

REGULAR MEETING OF THE BOARD OF APPEALS
CITY OF HUDSON
Thursday January 7, 2021

The meeting was held via Zoom Video Conference and was made accessible through the Zoom meeting login, call-in phone number. The Board of Appeals meeting was called to order by Chairman Hallbeck at 5:03 p.m.

BOARD MEMEBERS PRESENT. Carah Koch, Nick Hallbeck, Jon Huhn, Julie Heifner, and Mary Claire Potter.

BOARD MEMBERS ABSENT. None.

STAFF MEMBERS IN ATTENDANCE: Emily Boles, David Gray, and Tiffany Weiss.

OTHERS PRESENT. Tom Schmelz, Deb Schmelz, Jeff Mizinski, Doug Rowen, Olivia Gavic, Dave Morton and others present.

Discussion and possible action on September 17, 2020 meeting minutes. Motion by Potter, seconded by Heifner to approve the minutes of the September 17, 2020 Board of Appeals meeting. All ayes (5-0). Motion carried.

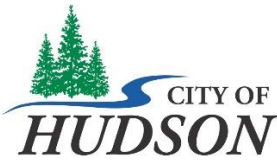
Public hearing on a variance application by Bruce & Dawn Kolander & Creative Homes Inc. to exceed the maximum structure height of 35 feet by 2.5 feet (City of Hudson Code § 255-18(A) and Wisconsin Administrative Code NR 118.06(1)(d)(2)) at 1458 Lee Circle – Appeal No. 252. Chairman Hallbeck opened the public hearing stating that persons desiring to speak shall direct their comments to the Board.

Doug Rowen, 295 Riverview Drive, requested the variance application be denied stating he believed it did not meet the five decision criteria. Rowen discussed violations, financial hardship and asked for the height violation to be corrected.

Emily Boles, Community Development Executive Assistant, read the following items into the record including a letter dated September 17, 2020 by Doug Rowen, 295 Riverview Drive, an email on September 16, 2020 and letter dated January 6, 2021 from Jeff Mizinski, 1417 Wheat Grass, and an email dated September 17, 2020 from Tom Schmelz, 305 Riverview Drive.

Olivia Gavic, Creative Homes Inc. representative, reviewed the history of the property stating that Creative Homes applied for a building permit that was reviewed by the City of Hudson and granted. She continued to state that the home meets the City of Hudson height requirement of 35 feet however due to different calculation methods does not meet the Wisconsin Department of Natural Resources (DNR) 35 feet height. Gavic stated that Creative Homes did not purposefully ignore any city or state requirements and the height evaluation came up after house construction. Gavic discussed how the home has a walkout basement and foundation causing the height overage in the calculation method. She stated that major work would be required to correct the height which might include temporary displacement of the family to adjust the roof height. Gavic said the intention of the DNR height restriction is for scenic river views in the St Croix river valley and the structure cannot be viewed from the river and is in the northeast part of the Summit Ridge neighborhood. Discussion was held regarding the visual impact of the structure to the neighborhood, potential cost involved with correction, and feasibility of changing grading around the home.

David Gray, Building Inspector, reviewed the staff report and site history. He stated that when the Summit Ridge Development was annexed and planned the City was aware of St. Croix Riverway Rural Residential 35 feet maximum structure height. The R-1, One-Family Residential, zoning district has a 35 feet maximum structure height as well. The methodology the DNR uses to measure maximum height was different than the



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City's methodology. The City measures maximum height from average grade to average height while the DNR measures from average grade to maximum height. Gray stated that both 1454 and 1458 Lee Circle meet height requirements for the local city methodology, but not the DNR measurement methodology. The City of Hudson was not aware of the height overage until the height of the structure was challenged by neighboring residents and the measurement error was found. Gray stated that the scenic riverway regulations are in place to protect the scenic riverway not protecting the neighbor's views.

Gray reminded the Board of Appeals member that whether the variance was granted or denied that it was not for the Board to find a solution. He reviewed several options that the applicant might pursue to correct the violation including lowering the roof, raising the grade in the back, and raising the grade on sides of the home. Gray described that he talked at length with DNR representative Kay Lutz who recommended the variance application format to follow. The City of Hudson did not charge an application fee as it was not any fault of the homeowners.

