

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, August 12, 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
Walter Schmidt
Richard Nawrocki
Nancy M. Bonniwell
Richard Bayer

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Town of Merton Board of Adjustment
Benjamin Greenberg, Senior Land Use Specialist
Joe and Julie Reinders, BA15:023, owners
Jeffrey Weigel, BA15:022
Katherine Conley, BA15:026, owner
Robert Bahr Sr., BA15:026, neighbor
Robert Bahr Jr., BA15:026, neighbor
Bob Conley, BA15:026, brother
Lisa Conley, BA15:026, sister-in-law
Dan Butler, BA15:022, agent
Bruce Stops, BA15:024, agent
Joe Cincotta, BA15:021, attorney
Paul Schultz, BA15:023, architect

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. Bayer *I make a motion to approve the Summary of the Meeting of July 8, 2015.*

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

NEW BUSINESS:

BA15:024 CATHY KOSSOW (OWNER) BRUCE STOPS (APPLICANT)

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 condition:

1. Prior to the issuance of a Zoning Permit, a complete set of to-scale building plans must be submitted to the Planning and Zoning Division Staff for review and approval.

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 R-3 district requires a minimum lot size of 20,000 sq. ft. with an open space requirement of 15,000 sq. ft. Thus the district requires a minimum of 75% open space on conforming lots. A hardship exists because virtually no improvements can be placed on the lot with strict adherence to open space standards. Relative to the size of the lot, the existing home and garage footprints plus the proposed roofed deck are very modest in size (1,497 sq. ft.), and would result in 13,702 sq. ft. of open space, or 90.1% of the lot, which is well in excess of the 75% required on conforming lots. Therefore we feel that granting an additional 280 sq. ft. of relief from the open space requirement of the R-3 district will give the petitioner a modest amount of covered outdoor space and provides reasonable use. Therefore, the approval of variances from the open space requirements, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA15:022 CITY OF PEWAUKEE (OWNER) DANIEL J. BUTLER (APPLICANT)

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 passed with four yes votes. Mr. Schmidt voted no.

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

1. The water tower and all associated appurtenances, including antennae, must not exceed 1,071' AMSL.
2. Cranes must not exceed an elevation of 1,095' height above mean sea level.
3. All conditions of the FAA determination letter (Study 2015-AGL-6148-OE) dated 6/15/15 must be complied with.
4. All conditions of the FAA determination letter (Study 2015-AGL-6321-OE) dated 8/11/15 must be complied with.
5. 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.
6. Contact information for the on-site operator must be provided to the Capitol Airport Manager and Waukesha County 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.

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

Providing water and water pressure is a critical function of a municipality to maintain and promote the health, safety and general welfare of its citizens and property owners. Alternative sites have been explored, but the City has been unable to locate another suitable site that fully complies with the HLZO limitations. The subject property is more than two miles from the Waukesha County Airport, which minimizes risks to aircraft. The FAA has determined that the new tank and associated temporary cranes would not be a hazard to air navigation if specific conditions and guidelines are met. Therefore, 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.

