



11333 N. Cedarburg Road
Mequon, WI 53092
Phone: 262-236-2911
Fax: 262-242-9655

www.ci.mequon.wi.us

Office of the City Clerk

BOARD OF APPEALS
Wednesday, August 17, 2016
6:00 PM
Christine Nuernberg Hall

Agenda

1. Call to Order, Roll Call
2. Approve meeting minutes of May 25, 2016
3. Hear evidence concerning; debate, deliberate and decide the request of:
Applicant(s): Christopher A. Stolte
Owner: Christopher A. Stolte
Appeal: Requesting a variance from Section 58-237 (j) of the City of Mequon Code of Ordinances in order to extend a deck to the north of the house with the second story addition at 7404 W. Freistadt Road.
4. Adjourn

Dated: August 4, 2016

/s/ Rose Reitz, Chairman

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 262-236-2911, twenty-four (24) hours in advance of the meeting.

Any questions regarding this agenda may be directed to the City Clerk's Office at 262-236-2911, Monday through Friday, 8:00 AM– 4:30 PM



draft

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**BOARD OF APPEALS
Tuesday, May 25, 2016; 6:00 PM**

Present: Chairman Reitz; Members Ashmore, Levin, Massey, Stern, Alternate Member Clancy, Deputy Clerk Fochs; City Attorney Sajdak; City Inspector Rakow, Court Reporter J. Steidtmann, Gramann Reporting; and interested public

Also Present: Brian Strachota, general contractor

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 6:01 PM.

1. Approve meeting minutes of April 26, 2016

Moved by Member Massey, seconded by Member Levin to approve the meeting minutes of April 26, 2016.

Discussion ensued on whether a correction to the minutes is necessary since further research discovered that there was new information gathered since the last meeting regarding the Weir project. Attorney Sajdak stated that Robert Rules of Order and stated that minutes are the official record of the proceedings of a deliberative the assembly and should contain a record of what took place at a meeting. The minutes are on this agenda solely for a discussion of that particular meeting. Review or reconsideration of a completed due process is improper.

The motion passed by roll call vote 4/0.
Favor: Members Ashmore, Levin, Massey, Reitz
Abstain: Alternate Member Clancy

Member Ashmore questioned what contact the City had with the Weirs post-hearing. The Chairman notified the Weirs of the possibility of reconsideration of the original decision. Attorney Sajdak stated case law in Wisconsin that a motion to reconsider, amend, or rescind action taken by a body is appropriate only when that action can be undone without negative affects to a party. The Weirs had already ordered materials and scheduled deliveries. Based on that a motion to reconsider would not be appropriate. It was determined that further discussion of the factual events of the previous hearing and of City staff were inappropriate and were discontinued.

2. Hear evidence concerning; debate, deliberate and decide the request of:

Applicant(s): Mark L. McGraw
Owner: Mark L. McGraw
Appeal: Requesting a variance from Section 58-234 (c)(1)(d) Mequon Code of Ordinances in order to erect a detached garage at 1220 W. Bonniwell Road.

Inspector Rakow summarized the applicant's case. He indicated that the appellant is requesting a variance to build a 26' x 30' accessory structure. Code allows one additional

Attachment: McGraw_minutes_05-25-16 (1776 : Board of Appeal meeting minutes of May 25, 2016)

detached structure; currently the appellant has two such accessory structures. Inspector Rakow indicated he visited the property in preparation for this case.

The appellant's representative, Mr. Strachota, explained that one of the current accessory structures would be eliminated if the variance is granted. The current setback of the existing garage is twenty-three feet off of Bonniwell Road and two feet of the property line. The landscaping/snow plowing businesses at the end of Bonniwell Road are causing traffic and safety problems for the appellant. He fears for his safety and the safety of his grandchildren.

The Board questioned the zoning of the landscaping/snow plowing businesses and staff could not state with certainty the zoning but did state that a landscape contracting business is an approved conditional use. The conditional use will need to be reviewed to see if snow plowing is allowed.

The appellant is not proposing to eliminate the existing garage. If both sheds were torn down he could construct another shed. There would be additional approvals beyond the decision of this Board. It would still need site plan approval to make sure that setbacks are met, size conforms to code, etc. Code allows for a detached garage of a certain size and one accessory structure. If the existing garage is eliminated along with another accessory structure then there is a possibility that the proposed 3 car garage could be built, assuming it passes code.

