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Office of the City Clerk

BOARD OF APPEALS
Thursday, January 4, 2024
6:00 PM
Christine Nuernberg Hall

Minutes

1) Call to Order, Roll Call

Chairman Massey called the meeting to order at 6:00 PM.

Present:

Chair Kathleen Massey
Vice Chair Joseph Russell
Board Member Ramona Larson
Board Member Steve Helfer
Board Member Thomas Flanagan -- **Absent**
Board Member Robert Stern -- **Absent**
Board Member Kirsten Hildebrand -- **Excused**

Also present: City Attorney Brian Sajdak, City Clerk Caroline Fochs, Building Inspections Supervisor Greg Golden, Andrej Sitarski, General Manager of About Nature, LLC, and interested public.

2) Approve meeting minutes of November 2, 2023

RESULT: **Approved by Voice Acclamation [Unanimous]**
MOVED BY: Board Member Russell
SECONDED BY: Helfer

AYES: Massey, Russell, Larson, Helfer
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3) Hear evidence concerning; debate, deliberate and decide the request of:

- a. Applicant: Kevin Walenta
Owner: Kevin Walenta
Appeal: Opportunity will be afforded to all interested in being heard concerning the petition by Kevin Walenta requesting a variance from Section 58-416(c)(2) of the City of Mequon Code of Ordinances in order to construct a floating staircase system at 11300 N. Lakeview Place.

Hearing no objection, Chairman Massey opened the public hearing, stated the variance appeal and the process.

All parties appearing before the Board of Appeals were sworn.

The Building Inspector Supervisor, Mr. Golden, stated that the City believes a floating staircase is a structure and therefore per Mequon Code 58-416(c)(2) shall be set back at least 75 feet from the top edge of the Lake Michigan bluff at the time of construction. The proposed plans for the floating staircase have a less than 75-foot setback. Discussion ensued on the definitions of building vs. structure. City Attorney Sajdak stated that the City's view is that the proposed staircase is a structure and more than 6 inches above ground and therefore subject to the 75-foot setback requirement.

Appellant Mr. Walenta provided an introduction and background about Mr. Sitarski and Above Nature, LLC, the company who designed the proposed staircase. In the past 15 years they have built numerous staircases along the Lake Michigan shoreline, including at Virmond Park, the County-owned park located in Mequon. He explained that the anchors for the staircase are permanently embedded into the ground at 75 feet from the bluff and the staircase can be adjusted with the cables if bluff conditions change. He believes the current ordinance was written to protect homeowners from the dangers of bluff erosion while also providing environmental protection for the bluff. The practical difficulties he faces are: 1) the ordinance is outdated and irrelevant as technology has improved and traditional staircases are not the only option available; 2) the top half of his bluff is too steep to access the bottom half of his bluff without a safe, reliable system; 3) his property is "unique" in that neighboring properties have less steep bluffs; 4) there is no safe access to his property without the proposed staircase and Code 58-419(c)(2) allows structures, other than buildings, which are anchored to supports and less than 4 1/2 feet of height to be constructed within the 75 foot setback.

Discussion ensued on the staircase at Virmond Park. Mr. Sitarski stated that conceptually it is identical to the one proposed by the appellant. City Attorney Sajdak stated that the Virmond Park staircase was not given any permits or approvals by the City of Mequon. There is a legal disagreement between the County and Mequon on whether our zoning codes apply to the county park property. After meetings with the County, both sides have agreed to withhold on enforcement of the code at this time and monitor this as a test case to study the impacts. Mequon's Common Council is scheduled to review the Code as it relates to this case later this year.

Mr. Walenta mentioned the 15-year successful track record of the floating staircase systems. He proposed a staircase seven years ago and discussed the project with City staff. It was disallowed. The costs increase the longer he waits. No one but About Nature, LLC designs the floating staircase. He does not want to wait for the ordinance to be reviewed and amended.

Discussion ensued on the ability of the Board of Appeals to recommend the Common Council to review the current ordinances in a timely manner. Bluff conditions are constantly

changing, priorities change while conducting city business, and there is another homeowner that would be interested in an ordinance revision. The system is not designed to be removed between seasons. Mr. Sitarski explained that there is nothing from the edge of the bluff to the 75-foot setback that is above 6 inches. The platform is about 5 inches and sits on the edge of the bluff and the cables lay flat on the ground or are buried under the soil. The anchors are 75 feet from the bluff. He further stated that over the 15 years he has built such staircases there has not been a collapse to-date. The Virmond Park bluff is eroding but the staircase is holding. The staircase maintenance is performed by the homeowners or with company assistance. The structure is not more than 6 inches above ground and therefore does not require a permit. The height of the proposed stairs is 124 feet. The platform is not a necessity but rather a convenience and could be removed from the plan. Stairs are typically 3 feet or wider.

Discussion ensued on the steepness of his bluff and the possibility to grade the bluff. His is not the only really steep bluff. It is thought that in order to grade his bluff he would lose approximately 40 feet of his backyard. He maintains that building a traditional staircase would be money wasted because it could not withstand erosion over the years.

Motion to close the public hearing.

RESULT:	Approved by Voice Acclamation [Unanimous]
MOVED BY:	Board Member Russell
SECONDED BY:	Board Member Larson

AYES:	Massey, Russell, Larson, Helfer
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Board discussion ensued.

- The Board can only enforce code 58-416(c)(2), they cannot rewrite it.
- This code may be outdated.
- The platform portion of the proposed staircase is a permanent structure.
- No unique condition on the appellant's property to be able to grant a variance.
- What is the durability of this type of staircase?
- No showing of hardship for the subject property.
- The matter should be addressed by the Common Council regarding amending the ordinance.

Board Member Helfer moved to grant the variance to construct a floating staircase.

The motion died due to a lack of a second.

Motion to deny the request for a variance pursuant to 58-416(c)(2) and a recommendation to the Common Council that they consider this issue of Mr. Walenta, along with the other similar issues, in at their meeting in March.

RESULT: **Approved by Roll Call Vote [3 to 1]**
MOVED BY: Board Member Massey
SECONDED BY: Board Member Russell

AYES:	Massey, Russell, Larson
NAYS:	Helfer

4) Adjourn

Motion to adjourn at 7:18 PM.

RESULT: **Approved by Voice Acclamation [Unanimous]**
MOVED BY: Board Member Russell
SECONDED BY: Board Member Helfer

AYES:	Massey, Russell, Larson, Helfer
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Respectfully Submitted,
Kathy Andrykowski
Deputy Clerk
Approved 05-02-24