

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, October 14, 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: Rob Schuett
Nick Jordan

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Amy Barrows, Senior Planner
Rebekah Baum, Land Use Specialist
Diane Baumann, BA15:034, property owner
Greg Perkins, BA15:034, builder
John Bagnet, BA15:034, architect
Mike Bertram, BA15:036, builder
Keith Kindred, BA15:036, petitioner
Jim Bernthal, BA15:036, property owner
Jane and Kevin Kasper, BA15:036, neighbor
Alan Freysinger, BA15:037, petitioner
Jeff Sporfal, BA15:037, petitioner
Dawn and Roy Anderson, BA15:037, property owners
Colleen Meyer, BA15:034, neighbor
Fran Heuer, BA15:034, neighbor
Jeff Schneider, BA15:034, neighbor

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 September 9, 2015.*

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

NEW BUSINESS:

BA15:036 JAMES BERNTHAL (OWNER) KEITH KINDRED (APPLICANT)

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 Mr. Nawrocki and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the shore setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance and **denial** of the request to extend the time period allowed between Board of Adjustment action and the issuance of a Zoning Permit to more than two (2) years, to permit the future construction of a single-family residence with an attached garage, retaining walls, a pool and patio adjacent to a navigable enclosed drainage way on the subject property, subject to the following conditions:

1. All ordinance requirements of the Waukesha County Shoreland and Floodland Protection Ordinance at the time of Zoning Permit issuance shall be complied with, except the shore setback variance from the enclosed drainage way, as approved herein.
2. The new residence and any appurtenances, including the attached garage, patio, pool and retaining walls, must be located no closer than 5 feet from the enclosed navigable drainage way and be located outside of the proposed storm sewer easement.
3. The storm sewer easement, including maintenance provisions, must be reviewed and approved by the Town of Delafield and be recorded with the Waukesha County Register of Deeds, prior to the issuance of a Zoning Permit.
4. If the existing detached garage will remain on the property, a Zoning Permit must be issued for the construction of a new residence before the existing residence is demolished or Section 3(d)1 of the Waukesha County Shoreland and Floodland Protection Ordinance shall be complied with, which includes the submittal of a financial assurance and deed restriction to ensure that a principal structure will be constructed within 2 years or the detached garage must be removed.
5. Prior to the issuance of a Zoning Permit, a complete set of house 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, pool, patio, and retaining walls, 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. 5.
8. The variance must be exercised by the petitioner within two years of the date of this decision, which shall include the issuance of a Zoning Permit for the residence. An extension of the variance may be granted by the Board upon written application of the petitioner without additional fee and for good cause as determined by the Board.

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.

The existing enclosed drainage way prohibits the construction of any residence on the property in compliance with the shore setback requirements. Because the drainage way is required to run the length of the property, there is no other potential home location that would eliminate the need for variations. Although the drainage way is considered navigable and is subject to the shore setback requirements, it is completely enclosed below grade. Runoff from the proposed structures and impervious surfaces will have no impact on the quality of water within the drainage way. The Town is requiring a storm water easement to ensure the functionality of the drainage way in the future. The house is sufficiently setback from Pewaukee Lake, which is the receiving waterbody. Therefore, the approval of a variance from the shore setback requirements, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

Staff does not feel that it is appropriate to grant a request for a greater timeframe between the Board's decision and the utilization of a Zoning Permit. The Board of Adjustment procedures allow the petitioner to request an extension prior to the expiration date of the variance, which applicants have done in the past. It would be setting a poor precedent to allow petitioners to request extended timeframes at the time of the original request. The two-year time limit is established because rules and site circumstances may change over time. Minimum and maximum shoreland zoning regulations, in particular, have been modified by the State several times over the past few years. The County will be adopting new regulations to be consistent with

the new State regulations that may or may not affect the subject property. It should also be noted that petitioner have 1.5 years to complete construction of a residence after permit issuance.

BA15:034 DIANE L. BAUMANN (OWNER) GREG PERKINS – GMH CONSTRUCTION (APPLICANT)

Ms. Bonniwell

I make a motion to approve the request in accordance with the staff report, except that the open space variance be approved as proposed by the petitioner, Condition No. 1 be modified to allow a 48 sq. ft. entry porch and a 24 sq. ft. lakeside deck with landing, and Condition No. 2 be revised to read, "Prior to the issuance of a Zoning Permit for the proposed construction, the existing brick patio near the lakeshore shall be removed and restored with vegetation and all concrete surfaces that Mr. Perkins represented at the hearing (highlighted on a survey submitted at the hearing) shall be removed."

In addition to the reasons stated in the staff report, the proposed request is compatible with the rest of the homes on Nickel's Point Road and the removal of the concrete surfaces makes for more useable open spaces areas.

Mr. Schmidt added that the proposal is not harmful to neighbors or anyone else given the uniqueness to the property and the areas around it.