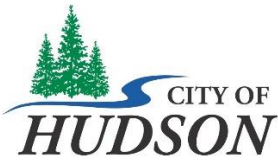
Hallbeck asked when the error was discovered. Gray stated he would need to check but the homes were well framed, and buyers were already identified. Gray confirmed that the process was recommended by the DNR, the DNR was notified of the meetings, and no statement was received. Potter inquired what the height overage was. Gray stated that under the DNR measurement methodology that 1458 Lee Circle was 2.5 feet too tall. Discussion was held regarding re-grading around both structures and that both applications were for height relief.

Doug Rowen, 295 Riverview Drive, read the first paragraph of NR118, Standards for the Lower Dt. Croix National Scenic Riverway, NR118.01 "Purpose". Gavic reviewed that the rears of the properties face southeast towards the Southpoint neighborhood. Discussion was held regarding views of the homes during ingress and egress in the area.

Tom and Deb Schmelz, 305 Riverview Drive expressed concern for a precedence that this will set going forward and highlighted the purpose of NR 118. Gray stated that the process helped the City identify the error in its review process. Going forward the method of how the house plans are reviewed and calculated were adjusted. The City of Hudson Building Inspection Department reviewed the height for all the other homes in the Summit Ridge development. Deb Schmelz, 305 Riverview Drive, stated that they do see the homes as they come and that stand out. Discussion was held regarding the appearance of the homes. Motion by Potter, seconded by Hallbeck to close the hearing. All ayes (5-0). Motion carried.

Discussion and possible action on a variance application by Bruce & Dawn Kolander & Creative Homes Inc. to exceed the maximum structure height of 35 feet by 2.5 feet (City of Hudson Code § 255-18(A) and Wisconsin Administrative Code NR 118.06(1)(d)(2)) at 1458 Lee Circle – Appeal No. 252. Hallbeck asked for discussion about the five decision criteria and asked the Board for further discussion. Huhn requested to review the correction options. Possible options for height correction were reviewed by Gray. He stated that the feasibility of correction should not come in to play during decision making.

Hallbeck asked for specific discussion on hardship. He highlighted that the permit was granted, and the builder did not know about the height violation and now the homeowners are occupying the structure. General discussion was held regarding at what point in the process the proposals for height corrections should be brought forward. Potter stated she felt that any correction for a new homeowner is a hardship. It was highlighted that Creative Homes was applying on behalf of the homeowners. Hallbeck stated that a hardship was created when the City unknowingly issued the permit. He continued to state that on the other hand it is important to consider upholding the conditional use permit the neighborhood has and that the houses exist but Hudson will continue to grow and develop.



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Gray highlighted that as the Board discusses “hardship” it is in regard to unnecessary hardship not financial hardship and if corrections are necessary the builder would come forward with solutions after the appeals processes. Discussion was held regarding unnecessary hardship and how a mistake occurred as it was not the fault of the builder, City or homeowner specifically. Heifner asked when the error was caught and stated there would be no hardship if the correction could have occurred during the construction process. Heifner stated that she did not want a precedent set for real estate or building homes that errors occur and then are not corrected. Gray stated that 1454 Lee Circle was occupied in October 2019 and 1458 Lee Circle was occupied in April 2020. The height was challenged in February 2020 when 1458 Lee Circle was approximately 90% finished.

Potter stated that the error was an unfortunate series of events between city and builder and emphasized that an understanding on the measuring method was now in place. She acknowledged that it is unfortunate that the structures are taller than the height allowance, however she felt that if it were her home it would be a huge hardship to fix. Heifner inquired if the homeowners were in attendance. The homeowners were not in attendance.

Hallbeck stated he felt that the situation was unique even though it occurred for two houses due to the same code it occurred from a calculation and measurement method. Potter agreed. Hallbeck continued to state that the value or income potential would not increase due to the seeking the variance because the height would not exclusively change the value of the home. The home has same value.

