

**WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE  
APPEAL FOR VARIANCE  
STAFF REPORT**

**DATE:** October 14, 2020

**FILE NO.:** BA64

**OWNERS:** Giuseppe and Rhiana Vella  
2660 Mayfair Dr.  
Brookfield, WI 53005

**TAX KEY NO.:** EGLT1827.043

**LOCATION:**

The subject property is described as Lot 43, Map of Clarks Park, located in E ½ of the SW ¼ of Section 25, and the N ½ of the NE ¼ of Section 36, T5N, R17E, Town of Eagle. More specifically, the property is located at S102W34652 Lower Clarks Park Rd.

**REQUEST:**

Variances from **Section 3(o) Non-conformance to Offset** provisions and **3(j)(5)(B) Maximum Building Footprint** provisions of the Waukesha County Shoreland and Floodland Protection Ordinance to construct a second story addition, covered deck and covered stoop to the existing residence.

**ZONING CLASSIFICATION:** R-3 Residential

**LOT CONFIGURATION:**

The property is approximately 5,498 square feet in size, with approximately 50 ft. of frontage on Lower Clarks Park Rd. The property is served by a private septic system and a private well. The existing and required average lot width, average lot depth and lot size are shown in the following table.

	Average Lot Width	Average Lot Depth*	Lot Size
Existing	44 +/-	126 ft. +/-	5,498 sq. ft.
Required	120 ft. (for lots served by septic)	n/a	20,000 sq. ft.

\*excluding the established road right-of-way of 10 ft. from the centerline

**PREVIOUS BOARD OF ADJUSTMENT ACTION ON THE SUBJECT PROPERTY:**

On July 25, 2001, in BA01:052, the Board approved variances from the offset, floor area ratio and open space and a special exception from the accessory building floor area requirements of the Ordinance to permit the construction of a new detached garage. The proposed improvements have been constructed.

**PENDING ACTIONS:**

None.

**PROPOSAL AND STAFF ANALYSIS:**

The property, which is located on Lower Clarks Park Rd, a private road, on the east side of Eagle Spring Lake, contains a one story, single-family residence, and detached garage. The lot is served by private well and a private septic system.

The petitioners are proposing to vertically expand the residence by adding a second floor, within the existing footprint, add a covered deck on the roadside of the residence and a covered stoop on the north side of the residence in conjunction with an interior remodeling project. The vertical expansion would add 786 square feet of living space on the second floor, including an additional bedroom and bathroom, within the existing footprint. The covered deck and covered stoop will increase the building footprint of the lot by 220 square feet.

The table below summarizes the existing and proposed improvements. A site plan showing existing improvements is attached as Exhibit A and a site plan showing proposed improvements is attached as Exhibit B. Building plans showing the proposed improvements are attached as Exhibit C.

	Acc. Bldgs. (sq. ft.)	Basement (sq. ft.)	1 <sup>st</sup> floor (sq. ft.)	2nd floor (sq. ft.)	Beds	Baths
Existing	395	n/a	786	n/a	2	1
Proposed	395	n/a	1,006	786	3	1.5

The proposed vertical expansion, covered deck and covered stoop require variances from the non-conformance to offset provisions and maximum building footprint provisions as summarized in the following table:

PROVISION	SFPO	EXISTING	NON-CONFORMING? 3(o)	PROPOSED	REQUIRED	VARIANCE/ SPECIAL EXCEPTION?
ROAD SETBACK	3 (h) (1) (C)	51'	N	41.8' (Covered Deck)	20' (Min – private road)	N
OFFSET ( E )	3 (h) (3) (A)	2'8"	Y	2'8"	7' (Min)	Y
OFFSET ( W )	3 (h) (3) (A)	14'1"	N	14'1"	7' (Min)	N
TOTAL BUILDING FOOTPRINT	3 (j) (5) (B)	1,181 SF	Y	1,401.7 SF	1,100 SF (Max)	Y
ACCESSORY FOOTPRINT	3 (j) 4	395 SF	N	395 SF	600 SF (Max)	N
BLDG HEIGHT	3 (i)	18'	N	22'	35' (Max)	N
MIN. FLOOR AREA (S.E.)	3 (j) (1)	786 SF	Y	1,006 SF (1 <sup>st</sup> Floor) 1,792 SF (Overall)	850 SF (Min – 1 <sup>st</sup> Floor) 1,100 SF (Min-Overall)	N

**PETITIONERS' COMMENTS:**

The petitioners' comments are attached as Exhibit D.

**STAFF RECOMMENDATION:**

The Planning and Zoning Division staff recommends **approval** of the request for variances from the non-conformance to offset provisions of the Waukesha County Shoreland and Floodland Protection Ordinance to construct a second story addition and first level deck but **denial** of the request for variances from the footprint provisions of the ordinance to construct a covered deck and covered stoop on the existing residence. This recommendation is based upon the analysis of the below tests for a variance and the criteria to be considered for a special exception, as analyzed below.

