

**CITY BOARD OF ADJUSTMENT**  
MINUTES JULY 3, 2024

Name	Title	01/03/2024	02/07/2024	03/06/2024	04/03/2024	05/01/2024	06/05/2024	07/03/2024	08/07/2024	09/04/2024	10/02/2024	11/06/2024	12/04/2024	
		Josh Sayer	Chair	C	C	C	1	1	C	1				
Oscar Heinrich	Vice Chair	C	C	C	1	1	C	A						
George Warmer	Member	C	C	C	1	A	C	A						
Michael Bruschwein	Member	C	C	C	1	1	C	A						
Chris Hayes	Member	C	C	C	1	1	C	1						
Dave Hagstrom	Member	C	C	C	1	1	C	1						
Brian Roush	Member	C	C	C	E	1	C	1						
<b>TOTAL NUMBER OF APPLICATIONS 2024</b>		<b>01/03/2024</b>	<b>02/07/2024</b>	<b>03/06/2024</b>	<b>04/04/2024</b>	<b>05/01/2024</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>		-	-	-	1	1	-	1						3
<b>Appeal</b>		-	-	-	-									

Chairman Josh Sayer called the meeting to order at 5:59 PM.

**Attending:**

Nicole Cromwell, Zoning Coordinator; Anna Vickers, Planning Division Manager; Karen Husman, Planner; Tate Johnson, Planner

**Public Comment**

Chairman Sayer opened the public comment period and asked if there was anyone wishing to speak during the public comment portion of the meeting. There were none.

### **Approval of Meeting Minutes**

Meeting minutes for May 1, 2024 – Approved by motion. Board member Hagstrom made a motion, seconded by Board member Hayes, to approve the minutes.

Disclosure of ExParte Communications - None

Disclosure of Site Visits – Board members Hayes and Sayer visited the site of Variance 1375

Disclosure of Conflict of Interest - None

### **Public Hearings**

**City Variance 1375 – 412 3<sup>rd</sup> St West** – A variance from Section 27-1802.H.3(b1) and Section 27-1209.D, requiring any fence or obstruction over 30 inches in height above the curb to be outside of clear vision area for an uncontrolled intersection. The clear vision area for un-controlled 4-way intersections is measured from the point of the intersecting street centerlines, 110 feet in both directions and connecting those end points (Figure 3a of Section 27-1802.3(b.1)). The purpose of the variance is to allow a 6-foot-tall chain link fence at the intersection of 3<sup>rd</sup> St West and Miles Avenue. Tax ID: A15922

Nicole Cromwell, Zoning Coordinator advised there are 4 Board members in attendance, requires a unanimous decision from all 4 Board members. Should the Applicant want a continuance of this hearing, they may request for a future date.

Tate Johnson, Planner gave a brief overview of the applicants request for Variance 1375. Tate stated the subject property is surrounded by primarily NX1 zoned properties, consists of mixed residential 1-4 dwelling-units per structure. To the southeast corner there is some CX Heavy Commercial zoning, and further to the north there is N1 zoning. The applicant provided a diagram describing the 110 x 110 triangle along the intersection roads. Within this zone, no fencing can be higher than 30”.

### **Recommendation**

Planning staff is recommending denial based on draft findings of the review criteria for variances:

- 1. There is a hardship with the property which is not applicable to other lands in the same district.**  
This property is unique, due to its adjacency to an alley on the northern side and an uncontrolled intersection to the south. This results in three clear vision areas affecting the property, the uncontrolled intersection, driveway, and alley. The property fronts onto 3<sup>rd</sup> St West and sits on the northwest side of the lot, faces a challenge in yard fencing due to the necessary clear vision areas dictated by regulations.
- 2. Denying the variance might deprive this owner of similar rights enjoyed by others in the area.**  
Numerous residences situated on comparable corners have erected fences to comply with the mandated clear vision zones without variances.
- 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 variances granted by this board and the existing development pattern in the area, staff finds granting this variance could confer a special privilege, as clear vision standards have been imposed on various residential properties within the City.
- 4. Granting the variance will be in harmony with the purposes of zoning and growth policy.**  
Granting this variance is not in conformance with the policies and regulations set forth in the Growth Policy and Zoning Code. Clear vision areas are the main tool in the Zoning Regulations to ensure the safety and visibility for both motorists and non-motorists in critical areas. Clear vision area standards are

enforced to prioritize and maximize the safety for all users of multimodal transportation at intersections. Encroachments into clear vision areas can create significant safety issues as it may cause unsafe traffic and pedestrian passage at the intersection of 3<sup>rd</sup> St W and Miles Ave.

