

**CITY BOARD OF ADJUSTMENT**

MINUTES March 2, 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	-	1										
Dave Hagstrom	Member	1	-	1										
George Warmer	Member	-	-	1										
Jeff Bollman	Vice Chair	P	-	1										
Oscar Heinrich	Chair	1	-	1										
VACANT	Member	-	-	-										
VACANT	Member	-	-	-										
<b>TOTAL NUMBER OF APPLICATIONS 2022</b>		<b>01/05/2022</b>	<b>02/02/2022</b>	<b>03/02/2022</b>	<b>04/06/2022</b>	<b>05/04/2022</b>	<b>06/01/2022</b>	<b>07/06/2022</b>	<b>08/03/2022</b>	<b>09/07/2022</b>	<b>10/05/2022</b>	<b>11/02/2022</b>	<b>12/07/2022</b>	<b>TOTAL</b>
<b>Variance</b>		<b>2</b>	<b>-</b>	<b>3</b>										

Chair Heinrich called the meeting to order at 6:02 p.m.

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

**Attending:** Nicolette Schuma, Don Bergeron, Ev Bergeron, Tanya Weinreis, Diana Koenig, Verlin Koenig, Eddie Schmidt, Robin Schmidt, Kirsten DeVries, Colter DeVries, Joe Easton, Chad Schreiner, Koltan Knatterud, Brent Brooks

**Public Comment**

Chair 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 January 5, 2022.

Board member Hagstrom motioned to approve the January 5, 2022 meeting minutes, Board member Mitchell seconded, they were approved by unanimous voice vote.

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

Board member Mitchell had no exparte communications, no conflicts of interest and visited 3 sites.

Board member Heinrich had no exparte communications, no conflicts of interest and visited 3 sites.

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

Board member Hagstrom had no exparte communications, no conflicts of interest and visited 1 site.

Board member Warmer had no exparte communications, no conflicts of interest and visited 0 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.

**Return 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 3<sup>rd</sup> 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



### Background

#### Temporary Uses – 27-1009

- Group 1: Less than 72 hours
  - No permit required
  - Examples: Food trucks
- Group 2: 73 hours to 90 days
  - Permit required
  - Examples: Food trucks, Christmas tree lots, greenhouses
- 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:

- 6 existing temporary use structures (kiosks) that exceed the maximum square footage of 120 square feet
- From 130-200 square feet
- 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
- This application is only for 1 of the 6 noncompliant temporary use structures
  - The existing structure is currently 160 square feet

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.


### **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,  
*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.



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.

### **Questions for staff:**

Board member Bollman asked if staff had be reaching out to the other 4 kiosk owners who are out of compliance.

### **Chair Heinrich**

Chair Heinrich opened the public hearing at 6:17PM 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

### **Favor**

NONE

### **Opposed**

NONE

Discussion-Board member Bollman confirmed the variance would only apply to this location and no new construction.

At 6:21PM, Chair 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 1339**, with staff recommendations & conditions.

<b>MEMBER</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAINED</b>	<b>NOT PRESENT</b>
David Mitchell	<b>x</b>			
Dave Hagstrom	<b>x</b>			
George Warmer	<b>x</b>			
Jeff Bollman	<b>x</b>			
Oscar Heinrich	<b>x</b>			
VACANT				
VACANT				

**The motion to approve City Variance 1339 passed with a 5-0 vote.**

**City Variance 1341 – Coca-Cola Building– Allow increase in maximum sign square footage in a Light Industrial (I1) zone** - A variance from 27-1407(E)(a) requiring a maximum of 250 square feet total sign area per frontage, on parcel 11A of COS 1391 AMND, generally located at Harnish Boulevard and S Frontage Road in a Light Industrial (I1) zone. The purpose of the variance is to allow a 456 sq ft sign on a building with 400 lineal feet of frontage. Tax ID: D008740

**RECOMMENDATION**

Planning Staff is recommending conditional approval based on draft findings of the review criteria for variances:

- 1) There is a hardship with the property that is not applicable to other lands in the same district – the property is a large lot not oriented directly or squarely with the street or interstate.
- 2) Denying the variance would deprive this owner of similar rights enjoyed by others in the area. The BOA has granted at least 2 sign variances in the past 10 yrs to increase sign area beyond the max, and several existing signs larger than 250 sf were approved under previous sign code.
- 3) Granting the sign variance will not confer a special privilege to this applicant based on previous BOA approvals and existing signs >250 sf in the area.
- 4) Granting the variance will be in harmony with the purposes of zoning and growth policy. The zoning code recognizes the need for businesses to accurately and efficiently advertise their location and services. While not all businesses will require signs >250 sf, the location and property orientation diminish the ability to communicate to the travelling public with a code compliant sign.
- 5) In granting the variance the BOA may impose appropriate conditions. Planning staff recommends the following conditions:
  - 1) Variance is to allow one wall sign up to 456 sf on the north west building façade
  - 2) Applies to the legally described land only
  - 3) Building shall be constructed and oriented in substantial compliance with site plan
  - 4) Apply for building permit within 2 years of BOA approval
  - 5) Prior to sign installation, apply for sign permit within 5 years of BOA approval
  - 6) Failure to begin or complete as required will void the variance
  - 7) All conditions apply to this owner and any future owners/managers/lessees, assigns.

