached garage will be approximately 557 sq. ft. less than the current footprint of the residence and detached garage **and the proposed deck is not to be considered a lateral expansion into the floodplain**. It is reasonable to allow some relief from the floor area ratio and open space requirements of the Ordinance because the residence will have reduced storage space due to a lack of basement and no structure could be constructed without the need for an open space requirements since the property is less than the required 15,000 sq. ft. of open space. It should be noted that the square footage proposed and recommended herein is also consistent with what has been allowed on similarly sized parcels in the immediate area.*

*A floodplain setback variance is necessary because the entire property is located in the floodplain and no structure could be constructed without a variance from this requirement.*

*The purpose and intent of the EFD District is to provide for the continued use of improved properties that lie within the floodplain*

*and which are otherwise considered prohibited structures and to regulate them in accordance with sound floodplain management practices. It is further the intent of these provisions to regulate and diminish the proliferation of non-conforming structures and uses in floodplain areas and to regulate said reconstruction, remodeling, conversion and repair with the overall intent of lessening the public responsibilities attendant to the continued and expanded development of land and structures which are inherently incompatible with natural floodplains and to lessen the potential danger to life, safety, health and welfare of persons whose lands are subject to the hazards of floods. As conditioned, the approval of this request will be within the purpose and intent of the Ordinance.*

*When a floodplain variance is granted, the Ordinance requires that the Board of Adjustment notify the applicant, in writing, that it may increase flood insurance premiums and risks to life and property. If the Board grants any of the variances requested, the petitioner shall consider this staff report and recommendation such written notification.*

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 variances from the floodplain setback, floor area ratio, and open space requirements of the Ordinance to allow the construction of a new single-family residence with an attached garage and a deck on the property, subject to the following conditions:

1. The proposed residence, attached garage and deck shall comply with the road setback, shore setback, and offset requirements of the Ordinance.
2. The footprint of the residence and attached garage shall not exceed 1,334 sq. ft. as proposed. This shall consist of a minimum 850 sq. ft. first floor and a minimum 400 sq. ft. attached garage. All covered decks, patios, covered porches and entryways shall be included in the total footprint.
3. A deck may be permitted on the lakeside of the residence if it does not extend beyond 15 ft. of the footprint of the residence. The total footprint of the residence, detached garage and deck shall not exceed 1,891 sq. ft.
4. The total floor area on the property shall not exceed 1,957 sq. ft. This will result in a floor area ratio of approximately 19.13%.
5. The residence and attached garage and all other appurtenances must not exceed two stories, as viewed from the lake and the road. The proposed residence and attached garage must conform to the height requirements of the Ordinance.

6. 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 private sewage system and private well shall be floodproofed to the flood protection elevation pursuant to Section 8(c) of the Ordinance and shall conform with the provisions of the Waukesha County Code of Ordinances and Wisconsin Administrative Codes where applicable to such facilities.
7. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all proposed structures (including decks, patios, and walkways) in conformance with all conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division Staff for review and approval.
8. Prior to the issuance of a Zoning Permit, the final construction plans for the residence and attached garage, in conformance with all conditions, must be submitted to the Planning and Zoning Division Staff for review and approval.
9. The elevation of the lowest floor of the residence including the attached garage, excluding those basements or crawlspaces that are 5 ft. or less in height, shall be placed at or above the flood protection elevation and reconstruction may only occur on the same foundation or newly construction foundation which represents no greater an encroachment or extension of the previously existing structure other than vertically. Said foundation shall be floodproofed and certified as set forth herein. Note: The Flood protection elevation is defined as the elevation corresponding to two (2) feet of freeboard above the floodplain. Basements or crawlspaces that are 5 ft. or less in height must comply with Condition No. 11 below.
10. Fill shall be used to elevate the lowest floor, excluding those basements or crawlspaces, 5 ft. or less in height, so as to meet the above. The fill surrounding the structure shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation at least fifteen (15) feet beyond the limits of the structure. The fill shall not negatively alter floodwater conveyance or increase flood heights. Where such distance cannot be achieved because of lot lines, elevations of existing streets or sewer lines, flood impacts, or other similar constraints, said fill elevation shall extend as far as is practicable resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties. In addition, where the fifteen (15) feet of fill cannot be achieved as set forth above, the structures shall be floodproofed to the flood protection elevation in accordance with the methods set forth herein and shall be certified as such by an architect or professional engineer registered in the State of Wisconsin and be authorized by the WDNR. Other methods may be used, as long as they are certified as set forth above, which are designed to the flood protection elevation for the particular area in question. All floodproofing measures shall at a minimum provide anchorage to resist flotation and lateral movement, and shall insure that the structural walls and floors are watertight. In order to insure that adequate measures are taken, the applicant shall submit a plan or document certified, as above, that the floodproofing measures are adequately designed to protect the

property to the flood protection elevation for the subject area.

