

CITY BOARD OF ADJUSTMENT

MINUTES May 4, 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	E	E								
Dave Hagstrom	Member	1	-	1	1	1								
George Warmer	Member	-	-	1	1	1								
Jeff Bollman	Vice Chair	P	-	1	1	E								
Oscar Heinrich	Chair	1	-	1	1	1								
Chris Hayes	Member	-	-	-	1	1								
Josh Sayer	Member	-	-	-	1	1								
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	-	3	1	*2								7

- 1 Returning variance

Chair Heinrich called the meeting to order at 6:00 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.

Attending: Josh Neibauer, Bill Starr, Steve Bullock, Andy Daleioen, Jenifer McRae, John Ellingsen, Sean Anderson, Brian Whelen, Travis Dennison, Brandie Robbins, Adela Awner

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 March 2, 2022 and April 6, 2022. Approved.

Board member Hayes indicated Exparte communication regarding Variance # 1343 and recused himself from the voting.

Chair Heinrich and Board member Hayes visited the sites.

Board member Hayes expressed a conflict of interest regarding Variance # 1343.

Public Hearings

Return Item - City Variance 1343 – 3840 Zoo Drive – Parking Siting - A variance from Section 27-409 requiring surface area parking located to the side and rear of the principal structure, to allow parking in the front of the principal structure in a Heavy Commercial (CX) zone, on Lots, 4 – 8 and 9A, Block 2, Shiloh Business Park Subdivision, a 24.91-acre parcel of land. The purpose of the variance is to allow the development of a new Costco facility. Tax ID: C13936, C13937, C13938, C13939, C13940 and C13941

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 Canyon Creek Ditch cross the northwest corner of the property limiting the ability to place structures close to or across the ditch. While the encumbered area of the property is small, its effect on a development of a 166K+ warehouse building, fueling facility and a future MDO addition are large, given the CX zone requirement for parking location.
- 2) Denying the variance would not deprive this owner of similar rights enjoyed by others in the area. This is a variance of first impression under the new code provisions in Billings. Other property in the area was developed under the previous code that allowed surface parking lots in any yard and of any size. This is a right commonly enjoyed by other properties but these rights are now considered legally nonconforming. Changing zoning regulations always creates some legally nonconforming uses or site development standards for prior projects. The applicant analyzed each alternate proposed or suggested by staff and has proven the proposed site plan balances the intent of the parking siting requirement and the safety and efficiency of the Costco development. Mitigation measures are proposed.
- 3) **Granting the parking siting variance will not confer a special privilege** to this applicant. Any variance has the potential to grant a special privilege to an owner. Based on the analysis of several site plans, the site constraints and proposed mitigation, staff believes a special privilege will not be granted in this case. This finding is limited to this case and these particular circumstances and should not be taken as a precedent for reviewing future parking siting requests for variance.

4) Granting the variance will be in harmony with the purposes of zoning and growth policy.

Granting this variance recognizes the value of the current zoning requirement for placing parking to the side or rear of building by providing mitigation measures. The Zoning regulations also recognize the need to provide relief from regulations that may create unnecessary hardship based on site constraints.

5) In granting the variance the BOA may impose appropriate conditions. Planning staff recommends the following conditions:

- 1) Variance is to allow up to 535 surface parking spaces in the front yard based on re-submitted site plans – *Costco suggested edits to this condition are acceptable to staff*
- 2) The variance is limited to Lots 4-8 and Lot 9A of Block 2 Shiloh Business Park Sub Amended – *Staff prefers this legal description as it encompasses all the lots.*
- 3) Provide ground markings for two safe pedestrian pathways from Zoo Dr to the warehouse building
- 4) Install gazebos and pavilions as shown on the Concept Landscape Plan at the Zoo Dr street frontage
- 5) No evergreen or conifer trees in the street frontage landscaping, lowest branch height at installation is 8 feet. Concept Landscape Plan is starting basis for final design.
- 6) No outdoor announcement system audibles beyond property lines.
- 7) Apply for building permit within 2 years and complete project within 5 years - *Costco suggested edits to this condition are acceptable to staff*
- 8) Any structures not shown on site plan will comply with all zoning requirements and other city regulations – *Costco suggests eliminating this condition as unnecessary*
- 9) All other city zoning regulations and city ordinances except for the granted variance will apply to the project - *Costco suggests eliminating this condition as unnecessary*
- 10) Failure to begin or complete as required will void the variance
- 11) All conditions apply to this owner and any future owners/managers/lessees, assigns - *Costco suggested edits to this condition are acceptable to staff*

6) A time limit for action on the variance shall be prescribed.

