



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, November 2, 2023
6:00 PM
Christine Nuernberg Hall

Agenda

- 1) Call to Order, Roll Call
- 2) Approve meeting minutes of March 2, 2023
- 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 appealing the Building Inspections Division to reject a June 22, 2023 Building Permit Application for a new deck at 12656 N. Shoreland Parkway.
- 4) Adjourn

Dated: November 2, 2023

/s/ Kathleen Massey, Chair

.....
Notice is hereby given that a quorum of other governmental bodies may be present at this meeting to present, discuss and/or gather information about a subject over which they have decision-making responsibility, although they will not take formal action thereto at this meeting.

Persons with disabilities requiring accommodations for attendance at this meeting should contact the City Clerk's Office at 262-236-2914, twenty-four (24) hours in advance of the meeting.

Any questions regarding this agenda may be directed to the City Clerk's Office at 262-236-2914, Monday through Friday, 8:00 AM – 4:30 PM



draft

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Mequon, WI 53092
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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

Attachment: 03-02-23_draft minutes (8912 : Board of Appeals meeting minutes of March 2, 2023)

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 accordance to 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



Private Office:
Wesolowski, Reidenbach & Sajdak, S.C.
11402 W. Church St.
Franklin, WI 53132
(414) 529-8900

www.ci.mequon.wi.us

Office of the City Attorney

Mequon Board of Appeals
11333 N. Cedarburg Rd.
Mequon, WI 53092

Re: Application of Nancy Tolocko Received July 28, 2023

Dear Honorable Board Members:

I am submitting this correspondence with respect to the above-referenced application, which is before you for two separate agenda items. The first of these agenda items is your consideration of whether this is a valid appeal. It is this topic which is the focus of this correspondence.

As you will recall, the Board heard a request from Ms. Tolocko at its March 2, 2023 meeting. For your benefit, your decision from that meeting (the "Original Decision"), together with the transcript of this hearing is included in the packet materials for this meeting. That hearing requested a variance from the provisions of Section 58-800(b)(1). That section reads:

No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this article. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Ordinary maintenance repairs are not considered an extension, modification or addition; these include painting, decorating, paneling and the replacement of doors, windows and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Ordinary maintenance repairs do not include any costs associated with the repair of a damaged structure. The construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition.

The requested variance sought approval of an already constructed deck which wrapped around the southern elevation of the single-family residence on the Property. Original Decision at ¶ 5. City staff had denied the requested building permit for the deck because the deck was a modification or extension of a nonconforming structure in violation of 58-800(b)(1). Original Decision at ¶ 9. As part of her testimony, Ms. Tolocko argued that a variance was not needed because she could rely on the provisions of Section 58-800(b)(1) which exclude from the definition of modification or addition a deck that does not exceed 200 sq. ft. Original Decision at ¶ 11. The Board rejected this argument. Original Decision at ¶ 12. Ultimately, the Board held

Attachment: City Attorney Memo (8917 : Tolocko Attorney memo)

Mequon Board of Appeals
Page 2

that “the Applicant’s request for a variance from the provisions of Mequon Code § 58-800(b)(1) to create a variance from the provisions that prohibit modifications or additions to a nonconforming structure that is located within a floodplain is hereby Denied.” Original Decision at ¶ 21.

Subsequently, Ms. Tolocko submitted a new application for a building permit to allow the same previously-built deck. The application included the same building plan as was included in the original application, with the sole difference being in inclusion of a few hand-drawn lines together with the notation: 1” separation per DNR. In response, the City’s Building Inspections Supervisor issued a denial on July 11, 2023 (attached to Ms. Tolocko’s Board of Appeals application as Exhibit B). The basis for the decision was that the Board had previously denied the variance for the deck as-built, and that new plans would need to be submitted with a deck that was less than 200 sq. ft. in size.

Ms. Tolocko responded by filing this administrative appeal wherein she seeks to have the Board overturn the City’s denial of the application because she submitted new plans. In essence, her argument is that any time an applicant files a plan, the City must not consider the history of the property, issue a new denial without reference to any prior actions this Board, and then provide the applicant with an entirely new chance to bring the same request to the Board. Such an argument must fail.

At the outset, recall that Ms. Tolocko’s situation resulted from her constructing a deck without seeking a building permit. After having the deck discovered by the City, she sought approval of the deck, which was denied because it was an illegal modification or extension to a nonconforming structure. Following this denial, she applied for a variance from the code to allow for the deck. As part of that application, and although not specifically part of a true variance request, she also argued that the City had misinterpreted the code, arguing that multiple 200 sq. ft. decks are expressly excluded from the definition of expansion or modification by the code. Ultimately, the Board rejected both the interpretation argument and the variance request.

Following the Board’s decision, Ms. Tolocko elected to not take the opportunity to have the Circuit Court review the decision within the time provided by law. Instead, she filed a new building permit application with the same effective request — to approve the deck that she placed around three sides of the existing home. In fact, the sole difference between the application plans is the addition of a couple of hand-drawn lines and a few additional words. Nothing that changed about the size or location of the deck other than it appears to be her intent to cut out a one-inch gap in the existing deck to make the argument that this is now multiple decks under the 200 sq. ft. limitation (although, without inspecting the property, these cutouts may very well already exist because many decks are constructed with natural gaps between boards for drainage).

Attachment: City Attorney Memo (8917 : Tolocko Attorney memo)

Ms. Tolocko appears to argue that the City should consider her request because the basis for her request is different than the previous application. I do not believe this matters for two reasons. First, it ignores the facts. Ms. Tolocko had been given incorrect information by the DNR, and resubmitted her application to comply with the information she had been given (the "per DNR" language on the plans). Now, perhaps recognizing the folly of the request given that the Board had already considered and rejected the argument, she suggests that there is a different basis to consider approving the deck — that she is allowed a modification or addition up to 50% of the value of the structure. The problem is that this statement in the Board of appeals application belies the facts that existed and known to the City at the time of denying the second building permit application.

The second, and more critical, reason that the basis of the request does not matter is that nothing has changed. The facts remain the same — Ms. Tolocko built a deck without a permit, got caught, and is now trying to get it approved. In attempting to seek that approval, she sought consideration by this Board of the reasons why. She raised two arguments at the time (variance and the 200 sq. ft. issue). However, she could and should have raised any argument that existed at the time. This includes the argument that the City was incorrectly applying the 50% value rule. Nothing has changed between the installation of the deck and today that makes this a new issue. Her failure to raise the issue results in her forfeiting the argument.

This general rule is well established. "In the interest of finality of decisions by zoning boards rehearings should not be lightly granted.... The rule in some states is that, unless new facts or conditions have arisen since the first determination, the board has no right to reopen the proceedings and set aside its former decision." Eugene McQuillen, *The Law of Municipal Corporations* § 27.274, at 412 (3d ed. 1994) (footnotes omitted). Further:

A zoning board may ordinarily entertain new or successive applications for the same relief, based upon changed conditions or new circumstances, although it is a general rule that after an application or petition has been decisively acted upon by a zoning board no new application or petition touching the same subject matter may be presented to the board within a designated time, or within a reasonable time. Where a new application is made, however, it is essential that changed conditions or circumstances be shown. A board is not required to hear a second application which is precisely the same as a prior one which had been disposed of by the board.

Id. at § 25.275, at 416. See also 3 E.C. Yokley, *Zoning Law and Practice* § 18-10, at 183 (4th ed. 1979) ("Where a zoning board denies a variance, it will not be permitted, at a subsequent hearing on the same facts, to reverse itself.... Absent a change in conditions between the two hearings, a board will not be permitted to review and reverse its former action."); 3 Edward H. Ziegler, Jr., *Rathkopf's The Law of Zoning and Planning* § 37.08, at 123-24 (4th ed. 1998) ("After an application for a variance or a special permit has been denied, the board may consider a new

Mequon Board of Appeals
Page 4

application with respect to the same property, and even for the same relief, if either the plans submitted or the conditions affecting the property have substantially changed.”).

Here, there are no substantial changes. The request before you is ultimately the request to allow Ms. Tolocko to retain her illegally constructed deck. Because nothing has changed, City staff’s decision to reject the application is consistent with the general rule. For that reason, the administrative appeal should be denied.

Very truly yours,

Brian C. Sajdak

Attachment: City Attorney Memo (8917 : Tolocko Attorney memo)

BOARD OF APPEALS ADMINISTRATIVE APPEAL APPLICATION

CITY OF MEQUON, WISCONSIN

Applicant: Nancy Tolocko Address: 12656 N. Shoreland Pkwy
City/zip: Mequon, WI 53092

Owner: Nancy Tolocko Address: 12644 N. Shoreland Pkwy
City/zip: Mequon, WI 53092

Contact Person/Name: Nancy Tolocko

Phone Number: 262-573-9049 Email: nancytupper12@gmail.com

TO THE BOARD OF APPEALS:

The above hereby requests an appeal to a decision made by:

Building Inspections Division

(please list the City Department or Board/Commission/Committee whose decision you are appealing)

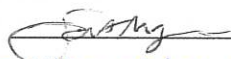
APPLICANT MUST PROVIDE:

Application form
\$215 filing fee

1 copy each of the following documents

1. Copy of denial letter if any, or a description of the denial
2. Letter explaining the reason for the appeal

FOR OFFICE USE ONLY

Receiving Officer: <u> JANET MEYER</u>	Received Date: <u>7/28/23</u>
Parcel #: <u>151-010-106-001</u>	Hearing Date: <u>9-7-23</u>
Zoning District: <u>FW</u>	Receipt #: <u>3735-0023</u>
Alderman & District #: <u>Ald. Tolocko, Dist #2</u>	Published: <u>8-24-23</u>

- c: Notice of scheduled hearing to DISTRICT ALDERPERSON, OWNER(S) OF RECORD as listed in the Office of the Assessor and all parcels in the City of Mequon as per state statute and City of Mequon Communication Policy.

July 27, 2023

City of Mequon
Board of Appeals
11333 N. Cedarburg Road
Mequon, WI 53092

Re: Board of Appeals Administrative Appeal Application
City Inspector's rejection of Building Permit Application for 12656 North Shoreland Parkway

To the Board of Appeals:

I am the owner of the home located at 12656 North Shoreland Parkway (the "Property"). Previously, I applied for a building permit application for the construction of a deck at the Property ("Permit Application #1"). City Staff determined that the originally proposed deck required a variance to Mequon Municipal Code Section 58-800(b)(1), which provides in relevant part that "*a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition.*" In response to City Staff's determination, I submitted a variance application to this Board. The Board reviewed the variance application on March 2, 2023 and denied the variance request.

In response to the Board's determination, I revised the design of the deck and submitted a new building permit application with new building plans for the deck on June 22, 2023 (the "Building Permit Application"). A copy of the Building Permit Application, including the new building plans is attached hereto as **Exhibit A**. Pursuant to a letter from the City Building Inspector, Greg Golden, dated July 11, 2023 (attached hereto as **Exhibit B**), the Building Permit Application was rejected by the City "*for seeking the same approval*" as Permit Application #1, despite the new building plans (the "City Rejection Letter"). In addition, the City Building Inspector referenced the Board's prior interpretation of Code Section 58-800(b)(1) as a basis for rejecting the Building Permit Application and requiring that a new building permit application be submitted that conforms to Staff's specifications.

By this Board of Appeals Administrative Appeal Application, I respectfully request that this Board overturn the City Building Inspector's rejection of the Building Permit Application based in part on the following:

1. The Building Permit Application does not contain the same building plan for the deck as Permit Application #1. It is a separate application for a different deck with a different building plan seeking a different approval. Therefore, the Building Permit Application must be reviewed individually under its own merits.
2. The building plan included with Building Permit Application does not require a variance from Code Section 58-800(b)(1) (as alleged in the City Rejection Letter). The proposed plan is consistent with Code Section 58-800(b)(4), being a modification or addition to a

Attachment: Tolocko Application (8918 : Tolocko Application)

nonconforming structure that does not “*exceed 50 percent of its present equalized assessed value.*”

Furthermore, Wisconsin case law holds that a municipality “cannot impose greater restrictions on the use of the land than the ordinance requires and where the ordinance is silent, the interpretation allowing for the greater use of the land must be followed since zoning ordinances are in derogation of common law and are to be construed in favor of the free use of private property.” *Bur v. Schwarten*, 83 Wis.2d 1, 8, 264 N.W.2d 721 (1978). In addition, to the extent an ordinance may be ambiguous, the ordinance must be construed in a manner that allows for the freer use of property. *See, e.g., Cohen v. Dane County Board of Adjustment*, 74 Wis.2d 87, 92, 246 N.W.2d 112 (1976).

Thank you for your consideration.

Nancy Tolocko
12644 North Shoreland Parkway
Mequon, WI 53092
262-242-5850

Attachments:

Board of Appeals Administrative Appeal Application
Exhibit A - Building Permit Application
Exhibit B – City Rejection Letter

Attachment: Tolocko Application (8918 : Tolocko Application)



EXHIBIT A

11333 N. Cedarburg Road
Mequon, Wisconsin 53092
Phone: (262) 236-2924
Fax: (262) 242-9819

2.a

www.ci.mequon.wi.us

INSPECTION DIVISION

Building Permit Application

Date Issued: _____
(Permit expires one year from date of issuance)

Permit Number: B- _____
Tax Key No: _____

☒ One & Two Family ☐ Commercial

PROJECT ADDRESS 12656 N. SHORELAND PKY

Subdivision _____ Lot Number _____

Project: _____ Cost _____

Finished Square Footage under construction: 1st floor _____ 2nd floor _____ Addition _____

Basement _____ Garage _____ Shed _____ Deck _____ Other _____

PROPERTY OWNER NANCY TOLOCKO

Address 12644 N. SHORELAND PKY City MEQUON Zip 53092

Home Phone Number 262-242-5850 Cell Number 262-573-9049

Email Address NANCYTUPPER12@GMAIL.COM

Is Property on City Sewer? NO Zoning _____

CONTRACTOR _____ ARCHITECT _____

Address _____ City _____ Zip _____

Office Number _____ Cell Number _____

Email Address _____

State Dwelling Contractor Number _____ Expiration Date _____

State Qualifier Number _____ Expiration Date _____

City use only: ☐ Tree Inspection ☐ Flow Sheet ☐ Culvert		
Arch. Board # _____	Building Fee _____	Zoning Approval _____
Arch. Board Fee _____	Inspection Deposit _____	Sanitary Permit # _____
Check # & Date _____	Impact Fee _____	Check/Receipt # _____
	Total Fee _____	

It is hereby agreed between the undersigned, as owner, his agent or servant, and the City of Mequon, for and in consideration of the premises and of the permit to construct, erect, alter or install and the occupancy of building as above described, to be issued and granted by the City Building Inspector, and that the work thereon will be done in accordance with the description herein set forth in this statement, and as more fully described in the specifications and plans herewith filed; and it is further agreed to construct, erect, alter or install and occupy in strict compliance with the ordinances of the City of Mequon, and to obey any and all lawful orders of the City Building Inspector of the City of Mequon, made or issued pursuant to the provision of the Zoning ordinances of the City of Mequon.

Signature of Applicant: Nancy Tolocko Owner/Contractor
(If owners' signature, I acknowledge that I have read and understand the cautionary statement)

Print Name: NANCY TOLOCKO Owner/Contractor

Date: 6/22/23

Rev. 5.20.22

Attachment: Tolocko Application (8918 : Tolocko Application)

EXHIBIT A

WANATO TRUST
12656 N. SHORELAND PARKWAY
MEQUON, WI 53092
6-12-23

PLAN VIEW

SCALE 1/4" = 1'-0"

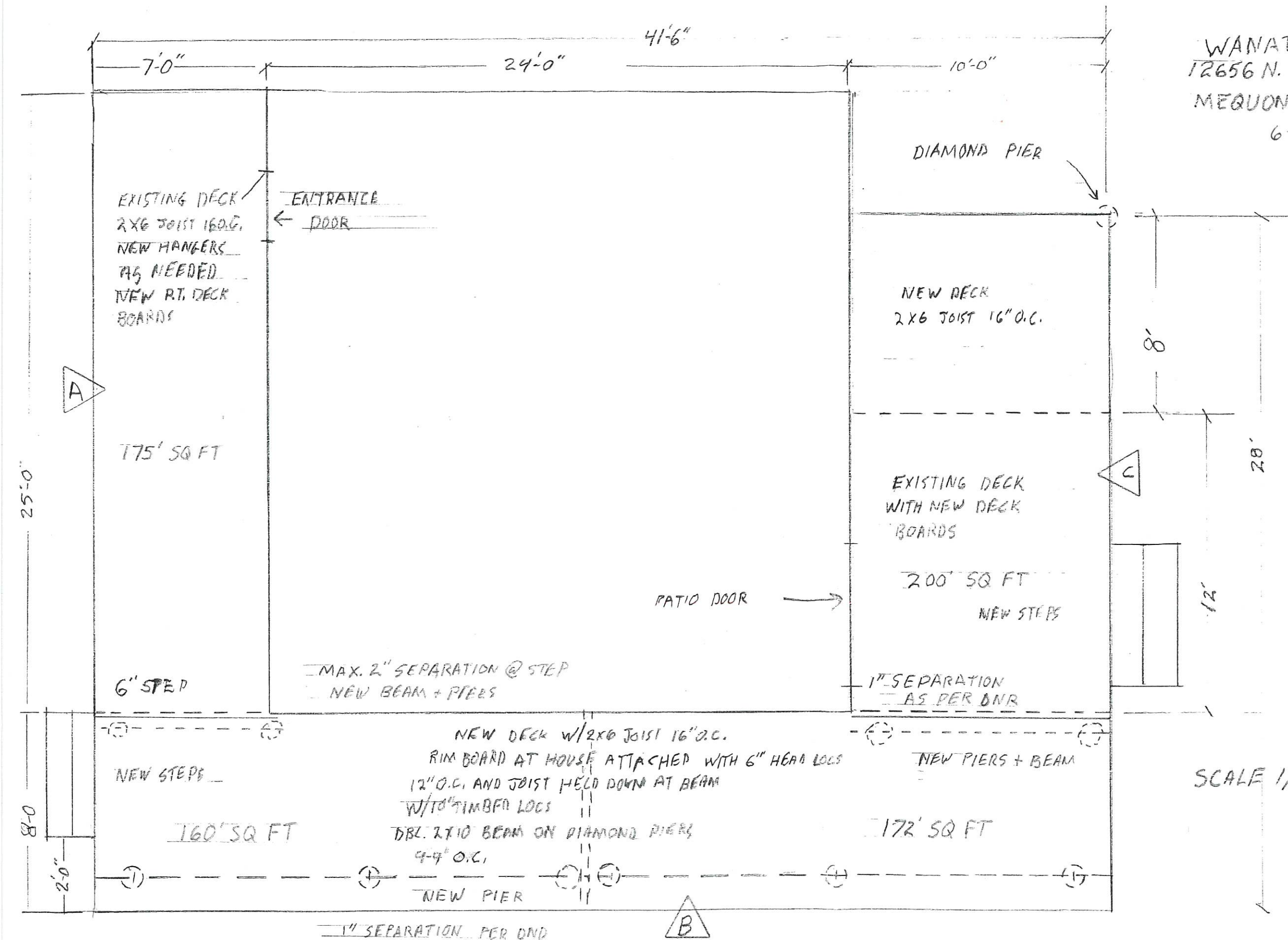
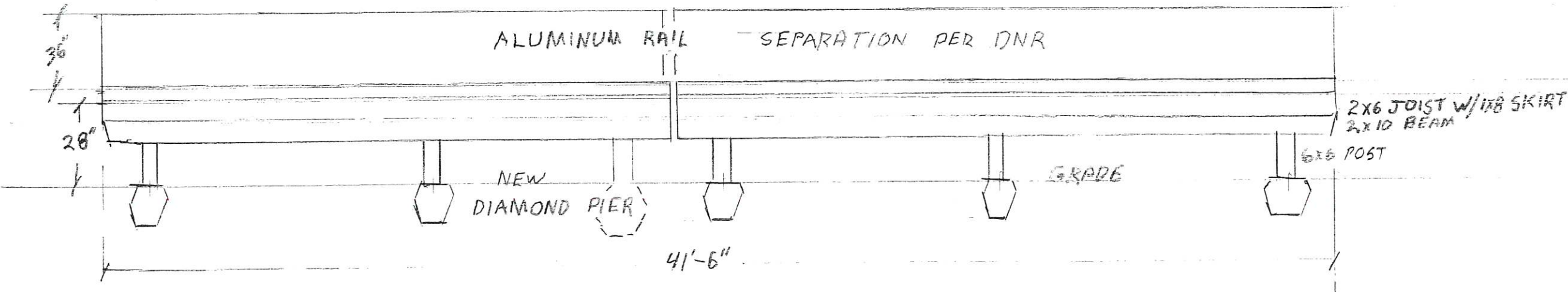