11. If the structure has a basement or a crawl space which is 5 ft. in height or less and which is not useable as living area, the surface of the floor of the basement or crawlspace shall be at or above the regional flood elevation. Heating, ventilation, air conditioning, electrical and gas equipment shall be at or above the flood protection elevation. In any case, the basement or crawlspace shall be floodproofed in accordance with section 8(c) of the Ordinance to the flood protection elevation so that floodwater cannot enter directly over the ground surface into such basement and crawlspace.
12. In addition to the lowest floor elevation and fill requirements of this ordinance, any structure must meet the floodproofing standards set forth in Section 8(c) of the Ordinance.
13. There shall be contiguous dry land access to the proposed structure. Dry land access is considered a vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above the regional flood elevation and wide enough for wheeled rescue and relief vehicles. In developments where existing street or sewer line elevations make compliance with this requirement impractical, a permit may be issued where access roads are at or below the regional flood elevation, if the municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure by wheeled vehicles during a regional flood event; or the municipality has a natural disaster plan approved by Wisconsin Emergency Management and the WDNR.
14. No change in the existing topography or drainage courses on any land will be allowed, which will result in adversely altering the drainage or increasing any portion of the existing slope through fill and/or grading to a ratio greater than three (3) horizontal to one (1) vertical. Further, no fill or alterations will be permitted under any circumstances, which will alter the drainage or topography in a way that will adversely affect the surrounding lands.
15. The structure must meet all of the minimum requirements under applicable FEMA regulations (44 CRF part 60), or the regulations promulgated thereunder.
16. The structure shall not have a High Flood Damage Potential (i.e. damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure and its contents).
17. The construction shall not impede drainage, obstruct flood flows (i.e. development which blocks the conveyance of floodwaters by itself or with other development), reduce the flood water storage capacity of the floodland or result in an increased regional flood elevation. Compensatory storage is required for all areas of authorized fill on a minimum of a one to one basis, which equals 100% replacement of any lost floodplain storage capacity. Excavation below the groundwater table is not considered to provide an equal volume of storage. Compensation must be provided in a manner which is not deleterious to other property or the quality of any wetlands. The area of compensatory floodplain storage shall be

in close proximity to fill activity and shall not result in an increase in floodplain elevations on upstream or downstream properties. The applicant shall provide the following data to determine the effects of the proposal according to these standards: A cross-section elevation view of the proposal, perpendicular to the watercourse, showing if the proposed development will obstruct flow; or an analysis calculating the effects of this proposal on regional flood height. These standards state that the submitted plans and calculations must demonstrate that the proposed fill of the floodplain does not impede drainage, obstruct flows, or reduce the floodwater storage capacity of the floodland. This analysis must be performed and certified by a Professional Engineer licensed in the State of Wisconsin.

18. Upon completion, the applicant shall submit a certification signed by a registered professional engineer, architect or land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or architect that floodproofing measures meet the requirements of Section 8(c) of the Ordinance. A copy of that certification must be submitted to the Town of Summit Building Inspector and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff, prior to proceeding with construction.
19. Upon completion of the foundations of the residence and attached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions.
20. The fill area and the fill around the residence shall be in accordance with the final Grading Plan, to be approved by the Town Engineer and in accordance with the standards of FEMA Technical Bulletin No.10.
21. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, 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. 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. 7.
22. Upon completion of the project, an “As-Built” Grading Plan, showing the finished grades on the property must be prepared by a registered land surveyor and submitted to the Town Engineer and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff. If that “as-built” Grading Plan indicates that the property has not been filled in accordance with the approved Grading Plan, the petitioners shall make

whatever changes are necessary to bring the property into conformance with the approved Grading Plan. The final plans and fill and floor elevations shall be submitted to FEMA to obtain LOMR-F certification if flood insurance is to be avoided.

