



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

Minutes

1) Call to Order

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 Steve Helfer

Board Member Robert Stern -- **Absent**

Board Member Kirsten Hildebrand -- **Excused**

Also present: City Attorney Brian Sajdak, City Clerk Caroline Fochs, Attorney Chris Jaekels, and interested public.

2) Approve meeting minutes of March 2, 2023

Motion to amend Page 4, bullet point 3 to state: "There are consequences to the City if the DNR determines the City, and this Board, granted a variance in violation of our flood plain ordinance."

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

MOVED BY: Board Member Flanagan

SECONDED BY: Helfer

AYES: Massey, Flanagan, Larson, Helfer

ABSTAIN: Russell

Motion to approve the amended meeting minutes of March 2, 2023

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

MOVED BY: Board Member Flanagan

SECONDED BY: Board Member Massey

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

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

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.

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

All parties appearing before the Board of Appeals were sworn.

Chairman Massey stated that City Attorney Sajdak raised a jurisdictional challenge to the Board's authority to hear this appeal and that will be heard first. Attorney Donner questioned the notice rights of such a jurisdictional challenge stating it was not noted on the agenda. Attorney Jaekels stated he felt fully informed of the jurisdictional challenge after reading the packet. The objection was noted by the Chair.

City Attorney Sajdak explained the reasons for his jurisdictional challenge. In March 2023, Ms. Tolocko submitted an application to the City to retain the already-build deck on the home at 12656 N. Shoreland Parkway. That request was denied by the Building Inspector and an appeal was submitted to the Board of Appeals to request a variance and an appeal of the issues involved. The issues were heard and the Board of Appeals denied her appeal. It is important to note that there was no appeal to the Circuit Court. Instead Ms. Tolocko subsequently submitted a second application requesting to keep her deck. The second application had minor changes such as "1" separation per DNR" and some hand drawn lines. Contemporaneously there were discussions with City Staff about the DNR's position on having multiple 200 square foot decks. The DNR said one cannot have multiple 200 square foot decks. Mr. Sajdak argues that repeat submissions are inappropriate and that decisions of this Board should be valued as final. There is no basis under the law for Ms. Tolocko to return and add or change her argument and therefore, he maintains that this body should deny this request based on this jurisdictional issue of the law.

Board discussion ensued on the description of the deck in the appellant's Exhibit A. It was confirmed that the deadline to appeal to Circuit Court was 30 days from the date of the Board's decision.

Attorney Donner addressed the legal issues presented by Attorney Sajdak. The appellant is asking the Board to review the administrative decision by the Building Inspector's Division to not process her new building permit application. Ms. Tolocko believes her application was revised and is consistent with Mequon Code. The appellant maintains that the City incorrectly directed her to apply under the wrong code initially. Mr. Golden denied her application because

it violated Mequon Code Sec. 58.800(b)(1) because the deck is greater than 200 square feet. Her revised drawing has numerous changes such as adding piers and beams. In the July 11, 2023 letter, Mr. Golden dismisses the application as seeking the same approval. He does not argue that the revised plans are not different enough from those previously submitted, as Attorney Sajdak claims, but rather just dismisses her application. He states that Mr. Sajdak and Mr. Golden are just assuming Ms. Tolocko is seeking approval of multiple 200 square foot decks as an attempt to comply with Sec. 58-800(b)(1). That is incorrect. She is seeking approval under Sec. 58-800(b)(4), where modification or addition to any nonconforming building is allowed as long as the value of the modification does not exceed 50% of the building's present equalized assessed value. Attorney Donner maintains that Sec. 58-800(b)(4) was incorrectly applied by City Staff. It is important to note that Ms. Tolocko was not represented by legal counsel during the initial appeal and subsequently hired representation after receiving the July 11, 2023 denial letter.

Ms. Tolocko stated that she has gained additional knowledge during every step of this long process. She did what City Staff told her to do and requested a variance to keep her deck. That was denied by this Board. She had conversations with the Department of Natural Resources (DNR) and had revised drawings for the deck created in anticipation of submitting a new building permit application to the city. The plans include adding new piers and beams in multiple locations. She thought she had found a solution but was devastated when the denial letter arrived in July. She submitted a separate application for a different deck with a different building plan seeking approval under a different legal theory and staff refused to review it. She is asking the Board to overturn the staff's decision not to accept her revised permit application and review the application on its merits.

Board questions and discussion ensued on the interpretation of the conditions of Sec. 58-800 (b). Do all of the conditions under sub (b) need to be met? Should conversations be had with the City to try to change the ordinance? Also discussed was the potential for double-standard when hearing appeals, definition of due process, differences between original application and the latest application. It was confirmed that the new plan is different because there are now five additional piers, three beams and three one-inch separations. The square footage is the same as before and no changes have been made to the deck or property. The frame is not continuous, they are separate decks. Also discussed was whether the hearing could be suspended to allow discussions with staff about 58-800(b)(4), possible repercussions to the City.

City Attorney Sajdak reiterated that the newest plans are for the same request, Ms. Tolocko had her due process, she could have raised this issue at the first hearing, she chose not to appeal the Board's first decision.

Attorney Donner reiterated that Ms. Tolocko has submitted a different plan and application, under a different theory of law.

Motion to close the public hearing.

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

MOVED BY: Board Member Flanagan

SECONDED BY: Board Member Massey

AYES: Massey, Russell, Flanagan, Larson, Helfer
--

Board discussion ensued.

- Appellant is advocating for different standards between those with counsel and those without counsel
- The appellant should have proposed all her arguments at the first appeal
- The configuration of the new deck is substantially the same as the original plans
- Board of Appeals does not have jurisdiction to hear additional arguments
- Disagreement with interpretation of referenced code
- Try to get the ordinance changed by the Common Council to make it clearer.
- Appellant chose to not appeal to Circuit Court

Motion to dismiss this appeal on the grounds that the Board of Appeals does not have the jurisdiction to rule and this matter was already decided on March 2, 2023.

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

MOVED BY: Board Member Massey

SECONDED BY: Board Member Flanagan

AYES: Massey, Russell, Flanagan, Larson, Helfer
--

4) Adjourn

Motion to adjourn at 7:47 PM.

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

MOVED BY: Board Member Russell

SECONDED BY: Board Member Larson

AYES: Massey, Russell, Flanagan, Larson, Helfer
--

Respectfully Submitted,

Kathy Andrykowski

Deputy Clerk

Approved 01-04-24