

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, July 11, 2018, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: Tom Day, Chairman
Richard Nawrocki
Nancy Bonniwell
Richard Bayer

TOWN OF MERTON BOARD MEMBERS: Rick Ray, Chairman
Marge Hager, Secretary
Jim Schneider
Dave Frazer

BOARD MEMBERS ABSENT: Ed Kannenberg

SECRETARY TO THE BOARD: Nancy Bonniwell

OTHERS PRESENT: Rebekah Leto, Senior Land Use Specialist
Michael Larsen, petitioner (BA10)
James Mella, architect (BA10)
Sharon Hipp, neighbor (BA11)
Beth and Paul Raab, neighbors (BA11)
Mike Gatzow, petitioner (BA8)
Patrick Lob, petitioner (BA11)
Charlotte Thomas, petitioner (BA11)
Amy Thomas, petitioner (BA11)
Bruce Hawkins, neighbor (BA11)
Scott and Kathy Kirkendall, neighbors (BA8)
John Butler, neighbor (BA8)
Sandy Burkhardt, friend (BA6)
William Schmitz, petitioner (BA6)
Teri Nelson, neighbor (BA6)

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, an audio recording of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and an audio recording is available, at cost, upon request.

SUMMARY OF PREVIOUS MEETING:

Mr. Nawrocki: *I make a motion to approve the Summary of the Meeting of June 13, 2018, as corrected.*

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

NEW BUSINESS:

BA10: MICHAEL LARSEN (OWNER)

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **denial** of variances from the road setback requirements and the non-conformance to the offset and non-conformance to the road setback provisions of the Waukesha County Shoreland and Floodland Protection Ordinance for the construction of two-story addition with an expanded fully exposed basement on the subject property.

Discussion between the petitioner, Board and Staff followed.

The petitioners discussed how it was not plausible for him to rebuild the residence. He has had positive comments from the neighbors regarding his proposal. In addition, the petitioner submitted an email from the Waukesha County Department of Public Works that they have no immediate plans to widen C.T.H. "C." The Board was concerned with the bulk of the structure and the road setback.

Public Reaction:

- There were no public comments.

Decision and Action:

The Town of Merton Board of Adjustment recommended **denial** of the petitioner's request as proposed.

Mr. Bayer:

*I make a motion for a **modified approval** of the request for variances from the road setback and nonconforming to the road and nonconforming to the offset provisions, subject to the following conditions:*

1. Elimination of the 2nd floor addition, as proposed. No living space above the garage shall be permitted.
2. A sanitary permit shall be obtained from the Environmental Health Division for the relocation of the holding tank, prior to issuance of a Zoning Permit.
3. Revised building plans that are in compliance with the conditions contained herein shall be submitted, prior to the issuance of a Zoning Permit.
4. Prior to the issuance of a Zoning Permit, an updated scaled Plat of Survey/Grading Plan, including all existing structures, overhangs, decks, patios, and other appurtenances in compliance with the conditions contained herein must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. The proposed addition shall not extend closer to the road than shown on the submitted survey (approximately 9.75 ft.).

The reasons for the decisions are as follows:

VARIANCE TEST CRITERIA ANALYSIS

State law and case law requires that the petitioner demonstrate that their request for a variance meets three tests. The below Staff analysis assesses the merits of the subject application relative to the tests:

1. **There are unique physical conditions existing on the property, which are not self-created, and which prevent compliance with the ordinance thereby causing a hardship and/or no reasonable use. The physical limitations of the property, and not the personal circumstances or desires of the property owner, are the basis for this test. A variance is not a convenience to the property owner.**

The property has very steep topography. Constructing a new residence in the conforming building envelope may be difficult due to the steep topography on the lot. The location the residence is at is the most desirable location on the property.