BA15:026 KATHERINE CONLEY

Mr. Schmidt

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 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 Plat of Survey showing the staked-out locations of the proposed home, garage, decks and patios must be prepared and submitted to the Planning and Zoning Division Staff for review and approval.
2. Prior to the issuance of a Zoning Permit for a new residence, a Certified Survey Map combining the three adjacent parcels into one lot must be prepared by a registered Land Surveyor, reviewed and approved by the Town of Oconomowoc and by the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff, and recorded in the Waukesha County Register of Deed's office.
3. The new home, garage as well as any decks or patios must be sited a minimum of 22' from the 100-year floodplain.
4. The new home, garage as well as any decks or patios must be sited a distance from the bank of the Oconomowoc River that is equal or greater than the distance from the existing residence (including the existing deck and patio), as indicated on a plat of survey created by Jahnke & Jahnke Associates with a revision date of April 4, 2015.
5. The new home, garage as well as any decks or patios must be sited a distance from any wetlands that is equal or greater than the distance from the existing residence (including the existing deck and patio). The location of the existing residence is indicated on a plat of survey created by Jahnke & Jahnke Associates with a revision date of April 4, 2015.
6. The total size of the new home including the first floor, second floor, attached garage, and existing sheds cannot exceed 4,305 as measured from outside wall to outside wall.
7. If any changes to the existing grade are proposed, 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. This is to ensure the construction of the proposed home does not result in adverse drainage onto adjacent properties.
8. No grading activity is permitted within the 100-year flood plain.
9. The elevation of the lowest floor of the residence shall be at or above the flood protection elevation (864 ft. amsl).
10. The new home, garage as well as any decks or patios must be sited a minimum of 29.9' from the right of way of Washington Street.
11. The applicant shall be advised in writing that the granting of a floodplain variance may increase flood insurance premiums and risks to life and property.

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.

In addition, the Waukesha County Shoreland and Floodland Protection Ordinance also provides that any variance granted on a property located in the floodplain must meet the following additional criteria:

- a. The variance may not cause any increase in the regional flood elevation.
- b. The variance may not increase the amount of obstruction to flood flows.
- c. The variance shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of the Ordinance.
- d. The flood proofing measures and EFD Existing Floodplain Development Overlay District standards required in the Ordinance, NR 116, of the Wisconsin Administrative Code, and FEMA regulations must be met.

The petitioner has lost her home and possessions due to fire. While the fire cannot be considered a hardship, a hardship does exist due to the fact that strict compliance with the ordinance would make it impossible to site a new home and garage, thus denying the petitioner reasonable use of her property. Additionally, the proposal is for a home that is smaller in size and footprint. The petitioner is also proposing to locate the home in a more conforming location in respect to shore, conservancy, floodplain, and road setbacks. Lastly, the condition to combine the three adjacent lots through a Certified Survey Map will convert three non-conforming lots into one lot that conforms with the ordinance. Therefore, the approval of variations from the road setback, shore setback as well as conservancy and floodplain setback requirements, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA15:023 JOSEPH AND JULIE REINDERS (OWNER) PAUL SCHULTZ (APPLICANT)

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** of a special exception from the offset requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, **denial** of the request for variances from the floor area ratio and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of an attached garage, but **approval** of variances from the from the floor area ratio and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of an attached garage slightly smaller than proposed, subject to the following conditions:

1. The depth of the proposed garage cannot exceed 25', as measured from the outside wall of the existing home (south side), to the outside wall of the proposed garage (south side).
2. Prior to the issuance of a Zoning Permit for the attached garage, a detailed Grading and Drainage Plan, showing existing and proposed grades must be prepared by a Professional 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 attached garage does not result in adverse drainage onto adjacent properties.
3. Any proposed storage area over the attached garage must be included in the floor area calculations, unless it is accessible **only** via pull-down stairs from the garage and cannot be accessed from the upper level of the residence either now or in the future. If the house plans indicate that any storage area over the attached garage could be easily converted to living area with a direct connection to the upper level of the residence, a Declaration of Restrictions, stating that area cannot be converted to living area without the approval of the Waukesha County Board of Adjustment or its successor, must be recorded in the Waukesha County Register of Deed's office, prior to the issuance of a Zoning Permit.
4. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location of the proposed attached garage, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. The proposed garage must be located a minimum of 3.76 ft. from the west lot line as measured to the outer edges of the wall, 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 are a minimum of 3.76 ft. the west lot line.

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.