Moved by Member Massey, seconded by Member Clancy to close the public hearing. The motion passed by voice acclamation 5/0.

The Board deliberated:

- The appellant has a choice to remove other structures to accomplish what he wishes
- Application for permit for new garage would include demolition of the existing garage and another structure
- Code allows a principal detached garage not to exceed 800 square feet; that code may influence the choice of which structures to keep and which to demolish
- This is a self-created hardship
- A variance cannot be self-created and the property owner bears the burden of proving unnecessary hardship

Motion by Member Ashmore, seconded by Member Levin to deny the variance. The motion passed by roll call vote 5/0:

Favor: Members Ashmore, Levin, Massey, Chairman Reitz, Clancy

Oppose: None

Members of the Board suggested a workshop be organized to include Board Members, City staff (Clerk's Office, Inspection Department and Community Development Department), and the City Attorney. Communication between staff and the Board, clarification of the appeals, efficiency and preparation for hearings are lacking and need improvement. One option is to invite the UW-Extension to provide training for Board of Appeals. The scheduling of this workshop is pending.

3. Adjourn

Moved by Member Ashmore, seconded by Member Massey to adjourn the meeting at 7:00 PM. The motion passed by voice acclamation 5/0.

Respectfully submitted,
CITY OF MEQUON BOARD OF APPEALS
Kathy Andrykowski, Administrative Secretary



11333 N. Cedarburg Road
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 Phone:
 Fax: 262-242-9655

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Office of Board of Appeals

TO: Board of Appeals
FROM: Martin Schoenknecht, Inspector
DATE: August 4, 2016
SUBJECT: Christopher Stolte Appeal for property located at 7404 W. Freistadt Rd.

Background

The appellant is requesting a variance to exceed the 25 foot offset at the east property line for the property located at 7404 W. Freistadt Road in order to build a second floor attached deck that projects beyond the building wall. Their proposed plan shows that the addition would have an offset encroaching the 25' minimum building offset. The proposed deck addition is approximately 19.5' from the east property line.

Variance

The appellant is requesting a variance to the R2B zoning. Ordinance 58-237 requires a 25 foot offset for that parcel.

Per Section 58-41 of Chapter 58, City of Mequon Code of Ordinance, the Board of Appeals shall determine if such variance will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this chapter will result in practical difficulty or unnecessary hardship so that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done.

The appellant's variance request did not list or provide any practical difficulty or hardship that is unique to the property that would support granting the variance. The burden of the need for the variance request is placed on the appellant.

Because no unique condition or hardship is presented by the appellant, staff recommends the Board of Appeals deny the applicant's appeal.

Martin Schoenknecht

Martin Schoenknecht, Inspector

Department of Community Development: Inspections Division

BOARD OF APPEALS APPLICATION

CITY OF MEQUON, WISCONSIN

Applicant: CHRISTOPHER A. STOLTE Address: 7404 W. FREISTADT RD.
City/zip: 53092

Owner: Same Address: _____
City/zip: _____

Contact Person/Name: CHRIS STOLTE
Phone Number: 414-303-7596 Email: CSTOLTE83@TANCO.COM

TO THE ZONING BOARD OF APPEALS:

The above hereby requests an appeal/variance in regard to Section No: 58-237(j)
of the Mequon Code of Ordinances regarding:

7404 W. FREISTADT RD. MEQUON, WI 53092
(street address or legal description)

in order to: EXTEND A DECK TO THE NORTH OF THE HOUSE
WITH THE SECOND STORY ADDITION.