2. **Compliance with the ordinance would cause the owner to experience an unnecessary hardship. The test as to whether or not an unnecessary hardship exists is whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, density, etc. would unreasonably prevent the owner from using the property for a permitted purpose, or whether it would render conformity with such restrictions unnecessarily burdensome. Hardships should not be financial or economic in nature. Variances are intended to provide only the minimum amount of relief necessary to allow a reasonable use of the property.**

Not having a garage, particularly with a smaller home, is a hardship in this climate. The house should not have to be rebuilt to add a garage. While you may be able to build a garage in a more conforming location, you would not be able to use it as a garage given the driveway slope that would be created, which is a hardship.

3. **The granting of the variance will not adversely affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources in the area. Lack of local opposition does not mean a variance will not harm the public interest.**

The proposed addition is set back further from the road than the existing home. A garage addition would not be inconsistent with other garages on C.T.H. "C."

The motion was seconded by Ms. Bonniwell and failed by a vote of 2-2, with Mr. Day and Mr. Nawrocki voting against the motion.

Mr. Nawrocki :

*I make a motion to **deny** the request in accordance with the staff report and for the reasons stated in the staff report.*

1. **There are unique physical conditions existing on the property, which are not self-created, and which prevent compliance with the ordinance thereby causing a hardship and/or no reasonable use. The physical limitations of the property, and not the personal circumstances or desires of the property owner, are the basis for this test. A variance is not a convenience to the property owner.**

The property is severely nonconforming to lot size and lot width with steep topography towards the lake. However, this is not unique to the properties along C.T.H. “C,” as most of the properties are the same size and width and experience the same lakeside slope on their property. There is a conforming building envelope on the property (Exhibit “C”) that is slightly larger than the maximum building footprint permitted (1,121 sq. ft.). The physical conditions of the property do not preclude reasonable use. The nonconforming provisions of the Ordinance allow continued use of the existing improvements and provides limited improvements to the structure. The proposal to more than double the size of the footprint of the severely nonconforming structure is a personal desire of the applicant that runs counter to the intent of the Ordinance relative to severely nonconforming structures.

2. **Compliance with the ordinance would cause the owner to experience an unnecessary hardship. The test as to whether or not an unnecessary hardship exists is whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, density, etc. would unreasonably prevent the owner from using the property for a permitted purpose, or whether it would render conformity with such restrictions unnecessarily burdensome. Hardships should not be financial or economic in nature. Variances are intended to provide only the minimum amount of relief necessary to allow a reasonable use of the property.**

The existing residence is a small, 2-story cottage that was built in 1950. The petitioners are proposing to add 525 sq. ft. on three levels (as viewed from the lake) which will significantly increase the bulk of the nonconforming structure. Compliance with the restrictions on the setbacks would not unreasonably prevent the owner from using the property for the permitted residential use (see Exhibit “C”). In fact, compliance with the Ordinance provisions would allow for the same square footage as requested in a conforming location and would allow the petitioner to design an attached garage, adequate driveway space and more living area similar to that being requested. To increase the structure by more than half of its existing floor area would be, in essence, to build a new residence. This demonstrates that the regulations set forth in the Ordinance are not unnecessarily burdensome.

3. **The granting of the variance will not adversely affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources in the area. Lack of local opposition does not mean a variance will not harm the public interest.**

The existing residence is located approximately 2 ft. from the edge of the right of way of County Highway “C,” within 3 ft. of the north property line and less than 8 ft. from the neighboring residence. To enlarge the footprint, height and bulk of the residence will increase the longevity of this severely nonconforming structure, which is not within the public interest. Significantly improving a structure located so close to the right of way and within 8 ft. of the neighboring residence does not promote the safety or interest of the general public.

The motion was seconded Mr. Day. The motion failed by a vote of 2-2, with Ms. Bonniwell and Mr. Nawrocki voting against the motion.

Because both motions failed to achieve a majority voting in support, the request was **NOT APPROVED**.

BA11: CHARLOTTE A. THOMAS, PATRICK LOB, AMY E. THOMAS (OWNERS)

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **approval** for variances from the Lot Size requirements of the Waukesha County Shoreland and Floodland Protection Ordinance and from the Blocks and Lots provisions of the Waukesha County Shoreland and Floodland Subdivision Control Ordinance to allow the lot size and lot width to be modified between two parcels.

