

Community Development Department

222 Lewis Street
River Falls, WI 54022
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www.rfcity.org



BOARD OF APPEALS January 22, 2020, 6:30 p.m. STAFF REPORT

ITEM: Board of Appeals, Amber Carlson, 1209 Emily Circle, River Falls, WI, 54022

REQUEST: Dimensional variance to encroach on the minimum side setback requirement in Sections 17.08.010(C)6e and 17.20.060(G) of the City's municipal code

LOCATION: 1209 Emily Circle, River Falls, WI, 54022

LEGAL: Lot 20 Rolling Hills Addition together with and subject to Party Wall Agreement Per DOC #410183, located in the NE¼ of the NE¼ of Section 2, T27N, R19W, City of River Falls, Pierce County, Wisconsin.

PIN: 276-01326-0520

APPLICANT: Amber Carlson

AGENT: Justin Kleidosty, Infinity Decks

OWNER: Amber Carlson

CITY STAFF: Sam Wessel, Planner
David Hovel, Building Inspector
Amy Peterson, Development Services Director
Brandy Howe, Senior Planner

PURPOSE

A public hearing is being held at the request of Amber Carlson to request an area variance to the side yard setback in the (R1) Single Family Zoning District.

BACKGROUND

Amber Carlson owns a twin home unit at 1209 Emily Circle, a corner lot in the Rolling Hills subdivision that is zoned R1 Single Family Low Density Residential, as are all of the adjacent properties. In May 2019, it was brought to staff's attention that the existing attached deck had been replaced by a new, enlarged deck (see Figure 1 on page 4). This work occurred without a building permit. David Hovel, Building Inspector, issued a letter to Ms. Carlson requiring her to apply for a retroactive building permit. Carlson's contractor, Justin Kleidosty of Infinity Decks, applied for a permit on her behalf on August 19, 2019. Upon inspection of the deck, Hovel found it to encroach on the minimum side yard setback.

Staff discussed the variance option with the applicant, stating that while it was an option, it was not recommended by staff because it would be difficult to provide the evidence of hardship as is required by Section 17.104.30(E) of the Municipal Code.

ANALYSIS

Tables 1 and 2, below list zoning district standards and pertinent dimensional data related to the subject property. As indicated, the lot width is 54.4 feet wide and the structure (house footprint) is 36.5 feet wide. The lot width less the structure leaves 17.9 feet of side yard remaining, which only provides room for a deck to extend 2.9-feet from the structure.

Table 1: Zoning District Standards

	Zoning Standards	1209 Emily Circle
Minimum Lot Size	3,750 SQ FT	Complies
Min. Front Yard Setback	20 FT	Complies
Min. Side Yard Setback	5 FT	N/A
Min. Side Yard Setback (corner lot)	15 FT	Does not comply

Table 2: Dimensional Facts

Area Measured	Measurement	Source
Lot size	7,956 SQ FT	Rolling Hills Plat
Lot width	54.4 FT	Rolling Hills Plat
Structure width (measured north to south)*	36.5 FT	River Falls GIS data
Dimension of new deck	12' x 18'	Applicant/Building Inspector
Dimension of former deck	12' x 10'	Applicant/Contractor
Dimension of former deck	8' x 8'	City Assessor
*Note that this is an estimate to the best of staff's knowledge based on GIS data – only a survey of the property prepared by a licensed surveyor will provide the dimensions with 100% accuracy.		

NEIGHBORHOOD/PUBLIC COMMENTS

A public hearing notice was published in the January 9, 2020 edition of the Star Observer. Public hearing notices were mailed to property owners within 300 feet of the subject property on January 10, 2020. The meeting agenda was posted at City of River Falls Public Library, Public Safety Building, and City Hall on January 17, 2020.

Staff received one email from a concerned resident on January 13, 2020, that stated that the new deck is much larger than the previous deck, and that a crew tore down the old deck and put up the new deck in one day without a building permit. The resident indicated that all other residents are required to obtain a building permit and adhere to zoning setbacks, therefore a variance should not be granted since standard procedures were violated.

CONDITIONS UNDER WHICH A VARIANCE MAY BE GRANTED

Section 17.104.030(E) of the Municipal Zoning Code authorizes the Board of Appeals to grant a variance subject to the following conditions.

1. That because of the particular physical surroundings, shape or topographical conditions of the specific parcel of land involved a particular hardship to the owner would result as distinguished from a mere inconvenience if the strict letter of the regulations were carried out.
2. That there are exceptional or extraordinary circumstances or conditions applying to the land or building which do not apply generally to land or buildings in the same zone classification.

