



REGULAR MEETING OF THE BOARD OF APPEALS
CITY OF HUDSON
Tuesday, July 10, 2018

The Board of Appeals meeting was called to order by Chairman Neset at 5:00 p.m. Chairman Neset noted that a quorum of four members were present which will require a unanimous vote to approve the requested variances. Neset requested approval from the applicant to proceed with a quorum of four. The applicant wished to proceed.

PRESENT. Nick Hallbeck, Jon Huhn (arrived at 6:02 p.m.), Carah Koch, Mary Claire Potter and Karen Neset.

ABSENT. Breanne Berning.

OTHERS PRESENT. Brian Zeller, Dave Snyder, Dan Burnam, Mike Leverty, Michelle Staff, Michael Rogney, David Schofield, Tiffany Weiss, Emily Sorenson, and Mike Johnson.

Discussion and possible action on February 22, 2018 meeting minutes. Motion by Potter, seconded by Hallbeck to approve the minutes of the February 22, 2018 Board of Appeals meeting. All ayes (4-0). Motion Carried.

Public Hearing on a variance application by River City Center, LLC requesting variances for construction of a basement floor below the flood protection elevation (NR116.13(2)(a) and City Code 253-6.3) and reduced dryland access (NR 116.13(2)(b) and City Code 253-6.3) at 109 Second Street, Appeal No. 239.

Chairman Neset read the public hearing notice and opened the public hearing.

Chairman Neset requested the applicant present their proposed site improvements and requested variances.

Dan Burnam with Ayers Associates presented the overall site improvements to the River City Center building. The proposed project includes replacement of the building façade, reconfiguration of access points, and redevelopment of the west and southwest area of the property to provide for additional parking. The applicant is proposing to extend the existing retaining wall on the west side of the building to create a boardwalk that will provide dryland access to Buckeye Street. Burnam noted that at this time the entire basement floor is below the flood protection elevation of 694.0'. The applicant is proposing to raise the lower level to an elevation from its 690.8' to 692.8' bringing the floor 0.8' above the regional flood elevation but 1.2' below the flood protection elevation.

Brian Zeller, a partner of River City Center, LLC, stated that the tenant space in the lower level may include office, retail, or other uses. Zeller noted that improvements will also include the replacement of the dock doors with windows, landscaping, and hardscaping.

Michelle Staff, Wisconsin DNR Floodplain Policy Coordinator, reviewed the key topics from her letter dated June 15, 2018. Staff reminded the Board members that the variance requested is not specific to the proposed development but is for the site itself. Staff noted that city and state standards require the property to come into compliance with development standards if improvement totals 50% over the



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equalized assessed value. Staff also noted that this area of the St. Croix River has not been studied to distinguish between floodway and flood fringe zones. Staff noted that she would remain available to answer any questions.

Discussion was held regarding site and structure improvement costs. Zeller stated that improvements to the structure itself will remain below the 50% equalized assessed value. David Schofield, SEH consultant, reviewed the qualifying costs towards the structure improvements. Zeller provided builder quotes.

Schofield, SEH consultant, summarized the staff report noting that the applicant is requesting two variances. Schofield said that City Code and State Code requires that commercial buildings be elevated to the flood protection elevation (two feet above the regional flood elevation) requiring the basement floor to be elevated to 694.0'. Secondly, the applicant is proposing the addition of a dryland access from the structure to Buckeye Street. Neset clarified that there is currently no dryland access to the property. Schofield confirmed and noted that the proposed dryland access is 10.3' at its narrowest. Further discussion was held regarding dryland access and floodway versus flood fringe.

Schofield reviewed the variance requirements pursuant to City of Hudson Municipal Code and Wisconsin Administrative Code and noted additional information for each criterion below.

1. *Literal enforcement of City of Hudson Municipal Code § 253-4.3 and Wisconsin Administrative Code 116.13 would constitute an "unnecessary hardship".*

Schofield requested the applicant to speak to the unnecessary hardship later in the meeting.

2. *No floor is allowed below the regional flood elevation for residential or commercial structures.*
The proposed floor is seven inches above the regional flood elevation.

3. *Human lives are not endangered.*

The proposed development will include the addition of a dryland access. Additionally, a staff recommended condition of approval would include that the building shall not be used for residential habitation.

4. *Public facilities, such as water or sewer, will not be installed.*
No additional water or sewer is proposed.

5. *Flood depths will not exceed two feet.*
The proposed floor depth is above flood elevation.

6. *Flood velocities will not exceed two feet per second.*
The proposed floor depth is above flood elevation.

