



**CITY OF DELAFIELD
MEETING MINUTES
ZONING BOARD OF APPEALS**

Chair: TBD

*Members: George Bogdanovich, Thomas Hoffman, Gerry Holton, Jeffry Krajacic, Matthew Miller
Alternates: Wendy Drago, Jackie Valde*

November 13, 2023

6:00 PM

City Hall, Council Chambers
500 Genesee St.

Regular Meeting Minutes

1. Call to Order

The meeting was called to order at 6:00 PM.

2. Pledge of Allegiance

The Pledge of Allegiance was recited.

3. Roll Call and Confirmation of Quorum

Members Present: George Bogdanovich
Gerry Holton
Matthew Miller
Wendy Drago, Alternate
Jackie Valde, Alternate

Alderspersons Excused: Thomas Hoffman
Jeffry Krajacic

Also Present: Kathy Sawyer-Gutenkunst, City Attorney
Scott Hussinger, Building Inspector
Molly Schneider, City Clerk

4. Elect a Chair of the Zoning Board of Appeals

Motion by Holton, seconded by Miller, to Elect George Bogdanovich as Chair of the Zoning Board of Appeals.

All in favor. Motion carried.

5. Confirmation of Compliance with Open Meetings Law and Public Notice Requirements

Schneider confirmed that hearing notices were mailed to all property owners within 300 ft. of the property in question, published in the paper, displayed in a public location, and posted on the City of Delafield website. The meeting notice and agenda were also posted in accordance with the State of Wisconsin Open Meeting laws.

6. Approval of Minutes of the June 25, 2020 Regular Meeting

Motion by Valde, seconded by Drago, to approve the minutes of the June 25, 2020 Regular Meeting.

All in favor. Motion carried.

7. Public Hearings:

A. Public Hearing #1:

Topic: Appeal to grant a variance to construct a deck in the shore yard

Location: 2646 Peninsula Dr, Delafield, WI 53018

Applicant: Lloyd and Silke Davis, Owner

Matter: Appeal to grant a variance to construct a deck in the shore yard at 2646 Peninsula Drive, DELC 751.109. The parcel is zoned RL-1A. The proposed deck is 50.50 feet from shore, in violation of the 55 feet minimum required in the RL-1A district per section 52-111(h)(7).

Bogdanovich opened the Public Hearing at 6:04 PM.

Lloyd Davis, Silke Davis, and Bill Fine, were present to discuss the requested variance. L. Davis explained the reason for the request for a variance. There are mobility issues and there is a preference for the property to be level. The surrounding properties are closer to the lake, but they are in a different zoning area. The survey was provided, they are requesting approximately 50' back from the lake. The variance would let the Davises enjoy the lake the same as the neighbors. There is a ginkgo tree to the south and moving the deck to the south would kill the ginkgo tree. A patio can be 30 feet off the water, but a deck needs to be farther. The proposed deck is only 10' deep. The neighbors are all ok with the proposed variance. S. Davis reiterated that the reason for the request is really to save the ginkgo tree.

Bogdanovich asked about the location of the deck that was torn off. L. Davis stated it was a 3' deck that was essentially a walkway.

George noted that according to the code there is about 5' that would be allowed for a deck currently.

Miller asked for clarification on the location and the potential to locate elsewhere and maintain a larger deck.

Holton asked about how extending the deck would kill the tree. L. Davis noted that impervious surface covering the root system might kill the tree. Fine added that digging piers to support the deck would also cause issues with the root system. L. Davis explained the issues with the tree and the deck location further. There is also a basement that causes issues with the support system.

Holton asked about the code on cantilever supports. Hussinger added that this could be engineered in a manner that could allow for cantilevers to be used instead of piers.

Holton stated that it appeared there is no interest in staying within code, and asked if the applicant had any interest to bring the deck within code. L. Davis added that at 5 feet, it's only a walkway and would be unusable. Holton added that with cantilevers, the deck could be larger. L. Davis stated that it might be 8.5' at most, but they really are wanting to save the ginkgo tree with this proposal. A patio could be put in and this would definitely kill tree. Clarification related to the definition of a patio was discussed.

Sawyer-Gutenkunst read 52-291 of the City of Delafield municipal code, which states the requirements which must be met for the Zoning Board of Appeals to grant a variance. Davis asked what the community hardship would be in favor of denying the variance. Their proposed option is the least invasive to the community.

