

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, March 9, 2016, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 516 W. Moreland Blvd., Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: Tom Day, Chairman
Walter Schmidt
Richard Nawrocki
Richard Bayer
Nick Jordan

BOARD MEMBERS ABSENT: Nancy M. Bonniwell
Rob Schuett

SECRETARY TO THE BOARD: Richard Bayer

OTHERS PRESENT: Town of Merton Board of Adjustment
Rebekah Baum, Senior Land Use Specialist
Gene Eggert, Architect, BA16:005
Jerry Donovan, Owner, BA16:005
Matt Clarkson, Owner, BA16:007
John Nelson, Builder, BA16:007
Brian Andaloro, Architect, BA16:007
John Fox, Architect, BA16:008
Ken Dahlin, Architect, BA16:008
Dan Mishich, Owner, BA16:008
Lois Mishich, Owner, BA16:008
Gwen Adair Stangohr, Neighbor, BA16:008
Steve Dufresne, Neighbor, BA16:008
Rick Zimbric, Neighbor, BA16:008
Jim Ruppenthal, Neighbor, BA16:010
Gary Etzel, Builder, BA16:010
Paul Schultz, Architect, BA16:010
Susan Tynes, Owner, BA16:009
Tony Larson, Builder, BA16:009
Jason Ruebl, Builder, BA16:009
Bill Ruebl, Builder, BA16:009

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 February 10, 2016.

The motion was seconded by Mr. Bayer and carried unanimously, with Mr. Jordan abstaining.

NEW BUSINESS:

BA16:005 GERALD DONOVAN (OWNER) GENE EGGERT (PETITIONER)

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**, subject to the following conditions:

1. Prior to the issuance of a Zoning Permit for the construction of a basement, 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 basement and associated fill does not result in adverse drainage onto adjacent properties.
2. No expansion of the existing building footprint is permitted.
3. The basement must meet the requirements of Waukesha County's Basement Wetness and Flooding Prevention Standards (i.e., there must be a vertical separation distance of at least one (1) ft. between the seasonal high groundwater table and the floor of the basement) and must be at or above the base flood elevation (959.7 ft. above mean sea level referenced to the NGVD29 datum), whichever is greater.
4. In order to offset the impact of the shore and floodplain setback encroachments and the additional fill, a Mitigation Plan involving the installation of a minimum 10' wide rain garden or filter strip running from the western terminus of the concrete swale to the shoreline of Lake Keesus must be implemented. Prior to the issuance of a Zoning Permit, a detailed Landscape/Mitigation Plan for the area subject to mitigation shall be prepared by a registered Landscape Architect or natural resources professional and submitted to the Planning and Zoning Division Staff for review and approval. The vegetative buffer shall include, at a minimum, a mix of perennial plants and grasses native to Wisconsin. If there are any existing trees located within the required mitigation area, the location, size and species of all such trees shall be identified on the Landscape/Mitigation Plan and must remain as part of the Landscape/Mitigation Plan. The Landscape/Mitigation Plan must include a timetable for completion. The Mitigation Plan must be implemented and the site stabilized within 12 months of the date of Zoning Permit issuance.

5. A Declaration of Restrictions shall be prepared noting that the Landscape/Mitigation Plan as required in Condition No. 4 above be permanently maintained unless modified by the Waukesha County Planning and Zoning Division. The Declaration of Restrictions shall also state that staff members of the Waukesha County Department of Parks and Land Use, or its successor, shall be permitted to conduct periodic inspections of the property for the purpose of verifying that the required vegetative buffer is maintained. The Declaration of Restrictions shall also include long-term maintenance provisions. Prior to the issuance of a Zoning Permit, the Declaration of Restrictions must be signed by the owners, notarized, and recorded in the Waukesha County Register of Deed's office, 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:

The applicant's primary reason for lifting the home to excavate a basement, is to alleviate the adverse drainage situation that currently causes water to pond between the driveway and garage. By lifting the structure and bringing up grade where the current garage approach is located, water will more effectively drain around the home as opposed to getting trapped against the home and garage. The petitioner has also proposed rain gardens to infiltrate runoff.

Since the proposed basement will be constrained within the footprint of the current foundation and will not get closer to the lake, floodplain, or adjacent lots, we believe some relief from those setback requirements is appropriate for the purpose of achieving a basement and improving site drainage addresses a unique physical site condition.

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. Staff feels that a hardship exists relative to site drainage conditions and that the basement and related grading project will help alleviate this issue.

Therefore, the approval of variations from the shore and floodplain setback requirements and a special exception to the offset requirements, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA16:008 DANIEL AND LOIS MISHICH (OWNERS)

Mr. Bayer

I make a motion to deny the petitioner's request for floor area ratio and open space but approval of modified variations for floor area ratio and open space. I recommend conditions in accordance with the staff report, with the following additional conditions for the following reasons:

1. *Floor Area Ratio shall not exceed 21% (2,813 sq. ft.).*

2. *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 open space approval, as listed in the staff report, shall be modified to say:

*“Because the property is 13,397 sq. ft. in area, no buildings could be constructed without relief from the open space provisions. **With the conditioned floor area ratio not to exceed 21%**, 85% of the lot would remain in open space, which would allow for a 2,009 sq. ft. footprint. This would provide reasonable open space and would grant the petitioners a reasonable building footprint, while not causing an adverse impact on neighboring properties.”*

I replace the staff’s reasons for denial of floor area ratio with the following reasons for approval:

“A hardship exists due to the substandard lot and when looking at the existing house floor area ratio, the low number is deceiving as the house does not have a garage. The house square footage, as modified in the meeting, is reasonable and now contains a necessary 24 ft. x 24 ft. garage.”

