

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, February 11, 2015, 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 M. Bonniwell
Richard Bayer

BOARD MEMBERS ABSENT: Walter Schmidt

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Town of Merton Board of Adjustment
Peggy Tilley, Senior Land Use Specialist
Jason Fruth, Planning and Zoning Manager
Kurt Stanich, Waukesha County Airport Manager
Dale Shaver, Waukesha County Department of Parks and Land Use Director
Tom Kranick, BA15:001, neighbor
Vicki Braden, BA15:001, owner
Doug Braden, BA15:001, owner
Tom Fotsch, BA14:050, petitioner
Paul Schultz, BA14:048, agent
Jeff Whipple, BA14:050, owner
Deb & Tim Kim, BA14:048, owners
Scott Wendt, BA14:050, contractor
Russ & Lisa Wankowski, BA15:001, neighbor
Keith Knapp Jr., BA14:054, owner

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, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Day *I make a motion to approve the Summary of the Meeting of January 14, 2015, with the one noted correction on Page 5.*

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

NEW BUSINESS:

BA14:050 IPK LLC, C/O INTERSTATE PARTNERS (OWNER) (Adjourned from the December 10, 2014 and January 14, 2015 meetings)

Ms. Bonniwell *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 Mr. Nawrocki and carried unanimously.

The Planning and Zoning Division staff's recommendation was for approval, subject to the following conditions:

1. The use of cranes is restricted to that period of time that the primary runway of the Waukesha County Airport is closed, which is planned to be May 2, 2015 to August 15, 2015.
2. Maximum crane height is restricted to 100' above ground level or 1,002' above mean sea level.
3. The revised crane use schedule must be provided to the FAA no later than February 18, 2015.
4. All cranes must be marked and lighted in accordance with the requirements of the Waukesha County Airport Manager and FAA Advisory Circular 70/7460-1K Obstruction Marking and Lighting. No crane shall be erected on the site until the Airport Manager has validated that the crane complies with marking and operational parameters. Any failure or malfunction that lasts more than thirty minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.
5. All cranes must be lowered at night or when weather conditions are below the minimum requirements for visual flight rules as determined by the air traffic control tower. The crane operator or onsite foreman will be notified by Airport Staff when this occurs.
6. Three days prior to the erection of the temporary cranes and again when the cranes are removed from the site, the project sponsor must notify the FAA and the Airport Manager by calling (262) 521-5250.
7. The project sponsor must notify the UES Airport Traffic Control Tower (ATCT) Manager, at (262) 650-0576, at least three days prior to erecting the cranes.
8. Contact information for the on-site operator must be provided to the Airport manager at least three days prior to the cranes being located on the site. If the crane operator or contact information changes, the Airport Manager must be notified immediately.

9. A Notice of Actual Construction or Alteration must be e-filed with the FAA within five days after the temporary cranes are removed from the site.
10. Any changes in specific crane height or location will require the notification of the FAA, the Airport Manager and the Waukesha County Planning and Zoning Division.
11. As proposed, the work area for the cranes is limited to the area within the proposed building footprint and the 50' work area on the subject parcels only.

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

Although the purpose of the Airport Height Limitation Zoning Ordinance is to keep structures below certain elevations in the vicinity of the airport, temporary intrusion into that space is sometimes necessary for construction projects. In the past, cranes have been used successfully in the vicinity of Waukesha County Airport by close coordination with staff and the FAA. Notices to Airmen (NOTAMs) are issued by the FAA to alert pilots of the cranes existence and proximity to approach paths and, when necessary, modify approach and departure procedures to provide additional separation from the obstruction. Daily coordination with airport staff and the air traffic controllers is required. At night and in the event of weather conditions that are below the minimums for navigation under Visual Flight Rules (VFR), the cranes are lowered below the height of the protected airspace. Additionally, lights, flags, and other mechanisms for marking will aid in the identification of the obstructions.

The proposed building complies with the County's HLZO, which is the County's only regulatory mechanism for controlling height near the airport, and because the building is less than 35' in height, the building itself is permissible without the need for any County permits. The request to utilize cranes temporarily during the primary runway closure will allow the petitioner the ability to safely erect pre-fabricated building components that cannot otherwise be installed due to their heavy weight. Other building components can also be more easily installed with the use of cranes during the same general time period. The duration that the crane will be on site is approximately 33 days.

