

Town of Merton
Joint Public Hearing with the Town of Merton Plan Commission & Waukesha County
To Consider the Conditional Use Request of Castoro, LLC for Land Altering Activities Associated with the
Construction of a Single-Family Residence.
January 4, 2023

Present: Acting Chairman Siepmann, Commissioners Griffin, Jensen, Morris, Queoff & Good, Planner Haroldson, Ben Greenberg of Waukesha County Parks & Land Use, and Deputy Clerk Claas

Absent: Chairman Klink

Also Present: Craig Caliendo, Dan & Pam Christianson, Richard Stalle, Erv & Bonnie Woller, Liz Tobolt, Joe Donovan & Jim Fleming

This Public Hearing was Called to Order by Acting Chairman Siepmann at 5:30 p.m.

Greenberg read the public hearing notice.

Greenberg gave a brief summary stating this is roughly a .6-acre lot located on Beaver Lake. It has a Highway K address, but it is a lot abutting a public road but has access via a private road that is utilized by riparian lot owners and some non-riparian lot owners for access. The site topography is variable that runs parallel to the shore and creates a side slope condition. There's a big topographic change coming from the road to the lake running across the property from east to west. On the southern part of the lot where the home and improvements are being proposed is generally flat, but there is a drainage area that appears to serve a large portion of the upstream neighborhood. It looks like a significant amount of drainage is conveyed through that existing swale and towards a kettle that sits along the western property line and extends to the Woller property. Prior to any changes, they had two legal lots of record with a home and an attached garage on the subject lot and the other lot was a separate legal lot of record. It is Greenberg's understanding that the owners of the Scaffidi lot had it as a rental unit, but it was a separate legal lot of record and it contained a unique combination 2-story boathouse residential structure. Recently the petitioner had a CSM reviewed and approved by the Town and the County and recorded. The lots were reshaped and straightened out, and though they are not conforming lots of the conforming standards of the R-1 district, the CSM was approved without variances because the petitioner was not proposing to make the two lots less conforming and they were existing lots. The old residence on the west lot, the subject lot, has been removed and the residential components of the unique boathouse structure have been removed. The proposal is a single-family home with an attached garage. The basement will have a full exposure on the west side, but will not have any exposure on the east side of the house. The home conforms to all ordinance standards. It is setback appropriately, the house is sized appropriately, and the height conforms to the height requirements of the ordinance and the impervious surface proposed conforms to today's standards. Caliendo is proposing to significantly reduce the impervious surface from what was on the subject lot prior to the demolition. With regard to the grading plan, County ordinance allows administrative approval of the grading associated with single-family construction considered to be necessary backfill. Once grading exceeds what's considered necessary, the County requires that the petitioner obtains a conditional use permit to authorize the grading activity. A significant amount of grading occurring via fill along the east and southeast portions of the home near the garage and driveway approach is up to 9'. The fill will basically be contained into the cane to the north, they'll run that fill to the higher grades to the north, and it will be contained with a series of terraced retaining walls to the south. The driveway fill as well will be contained with retaining walls along the southern edge. This will allow the petitioner to have a home with a garage up to the first

floor level as opposed to something at the basement level. The fill will soften the exposure and limit the view from the properties to the south and east. Looking at the drainage components of the plan, there is going to be a lot line swale proposed between the two new lots that were created via CSM that is fairly modest in depth. A much more substantial swale supported by some underground drain tile as well as a rain garden or a catch basin area is being proposed along the south, southwest, and western lot lines. There is a culvert being proposed under the driveway on the boathouse lot because the driveway is being built up and because drainage appears to flow towards that area, that culvert will prevent water from backflowing and ponding on that side of the driveway. It will allow it to flow through the driveway, into the rain garden, and the west lot line swale. According to County ordinance, the petitioner will need to obtain an erosion control permit from the Land Resources Division. There may be some Chapter 30 DNR requirements based on the amount of grading. The County will ensure that if the Conditional Use Permit is issued that a stormwater permit is issued and an erosion control and possible other stormwater regulations are being appropriately monitored. They discussed having a sunset date to complete all land altering activities at the site, the home built, and the site vegetated and restored. Greenberg proposed late 2024 for the sunset date and Caliendo seemed agreeable to that.

Caliendo would like to add that they removed a house that was non-conforming. It was too close to the lake. There was a lot of asphalt that was existing. All of the drainage actually flowed to the south and eventually to the southwest of the property. The new improvements will improve the stormwater flow from the middle of the lots. Everything that flows from the south and into the southwest is going to be captured in that catch basin and swale that is going to be diverted to the lake. They are going to dramatically reduce the amount of impervious surface that exists.

The Acting Chairman opened the hearing for public comments and concerns.

Erv Woller – N56W30664 County Road K – stated initially when Mr. Caliendo approached them, he said he was sizing his house down to 2,500 to 2,700 square foot house. He has something that's far greater than that right now. The house will include a snug room, 5 bedrooms, 5 bathrooms, an art studio, a painting nook, a yoga studio and an exercise studio. Woller's main concerns are the amount of fill that would be required to elevate the road to the level that is proposed. It would seem to him that if it's going up 9', that would be a lot. As far as raising it, it will probably increase the velocity of the water. It will probably make it harder to contain and the idea of setting up a catch pond and then diverting the water to the lake, he thinks is optimistic at best. They don't know what the plans are for the other lot and that concerns him as well. They're looking at one potential use. There used to be one house on the property and now there will have two houses on the same lot, and he doesn't know how it's going to look or how it's going to play out. Is it going to look like something like Okauchee Lake with houses stacked up. Three stories is a pretty big impediment to their view. Woller asked Greenberg why they are doing a conditional use. Isn't this a variance? Greenberg replied no, because he's meeting all of the standards of the ordinance outside of the land altering activity. By right he could locate the building where it is and have three stories because he still does comply. Woller's concern is that they're skirting the hardship issue.

