

CITY BOARD OF ADJUSTMENT

MINUTES January 5, 2022

Name	Title	01/05/2022	02/02/2022	03/02/2022	04/06/2022	05/04/2022	06/01/2022	07/06/2022	08/03/2022	09/07/2022	10/05/2022	11/02/2022	12/07/2022	
David Mitchell	Member	1												
Dave Hagstrom	Member	1												
VACANT	Member	-												
Jeff Bollman	Vice Chair	P												
Oscar Heinrich	Member	1												
VACANT	Member	-												
VACANT	Member	-												
TOTAL NUMBER OF APPLICATIONS 2022		01/05/2022	02/02/2022	03/02/2022	04/06/2022	05/04/2022	06/01/2022	07/06/2022	08/03/2022	09/07/2022	10/05/2022	11/02/2022	12/07/2022	TOTAL
Variance		2												

Vice Chair Bollman, attending by phone, appointed Board member Heinrich, Chairman pro tem. Board member Heinrich called the meeting to order at 6:01 p.m.

Nicole Cromwell introduced the City Board of Adjustment members and Planning Department staff. Attending Staff members are Monica Plecker, Planning Division Manager, Nicole Cromwell, Zoning Coordinator, Erin Keith, Planner I and Robbin Bartley, Administrative Assistant, (virtually).

Attending: Tanya Weinreis

Public Comment

Board member Heinrich 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.

Approval of Meeting Minutes

Meeting minutes for December 1, 2022.

The December 1, 2021 meeting minutes were approved, without motion, by unanimous voice vote.

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

Board member Mitchell had no ex parte communications, no conflicts of interest and visited 2 sites.

Board member Heinrich had no ex parte communications, no conflicts of interest and visited 2 sites.

Board member Bollman had no ex parte communications, no conflicts of interest and visited 0 sites.

Board member Hagstrom had no ex parte communications, no conflicts of interest and visited 2 sites.

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.

City Variance 1338 – 2716 7th Ave N – Allow DU on 1st floor - A variance from 27-1002.A.2 requiring a residential use in the Downtown Support (DX) zone to be either on the 2nd floor of a structure or at least 30 feet behind the front façade on the first floor of a structure to allow a residential dwelling to occupy the entire first floor of a structure in a Downtown Support (DX) zone, on Lots 13-14, Block 41, Fosters Addition, an 7,000 sf parcel of land. The purpose of the variance is to allow an existing structure to be renovated to its original use as a residential duplex with a dwelling in the basement and a dwelling on the first floor. Tax ID: A07267

RECOMMENDATION

Planning staff has reviewed this application & is recommending conditional approval of Variance 1338 based on the proposed findings of the review criteria.

Questions for staff:

Board member Heinrich opened the public hearing at 6:12 PM and asked if there was anyone wishing to speak in favor or against **City Variance 1338**.

Applicant: Not in attendance

Favor

NONE

Opposed

NONE

Discussion-NONE

At 6:12PM, Board member Heinrich closed the Public Hearing and called for a motion.

Motion


Board Member Mitchell made a motion and Board Member Hagstrom seconded the motion to approve **City Variance 1338**, with staff recommendations & conditions.

MEMBER	YES	NO	ABSTAINED	NOT PRESENT
David Mitchell	X			
Dave Hagstrom	X			
VACANT				
Jeff Bollman	X			
Oscar Heinrich	X			
VACANT				
VACANT				

The motion to approve City Variance 1338 passed with a 4-0 vote.

City Variance 1339 – Mountain Mudd Kiosks– allow temporary use structures larger than 120 sf at 16 Shiloh Rd, 2975 Grand Ave & 4001 Montana Avenue - A variance from Section 27-1009(A)(3)(b)(4)(i) requiring a group 3 temporary use structure to be a maximum floor area of 120 square feet to allow: 1) a 160 square foot structure in a Neighborhood Mixed Use (MNU) zone on Parcel 1A, Certificate of Survey 2727M, a 1.587 acre parcel of land located at 16 Shiloh Rd; 2) a 250 square foot structure in a Commercial Mixed Use 1 (CMU1) zone, on Lot 18A, Block 7, Westwood Estate 3rd Filing, a 39,207 sf parcel of land located at 2975 Grand Avenue; and 3) a 360 square foot structure in a Corridor Mixed Use 1 (CMU1) zone, on Lots 1 thru 8, Block 24, Yellowstone Addition, a 21,000 sf parcel of land located at 4001 Montana Ave. The purpose of the variance is to allow group 3 temporary use structures at the described locations larger than the maximum allowed floor area 120 square feet. Tax ID: D11891, A18486B; A19303. Erin Keith presenting.


