

In attendance: Chairman J. Fuchs, and Board Members M. Heise, K. Marlin, J. Treadwell and R. Welcenbach (arrived at 6:33 p.m.). T. Matt and G. Staven were absent and excused. Also present were Zoning Administrator J. Gibbs and Clerk/Treasurer K. Tarczewski.

- 1.0 Call to Order and Pledge of Allegiance - Chairman Fuchs called the meeting to order at 6:30 p.m.
- 2.0 Discussion and Possible Approval of Meeting Minutes
  - 2.1. September 14<sup>th</sup>, 2016 – **A motion was made and seconded, (K. Marlin, J. Treadwell) to approve the meeting minutes dated September 14<sup>th</sup>, 2016.**  
Motion Passed: 4-For, 0-Against.
  - 2.2. November 9<sup>th</sup>, 2016 – **A motion was made and seconded, (J. Treadwell, K. Marlin) to approve the meeting minutes dated November 9<sup>th</sup>, 2016.**  
Motion Passed: 4-For, 0-Against.
- 3.0 Public Hearings
  - 3.1. Discussion and possible action regarding the petition of **TOM YOUNGBAUER** for the property located at N28 W27580 Peninsula Drive (PWC 0933-064) for a variance to build a new single family home specifically related to the following:
    - 3.1.1. The NEW HOME as proposed will result in non-compliance with the City of Pewaukee Zoning Code 17.0436(c)(5) of a 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 closer than the 35 foot average. The petitioner is requesting a variance of 27.9 feet to the 100 year floodplain which is a setback of 7.1 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 4.76 feet on the RIGHT side of the house and is requesting a variance of 3.5 feet.*  
  
*The proposed new home will have a Side Yard Setback of 4.76 feet on the LEFT side of the house and is requesting a variance of 3.5 feet.*  
  
Mr. Gibbs stated that Mr. Krueger came in approximately in November/December inquiring about a tear down and rebuild. He said he reviewed the criteria with Mr. Krueger. Mr. Gibbs stated Mr. Krueger stopped in another time for more clarification. Mr. Gibbs made suggestions and some changes were made, but variances are needed for the side yard setback and the 100 year flood plain.  
  
Mr. Fuchs sworn in Mr. Krueger, Mr. Youngbauer, Mr. Gibbs and members of the audience.

Mr. Krueger stated they already altered the footprint significantly to make it fit on the lot better. He said it is a narrow lot. He said another issue is that Mr. Youngbauer can't have a basement for storage so he wants something large enough to be able to have storage options.

Mr. Fuchs stated the previous standard for obtaining a variance was that no reasonable use of the lot could be done absent of the grant of the variance. He said now it is if strict adherence to the code would unreasonably interfere with the use of premises for the intended use. Mr. Fuchs asked the petitioner to address why building within the set requirements would be a unreasonable burden.

Mr. Krueger stated the standard is unreasonable to adhere to the use of the property. Mr. Krueger stated he could only build a structure 10 x 20 feet. He said the two houses on both sides are relatively new and if he took the average of the neighbors' homes he would have to be off the road about 65 feet and be 75 feet from the 100 year flood plain, leaving only a small strip left.

Ms. Marlin stated she noticed a discrepancy in the building plan of 10 feet. Mr. Krueger stated the plan was not updated but they reduced the structure by 6 feet and chopped off half of the porch.

Mr. Heise stated he was looking at the residence to the right on the survey and noted it was a newer home. He asked why it was closer to the 100 year flood plain. Mr. Gibbs stated it actually wasn't, he referred to the dash line on the survey. Mr. Heise commented it must be elevated higher. Mr. Krueger stated swales have been cut into the property to allow for better drainage to the lake.

In reviewing the plat map submitted by Mr. Gibbs, Mr. Fuchs stated the conforming area is highlighted in green and appears to measure approximately 18 x 56 on one side and 60 on the other. Mr. Gibbs stated the survey is not to scale and may be off a few feet. He said the scale is 1 to 20. Mr. Fuchs said there is a substantial difference between the buildable area Mr. Krueger is claiming to be limited to and what Mr. Gibbs is stating.