7. *The structure will not be used for storage of hazardous materials.*



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There is no knowledge of any storage of hazardous materials at the site. A staff recommended condition of approval would include that the building shall not be used for storage of hazardous materials.

8. *The cost of the proposed alterations, not including any floodproofing costs, must not exceed 50% of the present equalized value.*

The applicant has testified to the proposed alteration cost and a condition of approval is that the owner must demonstrate that the cost of the proposed alterations will not exceed 50% of the present equalized value of the property.

Chairman Neset requested the applicant testify to the unnecessary hardship that would occur without the granting of a variance.

Zeller noted that adequate ceiling height is necessary to allow for movement and lighting in the space.

Dave Snyder, a partner of River City Center, LLC, testified that the original building was built in the 1950's. The existing space is experiencing deterioration and is in need of improvements. Snyder also stated that raising the entirety of the floor to two feet above freeboard would reduce window access on three sides of the building (north, south, and west). Snyder continued to state that the proposed improvements are mitigative and limit flood impact. Additionally, Snyder noted that the literal enforcement of code would result in low ceiling heights ranging from 6' 11.5" to 8' 2" prior to the installation of duct work and lighting.

Burnam noted that International Building Code requires a minimum ceiling height of 7' 6". Discussion was held regarding location of duct work and the proposed ceiling height of 8' 6". The applicant provided diagrams showing the ceiling height and retention wall (dryland access) in the existing, proposed, and code required conditions.

Koch questioned the participation of the City of Hudson in the National Flood Insurance Program (NFIP) if the variance was granted. Schofield stated that the Federal Emergency Management Agency (FEMA) can remove a city from participation in NFIP and enforce code requirements if a city does not properly administer code. Schofield stated that in this case the proposed project is above the flood elevation, is providing dryland access, and would not be allowing residential use of the structure. Staff confirmed that FEMA can enforce floodway code and remove a city from participation in the flood insurance program. Staff also noted that the federal government typically starts with a community audit to evaluate floodway management.

Motion by Potter, seconded by Koch to close the hearing. All Ayes (4-0). Motion Carried.

Discussion and Possible Action on a variance application by River City Center, LLC requesting variances for construction of a basement floor below the flood protection elevation (NR 116.13(2)(a) and City Code 253-6.3) and reduced dryland access (NR 116.13(2)(b) and City Code 253-6.3) at 109 Second Street, Appeal No. 239.



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Board member Huhn arrived at 6:02 p.m. Schofield provided a brief review of the staff report and requested variances. The diagrams of the existing structure and proposed development costs were provided to Huhn.

Hallbeck questioned if the City's hydraulic analysis of the St. Croix River to delineate between the floodway and flood fringe would support the City's effort to enforce floodway code. City Attorney Munkittrick reiterated that prior to the removal of a city from the flood insurance program, FEMA typically performs an audit to review the city's floodway management.

Discussion was held on the last time the Board of Appeals has considered and application for a variance in the floodplain. Naset noted she could not remember a floodplain variance request while she has been on the Board.

The Board agreed to make two separate motions for each requested variance.

Motion by Koch, seconded by Potter to grant a variance for construction of a basement floor at 692.8' which is below the flood protection elevation (694.0') (NR 116.13(2)(a) and City Code 253-6.3) at 109 Second Street based on the following findings:

- I) *Denial of variance would result in hardship to the property owner due to physical characteristics of the site.*

Strict adherence to the requirements of City of Hudson Municipal Code § 253-4.3 and Wisconsin Administrative Code NR 116.13 would require raising the lower level floor by 3.2 feet. The applicant has stated that this would reduce tenant ability to use the lower level due to insufficient floor-to-ceiling height. The applicant has testified that strict adherence to code would result in ceiling height of 6' 11.5" which is below International Building Code's required minimum ceiling height of 7' 6". Raising the upper floor would require structural modifications which would likely exceed 50% of the present equalized value.

- II) *The conditions upon which a petition for a variance is based are unique to the property for which variation is being sought.*

The combination of existing structure conditions, adjacent grades and floodplain elevations are unique to the River City Center building. The conditions of the property existed prior to the applicants purchase of it.

- 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 value or income potential motivations. The applicant has testified that the



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improvements to the property would improve the appearance of the building to the community and providing building enhancements to the current and future tenants.

- 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. It is believed that by raising the lower level above the regional flood elevation the proposed the improvements will mitigate flood impact in the area.

