

CITY OF WEST OKOBOJI
BOARD OF ADJUSTMENT MEETING
CITY HALL
March 16, 2020 – 4:30 p.m.

Presiding Jim Rohlfen
Member Present Peggy Bergh, Chuck Krumme, Judy Haviland
Member Absent
Zoning Administrator Derrick Miner
Others Present Anita Leveke, Ron Leveke, Mary Kennedy, Darlene Powers, Gretchen Hedrick, John Hedrick, Jake Schoelerman, April Bosma, Eva Shine, Don Hemphill, Suzy Wilmot, Dave Stein, Barb Lynch

Rohlfen called the meeting to order at 4:31 P.M. Krumme/Haviland moved to adopt the agenda. All ayes. Motion carried. Bergh/Krumme moved to approve previous minutes from 11/22/2019. All ayes. Motion carried.

Board to conduct a public hearing to consider a variance request submitted by John & Gretchen Hedrick, 1105 Maywood Ave, West Okoboji, Iowa.

Chairman Rohlfen opened the hearing to those in attendance. Zoning Administrator Miner explained that Mr. and Mrs. Hedrick are requesting a variance for a non-conforming foundation and soon to be house that encroaches into the line of sight. Miner explained that approval of the original building permit was based on old information provided by an old ordinance from the previous city administrator. In January of 2019 a new zoning ordinance was passed that changed the methods to use while determining the line-of-sight for new construction. The “straight-line” setback is determined by a line of sight joining the farthest projecting building wall of the nearest buildings on either side of the property. The “point or curved” setback is determined by extending the sight lines from the farthest projecting building wall of the nearest buildings on both sides of the subject property, until such projecting lines intersect each other. Miner explained that the foundation is non-conforming by 11.6ft on the North side and 12ft on the South side of the property using the “straight-line” method and non-conforming by 1.3ft on the North side and 4.4ft on the south side of the property using the “point or curved” method.

Chairman Rohlfen then turned the floor over to Mr. and Mrs. Hedrick to present their case. Mrs. Hedrick began her presentation by showing the Board several photos of the proposed construction. She explained that the “point or curve” line of sight method is what they were told to use in determining setback as instructed by zoning administrator Miner. Miner stated that he explained both methods to their land surveyor and that he never instructed them to use one or the other. Upon halting construction at the Hedrick residence, Miner determined that the straight line of sight method should be used based on precedents that were set in place to minimize confusion. Mrs. Hedrick asked Miner, “What is the precedent that the city put in place?” Miner explained that after meeting with Mayor Lynch and consulting with local cities, he came up with a “5-house” rule in which he would use from now on. This rule is used by going down 5 houses on both sides of the construction site and looking down the lakeshore to determine which line of sight method to use. If you can visibly see the houses on both sides of the construction site then the “straight-line” method shall be used, if you see open water/no houses then the “point-curved” method shall be used.

Board members Haviland and Krumme expressed concerns about the amount of dirt that was excavated from the property. Haviland asked “On the lower level have you taken dirt out all the way to the lake?” Mr. Schoelerman (the builder) explained that they are 7-8ft above the mark in which they would have to apply for a permit with the DNR. Krumme asked “It is a walkout isn’t it?” Mrs. Hedrick agreed. Krumme said, “In order to have a walkout quite a bit of dirt along the shoreline had to be removed.” Mrs. Hedrick replied, “no it didn’t.” She explained that they took out rotten timber ties from the lakeshore for structural purposes

and that even though it looks like they cut the lakeshore bank down significantly they did not. Mrs. Hedrick also informed the board that they had verbal approval to excavate from the DNR back in 2018.

Mrs. Bosma (Hedrick's lawyer) stated that because the building permit was granted, the city should approve this variance. Mrs. Hedrick explained that they have invested around \$80,000 for the foundation that is already poured and have already missed out on a summer with their family. Mrs. Bosma stated that if this variance is denied it would result in an unnecessary hardship for the Hedrick's.

