

## Community Development Department

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**BOARD OF APPEALS**  
**JANUARY 22, 2020 at 6:00 p.m.**  
**City Council Chambers**

Members Present: Eric Amundsen (Chair), Gary Horvath, Kellen Wells-Mangold, Morris Marsolek, Andrew Brown  
Members Absent: Jeanette Leonard (excused)  
Staff Present: Amy Peterson, Sam Wessel, Brandy Howe, Dennis Dadashev, Amy White  
Others Present: Amber Carlson (applicant), Justin Kleidosty (contractor), Jonathan Erickson

### **ANNUAL MEETING**

New to the Board of Appeals (BOA), the City held a BOA annual hearing to review BOA rules, responsibilities, and procedures, beginning at 6:00 p.m. Management Analyst Fellow Dennis Dadashev gave a brief presentation to the Board containing these details.

### **CALL TO ORDER**

Meeting convened at 6:30 p.m.

### **APPROVAL OF MINUTES**

M/Brown, S/Wells - Mangold – motion carried 5-0 to approve October 5, 2016 minutes

### **ROLL CALL, READING OF PUBLIC HEARING NOTICE AND ANNOUNCEMENT OF PROCEEDINGS**

Amy White called roll, read the public hearing notice, and stated that the agenda had to be amended to open the public hearing before the announcement of proceedings and City staff report.

M/Brown, S/Marsolek moved to amend the agenda as indicated. Motion carried 5-0.

### **AGENDA ITEM**

#### **Request for zoning variance by Amber Carlson, 1209 Emily Circle**

Amundsen opened the public hearing. White read the announcement of proceedings.

Wessel reported that the applicant requested a variance to allow an existing deck to encroach on the required minimum 15-foot side yard setback for decks found in Sections 17.08.010 C.6.e. and 17.20.060 G of the municipal code. This issue was first brought to staff's attention by a concerned neighbor who reported that an existing deck had been rebuilt with a larger footprint that encroaches on the required 15-foot side yard setback. Staff confirmed that the deck was built without a permit and that it encroaches on the setback. Wessel then read the City code requirements to grant a variance under Chapter 17 of the municipal code as well as motion options for the Board members to grant, grant with conditions, or deny the variance request. Wessel responded to various questions regarding the deck's dimensions and building permit records.

Amundsen called Justin Kleidosty to speak as a witness. Kleidosty explained that he didn't obtain a building permit because it was his original intent to simply replace broken boards on the former deck, but upon initiating the work it was determined that the deck was not in structurally sound condition and with owner Amber Carlson's permission it was decided to replace the whole deck with his crew. Kleidosty then responded to various Board member questions. He stated he has 13 years of experience, averages about 20 decks per year, is licensed, and that this was his first job in the City of River Falls. He also clarified that while he replace the entire deck he did not expand it closer to W. Maple Street compared to the former deck and that he used the existing footings (thus not making it more nonconforming than it was initially).

Owner Amber Carlson provided the history behind the deck including its significance to her family in memory of her late husband. She explained how she pulled a building permit after she was contacted by the City. She explained that she could not find a survey or dimensions of the lot or home, and lacking a property survey, she was told by the building inspector that based on his rough measurements using the sidewalk as a best guess on where the property line is located, her options were to either cut back the overhanging portion of the deck to the posts or bring the deck fully into compliance. She chose to instead pursue a variance.

Jonathan Ericson, friend of Carlson, asked why the variance is necessary if staff doesn't know exactly where the property line is. Wessel explained that the deck is within 15 feet of the sidewalk, which is not on Carlson's property, so any property line would not be greater than 15 feet from the deck.

Amundsen mentioned that if the existing deck projects the same distance from the house toward the lot line at 12 feet, and the new deck projects the same distance, the deck should be permitted since it did not become more nonconforming.

M/Amundsen, S/Brown moved to approve the variance request to leave the deck as it exists.

Several board members indicated support for granting the variance, but that it would be difficult to prove hardship since the applicant failed to obtain a building permit, which would have clarified where the setback was prior to construction. The burden of proof to identify the property line should be on the applicant and this case should not set a precedent that applicants can build without a permit and then later ask for a variance when not following procedures.

Motion to approve the variance request was restated. White read the voting results. Motion passed 5-0.

Wessel read procedures for the Board to complete their individual conclusions of law forms that will be compiled in the order and determination and final report, which Wessel and Amundsen will complete and submit to Pierce County.

Respectfully submitted,

A handwritten signature in black ink that reads "Samuel Wessel". The signature is written in a cursive style with a large initial "S" and "W".

Sam Wessel, AICP, Planner