

**VILLAGE OF PEWAUKEE  
PLAN COMMISSION  
April 14, 2016**

**1. Call to Order, Pledge of Allegiance, Moment of Silence**

President Knutson called the meeting to order at approximately 7:01 p.m. The Pledge of Allegiance was recited and a moment of silence followed.

Roll Call was taken with the following commission members present: Comm. Craig Roberts, Comm. Shane Levielle, Comm. Chris Bernauer, Comm. Tom Reilly, President Jeff Knutson; Trustee Joe Zompa was excused.

Also Present: Mary Censky, Village Planner; Tim Barbeau, Village Engineer; Mark Blum, Village Attorney; Scott Gosse, Village Administrator; Chaz Schumacher, Village Clerk.

**2. PUBLIC HEARING**

- a. On a Conditional Use Permit application request to permit reduced rear yard and side yard offsets for a detached garage replacement proposed to be constructed at 327 High Street (Applicant/Property Owner – Andrew Sisler, Property Zoned R-5 Single Family Residential)*

David Horning – 319 West Wisconsin Avenue – Mr. Horning stated there is no reason to deny the request because of the way the hill is set.

**President Knutson closed the public hearing at approximately 7:04 p.m.**

- b. On a Conditional Use Permit application for a seasonal/temporary use beer garden proposed to be located at 143 W. Wisconsin Avenue (Applicant- James & Jennifer Grabowski, Property Zoned B-2 Downtown Business)*

Jenni Grabowski – 128 Park Avenue – Ms. Grabowski stated she is hoping to open a fun and exciting business to help revive downtown Pewaukee. She stated they are hoping to have a Winnebago, similar to the unit outfitted in Milwaukee. She stated they want to draw people from the Pewaukee Beach area to spend more time and money downtown.

Mark Grabowski – 318 Park Avenue – Mr. Grabowski stated he is the one of the applicant's brother. He stated the intent of the beer garden is to bring something to downtown and to fill an empty lot that is currently an eyesore. He stated the wetland geography makes it difficult to develop. He stated that Stantec did a wetland delineation two years ago and the wetlands are different than what the County GIS map indicates, it doesn't follow the lot lines and the wetlands are actually further back. Mr. Grabowski stated there is plenty of room for a beer garden. He stated that although the concept may seem strange it has worked successfully in Milwaukee and Waukesha and it would bring a seasonal occupation to an otherwise empty lot. He stated there will not be food served so there will not be an impact on the local restaurants. He stated the intent is not for the beer garden to be a destination but for people who are already downtown. He stated the Winnebago is a nod to the outdoor living in Wisconsin and the camping lifestyle.

Mike Tasta – Treasurer of Pewaukee Lake Water Ski Club – Mr. Tasta stated his support for the beer garden as he feels it will benefit his organization.

Tom Pfister – 558 Kopmeier Drive – Mr. Pfister stated he has been a resident of Pewaukee for the last 25 years and sat on the Plan Commission and the Village Board at various times during that period. He stated that the beer garden would be an asset to the community and that he feels there is so much more potential for the downtown area. He stated support for approving the beer garden and urged the commission to vote in favor of it.

Ryan Lange – 778 Cheviot Drive – Mr. Lange stated there are number of young families and he feels the beer garden would be a great resource for the lake area as another option for young families and would encourage people to invest in their community.

**President Knutson closed the public hearing at approximately 7:15 p.m.**

### **3. Citizen Comments**

Attorney Fabian – representing Pat Nauth of 112 Highland Avenue – Mr. Fabian stated he is at the meeting regarding 388 Park Avenue and the number of new business items on the agenda affecting the property. He stated this property was originally before the Zoning Board of Appeals and he feels the modifications to the Code are a coup. He stated his concern for modifying the code to make it more unsafe to build a house. He stated the Plan Commission is supposed to look at the general health and safety of public to decide on a conditional use application and if you look at the neighborhood it's very tight and non-conforming to expand the footprint of 388 Park Avenue beyond its previous footprint and it would impact the neighborhood.