3. That the purpose of the variance is not based exclusively upon a desire to increase the value or the income potential of the parcel of land.
4. That granting of the variance is necessary for the preservation and employment of substantial property rights of the petitioner and the alleged difficulty or hardship is caused by this chapter and has not been created by any person having an interest in the parcel of land.
5. That granting of such variance will not, under the circumstances of this particular case, materially affect adversely the health and safety of persons residing or working in a neighborhood of the property of the applicant and will not, under the circumstances of this particular case, be materially detrimental to the public welfare or injurious to the property or improvements in such neighborhood.

The Board must apply the above-listed conditions and make a decision based on those criteria. To grant a variance, a favorable vote of a majority of the quorum is necessary. The motion regarding action should be very specific with regard to the action being taken.

STAFF RECOMMENDATION

The Board of Appeals is a quasi-judicial body, i.e. functions in many respects like a court. Staff makes no comments or recommendations prior to the hearing that may prejudice a decision by the Board. Staff will be available at the public hearing to answer questions that may aid the Board in their decision. Staff can assist the Board with drafting of the language once the decision has been made.

BOARD OF APPEALS OPTIONS

The Board must determine based on the finding of facts and conclusions of law whether the area variance request does or does not meet the three tests: Physical limitations of the property, harm the public interest and unnecessary hardship. These tests are described further below and in the Conclusions of Law form. Attached you will find a form regarding conclusions of law. It is the responsibility of Board members to complete this form and return it to staff at the end of the meeting.

1. Deny the requested variance – Deck must come into compliance with zoning setback (i.e. it is made smaller or removed altogether).
2. Grant the requested variance – deck remains as is.
3. Grant the requested variance subject to conditions/mitigation
4. Table the request and require the applicant to provide a survey of the lot and structure prepared by a licensed professional

ATTACHMENTS

1. Board of Appeals Application
2. City of River Falls Zoning Ordinance Section 17.08(C): General requirements for decks
3. River Falls Municipal Code Section 17.20.050: Height, area, and setback requirements (R1 single family)
4. City of River Falls Zoning Ordinance Section 17.104.030: Board of Appeals
5. Conclusions of Law Form (To be completed by Board Members at the meeting.)
6. Public hearing notice, January 9, 2020



Figure 1. Photo of new deck submitted by Kleidosty, deck contractor, on 9-17-2019.

October 27, 2019

To Whom it May Concern:

In May of 2018, I was given Justin Kleidosty from Infinity decks to help me replace some boards on my deck. He was a friend of some people that knew my husband Jeff Carlson when he was alive. After removing the first few boards it became clear that we could not save any of it. It was a safety hazard and on top of rotting boards it was not really connected to the house. It was at this point Justin and I decided to take it down and make it bigger. At this time, we did not know we needed a building permit as the posts stayed the exact same size. As you will see in pictures, I am on a corner lot. Rules are different that I have to be 15 feet from the sidewalk. If I was next to my neighbor, I would only have to be 5 feet. After the deck was finished my family and friends spent many nights enjoying the deck in remembrance of my husband. Almost 14 months later I received a letter from the city saying that I did not get a permit. I immediately called and met with Dave Hovel, paid him for the deck permit. Then met with him. He found a few fixes and Justin came out within a few days and fixed them. If you look at the pictures my deck is unique as it is in the air. The part of the deck we have been asked to cut off it the overhang that you can clearly see. If you look at my yard, I have spent money as a tribute to my husband and the father of my children. Everything from the landscaping to the plants are all things Jeff loved. The deck was built as a place for my children since he is buried up by his family over an hour away. Jeff had a very traumatic death. He fell onto a fish tank when the children and I were out of town and bled to death was his official cause of death at 44 years old. I have spent almost 3 years rebuilding and taking our children to therapy. My 12-year-old who would have been 9 at the time of Jeff's death is really starting this year to understand her dads passing. She has been cutting and on medication. When told that we may have to cut down part of "daddy's deck" she cried

and brought it up to her therapist. Cutting down this deck would traumatically affect my children. I have spoke with neighbors and I can't find one who thinks that we should make any changes to it. Having it up for over a year, we had no issues with it inferring with snow or visibility. I am coming to you today to plead that you grant my family a variance for our deck. Also, with the frost and thaw of the sidewalk, it further back when it was built. Thank you for meeting with us to discuss what can be done to save our deck. I am going to attach information of Jeff incase anyone was interested in looking into our tragic situation further.

Sincerely,

Amber Mae Carlson

<https://minnesota.cbslocal.com/2016/12/01/report-river-falls-man-falls-on-aquarium-cut-by-glass-dies/>

<https://bakken-young.com/jeffrey-carlson-11282016/>

17.08.010 - Lot and building regulations.

