WAUKESHA COUNTY BOARD OF ADJUSTMENT
REVISED SUMMARY OF MEETING

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, May 25, 2005, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann
Walter Schmidt

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Sheri K. Mount

OTHERS PRESENT: Town of Merton Board of Adjustment
Larry Kassens, BA05:032, petitioner
Louis Danegelis, BA05:031, property owner
Davis Lau, BA05:031, petitioner
William D. Brooks, BA05:032, property owner
William J. Brooks, BA05:032, property tenant
Lou Hernandez, BA05:028, property owner
Jim Molkentin, BA05:031, neighbor
Lisa Danegelis, BA05:031, property owner
Keith & Cathy Farnham, BA05:029, property owners
Scott Bence, BA05:029, neighbor
Bill Werra, BA05:029, neighbor
Wendy Wassum, BA05:029, neighbor
Attorney Robyn Schuchardt, Assistant Corporation Counsel for Waukesha County, BOA procedures
Peggy Pelikan, Waukesha County Staff, BOA procedures
Mary Finet, Waukesha County Staff, BOA procedures

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 or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of May 11, 2005.*

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

NEW BUSINESS:

BA05:027 DON & CAROL REINBOLD

Mr. Tarmann *I move to approve the request in accordance with the conditions recommended in the Staff Report, for the reasons set forth in the Staff Report.*

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

The staff's recommendation was for approval, with the following conditions:

1. The new residence, attached garage, and deck must be located in conformance with the offset, shore setback, and floodplain setback requirements of the Ordinance.

2. The attached garage must be located no closer to the road than proposed, which is 19 ft. from the road right-of-way, as measured perpendicular to the road from the closest point of the attached garage. The road setback shall be measured to the outer edge of the wall and the garage overhang shall not exceed 2 ft. in width.

3. The floor of the lowest level of the proposed residence, including a basement or crawl space if one is proposed, must be at or above the 100-year flood elevation of 899.9 ft. above mean sea level.

4. If the residence has a full basement, it must be located more than one-half below the finished grade, or it will be considered to be the first floor of the residence and must be included as floor area.

5. If more than one foot of backfill is required to be placed around the residence in order to result in a full basement that will be more than one-half below the finished grade, a full basement will not be permitted.

6. If the new residence can be constructed with a full basement, the total floor area, including the first and second floors of the residence and the attached garage, shall not exceed 3,000 sq. ft., as proposed. If the new residence cannot be constructed with a full basement, the total floor area, including the first and second floors of the residence and the attached garage, may be increased to 3,300 sq. ft.

7. The proposed residence and attached garage must have a footprint, as measured to the outer edges of the walls and including any covered porches or stoops, no larger than proposed, which is 2,500 sq. ft.

8. Prior to the issuance of a Zoning Permit, a complete set of plans for the residence, attached garage, and deck, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.

9. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location and elevation of the proposed residence, attached garage, and deck, 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. If the Plat of Survey differs significantly from the site plan submitted with the application, the Board may reconsider the approval of this request under "Old Business".

10. 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 attached garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in Condition Number 9.

11. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed new residence, 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:

> A hardship exists with respect to the minimum open space requirement of 15,000 sq. ft. because the property is only approximately 13,200 sq. ft. in area. Therefore, residential use of the property, which is a permitted use, cannot occur without a variance from the minimum open space requirement. The proposed residence and attached garage are appropriately sized for the lot and in keeping with other development in the area, and they will decrease the existing open space by only 280 sq. ft. The proposed residence and attached garage will not adversely affect the lake or the neighboring property owners. Therefore, the approval of a variance from the open space requirement, with the recommended conditions, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

<u>BA05:031 LOUIS & LISA DANEGELIS (DAVID LAU-PETITIONER)</u>

Mr. Schmidt *I move to deny the request in accordance with the Staff Report, for the reasons set forth in the Staff Report.*

The motion was seconded by Mr. Tarmann and carried with three yes votes.

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

> It has not been demonstrated, as required for a variance, that denial of the requested 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. The property owners currently have reasonable use of the property. The residence is already nonconforming to the road setback requirements. In addition, it appears the referenced drainage problem could reasonably be corrected by properly grading the area immediately in front of the house to drain away from the home, which would not require making this structure more non-conforming that it already is. The yard is flat in this area and therefore it does not seem impractical or unreasonable to correct a drainage problem by properly grading the surrounding areas rather than adding onto the structure. Proper grading is the more appropriate and likely permanent solution to the apparent drainage problem. There are not unique physical conditions existing on this property that prevent compliance with the Ordinance. More importantly, there are alternatives available that don't require variances from the Ordinance. Therefore, the approval of the request for a variance from the road setback requirements of the ordinance would not be in conformance with the purpose and intent of the Ordinance.

BA05:032 WILLIAM & LAVERNE BROOKS (LARRY KASSENS-PETITIONER)

Mr. Schmidt *I move to approve the request in accordance with the conditions recommended in the Staff Report, for the reasons set forth in the Staff Report.*

The motion was seconded by Mr. Tarmann and carried with three yes votes.

The staff's recommendation was for approval, with the following conditions:

1. The property must be rezoned to the B-3 business district and the Town's Land Use Plan must be amended before any additions can be constructed or any square footage can be added to the property.

2. The remodel may occur before the rezone, but shall not include the addition of any square footage to the existing principal structure. The building may contain an upper-level storage area only if the building conforms to the height requirements of the district, and only if that upper level is not accessible via a permanent staircase. The upper level of the building may only be accessed via pull-down stairs ONLY.

3. After a rezone is approved, the offset for any proposed additions to the principal building and any new detached structures must be a minimum of 30 ft. No additional detached structures are permitted at this time.

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4. 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.

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

Approval of the requested variance, with the recommended conditions, allows for a continued reasonable use of the property without expanding an already non-conforming structure and non-conforming use and is in conformance with the purpose and intent of the Ordinance. In addition, it allows for future expansion of the business if a rezone is approved on the property without needing to come back to the Board of Adjustment for an offset variance (since the existing structure is already non-conforming to offset). The use already does not conform to the current zoning district requirements (A-5, Mini Farm). The Mini Farm District allows for low density, single-family residential development in order to maintain to some degree the agricultural character of the property. Mini Farm lands are envisioned for small farm units, i.e., hobby farms, horse farms, orchards and other similar agriculturally related activities. However, the Waukesha County Development Plan designates this property and an area south of CTH K as commercial land. Therefore, while the use is not compatible with current County zoning regulations, it is an appropriate use based on the County's "build-out" plan. However, approval of the requested variances would essentially be the granting of a use variance and would be conceding that the use will be there in perpetuity. If a use variance is needed, the appropriate avenue to pursue is rezoning of the lands to legalize the use. In addition, Waukesha County does not historically entertain use variances, only area variances. Waukesha County staff feels that allowing the commercial structures and their use to expand to more than double their existing size on a low-density residential parcel is inappropriate for a variance request and is essentially a rezone of the property without going through the rezone process. In addition, if this property owner were to go out of business or cease operations for 12 consecutive months or 18 months in any two-year period, the use would be required to revert to the current district requirements (i.e. low-density residential and agricultural use), but would now have two very large commercial structures on it. If the property owner needs to continue expanding the business, the County recommends that the property owner petition the Town and County for a rezone of this property to a more appropriate business district. Further, business districts generally allow a floor area ratio of 50%.

Approval of the requested variances from the offset requirements and for remodeling a non-conforming structure in excess of 50% of its fair market value, with the recommended conditions, would not adversely affect the neighboring property owners and is not contrary to the public interest. It will also allow the existing legal non-conforming use to either continue without the necessity for a rezone or expand after a rezone of the property is approved. Therefore, the approval as conditioned is in conformance with the purpose and intent of the Ordinance.

BA05:028 LUIS R HERNANDEZ

Mr. Ward *I move to approve the request in accordance with the Staff Report and Recommendation with the following modifications to the*

conditions set forth in the Staff Report:

Condition #6 shall read as follows: The garage must be located a minimum of 30 ft. from the 100-year floodplain elevation of Okauchee Lake, with overhangs not to exceed two (2) ft. in width.

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

The staff's recommendation was for approval, with the following conditions:

1. The proposed garage shall be no larger than 400 sq. ft. on the first floor and 400 sq. ft. on the second floor.

2. The proposed garage shall contain only one story as viewed from the road, two stories as viewed from the Lake, and shall be no taller than 15 ft. from the road elevation to the primary horizontal soffit.

