

CITY BOARD OF ADJUSTMENT

MINUTES June 6, 2018

Name	Title	01/03/2018	02/07/2018	03/07/2018	04/04/2018	05/02/2018	06/06/2018	07/11/2018	08/01/2018	09/05/2018	10/03/2018	11/07/2018	12/05/2018
David Mitchell	Member	1	1	1	E	1	E						
Dave Hagstrom	Member	1	1	A	1	1	1						
Paul Hagen	Member	1	1	E	1	1	1						
Frank Chesarek	Vice Chair	1	E	1	E	E	E						
Oscar Heinrich	Member	1	1	1	1	1	1						
Martin Connell	Member	1	1	1	1	1	1						
Mark Noennig	Chair	1	1	1	1	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	3	2	3	1						

Chair 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 3rd 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: Denise Joy, Dianna Bachmann, Genova Ross, Pat Davies, Jim Duncan, Alice Golden, Kendrick Trostel, Tim Reedy, Janae Harper, Donna Gullwy, Mitch Goplen, Greg Matthews, Spencer Beddos, Thomas Towe

Public Comment

Chair Noennig opened the public comment period and asked if there was anyone wishing to speak during the public comment portion of the meeting.

Approval Meeting Minutes

Member Hagen made a motion for the approval of May 2, 2018 minutes. Member Connell seconded the motion to approve. Minutes were approved by unanimous voice vote 5-0, with Date correction.

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

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

Member Connell had an Ex Parte communication regarding #1279, with Pat Davies and his comment was “Get your act together”

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.

Chair Noennig advised all attending regarding a 3 minute guideline for testimony. He discouraged repetitive testimony and encouraged efficient testimony. He also reminded all although not sworn, you have duties with respect to candor to the Board.

Nicole Cromwell read the legal description for **Variance #1283**:

Nicole Cromwell presenting.

Appeal – Variance 1283 – 2213 2nd Ave N – Fence Materials – An appeal from an administrative decision to not allow the use of salvaged wood from the deconstruction of pallets used to transport appliances and glass. Section 27-604.e of the Zoning Regulations prohibits the use of salvaged materials for use in the construction of fences. The subject property is legally described as the East 44.5 feet of Lots 23 & 24, Block 63, Billings Original Town, a 2,250 square foot parcel of land. Tax ID: A00435

The BOA may determine the following:

- Reverse the determination and allow the fence permit to be approved
- Affirm the determination of staff regarding the salvaged materials – specifically wood from pallets – may not be used to construct a fence (affirm the denial of the permit)
- Modify in whole or in part the determination including conditions of modification

The BOA determination should be supported by testimony and information received regarding the appeal

“Material permitted-residential and commercial zones. All fences in residential, agricultural and commercial zoning districts shall be constructed from materials are commonly used for fencing and shall not be constructed from railroad ties, wood pallets, tires, rubble or salvaged material. Commonly used fence materials include wood, brick, stone, split railing, chain-link, wire, vinyl, ornamental iron work. Materials not listed are subject to special review.” Section 27-604(e)

“Salvage: Something saved as valuable or useful from trash, rubbish, worn out equipment, or junk.” Section 27-201

Recommendation:

Planning staff recommends the BOA sustain and uphold the administrative decision to not allow the use of salvaged wood for this fence.

Questions for Staff:

Member Connell stated she did not use whole pallets, the applicant should have used the terminology repurposed or recycled material.

Member Heinrich asked if the applicant had not used the word “pallet”, would this have been allowed? Staff replied all applicants are advised of the entire code. Any material that is used and not new would not be allowed by the code. Staff stated if the applicant does not disclose the fence material is used, we don’t know.

Will this be part of Recode? Staff has no idea if this will be revised.

Will this set a precedence going forward ? Staff indicated it may be subject to interpretation.

Chair Noennig asked if the chain link fence above the wood in the alley will remain. The shorter fence meets clear vision requirements. Staff explains a fence inside a fence is not a fence, but still must comply with the clear vision standards.

Chair Noennig inquired regarding the statement “Materials not listed are subject to special review” Was this used to make the decision? Staff replied the consensus is the materials used were listed. What is the definition of equipment?? Pallets are packaging material.

Member Heinrich stated a fence inside a fence is not a fence. The outside fence is the fence.

Chair Noennig **opened the public hearing at 6:28 PM** and asked if there was anyone wishing to speak in favor or against **City Appeal Variance #1283**.

Diana Bachmann, owner

Ms. Bachmann stated she is proud of the fence. She stated she was advised to get a fence permit. While obtaining the permit I disclosed I was using pallet wood and subsequently the permit was denied. I did not have money for a fence and a friend paid for the appeal. Reclaiming the wood seemed like a good idea.

Chair Noennig - where did the materials come from? The pallets were from appliance stores, etc.

Member Hagstrom asked how high the fence is. 4 foot

Chair Noennig asked if the boards are leveled? Yes it has been leveled, with a positive decision it will be finished, leveled and completely painted.

Member Hagstrom asked how the fence is attaching to the existing fence? There are boards on the inside and the interior fence will be removed.

Member Heinrich asked how long she has been in this house? Since 1975

Member Connell stated he has been watching the progress. He feels she has improved the area.

Randy Hafer, 702 N. 23rd

If salvaged is an issue could it not be considered as repurposed, upcycled or recycled. This is a clever way to use the wood in a positive way.

OPPOSED

None

The public hearing was closed at 6:39 PM.

Discussion

Member Heinrich stated this is a difficult situation as the definitions are in place. He is hoping someone will be able to find the exception.

Chair Noennig does not believe it was the intent of the statute to exclude repurposed wood. No disrespect meant to staff.

