

CITY BOARD OF ADJUSTMENT
MINUTES February 1, 2023

Name	Title	2023												
		01/04/2023	02/01/2023	03/01/2023	04/05/2023	05/03/2023	06/07/2023	07/05/2023	08/02/2023	09/06/2023	10/04/2023	11/01/2023	12/06/2023	
David Mitchell	Member	1	E											
Dave Hagstrom	Member	1	1											
George Warmer	Member	E	1											
Jeff Bollman	Vice Chair	1	1											
Oscar Heinrich	Chair	Z	1											
Chris Hayes	Member	1	E											
Josh Sayer	Member	1	1											
TOTAL NUMBER OF APPLICATIONS 2023		01/04/2023	02/01/2023	03/01/2023	04/05/2023	05/03/2023	06/07/2023	07/05/2023	08/02/2023	09/06/2023	10/04/2023	11/01/2023	12/06/2023	TOTAL
Variance		1	4											5

* Returning variance

Chair Heinrich called the meeting to order at 6:00p.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: Wyeth Friday, Chris Kukulski, Dennis Randall, Kari Kraske, Jason Fitzgerald, Lilly Corning, Maria Purcell, Tyson Bunch, Taylor Kasperick, Sara Nelson,

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.

City Administrator, Chris Kukulski, addressed the Board regarding the need for a text amendment in the new sign code restrictions. One of the variance requests to be heard is a first of its kind and sparking the investigation into some long-term solutions.

Approval of Meeting Minutes

Meeting minutes for December 7, 2022, Board member Warmer motioned for approval and seconded by Board member Sayer, unanimously approved.

Meeting minutes for January 4, 2023, Board member Warmer motioned for approval and seconded by Board member Hagstrom, unanimously approved.

Disclosure of Exparte Communications: Board member Warmer disclosed he knows Lilly Corning.

Disclosure of Site Visits: Chair Heinrich visited all sites, Board member Hagstrom 1358 and 1359 and Board member Warmer all sites.

Disclosure of Conflict of Interest: None

Public Hearings

City Variance 1356 – 1025 Shiloh Crossing Blvd – Sign size and location - A variance from BMCC 27-1407.C(3) requiring a maximum allowable area of wall signs (a type of attached sign) to 250 square feet maximum for all tenants in a multi-tenant structure, to allow an 80 square foot wall sign in a Corridor Mixed Use 2 (CMU2) zone, on a building façade with existing wall sign area of at least 327 square feet. The property is legally described as Block 1, Lot 3A1 of Shiloh Crossing Sub., a 6.354 acre parcel of land. The purpose of the variance is to allow relocation of an existing 80 square foot sign for Candy Town from 820 Shiloh Crossing Blvd to their new location. Karen Husman, Planner I, presenting.

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.

There are special circumstances that exist which are peculiar to the lot that are not applicable to other lots in the same district. The property is a very large shopping center and is not oriented in a way to address traffic on Shiloh Road, the signs on these buildings address traffic through the parking lots that are dispersed throughout the center. Shiloh Crossing Blvd is a private road running between parking lots in the shopping center.

2) Denying the variance might deprive this owner of similar rights enjoyed by others in the area.

The Board of Adjustment has granted at least four sign area variances in the past decade. Under the previous sign code, the attached sign budget was generous at 3 sf for each linear foot of street facing building facade.

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.

Granting this variance will not confer on the applicant a special privilege. Developments in the area also have oversized wall signs, although some have installed awning signs and canopy signs in addition to wall signs.

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 Policy.

Granting this variance may meet the general purposes and intent of the zoning regulations and the 2016 Growth Policy. The Growth Policy guidelines state that local economic prosperity should be supported and sustained. Allowing this wall sign enables Candy Town to continue adapting to the changing retail marketplace by moving to a new larger location.

Recommended Conditions:

1. The variance is for 80 square feet wall sign (attached sign type). No other variance is intended or implied by this approval.
2. The variance applies to Block 1, Lot 3A1 of Shiloh Crossing Sub., 1025 Shiloh Crossing Blvd.
3. The proposed location of the wall sign will be in substantial conformance with the submitted site plan
4. All future tenant replacement signs on the facade of this building including all tenants will be reduced in size to 50 sf as signs are replaced, until all tenants have equal or substantial equal signage up to the max allowed sign square footage.
5. The applicant will apply for a sign permit for the wall sign within 6 months of the Board of Adjustment and installed within 1 year of BOA approval.
6. This Variance approval is for the specified suite #2 location for the Candy Town sign only. If the sign is removed it will be replaced with a conforming sign
7. Failure to begin or complete actions required shall void this variance.
8. These conditions of variance approval shall run with this building only and the sign for "Candy Town", it shall apply to all current and subsequent owners, operators, managers, leaseholders, heirs and assigns of this building.

Vice Chair Bollman joins via phone at 6:22 pm.

Questions for staff:

Chair Heinrich asked for explanation for old code vs. new code. Staff explained the differences.

Board member Warmer asked if there are others in the same position. Staff replied this is the first of its kind.