See condition No. 7 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 – Costco Warehouse, Fueling Facility and future MDO – are all allowed uses in the CX zone district

Costco Proposed Landscape and Mitigation

Nicole Cromwell, Zoning Coordinator
City of Billings
Planning & Community Services Department -7-

April 26, 2022

IV. Providing a Safe and Attractive Pedestrian Connection from Zoo Drive:

The site plan is updated to include a pedestrian connection from the multi-use path along Zoo Drive, which travels south between the fuel facility and the northern parking pod until it connects with the ADA parking area north of the warehouse entrance. As described above, the area along Zoo Drive will be treated with enhanced landscaping to provide a comfortable setting for pedestrians. As the path travels through the parking areas toward the warehouse entrance, it will be delineated using bold line striping for drive aisle crossings and concrete for areas passing between parking stalls. This creates an easily visible path of travel for both pedestrians and motorists passing through the site.

Previously recommended conditions regarding the ADA parking location, and site lighting have not been included in this set of recommended conditions. Costco has adequately addressed these issues in the April 26, 2022 supplemental information provided (pages 7 and 8).

V. Review Options to Improve ADA Pedestrian Safety at the Warehouse Entrance, Including Setback of the Driveway:

After consideration of alternate driveway and ADA stall locations, the existing layout along with pedestrian safety enhancements such as bold ground striping and additional signage remains the preferred design. As discussed in the operational description, the drive aisle that travels along the building frontage is separated from the back-feed aisle circulation, meaning the members using this route are likely to be traveling at slower speeds, searching for parking or dropping someone off at the entrance rather than trying to pass through the site. Additionally, the presence of a busy, clearly delineated pedestrian area is likely to deter any drivers looking to quickly pass through the area.

Relocating the ADA stalls against the building frontage eliminates a circulation drive aisle that is included in the current design, resulting in an increased confluence of parking back-feed aisles directly in front of the warehouse entrance. This would cause increased congestion between pedestrians and vehicles circulating through the most desirable parking area of the property. In addition to creating a separate circulation aisle away from the main entrance, the current ADA parking canopy creates a refuge for the pedestrian connection to Zoo Drive.

The proposed location of the ADA stalls is preferable for Costco and was designed to observe and address feedback on current locations. Additionally, the ADA parking layout and pedestrian areas are designed in compliance with the 2010 ADA Standards for Accessible Design. We trust that the proposed design works well in other locations and anticipate that it will also work well at the proposed location in Billings.

VI. Parking Lot Lighting Pole Height:

External lighting for the warehouse and fuel canopy signage will be wall-mounted down-facing flat lens LED fixtures. Costco's standard silencing led lighting has been developed over many years with an eye toward sustainability through the reduction of raw materials and energy usage. As a result, they have developed a standard site lighting pole that is 30 feet 6 inches tall and uses high efficiency LED fixtures. City staff proposed a Condition of Approval, should the variance be granted, limiting the average pole height to 20 feet. Enclosed are two photographic exhibits showing a comparison of light levels between Costco's standard pole height and the proposed conditional height. Both options are equally efficient in limiting light spill and glare onto adjacent streets and properties. However, Costco's standard lighting design only requires 44 poles and 67 fixtures, as opposed to 102 poles and 130 fixtures, which would be required based on the City's conditional height limit. Costco's standard design would

Nicole Cromwell, Zoning Coordinator
City of Billings
Planning & Community Services Department -8-

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allow for a 56 percent reduction in materials and a 36 percent reduction in energy use for the site.

VII. Provide Explanation for Costco's Relocation:

The current Costco facility in Billings is undersized, has a poor parking area with narrow drive aisles, no back-feed lanes, and grades that make it difficult to maneuver Costco shopping carts. In addition, the current location does not allow for the ability to expand and add a MCO facility, which will be a critical part of Costco's future business operations. Due to the current physical limitations of the existing Costco location, the existing development, regulatory, experience, parking deficiencies, congestion, and internal circulation issues associated with an inefficient, non-standard layout. Specifically, the existing Costco building located on King Avenue includes 597 parking stalls and is located within a shopping center where on-site parking is shared with adjacent retail tenants. The main internal drive aisle between South 24th Street and King Avenue West also passes directly in front of the warehouse house entrance, where it also intersects with another drive aisle between the commercial areas to the east, and eventually Grant Road. As a result, the area in front of the warehouse entrance regularly experiences large volumes of vehicles interacting with a busy pedestrian area, creating congestion and increasing the risk of potential conflicts. The new project allows Costco to improve the efficiency, safety, and capacity of its operations.