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

The Planning and Zoning Division staff's recommendation was for **denial** of the proposed open space variance and **approval** of the request for variances from the shore and floodplain setback requirements and floor area ratio and nonconforming structure requirements and a modified variance from the open space requirements and a special exception from the offset requirements, subject to the following conditions:

1. This approval is for the construction of the one-story 14' x 12' mudroom addition on the west side of the residence with associated deck, the replacement of a 16 sq. ft. lakeside deck with landing, a 20 sq. ft. entry porch, raising the foundation to make better use of the basement level of the residence, modifying the roofline of the existing residence, and the addition of 78 sq. ft. on the second story of the residence and interior remodeling. The remainder of the second story shall not exceed 6 ft. in height, as measured from the floor to ceiling.
2. Prior to the issuance of a Zoning Permit for the proposed construction, the existing concrete patio on the lakeside of the residence shall be removed and restored with vegetation.

3. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
4. The proposed mudroom and entry porch addition and associated deck shall be no closer to the road, shore or floodplain than the existing residence. The proposed deck landing with stairs on the lakeside of the residence shall only be as wide as necessary to provide safe egress from the residence and to comply with building code regulations. The overhangs on the proposed addition shall not exceed 2 ft. in width.
5. Prior to the issuance of a Zoning Permit, a complete set of house 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, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed addition and decking, 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. 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 addition 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 storm water and drainage. The grading plan may be combined with the Plat of Survey required in Condition No. 6.

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. However, variations are intended to provide only the minimum amount of relief necessary to allow a reasonable use of the property. 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.

As conditioned, the petitioner will be allowed to make substantial improvements to the structure in the form of a mudroom addition, a front entry porch addition, a taller basement to allow more usable space, a heightened roofline on the residence, and a new deck. The petitioner will also be allowed to replace the lakeside deck with a minimally sized deck in order to provide safe entry and exit from the home. A special exception from the offset requirement is justified to allow the roofline of the residence to be modified. The structure will be no closer to the side lot line than the existing residence and, therefore, should not have an impact on the nearby properties.

The shore setback variance is needed to accommodate the raising of the foundation, as well as the new lakeside deck and steps. The lakeside deck and steps also require a floodplain setback variance. Because the lot is only approximately 85 ft. deep, it would be difficult for a reasonably sized residence to comply with the shore and floodplain setback requirements. As conditioned, only a minimal amount of relief from the shore and floodplain setback requirements is provided. The only further encroachment on the shore and floodplain setback from the existing lot conditions is for the new landing and stairs on the lakeside, which is necessary in order to provide safe ingress and egress.

A variance from the open space requirement is justified in that, due to the size of the lot, no structure could be constructed without the need for an open space variance. The raising of the foundation, the modifications to the roofline, and the proposed decks do not increase the floor area ratio. The minor mudroom addition and second story addition will allow for additional usable space and will only result in a minor increase in the floor area ratio.

As noted previously, the property is nonconforming relative to lot size and is also shallow between the road and the shore. Therefore, variances would also be needed to construct a new residence on the site. However, the west side of the property contains a number of mature trees that would likely be impacted with the construction of a new residence and the existing residence is located as far from the shore as is likely possible. In addition, the existing residence has been substantially added on to in the past. Therefore, it is reasonable to grant a variance from the remodeling more than 50% of the structural members of a nonconforming structure provisions of the Ordinance to allow some improvements to the existing structure. It should be noted that it is possible that the proposed construction may not involve work that exceeds replacement of 50% of the structural members. The petitioner submitted a worksheet that indicates the work will constitute approximately 47%, but with modifications to the approval as stated herein, it is possible that the work will exceed 50% of the structural members.

Therefore, the approval of the request for variances and a special exception to allow improvements and additions to the structure, as conditioned, would be within the purpose and intent of the Ordinance.

BA15:037 ROY C. ANDERSON FAMILY TRUST (OWNER) ALAN FREYSINGER – DESIGN GROUP THREE (APPLICANT)

Mr. Schmidt

I make a motion to approve the request in accordance with the staff report, with the conditions listed in the staff report, except that I approve the offset variance request as proposed by the petitioner and therefore, Condition No. 1 shall be modified to allow a 9.7 ft. offset from the southeast lot line and a 5.7 ft. offset from the northwest lot

line. Condition No. 3 of the staff report related to the removal of the boathouse shall be removed.

I replace the staff's reasons with the following reasons: "Although the uniqueness of the property does not differ greatly from others, the proposed residence meets the other homes in the area. The proposal does not impact the welfare of the area or cause a difficulty to the neighbors. The boathouse has been there for many years and it is an asset that provides storage.

Ms. Bonniwell added that the boathouse is a legal nonconforming structure in good condition and since it has existed before ordinances were developed, there is no substantial reason to remove it. Most of the structure is one-story, the 2nd story being minimal, and disturbance is minimized by using the existing foundation on the property.

