



11333 N. Cedarburg Road
Mequon, WI 53092
Phone: 262-236-2914
Fax: 262-242-9655

www.ci.mequon.wi.us

Office of the City Clerk

BOARD OF APPEALS
Thursday, March 2, 2023
6:00 PM
Christine Nuernberg Hall

Minutes

1) Call to Order, Roll Call

Chairman Massey called the meeting to order at 6:00 PM. She explained how to use the new audio system to those present.

Present:

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

Also present: City Attorney Brian Sajdak, Deputy Clerk Janet Meyer, Assistant Community Development Director Jac Zader, Building Inspections Supervisor Greg Golden, and interested public.

2) Approve meeting minutes of December 1, 2022

City Attorney Sajdak stated that the correct spelling of the Refined Renovations representative should be Matthew Jahns and it should be corrected in two places in the draft minutes.

Motion to approve the December 1, 2022 minutes as amended.

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

AYES: Massey, Flanagan, Larson, Stern, Hildebrand
--

3) Hear evidence concerning; debate, deliberate and decide the request of:

a. Applicant: Nancy Tolocko

Owner: Nancy Tolocko

Appeal: Opportunity will be afforded to all interested in being heard concerning the petition by Nancy Tolocko requesting a variance from Section 58-800 (b)(1) of the City of Mequon Code of Ordinances in order to retain the deck that was constructed that exceeds the allowable square footage per municipal code at 12656 N. Shoreland Parkway.

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

All parties appearing before the Board of Appeals were sworn.

Building Inspections Supervisor Golden summarized the variance request to Section 58-800(b)(1) which prohibits modifications or additions to a nonconforming structure located in a floodplain with the exception of a deck that cannot exceed 200 square feet. The appellant replaced an existing 120 square foot deck attached to the east side of the building and added an additional 603 square feet of decking to the east, south and west side of the building without a building permit. The Inspection Department instructed the appellant in August, 2022 to seek a building permit to avoid code enforcement action. The appellant submitted a building permit application on August 26, 2022, but it was subsequently denied on August 30, 2022. He further stated that the applicant's hardship is self-imposed and reminded them that Section 58-812 of the Mequon Code states when the Board of Appeals grants a flood plain approval, the Board shall notify the applicant in writing that it may increase flood insurance premiums and to the risk of life and property. Furthermore, the Wisconsin Administrative Code NR 116.21(4)(c) states “a variance may not be granted for a use that is common to a group of adjacent lots or premises. In such a case, the zoning ordinances would have to be amended through proper amendment procedures.” He added, the fact that the application includes a list of 13 adjacent property owners in support of the variance demonstrates that this is clearly not a unique and site-specific issue. The staff recommends denial of the variance request.

Board discussion ensued about the timeline of the site visit, the need for a permit and stages of deck construction. Originally there was a 120 square foot deck on the east side of the house and the west side had a platform. Combined total was less than 200 square feet. The owner then resurfaced the existing 120 square feet and added decking all the way around the house to connect it to the front of the house with an additional 603 square feet. There were no permits applied for and the builder is unknown. Based on drawings, the new deck appears to meet code, however, it has not been inspected by the City. If the variance is not granted, the applicant would need to remove the additional decking, obtain a permit for adding approximately 80 feet of decking, which would allow access to the home. Assistant Director Zader explained that the flood plain ordinances are different than any other ordinances in the city in that they require approval by the Department of Natural Resources (DNR). They would need to be notified of any action the Board would take. The DNR has the right to appeal to Circuit Court any Board's decision. The DNR's jurisdiction is to evaluate whether the Board granted a variance in accordance with our flood plain ordinance. They have no jurisdiction to come out and inspect the

deck. She also added that the posts on the new deck are tall enough so that they aid in the water flow.

City Attorney Sajdak reiterated the DNR's involvement in the case of granting this variance. He added that the DNR could withdraw the City's authority to regulate flood plains. Also important is the possibility that the Federal Flood Insurance program could deem Mequon "too risky" and not allow us to participate in their program. Section 58-812 (4) details the specific criteria that must be met in order to qualify for a variance. The Board should follow the letter of what our code says if the Board decides to grant this variance. Variance requests for flood plains are infrequent.