EXHIBIT A

WANATO TRUST
12656 N. SHORELAND PARKWAY
MEQUON, WI 53092
6-12-23



ELEVATION "B"

SCALE 1/4" = 1'-0"

EXHIBIT B



11333 N. Cedarburg Road
Mequon, Wisconsin 53092
Phone: (262) 236-2924
Fax: (262) 242-9819

www.ci.mequon.wi.us

INSPECTION DIVISION

July 11, 2023

Ms. Nancy Tolocko
12644 N. Shoreland Pkwy.
Mequon, WI 53092

Ms. Tolocko,

Thank you for your recent building permit application for the deck constructed without permit. I also appreciate the correspondence included between Andrea Stern of the Wisconsin DNR and yourself. Although Ms. Stern gave her interpretation of NR116.15, City staff does not agree with this interpretation. Moreover, the interpretation was the subject of the Board of Appeals case involving your property, and the Board expressly rejected this interpretation when the Board determined that multiple 200 square foot decks are not permitted. That decision, which you were provided, was filed with the Clerk on May 12, 2023, and the 30-day deadline to appeal their decision has passed. You cannot bypass or renew this deadline by filing another application seeking the same approval.

Based on the above, the City cannot issue a permit based upon your application as submitted. Please submit a new building permit application with updated drawings no later than July 27, 2023. The drawings shall include a deck no larger than 200 square feet on the east end of the residence. I will also approve the previously installed 3' x 3' landing and stairs at the required exit on the west end of the residence.

Respectfully,

A handwritten signature in black ink, appearing to read "Greg Golden", is written over a light blue horizontal line.

Greg Golden
Building Inspections Supervisor
City of Mequon

Attachment: Tolocko Application (8918 : Tolocko Application)



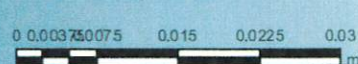
Attachment: Tolocko Application (8918 : Tolocko Application)

Legend			
	Tax Parcel		CSM
	Gap		Cemetery Plat
	Overlap		Condominium Plat
	Historical Parcel Lines		Subdivision Plat
	Assessors Plat		Plat of Survey
	US Highway		County Road
	State Highway		Ramp
	Town/Public Road		Private Road
	Railroad Centerline		

Product of the LAND INFORMATION OFFICE

10/19/2022, 2:35:54 PM

10/19/2022, 2:35:54 PM



Packet Pg. 18

DISCLAIMER: This map is not a substitute for an actual field survey or onsite investigation.

(a) Will be adversely affected by wave runoff along the shore of Lake Michigan or Lake Superior; or

(b) Is associated with a high flood damage potential.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

NR 116.15 Nonconforming uses and nonconforming buildings. (1) **GENERAL.** Insofar as the standards in this section are not inconsistent with the provisions of ss. 59.69 (10) and 62.23 (7) (h), Stats., they shall apply to all uses and buildings that do not conform to the provisions contained within a floodplain zoning ordinance. These standards apply to the modification of, or addition to, any building and to the use of any building or premises which was lawful before the passage of the ordinance. The existing lawful use of a building or its accessory use which is not in conformity with the provisions of a floodplain zoning ordinance may be continued subject to the following conditions:

(a) No extension of a nonconforming use, or modification or addition to any building with a nonconforming use or to any nonconforming building, may be permitted unless they are made in conformity with the provisions of this section. For the purposes of this section, the words "modification" and "addition" shall include, but not be limited to, any alteration, addition, modification, rebuilding or replacement of any existing building, accessory building or accessory use, except as provided in pars. (am) and (as).

(am) For the purposes of this section, ordinary maintenance repairs are not considered an extension, modification or addition; ordinary maintenance repairs include internal and external painting, decorating, paneling, the replacement of doors, windows and other nonstructural components; and the maintenance, repair or replacement of existing private sewage systems, water supply systems or connections to public utilities;

(as) For the purposes of this section, the construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition. The roof of the principal structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.

(b) If a nonconforming use or the use of a nonconforming building is discontinued for 12 consecutive months, it is no longer permitted and any future use of the building shall conform with the appropriate provisions contained in ss. NR 116.12, 116.13 and 116.14.

(c) No modification or addition to any nonconforming building or any building with a nonconforming use, which over the life of the building would exceed 50% of its present equalized assessed value, may be allowed unless the entire building is permanently changed to a conforming building with a conforming use in compliance with the applicable requirements of this chapter. The costs of elevating a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this paragraph.

(d) If any nonconforming building or any building with a nonconforming use is destroyed or is so badly damaged that it cannot be practically restored, it cannot be replaced, reconstructed or rebuilt unless the provisions of ss. NR 116.12, 116.13 and 116.14 are met. For the purpose of this subsection, restoration is deemed impracticable where the total cost of such restoration would exceed 50% of the present equalized assessed value of the building.

(2) **FLOODWAY AREAS.** (a) No modifications or addition to any nonconforming building or any building with a nonconforming use in a floodway area may be allowed, unless such modification or addition has been granted by permit, special exception, conditional use or variance and meets all of the requirements of sub. (1) and the following criteria:

1. The modification or addition to a building may not increase the amount of obstruction to flood flows; and

2. Any addition to a building shall be floodproofed in accordance with the requirements of s. NR 116.16, by means other than the use of fill, to the flood protection elevation.

(b) No new private sewage system, or addition to an existing private sewage system, may be allowed in a floodway area. Any maintenance, repair or replacement of a private sewage system in a floodway area shall meet the applicable requirements of all municipal ordinances and ch. SPS 383.

(c) No new well, or modifications to an existing well, which is used to obtain water for ultimate human consumption may be allowed in a floodway area. Any maintenance, repair or replacement of an existing well in a floodway area shall meet the applicable requirements of all municipal ordinances and chs. NR 811 and 812.

(3) **FLOODFRINGE AREAS.** (a) Except as provided in par. (b) or (c), no modification or addition to any nonconforming building or any building with a nonconforming use in the floodfringe area may be allowed unless such modification or addition has been granted by permit, special exception, conditional use or variance and the modification or addition is placed on fill or is floodproofed in compliance with the applicable regulations contained s. NR 116.13 (2).

(b) If compliance with the fill or floodproofing provisions of par. (a) would result in unnecessary hardship, and only if the building will not be used for human habitation and will not be associated with a high flood damage potential, the county board of adjustment or the city or village board of appeals, using the procedures established in s. NR 116.21 (4), may grant a variance for modifications or additions which are protected to elevations lower than the flood protection elevation if:

1. Human lives will not be endangered;
2. Water or private sewage systems will not be installed;
3. Flood depths will not exceed 2 feet;
4. Flood velocities will not exceed 2 feet per second; and
5. The building will not be used for storage of materials described in s. NR 116.13 (6).

(c) An addition to an existing room in a nonconforming building or a building with a nonconforming use may be allowed in a floodfringe area on a one time basis only if:

1. The addition has been granted by permit, special exception, conditional use or variance;
2. The addition does not exceed 60 square feet in area; and
3. The addition, in combination with other modifications or additions to the building, does not exceed 50% of the present equalized assessed value of the building.

(d) All new private sewage systems, or additions to, maintenance, repair or replacement of a private sewage system, in a floodfringe area shall meet the applicable requirements of all municipal ordinances and ch. SPS 383.

(e) All new wells, or additions to, replacement, repair or maintenance of a well, in a floodfringe area shall meet the applicable provisions of the floodplain zoning ordinance and chs. NR 811 and 812.

(4) **SHALLOW DEPTH FLOODING AREA.** No structural repairs, modifications or additions to an existing building, the cost of which exceeds, over the life of the existing building, 50% of its present equalized assessed value, may be allowed in a shallow depth flooding area unless the entire building is permanently changed to conform with the standards prescribed in s. NR 116.14 (1).

(5) **FLOOD STORAGE AREA.** No structural repairs, modifications or additions to an existing building, the cost of which exceeds, over the life of the existing building, 50% of its present equalized assessed value, may be allowed in a flood storage area unless the entire building is permanently changed to conform with the standards prescribed in s. NR 116.14 (2).

(6) **COASTAL FLOODPLAIN AREA.** No structural repairs, modifications or additions to an existing building, the cost of which exceeds, over the life of the existing building, 50% of its present equalized assessed value, may be allowed in a coastal floodplain area unless the entire building is permanently changed to conform with the standards prescribed in s. NR 116.14 (3).

(7) **MUNICIPAL RESPONSIBILITIES.** (a) Municipal floodplain zoning ordinances shall regulate nonconforming uses and nonconforming buildings in a manner consistent with this section and the applicable state statutes. These regulations shall apply to the modification or addition of any building or to the extension of the use of any building or premises which was lawful before the passage of the floodplain zoning ordinance or any amendment thereto.

(b) As permit applications are received for modifications or additions to nonconforming buildings in the floodplain, municipalities shall develop a list of those nonconforming buildings, their present equalized assessed value and a list of the costs of those activities associated with changes to those buildings enumerated in sub. (2) (a) or (3) (a), (b) and (c).

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; correction in (2) (c) and (3) (e) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1993, No. 477; correction in (1) (intro.) was made under s. 13.93 (2m) (b) 7., Stats., Register July 2001, No. 547; CR 03-064; am. (1) (c) Register April 2004 No. 580, eff. 5-1-04; CR 03-091; am. (1) (a), or. (1) (am) and (as), Register August 2004 No. 584, eff. 9-1-04; corrections in (2) (b), (3) (d) made under s. 13.92 (4) (b) 7., Stats., Register January 2012 No. 673.

NR 116.16 Floodproofing. (1) **GENERAL STANDARDS.** When floodproofing measures are required by either a municipal floodplain zoning ordinance or some other regulation which incorporates by reference the floodproofing requirements of this chapter, such measures shall be designed to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the regional flood, to assure that the structures are watertight and completely dry to the flood protection elevation without human intervention during flooding.

(2) **CERTIFICATION.** (a) Whenever floodproofing measures are required, a registered professional engineer or architect shall certify that the following floodproofing measures will be utilized, where appropriate, and are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the regional flood:

1. Anchorage of structures, or addition of mass or weight to structures, to prevent flotation.
2. Reinforcement of walls and floors to resist rupture or collapse caused by water pressures or floating debris.
3. Construction of wells, water supply systems and waste treatment systems so as to prevent the entrance of flood waters into such systems.
4. Subsurface drainage systems to relieve external pressures on foundation walls and basement floors.
5. Cutoff valves on sewer lines or the elimination of gravity flow basement drains.
6. Placement of essential utilities above the flood protection elevation.

(b) Whenever floodproofing measures are required, a permit, special exception, conditional use or variance may not be issued until the certification required in par. (a) is submitted to the municipal zoning administrator.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

NR 116.17 Levees, floodwalls and channel improvements. (1) **GENERAL.** The following standards shall apply to municipal floodplain zoning regulations for areas landward of levees, floodwalls and channel improvements.

(2) **LEVEES OR FLOODWALLS.** (a) A levee or floodwall shall be considered adequate if all of the following criteria and the requirements of par. (b) are met:

1. The minimum top elevation of the levee or floodwall shall be calculated using whichever of the following provides the greater protection from floods:

a. The profile of the regional flood with that regional flood confined riverward of the proposed levee or floodwall, plus 3 feet of freeboard; or

b. The standard project flood and/or the 500 year flood confined riverward of the proposed levee or floodwall.

c. Exceptions to the standards in subd. 1. a. and b. may be granted by the department on a case-by-case basis for levees and floodwalls not used to protect human life.

2. U.S. army corps of engineers standards for design and construction of levees and floodwalls shall be the minimum standard for levees and floodwalls.

3. Interior drainage shall be provided using designated ponding areas, pumps or other similar means, in accordance with U.S. army corps of engineers standards.

4. An emergency action plan, concurred in by the division of emergency government and approved by the department, shall be in effect for the area behind the levee or floodwall that would be in the floodplain without the proposed levee or floodwall in place.

5. The municipality shall provide notification to all persons receiving construction permits in the area behind the proposed levee or floodwall that would be in the floodplain without the proposed levee or floodwall in place that they are in an area protected by a levee or floodwall which is subject to flooding if the levee or floodwall is overtopped.

6. The levee or floodwall shall be annually inspected and certified, by a professional engineer registered in Wisconsin, that the levee or floodwall meets the standards in subds. 1. to 5. Annual reports of the inspection and certification shall be sent to the department for review.

7. The department reviews and approves the material submitted under subds. 1. to 5.

(b) No obstruction to flood flows caused by construction of levees or floodwalls may be allowed unless amendments are made to the floodway lines, regional flood profiles, floodplain zoning maps and floodplain zoning ordinances in accordance with the provisions of ss. NR 116.11, 116.12 (3) and 116.21 (6). Calculations of the effect of the levee or floodwall on regional flood heights shall compare existing conditions with the condition of the regional flood confined riverward of the proposed levee or floodwall.

(c) Floodplain areas protected by the adequate levee or floodwall shall be designated as flood fringe but may be regulated as areas outside of the floodplain unless the department determines that the levee or floodwall is no longer adequate.

(3) **INADEQUATE LEVEES OR FLOODWALLS.** If the department determines that an existing levee or floodwall does not meet the criteria of sub. (2) (a), all floodplain areas landward of the inadequate levee or floodwall shall be regulated as if the levee or floodwall does not exist.

(4) **CHANNEL IMPROVEMENTS.** (a) Channel improvements shall be considered to reduce flooding potential provided the following criteria are met:

1. The channel improvements are designed and constructed in accordance with acceptable standards.

2. Velocities resulting from the channel improvements will not increase downstream erosion.

3. An engineer registered in Wisconsin certifies that the criteria in subds. 1. and 2. are met.

4. The municipality submits a plan detailing how the channel improvements will be maintained.

5. The department reviews and approves the material submitted under subds. 1. to 4.

CITY OF MEQUON BOARD OF APPEALS

In re the application of Nancy Tolocko for a
variance from § 58-800(b)(1) of the Mequon
Municipal Code for the Property located at
12656 N. Shoreland Parkway, Mequon, Wisconsin

FINDINGS OF FACT
AND DECISION

This matter came before the City of Mequon Board of Appeals on March 2, 2023, at 6:00 pm in Christine Neurnberg Hall in Mequon City Hall following due notice by publication and first-class mail to the Applicant. Members present were Massey, Larson, Flanagan, Stern (who abstained from the decision), and Hildebrand.

This application is a request for a variance from the provisions of section 58-800(b)(1) of the Mequon Municipal Code. Specifically, this application seeks a variance from the provisions that prohibit modifications or additions to a nonconforming structure that is located within a floodplain. The Applicant, Nancy Tolocko, appeared in person and was sworn on oath and gave testimony in this matter. The City Department of Community Development appeared by Assistant Director Jac Zader and Building Inspections Supervisor Greg Golden, who were also sworn on oath and gave testimony. Based upon the testimony presented, the Board of Appeals makes the following findings and decision:

1. The subject property (the "Property") is located at 12656 N. Shoreland Parkway, Mequon, WI 53092, which is within the FW Floodway zoning district.
2. The Property is owned by WANATO Trust. The Applicant is the trustee, who rents the single-family residence on the Property to a third-party.

3. The structures on the Property are legal non-conforming structures given their existence prior to the City zoning the Property FW Floodway, which generally prohibits all structures.

4. The single-family residence had decks on the west (street side) and east (river side) elevations. In total, these decks combined to be approximately 295 sq. ft. in total area.

5. The Applicant sought to replace old decking boards and, while completing the project, decided to extend the footprint of the existing decks and also connected both decks by constructing new decking along the southern elevation of the residence.

6. In total, the decking project added between 412 and 603 sq. ft. of total decking surface area to the residence.

7. The Applicant did not obtain a building permit for the construction of the deck as is required under Mequon Code.

8. In August of 2022, the City's Community Development Department was informed about the construction without a permit and instructed the Applicant to obtain an after-the-fact building permit, which the Applicant applied for on August 26, 2022.

9. On August 30, 2022, the City denied the building permit because the deck was not allowed by code because it was a modification or extension of a nonconforming use, and the City subsequently issued an order to correct requiring the removal of the new decking.

10. Section 58-800(b)(1) of the Mequon Municipal Code prohibits the modification or alteration of a nonconforming structure, except the Code provides that the “construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure in not an extension, modification or addition.”

11. The Applicant argues that she could add multiple 200 square foot decks to the structure without violating the Code because the language of the code does not prohibit a structure to a single deck, only that any deck constructed cannot be more than 200 square feet.

12. The Board rejects this argument both because the evidence before it suggests that the deck constructed here is continuous and not multiple individual decks, and also because such an interpretation of the Code would lead to absurd results.

