



## Building Services

W240N3065 Pewaukee Road  
Pewaukee, WI 53072  
(262) 691-9107 Fax (262) 691-6039

### **ZONING BOARD OF APPEALS MEETING NOTICE AND AGENDA**

**Wednesday, May 1, 2019**

**6:00 PM**

Common Council Chambers ~ Pewaukee City Hall  
W240 N3065 Pewaukee Road ~ Pewaukee, Wisconsin

- 
1. Call to Order and Pledge of Allegiance
  2. Discussion and Possible Action to Approve the Zoning Board of Appeals Meeting Minutes Dated February 13, 2019
  3. Discussion and Possible Action to Approve the Zoning Board of Appeals Meeting Minutes Dated February 19, 2019
  4. Determination of Rehearing of Variance Requests Petitioned by Tyler J. Pinter for the Property Located at W267 N2965 Peterson Drive (PWC 0930-026) Previously Heard at the February 13, 2019 Zoning Board of Appeals Meeting and Decided Upon at the February 19, 2019 Zoning Board of Appeals Meeting
  5. **PUBLIC HEARING** and Possible Action Regarding the Petition of **TYLER J. PINTER** for the Property Located at **W267N2965 PETERSON DRIVE** (PWC 0930-026) for the following:
    - 5.1 **Section 17.0411** to allow side yard setbacks of 5.2 feet from the north property line and 3.0 feet from the south property line, opposed to the RS-7 District minimum side yard setback of 8.0 feet for a two story dwelling
    - 5.2 **Section 17.0435f** to allow a principal building to be located within 75-feet of the floodplain boundary
    - 5.3 **Section 17.043c(5)** to allow a building/structure to be located within 75-feet of the floodplain boundary
    - 5.4 **Section 17.0436d** to allow for an increased in lot coverage
  6. Adjournment

Kelly Tarczewski  
Clerk/Treasurer

April 25, 2019

#### NOTICE

It is possible that members of other governmental bodies of the municipality may be in attendance to gather information that may form a quorum. At the above stated meeting, no action will be taken by any governmental body other than the governmental body specifically referred

to above in this notice.

Any person who has a qualifying disability under the Americans with Disabilities Act that requires the meeting or materials at the meeting to be in an accessible format must contact the Building Services office, at (262) 691-9107 by 11:00 a.m. the Monday prior to the meeting so that arrangements may be made to accommodate your request.

**CITY OF PEWAUKEE  
ZONING BOARD OF APPEALS AGENDA ITEM 2.**

**DATE:** May 1, 2019

**DEPARTMENT:** Clerk/Treasurer

**PROVIDED BY:**

***SUBJECT:***

Discussion and Possible Action to Approve the Zoning Board of Appeals Meeting Minutes Dated February 13, 2019

***BACKGROUND:***

***FINANCIAL IMPACT:***

***RECOMMENDED MOTION:***

**ATTACHMENTS:**

Description

ZBA Minutes 2-13-2019

**In attendance:**

R. Welcenbach, J. Tredwell, T. Matt and D. Tuttle.

**Also Present:**

Zoning Administrator N. Fuchs and Clerk/Treasurer K. Tarczewski.

1. Call to Order and Pledge of Allegiance

R. Welcenbach called the meeting to order at 6:02 p.m.

2. **PUBLIC HEARING** and Possible Action Regarding the Petition of **TYLER J. PINTER** for the Property Located at **W267N2965 PETERSON DRIVE** (PWC 0930-026) for the following:

- 2.1 **Section 17.0411** to allow side yard setbacks of 5.2 feet from the north property line and 3.0 feet from the south property line, opposed to the RS-7 District minimum side yard setback of 8.0 feet for a two story dwelling
- 2.2 **Section 17.0410e(4)** to allow for the sum total of the first floor area of the principal building and all accessory buildings to exceed 30 percent of the lot area
- 2.3 **Section 17.0435f** to allow a principal building to be located within 75-feet of the floodplain boundary
- 2.4 **Section 17.043c(5)** to allow a building/structure to be located within 75-feet of the floodplain boundary
- 2.5 **Section 17.0436d** to allow for an increased in lot coverage

Mr. Matt recused himself stating he had a conflict of interest due to him being an adjacent property owner affected by the proposed application.

Ms. Tuttle stated she had a discussion with Mr. Pinter prior to the meeting at a sports outing. Once she found out Mr. Pinter lives in the City of Pewaukee she told him they could no longer discuss the matter. She spoke to the City Attorney and he stated as long as she could be impartial, she could deliberate on the request.

The City Clerk swore in the following individuals who wished to give testimony. Chris Wills (W267 N2955 Peterson Drive), Tyler and Brianna Pinter (W267 N2965 Peterson Drive), Thomas Matt (W267 N2930 Peterson Drive), Rose Sorensen (W267 N2926 Peterson Drive), and Steve Krings (N30 W26568 Peterson Drive). Later in the meeting the Architect, Jeff Levar was also sworn in.

Mr. Fuchs summarized the various variances that the applicant was requesting. He stated the first variance request was for a reduction of side yard setbacks. The applicant is proposing a 5.2 foot setback from the north property line and 3.0 foot setback from the south property line. The second variance is to allow a reduction in lot coverage. The Rs-7 District requires that the principal and accessory structures not exceed 30% of the lot area. The applicant is proposing lot coverage of 30.96%. Mr. Fuchs stated the variances in items #2.3 and #2.4 on the agenda are both related to the floodplain boundary. The F-1 District requires a 75 foot setback. The proposed setback varies, but is 13.3 feet at its nearest point. The Shoreland Overlay District also requires a 75-foot setback, but also allows for an average setback to be used based on adjacent structures. In this case the property to the north is vacant, so the averaging of setbacks is not applicable. The Shoreland Overlay District also requires different lot coverage requirements considering different types of structures. The first requirement is that permanent

structures may not occupy more than 20% of the lot. The applicant, again, is proposing lot coverage of 30.96%. The Shoreland Overlay District also limits impervious surfaces, such as driveways, parking areas, walkways, patios, and decks, which may not occupy more than 7.5% of the lot. The applicant is proposing approximately 19.52%. The Shoreland Overlay District also allows for a combined lot coverage of all structures and impervious surfaces of up to 35% with mitigation, such as a rain garden. The applicant is not proposing mitigation. The total lot coverage proposed is 50.5%.

He said staff is recommending denial and finds that the Rs-7 District is in the zoning code to accommodate these types of lots, so adhering to these standards would meet the intent of the Zoning Code. Mr. Fuchs also stated staff did not see any unusually circumstances. This lot is similar to a lot of the lots in the City, particularly around the lake. He said a single-family home could be built on that property that would meet these standards.

Mr. Pinter stated they purchased the property approximately 4 years ago. He said they have out grown their home. He added it is need of several repairs including a new roof, heating and air conditioning. He mentioned the garage has issues with the pitch and said it fills full of water when there are heavy rains. He added, with the recent thawing and heavy rains and cold weather his garage floor is covered in ice. He stated there are plumbing issues with the home too. In researching repair costs it was determined that they would be extremely costly and it would make more sense to build a new home.

Mr. Pinter stated he spoke to his neighbors about his proposed plans and they are in support of his new home. Mr. Pinter also submitted a letter of support from his neighbors Denny & Amy Stone who could not be present this evening.

Mr. Pinter also submitted photos of his property with various flags marking where his home would be positioned on his property. One is the view from the Stone's deck, another photo showed how far the proposed deck would extend in the yard in comparison to where the Wills deck is located and one photo showed three different flags; the notations were as following: *'five feet off N PL – Mr. Matt's desired location'*, *'Proposed plan, five feet off N PL'* and *'8 feet off N PL, 30 feet from RD ROW. Build location with no variances'*. Mr. Pinter stated he did not agree with Mr. Matt's request as it would require a greater encroachment into the floodplain.

Mr. Welcenbach opened the public hearing.

Mr. Wills spoke in favor of the proposed plans. He mentioned the lot adjacent to the Pinter property is vacant and won't be built upon and that should be considered when granting the variance.

Mr. Matt stated his view of the lake would be adversely affected and requested the house be moved slightly. He submitted pictures from his home office window.

Ms. Sorensen stated she was opposed to all of the variances that have been granted over the recent years. She said the homes that are being built on the lake are far too large for the small lots. She also voiced here concerns over the issues of the height of some of the buildings as well as construction activity and parking on her property.

Mrs. Pinter thanked the Commission members for their consideration on the matter before them.

Ms. Tuttle referenced Chapter 59 of the Wisconsin State Statutes and mentioned Chapter NR 117 of the Wisconsin Administrative Code to see if there was any leeway the Board could offer the petitioner.

Mr. Welcenbach closed the public hearing. The Board members stated they wanted to research the matter and asked if they could contact the City's Attorney if needed. The Board members were told they could not have any discussion among themselves.

**A motion was made and seconded, (R. Welcenbach, J. Tredwell) to table the decision and reconvene on Tuesday, February 19<sup>th</sup>, 2019 at 6:00 p.m.** Motion Passed: 3-For, 0-Against.

3. Adjournment

**A motion was made and seconded, (R. Welcenbach, J. Tredwell) to adjourn the meeting at 9:46 p.m.** Motion Passed: 3-For, 0-Against.

Respectfully Submitted,

Kelly Tarczewski  
Clerk/Treasurer

**CITY OF PEWAUKEE  
ZONING BOARD OF APPEALS AGENDA ITEM 3.**

**DATE:** May 1, 2019

**DEPARTMENT:** Clerk/Treasurer

**PROVIDED BY:**

***SUBJECT:***

Discussion and Possible Action to Approve the Zoning Board of Appeals Meeting Minutes Dated February 19, 2019

***BACKGROUND:***

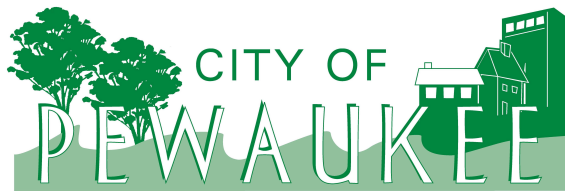
***FINANCIAL IMPACT:***

***RECOMMENDED MOTION:***

**ATTACHMENTS:**

Description

ZBA Minutes 2-19-2019



## Building Services

W240N3065 Pewaukee Road  
Pewaukee, WI 53072  
(262) 691-9107 Fax (262) 691-6039

### **ZONING BOARD OF APPEALS MEETING NOTICE AND AGENDA**

**Tuesday, February 19, 2019**

**6:00 PM**

Common Council Chambers ~ Pewaukee City Hall  
W240 N3065 Pewaukee Road ~ Pewaukee, Wisconsin

- 
1. Call to Order and Pledge of Allegiance
  2. **DELIBERATION** and Possible Action Regarding the Petition of **TYLER J. PINTER** for the Property Located at **W267N2965 PETERSON DRIVE** (PWC 0930-026) Previously Heard on Wednesday, February 13, 2019 for the following:
    - 2.1 **Section 17.0411** to allow side yard setbacks of 5.2 feet from the north property line and 3.0 feet from the south property line, opposed to the RS-7 District minimum side yard setback of 8.0 feet for a two story dwelling
    - 2.2 **Section 17.0410e(4)** to allow for the sum total of the first floor area of the principal building and all accessory buildings to exceed 30 percent of the lot area
    - 2.3 **Section 17.0435f** to allow a principal building to be located within 75-feet of the floodplain boundary
    - 2.4 **Section 17.043c(5)** to allow a building/structure to be located within 75-feet of the floodplain boundary
    - 2.5 **Section 17.0436d** to allow for an increased in lot coverage

**PLEASE NOTE:**

**NO ADDITIONAL TESTIMONY WILL BE ADMITTED AT THIS TIME.**

3. Adjournment

Kelley Tarczewski  
Clerk/Treasurer

February 15, 2019

**NOTICE**

It is possible that members of other governmental bodies of the municipality may be in attendance to gather information that may form a quorum. At the above stated meeting, no action will be taken by any governmental body other than the governmental body specifically referred to above in this notice.