The Variance is requested has changed and is only for 16 Shiloh Road.



Background

Temporary Uses – 27-1009

- o Group 1: Less than 72 hours
 - o No permit required
 - o Examples: Foodtrucks
- o Group 2: 73 hours to 90 days
 - o Permit required
 - o Examples: Foodtrucks, Christmas tree lots, greenhouses
- o Group 3: 91 days to 1 year
 - Permit required
 - Structures cannot have axels/wheels
 - Maximum structure size 120 square feet
 - Examples: Coffee kiosks, greenhouses, portable classrooms/offices




Background

Findings from a Recent Intensive Review of Group 3 Temporary Use Permits:

- o 6 existing temporary use structures (kiosks) that exceed the maximum square footage of 120 square feet
- o From 130-200 square feet
- o Proposed direction from Planning staff:
 - Continued use of oversized kiosks would require applying for a variance
 - All newly proposed kiosks would need to meet the maximum size requirement
- o This application is only for 1 of the 6 noncompliant temporary use structures
 - The existing structure is currently 160 square feet


RECOMMENDATION

Planning staff has reviewed this application & is recommending conditional approval of Variance 1339 based on the proposed findings of the review criteria.



Recommended Conditions

1. The approval is for a variance from Zoning Code 27.1009(A)(3)(b)(4)(i), as amended increasing the maximum allowed size of the structure from 120 square feet to 160 square feet (34% increase). No other variance is intended or implied with this approval.
2. The variance is limited the existing 8'x20' kiosk only, currently located on Parcel 1A, Certificate of Survey 2727M, and becomes void if the structure is moved (either within the same parcel or to another parcel within the City Limits) or the footprint is altered in any way.
3. The variance shall be null and void if at any time in the future, the temporary use permit for this kiosk remains expired for more than 30 days or if the structure is not in operation for more than 180 days.



**Recommended Conditions,
*continued***

4. 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, leaseholders, heirs and assigns, so long as the structure is not moved from its current location.
5. The applicant shall meet all other city code requirements, including annual renewal of the temporary use permit, except for this variance.

Questions for staff:

Board member Heinrich asked if ownership changed if there would need to be a new Variance. Staff explained Temporary Use permits are issued to persons while Variances run with the land.

Staff explained the desire to keep kiosks in service rather than deal with an abandoned building.

Monica Plecker stated the owner could find a permanent location and apply for a commercial building permit. It is the owners choosing to go the temporary route. It is beneficial to the owner financially because of the expenses incurred with a brick and mortar structure.

Board member Mitchell asked if all 6 of the oversized buildings are coffee kiosks. Staff affirmed. He then asked if other buildings oversized would be allowed. Staff replied a new structure at a new location would not be approved for permit. The IBC will not allow anything larger than 120 square feet. It is not possible to issue a building permit to an existing, in use, structure. These 6 kiosks were issued a Temporary Use Permit in error, a Variance is the best option for these existing kiosks.

Board member Heinrich asked about the large kiosk across the street (Soda Station). Staff stated it is 120 sf.

Previously there was an 8x8 coffee kiosk on this site, why is it larger now. Staff erred in issuing the Temporary Permits to the larger size.

Board member Heinrich opened the public hearing at 6:28 PM and asked if there was anyone wishing to speak in favor or against **City Variance 1339**.

Applicant: Tanya Weinreis, Mountain Mudd, PO Box 50626, Billings, MT 59105

The building department told her as long as it is on skids, she was not given a size limitation.. She is asking to use this kiosk because she was given the wrong information. She has 2 other buildings built, not yet in service she will be getting a commercial permit for.

Board member Hagstom asked what the size of the other 2 buildings are. Staff replied one is 360sf and the other 250sf. They will not be temporary uses.

Favor
NONE

Opposed
NONE

Discussion-NONE

At 6:32PM, Board member Heinrich closed the Public Hearing and called for a motion.

