



**Zoning Board of Appeals  
Wednesday, May 31, 2023  
6:00 p.m.**

**Village Hall, 235 Hickory Street, Pewaukee, WI 53072**

1. Call to Order and Roll Call
2. Approval of Minutes
  - a. November 28, 2022
3. Public Hearing
  - a. To Consider a Request of property owner/applicant James Kruswicki and Vickie Demler to retain an existing fence that they installed at a ~1 foot offset to the side lot line where Section 40.21.10(4) provides that the minimum offset of such fence should have been 5 feet minimum. This .19+/- acre property, located at 319 Park Avenue, is zoned R-5(LO) Single-Family Residential with Lakefront Overlay District.
4. New Business
  - a. Discussion and Possible Action to Consider a Request of property owner/applicant James Kruswicki and Vickie Demler to retain an existing fence that they installed at a ~1 foot offset to the side lot line where Section 40.21.10(4) provides that the minimum offset of such fence should have been 5 feet minimum. This .19+/- acre property, located at 319 Park Avenue, is zoned R-5(LO) Single-Family Residential with Lakefront Overlay District.
  - b. Discussion and Possible Action to Determine Future Meeting Date (if needed).
5. Adjournment

All interested parties please note: Section 40.137 of the Village Code states “The concurring vote of four (4) members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter or to affect any variation therefrom. The grounds of every such determination shall be stated.”

**Note:** Notice is hereby given that a quorum of a Village Committee and/or Commission may be present at the Zoning Board of Appeals meeting, and if so, this meeting shall be considered an informational meeting of that Committee or Commission and no formal action of that Committee or Commission shall occur. Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. To request such assistance, contact the Village Clerk at 262-691-5660.

Cassandra Smith – Village Clerk

Dated: May 25, 2023

**VILLAGE OF PEWAUKEE  
ZONING BOARD OF APPEALS  
November 28, 2022**

**1. Call to Order and Roll Call**

Clerk Smith called the meeting to order at approximately 6:00 p.m.

Clerk Smith asked the board for recommendations for acting as chairperson.

T. Opie offered to Act as the Chairperson for the November 28, 2022, Zoning Board of Appeals meeting.

**P. Evert moved, seconded by E. Krasovich to approve T. Opie as the acting Chair for the November 28th, 2022, Zoning Board of Appeals Meeting.**

**Motion carried 4-0**

Roll Call was taken with the following present: Theresa Opie, Eric Krasovich, Paul Evert, and Jim Kruswicki. Douglas Joers, and Alternate Patricia Stonger, were excused.

Also Present: Village Attorney, Mark Gralinski; Village Planner, Mary Censky; and Village Clerk, Casandra Smith.

**2. Approval of Minutes - July 22, 2021**

**P. Evert moved, seconded by E. Krasovich to approve the minutes of the July 22, 2021 meeting as presented.**

**Motion carried 4-0.**

**3. Public Hearing**

- a. **To consider a Request of Ben Mohns Jr. to construct an attached deck feature onto the south wall of the existing principal building at this site, which deck feature addition will result in a building setback between 33.31 feet and 33.74 feet from the ultimate road right-of-way line of Bluemound Road (CTH "JJ"), where the Code calls for a minimum 35-foot setback. This .9+/- acre property, located at 357 Morris Street, is zoned R-M Multi-Family Residential.**

T. Opie opened the public hearing at approximately 6:04PM.

Planner Censky explained that Mr. Mohns has requested a variance in the R-M district, specifically, from code 40.231 which specifies that a 35' minimum setback is required from the ultimate right-of-way line of any public street, road, or highway upon which the subject property abuts. The proposal would cause two (2) proposed decks to have a 33.31' and 33.74' (at their southwest and southeast corners respectively) setback on the south side of the building, which abuts the public road Highway JJ. Censky confirmed that the Fire Chief has noted that the ability to provide decks to the units would enhance fire safety for the residents. Censky also informed the Board that a ramp was previously located on the property and which has since been removed, but the old footings which are still there in the ground show that the ramp was encroaching at least as far, if not further, into the setback than the proposed decks would be.