Richard Benkstien – 384 Park Avenue – Mr. Benkstien stated he has an adjoining property and before the house at 388 Park Avenue was torn down there were 10 foot bushes all the way to stop sign and he didn't see any safety issues. He stated the footprint is only slightly larger and a different size than the original house. Mr. Benkstien stated his support of the new home, as an adjoining property owner.

Pat Nauth – 112 Highland Avenue – Ms. Nauth stated her agreement with her attorney Mr. Fabian and his statements regarding the proposed house being large and positioned in such a way as to significantly impact the safety of the neighborhood. She stated there is a similarly sized house down the street from the proposed house and there have been lots of complaints regarding it.

John, Resident of Pewaukee – John stated his support of the beer garden.

### **4. Approval of Minutes of the Regular Meeting of March 10, 2016**

**Comm. Roberts moved, seconded by Comm. Bernauer to approve the March 10, 2016 minutes as presented. Motion carried 4-0, Comm. Rogers and President Knutson abstained.**

### **5. NEW BUSINESS**

- a. *Review and Possible Action on a Conditional Use Permit application request to permit reduced rear yard and side yard offsets for a detached garage replacement proposed to be constructed at 327 High Street (Applicant/Owner – Andrew Sisler, Property zoned R-5 Single Family Residential)*

Planner Censky stated the applicant has an existing garage that is in poor shape and its current shape of 20 foot by 20 foot doesn't allow for larger vehicles or have room for 2 vehicles at the same time. The applicant is requesting to expand the garage pad a few feet to an area of 26 feet by 24 feet and maintaining the same offset in the rear of 2.85 feet and a similar offset on the side of 3.52 feet. Censky stated the applicant desires to use the existing slab and is making an effort to maintain similar offsets. She stated she has no objections but has attached conditions.

**Comm. Rogers moved, seconded by Comm. Levielle to approve the conditional use permit application request to permit a reduced rear yard and side yard offsets for a detached garage replacement at 327 High Street with the following conditions:**

- 1. Applicant to secure all necessary building permits prior to starting construction activity of any sort on the project;**
- 2. Recording of the Conditional Use Grant**

**Motion carried 6-0.**

- b. Review and Possible Approval/Acceptance of annual report as required under terms of Conditional Use Permit (Applicant – Boatgas Marine Refueling Service)*

Planner Censky stated this item is an annual housekeeping matter. The applicant is required to provide an annual report with any issues of concern with prior year before the approval of the current year. She stated there were no spills or crashes with the number the boats being fueled. She stated she had no objections.

**Comm. Reilly moved, seconded by Comm. Roberts to approve the annual report as required under the terms of a conditional use permit for Boatgas Marine Refueling Service. Motion carried 6-0.**

- c. Review and Possible Action on a Conditional Use Permit Application for a seasonal/temporary use beer garden proposed to be located at 143 West Wisconsin Avenue (Applicant – James & Jennifer Grabowski, Property zoned B-2 Downtown Business)*

Planner Censky stated the applicant introduced the idea very well during the public hearing. Censky stated there are 2 vacant parcels that the applicant intends to use to bring Winnebeergo to serve as tappers for beer. The applicant would provide picket fencing and will use the parcels as far back as the wetlands will allow within the fenced area. Censky stated it would be a standing bar that patrons would walk up to and order beer, soda, or water from. There would be no other retail service. There would be picnic tables and chairs with port-a-jon's in the rear area. She stated the applicant cannot construct a structure to contain the port-a-jon's and will have to use a screening device. The applicant will also need to secure and anchor port-a-jon's per the zoning regulations. She stated that although it's a temporary use it is a permanent use as it will be in operation from Memorial Day through Labor Day. The proposed hours are Monday through Thursday noon to 10:00 p.m., Friday noon to 11:00 p.m., Saturday 10 a.m. to 11 p.m. and Sunday 10 a.m. to 10 p.m., so it would be open 7 days a week. Censky stated WEPCO would provide a service drop at the rear of the property to run lines to provide electricity. There are no water services proposed. She stated that according to the GIS mapping there is considerable area of wetland and floodplain on the property and except for a small area in the front, everything would need to be anchored. Censky stated the DNR will need to provide guidance on the port-a-jon's and use of the parcel, specifically in the wetland area. She stated the code currently provides for temporary uses and requires that all business be inside buildings with no outside storage, this request would seem to be a direct digression of those provisions. Censky stated there is nothing to attach a compliance review to, the proposal doesn't abide by the downtown design guidelines. She stated concern over the encroachment on the wetland area because it is not a passive use but an intensive use. She asked if approval of this request is a precedent the Village wants to set. Censky stated concern over how the port-a-jon's would be serviced and the logistics of trucks backing in and out. She stated the proposed lighting is not consistent with the code. Censky stated there is no parking proposed and it's a stretch to say all attendants would be in walkable distance or those already there and because of that she could not support the idea. She stated concern over setting a precedence of allowing the use without providing parking. Censky did provide an alternative list if the Plan Commission is inclined to review the uses.

