

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

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

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Benjamin Greenberg, Senior Land Use Specialist
John and Jean Carrao, BA15:038, owner
Atty. Michael T. Schober, BA15:030, applicant Attorney
Terrance Casper, BA15:039, builder
Richard H. Casper, BA15:039, applicant
Dave and Jeff Meyer, BA15:030, Consultant
Don Demlang, BA15:040, builder
Mark Augustine, BA15:030, Engineer
Ron Marshall, BA15:030, applicant
Chad Coley, BA15:041, applicant
Bob Sokolowicz, BA15:040, neighbor
Jeffree Nelson, BA15:041, Consultant/builder

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 October 14, 2015.*

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

NEW BUSINESS:

BA15:030 RONALD S. AND MARIETTA A. MARSHALL 1994 REVOCABLE TRUST (OWNERS) ATTY T. MICHAEL SCHOBER (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. Bayer and passed 4-1 (*Ms. Bonniwell voted no, specifically due to her opposition of the granting of the special exception for Offset relief*).

The Planning and Zoning Division staff's recommendation was for **approval** of the request for the after-the-fact variance from the shore setback requirements for the construction of the retaining walls, **approval** of the request for after-the-fact special exception from the offset requirements for the construction of a patio and **denial** of the request for after-the-fact variances from the shore and floodplain setback requirements for the construction of a patio of the Waukesha County Shoreland and Floodland Protection Ordinance, subject to the following conditions:

1. All components of the patio located within 56 ft. of the shore and floodplain shall be removed and restored with vegetation prior to June 15, 2016.
2. All conditions of the Conditional Use approval (SCU-1546A) and its established deadlines shall be complied with.

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 retaining walls were constructed as a result of additional grading that took place without permits. In lieu of removing the retaining walls and implementing the originally approved grading plan, the petitioner has proposed significant measures to offset the impacts of the activities. Said measures include shoreline mitigation, the combination of parcels, and a restriction prohibiting future development activities on the acreage to be combined with the existing residential property. Because the grading activities conducted on the site created more severe cuts than the originally permitted grading plan, the retaining walls were implemented to help preserve the large trees on the slope. Therefore, the Planning and Zoning Division Staff believes that removing the retaining walls would do more environmental harm than allowing them to be retained. With the proposed shoreline mitigation, the water quality and aesthetics near the shoreline will be protected and possibly enhanced.

It is also reasonable to approve the patio closer to the west lot line than the required 8.4 ft. The petitioner replaced the patio in-kind on the west side of the property and the patio is located further from the lot line than the existing residence.

There is no justification for approving a patio that is nonconforming to the shore and floodplain setback requirements. The petitioner obtained a permit in 2011 for significant improvements to the property and the approved plans indicated the patio area would be used as a rain garden, which included a dry streambed and several atrium drains to accommodate and drain the overflow and downspout drainage. Therefore, the previously approved landscape plan provides the same or better benefits as the previous patio structure that the petitioner contends is beneficial to the site. The Zoning Permit was conditioned that any new patios would require additional permits. There is significant area available for the placement of a patio that conforms to the shore and floodplain setback requirements. The zoning ordinance allows for a patio that extends 18 ft. from the residence to the lake. Had the petitioner notified the Planning and Zoning Division office of the patio request in advance of permits, staff could have recommended that the addition to the residence be set back further from the shore to accommodate the larger proposed patio size. Additionally, if the patio is allowed to remain in the existing location, a new development pattern will be set for future averaging purposes, which ultimately provides the opportunity for new development within the neighborhood to move closer to the lake.

Therefore, denial of the variances from the shore and floodplain setback requirements for the construction of a patio and the approval of a variance from the shore setback requirement for the construction of the retaining walls and a special exception from the offset requirement for the patio replacement on the west side of the property, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA15:039 RICHARD AND BETTY CASPER (OWNERS) TLC CONTRACTING LLC (APPLICANT)

Mr. Schmidt

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

The motion was seconded by Ms. Bonniwell and carried 3-2 (*Mr. Bayer and Mr. Nawrocki voted no*).

The Planning and Zoning Division staff's recommendation was for **denial** of the request for variances from the floor area ratio requirements of the Waukesha County Shoreland and Floodland Protection Ordinance.