**AREA VARIANCE TEST CRITERIA ANALYSIS**

State law, case law, and County ordinances require that the petitioner demonstrate that their request meet the following tests for a variance. The below Staff analysis assesses the merits of the subject application relative to the tests:

- 1. Compliance with the ordinance would cause the owner to experience an unnecessary hardship. Unnecessary hardship is proven by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome. A property owner bears the burden of proving that the unnecessary hardship is based on special conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner. Hardships should not be financial or economic in nature. Variances are intended to provide only the minimum amount of relief necessary, and the purposes of the Ordinance shall be observed.**

The subject property is located in the Map of Clarks Park Subdivision, which was developed in 1924, with modest sized residential lots and large, commonly held open space utilized as park land. The subject property is bordered on the north by Forest Park, and on the south side, across Lower Clarks Park Rd., is another community park. The adjacent lot to the east, which is a double lot, has been developed with an attached garage along the west lot line, providing a buffer between the existing residence and the subject property.

The residence on the subject property is nonconforming to the east lot line as well as minimum first floor area, total minimum floor area and overall building footprint. The vertical expansion will be located no closer to the side offsets than the existing residence and will add additional living space. Relief is justified in that the house does not meet minimum first floor or total minimum floor area. A vertical expansion would make the house conforming to total floor area while not further contributing additional footprint. The owner would experience an unnecessary hardship in attempting to achieve minimum floor area via any other way, as any lateral expansion of the structure would require additional footprint relief. The location of the existing residence also allows for an increased offset between structures on the west side of the property. If the subject home were to be rebuilt, the conforming location would push the home closer to the west lot line where there is little separation from the home to the west.

The property is slightly nonconforming to building footprint, already having more than 1,100 square feet under roof. The ordinance would allow for the stoop and deck area, uncovered.

However, the roof coverings for those areas exceed allowable footprint. It has not been demonstrated that compliance with the ordinance would create an unnecessary hardship relative to the stoop and covered patio.

- 2. 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 neighboring lot to the east does appear to be an outlier on this street because it is a double lot. The double lot provides an increased separation between the neighboring residence and the subject property. The location of the existing residence also allows for an increased offset between structures on the west side of the property. Allowing the home to remain in its current configuration and vertically expand, allows for a greater offset between structures than would otherwise exist if re-development were to occur. The approval of the vertical expansion meets the purpose and intent of the Ordinance. The ordinance provides for 2200 square feet of building area on this site. Additional footprint area, beyond that provided by code would provide the subject property with disproportionate relief, as the vertical expansion that is being recommended for approval is providing the minimum relief necessary for the property owners to be able to use the property for a permitted purpose. Footprint rules are intended to control bulk of structures, provide equitable building space based upon lot size and have indirect impacts relative to runoff from roofed areas. In such regards, a footprint variance may be detrimental to the public interest.

Respectfully submitted,

*Jacob Heermans*

Jacob Heermans  
Senior Land Use Specialist  
Phone: 262-548-7790

Reviewed and approved by:

