

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, April 13, 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  
Nancy M. Bonniwell  
Richard Bayer

**BOARD MEMBERS ABSENT:** Rob Schuett  
Nick Jordan

**SECRETARY TO THE BOARD:** Nancy M. Bonniwell

**OTHERS PRESENT:** Amy Barrows, staff  
Kayla Reithmeyer, staff  
Bryan and Jessica Lehr – owners  
Ken and Evie Werra – owners  
Abby Werra – daughter  
Bev and Jerry Peterson – (Werra) neighbors  
Matt Clarkson – owner  
Gloria, Darlene and Peter Van Aacken – owners  
Bob and Judy Wrobelski – (Modl) – neighbors  
Tom Modl – owner  
Paul Schultz – (Modl) - architect

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, an audio recording of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and an audio recording is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Nawrocki *I make a motion to approve the Summary of the Meeting of March 9, 2016.*

The motion was seconded by Mr. Bayer and carried with 4 yes votes. Ms. Bonniwell abstained because she was absent at the March 9, 2016 meeting.

**NEW BUSINESS:**

**BA16:012 KENNETH AND EVELYN WERRA**

Ms. Bonniwell

*I make a motion to approve the request in accordance with the staff report, with the following modifications to the staff's conditions and reasons:*

*Condition No. 1 shall be modified to read, "The new residence, attached garage and any appurtenances, including the deck, patio and related staircases, must be located no closer than 5 feet from the floodplain and wetlands and no further north than the average of the two adjacent residential structures, whichever distance is more restrictive."*

*Condition No. 2 shall be modified to read, "In order to offset the impact of the conservancy-wetland setback encroachments, a Mitigation Plan must be prepared to provide for a 100 foot deep "no-mow" native wetland vegetative buffer adjacent to Lac La Belle. The buffer can exclude 35% of the lot width, as measured parallel to the shoreline to accommodate an access/view corridor. 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 Mitigation Plan and must remain as part of the Mitigation Plan. The Mitigation Plan must include a timetable for completion. The Mitigation Plan must be implemented and the site stabilized by September 15, 2016 unless extended by the Waukesha County Planning and Zoning Division upon just cause."*

*The reasons for the modified approval are as follows, "Variances 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. Variances also require that there are unique physical conditions existing on the property, which are not self-created, and which prevent compliance with the Ordinance thereby causing a hardship/no reasonable use.*

*Although the proposed residence is extremely close to the wetlands and floodplain, the residence is in conformity to the rest of the neighborhood. The significant buffer will mitigate any impacts. A variance is necessary because of the large area of wetland and floodplain. The variance will provide reasonable use."*

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

The Planning and Zoning Division staff's recommendation was for **denial** of the petitioners' request for variances from the floodplain and conservancy-wetland setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, but **approval** of modified variances from the floodplain and conservancy-wetland setback requirements, to permit the construction of a new single family residence with an attached garage, deck and patio, subject to the following conditions:

1. The new residence, attached garage and any appurtenances, including the deck, patio and related staircases, must be located no closer than 15 feet from the floodplain and wetlands and no further north than the average of the two adjacent residential structures, whichever distance is more restrictive.
2. In order to offset the impact of the conservancy-wetland setback encroachments, a Mitigation Plan must be prepared to provide for a 50 foot deep "no-mow" native wetland vegetative buffer adjacent to Lac La Belle. The buffer can exclude 35% of the lot width, as measured parallel to the shoreline to accommodate an access/view corridor. 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 Mitigation Plan and must remain as part of the Mitigation Plan. The Mitigation Plan must include a timetable for completion. The Mitigation Plan must be implemented and the site stabilized by September 15, 2016 unless extended by the Waukesha County Planning and Zoning Division upon just cause.
3. A Declaration of Restrictions shall be prepared noting that the Mitigation Plan as required in Condition No. 2 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 with ample notice 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.
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. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out locations of the proposed residence, attached garage, deck, patio, and any appurtenances, 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. **Please note that no fill may be placed within the 100-year floodplain or wetland.** Orange construction fencing must be installed and maintained until construction is complete. 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. This Grading Plan may be combined with the Plat of Survey required in Condition No. 5.
7. The lowest floor shall be a minimum of 1 ft. above the elevation of the seasonal high groundwater table and a minimum of 2 ft. above the regional floodplain elevation.

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

Variances 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. Variances also require that there are unique physical conditions existing on the property, which are not self-created, and which prevent compliance with the Ordinance thereby causing a hardship/no reasonable use.

