

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, June 8, 2016, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 516 W. Moreland Blvd., Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: Tom Day, Chairman
Walter Schmidt
Richard Nawrocki
Nancy M. Bonniwell
Richard Bayer

BOARD MEMBERS ABSENT: Rob Schuett
Nick Jordan

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Rebekah Baum, Senior Land Use Specialist
Lou Davis, BA16:020, agent
Dan Napgezck, BA16:020, neighbor
Sarah Burdick, BA16:020, neighbor
Dennis Zagrodnick, BA16:020, petitioner
Michelle Zagrodnick, BA16:020, petitioner
Matt Schaefer, BA14:022, agent
Jessica Schaefer, BA14:022, agent
Paul Schultz, BA16:019, agent
Jeff Ellis, BA16:019, petitioner
Mindy Ellis, BA16:019, petitioner
David Savage, BA16:019, neighbor
Eric Parkes, BA16:019, consultant
Kim Gradecki, BA16:018, petitioner

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.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Nawrocki *I make a motion to approve the Summary of the Meeting of May 11, 2016.*

The motion was seconded by Mr. Bayer and carried unanimously. Ms. Bonniwell abstained as she was not present at the May 11, 2016 meeting.

NEW BUSINESS:

BA16:015 ROBERT W. AND RUTH STRIETER REV. TRUST (OWNERS) - ECO-SITE, INC. (APPLICANT)

Mr. Day stated for the record that the applicant has withdrawn the application. No action was taken on the above matter.

BA16:019 JEFFREY ELLIS (OWNER) PAUL SCHULTZ (AGENT)

Ms. Bonniwell *I make a motion to table this matter until the next regularly scheduled Board of Adjustment meeting to properly notice the request for Shoreland Setback and that conditions may be prepared by Staff, as recommended by the Board of Adjustment.*

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

BA16:020 DENNIS AND MICHELLE ZAGRODNIK (OWNERS) SIDING UNLIMITED (AGENT)

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

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

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the shore and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to allow the petitioners to keep portions of the newly constructed retaining walls, patio, walkway and concrete stairs, and **denial** of the request for variance from the offset requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to retain a deck constructed too close to a lot line, subject to the following conditions:

1. All portions of the deck and associated stairs that encroach the averaged shore setback of 66.85' must be removed no later than August 1, 2016.
2. All portions of the deck and associated stairs that encroach the required 6' side lot offset must be removed no later than August 1, 2016.
3. The northwestern block retaining wall (designated as Wall #1 on exhibit E) must be removed, or reduced to maximum height of 2' no later than August 1, 2016.
4. All portions of the northeastern block retaining wall (designated as Wall #2 on exhibit E) that are within 65' of the shore and exceed 2' in height must be removed entirely no later than August 1, 2016.

5. All portions of the southern block retaining wall (designated as Wall #3 on exhibit E) that are within 75' of the shore and exceed 2' in height must be removed entirely no later than August 1, 2016.
6. With the exception of a 5' wide walkway to connect the authorized portions of the patio to the new stairs, all portions of the newly created patio that encroach the averaged shore setback of 66.85' must be removed no later than August 1, 2016.
7. If the petitioner is to retain the newly created stair and walkway access to the shore, the old concrete steps that run along the southern lot line, near the boat house, must be removed no later than August 1, 2016.
8. The petitioner must apply for an after the fact zoning permit for the newly created doorway, no later than July 1, 2016.
9. In order to ensure the modification of the deck, patio and retaining walls will not result in adverse drainage onto adjacent properties, the petitioners shall prepare and submit a detailed Grading and Drainage Plan, no later than July 15, 2016. The plan shall show existing and proposed grades as well as all proposed retaining wall heights, must be prepared by a registered landscape architect, surveyor, or engineer and must be submitted to the Planning and Zoning Division Staff for review and approval.
10. The petitioners must agree to allow Waukesha County Planning and Zoning Staff to conduct a follow up site inspection, with reasonable notice, to verify that all conditions of variance have been met.
11. The property must be seeded and property netted for erosion control no later than August 1, 2016.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The petitioners were authorized to construct an approximately 380 sq. ft. lakeside deck and 200 sq. ft. patio. Additionally, the Ordinance would have allowed them to construct even more outdoor improvements, if they were property configured to conforming specifications. Since the petitioners could construct a reasonable size deck and patio in a conforming location, no hardship appears to exist that would justify allowing an encroachment into the required shore setback. Furthermore, no justification can be made to provide relief from the offset requirements of the Ordinance, since a conforming deck would still be 4' wide along the north side of home, which would provide adequate width for ingress and egress from the main portion of the deck to the newly created side entrance of the home.

