In attendance:
J. Fuchs, K. Marlin, T. Matt, and J. Tredwell. R. Welcenbach, M. Heise were absent and excused.

Also Present:
City Attorney S. Riffle, Zoning Administrator J. Gibbs, Community Services Director K. Woldanski and Clerk/Treasurer K. Tarczewski.

1. Call to Order and Pledge of Allegiance - Chairman Fuchs called the meeting to order at 6:00 p.m.

2. Approval of Minutes Dated July 12, 2017

It was noted that the minutes were not available.

3. Public Hearings

3.1 **REVISIT THE VARIANCES ISSUED ON SEPTEMBER 14, 2016:**
Petition of **JOE GRASCH** for the property located at N27 W27112 Woodland Drive (PWC 0933-124) for a variance to build a new home with attached garage specifically related to the following:

3.1.1 The NEW HOME as proposed will result in noncompliance with the City of Pewaukee Zoning Code **17.0436(c)(5) of the Setback of 75 Feet to the 100 Year Base Floodplain**, but can average to the structures on EACH side of the parcel but no closer than 35 feet.

The proposed NEW HOME will have a setback to the 100 year base floodplain more than the average to the adjoining parcels on each side of the lot. This will be a non-compliance to the City of Pewaukee Zoning Code 17.0436(c)(5) of 13 feet.

3.1.2 The NEW HOME as proposed will result in a non-compliance with the City of Pewaukee Zoning Code **17.0411(a) Side Yard Setback Reductions** on non-conforming lots. Structures on these lots over one story in height must have a side yard setback of at least 8 feet.

The Proposed NEW HOME will have a side yard setback of 5.5 feet. This will be in a non-compliance to the City of Pewaukee Zoning Code 17.0411(a) of 2.5 feet.

Chairman Fuchs gave a summary on how the proceedings of the evening would take place.

Attorney S. Riffle was present to represent the City in this matter. He stated the designation of "Revisiting the Variances Issued to Mr. Grosch on September 14, 2016" was incorrect. He said this was a brand new application for a brand new variance because the Board issued a variance that has already been acted upon by the applicant as it relates to the construction of his home. Attorney Riffle stated it is the applicant's burden of proof to present evidence as to why the applicant is entitled to a new variance to go beyond what was already granted by the Zoning Board of Appeals. He stated it was the City's perspective that we want this to proceed as a Quasi-judicial, and hear the evidence presented by the applicant and then the City will respond.

Chairman Fuchs stated the Board has a copy of the survey from the original proceeding which shows a footprint and what was done in the variance that they dealt with back in September and a new survey. Chairman Fuchs stated it was evident that the new survey is different and has a larger footprint. All the members agreed.

Chairman. Fuchs asked Mr. Grasch to come up to the front of the room and he reminded him that he was under oath at the last hearing. Chairman. Fuchs stated the Board previously considered whether there was a hardship, and considered whether the standard has been relaxed and how it unreasonably interferes with the property as far as no reasonable use. He told Mr. Grasch that in order for his petition to be considered the Board will focus on why, without the new variance, is the use of the property unreasonably interfered with. Chairman Fuchs mentioned that the Board's decisions should be compatible to the Zoning Code. He stated Board should not give out a variance that violates the spirit of the code. With that, he asked Mr. Grasch to tell the Board what he is looking for and why not having it would unreasonably interfere with the use of the land and why this is not going beyond the spirit of the code. At this time Chairman Fuchs swore in Mr. Grasch.

Mr. Grasch stated he didn't know the difference between the new variance and the old variance, he would let the Board determine that after he states his case. He stated he felt he had a very compelling argument. Mr. Grasch prepared a statement which he read from. He stated his hardship was twofold. He said the City of Pewaukee has made specific representations that were relied upon and have later been determined to be wrong and that are very significant. He also said the City is not being consistent across the board with its interpretation of cantilevers and bump outs as it relates to the construction of his home in comparison to other homes under construction or have been built in the City of Pewaukee.

Mr. Grasch voiced his opinion that he and his wife have been grossly mistreated by the City of Pewaukee and City Attorney in regards to the issue of this home. He stated the City of Pewaukee issued them a building permit based on the plans and specification he provided. Chairman Fuchs stated he was entitled to his feeling on how he was treated but that should not be part of hearing.

Chairman Fuchs asked about the stop work order that was issued and whether or not there was a factual dispute about whether or not what they were doing went beyond the confides of the variance that was granted in September. Mr. Grasch stated that was an arguable point but he stipulates the building permit should have never been issued and was improperly granted. The building permit was issued based on the plans and specifications he provided. He said he built his home to those specific plans and specifications. He said after the house was built it was determined that the building permit issued did not meet the variance granted in September. He said he complied with the City's request. He said after the house was built they were instructed to make changes. He said all of this could have been rectified in the planning stage if the building inspector would have done a proper plan review.

