

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, July 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  
Richard Bayer  
Nick Jordan

**BOARD MEMBERS ABSENT:** Nancy M. Bonniwell  
Rob Schuett

**SECRETARY TO THE BOARD:** Acting Secretary – Richard Bayer

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Amy Barrows, Senior Planner  
Dennis Ketterhagen, BA16:021, petitioner's father  
Casey Ketterhagen, BA16:021, petitioner  
Dave Wildman, BA16:006, neighbor  
Michael Todd, BA16:023, petitioner  
Pamela Todd, BA16:023, property owner  
Steve Sobieski, BA16:022, agent  
Lawrence Gregg, BA16:021, neighbor  
Kathy Sheedy, BA16:021, neighbor  
Mark Pedriani, BA16:021, neighbor  
Jay Cavaiani, BA16:006, petitioner  
Gary Reichert, BA16:006, property owner  
Bonnie Reichert, BA16:006, property owner's spouse  
Paul Schultz, BA16:019, agent  
Mike Campbell, BA16:006, engineer

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.

**SUMMARY OF PREVIOUS MEETING:**

Mr. Nawrocki *I make a motion to approve the Summary of the Meeting of June 8, 2016.*

The motion was seconded by Mr. Bayer and carried with four (4) yes votes. Mr. Jordan abstained because he was not at the June 8, 2016 meeting.

**NEW BUSINESS:**

**BA16:021 CASEY KETTERHAGEN**

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **denial** of variances from the offset-separation between buildings and road setback-from a private right-of-way for the construction of a detached garage. Discussion between the petitioner, Board and Staff followed.

*Public Reaction:*

- The owner's father spoke in favor of the request and stated that the existing garage needs to be converted to living space so that a handicapped accessible bathroom can be constructed for his use.
- Kathleen Sheedy (beneficiary of the easement) does not want the easement vacated and does not want the garage construction to affect her ability to use the easement as needed in the future.
- Lawrence Gregg (neighbor and Secretary of Beaver Lakewood Corp.) spoke in favor of the request. The Beaver Lakewood Corp. would like to see the owner stay in the neighborhood. Mr. Gregg stated that the easement was formerly used as a farm road and the Sheedy's have direct access to their property from Lakewood Rd.

Decision and Action:

The Town of Merton Board of Adjustment recommended approval of the petitioner's request as proposed.

Mr. Schmidt *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. Nawrocki and carried unanimously.

Mr. Nawrocki *I make a motion to reconsider the previous motion.*

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

*Mr. Day reopened the public hearing.*

Mr. Nawrocki *I make a motion to table the matter to the next meeting to provide the petitioner an opportunity to revise the layout of the garage on the site plan and research the easement for consideration.*

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

**BA16:019 JEFFREY ELLIS (OWNER) PAUL SCHULTZ (AGENT)**Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **denial** of variances from the road setback, offset, shore, floodplain, and conservancy setbacks for the construction of a detached garage. Discussion between the petitioner, Board and Staff followed.

*Public Reaction:*

- The adjoining neighbor to the south submitted a letter of objection and spoke against the request due to flooding on her property. She is concerned that the garage construction will cause additional flooding.
- The Town of Oconomowoc Plan Commission recommended approval as requested.
- The DNR concurred with Staff's analysis and recommendation and recommended denial of the petitioner's request.

Mr. Schmidt

*I make a motion to approve the petitioner's request, subject to the following conditions and reasons:*

1. *The size of the garage shall not exceed 22.5 ft. wide x 24 ft. deep.*
2. *The offset from the drainage easement (navigable stream) shall be 5.7 ft.*
3. *The offset from the south lot line shall be 10.2 ft.*
4. *Prior to the issuance of a Zoning Permit, a complete set of building plans for the detached garage, 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 detached 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. In addition, the floodplain and wetland boundaries shall be shown on the Plat of Survey.*
6. *In order to ensure the construction of a new detached garage does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades and relationship to the proposed rain gardens, 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 marking the closest extent of the wetland and floodplain until construction is complete. A Zoning Permit for the detached garage will not be issued until a site inspection verifying the installation of the orange fencing had occurred.** 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 wetland or drainage easement, 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 of the garage shall be a minimum of 1. ft. above the regional floodplain elevation.*
8. *The gravel pads located on the property shall be removed, prior to the issuance of a Zoning Permit and restored with vegetation. The gravel pad on the western lot line may remain if it is used as a base from the approved garage.*
9. *The owners must obtain a Preliminary Site Evaluation from the Environmental Health Department, prior to the issuance of a Zoning Permit, if applicable.*
10. *The proposed rain gardens on the east and west side of North Shore Drive shall be a minimum of 10 ft. wide and 30 ft. deep.*
11. *As proposed, invasive species within the wetland buffer area on site must be removed, re-sprouts treated with herbicide, and re-seeded with a native prairie species. A Shoreland Cutting Permit shall be obtained prior to the removal of invasive species or trees within the wetland buffer area and wetland W1 area as identified in Figure 1, as submitted in the report prepared by Stantec Consulting Services. Said activity must be completed and photographed and a report from the petitioners' environmental consultant verifying said removal and re-seeding activities shall be submitted to the Waukesha County Planning and Zoning Division prior to July 1, 2017.*

12. *The wetland buffer shall extend the entire width of the property to a minimum depth of 40 ft., beginning immediately east of the erected garage.*
13. *Detailed planting and seeding plans must be prepared for the proposed rain gardens and wetland buffer and submitted to the Waukesha County Planning and Zoning Division for review and approval. The plan shall include a yearly performance schedule identifying performance standards for the wetland enhancement project to extend a minimum of three (3) years and said plans shall specify the long term maintenance obligations. Said plan must be implemented prior to July 1, 2017.*
14. *A Declaration of Restrictions must be prepared noting that the wetland enhancement plan required in Condition No. 11 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 wetland 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.*

**Reasons:**

*A garage is a necessity in Wisconsin because of the winter season. The petitioner is proposing a wetland enhancement, which meets the purpose and intent of the ordinance. The required conditions of approval will address the concerns of the neighboring property and the construction will not exacerbate the flooding conditions.*

The motion was seconded by Mr. Bayer and carried with four (4) yes votes. Mr. Day voted against the motion.