13. Accordingly, the decking would be allowed only upon the granting of a variance by this Board.

14. Based upon the FW Floodway Zoning of the Property, this Board may grant a variance under Section 58-812(4)a. if an applicant “convincingly demonstrates that: 1. Literal enforcement of the ordinance provisions will cause unnecessary hardship; 2. The hardship is due to adoption of the floodplain ordinance and unique property conditions, not common to adjacent lots or premises. In such case the ordinance or map must be amended; 3. The variance is not contrary to the public interest; and 4. The variance is consistent with the purpose of this article in section 58-753.”

15. Further, under Section 58-812(4)b., "to qualify for a variance under FEMA regulations, the following criteria must be met: 1. The variance may not cause any increase in the regional flood elevation; 2. Variances can only be granted for lots that are less than one-half acre and are contiguous to existing structures constructed below the RFE; 3. Variances shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of the ordinance." See also Wis. Admin. Code § NR 116.21(4).

16. The Applicant alleges that the lack of a garage or other storage structure on the Property constitutes a hardship because most of the neighboring properties have such structures which allow for storage of outdoor equipment and furniture such that during a flood these items do not float away.

17. The lack of a garage or other storage structure is not a hardship that is unique to the physical characteristics of the Property. Instead, it reflects a personal desire or convenience, which is not a hardship that justifies a variance.

18. Other factors identified by the Applicant to justify a variance such as the desire to keep items from floating away and having a spot to tie up a boat during a flood are not unique to the Property but instead concerns that are common to all of the properties along Shoreland Parkway.

19. While the Property is under one-half acre (.39 acres) and is contiguous to other structures which are below the regional flood elevation, and a deck would

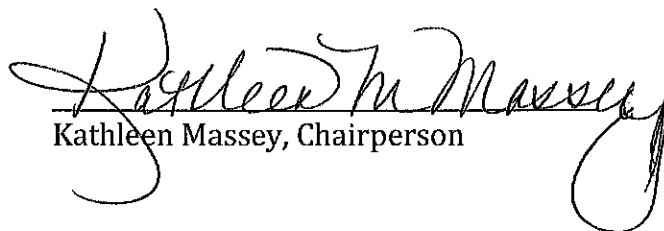
not appear to cause an increased risk to public safety nor increase the cost of relief efforts, there was no evidence presented by the Applicant that the requested variance would not cause any increase in the regional flood elevation as required by Section 58-812(4)b.

20. There is nothing in the record that establishes that a variance, if granted, would not be contrary to the public interest nor would such a variance be consistent with the purposes of the code regulating structures in flood-prone areas..

21. Based upon the foregoing, the Applicant's request for a variance from the provisions of Mequon Code § 58-800(b)(1) to create a variance from the provisions that prohibit modifications or additions to a nonconforming structure that is located within a floodplain is hereby Denied.

Dated at Mequon, Wisconsin, this 12th day of May, 2023.

CITY OF MEQUON BOARD OF APPEALS


Kathleen Massey, Chairperson

Attachment: Tolocko Decision 03-02-23 (8914 : Tolocko Decision)

TRANSCRIPT OF
CITY OF MEQUON BOARD OF APPEALS
REGULAR MEETING

DATE TAKEN: March 2, 2023

LOCATION: Christin Nuernberg Hall
11333 N. Cedarburg Road
Mequon WI 53092

Attachment: Tolocko Transcript (8913 : Tolocko Transcript)

1 APPEARANCES

2
3 Chair Kathleen Massey
4 Board Member Thomas Flanagan
5 Board Member Ramona Larson
6 Board Member Robert Stern
7 Board Member Kirsten Hildebrand
8

9 ALSO PRESENT:

10 Nancy Tolocko
11 Deputy Clerk Janet Meyer
12 City Attorney Brian Sajdak
13 Assistant Director of Community Development Jac Zader
14 Building Inspections Supervisor Greg Golden
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Attachment: Tolocko Transcript (8913 : Tolocko Transcript)

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Attachment: Tolocko Transcript (8913 : Tolocko Transcript)

P R O C E E D I N G S

CHAIRPERSON MASSEY: All right.

We are now going to be moving into our next agenda issue. That is a hearing brought by Nancy Tolocko. Ms. Tolocko is 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 North Shoreland Parkway. We're going to start with an explanation of the procedure.

So everyone who plans on speaking during Ms. Tolocko's presentation and issue needs to stand up right now because you will need to be sworn in by Ms. Meyer.

Ms. Meyer will then swear in all of the people at the same time who need to speak during Ms. Tolocko's hearing. She will then ask you for your first name, your last name, and the spelling of your last name followed by your current address.

So could everyone please stand?

Ms. Tolocko, that include you, the city of Mequon, and anyone else in the gallery who intends on speaking.

Attachment: Tolocko Transcript (8913 : Tolocko Transcript)

1 THE DEPUTY CLERK: Please raise your right
2 hand. Do you solemnly swear that the testimony
3 which you shall give in the matter now -- now on
4 hearing shall be the truth, the whole truth and
5 nothing but the truth so help you God?

6 If you could, please state your name and
7 address.

8 MS. TOLOCKO: Nancy Tolocko, 12644 North
9 Shoreland Parkway.

10 MR. GOLDEN: Greg Golden, 7901 West
11 Evergreen Boulevard. And I'm representing the
12 city as the building inspection supervisor.

13 Mr. ZADER: Jac Zader, 7900 West Evergreen,
14 Assistant Director Community Development for the
15 City of Mequon.

16 CHAIRPERSON MASSEY: Thank you.

17 You can all be seated. We're going to begin
18 with the City of Mequon. The City of Mequon will
19 give their presentation uninterrupted by any
20 board comments.

21 Board members, please hold your comments.
22 Once Mr. Golden is finished, we will then open it
23 up for board questions.

24 After that is completed, we'll move over to
25 Ms. Tolocko.

1 Ms. Tolocko, you will be allowed to give
2 your presentation uninterrupted. The board,
3 again, will hold their questions. When you are
4 completed, I'll open it up for board questions of
5 your presentations. Do you have any questions?

6 Okay. Mr. Golden.

7 MR. GOLDEN: Thank you.

8 As previously stated, the appellant is
9 requesting a variance of section 58-800(b)(1),
10 which prohibits the modifications or additions to
11 a nonconforming structure located within
12 floodplain with the exception of a deck that
13 cannot exceed 200 square feet.

14 The appellant replaced an existing 120-
15 square-foot deck attached to the east side of the
16 building and added an additional 603 square feet
17 of decking to the east, south, and west side of
18 the building without permit.

19 My office was notified of the deck by a
20 neighboring property. I made a site visit to
21 confirm the report. I then instructed the
22 appellant in August of 2022 to seek a building
23 permit to avoid code enforcement action.

24 The appellant submitted a building permit
25 application on August 26, 2022. The application

Attachment: Tolocko Transcript (8913 : Tolocko Transcript)

1 was denied by community development on
2 August 30, 2022.

3 The applicant's hardship is self-imposed.
4 And I would remind the board that according to
5 Mequon Municipal Code 58-812, which we neglected
6 to put in the packet but I have given everyone a
7 copy of that, states that when a Board of Appeals
8 grants a floodplain approval, the board shall
9 notify the applicant in writing that it may
10 increase flood insurance premiums and the risk to
11 life and property. The Wisconsin Department of
12 Natural Resources shall also be notified of the
13 decision within 10 days.

14 Furthermore, the Wisconsin Administrative
15 Code NR 116.21(4)(c) states, and I quote, A
16 variance may not be granted for the use that is
17 common to a group of adjacent lots or
18 predecessors. In such cases, the zoning
19 ordinance would have to be amended through proper
20 amendment procedures, unquote.

21 The fact that we have a petition with 13
22 adjacent properties owners in support of a
23 variance demonstrates that this is clearly not a
24 unique and site-specific issue. We recommend
25 denial of the variance request for the

1 aforementioned reasons.

2 BOARD MEMBER STERN: May I just ask for a
3 clarification?

4 CHAIRPERSON MASSEY: Mr. Stern.

5 BOARD MEMBER STERN: I didn't hear you. You
6 said the fact that you have 13 what?

7 MR. GOLDEN: We have -- in the -- in the
8 packet was a submission of 13 separate addresses
9 all on the same street.

10 BOARD MEMBER STERN: Right.

11 MR. GOLDEN: So that demonstrates that this
12 is not specific to one address.

13 BOARD MEMBER STERN: I'm sorry. But I don't
14 follow. What does that mean?

15 CHAIRPERSON MASSEY: Mr. Stern, you -- you
16 need to press your push to talk.

17 BOARD MEMBER STERN: I'm sorry. I pressed
18 the wrong one.

19 I'm sorry. I just don't understand what
20 that statement means.

21 MR. GOLDEN: Well, and I can tell you.
22 Because we quoted the Wisconsin Municipal Code
23 116.22 which states a variance may not be granted
24 for a use that is common to a group of adjacent
25 lots or premises. In such cases, the zoning

Attachment: Tolocko Transcript (8913 : Tolocko Transcript)

1 ordinance would have to be amended through proper
2 amendment procedures. So there's not -- you
3 don't even have the authority to give this
4 variance according to this, unless it's a site-
5 specific or unique to this property.

6 CHAIRPERSON MASSEY: Do we have any other
7 questions from the board for Mr. Golden?

8 Mr. Flanagan.

9 BOARD MEMBER FLANAGAN: Do you have a date
10 in your records as to when the city was actually
11 notified by the neighbor anywhere?

12 MR. GOLDEN: I do not.

13 BOARD MEMBER FLANAGAN: But we do know from
14 the exhibits that have been submitted that -- I'm
15 just going to run through, so I can make sure in
16 my own mind that the timeline is correct.
17 August 26, an actual site visit was made,
18 correct?

19 MR. GOLDEN: That's correct.

20 BOARD MEMBER FLANAGAN: And four days later
21 on August 30, the applicant was advised that the
22 west and the south decking had to be removed; is
23 that correct?

24 MR. GOLDEN: That's correct.

25 BOARD MEMBER FLANAGAN: So the earliest that

1 the applicant knew that the decking had to be
2 removed on the south side, which seems to be the
3 biggest complaint that I can see that would be on
4 her part, is the south extension between the east
5 side and the west side, that extension deck,
6 correct?

7 MR. GOLDEN: Yeah. The original deck to the
8 house was 120 square feet, which is on the north
9 -- the north -- I'm sorry -- the east side. And
10 there was also in the front of the -- what would
11 be the west side was kind of a junk platform. So
12 the total -- totaled combined of the two was less
13 than 200 square feet.

14 And then what happened is they resurfaced
15 the existing 120 square feet, added all the way
16 around the house to connect it to the front of
17 the house with an additional 603 square feet.

18 BOARD MEMBER FLANAGAN: The information that
19 is in my packet and the other members' packet
20 indicates that the deck was already constructed
21 by August 26 at the time of the inspection; is
22 that correct?

23 MR. GOLDEN: That is correct.

24 BOARD MEMBER FLANAGAN: And there was no
25 building inspection -- no building permit?

1 MR. GOLDEN: No permits at all.

2 BOARD MEMBER FLANAGAN: The record also
3 shows that the city sent the e-mail on
4 August 30, 2022, and the applicant responded on
5 the same day recognizing what the issue was.
6 Does that appear to be accurate?

7 MR. GOLDEN: I believe so, yes.

8 BOARD MEMBER FLANAGAN: The letter of
9 9/13/22 from the city, which is on page 20 if you
10 want to look at it. Do you have it in front of
11 you now? Okay. It says -- action required in
12 the middle of the letter says, "Please remove the
13 highlighted part of the new deck." Do you happen
14 to have what that is referencing, a picture of
15 that?

16 MR. GOLDEN: It doesn't appear to be
17 attached to that. But that was indicating the
18 decking on the south side of the house and then
19 part of the west side as well.

20 BOARD MEMBER FLANAGAN: On page 26 of the
21 exhibits, there is a highlighting of decking
22 going around the building. Do you know where
23 this particular exhibit came from? I don't know
24 if this is the highlighted deck that's referenced
25 in that September 13 letter or not.

1 MR. GOLDEN: No. That -- that is what's
2 actually existing now.

3 BOARD MEMBER FLANAGAN: Okay. I think I'm
4 finished for the time being.

5 CHAIRPERSON MASSEY: I -- I have a couple of
6 questions, Mr. Golden. Did the applicant ever
7 tell you why she did not apply for a building
8 permit?

9 MR. GOLDEN: In our conversations, I don't
10 remember if I'd specifically asked her that
11 question. The -- Ms. Tolocko was going through a
12 hard time. She'd just lost her husband. It was
13 a really emotional visit. And it was not a
14 pressing issue at that time.

15 CHAIRPERSON MASSEY: Okay. And then, if the
16 applicant is not granted this variance, will she
17 be able to maintain full access to the two
18 entryways to her home?

19 MR. GOLDEN: There would need to be a permit
20 to reconstruct the deck, what was existing before
21 the 120 square feet in the rear. And then we
22 would allow that 80 square feet in the front to
23 maintain access to the building.

24 CHAIRPERSON MASSEY: Thank you. That's all
25 I have.

Attachment: Tolocko Transcript (8913 : Tolocko Transcript)

1 Ms. Hildebrand, did you have a question?

2 BOARD MEMBER HILDEBRAND: I do. Looking at
3 packet page 14, is this the best rendition of the
4 existing deck versus the new deck conglomeration?

5 MR. GOLDEN: Which page are you on?

6 BOARD MEMBER HILDEBRAND: Page 14. It's --
7 it appears to be a hand-drawn rendering. And it
8 looks like there is a reference to new deck. And
9 then it says existing deck. Then it says new
10 deck. And then it says existing deck. Is that -
11 - is that the best way of visualizing this, at
12 least from (inaudible) standpoint?

13 MR. GOLDEN: Yes, that's correct.

14 BOARD MEMBER HILDEBRAND: And who was the
15 author or drafter of this document.

16 MR. GOLDEN: I believe that was the
17 gentleman she hired to build the deck. I don't
18 know who that was personally.

19 BOARD MEMBER HILDEBRAND: Do we know the
20 name of the individual who was hired to build the
21 deck? Was that ever revealed?

22 MR. GOLDEN: I never inquired about that.

23 BOARD MEMBER HILDEBRAND: So we don't know
24 whether this individual was licensed and bonded
25 or not.

Attachment: Tolocko Transcript (8913 : Tolocko Transcript)

1 MR. GOLDEN: Because they never went through
2 the whole permitting process, that's when we
3 would get that at that time. So we never got
4 that far because it got denied.

5 BOARD MEMBER HILDEBRAND: Has there been an
6 inspection of the deck.

7 MR. GOLDEN: No, there has not. Just a
8 visual to see what was there.

9 BOARD MEMBER HILDEBRAND: So we do not know
10 that even if a variance were allowed, whether
11 this deck conforms to existing ordinance
12 requirements regarding how it's to be structured
13 and whatnot.

14 MR. GOLDEN: That is correct. Based on the
15 drawings that I've seen, it meets the code. But
16 it has not been inspected yet.

17 BOARD MEMBER HILDEBRAND: Thank you.

18 CHAIRPERSON MASSEY: Any other board
19 questions of Mr. Golden?

20 Mr. Stern.

21 BOARD MEMBER STERN: Referencing page 17 --
22 page 7 of the packet, the city rules (inaudible)?

23 MR. GOLDEN: That is from the applicant.

24 BOARD MEMBER STERN: Do you have any
25 comments about either of those lists?

1 MR. GOLDEN: I can answer specific questions
2 you have about it. But I don't have comments.

3 BOARD MEMBER STERN: Do any of them seem
4 (inaudible)?

5 MR. GOLDEN: I'm sorry?

6 BOARD MEMBER STERN: I -- I mean, this comes
7 down to there was a rule that you broke, so
8 you're in trouble. But she's got a lot of issues
9 here that address like, you know, flood coming
10 out of the river and yet some people do choose to
11 live there. And they have to deal with things
12 like the river floods and having that dry area
13 higher than the ground is of great value and it
14 doesn't impede floodwaters in any way. It
15 doesn't obstruct the movement of the public in
16 any way.

17 And I've been by there several times. It's
18 very lovely. And it doesn't seem to be unduly
19 big for the property. So other than exceeding
20 the square footage specified in the code, is
21 there anything wrong with this deck?

22 MR. GOLDEN: I guess I'll (inaudible).

23 CHAIRPERSON MASSEY: Mr. Zader, would you
24 like to address that?

25 Mr. ZADER: I'll address some of your

1 answers.

2 First of all, I don't think we know some of
3 these things whether it increases regional flood
4 or resist flotation. We have no idea of these
5 issues. Some of these issues are not germane to
6 the issue of a variance. So I don't think it's
7 relevant.

8 And I will just add, I think Greg touched on
9 it a little bit, but I will add that the
10 floodplain ordinance is a little bit different
11 than every other ordinance in this city in terms
12 of zoning. The floodplain ordinance is required
13 to be approved by the DNR forum. So our last
14 revision was in 2008 when we redid our maps. We
15 had the language of the ordinance adopted by the
16 DNR.

17 So every other zoning district, we have
18 pretty much home rule authority to decide what we
19 want to do in terms of setbacks, in terms of
20 everything. But this one is a little bit
21 different. So we require the department -- DNR
22 requires us to get approval from them about any
23 changes made to the floodplain ordinance. So
24 it's a little bit different of an animal in a
25 sense.

1 And I think the applicant has shown that the
2 additional decking is really not a different
3 issue than any other -- any other property owner
4 on that street. So this is -- you know, it does
5 not meet the unique hardship standard. And I
6 think the biggest issue I think we should think
7 about is that we have to relay this information
8 to the DNR. And they expect us to withhold our
9 end of the bargain in enforcing that -- the
10 floodplain ordinance.

11 And again, I think the staff report mentions
12 some lawsuit issue. But it's really more of a,
13 they could put us on probation for a floodplain
14 ordinance. They could appeal our decision to
15 circuit court. There are things we can do. And
16 we have to notify them within a certain amount of
17 time of our actions.

18 So I think this is a little bit more than
19 just it's just aesthetically pleasing, so what's
20 the harm. This is an issue of following our
21 floodplain ordinance that we are required to by
22 the DNR.

23 CHAIRPERSON MASSEY: Ms. Larson.

24 BOARD MEMBER LARSON: So are you saying that
25 if the DNR were to come out and inspect it and

1 gave their approval, there wouldn't be a problem?

2 Mr. ZADER: That is not their jurisdiction.

3 Their jurisdictions determine whether we granted

4 a variance in accordance with the -- our

5 floodplain ordinance. And if they have an issue

6 with that, then they can, again, take recourse

7 against that. They will not come and expect it

8 and make a determination of whether the deck

9 itself meets the requirements or not. They're

10 going to see whether this board made a decision

11 that is not contrary to the variance procedures

12 that are in the code.

13 BOARD MEMBER LARSON: Thank you.

14 CHAIRPERSON MASSEY: I have a question of

15 our attorney, who is Mr. Sajdak.

