

**CITY BOARD OF ADJUSTMENT**

MINUTES February 7, 2018

Name	Title	01/03/2018	02/07/2018	03/07/2018	04/04/2018	05/02/2018	06/06/2018	07/05/2018	08/01/2018	09/05/2018	10/03/2018	11/07/2018	12/05/2018
David Mitchell	Board member	1	1										
Dave Hagstrom	Board member	1	1										
Paul Hagen	Board member	1	1										
Frank Chesarek	Vice Chairman	1	E										
Oscar Heinrich	Board member	1	1										
Martin Connell	Board member	1	1										
Mark Noennig	Chairman	1	1										

TOTAL NUMBER OF APPLICATIONS 2018	01/03/2018	02/07/2018	03/07/2018	04/04/2018	05/02/2018	06/06/2018	07/05/2018	08/01/2018	09/05/2018	10/03/2018	11/07/2018	12/05/2018	TOTAL
Variance	2	2											4

Chairman Noennig called the meeting to order at 6:00 p.m. The City Board of Adjustment met in the first floor conference room of the Miller Building located at 2825 3<sup>rd</sup> Avenue North.

Nicole Cromwell introduced the City Board of Adjustment members and Planning Department staff. Attending Staff members are Nicole Cromwell, Zoning Coordinator; Karen Husman, Planner I and Robbin Bartley, Administrative Support.

**Attending:** Mark Sevier, Megan Lind

**Public Comment**

Chairman Noennig opened the public comment period and asked if there was anyone wishing to speak during the public comment portion of the meeting. There were none. Chairman Noennig closed the public comment period.

**Approval Meeting Minutes**

Board member Heinrich made a motion for the approval of January 3, 2018 minutes. Board member Hagen seconded the motion to approve. Minutes were approved by unanimous voice vote 6-0.

**Disclosure of any Conflict of Interest, Ex Parte Communications and Site Visits**

A new form has been implemented for any disclosures. If any Board member circled yes to a Conflict of Interest or Ex Parte Communication, it will be explained here.

## **Public Hearings**

Nicole Cromwell reviewed the procedures for public hearings and stated the Board will open a public hearing and allow public comment this evening. She reviewed the hearing and presentation processes for the meeting and acting on each variance.

Nicole Cromwell read the legal description for **Variance #1273**:

**City Variance 1273 – 2303 1<sup>st</sup> Avenue South – Lot Coverage** - A variance from Section 27-309 requiring a maximum lot coverage of 75% to allow a maximum lot coverage of 77% (16,240 sf total) in a Controlled Industrial (CI) zone, on Lots 1 through 6, Block 135 of Billings Original Town, a 21,000 sf parcel of land. The purpose of the variance is to allow the addition of a 2,400 square foot canopy to the southwest corner of the building. Tax ID: A00887

**Recommendation**: Staff recommends denial of the variance based on the criteria for granting a variance.

## **Questions for Staff:**

**Board member Connell** asked what is the disadvantage to allowing this area covered. Staff indicated there is no hardship and they are creating their own hardship.

**Board member Heinrich** asked for clarification on “creating their own hardship.” Staff explained that the first determination is an oddity or such with the property that creates a hardship. Adding 1910 sq. feet is acceptable, exceeding this is not. Staff was unable to find a basis for hardship.

**Chairman Noennig** also asked about the hardship criteria. Staff again replied that there is no evident hardship.

**Commission Hagen** asked for explanation for two commercial properties with granted variances. Staff explained them as being legal non-conforming situations.

**Commissioner Mitchell** inquired as to parking on the property. Staff did not know about the parking area, and parking requirements were being met.

**Commissioner Heinrich** asked if the new canopy can be enclosed. Staff indicated with a building permit, enclosure was possible.

Chairman Noennig **opened the public hearing at 6:10 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1273**.

## **Mark Sevier, Owner, 2303 1<sup>st</sup> Ave South**

He now has the funds to landscape and clean this property up. Since purchasing this site, he has made structural and lot improvements. These improvements have enabled better parking and forklift access. The lot can now be plowed. At the onset, 5 persons were employed, he now has 12 employees. He has prepared for landscaping. He explained that a 24-foot canopy could be constructed instead of the proposed 30-foot canopy but it does not blend with existing structures. The bi-product of wood drops are offered to the public and there is no issue, however the sawdust is. Building and partially enclosing this canopy would help with blowing sawdust residues.