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arrangements may be made to accommodate your request.

**CITY OF PEWAUKEE  
ZONING BOARD OF APPEALS AGENDA ITEM 4.**

**DATE:** May 1, 2019

**DEPARTMENT:** Zoning Appeal

**PROVIDED BY:**

***SUBJECT:***

Determination of Rehearing of Variance Requests Petitioned by Tyler J. Pinter for the Property Located at W267 N2965 Peterson Drive (PWC 0930-026) Previously Heard at the February 13, 2019 Zoning Board of Appeals Meeting and Decided Upon at the February 19, 2019 Zoning Board of Appeals Meeting

***BACKGROUND:***

***FINANCIAL IMPACT:***

***RECOMMENDED MOTION:***

**ATTACHMENTS:**

Description

Emails Pinter & Fuchs

Determination 2-19-2019

## Tarczewski, Kelly

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**From:** Fuchs, Nick  
**Sent:** Thursday, April 25, 2019 8:11 AM  
**To:** Tarczewski, Kelly; Stan Riffle  
**Cc:** Klein, Scott  
**Subject:** FW: Variance request

Below is an email from Tyler Pinter that he would like included with his packet materials.

Give me a call if you'd like to discuss. Thanks.

Nick Fuchs  
Planner & Community Development Director  
[City of Pewaukee](#)  
W240N3065 Pewaukee Road  
Pewaukee, WI 53072  
262-691-6007  
[fuchs@pewaukee.wi.us](mailto:fuchs@pewaukee.wi.us)

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**From:** Tyler Pinter [mailto:tpinter06@gmail.com]  
**Sent:** Wednesday, April 24, 2019 5:12 PM  
**To:** Fuchs, Nick <[fuchs@pewaukee.wi.us](mailto:fuchs@pewaukee.wi.us)>  
**Subject:** Re: Variance request

Nick:

At the hearing on February 19, 2019, the Board of Zoning Appeals approved some of the requested variances, but due to the issues raised concluded that the plans for my home would necessarily need to be changed, which would change their analysis. The Board reviewed the procedure for resubmission of the application with both you and the City Attorney, and ultimately concluded that the resulting changes in plans would need to be resubmitted to the Board for further determination of the impacted zoning variances.

Because the Board already has approved the resubmission of plans for the home and a rehearing based upon those plans, there is no reopening or a reconsideration necessary. The Board has already approved the hearing.

You have not provided me with the case law that the City Attorney is relying upon, but I would expect that it does not address the situation where the Board has already approved the rehearing with its original decisions.

On March 20th 2019 I submitted the updated plans and application and on a letter from the city dated April 1st 2019, I was informed that a meeting would be held on May 1st 2019 after proper notice. When I spoke with you today, you told me that despite the hearing being one week from today, my were unsure if my submissions have been sent to the Board,

Given that the hearing is one week away, it was a shock to me to receive your email that appears to be the City Attorney attempting to derail the Board's consideration of my application based upon inapplicable procedural grounds. Again, the Board specifically requested that I reapply with revised plans.

I have recently met with you to review the application documents and have sought to address all of my neighbors and any other public considerations with my proposed home construction. In the process I have revised the plans several times to seek to cooperate and address all of these concerns, at my personal expense. I believe my plans are consistent with the intent of the ordinances and presents a best possible outcome both for the community and my family, and avoid unnecessary hardship. Despite these efforts it appears there has been a coordinated effort within the City to prevent consideration of my application, and most recently to employ tactics to even allow my application to be heard. I do not know what about this application that has garnered this kind of attention, but I am simply asking for the Board who is the proper authority in this situation to review my application as they have instructed me to resubmit.

Please include this e-mail string with my application materials to be provided to the Board for the May 1 hearing.

Thank you.

Tyler Pinter

On Wed, Apr 24, 2019 at 8:55 AM Fuchs, Nick <[fuchs@pewaukee.wi.us](mailto:fuchs@pewaukee.wi.us)> wrote:

Tyler,

The City Attorney contacted me this morning and, based on previous case law, indicated that a determination by the Board is required to rehear your request. The Board must determine that a case should be reopened or reconsidered if there was a mistake or if there is a public necessity or other good cause, such as a significant change in circumstances.

Therefore, the Board will first have to decide if there is reason to rehear/reconsider your request. If they choose to do so based on the reasoning noted above, then the Board would hold the public hearing and consider your request similar to the previous meeting.

Please call me if you wish to discuss further. Thanks.

Nick Fuchs

Planner & Community Development Director

[City of Pewaukee](#)

W240N3065 Pewaukee Road

Pewaukee, WI 53072

262-691-6007

[fuchs@pewaukee.wi.us](mailto:fuchs@pewaukee.wi.us)

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**CITY OF PEWAUKEE  
OFFICE OF THE CITY CLERK  
W240N3065 PEWAUKEE ROAD  
PEWAUKEE, WI 53072**

**BOARD OF ZONING APPEALS  
FINDINGS, CONCLUSIONS, DETERMINATION AND ORDER**

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In review of the Area Variance Application of Tyler J. Pinter, for the property located at W267N2965 Peterson Drive, Pewaukee, Wisconsin (TAX KEY NO. 0930026) for a variance from Section 17.0411 to allow for side yard setbacks of 5.2-feet from the north property line and 3.0-feet from the south property line, opposed to the Rs-7 District minimum side yard setback of 8-feet for a two story dwelling.

Application filed: December 19, 2019  
Date of Notice: January 4, 2019  
Hearing Date: February 13, 2019 with further deliberation and action on  
February 19, 2019

**LEGAL DESCRIPTION**

Lot 27, Petersens Subdivision No. 2, being a part of the Northwest 1/4 of Section 17, Township 7 North, Range 19 East, City of Pewaukee, County of Waukesha, State of Wisconsin; containing 12,317 square feet, 0.2828 acres more or less measured to the shoreline of Pewaukee Lake; Tax Key No. 0930026.

**FINDINGS OF FACTS**

The Board of Zoning Appeals having heard the testimony and considered the entire record, the Board finds:

1. The applicant is the property owner of the subject parcel of land and is proposing to raze an existing single-family dwelling to allow for the construction of a new 2-story single-family home. The property is zoned Rs-7 Single-Family Residential District, F-1 Floodplain District and SO Shoreland Overlay District.
2. The property is 50-feet wide and has an area of 12,317 square feet.
3. The proposed home, garage, boathouse and other impervious surface total to approximately 6,218 square feet.
4. The proposed home location is setback 5.2-feet from the north property line and as close as

3-feet from the sound property line.

5. Section 17.0411 of the City's Zoning Code requires that residences over one story in height must have a side yard setback of at least eight (8) feet.

### CONCLUSIONS OF LAW

1. The variance requested is for a 40-foot wide home on a 50-foot wide lot, where the property owner should have done his due diligence and researched what would be allowable for a new home.
2. The proposed home restricts the neighbors view and is contrary to the public interest.
3. There is an existing home on the lot that could be repaired, and financial hardships do not rise to the level of unnecessary hardship.
4. The petitioner could repair the home within the existing footprint of the dwelling.
5. This is a self-imposed hardship because there is an existing structure that the property owner wants to tear down and build something larger that is contrary to code.
6. The property owner could fix the existing home, but is proposing to build a larger home.

### DETERMINATION AND ORDER

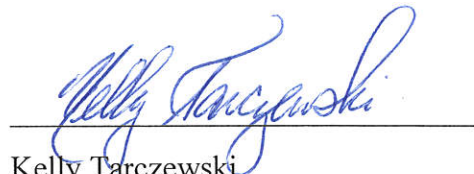
The Board denies the requested variance from Section 17.0411 to allow for side yard setbacks of 5.2-feet from the north property line and 3.0-feet from the south property line, pursuant to the findings and conclusions noted above.

Dated: February 19, 2019

City of Pewaukee City of Pewaukee



Robert Welcenbach  
Vice-Chairman, Board of Zoning Appeal



Kelly Tarczewski  
City Clerk/Treasurer

Dated: March 13, 2019

Dated: March 13, 2019

**CITY OF PEWAUKEE  
OFFICE OF THE CITY CLERK  
W240N3065 PEWAUKEE ROAD  
PEWAUKEE, WI 53072**

**BOARD OF ZONING APPEALS  
FINDINGS, CONCLUSIONS, DETERMINATION AND ORDER**

---

In review of the Area Variance Application of Tyler J. Pinter, for the property located at W267N2965 Peterson Drive, Pewaukee, Wisconsin (TAX KEY NO. 0930026) for a variance from Section 17.0410e(4) to allow for the sum total of the first floor area of the principal building and all accessory buildings to exceed 30 percent of the lot area.

Application filed: December 19, 2019  
Date of Notice: January 4, 2019  
Hearing Date: February 13, 2019 with further deliberation and action on  
February 19, 2019

**LEGAL DESCRIPTION**

Lot 27, Petersens Subdivision No. 2, being a part of the Northwest 1/4 of Section 17, Township 7 North, Range 19 East, City of Pewaukee, County of Waukesha, State of Wisconsin; containing 12,317 square feet, 0.2828 acres more or less measured to the shoreline of Pewaukee Lake; Tax Key No. 0930026.