Rick Stalle – N57W30766 Lakewood Drive – stated he is a neighbor 250' to the west on Lakewood Drive. He's sat on the Board of Zoning Appeals, he's been in front of one of the boards about 20 times, he's been a residential developer and he appreciates the Plan Commission's service to the community. He had to apply for a variance to get 2' retaining walls changed. He lives on a unique property. Stalle questioned how many Plan Commissioners have been out and walked and observed the property. R-1 Residential District is a one-acre lot and he's not a fan of Waukesha County approving two non-

conforming half acre lots. He disagrees with Caliendo's last statements that this will not improve the impervious surface, because the two lots that were primarily there before had houses of about 4,500 sq. ft. They're talking about a two-lot issue here and there will be about 9,000 sq. ft. of buildable lots on this 17 ½% calculation when the two properties get done. He hopes Mr. Katz's comments are part of public record, the neighbor to the east. Stalle is three neighbors to the west. Nine feet of fill is a lot of fill. His property sets 12' from the ground floor to the garage floor. He appreciates anyone's desire to have a garage at the same floor as their living area, but this property was designed 2,000 years ago by the glaciers. He hopes the Plan Commission comes out to see the unique nature of the topography of his house which sits kind of like a tri-level that built into the side on one cane and the property of the Scaffidi property to the east that sits with a good 15- or 20-foot variation. None of the plans that they have seen really delineate the amount of fill. Nine feet is not a 2' variance requirement that he had to go through to change his retaining walls from 2' to 4'. Nine feet is a lot of fill. That's 15, 20, 30 truckloads of 20-ton dump trucks coming up and down County roads and private roads to change what has been natural topography that's been on this property for 2,000 years. He appreciates the applicant's desire to have a ground floor garage but they can build an attached garage without adding 9' of fill or 20 or 30 truckloads of fill to the property. If the Plan Commission adopts this recommendation for approval, which he also believes it should be a variance and not a conditional use, then what's to say the neighbor to the east on the second lot, which is still yet to be defined, can come to the Plan Commission and say they want to add 10 or 20 yards or they want to decrease or take away 9 or 10 or 15 feet of fill from this beautiful, natural cane that separates these two properties from the property to the east. If the Plan Commission grants this, then you're going to be forced into a situation of granting the approval to the guy next door that we have no knowledge of what's going to happen. When the Plan Commission granted the CSM for both properties, which now allows double the square footage, contrary to Mr. Caliendo's calculations of impervious surfaces to be allowed on the property, what happens with the next guy. His recommendation to the Plan Commission as a board is to not approve this and do one of two things. Wait until both properties come together with a comprehensive plan for both properties, just like they've been for the last 60 years, or require that both properties expand no more and no further than beyond the square footage of footprint calculations that have been on the property for the last 60 years. He stated he is also the commodore of the Beaver Lake Yacht Club which has some jurisdictional interest in what the Plan Commission does as a municipal board and again, thanks the Plan Commission for their service.

Dan & Pam Christiansen – N57W30804 Lakewood Drive – stated he is on the drive immediately to the west of these properties being discussed. He would like to echo the concerns of Mr. Stalle and the previous speaker about the concern about things getting out of hand before they are under control, if you know what he means. All of us have had to respond to regulations that they thought at the time difficult, even ridiculous, but they know they are made in good faith. Part of the reason he wanted to speak to the Plan Commission was to inform them that there's another one coming that's a monster, and that monster is at the west end of Lakewood Drive, and it's a similar kind of thing where hundreds of truckloads of fill have been brought in and already dumped and hundreds of mature trees have been taken away. The process here needs to be focused, as Mr. Stalle so eloquently said, on what has been there for thousands of years or hundreds of years, and he urged this board to do that.

Caliendo said he's very sensitive to the fact that someone would accuse him of being misleading. The size of the first floor of this house is a little over 2,800 sq ft. He did tell Mr. Woller that they were looking at 2,500 to 2,800 sq ft basically as the first floor of the house. It's not 5 bedrooms; it's 3 bedrooms with an office and 4 bathrooms. It is downsizing for them and they have met the building site requirements. When they did the demolition, all of the asphalt and the hard retaining walls that were existing on the

site they crushed and repurposed on site. They didn't truck it out. They positioned it where the driveway would go up. As Mr. Woller knows because he lives right by there and Mr. Stalle can see from his house, the driveways elevated about 4'. The excavation to the house he thinks is going to come close to balancing. They may need to truck a little bit of fill in, but that site where they need to fill, does need a total of 9' of fill because they repurposed those materials on site. As far as the impervious surface calculations, his surveyor actually did the calculations of the impervious surface on both lots combined with those existing improvements and it was over 40%. Then they split out and did impervious surface calculations for the lot their building on and it was over 37% and it's going to be down to 27% post completion of the improvements. Caliendo said all he can control is what he is going to be doing on this lot. He doesn't know when the person who bought lot 1 is going to build, and it's not right or fair to make them wait, whether it's nine months, a year, or two years, whenever they want to build, and analyze these properties together as opposed to looking at what he's proposing, which Greenberg indicated didn't require a variance because they're meeting all of the requirements. The only thing they are asking for is the ability to grade beyond that 4' threshold that would have been allowed under staff approval.

Siepmann closed the hearing at 5:58 p.m.

Respectfully submitted,

Holly R Claas
Deputy Clerk