Although the petitioner could be granted a reasonably sized building envelope without the need for variances, the development pattern for the neighborhood has been set so that the remaining homes along Hawthorne Drive would be located much closer to the lake than the available permitted building envelope, significantly reducing the lake view for the petitioners. It should be noted that the main part of the lake is located just northwest of the subject property. Unique physical conditions exist because the subject and adjacent properties contain vast areas of wetland and floodplain. There is also a unique circumstance on the property where the floodplain extends approximately 40 ft. further south than the adjacent properties, which affects the buildable area on the subject property.

Providing a floodplain and wetland setback of 15 ft. rather than 5 ft., will ensure that land altering activities and construction activities do not encroach on the floodplain or wetland and will ensure space for long-term maintenance in the area near the residence. The required wetland buffer will improve water quality and habitat within the near-shore area, wetland, and area that is subject to frequent flooding and will help to offset the proposed floodplain and wetland setback.

Therefore, denial of the petitioners' request for variances from the floodplain and conservancy-wetland setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, but approval of modified variances from the floodplain and conservancy-wetland setback requirements, to permit the construction of a new single family residence with an attached garage, deck and patio, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**NOTE: The following item was taken out of order.**

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

Mr. Nawrocki *I make a motion to approve the Staff Memorandum dated April 13, 2016, which clarifies the required mitigation standards required in Condition #3 of the March 9, 2016 Board of Adjustment Decision.*

The motion was seconded by Mr. Bayer and carried with 4 yes votes. Nancy abstained because she was not present at the March 9, 2016 meeting.

The Planning and Zoning Division's Staff Memorandum requested that the following statement be added to the Decision Sheet to clarify the specific requirements of Condition No. 3.

*In order to offset the impact of the increased floor area ratio and decreased open space, a mitigation plan involving the installation of a native vegetative buffer within the area 15 ft. inland from the shoreline of Lac La Belle must be implemented along approximately 55 ft. of shoreline, which allows for a 35% (approx. 29 ft.) single, contiguous viewing corridor. Prior to the issuance of a Zoning Permit, a detailed Landscape/Mitigation Plan for the area subject to the mitigation requirements 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.*

**BA16:011 THOMAS MODL (OWNER) PAUL SCHULTZ (AGENT)**

Mr. Schmidt *I make a motion to approve the request in accordance with the staff report, with the conditions listed in the staff report, including the following modifications. The reasons stated in the staff report remain, except that the reasons should reflect the removal of two accessory structures, rather than three.*

*Condition No. 1 shall be modified to read, "The attached garage shall not exceed 528 sq. ft. in size and shall be located no closer to the west and east lot lines than the existing residence. The total floor area ratio shall not exceed 15% of the lot area."*

*Condition No. 2 shall be modified to read, "The existing car port and shed located in the vicinity of the proposed garage shall be removed prior to the issuance of a Zoning Permit for the attached garage. The shed and patio near the lake may remain."*

The motion was seconded by Mr. Bayer and carried with 4 yes votes. Ms. Bonniwell voted against the motion because she felt that the shed near the lake should be removed as recommended by staff.

The Planning and Zoning Division staff's recommendation was **approval** of the request for a variance from the open space requirements and a special exception from the offset requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit an attached garage to the existing residence, subject to the following conditions:

1. The attached garage shall not exceed 528 sq. ft. in size and shall be located no closer to the west and east lot lines than the existing residence.
2. The existing car port, two sheds, and patio surface that lead from the stairway to the existing shed near the lake, shall be removed prior to the issuance of a Zoning Permit for the attached garage and be restored at a minimum with grass seed and mulch.
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. Prior to the issuance of a Zoning Permit, a complete set of building plans with exterior elevations of all sides, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. 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 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. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed garage 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. 5.

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 hardship exists because the property is severely nonconforming in width (average of 35.5 ft.) and size (11,638 sq. ft.). The open space requirements on this nonconforming parcel would prevent the construction of any structural improvements without a variance. The petitioner is willing to remove three nonconforming accessory structures in order to construct a modest sized attached garage. Therefore, the total area of roofed structures would only increase by 192.7 sq. ft. The increase in roofed area would be further offset by the reduction in patio area near the lake. A special exception from the offset provisions in order to accommodate an attached garage is also reasonable. The existing residence is only 24.2 ft. wide. The attached garage will be measured 22 ft. in width in order to maintain the same offset as the existing residence because the lot narrows to a greater extent in the location of the garage. The removal of the existing nonconforming structures and construction of an attached garage will improve the overall conformity of the lot and would not negatively impact the surrounding neighborhood or natural resources.

Therefore, the approval of a variance from the open space requirement and a special exception from the offset requirement, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

#### **BA16:014 BRYAN AND JESSICA LEHR**

Mr. Bayer

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

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

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

1. The new residence, attached garage and any appurtenances, including the deck, patio and related staircases, must be located no closer than 11.5 ft. from the established baseline of Road P or 19 ft. from the platted road right-of-way. The stoop and staircase on the roadside of the residence will need to be modified accordingly.

2. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out locations of the proposed residence, attached garage, deck, patio, and any appurtenances, 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. 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 storm water and drainage. This Grading Plan may be combined with the Plat of Survey required in Condition No. 2.
4. In order to offset the impact of the road setback variance, which will significantly impact a wooded slope, a Mitigation Plan must be prepared to provide for a 35 foot deep “no-mow” native wetland vegetative buffer adjacent to Okauchee Lake. The buffer can exclude 35% of the lot width, as measured parallel to the shoreline to accommodate an access/view corridor. The vegetative buffer shall include, at a minimum, a mix of perennial plants and grasses native to Wisconsin. The Mitigation Plan shall also include the planting of four (4) trees native to Wisconsin of a minimum size of 2 in. diameter at breast height, located between 35 ft. and 100 ft. of the lake. If there are any existing trees located within the required mitigation buffer area, the location, size and species of all such trees shall be identified on the Mitigation Plan and must remain as part of the Mitigation Plan. The Mitigation Plan must include a timetable for completion. The Mitigation Plan must be implemented and the site stabilized by September 15, 2016 unless extended by the Waukesha County Planning and Zoning Division upon just cause.
5. A Declaration of Restrictions shall be prepared noting that the 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 with ample notice 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:

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. Variations also require demonstration that there are unique physical conditions existing on the property, which are not self-created, and which prevent compliance with the Ordinance thereby causing a hardship/no reasonable use.

Staff feels that this is a very difficult lot to re-develop. The pre-existing residence appears to have been accessed via an adjacent property, likely because the grades on the narrow lot are challenging. The petitioners have expressed a preference to have a basement, but soil conditions at the pre-existing home site created a physical challenge, as they are poorly drained. Basement construction in the area near the lake would have prompted the need for significant near-shore fill and may have created drainage problems for neighbors. The petitioner has expressed concern runoff from a new driveway may negatively affect a homesite near the lake. The petitioner has expressed concern that complying with road setback may cause other drainage concerns as both road and driveway runoff would run down slope towards the roadside of the proposed residence. Staff feels that the combination of a steep slope and poor drainage creates a hardship in redeveloping the property for a permitted purpose.

The granting of a road setback variance will help to alleviate drainage concerns and will allow the home to be constructed at the top of the slope. A steep wooded slope will be disturbed to accommodate the reduced road setback. However, as recommended, a shore buffer will be required to mitigate the loss of the wooded slope that is necessitated by the granting of this variance. A new home could have been constructed as close as 35 ft. to the shore, whereas this proposal will significantly increase the shore setback and will help push the future development pattern further from the lake in the surrounding area over time.

Therefore, approval of the petitioners' request for a variance from the road setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a new single family residence with an attached garage, deck and patio, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA16:013 DARLENE, PETER AND GLORIA VAN AACKEN**

Mr. Schmidt

*I make a motion to approve the request in accordance with the staff report, with the following modifications to the conditions and reasons.*

*Condition No. 1 shall be modified to read, "The footprint of the attached garage shall not exceed 250 sq. ft. in area. If a loft area is proposed, it must be accessed by a pull-down staircase only."*

*A condition shall be added that reads, "The shed shall be removed prior to the issuance of a Zoning Permit."*

*I add the following to the reasons, "There will still be 81% open space available on the property."*

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

The Planning and Zoning Division staff's recommendation was for **denial** of the petitioners' request for variances from the floor area ratio, offset and open space requirements, but **approval** of a modified request for variances from the floor area ratio, offset and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit a garage attached to the existing residence, subject to the following conditions:

1. The footprint of the attached garage shall not exceed 250 sq. ft. in area.
2. The attached garage shall be located a minimum of 7 ft. from the north and east lot lines.
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. Prior to the issuance of a Zoning Permit, a complete set of building plans with exterior elevations of all sides, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all structures and the staked-out location of the proposed garage, in conformance with the above conditions, must be prepared by a professional land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed garage 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. 5.

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 hardship exists because the property is severely nonconforming in size (6,464 sq. ft.). The open space and floor area ratio requirements on this nonconforming parcel would prevent the construction of any structural improvements without a variance. The petitioner removed a garage several years ago and no longer has any interior space for storage, with the exception of an 80 sq. ft. illegal shed that will be removed. It should also be noted that there is no basement to provide an area for storage. However, because the lot is severely nonconforming in size, minimal relief shall be provided in order to protect the neighborhood from overdevelopment on the individual lots. A maximum 250 sq. ft. garage will provide storage to accommodate one vehicle and/or lawn equipment and a seven (7) ft. offset will provide additional space to accommodate drainage and long term maintenance needs. If the petitioner desires additional living or storage space, consideration should be given to a 2<sup>nd</sup> story rather than utilizing additional lot area on this severely nonconforming parcel.

