

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, June 13, 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
Jim Schneider

BOARD MEMBERS ABSENT: Ed Kannenberg
Marge Hager

SECRETARY TO THE BOARD: Nancy Bonniwell

OTHERS PRESENT: Rebekah Leto, Senior Land Use Specialist
Amy Barrows, Senior Planner
Pat Bolger, applicant (BA7)
Bill Schmitz, applicant (BA6)
Joseph Leone, neighbor (BA6)
Curt Denevan, applicant (BA5)
Mike Schlossmann, applicant (BA9)
Ellen Schlossmann, applicant (BA9)
Barbara Seeboth, neighbor (BA5)
Jeffery Seeboth, neighbor (BA5)
Leigh Vanderkin, applicant (BA3)
Jeffery Vanderkin, applicant (BA3)
Kevin Breslow, Architect (BA9)
Dan Janke, Engineer (BA9)
Steve Auchter, Builder (BA9)
Teri Nelson, neighbor (BA6)
Mike Loatson, 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 May 9, 2018 with the typographical corrections submitted to staff.*

The motion was seconded by Mr. Bayer and carried unanimously. Ms. Bonniwell did not vote because she was absent at the May 9, 2018 meeting.

NEW BUSINESS:

BA3: JEFF VANDERKIN (OWNER)

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **denial** of the request for variance from the maximum building footprint requirements of the Waukesha County Shoreland and Floodland Protection Ordinance and **approval** of the request for a variance from the road setback provisions of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the construction of a detached garage on the subject property.

Discussion between the petitioner, Board and Staff followed.

The petitioner discussed how his proposal to build a minimum 2-car garage, when he currently does not have a garage, was necessary in Wisconsin climate. He also explained how his proposal is only a difference of 3 ft. in width than what staff was recommending. The petitioner passed around photos of other garages and discussed how many of the properties were smaller than his own and have the same size or larger garage. The petitioner also submitted a petition signed by neighbors in support of the project.

Public Reaction: None.

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 for variances from the maximum building footprint and road setback provisions of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the construction of a detached garage on the subject property, subject to the following conditions:*

1. The detached garage shall be located a minimum of 22.84' from the platted right-of-way of Dobbertin Road and a minimum of 14.25' from the platted right-of-way of Audrey Drive. All other requirements of the Ordinance shall be complied with.
2. The impervious surfaces that are proposed to be removed on the property shall be removed in accordance with the proposed plan.

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 and Board of Adjustment 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.**

Relief from road setback can be justified because the property is a substandard sized, corner lot with sloping topography and two road setback requirements, in addition to an encroaching public road. Minimal relief through averaging is available for the road setback of Audrey Drive and none is available on Dobbertin Road. Therefore, without any additional relief from the road setback provisions, the petitioner would be unable to locate a garage of any size on the property without a full redevelopment of the parcel. The lot is small and relocating the house is unreasonable, which justifies a larger building footprint.

- 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 house was built in 1947, prior to the adoption of the Waukesha County Shoreland and Floodland Protection Ordinance and is in relatively good shape. The petitioner originally wanted to build an attached garage onto the residence; however, a variance from the non-conformance to offset provisions would have been needed because the home is only 0.27 feet away from the north lot line. The petitioner would be able to construct a one-car garage without the need for a variance from building footprint, however, the location of the existing home and application of two road setback requirements contribute to hardship in siting a detached garage and achieving basic garage shelter. However a 20 ft. by 20 ft. garage is reasonable for today's two-car garage standards.

- 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.**

A 20 ft. x 20 ft. detached garage would fit the pattern of development in the neighborhood and complies with Town DPW requirements. Having garage space will allow the petitioner some enclosed parking for both residents of the property and allow the owners to continue to utilize the property for a permitted purpose.

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

BA3: PATRICK BOLGER

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **approval** of the request for a special exception from the non-conforming to the offset provisions of the Waukesha County Shoreland and Floodland Protection Ordinance to permit the construction of an attached garage addition to the existing residence.

No further discussion regarding the request for variance between the petitioner, Board and Staff occurred. The Town of Merton Board of Adjustment inquired about the Certified Survey Map.

Public Reaction: None.

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 for a special exception from the non-conforming to the offset provisions of the Waukesha County Shoreland and Floodland Protection Ordinance to permit the construction of an attached garage addition to the existing residence, subject to the following conditions:*

1. A Certified Survey Map shall be prepared to combine Lots 21 and 22 of the Plat of Marshall Park Lake Keesus, prior to the issuance of Zoning Permits for the proposed improvements.
2. The proposed garage additional shall be located a minimum of 10 ft. from the east and west lot lines.
3. The proposed garage addition shall not exceed 50% of the footprint of the existing structure (893 sq. ft. maximum).
4. Prior to the issuance of a Zoning Permit, a revised Plat of Survey showing the staked-out location of the proposed improvements shall be submitted to the Planning and Zoning Division staff for review and approval.
5. 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.
6. The non-conforming shed at the road shall be removed, prior to the issuance of a Zoning Permit.