- 6) A time limit for action on the variance shall be prescribed. See conditions No. 4 and No. 5 above.
- 7) No variance may allow a use not otherwise allowed or be inconsistent with other limits on uses in the district. The proposed use – a bottling plant, warehouse and distribution center are allowed uses in the Light Industrial (I1) zone district

**Questions for staff:**

Chair Heinrich opened the public hearing at 6:48PM and asked if there was anyone wishing to speak in favor or against **City Variance 1341**.

**Applicant: Joe Easton, 5730 Alloy North, Missoula, MT**

Messenger Director of Property Development for High Country Coca Cola.  
Very excited about the opportunity in Billings at this location.

**Chad Schreiner, 124 N. 24<sup>th</sup>, Billings, MT**

The intent is to be a prominent location 160 K square foot building and 15 K square foot office building. No secondary sign will be on Harnish. This sign is the same size as the one in Missoula. North/South orientation, design forward office. It is a 50 square foot monument sign.

**Favor**

NONE

**Opposed**

NONE

**Discussion-**Boardmember Bollman encouraged usage of the building for signage, not free standing.

At 6:50PM, Chair 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 1341**, with staff recommendations & conditions.

<b>MEMBER</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAINED</b>	<b>NOT PRESENT</b>
David Mitchell	x			
Dave Hagstrom	x			
George Warmer	x			
Jeff Bollman	x			
Oscar Heinrich	x			
VACANT				
VACANT				

**The motion to approve City Variance 1341 passed with a 5-0 vote.**

**City Variance 1342 -2622 Rimrock Rd – Reduce lot width for a 2<sup>nd</sup> dwelling unit** – A variance to reduce the required lot width from 65 feet for each dwelling unit to allow 84.5 feet in lot width for two dwelling units on Lot 11, Block 4 of Bridger Square Subdivision 7<sup>th</sup> Filing, in a Suburban Neighborhood (N3) zone district on a 12,607 square foot parcel of land. The variance would allow the demolition of an existing garage and construction of a second dwelling unit. Tax ID: A03197D

**RECOMMENDATION**

Planning staff recommends conditional approval based on the proposed findings of the review criteria for Variance 1342.

**Questions for staff:**

Boardmember Hagstrom asked how close they are on the lot coverage. Staff replied they are at 36 percent; 40 percent is the maximum. If the zoning was still using the R-96 zoning, what variance would be needed? Staff replied 2 variances would be necessary, 1 for setbacks less than 8 feet for a 2-story building and 1 for lot area. He then asked what the off-street parking requirement would be for the 2 structures. Staff replied each structure requires 2 parking spaces.

Boardmember Mitchell asked if the 3 previously approved variances in the area were before RE:Code. Staff confirmed. He then asked if the construction of a garage would be allowed without a variance. Staff explained the requirements and limitations for a detached garage.

A discussion ensued regarding ADU with garage allowances and the permitting process.

Questions arose regarding the existing house current use with a basement apartment and how that would affect the ADU codes.

The question of rentals was discussed. When there is an Internal door connecting the upper and lower floors, it is not considered 2 dwellings, no matter if one is a rental.

This is not a rebuild situation, this is a new build.

Chair Heinrich opened the public hearing at 7:31PM and asked if there was anyone wishing to speak in favor or against **City Variance 1342**.

**Applicant:** Colter DeVries, 2622 Rimrock Rd

Thanks to Nicole and Erin for all the help. He wants to reiterate their request is not to ask for a special privilege. There have been heated opinions about our property. We have a pride of ownership; the small house is a fixer upper and will be kept as a guest house. The new house will be our growing family's home. The neighbors want a fence and we are not opposed. We request the building orientation stay as displayed, east to west and not north to south. We would like you to consider a compromise. We do not feel we have any entitlement to the neighbor's driveway/property.

**Favor**  
NONE

**Opposed**

**Don Bergeron, 2729 E. Bridger Drive**

Their home has been here for 35 years. He enjoys their backyard. He and his neighbors are powerless to stop this kind of development. It will greatly affect his quality of life, his view and he is overwhelmed with the thought of this happening. Who will advocate for him and his neighbors?