- V) *The proposed variance will not jeopardize the spirit and general and specific purposes of the Zoning Code.*

The requested variance is not believed to undermine the spirit of the Zoning Code. The intent of the zoning code is the protection of the community. The granting of a variance for construction of a basement floor below the flood protection elevation will allow for improvement to flood protection from current conditions.

Approval is granted based on testimony and documents received displaying diagrams of the existing structure and proposed development costs below the 50% equalized value with the following conditions:

1. Property owner must obtain conditional use permit approval from the Common Council.
2. Property owner must obtain final development plan approval from Plan Commission and Common Council.
3. Property owner must demonstrate that the cost of the proposed alterations will not exceed 50% of the present equalized value of the property.
4. Property owner must obtain a floodway determination from Wisconsin DNR confirming that the building is located outside of the floodway.
5. Property owner must obtain all applicable Wisconsin DNR and FEMA approvals. It is specifically noted that this may include a hydraulic analysis of the St. Croix River to confirm that the proposed fill for the dryland access does not increase upstream flood elevations.
6. Property owner must obtain all applicable Building Permits and State Plan Approvals.
7. The building shall not be used for residential habitation or storage of hazardous materials.
8. Any omissions of any conditions not listed shall not release the property owner/developer from abiding by City Ordinances.
9. 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.

All Ayes (5-0). Motion Carried.



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Motion by Hallbeck, seconded by Potter to grant a variance for reduced dryland access at 692.57' and 10.3-feet in width (below 693.0' and narrower than 15-feet) (NR 116.13(2)(b) and City Code 253-6.3) at 109 Second Street based on the following findings:

- I) *Denial of variance would result in hardship to the property owner due to physical characteristics of the site.*

Strict adherence to the requirements of City of Hudson Municipal Code § 253-4.3 and Wisconsin Administrative Code NR 116.13 would require raising the lower level floor by 3.2 feet. The elevation of the dryland access is tied to the elevation of the lower level. The applicant is proposing the construction of a dryland access that is 10.3' at its narrowest where no dryland access currently exists. Site conditions require space for parking and ingress and egress of the property which limits dryland access size. The Board of Appeals stated that 10.3' is an adequate dryland access width to move persons to safety in a flood event. The width of the dryland access has been selected to minimize fill into the floodplain beyond the existing building face. Strict adherence to the 15' requirements would increase the potential of the dryland access to protrude into the floodplain.

- II) *The conditions upon which a petition for a variance is based are unique to the property for which variation is being sought.*

The existing River City Center site presents a unique combination of limitations including the existing structure conditions, adjacent grades and floodplain elevations. The applicant has stated that the conditions existed prior to his purchase of it.

- 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 value or income potential motivations.

- 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. To the contrary, it is believed that the proposed improvements will provide a dryland access from the lower level to Buckeye Street that does not currently exist. The addition of a dryland access will provide the capability to move people from a possible flood situation. It is believed that the addition of a dryland access will increase safety for tenants and individuals visiting tenants. The dryland access is not believed to be injurious to other property.



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- V) *The proposed variance will not jeopardize the spirit and general and specific purposes of the Zoning Code.*

The requested variance is not believed to undermine the spirit of the Zoning Code. The Board of Appeals noted that a floodplain variance request has not been considered since any of the current members have been on the board.

Approval is granted based on testimony and documents received displaying diagrams of the existing structure and proposed development costs below the 50% equalized value with the following conditions:

1. Property owner must obtain conditional use permit approval from the Common Council.
2. Property owner must obtain final development plan approval from Plan Commission and Common Council.
3. Property owner must demonstrate that the cost of the proposed alterations will not exceed 50% of the present equalized value of the property.
4. Property owner must obtain a floodway determination from Wisconsin DNR confirming that the building is located outside of the floodway.
5. Property owner must obtain all applicable Wisconsin DNR and FEMA approvals. It is specifically noted that this may include a hydraulic analysis of the St. Croix River to confirm that the proposed fill for the dryland access does not increase upstream flood elevations.
6. Property owner must obtain all applicable Building Permits and State Plan Approvals.
7. The building shall not be used for residential habitation or storage of hazardous materials.
8. Any omissions of any conditions not listed shall not release the property owner/developer from abiding by City Ordinances.
9. 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.

All Ayes (5-0). Motion Carried.

COMMUNICATIONS AND ITEMS FOR FUTURE AGENDAS. None.

ADJOURNMENT.

Motion by Potter, seconded by Hallbeck to adjourn at 6:20 p.m. All ayes (5-0). Motion Carried.

Respectfully submitted,
Emily Sorenson, Acting Secretary