16 Mr. Sajdak, I'd like you to comment on what

17 we just heard from Mr. Zader, specifically

18 whether this board has legal authority to even

19 rule on this variance and whether or not there is

20 any type of unique hardship when you have all of

21 these neighbors here signing a petition stating

22 that there are in support of this so that there

23 may be other issues from other neighbors sitting

24 in our gallery.

25 MR. SAJDAK: Sure. So certainly this board,

1 you know, and I think even Mr. Zader would agree
2 that this body has the ability to grant an
3 appropriate variance where -- where we determined
4 that it's appropriate. The -- the challenge with
5 that is, you know, unlike the, you know, the
6 garage that's a little bit too close to the
7 property line in the north part of the city where
8 the next house is, you know, an acre and a half
9 away, this is one that the DNR will get notice
10 of. And then they will review it basically
11 automatically. They'll look at every variance
12 that's granted to make sure that they feel that
13 it's appropriate. And if they don't, they will
14 certainly appeal the decision to Circuit Court
15 and challenge the decision there.

16 In addition, the other things that Mr. Zader
17 indicates are also possibilities as well, that
18 they could withdraw our authority to even
19 regulate floodplains if they feel that the city
20 is just not doing a good job as a whole of
21 enforcing the floodplain regulations. They
22 could, you know, likewise -- I guess it's not
23 really them.

24 But certainly one of the impacts that could
25 potentially happen as well is the federal Flood

1 Insurance Program could certainly, you know, if
2 we granted enough variances, that they could
3 potentially withdraw our participation in a
4 program because we're just too much of a risk for
5 the program above and beyond what's there. So
6 there are maybe a little bit more stakes in this
7 one than other ones. So it's important that you
8 look at the requirements of the -- the -- the
9 statutes in the code to make sure that we're
10 granting a variance only where it is appropriate.

11 Certainly, as, you know, within 58-812,
12 which was handed up this evening, you know, one
13 of the issues is that, you know, in order to
14 qualify for a variance under FEMA regulations,
15 there are certain criteria that need to be met
16 that are above and beyond even what we've looked
17 at traditionally. For example, at the bottom of
18 page 2 of that document, variance may not cause
19 any increase in the regional flood elevation can
20 only be granted if there are less than one half
21 acre and contiguous to existing structures, shall
22 be only granted upon showing of good and
23 sufficient cause, and shall be the minimum relief
24 necessary, try not cause increased risk to public
25 safety or nuisances, shall not increase costs for

1 rescue and relief efforts and that be contrary to
2 purpose of this ordinance. And so these are
3 above and beyond even typical standards that we
4 look at.

5 Likewise, you heard Mr. Golden talk about
6 the provisions of NR 116, which is in your
7 packets on page -- sorry. Trying to find it. It
8 starts on page 27 and continues through there.
9 And you know, that was Mr. Stern's question that
10 the language in NR 116 talks about the concept
11 that if this is a variance that could just as
12 easily apply to a whole bunch of neighbors in the
13 same location on the same body of water, that --
14 that a variance request isn't the appropriate way
15 to address that. It would be to look at, you
16 know, potential changing of the zoning code or
17 figuring out a way to deal with it that way.

18 And that's somewhat true of all variances,
19 mind you, you know, recognizing that -- that the
20 hardship always needs to be unique to the
21 property. And so that's a standard that's always
22 there. But again, this is something that the DNR
23 when they review what this body does is going to
24 look at and say, Okay, Does this apply
25 specifically this property or is it a broader

1 issue?

2 I think what you heard Mr. Golden say is
3 that in his opinion, the fact that you've got a
4 list of property owners that are all on the same
5 street that say, "Yeah, We think this is a great
6 idea," presumably because then they are able to
7 get the same variance suggests that you are not
8 meeting that standard. You know, that's
9 ultimately for you guys to decide whether that's
10 true or not. But that effectively is the
11 argument.

12 And so I think that the -- the -- you know,
13 as I've said already, the stakes are a little bit
14 higher on this one just because, you know, I can
15 tell you that in a lot of the variances that we
16 hear we're are never going to get appealed
17 because there's just nobody that's going to care
18 unless we deny it and the property owner appeals,
19 right?

20 This one, the DNR will look at. And if they
21 don't agree with the decision, they will appeal.
22 It's as simple as that. So you want to make sure
23 that you're following the letter of what the code
24 says what the requirements are if you're going to
25 grant the variance. That's not to say that you

1 can't, but that you just need to make sure that
2 we're hitting those standards and verbalizing for
3 the record the basis upon which we're granting
4 that variance so that the DNR can look at it and
5 say, "Nope. Everything is aboveboard here.
6 We're okay with it." And if we can't do that,
7 then we shouldn't be granting the variance just
8 because it looks nice.

9 CHAIRPERSON MASSEY: Mr. Stern.

10 BOARD MEMBER STERN: I have a question for
11 Mr. Zader. What role, if any, does this body
12 have in suggesting a change in the zoning
13 ordinance if we felt that allowing larger decks
14 for these 22 houses, it doesn't seem to in any
15 way affect the flow of floodwaters, it should be
16 just made as a change and there shouldn't be a
17 variance?

18 Mr. ZADER: So in terms of the role that
19 this body plays, certainly staff takes the
20 results of all of this body's decisions and
21 considers what that means for them. And -- and
22 in fact, there was just a relatively recent
23 change that we made to the zoning code that was a
24 reflection of the fact that we had granted a
25 number of variances for the same type of thing,

1 you know, kind of in a row.

2 And so the staff looked at and said, "If
3 we're going to get variances for this, why are we
4 going through this hassle? Let's just make this
5 something that we can approve at the staff level
6 or the planning commission level." So they take
7 the decisions certainly with them. You know, I
8 think this body certainly could, you know, pass a
9 motion. It would be a recommendation. The
10 planning commission and the council wouldn't have
11 to do anything with it. But certainly, this body
12 could, you know, take action and say, "Hey. We'd
13 like to suggest that you review that." But, you
14 know, I don't know that it's a given that, you
15 know, a deck structure doesn't impede the -- the
16 -- the -- the -- the waters within the area.
17 There's a lot of factors that go into that, you
18 know, type of construction, the location, you
19 know, all of those types of things.

20 And so was easy to say, "Well, yeah, it
21 doesn't impact the water level." But without an
22 engineer who is willing to look at it and study
23 it, that's a difficult thing to just say without
24 really looking at it.

25 CHAIRPERSON MASSEY: Mr. Stern, I don't

1 believe that we have any evidence so far to
2 indicate one way or the other. But you can
3 certainly pose that question to the applicant and
4 to the city if you choose.

5 Any other board questions of Mr. Golden at
6 this time before we proceed to the applicant?

7 BOARD MEMBER HILDEBRAND: Is there any
8 precedent that would be relevant to this
9 situation in dealing with the DNR in a similar
10 type of situation that has occurred?

11 MR. GOLDEN: Certainly, there hasn't been
12 anything here in Mequon in my tenure. In fact, I
13 think this is the first variance request in a
14 floodway that I can remember in my what: Eights
15 years now, almost nine years. And -- and so we
16 don't get a lot of these requests. My
17 experience, you know, just from talking with my
18 colleagues across the state, these types of
19 things, if they are granted, typically goes to
20 the Circuit Court level and there is a decision
21 and that usually it because typically the DNR
22 wins and the city says, "Okay. Well, we're not
23 going to fight anymore."

24 So there's not a whole lot of like appellate
25 case law that we can rely on and look at. But

1 the DNR will come out swinging. And -- and
2 that's not to say that we should back down to the
3 DNR because they might sue us, but it -- it -- it
4 does reflect the necessity of really making sure
5 that we're following what the code is and what
6 the standards are to grant the variance. Because
7 that's the way we survive that challenge.

8 CHAIRPERSON MASSEY: Any further questions
9 before we proceed to the applicant?

10 Mr. Stern?

11 BOARD MEMBER STERN: Just a comment. My
12 daughter happens to live on the same street. So
13 I have reason to have some conversations with
14 Jack Favre about this.

15 My opinion, if the DNR is working
16 (inaudible) their position, I don't know how much
17 -- we are dealing with absolute rights or wrongs
18 about design limitations. They'd just like those
19 22 houses gone. Period. The DNR will be very
20 happy if those 22 houses were gone. And they
21 have imposed restrictions that make it very
22 difficult to live so that people who live there
23 put up with a lot of restrictions that other
24 people in Mequon don't have.

25 CHAIRPERSON MASSEY: Ms. Larson.

1 BOARD MEMBER LARSON: Yes. I have a
2 question for Mr. Golden. Since the issue seems
3 to be the 200 square feet that is over -- if, and
4 I don't know if this is a possibility, but if
5 that one part of the deck were made narrower to
6 come down to the specifications, then would it be
7 okay?

8 MR. GOLDEN: They are allowed 200 hundred
9 square feet total decking. Right now, it's at
10 803. So anything in the 200-square-foot or less
11 is acceptable. It doesn't matter where it is; it
12 just needs to be no more than 200 square feet.

13 BOARD MEMBER LARSON: So -- so, in other
14 words, making the deck narrower wouldn't do
15 anything?

16 MR. GOLDEN: I think based on the length of
17 the house, it would have to be 6 inches wide to
18 get that lower.

19 BOARD MEMBER LARSON: Okay.

20 CHAIRPERSON MASSEY: Okay. We're now going
21 to proceed to the applicant.

22 Ms. Tolocko, you can go ahead.

23 MS. TOLOCKO: Thank you for this opportunity
24 to present my request for variance to allow the
25 deck constructed at 12656 North Shoreland

1 Parkway.

2 MALE BOARD MEMBER: Ms. Tolocko, could you
3 just pull that microphone a little bit closer?
4 There you go.

5 MS. TOLOCKO: Got it.

6 MALE BOARD MEMBER: Thank you.

7 MS. TOLOCKO: Is that better?

8 MALE BOARD MEMBER: Yes.

9 MS. TOLOCKO: Okay. I also would like to
10 thank staff for their assistance in affording me
11 the time necessary to prepare this application.
12 I would like to reiterate the key points from my
13 letter. This home has had a streetside deck and
14 a riverside deck for over 40 years. When
15 maintaining these decks with new deck boards and
16 railing, I decided to connect the two with a deck
17 along the south side of the house. I was not
18 aware of the 200-square-foot limit at that time.

19 This deck eases the hardship of when it
20 floods. It allows us a safe place from which we
21 can access our home, drop off needed supplies,
22 and tie up canoes when we must park our cars up
23 by Highland Road.

24 It provides an area to temporarily store
25 items out of floodwaters: Lawn equipment, lawn

Attachment: Tolocko Transcript (8913 : Tolocko Transcript)

1 chemicals, grills, outdoor tools on furniture,
2 garbage cans; avoiding the potential of them
3 floating down the river and causing contamination
4 of the watershed. This deck is a permeable
5 structure that allows for the natural flow of
6 floodwaters to run under, through, and past.
7 This deck will not impede, redirect, or displace
8 floodwaters. This deck will not increase the
9 regional flood height.

10 Deviating from the dimensional standard of
11 deck size in the floodplain is not contrary to
12 the public interest. There is unanimous support
13 of this deck from the residents of Shoreline
14 Parkway as demonstrated by the petition. But
15 this petition represents only the support of my
16 variance request with no objection to the deck
17 construction. And to infer anything else is not
18 accurate.

19 In researching the ordinance, I wanted to
20 understand the reasons for it. I believe the
21 main purpose of the code is to protect the public
22 during a flood, limit property damage caused by
23 flooding and to not increase the flood elevation
24 level. Allowing this deck does not compromise
25 this intent. In fact, you could consider that

1 this deck lends support to the purpose of the
2 ordinance.

3 Lastly, I would like to respond to the
4 letters submitted by staff. Staff's
5 recommendation to deny seems to be based on their
6 subjective determination that my hardship is
7 self-imposed. But shouldn't this be the
8 determination of the board?

9 Under the ordinance, the Board of Appeals is
10 the only entity that has the authority to
11 determine hardship and grant the variance, not
12 city staff or the DNR. Self-imposed means
13 imposed on oneself, not by an external force. I
14 can assure you that anyone who has experienced a
15 flood event considers it a hardship over which
16 they have no control.

17 The hardship that is virtually unique to me
18 is that the majority of the homes on my street
19 have garages or sheds built in pre-ordinance
20 times; structures that I would not be able to
21 allow -- would not be allowed to build for myself
22 today. It is essential that I have a place to
23 store and secure items from floating downriver
24 and contaminating the watershed. That said,
25 granting this variance would meet the criteria of

1 NR 116.21(4), and would not expose the city to a
2 lawsuit.

3 One additional insight to consider, while
4 the ordinance limits deck size to 200 square
5 feet, it does not contain verbiage limiting how
6 many decks would be construction -- constructed.
7 If I had built four 200-square-foot decks, one on
8 each side of the house, totaling 800 square feet,
9 it would be exempt from this restriction. I
10 believe that my application for variance has
11 merit. And I sincerely hope that this board sees
12 the value in granting my request. Thank you.

13 CHAIRPERSON MASSEY: Thank you.

14 We'll now open it up to board questions of
15 the applicant.

16 I think I'll begin. I would like to know
17 what information our discussions you've had with
18 others that support your contention that this
19 will not impede in any way the natural flow of
20 floodwaters.

21 MS. TOLOCKO: I've had -- sorry. I've had
22 discussions with some local people. The amount
23 that it will not impede the floodwaters because
24 it will not displace -- there's not enough
25 structure to displace the water. And -- and I

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1 want to -- in the code, I understood it, I want
2 to say it was .02 was the number, but it will not
3 displace the floodwaters that much.

4 CHAIRPERSON MASSEY: Have -- have you done
5 any -- any measurements of that? Because we are
6 being asked to go against a -- written code. And
7 we need to understand why you believe that we are
8 not impinging that code. So, you know, I want to
9 give you the opportunity to tell us what
10 information you based your conclusions on.
11 Because the city is sticking with the code as
12 written as you understand, right?

13 MS. TOLOCKO: I understand. No, I don't
14 have any scientific or mathematical evidence to
15 support my position.

16 CHAIRPERSON MASSEY: Have you had any
17 discussions with the DNR concerning your request
18 here? Because your -- your contention is that
19 this will not expose the city of Mequon to
20 litigation. And I want to know any information
21 you may have that would support that contention.

22 MS. TOLOCKO: I have not had any
23 conversations with the DNR. But based on the
24 code as written, I feel that my position meets
25 the criteria that is -- is listed in the

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1 ordinance.

2 CHAIRPERSON MASSEY: Then I had one further
3 question. Why didn't you apply for a permit in
4 advance of constructing this deck?

5 MS. TOLOCKO: I don't believe I can give you
6 an answer that would be acceptable to you. I
7 know now that I should have requested a permit.

8 CHAIRPERSON MASSEY: Mr. Flanagan.

9 BOARD MEMBER FLANAGAN: Just a follow-up on
10 that. Did your builder and you talk about a
11 permit?

12 MS. TOLOCKO: It was a friend of mine that
13 helped me build this. It was kind of a side
14 thing. It was -- it wasn't anything that we
15 really went over too much.

16 BOARD MEMBER FLANAGAN: Does that person
17 have any experience with building?

18 MS. TOLOCKO: He does. He is an older
19 gentleman. He did do the drawings for me after
20 -- after Greg came out and said I needed to apply
21 for a permit. So he did those up for me.

22 BOARD MEMBER FLANAGAN: I'm struggling with
23 the fact that adding 600 square feet to what you
24 -- what you had just sends red lights off. And
25 -- and -- and now we're chasing an issue. I can

1 sympathize with your concern. But we have people
2 that have talked with other people that know the
3 DNR is going to come back on us if we give a
4 variance.

5 Let me ask you this: How many people on
6 your list have extensions from the front to the
7 back along the sides of their house? And are
8 they within 200 feet -- square feet?

9 MS. TOLOCKO: I don't think I can answer
10 that. I don't know.

11 CHAIRPERSON MASSEY: Are there any other
12 questions from the board at this time, either of
13 the applicant or of the city of Mequon?

14 BOARD MEMBER STERN: Yes.

15 CHAIRPERSON MASSEY: Mr. Stern.

16 BOARD MEMBER STERN: This is for the staff.
17 Is there any validity to Ms. Tolocko's assertion
18 that if this would have been four separate decks
19 of 200 square feet it wouldn't be an issue?

20 MR. GOLDEN: Not the way I interpret it. I
21 can read to the sentence that says: The
22 construction of a deck that does not exceed 200
23 square feet and that is adjacent to the exterior
24 wall of a principal structure is not considered
25 an extension, modification, or addition. So

1 basically, it's kind of an exception. You're not
2 allowed to do anything, but they're allowing a
3 200-square-foot deck to not be considered an
4 addition.

5 So I am taking it upon my interpretation to
6 say we could split that up, that 200 square feet,
7 to get the front and the back of the house so
8 that she can have access to both of her required
9 exits.

10 BOARD MEMBER STERN: But, in fact, it
11 doesn't say you can't do one on the north wall
12 and one on the south wall.

13 MR. GOLDEN: It says "a deck not to exceed
14 200 square feet." I guess I would entertain
15 Mr. Sajdak to comment on that.

16 CHAIRPERSON MASSEY: Mr. Sajdak.

17 MR. SAJDAK: I -- I think I would agree with
18 that interpretation. The code talks about a deck
19 and I think that -- that -- we're being -- I
20 should say we're. But I think staff are being
21 reasonable in saying we're going to allow you to
22 split that forth and back. But I -- I don't
23 think that you could put a bunch of singular
24 decks that are each 200 feet and put an inch
25 between them and say, "Okay. Well, you know,

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1 I've now got 16 decks all the way around my
2 house, and now I'm okay." I don't think that is
3 the -- the appropriate interpretation of the
4 code.

5 CHAIRPERSON MASSEY: Yes, Ms. Tolocko.

6 Ms. TOLOCKA: As I had mentioned, there was
7 an existing deck on the front of the house. You
8 see -- you've seen the pictures. You saw the
9 pictures before and after. There was a deck on
10 the front of the house. There was a deck on the
11 back of the house. And that had been there for
12 quite some time.

13 And I believe that both deck -- both the
14 deck that they were there did exceed 200 square
15 feet if you added them together. I mean, those -
16 - and those had been there for 40 years.

17 CHAIRPERSON MASSEY: So is what you're
18 asking us is whether you can put decks back the
19 way they were and whether or not that would be a
20 violation of the city code? Is that your
21 question?

22 Ms. TOLOCKA: It's not a question as much is
23 an observation that the decks were there and
24 Mr. Golden is saying that -- that that front deck
25 has to come down. And it was already there.

1 CHAIRPERSON MASSEY: Mr. Golden, could you
2 respond to that?

3 MR. GOLDEN: I think the fact that what was
4 there is not there anymore makes it a lot more
5 difficult to -- to kind of decide how to treat
6 that. You know, had the permitting process been
7 followed originally, we may have been able to
8 discuss it's been there. I don't know that those
9 -- that front deck was ever permitted before.
10 You know, that one could have been 40 years ago
11 installed without permits.

