

CITY BOARD OF ADJUSTMENT

MINUTES October 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	-	1	E	E	E	1	E	-	E			
Dave Hagstrom	Member	1	-	1	1	1	1	1	1	-	1			
George Warmer	Member	-	-	1	1	1	E	1	1	--	1			
Jeff Bollman	Vice Chair	P	-	1	1	E	1	1	1		E			
Oscar Heinrich	Chair	1	-	1	1	1	1	1	1	-	1			
Chris Hayes	Member	-	-	-	1	1	1	E	1	-	1			
Josh Sayer	Member	-	-	-	1	1	1	1	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	1	*3	*2	-	1			11

*1 Returning variance

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

Chair Heinrich 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 Assistant.

Attending: Vu Le

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 July 6, 2022 and August 3, 2022 were approved unanimously.

Disclosure of Exparte Communications:

Disclosure of Site Visits: Chair Heinrich visited the site

Disclosure of Conflict of Interest:

Public Hearings

City Variance 1350 – 3032 King Ave West – Reduce Front Lot Line Coverage - A variance from 27-406 – Table of Site and Structure Regulations A.3 – requiring a minimum of 50% of the front lot line to be covered by a building façade to allow 30% front lot line coverage in a Corridor Mixed Use 2 (CMU2) zone, on Studer Acreage Tracts Sub 822, Lot 3B, Amended, a 63,461 sf parcel of land. The purpose of the variance is to allow the construction of a new Panda Express with a drive through. Tax ID: C03640

Recommendation:

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

1. That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district.

There is a special circumstance with this parcel that does not apply to other parcels in the area. The lot has an irrevocable access easement that applies to the western 30 feet of the 164-foot wide lot. In addition, the lot is exceptionally narrow compared to its depth - 164 feet wide and 387 feet deep or a ratio of 2.35. A width to depth ratio of more than 1.6 makes site design more difficult even for smaller building footprints such a fast-casual or drive-thru restaurant. A typical drive-thru designs requires customers to "circle" the building. The proposed site design illustrates the path of travel for drive-thru customer. Traffic enters through the existing 30-foot wide access at King Ave W, traveling down this access road for about 270 feet, then turning east into the order queuing lane. Customers then travel north to the order board and delivery window.

The drive-thru exits across the front of the building and back to the access point for King Ave West. The access to King Ave W is restricted to a right-in/right-out configuration. There is a raised median separating the east-bound and west-bound lanes of King Ave W.

2. That a literal interpretation of the provisions of this Zoning Code would deprive the applicant of rights commonly enjoyed by other tracts in the same district.

This is the first variance requested from the new front lot line coverage requirement for the mixed-use zone district. The previous zoning required minimum setbacks but did not impose maximum setbacks or require a certain percentage of the front line to be covered by a structure or structures. There is no applicable or similar zoning variance history to the application. Planning staff did find there were several zoning variances granted in the area to accommodate larger signs or more signs on commercial buildings. One zoning variance was granted to reduce the required arterial setback on S 32nd Street from 70 feet to 63.5 feet to allow an addition to a home. The current arterial setback is 50 feet for all zones. The previous 80-foot and 70-foot arterial setbacks were not included in the zoning update in 2021.

The development of the King Ave W corridor in the late 1980s and through the 1990s included large setbacks for buildings most placed at the back of massive parking lots. The CMU zone districts intends to make this style of commercial development obsolete in Billings. Even the new Heavy Commercial (CX) zone requires placement of parking to the side or rear of a building. The BOA did consider and granted a zoning variance from this requirement for the new Costco warehouse on Zoo Drive. This variance, Variance 1343, was granted in part to accommodate an immovable irrigation canal, and to allow the Costco store design to fit across seven lots with multiple street frontages.

Another variance in 2021 was granted from the maximum build-to setback for a property on Blue Creek Road. This location had challenges with the floodplain of Blue Creek across the entire street front of the property.

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Zoning Code to other land in the same district.

The zoning history in the area shows several granted variances from sign code and one from an arterial setback, two previous commercial zone variances have been granted after the adoption of the 2021 zoning code. Granting this variance will not confer on this applicant any special privilege.

4. That the granting of the variance will be in harmony with the general purpose and intent of this Zoning Code and with the growth policies.

The proposed site plan will be similar to several others along the King Ave W corridor but will meet the build-to requirements for the CMU2 zone.

5. In granting any variance, the BOA may prescribe appropriate conditions and safeguards in conformity with this Zoning Code. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Zoning Code.

6. The BOA shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both.

Failure to begin or complete such action within the time limit set shall void the variance.

Staff is recommending a 1-year time period to apply for a building permit and 3 years to complete the development.

7. Under no circumstances shall the BOA grant a variance to allow a use not permissible under the terms of this chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.

The proposed use of the building is an allowed use in the CMU2 zone district.

Planning Staff is recommending the following conditions of approval:

- 1. The variance is limited to Lot 3B of Studer Acreage Tracts amended generally located at 3032 King Ave W.**
- 2. The variance is from Section 27-406 requiring a minimum front lot line coverage of 50% to allow a minimum front lot line coverage of 30%. The front lot coverage is defined as the length of the street front building facade placed within the required build-to range along King Ave West. The building facade includes area intended to be occupied for seating that may not be totally enclosed - such as a covered patio.**
- 3. The applicant or developer will comply with all other requirements for buildings and siting in the CMU2 zone district. The site will be developed in substantial conformance with the submitted site plan.**
- 4. All outdoor lighting, with the exception of signs, shall have full cutoff shields so no part of the fixture or lens projects below the cutoff shield. Light pole standards must be 15 feet in height or less. Height includes the fixture, the base and the supporting pole.**
- 5. No fascia on the building or canopy may be internally illuminated.**
- 6. There shall be no construction activity prior to 7 am or after 8 pm daily.**
- 7. The applicant/developer shall apply for a building permit within 12 months of Board approval and complete the development within 3 years of Board approval. Completion includes all buildings, landscaping, parking and other site structures and amenities.**
- 8. Failure to begin or complete the project according to the time periods within this approval will void the variance.**

9. 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 Heinrich asked if the Panda sign would be added or their own. Staff replied the applicant will need to comply with the sign code. Chair Heinrich confirmed the irrevocable easement shown is access to all 4 lots.

Board member Hayes asked about the 4th lot. Staff explained there were 4 lots originally. The lot lines have change.

Public Hearing opened at 6:20PM

Applicant: Vu Le, Klover Architects, 8813 Penroe Ln, Kansas

Mr. Le stated the variance is needed to accommodate a drive thru at the new Panda restaurant being built at this location.

Questions for Applicant

Board member Hagstrom asked the seating capacity. 45-46

Chair Heinrich asked where the entry is. Mr. Le indicated the double doors are located to the west side. It is a right out only.

In Favor: None

Opposed: None

Public Hearing closed at 6:25PM

Discussion

Motion

Board Member Warmer made a motion and Board Member Hayes seconded the motion to approve the **City Variance 1350 with staff conditions and 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 1350 passed with a * vote.**

Other Business:

Reminder of Volunteer Appreciation dinner, No November meeting and a possible appeal to be heard.

ADJOURNMENT: The meeting adjourned at 6:27PM.

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