**FINDINGS OF FACTS**

The Board of Zoning Appeals having heard the testimony and considered the entire record, the Board finds:

1. The applicant is the property owner of the subject parcel of land and is proposing to raze an existing single-family dwelling to allow for the construction of a new 2-story single-family home. The property is zoned Rs-7 Single-Family Residential District, F-1 Floodplain District and SO Shoreland Overlay District.
2. The property is 50-feet wide and has an area of 12,317 square feet.
3. The proposed home, garage, boathouse and other impervious surface total to approximately 6,218 square feet.
4. The proposed home, garage, covered porch, and existing boat house total 3,814 square feet, which exceeds this standard by 118.9 square feet. Considering these structures, the proposed

lot coverage is 30.96%.

5. Section 17.0411a. and 17.0410e(4) of the City's Zoning Code requires that the sum total of the first floor area of the principal building and all accessory buildings shall not exceed 30 percent of the lot area.

### CONCLUSIONS OF LAW

1. There is not a substantial difference between the requirement and the proposed lot coverage.

### DETERMINATION AND ORDER

The Board approves the requested variance from Section 17.0410e(4) to allow for the sum total of the first floor area of the principal building and all accessory buildings to occupy 30.96% of the lot, pursuant to the findings and conclusions noted above and subject to the proposed home being in substantial conformance with the application materials provided by the applicant.

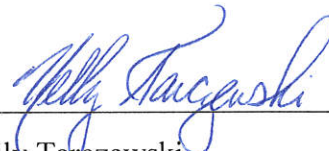
Dated: February 19, 2019

City of Pewaukee City of Pewaukee



Robert Welcenbach  
Chairman, Board of Zoning Appeal

Dated: March 13, 2019



Kelly Tarczewski  
City Clerk/Treasurer

Dated: March 14, 2019

**CITY OF PEWAUKEE  
OFFICE OF THE CITY CLERK  
W240N3065 PEWAUKEE ROAD  
PEWAUKEE, WI 53072**

**BOARD OF ZONING APPEALS  
FINDINGS, CONCLUSIONS, DETERMINATION AND ORDER**

---

In review of the Area Variance Application of Tyler J. Pinter, for the property located at W267N2965 Peterson Drive, Pewaukee, Wisconsin (TAX KEY NO. 0930026) for a variance from Section 17.0435f to allow a principal building to be located within 75-feet of the floodplain boundary.

Application filed: December 19, 2019  
Date of Notice: January 4, 2019  
Hearing Date: February 13, 2019 with further deliberation and action on  
February 19, 2019

**LEGAL DESCRIPTION**

Lot 27, Petersens Subdivision No. 2, being a part of the Northwest 1/4 of Section 17, Township 7 North, Range 19 East, City of Pewaukee, County of Waukesha, State of Wisconsin; containing 12,317 square feet, 0.2828 acres more or less measured to the shoreline of Pewaukee Lake; Tax Key No. 0930026.

**FINDINGS OF FACTS**

The Board of Zoning Appeals having heard the testimony and considered the entire record, the Board finds:

1. The applicant is the property owner of the subject parcel of land and is proposing to raze an existing single-family dwelling to allow for the construction of a new 2-story single-family home. The property is zoned Rs-7 Single-Family Residential District, F-1 Floodplain District and SO Shoreland Overlay District.
2. The property is 50-feet wide and has an area of 12,317 square feet.
3. The proposed home, garage, boathouse and other impervious surface total to approximately 6,218 square feet.
4. The majority of the home is closer than 75-feet to the floodplain boundary and the deck is setback 13.3-feet at its nearest point.

5. Section 17.0435f. of the City's Zoning Code requires that no new walled buildings or structures be allowed within 75-feet of the floodplain.

### CONCLUSIONS OF LAW

1. The existing home is 25-feet from the floodplain and the proposed home is 24.5 feet.
2. A hardship exists in fitting a home within the smaller buildable area of the property as shown in the applicant's submittal.

### DETERMINATION AND ORDER

The Board approves the requested variance from Section 17.0435f to allow a principal building to be located 24.5-feet from the base floodplain boundary, pursuant to the findings and conclusions noted above and subject to the proposed home being in substantial conformance with the application materials provided by the applicant.

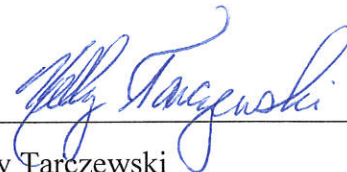
Dated: February 19, 2019

City of Pewaukee City of Pewaukee



Robert Welcenbach  
Vice Chairman, Board of Zoning Appeal

Dated: March 13, 2019



Kelly Tarczewski  
City Clerk/Treasurer

Dated: March 14, 2019

**CITY OF PEWAUKEE  
OFFICE OF THE CITY CLERK  
W240N3065 PEWAUKEE ROAD  
PEWAUKEE, WI 53072**

**BOARD OF ZONING APPEALS  
FINDINGS, CONCLUSIONS, DETERMINATION AND ORDER**

---

In review of the Area Variance Application of Tyler J. Pinter, for the property located at W267N2965 Peterson Drive, Pewaukee, Wisconsin (TAX KEY NO. 0930026) for a variance from Section 17.0436c.(5) to allow a building/structure to be located within 75-feet of the floodplain boundary.

Application filed: December 19, 2019  
Date of Notice: January 4, 2019  
Hearing Date: February 13, 2019 with further deliberation and action on  
February 19, 2019

**LEGAL DESCRIPTION**

Lot 27, Petersens Subdivision No. 2, being a part of the Northwest 1/4 of Section 17, Township 7 North, Range 19 East, City of Pewaukee, County of Waukesha, State of Wisconsin; containing 12,317 square feet, 0.2828 acres more or less measured to the shoreline of Pewaukee Lake; Tax Key No. 0930026.

**FINDINGS OF FACTS**

The Board of Zoning Appeals having heard the testimony and considered the entire record, the Board finds:

1. The applicant is the property owner of the subject parcel of land and is proposing to raze an existing single-family dwelling to allow for the construction of a new 2-story single-family home. The property is zoned Rs-7 Single-Family Residential District, F-1 Floodplain District and SO Shoreland Overlay District.
2. The property is 50-feet wide and has an area of 12,317 square feet.
3. The proposed home, garage, boathouse and other impervious surface total to approximately 6,218 square feet.
4. The majority of the home is closer than 75-feet to the floodplain boundary and the deck is setback 13.3-feet at its nearest point.

5. The Shoreland Overlay District includes a requirement that a building/structure shall not be located within 75-feet of the floodplain boundary.

### CONCLUSIONS OF LAW

1. The existing home is 25-feet from the floodplain and the proposed home is 24.5 feet.
2. A hardship exists in fitting a home within the smaller buildable area of the property as shown in the applicant's submittal.
3. Typically averaging setbacks would apply; however, the property to the north is uniquely owned by the property owners of the Petersen's Subdivision and does not contain a principal structure.

### DETERMINATION AND ORDER

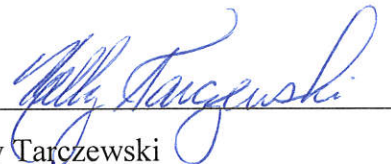
The Board approves the requested variance from Section 17.0436c.(5) to allow a building/structure to be located within 75-feet of the floodplain boundary, pursuant to the findings and conclusions noted above and subject to the proposed home being in substantial conformance with the application materials provided by the applicant.

Dated: February 19, 2019

City of Pewaukee City of Pewaukee



Robert Welcenbach  
Vice-Chairman, Board of Zoning Appeal



Kelly Tarczewski  
City Clerk/Treasurer

Dated: March 13, 2019

Dated: March 14, 2019

**CITY OF PEWAUKEE  
OFFICE OF THE CITY CLERK  
W240N3065 PEWAUKEE ROAD  
PEWAUKEE, WI 53072**

**BOARD OF ZONING APPEALS  
FINDINGS, CONCLUSIONS, DETERMINATION AND ORDER**

---

In review of the Area Variance Application of Tyler J. Pinter, for the property located at W267N2965 Peterson Drive, Pewaukee, Wisconsin (TAX KEY NO. 0930026) for a variance from Section 17.0436d. to allow for an increase in lot coverage.

Application filed: December 19, 2019  
Date of Notice: January 4, 2019  
Hearing Date: February 13, 2019 with further deliberation and action on  
February 19, 2019

**LEGAL DESCRIPTION**

Lot 27, Petersens Subdivision No. 2, being a part of the Northwest 1/4 of Section 17, Township 7 North, Range 19 East, City of Pewaukee, County of Waukesha, State of Wisconsin; containing 12,317 square feet, 0.2828 acres more or less measured to the shoreline of Pewaukee Lake; Tax Key No. 0930026.

**FINDINGS OF FACTS**

The Board of Zoning Appeals having heard the testimony and considered the entire record, the Board finds:

1. The applicant is the property owner of the subject parcel of land and is proposing to raze an existing single-family dwelling to allow for the construction of a new 2-story single-family home. The property is zoned Rs-7 Single-Family Residential District, F-1 Floodplain District and SO Shoreland Overlay District.
2. The property is 50-feet wide and has an area of 12,317 square feet.
3. The proposed home, garage, boathouse and other impervious surface total to approximately 6,218 square feet.
4. Section 17.0436d.(1) requires that the total building coverage or footprint of permanent structures shall be no more than 20% of the total area of a parcel.
5. The proposed house, garage, porch, and existing boat house total 3,814 square feet and

occupy approximately 30.96% of the lot.

6. Section 17.0436d.(3) requires that permeant impervious surfaces such as driveways, parking areas, walkways, patios, ground level decks, ramps, tennis and other sports courts, and fountains or pools shall total no more than 7-1/2% of parcels of 10,000 square feet or more.
7. The total proposed area of impervious surfaces is 2,404 square feet, which occupy approximately 19.52% of the lot.
8. Section 17.0436d.(4) & (5) states that the combined total lot coverage may be increased to 35% with approved mitigation measures.
9. No mitigation is proposed that is consistent with Section 17.0436d.(4)a. and b. of the City's Zoning Code.

### CONCLUSIONS OF LAW

1. Insufficient information is provided as the previous variance denial related to setbacks will require the plans to change and the amount of lot coverage to be reduced. The extent of the request, as may or may not still be necessary, is unknown.

### DETERMINATION AND ORDER

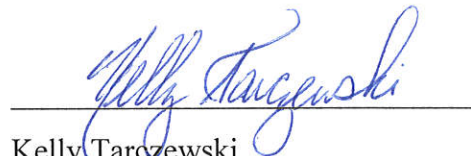
The Board denies the requested variance from Section 17.0436d. to allow for an increase in lot coverage pursuant to the findings and conclusions noted above.

