

CITY BOARD OF ADJUSTMENT

MINUTES November 8, 2018

Name	Title	0	0	0	0	0	0	0	0	0	0	1	1	1
		1	2	3	4	5	6	7	8	9	0	1	2	
		/	/	/	/	/	/	/	/	/	/	/	/	
		0	0	0	0	0	0	1	0	0	0	0	0	
		3	7	7	4	2	6	1	1	5	3	8	5	
		/	/	/	/	/	/	/	/	/	/	/	/	
		2	2	2	2	2	2	2	2	2	2	2	2	
		0	0	0	0	0	0	0	0	0	0	0	0	
		1	1	1	1	1	1	1	1	1	1	1	1	
		8	8	8	8	8	8	8	8	8	8	8	8	
David Mitchell	Member	1	1	1	E	1	E	1	-	1	1	E		
Dave Hagstrom	Member	1	1	A	1	1	1	1	-	1	1	1		
Paul Hagen	Member	1	1	E	1	1	1	1	-	1	E	E		
Frank Chesarek	Member	1	E	1	E	E	E	1	-	E	E	E		
Oscar Heinrich	Member	1	1	1	1	1	1	E	-	1	1	1		
Martin Connell	Member	1	1	1	1	1	1	1	-	E	E	1		
Mark Noennig	Chair	1	1	1	1	1	1	E	-	1	1	1		

TOTAL NUMBER OF APPLICATIONS 2018	0	0	0	0	0	0	0	0	0	1	1	1	T
	1	2	3	4	5	6	7	8	9	0	1	2	O
	/	/	/	/	/	/	/	/	/	/	/	/	T
	0	0	0	0	0	0	1	0	0	0	0	0	A
	3	7	7	4	2	6	1	1	5	3	8	5	L
	/	/	/	/	/	/	/	/	/	/	/	/	
	2	2	2	2	2	2	2	2	2	2	2	2	
	0	0	0	0	0	0	0	0	0	0	0	0	
	1	1	1	1	1	1	1	1	1	1	1	1	
	8	8	8	8	8	8	8	8	8	8	8	8	
Variance	2	2	3	2	3	1	1	-	1	2	3		20

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: Joel Parker, Marilyn Kreiner, Dave Scott, Kelly Holmes, Kacie Rodahl, Nancy Heidlebaugh, Carol Trawick, Tammy Wigley, Scott Chesarek, Bob Whalen

SPECIAL PRESENTATION: Mayor Cole presented a plaque to Scott and Carol Chesarek recognizing Frank Chesarek's volunteer work on the City Board of Adjustment.

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 Heinrich made a motion for the approval of October 3, 2018 minutes. Member Connell seconded the motion to approve. Minutes were approved by unanimous voice vote 4-0.

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

A 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.

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 **Return Item - City Variance 1284**.

Karen Husman presenting:

Return Item - City Variance 1284 – 1324 O'Malley Dr –Front Setback for an Attached Garage
- A variance from Section 27-308 requiring a minimum front setback of 20 feet to allow a 12-foot front setback in a Residential 9,600 (R-96) zone, on Lots 11 & 12 of Block 1, Carlson Subdivision, a 9,980 square foot parcel of land. The purpose of the variance is to allow the construction of a new attached garage. The variance request for a 4 foot rear setback was previously approved in July 2018. Tax ID: A04101.

Recommendation:

Planning staff has reviewed this application & is recommending conditional approval of Variance #1284. Based on the Determinations for granting a variance.

1. This approval is for a variance from Section 27-308 requiring a minimum front setback of 20 feet to allow a 12-foot front setback and a minimum rear setback of 20 feet to allow a setback of 4 feet to allow an attached garage. No other variance is intended or implied with this approval.
2. The variance is limited to Lots 11 & 12 of Block 1, Carlson Subdivision generally located at 1324 O'Malley Drive.
3. The applicant will submit and obtain a building permit for the new addition within 1 year and building completion within 2 years of variance approval. Failure to complete the project within required timeline will void the variance.

4. The construction shall be in substantial conformance to the site plan submitted with the amended application seen at the November 8, 2018 public hearing.
5. Construction or demolition activity will not occur prior to 7 am or after 8 pm daily.
6. The applicant shall meet all other city code requirements for the proposed addition, with the exception of this variance.
7. 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:

Member Heinrich asked regarding the previous Variance approval. Either way a Variance would be necessary, back or front. Staff confirmed.

Chair Noennig inquired regarding the previously approved Variance as he was not in attendance.

Member Hagstrom confirmed the setback in the rear. How far is the Public Right of Way? How far is the back of curb to his property line? 11 feet

Chair Noennig **opened the public hearing at 6:12 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1284**.

Joel Parker, 1324 O'Malley

He measured incorrectly therefore creating the need for this Variance. Mr. Parker lives on site and wants to build this structure to consolidate his belongings. He does some business at his home.

Member Heinrich asked if he is cutting trees. Mr. Parker may need to cut and remove one tree.

