



*Attorney Troy Giles who represents the owners was present and voiced concern over the condition requiring a deed restriction be recorded in perpetuity forbidding a boathouse, and the applicant voiced similar concerns. Ryan Cardinal, project engineer, stated that the lower wall is a nice way to reinforce the slope and will be screened by a robust landscape plan. Brian, of Paragon Design Group, echoed Mr. Cardinal's comments, and stated that the extensive landscape plan will provide a buffer and screening of the walls.*

*Public Reaction:* A letter of support from the neighbor across the street was submitted prior to the public hearing.

Decision and Action:

The Town of Merton Board of Adjustment recommended approval of the petitioner's request as proposed but recommended that condition #7 be removed relative to the prohibition of a boathouse.

Mr. Bayer *I make a motion to approve the request for a variance from the required shore setback with the following conditions and the reasons stated in the staff report.*

- 1. If any trees or vegetation within thirty-five (35) feet of the lake will be disturbed or Priority Trees removed, a Vegetation Removal Permit must be obtained prior to the issuance of any permits.*
- 2. Prior to the issuance of a Zoning Permit, a Conditional Use Permit for land altering activity shall be obtained from Waukesha County.*
- 3. The Town of Merton Plan Commission and Waukesha County Park and Planning Commission must approve any retaining walls within five (5) feet of a common lot line, prior to the issuance of a Zoning Permit.*
- 4. Documentation shall be submitted to the Waukesha County Planning and Zoning Division staff that a Stormwater Permit has been issued by the Waukesha County Department of Parks and Land Use, Land Resources Division (LRD), prior to the issuance of a Zoning Permit. The LRD review may necessitate further design changes. The proposed dry creek beds and catch basins must be maintained in perpetuity unless design changes are authorized by LRD. Outlets from catch basins must be depicted upon the final plans.*
- 5. Wall cross-sections approved/stamped by either an engineer or landscape architect licensed in the State of Wisconsin must be submitted for any walls exceeding 4' in height, prior to the issuance of a Zoning Permit.*
- 6. To offset the impacts of the retaining walls within the shore setback area, the existing patio that is located below the lowest proposed wall shall be removed, prior to the issuance of a Zoning Permit. The proposed replacement paver patio is not permitted. All site and landscape plans shall be revised to omit the lakeside patio.*
- 7. The proposed retaining walls shall be screened with vegetation, consistent with the submitted Landscape Plan attached as Exhibit D in order to provide year-round screening of the retaining walls from adjoining properties and the lake. The plan shall be revised to include screening immediately west of the lower wall in the northwest part of the property to the north*

*of the walkway to the pier. Changes to the landscape plan species over time can be authorized by Waukesha County Planning and Zoning staff provided that replacement species will provide an equivalent amount of screening.*

8. *A Declaration of Restrictions must be prepared noting that the Retaining Wall Landscape Plan shall be permanently maintained unless modified with the approval of the Waukesha County Planning and Zoning Division. Prior to the issuance of any permits, the Declaration of Restrictions must be signed by the owners, notarized, and recorded in the Waukesha County Register of Deed's office, and a copy furnished to the Planning and Zoning Division staff.*

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

**BA92: KIM FERRARO (OWNER), DAVID J. KOSCIELNIAK (APPLICANT)**

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for approval of variances from the shore setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to permit the reconstruction and modification of existing retaining walls.

Discussion between the petitioner (David Koscielniak), owner (Kim Ferraro), Board and Staff followed.

***Mr. Koscielniak stated that the wall will have an 8" curb and guard rail for safety. The wall modification will allow for an expanded parking area and will aid in snow removal.***

*Public Reaction: None*

Decision and Action:

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

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

**BA88 ZACHARIAH'S ACRES (OWNER), TERRY BARTOWITZ (APPLICANT):**

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for approval of variances from the shore and wetland setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance for the construction of an open-air pavilion with an attached patio.

Discussion between the owner (Terry Bartowitz), Board and Staff followed.

*Public Reaction: None*

Decision and Action:

Ms. Bonniwell *I make a motion to approve the request in accordance with the staff report with the conditions and reasons stated in the staff report.*

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

**BA81 TODD GILLETTE (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, shore setback, maximum accessory building footprint, maximum building footprint, impervious surface, offset C-1 Conservancy District use requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to permit the construction of a gazebo, deck, retaining wall and carport.

Discussion between the owner (Todd Gillette), Board and Staff followed.

*Mr. Gillette relayed that he and his wife purchased the lake property as a part-time residence, however, it now serves as their primary residence. The home has 3 sump pumps that used to run constantly, but after some minor grading associated with the small wall at the shore, the water issues have subsided. The deck was constructed over existing concrete and the carport provides protection from falling tree branches. Mr. Gillette stated he would remove the shed at the shore if the improvements were allowed to remain and that they were a positive to the community.*

*Mr. Heermans relayed that the retaining wall at the shore was less than 2' in height based on a site inspection and is not classified as a structure, however, it does constitute floodplain fill. Mr. Greenberg shared a FEMA Floodplain Bulletin and stressed several reasons why variances for structures in the floodplain should be denied.*

*Public Reaction:* Several letters of support from neighbors, the Eagle Spring Lake Management District and Town Chairman was submitted prior to the public hearing.

- **Michelle and Shane Vant (W345S10417 Wambold Rd) live adjacent to the south and both expressed support of Mr. Gillette's improvements. The improvements are aesthetically pleasing and provide some screening.**
- **Bill Leech (W345S10423 Wambold Rd) lives two house to the south and expressed his support for Mr. Gillette to retain the improvements.**
- **County Board Supervisor Chris Mommaerts (W354S7990 STH 59) expressed support for Mr. Gillette to retain the unpermitted improvements.**

Decision and Action:

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

The motion was seconded by Ms. Bonniwell and carried 3-2, with Mr. Bayer and Mr. Nawrocki voting against the motion.

**OTHER ITEMS REQUIRING BOARD ACTION:**

**BA83 ADIL DZABIROSKI (OWNER):**

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for denial of variances from the wetland setback requirements and the height requirements of the Waukesha County Shoreland and Floodland Protection Ordinance for after the fact approval of a 30' x 50' accessory building built without the benefit of a permit.

Discussion between the owner (Adil Dzabiroski), Board and Staff followed.

*The height of the building was previously unknown prior to the public hearing. The petitioner indicated at the public hearing and afterward to staff that the wall height of the building is 14 ft., and the roof pitch is a 4/12 pitch. Given a 45' wide building, the height of the structure is 21'6" tall, which exceeds the allowable height limits. The petitioner obtained a wetland delineation, as requested by the Board, and the accessory building is closer to the wetlands (23.69') than shown on the 1996 SEWRPC boundary (53.8').*

*Public Reaction: None*

Decision and Action:

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

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

**ADJOURNMENT:**

Mr. Bayer *I make a motion to adjourn this meeting at 8:30 p.m.*

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

Respectfully submitted,



Richard Bayer  
Vice Chairman, Board of Adjustment