

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, February 10, 2016, 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: Town of Merton Board of Adjustment
Benjamin Greenberg, Senior Land Use Specialist
Frank Pletcher, BA16:001
Trude Pletcher, BA16:001, Mother
Gene Eggert, BA15:047, Owner
David Mihalovich, BA16:001, applicant
Dana Andrews, BA16:004, petitioner
Lynn Fields, BA13:003, Owner
Larry Fields, BA13:003, Owner
Don Hammond, BA13:003, builder
Andrea Mihalovich, BA16:001, applicant
Terry Young, BA16:001, father
Keith Heinze, BA16:002
Pete Feichtmeier
Mark Augustine, BA16:001, Agent
Jerry Donovan
Chris Carrie
Bruno Stamm, BA16:004, Owner
Pat McGuire, BA16:002, Owner
Gayle McGuire, BA16:002, Owner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, 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 January 13, 2016.*

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

NEW BUSINESS:

BA15:047 GREG EGGERT

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. The size of the proposed garage cannot exceed 478 sq. ft., as measured from outside wall to outside wall. If the proposed roof overhangs exceed two feet, then the size of the garage shall be measured from the outside roof edge.
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 storm water and drainage. This is to ensure the construction of the proposed attached garage does not result in adverse drainage onto adjacent properties.
3. 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.
4. The proposed garage must be located a minimum of 6 ft. from the north lot line and 2.44 ft. from the east 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 non-conforming size and width. Since the lot is only 10,089 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 accessory floor area ratio of 3%. The substandard lot width, and location of the septic field also make it impractical, if not impossible, to site a garage in a conforming location with respect to offset. It should also be noted that the proposed garage would be in a slightly more conforming location (with respect to offset) than the existing one.

A Variance for height can also be justified since the petitioner is proposing a structure which is more conforming to height (17.9 feet) than the existing structure (24 feet). More importantly, the additional height request is solely to preserve the general aesthetics of the rustic style roof of the failing garage, in an attempt to make the new structure fit into the surrounding neighborhood. Therefore we believe that some relief for height is appropriate in this case, as it will result in a more conforming accessory building while helping preserve the historic characteristics of the surrounding area.

Therefore, the approval of Variances from the open space, offset and height requirements and a Special Exception to the accessory building floor area ratio requirements, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA16:003 LARRY AND LYNN FIELDS (OWNER) HAMMOND BUILDERS (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, with an additional condition (#6) to be added which states that: **A declaration of restriction shall be prepared and recorded with the Waukesha County Register of Deeds, indicating that the second floor space designated as unusable space, as submitted on the building plans (revision date 1-5-16), cannot be used for any purpose, including storage. The restriction shall expire to the extent that the petitioners are permitted by subsequent revisions of the Waukesha County Shoreland and Floodland Protection Ordinance.***

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 variances from the floor area ratio and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, and **approval** of the Special Exception to the minimum first floor area requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to permit the construction of a new residence and attached garage, subject to the following conditions:

1. The size of the proposed home and attached garage cannot exceed a floor area ratio of 23.04%.
2. Prior to the issuance of a zoning permit, the existing storage shed must be removed.
3. The second floor space designated as "Unusable Space" on the submitted building plans (revision date 1-5-16) cannot be utilized for any purpose, including storage, unless permitted by the Ordinance.
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. Documentation from the Waukesha County Environmental Health Division indicating that the existing septic system can be used for the proposed home, must be provided.

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.

Hardships relative to open space exist on the subject property due to its non-conforming size. Since the lot is only 7,078 sq. ft. in area, it is impossible to meet the open space requirement of 15,000 sq. ft.

Hardships also exist in regards to both the maximum floor area ratio requirements and the minimum floor size requirements of the Ordinance. Strict adherence to floor area ratio requirements would not allow the owner to construct a home that met the minimum size requirements of the ordinance. Conversely, strict adherence to the minimum floor area requirements would make it impossible to stay under the allowed maximum floor area ratio of 15%. It should be noted that the petitioner could modify the proposal to re-allocate square footage from the proposed 2nd floor to the proposed 1st floor to meet first floor square footage requirements, however the resulting structure would have a larger footprint, would further reduce open space, and would inevitably be closer to the road, lake, or adjacent lot lines.

Therefore, the approval of variations from the floor area ratio and open space requirements, and the approval of a special exception from the minimum 1st floor area requirements with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA16:004 BRUNO AND CYNTHIA-JO STAMM (OWNERS) CHAMPION WINDOWS (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 3-2 (Ms. Bonniwell and Mr. Schmidt voted no).