Dated: February 19, 2019

City of Pewaukee City of Pewaukee



Robert Welcenbach  
Vice Chairman, Board of Zoning Appeal



Kelly Tarozewski  
City Clerk/Treasurer

Dated: March 13, 2019

Dated: March 14, 2019

**CITY OF PEWAUKEE  
ZONING BOARD OF APPEALS AGENDA ITEM 5.**

**DATE:** May 1, 2019

**DEPARTMENT:** Zoning Appeal

**PROVIDED BY:**

***SUBJECT:***

**PUBLIC HEARING** and Possible Action Regarding the Petition of **TYLER J. PINTER** for the Property Located at **W267N2965 PETERSON DRIVE** (PWC 0930-026) for the following:

***BACKGROUND:***

***FINANCIAL IMPACT:***

***RECOMMENDED MOTION:***

**ATTACHMENTS:**

Description

Pinter Application/Request

Pinter Plans

Staff Report 5.1.2019

Application Deadline: \_\_\_\_\_

Meeting Date: \_\_\_\_\_

**Zoning Board of Appeals  
Appeal and Application for Variance**

Pewaukee City Hall  
W240N3065 Pewaukee Rd.  
Pewaukee, WI 53072

**RECEIVED**  
MAR 20 2019

OFFICE OF THE  
CLERK/TREASURER

**NOTICE:** The board meets on the first Wednesday of each month at 6:30pm in the City Hall Conference Room unless otherwise noted. **ATTENDANCE OF THE APPLICANT OR REPRESENTATIVE IS REQUIRED.** Failure to appear could result in the application being acted upon without the applicant's input, or it could result in the item being removed from the agenda, requiring the applicant to reapply and pay another filing fee.

The appeal or application must be filed with the Building Services Department **30 days prior to the next Zoning Board of Appeals meeting and within 20 days of the Building Inspector's denial of permit**, accompanied by the filing fee of \$400.00 and a list of names of all owners of property within 600 feet from the exterior boundaries of the properties requesting the variance. \*\* Note: Applicant/Owner is also responsible for reimbursing the City for cost of publishing legal notices and other fees, including, but not limited to, attorney fees for reviewing the petition.

**ALL APPEALS FOR VARIANCES MUST INCLUDE PLANS SHOWING THE VARIANCES BEING REQUESTED.**

Site Address W267 N2965 Peterson Dr.

Parcel Tax Key No. PWC 0930026

**Applicant**  
(person to receive notices)

**Property Owner**

Name

Tyler J Pinter

Tyler Pinter

Address

W267 N2965 Peterson Dr

W267 N2965 Peterson Dr

City, Zip

Pewaukee WI 53072

Pewaukee WI 53072

Phone

(262) 617-1632

(262) 617-1632

**TO THE ZONING BOARD OF APPEALS:**

I hereby make an application for a variances & see letter  
(appeal from the decision of the Zoning Inspector)

For the property located at the following address: W267 N2965 Peterson Dr

Present use of premises Single family home

Briefly describe proposal Replace defective existing home with new home

If this is an appeal, attach the following:

- (1) Statement of principal points on which appeal is based
- (2) Plans showing the variances requested.
- (3) Plat of Survey, which shows where the building for the variance request would be built.

I hereby depose that the above statements contained in the papers submitted herewith are true and correct.

Date: 3/20/19

Applicant Signature: Tyler Pinter

< By signing this document you are giving the Zoning Board of Appeals members permission to view your property >

City of Pewaukee Zoning Board of Appeals  
W240 N3065 Pewaukee Road  
Pewaukee, WI 53072



February 15, 2019

Dear City of Pewaukee Zoning Board of appeals,

At the February 19, 2019 hearing, the Board granted a portion of our requested variances, based upon our original plans. The Board conditioned its approval of the variances on resubmission of plans substantially similar to those plans as submitted.

Specifically, the Board denied our request for a variance to Section 17.0411 to allow for reduction of side setbacks. The Board's denial of the side setback variance was based upon its consideration of public concern expressed by our neighbor to the rear of the home as to the potential for limited sight lines to the lake along the north side yard due to the lower setbacks. The Board's consideration was focused on maintaining an identified purpose of the setback ordinance to address those concerns with aesthetics and public views to the lake.

Based upon the concerns raised by the Board, we reviewed plans with our neighbors, and have developed a plan that alleviates their concerns, increases the aesthetics and sight lines to the lake, and which will address the unnecessary hardships posed by the setback ordinance on our parcel. Our neighbor to the rear has approved this plan and confirmed that it resolves his concerns with sight lines to the lake.

With this letter we are submitting updated plans for our home, and requesting variances to allow for the construction of the modified plans.

**Proposed Plan:**

An updated plan showing the differences between the original plans reviewed by the board with the current proposed plan is included. This updated plan mitigates the concerns raised by our rear neighbor to address the north side sight lines by reducing the size of the home, porch and deck by removing approximately 200 sf collectively. The lakeside foundation of the home is moved slightly closer to the lake by 2ft, however is still 13.3' off the 100 year flood elevation which is consistent with the variance the board previously approved based on our initial proposal.

With the area removed from the rear of the street side of the home and with the adjacent lot to the north being an undeveloped community lake access lot, the viewing angle from the road and across the street will be significantly increased, despite maintaining a smaller side setback.

Based upon the Board's approved variances for the Property, and with an 8' side setback, the only options for the home would have been to extend the home closer to the road. While this could have technically complied with the side setback ordinance, it would have resulted in a decrease in the viewing angle to the lake and unnecessary burden on the design and function of our home. The body of the proposed home

has a 5 ft setback on both the north and south Property line, and the only 3 ft setback area is the attached garage on the south property line. The 3Ft setback on the garage greatly improves sight angles from across the street, which helps alleviate our neighbor's original concerns. As a result, there is only a deviation of 3' on each side of the home itself from the 8' setback ordinance, and with the modifications that have been made to the home the goal of the ordinance has been maintained. In fact, the side setbacks for the home are generally consistent with the lowered side yard setback for single story homes that are only 5' narrower than our lot as our lot is only 49.9' in width. The 5' setback that is requested is therefore generally consistent with the ordinance standards and while deviates from the strict application, it is still in line with the accommodations included within the ordinance which allow for 5' setbacks on lots 44.9' wide, and will not be inconsistent with the general plan of development of lake properties.

Strict compliance with the ordinance would have been unreasonably detrimental to our construction by requiring construction of a home that is unreasonably narrow on the lot preventing a home that is aesthetically pleasing and with interior widths that would greatly impact the layout of the home and unreasonably reduce usefulness. More importantly, it would actually been more harmful to the public interest by unnecessarily restricting sight lines to the lake – the basis for the board's original denial of the side-setback variance.

With the property to the north being vacant deeded lake access and the property to the south being situated 30' away from the property line, there also will not be any issues with accessing the home in the event of a fire, which is a goal of the setback ordinances.

With the present support of all neighboring property owners, the proposed plan would advance the public interests in the side setback ordinance. A literal enforcement would result in a structure that is poorly situated on the property and unnecessarily narrow, creating an unreasonable and unnecessary burden on the use of the property as a permanent single family home. Complying with that limit would be unnecessarily burdensome, without producing an advantage to the public or adjacent property owners, and would instead harm those public interests. Strict compliance would further narrow the sight angles to the lake and cause our home to be inconsistent with the character, quality, and aesthetic of the nearby homes built on this portion of the lake. The purposes of the ordinance will continue to be achieved with the variance from the setback, without causing unnecessary hardship to us by requiring a home that would be inadequate in functional design and use.

#### **Requested Variances:**

1. Variance from Section 17.0411 to allow for reduced site setbacks.

As explained with the description of the proposed plan (above), by reducing the rear of the home and moving the home slightly closer to the lake, the proposed plan addresses the public concerns and increases the sight lines to the lake and maintains fire access. Strict compliance with the ordinance would result in unnecessary hardship to the construction of the home, but would impose a hardship on the public. The proposed plan will permit the construction of home in keeping with the character and aesthetics of the community and enhances the public's ability to view the lake. Accordingly, we

request the board grant a variance to allow the side setbacks as identified in the proposed plan.

2. Variance from Section 17.0435f, to allow a principal building to be located within 75-feet of the floodplain boundary.

The Board approved the previously requested variance to allow the home to be constructed with the deck at a distance of 13.3' and with the principal structure within 24.5' of the 100 year floodplain elevation. The proposed plan would not alter the 13.3' distance from the deck to the floodplain and move the principal building only 2.2ft closer to the floodplain boundary to put it at a distance of 22.3' from the 100 year floodplain boundary. As demonstrated with the prior variance, a hardship exists in fitting the home within the smaller buildable area of the property as restricted by the floodplain setbacks.

In combination with the re-design of the home to address the public concerns with side setback and sight lines, the proposed plan to move the home slightly closer to the floodplain boundary would not significantly impact the Board's analysis as to the hardship caused by the ordinance and would not otherwise impact the considerations of the purpose of the ordinance to provide for uniformity of development. The change from the approved variance is nominal, and would not have an adverse impact on the home or public considerations.

3. Section 17.0436c.(5) to allow a building/structure to be located within 75-feet of the floodplain boundary.

Consistent with the considerations for variance from Section 17.0435(f), similar request is made to permit the home to be moved slightly closer to the floodplain boundary.

4. Variance from Section 17.0436d. to allow for an increase in lot coverage.

The Board approved the original variance request to permit increased lot coverage under Section 17.0410e.(4) to permit lot coverage of 30.96%, as opposed to the ordinance limit of 30%, citing the nominal increase in lot coverage. The Board withheld its decision on a variance from Section 17.0436d because the denial of the side setback required the home plan to be revised.

Much like the lot coverage analysis, there is no practical ability to construct virtually any home on the property other than within an extremely limited building location identified in previous submission and found by the Board to be unnecessarily burdensome and limited.

The proposed plan mitigates the currently existing impervious areas by eliminating a large asphalt apron that exists along the street side of the home. This area would be turned into grass/landscaped areas. The new plan reduces the total impervious areas,

including the home, porch, drive, walkway, deck, and boathouse, from our original plan of 6,218 sf down to the proposed plan of 5,414 sf.

Under Section 17.0436d(1) total building coverage of footprint of permanent structures is to be no more than 20% of the total area of the parcel. For our lot that would mean a total impervious area of the house, garage, boathouse, and porch would be limited to 2,463.40 sf. The existing boathouse is approximately 604 sf and the proposed garage is 704 sf. That would leave a footprint of the first floor of the home and deck of 1,096 sf, and a home that would be unreasonably small and unnecessarily limiting on the property. The ordinance already anticipates allowing an increase in square footage of impervious areas for mitigation, which is accomplished by reducing the currently existing asphalt drive as discussed below.

Under Section 17.0436d(3), the ordinance restricts total impervious areas, other than the home, to 7 ½% for parcels of 10,000 sf or more. The impact of this poses a substantial hardship, as it would permit only 925 sf of impervious area. To compare, that would prevent even the basic driveway and walkways of the proposed plan. That would further prevent any boathouse or deck, both of which are pre-existing and pose no detriment to the property or public.