Hardships exist on the subject property due to its size. Since the lot is only 7,986 sq. ft. in area, it is impossible to meet the open space requirement of 15,000 sq. ft. and difficult to conform with the maximum permitted floor area ratio of 19.5%. Additionally, without any relief, the applicants would not be able to construct any enclosed parking on their property, making full compliance with the ordinance unnecessarily burdensome. With that said, a 24' x 27' attached garage exceeds the minimal relief necessary to provide reasonable use. On smaller lots such as this, Staff typically recommends 20' x 20' garages. We feel that 24' x 25' is appropriate in this case, as it would provide adequate parking for two vehicles, allow the applicants to match the width of their existing home, and give the applicants 5 (five) feet of extra depth to incorporate the existing stairs and roadside access into their proposal.

The proposed attached garage also requires a special exception from the offset requirements from the Ordinance because it will not comply with the offset requirement, but will be located no closer to the side lot line than the existing residence. As noted above, a special exception is a minor adjustment to the requirements of the Ordinance, owing to special conditions of the property. A special exception differs from a variance in that a special exception does not necessarily require the demonstration of an unnecessary hardship. However, the special exception must be necessary and desirable and must not adversely affect adjacent property owners. When granting special exceptions, the Board must still consider whether the requested special exception would be hazardous, harmful, noxious, offensive, or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare. The proposed attached garage is located no closer to the side lot lines or the lake. Additionally, by attaching the garage as opposed to replacing the destroyed detached garage in-kind, the petitioner is bringing the property into conformance with regards to road setback. Thus the proposed attached garage will not be contrary to the public interest.

Therefore, the approval of variances from the open space and floor area ratio requirements as well as a special exception from the offset requirements, to permit the construction of an attached garage slightly smaller than proposed, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA15:021 TIM AND MARY DONOVAN (OWNERS) TERRACE CUSTOMER HOMES (APPLICANT)

Mr. Nawrocki

I make a motion to table the item to the September 9, 2015 Board of Adjustment meeting.

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

OTHER ITEMS REQUIRING BOARD ACTION:

BA15:STEVEN DUFRESNE (OWNER) JOSEPH R. CINCOTTA (AGENT) Request for Reconsideration of Decision of June 10, 2015.

Mr. Schmidt *I make a motion to deny the request for reconsideration of the June 10, 2015 meeting.*

The motion was seconded by Ms. Bonniwell and passed with four yes votes. Mr. Nawrocki voted no.

ADJOURNMENT:

Mr. Nawrocki *I make a motion to adjourn this meeting at 7:53 p.m.*

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

Respectfully submitted,



Nancy M. Bonniwell
Secretary, Board of Adjustment

(PLEASE FILL OUT COMPLETELY AND PLEASE PRINT. THANK YOU.)

NAME	ADDRESS	PHONE NUMBER	IN ATTENDANCE FOR THE VARIANCE OF:	RELATIONSHIP TO PETITIONER
Joe Reinders	1048 W 34144 Saechles Dr. Neshkoting	414-581-5220	Joseph & Julie Reinders	Same
Julie Reinders	" " " "	"	"	"
Jeffrey Weisz	W240 N3065 Penauken Rd, Pewaukee	262-691-0804	Pew. Water Town	"
Katherine Conley	N52 W37049 Washington Street Oconomowoc	262-510-6181	Katherine Conley	Self
ROBERT BAHR SR	N52 W37077 WASHINGTON ST OCON	262-567-5749	KATHIE CONLEY	NEIGHBOR
ROBERT BAHR JR	" " " " "	414-651-7287	"	"
Bob Conley	516 Lee La Belle Drive, Ocon.	262-567-5947	Kathie "	brother
Lisa Conley	"	"	"	Sister in law
Don Botler	7715 May Place Place Tosa 73217	262-542-5733	Pewaukee	Pewaukee
BRUCE STOPS	W288 N18089 PARK DR. HARTLAND 53029	414-807-3025	KOSSOW	AGENT
JOE CINOLTA ARTY	KERIGMAN T DANN 757 N BROADWAY MUMFORD 53222	414-416-1291	DUFRESNE	AGENT
PAUL SCHULTZ	133A E. WISCONSIN, Oconomowoc	262-567-5755	REINDERS	ARCHITECT