

Village of Pewaukee
Zoning Board of Appeals
Thursday, March 27th, 2014

1. Call to Order and Roll Call

Chairperson Flowers called the March 27th Zoning Board of Appeals meeting to order at approximately 7:00 pm. Roll call was taken with the following present: Chairperson Dean Flowers, Theresa Opie, Matt Haydack, Thomas Gund and Bill Hansen.

Also Present: Attorney Jim Dunlap, Attorney Joe Wirth, Division Chief Pete Rohde, Assist. Chief Mark Hoppe, Building Inspector John Gibbs and Clerk/Treasurer Nancy J. Zastrow

Excused Absent: Alt. Casey Smith.

Citizen Comments

There were no citizen comments.

2. Public Hearings

- a. *Upon the order of the Honorable James Kieffer Waukesha County Circuit Court Judge Case Number 13-CV-1426 an appeal for a variance from section 40.210(3) of the Village Code requiring structures within the R-5 zoning district to be offset 75 feet from lake frontage. The applicant, David Behnke, is requesting a variance to construct a deck that would be offset 59' from Pewaukee Lake. The deck would require a 16' lake frontage variance.*

Location – 616 Kopmeier Drive

Chairperson Flowers called the public hearing to order at 7:01 pm. There were no comments and the public hearing was closed.

3. Approval of the Minutes of the Meeting of May 16, 2013.

T. Gund moved, seconded by T. Opies to approve the minutes from the May 16, 2013 meeting as presented. Motion carried 5-0.

4. New Business

- a. *Review and Action on Appeal for a variance from section 40.210(3) of the Village Code as fully described above in Item 2a.*

Applicant – Luke Chiarelli on behalf of property owner David Behnke

Location – 616 Kopmeier Drive

Attorney Wirth explained he is the attorney hired by the Village insurance company to represent the village in this case. Attorney Dunlap has been retained to provide legal advice to the Zoning Board during the meeting.

Attorney Wirth then explained this hearing was ordered by Judge Kieffer after the Behnke's took their appeal to Circuit Court. He then gave a summary of the actions that have happened up until tonight's hearing. He stated the Behnke's applied for variances in 2012. In October 2012 the Zoning Board of Appeals denied the request to widen the deck on the house. In April 2013 they submitted a second application to increase the depth of the deck from 4' to 12' claiming a hardship for egress. The appeal is claiming a

wider deck allows for a wider area for evacuation in case of fire. At the May 16, 2013 the Zoning Board of Appeals allowed a deck of 4' in depth and spanning the east/west width of the home and to allow stairs to grand on the west end of the deck in order to provide reasonable egress from any of the three doors on the lakeside of the home. The Behnke's have since argued the Zoning Board of Appeals did not consider the hardship in their May 16, 2013 decision. Judge Kieffer then ordered this board to review the fire safety of the deck and tonight the Zoning Board must reconsider the May 16, 2013 decision including the fire safety issue.

Division Chief Pete Rohde was then asked several questions by Attorney Wirth. Div. Chief Rohde performs fire prevention and inspections for the Pewaukee Fire Department. He explained he received an e-mail from the property owner at 616 Kopmeier to perform an inspection last May or June and met with Attorney Jelinske. He stated they talked about egress needs and if two egress were necessary. He stated they did talk about if there was a fire on the deck and egress off the deck in that type of emergency. Attorney Wirth asked if anything was issued in writing regarding this information and Rohde stated there was nothing documented regarding the conversation. Attorney Wirth then asked if the fire department issued anything in writing regarding this matter and Rohde responded they did not.

Attorney Thad Jelinske is representing the Behnke's. Attorney Jelinske stated if there was a fire close to the building the exit route would be over the railing but an extension of the deck would allow another safe route off of the deck.

Attorney Wirth stated there is no need to exit over the railing because the board approved another staircase at the May 2013 meeting. Attorney Dunlap reaffirmed this from the minutes of the May 16, 2013 meeting.

Chairperson Flowers inquired about the drawing which was submitted during the previous meetings. Attorney Wirth reiterated the board never granted the Behnke's the authority to building anything closer to the high water mark. There was no variance granted for reducing the 75' setback to the lake.

Chairperson Flowers stated he is concerned with the 12' deck. Attorney Jelinske stated if there is more room to gather the chances of a safe exit are increased. He reiterated they are asking for the deck extension for safety reasons. Attorney Jelinske distributed aerial photos for the members of ZBA showing with the extension of the deck would not make the structure equal to surrounding properties.

Mr. Behnke addressed ZBA explaining his house is 70' away from the lake and he currently has a partial deck 4' wide and 10' long. There is a white shed that is 59' from the water mark and located 16' from the house. The whole point of the request is to make his family safe. He is planning to extend the deck over the shed.