We have sought to limit the impervious areas as much as reasonably possible, and seek to mitigate the existing impervious areas by reducing the pavement sections from the currently installed asphalt drive of 1,219 sf to 1,061 sf.

The proposed plan results in a net benefit to the community, without a significant increase in the impervious areas of the property. The ordinance restrictions would impose an unnecessary hardship and unreasonably restrict the size of the home eliminating the pre-existing boathouse, and precluding a reasonably constructed home.

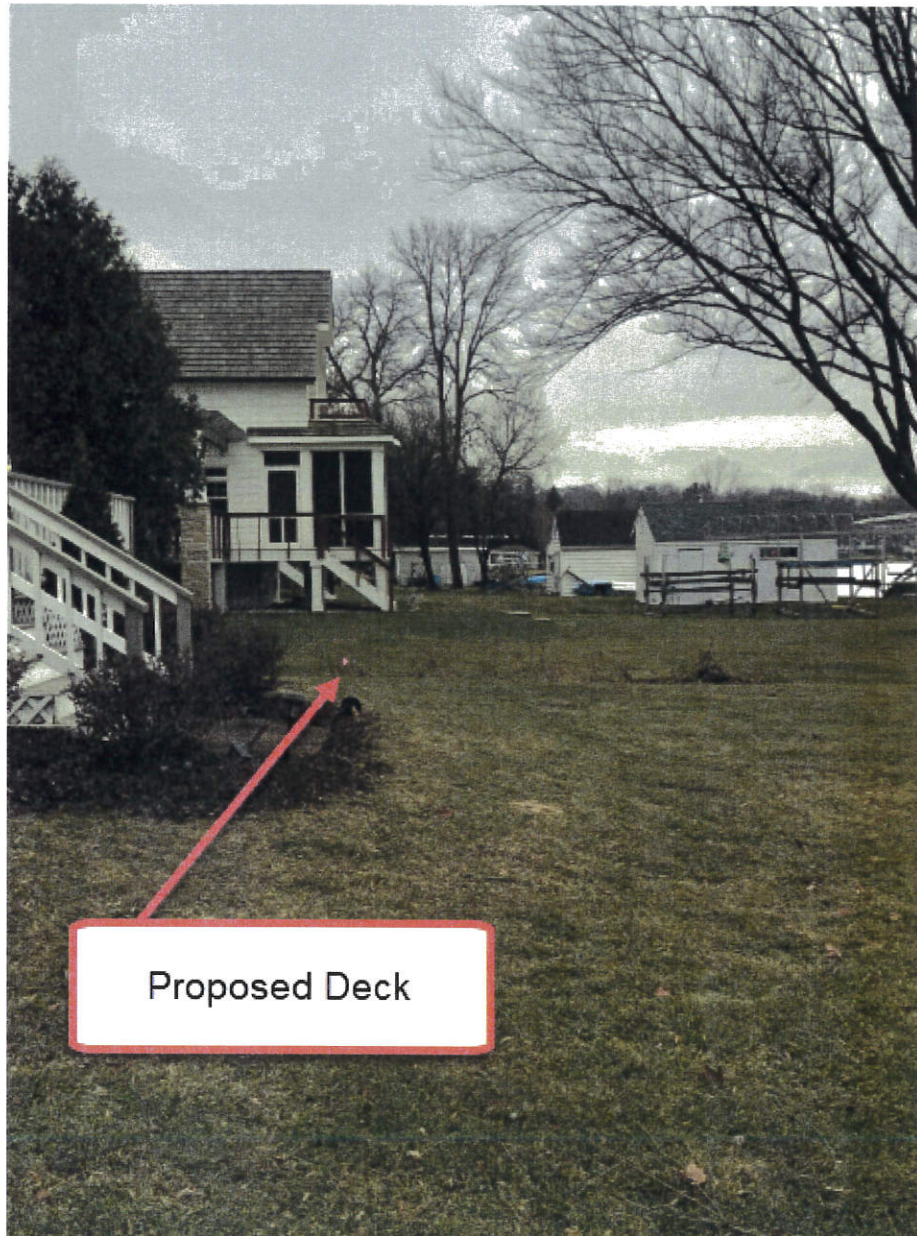
Thank you for considering our proposal.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Tyler Pinter".

Tyler J Pinter  
W267N2965 Peterson Dr  
Pewaukee WI 53072  
(262)617-1632  
[Tpinter06@gmail.com](mailto:Tpinter06@gmail.com)

RECEIVED  
MAR 20 2019  
OFFICE OF THE  
CLERK/TREASURER



March 15, 2019

Denny and Amy Stone  
N29W26716 Peterson Drive  
Pewaukee, WI 53072  
262-366-9410

Sirs:

We have had the opportunity to review the latest Pinter family house plan and proposed placement on their property. We are excited to see the proposed improvement to our neighborhood and community, and still can find no fault with any aspect. The placement will in no way affect the use of our lake home or views, and the structure would seem to only enhance our own property value.

We are currently out of state and in all probability, would be unable to appear in person to represent our complete assent and approval for any necessary variances or permits. Please consider this letter in our stead.

Thank you so much for your anticipated approvals. Should you have any questions or need clarification, do not hesitate to contact us by phone, text, or email ([PewaukeeWI@sbcglobal.net](mailto:PewaukeeWI@sbcglobal.net)).

Respectfully,

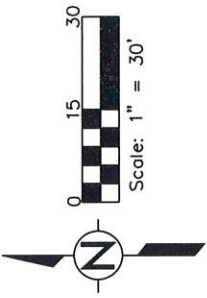
Denny and Amy Stone

LOT 27, PETERSENS SUBDIVISION NO. 2, BEING A PART OF THE NORTHWEST ¼ OF SECTION 17, TOWNSHIP 7 NORTH, RANGE 19 EAST, CITY OF PEWAUKEE, COUNTY OF WAUKESHA, STATE OF WISCONSIN.

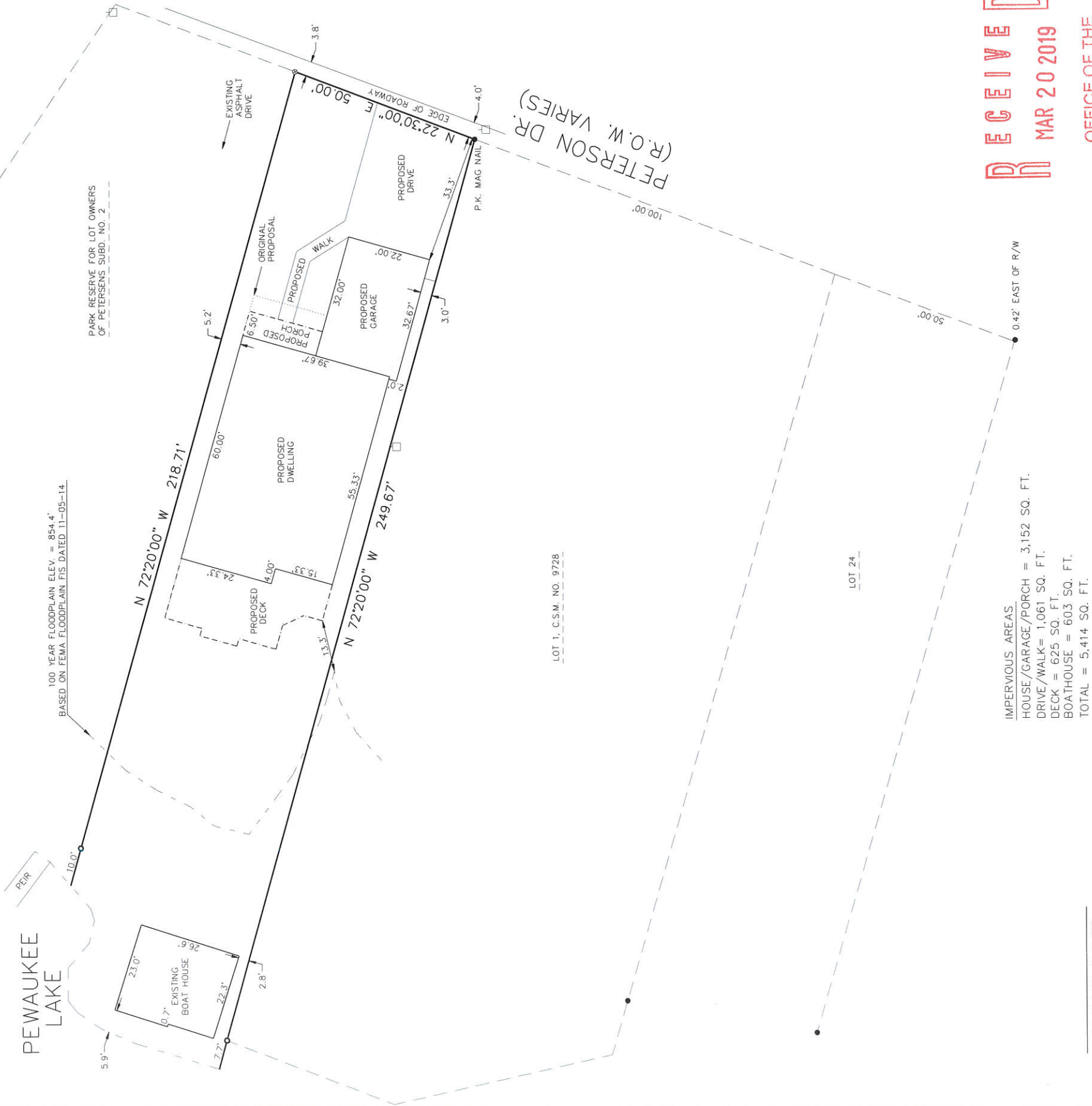
CONTAINING 12,317 SQUARE FEET, 0.2828 ACRES MORE OR LESS MEASURED TO THE SHORELINE OF PEWAUKEE LAKE.