Motion

Board Member Hagstrom made a motion and Board Member Mithcell seconded the motion to approve **City Variance 1339**, with staff recommendations & conditions.

Board member Bollman then interjected and asked the motion to be rescinded. He has concerns about the presidence being set for future oversized kiosks. He understands the administrative error. If this approved, 6 more will be approved?

Monica Plecker explained the other 5 will be considered individually as they come forward to renew their Temporary Use Permts applied for annually. It is not the intent to bring to the Board for Variance anything that is not currently in use. All future kiosks will have to comply with the 120sf limitation.

Board member Bollman asked if this 160sf kiosk was recently moved to this location. Monica Plecker stated it was moved into place earlier in 2021. It was originally an 8 x 8 structure.

He then asked if the Temporary Use renewal application stated the size of the new building. Staff affirmed the size was stated and missed by the application reviewer.

Board member Bollman stated he is not convinced this is the best option. While he does simpathize with the owner, the Temporary Use application online does not specify the maximum building size. His thought is to delay this for 30 days to give it further consideration. He wants to understand the ramification of the decision going forward. If the board approves this one, he feels the other 5 are basically being approved and he has no information on the other 5 in question.

Board member Heinrich understands his concern and believes these are anomalies and will probably need to be approved after first considering them individually.

Staff has informed each of the other 5 of their options to apply for a Variance or apply for commercial building permit. The largest of the other 5 in question is 200sf. There is absolutely no intention of allowing permission of larger than 120sf going forward.

The application process has been updated and approved, there are no mysteries going forward.

Board member Bollman stated there was no malicious intent on the approval of these 6 structures. What is to say it can't happen again after we have cleaned these up? We could have this situation again.

Board member Heinrich asked Board member Bollman what he would like to see from Staff if this decision was delayed for 30 days.

Board member Bollman stated he would like to see the information on the other 5 kiosks that could potentially come before the board.

Staff (Nicole Cromwell) stated this may not be the last time Planning staff will have to ask for mercy from the board on behalf of a permitting mistake.

Board member Mitchell asked if the 120sf limitation came into effect with Re:Code. Staff replied it has always been 120sf and Re:Code had no affect.

Monica Plecker stated the audit information can be shared with the board. It is very important that each application be considered for the one location in question.

Board member Heinrich asked the applicant if this would hurt her in anyway. Ms. Weinreis replied she likely has \$150,000.00 invested. He then asked Staff what she would have to do if this Variance is denied. Monica Plecker stated the applicants current Temporary Permit is good thru November 2022. Decisions would have to made at that time how to proceed. She believes bringing this to the board for Variance consideration is the best first step to correct the error.

Board member Hagstrom asked about the clarity of the application and whether or not the maximum size is clearly stated.

Staff (Erin Keith) explained the process has changed from paper application to online. The paper application asked for the total square footage but does not state the maximum. All six did disclose the size of their building.

Board member Heinrich explained the options available. He also explained the need for all board members to approve. The options include asking Board member Bollman to motion to delay 30 days, or go ahead with the vote.

Board member Heinrich asked Board members Hagstrom and Mitchell if they would rescind their previous motion. They agreed to rescind.

Board member Bollman then made a motion to continue the public hearing for Variance 1339 to the February 2, 2022 meeting. Board member Hagstrom seconded.

Board member Bollman pointed out there is no urgency since the applicant can remain open without restrictions until November, 2022.

MEMBER	YES	NO	ABSTAINED	NOT PRESENT
David Mitchell	X			
Dave Hagstrom	X			
VACANT				
Jeff Bollman	X			
Oscar Heinrich	X			
VACANT				
VACANT				

The motion to continue the Public Hearing for City Variance 1339 passed with a 4-0 vote.

Other Business: 2022 Chair and Vice Chair elections

Board member Hagstrom nominated Oscar Heinrich for Chairman, Board member Mitchell seconded. All were in favor.

Board member Mitchell nominated Jeff Bollman for Vice Chairman, Board member Hagstrom seconded. All were in favor.

ADJOURNMENT: The meeting adjourned at 6:56PM.

ATTEST: DRAFT. To be approved by a motion at the next regularly scheduled meeting.
Robbin Bartley, Administrative Assistant.