Chair Heinrich asked for explanation of the Variance request. Staff explained the current sign is bigger than allowed in the new code.

Board member Sayer asked if there is a provision for the distance from the street.

Board member Hagstrom asked if granting this request would set a precedence.

Public Hearing opened at 6:22PM

Applicant: Maria Purcell, 8720 Sail Fish Drive, 59106

She is the owner of Candy Town. She has been in business for 14 years, a small business and expanding to a larger location at Shiloh Crossing. She wishes to use her existing sign which is too large, according to the code for the new location.

Questions for Applicant:

Board member Warmer asked when they are moving. The applicant answered February 10, 2023.

He then asked if the expense of a new sign is taken under consideration.

Board member Hagstrom asked when the problem was discovered. The applicant explained she was denied a sign permit for the new sign.

In Favor: Jason Fitzgerald, 519, Wyoming, Collaborative Design

He is the designer of the sign. The new code allows only 50 feet of frontage whereas the old code allowed 150 square feet. 80 square feet is appropriate.

Lilly Corning, 3222 Redwood Lane, 59102, Owner of Shiloh Crossing

The other buildings are using all available square footage according to the new code. She requests condition #4 and 6 be removed. These buildings are not designed for canopies.

Opposed: None

Public Hearing closed at 6:43 PM

Vice Chair Bollman arrived in person at 6:47 PM.

Discussion

Board member Bollman asked for clarification of unheard information and asked how this will work with the existing sign. Staff is seeking a solution to existing signs and replacements to avoid future variances.

#4- Proportionate to Linear frontage

#6-according to code in place at the time.

Motion

Board Member Hagstrom made a motion and Board Member Sayer seconded the motion to approve the **City Variance 1356 with staff conditions, recommendations and changes.**

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 1356 passed with a 5-0 vote.

Public Hearings

City Variance 1357 – 1423 38th St. West, Ste. 2 – Maximum sign size - A variance from BMCC 27-1407.B(3) requiring a maximum allowable area of wall signs (a type of attached sign) to 100 square feet maximum for all tenants in a multi-tenant structure, and an individual tenant sign to a maximum of 32 square feet, in a Neighborhood Mixed Use (NMU) zone, to allow Suite 2 (three suites total) to have sign area of 43.25 square feet. The property is legally described as Block 1, Lot 1A1, Hancock Grand Subdivision, a 1-acre parcel of land. The purpose of the variance is to allow a sign area greater than 32 square feet for IV Nutrition, a new business in a multi-tenant building. Karen Husman, Planner I, presenting.

Recommendation:

Planning Staff is recommending denial 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.

There are no special circumstances that exist which are peculiar to the lot that are not applicable to other lots in the same district. The property is a one acre parcel with three new tenant spaces, and is not oriented in a way to address traffic on

38th St. W. adhere to the code requirements. Sign was installed without a permit. Had the sign company applied for the permit prior to installation, it would have known the dimensions were too large for allowable signage.

2) Denying the variance might deprive this owner of similar rights enjoyed by others in the area.

The applicant could have a different type of sign (canopy or projecting would allow the size they are requesting). The applicant would prefer to utilize their existing sign as installed.

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.

Granting this variance may confer on the applicant a special privilege because the Because this is a new developed parcel and the parcel to the south is a new development, approving the variance may be granting a 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 Policy.

Granting this variance will meet the general purposes and intent of the 2016 Growth Policy. However, it does not meet the zoning regulation specification for granting a variance application, and is not in harmony with the intent of the Zoning Code for new signage in this district.

Recommended Conditions:

Questions for staff:

Board member Warmer asked for clarification of a wall and canopy installation

Board member Sayer asked for the definition of a canopy

Public Hearing opened at 7:21 PM

Applicant: Sara Nosten, 4627 Corral Drive

This is a first time business newly opened. Code Enforcement Officer Todd Morgan issued her notice of No Sign Permit. She ordered the sign thru Sign Pro, no sign permit application was received by the City. When the application was made, it was denied due to being too large.

Questions for Applicant:

Board member Bollman asked if Sign Pro had been invited to this meeting. NO

In Favor: None

Opposed: None

Public Hearing closed at 7:33 PM

Discussion

Motion

Board Member Hagstrom made a motion and Board Member Warmerseconded the motion to deny the **City Variance 1357 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 deny City Variance 1357 passed with a 4-1 vote.

City Variance 1358 – 6047, 6105 & 6153 Elysian Rd., 1588 & 1589 Walter Creek, 1586 & 1587 Springhedge St., 1585 George Blvd. – Minimum two dwelling units per principal structure - A variance from 27-1002.C – Table 27-1000.1 requiring at least two dwelling units per principal structure in a Mixed Residential 2 (NX2) zone, to allow one dwelling unit in a principal structure on Lots 8, 9, 11 and 12 in Block 1, and Lots 1, 9, 10 and 16 in Block 2 of Annafeld North Sub. 1st Filing. The subject parcels range in area from 2,000 square feet to 6,000 square feet. The purpose of the variance is to allow construction of a single family dwelling in a principal structure on the parcels above. Nicole Cromwell, presenting

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 lots are located at corners of intersections where additional safety consideration for vehicle and pedestrian safety is required. This limitation does not apply to other lots in the area.
- 2) **Denying the variance might deprive this owner of similar rights enjoyed by others in the area.**
This is a variance of first impression. Previous variances were typically oriented to the opposite request – more units than allowed by lot area. Lot area no longer a consideration. The minimum was included in NX2 and NX3

zones to provide more predictable land development – e.g. this is where multifamily units will be constructed. Existing single unit structures in NX2/NX3 (prior to Feb 2021) are considered non-conforming but could be re-built under the savings clause in Section 27-1504.C.3 (a.2). Denying this variance may deprive this owner of similar rights enjoyed by other owners.