PLAT OF SURVEY FOR:

TYLER PINTER  
W267 N2965 PETERSON DR.  
PEWAUKEE, WI 53072



- LEGEND
- P.K. MAG. NAIL SET
  - 3/4" REBAR SET
  - 1" IRON PIPE FOUND UNLESS NOTED
  - WELL
  - POWER POLE

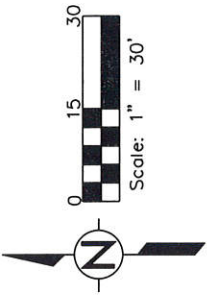


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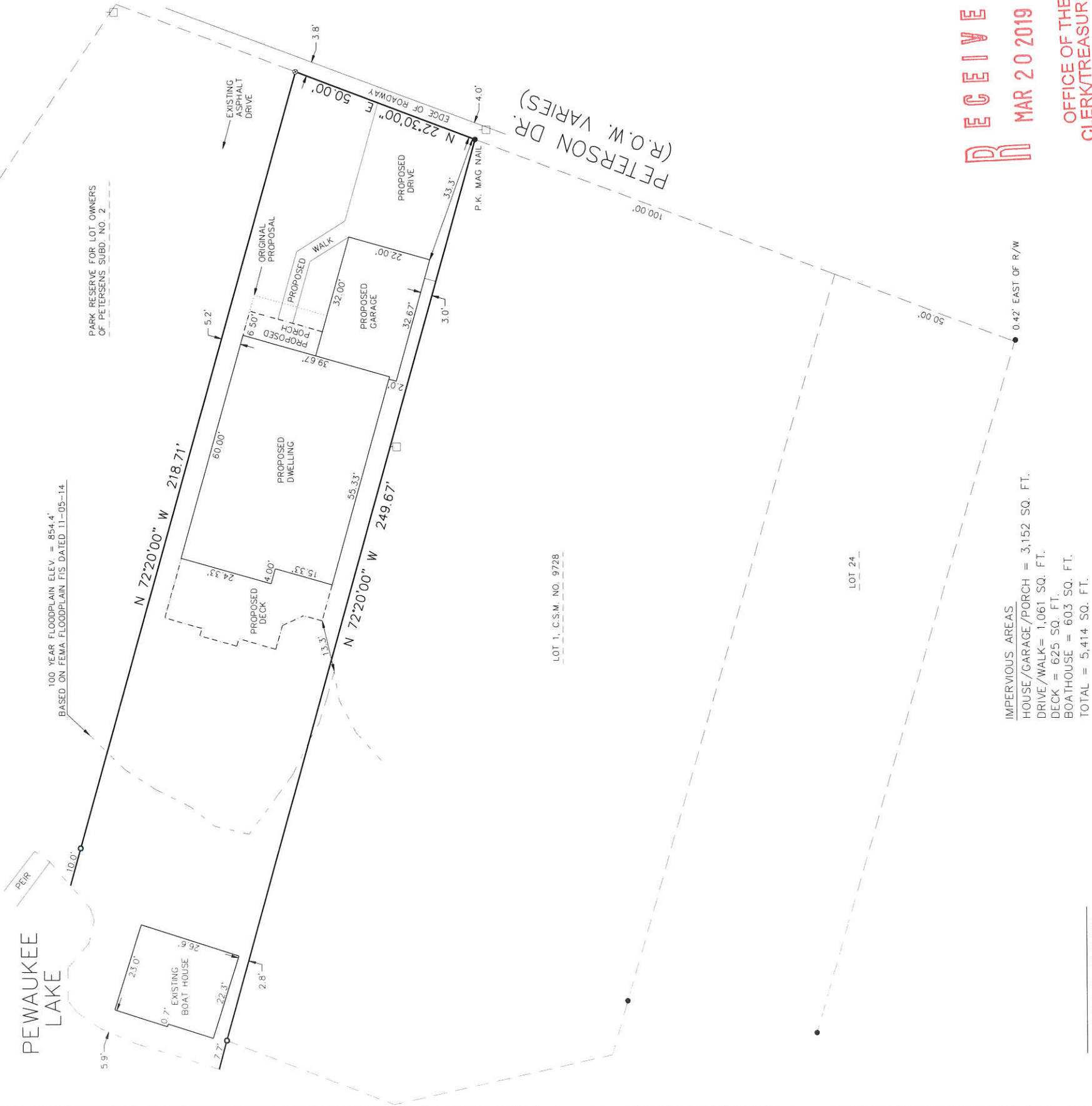
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JASON T. MAYER  
P.L.S. NO. 2844

THIS IS AN ORIGINAL PRINT ONLY IF SEAL IS IMPRINTED IN RED. "I have surveyed the above property, representation thereof and shows the size and location of the property, its exterior boundaries, the location and dimensions of all structures thereon, fences, apparent easements, roadways, and visible encroachments and is in compliance with Wisconsin Administrative Code AE-7 for property survey standards and is correct to the best of my knowledge and belief.

This survey is made for the exclusive use of the present owner of the property; also those who purchase, mortgage, or guarantee the title thereto, within one year from the date hereof."

AS OF THE DATE OF THIS SURVEY, NO TITLE POLICY WAS PROVIDED, THEREFORE THIS PLAT OF SURVEY DOES NOT GUARANTEE THE EXISTENCE, SIZE AND LOCATION OF ANY EASEMENTS, ENCUMBRANCES, RESTRICTIONS OR OTHER FACTS THAT COULD OTHERWISE BE DISCLOSED IN A TITLE SEARCH OR CURRENT TITLE POLICY.

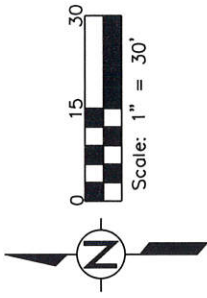
THIS INSTRUMENT WAS DRAFTED ON 03-13-2019 BY JASON T. MAYER, P.L.S. W241 N7303 S. WOODSVIEW DR. SUSSEX, WI 53089 (262)424-7552

LOT 27, PETERSENS SUBDIVISION NO. 2, BEING A PART OF THE NORTHWEST ¼ OF SECTION 17, TOWNSHIP 7 NORTH, RANGE 19 EAST, CITY OF PEWAUKEE, COUNTY OF WAUKESHA, STATE OF WISCONSIN.

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PLAT OF SURVEY FOR:

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THIS INSTRUMENT WAS DRAFTED ON 12-05-2018 BY JASON T. MAYER, P.L.S. W241 N7303 S. WOODSVIEW DR. SUSSEX, WI 53089 (262)424-7552