Attorney Gralinski read the standards from the Village Code and in summary, he indicated that the commission must provide evidence to show that the following criteria are met to grant the variance:

- Determine if the property is/has a unique condition;

- Due to the unique property condition, would enforcement of the ordinance provisions will cause an unnecessary hardship;
- The variance is not contrary to the public interest

Ben Mohns – Applicant/Owner for 357 Morris St – Mr. Mohns was sworn in by Attorney Gralinski. Mohns explained that a previous owner had constructed the building and had placed a ramp within the 35’ setback. The ramp has since been removed but Mr. Mohns noted that the proposed new decks would only encroach about the same distance as that ramp had. Mohns had a survey made of the property which showed that the decks would come close, but not quite meet the required 35’ setback. At the southwest corner, they would be setback at 33.31’ and at the southeast corner, 33.74. The building was not built parallel to the south lot line, it’s closer on the west end making it difficult to maintain the 35’ setback all the way across as required by code. All the other decks were approved by the Planning Commission because they do comply with the Code as to setbacks. Mohns stated that the Fire Chief had been contacted and felt it was advantageous to install decks for emergency rescue services. Mohns stated that he sent a letter to all abutting property owners and not one was against his proposal.

E. Krasovich asked about the ramp and asked why he removed it. Mr. Mohns stated that the ramp was removed before he took ownership. The footings that are still on site (at grade and below) reveal that the former ramp encroached on the setback more than what the proposed decks would be.

Mr. Mohns responded to P. Evert that the building may not have been constructed as originally approved, in terms of setbacks. P. Evert stated that the property is surrounded on three sides by roads making it difficult to build between the south side of the building and the south lot line of the property.

Mr. Mohns stated that this property is somewhat unique in how the property tapers at one end and is not square in relation to the building. Also, it is surrounded by roads on three sides. He feels the hardship regarding the decks for the property is about diminished ease of emergency rescue service. The decks provide more rescue access for the tenants in the event of an emergency. Also, if there were no decks in some of the units, he will experience decreased rent revenue for those units which are perceived as less safe and enjoyable.

Mr. Mohns responded to E. Krasovich, yes, the patio doors are already installed and if decks are not approved, they would have to put bars back in front of the doors.

Attorney Gralinski noted for the record the following documents have been submitted by the applicant:

- |   |                         |
|---|-------------------------|
| • Staff report dated 11/28/2022               | • Renovation Plans S1.0 |
| • Applicant letter (2 pages) dated 10/19/2022 | • Renovation Plans A1.1 |
| • Property drawing EX-PRL-1                   | • Renovation Plans A1.2 |
| • Exterior photos (4)                         | • Renovation Plans A2.0 |
| • Renovation Plans T1.0                       | • Renovation Plans A2.1 |

T. Opie closed the Public Hearing at approximately 6:34 p.m.

**4. New Business**

- a. **To consider a Request of Ben Mohns Jr. to construct an attached deck feature onto the south wall of the existing principal building at this site, which deck feature addition will result in a building**

**setback between 33.31 feet and 33.74 feet from the ultimate road right-of-way line of Bluemound Road (CTH "JJ"), where the Code calls for a minimum 35-foot setback. This .9+/- acre property, located at 357 Morris Street, is zoned R-M Multi-Family Residential.**

T. Opie indicated that she favors the request due to the property being a unique property due to how the lot tapers and because the decks would provide an increase in safety.

J.Kruswicky was in favor of the request as presented.

P. Evert stated that it is not the applicant's fault that the construction was not completed parallel to the lot lines. Due to the safety increase and the property abutting 3 roads on 3 sides; he is in favor of this request.

E. Krasovich agreed with other members and stated that it would be a hardship if the decks were not approved especially if a person is disabled or injured and not able to escape.

