

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, October 10, 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  
Nancy Bonniwell  
Richard Nawrocki  
Richard Bayer

**BOARD MEMBERS ABSENT:** None.

**SECRETARY TO THE BOARD:** Nancy Bonniwell

**OTHERS PRESENT:** Ben Greenberg, Senior Land Use Specialist  
Derek Ingram, BA15  
Sandy Ingram, BA15  
Altfred Krusenbaum, BA16  
Sue Krusenbaum, BA16  
William Matt, BA17

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 September 12, 2018, as written.*

The motion was seconded by Mr. Bayer and carried 3-0 (Ms. Bonniwell abstained).

**NEW BUSINESS:**

**BA15: DEREK J. AND SANDRA M. INGRAM (OWNER)**

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **approval** of the request to release Deed Restriction No. 1088490, to provide the owner with year-round use of the residence on the subject property.

Discussion between the petitioner, Board and Staff followed.

The petitioner indicated that the staff report was factually correct. The property owners were asked by Ms. Bonniwell if any additional work to the structure was planned. The owners indicated that they planned to install a new HVAC system and better insulate the residence.

*Public Reaction:* None

Decision and Action:

Ms. Bonniwell: *I make a motion to approve the request to release Deed Restriction No. 1088490, to provide the owner with year-round use of the residence on the subject property for the following reasons and subject to the following conditions:*

1. Prior to October 1, 2020 or year-round occupancy of residence, whichever occurs sooner, the existing holding tank shall be replaced. Documentation shall be provided indicating that the Waukesha County Environmental Health Division has approved the installation of the new tank.
2. Prior to October 1, 2020 or year-round occupancy of residence, whichever occurs sooner, a release of deed restriction No. 1088490 shall be drafted by the Waukesha County Planning and Zoning Division, or its designee and shall be recorded with the Waukesha County Register of Deeds Office.

The reasons for the decision are as follows:

In the past, the minimum relief provided by the Board for area variances such as offset or open space occasionally came in the form of approving the improvement(s), but limiting the use. *Rule v. Iowa County Board of Adjustment (March 18, 2010)* strictly scrutinized the appropriateness of a Board of Adjustment to address variance requests which are more fundamentally related to use versus area. Having said that, restrictions limiting use, as were employed in 1979, would be considered a somewhat inappropriate condition to require today. The poor soil conditions are a limiting factor of the property. Today, many nearby properties utilize holding tanks, as year round use of residential structures on lakes has become commonplace.

Additionally, the requirement to replace the aged and undersized metal holding tank with a more environmentally sound modern concrete tank will ensure that the additional utilization of the residence will not adversely affect the surrounding properties or natural environment.

The motion was seconded by Mr. Nawrocki and carried unanimously

**BA16: SONJA GORSCH (OWNER) AND ALTRID AND SUE KRUSENBAUM (APPLICANTS)**

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **denial** of the request for a variance from the offset provisions of the Waukesha County Shoreland and Floodland Protection Ordinance as requested and **approval** of a variance from said offset provisions with less relief than requested, to allow the petitioner to build a detached garage on the subject property.

Discussion between the petitioner, Board and Staff followed.  
The petitioner indicated that the staff report was factually correct.

Mr. Bayer asked the petitioner if he could move the garage further from the lot line than the proposed three (3) feet and still have a workable site plan. The petitioner explained that he needed as much room as possible to be able to create a turn around to avoid having to backup from the garage to the road.

Ms. Bonniwell agreed with Staff that a three (3) foot offset to the lot line would not provide adequate room for maintenance and proper drainage.

*Public Reaction:* Three neighbors (William R Evans Jr. - W345S10715 South Shore Dr., Paul Striemel – W345S10733 South Shore Dr. and Tom Casey – W345S10709 South Shore Dr.) submitted written letters of support for the project as proposed.

Decision and Action:

Mr. Bayer: *I make a motion to approve the request for a variance from the offset provisions of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the petitioner to build a detached garage for the reasons as stated in the Staff Report and subject to the following conditions:*

1. The proposed detached garage can be located no closer than seven (7) feet to the northern lot line and must comply with all other offset requirements of the Ordinance.
2. Prior to the issuance of a Zoning Permit, a Plat of Survey, prepared by a qualified professional shall be submitted to Waukesha County Planning and Zoning staff. The survey must be submitted to-scale and shall show all existing and proposed improvements
3. Prior to issuance of occupancy permits for the detached garage or June 1, 2018, whichever occurs sooner, the existing impervious surface lying directly between the proposed garage and northern lot line should be removed, stabilized and revegetated with grass or some other type of ground cover. This is being required to offset the impacts to the adjacent parcel and lake caused by any additional run-off from the proposed garage.