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MAR 20 2019

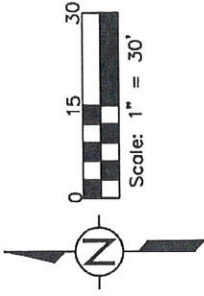
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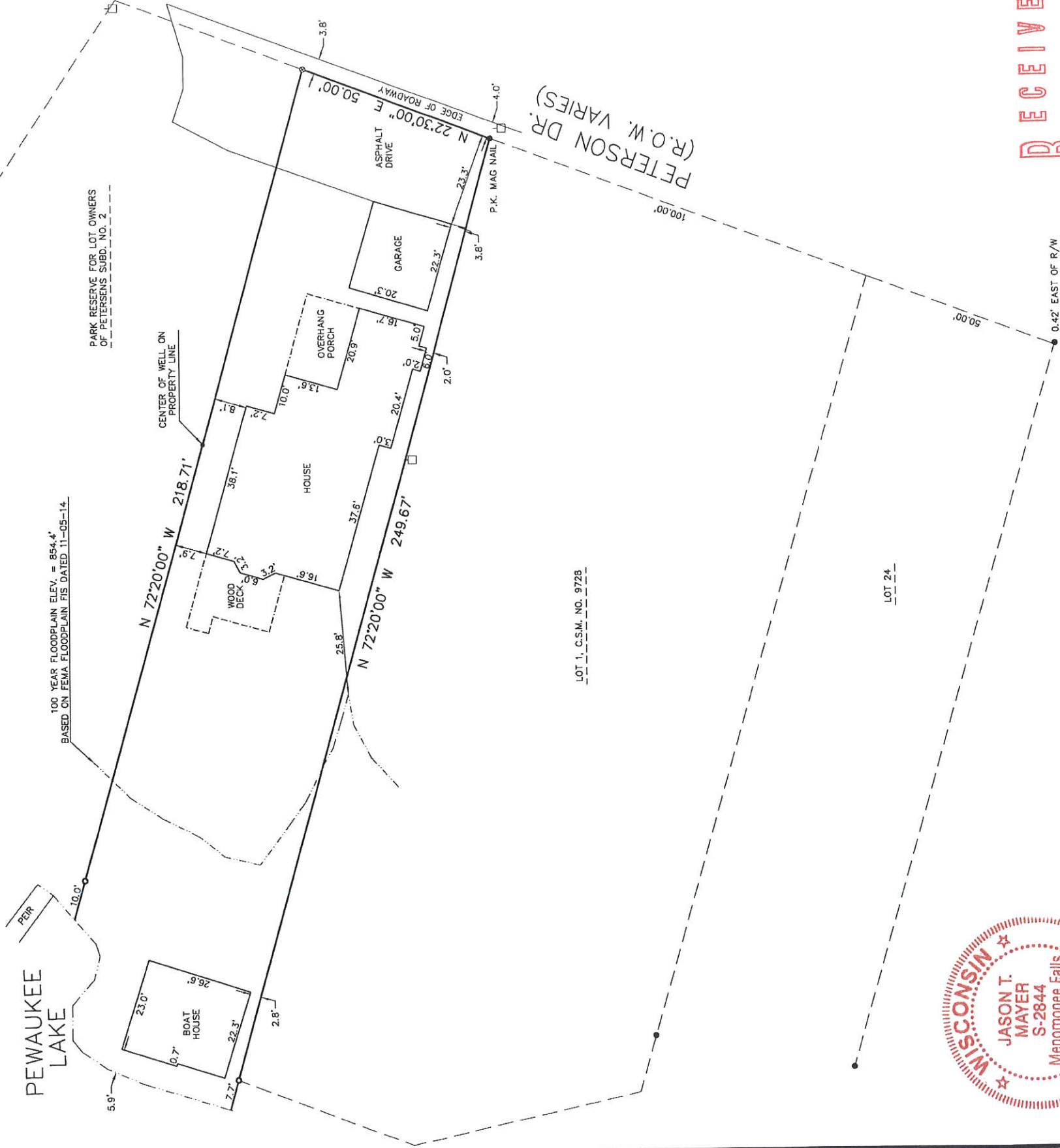
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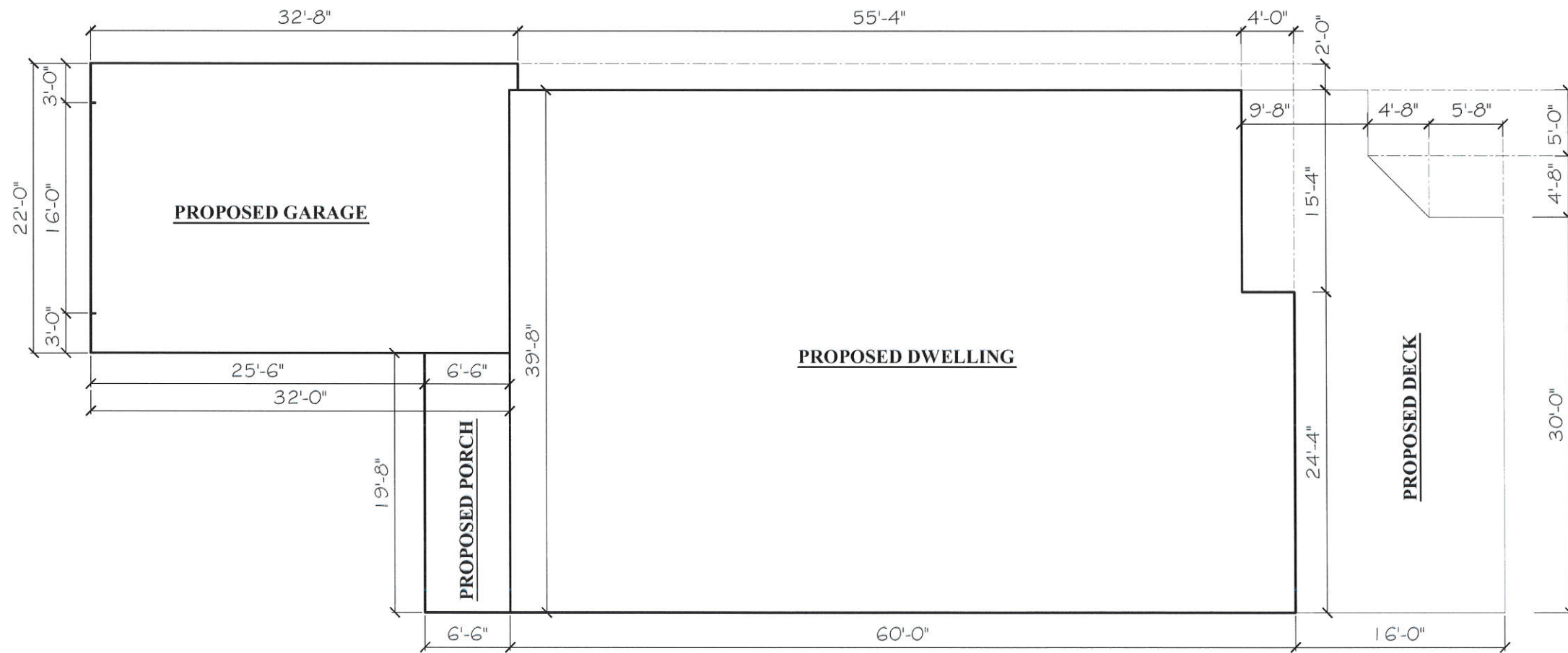
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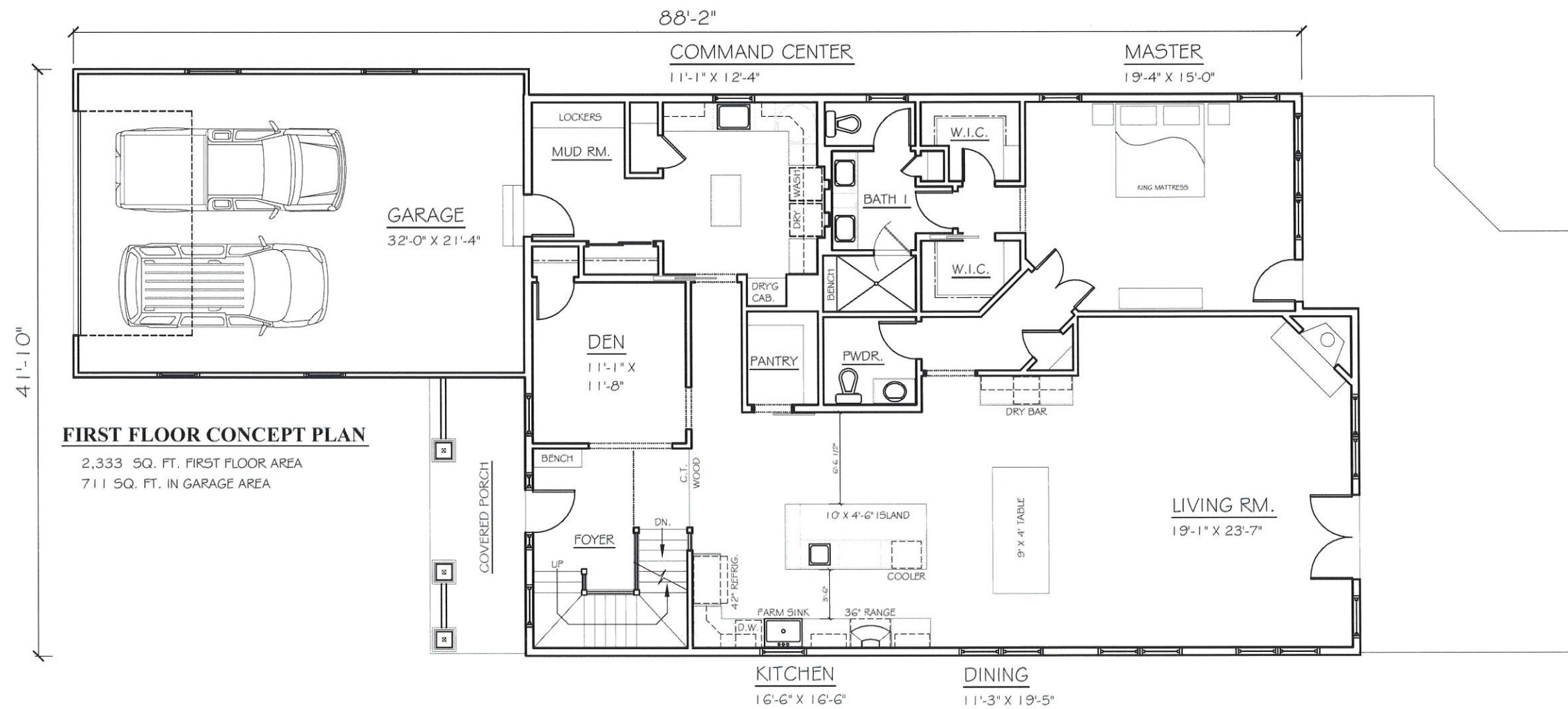
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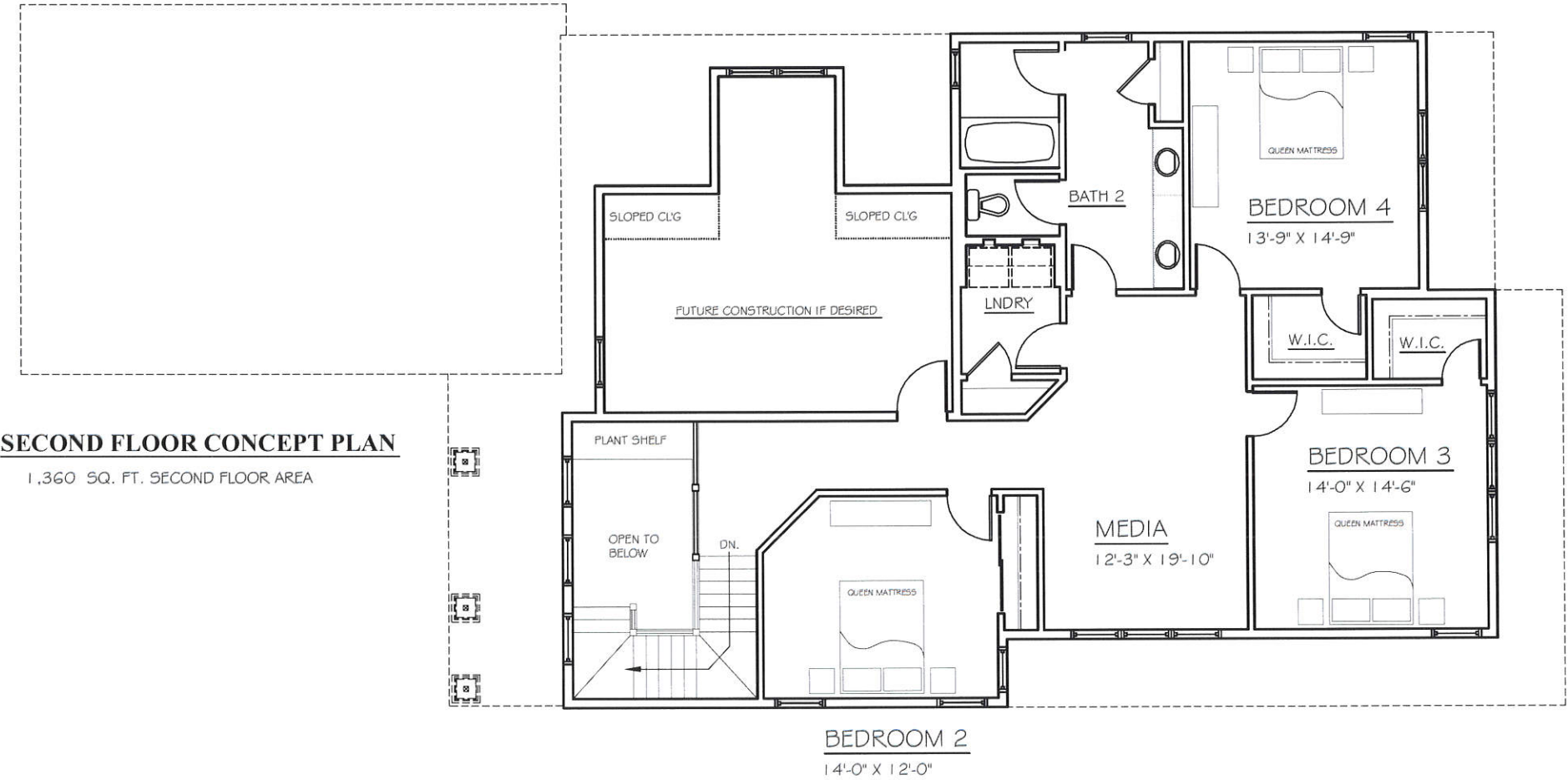
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THIS INSTRUMENT WAS DRAFTED ON 10-29-2018 BY JASON T. MAYER, P.L.S. W241 N7303 S. WOODSVIEW DR. SUSSEX, WI 53089 (262)424-7552













**Office of the Planner & Community Development Director**  
W240 N3065 Pewaukee Road  
Pewaukee, Wisconsin 53072  
Phone (262) 691-0770 Fax (262) 691-1798  
[fuchs@pewaukee.wi.us](mailto:fuchs@pewaukee.wi.us)

## REPORT TO THE ZONING BOARD OF APPEALS

Meeting of May 1, 2019

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**Date:** April 23, 2019

**Project Name:** Pinter Variance Request

**Project Address/Tax Key No.:** W267N2965 Peterson Drive/PWC0930026

**Applicant:** Tyler J. Pinter

**Property Owner:** Tyler J. Pinter

**Current Zoning:** Rs-7 Single-Family Residential District

**Proposed Zoning:** Same

**2050 Land Use Map Designation:** Low – Medium Density Residential and Flood Plains, Lowland & Upland Conservancy, and Other Natural Areas

**Use of Surrounding Properties:** Single-family residential to the north, south, and east and Pewaukee Lake to the west

---

### **History:**

The applicant previously applied for variances for the construction of a new home at W267N2965 Peterson Drive. Those variance requests were heard at the February 19, 2019 Zoning Board of Appeals meeting, where the Board took the following actions:

- The Board denied the requested variance from Section 17.0411 to allow for side yard setbacks of 5.2-feet from the north property line and 3.0-feet from the south property line.
- The Board approved the requested variance from Section 17.0410e(4) to allow for the sum total of the first floor area of the principal building and all accessory buildings to occupy 30.96% of the lot.
- The Board approved the requested variance from Section 17.0435f to allow a principal building to be located 24.5-feet from the base floodplain boundary.
- The Board approved the requested variance from Section 17.0436c.(5) to allow a building/structure to be located within 75-feet of the floodplain boundary.
- The Board denied the requested variance from Section 17.0436d. to allow for an increase in lot coverage.

