WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, February 9, 2011, 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: Robert Bartholomew, Vice-Chairman
Tom Day
Nancy Bonniwell
Rob Schuett

BOARD MEMBERS ABSENT: Walter Schmidt
Richard Bayer

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Mary E. Finet, Senior Land Use Specialist
Jim Gozdowiak, BA10:034, petitioner
Lynn Duncan, BA10:040, petitioner
Mike and Janine Borel, BA10:040, neighbors
Debra Preuss, BA11:001, petitioner
Dawn Szajna, BA11:001, resident of the property
Pat Bindel, BA11:001, mother of the petitioner and former owner of the property
Linda Kennedy, BA11:001, neighbor
David S. Hoffman, Architectural Xpressions, BA11:003, builder

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Day *I move to approve the Summary of the Meeting of December 8, 2010.*

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

NEW BUSINESS:

BA10:034 JIM GOZDOWIAK (FIELD FARMS 1 LLC):

Mr. Day *I move to **approve** the request for a variance from the road setback requirement for signs to permit the portable marquee sign for Friends of Nature to remain in its present location, subject to the conditions stated in the Staff Report and for the reasons stated in the Staff Report.*

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

Ms. Bonniwell *I move to **deny** the request for a variance to permit two wall-mounted signs to remain on one side of the building, due to the fact that it doesn't appear that there is a hardship with regard to allowing any variance for the two wall-mounted signs. It also appears that the current signage can be retained and still comply with the requirement that permits only one sign per side of the building if the individual signs are incorporated into one sign.*

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

Mr. Schuett *I make a motion to **approve** the appeal of the condition placed by the Planning and Zoning Division staff on the approval of the Site Plan/Plan of Operation for Friends of Nature that required the removal of two "A-frame" sidewalk signs and allow one of the "A-frame" signs to be located on the sidewalk near the entrance to Friends of Nature. The one sidewalk sign permitted to remain shall be no larger than the current black plastic sign with interchangeable lettering that is depicted in the photograph on file, which is approximately 2 ft. x 3 ft. However, since the sign may pose a danger to pedestrians on the sidewalk, the petitioner should be aware that he has the full responsibility to ensure the safety of all pedestrians on his property. The reason for this approval is that the "A-frame" sidewalk sign is necessary for the successful operation of the business.*

The motion was seconded by Ms. Bonniwell and carried with three yes votes. Mr. Day voted no.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the road setback requirement for signs, as set forth in the Waukesha County Zoning Code, to permit the 8 ft. x 4 ft. portable marquee sign for Friends of Nature to remain in its present location, subject to the following conditions:

1. Unless an amendment to the Site Plan/Plan of Operation for Friends of Nature permitting the portable marquee sign to remain longer is approved by the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff and the Town of Genesee Plan Commission, the portable marquee sign must be removed by January 31, 2012. If the road construction is not completed by January 31, 2012, the petitioner may request an extension to the deadline from the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff, with the extension not to extend beyond March 31, 2012, unless the extension is also approved by the Town of Genesee Plan Commission.

2. The road setback variance applies only to the 8 ft. x 4 ft. portable marquee sign for Friends of Nature. The installation of a permanent sign within the road setback area will require an additional variance.

3. No additional signs, either permanent or temporary, shall be placed on the property unless they have been authorized by a Site Plan/Plan of Operation that has been approved by both

the Town of Genesee Plan Commission and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division, all conditions of those approvals have been complied with, and all necessary permits have been issued.

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

Variances require a demonstration that denial of the 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 portable marquee sign would not be visible if it were located in conformance with the road setback requirement, unless the large landscaped berms between the parking lot and S.T.H. 59 were modified. This would be unnecessarily burdensome, since the portable marquee sign has only been permitted to remain for a limited period of time, and it would also be aesthetically unappealing. The portable marquee sign does not interfere with the travelling public's use of S.T.H. 59 and does not pose a safety hazard. Therefore, the approval of the requested road setback variance for the portable marquee sign for Friends of Nature is in conformance with the purpose and intent of the Ordinance.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for a variance from the B-2 Local Business District sign regulations, as set forth in the Waukesha County Zoning Code, that permit only one sign per store side of building, to permit the two wall-mounted signs for Friends of Nature to remain on the Commercial Drive side of the building. The Planning and Zoning Division staff also recommended **denial** of the requested appeal of the condition placed by the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff on their approval of an amendment to the Site Plan/Plan of Operation for Friends of Nature (File No. PO-10-GNT-08) requiring the removal of two "A-frame" sidewalk signs located near the entrance of Friends of Nature.