The reasons for the decisions are as follows:

Special Exception: The Ordinance defines Special Exception as a request for a minor adjustment to the requirements of this Ordinance only where specifically authorized by this Ordinance, owing to special conditions of the property. The special exception must be necessary and desirable and must not adversely affect adjacent property owners. A special exception differs from a variance in that a special exception does not necessarily require the demonstration of an unnecessary hardship or practical difficulty. In the granting of a special exception, the approving body must still consider whether the proposed special exception would be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects and may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare.

The existing one-story residence constructed in 1954 and prior to the adoption of the Waukesha County Shoreland and Floodland Protection Ordinance, is a legal nonconforming structure. The only nonconformance is to the east lot line offset provisions (the residence is located approximately 9 inches closer than is permitted). The lot and surrounding area is heavily vegetated, making the residence to the east not visible from the property. The proposed improvements are modest in size, fit in aesthetically with the existing residence and surrounding neighborhood and will not have any negative impacts on the lake. It would be unreasonable to require that the petitioner relocate the residence in order to make minor improvements to the residence. The severe slopes that exist on the property, in addition to its pie-shaped configuration, would also not allow the residence to be relocated in any alternative location that would still meet all required setbacks and offsets. The location of the attached garage itself complies with all locational requirements of the Ordinance.

Granting of the special exception to allow the garage addition to the residence will not result in negative impacts to the surrounding neighborhood or the public interest and welfare and complies with the purpose and intent of the Ordinance. In addition, the lot combination, as conditioned, creates a more conforming lot of 16,335 sq. ft. in area, whereas the two existing legal non-conforming lots are both severely sub-standard. Finally, the conditional approval will removing a non-conforming shed that encroaches into the road setback and required offset.

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

BA5: W CURT & CINDI D. DENEVAN 2007 LIVING TRUST (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 separation between structures requirement and a **modified approval** of the request for variances from the offset and maximum building footprint requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the construction of a detached garage on the subject property.

Discussion between the petitioner, Board and Staff followed.

The petitioner described how the existing garage is failing and how he does not have a lot of storage space within his house. He indicated that 17 sq. ft. of additional square footage in the one-car garage is minimal and would allow him to construct a 15 ft. x 21 ft. garage. Staff relayed again that he could rebuild the existing garage without variances and his property was severely nonconforming.

Public Reaction:

Bryan Kohlhaas, W298 N2805 Shady Lane, stated that all the properties in this area are small and that this proposal was not going to affect the neighbors. The garage will be an improvement to what exists today.

Jeff Seeboth, W298 N2778 Shady Lane, stated that he concurs with the neighbor above. The current garage needs to be replaced and the proposed garage would not be detrimental to the neighborhood.

Decision and Action:

Ms. Bonniwell: *I make a motion to **approve** the request for variances from the separation between structures requirement and the maximum building footprint requirements and a **modified approval** of the request for a variance from the offset requirement of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the construction of a detached garage on the subject property, subject to the following conditions:*

1. The petitioner shall submit written documentation from the Town Building Inspector and Fire Inspector stating they approve of the location of the detached garage. The detached garage shall not be located closer than 6 ft. from the residence, as measured from the outermost overhang to the outermost overhang of each structure.
2. The detached garage shall comply with the accessory building footprint provisions of the ordinance.
3. The detached garage shall be located a minimum of 5 ft. from the north lot line and shall be located no closer to the west lot line than the existing detached garage (approximately 6.5 ft.). All other location requirements of the Ordinance shall be complied with.
4. A revised Plat of Survey shall be prepared in compliance with the above conditions and be submitted to the Planning and Zoning Division for review and approval.
5. A scaled building plan shall be prepared and submitted to the Planning and Zoning Division for review and approval, prior to the issuance of a Zoning Permit.

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 Board of Adjustment assessed 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.**

Relief from the offset requirement can be justified because there is no other practical location for a detached garage on the property. Shady Lane extends only 8 ft. past the existing driveway and then dead ends. To place a garage on the south side of the residence where there is no road to enter the garage would not allow reasonable use of the structure itself. However, to allow the petitioner to construct the detached garage in a more non-conforming location to the west lot line cannot be justified. Retaining a 6.5 ft. offset from the west lot line will still allow the proposed garage to meet the road setback requirement. By relocating the garage four additional feet from the north lot line (5 ft. total), the petitioner will be able to maintain the garage over time from his own property.

