

**CITY BOARD OF ADJUSTMENT**  
MINUTES October 4, 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                 | 1                 | 1                 |                   |                   |              |
| George Warmer                            | Member                               | E                 | 1                 | 1                 | 1                 | -                 | E                 | E                 | E                 | 1                 | A                 |                   |                   |              |
| Jeff Bollman                             | Vice Chair                           | 1                 | 1                 | E                 | E                 | -                 | 1                 | 1                 | 1                 | 1                 | -                 | -                 | -                 |              |
| Oscar Heinrich                           | Chair                                | Z                 | 1                 | 1                 | Z                 | -                 | 1                 | 1                 | 1                 | 1                 | 1                 |                   |                   |              |
| Chris Hayes                              | Member                               | 1                 | E                 | 1                 | 1                 | -                 | 1                 | 1                 | 1                 | 1                 | P                 |                   |                   |              |
| Josh Sayer                               | Vice Chair<br>beginning<br>10/4/2023 | 1                 | 1                 | 1                 | 1                 | -                 | 1                 | 1                 | 1                 | 1                 | 1                 |                   |                   |              |
| Brian Roush                              | Member                               | -                 | -                 | -                 | -                 | -                 | -                 | -                 | -                 | 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>*1</b>         | <b>3</b>          |                   |                   | <b>17</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, Karen Husman, Planner I and Robbin Bartley, Administrative Support..

**Attending:** Taylor Kasperic, Bryce Terpstra, Anna Vickers

**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 September 6, 2023. - Approved

Disclosure of Exparte Communications: None

Disclosure of Site Visits: Chair Heinrich all

Disclosure of Conflict of Interest: None

**Chair Heinrich nominated Josh Sayer for Vice Chair. No other nomination. Josh Sayer unanimously voted for Vice Chair.**

**Public Hearings**

**City Variance 1369 –502 Wicks Ln. – Parking Siting** - A variance from Table 27-400.5-B.8 requiring surface or accessory parking location to be either in the rear yard or limited in the front or side yard in a Neighborhood Office (NO) to allow unlimited parking in the front yard on the west 25 feet of lot 9 and the east 50 feet of lot 10 of Block 1 (less 750 sf street) of Arrowhead Subd., an 0.863 acre parcel of land. The purpose of the variance is to allow an existing commercial structure to remain in place while a replacement structure is built on the site.

**Recommendation:**

Planning staff is recommending denial and adoption of the findings of the criteria for Variance 1369.

Staff is not recommending conditions for the variance request. Staff is ready to provide 6 conditions if the Board disagrees with staff findings.

**Questions for staff:**

Chair Heinrich asked the applicant if they were aware of the denial recommendation. - Yes

**Public Hearing opened at 6:47 PM**

**Applicant: Taylor Kasperick, PEC, 608 N. 29<sup>th</sup>**

Described a lengthy description of the site, the dental office and tenants. The current dental office cannot shut down during the construction time. The design proposed provides allowance to continue while the new building is constructed.

**Questions for Applicant:**

Board member Hagstrom asked if the original plan could be modified to adjust floor area requiring no variance.

Applicant said not really, equipment size does not permit this.

Board member Sayer asked what the narrow portion will be – rental units.

**In Favor:** Bryce Terpstra is the general contractor on the project. This is about timing and sequence. The original layout has a 2<sup>nd</sup> floor requiring a stairwell on the westside.

**Opposed: None**

**Public Hearing closed at 6:49 PM**

**Discussion:**

The applicant was advised of the protocol in the case of withdrawal, delay or denial.

**Motion**

Board member Sayer made a motion and Board member Hagstrom seconded the motion to **postpone City Variance 1369 until November 1, 2023 meeting.**

| 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 **postpone City Variance 1369** passed with a 4-0 vote.

**City Variance 1370 –3042 King Ave W. (AKA 3036 King Ave W) – Front Build to Zone** - A variance from Table 27-400-3. A-4 Front build to zone of 10 to 20 feet; 27-400-3. B-14 Ground story maximum height of 18 feet; 27-400-3. B-16 and 17 Window and Door Coverage of 65% on the ground floor and 15% on upper floors, 27-400-3. B-18 Number of front façade entrances – one required, 27-400-3. B-19 Permitted roof types – limited to parapet, pitched or flat, and Section 27-1005.Q.1 Vehicle Service Station, service bays may not be located on a front facade in a Corridor Mixed Use 2 (CMU2) zone to allow a front build-to zone of 44.2 feet from the back of easements on the King Ave W frontage, allow a 19.33 foot ground floor height, allow 50.5% window coverage on the ground floor, allow the front door to face east instead of north, allow a barrel roof type, and allow one service bay overhead door to face the front property line on Lot 3A1, Studer Acreage Tracts Subd., a 1.165 acre parcel of land. The purpose of the variance is to allow the development of a Smitty’s Carwash.

**Recommendation:**

The Planning staff is recommending conditional approval and adoption of the findings of the variance criteria for this application.

