

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, January 10, 2024, at 6:00 p.m. in Room 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** Richard Bayer, Chairman  
Stephen Schmidt  
Joseph Kershek  
Curtis Podd  
Kathryn McNelly Bell

**BOARD MEMBERS ABSENT:** Nancy M. Bonniwell

**SECRETARY TO THE BOARD:** Stephen Schmidt

**PLANNING STAFF MEMBER:** Jacob Heermans

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. Schmidt *I make a motion to approve the Summary of the Meeting of November 8, 2023.*

The motion was seconded by Mr. Kershek and carried 4-0 with Mr. Bayer abstaining.

**NEW BUSINESS:**

**BA167: DAVID ELARIO AND LAURA REYES/DAVE PATZER (OWNERS), DAVE PATZER (APPLICANT)**

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **approval** of the request for a variance from the shore setback requirements of the Waukesha County Shoreland Protection Ordinance to permit the after-the-fact retaining wall closest to the shore on both subject properties (wall #1) and **denial** of the request for a variance from the shore setback requirements of the Waukesha County Shoreland Protection Ordinance to permit the after-the-fact construction of the upper walls on the Elario/Reyes property (wall #2 & #3).

Discussion between the owner (David Patzer, David Elario and Laura Reyes), Board and Staff followed.

*Public Reaction:* None

Decision and Action:

Mr. Podd *I make a motion to **approve** the request for the lower wall (wall #1) and **deny** the request for the upper walls (wall #2 and #3) in accordance with the staff report and reasons stated in the staff report.*

The motion was seconded by Mr. Schmidt and carried 3-2 with Mr. Kershek and Ms. McNelly Bell voting against the motion.

**BA179: MELANIE AND BRYAN MOODY (OWNERS)**

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **approval** of the request for a variance from the shore setback requirements of the Waukesha County Shoreland Protection Ordinance to allow the construction of a new single-family residence, attached garage, deck, patio, and retaining walls and **denial** of the request for a variance from the shore setback requirements of the Waukesha County Shoreland Protection Ordinance to allow the construction of an exterior staircase, subject to conditions.

Discussion between the owners (Bryan and Melanie Moody), Board and Staff followed.

*The owners noted that there is a discrepancy between the house plans and the survey, specifically related to the proposed exterior staircase. The owners stated that the staircase shown on the building plans more closely resembles the desired design.*

*Staff noted that an email of support was received from the property owner to the east.*

*Public Reaction: None*

Decision and Action:

Mr. Schmidt *I make a motion to **approve** the request including the exterior stairs with the following conditions and for the following reasons:*

- 1. The proposed retaining walls shall be screened with vegetation that will provide year-round screening of the retaining walls from adjoining properties and the lake. A landscape plan shall be submitted to Waukesha County Planning and Zoning staff for review and approval. The landscape plan should provide a mix of native and other non-invasive species. The screening shall effectively screen at least half of the wall face(s) at the initial time of planting.*
- 2. The retaining wall closest to the shore, shall encroach no closer into the shore setback than the existing wood retaining wall (6.3 ft).*

3. *The proposed deck shall encroach no closer to the shore than indicated on the proposed Plat of Survey/Grading Plan. The exterior stairs shall encroach no closer to the side lot line than the proposed home and shall encroach no closer to the shore than the proposed deck as indicated on the proposed Plat of Survey/Grading Plan (Exhibit B).*

**REASONS:**

Accounting for all setbacks and offsets, the petitioners would be limited to a 1,200 square foot footprint in which to locate all improvements, including the home, deck, patio and attached garage. The proposed home meets all the Ordinance requirements with the exception of road setback; however, staff can administratively approve a reduced road setback to facilitate a 1,100 square foot footprint. Further encroachment into the road setback would make it impractical to park vehicle(s) in the driveway, outside of the ultimate right-of-way. Therefore, some relief from the shore setback requirements can be justified to allow the owner to construct a modest lakeside deck and patio. The deck/patio is approximately 200 square feet in size, and only 15 square feet of each structure extend into the shore setback, albeit, further from the shore than the existing improvements. The requested relief is minimal to achieve adequate outdoor recreational space on a smaller lot and will allow the owner to utilize the property for a permitted residential purpose.

The proposed wing walls help to direct drainage away from the home and create additional outdoor living space. The Waukesha County Land Resources Division Staff have reviewed the proposed grading plan and, given the steep slope conditions, feel that the proposed retaining walls are necessary to stabilize the slope, protect the foundation of the home and provide some useable yard space. Other than in-kind wall replacement, no new lakeside retaining walls could be constructed as a matter of right, which creates a hardship and justification for some setback relief for the walls.

The proposed exterior staircase is located further from the shore than the existing improvements and provides safe access from the 1<sup>st</sup> floor deck to the lakeside yard. Allowing the stairs to encroach no closer to the shore than the proposed deck provides minimal relief while helping to protect the riparian zone. Additionally, the shoreline creates a pinch point on the west side of the property, reducing where an exterior staircase can be located.

If the relief requested is granted for the home, retaining walls, deck and patio and exterior staircase, it would not have an adverse impact to nearby properties and the general public welfare. Granting the requested shore setback relief will result in the minimal relief necessary for the owners to add outdoor recreational space, while also aiding in new home construction. The neighboring properties all have extensive retaining wall systems located within the shore setback, and the reduced wall heights and recommended screening will be less impactful to neighboring property owners. The cumulative walls heights will be reduced from nearly 14 ft. to 6.5 ft. as viewed from the shore. Impervious surface will be reduced, and the proposed structures do not encroach further into the offsets and setbacks than the existing structure. It should also be noted that if the structure were to be replaced in kind it would perpetuate a nonconforming structure, as the existing residence is nonconforming to the required shore setback, minimum floor area and road setback. The staircase is located further from the shore than the existing improvements, and matches the setback of the proposed deck.

The motion was seconded by Ms. McNelly Bell and carried unanimously.

**BA182: KURT AND SANDY LUDWIG (OWNERS)**

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **approval** of the request for a variance from the road setback requirements of the Waukesha County Zoning Code to allow the construction of a 30 ft. x 34 ft. detached garage, subject to conditions.

Discussion between the owner (Kurt Ludwig), Board and Staff followed.

*Public Reaction:* None

Decision and Action:

Mr. Kershek *I make a motion to **approve** the request in accordance with the staff report with the condition and reasons stated in the staff report.*

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


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

**ADJOURNMENT:**

Mr. Schmidt *I make a motion to adjourn this meeting at 7:22 p.m.*

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

Respectfully submitted,



Richard Bayer  
Chairman, Board of Adjustment