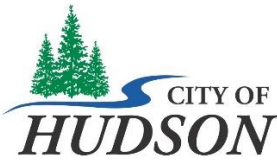
Hallbeck discussed the public welfare criteria and said that with the addition of landscaping or re-grading the altitude of the roofline would still be in the same spot. Heifner highlighted that neighbor testimony considered the structure as significant including the impact of the walkout basement leading to larger amounts of siding. Heifner continued to state that re-grading leading to more grass or the addition of trees does not change the structure but could change the view. Koch stated that there was large number of new houses in the neighborhood and there may be more with walkout basements. Discussion was held regarding house styles and the view of walkouts from the front versus the back. Gavic stated that there were three homes in the Summit Ridge development with walkout basements. Two of the homes were being considered at the current meeting and the third was a rambler which met City and DNR height requirements. She noted that the Southpoint development twinhomes and townhomes may include walkouts, but Southpoint is not in the St. Croix Riverway.

Gray displayed the approved Summit Ridge Development landscaping plan and said that the majority of the trees were planted along the streets of Lee Circle and Mayer Road. Gray stated that specific landscape requirements could be added as a condition of approval if desired by the Board.

Deb Schmelz, 305 Riverview Drive, reiterated that the appearance of the structures from the backside are abnormally large compared to the other homes in the development or neighborhood. She believed it was important that the builder be required to add a buffer in terms of landscape to offset the appearance and she thought it might be a desired option because even raising the grade would still leave an “eyesore”.

Hallbeck responded to the decision criteria regarding to the spirit of the code and noted that unfortunately the variance consideration had to occur after the construction and if the home that was not built that the height excess would not have happened.

Jeff Mizinski, 1417 Wheat Grass, stated that he felt like it was a “slap in the face” that the homes were not done properly as the state and DNR asked. Mizinski stated he also spoke to the DNR representative and had concerns that the DNR may not approve future items if the rules are not followed. Hallbeck stated that in the past discussions regarding the floodplain protection part of NR 118 fell under FEMA floodplain protection.



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Potter said the DNR had suggested the variance be sought. Gray reviewed an example that was provided by the DNR of a similar situation where a permit was granted in Door County and issues were found out after the fact and a variance application was pursued. Gray stated that mistakes do happen and the purpose of the consideration of the appeal was to try to remedy the mistake. Koch stated that she felt that this was a mistake, and the situation does not jeopardize the rules and process followed by the City which have been adjusted to the proper height measurement methodology. She stated that the structures were not built with disregard to the regulations. Hallbeck emphasized that the City recommended approval of the application. Heifner stated that fixing the roof may not be as hard as suggested.

Potter inquired as to how a condition of approval for additional landscaping would be added. Gray stated that if the Board desired to add a landscaping condition that the parameters would need to be easily measured and verifiable. General discussion was held regarding landscape buffers and screening. Gavic stated that Creative Homes Inc. fully cared about their homeowners and would not place the burden of a buffer on the homeowner. Gavic also noted that the homes were approximately more than 150 feet from the roadway as well as about 120-140 feet from private drive.

Deb Schmelz, 305 Riverview Drive, stated that the structures needed a buffer due to the roofline of the two homes being very high. Schmelz stated that accountability and consequences resulted in a need for a buffer area. General discussion was held regarding hardship, variances, and responsibility for corrections. Hallbeck stated that he believed the addition of a landscaping condition would preserve the spirit and purpose of the code.

Gray reviewed that the overall developed Lee property also includes the Southpoint Development to the east of the Summit Ridge Development and is not located in the St. Croix Riverway. He continued stating that if the same houses were one block over that they would be in compliance with City of Hudson zoning. Heifner inquired about setting a precedence. Gray said that each variance application is considered on its own.

