

**WAUPACA COUNTY BOARD OF ADJUSTMENT MEETING
MINUTES –OCTOBER 26, 2017**

ON-SITE INSPECTIONS: The Board made on-site inspections starting at 8:30 a.m. on the Joe W. Lindner property, Town of Helvetia and the Peebles Living Trust property, Town of Farmington.

Chair Craig called the meeting to order at 10:01 a.m. Roll call was taken with the following members present: P. Craig, A. Richardson, J. Fulcher, P. Leder and D. Johnson, all present.

P. Leder moved and A. Richardson seconded the motion to approve the agenda as presented. The motion was carried.

D. Johnson moved and P. Leder seconded the motion to approve the minutes from the July 20, 2017 meeting with the correction of J. Beyer to P. Leder. The motion was carried.

PUBLIC HEARINGS:

The first continuation public hearing was called to order at 10:05 a.m. by Chair Craig to hear the Petition for Grant of Variance for **Richard P. & Kay J. Miller:** Located in part of the SE ¼ of the NW ¼ of Sec. 4, Town of Little Wolf, lying along Miller Lane, Fire Number N7165, Waupaca County, Wisconsin; for an after the fact Petition for Grant of Variance for the construction of an addition to the dwelling and the construction of a shed both being less than the required Shoreland setback in an AE (Agriculture Enterprise) District on approximately 2.44 acres. Roll call was taken with the following members present: P. Craig, A. Richardson, J. Fulcher, P. Leder and D. Johnson, all present. The Board, Ryan Brown, Planning & Zoning Director, and Jeff Henneman, Land Use/Code Enforcement Specialist made an on-site inspection of the property on July 20, 2017. Chair Craig declared the hearing legal and gave the general procedure.

Richard Miller was sworn in to testify. Mr. Miller commented on the document from July 25, 2017 that shows a site plan with the ordinary high water mark (OHWM) to the accessory structure. Mr. Miller said that according to the distance and the wetland, shoreline and floodplain, it shows that the requirements were met as requested.

Jason Snyder, Deputy Zoning Administrator, read an excerpt from an email from Scott Koehnke, Department of Natural Resources (DNR) regarding a bog area. (email on file). Scott Koehnke made an onsite determination as to where the ordinary high water mark (OHWM) is, and that indeed it is a floating bog. The lake bed is thirty (30) feet away from where the structure was built.

D. Johnson moved and P. Leder seconded the motion to **DENY** the Petition for Grant of Variance due to the following: The accessory structure may be placed on the property in a compliant location. Options exist to place the accessory structure in compliant locations, allowing the structure to remain would undermine the purposes of the ordinance. With the following conditions: The applicant shall remove the structure from the shoreland setback area by **July 1, 2018**. Relocation of the structure is subject to obtaining a land use permit and complying with the applicable regulations. Roll call vote was taken: P. Craig—yes; J. Fulcher —yes; A. Richardson—yes; P. Leder —yes and D. Johnson — yes, unanimous vote to DENY the Variance request. A. Richardson moved and P. Leder seconded the motion to close the hearing at 10:24 a.m. The motion was carried.

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The second public hearing was called to order at 10:25 a.m. by Chair Craig to hear the Petition for Grant of Variance for **Joe W. Lindner**: Located in part of the NE ¼ of the NW ¼ of Sec. 17, Town of Helvetia, lying along Willkom Road, Fire Number E3026, Waupaca County, Wisconsin; for an after the fact Petition for Grant of Variance for a dwelling with less than the required side yard setback in an RR (Rural Residential) District on approximately 2.28 acres. Roll call was taken with the following members present: P. Craig, A. Richardson, J. Fulcher, P. Leder and D. Johnson, all present. The Board, Ryan Brown, Planning & Zoning Director, and Jason Snyder, Deputy Zoning Administrator, made an on-site inspection of the property Deb Giuffre read the names of persons notified of the hearing. Chair Craig declared the hearing legal and gave the general procedure.

Joe Lindner and Bruce Meagher were sworn in to testify. Mr. Meagher gave a history of the occurrences of the structure and the encroachment.

Three criteria: **1) Unique physical limitations;** the structure was approved by the Town of Helvetia and Waupaca County Zoning Department. A Plat of Survey disclosed the Southeast corner of the building was located 5.5 feet outside of the lot line. The portion of the structure that encroaches will be razed. **2) No harm to the public interests;** will further the maintenance of safe and healthful conditions and prevent and control water pollution. Protect spawning grounds and preserve shore cover. Will bring the building into compliance. **3) Unnecessary hardship;** reconfigure the structure so it lies within the property and raze the portion that encroaches on neighbor's property.

Chair Craig called three times for any testimony in favor of the application. There was none.

Chair Craig called three times for any testimony in opposition to the application. There was none.

Jeff Wacek was sworn in to testify. Mr. Wacek suggested that a survey be done after the structure is reconfigured.

Jason Snyder, Deputy Zoning Administrator, gave a staff report for the after the fact dwelling with less than the required side yard setback. Staff recommendation is to deny the application and for the Board to establish a time frame for the removal of the portion of the structure encroaching into the setback area.