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

Denying the requested variance from the B-2 Local Business sign regulations, which would permit only one of the two-wall mounted signs to remain on the Commercial Drive side of the building, does not present a hardship since there are other options that could be exercised in regard to erecting conforming signage on the property. Further, the staff continues to believe that the "A-frame" signs, which are not visible from the road, are not necessary for the successful operation of the business and should be removed for aesthetic and safety reasons. Therefore, approval of the request for a variance from the B-2 Local Business District sign regulations, as set forth in the Waukesha County Zoning Code, that permit only one sign per store side of building, to permit the two wall-mounted signs for Friends of Nature to remain on the Commercial Drive side of the building and approval of the requested appeal of the condition placed by the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff on their approval of an amendment to the Site Plan/Plan of Operation for Friends of Nature (File No. PO-10-GNT-08) requiring the removal of two "A-frame" sidewalk signs located near the entrance of Friends of Nature would not be in conformance with the purpose and intent of the Ordinance.

BA10:040 LYNN DUNCAN:

Ms. Bonniwell

*I move to **approve** the request for after-the-fact variances from the shore setback and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the petitioner to retain the existing elevated wood deck, which is approximately 9 ft. in depth and 20 ft. wide, on the lake side of her residence and, if desired, construct a stairway from that elevated, wood deck, provided the stairs do not exceed 4 ft. in width. This approval is conditioned upon the existing 18 ft. x 24 ft. ground-level wood deck located near the east lot line being removed in its entirety and replaced with either grass or natural vegetation, no later than June 15, 2011. The June 15th deadline may be extended by the Planning and Zoning Division staff, but only upon finding of just cause.*

The reasons for this approval are as follows: There has been testimony that there were safety issues with the previously existing cantilevered deck and the petitioner was informed by her contractor that the old deck should be replaced. In addition, it was confirmed by a builder in the audience that cantilevered decks do generally have problems. Finally, the removal of the much larger ground-level deck, as required, will result in a net decrease in impervious surface on the property.

The motion was seconded by Mr. Schuett and carried with three yes votes. Mr. Day voted no.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for after-the-fact variances from the shore setback and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to authorize the replacement of a previously existing 4 ft. x 6 ft. elevated deck/balcony on the lake side of the residence with a 9 ft. x 20 ft. elevated deck/balcony. However, the Planning and Zoning Division staff recommends **approval** of variances from the shore and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the previously existing elevated deck/balcony to be rebuilt to its previous size, subject to the following conditions:

1. The existing 9 ft. x 20 ft. elevated deck/balcony, which was constructed without permits, on the lake side of the residence must be reduced in size so that it is no more than six (6) ft. in length and does not extend more than four (4) ft. towards the lake from the north wall of the residence. If desired, the rebuilt deck/balcony may have stairs extending to the ground level, provided the stairs are no more than four (4) ft. in width.

2. Prior to the issuance of a Zoning Permit to rebuild the elevated deck/balcony, a set of plans for the deck/balcony, in conformance with the condition noted above, must be submitted to the Planning and Zoning Division staff.

3. The deck/balcony must be rebuilt, as set forth above, no later than June 15, 2011. This deadline may be extended by the Planning and Zoning Division staff, but only upon finding of just cause.