According to the petitioners, the existing retaining walls were failing and needed to be replaced. Had the petitioners included a request in their zoning permit application to replace those walls in-kind, it is likely that they would have received authorization for the work, since the walls were necessary to abate soil erosion. However, the retaining walls were modified by the petitioners due their desire to widen their lower level exposure, and were not modified to improve erosion control on site. Therefore, the argument that the new walls are now necessary for erosion control is a self-created hardship and cannot be considered grounds for variance. With that said, staff is recommending a small amount of relief to retain the westerly 10 feet of the northeast wall that encroaches into the required 75' setback, as it is believed that a more significant reduction in that wall will potentially create unstable site conditions.

By right, the petitioners can have one 5' wide access to the shore. Therefore, we believe it is appropriate to allow the petitioners to retain a 5' wide portion of the nonconforming patio and the new concrete steps and walkway, to complete a safe access route from home to shore. However, as conditioned, the petitioners must remove the existing stairs near the boathouse, as two access points to the shore are not permitted without variance.

Therefore, the denial of variance from the offset requirement and the approval of variances from the floodplain and shore setback requirements, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA16:018 KIM GRADECKI

Mr. Schmidt

I make a motion to approve the request submitted by the petitioners with the following conditions and for the following reasons, as modified from the staff report.

Condition No. 1 shall be modified to read, "The detached garage shall not exceed 720 sq. ft. in accordance with Condition No. 6.

Condition No. 2 shall be modified to read, "The two sheds on the property shall be removed upon completion of the detached garage or at the expiration of the Zoning Permit."

Condition No. 3 shall be modified to read, "If the size or location of the garage is modified, the submitted Plat of Survey shall be modified to reflect the changes."

Condition No. 4 shall remain, as is.

Add a condition that states, "If there is to be a second level of storage within the detached garage, it shall be accessible only by a pull-down staircase."

Add a condition that states, "The two parcels presently owned by the applicants and divided by W. Pretty Lake Road shall be combined via Certified Survey Map (CSM), which shall be recorded on or before

June 8, 2017 and prior to the issuance of a Zoning Permit for a 720 sq. ft. detached garage. In the event the CSM is not recorded by June 8, 2017, the attached garage shall not exceed the 576 sq. ft. as recommended by staff.”

I remove the following from the reasons as stated in the staff report, “With the recommended garage size of 576 sq. ft. and removal of both sheds, open space on the property is reduced by only 436 sq. ft.”

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

The Planning and Zoning Division staff’s recommendation was for **approval** of the request for a road setback variance and **denial** of the request for variances from the open space, floor area ratio and the accessory building floor area ratio requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, but **approval** of modified variances from the open space and floor area ratio provisions and **approval** of a special exception of the accessory building floor area ratio provisions to permit the petitioner to construct a detached garage on the subject property, subject to the following conditions:

1. The detached garage shall not exceed 576 sq. ft. in size.
2. The two sheds on the property shall be removed prior to the issuance of a Zoning Permit.
3. The submitted Plat of Survey shall be revised to show that the sheds have been removed and the size of the garage modified and shall be submitted to the Planning and Zoning Division for review and approval. Any change in placement of the proposed detached garage must also be shown on said survey.
4. A Preliminary Site Evaluation (PSE) of the existing septic system must be approved by the Waukesha County Environmental Health Division prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variations require a demonstration that denial of the variations would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The petitioners are also required to demonstrate that unique physical conditions exist and that the proposal will not negatively impact the general interest or welfare of the public or the surrounding environment.