Mr. Don Hemphill was present at the meeting representing Gerald and Sandra Wilmot in objection of this variance. Mr. Hemphill explained that the construction has violated 4 provisions of the West Okoboji Zoning Ordinance. 1- Section 6.5 Site Development Regulations- Lot area 10,000 square ft. minimum. Schoelerman explained to Mr. Hemphill that the Hedrick's own 2 lots, side by side, which amounts to greater than 10,000 sq. ft. 2- Section 6.6 Lakeshore Yard Setback-Line of sight. The existing foundation extends approximately 12 ft. beyond the required "line of sight" front yard setback line. 3- Section 6.9 Construction within the Lakeshore Bank. Mr. Hemphill stated that the excavation in violation of the ordinance has damaged the integrity and appearance of the lakeshore and creates potential for erosion and loss of lateral support for the Wilmot property. He stated that it should be required to restore the lakeshore to the previously existing condition. 4- Mr. Hemphill stated that the Hedrick's apparently contend that they relied on advice or representations of city officers in connection with their project. He explained that the Iowa Appellate Courts have repeatedly held that a building permit which was unlawful at the time of issuance does not afford the applicant any vested right and that the city is not estopped from enforcing its ordinances. In conclusion, Mr. Hemphill explained that if this variance is granted that it would severely affect the Wilmot property due to their loss of lake view.

Public comments:

Mr. and Mrs. Leveke supported the Hedrick's request for a variance. Mrs. Leveke said, "If the building permit was granted then they should be able to continue construction." Chairman Rohlfen told the public that this decision will be setting a precedent for future variances. Eva Shine expressed her concern by saying, "The city has ordinances for a reason and that the City should enforce those rules." Suzy Wilmot agreed with Shine's remark and said, "If this variance is granted, I am going to come in and ask for a variance for my house. Who wouldn't want to be closer to the lake?" City attorney, Dave Stein, informed the Board that if this variance is granted that the city wouldn't have to grant every variance similar in nature. He said, "each variance is different and each have special conditions and circumstances." In Article 20, Section 20.3 of the West Okoboji Zoning Ordinances it states that granting a variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district. Mr. Stein informed the Board that they should not make a decision based on being sued by one side or the other.

Board member Haviland made a motion to approve the proposed variance, as the house sits, based on the following reasons. 1. That special conditions and circumstances do not result from the actions of the applicant. 2. That the Hedrick's were in compliance with the original building permit. 3. Some of the objections were not supported by the readings of the ordinance. 4. Hardship exists with the builder and property owners. Chairwoman Bergh seconded the motion. Ayes: Bergh, Haviland. Nays: Krumme, Rohlfen. Motion dead. Mr. Hedrick asked the board if they would vote on the "point-curve" line of sight method. Board member Krumme said that there has to be some negotiations on the cities part and the Hedrick's part. Krumme continued by saying that as of right now there are no negotiations. Schoelerman came up with a proposal by saying, "if we use the "point-curve" method and leave the foundation where it is, we would bring the second story of the house and deck back 1.3ft on the North side and 4.4ft on the South side to confine with the "point-curve" line of sight." Bergh asked Schoelerman, "Since you just came up with this idea, do we need to get another survey drawn up for these changes?" Bosma replied by saying, "I think another survey would be a cheap insurance policy to make sure we got things right." Schoelerman replied by saying, "The foundation isn't going to move and the survey has already been completed by

Mohning Land Surveying. So, another survey would be exactly the same as the one already presented.” Krumme said, “You have the answer that we are not going to grant the variance as is. Do we need to meet again so you can present the new information and design to the board?” Mr. Hedrick responded, “You have all of the facts, if we can come to an agreement with the “point or curve” method we can work with the existing foundation so we are not out \$80,000.” Bergh asked, “do we know if the properties to the north and south were using the “point-curve” method?” Schoelerman replied, “None of the houses to the North and South have used the new ordinance. (straight-line) line of sight method.” Krumme asked the Wilmot’s for a rebuttal. Mr. Hemphill responded, “remember, applying the “point-curve” method to this property is completely artificial, it’s a straight-line.” Schoelerman responded, “if you go look at the houses to the north and south, the properties to the north are angled, each one comes out farther, and the property to the south is 40ft behind us.”

Board member Krumme made the motion based on the reasons stated above to move the house back 1.3ft on the north side and 4.4ft on the south side to confine with the “point-curve” line of sight method. Board member Haviland seconded the motion. All ayes. Motion carried.

Bergh/ Haviland moved to adjourn at 6:05pm.