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

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

petitioners 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 subject parcel conforms to both the size and width requirements of the R-2 district in which it is located. The parcel actually exceeds the required lot size by over 7,000 sq. ft. and exceeds the required average lot width by over 60 ft. Reasonable use for conforming lots has been established and quantified in the Shoreland Ordinance with a floor area ratio limit of 15% in the R-2 district.

Though the petitioners' 724 sq. ft. request is only 18 sq. ft. in excess of the 15% floor area ratio limit, we believe the ordinance provides reasonable use when applying this standard on this lot, thus a denial of a request for a variance from floor area ratio does not deny the petitioner reasonable use of their property. Therefore, the denial of a variance from the floor area ratio requirement is in conformance with the purpose and intent of the Ordinance.

BA15:040 JEFFREY AND NICOL BEFUS (OWNERS) DEMLANG BUILDERS (APPLICANT)

Ms. Boniwell

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 **denial** of the request for variances from the road setback, floor area ratio, open space, shore and floodplain setback and conservancy setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a single family residence, but **approval** of variances from the road setback, floor area ratio, and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a single family residence with attached garage, subject to the following conditions:

1. The size of the building footprint, including attached garage, cannot exceed 900 sq. ft. as measured from outside walls. If the roof overhang exceeds 2 feet, the size of the footprint shall be measured from the roof edge. Any future decks, patios, and appurtenances shall be designed to comply with ordinance requirements.
2. The total size of the home and attached garage, not including the basement cannot exceed 1,800 sq. ft. as measured from outside walls. If the roof overhang exceeds 2 feet, the size shall be measured from the roof edge.
3. The total depth of the proposed home and garage shall not exceed 30' as measured from outside walls. If the roof overhang exceeds 2 feet, the depth shall be measured from the roof edge.
4. The proposed home and garage must be a minimum of 30' from the ordinary high water mark of Okauchee Lake.

5. The proposed home and garage must be a minimum of 30' from the 100-year flood elevation of 874.5 ft. AMSL referenced to the NAVD88 Datum.
6. The proposed home and garage must be a minimum of 3' from the established road right of way (6' from the platted right of way).
7. Prior to the issuance of a Zoning Permit for the home and attached garage, 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.
8. Prior to the issuance of a Zoning Permit for the home and attached garage, 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.
9. Prior to the issuance of a Zoning Permit for the home and attached garage, 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.
10. Prior to the issuance of a Zoning Permit for the home and attached garage, a detailed Grading and Drainage Plan, showing existing and proposed grades and incorporating the requirements set forth above, must be prepared by a Professional 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, 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 reasons for the recommendation, as stated in the Staff Report, are as follows:

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

Hardships exist on the subject property due to its size. Since the lot is only 4,050 sq. ft. in area, it is impossible to meet the open space requirement of 15,000 sq. ft. It would also be impossible to conform with the maximum permitted floor area ratio of 15% as the maximum size of the permitted residence would not meet the minimum size requirements of the district, which are 850 sq. ft. and 1,110 sq. ft. for the minimum first floor and minimum total size, respectively. Therefore we believe that a 30' deep, 900 sq. ft. footprint is appropriate and a second story structure on this lot is also appropriate to accommodate a garage near the road elevation and to minimize the footprint.

Topography also presents a unique physical constraint, as conformance with road setback would make vehicular access to the property difficult, if not impossible, due to the severe slope near the road. Close proximity to the road will also reduce the amount of grading that will be required for new home construction. The steep topography will also shield much of the residence from the sightlines at road grade, thus limiting any perceived adverse effect on neighborhood aesthetics. Therefore, the approval of less relief from the road setback, floor area ratio and open space with the recommended conditions and a denial of relief from shore setback, floodplain setback and conservancy setback requirements is in conformance with the purpose and intent of the Ordinance.

BA15:038 JOHN AND JEAN CARRAO

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 and reasons.

Condition No. 3: "The proposed garage must be a minimum of 40 feet from the platted right-of-way of Hunter's Lake Road (32 feet from the established road right of way)."