The Planning and Zoning Division staff's was for **approval** of the request for variations from the floor area ratio and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a 10' x 14' one story sunroom addition to the existing home on the subject property, subject to the following conditions:

1. The new sunroom addition shall be no larger than 10' x 14' as indicated on the plat of survey submitted with the application.

2. The new sunroom addition shall conform to the required minimum sideyard offset 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 addition must be located so that the outer edges of the overhangs conform.
3. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location of the proposed sunroom addition, 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.
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.

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

Hardships exist on the subject property due to its size. Since the lot is only 10,062 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 15%.

The petitioner's request for a floor area ratio of 15.9% only exceeds the allowable building limits by 90 sq. ft. By improving the home with a 10' x 14' addition, they are bringing a structure which currently doesn't meet the minimum size requirements of the Ordinance closer to conformance relative to size.

Therefore, the approval of floor area ratio and open space variances to permit the construction of the proposed 10' x 14' sunroom addition with the recommended conditions, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

BA16:001 GERTRUDE AND MIHALOVICH PLETCHER (OWNER) DAVID AND ANDREA MIHALOVICH (APPLICANTS)

Mr. Bayer

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

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

The Planning and Zoning Division staff's recommendation was for **denial** of the request for a variance from the floor area ratio requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a single family residence.

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.

This lot which is 14,544 sq. ft., conforms to the R-3 district minimum lot size requirements of 14,000 sq. ft. for lots served by sewer. Since the lot conforms to the size requirements and because the only request for relief is for floor area ratio, no hardship as defined by the Wisconsin Supreme Court has been demonstrated. By right (without variance), the petitioners could construct 2,800 sq. ft. in first and second story improvements on this lot. Basement level space provides still more options for achieving additional useable space, thus without the granting of variance from floor area ratio, they would still be able to utilize the property for a permitted purpose. Therefore, the **denial** of a variance from the floor area ratio requirements, is in conformance with the purpose and intent of the Ordinance.

BA16:002 GAYLE McGUIRE

Mr. Schmidt

I make a motion to approve the request for variance from the minimum lot size and width requirements, and to deny the request for variance from floor area ratio requirements, 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 a variance from the floor area ratio requirements of the Waukesha County Shoreland and Floodland Protection Ordinance but **approval** of the request for variances from the minimum lot size and width requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the creation of two non-conforming lots, subject to the following conditions:

1. A Certified Survey Map combining the four adjacent parcels into two lots must be prepared by a registered Land Surveyor, reviewed and approved by the Town of Eagle 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.
2. All proposed lots must meet the current floor area ratio requirements of the district. (This will require that approximately 1,000 sq. ft. of improvements be removed from proposed Lot 14/15 prior to recordation of the Certified Survey Map.)

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.

A hardship does exist relative to the lot size and lot width requirements due to the non-conforming width and size of the lots. Though they have been regulated as one lot for construction purposes, these are still technically four lots of record on the subject property. Thus there is potential for up to four new residences if the existing structures were to be razed and the property separated back to the original four lots as they existed in July 1970. This could be done by the petitioner without the need for variations or a Certified Survey Map. This proposal would create two more-conforming lots from four less-conforming lots, therefore, the approval of variations from the minimum lot size and width requirements, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

However, no hardship has been demonstrated relative to the request for floor area ratio relief. The documentation of permitted improvements on the subject property clearly demonstrate that the combined area of all four lots was utilized to demonstrate compliance with floor area ratio regulations to allow for the existing improvements to be constructed. It should also be noted that the property currently conforms to floor area ratio requirements when all parcels are considered.

The property currently contains over 3,800 sq. ft. of improvements. Staff feels that the property could still be utilized for a permitted purpose if the approximately 1,000 sq. ft. of improvements were removed to bring the property into floor area ratio compliance.

Therefore, the request for relief from floor area ratio based on a proposed land division is a self-created hardship and does not meet the required tests for variance as defined by the Wisconsin Supreme Court.

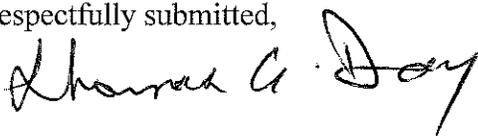
ADJOURNMENT:

Mr. Bayer

I make a motion to adjourn this meeting at 8:23 p.m.

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

Respectfully submitted,



Nancy M. Bonniwell/Tom Day
Secretary, Board of Adjustment/Chairman