**Evelevn Bergeron, 2729 E. Bridger**

Mrs. Bergeron was very emotional and claimed the building of this dwelling would limit the light and access. She is an artist.

**Diana Koenig, 2612 Rimrock**

She and her husband are against the Variance. There is not a shared driveway as the DeVries state. They have no interest in sharing the driveway and no easement exists. They have had problems with owners and renters infringing on their driveway for years. This Variance will not solve their narrow driveway issue. There will be more vehicles. Their views would be blocked, they would be looking directly into the side of the “apartments”. The DeVries already have to entrances to their current dwelling. She continues to refer to the proposed structure as an “apartment building”. She feels this is too much congestion for this residential neighborhood. We are asking, if approved, a condition be put in place of a permanent, solid 6 foot fence.

**Verlin Koenig, 2612 Rimrock**

This Variance is not appropriate for the location. It falls 45 feet short of the City code. This will create safety issues entering and exiting the lot. The approval of this Variance is forcing and imposing hardships on the surrounding neighbors daily lives. He believes his property value is in jeopardy, while the DeVries profit. Please deny this Variance. 98 percent of the surrounding neighbors are single family residences.

**Nicolette Schuman, 2626 Rimrock**

Past variances are for shorter and smaller dwellings. Natural landscapes are encouraged. Drainage will be compromised, where will all the rain/snow end up? Cameron Park is a wild park. The proposed dwelling has no room for a yard for children to play.

**Brent Brooks, 115 N Broadway**

Mr. Brooks is a friend of the surrounding property owner. The applicant has compromised some. The lot is narrow and there are several issues that have not yet been addressed.

**Eddie Schmidt, 2625 N Broadway**

He is opposed because he does not want to see more rentals in the area. There are very few now. He believes it should be left as a single family residence area.

**Robin Schmidt, 2625 N Broadway**

Mrs. Schmidt stated she is opposed to the Variance request.

**REBUTTAL**

**Krysta and Colten DeVries, 2622 Rimrock**

Verlin brings up a good point regarding the shed access in the back. He wants to replace it as it will not fit his pickup or future purchases. The home would be for our growing family. They are

considering removing the ash tree. It depends on where the survey pins are located. The chain link fence with vines are messy.

It is not a shared driveway, we respect their property. The new building will be our home, it is not an apartment building. The current house is still connected with an interior door. She has considered a circular driveway.

Board member Bollman about the rental issue. An ADU was considered, however 750 square feet is too small.

At 8:06PM, Chair Heinrich closed the Public Hearing and called for a motion.

### **Discussion-**

Boardmember Hagstrom asked what the total square footage would be. 3522 square feet. A Variance is necessary because it is a separate structure. They could add an attached dwelling.

Boardmember Hagstrom mentioned the intention of Re:Code was to increase density in the City and decrease sprawl. However, the neighbors' input is important. He stated to Mr. DeVries that his project makes sense, but understanding the neighbors' input. He then moved to deny the approval of the application.

Chairman Heinrich asked staff to place the criteria back on the viewing screen. He also asked if this is denied, how long must the applicant wait to reapply? Staff replied a 1 year waiting period is required. He then confirmed the applicant may withdraw the application at anytime before the decision is made. Staff replied in the affirmative and there are several options under the code. The Board may **delay action** and keep the public hearing open for 30 days if the applicant and neighbors could agree on a compromise, if there is the possibility of a set of agreed upon conditions to consider, if the Board needs more information about other approved Variances in the area or any other reason you might need a delay.

Chairman Heinrich asked the Board if there was reason to delay action. Board member Mitchell there is no reason to delay and 2<sup>nd</sup> the motion to deny.

Staff asked the mover and the second to articulate the change of findings from the staff recommendations. Chair Heinrich advised the Board they must find something opposite in the table of findings.

Board member Mitchell said granting this Variance would be a special privilege because of the lot width being so narrow.

Board member Warmer stated he is struggling to deny this. The house to the east has similar square footage. The same size on a smaller lot. The neighbors are benefiting from the DeVries large open lot. It is unfair to penalize them because of the neighbors wish for view.

Colten DeVries stated he would like to withdraw the application.

Chair Heinrich asked the mover and 2<sup>nd</sup> if they would withdraw the motion, both agreed to remove the motion.

**Motion**

Board Member Hagstrom made a motion and Board Member Mitchell seconded the motion to allow withdrawal of **City Variance 1342**.

<b>MEMBER</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAINED</b>	<b>NOT PRESENT</b>
David Mitchell	x			
Dave Hagstrom	x			
George Warmer	x			
Jeff Bollman	x			
Oscar Heinrich	x			
VACANT				
VACANT				

**The motion to approve withdrawal of City Variance 1342 passed with a 5-0 vote.**

**Other Business:**

**ADJOURNMENT: The meeting adjourned at 8:47PM.**

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