**J. Kruswicky moved, seconded by E. Krasovich, to approve the setback variance request for 357 Morris Street to construct an attached deck feature onto the south wall of the existing principal building at this site, where the deck addition will result in a building setback between 33.31 feet (at the southwest corner of the deck) and 33.74 feet (at the southeast corner of the deck) from the south lot line (i.e., the ultimate road right-of-way line of Bluemound Road (CTH "JJ"), where the Code specifies a minimum 35-foot setback would otherwise be required.**

**5. Adjournment**

**E. Krasovich moved, seconded by P. Evert, to adjourn the November 28, 2022, Zoning Board of Appeals meeting. Motion carried 4 - 0.**

**Meeting adjourned at approximately 6:41 p.m.**

Respectfully Submitted,

Casandra Smith  
Village Clerk

## STAFF REPORT

**To:** Village of Pewaukee Board of Zoning Appeals

**By:** Mary Censky

**Date Prepared:** May 31, 2023

### General Information:

**Agenda Item:** **4a**

**Applicant/Property Owner:**

James Kruswicki and Vicki Demler

**Requested Action:**

Variance approval to retain in place, a fence that was constructed/installed at a ~1 foot offset to the side lot line where Section 40.21.10(4) provides that the minimum offset of such fence should have been 5 feet minimum.

**Existing Zoning:**

R-5(LO) Single-Family Residential with Lakefront Overlay District

**Surrounding Zoning/Land Use:**

North: Pewaukee Lake  
South: R-5 Single-Family Residential  
East: R-5(LO) Single-Family Residential with Lakefront Overlay District  
West: R-5(LO) Single-Family Residential with Lakefront Overlay District

**Existing Master Plan Classification:**

Single-Family Residential

**Location:**

319 Park Avenue

**Lot Size:**

.19 +/- acres

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### Discussion:

The applicant installed this existing fence without prior approval. After the fact, he has been notified that the fence must be removed or relocated because the required minimum offset to the side lot line for a fence on this lot is five (5) feet [ref Section 40.21.10(4) of the Village Code].

The applicant seeks a variance approval to retain the fence in its current location vs having to remove or relocate it.




**Legend**

- Municipal Boundary\_2K
- Parcel\_Dimension\_2K
- Note\_Text\_2K
- Lots\_2K
  - Lot
  - Unit
  - General Common Element
  - Outlot
- SimultaneousConveyance
  - Assessor Plat
  - CSM
  - Condominium
  - Subdivision
- Cartoline\_2K
  - EA-Easement\_Line
  - PL-DA
  - PL-Extended\_Tie\_line
  - PL-Meander\_Line
  - PL-Note
  - PL-Tie
  - PL-Tie\_Line
  - <all other values>
- Railroad\_2K



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**Notes:**  
 Printed: 5/24/2023





## ZONING BOARD OF APPEALS INFORMATION

If you wish to apply for a variance, you must appear before the Zoning Board of Appeals. The Zoning Board of Appeals meets on the third (3<sup>rd</sup>) Thursday of the month at 7:00 p.m. if the Board has an appeal application to act upon.

Along with a completed application, the following must be submitted to the Village Clerk's Office at the Village Hall three (3) weeks and two (2) days preceding the meeting date:

1. Seven (7) copies and one digital copy of a letter explaining the specific variance(s) that you are requesting. The letter must explain: the variance requested, what special conditions exist which will cause practical difficulty or unnecessary hardship if the variance requested is not granted, why the variance being requested is not contradictory to the public interest and will not endanger public safety and welfare, and why the variance requested will be in accord with the spirit of the zoning ordinance.
2. Seven (7) copies of a site plan (survey) showing the location and size of the property, existing improvements, abutting properties and improvements and the requested change or addition. Photos are highly recommended.
3. A memorandum from the building inspector describing what part of your plans does not meet the Building Code.
4. The fee of \$150.00. This fee is non-refundable and is necessary for the processing of your application and the public hearing regardless of the outcome.

### PROCESS

Note: Full information on this process is published in the ordinances of the Village of Pewaukee, Section 40.131 (available at Village Hall) and further information is found in Wisconsin Statute Section 62.23(7)(e). It is your responsibility to be aware of all requirements stated therein.

After submission of a complete application as noted above, the Village will call a meeting of the Zoning Board of Appeals. You will be notified of the date and time of the meeting as soon as it has been scheduled.

