

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, May 9, 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  
Richard Bayer

**BOARD MEMBERS ABSENT:** Nancy Bonniwell

**SECRETARY TO THE BOARD:** Richard Bayer

**OTHERS PRESENT:** Ben Greenberg, Sr. Land Use Specialist  
John Choren, N87 W34499 Mapleton Rd, Oconomowoc  
Richard Gerdeman, 1815 S Meyers Rd, Oak Brook Terr., IL  
Joe Herriges, 121 Wolf Run, Suite 1, Menomonee Falls  
Rob Youngblood, N51W16838 Fair Oak Pkwy, Men..Falls  
Peggy Youngblood, N51W16838 Fair Oak Pkwy, Men..Falls  
Teri Schmidt, N53W34988 Road B, Oconomowoc

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 April 11, 2018 as corrected.*

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

**NEW BUSINESS:**

**BA2 P & G 29700-29704 LLC (OWNER) WARREN KRUSE (APPLICANT)**

The public hearing was not held.

Staff updated the Board that the applicant had requested a postponement of his hearing to weigh his options in light of an unfavorable staff recommendation.

**BA4 YOUNGBLOOD TRUST DATED MARCH 25, 2011**

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 maximum building footprint provisions of the

Waukesha County Shoreland and Floodland Protection Ordinance to construct a front stoop and second floor dormer and **approval** of the request for variances from the shore setback provisions, offset provisions and maximum height provisions of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the re-construction of failed retaining walls and associated stairs, patios and walkways.

Discussion between the petitioner, Board and Staff followed.

The petitioners indicated a factual error in the staff report. The staff report stated that the proposed height of the dormer was 35' ¾", which was inaccurate. The height proposed in the building plans showed a height of 35' 9 ¾" a difference of nine inches. The staff report also stated that the new walls would be setback from the shore the same distance as the current lower wall. The petitioners indicated that the plan was to rebuild the wall slightly further from the shore (within a foot) and not in the exact same spot.

Public Reaction: Teri Schmidt, N53W34988 Road B, lives next door and said she supports the project and believes her property is vulnerable if the retaining walls are not addressed properly.

#### Decision and Action:

Mr. Bayer :

*I make a motion to **deny** the request for variances from the maximum building footprint provisions of the Waukesha County Shoreland and Floodland Protection Ordinance to construct a front stoop and to **conditionally approve** of the request for variances from the shore setback provisions, offset provisions and maximum height provisions of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the re-construction of failed retaining walls and associated stairs, patios and walkways and a second floor dormer addition subject to the following conditions:*

1. 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.
2. Prior to the issuance of a Zoning Permit, a scaled Plat of Survey or Site Plan showing all existing and proposed improvements must be provided to Waukesha County Planning and Zoning staff.
3. 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.

4. Prior to issuance of a Zoning Permit, the petitioner shall document compliance with all impervious surface regulations.
5. If any trees or vegetation within thirty-five (35) feet of the lake will be disturbed a Vegetative Removal Permit, must be obtained, prior to the issuance of Zoning Permits.
6. 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.
7. In order to offset the impacts of the additional retaining walls closer to the lake, the owner must implement one of the following two mitigative options, the mitigation plan must be implemented and the site stabilized within 12 months of the date of Zoning Permit issuance.
  - a. Remove the existing warf outside of the allowed view and access corridor. The view and access corridor can have a maximum width no greater than 35% of the total shore frontage to a depth of 35 feet from the Ordinary High Water Mark of the lake. Additionally, the proposed replacement stair access to the shore must occur within said view and access corridor. The defined view access corridor must be reviewed and approved by the Waukesha County Planning and Zoning Division and the approved view and access corridor plan must be recorded with Waukesha County Register of Deeds.
  - b. Alternatively, if the warf is to remain, a vegetative buffer mitigation plan shall be prepared by a registered Landscape Architect or natural resources professional and submitted to the Planning and Zoning Division Staff for review and approval. The mitigation plan shall include a vegetative buffer that, at minimum, parallels the shore outside of a 35% view and access corridor. The buffer shall extend to the full depth between the Ordinary High Water Mark of the lake and the proposed retaining wall. The vegetative buffer shall include, at a minimum, a mix of perennial plants, shrubs and grasses native to Wisconsin. If there are any existing trees located within the required mitigation area, the location, size and species of all such trees shall be identified on the mitigation plan and said trees must remain as part of the mitigation plan. The mitigation plan must include a timetable for completion. The mitigation plan with delineated view corridor must be recorded with Waukesha County Register of Deeds.

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 necessity for retaining walls is clearly present on this lot due to the steep topography and narrow lot width. The walls provide both frost protection as well to create safe access from the residence to the lake. The owners could rebuild the existing walls in kind without any relief; however, structural analysis from a qualified professional indicates that an in-kind rebuild would still leave the property structurally vulnerable. Extending the top wall out approximately five (5) feet will provide the necessary frost protection for the residence. The slight request for offset relief can also be justified, because it is necessary to provide the minimum amount of frost protection around the deck footings. The proposal also makes part of the same stair access more conforming to offset in other areas. There is a reasonable need for additional storage, which justifies the dormer addition and the non-conforming configuration of the lot makes any lateral expansions impossible.

Having said that, there is no justification for building footprint variance. Additionally, no justification was provided by the petitioner for the building footprint relief either. The current improvements already significantly exceed the 17.5% maximum building footprint allowed by the Ordinance and no demonstration has been made that the owner can not utilize the property for a permitted purpose without the additional front stoop. It should also be noted that the petitioners could construct a front stoop of the same area as the lean-to being removed (~20 sq. ft.) without the need for variance.

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, without relief from the shore setback or offset provisions of the Ordinance, the petitioner could only rebuild the failing walls in-kind. The relief required to meet structural requirements is the minimum relief necessary to property rebuild the walls and protect the home's foundation. Denial of relief from these provisions would lead to unnecessary hardship because the owner would be forced to put immediately needed improvements into the property, but would not be able to properly engineer the new improvements without any relief. The significant additional engineering required to build the dormer to 35' vs. 35.8' would present a practical difficulty for such a minor adjustment and doesn't increase the overall height of the structure.

Denial of relief from the building footprint provisions does not result in unnecessary hardship. The owners have already established reasonable use for a 4,600 sq. ft. parcel with an existing home and garage totaling 1,692 sq. ft. (building footprint of 24.3%).

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 new walls if approved as conditioned will be required to have substantial vegetative screening to mitigate the exposure of the walls as viewed from the lake. The project as proposed will also improve site drainage for both the subject property and adjacent lots through an improved drainage plan. The additional mitigative measures suggested in the recommended conditions of approval with further offset any potential adverse impacts of the proposed improvements.

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

**ADJOURNMENT:**

Mr. Nawrocki: *I make a motion to adjourn this meeting at 7:26 p.m.*

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

Respectfully submitted,



Richard Bayer  
Acting Secretary, Board of Adjustment