We believe that the above responses, together with the enclosed revised plans, landscape perspectives and alternate layout analysis exhibits address the feedback received from both the Staff Report and our subsequent discussions, and demonstrate the key considerations Costco made in meeting the intent of the Heavy Commercial design standards. The variance request is the minimum necessary deviation from the City parking sign Code in order to allow the project to meet the Costco's operational requirements within the constraints of the site. Based on the additional materials and narrative responses provided in this letter, we believe staff are justified in supporting the variance request. If you have questions or need additional information, please do not hesitate to contact me at (405) 251-6222. Thank you.

Sincerely,
Sean Anderson, ADP
Senior Planner

Questions for staff:

Chair Heinrich asked staff if this was setting precedence for anyone else. Staff replied explaining the "neighborhood manners" listed in the commercial code. ADA parking was also addressed, placing it in a safe zone in front of the building and meeting all ADA specifications.

Public Hearing opened at 6:35PM

Applicant:

John Ellingsen, 999 Lake Drive, Issaquah, Wa. 98027

Also in attendance are Brian Whelan, Steve Bullock, Andy Daleioen, Sean Anderson and Jeff Schumacher via Zoom.

EXISTING SITE

- Facility in place for 30-years; Costco has outgrown the location
- Smaller building (142,000 Sq. Ft.)
- Limited exclusive parking with narrow drives
- Site access and circulation creates confluence of vehicular activity at warehouse entrance
- No room for future Market Delivery Operation



This 30 year old design has taught us many things about how to improve circulation and parking. Parking is paramount. All surrounding neighbors are in support of this plan.

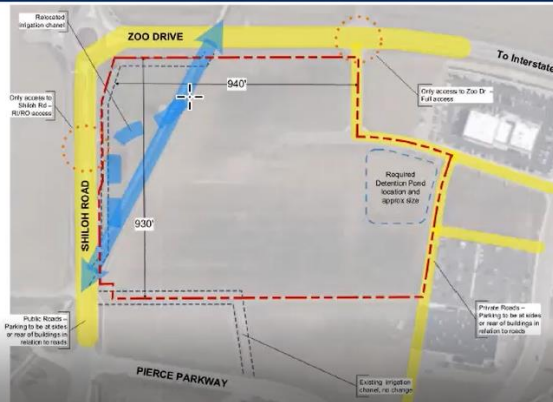
VARIANCE REQUEST

- In order to relocate within Billings
- Develop a parcel that has unique constraints making strict adherence to the Code infeasible
- Allow Costco to develop a new site that improves the safety, efficiency and capacity of its operations
- Implementing this plan is supported by all immediately surrounding neighbors

Barghausen Consulting Engineers, Inc – Sean Anderson, agent
18215 72nd Avenue South Kent, WA 98032

SITE CONSTRAINTS

- Constraints due to the irrigation canal running through the land;
- Fixed access points to surrounding streets that impact internal drive design;
- Known future expansion must be accommodated;
- Existing drainage infrastructure limits design options



The ditch can be relocated and piped to unlock the corner for future needs. There are fixed access points. Staff alternatives would not allow MDO drainage infrastructure. Costco is a 46-year-old business with 572 warehouses in the US and more than 800 warehouses globally. The suggested layout will provide the best way to address all constraints with a minimum variance. The traffic will be kept away from the front of the warehouse. The ideal Costco prototype is to fan parking across the front of the building. The fuel facility must be located in view of the warehouse but separate from the warehouse. We have added features to mitigate parking in the front. A multiuse path and gazebo, also enhanced landscape on Zoo MT route to Riverfront Park. We will use tree species that are acclimated to the area. Landscaping will allow natural observation and enhance pedestrian safety. There will be bold pedestrian striping and an ADA parking pod.

John Ellingson concluded by thanking the Board and staff for their time.

CONCLUSION

- Staff has reviewed the project site revisions and agreed with the alternate site plan analysis
- Surrounding property owners support the project design and layout
- Staff recommend a conditional approval of the variance request
- Costco accepts the conditions of approval, as amended

Questions for applicant:

Chair Heinrich asked about additional signage on the building. There are additional signs along Zoo Drive. Chair Heinrich also asked if the property to the south of the current site was able to be purchased to alleviate the ditch hardship. Brian Whelan responded by pointing out the additional ditch complications making the circulation and parking even more cumbersome.

In Favor:

Bill Starr, 6868 Whitetail Lane, Billings

He is the president of Canyon Creek ditch company. They have talked extensively with Costco and are in agreeance of the proposed changes.

Josh Neibauer, 4404 Neibauer

He is good with the ditch relocation.