**Board member Connell** asked if it would be an impediment to add a restriction to enclose only a 20 x 30-foot area. Mr. Sevier agreed to this restriction.

**OPPOSED**

None

**Discussion**

**Board member Connell** stated he thinks this should be granted with enclosure restrictions.

**Chairman Noennig** is struggling with the issue of hardship. Staff explained finding a hardship is regarding the land not the use. There have been variances granted with no hardship.

**Board member Heinrich** asked about other zoning that would allow 77 percent lot coverage. How could the zoning be changed from Controlled Industrial to Heavy Industrial? A zone change would be required.

**Board member Connell** stated what is being asked is very minimal and having to change the zoning is an undue burden. The benefits to granting this variance far out way the possible negative impacts on the surrounding neighbors.

**Board member Hagen** agreed the 490 square feet of extra coverage is minimal and he is in favor of the variance.

**Board member Hagstrom** explained no other recommendation from staff was possible based on the determinations given. He also stated this is why a board is available to consider the request.

**Board member Heinrich** is concerned with the future possibility of not following thru with stated intentions.

**Board member Connell** reiterated his intent to make a motion with the restrictions.

**Staff** reminded the board they will need a fitting determination to change the recommendation.

**The public hearing was closed at 6:40 PM.**

BOARD MEMBER Connell made a motion to APPROVE **City Variance #1273** in line with #4 determination for granting, with the restrictions that the new canopy may not be fully enclosed and a maximum 20 x 30 area will be enclosed for the purposes of wind. BOARD MEMBER Hagen seconded the motion to approve **City Variance #1273**.

Board member	Yes	No	Not Present
David Mitchell	x		
Dave Hagstrom	x		
Paul Hagen	x		
Frank Chesarek			x
Oscar Heinrich		x	
Martin Connell	x		
Mark Noennig	x		

The motion to deny staff recommendation and approve **City Variance #1273** with restrictions, passed 5-1.

Nicole Cromwell read the legal description for **Variance #1274**:

**City Variance 1274 – 1727 Yellowstone Ave – Lot Area** - A variance from Section 27-308 requiring a minimum lot area of 9,600 square feet for two (2) dwellings units and Section 27-308 requiring a minimum 20-foot rear setback to allow a 0-foot rear setback in a Residential 7,000 (R-70) zone, on Lot 7, Block 4 of Burg Subdivision 2<sup>nd</sup> Filing, an 8,400 square foot parcel of land. The purpose of the variance is to allow the sale and financing of the subject property and no construction or reconstruction is proposed at this time. Tax ID: A03841

**Recommendation:**

Planning staff has reviewed this application & is recommending conditional approval of Variance #1274. Based on the determinations for granting a variance.

1. The variance is to decrease the minimum lot size from 9,600 sf to 8,400 sf for two existing single family dwellings & to allow a zero setback to the rear of the second dwelling
2. The variance is limited to the legally described property
3. Any future re-construction of the existing structures will require compliance with all other regulations that apply
4. These conditions shall run with the land

**Questions for Staff:**

NONE

Chairman Noennig **opened the public hearing at 6:50 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1274**.

**Megan Lind, owner**

Ms. Lind and her husband need this variance to obtain a rebuild letter so perspective buyers may get financing for the two structures on this property.

**OPPOSED**

None

**Discussion**

**The public hearing was closed at 6:55 PM.**

BOARD MEMBER Heinrich made a motion and BOARD MEMBER Mitchell seconded the motion to approve **City Variance #1274**.

Board member	Yes	No	Not Present
David Mitchell	x		
Dave Hagstrom	x		
Paul Hagen	x		
Frank Chesarek			x
Oscar Heinrich	x		
Martin Connell	x		
Mark Noennig	x		

The motion to approve with conditions, **City Variance #1274**, passed 6-0.

**Other business:** Chair and Vice Chair election 2018.

**Board member Connell** made a motion to retain the Chair and Vice Chair. **Board member Heinrich** seconded the motion. The motion carried with a 5-1 vote. Chairman Mark Noennig agreed. Vice Chair Frank Chesarek was absent.

The next meeting will be on March 7, 2018.  
Board member Hagstrom will be absent.

**The meeting adjourned at 7:00 PM.**

**ATTEST: DRAFT. To be approved by a motion March 7, 2018.**