Planning Staff is recommending the following conditions of approval:

1. The variance is limited to Lot 3A1 of Studer Acreage Tracts amended generally located at 3036/3042 King Ave West.
2. The variance is from the following portions of Section 27-406 and from Section 27-1005.Q:
  - a. Table 27-400-3. A-4 Front build to zone of 10 to 20 feet to allow a maximum setback of 74.2 feet from the front property line and 44.2 feet from the back of the easements across the front of the property;
  - b. Table 27-400-3. B-14 Ground story maximum height of 18 feet to allow a maximum first floor height of 19 feet 4 inches;
  - c. Table 27-400-3. B-16 and 17 Window and Door Coverage of 65% on the ground floor and 15% on upper floors to allow 50.5% on the ground floor and 0% on the front facade upper floor, including exceeding the maximum 15-foot width of a blank wall on the ground floor;
  - d. Table 27-400-3. B-18 Number of front façade entrances -- one required to allow no entrance on the front facade;

- e. Table 27-400-3. B-19 Permitted roof types -- limited to parapet, pitched or flat to allow a barrel roof/flat roof combination; and
- f. Section 27-1005.Q.1 Vehicle Service Station, service bays may not be located on a front facade to allow one overhead bay door to face the front street.

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 above or below the cutoff shield. This includes lighting for security on the building or in the parking lot.
- 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 24 months of Board approval and complete the development within 4 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.

Board member Hayes arrived by Phone @ 7:19 PM, stating he had been listening via Facebook for the entire meeting but was unable to connect via Zoom.

**Questions for staff:**

Board member Hagstrom stated this will be a great improvement to King Ave and asked if the barrel roof is in violation of the code

**Public Hearing opened at 7:21 PM**

**Applicant:** Anna Vickers, IMEG, 175 N. 27th

Thanked the staff for all their work on this and other projects. This project is a tight site front build to zone. The ground floor height window and door is not noticeable by pedestrian traffic. All landscaping requirements will be met. The roof type is a design brand for this company, Smitty's Car Wash.

**Questions for Applicant:**

Chair Heinrich asked if the applicant is amenable to changing the roof design. Anna replied she would ask but it is not cost effective and it is a standard design, a branding of this company.

**In Favor:** None

**Opposed:** None

**Public Hearing closed at 7:26 PM**

**Discussion:**

**Motion**

Board member Hagstrom made a motion and Board Member Hayes seconded the motion to **approve** **City Variance 1370 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 1370 passed with a 4-1 vote.

**City Variance – 1371 – 3100 S Frontage Rd. – Parking siting** - A variance from Table 27-400-6.B.6 requiring surface or accessory parking location to the side or rear of the property to allow the parking in the front yard in a Heavy Commercial (CX) zone, on Lots 5-7 of Riverside Acreage Tracts Subd., a 5.432 acre parcel of land. The purpose of the variance is to allow the location of parking to be in the front of a new building. The property has submitted a concurrent annexation petition.

**Recommendation:**

Planning staff is recommending conditional approval and adoption of the findings of the criteria for Variance 1371.

Staff is recommending conditions for the approval of this variance request.

1. The variance is to allow up to seven surface parking spaces to be in the front yard of the proposed office/warehouse building at 3100 S Frontage Road. The front yard is a yard extending along the full length of the front lot line which is situated between the office/warehouse building and the front lot line on S Frontage Road. No other variance is intended or implied
2. The variance is limited to Lots 5-7 of Riverside Acreage Tracts Subd., generally located at 3100 S Frontage Road.
3. The property must be annexed into the City of Billings in order for this variance approval to be valid. Annexation will be completed within 3 months of approval of this variance.
4. Minor modifications to the location of the proposed structures and other site improvement as shown on the submitted site plans are acceptable.
5. The street frontage landscaping on S Frontage Road will not include any evergreen trees or shrubs that are intended to obscure the subject property either at the time of installation or at maturity. All street trees installed shall be trimmed up so the lowest branch height at installation is at least 8 feet above grade.
6. No outdoor announcement system shall be audible beyond the exterior property lines.
7. The applicant will complete the building permit process (after annexation) within 2 years of Board approval and complete the project within 5 years of Board approval.
8. Any structures not shown on this approved site plan, will comply with all zoning regulations and other city regulations in place at the time of development.

9. All other zoning regulations, except for this specific variance, and any other applicable city regulations apply to the development of the site.
10. Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
11. 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:**

**Public Hearing opened at 7:35 PM**

**Applicant: Taylor Kasperick, PEC, agent**

The corridor is developing. Magnum Trucking is the owner. This is tailored to large truck distribution warehouse. The parking is minimized as much as possible. Lots of dead space with non-orthogonal lot design.

**Questions for Applicant:**

**In Favor:** None

**Opposed:** None

**Public Hearing closed at 7:40 PM**

**Discussion:**

**Motion**

Board member Hagstrom made a motion and Board Member Rousch seconded the motion to **approve City Variance 1371 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 1371 passed with a 5-0 vote.

**Other Business: 2 new variances for November. Chair Heinrich will likely not attend.**

**ADJOURNMENT: The meeting adjourned at 7:44 PM.**

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