T. Gund pointed out at the first ZBA the board was told and it is also indicated on the submitted plat map the shed to be removed. The board has been informed once the shed is removed another shed cannot be located in the same location.

Building Inspector Gibbs stated the original building permit was for 3 new windows. When he performed the inspection he found 3 doors were installed. He did not make them remove the two doors and instead had the contractor complete a new building application indicating the doors. He also stated the unified building code requires two exits and they currently have two exits and are in compliance with the code.

Chairperson Flowers stated he has sympathy for the safety concerns but thinks 12' is a little too much and believes the 4' allows an exit. Discussion followed regarding the stairwell and how far this would extend towards the lake. The question was asked of Building Inspector Gibbs regarding how far the stairs would extend from a 4' deck. It was determined the stairs would extend 8'. Attorney Wirth asked for clarification if the board is looking at 12' with staircase or a 4' deck with 12' stairs. The board stated the 12' would include the stairs. Attorney Wirth reminded the board what is before them is whether or not the safety issue which Div. Chief Rohde discussed were used to make their determination.

Mr. Behnke stated he is looking for any distance greater than 4' for his deck. He is always thinking of safety and feels 4' is not enough.

T. Opie stated she is not comfortable saying you are safe with a 4' deck and does not want this on her shoulders.

Attorney Dunlap explained when ZBA made the order last May it was not clear which side the stairs would go. T. Gund stated they did not specify where the steps would be located other than not towards the lake. Attorney Wirth stated the variance request in May 2013 was for the 12' deck and that was denied. The October 2012 variance request was amended to allow the staircase.

Building Inspector Gibbs reiterated the original submittal did not include sliding doors, only windows. He also stated the fire department has no say over one and two family homes. The UDC dictates this. Attorney Wirth stated the Judge wanted to make sure fire safety was considered in the determination.

Attorney Wirth reiterated to the board the May 2013 hearing was regarding whether or not a 4' deck caused a safety issue or not. This is not the first time fire safety with a 4' deck is before the board, the only thing new is the testimony from Div. Chief Rohde.

Attorney Dunlap pointed out to the ZBA they have three options:

- 1) The board can affirm the decision made in May 2013 to deny the request. This action would take a 3-2 vote to pass.
- 2) If the board modifies or reverses either the October 2012 or May 2013 action it would require four votes to affirm the action.
- 3) The board would not need to take action on any additional variance if they only want to clarify the action taken in May 2013 to add the additional steps.

B. Hansen questioned if the building permit was obtained for windows, why were the sliding doors allowed? Building Inspector Gibbs explained the original submittal had three windows across the front and they decided to replace them with three doors without notifying the building inspector. Gibbs reported he worked with the builder even though it was not part of the submittal. B. Hansen asked if they could still build a 4' deck and have the staircase egress towards the lake. Gibbs responded the UDC requires a 3' landing for the steps to begin. B. Hansen stated in his opinion the shed would need to be removed as was indicated on the plat presented to the board especially if the steps conflict with the stairs coming down on the west end of the deck.

B. Hansen moved to allow the 4' deck and make clarification to the original decision from May 16, 2013 to allow egress of a staircase to the lake. Attorney Dunlap stated the Attorney wants consideration of the original request for a variance. Attorney Wirth suggested the motion to be "motion to affirm the prior decision and clarify the staircase may extend to the lake." Discussion followed. The motion was then modified to read "variance is denied and original decision from 2012 is upheld and stairs will be allowed per the May 2013 decision to provide a reasonable and safe egress from any doors from the home. M. Haydack seconded the motion. T. Opie inquired if the variance for the stairs allows an 8' deck? Discussion continued. B. Hansen withdrew his motion and M. Haydack withdrew his second.

B. Hansen moved, T. Opie seconded to deny the request for a variance to allow a 12' deck and to modify the variance to include stairs on the west end of the deck not to extend more than 8' from house for safety purpose and grant a variance for the deck including the stairs to no closer than 62' from the lake. Roll call vote was taken.

M. Haydak	yes
B. Hansen	yes
T. Gund	yes
T. Opie	yes
Chairperson Flowers	yes

Motion carried 5-0.

b. Set date for next meeting

The board agreed to set the next meeting date for Wednesday April 16th @ 7:00 pm.

5. Adjournment

T. Opie moved, T. Gund seconded the motion to adjourn the March 27th meeting of the Zoning Board of Appeals at approximately 8:34 pm. Motion carried 5-0.

Respectfully submitted,

Nancy J. Zastrow
Clerk/Treasurer