23. Floodplain Certificate of Compliance: No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a Floodplain Certificate of Compliance is issued by the Zoning Administrator. The Floodplain Certificate of Compliance shall show that the building or premises or part thereof, and the proposed use, conform to the floodplain provisions of this ordinance. If all provisions are met, the Floodplain Certificate of Compliance shall be issued within 10 days after written notification that the permitted work was completed. The Zoning Administrator shall issue the Floodplain Certificate of Compliance to the Town Building Inspector and a copy of the Floodplain Certificate of Compliance to the applicant.
24. Notwithstanding the above, compliance with any other provisions or requirements of the Waukesha County Shoreland and Floodland Protection Ordinance is required.

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

The conditional approval of this request will allow the replacement of a flood damaged residence and detached garage with the construction of a new residence with an attached garage and a deck that is appropriately sized for the lot and the particular lot conditions. The entire property is located within the estimated 100-year floodplain of Lower Genesee Lake and there is no conforming location on the lot on which a structure could be constructed without the need for variances. The Ordinance provides that a variance granted on a property located in the floodplain shall meet the following criteria in addition to the three tests for the granting of a variance:

- a. May not cause any increase in the regional flood elevation.
- b. May not increase the amount of obstruction to flood flows.
- c. The variance shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of the Ordinance.
- d. The floodproofing measures and EFD Existing Floodplain Development Overlay District standards required in the Ordinance, NR 116, of the Wisconsin Administrative Code, and FEMA regulations must be met.

As conditioned, the applicant will be responsible for proving that these measures are satisfied prior to the issuance of a Zoning Permit for the construction of the residence.

As stated above, the property is located entirely below the estimated floodplain elevation of Lower Genesee Lake (870.0 above mean sea level (amsl)). It is important to note that the floodplain elevation for Lower Genesee Lake is unstudied at this time. However, the C-1 (EFD) District requires that the first floor of all structures must be floodproofed to the flood protection elevation (2 ft. above the floodplain). Although the floodplain is unstudied for this lake, updated FEMA mapping

indicates that the floodplain elevation is approximately 868.0-870.0 amsl. In addition, survey information taken by Waukesha County after the 2008 floods indicates that the flood elevation in June of 2008 was 869.5, and a preliminary flood study done by Welch Hansen dated April 6, 1978 placed the flood elevation at 869.6. Therefore, the County Zoning Administrator has determined that it is a reasonable assumption to regulate the floodplain of Lower Genesee Lake as 870.0 amsl.

This approval, as conditioned, will result in 1,957 sq. ft. of living and storage space. It should be noted that the resultant footprint of the residence, attached garage, and deck will be approximately 39 sq. ft. less than the current footprint of the residence and detached garage. The proposed deck will increase the area but even including the deck, the proposed structures will not exceed the footprint of the existing structures. It is reasonable to allow some relief from the floor area ratio and open space requirements of the Ordinance because the residence will have reduced storage space due to a lack of basement and no structure could be constructed without the need for an open space requirements since the property is less than the required 15,000 sq. ft. of open space. It should be noted that the square footage proposed and recommended herein is also consistent with what has been allowed on similarly sized parcels in the immediate area.

A floodplain setback variance is necessary because the entire property is located in the floodplain and no structure could be constructed without a variance from this requirement.

The purpose and intent of the EFD District is to provide for the continued use of improved properties that lie within the floodplain and which are otherwise considered prohibited structures and to regulate them in accordance with sound floodplain management practices. It is further the intent of these provisions to regulate and diminish the proliferation of non-conforming structures and uses in floodplain areas and to regulate said reconstruction, remodeling, conversion and repair with the overall intent of lessening the public responsibilities attendant to the continued and expanded development of land and structures which are inherently incompatible with natural floodplains and to lessen the potential danger to life, safety, health and welfare of persons whose lands are subject to the hazards of floods. As conditioned, the approval of this request will be within the purpose and intent of the Ordinance.

When a floodplain variance is granted, the Ordinance requires that the Board of Adjustment notify the applicant, in writing, that it may increase flood insurance premiums and risks to life and property. If the Board grants any of the variances requested, the petitioner shall consider this staff report and recommendation such written notification.