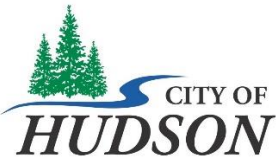
Discussion was held regarding the landscape requirements. Tiffany Weiss, Associate City Planner, reviewed City of Hudson landscaping code requirements. Dave Morton, 721 Glenna Drive, stated he worked for St. Croix Tree Service and noted that how trees are placed can be a major issue. Morton continued to say that 6 ft spruce trees would take years to grow and stated 12 ft or 16 ft trees can be planted with a tree spade truck. Discussion was held regarding tree planting and placement.

Gray stated that in his experience as a staff liaison to the Board of Appeals staff had never made a recommendation until these applications. He continued to state that city staff is recommended approval. Gray recommended any landscaping conditions if desired be consistent with the City of Hudson zoning code requirements. Heifner noted that a tree buffer will grow and did not need to be a wall of trees immediately. Heifner stated that she liked that a landscaping condition was not a negotiation, is a compromise that is not any change, and clarified that the consequences were not to be placed on the homeowners. Potter stated that Creative Homes Inc. had been a longtime partner of the community and it was important to note that they are supporting the homeowners.

Motion by Potter, seconded by Heifner to grant a variance to exceed maximum structure height of 35 ft by 2.5 ft (City Code 255-18(A) & Wisconsin Administrative Code NR 118.06(1)(d)(2)) (Appeal No. 252) at 1458 Lee Circle.

Decision Criteria:

- 1) *Literal enforcement of the code would result in unnecessary hardship to the property owner.*



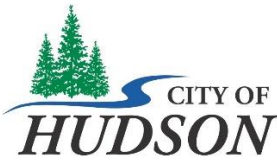
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Strict adherence to the requirements of City of Hudson Code and Administrative Code NR 118 would create hardship due the home being issued a building permit and constructed prior to discovering the height calculation discrepancy between the DNR and City of Hudson methodologies. The hardship was unknowingly created when the permit was issued and the builder constructed the home. The hardship is not self-imposed by the homeowners. The applicant gave testimony that major reconstruction to the home to reconcile the building height calculation methods would be a hardship, because the home construction is complete.

- II) *The conditions upon which a petition for a variance is based are unique to the property for which variation is being sought.*
The variance is sought due to a unique walk-out condition of the property. The measurement calculation and error are unique to the property. The home is already constructed. The applicant gave testimony that the cause of the overage in height of the home is primarily due to the home having a walk out basement leading to the rear of the home being lower. They also stated that the property owner and contractor were unaware of the DNR height calculation method at the time of building permit application.
- III) *The petition for a variance is not based exclusively upon a desire to increase the value or income potential of the property.*
There is no indication that the purpose of the requested variance is based exclusively upon economic considerations. The requested relief does not impact home value. Testimony was given that there is no material effect on the value of the home or parcel associated with the variance request. The overall structure, design, and finishes of the home would have remained consistent to what was constructed.
- IV) *The granting of the variance will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.*
The requested variance is not believed to be detrimental to adjacent properties or the public welfare. A landscape buffer consisting of trees was added as a condition of approval. The applicant gave testimony that there are not obstructed views, nor does the building height impose any limits of use or enjoyment by the neighboring owners.
- V) *The proposed variance will not jeopardize the spirit and general and specific purposes of the Code.*
The requested variance is not believed to undermine the spirit of the Code. The addition of a tree landscape buffer will preserve the views and uphold the spirit and purpose of the code.

Approval is granted to permit variance from City of Hudson Municipal Code 255-18(A) & Wisconsin Administrative Code NR 118.06(1)(d)(2) to exceed maximum structure height of 35 ft by 2.5 ft (City Code 255-18(A) & Wisconsin Administrative Code NR 118.06(1)(d)(2)) (Appeal No. 251) at 1458 Lee Circle with the following conditions:

1. Any omissions of any conditions not listed shall not release the property owner/developer from abiding by City Ordinances.



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2. All conditions run with the land and are binding upon the property owner and all heirs, successors, and assigns. The sale or transfer of all or any portion of the property does not relieve the original property owner from meeting any conditions.
3. That a landscape buffer in the form of five (5) trees (combination of deciduous and coniferous) shall be planted at least 15 feet apart in or near the rear yard setback. Tree size and caliper shall be consistent with City of Hudson Zoning Code 255-34, Landscape Requirements. The planting plan shall be approved by City of Hudson staff.