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 floor area ratio and open space requirements, but **approval** of a modified variance from the open space provisions of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit a single family home and attached garage, subject to the following conditions:

1. A minimum of 11,387 sq. ft. (85% of the lot area) shall remain as open space. The footprint of any proposed residence and all outbuildings, covered decks, covered patios, roof overhangs that exceed 2 ft. in width, and other covered surfaces, count against the open space calculation.
2. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out locations of the proposed residence, attached garage, decks or patios, as well as any proposed sidewalks, stairs, walkways and/or retaining walls (proposed or existing), 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.

3. 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. 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. This Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 2
4. 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.
5. The proposed residence must not exceed three stories (including any exposed basement level), as viewed from the lake.

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.

It has not been demonstrated that a hardship exists relative to floor area ratio, as the Ordinance allows for approximately 2,000 sq. ft. of improvements on this site, by right. This provides for use of the property for a permitted purpose (house and garage). Additional living and storage spaces are available in the multiple basement levels being proposed. There are no unique physical limitations that preclude reasonable use relative to floor area ratio.

However, because the property is 13,397 sq. ft. in area, no buildings could be constructed without relief from the open space provisions. By conforming to the required 15% floor area ratio requirement, 85% of the lot would remain in open space, which would allow for a 2,009 sq. ft. footprint. This would provide reasonable open space and would grant the petitioners a reasonable building footprint, while not causing an adverse impact on neighboring properties.

Therefore, the denial of variations from the floor area ratio and open space requirements, but approval of a modified variance from the open space provisions, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA16:007 MATTHEW AND LISA CLARKSON (OWNERS) VICTORY HOMES (APPLICANT)

Mr. Schmidt

*I make a motion **to table this matter until the April 13, 2016** meeting of the Board of Adjustment, in accordance with the applicants request dated March 9, 2016.*

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

BA16:010 GEORGE SARGENT (OWNER) PAUL SCHULTZ (AGENT)

Mr. Bayer

I make a motion to deny the petitioner's request for floor area ratio and open space, but approve a modified variance for floor area ratio and open space with the following conditions and for the following reasons:

1. *Floor area ratio shall not exceed 21% (2,739 sq. ft.).*
2. *Open space shall be a minimum of 10,300 sq. ft.*
3. *A mitigation plan shall be prepared to offset the impact of the variance and shall be reviewed and approved by Waukesha County Planning and Zoning Division staff (see note*).*
4. *A Declaration of Restrictions shall be prepared noting that the Mitigation Plan as required in Condition No. 3 above be permanently maintained unless modified by the Waukesha County Planning and Zoning Division. The Declaration of Restrictions shall also state that staff members of the Waukesha County Department of Parks and Land Use, or its successor, shall be permitted to conduct periodic inspections of the property for the purpose of verifying that the mitigation plan is maintained. The Declaration of Restrictions shall also include long-term maintenance provisions. Prior to the issuance of a Zoning Permit, the Declaration of Restrictions must be signed by the owners, notarized, and recorded in the Waukesha County Register of Deed's office, and a copy furnished to the Planning and Zoning Division staff.*
5. *Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out locations of the proposed residence and attached garage, 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.*

6. *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 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. This Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 5.*

7. *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.*

The reasons include: "The lot is substandard. The house and garage size, as conditioned, is reasonable because it does not have a basement, as a basement is not conducive to the lot. Open space relief is necessary to provide for the allowable square footage. Mitigation will help protect the quality of the lake due to the increase in impervious surface."

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 floor area ratio and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a new single family residence with an attached garage.

While there are physical limitations relative to high groundwater on this lot, this condition is common place in the neighborhood. The ordinance provides for a reasonable amount of building square footage to achieve a residence and garage. If desired, additional storage space could be designed into the attic spaces above the garage if accessed via pull down stairs.

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 13,044 sq. ft., nearly conforms to the R-3 district's minimum lot size requirements of 14,000 sq. ft. for lots served by sewer. By right (without variance), the petitioners could construct 2,544 sq. ft. of improvements on this lot. It should also be noted that 2,544 sq. ft. of improvements on a 13,044 sq. ft. lot would comply with open space requirements of 10,500 sq. ft. for sewered lots. The inability to construct a basement due to high ground water conditions does make designing adequate storage in a home more challenging, however a limit of 2,544 sq. ft. of improvements on a lot this size is not unreasonably burdensome, and will still allow the petitioners to use their property for a permitted purpose of residential use. Therefore, the denial of variations from the floor area ratio and open space requirements is in conformance with the purpose and intent of the Ordinance.

BA16:009 THOMAS AND SUSAN TYNES (OWNERS) RUEBL BUILDERS LLC (APPLICANT)

Mr. Schmidt

*I make a motion **to table this matter until the April 13, 2016** meeting of the Board of Adjustment, in accordance with the applicants request dated March 9, 2016.*

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

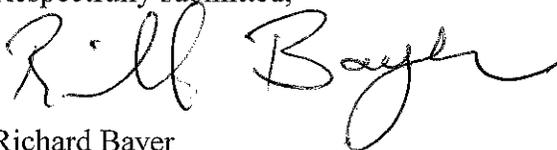
ADJOURNMENT:

Mr. Jordan

I make a motion to adjourn this meeting at 9:14 p.m.

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

Respectfully submitted,



Richard Bayer
Acting Secretary, Board of Adjustment