

**CITY BOARD OF ADJUSTMENT**  
MINUTES September 6, 2023

Name	Title	2023												
		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	1				
George Warmer	Member	E	1	1	1	-	E	E	E	1				
Jeff Bollman	Vice Chair	1	1	E	E	-	1	1	1	1				
Oscar Heinrich	Chair	Z	1	1	Z	-	1	1	1	1				
Chris Hayes	Member	1	E	1	1	-	1	1	1	1				
Josh Sayer	Member	1	1	1	1	-	1	1	1	1				
Brian Roush	Member	-	-	-	-	-	-	-	-	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>*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 Nicole Cromwell, Zoning Coordinator and Karen Husman, Planner I.

**Attending:** David Sellers, Norma Sellers

**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 and August 2, 2023, unanimously approved.

Disclosure of Exparte Communications: None

Disclosure of Site Visits: Chair Heinrich

Disclosure of Conflict of Interest: None

Board member Warmer arrived at 6:12PM.

**Public Hearings**

**Return Item -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:**

- 1. The variance from Section 27-1209 to allow an 8-foot fence on the property line. No other variance is intended or implied with this approval.
- 2. The fence shall be placed at least 6 inches to the inside of the subject property's rear property line, this condition in no way indicates the neighboring property owner can claim these six inches as their property.
- 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 with the exception of this variance.
- 5. The property owner must submit and receive approval of a fence permit within six months of approval of this variance, and complete construction within one year.
- 6. 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: NONE**

**Public Hearing opened.**

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

Mr. Sellers stated the fence is needed for protection, safety and privacy. He described and presented the letter in support by the signing neighbors. In 1989 the owners applied for a pool, pumphouse and deck. The conditions of permit was to maintain a surrounding fence. The pumphouse is currently 4 inches to the property line.

**Questions for Applicant:**

**In Favor:** None

**Opposed:** None

**Public Hearing closed.**

**Discussion:**

**Motion**

Board Member Sayer made a motion and Board Member Bollman seconded the motion to **approve** **City Variance 1368 with staff recommendations and conditions.**

MEMBER	YES	NO	ABSTAINED	NOT PRESENT
Brian Roush	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 1368 passed with a 7-0 vote.

**Other Business**

**ADJOURNMENT:** The meeting adjourned at 6:26 PM.

**APPROVED BY A MOTION OCTOBER 4, 2023. Robbin Bartley, Administrative Assistant.**