12 So the fact that it was taken apart and
13 rebuilt before we were involved at all, it makes
14 it really difficult for me to make a decision on
15 what I can grandfather in and allow.

16 Ms. TOLOCKA: Excuse me. The -- the decks
17 were not taken apart. The structure remained the
18 same on the existing decks. We resurfaced it and
19 there was a new railing. The existing structure
20 was maintained.

21 CHAIRPERSON MASSEY: Any further board
22 questions?

23 Ms. Hildebrand.

24 BOARD MEMBER HILDEBRAND: Thank you.

25 Are there any grandfather clauses that would

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1 allow for a resurfacing of the original decking
2 that would -- that would address Mr. Golden's
3 concern?

4 MR. GOLDEN: I think that -- that generally
5 staff position and it's kind of consistent with
6 the language in the code is that -- that what the
7 code really talks about is expanding or enlarging
8 a nonconforming use. Typically, just
9 maintenance-type work we tend to overlook because
10 we recognize that people do have property rights
11 that are there. So it typically requires
12 something more than -- than simple maintenance.

13 An example that I can think of immediately
14 off the top of my head was we had an issue -- and
15 it maybe even came here now that I'm thinking
16 about it, where the property owner basically
17 gutted his bathroom and put in a new bathroom but
18 called it maintenance because it was a really old
19 bathroom and needed to be done. You know, that's
20 different than slapping a coat of paint on or
21 replacing some rotting boards, or that kind of
22 stuff. And so I -- typically, you would find
23 that you would be able to do that.

24 BOARD MEMBER HILDEBRAND: Additionally, a
25 question for you, Madam. And I am sympathetic

1 for your situation. But I would like to know,
2 you had indicated that the structures that you
3 expanded had been in place for over 40 years; is
4 that correct? And during that period of time,
5 would you say that there was a hardship that was
6 occurring during that entire 40-year period.

7 Ms. TOLOCKA: I did not own the home at that
8 time. I lived next door. The gentleman that
9 lived there for 20 years, the -- the latest
10 resident, his daughter, owns the house -- who
11 owns the house, who lived there beforehand, she
12 moved him out. And my husband and I bought the
13 home. And so I -- we lived next door through
14 several owners.

15 It's interesting -- I'll tell you a little
16 story. A couple of years ago when I was working
17 in the yard, a gentleman drove up on his
18 motorcycle and got off and asked if he could look
19 at the property. And I said why? And he said
20 well, I used to live here in the late fifties and
21 sixties as a kid.

22 And he said, in this house, there were nine
23 people that lived in his house, eight children
24 and my mom. And he said there used to be a -- a
25 screened-in porch on the back of the house where

1 the deck is and there used to be a garage on the
2 property to. And now, those things are gone.
3 And that was before any codes and things were in
4 place.

5 So the property has changed. Whether it's a
6 hardship for anybody, I know living next door --
7 you can see in the pictures some -- my home is in
8 the pictures of that flood. We tied -- we tie up
9 our canoe to our deck. And it's a larger deck.
10 But it's been there for a very long time,
11 probably before this code was adopted.

12 Does that answer your question? I don't
13 know if it does. I'm sorry. I'm kind of
14 rambling.

15 BOARD MEMBER HILDEBRAND: Yes. Thank you.

16 My other question is, and I believe you may
17 have already answered it. But I would just like
18 to ask again because it does say that the
19 variance may not cause any increase in the
20 regional flood elevation. Have you consulted
21 with a civil engineer or a water resource
22 engineer or obtained any type of professional
23 opinion that we could rely upon so that we have a
24 sufficient defense against the DNR?

25 Ms. TOLOCKA: I do not. However, I -- I

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1 think if -- I could perhaps get some. But I --
2 there's one comment I do want to make that I
3 think would have a bearing on this. I know when
4 Mr. Golden came out, he had said that if that
5 deck was 6 inches off the ground, it would be
6 allowed. And I believe that if a deck like that,
7 6 inches off the ground, it would probably
8 displace more water than the posts that support
9 the deck now.

10 So I -- I think that's kind of -- not an
11 apples-to-apples. But I think if you could put
12 something on the ground that's 6 inches high and
13 that's acceptable, I think, posts taking things
14 up off the ground would be in a better position
15 as far as water displacement.

16 BOARD MEMBER HILDEBRAND: One more follow-up
17 question. Did Mr. Golden or anyone else at the
18 city recommend that you obtain the opinion of a
19 civil engineer or a water resource engineer?

20 Ms. TOLOCKA: No.

21 CHAIRPERSON MASSEY: Mr. Sajdak.

22 MR. SAJDAK: I just have a couple of
23 questions for you. And -- and it's really just
24 based on some of the things that you just said.
25 So one of my responsibilities is that I get to

1 put all of this discussion into writing and I
2 have certain things that I like to include in all
3 of the decisions. And now, I'm wondering if
4 maybe what I was thinking is true is not true.
5 So do you live in the property or do you still
6 live next door?

7 Ms. TOLOCKA: I live next door. We bought
8 the property. And the long-term is that my
9 daughter and my granddaughter are going to be
10 coming to move up as soon my granddaughter is out
11 of school.

12 MR. SAJDAK: Okay. So you -- you own it,
13 but -- but nobody -- nobody resides in it right
14 now?

15 Ms. TOLOCKA: No. There is a rental.
16 There's a gentleman that's there -- that lives
17 there. He has lived there for a year now.

18 MR. SAJDAK: Okay. And then I guess the
19 other question that I have for you is that you
20 had -- if I'm looking at pictures, like, on page
21 8 of the packet, you had a deck in the -- in the
22 front, and you had a deck in the back. And this
23 really just kind of connected the two. The
24 height of the deck didn't change?

25 Ms. TOLOCKA: No.

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1 MR. SAJDAK: Okay.

2 Ms. TOLOCKA: No.

3 MR. SAJDAK: And so what -- I guess when you
4 talk about the -- the benefit of being able to
5 have an area to tie up your boat and access the
6 house and that kind of stuff, what is the -- the
7 -- the benefit along the side of the house of
8 having that deck there for that purpose if you
9 already had a deck that would arguably allow you
10 to do that?

11 Ms. TOLOCKA: I think it's more of an area
12 that we can store things that float. Because
13 this property doesn't have a garage or a shed,
14 there's a lot of stuff. There's loan furniture
15 now and garbage cans and lawn decorations and all
16 kinds of stuff. And it's really good to get that
17 stuff up and out and secure so that it doesn't
18 float down the river.

19 CHAIRPERSON MASSEY: Mr. Flanagan.

20 BOARD MEMBER FLANAGAN: Is there anything
21 that would prohibit the garage being built on
22 that property? I don't know if the city can
23 answer that or --

24 CHAIRPERSON MASSEY: Mr. Golden or
25 Mr. Zader.

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1 MR. SAJDAK: Yes. The property is in the
2 floodway. These are nonconforming uses. Cannot
3 expand a nonconforming use. You cannot build any
4 garage or any additions to the home or anything
5 like that in a floodway.

6 CHAIRPERSON MASSEY: Any other board
7 questions or shall we close the public hearing?
8 Is there a motion to close the public hearing?

9 MS. TOLOCKO: Can I just say --

10 MALE BOARD MEMBER: Motion to close.

11 Ms. TOLOCKA: Oh, I'm sorry. Can I just say
12 one more thing?

13 CHAIRPERSON MASSEY: Sure.

14 Ms. TOLOCKA: Thank you. I appreciate it.

15 I do believe that the hardship of not having
16 a place to store things is unique to this area
17 and I really think that's what tips things in my
18 favor in a really hope you consider that. Thank
19 you.

20 CHAIRPERSON MASSEY: Is there a motion to
21 close the public portion of the hearing?

22 MALE BOARD MEMBER: So moved.

23 CHAIRPERSON MASSEY: Is there a second?

24 FEMALE BOARD MEMBER: Second.

25 CHAIRPERSON MASSEY: All in favor, please

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1 say aye.

2 (Board members respond.)

3 CHAIRPERSON MASSEY: All opposed?

4 The public portion of this hearing is
5 closed. We are now going to open it up for board
6 discussion, and that discussion will be public.

7 Mr. Stern.

8 BOARD MEMBER STERN: Ms. Tolocko's comment
9 about not having a garage and needing a place to
10 store things really did strike me. I'm familiar
11 with the street again because my daughter lives
12 at the front end of it. So I see all 21 other
13 houses as I go to hers. It's a hodgepodge of 100
14 years of building and code enforcement. Some
15 people have garages and some people don't. And
16 some houses are three stories and some are long.

17 But not having a garage, not having a place
18 to keep things in a flood, I -- I very much see
19 as a hardship. Is it unique to her property?
20 No. It is unique to living in a floodway. When
21 floodwaters come, you have to deal with all of
22 that stuff.

23 Any of the discussion tonight that's made
24 the biggest impact on me is that's a very
25 legitimate reason to have more deck. And I am

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1 not an engineer. I've been a builder for a lot
2 of my life and having a few posts sticking out of
3 the ground is not to affect floodwater
4 (inaudible).

5 CHAIRPERSON MASSEY: The Chair recognizes
6 herself.

7 My objections here are primarily legal in
8 nature. And what I am struggling most with is
9 Section 58-812(4), which are the requirements for
10 granting a variance. We need to find that the
11 variance is not contrary to the public interest.
12 I am not convinced that there is enough
13 information or testimony on the record that would
14 clearly tell me that it is in the public interest
15 to proceed.

16 Second of all, the variance may not cause an
17 increase in the regional flood elevation. I
18 don't think that there is any testimony on the
19 record from which I could conclude that that is
20 in fact true. Without that, I -- I don't feel
21 legally we have the grounds to grant a variance.

22 Ms. Hildebrand.

23 BOARD MEMBER HILDEBRAND: Thank you,
24 Chairman.

25 I share the -- a similar concern. And mine

1 is oriented towards a jurisdictional analysis.
2 If I'm hearing the city attorney correctly, what
3 he is saying is that if we were to allow for the
4 variance, the DNR would file a lawsuit against
5 the city and the first argument that the DNR
6 would make is that this board did not have the
7 legal authority to allow for the variance. I
8 would like confirmation from the city attorney
9 that I'm hearing that correctly.

10 MR. SAJDAK: No. I don't -- I don't think
11 you're hearing what I said correctly. Or if
12 maybe you are and I just didn't say it right, is
13 probably a more likely answer. There is no
14 question that this body in the right
15 circumstances has the authority to grant a
16 variance. And if we can meet the requirements of
17 -- of the code that -- that's been reviewed by
18 the DNR in terms of how variances would be
19 granted in the circumstances, I don't even think
20 the DNR would sue us if you can establish that.

21 The -- my point is that -- that, you know,
22 unlike in other instances where it's kind of
23 like, well, what's the harm, there is potentially
24 a real harm here. Because, A, not only could we
25 get sued which, you know, we would defend and

1 maybe we win, maybe we don't, you know, we'll see
2 based on the reasoning, the explanation, and the
3 decisions that go into this.

4 But there are other things that are
5 admittedly not likely to result from one decision
6 of this body, but multiple decisions of this body
7 or multiple staff-level decisions based on this
8 decision this evening that could cause, you know,
9 additional dominoes to fall: Flood Insurance
10 Program withdrawing us from the program; DNR
11 saying, "Hey, you just don't have the right to
12 enforce flood -- flood regulations at all,"
13 meaning that any variance requests go to the
14 state automatically. We don't even get involved
15 in it. Those types of things certainly are
16 realistic potential outcomes if the DNR feels
17 that we're just not doing our job appropriately
18 to protect the floodwaters of the state.

19 BOARD MEMBER HILDEBRAND: Thank you for that
20 clarification. I have a follow-up question.
21 What kind of a cost would we be looking at on
22 behalf of the city if we were to decide to grant
23 the variance and incur a lawsuit? Would we have
24 to hire experts? Would we have to hire a third-
25 party law firm? I think these are important

1 questions for the public to understand what kind
2 of financial impact we would be incurring on --
3 on behalf of the city.

4 BOARD MEMBER FLANAGAN: You know, so in
5 terms of impact, I mean, it would be a typical
6 certiorari review. You know, and I believe
7 you're familiar with those -- actually, I know
8 you're familiar with those from previous
9 experiences. But, you know, so I mean, our role
10 is really defending that our decision is based on
11 the law and we didn't act inappropriately.

12 That process certainly we can hire an
13 outside counsel. If we don't, it will be taxed
14 -- taxed to me. I'm not an employee. I likewise
15 get paid by the hour to do litigation. So it's
16 cheaper because I'm silly and I charge less than
17 what normal people charge. But there is an
18 expense to it, you know. What that expense would
19 be depends on, you know, how many issues get
20 raised, how long the Court drags it out, you
21 know, all of the things that typically go into
22 litigation.

23 So there is a cost. What it would be, it's
24 hard to say for sure. But it wouldn't be, you
25 know, a battle of experts and that kind of stuff.

1 It would be just, you know, "Hey, did this body
2 act in accordance with the law?"

3 CHAIRPERSON MASSEY: Mr. Flanagan.

4 BOARD MEMBER FLANAGAN: I come down more on
5 the legal side also. And I understand what
6 you're saying, Ms. Tolocko -- Tolocko. I just
7 can't -- I have a hard time getting past the fact
8 that someone can come in and advise you that you
9 can put 600 square feet of deck on -- on a house
10 in addition to what you have there.

11 And now we're -- we're looking at -- it's
12 going to be more than just litigation and -- the
13 cost of litigation is going to have an effect,
14 perhaps, on what the city gets, what the city can
15 do, what control the city has on its own prop-
16 -- with regard to its own property. So it's more
17 than just the cost of litigation.

18 I think that the variances in the -- in the
19 statute, it sets forth -- the statute sets
20 fourth, the variance can't be granted for various
21 things. I don't think the legal standard has
22 been met. That's it.

23 CHAIRPERSON MASSEY: Ms. Larson?

24 Mr. Stern, did you have any additional
25 comments?

1 Ms. Hildebrand?

2 Or Mr. Flanagan?

3 BOARD MEMBER FLANAGAN: Any more comments?

4 No.

5 CHAIRPERSON MASSEY: For the reasons
6 expressed, I move that this variance be denied.

7 BOARD MEMBER FLANAGAN: I'll second.

8 CHAIRPERSON MASSEY: Ms. Meyer, please call
9 the roll -- roll call vote.

10 THE DEPUTY CLERK: Member Flanagan?

11 BOARD MEMBER FLANAGAN: I do -- I do not
12 vote for the variance. It should be denied.

13 THE DEPUTY CLERK: Member Hildebrand.

14 BOARD MEMBER HILDEBRAND: Denial of the
15 variance.

16 THE DEPUTY CLERK: Member Larson.

17 BOARD MEMBER LARSON: Denial. Denial.

18 THE DEPUTY CLERK: Member Stern.

19 BOARD MEMBER STERN: Abstain.

20 THE DEPUTY CLERK: Chairman Massey.

21 THE COURT: Denial of the variance.

22 Ms. Tolocko, your variance has been denied.
23 Do you have any questions? Or do you know how to
24 proceed with the city? Or do you have any
25 questions there?

1 Ms. TOLOCKA: I'm sure I have a lot of
2 questions, but I just can't do it right now.
3 Thank you.

4 CHAIRPERSON MASSEY: Any questions you can
5 address either to Mr. Golden or Mr. Zader at the
6 City of Mequon. And do you know how to contact
7 them?

8 Ms. TOLOCKA: I do. Thank you.

9 CHAIRPERSON MASSEY: Okay. Thank you.

10 We're going to take a five-minute break.
11 And then we're going to be proceeding with the
12 next request, which is by Hannah Boyd, Instyle
13 Homes.

14 (End of transcript excerpt.)
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CERTIFICATE OF TRANSCRIPTIONIST

I, Teresa Johnson, do hereby certify that I transcribed the electronic recording of the foregoing proceedings; and that the foregoing transcript is a true transcript of said electronic recording.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED this 29th day of August 2023.



Teresa Johnson

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Office of the City Clerk

Packet from the March 2, 2023 Board of Appeals meeting.

Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)



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Office of the City Clerk

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

Agenda

- 1) Call to Order, Roll Call
- 2) Approve meeting minutes of December 1, 2022
- 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.
 - 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.
- 4) Adjourn

Dated: March 2, 2023

/s/ Kathleen Massey, Chair

.....
Notice is hereby given that a quorum of other governmental bodies may be present at this meeting to present, discuss and/or gather information about a subject over which they have decision-making responsibility, although they will not take formal action thereto at this meeting. Persons with disabilities requiring accommodations for attendance at this meeting should contact the City Clerk's Office at 262-236-2914, twenty-four (24) hours in advance of the meeting.

Any questions regarding this agenda may be directed to the City Clerk's Office at 262-236-2914, Monday through Friday, 8:00 AM – 4:30 PM.

Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)



draft

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, December 1, 2022
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 Thomas Flanagan
Board Member Ramona Larson
Board Member Robert Stern
Board Member Steve Helfer- Non-voting member this meeting
Board Member Kirsten Hildebrand – Non-voting member this meeting

Also Present: City Clerk Caroline Fochs, City Attorney Brian Sajdak, Community Development Assistant Director Jac Zader, Inspection Supervisor Gregg Golden, Matthew Johns of Refined Renovations, and interested public.

2) Approve meeting minutes of June 2, 2022

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

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

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

a) Applicant: Mike Ryan
Owner: Mike Ryan
Appeal: Opportunity will be afforded to all interested in being heard concerning the petition by Mike Ryan requesting a variance from Section 58-249 of the City of Mequon Code of Ordinances in order to install ground mounted solar panels that exceed the required front setback at 11724 N. Shorecliff Avenue.

Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)

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

All parties appearing before the Board of Appeals were sworn.

Assistant Director of Community Development Zader explained that the applicant is requesting a variance to Section 58-249 of the City of Mequon Municipal Code in order to install ground mounted solar panels. The designed plan is contrary to code due to not conforming to the 75' front setback. These panels are greater than 6" in height, therefore regulated by code. Mr. Zader explained that the applicant has other options for placement of the panels on the property, mainly to install the panels on the roof or at the south end of the driveway. This home has not been designated as a historic home so additional panels on the roof is a plausible solution. Due to these options staff is asserting there is no hardship therefore recommending denial of the variance.

Mr. Zader confirmed that the current home is powered by electricity, that solar power is not the only power to the home. Exhibit A was entered into the record, a drawing of the proposed panels.