### **Project Description:**

The applicant, Tyler Pinter, filed an application for variances from several sections of the zoning ordinance to allow for the construction of a new home upon property located at W267N2965 Peterson Drive. The applicant is requesting a variance from:

- 1) Section 17.0411 to allow for side yard setbacks of 5.2-feet from the north property line and 3.0-feet from the south property line, opposed to the Rs-7 District minimum side yard setback of 8-feet for a two story dwelling;
- 2) Section 17.0435f. to allow a principal building to be located within 75-feet of the floodplain boundary;
- 3) Section 17.0436c.(5) to allow a building/structure to be located within 75-feet of the floodplain boundary; and
- 4) Section 17.0436d. to allow for an increase in lot coverage

Below is a further analysis of each request. In considering the variance requests, it should be noted that the property is zoned Rs-7 Single-Family Residential District, F-1 Floodplain District and SO Shoreland Overlay District and has an area of 12,317 square feet or approximately 0.2828 acres.

Furthermore, below is a breakdown of impervious surface areas provided by the applicant, which are the square footage amounts utilized in this analysis.

|                                  | Previous Submittal |                         | Current Submittal |
|----------------------------------|--------------------|-------------------------|-------------------|
| House/garage/porch               | 3,211 square feet  |                         | 3,152 square feet |
| Deck                             | 685 square feet    |                         | 625 square feet   |
| Additional concrete drive & walk | 500 square feet    | 1,719 square feet total | 1,061 square feet |
| Asphalt drive                    | 1,219 square feet  |                         |                   |
| Existing boat house              | 603 square feet    |                         | 603 square feet   |
| Total                            | 6,218 square feet  |                         | 5,414 square feet |

In addition, the applicant includes findings within their project narrative for Board review. The applicant references the vacant property to the north. Please be aware that this is a “Park Reserve” on the Petersen’s Subdivision No. 2 plat, and is jointly owned by the property owners of the Petersen’s Subdivision.

### **Analysis:**

#### 1. Variance from Section 17.0411 to allow for reduced side yard setbacks

The applicant is proposing side yard setbacks of 5.2-feet from the north property line and 3.0-feet from the south property line, opposed to the Rs-7 District minimum side yard setback of 8-feet for a two story dwelling.

#### 2. Variance from Section 17.0435f. to allow for a reduced setback to the floodplain boundary

The F-1 Floodplain District states that “No new walled buildings or structures, including manufactured mobile homes and walled enclosures, shall be allowed within or within a distance of 75 feet from the boundary of a base flood floodplain...”

The proposed setback from the floodplain boundary from the home and deck varies. The majority of the home is closer than 75-feet to the floodplain boundary and the deck is setback 13.3-feet at its nearest point. The proposed home is approximately 22.5-feet from the floodplain boundary.

The previous submittal showed the home 24.5-feet from the floodplain. The deck setback of 13.3-feet has not changed.

3. Variance from Section 17.0436c.(5) to allow a building/structure to be located within the floodplain setback

The Shoreland Overlay District also includes a requirement that a building/structure shall not be located within 75-feet of the floodplain boundary (see below).

(5) Structure Setbacks. No structure except necessary streets or access ways, utilities, navigational aids, piers and boat launch facilities, parking areas, approved boathouses, and principal buildings shall be located within 75 feet of a designated 100 year recurrence interval (base flood) floodplain of any lake or navigable stream or within 50 feet of an OHWM or officially designated wetland, unless there are existing principal use structures on adjoining parcels, in which case the setback from the OHWM or base flood elevation may be an average of setbacks on the adjoining parcels but no less than 35 feet. (See subsection 17.0435p for definition of 'base flood'). In this subdivision, 'principal building' shall mean the main building or structure on a single lot or parcel of land and includes any attached garage or attached porch.

Note that averaging setbacks does not apply in this case as the property to the north does not contain a principal structure. Furthermore, the deck and a small portion of the home would be within 35-feet of the floodplain boundary.

4. Variance from Section 17.0436d. to allow for an increase in lot coverage.

*Section 17.0436d.(1):*

For properties within 300-feet of the ordinary high water mark or base flood elevation of a lake, whichever is greater, the SO District requires that the total building coverage or footprint of permanent structures shall be no more than 20% of the total area of a parcel. Note that the SO District states, "Permanent structures include houses, condo/apartment buildings, commercial, industrial or institutional buildings, garages, boathouses, storage buildings, swimming pools, cabanas, gazebos, porticos, carports and like structures."

The subject lot is 12,317 square feet; therefore, these structures may not exceed 2,463.4 square feet. The proposed house, garage, porch, and existing boat house total 3,755 square feet. Thus, the applicant is proposing to exceed this standard by 1,291.6 square feet. These structures occupy about 30.49% of the lot.

*Section 17.0436d.(3):*

The SO District also requires that permeant impervious surfaces such as driveways, parking areas, walkways, patios, ground level decks, ramps, tennis and other sports courts, and fountains or pools shall total no more than 7-1/2% of parcels of 10,000 square feet or more.

Again, the lot is 12,317 square feet. The total allowed area of these impervious surfaces is 923.78 square feet. The applicant is proposing 1,686 square feet of impervious surface consisting of the deck, additional concrete drive and walk, and asphalt drive. Therefore, these structures would total approximately 13.69% of the lot, exceeding the allowed square footage amount by 762.22 square feet.

*Section 17.0436d.(4) & (5):*

Finally, the SO District states the “the total combined coverage of permanent structures and permanent impervious surfaces outside the structures may be increased to a total of 35 percent when the parcel is located within 300 feet of the OHWM or base flood elevation of either a lake or navigable stream whichever is greater...” Note that mitigation is required to exceed the 20% and 7-1/2% standards and increase coverage to a total of 35%.

Moreover, the SO District states that “In no case shall lands lying within 300 feet of the OHWM or base flood elevation of a lake or a navigable stream, whichever is greater, have less than 65 percent of the parcel covered with natural grasses and vegetation and/or aforementioned mitigation measures.”

35% lot coverage would allow for 4,310.95 square feet of impervious surface. With a total of 5,414 square feet of impervious structures and surfaces proposed, the applicant is requesting to exceed this standard by 1,103.05 square feet. The proposed lot coverage is about 43.95%.

Also note that mitigation measures are not being proposed by the applicant. If the property owner is allowed to exceed lot coverage in any way, staff recommends that the property owner provide mitigation measures consistent with Section 17.0436d.(4)a. and b., subject to review and approval by the Engineering Department.

**Recommendation:**

Section 17.1007 states that the Zoning Board of Appeals shall not grant a variance “unless it finds beyond a reasonable doubt that all the following facts and conditions exist and so indicates in the minutes of its proceedings.” Below are the Findings for Board review.

- a. Preservation of Intent: No variance shall be granted that is not consistent with the purpose and intent of the regulations for the district in which the development is located. No variance shall have the effect of permitting a use in any district that is not a stated permitted principle use, permitted accessory use, or permitted conditional use in that particular district.
- b. Exceptional Circumstances: There must be exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district, and the granting of the variance should not be of so general or recurrent nature as to suggest that the Ordinance should be changed.
- c. Economic or Financial Hardship and Self-Imposed Hardship Not Grounds for Variance: No variance shall be granted on the basis of economic/ financial gain or loss. Self-imposed hardships shall not be considered as grounds for the granting of a variance.
- d. Preservation of Property Rights: The variance must be necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.
- e. Absence of Detriment: No variance shall be granted that will create substantial detriment to adjacent property or that will materially impair or be contrary to the purpose and spirit of this Ordinance or the public interest.
- f. Additional Requirements in Floodplain District: No variance in or related to a floodplain\* shall be granted where:

- 1) A change in the boundaries or elevation of the base flood floodplain (F-1 District) would result.
  - 2) A lower degree of flood protection than a point two (2) feet above the 100-year recurrence interval base flood for the particular area would result.
  - 3) Any action contrary to the provisions of Chapter NR-116 of the Wisconsin Administrative Code would result. (See sub-section 17.0435 and WisDNR requirements)
  - 4) The lot or parcel is larger than one-half acre and is not contiguous to existing structures constructed below the regional (base) flood elevation.
  - 5) No good or sufficient cause can be shown; greater than a minimum relief is necessary; there is increased risk to public safety or nuisances; rescue and relief costs would be increased; and, it is contrary to the purposes of this ordinance.
  - 6) Such variance would allow alteration of an historical structure and/or use.
- g. When a floodplain variance is granted, the Board shall notify the applicant in writing that it may increase risks to life and property and flood insurance premiums could increase up to \$25.00 per \$100.00 per coverage. A copy shall be maintained with the variance record.

Staff does not find that the applicant has provided evidence that demonstrates the Findings of Section 17.1007 are met; therefore, staff recommends denial of the variance requests. More specifically, staff contends that the City's zoning code created the Rs-7 District to provide standards for development of existing substandard lots and abiding to these standards would then preserve the intent of the Zoning Code.

Additionally, staff does not find exceptional or unusual circumstances as the subject lot is similar to surrounding lots around Pewaukee Lake and other Rs-7 zoned properties.

Staff finds that property rights are preserved without the approval of the variance requests as a new single-family dwelling could be built within the standards of the Rs-7, F-1 and SO Districts. Therefore, staff recommends that the home be reduced in size and designed to comply with the applicable zoning districts standards.

Alternatively, the applicant may choose to remodel the existing home or build a new home within the same footprint of the existing home.