

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, March 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
Nick Jordan (arrived at 7:30 p.m.)

BOARD MEMBERS ABSENT: Walter Schmidt

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Amy Barrows, Senior Land Use Specialist
Benjamin Greenburg, Senior Land Use Specialist
Randy and Susie Walters BA15:004
Bill Lincoln BA15:003
Roger Martens (Neighbor) BA15:003

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. Nawrocki *I make a motion to approve the Summary of the Meeting of February 11, 2015 subject to the word "property" being replaced with "properly" in condition no. 1 of the decision for BA15:001.*

The motion was seconded by Mr. Bayer and carried unanimously. Mr. Jordan abstained because he was not present at the February 11, 2015 meeting.

NEW BUSINESS:

BA15:003 WILLIAM A. & SUSAN J. LINCOLN REVOCABLE TRUST

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 exception that I recommend approval of the height variance. The height limitation noted in Condition No. 2 shall be modified to read, "20'3", as proposed". The last paragraph of the reasons shall be replaced with the following statement, "Combining five small nonconforming lots is favorable to the environment and the community, which justifies a minor variance to the height requirements."*

It should be noted that the 57 ft. required wetland setback shall remain as proposed in the staff report. The contractor can be careful during construction of the garage as to not disturb utility lines.

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

The Planning and Zoning Division staff's recommendation was for approval of the requested conservancy setback variance and denial of the requested height variance, subject to the following conditions:

1. Prior to the issuance of a Zoning Permit, an updated stake-out Plat of Survey identifying the detached garage a minimum of 57 ft. from the wetland boundary and in conformance with the offset, floor area ratio, accessory floor area ratio, open space, and road setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
2. Prior to the issuance of a Zoning Permit, a complete set of building plans that identify the height of the proposed detached garage a maximum of 18 ft. in height must be submitted to the Planning and Zoning Division staff for review and approval.
3. Prior to the issuance of a Zoning Permit, a Certified Survey Map combining Lots 41 through 45 and Lots 8 and 9 of the Plat of Tearney Subdivision must be submitted for review and approval by all required land division review entities and be recorded with the Waukesha County Register of Deeds. There shall be a statement on the Certified Survey Map which indicates that the two resultant parcels shall not be sold separately and that the area on the north side of Tearney Road shall not be used when calculating open space or floor area ratio for the construction of buildings or additions to existing buildings on the parcels on the south side of Tearney Road.
4. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, 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. This is to ensure the construction of the proposed detached garage does not result in adverse drainage onto adjacent properties. 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 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 stormwater and drainage.

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. Variations also require that unique physical conditions exist on the property, which are not self-created, which prevent compliance with the ordinance. Variations shall not affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources in the area.

Currently, the petitioner owns seven legal nonconforming lots on the north side of Tearney Road that are zoned residential and each lot could be developed with residences. Three of the legal lots of record contain wetland that would prevent access to a buildable area of the lots without filling a significant amount of wetland. Because the petitioner is proposing to combine five of the legal nonconforming lots of record with two lots on the south side of the road as a single lot, the approval of the request to construct a detached garage 57 ft. from the wetland would be far less impactful to the nearby properties and on the natural landscape than the potential construction of several residences. The combination of parcels would prevent the need for any future wetland fill and related land disturbance activities. It should also be noted that the ordinance provides for a 50 ft. wetland setback between a principal structure and a wetland if the natural grade where the structure is proposed is at least three vertical feet above the elevation of the wetland. The proposed garage will be at least 6 vertical feet above the elevation of the wetland. A residence could be constructed in the same location as the detached garage and comply with the wetland setback as stated in the Ordinance. Therefore, the approval of the request to construct a detached garage within the wetland setback area, in accordance with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

However, staff does not feel that the petitioner can demonstrate that the height variance meets the statutory tests for obtaining a variance. There is no hardship being caused by requiring that the petitioner reduce the height of the building by 2 ft. 3 in. The petitioner has stated that he is trying to match the pitch of the roofline of the residence. However, the petitioner should be able to creatively redesign the garage so that it architecturally compliments the existing structures on the opposite side of the road without the need for a variance. In addition, by reducing the height of the proposed building, the building can be moved three feet closer to the southwest lot line and still comply with the offset provisions of the Ordinance while maintaining a greater wetland setback.