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

Variances require a demonstration that denial of the 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. It has not been demonstrated that denial of the requested after-the-fact shore setback and floodplain setback variances, which are necessary to permit the rebuilt deck to remain in its current configuration, would result in an unnecessary hardship. However, it would be an unnecessary hardship, as well as a safety hazard, to deny the shore setback and floodplain setback variances that are necessary to allow the previously existing elevated deck/balcony, which provides an emergency exit from the upper level of the residence on the lake side, to be rebuilt to its previous size. While the petitioner may desire a larger deck outside of the upper-level patio door, variances should be granted only to provide the minimum relief necessary for a reasonable use of the property. Restricting the size of the deck to the size that existed previously, as recommended, will still allow a reasonable use of the property and would not result in an unnecessary hardship.

Variances also require the demonstration of unique physical conditions of the property that prevent compliance with Ordinance requirements. The lot is very small and non-conforming, but that is not a unique condition. The location of the residence and the upper-level patio door are physical constraints, but they do not justify granting the requested shore setback and floodplain setback variances to permit the 9 ft. x 20 ft. elevated deck/balcony to remain in its present configuration.

Finally, it has not been demonstrated, as required, that granting the requested shore setback and floodplain setback variances will not adversely affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources in the area. Although small, the increase in impervious surface that results from the larger elevated deck/balcony contributes to a cumulative negative effect on water quality. The larger elevated deck/balcony also has a negative impact on the natural scenic beauty of the shoreline.

Therefore, the approval of the requested after-the-fact variances from the shore and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to authorize the replacement of a previously existing 4 ft. x 6 ft. elevated deck/balcony on the lake side of the residence with a 9 ft. x 20 ft. elevated deck/balcony would not be in conformance with the purpose and intent of the Ordinance. However, the approval of variances from the shore and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the previously existing 4 ft. x 6 ft. elevated deck/balcony to be rebuilt, would be in conformance with the purpose and intent of the Ordinance.

BA11:001 DEBRA PREUSS:

Mr. Day *I make a motion to **approve** the request to retain the lean-to addition to the garage. The reason for this decision is that there is a hardship*

because the property is a non-conforming lot that is triangular in shape and bordered by roads on two sides, which limits the amount of buildable area.

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 an after-the-fact variance from the floor area ratio requirement and for after-the-fact special exceptions from the road setback and accessory building floor area ratio requirements of the Waukesha County Zoning Code, to authorize the lean-to addition that was constructed without permits on the northeast side of an existing detached garage.

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

> Variances require a demonstration that denial of the variance 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. While the petitioner may desire to retain the lean-to addition for the additional storage that it provides, it has not been demonstrated that denial of the requested floor area ratio variance would result in an unnecessary hardship, as removal of the lean-to addition on the side of the detached garage would still leave the property with a 34 ft. x 22 ft., three-car detached garage and a 10 ft. x 12 ft. storage shed. Therefore, the approval of the requested variance from the floor area ratio requirement to authorize the lean-to addition to remain would not be in conformance with the purpose and intent of the Ordinance.
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> Further, although the requested relief from the road setback and accessory building floor area ratio requirements are special exceptions, rather than variances, and do not require the demonstration of an unnecessary hardship, special exceptions require special conditions on the property and they must be necessary and desirable and must not adversely affect adjacent property owners. When granting special exceptions, the Board must also consider whether the requested special exception would be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects. While granting the requested special exceptions may not be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood, it is felt that the requested special exceptions are not necessary or desirable, as they would further increase the non-conformities on the property. Therefore, the approval of the requested special exceptions from the road setback and accessory building floor area ratio requirements to authorize the lean-to addition to remain would also not be in conformance with the purpose and intent of the Ordinance.

BA11:003 PARKER PHEND:

Mr. Day — *I move to **approve** the request, in accordance with the Staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.*

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

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the open space, offset, and minimum first floor area requirements and of the request for a special exception from the minimum total floor area requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the existing residence to be replaced with a larger residence, with the existing deck on the lake side of the residence either being retained or replaced with a new deck of the same size, and to permit the construction of a one-car detached garage, subject to the following conditions:

1. The new residence and, if applicable, the new deck shall be no closer to side lot lines than the existing residence and deck.

2. The new residence must be at least 10 ft. from the residences on the adjacent lots, as measured to the outer edges of the overhangs.