He said he and his wife were vilified by the City and the neighbors for building a house which they received a building permit for. He said the memorandum written by the City Attorney had a negative tone and made them look like bad people. He said the entire process has been a nightmare and they are disappointed by the mistakes and the inconsistent interpretations of the codes and ordinance made by the City of Pewaukee. He said this was very costly.

He said they tried to work in the City in good faith but the attorney refused to meet with them and basically told them to comply with what the City had told them.

He stated he was forced to remove a 2-foot cantilever from his lakeside decks of his new home. Mr. Grasch stated there were two issues regarding this matter. One, the definition of "structure" as loosely defined and interpreted by the City of Pewaukee Building Department and two, input the proper and correct survey into the record of their original variance.

He said it was important to talk about the process that was involved with designing and building his home from the beginning. He said in April of 2016 he met with the Building Inspector and discussed the construction of this house. Mr. Grasch said he specifically asked him how structure was defined. The Building Inspector told him it was the foundation of the home. He said Mr. Gibbs provided a site plan of the previous owner, that he marked up to show the buildable area and the setback line. He called this Exhibit A.

A couple of weeks afterwards, Mr. Grasch stated he followed up with additional questions related to definition of 'structure'. He stated the setback line drawn by Mr. Gibbs did not take into account the foundation extension of the neighbor to the east. He said Mr. Gibbs disagreed with Mr. Grasch's interpretation and said it shouldn't be included. Mr. Grasch stated that was his first inclination that there where inconsistencies with how the City interprets structure. He said he thought he could maximize his deck by cantilevering consistent with the eves and overhangs, as has been done on many new construction such as the house he built on Peninsula Drive.

He stated he has a list of addresses of other homes that are currently under construction or that have recently have been built that clearly have bump-outs or cantilevers that extend past the lakeside setback or the side yard setback.

He said it was his opinion that the City is not being consistent with how they interpret structure or cantilever for his home. Based on this he was forced to look for another method within the code to get his 6-foot deck. Mr. Grasch stated he hired an architect to investigate this matter and he determined that the average setback line drawn by Mr. Gibbs was wrong. He stated the variance issued in September was based on bad information. He said his neighbor's home to the east should have been considered for the setback.

Mr. Grasch stated he was going to read an email he sent to the City Attorney. Chairman Fuchs stated we weren't a circuit court. They follow a rule where attempts to settle cases are not normally entered into evidence. Attorney Riffle stated he has no objection to anything Mr. Grasch would like to present. He read an email he wrote to the City Attorney asking for a written response to his architect's setback opinion. In his email he stated, if you dispute the architect's opinion he would consider going a different route other than returning to the Zoning Board of Appeals. He stated Attorney Riffle's response was, the Zoning Administrator's interpretation and determination is the average setback line.

Mr. Grasch stated Mr. Gibbs made two errors on his original mark up; the location of the average setback line on the house to the west and the location of the line to the east. He stated he wants the new and corrected survey put into record. He read the variance that was granted as written. The variance as requested as set forth in paragraph 4 is denied, which Mr. Grasch stated was in regards to the deck, but an alternate variance is granted to allow construction of the structure to the eastern most point of the average setback area as described on Exhibit A attached hereto and incorporated there in. Mr. Grasch stated Exhibit A has bad information and he said he wanted the new survey incorporated therein. He said if the new and corrected survey was accepted, the two foot cantilever on the lakeside would be allowed.

Chairman Fuchs asked Mr. Grasch if he had other witness. He stated no.

Please note the tape recording of the meeting ended at this point.

Attorney Riffle responded. He said Mr. Grasch was making the basis of his case the claim that the Board could not properly interpret the code and therefore did not make a proper determination. He said that is completely irrelevant in this case. Attorney Riffle stated the new proposal is different from the formerly proposed setback and needs a new variance. He requested the Board members place the original survey and the revised survey side by side to compare them. The first variance granted the building to be squared off on the north most corner of the building and you're encroaching on floodplain. The argument about the east property stoop being part of the structure will not be analyzed now, the setback was determined off the principal structureThe new survey shows that Mr. Grasch wants to push more to the north. Attorney Riffle stated the original variance shouldn't have been granted in the first place because there was no hardship under the law. This is what happens when we hand out variance contrary to the code. The City's perspective is there is no legal reason to grant an additional variance. He said that Mr. Grasch's application which indicated his desire for a bigger home which would result in a better property resale value is not criteria under the law for this variance. Attorney Riffle respectfully requested the Board deny the variance.