ZONING BOARD of APPEALS  
Variance Requested

1) FENCE

Ok, I did install a fence 1 foot off lot line, about 6 feet off lake front and 70 to 71 inches high.  
(under 6 foot)

The village received a complaint not from the neighbor but from a person that parks his boat there, the same guy that in past ran thru our yard to get to his boat. So we did receive a notice from Village for permit. I did go to building inspector after finding out a permit was needed. The first look at permit form, survey and check inspector thought it was ok, but after I told him my address and what has happen, he said he had to pass on to village. Not thinking much of it a week later I went back to ask what happen with our permit. Randy (inspector) stated the village was holding it and I asked who. At this point it is still in the village administrators hands. I have tried to talk with Scott about this and there has been different interpretations of where a fence maybe placed in ones yard.

The fence was placed there for the safety of our family and friends that visit. So being about 6 foot off lake front the fence runs 42 feet of that 42 feet 22 covers neighbors boat house then about 4 to 5 feet is the neighbors grass area and the rest covers his house. There will be pictures at the meeting of all of this .

2) Unnecessary Hardships and Special Conditions

The neighbors intentional acts or negligence has caused interference with the use and enjoyment of our property. The interference has resulted in a significant harm to us, which harm includes the following:

- a) Loss of enjoyment of property
- b) Diminished property value
- c) Loss aesthetics
- d) Unwanted physical conditions such as dust, blowing trash and debris, the increased likelihood of vermin and other conditions associated with the condition of his property
- e) The buildings and structures located on property have failed to be maintained

The most important to me is that when we have company and someone ask what is going on next door Vickie brakes down. It takes me 15 to 30 minutes to get her back out and calm down.

First off in the web site for Pewaukee, permits there is not a thing about fences (picture attached) city attached also.