Opposed:

Adela Awner, 1109 Delphinium

A Costco member for many years. She is concerned for the large empty warehouse being left at the current location. What business will occupy this vacancy? Brian Whelan stated there is a high interest in the current location and a lot of ability to rehabilitate and redo.

Chair Heinrich asked about the Shopko space. Did Costco try to occupy it when it was available. Mr. Whelan explained because of the way Shopko was financed, Costco ability to buy, was not possible. Chair Heinrich asked about the King Ave fuel facility. The facility will be properly decommissioned.

Public Hearing closed at 7:08PM

Discussion

Motion

Board Member Warmer made a motion and Board Member Sayer seconded the motion to approve the **City Variance 1343 with staff recommendations, conditions and findings of fact.**

MEMBER	YES	NO	ABSTAINED	NOT PRESENT
David Mitchell				X
Dave Hagstrom	X			
George Warmer	X			
Jeff Bollman				X
Oscar Heinrich	X			
Chris Hayes			RECUSED	
Josh Sayer	X			

The motion to approve City Variance 1343 passed with a 4-0-1 vote.

City Variance 1344 – Classy & Sassy Kiosks – A variance to allow Group 3 temporary use structures larger than 120 sf at 1508 Main St, 1221 6th Ave. N & 1313 Broadwater. 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 200 square foot structure in a Corridor Mixed Use 1(CMU1) zone on Block 2, Lot 1, Arrowhead Sub. a 14,724 square foot parcel of land located at 1508 Main St.; 2) a 150 square foot structure in a East Billings Central Works (EBURD-CW) zone, on Block 4, Lot 23, North Park Sub., a 37,500 sf parcel of land located at 1221 6th Ave. N; and 3) a 200 square foot structure in a Corridor Mixed Use 2 (CMU2) zone, on COS 568, Parcel C, a 5.057 acre parcel of land located at 1313 Broadwater 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. Group 3 temporary uses may be located on property indefinitely but require a yearly renewal of the temporary use permit by the City. Tax IDs: D02554, A12100, D01319.

Recommendation:

Planning staff has reviewed this application & is recommending conditional approval of Variance 1344 based on the proposed findings of the review criteria.

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: two at 200 square feet (66% increase) and one at 150 square feet (30% increase). No other variance is intended or implied with this approval.
2. The variance is limited the existing kiosks only, currently located on the parcels described in this application, 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 permits for any of these kiosks remain expired for more than 30 days or if the structure is not in operation for more than 180 days.
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 structures are not moved from their current location.

5. The applicant shall meet all other city code requirements, including annual renewal of the temporary use permits, except for this variance.

Staff indicated they had received an email in opposition. It was distributed by email and hardcopy to the Boardmembers.

Questions for staff:

Public Hearing opened at 7:35PM

Applicant: Greg Reid, Agent, WWC Engineering

The owners did apply for their yearly temporary use permits and were previously approved. A commercial building permit is now in process for the Henesta address. It is now time for yearly renewal for the existing Kiosks thru Planning review. The larger size kiosks help deal with more business.

Questions for applicant:

In Favor:

Travis Dennison, 6947 Brave Lookout, Shepherd, MT

He is the owner and has 45 employees. We were unaware of the size constraints because it is legal to build a 200 square foot shed without a building permit in the City.

Opposed:

Jenifer McCrae, 208 Prickett Lane, Billings, MT

She purchased Sunshine Espresso and cannot take in more employees or increase the building size. It is a huge disadvantage to her business and it is unfair to allow others in the same business to do it.

Rebuttal: Greg Reid, WWC Engineering

A larger building is allowed with a commercial building permit. This variance process is not the only way to build bigger.

Cassandra Dennison, 6947 Brave Lookout, Shepherd, MT

She is also an owner and has been in business 10 years. This situation was not done with ill intent. We were approved, with this building size, at yearly renewal. Months later the error was discovered and this variance is the remedy. She understands Ms. McCrae's concerns with fairness.

Public Hearing closed at 7:44PM

Discussion

Motion

Board Member Hayes made a motion and Board Member Hagstrom seconded the motion to approve **City Variance 1344 with staff recommendations.**

MEMBER	YES	NO	ABSTAINED	NOT PRESENT
David Mitchell				X
Dave Hagstrom	X			
George Warmer	X			
Jeff Bollman				X
Oscar Heinrich		X		
Chris Hayes	X			
Josh Sayer	X			

The motion to approve City Variance 1344 passed with a 4-1 vote.

Other Business: 1 item for June 1, 2022 meeting.

ADJOURNMENT: The meeting adjourned at 7:47PM.

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