Sawyer-Gutenkunst clarified the standard as being a hardship to the property owner which unreasonably prevents the use of the property for the permitted purpose which is residential use.

Miller asked about setback difference if the deck was located at ground level.

Davis asked what the bar would be for the property use to be unreasonable for a variance. Sawyer-Gutenkunst noted that the bar to get a variance is very high and the intended purpose is for the property owner to prove that they have met that standard.

Davis added that he was not able to enjoy the home in the same way as the neighbors.

Bogdanovich added that a desire for the deck to be bigger is understandable, but the house and the deck size that were present in the manner allowable at the time of the purchase of the home. S. Davis noted that they were unaware of the need for a variance to make the deck larger at the time of purchase, but they would deal with whatever the Board determines is appropriate moving forward.

Miller added that there are alternatives that will allow for the applicant to have a larger deck and not destroy the tree and maintain the allowance of the code. There are solutions and a deck that is smaller is not an undue burden.

L. Davis pointed out that the adjacent neighbors in the same zoning are not within code. Miller added that the other houses that are nearby may not fall within the current code due to when they were built and the code that was in place at the time they were built.

Valde stated that the reasons to allow for a variance are supported by some of the items, especially in favor of maintaining the ginkgo tree. Also, surrounding properties are significantly closer. However, protecting the trees and green space is also important.

Davis added that a patio could be 20' closer.

Bogdanovich added that it is a unique property, visually. Is the variance for 1.5' or 5'. Holton noted that there is confusion. Sawyer-Gutenkunst clarified that the application is requesting a 4.8' variance. Hussinger stated the site plan does indicate a 50.2' feet setback. Discussion occurred to clarify the variance request for consideration.

Valde asked if the property owners could come back to request for a smaller variance. L. Davis stated they are not interested in coming back for a smaller variance.

S. Davis asked for clarification that if this is denied, then they can still move on with their project, but within code? It was clarified that they could move forward with the project within the confines of the municipal code.

Hearing no one further who wished to speak, Bogdanovich closed the Public Hearing at 6:43 PM.

8. New Business

Discussion and possible action on the following items:

- A. Appeal of Lloyd and Silke Davis, owner, to grant a variance to construct a deck in the shore yard at 2646 Peninsula Drive, DELC 751.109. The parcel is zoned RL-1A. The proposed deck is 50.50 feet from shore, in violation of the 55 feet minimum required in the RL-1A district per section 52-111(h)(7).

Motion by Miller, seconded by Holton, to deny the variance to construct a deck in the shore yard at 2646 Peninsula Drive, DELC 751.109. The parcel is zoned RL-1A. The proposed deck is 50.50 feet from shore, in violation of the 55 feet minimum required in the RL-1A district per section 52-111(h)(7).

Discussion: Miller added that there has not been a hardship shown that meets the standards that the code and law says. There are alternatives that would allow for the landowner to have a larger deck, without a variance, and the burden has not been met. The situation is that a deck is larger than what was on the house when purchased, and it is not preventing the applicant from using the house. The neighbors might be closer, but the neighbors' circumstances is not what the law considers and is not preventing the applicant from using the property as intended per the law.

Holton added that a variance is a tough burden to meet, and this is not a hardship, it is an inconvenience. It is something that they would like, and the burden for hardship has not been met.

Drago added that the responsibility of the Zoning Board of Appeals is to follow the criteria that has been set forth by law. She is a tree lover and is familiar with the channel. Unfortunately, all of the necessary criteria have not been met. The unnecessary hardship requirement has not been met. While a tree is beautiful, removal is not a hardship. There are alternatives.

Valde added that although there are logical arguments, the statutes do not allow for some of those arguments to be taken into account.

Miller reiterated that the requirements are what they are.

Bogdanovich added that the deck would beautify the area, but if exceptions are made that don't fit the criteria, there will be no law and order and no codes any longer. The property is unique because nobody really sees it from the lake because it is on a channel.

Sawyer-Gutenkunst clarified that Bogdanovich meant the property was unique in how it is visible from the water.

Motion passed with Valde voting Nay.

9. Adjournment

Motion by Drago, seconded by Holton, to adjourn the meeting at 6:55 PM.

All in favor. Motion carried.

Minutes Approved: November 27, 2023

Minutes Prepared by: Molly Schneider, City Clerk