Member Heinrich stated just up the block there is an identical fence.

Member Connell made a motion to reverse , stating this is not salvage material and imposing the

conditions of painting and finishing the fence. Member Heinrich seconded the motion to approve **City Appeal Variance #1283 with conditions.**

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 Appeal Variance #1283, as presented.**

~~_____ recommended the verbiage to be changed during Project Re:Code.~~

Nicole Cromwell read the legal description for ~~Return Item City Variance #1279.~~ Karen Husman presenting:

~~**Return Item - City Variance 1279 – 608-624 N 25th Street – Front and Side Adjacent to Street Setbacks - A variance from Section 27-309 requiring a minimum front setback of 20 feet to allow a 2-foot front setback from 7th Ave North; from Section 27-309 requiring a minimum side adjacent to street setback of 10 feet to allow an 8-foot side adjacent to street setback from N 25th Street in a Residential Professional (RP) zone, on Lots 4-12 and 17-21 of Block 59 Foster’s Addition and Lots 4-11 of Block 269 Billings First Addition, a 1.12 acre parcel of land. The purpose of the variance is to allow the construction of a new medical clinic. Tax IDs: A01966, A01967, A01968, A07375 & A07379**~~

The Board of Adjustment held a public hearing on April 4, 2018, for Variance 1279 and voted 2-3 on a motion to approve the variance application based on the determinations by staff with the conditions recommended. The motion failed. At its meeting of May 2, 2018, the BOA voted to reconsider the motion at its meeting on June 6, 2018. Presented by Karen Husman, Planner I.

Recommendation:

Planning staff has reviewed this application and is forwarding a recommendation of conditional approval for the variance based on the determinations for review provided within this report.

1. The variance is from 27-309 requiring a minimum side adjacent to street setback of 10-feet to allow a setback of 8 feet and the front setback of 20 feet to allow a 2-foot. No other variance is intended or implied with this approval.
2. The variance is limited to the south Lots 4-12 and 17-21 of Block 59 Foster’s Addition and Lots 4-11 of Block 269 Billings First Addition, generally located at the SW corner of 7th Ave. W & N 25 St.
3. The applicant will submit and obtain a building permit for the structure within 1 year and have the construction completed within 3 years.
4. The structure shall be built in substantial conformance to the site plan submitted with this application. The applicant must show compliance with the clear vision area requirements, and if needed the site plan modified to meet the code.
5. Construction or demolition activity will not occur prior to 7 am or after 8 pm daily.
6. Failure to begin or complete actions required by this approval within the time limits

set forth shall void this variance.

7. The applicant shall meet all other city code requirements for the proposed clinic with the exception of this variance.

8. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

Questions for Staff:

Chair Noennig asked for clarification regarding the setback requirement being the original setback proposed. What is the setback requirement? 10.5 feet and the 10 foot setback on the side is met.

Chair Noennig **opened the public hearing at 6:47 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1279**.

Jim Duncan, 2711 Gregory Drive

Mr. Duncan stated this process has been good for them. The first plans were not complete and thank you for letting us come back. This time not many stones have been left unturned. The request has been narrowed and the plan has been revised. The 9.5 encroachment has been cut in half, and are setback 10.5 feet . There are several variances in the area have been approved. We have met with the neighbors. Why do we need the extra 2 feet on the edge of the building? The rate for those needing dialysis is increasing. 36 chairs is the optimal number for all concerned. Dialysis is a tough business and Billings Clinic is now partnering with them. This will help with the work force shortage, reimbursement is an issue. A two story operation is not efficient and is difficult to meet the needs of the patients including safety concerns. We need to be near the medical corridor and there is no good piece of property on the Billings Clinic Campus. We like the central locality. Moving the alley was not cost efficient. This project supports the City of Billings Growth Policy. We will be using local contractors and engineers. We hope to have gotten our act together to provide a good service.

Member Hagen stated he is really glad they went back to the drawing board.

Member Connell thanked them for coming back and doing this right, Billings Clinic is a large supporter in the area. This will definitely be an improvement to the area.

Chair Noennig asked how far is the building moving in - 2 feet to 0, 18 feet to 9.5 feet.

Member Hagstrom questioned Pat Davies asking the total square footage is 49000 feet. What you are asking for 300 square feet. Couldn't you have squeezed this into the footprint? Because of code and zone, we were not able to crush it any further.

Randy Hafer, neighbor

From his perspective, this is a vast improvement to the area. Their presentation has definitely improved.

Tom Towe, 2739 Gregory Drive

Mr. Towel originally owned this property, 10-15 years ago MSUB asked to look into what kind of business should go there. 2-4 months later they determined nothing would work there. Please consider giving a little leeway.

Alice Golden

Her husband is on dialysis. The current facility is depressing. The new building is so uplifting. Thank you DCI and Billings Clinic.

The public hearing was closed at 7:12 PM.

Discussion

Member Heinrich exclaimed his surprise and stands corrected. He is extremely happy at the new evidence provided and will reconsider his original vote. This is nice.

Member Heinrich made a motion and Member Hagstrom seconded the motion to approve **City Variance #1279**.

Amend 1 and 4 conditions, indicate we reviewed the variances

Member	Yes	No	Not Present
David Mitchell			X
Dave Hagstrom	X		
Paul Hagen	X		
Frank Chesarek			X
Oscar Heinrich	X		
Marty Connell	X		
Mark Noennig	X		

The motion to approve with conditions, **City Variance #1279**, passed 5-0.

Other business: .

The meeting adjourned at 7:14 PM.

ATTEST: APPROVED by a motion July 11, 2018.