**BA10:019 JAMES KUEHT AND CHRISTINA BINN:**

Ms. Bonniwell

*I make a motion to **deny** the request for variances from the road setback and offset requirements but **approve** the request for a variance from the conservancy setback requirements as well as **approve** the request for a special exception from the accessory building floor area ratio requirements. The conditions and the reasons stated in the staff recommendation shall be a part of this*

*decision as modified below:*

*Condition No. 1 shall be modified to read as follows: “The total accessory building floor area ratio on the property shall not exceed 4.03% (960 sq. ft.) of the lot size.”*

*The reasons stated in the staff recommendation shall be modified to read as follows: “In order for the proposed garage to comply with the road setback requirements of the Ordinance, the garage would need to be moved back less than one foot. The existing accessory structures are centrally located between the north and south lot lines and the lot is approximately 100 ft. wide. There are no physical limitations of the property that preclude the construction of a garage in conformance with the offset requirements. 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 granting of a special exception from the accessory building floor area ratio requirements does not require the demonstration of an unnecessary hardship. However, we find that removal of the existing buildings that currently could stand for a very long time and do provide storage, will provide better safety because the new building will be further back from the road than the existing structures. The proposed construction will not only benefit the landowners and the neighbors but anyone who drives on Golden Lake Lane.***

*The approval of the request for a variance for a conservancy setback variance is reasonable because the wetland is located on the other side of the road than subject property. The proposed garage will not have an impact on the wetland and it will be located further from the wetland than the existing detached garage. To require compliance with the conservancy setback requirements would be unnecessarily burdensome on the petitioners as it would require the garage to be located approximately 35 ft. further back into their front yard and would result in an increase of impervious surface as the driveway would need to be increased to access the garage.*

*Therefore, the approval of the request for a variance from the conservancy setback requirements of the Ordinance **and a special exception from the accessory building floor area ratio requirements of the Ordinance**, as conditioned, would not be contrary to the public interest and would be within the purpose and intent of the Ordinance.*

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

The Planning and Zoning Division staff's recommendation was for **denial** of the request for variances from the road setback and offset requirements of the Waukesha County Shoreland and Floodland Protection Ordinance as well as **denial** of the request for a special exception from the accessory building floor area ratio requirements of the Ordinance but **approval** of the request for a variance from the conservancy setback requirements to allow the construction of a new detached garage subject to the following conditions:

1. The total accessory building floor area ratio on the property shall not exceed 3% of the lot size.
2. The proposed garage must comply with the road setback and offset 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 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.
4. 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.
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, if necessary, 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:

In order for the proposed garage to comply with the road setback requirements of the Ordinance, the garage would need to be moved back less than one foot. The existing accessory structures are centrally located between the north and south lot lines and the lot is approximately 100 ft. wide. There are no physical limitations of the property that preclude the construction of a garage in conformance with the offset requirements. 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.

Although the granting of a special exception does not necessarily require the demonstration of an unnecessary hardship, the Ordinance states that the special exception must be necessary due to special conditions of the property. In this case, the lot exceeds the minimum lot size standards and the petitioners would be able to construct an approximately 714 sq. ft. detached garage without the special exception. Furthermore, it should be noted that the petitioners also own the vacant, adjacent lot to the north. They have indicated that the lot is unbuildable due to a drainageway on the property. However, if additional square footage is desired, the petitioners may consider combining the subject property with the adjacent lot to the north by a Certified Survey Map.

The approval of the request for a variance for a conservancy setback variance is reasonable because the wetland is located on the other side of the road than subject property. The proposed garage will not have an impact on the wetland and it will be located further from the wetland than the existing detached garage. To require compliance with the conservancy setback requirements would be unnecessarily burdensome on the petitioners as it would require the garage to be located approximately 35 ft. further back into their front yard and would result in an increase of impervious surface as the driveway would need to be increased to access the garage.

Therefore, the approval of the request for variances from the conservancy setback requirements of the Ordinance, as conditioned, would not be contrary to the public interest and would be within the purpose and intent of the Ordinance.

**OTHER ITEMS REQUIRING BOARD ACTION:** None.

**ADJOURNMENT:**

Mr. Schmidt *I make a motion to adjourn this meeting at 9:30 p.m.*

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

Respectfully submitted,

Nancy M. Bonniwell  
Secretary, Board of Adjustment