Roll call voting. **Ayes (5-0). Motion carried.**

Public hearing on a variance application by Brian and Stephanie Defore & Creative Homes Inc. to exceed the maximum structure height of 35 feet by 3.9 feet (City of Hudson Code § 255-18(A) and Wisconsin Administrative Code NR 118.06(1)(d)(2)) at 1454 Lee Circle – Appeal No. 251.

Chairman Hallbeck read the public hearing notice and opened the public hearing stating that persons desiring to speak shall direct their comments to the Board.

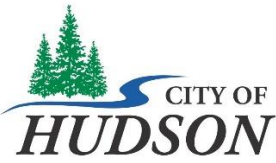
Doug Rowen, 295 Riverview Drive, stated that the only difference he noted between 1458 Lee Circle and 1454 Lee Circle was that the originally permitted plans were not what was constructed. Rowen stated that the change was caught by the inspector in the field and that they did not build permitted structure built a different structure. David Gray, Building Inspector, stated that the original permit was for a lookout style home and at a point during construction the home was switched to a walkout style. The new plans were reviewed and permitted. He continued to state that it was well into the build that the height issue was calculated. At that time, all the homes in the development were reevaluated for height. Discussion was held regarding the house building process.

Jeff Mizinski, 1417 Wheat Grass, expressed concern for the Board of Appeals not including a timeframe for the tree plantings in the previous variance consideration. Mizinski stated that the situation was not unique because the Board considered an application for the same variance for 1458 Lee Circle. He continued to question how the house could be sold if it did not meet code requirements. Gray also noted that granted variances travel with the property and not the homeownership.

Emily Boles read the following items into the record including a letter dated September 17, 2020 by Doug Rowen, 295 Riverview Drive, an email on September 16, 2020 and letter dated January 6, 2021 from Jeff Mizinski, 1417 Wheat Grass, and an email dated September 17, 2020 from Tom Schmelz, 305 Riverview Drive. Gray stated that City staff would monitor the tree installation and stated that plantings before August 1, 2021 would be a reasonable timeline.

Olivia Gavic, Creative Homes Inc. representative, reviewed the history of the site. She stated that the initial draft of the home was for a lookout basement, but the grading plans could accommodate a walkout basement and the plans were altered. Creative Homes re-applied for a building permit with the new home plans. Gavic stated that Creative Homes Inc. did not purposefully ignore any city or state requirements and the height evaluation came up after house construction.

Nick Hackworthy, Creative Homes representative, introduced himself and noted that he could add additional comments on the application as requested. Hackworthy explained that the method that the City measured the maximum height varied from the DNR method. He stated that he believed the height intent of the scenic riverway code was for properties in the river valley. Hackworthy noted that the structure was set back from the



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river with trees and neighboring houses in between. He expressed appreciation for the time to speak as well as the City and neighbor cooperation in fixing an honest mistake.

Gray reviewed the staff report stating the application is similar to the 1458 Lee Circle consideration. The 1454 Lee Circle home is 3.9 feet above the maximum height requirement. Gray stated that the measurement error was identified well after the home construction was under way. Discussion was held regarding the introductory purpose of NR 118. Gray noted that to determine if a property is “visually inconspicuous” the NR-118 definition needed to be reviewed. The definition for “visually inconspicuous” stated that it is difficult to see, or not readily noticeable in summer months as viewed from at or near the mid-line of the Lower St. Croix River. Motion by Potter, seconded by Huhn to close the hearing. All ayes (5-0). Motion carried.

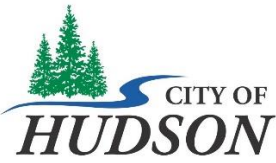
Discussion and possible action on a variance application by Brian and Stephanie Defore & Creative Homes Inc. to exceed the maximum structure height of 35 feet by 3.9 feet (City of Hudson Code § 255-18(A) and Wisconsin Administrative Code NR 118.06(1)(d)(2)) at 1454 Lee Circle – Appeal No. 251.