3. Any sidewalks, walkways, or stairs must be at least three (3) from the side lot line.

4. The detached garage must be no larger than proposed (280 sq. ft.) and it must be located in conformance with all locational requirements of the Ordinance. This will require it to be at least 19.5 ft. from the edge of the road right-of-way and at least 5.5 ft. from the side lot lines, 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 setback and offset requirements. The detached garage must also be at least ten (10) ft. from the residence, as measured to the outer edges of the overhangs.

5. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out locations of the proposed residence and detached garage and of any proposed walkways and stairs, 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.

6. The new residence must be designed to fit into the existing topography as much as possible, with minimal grade changes and with no retaining walls located within 5 ft. of the side lot lines or within 75 ft. of the lake.

7. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the new residence and detached 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 and Drainage Plan may be combined with the Plat of Survey required in Condition No. 5.

8. The detached 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.

9. Prior to the issuance of a Zoning Permit for the detached garage, a complete set of plans, in conformance with the above condition, must be submitted to the Planning and Zoning Division staff for review and approval.

10. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

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

Variances require a demonstration that denial of the 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. Due to the small lot size, a hardship exists with respect to open space, as it is not possible to conform with the minimum open space requirement of 15,000 sq. ft. on this 11,934 sq. ft. lot. Due to the narrow lot width, a hardship also exists with respect to the sideyard offset requirement, as conformance with the 10 ft. offset requirement would permit only a 13 ft. wide residence. Further, granting offset variances to permit the new residence to have the same offset as the existing residence will allow it to remain nearly centered between the residences on the adjacent lots and allow for a walkway and stairs to the lake to be located on the side of the residence.

Regarding the request for a variance from the required minimum first floor area of 850 sq. ft., conformance with the required minimum first floor area would only serve to further reduce the open space on this very non-conforming lot, which is not in the public interest. Even the conversion of the entire proposed covered porch, which is not considered as floor area for the purpose of meeting the minimum floor area requirement, would result in a residence with a first floor area of only 785 sq. ft., which would still require a variance from the required minimum first floor area. Therefore, denial of the requested variance from the required minimum first floor area would be unnecessarily burdensome and not in conformance with the purpose and intent of the Ordinance.

The requested relief from the minimum total floor area requirement for the residence is a special exception, rather than a variance. A special exception differs from a variance in that a special exception does not require the demonstration of an unnecessary hardship. However, there must be special conditions on the property, such as the small lot size and narrow lot width, and the special exception must be necessary and desirable and must not adversely affect adjacent property owners. When granting special exceptions, the Board must still consider whether the requested special exception would be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions they deem

necessary for the protection of adjacent properties and the public interest and welfare. The proposed 1,269 sq. ft. residence is nearly in conformance with the 1,300 sq. ft. minimum total floor area required for homes that do not have a basement of at least 300 sq. ft. and it would be in conformance with the 1,100 sq. ft. minimum total floor area that is required for homes with a basement of at least 300 sq. ft. While it would be possible to construct a residence in conformance with the required minimum total floor area of 1,300 sq. ft. by converting a portion of the proposed 62 sq. ft. covered porch to living area, that would serve no useful purpose and would eliminate an aesthetically appealing and useful design feature of the proposed residence. It would also be possible to bring the residence into conformance with the required minimum total floor area by constructing it with a full basement instead of with a crawl space, as proposed, but that too would serve no useful purpose and would not change the outward appearance of the residence. Therefore, granting the requested special exception to allow the proposed residence to be constructed with a total floor area of 1,269 sq. ft., whereas a minimum total floor area of 1,300 sq. ft. would otherwise be required, is necessary and desirable and will not adversely affect adjacent property owners or be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood.

Finally, the proposed residence and garage have been designed to minimize their impact on the lake and the adjacent properties and their construction is not contrary to the public interest. Therefore, the approval of the requested variances from the open space, offset, and minimum first floor area requirements and of the requested special exception from the total minimum floor area requirement, to permit the proposed construction, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION: None.

ADJOURNMENT:

Mr. Day *I move to adjourn this meeting at 8:58 p.m.*

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

Respectfully submitted,

Nancy M. Bonniwell
Secretary, Board of Adjustment

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