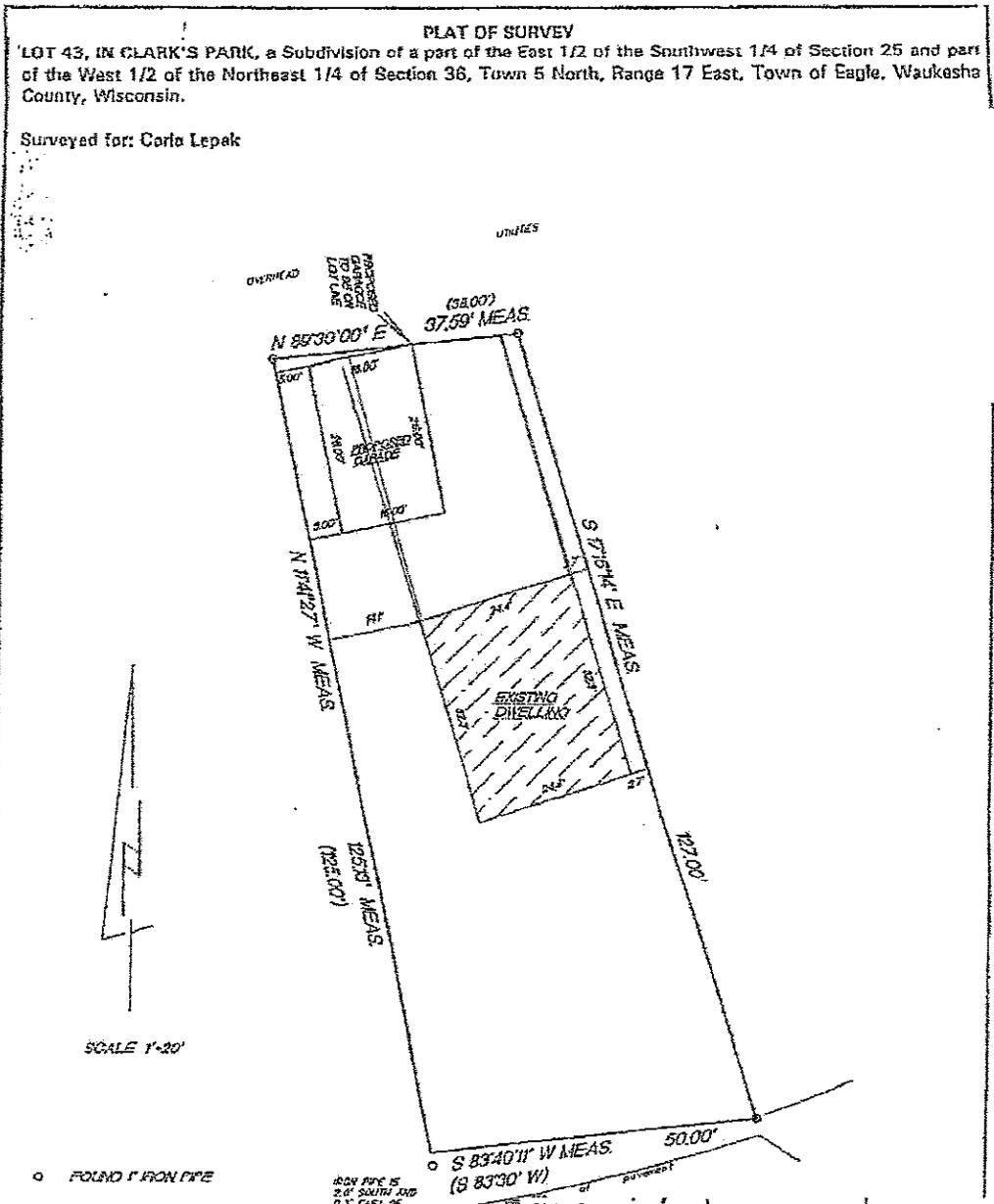
*Jason Fruth*

Jason Fruth  
Planning and Zoning Manager

Exhibits: "A"- "D"

# EXHIBIT "A"

RECEIVED  
By erica at 9:08 am, Aug 06, 2020



property and that the above map is a true representation thereof and shows the size and location of the property, its exterior boundaries, the location of all principal buildings thereon, bound-  
 the above described representation thereof property, its exterior lines and dimension of y fenced, apparent ny.  
 present owners of the page or guarantee the

**KETTLE MORaine SURVEYING**  
 W356 S9050 Godfrey Lane  
 Eagle Wisconsin 53119  
 P.O. Box 357  
 (262) 694-3484  
 Terrance E. Plezsek R.L.S.

THIS IS NOT AN ORIGINAL SURVEY UNLESS THE SEAL IS RED.

DATE WORK BY: TEP DRAWN BY: 01200 JOB NUMBER

Godfrey Lane  
 Eagle Wisconsin 53119  
 P.O. Box 357

I hereby certify that I have surveyed property and that the above map is a true and shows the size and location of the boundaries, the location of all visible struc-  
 all principal buildings thereon, bound-  
 easements, roadways and encroachments if  
 This survey is made for the use of the property, and also those who purchase, mo-  
 file thereto within one year from date hereo  
 REV: 3/25/07  
 10/12/07

DATE

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 10/12/07

DATE





## EXHIBIT "D"

**Describe the proposed construction/request and use in detail:**

Looking to add on a second level, and a front deck to the existing home.

**Compliance with the ordinance would cause the owner to experience an unnecessary hardship. Unnecessary hardship is proven by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome. A property owner bears the burden of proving that the unnecessary hardship is based on special conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner. Hardships should not be financial or economic in nature. Variances are intended to provide only the minimum amount of relief necessary, and the purposes of the Ordinance shall be observed.**

Owner is looking to add a second story and a deck off of the front of the house. The house currently does not meet setback standards. The new construction would be a second floor with a deck that does not any further east than the existing house. In order to add a second story the owner would need to build the new deck and second story in the setback based on using the existing foundation and first floor for the project. This hardship is based on a structure that predated the current setback standards.

**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 construction would not cause any adverse affects on the general public. The house would not encroach any further in any direction and the construction would only add 3' of height compared to the existing structure. The house sits back on the property further than the existing houses to the east and west. View to the lake would not be adversely affect the neighboring properties.