Mr. Matthew Johns spoke on behalf of the applicant. He stated that the home currently has solar panels on the roof, however, there are not enough to power the home with 100% solar power which is the goal of the owner. He claims that the design before the Board is the only location on the parcel in which the panels can be constructed. He asserts that the roof is not feasible due to the home being architecturally significant, and not wanting to detract from the aesthetics. He also explained that the roof is not large enough and is not slanted in the correct direction to allow enough panels to be installed for 100% solar power to the house. The south side of the home is not an option because in order for the panels to get adequate sunlight, 100 year old oak and maple trees would need to be cut down. The Board asked if fewer panels could be installed or if two rows of panels could be installed consistent with the municipal code? Mr. Johns stated that these are not feasible options.

Daniel Sabie of 11503 Shorecliff Lane stated he is a neighbor and suggested installing the panels on the bluff for morning sunlight. He also cautioned the Board about setting a precedent that could lead to more structures built in the front setbacks.

Mr. Zader stated that refraining from adding more panels on the roof and not constructing the panels on the south side of the driveway are choices, therefore there is no hardship in this case.

Motion to close the public hearing.

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

AYES: Massey, Russell, Flanagan, Larson, Stern

Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)

Board discussion ensued:

- The home is powered by electricity, solar power is not their only option
- The home is not historically protected and the owner could install more panels on the roof
- There is enough room on the south side of the driveway to install the panels
- A combination of more panels on the roof and panels on the south side of the driveway could potentially accomplish the owner's goal of energy independence\
- The hardship is self-imposed

Motion to deny the petition by Mr. Ryan requesting a variance from Section 58-249 in order to install ground mounted solar panels that exceed the required front setback.

RESULT: **Approved by Roll Call Vote [Unanimous]**

MOVED BY: Board Member Massey

SECONDED BY: Board Member Stern

AYES:	Massey, Russell, Flanagan, Larson, Stern
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The following appeal was not heard as the appellant asked for a postponement prior to the meeting.

- b) 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 58-38 (c) of the City of Mequon Code of Ordinances in order to retain the deck that was constructed without obtaining a permit at 12656 N. Shoreland Parkway.

4) Adjourn

Motion to adjourn at 6:48 PM.

RESULT: **Approved by Voice Acclamation [Unanimous]**

MOVED BY: Board Member Flanagan

SECONDED BY: Board Member Stern

AYES:	Massey, Russell, Flanagan, Larson, Stern
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Respectfully Submitted,
Kathy Andrykowski
Deputy Clerk

Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)

BOARD OF APPEALS VARIANCE APPLICATION**CITY OF MEQUON, WISCONSIN**

Applicant: NANCY TOLOCKO Address: 12644 N. SHORELAND PKY
 City/zip: MEQUON, WI 53092

Owner: NANCY TOLOCKO Address: 12644 N. SHORELAND PKY
 City/zip: MEQUON, WI 53092

Contact Person/Name: NANCY TOLOCKO

Phone Number: 262-573-9049 Email: NANCYTUPPER12@GMAIL.COM

TO THE BOARD OF APPEALS:

The above hereby requests a variance to City of Mequon Code Sec. #: 58-800(b)(1)
 regarding:

12656 N. SHORELAND PKY

(street address or legal description)

in order to: RETAIN THE CONSTRUCTED DECK AT
12656 N. SHORELAND PKY. THAT EXCEEDS THE
SQUARE FOOTAGE SPECIFIED IN THE CODE.

APPLICANT MUST PROVIDE:

Application form

\$215 filing fee

1 copy each of the following documents

1. Copy of denial letter if any, or a description of the denial
2. Letter explaining hardship or practical difficulty in complying with the ordinance requirement(s)
3. Detailed dimension drawing of/and indicating area where appeal/variance is requested
4. Elevation drawings if appropriate (4 views)

FOR OFFICE USE ONLY

Receiving Officer: <u>Cassidy Ink</u>	Received Date: <u>2-8-23</u>
Parcel #: <u>151-010-106-001</u>	Hearing Date: <u>3-2-23</u>
Zoning District: <u>FW</u>	Receipt #: <u>003604-0055</u>
Alderman & District #: <u>Ald. Bushee / Dist. 2</u>	Published: <u>2-16-23</u>

- c: Notice of scheduled hearing to DISTRICT ALDERPERSON, OWNER(S) OF RECORD as listed in the Office of the Assessor and all parcels in the City of Mequon as per state statute and City of Mequon Communication Policy.

City of Mequon
Board of Appeals
11333 N. Cedarburg Rd.
Mequon, WI 53092

February 8, 2023

To the Board of Appeals:

Thank you for taking the time to review my variance request for the deck located at 12656 N. Shoreland Pkwy.

For background information... N. Shoreland Pkwy is a dead end road along the Milwaukee River. It is in the floodplain. It is an exceptionally narrow road because it is one of the older streets of Mequon and there are no houses across the street, except for one at the entrance from Highland Road. All other homes are located along the river side of the road and were once summer cottages, most built near 100 years ago.

This home has had a street side deck and a river side deck for as long as I can remember, going back at least 35-40 years. While maintaining the existing decks (replacing deck boards and railing) we decided to connect the two decks with a deck along the south side of the house. I was not aware of the 200 sq. ft. limit at the time.

I ask that you provide this variance to me for reasons below:

- 1) I have lived through many floods on this street. Most of the houses on this road have doors that are well above ground level, with stairs and decks for access. During floods, all the neighbors and I park our vehicles up near Highland Rd., on high ground, and we paddle canoes and boats to and from our homes. I am sure you have seen our street on local and national news during great floods, but I want to add that this street routinely floods; it's just not always as high or news-making. It is a hardship when it floods.

The decks ease the hardship of accessing our homes. The flood waters often reach nearly deck and door level. (see attached Flood photos) When we must use canoes or paddle boats to get to and from work and bring in needed supplies, having drop off areas for supplies and groceries on a deck - along with it being the place to tie up boats - make decks an integral and essential part of life when living in the floodplain.

During a flood, this newly enlarged deck gives me the ability to temporarily store items like lawn equipment, grills, outdoor tools, lawn furniture, garbage cans, lawn decorations and such, keeping them out of flood waters and avoiding the potential of floating down river.

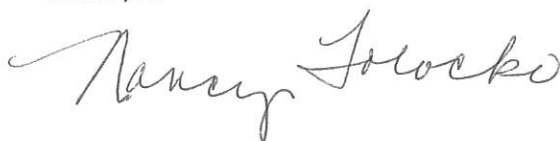
- 2) Deviating from the dimensional standards of deck size in the floodplain is not contrary to the public interest and will not be damaging to the rights of other persons or property values in the area. Nearly everyone on this street has front and back decks.
- 3) This deck is a permeable structure that allows for the natural flow of flood waters to run under, through and past. It will not impede, redirect or displace floodwaters. It will not increase the regional flood height. It is an anchored structure and resists flotation, collapse and lateral movement.

- 4) The deck is well built and aesthetically pleasing, which only benefits the neighborhood and property values

Attached are photos of Shoreland Pkwy during a flood to give you some perspective.

I have been a proud Mequon resident on Shoreland Pkwy for close to 40 years. I sincerely hope that the board sees the value of my request and grants this variance.

Thank you.



Nancy Tolocko

Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)

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Eases hardship of a flood event

Provides area to load and unload supplies

Provides place to tie up boats during a flood

Provides a place to secure and temporarily store items like lawn equipment, grills, outdoor tools, lawn furniture, garbage cans, lawn decorations and such, keeping them out of flood waters and the potential of floating down river

Additional square footage is not contrary to the public interest

Deck is a permeable structure, allowing the natural flow of flood waters

Does not impede, redirect or displace flood waters

Does not increase the regional flood height

Is an anchored structure that resists flotation, collapse and lateral movement

Is aesthetically pleasing

Exceeds square footage specified in code

12656 N. SHORELAND PKY.

**B
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R
E**

Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)



A F T E R

13656 N. SHORELAND PKY.



Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)

SHORELAND PKY DURING A FLOOD





We, the residents of N. Shoreland Pkwy, support
Nancy Tolocko's request for variance and have no objection
to the deck constructed at 12656 N. Shoreland Pkwy.

NAME

PRINT NAME

ADDRESS

Patricia Zipfer	PATRICIA ZIPFER	12608 N. SHORELAND, PKWY
Robert W. Zipfer	ROBERT W. ZIPFER	12608 N. SHORELAND PKWY
Bethany Vulich	Bethany Vulich	12618 N. Shoreland Pkwy
Tom Oettiker	TOM OETTIKER	12548 N. SHORELAND PKWY
Linda K. Weiher	Linda K. Weiher	12548 Shoreland Parkway
William R. Bayer	William Bayer	12540 N. Shoreland Pkwy
Sue Richards	Sue RICHARDS	12718 N. SHORELAND PKWY
QUEEN PELL	Queen Pell	12712 N. SHORELAND PKWY
Candace Zuniga	Candace Zuniga	12736 N Shoreland PKWY
Amy Bailey	Amy Bailey	12759 N. Shoreland Pkwy
Lois Mueller	LOIS MUELLER	12564 N. SHORELAND PKWY
Mike Gross	Mike Gross	12554 N. Shoreland Pkwy
	"Chairman M-T River Advisory Board"	
JUNE KNADE	June Knade	12740 N. SHORELAND PKWY
REBECCA STERN	REBECCA STERN	125210 N SHORELAND PKWY
KIRT BJORK	Kirt Bjork	12724 N. SHORELAND PKWY
Shrene Forbes	Shrene Forbes	12628 N Shoreland Pkwy

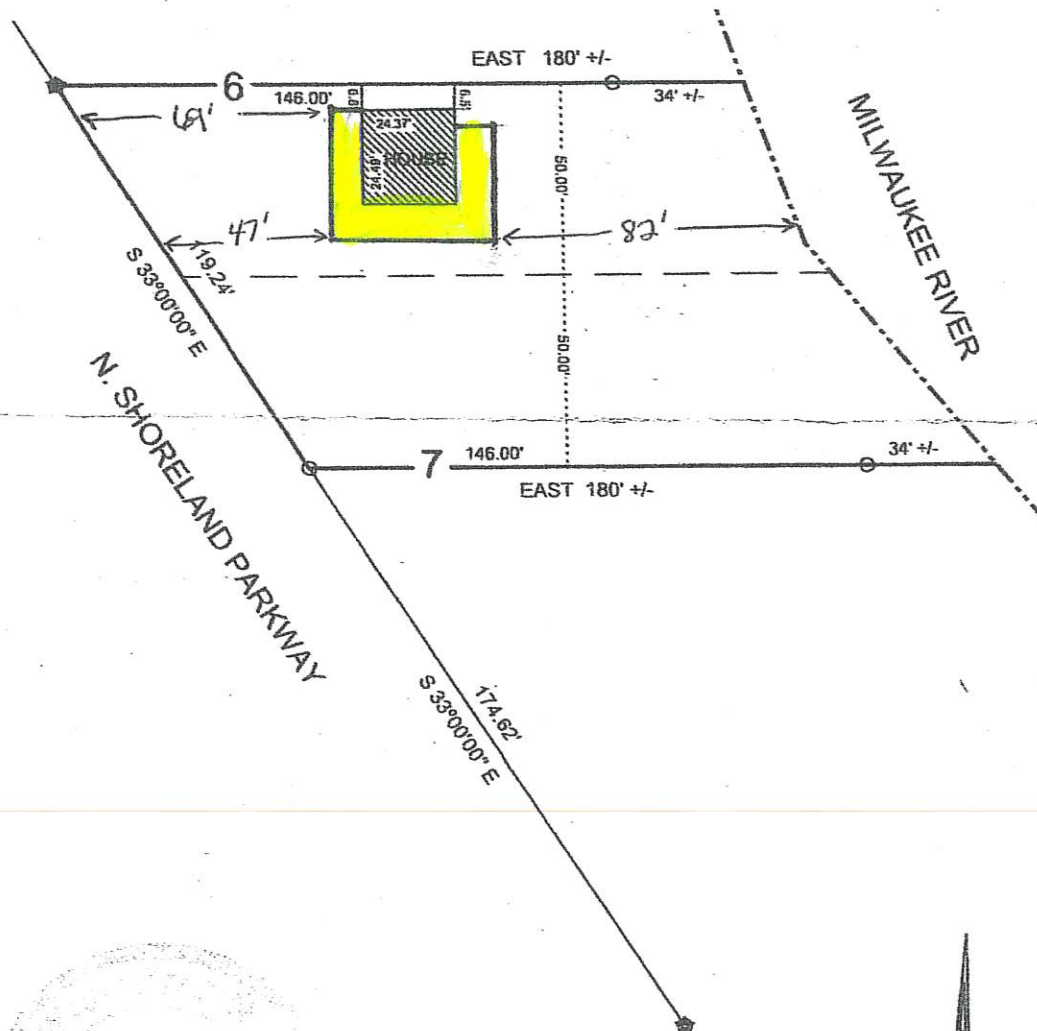
Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)

12656 SHORELAND PARKWAY

TAX PARCEL 15-101-01-06-001

BEING THE SOUTH HALF OF LOT 6 AND THE NORTH HALF OF LOT 7
OF BLOCK 1 OF RIVERSIDE PLAT LOCATED IN SECTION 18

T.9 N., R.22 E., CITY OF MEQUON, OZAUKEE COUNTY, WISCONSIN.



THIS IS TO CERTIFY THAT THE INFORMATION SHOWN HEREON
IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

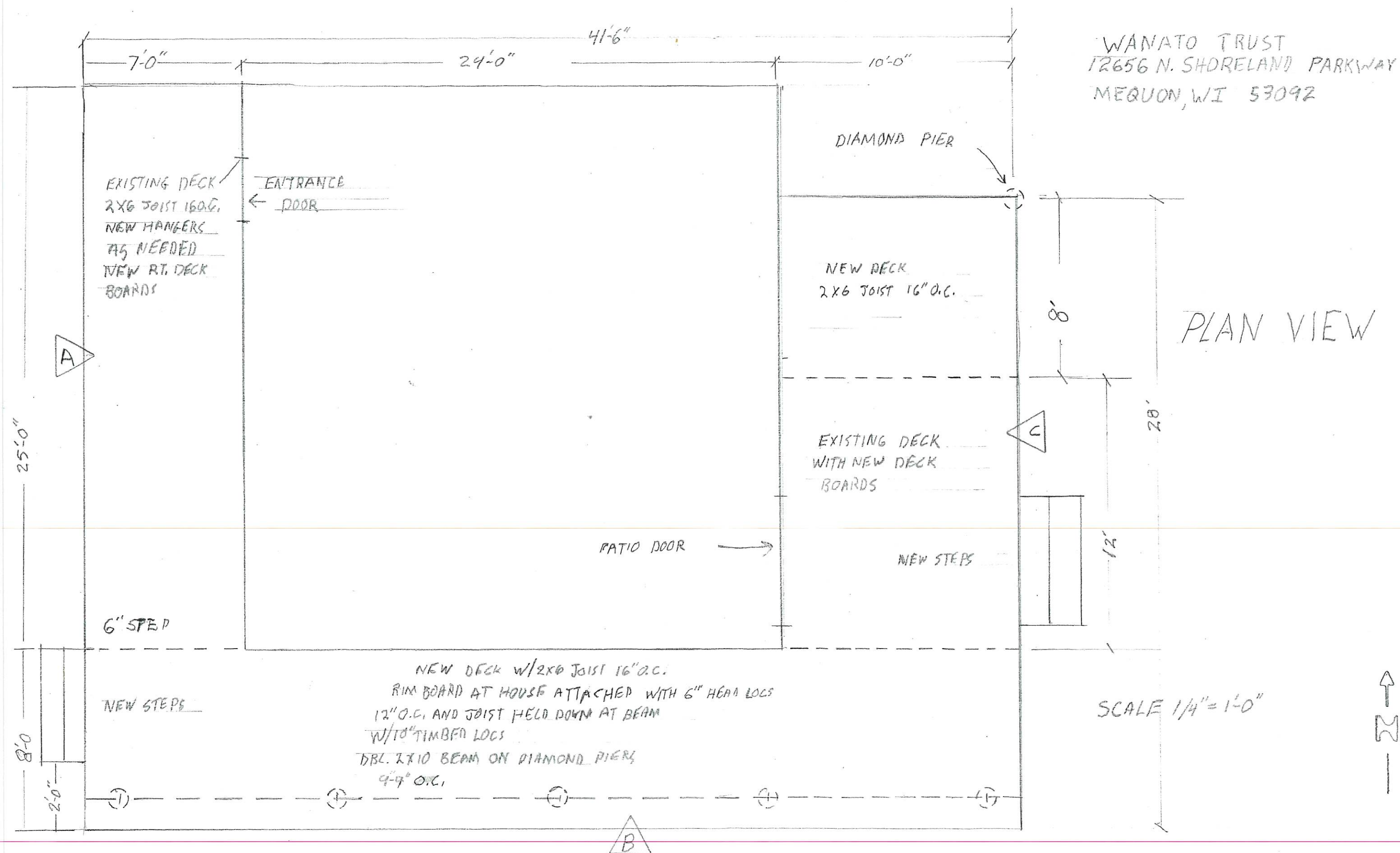
Dennis J. Van Sluys

Dennis J. Van Sluys S-1238

★ = 1" IRON PIPE FOUND

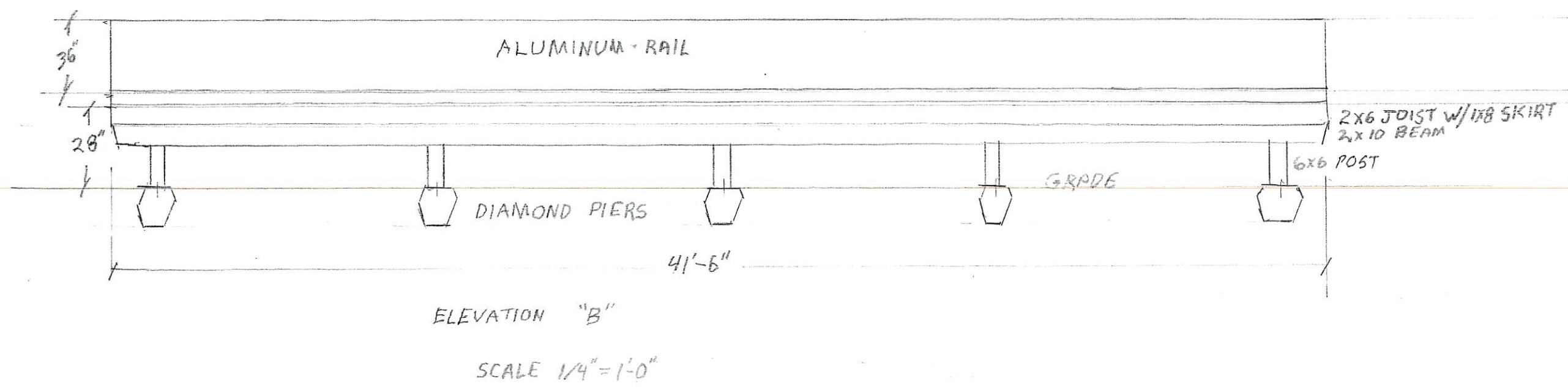
○ = 1" IRON PIPE SET

1" = 50'

