



**BOARD OF APPEALS**  
**Tuesday, March 3, 2015; 5:30 PM**  
**MINUTES**

**Present:** Chairman Reitz; Members Ashmore, Larson (6:09 PM) Levin; Alternate Member Gierl; City Attorney Sajdak, Deputy Clerk Fochs; City Inspector Rakow, Court Reporter Kovac, Gramann Reporting; and interested public

**Also Present:** Appellant Antony Enea, Ruvin Bros. Artisans & Trades, Inc., representing the homeowners, Tim and Danielle Strauss

All parties appearing before the Board of Appeals were sworn.  
A complete transcript of the proceedings can be made available upon request.

The meeting was called to order at 5:43 PM.

**1. Approve meeting minutes of February 3, 2015**

Moved by Member Levin, seconded by Member Ashmore to approve the meeting minutes of February 3, 2015.

The motion passed by voice acclamation.

Moved by Member Ashmore, seconded by Member Levin to suspend the rules and hear evidence concerning, debate, deliberate and decide the request of:

**Applicant(s):** Ruvin Bros. Artisans & Trades, Inc.

**Owners:** Tim and Danielle Strauss

**Appealing:** Requesting a variance from Section 58-239(c)(1)d Mequon Code of Ordinances to construct a detached 2-car garage totaling 528 square feet at 405 Eastwyn Bay Road

The motion passed by voice acclamation.

Appellant Mr. Enea summarized his reasons why the appeal was made: 1) The topography of the lot requires the proposed detached garage to be built into an existing hill in order to minimize the appearance of the structure. As a result, the foundation walls also act as retaining walls and are thicker. The dimensions of the outside of the garage are what the square footage is based on, hence the oversized garage. However, the square footage of the inside of the garage would be more than code would allow as well; and 2) the existence of an extensive underground drainage system on the property results in the garage footing needing to be placed outside the underground pipes. The intent is not to disrupt the drainage system in any way.

Inspector Rakow stated that the size of the garage exceeds that allowed by zoning code. Mr. Rakow stated that he did not consult with the Engineering Department, but rather got his information from a third party, Jac Zader, Associate Director of Community Development. It was not clear whether City staff had visited the site.

Mr. Enea reiterated that there currently is not a drainage or grading problem. Rather, the intent is to avoid interacting with the drainage system that has been in place for years. It is a system of underground concrete catch basins and pipes that direct water around or away from residences. Mr. Enea confirmed they have not investigated relocating the drainage system. He clarified that he is seeking a variance not because of the “drainage of the lot” but rather “the existing drainage system” is the primary issue. The footings of the garage would need to extend down 4’ where they would disrupt the existing underground piping. As a result, the footings would have to straddle the pipes.

Member Ashmore questioned the appellant about perceived hardship. The property currently has a 3-car attached garage and the proposal is for an additional 2-car detached garage. Mr. Enea defended the idea that this is a self-imposed hardship because the present homeowners installed the underground system to resolve a drainage problem.

Mr. Enea confirmed that if a code-compliant garage were to be built they would need to relocate some of the underground piping and potentially impact their effectiveness. However, that garage would be unusable for its intended purpose as the interior square footage would be inadequate to function as a 2-car garage.

City Attorney Sajdak requested the clarification of the correlation between the size of the structure and the need for a retaining wall. The gross square footage (outside) is 528 square feet and the net square footage (inside) is 436 square feet. This garage will be nestled in a berm on the west side of the property, partially hidden to achieve a more aesthetically pleasing view for that neighbor. Thus, the wall should be thicker in order to hold back the soil. The complex underground system of concrete catch basins and pipes makes moving the garage to a different location difficult.

Moved by Member Ashmore, seconded by Member Levin to close the public hearing. The motion passed by voice acclamation.

The Board deliberated:

- Berms are artificially created.
- It is important to be consistent with the application of the ordinances.
- Has the appellant demonstrated a hardship unique to the property and not self-created?
- It is within the powers of the owners to correct. Solutions would be 1) they could build a smaller 2-car garage that conforms to the ordinance; 2) the berm could be modified; and 3) City staff believes the drainage issue is remediable.
- The underground piping could be moved to avoid straddling and the garage could be moved to another location to avoid the existing pipe system.