APPLICANT MUST PROVIDE:

Application form (1 copy only)
\$215 filing fee

10 copies each of the following documents (One for each Board Member)

1. Copy of denial letter *(Appeal must be made within 30 days of affecting decision)*
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>Reggie Roy</u>	Received Date: <u>7/11/16</u>
Parcel #: <u>140 151 102 000</u>	Hearing Date: <u>8/17/16</u>
Zoning District: <u>R-2B</u>	Receipt #: <u>001852-0007</u>
Alderman & District #: <u>Dale Mayr, Dist. # 3</u>	Published: <u>8/4/16</u>

c: Notice of scheduled hearing to DISTRICT ALDERPERSON, and OWNER(S) OF RECORD as listed in the Office of the Assessor of all lands within 1320 feet of subject property (when hearing involves a proposed zoning district classification change or conditional use grant); copy of mailing list attached for case file/record (if applicable)

RECEIVED

JUL 17 2016

Aug 19 = 40 days

**SUBSTANTIVE AND PROCEDURAL GUIDE TO VARIANCES
FOR APPLICANTS TO THE BOARD OF APPEALS**

I. CRITERIA FOR ISSUANCE OF VARIANCE:

To qualify for a variance, an applicant has the burden of proof to demonstrate at a public hearing before the Board of Appeals the following:

1. Unnecessary hardship due to the unique physical limitations of the property and not the particular circumstances of the applicant. The unnecessary hardship must not be self-imposed by the applicant or the prior owners of the property. Further, economic loss or financial hardship does not justify a variance.
2. The variance will not create substantial detriment to the adjacent or neighboring property, and will not be contrary to the public interest or public safety.

The foregoing criteria are defined in the State Statutes and/or Mequon Ordinances and have been interpreted by the Courts. This guide is intended merely to assist applicants and not intended as a substitute for the criteria defined in the Statutes and ordinances as interpreted by the Courts. As noted above, the burden is upon the applicant, not the Board of Appeals or the City to present sufficient evidence to support the findings to be made by the Board of Appeals based upon the evidence presented at the public hearings.

II. DETERMINATION

In making its findings and determinations, the Board of Appeals may consider factors such as: characteristics of the property, including, but not limited to, relative placement of improvements thereon with respect to property boundaries or otherwise applicable setbacks; existing and future use of property; useful life of improvements at issue; disability of an occupant; aesthetics; degree of non-compliance with the requirement allowed by the variance; proximity to and character of surrounding properties; zoning of the area in which property is located and neighboring areas; and the purpose and intent of the Zoning Code subsection imposing the requirements.

Any variance granted by the Board of Appeals may contain conditions that it deems necessary, including, but not limited to, conditions that:

1. Prescribe the duration of the variance to be:
 - a. permanent, thereby remaining permanently with the property;
 - b. a specified length of time; or,
 - c. the time period during which the property is owned or occupied by a particular person;
2. Require the performance of additional actions related to the mitigation or enhancement of impacts resulting from the variance; or,
3. Prescribe a limitation on the action effectively authorized by the variance.

Christopher A. Stolte
7404 W Freistadt Rd.
Mequon, WI 53092

City of Mequon
Board of Appeals

July 10, 2016

To Whom it May Concern:

I am requesting variance of current setback for a raised deck to be located on the back of the house for a new 2nd story addition over the attached existing garage. The addition does not affect setback, however, also includes a raised deck from a patio door exit to the north. The deck does not further encroach on the property line to the east, but runs adjacent to it along the current setback of 20 feet with the rest of the house. Please see attached documentation. These plans were approved by the architecture review board and subsequently denied by the Zoning Department as the current setback is 25 feet. The house was originally built in 1949 and was approved for the rest of the 2nd story in 1979, following the original setback of 20 feet to the east, which will remain intact.

Sincerely,

Christopher A. Stolte



11333 N. Cedarburg Rd 60W
Mequon, WI 53092-1930
Phone (262) 236-2921
Fax (262) 242-9655

www.ci.mequon.wi.us

INSPECTION DIVISION

June 10, 2016

Mr. Christopher Stolte
7404 W. Freistadt Road
Mequon, WI 53092

Dear Mr. Stolte:

I am writing in regards to the building permit application for a deck at 7404 W. Freistadt Road. The proposed deck does not comply with the 25' offset from the east property lot line. Based on this information, a variance through the Board of Appeals is required. It is my understanding based on your submittal of a building permit for the deck you are requesting commencement of this process.

Please remember the following information if you decide to request a variance:

1. The hardship must be based on conditions unique to the property rather than considerations personal to the property owner.
2. The hardship cannot be self-created.
3. The Board of Appeals is to evaluate the hardship in light of the purpose of the zoning restriction at issue.
4. A variance cannot be contrary to the public interest.
5. The property owner bears the burden of proving unnecessary hardship.