A hardship exists on the property relative to floor area ratio as the existing residence does not meet the minimum floor area requirements of the Ordinance and yet even with a modest home size, a reasonable size garage could not be constructed while complying with floor area ratio requirements. A residence with no basement and no garage can be seen as unreasonable given today’s living standards and typical storage needs. In addition, the granting of a special

exception to the accessory floor area ratio is reasonable due to the size of the lot. An accessory structure on this parcel is limited to 261 sq. ft., which is smaller than a typical single car garage (308 sq. ft.). Because the property is 8,705 sq. ft., no buildings could be constructed without relief from the open space provisions. With the recommended garage size of 576 sq. ft. and removal of both sheds, open space on the property is reduced by only 436 sq. ft.

Due to the configuration of the parcel and the mapped floodplain boundary, the lands west of W. Pretty Lake Road would not be buildable without the granting of variances. By permitting an additional structure on the lakeside parcel, potential impacts to the floodplain are avoided. Due to the depth of the east lot and the placement of the house, a conforming detached garage could be a maximum of 14 ft. in depth, which is not a reasonable size. While attaching the garage would likely alleviate the need for a road setback variance, the configuration of the existing residence would make it unnecessarily burdensome for the petitioner. The front door is located on the north side of the home, which would require extensive interior remodeling to relocate and/or require guests to go through the attached garage to enter the residence. The south portion of the lot is encumbered by overhead utility lines. The garage is proposed to be located 10 ft. from the residence, as required by the Ordinance, placing the garage as far back from the road right of way as possible with the given depth. It should be noted staff recommends the petitioner reconsider placement of the detached garage so that it is not placed directly in front of the residence, but instead located slightly off to either side to be more aesthetically pleasing.

Many other properties along W. Pretty Lake Road have garages, either detached or attached, on the same parcel as the residence, including the adjacent homes. Therefore, the garage will not negatively impact the general interest or welfare of the neighborhood.

Therefore, the approval of a road setback variance, modified variances from the open space and floor area ratio requirements and a special exception from the accessory building floor area ratio requirements, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA14:022 TREVOR AND DIANE GARLEIPP (OWNERS) MATT AND JESSICA SCHAEFER (AGENTS)

Mr. Schmidt

I make a motion to approve an extension of the approved Zoning Permit until December 31, 2017 to grant the petitioners adequate time to complete the project, as proposed, as this is the first time they are asking for an extension and they are completing the work themselves.

The motion was seconded by Mr. Nawrocki and passed 4-1, with Ms. Bonniwell voting against the motion.

The Planning and Zoning Division staff's recommendation was for denial of the petitioners request for an additional two-year extension of the approved zoning permit from the Board of Adjustment in order to complete the initial project as proposed.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Since obtaining the required permits, very little progress has been made on the large scope of work proposed. Only a small 8 ft. x 15 ft. addition has been constructed (whereas a 24 ft. by 24 ft. addition was proposed and approved). The addition did not yet have exterior siding at the time of the site visit. Staff feels that due to the length of time the petitioners have been working on the project and the rate at which the work is being completed, the petitioners should apply for new permits and variances, if applicable, when and if they are ready to proceed with the larger projects (e.g. detached garage, raising the roof line). The petitioners have until September 17, 2016 to complete the work as initially proposed. The Town of Oconomowoc Building Inspector has also relayed to staff that a new building permit will be required to move forward with the rest of the project, complete with professional plans. The property has served as an ongoing construction site since 2013, leaving an unfinished project and potential nuisance for this compact neighborhood. It should also be noted that the letters "FU" were painted on two different structures facing a neighboring property during the ongoing construction. Those letters have since been removed. It is also important to note that the Waukesha County Shoreland and Floodland Protection Ordinance is proposed to be modified significantly within the next several months to comply with revised Shoreland zoning rules. The proposed changes will likely alleviate the need for some of the variances that were previously approved. Due to the minimal work completed at this time, and based upon the above, the Staff does not feel a further extension is appropriate.

ADJOURNMENT:

Ms. Bonniwell

I make a motion to adjourn this meeting at 9:44 p.m.

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

Respectfully submitted,

Nancy M. Bonniwell

Nancy M. Bonniwell
Secretary, Board of Adjustment