Moved by Member Ashmore, seconded by Alternate Member Gierl to deny the variance.

The motion resulted in a roll call vote (4/0):

Favor: Ashmore, Levin, Gierl, Reitz

Oppose: None

Alternate Member Gierl stepped down from the Board at 6:15 PM and Member Larson took her place on the Board.

**2 and 3. Open and adjourn the requests of:**

**Applicant(s):** Henry Rosler & Yvette Nossig

**Owners:** Henry Rosler & Yvette Nossig

**Appeal:** Requesting a variance in regard to Section 58-41 Mequon Code of Ordinances to correct condition of premises dated December 2, 2014 for the property located at 14050 N. Birchwood Lane

**Applicant(s):** Henry Rosler & Yvette Nossig

**Owners:** Henry Rosler & Yvette Nossig

**Appeal:** Requesting a variance in regard to Section 58-41 Mequon Code of Ordinances to correct condition of premises dated December 10, 2014 for the property located at 14050 N. Birchwood Lane

Chairman Reitz stated that the applicant requested that this not be taken up at this time and that the informational packets were void of the applications and supporting documentation. She requested that the Board adjourn to a future meeting date, not more than 90 days from today.

Member Levin requested that the Clerk's Office forward copies of all materials provided by the appellant to the Board within 5 days so that the Board is knowledgeable about what the request is about and to schedule another meeting within the 40-day rule. He contended that the case is not properly before the Board and City staff did not have the authority to open and adjourn these cases. Furthermore, it is incumbent to have all the materials, schedule another meeting and then consider the request or consider the motion by the appellant not to consider the case at this time.

City Attorney Sajdak explained that the request actually came from his office. For purposes of this appeal, his involvement with staff is such that he cannot realistically represent the City/or Board, with respect to the variance itself. Member Levin reminded the Board that at the last Board meeting they advised the City Attorney to notify the Chairman and arrange for another attorney to represent if he finds himself at all compromised because he has assisted City staff or otherwise taken a position on an issue before the Board.

Attorney Sajdak continued to explain that the request to not hear the case at this point was made by the applicant; the appeal was filed with the intent to preserve the rights that they had; deadlines were imposed; there was a request to extend those deadlines at staff level; request was not granted due to the absence of the senior staff member; staff, applicant and applicant's attorneys continue to work on issue with the hope of obtaining a resolution; winter weather is prohibiting progress at this point; request was made by applicant to adjourn to allow the staff to continue to work on the issues; adjournment should be reasonable.

Member Levin repeated his request to receive all the materials, schedule another meeting and then have the Board consider the request or consider the motion by the appellant not to consider the case at this time, all within the 40-day timeline. Member Ashmore concurred that this matter should be expedited. Other residents' rights could also be an issue.

Chairman Reitz stated her understanding that the Board has the ability to adjourn these matters to a date to-be-determined without compromising the applicant's 40-day window of hearing. She proposed that within seven days of this date the Clerk will provide a full packet to all Members and that another meeting be scheduled as soon as practicable so that the Board can, with all knowledge necessary, deliberate and take these matters up in a timely

manner. A new attorney and City staff with firsthand knowledge of these cases should be at the next meeting.

Moved by Member Ashmore, seconded by Member Larson to adjourn to a date to-be-determined and within seven days of this date the Clerk will provide a full packet to all Members and that another meeting be scheduled as soon as practicable so that the Board can, with all knowledge necessary, deliberate and take these matters up in a timely matter.

The motion resulted in a roll call vote (4/0):

Favor: Ashmore, Larson, Levin, Reitz

Oppose: None

## **5. Adjourn**

Moved by Member Ashmore, seconded by Member Levin to adjourn the meeting at 6:33 PM.

The motion passed by voice acclamation.

Respectfully submitted,

CITY OF MEQUON BOARD OF APPEALS

Kathy Andrykowski, Administrative Secretary

Approved: July 16, 2015

Clerk's Note: Rosler/Nossig withdrew their appeal prior to the seven-day deadline. Therefore, no additional materials were provided to the members and another meeting was not scheduled. See file for withdrawal.