The applicant, Nancy Tolocko, explained that the home has had a street-side deck and a river-side deck for over 40 years, she decided to resurface the original decks, add a new railing and connect the two decks. She was not aware of the 200 square foot limit. The larger deck eases the hardship when it floods; it allows access to the home and allows storage during floods. It does not impede the flow of flood waters nor does it increase the flood height. The neighbors unanimously support the variance request, as evidenced by the enclosed petition. Ms. Tolocko disagreed with staff that her hardship is self-imposed. The hardship unique to her is that the majority of the homes in her neighborhood have garages or sheds built in pre-ordinance times and she is not allowed to build for herself under today's ordinances. She needs a place to store and secure items from floating down the river during a flood. She contended the ordinance does not regulate the number of decks allowed, it just regulates the size of the deck. She stated she has no reason that would be acceptable to the Board and she knows now that she should have applied for a permit. The subject property is an occupied rental; the applicant does not live in the home. She does not have any "professional" support to her claim that the deck does not impede the water flow or increase the flood height.

Staff clarified that the statute talks about allowing "a deck not to exceed 200 square feet". Staff's interpretation allows for dividing that 200-foot maximum between two decks but not allowing multiple 200-foot decks. Staff stated that it is unknown if the original two decks had permits. Discussion ensued on the possibility of grandfathering the original decking. The building of a garage would not be allowed on the property since it is in the flood way. A garage is a non-conforming use and one cannot expand a non-conforming use in a flood way.

Motion to close the public hearing.

RESULT: **Approved by Voice Acclamation [Unanimous]**
MOVED BY: Board Member Stern
SECONDED BY: Board Member Hildebrand

AYES: Massey, Flanagan, Larson, Stern, Hildebrand
--

Board discussion ensued.

- Recognition of need for storage
- There is not enough information/testimony to support that the variance is not contrary to the public interest

- There is not enough information/testimony to conclude that the variance may not cause any increase in the regional flood elevation. And without this information the Board does not legally have the grounds to grant this variance.
- The Board has the authority to grant the variance
- There are consequences to the City if the DNR determines the City, and this Board, granted a variance in violation of our flood plain ordinance.
- There would be financial consequences to the City in the event of a DNR appeal.

Motion to deny granting the variance in order to retain the deck that was constructed that exceeds the allowable square footage per municipal code.

RESULT: **Approved by Roll Call Vote [4-1]**
MOVED BY: Board Member Massey
SECONDED BY: Board Member Flanagan

AYES:	Massey, Flanagan, Larson, Hildebrand
ABSTAIN:	Stern

The Board took a 5-minute break and reconvened at 7:17 PM.

b. Applicant: Hannah Boyd Instyle Homes
 Owner: Instyle Homes Hannah Boyd
 Appeal: Opportunity will be afforded to all interested in being heard concerning the petition by Hannah Boyd Instyle Homes requesting a variance from Sections 58-248(f)(5), 58-248(a), 10-56, 58-248(f)(2), 58-248(f)(3), and 58-549(a) of the City of Mequon Code of Ordinances in order to replace an existing accessory structure with an 1868 locally salvaged oak cabin at 3800 West Grace Avenue.

Member Flanagan questioned whether the Architectural Board should have ruled on the applicant's request first. City Attorney Sajdak explained that the Board of Appeals and the Architectural Board are separate processes, however, they are often times related. It is not unusual to hear an appeal before the Architectural Board weighs in on the issue.

Motion to postpone the applicant's variance application due to the fact the Board of Appeals lacks the clear jurisdiction to hear this matter at this time and to waive any further filing fee.

Attorney Sajdak suggested a clarification to the motion: "Motion to postpone the hearing on this matter until such time as the Architectural Board has made a determination".

Chair Massey made a request that the Architectural Board provide the Board of Appeals with all findings on the issues before us today so that should Ms. Boyd need to return then the Board would have a clear pathway so that the Board would be able to rule and give a definitive answer."

Building Inspector Supervisor Golden reminded the Board that the number of structures allowed on the property is part of the variance request. The Architectural Board would not have

jurisdiction over that. Ms. Boyd may still need to return to the Board of Appeals for a ruling on that issue. Currently there are three accessory structures. He further stated that the proposed cabin is a larger structure than one that would need to be torn down so it would not match the existing footprint.

RESULT: **Approved by Roll Call Vote [Unanimous]**
MOVED BY: Board Member Flanagan
SECONDED BY: Board Member Massey

AYES: Massey, Flanagan, Larson, Stern, Hildebrand
--

4) Adjourn

Motion to adjourn at 7:38 PM.

RESULT: **Approved by Voice Acclamation [Unanimous]**
MOVED BY: Board Member Hildebrand
SECONDED BY: Board Member Stern

AYES: Massey, Flanagan, Larson, Stern, Hildebrand
--

Respectfully Submitted,
Kathy Andrykowski
Deputy Clerk
Approved 11-02-23