

CITY BOARD OF ADJUSTMENT

MINUTES November 1, 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	1		
George Warmer	Member	E	1	1	1	-	E	E	E	1	A	1		
Jeff Bollman	Vice Chair	1	1	E	E	-	1	1	1	1	-	-	-	
Oscar Heinrich	Chair	Z	1	1	Z	-	1	1	1	1	1	1		
Chris Hayes	Member	1	E	1	1	-	1	1	1	1	P	A		
Josh Sayer	Vice Chair beginning 10/4/2023	1	1	1	1	-	1	1	1	1	1	1		
Brian Roush	Member	-	-	-	-	-	-	-	-	1	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	07/06/2023	08/02/2023	09/06/2023	10/04/2023	11/01/2023	12/06/2023	TOTAL
Variance		1	4	3	4*	-	2	-	1	*1	3	2		21
Appeal					1	-								1

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

Vice Chair Sayer introduced the City Board of Adjustment members and Planning Department staff. Attending Staff members are Nicole Cromwell, Zoning Coordinator; and Brenda Berns, Planning Clerk

Attending: Taylor Kasperick, Performance Engineering

Public Comment

Vice Chair Sayer 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 October 4, 2023. - Approved

Disclosure of Exparte Communications: None

Disclosure of Site Visits: George Warmer, Dave Hagstrom

Disclosure of Conflict of Interest: None

Public Hearings

Applicant requested Withdrawal – 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.

Motion

Motion made by Oscar Heinrich, seconded by Dave Hagstrom to Approve Applicant’s request to withdraw. The motion was carried with a unanimous vote.

City Variance 1372 – 3508 S Frontage Road – Parking Siting – A variance from the siting and building standards for the Heavy Commercial (CX) zone district that requires surface parking to be in a side or rear yard (Section 27-409-Table 27-400.6 (B.6)). The property is on South Frontage Road near where the road changes speed and direction, then becomes Riverside Drive, and then Garden Avenue. These are local streets that continue north and east to the S 27th St interchange with Interstate 90. The subject property is legally described as an unplatted parcel in Section 15, Township 1 South, Range 26 East, a remainder of the south part of Government Lots 2 and 3 (less C/S 1596) and is approximately 20 acres in area. The lot will be split in the near future and the requested variance will apply only to the lot on the west half of the parcel where the proposed use will be located. The proposed use is for a consolidated location for Torgerson’s Equipment, and agricultural dealership offering sales, parts, & service to customers across Montana.

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, two drainage ditches, a flood plain on the rear of the property, and state-controlled access to S Frontage Road.
- 2) Denying the variance might deprive this owner of similar rights enjoyed by others in the area. The Board has granted two previous variances to allow parking in front of a building in the CX zone on this section of S Frontage Rd. 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 do 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 the out-of-date development pattern of large buildings setback behind a sea of parking in the front of those buildings. The provision of parking stalls in 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. Planning staff recommends the following conditions:
 1. The variance is to allow up to 41 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 required landscaping.
 4. Minor modification of the site plan is 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 system that is 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.
- 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 for agricultural and heavy equipment sales and service is allowed.

Board Discussion

Board Member Heinrich asked for a rereading of Staff Report item #7 and questioned if there were decision making capabilities for the Board regarding the east or west side.

Nicole Cromwell stated that both sides of the building, east and west were not included in the report. All conditions recommended for approval are under #5.

Board Member Hagstrom stated that one of the hardships was the two irrigation ditches on the land, however it appeared as though the owners of the warehouse were going to re-route the ditch. This would no longer be a hardship.

Nicole said there is still a ditch on the west side that restricts what they do on that side. This is the City/County drain that comes out of Washington Avenue. Most of the area where the ditch is right now is going to be a staging yard.

Applicant: Taylor Kasperick, PEC, 608 N. 29th, Billings MT

Mr. Kasperick is the Agent for the Torgersons. We have had discussions with MDT regarding 2 approaches: one for the Torgersons, and another for a future vacant lot. It would be preferable on the eastern side for trucks off the roadway, but western side may work as well. We are looking to have 80 parking stalls with 41 in front of the building. We are attempting to keep heavy trucks and machinery away from the day-to-day traffic. With the layout we have on the eastern edge, heavy trucks and semis could pull straight in and out without conflict with pedestrians or other passenger vehicles. We have a loop-around to accommodate heavy trucks and our current plan would include curbs. Similar to other vehicle maintenance type facilities, we will have overhead doors allowing trucks to drive through the building. As far as the ditch, we are planning to re-route the Grey Eagle Ditch TPA south, as it would have been under one of the buildings.

20-acres is deceptive on this property, given that much of it is down off the bank of the Yellowstone River. The owner is attempting to maximize the space, allowing approximately 28 customer parking stalls.

Questions for Applicant:

Board member Josh Sayer asked how many stalls are shown on the layout presented. Mr. Kasperick responded there are 78 stalls.

Vice Chair Sayer asked if there were any additional questions. There were none.

Motion

Motion made by Board Member Hagstrom, seconded by Board Member Warmer to Approve City Variance 1372. Motion was carried with a unanimous voice vote to Approve.

Other Business: There was no other business.

ADJOURNMENT: The meeting adjourned at 6:30 PM.

ATTEST: DRAFT. To be approved by a motion at the next regularly scheduled meeting.

Brenda J Berns, Planning Clerk