3) **Granting the building location 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 the surrounding development pattern, staff does not find the variance to be a special privilege. The owner could construct taller buildings to accommodate the 2nd unit but these buildings would then look out of place in the neighborhood.

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

Granting this variance is in conformance with the Growth Policy. The buildings fit in with the area and due not appear to be single-unit structures from the property exterior.

5) **In granting the variance the BOA may impose appropriate conditions.**

Recommended Conditions:

Planning staff recommends the following conditions:

1. The variance is to allow single unit principal structures
2. The variance is limited to the legally described lots.
3. Apply for building permits within 2 years and complete all the structures within 4 years. Failure to meet time lines, voids the variance.
4. No construction before 7 am or after 8 pm.
5. Applicant will meet all other city codes required for construction.
6. These conditions of variance approval shall run with the land

Questions for staff:

Public Hearing opened at 8:12 PM

Applicant: Dennis Randall, McCall Homes agent, 1536 Mullowney

Questions for Applicant:

In Favor:

Opposed:

Public Hearing closed at 8:13PM

Discussion

Motion

Board Member Warmer made a motion and Board Member Bollman seconded the motion to approve the **City Variance 1358 with staff conditions and recommendations for all addresses.**

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 1358 passed with a 5-0 vote.

City Variance 1359 – 3218 South Frontage Rd. – Location of Surface Parking - A variance from Section 27-409 – Table 27-400.6 (B.6) requiring surface parking to be in the side or rear yard to allow parking in the front yard of property in a Heavy Commercial (CX) zone, on Certificate of Survey 1591 Tract 1, a 10.19 acre parcel of land. The purpose of the variance is to allow the required parking to be located in the front of the proposed new building for Mobile-Stor. Nicole Cromwell, presenting

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 has two petroleum pipelines that cross the frontage and one that parallels the east property line. A flood plain affects the south end of the property.
- 2) **Denying the variance might deprive this owner of similar rights** enjoyed by others in the area. The Board has granted one previous variance to allow parking in front of a building in the CX zone. This was for a new Costco Warehouse on Zoo Drive. Several older developments in the area do have at least some parking in front of buildings on S Frontage Road. Denying this variance request might deprive this owner of rights enjoyed by others in the same area.
- 3) **Granting the building location 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 the surrounding zoning history, the prior variance granted by this board and the existing development pattern in the area, staff does not find the variance to be a special privilege.
- 4) **Granting the variance will be in harmony with the purposes of zoning and growth policy.** Granting this variance is in conformance with the Growth Policy. The policy and regulations adopted to implement the policy are intended to reduce and eliminate to out-of-date development pattern of large buildings setback behind a sea of parking in the front of those buildings. The provision of 8 parking stalls along the front of the building will be in harmony with the purpose and intent of the growth policy and zoning.
- 5) **In granting the variance the BOA may impose appropriate conditions.**

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

See condition 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 – a building and storage yard for a mobile storage business is allowed.

Recommended Conditions:

Planning staff recommends the following conditions:

1. The variance is to allow 8 surface parking spaces in front of the building. No other variance is intended or implied.
2. The variance is limited to this legally described lot.
3. The owner will install all landscaping as shown.
4. Minor modification of the site plan allowed.
5. No evergreen in the street frontage, street trees trimmed up to 8-ft above grade. Trees shown on LS plan are sufficient.
6. No outdoor announcement audible beyond property lines.
7. Complete the building permit process within 2 years and complete the project within 5 years. Failure to meet time lines, voids the variance.
8. Any structures not shown on the site plan must conform to all zoning and city regulations.
9. All regulations except for this variance apply to the development of the site
10. Failure to begin or complete the project will void the variance
11. These conditions of variance approval shall run with the land

Questions for staff: None

Public Hearing opened at 8:28 PM

Applicant: Taylor Kasperick, PEC

There may be possible sale of property pieces in the future.

Questions for Applicant:

In Favor: None

Opposed: None

Public Hearing closed at 8:34 PM

Discussion

Motion

Board Member Bollman made a motion and Board Member Hagstrom seconded the motion to approve the **City Variance 1359 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 1359 passed with a 5-0 vote.

Other Business: Board member Bollman will be unavailable in March.

ADJOURNMENT: The meeting adjourned at 8:35 PM.

ATTEST: APPROVED by a motion April 5, 2023.

Robbin Bartley, Administrative Assistant.