I have enclosed an application for the Board of Appeals which should be returned to the City Clerk with a check for \$215.00.

If you have any further questions, feel free to call me at 262-236-2904 during normal business hours.

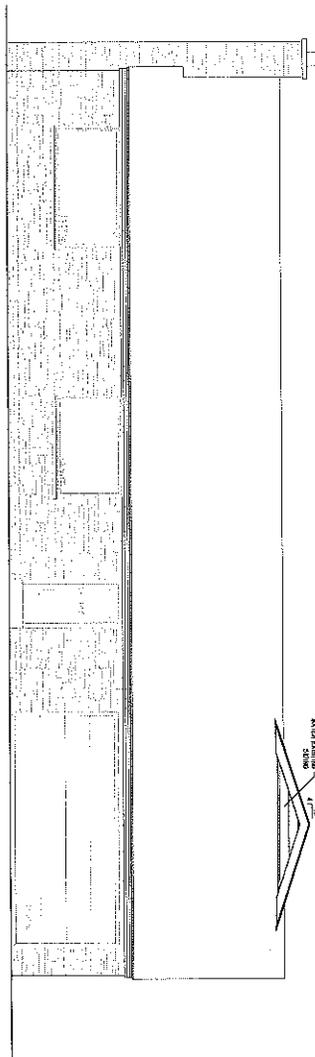
Respectfully,


Jac Zader