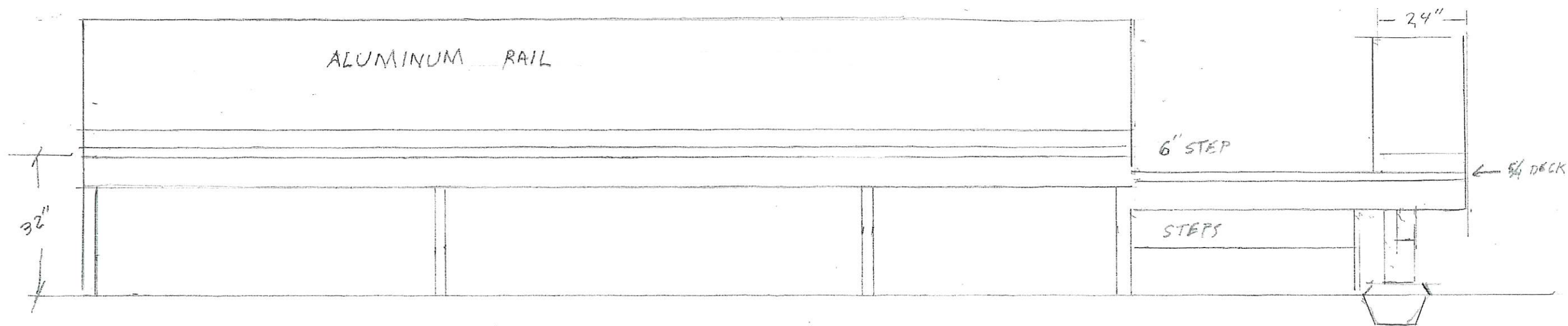


WANATO TRUST

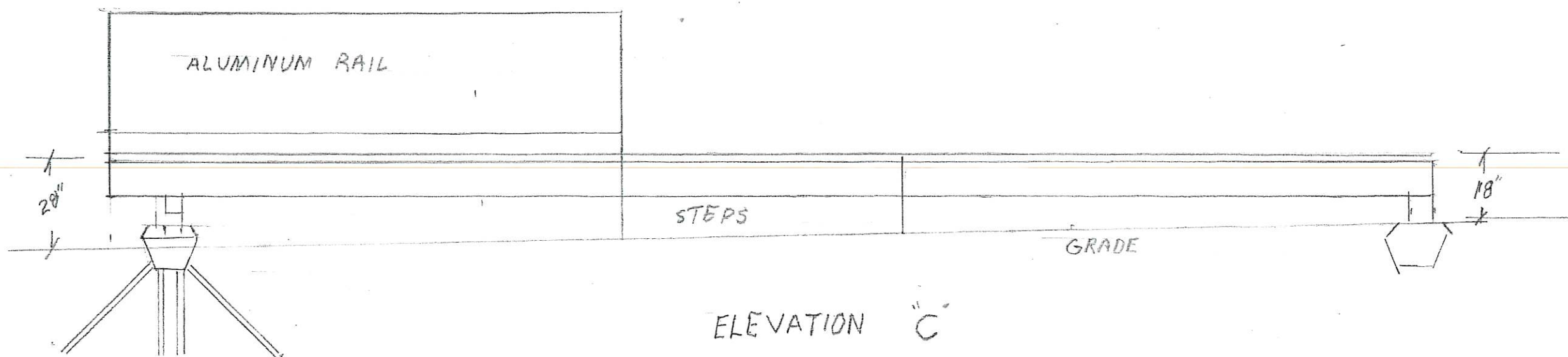
12656 N. SHORELAND PARKWAY
MEQUON, WI 53092



Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)



ELEVATION "A"



ELEVATION "C"

WANATO TRUST

12656 N. SHORELAND PARKWAY MEQUON, WI 53092

SCALE 3/8"=1'-0"



11333 N. Cedarburg Road
Mequon, WI 53092-1930
Phone: 262-242-3100
Fax: 262-242-9655

www.ci.mequon.wi.us

Office of Board of Appeals

TO: Board of Appeals
FROM: Laurie Miller, Planner
DATE: March 2, 2023
SUBJECT: Nancy Tolocko Variance: 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 without obtaining a permit at 12656 N. Shoreland Parkway.

Background: The appellant is requesting a variance to Section 58-800(b)(1) which prohibits modifications or additions to a nonconforming structure located in floodplain with the exception of a deck that cannot exceed 200 square feet. Section 58-800(b)(1) meets statutory requirements set by the Wisconsin Department of Natural Resources (WDNR). The property is zoned FW Floodway District. The appellant replaced the existing 120 sq. ft. deck attached to the east side of the building and added an additional 603 sq. ft of deck on the east, south, and west side of the building without the issuance of a permit.

Inspection Department was notified of the deck by a neighboring property and instructed the appellant in August of 2022 to seek a building permit to avoid code enforcement action. The appellant submitted a building permit application on August 26, 2022. The application was denied by the Community Development Department on August 30, 2022 stating that they cannot approve the west and south side decking.

Code enforcement issued an order to correct on September 13, 2022. The order to correct stated the following:

- Resident is allowed to keep the original 120 sq. ft. deck located on east side of the building.
- Resident is required to remove the west and south decking.
- Resident shall submit a building permit to reconstruct stairs by the west elevation door and the 80 sq. ft. deck addition on the east side of the building.

Analysis: The applicant's hardship is self-imposed and approving the variance will open the City up to a possible lawsuit from the WDNR. The applicant is able to replace the decking on the existing 120 sq. ft. deck and add an additional 80 sq. ft. deck by applying for a building permit. Had a building permit been applied for, staff would have been able alert the resident that the proposed size of the deck was non-compliant prior to the investment and construction of the deck.

Without the approval of the variance, the applicant will be able to maintain full access to the two entryways into the home. A landing and stairs may be constructed for both entryways per State Building Code SPS 321. Section 58-800(b)(1) will also permit up to 200 sq. ft. of deck which may be purposed as access to the existing entryways and serve as a place to secure and store items during flooding events. The remaining portion of the newly constructed deck is not required for access to the home and therefore would be removed unless a variance is granted.

Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)

Wisconsin State Statute NR 116.21(4) regulates the City's ability to provide a variance from Section 58-800 (b)(1); however, the variance request will violate several of the NR 116.21(4) criterion to allow for the variance to be issued. State statute NR 116.21 (4) has been attached to the staff report and criterion have been highlighted that could be considered violated should the City approve the variance.

Recommendation: Staff recommends denial of the variance request because the applicant's hardship is self-imposed and the City's exposure to a lawsuit.

Attachments:

Nancy Tolocko BOA application_03-02-23 (PDF)

Tolocko BOA application_12-01-22 (PDF)

NR 116.21 attachment (PDF)

Ald. Bushee Email (PDF)

BOARD OF APPEALS VARIANCE APPLICATION**CITY OF MEQUON, WISCONSIN**

Applicant: Nancy Tolocko Address: 12656 N. Shoreland Pkwy
 City/zip: Mequon, WI 53092
 Owner: Nancy Tolocko Address: 12644 N. Shoreland Pkwy
 City/zip: Mequon, WI 53092
 Contact Person/Name: Nancy Tolocko
 Phone Number: 262-573-9049 Email: NANCYTUPPER12 @ GMAIL.COM

TO THE BOARD OF APPEALS:

The above hereby requests a variance to City of Mequon Code Sec. #: 58-38(c)
 regarding:

12656 N. Shoreland Pkwy.

(street address or legal description)

in order to: retain deck

APPLICANT MUST PROVIDE:

Application form

\$215 filing fee

1 copy each of the following documents

1. Copy of denial letter if any, or a description of the denial
2. Letter explaining hardship or practical difficulty in complying with the ordinance requirement(s)
3. Detailed dimension drawing of/and indicating area where appeal/variance is requested
4. Elevation drawings if appropriate (4 views)

FOR OFFICE USE ONLY

Receiving Officer: <u>Carol Ink</u>	Received Date: <u>10-12-22</u>
Parcel #: <u>151-010-106-001</u>	Hearing Date: _____
Zoning District: <u>FW</u>	Receipt #: <u>003604-0055</u>
Alderman & District #: <u>Ald. Bushee/Dist. 2</u>	Published: _____

- c: Notice of scheduled hearing to DISTRICT ALDERPERSON, OWNER(S) OF RECORD as listed in the Office of the Assessor and all parcels in the City of Mequon as per state statute and City of Mequon Communication Policy.

CITY OF MEQUON
DEPARTMENT OF COMMUNITY
DEVELOPMENT CODE ENFORCEMENT
SERVICES

11333 North Cedarburg
Road MEQUON, WI 53092
PHONE 262-236-2943 FAX 262-242-9655

ORDER TO CORRECT CONDITION OF PREMISES

NANCY TOLOCKO
12656 N SHORELAND PKWY
MEQUON, WI. 53092

DATE: 9/13/22

PROPERTY ID#: 151010106001

NANCY,

Your property has been observed to be in violation of the Mequon Code of Ordinances.

VIOLATION: An inspection of the property at ABOVE ADDRESS on 8/26/22 confirms that the deck located on your property was done without obtaining a permit. This is a violation of SECTION 58- 38 (c) of the City of Mequon Code of Ordinances.

ACTION REQUIRED:

PLEASE REMOVE THE HIGHLIGHTED PART OF THE NEW DECK. PLEASE RESUBMIT A BUILDING PERMIT FOR DECK ON EAST SIDE AND STAIRS ON WEST SIDE BY DOOR.

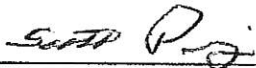
CORRECTION DEADLINE DATE: You are hereby ordered to correct this violation by 12/14/22

PENALTY: Failure to correct the violations noted herein within the time set may subject you to prosecution and to penalties ranging from \$125 to \$300 per violation per day (plus court costs) in the manner provided in Section 1-7 of the City of Mequon Code of Ordinances.

APPEAL: Pursuant to Section 58-41, you may appeal an order, requirement, decision, or determination made by the Enforcement Officer, which you believe to be an erroneous interpretation or application of the law. An appeal may be taken by the aggrieved person within 30 days of the order, requirement, decision, or determination, by filing a notice of appeal with the City Clerk on the prescribed form specifying the grounds for the appeal and paying the prescribed fee.

Questions, comments, or concerns regarding this order shall be directed to the City of Mequon, by calling (262) 236-2943. You may also wish to visit the City's website at www.ci.mequon.wi.us to review the entire City of Mequon Code of Ordinances.

SIGNATURE:



DATE 9/13/22

SCOTT PINZER CODE ENFORCEMENT OFFICER CITY OF MEQUON

Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)



Nancy Tupper <nancytupper12@gmail.com>

12644 N. Shoreland Pkwy

5 messages

Laurie Miller <lmiller@ci.mequon.wi.us>

Tue, Aug 30, 2022 at 3:35 PM

To: "nancytupper12@gmail.com" <nancytupper12@gmail.com>

Cc: Greg Golden <ggolden@ci.mequon.wi.us>, Scott Pinzer <spinzer@ci.mequon.wi.us>

Good afternoon,

12656

Thank you for submitting your building permit application for the deck surrounding the home of 12644 N. Shoreland Pkwy. Unfortunately, I cannot approve this permit because the west and south decking exceeds the front setback of 50' (The setback from the proposed deck is anywhere from 32' to 40'). My understanding from our inspector, Greg Golden, is that this structure has already been constructed. Please work through Greg Golden and our Code Enforcement Officer, Scott Pinzer, to establish a timeline to when the deck on west and south side of the home has been removed. You may submit an updated permit application if you wish to keep the decking attached to the rear portion of the home. Should you have any questions, please don't hesitate to reach out to me.

Sincerely,

Laurie

**Laurie Miller**

Planner

City of Mequon

11333 N. Cedarburg Rd. | Mequon, WI 53092

262-236-2908 | lmiller@ci.mequon.wi.us

City Website

Nancy Tupper <nancytupper12@gmail.com>

Tue, Aug 30, 2022 at 5:05 PM

To: Laurie Miller <lmiller@ci.mequon.wi.us>

Cc: Greg Golden <ggolden@ci.mequon.wi.us>, Scott Pinzer <spinzer@ci.mequon.wi.us>

Hi Laurie, Greg and Scott,

I don't understand what this means. Is it possible for you, Greg or Scott to call me to explain or better yet pay me a visit? The deck on the front and back sides of the house were existing structure that we resurfaced. The address of the property is 12656 N. Shoreland Pkwy.

Thanks very much. I appreciate any help you can provide.

Nancy Tolocko

City of Mequon
11333 N. Cedarburg Rd.
Mequon, WI 53092

October 11, 2022

To the Board of Appeals:

This amends my previous letter to you, dated 10/9/22 and submitted 10/11/22, in regard to my appeal for variance on deck size and location for PROPERTY ID: 151010106001, Address: 12656 N. Shoreland Parkway, Mequon.

Additional Information came to my attention yesterday as I worked with staff to begin my appeals process. I thought I was appealing to you because of the letter I received from the City of Mequon Code Enforcement Officer on 9/13/22, which you received, directing me to tear down two decks because, as the letter states, I did not have a permit.

As I said before, I tried to rectify that issue, but was denied a permit because of what I was told were setback issues - the deck was not set back by the standard 50 feet.

I DID NOT receive any written communication from the City of Mequon regarding a 200 square-foot limitation on decks built in the floodplain. As I was trying to work through the Appeals process with Laurie Miller of City Planning and the City Clerk, the 200 sq. ft. limitation of decks in the floodplain was brought up, and I asked for written code information. I had previously done my homework and found nothing about this in the City of Mequon Code of Ordinances. I was verbally informed that it was a DNR rule, but was not provided with any documentation of this rule.

After returning home and doing hours of digging and research, I found the WI State Statute: NR 116.15(1)(as). Yes, there was the 200 sq. ft. size limit. But as I continued to read the Statutes, I came across NR 116.21(4). The State of Wisconsin, Department of Natural Resources allows all of you, my local Board of Appeals, to grant this deviation from the dimensional standards and keep my deck that is larger than the 200 sq. ft. limit and shy of the 50 ft. setback.

I ask you to provide this variance to me for the reasons that I redress in the Statute:

- 1) I have lived through many floods on this street. Most of the houses on this road have doors that are well above ground level, with stairs and decks for access. During floods, all the neighbors and I park our vehicles up near Highland Rd., on high ground, and we paddle canoes and boats to and from our homes.

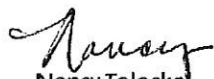
The decks ease the hardship of accessing our homes. The flood waters often reach nearly deck and door level. When we must use canoes or paddle boats to get to and from work and bring in needed supplies, having drop off areas for supplies and groceries on a deck - along with it being the place to tie up the boats - make decks an integral part of life when living in the floodplain.

My newly enlarged deck also gives me the ability to keep a watchful eye on home and property, since it wraps from front door to back door of this small house.

- 2) Deviating from the dimensional standards of deck size and setback in the floodplain is not contrary to the public interest and will not be damaging to the rights of other persons or property values in the area. Nearly everyone on this street has front and back decks.
- 3) Decks are permeable structures that allow for the natural flow of floodwaters to run under, through and past them; they do not impede, redirect or displace floodwaters.

I hope you share in my logic and would be amenable to granting the variance for my deck.

Thank you for your consideration and time.


Nancy Tolocko
262-573-9049

Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)

City of Mequon
Board of Appeals
11333 N. Cedarburg Rd.
Mequon, WI 53092

October 9, 2022

To the Board of Appeals:

Thank you for taking the time to review my appeal. I respectfully request a variance for my deck located at 12656 N. Shoreland Pkwy.

For background information, I live on a dead end road along the Milwaukee River. It is in the flood plain. It is an exceptionally narrow road because it is one of the older streets of Mequon and there are no houses across the street, except for one at the entrance from Highland Rd. All other homes are located along the river side of the road.

With only 20 small houses, my entire street is non-confirming. Most of these homes were once summer cottages, most built 100 years ago. There are homes on this street that have sheds, garages and other structures that are located near or at their lot lines, just a few feet from the road. In other words, there are numerous structures along this small parkway that do not conform to any setback.

My home, at issue today, has had a small, street-side deck for as long as I can remember, going back at least 30-40 years, that included steps from the door down to the yard. The City Inspector said I needed to remove this deck, along with the new one just built onto it, running along the south side of the house. As I recently decided to utilize this sunny side of the house, I built a deck that connects the two existing small decks located at the front and back doors, creating a beautiful wrap-around deck that is well constructed.

I have been given notice that I violated the permit process, which I attempted to rectify by applying, paying fees and penalties and submitting the plans and specs after the construction. I was denied the permit because of the setback standards, which I was amazed to find were applicable to this entirely non-confirming street.

Now I am being forced to tear down the entire new deck along with the old existing one on the west side that has been there for decades and long before I owned this house. This entire deck is 43 feet from the setback rather than the standard 50 feet.

Please see the "Before" and "After" photos of the house and decks. You can see how the improvements have made this property more aesthetically pleasing, which only benefits the neighborhood and property values.

Please note there are many properties that have structures right along the road here. I believe that my new and existing decks should be allowed to remain as they are only slightly off from the setback standard and far enough from the road that makes the shortened setback undetectable.

Thank you for considering my request for a variance.