OPPOSED

David Scott, 1339 Crawford Drive

There is an existing garage. He has lived across the alley for 21 years. He has never seen anyone live there. A business is being run from this location. He insists this will be a parking lot for employees.

Kelley Holmes, 2210 14th Street West

Ms. Holmes contends Mr. Parker is running a business out of this location and does not live there. Ms. Holmes wishes to resubmit her letter of opposition to this Variance. She feels it is not right to allow a business in a residential area.

Rebuttal

Mr. Parker confirms there was a garage at the front but this structure has been converted into living space. While his father was alive, there was business in this location. My rental tenants throughout the city will confirm the storage of motorcycles etc in those locations.

Member Heinrich-living on site

Discussion

Member Heinrich asked staff if a business at this location have any bearing on the Variance. Staff replied, no.

Chair Noennig stated USE is not within the Board's jurisdiction.

The public hearing was closed at 6:28 PM.

Member Heinrich made a motion to approve and Member Connell seconded the motion to **approve** **City Variance #1284**.

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 **City Variance #1284**, passed 4-0.

Nicole Cromwell read the legal description for **Variance #1288**.

Monica Plecker presenting:

City Variance 1288 – Land Use Contrary to Zoning (LUCZ) – Elysian School Sign - A public forum to gather comment on a proposed sign contrary to the City Sign Code requirements for all schools limiting the maximum sign height to 5 feet. The proposed sign structure is 12 feet tall. (Section 27-706.e) *The City Board of Adjustment has no power to approve, deny or attach conditions to the proposed use. State law (MCA 76-2-402) requires a forum before the Board of Adjustment to receive public comment.* The property is C/S 832 Parcel 1A 19.93 acres in area and is zoned Public. Tax ID D00862

Recommendation:

This request to conduct a public forum for the new sign. Use of land contrary to zoning is allowed by state statute MCA 76-2-402 after a Public Forum is held before the local Board of Adjustment. State law does not give the authority to the Board of Adjustment to approve or deny the request but does allow the Board to receive public comment on the use

State Statute

76-2-401. Definitions. As used in 76-2-402, the following definitions apply:

(1) "Agency" means a board, bureau, commission, department, an authority, or other entity of state or local government.

(2) "Local zoning regulations" means zoning regulations adopted pursuant to Title 76, chapter 2.

History: En. Sec. 1, Ch. 397, L. 1981.

76-2-402. Local zoning regulations – application to agencies. Whenever an agency proposes to use public land contrary to local zoning regulations, a public hearing, as defined below, shall be held.

(1) The local board of adjustments, as provided in this chapter, shall hold a hearing within 30 days

of the date the agency gives notice to the board of its intent to develop land contrary to local zoning regulations.

(2) The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

Questions for Staff:

Chair Noennig **opened the public hearing at 6:33 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1288**.

Bob Whalen, 6416 Elysian Road

Mr. Whalen discussed the location and need for this 12 foot sign.

OPPOSED

None

Discussion

The public hearing was closed at 6:38 PM.

Nicole Cromwell read the legal description for **Variance #1289**.

Monica Plecker presenting:

City Variance 1289 – 41 Sunset Dr – Lot Coverage - A variance from Section 27-308 requiring a maximum lot coverage of 30% to allow a maximum of 33% for a proposed 1,170 square foot addition to an existing single family residence in a Residential 9,600 (R-96) zone on Lot 9A, Block 11, Hilltop Subdivision 2nd Filing, a 11,250 square foot parcel of land. Tax ID A09139A

Recommendation:

Planning staff has reviewed this application & is recommending denial of Variance #1289 based on the Determinations for granting a variance.

Questions for Staff:

Chair Noennig asked if any neighbors had commented during the application process. Staff has heard from no one.

Member Hagstrom asked if there are existing height restrictions in this subdivision. There is, a 34 foot restriction.

Member Heinrich asked if this Variance, if approved, would be setting a precedence. Staff replied it would be the first of it's type in the area.

Chair Noennig **opened the public hearing at 6:45 PM** and asked if there was anyone wishing to speak in favor or against **City Variance #1289**.

Kacie Rodahl, 41 Sunset Drive

Ms. Rodahl, sister and 5 children live in this home and need more room. They do not want to move because the grandparents live just across the road.

Nancy Heidlebaugh, 701 Sapphire

Ms. Heidlebaugh is the grandmother and enjoys having her children and grandchildren so close. The family simply needs more room.

Chair Noennig asked for explanation regarding the dirt basement area.

OPPOSED

None

Discussion

Member Heinrich stated building within the constraints of a 914 square foot addition, it could be 2 stories.

Chair Noennig also reiterated the addition would be sufficient. You are a victim of the Zoning restrictions.

The public hearing was closed at 6:53 PM.

Member Heinrich made a motion and Member Connell seconded the motion to deny. **City Variance #1289, based on staff recommendation.**

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, **City Variance #1289**, passed 4-0

Other business:

The meeting adjourned at 6:56 PM.

ATTEST: DRAFT. To be approved by a motion December 4, 2018.

Dave Hagstrom will not attend.