C. General Provisions

6. [Decks.] For purposes of this chapter, a deck shall be subject to the following.
 - a. No deck shall occupy more than thirty (30) percent of the area of a required yard.
 - b. A deck shall have the same front yard setback requirements as the principal building and shall not be allowed to encroach upon the front yard setback.
 - c. No deck shall be closer than fifteen (15) feet from the rear lot line.
 - d. No deck shall be closer than five feet from the side lot line.
 - e. No deck shall be closer than fifteen (15) feet from the side lot line on a corner lot.
 - f. No deck shall encroach on a recorded easement.

A deck, gazebo or screen porch that is intended to be integrated into the principal structure by a roof extension, walls, or other improvements that partially or fully enclose it, shall be subject to the setback and yard requirements of the principal building.

17.20.050 - Height, area and setback requirements (single-family).

- A. Minimum lot area: Seven thousand five hundred (7,500) square feet, except that lots of record with less than seven thousand five hundred (7,500) square feet or less than seventy-five (75) feet wide shall have a minimum of five thousand (5,000) square feet and fifty (50) feet.
- B. Maximum building height: Thirty-five (35) feet.
- C. Minimum lot width: Seventy-five (75) feet, except as referred to in subsection A of this section.
- D. Minimum front yard: Twenty (20) feet.
- E. Minimum rear yard: Twenty-five (25) feet, except that accessory buildings shall not be closer than five feet to rear lot line.
- F. Minimum side yard (interior lot): Five feet.
- G. Minimum side yard (corner lot): Fifteen (15) feet.
- H. Average Structures Setbacks. Along streets designated as local streets on the city's official map, a new principal structure or addition to a principal structure (excluding garage or carport) may encroach upon the minimum front yard setback for its lot if there is a principal structure on a lot adjoining it or principal structures on both lots on either side of it having setbacks less than the minimum setback line. Averaging of setback shall be calculated as follows:
 1. If one principal structure on an adjoining lot is located within the minimum setback line, the setback for the new principal structure or addition to a principal structure shall be the average of the distance between the standard setback line and the location of the front of the adjoining principal structure.
 2. When principal structures are on lots on either side and within the minimum setback line, the setback for the new principal structure or addition to a principal structure shall be the average of the distance between front of both adjoining principal structures.

17.104.030 - Board of appeals.

- A. How Constituted. The board of appeals shall consist of five members appointed by the mayor, subject to confirmation by the council, for terms of three years pursuant to Section 62.23(7), Wis. Stats.
- B. The members shall serve with compensation as provided in Section 2.08.060 and shall be removable by the mayor for cause upon written charges and after public hearing. The board of appeals shall make and file in the office of the city clerk its own rules of procedure consistent with the statutes. The minutes of proceedings and hearings before the board and all variances granted by it shall be filed promptly at the office of the city clerk and shall be open for public inspection during office hours. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination

appealed from or to decide in favor of the applicant on any matter on which it is required to pass or to effect a variance. A concurring vote of a majority of the quorum is sufficient if the decision of the board is advisory or upholds the zoning administrator's decision. The grounds of every such determination shall be stated and recorded.

- C. Alternate Members. The mayor may appoint, for staggered three year terms, two alternate members to the board of appeals. Annually, the mayor shall designate one of the alternate members as first alternate and the other as second alternate. The first alternate shall act with full power only when a member of the board refuses to act because of interest or is absent. The second alternate shall so act only when the first alternate so refuses or is absent, or when more than one member of the board so refuses or is absent.
- D. Powers and Duties. The board of appeals shall have the following duties, powers and responsibilities:

- 1. To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by an administrative officer in the enforcement of the zoning code.
- 2. To hear requests for variances from the literal provisions of this title in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter. The board of appeals may not permit as a variance any use that is not permitted under this title for property in the zone where the affected person's land is located. The board of appeals may impose conditions in the granting of variances to ensure compliance with the variance and to protect the adjacent properties.

E. The board of appeals may grant a variance subject to the following conditions:

- 1. That because of the particular physical surroundings, shape or topographical conditions of the specific parcel of land involved a particular hardship to the owner would result as distinguished from a mere inconvenience if the strict letter of the regulation were carried out;
- 2. That there are exceptional or extraordinary circumstances or conditions applying to the land or building which do not apply generally to land or building in the same zone classification;
- 3. That the purpose of the variance is not based exclusively upon a desire to increase the value or the income potential of the parcel of land;
- 4. That granting of the variance is necessary for the preservation and employment of substantial property rights of the petitioner and the alleged difficulty or hardship is caused by this chapter and has not been created by any person having an interest in the parcel of land;
- 5. That granting of such variance will not, under the circumstances of this particular case, materially affect adversely the health and safety of persons residing or working in a neighborhood of the property of the applicant and will not, under the circumstances of this particular case, be materially detrimental to the public welfare or injurious to the property or improvements in such neighborhood.