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

The Planning and Zoning Division staff's recommendation was for **denial** of the proposed request for an offset variance and **approval** of the request for variances from the floor area ratio and open space requirements and **approval** of a modified offset variance of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the petitioner to raze the existing residence and construct a new single-family residence and deck, subject to the following conditions:

1. The residence shall comply with all setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance and be located at least 10 ft. from the southeast lot line and 9 ft. from the northwest lot line. The overhangs on the residence shall not exceed 2 ft. in width. The deck shall be located at least 6 ft. from the side lot lines.
2. The floor area ratio shall not exceed 17% and there shall be a minimum of 13,500 sq. ft. of open space remaining on the property.
3. Prior to the issuance of a Zoning Permit for the proposed construction, the existing nonconforming boathouse near the lake shall be removed and restored with vegetation. The floor area ratio from the boathouse may be used to enlarge the size of the residence, provided the addition complies with all setback and offset requirements.
4. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
5. Prior to the issuance of a Zoning Permit, a complete set of house 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, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed addition and decking, 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. 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 addition 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 grading plan may be combined with the Plat of Survey required in Condition No. 6.
8. Any proposed foundation or crawlspace shall be a minimum of 1 ft. above the seasonal high groundwater table. If the 1 ft. groundwater separation cannot be achieved, the petitioner is required to apply for an additional variance to be considered by the Waukesha County Board of Adjustment.
9. If the existing detached garage will remain on the property, a Zoning Permit must be issued for the construction of a new residence before the existing residence is demolished or Section 3(d)1 of the Waukesha County Shoreland and Floodland Protection Ordinance shall be complied with, which includes the submittal of a financial assurance and deed restriction to ensure that a principal structure will be constructed within 2 years or the detached garage must be removed.

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 variance from the open space requirement is justified in that, due to the size of the lot, a reasonably sized structure could not be constructed without the need for an open space variance. The total footprint allowed for all structures without a variance is 945 sq. ft. Granting a total floor area ratio of 17% (2,716 sq. ft.) allows for some relief from the ordinance in order for the petitioner to construct a reasonably sized residence on the subject property, especially when

consideration is given to the recently constructed homes located directly to the southeast of the subject property. Because floor area ratio relief is being requested and the property already does not comply with accessory building floor area ratio requirements, it is reasonable to require that the nonconforming boathouse be removed. The boathouse is located only 1 ft. from the southeast lot line and is nonconforming because boathouses are not permitted on lots that have an average width of less than 100 ft. The subject property has an average lot width of 49 ft.

It is not uncommon for lake lots within the County's shoreland jurisdictional area to have a lot width of approximately 50 ft. The ordinance provides relief from the offset standards when the lot width is less than the district requirements, up to a minimum offset of 10 ft. The petitioner would be allowed to construct a 30 ft. to 31 ft. wide residence if granted the minimal relief necessary from the offset provisions as provided in the conditions of this recommended approval.

Therefore, the approval of variances from the floor area ratio and open space requirements and the approval of the modified variance from the offset requirements, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

DISCUSS SCHEDULE FOR ELECTION OF OFFICERS FOR THE BOARD OF ADJUSTMENT

DISCUSS PROCESS OF REQUESTING DNR COMMENTS IN ACCORDANCE WITH ACT 55

Mr. Nawrocki *I make a motion to provide DNR the ability to make comment to the BOA when DNR staff feels it is necessary.*

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

ADJOURNMENT:

Mr. Nawrocki *I make a motion to adjourn this meeting at 8:35 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
Diane Bauman	N60 W35144 Lake DR Dun	414 588 0897	Nickels Pt	Myself
Mike Berkman	1133 Green Ct Pewaukee	262-894-4614	show of back	
KEITH KINDER	SE4 501 Maple Ave Delafield	262-370-0165	" "	
JIM BERNTHAL	N30 W28895 W. LAKESIDE	262-691-241	BERNTHALS	ME
Jane Kevin Kasper	N30 W28935 W. Lakeside Dr	262-695-8102	Bernthals	Neighbor to West
ALAN FREYSINGER	5050 N. PORT WASH. RD. MILW.	414-962-5560	ANDERSON	REPRESENTATIVE
JEFF SPORFATZ	5050 N. PORT WASHINGTON RD MILWA	414 962 5560	ANDERSON	ME
Dawn + Roy ANDERSON	W352 N6080 Bauers Ln. Oconomowoc	414 801 7608	Bauers Ln.	ourselves
Colleen Meyer	+2511 E Menlo Blvd Shorewood 53011	← mailing address		
Colleen Meyer	N57 W34375 Nickels Pt Rd Oconomowoc	262-468-4629	Bauman	neighbor
Eron Heuer	N57 W34356 Nickels Pt Rd	262-569-8214	Bauman	neighbor
JEFF SCHNEIDER	N57 34365 " " " "	262	ADJIA	" "