Diane Meulemans, Corporation Counsel, confirmed that the County did not agree to the zero (0) setback as part of the settlement of the litigation. The County clarified with Judge Clussman that the decision included the fifteen (15) foot yard setback.

Bruce Meagher came back for rebuttal. Mr. Meagher said he felt that the three criteria were met even though it was self-imposed and that it was discovered five (5) years after the fact. Mr. Meagher said there are unique physical limitations and it is a very small portion of encroachment that can be corrected. Mr. Meagher said the property was surveyed about five (5) years after the construction.

Jeff Henneman, Land Use/Code Enforcement Specialist, stated that there were property stakes and the stakes were about 400 feet apart.

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J. Lindner said he had the property staked out to have the concrete poured and Jeff Henneman, Land Use/Code Enforcement Specialist was out to verify the setbacks. The setback was actually ten (10) feet and there is a five (5) foot relief for a lake lot.

Jeff Henneman, Land Use/Code Enforcement Specialist, said the previous Shoreland Zoning Ordinance you could be as close as ten (10) feet on one side if the property is wider than 100 feet for a total of thirty (30).

Diane Meulemans, Corporation Counsel, stated that fifteen (15) feet is in the lawsuit.

D. Johnson moved and A. Richardson seconded the motion to **DENY** the Petition for Grant of Variance due to the following: The structure could have been built in a compliant location. There are no unique physical limitations of the property. Granting the variance would undermine the intent of the ordinance to protect the public. The hardship is financial and self-created. With the following conditions: The portion of the structure located within fifteen of the property line shall be removed by **October 26, 2018** (any structural alteration to the existing structure requires a land use permit prior to the start of construction). Roll call vote was taken: P. Craig—yes; J. Fulcher —yes; A. Richardson—yes; P. Leder —yes and D. Johnson —yes, unanimous vote to DENY the Variance request. A. Richardson moved and P. Leder seconded the motion to close the hearing at 10:56. The motion was carried.

The third public hearing was called to order at 10:57 a.m. by Chair Craig to hear the Petition for Grant of Variance for **Peebles Living Trust**: Located on Lot 43 of Columbian Park Subdivision of Sec. 33, Town of Farmington, lying along West Columbia Lake Drive, Fire Number N2490, Waupaca County, Wisconsin; for a Petition for Grant of Variance for the structural alteration (roof pitch modification) of an existing non-conforming accessory structure with less than the required side yard and road setback in an SR (Sewered Residential Single-Family) District on approximately 0.29 acres. Roll call was taken with the following members present: P. Craig, A. Richardson, J. Fulcher, P. Leder and D. Johnson, all present. The Committee, Ryan Brown, Planning & Zoning Director, and Jason Snyder, Deputy Zoning Administrator, made an on-site inspection of the property. Deb Giuffre read the names of persons notified of the hearing. Chair Craig declared the hearing legal and gave the general procedure.

Marshall & Dianne Peebles were sworn in to testify. Mr. Peebles said when he purchased the property the garage met the setbacks. The laws have changed and now the garage does not meet the required setback for alterations. The garage has a low pitch and has structural damage. Ms. Peebles said that nothing will change but the roof.

Three criteria: 1) **Unique physical limitations**; garage does not meet the required setbacks but the footprint remains the same. 2) **No harm to the public interests**; no impact or harm to the neighbor or public. 3) **Unnecessary hardship**; current roof pitch allows pine needles and snow to accumulate which results in damage to the roof.

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Chair Craig called three times for any testimony in favor of the application. There was none.

William Kramer was sworn in to testify. Mr. Kramer said he owns the neighboring property and that the roof does accumulate debris. Mr. Kramer is in favor of the application.

Chair Craig called three times for any testimony in opposition to the application. There was none.

Jason Snyder, Deputy Zoning Administrator, gave a staff report for the structural alteration (roof pitch modification) of an existing non-conforming accessory structure. Staff recommendation is denial. The proposal does not meet any of the criteria outlined for a variance to be granted.

A. Richardson moved and D. Johnson seconded the motion to **DENY** the Petition for Grant of Variance due to the following: The parcel is similar to other lake properties, no unique physical characteristics. Granting the variance will undermine the purpose of the ordinance. Ordinary maintenance and repair can be completed on the structure without structural alterations in the setback area. Roll call vote was taken: P. Craig—yes; J. Fulcher —yes; A. Richardson—yes; P. Leder —no and D. Johnson —yes, four (4) to one (1) vote to DENY the Variance request. P. Leder moved and D. Johnson seconded the motion to close the hearing at 11:20 a.m. The motion was carried.

DISCUSSION AND POSSIBLE ACTION

- Board of Adjustment Decision-Making Worksheet was discussed. P. Leder moved and A. Richardson seconded the motion to approve the worksheet. The motion was carried.
- Schedule upcoming meetings

D. Johnson moved and A. Richardson seconded the motion to adjourn the meeting at 11:45 a.m. The motion was carried. The Board adjourned.

Debra Giuffre
Recording Secretary

cc: County Clerk