Assistant Director of Community Development

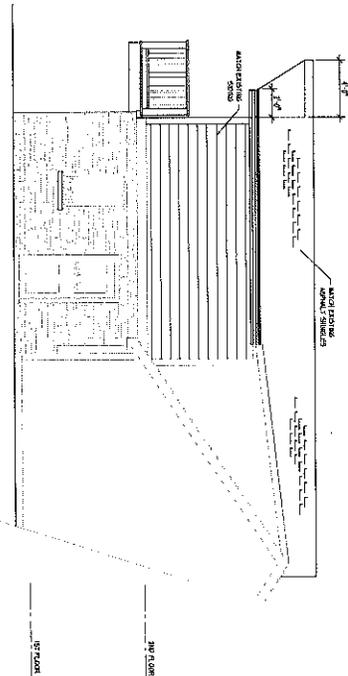
JZ / kh

enclosure

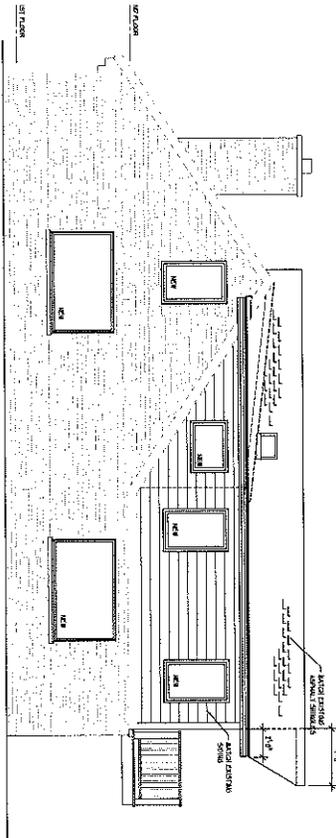
SOUTH ELEVATION



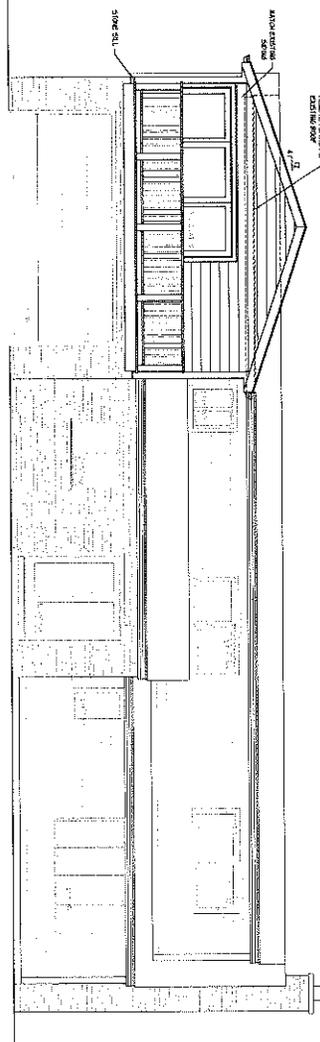
WEST ELEVATION



EAST ELEVATION

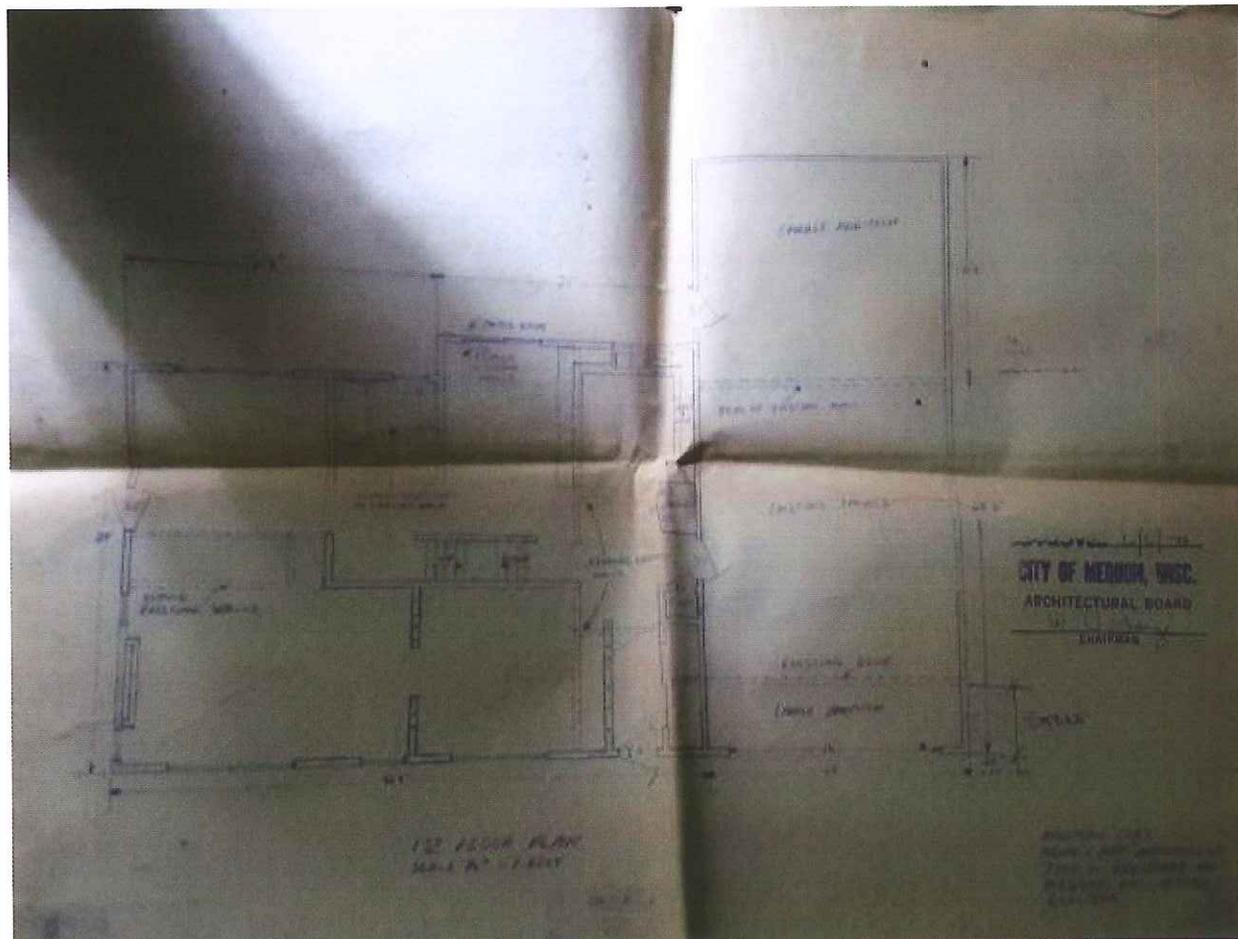
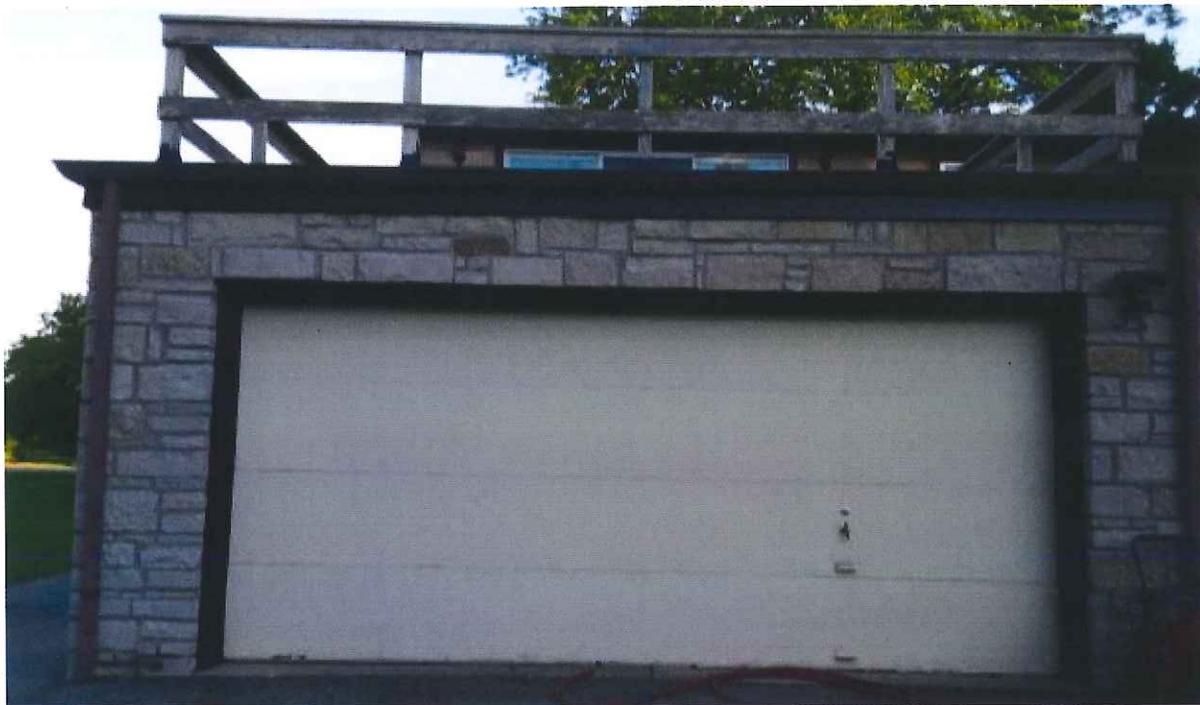