The use of cranes will allow the petitioner to construct a building in a manner that is safe for construction workers. There is no reasonable alternative for constructing the large building with pre-cast panels in its proposed location without the use of cranes. There are unique physical conditions in that the petitioner's holdings have an approximate 30' grade change from south to north in the vicinity of the proposed building. In addition, County highway access was granted on the east end of the site to align with nearby Oakridge Drive which dictated the orientation of the building, in part. Although the cranes will exceed the HLZO height limitation, their temporary presence and use during a planned runway closure and with the required markings and lowering requirements will aid in the safety of pilots and their passengers, people living in the vicinity of the Waukesha County Airport, and the general public. The intent of the HLZO is protect people that live near the airport and aircraft that use the airport. It is likely that the scenario of a full runway or airport closure was not contemplated by the drafters of the HLZO. The proposed crane usage during the primary runway closure greatly mitigates the effect of the cranes at their proposed elevation.

The approval of this request, with the recommended conditions, is not contrary to the public interest and is in conformance with the purpose and intent of the Waukesha County Airport Height Limitation Ordinance.

BA14:048 Timothy and Deborah Kim (Owners) Paul Schultz (Agent) Adjourned from the December 10, 2014 meeting:

Mr. Bayer

*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 with the following modifications to the conditions:*

Condition No. 15 shall be modified to read as follows: In order to offset the impact of the shore and floodplain setback encroachments, a mitigation plan involving the installation of a vegetative buffer within the area 15 ft. inland from the shoreline of Okauchee Lake must be implemented along approximately 165 ft. of shoreline on the south end of the peninsula as identified on the Site Plan (Exhibit "C"). A 15 ft. wide access/view corridor may be permitted within the vegetative buffer area identified on the proposed plan. However, if a 15 ft. wide access/view corridor is proposed, the length of the vegetative buffer area shall be lengthened to maintain a total of approximately 165 ft. of vegetated buffer area along the shoreline. Prior to the issuance of a Zoning Permit, a detailed Landscape/Mitigation Plan for the area subject to mitigation 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 vegetative buffer shall include, at a minimum, a mix of perennial plants 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 Landscape/Mitigation Plan and must remain as part of the Landscape/Mitigation Plan. The Landscape/Mitigation Plan must include a timetable for completion. The mitigation plan must be implemented and the site stabilized within 12 months of the date of Zoning Permit issuance.

Condition No. 16 shall be modified to read as follows: A Declaration of Restrictions shall be prepared noting that the Landscape/Mitigation Plan as required in Condition No. 15 above be permanently maintained unless modified by the Waukesha County Planning and Zoning Division. The Declaration of Restrictions shall also state that, upon reasonable notice, staff members of the Waukesha County Department of Parks and Land Use, or its successor, shall be permitted to conduct periodic inspections of the property for the purpose of verifying that the required vegetative buffer is maintained. The Declaration of Restrictions shall also

include long-term maintenance provisions. Prior to the issuance of a Zoning Permit, 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 Mr. Nawrocki and carried unanimously.

The Planning and Zoning Division staff's recommendation was for approval, subject to the following conditions:

1. Prior to the issuance of a Zoning Permit, a Sanitary Permit for a new waste disposal system must be issued by the Waukesha County Environmental Health Division and a copy furnished to the Planning and Zoning Division Staff.
2. The proposed residence, attached garage, and deck shall not be located closer than 30 ft. to the ordinary high water mark of Okauchee Lake on the west side of the property and the overall building footprint, location and configuration for all proposed structures shall otherwise match the footprint as identified on the Site Plan (Exhibit "C"). The setbacks shall be measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the setback requirements of this condition.
3. The total footprint of the residence, attached garage, and boathouse shall not exceed 2,324 sq. ft., as proposed in the revised application.
4. The residence shall not exceed 35 ft. in height, measured from the lowest exposure to the peak, and shall only contain two (2) stories, including all levels.
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. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out locations of the proposed residence, attached garage, deck, and boathouse, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division Staff for review and approval.
7. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division Staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the private road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an

Erosion and Sediment Control Plan, and the impact of any grading on storm water and drainage. This Grading Plan may be combined with the Plat of Survey required in Condition No. 6.