Discussion between the petitioner, Board and Staff followed.

Staff explained the history of the parcels and made note that the undeveloped parcel is a legal lot of record and the owner could apply for a permit for a new home on the lot as configured. The Board was concerned that in the future, the petitioners will be back for variances in order to build on the parcel. Discussion of the legal history of the easement, sanitary regulations for undeveloped parcels and riparian rights occurred.

Public Reaction:

- Sharon Hipp, W302 N6045 Spence Road, was concerned that someone will come back and asked for a variance to build on this smaller parcel. Ms. Hipp was concerned about the Board setting a precedent for dividing lake lots on Beaver Lake.
- Bruce Hawkins, N64 W31211 Beaver Lake Road, stated the original lot does not have frontage and would like to see the parcels remain in the same configuration. He was concerned about a house being built on this already congested bay.
- Paul Raab, N64 W31261 Beaver Lake Road, inquired as to the requirements of the Certified Survey Map and what approvals are necessary to prove it's a buildable lot (sanitary permit, soil testing). He also noted the kettle on site and inquired as to how that would be dealt with. Staff stated that soil testing proving the lot is suitable for an on-site private sewage system is required; building near the kettle is addressed when and if someone inquires with constructing a structure on the parcel.
- Ms. Leto read an email into the record from Robert Schmidt Jr., N64W31227 Beaver Lake Road, that was opposed to the project for various reasons, which included no current lake access, no sanitary facilities and no hardship to grant the variance.

Decision and Action:

The Town of Merton Board of Adjustment recommended approval of the petitioner's request as proposed.

Ms. Bonniwell:

*I make a motion to **approve** the request in accordance with the staff report and for the reasons stated in the staff report in addition to those stated below, subject to the following conditions:*

1. A Certified Survey Map shall be submitted to the Town of Merton, Waukesha County, and Village of Chenequa for review and approval.
2. The Environmental Health Division shall approve of the proposed CSM, prior to the Director affixing his signature upon the Certified Survey Map.
3. A Termination of Easement document shall be prepared to eliminate the easement relative to Lot 3's lake access rights and recorded in the Register of Deeds office prior to the Director affixing his signature upon the Certified Survey Map. The Termination of Easement shall be reviewed and approved by Waukesha County Corporation Counsel.

The reasons for the decision are as follows:

VARIANCE TEST CRITERIA ANALYSIS

State law and case law requires that the petitioner demonstrate that their request for a variance meets three tests. The below Staff analysis assesses the merits of the subject application relative to the tests:

1. **There are unique physical conditions existing on the property, which are not self-created, and which prevent compliance with the ordinance thereby causing a hardship and/or no reasonable use. The physical limitations of the property, and not the personal circumstances or desires of the property owner, are the basis for this test. A variance is not a convenience to the property owner.**

The existing parcels are legal nonconforming parcels that are zoned for residential use. Lot 1 has remained in open space to this point, but a structure could be built on the lands provided it meets all zoning requirements at the time of application. Lot 1 is very small as compared to most properties on Beaver Lake at only 7,000 sq. ft. Its unique shape does not allow for reasonable use of the near lake area. The shore frontage on the property, as platted, has been debated for decades and approval of the variance will allow the petitioners to utilize the lake consistent with the platting over 100 years ago.

The easement is not clearly defined and is located only 6 ft. from the existing residence on Lot 2. The easement has caused legal issues between property owners. The petitioners desire to remove the easement removes an additional lake access right granted to a non-riparian parcel, which eliminates a nonconforming condition.

2. **Compliance with the ordinance would cause the owner to experience an unnecessary hardship. The test as to whether or not an unnecessary hardship exists is whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, density, etc. would unreasonably prevent the owner from using the property for a permitted purpose, or whether it would render conformity with such restrictions unnecessarily burdensome. Hardships should not be financial or**

economic in nature. Variances are intended to provide only the minimum amount of relief necessary to allow a reasonable use of the property.