The reasons for the decision are as follows:

- 1. 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.**

Full compliance with the offset provisions would require the petitioner to locate the garage, whether attached or detached, on the steeper portion of the lot. The limited depth between the road and conforming building footprint, along with the obstructed location of the nearby septic field would necessitate a steep and direct approach to the garage, which might not be achievable absent a complete regrading of the slope. The location proposed avoids any such

disruption to the slope and established vegetation. Additionally, requiring the petitioner to retrofit attached garage space to existing log cabin type construction would be unnecessarily burdensome.

Having said that, the relief requested goes beyond the minimum relief necessary to alleviate the demonstrated hardship. The relief as recommended would allow the petitioner to build a two-car garage and would allow them to continue to utilize the property for a permitted purpose.

- 2. 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 location of the slope and septic system near the road limit the size and location of a viable building footprint in a conforming location. Furthermore, the high groundwater conditions prevent basement construction and the encroachment of the 100-year floodplain limit the placement of a boathouse. These physical limitations inhibit the potential conforming locations for enclosed storage on the subject property.

- 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 request as proposed would be detrimental to nearby properties. A significant structure only three (3) feet from a common lot line does not provide adequate room for maintenance of the structure and can impede drainage patterns. Additionally, Section 3(h)(3)(A)(iv) of the Ordinance allows for clustering of accessory buildings when an existing structure is located within five (5) ft. of a common lot line. Approval of the request as proposed could potentially perpetuate future clustering of accessory buildings in lieu of a conforming pattern of future development.

If approved with recommended conditions, adequate room for maintenance and drainage would be provided, total impervious surfaces reduced and any concern over the perpetual clustering of accessory buildings as noted above would be erased. Therefore, the granting of variance if approved with conditions as recommended, will not adversely affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources in the area.

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

**BA17: WILLIAM B. MATT (OWNER)**

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 non-conformance to offset provisions of the Waukesha County Shoreland and Floodland Protection Ordinance, for after-the-fact approval of a sunroom addition on the subject property.

Discussion between the petitioner, Board and Staff followed.

The petitioner indicated that the staff report was factually correct.

Mr. Bayer asked the petitioner why he did not apply for the necessary permits before he started the work.

The petitioner replied that an engineer told him the work did not need permits. He added that the greenhouse structure was a complete eyesore.

*Public Reaction:* None

Decision and Action:

Mr. Bayer: *I make a motion to approve the request for a variance from the non-conformance to offset provisions of the Waukesha County Shoreland and Floodland Protection Ordinance, for after-the-fact approval of a sunroom addition on the subject property for the following reasons and subject to the following condition:*

1. Prior to the issuance of a Zoning Permit for the three-season room addition and deck, the petitioner must demonstrate compliance with the impervious surface regulations of the Ordinance.

The reasons for the decision are as follows:

- 1. 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.**

The conversion from greenhouse to sunroom does add a minor amount of additional bulk to the structure and cannot be considered an in-kind replacement permitted by right. In addition, if not for the intrusion of the chimney within five feet of the lot line, this would be a request for special exception as opposed to variance. Due to the limited footprint of the residence and low ceiling of the greenhouse room, relief from the Ordinance as requested will provide the owner reasonable use of the property.

- 2. 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 severely non-conforming width of the lot makes strict compliance with the ordinance practicably difficult. The minor addition, if approved, provides a small amount of additional overhead space, allowing the owner more practical use of the existing building footprint

- 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 (and constructed) sunroom addition is an aesthetic improvement to the greenhouse and does not add any significant bulk that might blocks views or otherwise adversely affect nearby property owners.

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

**ADJOURNMENT:**

Mr. Nawrocki: *I make a motion to adjourn this meeting at 7:27pm.*

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

Respectfully submitted,



Nancy Bonniwell  
Secretary, Board of Adjustment