NORTH ELEVATION



NOTES:
 1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 2. ALL MATERIALS TO BE USED SHALL BE APPROVED BY THE ARCHITECT.
 3. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL RESIDENTIAL CODE BOOK AND ALL APPLICABLE LOCAL ORDINANCES.
 4. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL MECHANICAL AND PLUMBING CODE BOOK AND ALL APPLICABLE LOCAL ORDINANCES.
 5. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL ELECTRICAL CODE BOOK AND ALL APPLICABLE LOCAL ORDINANCES.
 6. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL FIRE AND SAFETY CODE BOOK AND ALL APPLICABLE LOCAL ORDINANCES.
 7. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL ENERGY CONSERVATION CODE BOOK AND ALL APPLICABLE LOCAL ORDINANCES.
 8. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL SMOKE ALARM CODE BOOK AND ALL APPLICABLE LOCAL ORDINANCES.
 9. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL ACCESSIBILITY STANDARDS AND ALL APPLICABLE LOCAL ORDINANCES.
 10. ALL WORK SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL GREEN BUILDING CONSTRUCTION AND MAINTENANCE SOURCEBOOK AND ALL APPLICABLE LOCAL ORDINANCES.

JOB NUMBER STO-1716-10B	DATE 01/10/16	 NEW HORIZON VENTURES, L.L.C. ARCHITECTS/PLANNERS	PROJECT NEW ADDITION FOR CHRIS AND NEKI STOLTE
CHECKED BY: TLB	REVISIONS: 01/10/16 04/10/16 05/05/16		
DRAWN BY: TLB	SHEET 3		



Sec. 58-237. - R-2B suburban residential detached district.