Condition No. 4: "Within thirty days of occupancy of the proposed detached garage, the existing 12' x 12.3' shed must be removed."

The reasons shall be revised to read:

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

Hardships and physical limitations exist on the subject property due to a number of factors including its size, proximity to floodplain, drainage patterns as well as existing overhead utility lines. Since the lot is only 13,023 sq. ft. in area, it is impossible to meet the open space requirement of 15,000 sq. ft. Some relief from accessory floor area ratio and road setback is also appropriate due to the physical characteristics and constraints of the site.

Had the petitioners proposed an attached garage, the proposal would comply with road setback, floor area ratio as well as accessory floor area ratio, though it would need relief from floodplain setback and open space. However a number of mitigating factors make an attached garage proposal not only impractical, but might also have adverse effects on the surrounding properties. This is largely due to the fact that an attached garage would impede the existing drainage patterns for both the subject property and the property to the north. Additionally, consideration

should be given to the fact that the existing holding tank would likely need to be relocated in order to accommodate an attached garage.

With that said, there has been no demonstrated hardship to support a variance from the height limitation for accessory buildings. A 24' tall accessory building, though partially shielded by the topography of the site, may have adverse effects on the aesthetics of the surrounding properties. By slightly reducing the depth of the structure and requiring it be further setback from the road, the proposed garage would be more conforming to road setback, and would still be a safe distance from the overhead power lines which bisect the property. If the road setback relief is approved as requested, it will create a new point which would become available to nearby property owners for significantly reduced road setbacks using averaging from the new structure, and could potentially start a new pattern of accessory structure development near the right of way that could have adverse effects on the aesthetics and sight lines of Hunters Lake Road.

As some relief from open space is required in order to accommodate a garage, the proposed square footage exceeds the minimal relief necessary. Therefore, the denial of a variance from the maximum height requirements and approval of variances with slightly less relief from the open space, road setback requirements, and approval of a special exception with slightly less relief from the accessory floor area ratio requirements, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

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

The Planning and Zoning Division staff's recommendation was **denial** of the request for variances from the road setback, open space, and building height requirements as well as a special exception from the accessory building floor area ratio requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a detached garage, but **approval** of variances for slightly less relief than requested from the road setback, open space requirements as well as a special exception from the accessory building floor area ratio requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a detached garage subject to the following conditions:

1. The height of the proposed garage must conform to the Waukesha County Shoreland and Floodland Protection Ordinance requirements.
2. The proposed garage cannot exceed 576 sq. ft., as measured from the outside walls.
3. The proposed garage must be a minimum of 50 feet from the platted right-of-way of Hunter's Lake Road (42 feet from the established road right of way).
4. Prior to issuance of a Zoning Permit the existing 12' x 12.3' shed must be removed.
5. Prior to the issuance of a Zoning Permit for the detached garage, a detailed Grading and Drainage Plan, showing existing and proposed grades must be prepared by a Professional 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.

6. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location of the proposed detached garage, must be prepared by a registered land surveyor and 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:

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.

Hardships and physical limitations exist on the subject property due to a number of factors including its size, proximity to floodplain, drainage patterns as well as existing overhead utility lines. Since the lot is only 13,023 sq. ft. in area, it is impossible to meet the open space requirement of 15,000 sq. ft. Some relief from Accessory floor area ratio and road setback is also appropriate due the physical characteristics and constraints of the site.

Had the petitioners proposed an attached garage, the proposal would comply with road setback, floor area ratio as well as accessory floor area ratio, though it would need relief from floodplain setback and open space. However a number of mitigating factors make an attached garage proposal not only impractical, but might also have adverse effects on the surrounding properties. This is largely due to the fact that an attached garage would impede the existing drainage patterns for both the subject property and the property to the north. Additionally, consideration should be given to the fact that the existing holding tank would likely need to be relocated in order to accommodate an attached garage.

With that said, there has been no demonstrated hardship to support a variance from the height limitation for accessory buildings. A 24' tall accessory building, though partially shielded by the topography of the site, may have adverse effects on the aesthetics of the surrounding properties. By slightly reducing the depth of the structure and requiring it be further setback from the road, the proposed garage would be nearly conforming to road setback, and would still be a safe distance from the overhead power lines which bisect the property. If the road setback relief is approved as requested, it will create a new point which would become available to nearby property owners for significantly reduced road setbacks using averaging from the new structure, and could potentially start a new pattern of accessory structure development near the right of way that could have adverse effects on the aesthetics and sight lines of Hunters Lake Road.