Mr. Krueger stated it depends on how you interpret the setback from the road, it is either 30 feet off of the road or the average of the two neighbors. Mr. Krueger stated he was using the average of each of the neighbors. Mr. Gibbs stated he can average but not less than 20 feet from the roadway. Mr. Gibbs state he was actually at 30 feet. Mr. Gibbs stated he has nothing to average against since the neighbors' homes are not on the surveys. Mr. Gibbs stated Mr. Youngbauer should revert back to the RS-6 zoning which is 30 feet from the street. Mr. Fuchs concurred with Mr. Krueger that if he averages between the neighbors it takes away from the buildable area. Mr. Gibbs stated they could average but it could not be closer than 20 feet and if there is a minimum setback requirement and it is his understanding that they have to default back to the RS-6 which is 30 feet and then the lot would be unbuildable. He said clarification is needed because the starting point is no clear and the measurements are missing. Mr. Krueger stated he could go back to the surveyor for the measurements of the neighbors'

setbacks.

David and Meagan Moe (N28 W27572 Peninsula Drive) state they were confused about the conversation related to the street side setback as well as the side setbacks and the lakeside setback. Mr. Gibbs explained how the street side setback was determined and the backside is determined by the 100-year flood plain. Mr. Moe stated he did not hear what Mr. Youngbauer's hardship was. Mr. Moe stated Mr. Youngbauer's current home is already too close to theirs. He voiced concerns over their privacy. Mr. Krueger stated the proposed home would be the same width of the existing home but will be centered on the lot more, giving them more space between their homes.

Mr. Moe also voiced his concerns about the lack of the property maintenance. Mrs. Moe stated Mr. Youngbauer has not been following codes up to this point and it is a safety issue. She again stated she was not in support of this. Mr. Fuchs stated this matter was not before the Zoning Board of Appeals and they could do nothing about this issue.

Mr. Krueger added all houses on the lake have some sort of variance and their request was not unreasonable.

Tom Reinke (N28 W27571 Peninsula Drive) stated the house that the Moes live in should have had a variance but one was never applied for. He stated the old Mayor and a developer bypassed that requirement. Mr. Heise stated that could be an issue at some point in time since it is a legal non-conforming structure, that couldn't be rebuilt. Mr. Fuchs suggested that they look into that. This situation would easily qualify as an undue hardship.

Mr. Heise stated he doesn't have too much of a problem with the side setback being at the minimum of 5 feet.

Mr. Heise was okay with the variance needed for the floodplain as long as the owner realizes that there could be an issue with the house flooding at some point.

Ms. Marlin was also okay with the 5-foot side yard setback, but did voice an issue with encroaching on the lake and would like more green space. She thought there may be a little more room by decreasing the driveway and moving the home towards the street.

Mr. Welcenbach would also like to move the home away from the lake.

Mr. Tredwell stated he was confused about the dimensions, but echoed the previous comments related to supporting the side yard setback 5 feet and would prefer keeping away from the lake and does not want to set precedents with floodplain variances.

Mr. Fuchs stated the owner has satisfy the hardship requirement as it appears the lot is unbuildable. He noted the zoning code for the lake doesn't match what has been built in the area.

Mr. Fuchs asked the Board if there was much of difference between 5 feet

and 4.7 feet. Mr. Heise and Ms. Marlin Kate both stated this is an issue and a standard should be adhered to. Mr. Fuchs stated it is a particularly narrow lot and would be an improvement of the situation if the house is centered on the lot. He stated he'd want the house away from the lake and should remain behind his neighbors' homes. There was discussion that the porch dimensions changed to 12 x 6 feet.

**A motion was made and seconded, (M. Heise, R. Welcenbach) to set the side yard setback variance to 5-feet on both sides of the home.** Motion Passed: 4-For, 1-Against (J. Fuchs) stating that three inches is not unreasonable.

**A motion was made and seconded, (M. Heise, J. Fuchs) to allow for a 27.9 foot variance from the floodplain setback.** Motion Passed: 3-For, 2 Against (K. Marlin & J. Tredwell) Ms. Marlin stated she'd like the house built closer to the road and Mr. Tredwell agreed.