8. No retaining walls, as defined in the Waukesha County Shoreland and Floodland Protection Ordinance, are permitted.
9. No walkways or stairways are permitted with the exception of a walkway from the driveway to the front entrance of the residence.
10. Prior to the issuance of a Zoning Permit, a Certified Survey Map must be submitted combining Lots 38 and 39 of Darrah's Point for review and approval by all required land division review entities and be recorded with the Waukesha County Register of Deeds.
11. Due to seasonal high groundwater conditions, the lowest level of the residence shall not be located below 877' amsl, unless further restricted by the Waukesha County Land Resources Division or the Town of Merton Engineer.
12. Since the property is mapped as floodway by FEMA, the property owner must obtain a LOMA from FEMA prior to the issuance of a Zoning Permit.
13. The two existing detached patios must be removed within 6 months of the date of Zoning Permit issuance.
14. Prior to the issuance of a Zoning Permit, the Declaration of Restrictions that was recorded on August 7, 1985 (Doc. #1306440) shall be properly revoked since the restriction is no longer applicable.
15. In order to offset the impact of the shore and floodplain setback encroachments, a mitigation plan involving the installation of a vegetative buffer within the area 15 ft. inland from the shoreline of Okauchee Lake must be implemented along approximately 165 ft. of shoreline on the south end of the peninsula as identified on the Site Plan (Exhibit "C"). Prior to the issuance of a Zoning Permit, a detailed Landscape/Mitigation Plan for the area subject to mitigation 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 vegetative buffer shall include, at a minimum, a mix of perennial plants 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 Landscape/Mitigation Plan and must remain as part of the Landscape/Mitigation Plan. The Landscape/Mitigation Plan must include a timetable for completion. The mitigation plan must be implemented and the site stabilized within 12 months of the date of Zoning Permit issuance.
16. A Declaration of Restrictions shall be prepared noting that the Landscape/Mitigation Plan as required in Condition No. 15 above be permanently maintained unless modified by the Waukesha County Planning and Zoning Division. The Declaration of Restrictions shall also state that staff members of the Waukesha County Department of Parks and Land Use, or its successor, shall be permitted to conduct periodic inspections of the property for the purpose of verifying that the required vegetative buffer is maintained. The Declaration of Restrictions shall

also include long-term maintenance provisions. Prior to the issuance of a Zoning Permit, 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 reasons for the recommendation, as stated in the Staff Report, are as follows:

Variations require a demonstration that denial of the variance 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. Variations also require that 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/no reasonable use.

Unique physical conditions exist because the property is located on a narrow peninsula. The petitioner would be limited to a very small building envelope, approximately 13 ft. from the west to east side of the property at the widest point, if the shore and floodplain setback requirements were met. This setback would prohibit the construction of a residential structure, which results in an unnecessary hardship. It should be noted that the Ordinance establishes that shore setback regulations shall not reduce the buildable area of a lot to less than 30 ft. of depth. The Ordinance provides the zoning administrator the authority to modify the setbacks and offsets to the extent necessary to minimize the encroachment while maintaining the 30 foot depth. The petitioner has modified his plans from a building envelope that ranged 30 to 65 ft. wide, to 30 ft. wide for a majority of the length, with the exception of 5 ft., to accommodate a connection between the 23 ft. wide attached garage and 30 ft. wide residence. It should also be noted that the two (2) nonconforming lots will be combined and an existing residence on each lot will be removed, as well as two (2) detached patios located adjacent to the west shoreline. The proposed residence will be located slightly further from the shore and floodplain than the existing structures. The open space will increase by 321 sq. ft. and the floor area ratio will comply with the ordinance even with no basement being proposed. Therefore, the Planning and Zoning Division Staff feel that the granting of the variations will provide minimal relief necessary in order to accommodate a residence and attached garage on the property.

Variations also require that 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. Because the proposal is to remove two nonconforming residences and construct one residence, in a more conforming location with additional open space, the proposal will not adversely affect the general public interest/welfare or be detrimental to nearby properties. The petitioners are also proposing a residence with limited height and are proposing a natural vegetative buffer along approximately 165 ft. of shoreline frontage. The proposed will result in a reduced building footprint and vegetative buffer that should positively impact water quality and natural beauty.

The approval of this request, as conditioned, would be in conformance with the purpose and intent of the Ordinance.

BA14:054 Keith K. Knapp Jr.

Mr. Bayer

*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 Mr. Nawrocki and carried unanimously.

The Planning and Zoning Division staff's recommendation was for approval, subject to the following conditions:

1. The petitioner must obtain approval of the Conditional Use Permit request by the Waukesha County Park and Planning Commission and all conditions shall be complied with or this variance is considered null and void. Approval of this variance does not infer approval of the Conditional Use.
2. Prior to the issuance of a Conditional Use Permit, a Certified Survey Map for the division of the parcel shall be recorded in the Waukesha County Register of Deed's office and a copy furnished to the Planning and Zoning Division Staff.
3. If applicable, the petitioner must obtain approval from the Waukesha County Environmental Health Division to occupy the existing structure as a two-family residential unit and all conditions of their approval must be complied with.

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

Variations require demonstration that denial of the variance 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. Physical limitations must exist that necessitate the need for a variance and the variance must not negatively affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources in the area.