BA15:004 RANDY AND SUSAN WALTERS

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 proposed residence, attached garage, deck, patio, and any appurtenances shall be located a minimum of 60 ft. from the floodplain and a minimum of 55 ft. from the wetland. 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.
2. The proposed residence, attached garage, deck patio, and any appurtenances shall be located a minimum of 40 ft. from the 66 ft. wide established road right-of-way. The existing garage may remain at 39 ft. from the 66 ft. wide established road right-of-way. The road setback 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. Prior to the issuance of a Zoning Permit, an updated stake-out Plat of Survey identifying the proposed structures in conformance with the above conditions and in conformance with the offset requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. Prior to the issuance of a Zoning Permit, a complete set of building plans must be submitted to the Planning and Zoning Division staff for review and approval.
5. No land altering activities are permitted within the area designated as Primary Environmental Corridor.
6. A detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, 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. This is to ensure the construction of the proposed residence and attached garage does not result in adverse drainage onto adjacent properties and that the Primary Environmental Corridor is not disturbed. 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 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 stormwater and drainage.
7. Prior to the issuance of a Zoning Permit, a Certified Survey Map adjusting the lot line between Lots 2 and 3 of CSM 5584 in accordance with the Site Plan submitted as part of this variance request must be submitted for review and approval by all required land division review entities and be recorded with the Waukesha County Register of Deeds.
8. Prior to the issuance of a Zoning Permit, the Declaration of Restrictions that was recorded on August 8, 2000 (Doc. #2581621) shall be properly released.
9. The existing and proposed garages on the property shall be used for personal storage only and no commercial or business operations are permitted.
10. Prior to the issuance of a Zoning Permit, a complete engineered plan for the proposed basement/foundation construction and proposed drainage system shall be submitted for review and approval by the Waukesha County Planning and Zoning Division Staff and the Waukesha County Land Resources Division. The basement floor elevation shall not extend further into the ground than 857' amsl. At a minimum, the plans (Drainage System Maintenance Plan) must be submitted by a qualified professional engineer, and contain the following information:
 - Narrative describing the proposed drainage system.
 - Plan view, cross-section and profile drawings of the proposed system with key elevations, pipe grades, etc. Show details where pipes are proposed to cross or connect.
 - System design must include or address the following:
 - Flow calculations for groundwater seepage and system conveyance.
 - Measures to intercept flows and/or alleviate hydrostatic pressure on the walls and floor of the structure.

Separation of sump pump system, gravity drains, and exterior down spouts. If connections are proposed, flow impacts must be described and supported by calculations.

Access/clean out traps for future maintenance.

Location and detail design of the outfall structure, including material specifications, elevations, cover depth/frost protection, animal guards and erosion control measures.

The outfall shall not cause adverse drainage on adjacent properties or road right-of-ways, or negatively impact natural resources. Written approval of the downstream landowners or municipality (if public road), may be required.

- Material specifications for all key components of the system.
 - Construction inspection plan and contact information for the engineer who will oversee and verify proper system installation.
 - Long term maintenance plan and procedures.
11. Prior to the issuance of a Zoning Permit, the Foundation Drainage System Maintenance Plan shall be recorded in the Waukesha County Register of Deeds Office which will alert future owners of the property that the residence has been constructed which does not comply with the 1 ft. of separation from high groundwater section of the Ordinance. In addition, the Foundation Drainage System Maintenance Plan shall reference the presence of the approved basement drainage system and long-term maintenance requirements of said system and said approved plans shall be recorded as exhibits to the Foundation Drainage System Maintenance Plan. A statement shall further be placed on the Foundation Drainage System Maintenance Plan which notes that the owners of the property are aware that the Town and County shall not be liable for the failure of the basement due to water or any other condition. Waukesha County is willing to draft the Foundation Drainage System Maintenance Plan for the petitioner at the petitioner's expense.
12. An as-built survey and construction verification letter from a qualified professional engineer shall be recorded as an addendum to the Declaration of Restrictions referenced above.

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. Variations also require that unique physical conditions exist on the property, which are not self-created, which prevent compliance with the ordinance. Variations shall not affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources in the area.

The Certified Survey Map that was recorded in 1988 created three parcels. At the time of CSM creation, Lot 3 was highly restricted by the conservancy boundary and the construction of any residential structure at that time most likely would have required a variance from the conservancy setback requirements. Since the creation of the CSM, Primary Environmental Corridor has been mapped on the property, which further restricts the location of a residence and associated land altering activities. Although the petitioners constructed a garage in generally the most conforming buildable area on the proposed lot, the proposed residence reasonably fits on the property with a wetland and floodplain setback that would otherwise conform if there was a three foot vertical separation between the proposed structure and the wetland and floodplain boundaries. Because the natural grade at the northeast corner of the proposed residence is slightly less than 3 ft. above the wetland and floodplain elevation, the provision may not be utilized without

a variance. The location of the well prohibits the petitioners from adjusting the northeast corner of the proposed residence so that it can comply with the reduced setback provision. The proposed residence and attached garage will be located further from the road than the existing garage, which is already a substantial structure on the property. At the time the garage was constructed, the petitioners thought that the structure was in compliance with the road setback when in actuality they encroached within the setback by 3 ft. using the platted road right-of-way. The petitioners are also limited in the proposed elevation of the basement floor because the petitioners are attempting to match the 1st floor with the existing garage floor. The height of the basement floor is proposed at approximately 8.5 ft. in height, which is a fairly typical basement height. Therefore, the approval of the request to construct a residence, deck and attached garage as proposed, in accordance with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

None

ADJOURNMENT:

Mr. Nawrocki *I make a motion to adjourn this meeting at 7:47 p.m.*

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

Respectfully submitted,



Nancy M. Bonniwell
Secretary, Board of Adjustment