The two subject lots are both legal nonconforming lots that do not meet the current lot size and lot width standards of the Waukesha County Shoreland and Floodland Protection Ordinance. The new configuration of proposed Lot 1 will allow more reasonable use of the property over the existing triangle configuration. In addition, while Lot 2 is decreasing in size by 1,900 sq. ft., it is still consistent with the lot size and lot width of other properties on Beaver Lake Road.

The existing nonconforming residence on Lot 2 will also become conforming to the offset requirement of the Ordinance. It is desirable to have more space between residences, of which this will accomplish. In addition, future owners of Lot 2 will not endure the burden of a lake access easement granted to a non-riparian parcel held in different ownership.

- 3. The granting of the variance will not adversely affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources in the area. Lack of local opposition does not mean a variance will not harm the public interest.**

Historically, the existing lot configuration has caused civil disputes over shoreline frontage and pier rights. In addition to the 1996 court case that began with the owners of Lot 3 installing a pier within the easement, the parcel to the west has their pier located in a location that currently prevents Lot 1 from having a pier. Since Lot 1 and Lot 3 are currently in the same ownership, the pier is “shared” and is located within the easement; however, the location can still be problematic given position of the properties in the bay. The proposed lot configuration will benefit Lot 1, Lot 2 and the parcel to the west of the subject lands, as the existing frontage will be more evenly distributed and will allow Lot 1 to have a pier on what is now a clear shore frontage area on their property. The pier rights of Lot 3 will be removed with the elimination of the easement, as proposed. Therefore, two piers exist for the three properties today and two piers will remain in a safer and more useable configuration.

All three parcels owned by the petitioners currently have lake access rights. As one of the parcels is not riparian, this is not a permitted use in the Shoreland and Floodland Protection Ordinance. Elimination of the easement will remove an access right from Lot 3 and eliminates a nonconforming use, thereby benefitting the public. No additional riparian rights are being created.

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

BA8: MICHAEL AND SUE GATZOW (OWNERS)

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff’s recommendation was for **denial** of the request for variances from the offset and maximum building footprint and a **modified approval** of shore and road setback variances and **approval** of the Special Exception

from the minimum floor area requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to construct a single-family residence, attached garage, deck and retaining wall on the property.

Discussion between the petitioner, Board and Staff followed.

Discussion occurred regarding the road right of way width, steep topography and the overlapping building envelope on the lot.

Public Reaction:

- John Butler, N53 W34278 Road Q, stated that no parking was available on that section of Road Q and inquired as to what the petitioners' plans were to control the construction equipment blocking the road. Mr. Butler indicated that safety was already a concern. He also inquired as to whose responsibility it was to repair the road damage created from the construction. The Board and Staff answered that the Town Highway Department should be contacted.
- Scott Kirkendall, N53W34286 Road Q, stated that the paved road was very narrow and inconsistent and passing 2 passenger vehicles was very difficult and sometimes impossible in certain areas. He stated that this construction will completely block traffic and it is a major safety hazard.
- Ms. Leto read an email from Doug Grant, N53 W34359 Road Q, into the record. Mr. Grant was supportive of the project contingent upon off-site parking was available for at least two cars. In addition, Mr. Grant offered the opportunity for the petitioner to use his driveway for construction vehicles, per contract, if required.

Decision and Action:

Mr. Bayer:

*I make a motion to **deny** the request for variances from the offset and maximum building envelope, and a **modified approval** of the request for shore and road setback variances and **approval** of the special exception from minimum floor area requirements to permit the construction of a single family home with attached garage, decks and retaining walls, subject to the following conditions and for the reasons stated in the staff report:*

1. If the road right of way is not reduced, the petitioner must obtain approval from the Town to build within the established road right of way and the proposed residence shall be located a minimum of 5 ft. from the 30 ft. platted road right of way to provide for adequate guest parking on site.

If the road right of way is reduced, the proposed residence shall be located entirely outside of the 30 ft. right of way and a parking plan shall be provided to Waukesha County and the Town indicating where guests may park.

2. Written documentation from the Town of Oconomowoc granting approval for grading within the right of way of Road Q shall be obtained, prior to the issuance of a Zoning Permit.