(a) *Purpose.* The R-2B district is intended to provide for large lot single-family detached residential development primarily within the area designated on the land use plan map as "urban service area." The district regulations are designed to reasonably accommodate large homes which may potentially be served by public sewerage facilities.

(b) *Permitted uses.*

(1) Single-family detached dwellings.

(2) Agricultural uses shall be allowed subject to the following:

- a. Poultry and domestic livestock (excluding horses which are addressed in subsection (b)(2) (b.) shall be permitted on lots of at least ten acres. No more than one head of livestock per acre and 20 fowl per acre shall be allowed.

Exception: Chickens shall be permitted on lots of one and one-half acres or greater per the following criteria:

1. No more than four chickens per parcel shall be allowed.
2. Roosters are prohibited.
3. All chickens must be kept at all times in a secure, clean enclosure that is kept in sanitary conditions.
4. All enclosures shall be set back at least 50 feet from any property line, shall be located only in the rear yard and shall be located closer to the principle dwelling on the subject parcel than the neighboring lot lines.
5. Enclosures shall not exceed 40 square feet and six feet in height.
6. Feed kept outside shall be kept in sealed containers so that it is rodent-proof.
7. Feces shall be removed from yards and enclosures daily and stored in tightly covered metal containers that are setback at least 50 feet from the property line.
8. Yards, enclosures, premises and animals shall be kept free of insect infestations.
9. No odor or noise nuisance shall be permitted.
10. An initial and annual permit fee is required.
11. Applicable home owners associations shall provide consent on only the initial permit to allow the keeping of poultry in accordance with the above listed standards.

- b. One horse shall be permitted on lots of at least 1½ acres. One additional horse shall be allowed per each additional acre.
- c. Farms primarily for the keeping or raising of fur bearing animals, hogs, or goats shall not be permitted except as a conditional use.
- d. Commercial fish hatcheries shall not be permitted except as a conditional use.
- e. Commercial greenhouses shall not be permitted except as a conditional use.
- f. Stables, barns, poultry houses, riding arenas, greenhouses, sheds and other similar structures, provided that no such structure may exceed 1,000 square feet in size in any residential district where they are located without planning commission approval, and provided that no building housing domestic livestock or poultry shall be closer than 100 feet to any lot line. Any structure listed in this subsection in excess of 1,000 square feet located within an (OA) zoning district and on a parcel of at least 40 acres or more is subject to approval by the planning commission but the application processing fee will be waived, since the intent of this section is to not overly burden the farmers of the City of Mequon and to encourage agricultural pursuits. (This section shall apply to structures constructed after the effective date of the ordinance from which this section is derived.)

(3) Community living arrangements for eight or fewer persons in accordance with Wis. Stats. § 62.23(7)(i).

(c) *Permitted accessory uses.*

- (1) Private garages, carports, and paved parking areas shall be allowed provided that no garage or carport shall be erected prior to the erection of the principal building to which it is accessory. Garages and storage structures shall conform to the following:
 - a. Except as otherwise specifically provided below, no more than one principal garage; either attached or detached, shall be permitted on a lot.
 - b. Any property having a residence without an attached garage shall be permitted one principal detached garage not to exceed 800 square feet in area.
 - c. Any property having a residence which was constructed prior to year 2003 with an attached garage in which two full-sized personal automobiles cannot reasonably be stored side-by-side shall be permitted one principal detached garage not to exceed 675 square feet in area, provided no such garage structure shall be sited in front of an existing residence or in such other location as shall unreasonably affect or adversely impact the beauty and general enjoyment of existing residences or adjoining properties.
 - d.

Any property may have, in addition to any permissible garage, one detached storage structure not exceeding one percent of the property area provided the parcel is not divisible under the current zoning classification. If the parcel is divisible under the current zoning classification, the structure shall not exceed one percent of the property's minimum lot size zoning requirement, whichever is less.