As some relief from open space is required in order to accommodate a garage, the proposed square footage exceeds the minimal relief necessary. Therefore, the denial of a variance from the maximum height requirements and approval of variances with slightly less relief from the open space, road setback requirements, and approval of a special exception with slightly less relief from the accessory floor area ratio requirements, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA15:041 CHAD AND VICTORIA COLEY

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** of the request for variances from the Open Space, Floor Area Ratio, and Offset requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a new residence, subject to the following conditions:

1. The proposed construction shall be substantially in compliance with the plans provided herein.
2. The total Floor Area Ratio, including the proposed residence and existing boat house and garage, shall not exceed 24.0%.
3. The required offset to the northwest lot line shall be a minimum of 3.0 feet.
4. The required offset to the southeast lot line shall be a minimum of 3.1 feet.
5. Prior to the issuance of a Zoning Permit, a to scale Plat of Survey showing the staked-out location of the proposed residence must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. Prior to the issuance of a Zoning Permit, a detailed Grading and Drainage Plan, showing existing and proposed grades and incorporating the requirements set forth above, must be prepared by a Professional 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, 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.
7. Since the new residence is proposed to be within 10 ft. of the residences on the adjacent lots. All applicable building and fire codes relative to the close proximity of the structures must be complied with. If compliance with building and fire codes results in the need for modification to the plans presented with this application, the revised plans shall be submitted to the Waukesha County Planning and Zoning Division Staff for review and approval prior to the issuance of a Zoning Permit.

8. Prior to the issuance of a Zoning Permit, a complete set of updated house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval. These plans must clearly and explicitly delineate all existing and proposed structures on the subject parcel.

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.

A hardship exists relative to the offset and open space requirements. Because the lot size is less than the minimum required amount of open space, no structure could be constructed on the property without the need for an open space variance, and the narrow lot width would make compliance with the offset requirements unreasonable, as application of the required offsets would leave only 18' of buildable width. Additionally, because this lot is non-conforming relative to lot size, it would difficult to conform with the allowed 19.5% Floor Area Ratio. It should also be noted that the proposed home is slightly smaller than the previous residence.

Therefore, the approval of variances from the Open Space, Floor Area Ratio, and Offset requirements, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

ELECTION OF OFFICERS:

Office of Board of Adjustment Chairperson:

Mr. Nawrocki *I make a motion to retain the existing slate of Waukesha County Board of Adjustment Officers.*

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

ADJOURNMENT:

Mr. Bayer *I make a motion to adjourn this meeting at 9:30 p.m.*

The motion was seconded by Mr. Nawrocki 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
John & Jean Corrado	N69W23778 SARI Ct Sussex W.	262-246-4311	BA/51038	Self prop. owners
Mike Schober	28355 Woodland New Berlin	262-785-820	Marshall	attor.
Terrance Casper	2452 N. 62nd St Wauwatosa	(414) 232-4448	Bay Ridge of	builder
Richard H Casper	N51W35621 Bay Ridge Ct, Ocos.	414-297-5612	R. Casper	same
Dave & Jeff Meyer	Westland & Water, Corally 583623915 American Ave. ^{P.R.} Grand	262-719-4286	Marshall	Contract
Ros Dymally	W352 N5318 LAKE DR.	2-366-5316	Refus	b.c.
Mark Augustine	119 Coolidge Ave., Waukesha, WI 53186	414-719-2769	Ron Marshall	Eng.
Ron MARSHALL	W 347 N 6119 Rd E	262-227-3464	Ron Marshall	owner
CHAD COLEY	N21 W28624 LOUIS AVE.	612-616-8313	Refus	owner
BOB SAKOLOWICZ	N 64 W 34899 ROAD J 53066	262-966-3625	REFUS	RESIDENT
JEFFREY NELSON	153 Park Ave Pewaukee 53072	414-588-9033	Coley	Consultant/Builder