

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

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, October 12, 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
Richard Bayer
Nancy M. Bonniwell

BOARD MEMBERS ABSENT: Nick Jordan
Rob Schuett

SECRETARY TO THE BOARD: Nancy Bonniwell, Secretary

OTHERS PRESENT: Amy Barrows, Senior Planner
Jason Fruth, Planning and Zoning Manager
Erik Weidig, Corporation Counsel
Vicki Braden, BA16:031, property owner
Doug Braden, BA16:031, property owner
Kurt Baneck, BA16:030, agent
Bob Zlotocha, BA16:032, property owner
Patricia Zlotocha, BA16:032, property owner
Bob Jarchow, BA16:030, neighbor
Joe Czarnecky, BA16:030, neighbor
Steve Nichols, BA16:030, neighbor
Norman Greeb, BA16:030, property owner
Bob Sokolowicz, BA16:030, Town citizen

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 September 14, 2016.

The motion was seconded by Ms. Bonniwell and carried unanimously.

NEW BUSINESS:

BA16:030 NORMAN AND ANN GREEB (OWNERS) Kurt Baneck (Petitioner)

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **denial** of the request for a variance from the shore setback provisions and **modified approval** of the request for variances from the conservancy setback and floor area ratio provisions of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a residence, attached garage, decks and a patio. Discussion between the petitioner, Board and Staff followed.

Public Reaction:

- Several neighbors and a Town citizen voiced their support for the petitioner's request.
- The DNR submitted a letter supporting the staff's recommendation.
- A neighbor mentioned that the Town Plan Commission supported the petitioner's request. The County did not receive Town notification in advance of the meeting.

Decision and Action:

Mr. Bayer

I make a motion to deny the request for a variance from the shore setback provisions and approve modified variances from the conservancy and floor area ratio provisions in accordance with the staff report, with the following modifications to the staff's conditions and reasons.

Condition No. 2 shall be modified to read, "All structures, inclusive of decks and patios, shall be constructed a minimum of 20 ft. from the conservancy (wetland) boundary, 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 setback requirements."

Condition No. 12 shall be added to read, "The existing detached garage shall be razed prior to the issuance of a Zoning Permit for the proposed improvements."

Condition No. 13 shall be added to read, "The building footprint, as defined in the ordinance, shall not exceed 17.5%."

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.

The property has unique physical characteristics because it is nonconforming to lot width and in combination with the shore and wetland setbacks, the buildable area of the property is restricted to approximately 1,250 sq. ft. in size, whereas the property would otherwise provide for a buildable area of approximately 2,959 sq. ft. (19.5% FAR). Although a 1,250 sq. ft. building envelope may provide for reasonable use of the property, the shape of the wetland creates awkward building envelope dimensions. The building would need to be designed in a manner that may not allow the petitioner to maximize the full 1,250 sq. ft. buildable area. The buffer area mitigates the reduced wetland setback to ensure that the project does not create adverse environmental impacts.

Because the petitioner applied for the variance just ahead of the new ordinance being adopted, floor area ratio is still a provision that must be considered. It should be noted that State law allows that the application be analyzed pursuant to the code in effect on the date an application is filed or, if requested by an applicant, the request can also be considered pursuant to a newly adopted code. Because floor area ratio has now been eliminated from the new code, staff feels that some relief from floor area ratio is appropriate as the resultant building envelope complies with the now adopted building footprint requirements that, together with height provisions, take the place of floor area ratio in limiting building size.

It would not be reasonable to grant a variance from the shore setback requirements of the ordinance because, as conditioned herein, the petitioner is granted the minimum necessary relief in order to eliminate the hardship caused by the unique physical characteristics of the lot. The unique angle of the permissible building envelope is created by the irregular boundary of the small isolated wetland and that relief from wetland setback is more appropriate and less impactful to the lake, which is a more significant natural resource. The granting of a wetland setback variance has less impact on the general interest and welfare of the public and natural resources than the granting of a shore setback variance. The wetland is isolated and its quality is marginal, whereas granting a variance from the shore setback standards would allow additional development activities in the shore setback area and allow the possible encroachment of additional future development along the shoreline via setback averaging.

*The **denial** of a variance from the shore setback requirements and **modified approval** of variances from the conservancy setback and floor area ratio requirements, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

BA16:031 VICKI BRADEN, FORCE PROPERTIES LLC (OWNER)

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **approval** of the request for variances from the shore setback and conservancy setback requirements and **modified approval** of the request for a variance from the offset requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to construct a screen porch over an existing patio. Discussion between the petitioner, Board and Staff followed.

Public Reaction: The DNR submitted a letter supporting the staff's recommendation.

Decision and Action:

Mr. Schmidt

I make a motion to approve a modified request in accordance with the staff report, including staff's recommended conditions, and for the reasons stated in the staff report.

The motion was seconded by Ms. Bonniwell and carried unanimously.

BA16:032 ROBERT ZLOTOCHA

Public Hearing:

Staff provided a brief summary of the Staff Report and Recommendation. Staff's recommendation was for **approval** of the request for a special exception from the offset requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the petitioner to increase the height of the existing detached garage. Discussion between the petitioner, Board and Staff followed.

Public Reaction: The property owner mentioned that the Town Plan Commission supported their request. The County did not receive Town notification in advance of the meeting.

Decision and Action:

Ms. Bonniwell

I make a motion to approve the request in accordance with the staff report with the following modification to Condition No. 2 and for the reasons stated in the staff report. Additionally, the lot is severely nonconforming and narrow and the special exception allows the petitioners to have full use of the garage.

