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Office of the City Clerk

BOARD OF APPEALS
Thursday, February 6, 2025
6:00 PM
Christine Nuernberg Hall

Minutes

1) Call to Order

Present:

Chair Kathleen Massey
Vice Chair Thomas Flanagan
Board Member Steve Helfer
Board Member Ramona Larson
Board Member James Wawrzyn
Board Member Robert Stern – **Excused**

Also present: City Attorney Sajdak, City Clerk Fochs, Building Inspections Supervisor Golden and interested public.

2) Approve meeting minutes of January 2, 2025

Motion to approve meeting minutes.

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

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

Applicant: Jeffrey & Susan Konkell
Owners: Jeffrey & Susan Konkell
Appeal: Opportunity will be given to all interested in being heard concerning the petition by Jeffrey and Susan Konkell to request a variance to Mequon Code Sec 58-419(a) regarding the placement of their existing generator at 10808 N Lake View Road.

Chair Massey explained the guidelines for the Board of Appeals as well as the process for the meeting. All parties appearing before the Board of Appeals were sworn.

Susan Konkell	10808 N. Lake View Road
Jeffrey Konkell	10808 N. Lake View Road

Greg Golden	11333 N. Cedarburg Road
Amy Daniels	10827 N. Lake View Road
Mark Daniels	10827 N. Lake View Road

Building Inspections Supervisor Golden began testimony on behalf of the City of Mequon by explaining that he first noted the violation of the placement of the generator during the final inspection. The R-3 zoning requires a front yard setback of 50 feet, and the current location of the generator is 23.2 feet.

The Board asked for clarification of the setback codes in regards to generators being defined as structures. Supervisor Golden recited the portion of code 58-8 defining “structure” as:

Structure means a combination of materials other than natural terrain or plant growth erected or constructed to form among other things, a building, shelter, sign enclosure, retainer, container, support, base, or decoration.

Supervisor Golden said the definition of structure was written to be broadly encompassing, and it includes anything that is not naturally growing. The actual generator is within a case, and that case is manmade as an enclosure or container. Similarly, an air conditioner unit is housed by an external container that protects that condenser. Both are common examples of structures.

Chair Massey pointed out Exhibit #7 from the Konkels provided within the packet, which were guidelines provided by the generator company saying to consult local codes. Supervisor Golden was unaware of any communication from the applicants related to verifying such code from the City staff before the installation.

Supervisor Golden explained the difference between the zoning for offsets and for setbacks and the measurements as determined by the ultimate street right of way. On the Plat of Survey supplied by the Konkels, it clearly shows the correct 50-foot setback as a red line. Supervisor Golden had used this survey and added his own notes to provide two highlighted spots as the alternate locations that would have met code requirements for generator placement.

The Board asked about how setbacks are determined. Supervisor Golden explained that setbacks were created many years by the City of Mequon based on zoning for safety (to prevent the spread of fire, etc.) or aesthetics, including the 50-foot setback from the road.

The Board discussed the topography surrounding the house and the two compliant placement options for the generator supplied by Supervisor Golden. One option measured 6 feet by 8 feet; the other option measured 10 feet by 10 feet. Both areas would allow for placement on concrete, would not have been affected by standing water and would have access to electricity. These site locations were discussed in regards to the location of a well pipe and landscaping.

City Attorney Sajdak clarified that some page numbers of the packet may have been incorrectly referenced by the Board. This was a result of there being a packet for the original meeting date of January 2 and the new packet created for February 6. Because of the additional submissions by the Konkels and the minutes from the January meeting, the packet pages were not identical.

For added transparency, Deputy Clerk Kong has referenced the Exhibit number or Document Name being referred to rather than a packet page number for use in these minutes.

Applicant Jeffrey Konkel began his testimony by saying that he had called to request an inspection, and that is when he determined his contractor had not applied for a permit. Supervisor Golden would not begin an inspection until the permit was in order. The generator was placed based on the applicant's desire to avoid flooded areas of the yard, their well placement and the potential for carbon monoxide fumes near the house. The Konkels wanted to place the generator as far from the house as possible.

Susan Konkel referred to the letter supplied with their application for the variance. It described the unique shape of their property as it faces three streets, which she feels creates a hardship for them to meet all the offsets. Their surveyor calculated that only 22.1% of their property is buildable. The generator location was selected based on it having the fewest issues with water.

Ms. Konkel also questioned having the generator being defined as a structure and how that compares to electrical equipment. She referred to their Exhibits numbered 10, 11, 12 and 13 which were definitions printed from generator website discussions.