**BA16:006 GARY REICHERT (OWNER) JAY CAVIANI (PETITIONER)**

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **conditional approval** of variances from the offset, parking and sign requirements to permit a church and religious assembly use to occupy an existing multi-family building. Discussion between the petitioner, Board and Staff followed.

*Public Reaction:* None.

Decision and Action:

Mr. Schmidt: *I make a motion to approve the request in accordance with the staff report, with the conditions listed in the staff report, except for the following modification to Condition No. 1, and for the reasons stated in the staff report.*

*Condition No. 1: The digital message reader shall conform to the conditions set forth by the Waukesha County Park and Planning Commission as part of the Conditional Use Permit.*

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

**BA16:022 JEFFREY AND BONNIE DITTEL**

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **approval** of variances from the open space requirement and a special exception from the offset requirement for the construction of additions to the residence and a new deck. Discussion between the petitioner, Board and Staff followed.

*Public Reaction:*

- The Town of Oconomowoc Plan Commission recommended approval as requested.

Decision and Action:

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.

**BA16:023 MICHAEL P. TODD**Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **denial** of a variance from offset provisions, as measured from the lot line and separation between buildings and **denial** of a special exception from the accessory building floor area ratio requirements and **conditional approval** of variances from the road, shore and floodplain setback, floor area ratio and open space provisions for the construction of an accessory structure. Discussion between the petitioner, Board and Staff followed.

Public Reaction:

- The Town of Oconomowoc Plan Commission recommended approval as requested.
- The DNR concurred with Staff's analysis and recommendation and recommended modified approval of the variance request as stated in the Staff Report.
- Several letters of support (~9) from neighboring property owners were submitted with the application.
- A neighboring property owner spoke in favor of the request and thought that the proposed garage may help block the noise from Foolery's and provide aesthetic beauty.

Decision and Action:

Mr. Bayer

*I make a motion to deny the variance request from the offset provisions (separation between buildings) and the special exception from the accessory building floor area ratio requirements and approve a modified request for variances from the offset provisions (measured to a lot line), road, shore and floodplain setback, floor area ratio and open space requirements, with the following modifications to the conditions and reasons of the Staff recommendation (modifications are underlined).*

1. *The accessory structure shall not exceed 208 sq. ft. in size.*
2. *The accessory structure must be located at least 5 ft. from the west lot line, 10 ft. from the platted road right-of-way, and 35 ft. from the ordinary high water mark of Okauchee Lake, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset/setback requirements.*
3. *The accessory structure shall be located at least 10 ft. from the residence, measured overhang to overhang.*

4. *Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location of the proposed accessory structure, 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.*
5. *Prior to the issuance of a Zoning Permit, a Certified Survey Map combining the lots shall be submitted, reviewed and signed by all review entities and be recorded with Register of Deeds.*
6. *The existing poly-structure and any gravel in the vicinity of the proposed structure that is not required to accommodate parking or access to the building shall be removed immediately after construction of the accessory structure is completed or prior to December 1, 2016, whichever is earlier.*
7. *Existing asphalt shall be removed from the property and restored with vegetation no later than June 15, 2017. The area of required asphalt removal is shown on a Site Plan prepared by Staff at the Board of Adjustment meeting of July 13, 2016 and the remaining area will continue to provide enough asphalt for the parking of vehicles.*

**Reasons:**

*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. Variances 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. A variance shall not adversely affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources of the area.*

*A hardship exists because the property is severely nonconforming in size (6,959 sq. ft. +/-) and there is currently no inside storage available on the property with the exception of a crawlspace. Because the lot is severely nonconforming in size and the existing duplex is significant in size, minimal relief should be provided in order to protect the neighborhood and natural resources from overdevelopment. A maximum 208 sq. ft. accessory structure will provide needed storage to accommodate lawn equipment. If the petitioner desires additional storage*

*space, consideration should be given to reducing the size of the living area of each unit or maximizing the use of the crawlspace on this severely nonconforming parcel.*

*The amended approvals will allow the petitioner to comply with offset, measured from the residence. The structure would also comply with accessory building floor area ratio.*

*Therefore, denial of the variance request from the offset provisions, separation between buildings, and a special exception from the accessory building floor area ratio requirements and modified approval of the variance requests from the offset provisions as measured from the lot line, road, shore and floodplain setback, floor area ratio and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance requirements, with the recommended conditions, conforms with the purpose and intent of the Ordinance.*

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

**ADJOURNMENT:**

Mr. Bayer

*I make a motion to adjourn this meeting at 9:33 p.m.*

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

Respectfully submitted,

A handwritten signature in cursive script that reads "Richard Bayer". The signature is written in black ink and is positioned above the printed name and title.

Richard Bayer  
Acting Secretary, Board of Adjustment