**A motion was made and seconded, (J. Fuchs, K. Marlin) to reconsider at the next meeting if there is an issue with the surveyor's measurements.** Motion Passed: 5-For, 0-Against.

- 4.0 Adjournment – **A motion was made and seconded, (K. Marlin, M. Heise) to adjourn the meeting at 7:40 p.m.** Motion Passed: 5-For, 0-Against.

Respectfully Submitted,

Kelly Tarczewski  
Clerk/Treasurer

#### **FOLLOW-UP:**

Mr. Gibbs stated Mr. Krueger gave misinformation regarding the buildable area. He confirmed the legal buildable area was correctly marked in green on the survey presented to the ZBA on March 1, 2017. Per Chapter 17.0411 the street yard setback shall follow 17.0410 but can average. See highlighted notation below.

Excerpt from the City of Pewaukee Municipal Code – Chapter 17 Zoning

#### **17.0411 Rs-7, SINGLE-FAMILY RESIDENTIAL DISTRICT (Renamed 13-09)**

- a. The Rs-7, Single-Family Residential District is intended to accommodate only existing single-family residential uses or parcels within the older, established areas of the City where such uses are located on lots or parcels of land which are within predominantly residential areas, do not conform to the restrictions set forth in the Rs-6 district, and were "lots of record" prior to August 1982. Any single-family residential use or structure existing in the Rs-7 Zoning District shall be considered to be a conforming use but may not be altered to change the principal use and may only be structurally altered in conformance with the requirements set forth in sub-section 17.0410 with the exception that the setback and yard requirements may be changed as follows:

The street yard setback may be reduced to the average of the yards on each side within the same block but to not less than 20 feet. The existing side yard on each side of the structure may be considered the side yard for purposes of structural expansion; and, the rear yard may be reduced to 20 feet unless adjacent to a designated 100 year recurrence interval (base flood) floodplain (see 17.0435).

In addition, existing non-conforming parcels of land in the older, established areas of the City (particularly the Lake Pewaukee shore area) may be placed in this district if no other residential district is appropriate, but may not be altered in any way or a residence constructed thereon except in conformance with the requirements set forth in Section 17.0410 and 17.0436, with the exception that the setback and yard requirements set forth in Section 17.0410 may be reduced as follows:

The street yard setback may be reduced to the average of the nearest residences on each side of the parcel in question but to not less than 20 feet; the side yard requirement on lots 60-89 feet in width may be reduced by one (1) foot for each ten (10) feet less than 90 feet; and, lots less than 60 feet in width may be reduced by an additional one (1) foot for each five (5) feet less than 60 feet, but to not less than five (5) feet and with the exception that residences over one story in height must have a side yard setback of at least eight (8) feet. The rear yard may be reduced to 20 feet unless adjacent to a designated 100 year recurrence interval (base flood) floodplain (See 17.0435 and 17.0436). (See table below.)

Further, any such existing uses which lie within the shoreland or floodplain areas in the City must comply with all Waukesha County Shoreland regulations or subsection 17.0436 of this ordinance, whichever is more restrictive.

| <b>SIDE YARD REDUCTION ON EXISTING PARCELS IN THE Rs-7 ZONING DISTRICT</b> |                          |                    |                          |
|----------------------------------------------------------------------------|--------------------------|--------------------|--------------------------|
| <b>LOT WIDTH</b>                                                           | <b>MINIMUM SIDE YARD</b> | <b>LOT WIDTH</b>   | <b>MINIMUM SIDE YARD</b> |
| 90 ft. – 99.8 ft.                                                          | 12 ft.                   | 55 ft. – 59.9 ft.  | 8 ft.                    |
| 80 ft. – 89.9 ft.                                                          | 11 ft.                   | 50 ft. – 54.9 ft.* | 7 ft.                    |
| 70 ft. – 79.9 ft.                                                          | 10 ft.                   | 45 ft. – 49.9 ft.* | 6 ft.                    |
| 60 ft. – 69.9 ft.                                                          | 9 ft.                    | Less than 45 ft.*  | 5 ft.                    |

**\* Residences on these lots over one story in height must have a side yard setback of at least eight (8) feet.**