While the house is of reasonable size, no garage or basement exist on the property, which may limit the storage opportunities for lawn equipment. The lot size is smaller than what is required, which justifies a larger building footprint.

- 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.**

Having garage space will allow the petitioner to have an enclosed parking space for one vehicle and will allow him to continue to utilize the property for a permitted purpose. If the required setbacks and offsets were complied with, including a 10 ft. separation between buildings, the resulting structure would only be 3 ft. wide when taking into account minimal overhangs. As noted above, relocating the garage to the south side of the property is unreasonable, as Shady Lane does not extend the entire length of the property. To conform to all Ordinance requirements to build a new garage is a hardship as they would end up with no garage. The proposed garage is almost the same size that could be rebuilt by State Statute. This size garage gives reasonable use of the 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.**

Replacing a garage of the same size but in a more conforming location would have no adverse impacts on the public. The proposal, as conditioned, provides a greater offset to a structure on the adjacent property while still providing safe passage between the petitioners existing residence and proposed garage. The modified location will also leave additional open space near the lake. The garage size is modest and will not be detrimental to the neighborhood.

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

BA6: WILLIAM SCHMITZ (OWNER)

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 shore setback, road setback, maximum building footprint, maximum accessory building footprint, building height, floodplain C1-EFD District, impervious surface and nonconformance to offset provisions of the Waukesha County Shoreland and Floodland Protection Ordinance to replace and expand an existing detached garage and excavate a tunnel to connect the garage with the existing residence.

Discussion between the petitioner, Board and Staff followed.

The petitioner stated reasons for his request to the Board. Following discussion on the proposal, the Board inquired as to whether the petitioner would like to revise the submitted plans based on the feedback received by the Board throughout the hearing. Staff indicated this was not advisable.

Public Reaction:

Teri Nelson, a resident within the area, was impressed that the petitioner was offering the volunteer fire department access to water as a part of this proposal. Ms. Nelson is in favor of the project and believes it would enhance the community.

Mike Loatson, a neighbor and resident of Washington County, explained how the petitioner has a hardship on the property because of the drainage issues caused by C.T.H. "Q". He reiterated his support of the project and of the petitioner's desire to give back to the community. Mr. Loatson stated how there is a safety issue on C.T.H. "Q" and the highway department will not lower the speed.

Decision and Action:

Mr. Bayer: *I make a motion to table this matter until a future Board of Adjustment meeting to allow the petitioner time to revise the proposed plans.*

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

BA9: MICHAEL AND ELLEN SCHLOSSMAN (OWNERS)**Public Hearing:**

Staff provided a brief summary of the Staff Report and Recommendation. Staff's original recommendation was for **denial** of the request for variances from the shore, floodplain and wetland setback provisions; the nonconforming structure to shore, floodplain and wetland setback provisions; and the C-1 Conservancy Overlay District provisions of the Waukesha County Shoreland and Floodland Protection Ordinance to reconstruct the existing residence with lateral expansions and **approval** of the request for a variance from the nonconforming structure to floodplain setback provisions of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the re-construction of the existing residence with a vertical expansion only.

However, the petitioners proposed a modified request presented at the public hearing as the Alternate "A" drawing. The modified request consists of slight modifications to the overall building footprint, resulting in lateral additions. However, the overall building footprint is 4 sq. ft. smaller than the existing building footprint and the exterior walls and overhangs do not extend closer to the shore, wetland, or floodplain than the existing structure. *Therefore, staff modified their recommendation to approval of all requests, with the exception of the original request to obtain a variance from the C-1 Conservancy Overlay District requirements.*

Discussion between the petitioner, Board and Staff followed regarding the modified requests. The recommended conditions and reasons were modified accordingly.

Public Reaction: The adjacent property owner to the north provided written comments that were read into the record. Concern was raised regarding adverse drainage into the wetland area and aesthetics along the shoreline of the lake.

Decision and Action:**Mr. Bayer:**

I make a motion of **denial** from the request for a variance from the C-1 Conservancy Overlay District provisions of the Waukesha County Shoreland and Floodland Protection Ordinance and **approval** of the request modified at the public hearing for variances from the shore, floodplain and wetland setback provisions; and the nonconforming structure to shore, floodplain and wetland setback provisions of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the re-construction of the existing residence with vertical and lateral expansions, subject to the following conditions:

1. 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. The survey shall include the ordinary high water mark of Lac La Belle, delineated wetland, and surveyed floodplain boundary. No grading shall extend into the regulated floodplain.