Mr. Grasch said every home has overhangs of eves. He said they are not addressed specifically in the City's code. He said the cantilever is within the 2 feet of the overhang. Mr. Gibbs stated he was incorrect, eves and overhang are part of the measurements and can't be more than 2 feet. Chairman Fuchs stated there may be inconsistency but that is beyond this board. Attorney Riffle stated there should have been no misunderstandings with what was granted. Attorney Riffle stated he was unaware of bump outs and cantilevers on other structures that didn't conform to the code. He said the definition of a structure is anything attached to a structure. He said it was clearly illegal. He stated if there are other structures that are illegal within the City, they have nothing to do with the case or the board's jurisdiction. Attorney Riffle stated just because Mr. Grasch wants a deck bigger than what he has, doesn't make it a hardship.

Mr. Fuchs stated the deck was what requires the variance. He quoted minutes of the last meeting. He stated the drawing showing the alignment was not problematic because Mr. Matt didn't want the house built on an angle. Mr. Fuchs said it was clear that Mr. Grasch wants a bigger variance, but it encroaches further into the flood plain. He said the dimensions got bigger. He asked the Board if it was appropriate to look at tonight's proceedings as a new and difference variance. The Board concurred.

Mr. Janka (W276 N1728 Spring Creek Drive) is in favor of what was presented and acted upon at the September meeting. He noted there was a lot of confusion among the board members at that time. He stated he has built homes in Pewaukee and didn't agree with the statement made about eves on homes. Mr. Janka stated it is a hardship to have a 3 ½ foot deck that can't be used. Mr. Janka stated the City put the Grasch family through hell and the City should make some concessions.

Attorney Riffle stated anything attached to the house is attached. Mr. Grasch didn't want to include the concrete slab, it is a balcony stoop that is fastened to the house. Attorney Riffle stated a variance is still needed.

James Marlin (N27 W27086 Woodland Drive) stated he lives four houses down. Houses aren't built close to each other or to the lake. He said the City loses the ability to enforce the code if the Board

ignores the law. Mr. Marlin said, 'not being able to build a bigger house' is not a hardship. He said he was against Mr. Grasch's first variance and is opposed to Mr. Grasch's second variance request as well.

Deb Petersen (N27W27104 Woodland Drive) stated she was opposed to the new variance. She said the variance that he was granted last time gave him opportunity to build his house. She asked the members of the ZBA to support the codes and preserve the lake.

Mark Peterson (N27 W27104 Woodland Drive) stated he is opposed to another variance. It will completely eliminate their view. He said Mr. Grasch could have adjusted his plans. Mr. Tredwell concurred and said it was a buildable lot even without a variance. Mr. Peterson said the deck was never a hardship in the minutes nor was it now and asked the Board to please deny Mr. Grasch's request.

Jim Bauman (N27W27028 Woodland Drive) stated he was against the variance. Mr. Grosch received a permit to build the house that he built with the cantilever.

Mr. Matt stated he reviewed the minutes from the last meeting and four residents spoke up against the deck. He said it was blocking the neighbors view and is contrary to the public interest. He read the motion that was made at the last meeting, noting the side setbacks were granted as requested, the deck variance was eliminated and the rear variance was approved with the notation that it should be straightened out to the extent of the eastern edge of the average setback line. He said all the Committee members agreed that was reasonable. He said a different home was built.

Ms. Marlin stated Mr. Grasch built his home outside the variance given. She stated the ruling was not followed at that point and she had no confidence that Grasch would comply this time. She said the original foot print was 60 feet and the new drawing is showing 65 feet.

Mr. Tredwell stated he agreed to the original variance, but couldn't speak to the building permit that was issued. He said the home built is not within variance.

Mr. Fuchs stated the real issue related to the variance requested was that a hardship was not shown. The burden lays with the person applying for permit. It is not the Board's responsibility to take on the roll of a surveyor. The house was designed and the variance was granted for a buildable lot, it was apparent that Mr. Grasch just wanted to build a bigger house. He said the deck was part of that. The plans should have taken into account that the deck had to meet the setback. Mr. Fuchs stated there is no unreasonable interference of this property.

A motion was made and seconded, (J. Fuchs, K. Marlin) to affirm the Zoning Administrator and deny the variance based on the applicant not demonstrating a hardship.
Motion Passed: 4-For, 0-Against.

4. Adjournment
A motion was made and seconded, (T. Matt, J. Treadwell) to adjourn the meeting at 7:08 p.m.
Motion Passed: 4-For, 0-Against.

Respectfully Submitted,

Kelly Tarczewski
Clerk/Treasurer