Ms. Konkel wanted to know the process for how setbacks can be changed. Chair Massey explained that this Board does not modify code from the City of Mequon; only the Common Council can approve of such changes.

Ms. Konkel shared some history of their house and property. The setbacks limited how and where they built their home from the start. They have dealt with issues regarding a 50-foot setback since they initially built on the property. A generator is a necessity based on the frequent loss of power; a portable generator was no longer a feasible option for them.

The contractor and the Konkels believed they were within the correct setbacks. It was during the process of obtaining the permit that they ran into issues with the contractor and the placement of the generator. It was installed in April, but it was September before the inspection and issues were brought to light. They didn't know that the permits had not been applied for up front. The contractor said he was open to moving the generator, but the Konkels did not like the two options provided by Supervisor Golden. There would be an additional cost to move it.

The Konkels do not believe the generator can go closer to the house as the ground is not settled, and it could sink. According to their well pump company, they need to keep 25 feet of clearance to maintain the well pump. The Konkels feel that the well pump access and the amount of potential standing water create a hardship with this property. The Konkels are also trying to be good neighbors and avoid placing the generator too close to the neighboring property while getting as far from their own house as possible. The current placement is facing the park and thus away from neighbors. It is also in a higher spot of their yard to avoid potential standing water.

Mr. Daniels and his wife are neighbors to the northwest of the Konkels. They attested to the amount of water that drains and stands due to heavy rains or spring thaw. Mr. Daniels believes the current location of the generator is the best spot, especially due to the water. Other locations

would be closer and noisier for the surrounding neighbors. He wanted to emphasize that the Konkels take meticulous care of their yard. He had no doubt that the Konkels would apply the same care to landscape the area around the current generator.

Ms. Daniels reiterated that the unique landscape and topography of the Konkels' property created a challenge in placing the generator. The Daniels would both support allowing the Konkels to keep the generator in its current spot.

Board Member Larson asked for clarification of a structure versus a container as it relates to a generator. Supervisor Golden and City Attorney Sajdak provided examples of structures such as a premade shed or home. These can be assembled by a manufacturer and placed on a property and are structures just as the generator or an air conditioner unit would be.

Ms. Konkel cited Exhibit 11 from Electrical Contractor Magazine which discusses NEC code and definitions of Building, Structure or Equipment. She interpreted this to mean their poured concrete pad would be the actual structure, not the generator. She further believes the generator should be looked at as electrical equipment not a structure.

Supervisor Golden explained that he is a trained Master Electrician and is familiar with NEC codes mentioned in that article. However, when performing his inspections for the City he must adhere to both NEC and the zoning code established by the City of Mequon. When he performs an inspection, he makes sure the electrical and gas codes are met as well as the zoning. He looks at the placement to ensure it meets setbacks and also that it conforms to the electrical and gas codes to be safe within those guidelines.

Motion to close public hearing.

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

AYES:	Massey, Flanagan, Helfer, Larson, Wawrzyn
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Having closed the public portion of the hearing, the Board continued its discussion on the record before making its decision. The Board members discussed whether the generator is a structure and subject to the setback requirements. While both the Konkels and the Daniels showed the challenges posed by the property, the City had provided at least two alternative locations that would comply with the setbacks.

Board Member Helfer said the code's definition of structure could be clearer especially how it refers to a "closure" or "container" around a piece of equipment. He also commented on the levels of water shown in some of the exhibits and felt there was hardship related to the concerns by the applicants of water on the property.

Board Member Flanagan said a guideline for installing the generator says to be at least 18 inches from the house. He asked if other guidelines stipulate why this unit could not be placed closer to the house because the Kohler guidelines also said it can be closer. While the Konkels did not like the options provided by the City and had poor guidance from their contractor, that does not

create a hardship. He also suggests that something be brought to the Common Council to address the language in ordinances to make the definition clearer.

Board Member Larson wanted to clarify the difference between a fully constructed container and something that is assembled and then placed on a homeowner's property. She agreed with Board Member Helfer.

Motion to deny the variance.

RESULT: **Approved by Roll Call Vote [3 to 2]**
MOVED BY: Board Member Wawrzyn
SECONDED BY: Board Member Massey

AYES:	Massey, Flanagan, Wawrzyn
NAYS:	Helfer, Larson

4) Adjourn

Motion to adjourn at 8:09 PM

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

AYES:	Massey, Flanagan, Helfer, Larson, Wawrzyn
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Respectfully Submitted,

Beth Kong
Deputy Clerk