3. The proposed residence, decks and retaining wall shall be located a minimum of 30 ft. from the Ordinary High Water Mark of Tierney Lake.
4. The footprint of the structure shall not exceed 30 ft. in depth from Road “Q” to Tierney Lake.
5. Prior to issuance of a Zoning Permit, the petitioner shall document compliance with all impervious surface regulations based on the regulated lot size.
6. The retaining wall shall be reduced to the greatest extent practicable. In addition, the petitioner shall demonstrate that the retaining wall is unavoidable. The proposed retaining wall requires stamped Landscape Architect or Professional Engineer plans to ensure the integrity of the wall, prior to issuance of a Zoning Permit.
7. In order to offset the impacts of the retaining wall located 30 ft. from the lake, the owner shall provide vegetative screening of the proposed wall. A complete and detailed Vegetation Plan with a specific timetable for completion, and species and sizes of plants and/or other vegetation shall be submitted to Waukesha County Planning and Zoning staff for review and approval prior to the issuance of Zoning Permits. The proposed vegetation shall provide appropriate and effective year round screening of the retaining walls from adjoining properties and the lake. The vegetative screen shall be implemented prior to the date of the Zoning Permit expiration.
8. Prior to issuance of a Zoning Permit for any proposed retaining walls within five feet of a common line, documentation must be provided to Waukesha County Planning and Zoning staff that the Town of Oconomowoc Plan Commission and the Waukesha County Park and Plan Commission have approved the retaining walls.
9. The proposed structure shall meet the height, offset and maximum building footprint provisions of the Shoreland and Floodland Protection Ordinance.
10. Revised building plans that accurately depict the approved building dimensions shall be submitted to Waukesha County, prior to the issuance of a Zoning Permit.
11. Prior to the issuance of a Zoning Permit, an updated scaled Plat of Survey/Grading Plan showing all proposed structures, overhangs, decks, patios, and other appurtenances in compliance with the conditions contained herein must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
12. Prior to the issuance of a Zoning Permit, a detailed Grading and Drainage Plan, showing existing and proposed grades must be prepared by a landscape architect or engineer, licensed in the State of Wisconsin and submitted to the Planning and Zoning Division staff for review and approval. The Grading and Drainage Plan should also include a timetable for completion, the source and type of fill, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage. This is to ensure the construction of the proposed basement and associated fill does not result in adverse drainage onto adjacent

properties. A Stormwater Permit shall be obtained from the Land Resources Division to review adverse drainage and erosion control measures, prior to the issuance of a Zoning Permit.

The reasons for the decision are as follows:

VARIANCE TEST CRITERIA ANALYSIS

State law and case law requires that the petitioner demonstrate that their request for a variance meets three tests. The below Staff analysis assesses the merits of the subject application relative to the tests:

- 1. There are unique physical conditions existing on the property, which are not self-created, and which prevent compliance with the ordinance thereby causing a hardship and/or no reasonable use. The physical limitations of the property, and not the personal circumstances or desires of the property owner, are the basis for this test. A variance is not a convenience to the property owner.**

The property has an extremely steep slope that drops off almost immediately from the road. Building approximately 20 ft. from the base setback line, as required, would result in an unsafe driveway slope, a large amount of fill and retaining walls or no garage at all. To construct a new residence without a garage on a road with no street parking would be unreasonable. Relief from only the road setback would not allow a reasonable building envelope of at least 30 ft. in depth. The shore and road setback requirements overlap, making a building envelope unavailable. Therefore, relief from the shore and road setback requirements is necessary.

However, there is no justification to provide relief from the offset provisions or the maximum floor area provisions. The offset requirement would still allow the petitioners to construct an 85 ft. wide residence. The proposed residence is only 58 ft. wide and can be shifted west 2 ft. to meet the Ordinance requirements. The maximum floor area, even without a reduced road right of way, would allow the petitioners to construct more than an 1,100 sq. ft. building footprint, which would allow a substantial two-story residence. Therefore, relief from the maximum floor area requirements cannot be justified.