Comm. Roberts stated he liked the idea however Planner Censky gave valid reasons for not approving the use. He stated that in the past the Commission has set a precedence of not allowing temporary uses similar to this request and he doesn't see anything in the proposal that is different. He stated the applicant's number one problem is parking and the required onsite parking that was provided for. Bernauer stated that is why the gas station/restaurant was not approved previously. He expressed concern that the use would draw people and take up parking and any other proposal without parking would be rejected. He stated it outright competes with brick and mortar businesses.

Comm. Leveille asked how many patrons are expected in the space. Jennifer Grabowski, applicant, stated they expect upwards of 50 people with it fluctuating to 80 people on busier days. She stated the downtown is busy all the time and that the private parking lots that charge for parking would still see patrons. She stated their proposed use is intended as a supplement for local businesses and a number of them are in full support of their proposal. Mark Grabowski stated they could steer patrons to the Oakton parking lot. Discussion followed.

Comm. Bernauer stated concern that the Winnebago and the port-a-potties don't reflect the image of the downtown area.

Comm. Rogers stated he doesn't agree with the argument that there would be no competition with the other businesses. He stated the gas station restaurant was denied because of no parking. He stated if the applicant could find a way to provide for parking in the radius of the property, than he would be in favor of the proposal.

Planner Censky stated if the applicant found parking it would be 1 stall per 60 square feet. Comm. Rogers asked how much parking would be required for 50 patrons. Planner Censky stated that at Seester's it is 1 stall per 200 square feet and they were required to have 25 parking stalls. Discussion followed.

Comm. Bernauer asked if there were any information from the DNR on this proposal. Planner Censky stated she has not made any contact with the DNR. Jennifer Grabowski, applicant, stated the DNR zoning specialists and Army Corps of Engineers are not involved with the conditional use process but that she had spoken with Stantec regarding a delineation that was done on the adjoining parcel because both parcels were surveyed at the same time. The survey for 143 West Wisconsin Avenue is still a draft but it shows the wetland does not start until 90 feet back on the north parcel and 120 feet back on the south parcel.

Comm. Bernauer stated that parking is still the biggest issue.

President Knutson stated he felt it is an excellent idea but that the Village has never allowed this use in the past because they do not want portable units down there. He likes it but there is no public parking allowed for in the proposal and he can't support it. Discussion followed.

**Comm. Rogers moved, seconded by Comm. Bernauer to table the request for the Conditional Use Permit application for a seasonal/temporary use beer garden proposal at 143 West Wisconsin until the applicant has more information regarding proposed parking. Roll Call vote was taken:**

<b>Comm. Roberts</b>	<b>Aye</b>	<b>Comm. Leveille</b>	<b>Aye</b>
<b>Comm. Rogers</b>	<b>Aye</b>	<b>Comm. Bernauer</b>	<b>Aye</b>
<b>Comm. Reilly</b>	<b>Nay</b>	<b>President Knutson</b>	<b>Nay</b>

**Motion carried 4-2.**

- d. *Review and Possible Action on an Ordinance to Amend Section 40.134 and 40.152(a) of the Municipal Code of the Village of Pewaukee relating to requests which require both variance and conditional use approval. (Staff initiated topic)*

Planner Censky stated this is regarding a draft ordinance amendment brought forward by Attorney Blum that would clarify the ability of the ZBA to approve Conditional Use grants when the matter also requires a variance request. The language would allow for direction on which body would review the application instead of allowing for the potential for required review by both the ZBA and Plan Commission.