Hallbeck asked for discussion about the five decision criteria and asked the Board for further discussion. He continued acknowledging that two homes in the Summit Ridge development had the same problem and it was too late to fix during construction. Hallbeck summarized that now a citizen owns the home, the height is incorrect, and still meets City code requirements. Heifner stated that the time to fix the height was during construction. General discussion was held. Gray stated that if the Board desired to grant a variance with the same methodology as the previous request, staff would recommend six (6) trees be planted in the rear yard setback due to the wider lot.

Motion by Huhn, seconded by Potter to grant a variance to exceed maximum structure height of 35 ft by 3.9 ft (City Code 255-18(A) & Wisconsin Administrative Code NR 118.06(1)(d)(2)) (Appeal No. 251) at 1454 Lee Circle.

Decision Criteria:

- I) *Literal enforcement of the code would result in unnecessary hardship to the property owner.*
Strict adherence to the requirements of City of Hudson Code and Administrative Code NR 118 would create hardship due the home being issued a building permit and constructed prior to discovering the height calculation discrepancy between the DNR and City of Hudson methodologies. The hardship was unknowingly created when the permit was issued and the builder constructed the home. The hardship is not self-imposed by the homeowners. The applicant gave testimony that major reconstruction to the home to reconcile the building height calculation methods would be a hardship, because the home construction is complete.
- II) *The conditions upon which a petition for a variance is based are unique to the property for which variation is being sought.*
The variance is sought due to a unique walk-out condition of the property. The measurement calculation and error are unique to the property. The home is already constructed. The applicant gave testimony that the cause of the overage in height of the home is primarily due to the home having a walk out basement leading to the rear of the home being lower. They also stated that the property owner and contractor were unaware of the DNR height calculation method at the time of building permit application.
- III) *The petition for a variance is not based exclusively upon a desire to increase the value or income potential of the property.*



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There is no indication that the purpose of the requested variance is based exclusively upon economic considerations. The requested relief does not impact home value. Testimony was given that there is no material effect on the value of the home or parcel associated with the variance request. The overall structure, design, and finishes of the home would have remained consistent to what was constructed.

- IV) *The granting of the variance will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.*
The requested variance is not believed to be detrimental to adjacent properties or the public welfare. A landscape buffer consisting of trees was added as a condition of approval. The applicant gave testimony that there are not obstructed views, nor does the building height impose any limits of use or enjoyment by the neighboring owners.
- V) *The proposed variance will not jeopardize the spirit and general and specific purposes of the Code.*
The requested variance is not believed to undermine the spirit of the Code. The addition of a tree landscape buffer will preserve the views and uphold the spirit and purpose of the code.

Approval is granted to permit variance from City of Hudson Municipal Code 255-18(A) & Wisconsin Administrative Code NR 118.06(1)(d)(2) to exceed maximum structure height of 35 ft by 3.9 ft (City Code 255-18(A) & Wisconsin Administrative Code NR 118.06(1)(d)(2)) (Appeal No. 251) at 1454 Lee Circle with the following conditions:

1. Any omissions of any conditions not listed shall not release the property owner/developer from abiding by City Ordinances.
2. All conditions run with the land and are binding upon the property owner and all heirs, successors, and assigns. The sale or transfer of all or any portion of the property does not relieve the original property owner from meeting any conditions.
3. That a landscape buffer in the form of six (6) trees (combination of deciduous and coniferous) shall be planted at least 15 feet apart in or near the rear yard setback. Tree size and caliper shall be consistent with City of Hudson Zoning Code 255-34, Landscape Requirements. The planting plan shall be approved by City of Hudson staff.

Roll call voting. **Ayes (5-0). Motion carried.**

COMMUNICATIONS AND ITEMS FOR FUTURE AGENDAS.

Boles noted that she would be sending out the draft minutes for review in the next week.

ADJOURNMENT.

Motion by potter, seconded by Hallbeck to adjourn at 7:24 p.m. All ayes (5-0). Motion carried.

Respectfully submitted,
Emily Boles, Acting Secretary