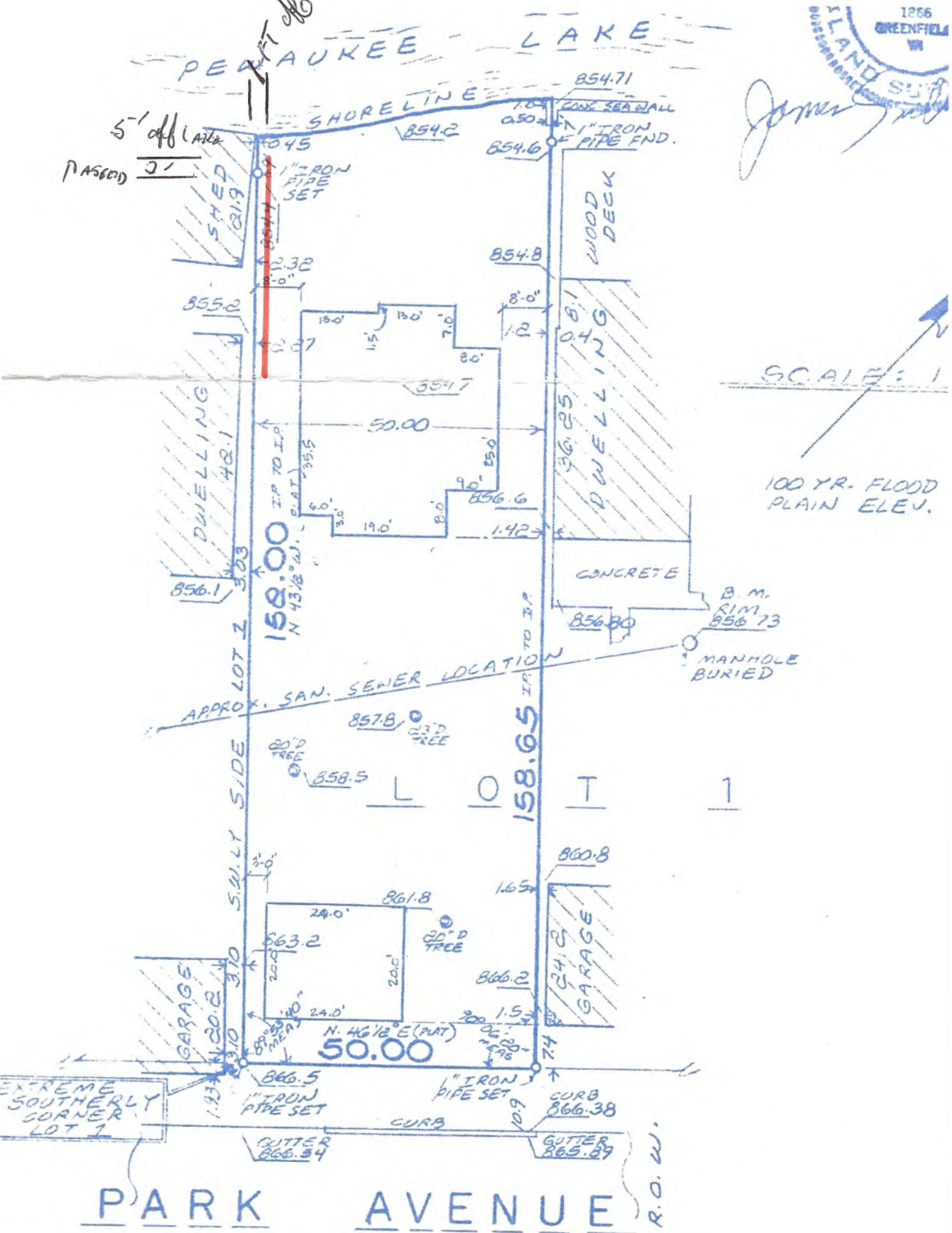


# PEWAUKEE LAKE



*John [Signature]*

5' off lake  
PASSION 3'



SCALE: 1

100 YR. FLOOD PLAIN ELEV.

APPROX. SAN. SEWER LOCATION

EXTREME SOUTHERLY CORNER LOT 1

# PARK AVENUE

R.O.W.



Building Services Department  
W240 N3065 Pewaukee Road  
Pewaukee, Wisconsin 53072  
Phone (262) 691-9107  
buildingservices@pewaukee.wi.us



Mr. Jim Kruswicki  
319 Park Ave  
Pewaukee, WI 53072

Hi Jim-

The reasons your fence does not meet the Village of Pewaukee's codes are as follows:

**Sec. 40.210.10.4**

Sec. 40.210.10. - Minimum building offset.

Minimum building offset in the R-5 lakefront overlay district shall be:

- (1) Side lot line: Minimum ten feet.
- (2) Rear lot line: Minimum 25 feet.
- (3) Lake frontage: Minimum 75 feet.

**(4) Non-storage related accessory structures: Minimum five feet.**

Accessory storage structures and detached garages: Minimum ten feet.

ALSO:

**Sec. 40.422. - Structures other than buildings.**

(a) Structures not classified as buildings and less than six inches in height from the surface of the ground shall not require a building permit nor be subject to the setback or offset requirements of this chapter except as may be specifically otherwise provided.

(b) Structures not classified as buildings and six inches or more in height from the surface of the ground shall be subject to the setback, offset, building size, and open space requirements of this chapter except as may be specifically otherwise provided.

(c) Fences, walls and other architectural screening devices, when anchored to supports, imbedded in the ground shall be considered permanent structures and shall be subject to the following:

(1) No structure shall be permitted that by reason of noise, dust, odor, appearance or other objectionable factor creates a nuisance or a substantial adverse effect upon the property value or reasonable enjoyment of the surrounding property.

(2) Any such structure less than 4½ feet in height may be permitted anywhere on the lot.

(3) Any such structure in excess of 4½ feet in height may be permitted provided it conforms to the open area, height, setback and offset requirements of the zoning district in which it is located.

(4) Any such structure in excess of 4½ feet, but not more than six feet in height, may be permitted to within five feet of a street right-of-way provided the side facing the street line is attractively landscaped and subject to approval by the building inspector.

(5) Any such structure in excess of 4½ feet in height may be permitted closer than required offset from an adjoining lot line, other than a street line, with the written consent of the adjoining property owner. Such structure shall not project forward of the building setback line.

Thank you,

*Randy Romens*

**Commercial & UDC Plumbing Inspector  
Building & HVAC Inspector  
262-691-9107**

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“INTERFERED SUBSTANTIALLY WITH THE FOLLOWING:

comfort

enjoyment

life

health

safety

INTERFERENCE HAS RESULTED IN SIGNIFICANT HARM:

Loss of enjoyment of property

Diminished property value

Loss of aesthetics

Unwanted physical conditions

Dust

Blowing trash

Debris

Vermin

lead base paint

Tar paper and shingles