Discussion followed.

**Comm. Rogers moved, seconded by Comm. Roberts to recommend to the Village Board amendments to Sections 40.134 and 40.152(a) of the Code respectively defining the process for projects that require both Conditional Use and Board of Zoning Appeals approvals to proceed. Motion carried 5-1, President Knutson voted nay.**

- e. *Review of the Building Inspector's denial of a building permit for a single family home with deck(s) on the front of the home as proposed to be built on a legal non-conforming parcel at 388 Park Avenue. (Applicant – Steve Schwartz, Property zoned R-5 Single Family Residential)*

Planner Censky stated that Section 43.136 prohibits decks on the front and sides of houses. She stated in the R-5 district there is an abundance of decks and to an extent it makes sense in the Village because of the lake. She stated there is an existing pattern of this type of deck placement. However the Building Inspector cannot approve an application if the design guidelines are not met. The application then has to go to the Plan Commission and then to the ZBA. The ZBA has a standard to uphold and the applicant has to prove there is a hardship. There is no hardship in not being allowed to have a deck on the front of a house. She stated the Plan Commission needs to either support the Building Inspector's denial of the building permit or support the proposed deck. Discussion followed.

**Comm. Rogers moved, seconded by Comm. Reilly to uphold the Building Inspector's denial of the application due to the deck located on the front of the property. Motion carried by Roll Call vote, 5-0-1, Comm. Roberts abstained.**

- f. *Review and construction of Section 40.424 as it relates to the term "obstructions" attendant to the building plan for a single family home proposed to be constructed on a legal non-conforming parcel at 388 Park Avenue. (Staff initiated topic)*

Planner Censky stated this item was prompted by the recent review of a building plan proposed to be situated on a very small parcel. She stated staff feels that there may be a more contemporary standard for the vision triangle that is less restrictive but will meet the underlying intent of the regulation. She stated currently the Code is more restrictive than other municipalities where others state 'no substantial obstruction' or 'nothing between 2 feet from ground level to 8 feet from ground level. She stated the Plan Commission determines what an obstruction is and would they consider a 12 inch by 12 inch post an obstruction in the current 50 foot by 50 foot vision triangle. Discussion followed.

President Knutson stated his disapproval of these items on the same agenda as the property bringing causing them to be reviewed. He stated he does not feel the Commission should discuss them. Discussion followed.

Comm. Bernauer asked if the Commission was being asked to define obstructions or approve the 12 inch by 12 inch support post for the property in question. Attorney Blum stated the Commission is being

asked to look at both so that obstructions are defined and the applicant can be told how the Code applies to their application. Discussion followed.

Comm. Bernauer stated that if the vision triangle is smaller than the obstruction becomes more of an issue. Discussion followed.

Comm. Rogers moved to table agenda item 5.f, motion failed for lack of a second.

**Comm. Roberts moved, seconded by Comm. Bernauer that the deck and 12 inch post as presented for 388 Park Avenue does not constitute an obstruction in the vision triangle. Roll Call vote was taken:**

<b>Comm. Roberts</b>	<b>Aye</b>	<b>Comm. Levielle</b>	<b>Aye</b>
<b>Comm. Bernauer</b>	<b>Aye</b>	<b>Comm. Rogers</b>	<b>Nay</b>
<b>Comm. Reilly</b>	<b>Abstain</b>	<b>President Knutson</b>	<b>Nay</b>

**Motion carried, 3-2-1.**

- g. Review and Possible Action on an Ordinance to Amend Section 40.424 of the Municipal Code of the Village of Pewaukee relating to the vision clearance triangle at intersections. (Staff initiated topic)*

Planner Censky stated the Village has one standard for the vision triangle and that is a 50 foot by 50 foot triangle. It seems large so staff reviewed area communities and most provide for a 15 foot triangle with larger triangles for arteries. They also provide for a horizontal area usually between 2 feet from ground level to approximately 8 feet above ground level.

Comm. Rogers stated he feels that a 50 foot vision triangle is excessive but doesn't know if he's comfortable with a 15 foot triangle, maybe a 35 foot triangle. Planner Censky stated it could be increased for larger connection of arteries and railroad intersections. Discussion followed.

