

**CITY BOARD OF ADJUSTMENT**  
MINUTES August 2, 2023

Name	Title	01/04/2023	02/01/2023	03/01/2023	04/05/2023	05/03/2023	06/07/2023	07/06/2023	08/02/2023	09/06/2023	10/04/2023	11/01/2023	12/06/2023	
		David Mitchell	Member	1	E	-	R	E	S	I	G	N	E	D
Dave Hagstrom	Member	1	1	1	1	-	1	E	E					
George Warmer	Member	E	1	1	1	-	E	E	E					
Jeff Bollman	Vice Chair	1	1	E	E	-	1	1	1					
Oscar Heinrich	Chair	Z	1	1	Z	-	1	1	1					
Chris Hayes	Member	1	E	1	1	-	1	1	1					
Josh Sayer	Member	1	1	1	1	-	1	1	1					
<b>TOTAL NUMBER OF APPLICATIONS 2023</b>		<b>01/04/2023</b>	<b>02/01/2023</b>	<b>03/01/2023</b>	<b>04/05/2023</b>	<b>05/03/2023</b>	<b>06/07/2023</b>	<b>07/06/2023</b>	<b>08/02/2023</b>	<b>09/06/2023</b>	<b>10/04/2023</b>	<b>11/01/2023</b>	<b>12/06/2023</b>	<b>TOTAL</b>
<b>Variance</b>		<b>1</b>	<b>4</b>	<b>3</b>	<b>4*</b>	<b>-</b>	<b>2</b>	<b>-</b>	<b>1</b>					<b>14</b>
<b>Appeal</b>					<b>1</b>	<b>-</b>								<b>1</b>

\* Returning variance

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

Chair Heinrich introduced the City Board of Adjustment members and Planning Department staff. Attending Staff members are Karen Husman, Planner I and Robbin Bartley, Administrative Assistant.

**Attending:**

**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.

**Approval of Meeting Minutes**

Meeting minutes for June 7, 2023 - Delayed  
Disclosure of Exparte Communications: None  
Disclosure of Site Visits: Chair Heinrich  
Disclosure of Conflict of Interest: None

**Public Hearings**

**City Variance 1368 – 3903 Palisades Park Drive – Variance from Section 27-1209 to allow an 8-foot fence on the rear property line** - A variance from BMCC Section 27-1209.C.2(b) requiring a minimum 5-foot side yard setback for any fence or wall over 6 feet in height to allow a fence up to 8 feet tall on the side property line in a Suburban Neighborhood (N3) zone, on Lots 4A and 4B of Block 8, Palisades Park Subdivision, 2<sup>nd</sup> Filing, a 10,195 square foot parcel of land. The purpose of the variance is to allow taller fence on a shared side property line.

**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 elevation of the subject property is at a lower elevation than the adjacent property at the rear property line. There is an inground pool and it's equipment prevent the 8 foot fence from being set at the required setback.
- 2) **Denying the variance might deprive this owner of similar rights** enjoyed by others in the area.  
**There is at least one other property that has a variance approved for an 8 foot fence for a property with similar topographic properties.**
- 3) **Granting the building location variance will not confer a special privilege to this applicant.**  
An 8 foot fence would allow the property owner the same privacy as other properties that have neighboring property at the same grade level.
- 4) **Granting the variance will be in harmony with the purposes of zoning and growth policy.**  
As stated in criteria 1, the parcel has unique features that would not allow placement of an 8 foot fence the required 5 foot setback from the property line.

**Planning staff recommends the following conditions: (summarized here)**

1. The variance from Section 27-1209 to allow an 8-foot fence on the property line.
2. The fence shall be placed at least one foot (12 inches) to the inside of the subject property's rear property line. **Applicant requests change to 6 inches.**
3. The variance is limited to Lots 4A and 4B of Block 8, Palisades Park Subdivision, 2nd Filing.
4. The applicant shall meet all other city code requirements
5. The property owner must submit and receive approval of a fence permit within 6 months of approval, and complete construction within one year.

6. These conditions of variance approval shall run with the land described

**Questions for staff:** Board member Bollman asks if this has been reviewed before and comments on the freestanding deck legal status. Staff could find no permits.

**Public Hearing opened at 6:12 PM**

**Applicant:** David Sellers, 3903 Palisades Park Drive, Billings, MT

**Questions for Applicant:** Board member Sayer asked if the fence is partially on their property. Board member Hayes asked about the proposal for pool house and prescriptive easment was mentioned.

**In Favor:** Mitch Donahue, 3907 Palisades Park Drive, Billings, MT

He mentions the long-standing issue and reiterates the NO Privacy problem.

**Opposed:** None

**Public Hearing closed at\*\*\* PM.** the public hearing remains open. The applicant requests to delay the outcome for a more complete board until the September meeting.

**Discussion:**

**Motion**

Board Member Sayer made a motion and Board Member Hayes seconded the motion to **approve** the **Delay of hearing City Variance 1368.**

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

The motion to **approve the delay of** City Variance 1368 passed with a 4-0 vote.

**Other Business**

**ADJOURNMENT:** The meeting adjourned at 6:50 PM.

**APPROVED by a motion September 6, 2023.**

*Robbin Bartley, Administrative Assistant.*