Sincerely,



Nancy Tolocko
262-573-9049
nancytupper12@gmail.com

Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)



12656 N. SHORELAND PKWY
"BEFORE"

Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)



12656 N. SHORELAND
PKWY.

"AFTER"

Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)

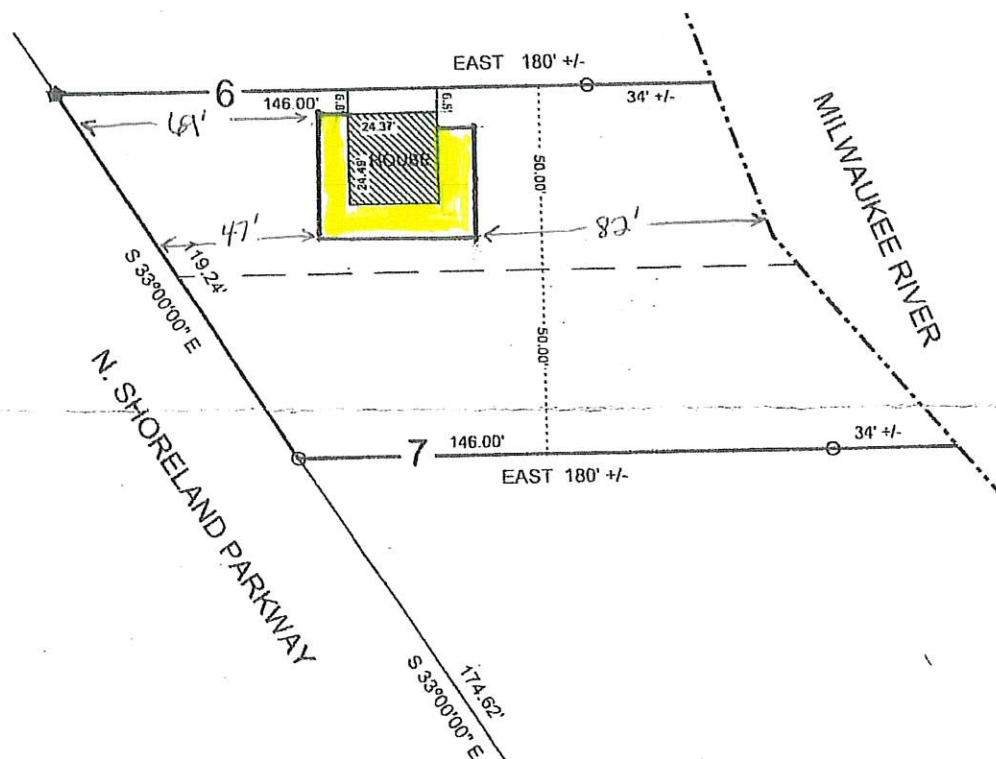
SHEBOYGAN, WISCONSIN

12656 SHORELAND PARKWAY

TAX PARCEL 15-101-01-06-001

BEING THE SOUTH HALF OF LOT 6 AND THE NORTH HALF OF LOT 7
OF BLOCK 1 OF RIVERSIDE PLAT LOCATED IN SECTION 18

T.9 N., R.22 E., CITY OF MEQUON, OZAUKEE COUNTY, WISCONSIN.



THIS IS TO CERTIFY THAT THE INFORMATION SHOWN HEREON
IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Dennis J. Van Sluys
Dennis J. Van Sluys S-1238

⬠ = 1" IRON PIPE FOUND

○ = 1" IRON PIPE SET

1" = 50'

DATA/MEQUON/12656SHO/ L-24126

Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)

2. Any alteration, addition, modification, rebuilding or replacement of any existing structure, building or accessory structure or building;

3. Any deposition of materials for any purpose; and

4. Any sewage disposal system or water supply facilities, both public and private.

(2) **ADMINISTRATIVE PROCEDURES.** The floodplain zoning ordinance shall establish administrative procedures for obtaining all required permits, special exceptions, conditional uses, variances, appeals and amendments. These procedures shall provide for the following:

(a) An application shall be made to the zoning administrator for all zoning permits, special exceptions, conditional uses, variances and amendments. The application shall include, but not be limited to, the following information:

1. The name and address of the applicant and property owner;

2. The legal description of the property and the type of proposed use;

3. A map plan which accurately locates or describes the proposal with respect to the floodway and floodplain, and which provides all pertinent information such as the fill dimensions and elevations, building floor elevations, and floodproofing data; and

4. For all subdivision proposals, as defined in s. 236.02 (8), Stats., and for other land divisions or proposed developments which have a total area that exceeds 5 acres or which have an estimated cost that exceeds \$125,000, the applicant shall provide all of the computations which are required to show the effect of the proposal on flood heights, velocities and floodplain storage. The municipality may transmit this data to the department for review. For the purpose of this paragraph, the cost of the proposal shall be estimated to include all structural development and landscaping improvements such as access and road development, electrical and plumbing services development, and other similar items, which can be reasonably applied to the overall development costs, but may not include the cost of the land.

(b) For land divisions and proposed developments which do not exceed 5 acres in area and which have an estimated cost of \$125,000 or less, if the regional flood profile has not been determined and the conditions in par. (a) 4. are not present, the municipality may transmit the information required in par. (a) 1. to 3. to the department for a determination of flood protection elevations and for an evaluation of the effects of the proposal upon flood heights, velocities and floodplain storage. Additional information, such as valley cross sections or survey data, may be required by the department when needed to determine the effects of the proposal; this information shall then be obtained from the applicant by the municipality. The department shall advise the municipality of its findings within 30 days after receiving the data, or within 30 days after receiving all requested additional information. Failure of the department to respond within 30 days shall be construed to mean it has no comment.

(c) Public hearings shall be held by municipalities on all special exceptions, conditional uses, variances, appeals and amendments. Proper notice shall be given of such public hearings in accordance with appropriate statutes; mailed notice of such public hearings and a copy of the application shall be given to the appropriate department district office. Such notice shall specify the time and place of the hearing and give sufficient details concerning the subject matter of the public hearing.

(d) A copy of all decisions granting or denying a special exception, conditional use, variance or amendment to the floodplain zoning ordinance shall be mailed within 10 days to the appropriate department district office.

(3) **CERTIFICATE OF COMPLIANCE.** No vacant land in the floodplain, and no building hereafter erected, altered or moved into the floodplain, may be occupied or used until the applicant obtains a certificate of compliance from the municipality. Municipalities

shall require that the certificate be issued only after the applicant has submitted, prior to occupancy, to the municipal zoning administrator or building inspector a certification by a registered professional engineer or architect that the floodproofing requirements in the floodplain zoning ordinance have been met and a certification by a registered professional engineer, architect or registered land surveyor that the following are in compliance with the floodplain zoning ordinance:

(a) The elevation of fill; and

(b) The elevation of the lowest floor including basement floor.

(4) **ENFORCEMENT AND PENALTIES.** Each floodplain zoning ordinance shall include a separate section establishing appropriate penalties for violations of various provisions of the ordinance. An appropriate penalty, as reflected in s. 87.30 (2), Stats., may include an injunction for abatement or removal, and a fine or forfeiture. Any violation of the provisions of the floodplain zoning ordinance shall be investigated and reported to the appropriate municipal attorney, corporation counsel or district attorney for the prosecution of the violator.

(5) **PUBLIC INFORMATION.** (a) Where useful, marks on bridges or buildings or other markers may be set to show the depth of inundation during the regional flood at appropriate locations within the floodplain.

(b) All available information in the form of maps, engineering data and regulations shall be readily available and should be widely distributed.

(c) All legal descriptions of property in the floodplain should include information relative to the floodplain zoning classification when such property is transferred.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

NR 116.21 Permits, special exceptions, conditional uses, variances, appeals and amendments. (1) **GENERAL.** The floodplain zoning ordinance shall list the specific types of uses which may be authorized by permit, special exception or conditional use, indicating the particular authorization required for each type of use. These authorizations may not be contrary to the provisions of this chapter or other state law, or to applicable municipal ordinances.

(2) **PERMITS.** Municipalities shall issue permits for uses in floodplain areas which are in compliance with the applicable provisions for permitted uses in their floodplain zoning ordinances. These permits shall be issued by the zoning administrator.

(3) **SPECIAL EXCEPTIONS OR CONDITIONAL USES.** Any use requiring a special exception or conditional use permit may be allowed only upon application to the zoning administrator, public hearing and issuance of a special exception or conditional use permit by the board of adjustment or appeals or, where appropriate, the zoning agency. When determining whether to grant or deny a special exception or conditional use permit, the board of adjustment or appeals shall assure compliance of the proposal with:

(a) The provisions of the floodplain zoning ordinance;

(b) The purpose and objective of floodplain management, as enumerated in s. NR 116.01; and

(c) Local land use plans and other land use controls.

(4) **VARIANCES.** Any prohibited deviation from the dimensional standards of the floodplain zoning ordinance, for which a permit has been denied by the zoning administrator, may be allowed only upon written request for a variance submitted to the zoning administrator, public hearing and issuance of a variance by the board of adjustment or appeals. The board of adjustment or appeals may, after a written request for a variance has been submitted and a public hearing has been held, authorize in specific cases such a variance from the dimensional standards of the ordinance which will not be contrary to the public interest if, owing to special conditions and the adoption of the floodplain zoning

ordinance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship. A variance:

(a) Shall be consistent with the spirit of the floodplain zoning ordinance.

(b) May not permit a lower degree of flood protection in the floodplain area than the flood protection elevation.

(c) May not be granted for a use that is common to a group of adjacent lots or premises. In such a case, the zoning ordinance would have to be amended through proper amendment procedures.

(d) May not be granted unless it is shown that the variance will not be contrary to the public interest and will not be damaging to the rights of other persons or property values in the area.

(e) May not be granted for actions which require an amendment to the floodplain zoning ordinance as described in sub. (6).

(f) May not have the effect of granting, increasing or extending a use of property which is prohibited in that zoning district by the floodplain zoning ordinance.

(g) May not be granted solely on the basis of economic gain or loss.

(h) May not be granted for a self-created hardship.

(5) **APPEALS.** Appeals to the board of adjustment or appeals or zoning agency may be taken by any party aggrieved by any decision of the zoning administrator. Requests for special exception or conditional use permits may be considered as appeals. Such appeals shall specify the grounds thereof and be filed within a reasonable period of time with the zoning administrator. The floodplain zoning ordinance shall set forth the time limitations for filing appeals. The zoning administrator shall forthwith transmit to the board of adjustment or appeals or zoning agency all records of the matter concerning the appeal. After public hearing, the board's or agency's decision shall either affirm, reverse, vary or modify in whole or in part the order, requirement, decision or determination appealed from. All appeal decisions shall conform to the applicable provisions of the floodplain zoning ordinance. The board's or agency's decision may be appealed to the courts in accordance with applicable state law.

(6) **AMENDMENTS.** (a) Official amendments are required for any changes in the official floodway lines, water surface profiles, floodplain zoning maps or floodplain zoning ordinance. Actions which require an amendment by the municipality include, but are not limited to, the following:

1. Any change in the official floodway lines or in the boundary of the floodplain area;
2. Settlement of conflicts between the water surface profiles and floodplain zoning maps, in accordance with s. NR 116.10;
3. Any fill, encroachment or development into the floodway which will result in obstructing flood flows; and
4. Any upgrading of floodplain zoning ordinances in accordance with s. NR 116.05.

(b) Amendments may be made upon petition of any interested party in accordance with the appropriate provisions of ss. 59.69 (3) and (4) and 62.23 (7) (d), Stats.

(c) All proposed amendments shall be referred to the appropriate municipal zoning agency for a public hearing and recommendation to the governing body which shall approve or disapprove the proposed amendment.

(d) Amendments of official floodway lines shall meet the provisions of s. NR 116.11.

(e) No amendments to official floodway lines, water surface profiles, floodplain zoning maps or floodplain zoning ordinances may become effective until they have been approved by the department.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; corrections in (6) (b) were made under s. 13.93 (2m) (b) 7., Stats., Register July 2001, No. 547; reprinted to restore dropped copy in (4), Register October 2002 No. 562.

NR 116.22 Department duties. (1) **ASSISTANCE TO MUNICIPALITIES.** The department shall provide assistance to municipalities in the development, adoption and administration of their official floodway lines, water surface profiles, floodplain zoning maps and floodplain zoning ordinances. Such assistance shall include, but not be limited to, the activities described in this subsection.

(a) The department shall establish and upgrade standards for local floodplain zoning ordinances.

(b) When requested by a municipality, the department shall evaluate flood hazards and the effects of proposals in floodplain areas upon water surface profiles, floodway limits and flood velocities as provided in s. NR 116.20 (2) (b). Requests for such evaluations shall come from a municipality, not from individual property owners or applicants. Information needed to conduct the evaluation shall be provided by the applicant or the municipality.

(c) The department shall work with federal agencies to provide technical guidance and computer facilities for certain hydrologic, hydraulic and engineering studies. Generally, the necessary topographic and other base maps and field surveys will be the responsibility of the municipality.

(d) The department shall establish priorities for engineering studies to be done in municipalities by federal agencies.

(e) The department shall respond to the requests from municipalities to provide them assistance in enforcement actions against violations of their floodplain zoning ordinances.

(f) The department shall respond to requests from municipalities for assistance in developing hydraulic and official floodway lines.

(g) The department shall review all studies. No studies may be used until department approval has been secured.

(2) **REVIEW AND APPROVAL OF FLOODPLAIN ZONING ORDINANCES.** The department shall issue a certificate of approval to a municipality upon a finding that the adopted floodplain zoning ordinance meets the provisions of this chapter. The department review of floodplain zoning ordinances may include, but is not limited to, determinations that:

(a) The most accurate maps were utilized in delineating the floodplains;

(b) All floodplain zoning maps and floodplain zoning ordinances are compatible with all other shoreland regulations, existing zoning and land use plans;

(c) All water surface profiles, floodplain zoning maps and floodplain zoning ordinances are compatible with those of the adjoining municipalities on the same streams or rivers; and

(d) The floodway and floodplain lines shown on the floodplain zoning maps are accurate.

(3) **MONITORING.** The department shall monitor the administration and enforcement of floodplain zoning ordinances in municipalities. In so doing, the department may:

(a) Establish and upgrade standards for the review and evaluation of the administration and enforcement of floodplain zoning ordinances.

(b) Review and approve or deny proposed amendments to water surface profiles, floodplain zoning maps and floodplain zoning ordinances.

(c) Review floodplain zoning permits and all special exceptions, conditional uses, variances and amendments to floodplain zoning ordinances, to ensure in each instance compliance with the applicable floodplain zoning ordinances and this chapter.

(d) Review state and federal projects to assure that public works proposals in floodplains are compatible with local floodplain zoning ordinances and the provisions of this chapter.

(4) **ENFORCEMENT.** The department shall assist municipalities in achieving a consistent statewide approach to floodplain

From: Glenn Bushee <gbushee@ci.mequon.wi.us>
Sent: Wednesday, February 22, 2023 6:28 AM
To: Kimberly Tollefson <KTollefson@ci.mequon.wi.us>
Cc: Jac Zader <JZader@ci.mequon.wi.us>
Subject: Please include in March 2nd, 2023 Board of Appeals packet

To the members of the Board of Appeals:

As the alderman for this district, I was asked by Mrs. Tolocko to review the materials and visit her at the property. I concur with her request to allow a variance to code in order to retain the deck.

Former Mayor Dan Abendroth at a time of one of the floods referred to the people living on the river as a "hardy bunch" and that they were able to take care of themselves pretty well. I agree and after going past the homes on the east side of the river many times in all seasons and now the homes on the west side, it is obvious that this is a very different neighborhood from the rest of Mequon. While residents live there year round, it is a self-sufficient cottage/summer home style of living compared to almost all other areas within the city.

It is also obvious that the larger deck provides a very necessary service of protecting items that would otherwise be in the yard from floating into the river with the nearly annual flooding. Since homes do not include basements and are generally small in size, this seems to be an extremely valuable component for a home on the river. In addition, the deck is solidly constructed and provides structural integrity to allow water to flow around and through while giving the ability to maintain items on the deck. Rather than being a concern for debris in the river, this deck provides desirable protection for our ecological resources.

While I understand the 200 sq ft limitation set as a statewide standard, I'd note again how unique this area is and encourage board members to visit the location.

I strongly support Nancy Tolocko's appeal.

Thank you very much for your time and efforts on the Board of Appeals.

- Glenn Bushee
Alderman, Mequon District 2
Cell: 414-412-3857

Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)

- (a) *Applicability.* If these standards conform with Wis. Stats. § 59.69(10), for counties or Wis. Stats. § 62.23(7)(h), for cities and villages, they shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this article or any amendment thereto.
- (b) The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this article may continue subject to the following conditions:
- (1) No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this article. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Ordinary maintenance repairs are not considered an extension, modification or addition; these include painting, decorating, paneling and the replacement of doors, windows and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Ordinary maintenance repairs do not include any costs associated with the repair of a damaged structure.

The construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition.
 - (2) If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months or 36 cumulative months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this article;
 - (3) The city shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent;
 - (4) No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would exceed 50 percent of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this article. Contiguous dry land access must be provided for residential and commercial uses in compliance with subsection 58-782(a). The costs of elevating a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50 percent provisions of this paragraph;
 - (5) a. Except as provided in subsection b. below, if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition exceeds 50 percent of the structure's present equalized assessed value.

b. For nonconforming buildings that are damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building may be permitted in order to restore it after the nonflood disaster, provided that the nonconforming building will meet all of the minimum requirements under applicable FEMA regulations (44 CFR Part 60), or the regulations promulgated thereunder.
 - (6) A nonconforming historic structure may be altered if the alteration will not preclude the structures continued designation as a historic structure, the alteration will comply with subsection 58-772(a), flood resistant materials are used, and construction practices and floodproofing methods that comply with section 58-814 are used.
- (c) Unclassified uses, governed in the section 58-172 of this Code, are uses not specifically listed in this section and are prohibited in all floodway or floodfringe areas. Examples of these uses include; manufactured homes, mobile homes and mobile home parks, and private or public campgrounds.

(Ord. No. 2007-1201, § I, 2-13-2007)



Attachment: Tolocko 3-2-23 packet (8916 : Tolocko 3-2-23 Packet)

Legend

Tax Parcel	CSM	US Highway	Town/Public Road
Gap	Cemetery Plat	State Highway	Railroad Centerline
Overlap	Condominium Plat	County Road	
Historical Parcel Lines	Subdivision Plat	Ramp	
Assessors Plat	Plat of Survey	Private Road	

Product of the LAND INFORMATION OFFICE
10/19/2022, 2:35:54 PM

10/19/2022, 2:35:54 PM

0 0.00375 0.0075 0.015 0.0225 0.03 mi

DISCLAIMER: This map is not a substitute for an actual field survey or

OZAUKEE COUNTY

Packet Pg. 126

February 22, 2023

Re: Nancy Tolocko's request for a variance to Section 58-800(b)(1) of the City of Mequon Code of Ordinances in order to retain the deck at 12656 N. Shoreland Parkway

To the members of the Board of Appeals:

As the alderman for this district, I was asked by Mrs. Tolocko to review the materials and visit her at the property. I concur with her request to allow a variance to code in order to retain the deck.

Former Mayor Dan Abendroth at a time of one of the floods referred to the people living on the river as a "hardy bunch" and that they were able to take care of themselves pretty well. I agree and after going past the homes on the east side of the river many times in all seasons and now the homes on the west side, it is obvious that this is a very different neighborhood from the rest of Mequon. While residents live there year round, it is a self-sufficient cottage/summer home style of living compared to almost all other areas within the city.

It is also obvious that the larger deck provides a very necessary service of protecting items that would otherwise be in the yard from floating into the river with the nearly annual flooding. Since homes do not include basements and are generally small in size, this seems to be an extremely valuable component for a home on the river. In addition, the deck is solidly constructed and provides structural integrity to allow water to flow around and through while giving the ability to maintain items on the deck. Rather than being a concern for debris in the river, this deck provides desirable protection for our ecological resources.

While I understand the 200 sq ft limitation set as a statewide standard, I'd note again how unique this area is and encourage board members to visit the location.

I strongly support Nancy Tolocko's appeal.

Thank you very much for your time and efforts on the Board of Appeals.

- Glenn Bushee
Mequon Alderman District 2
gbushee@ci.mequon.wi.us

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