**Comm. Rogers moved, seconded by Comm. Bernauer to approve the recommendation to the Village Board for an Ordinance to Amend Section 40.424 of the Municipal Code with the following changes to the proposed draft ordinance:**

- 1. That Section 1 (1) be changed to a minimum of 25 feet instead of 15 feet**
- 2. That Section 1 (2) be changed to a minimum of 35 feet instead of 25 feet**
- 3. That Section 1 (5) be changed to add a provision for the Director of Public Works to review the plans prior to Plan Commission Review**

**Motion carried on Roll Call vote, 4-2, President Knutson and Comm. Reilly voted nay.**

- h. Review and Possible Action on an Ordinance to Amend Section 40.436(b)(3)b. regarding the process for review and dispensation of determinations made by the Building Inspector under the Residential Design Requirements sections of the Code. (Staff initiated topic)*

Planner Censky stated this is the section of the Code where all the guidelines are laid out, the exterior finishings guideline states that areas of the foundation greater than 2 feet be covered, roofs are limited to 2 materials, changes to the exterior materials must be in similar style to the original structure. She stated that currently the Building Inspector reviews the house plan so if the applicant wants to do an enclosed porch not on a foundation the Building Inspector doesn't have a choice, the applicant has to go to the Plan Commission for review, if they agree then there's a path to the ZBA. The ZBA has to find hardship in where you place a deck, and it's not demonstrable. The guidelines would not be modified. She stated the proposed change is to add the ability of the Plan Commission to review and adjust plans instead of reviewing and passing the application onto the ZBA. The application would still require a

public hearing. Censky stated this seems like a good thing to address now because a one-size-fits-all approach is not an entirely practical approach given the diversity of neighborhoods in the Village. She stated this change is not because someone needs it now or in the future.

Comm. Bernauer stated if the Plan Commission doesn't allow the use there is still a path to the ZBA. Discussion followed.

Comm. Tom Reilly left the meeting at approximately 9:49 p.m.

**Comm. Bernauer moved, seconded by Comm. Roberts to approve the Ordinance Amendment to Section 40.436(b)(3)b regarding the process for review and dispensation of determinations made by the Building Inspector under the Residential Design Requirements sections of the Code. Motion carried by Roll Call vote, 4-1 with President Knutson voting nay.**

- i. Review and discussion of Draft Sign Code Revisions prepared in light of a recent U.S. Supreme Court decision requiring sign regulation to be content neutral. (Staff initiated topic)*

Planner Censky stated this discussion regarding changes to the sign code is due to a Supreme Court decision that lead communities to review if signs are regulated by content or structure because they cannot provide graces for certain groups' signs. She stated it was due to this decision that the sign code was reviewed in its entirety.

Comm. Roberts asked if the standards have been removed. Attorney Blum stated communities cannot regulate content so any restriction has to be the least restrictive as the first amendment is frequently mitigated. He stated you cannot regulate content unless you can show a substantial public purpose. Discussion followed.

Administrator Gosse stated the changes would eliminate any signage in the Village right of way. He stated staff also looked at eliminating sign corners because residents can put up signs but staff is looking for direction. Discussion followed.

**Comm. Roberts moved, seconded by Comm. Rogers to table the discussion and possible recommendation to the Village Board regarding the Sign Code Ordinance to allow the Plan Commission to review changes more thoroughly before making a decision. Motion carried on Roll Call vote, 5-0.**

## **6. Citizen Comments**

Pat Nauth – 112 Highland Avenue – Ms. Nauth questioned if most of the homes on Park Avenue have decks. She stated on item 5.f the driveway in front of the house would take one car parked in it to create an obstruction. She stated on item 5.g the Commission may want to include steep hills.

Richard Benkstien – 384 Park Avenue – Mr. Benkstien stated it was not possible to see through the 10 foot bushes up to the stop sign at 388 Park Avenue, a car would be much lower.

## **7. Adjournment**

**Comm. Bernauer moved, seconded by Comm. Roberts to adjourn the April 14, 2016 Plan Commission Meeting. Motion carried 5-0.**

**Meeting adjourned at approximately 10:18 p.m.**

Respectfully submitted,

Chaz M. Schumacher  
Village Clerk