### **Questions**

Board member Hayes asked whether the original fence was permitted. Tate confirmed it was not, leading to a visit from Code Enforcement in April. The owner was instructed to apply for a fence permit, was conditionally approved with the stipulation that the fencing in the clear-vision area must not exceed 30 inches in height.

Planner Karen Husman clarified the fence permit had not been issued, and the owner was given the option to apply for a variance. Code Enforcement also directed the owner to halt construction of the fence until the variance was obtained. The owner submitted the application at the time. Karen noted barbed wire is prohibited in residential zones and is only allowed atop an 8-foot fence in commercial zones.

Board member Hagstrom asked about a study on whether chain link fences can obstruct visibility. Tate explained there is a point where visibility can become opaque and hinder sightlines. Hagstrom further inquired if this was addressed in the code. Nicole clarified the code does not specify criteria for determining a fence's impact on visibility. She also mentioned adding foliage or fabric could further impair visibility.

Board member Roush questioned the traffic levels at the intersection. Tate responded that both roads are residential and uncontrolled, lacking yield or caution signs.

### **Applicant**

Lorin Peterson 1014 W Maryland Ln, Laurel – Mr. Peterson mentioned he owns the home where his parents reside. He expressed concern about people entering the yard to pick apples and take items without permission. He stated he was not informed of any regulations and was unaware he needed to apply for a fence permit. Mr. Peterson noted he complied with Code Enforcement, but this occurred the day after the chain-link fence was installed.

### **Questions**

Board member Hagstrom inquired about the reason for installing barbed wire. Mr. Peterson explained they wanted to protect the property from theft and vandalism, stating a 30-inch fence would not provide adequate security.

Board member Hagstrom noted a 6-foot fence could be built on the property as long as it does not intrude on the clear vision area. Mr. Peterson confirmed he learned this later. He also mentioned he had been informed about the possibility of the intersection becoming controlled, but he had not received any further details.

Chairman Sayer asked if there was anyone who wished to speak in favor or opposition to the variance.

### **In Favor**

Lisa Sundeen 336 E. Alkali Creek Road, Billings – Ms. Sundeen stated this is her parents' home and wish to protect the yard from people walking through the property and taking items off the property. Ms. Sundeen stated she believes the fence does not limit visibility, is much more obscured with the neighbor's parked vehicles. She has not received any negative feedback from neighbors.

Mr. Peterson requested additional clarification of the regulations with clear vision rules with residential versus commercial areas.

Nicole explained clear vision requirements apply to all four corners of intersections and are established through permitting. Historically, before zoning codes were implemented, the process was subjective and mainly considered controlled intersections, uncontrolled intersections, and driveways and alleys. In 2009, the city made the clear vision areas more specific based on certain criteria. Ms. Cromwell noted she is not aware of any control devices being installed at this intersection.

Karen Husman, Planner, added they had reached out to Engineering for clarification but had not received a response.

Further discussion ensued about the option of creating a controlled intersection and its effects on other neighborhoods. Board member Hayes asked why trees on boulevards are not included in the clear vision requirements. Nicole clarified this is because they fall within the right-of-way, and exceptions for fencing have never been made.

Board member Hagstrom remarked the City might risk setting a precedent by allowing a variance in cases where a clear vision safety issue has been identified.

Chairman Sayer asked if there was anyone else who wished to speak in favor or opposition to the variance. There was none and the Public Hearing was closed.

### **Motion**

**Motion made by Board member Hagstrom, seconded by Board Member Hayes to Deny City Variance 1375 and adopt the staff recommended findings. Motion was carried with a unanimous voice vote.**

Nicole advised the applicants they have 30 days to modify the fence or to file an appeal. Ms. Cromwell recommended they speak to the City Engineer, Mac Fogelsong, for additional information.

**Other Business:** There was no other business.

**ADJOURNMENT:** The meeting adjourned at 6:49PM.

**ATTEST:** Draft to be approved by a motion at the next regularly scheduled meeting.

***Brenda J Berns, Planning Clerk***