2. Modifications to the existing building footprint, overhangs, entryways, stoops, and new balcony shall comply with Alternate “A” submitted at the public hearing. Alternate “A” is attached as Exhibit “A.”
3. The lowest floor of the residence shall be located at least two (2) vertical ft. above the 1% chance floodplain elevation. The 1% chance floodplain elevation is 854 ft. amsl NAVD88. An as-built survey shall be submitted within 30 days of an Occupancy Permit, including the lowest floor elevation of the residence and grade elevations to demonstrate compliance with this condition.
4. The illegal shed, patio, and permanent grill structure shall be removed prior to issuance of a Zoning Permit.
5. Revised scaled building plans shall be submitted that accurately depict the approved building dimensions prior to the issuance of a Zoning Permit.
6. The structure shall be limited to 35’ in height. No spires that exceed 35’ in height are permitted because the structure is located within 75 ft. of Lac La Belle.
7. No new decks or patios, with the exception of the proposed balcony, are permitted unless they are located within the building footprint of the existing residence or are replacing existing decks/patios in-kind and outside of the wetland and floodplain.

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 includes a significant area of wetlands and floodplain. A building envelope for any construction activities is limited by the lake on the west side, the wetland on the east side, and the floodplain on both sides. There is an existing nonconforming two-story residence on the property that is nearly 3,000 sq. ft. and a boathouse that is 1,358 sq. ft. The ordinance allows the reconstruction of nonconforming structures. The minor adjustments proposed with lesser adverse impacts than the existing structures provide the petitioners the opportunity to use the property for its permitted purpose. It should be noted that the ordinance provides for structures located within the floodplain to expand vertically. Because of the unique resource boundaries on this site, a similar vertically expanded structure that is slightly outside of the floodplain would be prohibited. The configuration of the multiple natural resource boundaries represents a unique condition in the context of vertical construction on this site.

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.**

As stated above, the property is restricted by several natural resource boundaries. The minor adjustments to the existing building footprint provide the petitioners the opportunity to use the property for its permitted purpose with a lesser adverse impact than the existing structure. The original proposal, which includes a lateral addition into the floodplain violates the C-1 District standards. This would constitute a “use” variance, which should only be granted if there is no reasonable use of the property.

It should be noted that the FEMA maps indicate that nearly the entire property is located in the floodplain. However, surveyed data indicates that the residence and its immediate surroundings are located outside of the floodplain. If the structure were located within the floodplain, a vertical expansion would be permitted by right. There is no greater impact on the resource boundary by constructing a vertical expansion, nor is there an alternative conforming location available for the home. Therefore, it would be unnecessarily burdensome to prohibit the vertical expansion provided it complies with the height provisions of the ordinance.

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.**

If the petitioner reconstructs the existing residence in the same location, with vertical expansions and minor lateral additions resulting in a lesser adverse footprint than the existing structure, there will not be any additional adverse impacts on the natural resources in the area. The residence complies with the offset provisions of the ordinance and is adjacent to a residence that is taller than the proposed residence. The proposed residence complies with the height requirement of the ordinance. Therefore, the proposed vertical addition will not be detrimental to nearby properties.

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

ADJOURNMENT:

Mr. Nawrocki: *I make a motion to adjourn this meeting at 9:41 p.m.*

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

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Nancy Bonniwell".

Nancy Bonniwell
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
Pat Bolger	N82 W 28411 Vista Dr. Merton	262-313-8797	Pat Bolger	SAME
Bill Schmitz	N95 W 26740 Hwy. Q	414-708-7885	Bill Schmitz	SAME
Joseph Leone	3413 Bark Lake Rd Hubertus WI	414 688-2023	Bill Schmitz	Acquainted
Curt Denevan	W298 N2777 Shady Lane	414-305-5610	Curt Denevan	Son
Mike / Ellen Schlossmann	W383 N6153 Sandheech Rd OCC.	414-378-9322	Mike / Ellen	Son
Barbara Debbert	W298 N2778 Shady Lane, Pewaukee	262-844-8152	Curt Denevan	neighbor
Jeffrey Seebert	" "	414-520-1790	"	"
Ligh Vanderkin	W287 N8272 Debbertin Rd.	262-757-6082	Jeff Vanderkin	Wife
Jeff Vanderkin	" "	414-651-4771	" "	-
Kevin Breslin	3675 Dominic Dr, Brookfield, WI 53045	262-792-1125	Schlossmann	Architect
Dan Janke		262-758-6014	Schlossmann	Engineer
STEVE AUGSTER		414-531-6443	SCHLOSSMANN	BUILDER