- e. Enclosed vehicular storage space for not more than one vehicle may be rented to persons not resident on the lot, such space being defined as an area not to exceed 300 square feet.
- (2) Home occupations and professional offices which are clearly incidental to the principal residential use subject to the following:
- a. The home occupation shall be carried on wholly within the principal residential building or within a building accessory thereto, and only by residents occupying the premises and one additional person not a resident on the premises.
 - b. No article or service shall be sold or offered for sale on the premises.
 - c. The home occupation shall not normally generate customer or client traffic to the residential premises.
 - d. Any off-street parking area shall be maintained reasonably dustless and adequately screened from adjoining residential properties.
 - e. The home occupation shall not include the conducting of any retail or wholesale business on the premises, nor the removal of sand, gravel, stone, topsoil or peat moss for commercial purposes.
 - f. The home occupation shall not include outside storage of materials or other operational activity resulting in offensive noise, vibration, smoke, dust, odors, heat or glare which may create a nuisance or be otherwise with the surrounding residential area.
- (3) Private outdoor recreational facilities normally accessory to a residential use.
- (d) *Conditional uses.*
- (1) Public and private schools, child day care.
 - (2) Churches and religious institutions.
 - (3) Commercial use of historically significant structures.
 - (4) Public and or private utility, transmission and distribution lines, poles, and other accessories provided that when the utility proposes a main inter-city transmission facility, the utilities shall give notice to the planning commission of such intention and of date of hearing before the public service commission, and before actual construction shall file with the planning commission a map description of the route of transmission line. Public and/or private utility

installations less than three feet in height shall be subject only to City of Mequon staff approval and may be allowed subject to staff imposed conditions regarding, among other things, effective screening from public view with all season vegetation.

- (5) Hogs, goats and fur bearing animals. Poultry, livestock and horses in greater quantities than allowed by right.
 - (6) Public or private outdoor recreational facilities.
 - (7) Additional attached non-income producing living accommodation with separate bath and kitchen facilities for relatives of the individual(s) residing in the primary dwelling.
 - (8) Guesthouse subject to, among other things, living quarters being within a detached accessory building which is located on the same lot with the principal residential structure. Furthermore, the guesthouse is intended for use by temporary guests of the residents and shall have no kitchen facilities, and not be rented or otherwise used as a separate dwelling.
 - (9) Community living arrangements for nine or more persons in accordance with Wis. Stats. § 62.23 (7)(i).
- (e) *Lot size.* The minimum lot size shall have an area of not less than 1½ acres (65,340 square feet) with all or part of the lot being devoted to permitted residential use.
- (f) *Dwelling standards.* Single-family dwellings within the R-2B district shall have a 1,400-square-foot minimum living area measured from the outside of exterior walls (excluding cellars, basements, open porches, breezeways, garages and other spaces that are not used frequently or during extended periods for living, eating or sleeping purposes).
- (g) *Building height.*
- (1) The height of any dwelling unit shall not exceed 42 feet.
 - (2) The height of accessory structures shall not exceed 15 feet.
- (h) *Lot width and lot length.* The minimum average lot width and minimum average lot length shall be 175 feet.
- (i) *Minimum building setback.* All structures within the R-2B district shall be set back from the ultimate road right-of-way as follows:
- (1) Local streets, 50 feet.
 - (2) Expressways-freeways, 200 feet.
 - (3) Primary arterials, 100 feet.
 - (4) Secondary arterials, 80 feet.
 - (5) Local arterials, 70 feet.
- (j) *Minimum building offset.* No building or structure, hereafter erected, shall be placed closer than 25

feet to a side or rear lot line.

(k) *Lot coverage.* Not more than 15 percent of the lot may be covered by buildings or structures. (Code 1957, § 3.07(4); Ord. No. 92-767, 8-4-1992; Ord. No. 96-878A, 6-11-1996; Ord. No. 96-890, 6-25-1996; Ord. No. 2001-1008, 3-13-2001; Ord. No. 2001-1017, § VIII, 5-8-2001; Ord. No. 2003-1066, § IV, 8-12-2003; Ord. No. 2005-1143, § 5, 9-13-2005; Ord. No. 2008-1238, § I, 4-8-2008; Ord. No. 2014-1417, § I, 4-8-2014; Ord. No. 2014-1430, § I(Att.), 10-14-2014; Ord. No. 2015-1445, § I(Att.), 4-14-2015)