- 2. Compliance with the ordinance would cause the owner to experience an unnecessary hardship. The test as to whether or not an unnecessary hardship exists is whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, density, etc. would unreasonably prevent the owner from using the property for a permitted purpose, or whether it would render conformity with such restrictions unnecessarily burdensome. Hardships should not be financial or economic in nature. Variances are intended to provide only the minimum amount of relief necessary to allow a reasonable use of the property.**

The existing setback requirements of the Ordinance would not permit this property to be improved. The road and shore setbacks, which are both reduced through averaging, overlap (Exhibit "C"). Therefore, there is no available building envelope on the property without

variances from the road and shore setback requirements. Requiring a house to be setback further from the road on a very steep slope, in addition to no building envelope, justifies a hardship.

However, there is no justification to provide relief from the offset with a lot that is over 100 ft. wide. In addition, the Ordinance provides for up to an 1,100 sq. ft. building envelope with a 30 ft. depth, on properties where strict compliance may not provide a reasonable envelope. The Ordinance does not allow the Zoning Administrator to grant relief from shore setback or allow a structure to be placed within the established road right of way. Even without a reduced road right of way, the petitioner may construct more building footprint (1,197 sq. ft.) than what the Ordinance allows.

- 3. The granting of the variance will not adversely affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources in the area. Lack of local opposition does not mean a variance will not harm the public interest.**

As conditioned, the proposed residence will be located approximately 17 ft. from the edge of the paved road. This allows for greater sight distance around the driveway entrance and allows visitors to park in the driveway. The proposed retaining wall, if approved as conditioned, will be required to have vegetative screening to mitigate the exposure of the walls and will enhance the natural scenic beauty as viewed from the lake.

Special Exception (Minimum Floor Area): The Ordinance states that the Board of Adjustment may grant a Special Exception to permit a building of less than the required minimum floor area, where the spirit and intent of the Ordinance is not lost and provided the proposed building would not be of such character or quality as to depreciate the property values of the surrounding area.

The setback requirements do not provide a building envelope on the property. The petitioners are therefore proposing a residence, which well exceeds the minimum home size requirements but is slightly smaller than the minimum total first floor area requirement of 850 sq. ft. The granting of a special exception for minimum floor area will provide the owner with a 2 ½-car garage. Because street parking is not available and because of the unique lot shape, the proposal for relief to achieve a two-car garage is justified. The proposed residence will be comparable in size to many of the nearby homes, will not be out of character for the neighborhood, and should not compromise surrounding property values.

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

BA6: WILLIAM SCHMITZ (OWNER)

Public Hearing:

Staff provided a summary of a memorandum identifying the changes made from the June 13, 2018 public hearing. Staff's recommendation was for **denial** of variances from the Shore Setback, Road Setback, Maximum Building Footprint, Maximum Accessory Building Footprint, Building

Height, Floodplain C1-EFD District, Impervious Surface and Nonconformance to Offset requirements to allow the petitioner to rebuild and expand his existing detached garage as well as construct a underground passageway connecting the proposed garage addition with the existing residence on the subject property.

Discussion between the petitioner, Board and Staff followed.

Staff discussed the previous staff report and noted changes made based on a submitted survey. One significant change of note was the original height of the structure, as measured per the Ordinance, was significantly different from what was written in the staff report. The petitioner stated that he lowered the height to 18 ft. as permitted based on the height noted in the staff report. The Board again recommended the petitioner meet with staff to discuss the site and the requirements.

Public Reaction:

- Sandra Burkhart, N95 W26740 County Road Q, Colgate, asked for clarification for what the Board was looking for in terms of a modified proposal. Staff addressed the questions by offering a meeting with the petitioner.