3. Any proposed storage area over the garage must be included in the square footage calculations, unless it is accessible **only** via pull-down stairs from inside the garage and it meets the height requirements outlined above.

4. The proposed garage must be located at least 0.5 ft. from the edge of the established road right-of way.

5. The proposed garage must be at least 7 ft. from the side lot lines, as measured to the outer edges of the walls and any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width. Any sidewalks, stairs, or walkways along the sides of the garage must be located at least three (3) ft. from the lot lines.

6. The garage must be located a minimum of 35 ft. from the 100-year floodplain elevation of Okauchee Lake, with overhangs not to exceed two (2) ft. in width.

7. A firewall sufficient to meet the one-hour fire rating contained in the Building Code shall be placed on the side of the detached garage facing the residence and on the side of the residence facing the detached garage.

8. Prior to the issuance of a zoning permit, the shed must be removed from the property.

9. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the **approved** garage location will not interfere with the existing well and/or septic system.

10. Prior to the issuance of a Zoning Permit, a stakeout survey showing the location of the proposed garage, as well as any proposed sidewalks, stairs, and walkways, 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. This survey must also show the exact location of the 100-year floodplain elevation on the property.

11. 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.

12. No new retaining walls are permitted within 75 ft. of the lake, unless the Planning and Zoning Division staff determines that they are necessary for erosion and sediment control. No retaining walls will be permitted within 5 ft. of the side lot lines, without approval from the Town of Merton Plan Commission and the Waukesha County Park and Planning Commission.

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

> The approval of the request to construct a detached garage, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome and is in scale with the lot's very small size. It has not been demonstrated, as required for a variance, that denial of the requested variance from the road setback requirements 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 is possible to construct a reasonably sized garage that remains the required 0.5 ft. from the road right-of-way. Further, it is possible to reduce the size of the garage and build in a location that would be conforming to the road setback requirement.
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> However, a hardship does exist due to the total size of the lot and location of the existing residence. First, without the granting of a variance from the required separation distance between accessory and principal structures and side lot line offset, it would be impossible to provide for a reasonably sized garage on the property. There is currently only 31 ft. between the existing residence and the northern lot line. If the 10 ft. separation distance and the 12.5 ft. offset requirements were maintained, only 9.5 ft. of width is available for a garage. Secondly, conformance with the maximum permitted floor area ratio of 15% is impossible because the existing residence already exceeds the maximum permitted floor area ratio for this zoning district. However, the home is otherwise a substantially conforming structure. Conformance with the maximum permitted floor area ratio of 15% would permit a total floor area of only 892 sq. ft. on the property, which is not considered reasonable. Similarly, conformance with the accessory building floor area ratio of 3% would only allow for a 178 sq. ft. detached garage. Conformance with the open space requirement of 15,000 sq. ft. is also impossible because the lot is only 5,944 sq. ft. in size. Conformance with the 75 ft. shoreline and floodplain setback is impossible because there is only 75 ft. available between the shoreline and established right-of-way, and 60 ft. from the floodplain to the right-of-way. Therefore, some relief from the lot line offset, offset between a principal structure and accessory structure, floor area ratio, accessory building floor area ratio, open space, shoreline setback and floodplain setback requirements should be provided. Variances, however, should be granted only to provide the minimum relief necessary for a reasonable use of the property. It is felt by the Waukesha County Staff that the proposed garage is too large for the lot and that a smaller garage, as recommended, will still provide for a reasonable use of the

property. As recommended, an accessory floor area of 800 sq. ft. and a total floor area of 1,856 sq. ft. (31.2% floor area ratio), not including the basement square footage, provides a reasonable use of the property, is not unnecessarily burdensome and will permit the construction of a detached garage that will be appropriately sized for the lot, not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:029 KEITH & CATHY FARNHAM

The application was withdrawn by the property owner.

OTHER ITEMS REQUIRING BOARD ACTION:

Discuss adoption of BOA procedures.

The Board discussed in detail the proposed Board of Adjustment Procedures. Robyn Schuchardt, Corporation Counsel, is going to make revisions to the Procedures and submit them to the Board at a later date for their review and possible adoption

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 9:45 p.m.*

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

Respectfully submitted,

Sheri K. Mount
Secretary, Board of Adjustment