F. The following procedures shall be applicable in making an appeal to the board of appeals:

- 1. Any person appealing to the board of appeals shall make written application providing such information as is necessary to the city clerk and make a payment of a fee. The fee will be set from time to time by resolution of the city council.
- 2. The board of appeals shall hold a public hearing on the appeal. Notice of the hearing shall be published in the official newspaper at least ten (10) days before the hearing. Due notice shall also be sent to the parties in interest.
- 3. The board of appeals after review of the application and within fourteen (14) days after the hearing shall make a decision on the appeals.
- 4. In granting an appeal or a variance under the provisions of this section the board of appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of the regulations or provisions to which the appeal or variance is granted as to the public health, safety, comfort, convenience and general welfare.

Application/petition: Amber Carlson, 1209 Emily Cir, 1-22-2020

CONCLUSIONS OF LAW

Based on the above findings of fact the Board concludes that:

Variance – The variance (does/does not) meet all three of the following tests:

A. The hardship (is/is not) due to physical limitations of the property rather than the circumstances of the appellant because:

B. The variance (will/will not) harm the public interest because:

C. Unnecessary hardship

An applicant may not claim unnecessary hardship because of conditions which are self-imposed or created by a prior owner (for example, excavating a pond on a vacant lot and then arguing that there is no suitable location for a home). Courts have also determined that economic or financial hardship does not justify a variance. When determining whether unnecessary hardship exists, the property as a whole is considered rather than a portion of the parcel. The property owner bears the burden of proving unnecessary hardship.

For an area variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome. The board of adjustment must consider the purpose of the zoning restriction, the zoning restriction's effect on the property, and the short-term, long-term and cumulative effects of a variance on the neighborhood, the community and on the public interests. This standard reflects the new Ziervogel and Waushara County decisions.

Application/petition: Amber Carlson, 1209 Emily Cir, 1-22-2020

D. Unnecessary hardship (is/is not) present because:

Section 17.104.030 of the City of River Falls Municipal Code:

E. The board of appeals may grant a variance subject to the following conditions:

1. That because of the particular physical surroundings, shape or topographical conditions of the specific parcel of land involved a particular hardship to the owner would result as distinguished from a mere inconvenience if the strict letter of the regulation were carried out;
2. That there are exceptional or extraordinary circumstances or conditions applying to the land or building which do not apply generally to land or building in the same zone classification;
3. That the purpose of the variance is not based exclusively upon a desire to increase the value or the income potential of the parcel of land;
4. That granting of the variance is necessary for the preservation and employment of substantial property rights of the petitioner and the alleged difficulty or hardship is caused by this chapter and has not been created by any person having an interest in the parcel of land;
5. That granting of such variance will not, under the circumstances of this particular case, materially affect adversely the health and safety of persons residing or working in a neighborhood of the property of the applicant and will not, under the circumstances of this particular case, be materially detrimental to the public welfare or injurious to the property or improvements in such neighborhood.

Client:

CITY OF RIVER FALLS

Account # 254602 Ad # 2816717

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Dimensions: 2 col. x 5.00 Inches

Publications: Star-Observer

Total Price: \$42.00

Paid Amount: \$0.00

Balance: \$42.00

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CITY OF RIVER FALLS, WISCONSIN NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Board of Appeals of the City of River Falls will hold a public hearing on **Wednesday, January 22, 2020 at 6:30 p.m.** at the City Hall Council Chambers, 222 Lewis Street, River Falls, WI 54022, to consider the following:

A REQUEST FOR VARIANCE for Amber Carlson, 1209 Emily Cir. The request for variance is for the corner lot side setback requirement of 15 feet from the property line required in the R-1 Single Family Low Density Residential Zoning District in the City of River Falls. The proposed variance is requested to accommodate an existing deck that encroaches on the required setback. This land is described as follows:

Lot 20 Rolling Hills Addition together with and subject to party wall agreement per document #410183 (1199 W Maple St or 1209 Emily Cr) (7956 sq ft).

All interested persons will be given an opportunity to be heard. The application for variance is available for public inspection in the Office of the City Clerk, City Hall at 222 Lewis Street, or on the City's website (www.rfcity.org) under the "agenda center" corresponding to the meeting date listed above.

Dated this 9th day of January 2020

Amy White, City Clerk

(Pub. 1/9/2020) WNAXLP