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

#### **OTHER ITEMS REQUIRING BOARD ACTION:**

#### **BA16:007 MATTHEW AND LISA CLARKSON (OWNERS) VICTORY HOMES (APPLICANT) matter tabled at the March 9, 2016 meeting.**

Ms. Bonniwell

*I make a motion to un-table the BA16:007 Matthew and Lisa Clarkson hearing and approve the petitioner's request, subject to all structures, including decks and patios, being located within the setbacks proposed by the petitioners and that the existing patio be removed. I approve the request because the proposal gives reasonable use of the property. A hardship would exist if the proposal were denied. The request will not be harmful to the public. The residence will not create a shoreline encroachment because it is in the same location as the existing residence. The addition will be located on the rear side of the residence away from the lake. The location of the residence will preserve trees and vegetation because it is sited in the same location as the existing residence. The petitioner is being conservative with his request for a variance and the variance meets the intent of the ordinance.*

The motion was seconded by Mr. Schmidt and carried with 4 yes votes. Mr. Nawrocki voted against the motion.

The Planning and Zoning Division staff's recommendation was for **denial** of the petitioners' request for variances from the shore and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a single-family residence with a deck:

The reasons for the recommendation, as stated in the Staff Memorandum, 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.

Staff has analyzed the proposed building footprint size in relation to the required shore and floodplain setback requirements of the Ordinance and has determined that there is adequate space on-site to accommodate the proposed building without encroaching on setbacks. The petitioner notes difficulty in comply with the 75 ft. setbacks, however as noted on Page 2 of this report, reduced setbacks are available by right and there is not a 75 ft. setback requirement. Accordingly, it has not been demonstrated that a hardship exists. The averaging provisions grant enough relief from the required shore and floodplain setbacks that the proposed home could be built in a conforming location (see Exhibit "C"). In addition, as there is currently no basement and a basement is being proposed, there is no potential re-use of the existing foundation. However, the site visit has revealed a six (6) ft. cinderblock foundation that the petitioners are proposing to reuse.

The petitioners also indicate that the proposed residence location helps to preserve trees and vegetation on site and submitted a site plan showing mature trees on the property (Exhibit "D"). However, the plan does not depict trees of size in the conforming location that would be available for a potential re-build as shown on Exhibit "C." There are a few trees shown on the plan that are approximately 3 to 4 feet away from the proposed residence. Basement construction activities in the proposed location may cause more damage to these trees than an alternative conforming site. It should be noted that Mr. Bourquin has indicated that the existing six (6) ft. foundation may mitigate some of the damage done to the root systems of 2-3 trees based on the proposal and addition of a full basement, as the roots have likely shaped themselves around the existing foundation. By relocating the footprint to a conforming location, two (2) trees will need to be removed (one mature White Oak and one small Black Cherry) and damage to root systems of other trees are unlikely. It should be noted that it appears as though the petitioner's proposal would also likely require the removal of the White Oak. After evaluating the proposal in conjunction with the site visit and considering the input of Mr. Bourquin, staff feels that relocating the footprint of the house approximately 17-22 ft. to the north, as shown on Exhibit

“C,” will result in the same number of trees lost, if not less, than building in an expanded footprint of the existing residence. The intent of the Ordinance is to preserve shore cover and natural beauty in part, by preventing shoreline encroachments of structures. While staff recognizes the importance of preserving mature trees and other vegetation, the island is not designated as any type of environmental corridor and all trees that would need to be removed, in both the existing and proposed [by staff] locations, are not within 35 ft. of the shoreline and removal is therefore not regulated by Waukesha County. As such, staff does not believe that it has been demonstrated that unique physical conditions exist on the site.

Therefore, the denial of variances from the shore and floodplain requirements is in conformance with the purpose and intent of the Ordinance.

**BA16:009 THOMAS AND SUSAN TYNES (OWNERS) RUEBL BUILDERS LLC (APPLICANT) matter tabled at the March 9, 2016 meeting.**

Mr. Bayer *I make a motion to table this matter until the May 11, 2016 meeting of the Board of Adjustment.*

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

**ADJOURNMENT:**

Mr. Schmidt *I make a motion to adjourn this meeting at 8:47 p.m.*

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

Respectfully submitted,

*Nancy M. Bonniwell*  
Nancy M. Bonniwell  
Secretary, Board of Adjustment