The petitioner is proposing to bring the property more into conformity with the Zoning Code by dividing the property so that there is one single-family residence with the horse boarding operation on proposed Lot 1 and a duplex on proposed Lot 2. The variances from the conditional use provisions are needed because the request is to authorize an existing use that, according to the petitioner, has existing on the property for many years. If the structure contained a single-family use, road setback averaging could be utilized and the structure would comply with the required road setback; however, because the conditional use provisions specify that a 50 ft. road setback is required, a variance is needed. The property is located in a fairly urbanized area on S.T.H. 83 where a number of structures appear to be

located within 50 ft. of the road right-of-way. To require that the duplex be relocated 10 ft. to bring it into conformance with the required road setback for a duplex would be unnecessarily burdensome.

The property contains two units, one of which greatly exceeds the minimum required unit size and other that is smaller than required. Since the units are an upper and a lower, it would not be practical for the units to be modified to comply with the Ordinance requirements. To require that the units be remodeled or otherwise altered to enlarge one of the units to the minimum required size would be unnecessarily burdensome when the structure has existed in its current configuration for many years and the petitioner is not currently proposing any improvements to the structure.

The approval of the request for a special exception from the accessory building floor area ratio requirements is justified in that no changes are being proposed to the existing buildings and because the property will comply with the overall required floor area ratio. The approval of the request for a special exception should not have an adverse effect on the general public.

Since the use has existed for many years and no modifications to the structures are proposed, the approval of the proposed request for variances from the conditional use provisions should not negatively affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources in the area. Therefore, the approval of this request, with the recommended conditions, would be in conformance with the purpose and intent of the Ordinance.

BA15:001 Force Properties LLC, c/o Vicki Braden (Owner):

Ms. Bonniwell

*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 with the following modifications to the conditions:*

Condition No. 1 shall be modified to read as follows: The existing free-standing screen porch and any foundation or slab associated with the screen porch shall be removed from the property and the area shall be property restored and stabilized within 4 months of the issuance of a Zoning Permit.

Condition No. 8 shall be added to read as follows: Prior to the issuance of a Zoning Permit, a Certified Survey Map combining the lots and the portion of the vacated roadway must be submitted for review and approval by all required land division review entities and be recorded with the Waukesha County Register of Deeds.

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

The Planning and Zoning Division staff's recommendation was for approval, subject to the following conditions:

1. Prior to the issuance of a Zoning Permit the existing free-standing screen porch and any foundation or slab associated with the screen porch shall be removed from the property and the area shall be properly restored and stabilized.
2. The proposed second story addition and deck must be substantially in compliance with the plans approved herein. No expansion of the footprint of the structure is proposed nor permitted herein.
3. The proposed second story addition and deck must be located outside of the established road right-of-way of Poplar Dr., as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the setback requirements.
4. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the location of the proposed addition and deck, in conformance with the above condition, must be prepared by a registered land surveyor and 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. Prior to issuance of a Zoning Permit, a detailed description of the proposed re-grading near the foundation along with a site plan identifying the proposed area of disturbance shall be submitted to the Planning and Zoning Division Staff for review and approval. Based on the information provided, staff shall determine if the proposed grading activities can be authorized in conjunction with the Zoning Permit for the proposed addition or whether a separate Minor Grading Zoning Permit or Conditional Use Permit is required.
7. All grading activities shall remain within 30 ft. of the foundation of the residence and shall not cause adverse drainage on neighboring properties during or after construction

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 property consists of three nonconforming lots and a portion of a vacated roadway which the petitioner is proposing to combine by Certified Survey Map. Even combined, the parcel is still a nonconforming lot. Due to the location of the intermittent stream on the adjacent property to the east and partially on the southeast corner of the subject property and the fact

that the property is bounded on two sides by public road right-of-ways, when consideration is given to the road and shore setback requirements of the Ordinance, there is no conforming location on the lot for the construction of a residence. To require that the proposed addition and deck comply with the road, shore, floodplain, and conservancy setback requirements would be unnecessarily burdensome, as it would result in the relocation or reconstruction of the residence before it could be improved and any relocation or reconstruction on the subject property would likely also require variances. The proposed addition will be set back further from the road and the stream than the existing residence and will not expand the footprint of the structure. Although the proposed addition will be located just outside of the road right-of-way, it will be located further from the road than the existing residence and will be approximately 25 ft. from the minimally traveled roadway.

The approval of this request, as conditioned, will also result in the removal of a severely nonconforming free-standing screen porch from the property. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION: None.

MISCELLANEOUS:

NR115 Status Update and Mitigation Discussion – Jason Fruth, Planning and Zoning Manager

ADJOURNMENT:

Ms. Bonniwell

I make a motion to adjourn this meeting at 9:14 p.m.

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

Respectfully submitted,

Nancy M. Bonniwell

Nancy M. Bonniwell
Secretary, Board of Adjustment