Decision and Action:

Mr. Bayer: *I make a motion to deny the request in accordance with the staff report and for the reasons stated in the staff report.*

The reasons for the decision are as follows:

VARIANCE TEST CRITERIA ANALYSIS

State law and case law requires that the petitioner demonstrate that their request for a variance meets three tests. The below Staff analysis assesses the merits of the subject application relative to the tests:

1. **There are unique physical conditions existing on the property, which are not self-created, and which prevent compliance with the ordinance thereby causing a hardship and/or no reasonable use. The physical limitations of the property, and not the personal circumstances or desires of the property owner, are the basis for this test. A variance is not a convenience to the property owner.**

There is no justification for building footprint, road setback, shore setback, impervious surface, non-conformance to offset, C-1 EFD or height variances. The petitioner's justification for relief are, by definition, personal in nature: to better accommodate larger work and personal vehicles and to provide additional enclosed storage. The property does present some unique physical constraints as it is located between the highway and lake and has significant topography on portions of the lot. Having said that, the existing 2,144 sq. ft., 1.5 story residence plus detached two car garage provide the owners with reasonable use.

2. **Compliance with the ordinance would cause the owner to experience an unnecessary hardship. The test as to whether or not an unnecessary hardship exists is whether compliance with the strict letter of the restrictions governing area, setbacks, frontage,**

height, bulk, density, etc. would unreasonably prevent the owner from using the property for a permitted purpose, or whether it would render conformity with such restrictions unnecessarily burdensome. Hardships should not be financial or economic in nature. Variances are intended to provide only the minimum amount of relief necessary to allow a reasonable use of the property.

Denial of relief from requests for variance does not result in unnecessary hardship. The owners have already established reasonable use for an 11,245 sq. ft. parcel with a 2,144 sq. ft. two-story residence and two car garage. Additionally, the non-conforming provisions of the Ordinance would allow the garage to be rebuilt within the same vertical and horizontal footprint (with authorization from the Washington County Highway Dept.).

- 3. The granting of the variance will not adversely affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources in the area. Lack of local opposition does not mean a variance will not harm the public interest.**

The larger accessory building proposed would further encroach upon the lake, potentially blocks views of the lake and the additional impervious surfaces create additional impacts to the lake through increased runoff. In addition, the proposal to deviate from flood proofing standards leaves the possibility of floodwater entering the building.

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

ADJOURNMENT:

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

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

Respectfully submitted,

Richard Bayer
Acting Secretary, Board of Adjustment

(PLEASE FILL OUT COMPLETELY AND PLEASE PRINT. THANK YOU.)

| NAME | ADDRESS | PHONE NUMBER | IN ATTENDANCE FOR THE VARIANCE OF: | RELATIONSHIP TO PETITIONER |
|--------------------|--|---------------|------------------------------------|----------------------------|
| Michael Larsen | W 332 N 6361 CTH C | 414 229-1902 | | |
| JAMES MELLA | W 332 N 6361 CTH C (^{HOME} DESIGNER) | 262-548-9797 | MIKE LARSEN | HOME DESIGNER |
| Sharon Hipp | W302 N6045 Spence Rd | 262-301-4010 | Thomas | none |
| Beth Raab | N64 W31261 BEAVER LK. RD HARTLAND | 262-563-1063 | THOMAS | none |
| Mike (GATZOW) | 4439 VETTELSON RD. HARTLAND | 262-893-6299 | GATZOW | owner |
| S PATRICK LOB | N64 W31280 BEAVER LAKE RD HARTLAND | 262 893 8266 | THOMAS/LOB | OWNER |
| PC THOMAS | N64 W31243 BEAVER LAKE RD HARTLAND | 262 893 369 | 8283 | OWNER |
| AMY THOMAS → | | | | |
| Scott Kirkendall | N53W34286 ROAD Q OKAUKEE 53069 | (414)617-9165 | BAB | NONE |
| Kathy Kirkendall → | | 262-384-1126 | Y | g |
| John P Butler | N53 W 34278 ROAD Q OKAUKEE 53069 | 262/719-3985 | BAB | NONE |
| Judy Burkhardt | N95 W 26740 C. RD Q, Colgate | 414 801 3996 | FRIEND | |
| Dill Schmitz | N95 W 26740 C. RD Q, Colgate | 414 708 7885 | ME | Self |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |