



Michael Alvarez, Planner II
Community Development Department
316 North Park Avenue, Rm. 445
Helena, MT 59623

: Phone: 406-447-8459
: Fax: 406-447-8460
: Email: malvarez@helenamt.gov

helenamt.gov

DATE: March 29, 2022

STAFF REPORT

TO: Helena Board of Adjustment

FROM: Michael Alvarez, City Planner II

SUBJECT: Consideration of:

A variance from Section 11-4-2 to decrease the allowable minimum front setback from 10 ft to 3 ft for a property with a legal description of West fifty-four (54) feet of Lots Ten (10), Eleven (11) and Twelve (12) and the West fifty-four (54) feet of the North fifteen (15) feet of Lot Thirteen (13) in Block 50 of the Original Townsite to the City of Helena, Lewis and Clark County, Montana.

The reason for the variance is to build a new front porch on a home that was built a long time prior to the adoption of the current setback regulations.

OVERVIEW

GENERAL INFORMATION

DATE OF APPLICATION: Complete application received February 15, 2022

PUBLIC HEARING DATE: Board of Adjustment - 5:30 p.m., Tuesday, February 01, 2021

APPLICANT/ PROPERTY OWNER: Derf L Johnson

MAILING ADDRESS: 419 8th Ave, Helena, MT 59601

CONTACT NUMBER: 406 581-4634

EMAIL ADDRESS: derfjohnson@gmail.com

PROPERTY ADDRESS: 419 8th Ave, Helena, Montana 59601

LEGAL DESCRIPTION: West fifty-four (54) feet of Lots Ten (10), Eleven (11) and Twelve (12) and the West fifty-four (54) feet of the North fifteen (15) feet of Lot Thirteen (13) in Block 50 of the Original Townsite to the City of Helena, Lewis and Clark County, Montana.

GENERAL LOCATION: The property is generally located mid-block on the south side of 8th Ave between N Rodney St and N Davis St

PRESENT LAND USE: Single dwelling-unit.

ADJACENT LAND USE: The surrounding land use is generally zoned R-1 (Residential).

PRESENT ZONING: R-3

VARIANCE PROPOSAL:

Consideration of a variance from Section 11-4-2 to decrease the allowable minimum front setback from 10 ft to 3 ft for a property with a legal description of West fifty-four (54) feet of Lots Ten (10), Eleven (11) and Twelve (12) and the West fifty-four (54) feet of the North fifteen (15) feet of Lot Thirteen (13) in Block 50 of the Original Townsite to the City of Helena, Lewis and Clark County, Montana.

History of Building Permits:

- Re-roof: 05/2010
- Water Line: 01/2006
- Electrical: 08/1986
- Plumbing: 08/1986
- Roof: 09/1982
- **Bldg-Porch: 07/1953**
- Roof: 08/1943

ZONING EVALUATION for the property legally addressed as 419 8th Ave, Helena, MT.

ZONING REQUIREMENT	R-3 ZONING REGULATIONS	PRESENT CONDITION	PROPOSAL	VARIANCE REQUIRED
City Code: 11-4-2 Front lot line setback	10' min	>10'	3'	Yes

BOARD OF ADJUSTMENT VARIANCE CRITERIA

Section 11-5-5 of the Helena Zoning Ordinance includes certain criteria that must be reviewed as part of the variance procedure.

To approve a requested variance for a new building or portion thereof, the board of adjustment shall consider the following standards and find as follows:

1. *The variance will not create a significant risk to the public health, safety, or general welfare;*
2. *The variance will not significantly reduce or impair the peaceful use of existing property or improvements in the vicinity and the zoning district in which the subject property is located; and*
3. *Strict compliance with the provisions of this title would create unnecessary hardship or practical difficulty.*

In evaluating the standards above, the board of adjustment may consider the following factors:

1. *Special conditions and circumstances that are unique to the applicant's site, including the size of the property, unusual or extreme topography, or unusual shape of the property.*
2. *The height, location, or dimensions of existing structures located on the site or in the vicinity of the site.*
3. *Whether there is a prevalence of nonconformities in the vicinity of the site that are similar to the variance requested.*
4. *The subsequent imposition of zoning restrictions creating nonconforming lots or parcels, and governmental actions beyond the applicant's control.*
5. *Whether a literal interpretation of the provisions of this Title would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this Title.*
6. *The extent to which the hardship or difficulty results from the actions of the applicant.*
7. *Whether granting the variance requested will confer an unreasonable special privilege to the subject property that is not available to other properties similarly located in the same zoning district.*

PUBLIC COMMENT:

As of Monday, March 28, 2022, two public comments have been received and they are in support of the variance.

City Attorney's Office:

It is the recommendation of the City Attorney's Office, that staff does not make a recommendation to

approve or deny a variance.

CONCLUSION

Montana law states the Board of Adjustment has authority to consider "...upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done." (76-2-323 MCA)

Motion:

Move to Approve or Deny A variance from Section 11-4-2 to decrease the allowable minimum front setback from 10 ft to 3 ft for a property with a legal description of West fifty-four (54) feet of Lots Ten (10), Eleven (11) and Twelve (12) and the West fifty-four (54) feet of the North fifteen (15) feet of Lot Thirteen (13) in Block 50 of the Original Townsite to the City of Helena, Lewis and Clark County, Montana.

If the Board of Adjustment approves the requested variance, the following condition is recommended:

Building Permit: A building permit must be obtained within one (1) year.



City of Helena
BOARD OF ADJUSTMENT
APPLICATION FOR VARIANCE
 Community Development Department
 Phone (406) 447-8490 Fax (406) 447-8460
citycommunitydevelopment@helenamt.gov

RECEIVED

FEB 15 2022

City Comm. Dev. Dept.

- 1) APPLICATION FOR VARIANCE MUST USE THIS FORM.
- 2) AN APPLICATION FEE OF \$125.00 MUST BE PAID TO THE COMMUNITY DEVELOPMENT DEPARTMENT BEFORE THE CITY WILL PROCESS THE APPLICATION.
- 3) THE MOST RECENT DEED FOR IMPACTED PROPERTY MUST BE INCLUDED.

CITY STAFF RESERVE THE RIGHT TO RETURN MATERIALS THAT ARE DEEMED INCOMPLETE OR LACK SUFFICIENT SUPPORTING DOCUMENTATION. THIS MAY ALSO DELAY THE SCHEDULING TO PRESENT A VARIANCE REQUEST.

(Part A) PLEASE PROVIDE THE INFORMATION REQUESTED BELOW.

1. 1 copy of a scaled site plan and supporting data/documents. The site plan must clearly show the existing standard and the proposed variance to the standard.

2. **APPLICANT/REPRESENTATIVE:**

Name: Derf L. Johnson Cell Phone Number: 406-581-4634
 Address: 419 8th Ave. Other Phone Number: _____
 Email: derfjohnson@gmail.com

3. **PROPERTY OWNER (if different from applicant):**

Name: _____ Cell Phone Number: _____
 Address: _____ Other Phone Number: _____
 Email: _____

4. **ADDRESS OF PROPERTY:**

419 8th Ave.

5. **LEGAL DESCRIPTION OF PROPERTY (Block & Lots, Subdivision/Addition):**

West Fifty Four (54) feet of Lots Ten (10), Eleven (11), and Twelve (12) and the West fifty-four (54) feet of the North fifteen (15) feet of Lot Thirteen (13) in Block 50 of the Original Townsite to the City of Helena, Lewis and Clark County, Montana. (Deed Reference Book 226 of Deeds.)

6. **LOT OR PARCEL SIZE (Square feet):**

5,096 S/F 5076 S/F

7. **CURRENT AND PROPOSED USE OF STRUCTURE OR PROPERTY:**

Residential

8. **ZONING DISTRICT: R-3 Residential**

Updated: 08/2020



City of Helena
BOARD OF ADJUSTMENT
APPLICATION FOR VARIANCE

(Part B) INDICATE WHICH VARIANCE(S) IS (ARE) BEING REQUESTED AND THE EXTENT OF THE VARIANCE.

EXAMPLE: [X] Reduce Front Lot Line Setback: *From the required 10 feet to 3 feet.*

Dimensional Criteria:

- Reduce front lot line setback: From the required 10 feet to 3 feet.
- Front lot line setback #2 (corner lot): _____
- Reduce garage entrance setback: _____
- Reduce side lot line setback: _____
- Reduce rear lot line setback: _____
- Exceed building height limitation: _____

Lot Coverage/Area Criteria:

- Lot coverage percentage: _____
- Front porch lot coverage percentage: _____
- Lot area per dwelling unit: _____

Landscaping Criteria:

- Reduce or eliminate landscaping area: _____
- Reduce or eliminate screening area: _____

Parking Criteria:

- Exceed the maximum parking spaces allowed: _____
- Reduce the amount of required on-site parking spaces: _____
- Reduce or eliminate loading berths: _____
- Reduce or eliminate required bicycle spaces: _____

Sign Criteria:

- Sign area (square footage): _____
- Sign height: _____
- Sign location: _____
- Number of signs: _____



City of Helena
BOARD OF ADJUSTMENT
APPLICATION FOR VARIANCE

(Part C) BOARD OF ADJUSTMENTS VARIANCE REVIEW CRITERIA. To approve a requested variance for a new building or portion thereof, the Board of Adjustment shall consider the following standards in section 11-5-5 of the Helena City Code and find as follows:

1. The variance will not create a significant risk to the public health, safety, or general welfare;
2. The variance will not significantly reduce or impair the peaceful use of existing property or improvements in the vicinity and the zoning district in which the subject property is located; and
3. Excluding monetary hardship, strict compliance with the provisions of this title would create unnecessary hardship or practical difficulty.

It is the applicant's burden of proof to show that a variance should be granted. As part of your application, you are required to provide information for each of the following factors including all alternatives considered. Failure to provide adequate responses or requested documentation may result in a returned application.

1. Are there special conditions and circumstances that are unique to the applicant's site, including the size of the property, unusual or extreme topography, or unusual shape of the property? If so, state the specific factors and provide supporting documentation. For example, if the variance request is due to an abnormal lot configuration, provide a survey of the lot that specifically demonstrates the issue.

The lot was created as part of the original Helena Townsite, and the house is 141 years old, and constructed well before modern setbacks were adopted. The construction of a new porch is impossible without a variance.

2. How is the proposed variance compatible with the other structures located on the site or in the vicinity of the site? Provide a site plan that accurately and to scale represents the height, location, and dimensions of existing structures.

All of the homes located on the south side of the 400 block of 8th Avenue are non-conforming to the setback requirement. This is also an incredibly common feature of older, smaller homes in the older parts of Helena.

3. Describe whether there is a prevalence of nonconformities in the vicinity of the applicant's site that are similar to the variance requested. If so, what are those nonconformities and provide supporting documentation.

To the west, 415 8th Ave.'s porch is 4' from the sidewalk, and the steps end right on the sidewalk. To the east, 423 8th Ave.'s porch is directly next to the sidewalk, and 427 8th Ave. has a porch that is 4' from the sidewalk, with stairs closer.

4. Is the need for a variance request a result of government action? For example, the front yard setbacks were increased after construction of the structure, there fore creating the non-conformity. Explain.

Yes. My house, and all of my neighbors homes, were constructed well before modern setbacks were in place. Currently, my property has the largest setback of all of the buildings on the south side of the 400 block of 8th Ave.

5. Would a literal interpretation of the provisions in this title deprive the property owner of rights commonly enjoyed by other similar properties in the same zoning district? For example, would the denial of the variance deny the property owner the right to safe placement of a garage where garages are typical. If so, explain.

Currently, my porch is x' from the sidewalk. It is dilapidated, and leaning heavily away from my home. I would like to reconstruct the porch (both deck and roof), and to make it larger. A literal interpretation would prevent this from occurring.



City of Helena
BOARD OF ADJUSTMENT
APPLICATION FOR VARIANCE

(Part C Continued...)

6. Explain the extent of the circumstances that are creating hardship or difficulty in compliance with the City Code and list alternatives and options considered by the applicant. Provide supporting documentation.

Due to the very limited space in the front of my house, there is no alternative for the construction of a larger porch without a variance.

7. Describe whether or not granting the variance requested will confer an unreasonable special privilege to the subject property that is not available to other similar properties located in the same zoning district and provide supporting documentation.

Granting this variance would not confer any special privileges. In fact, it would allow for me to have the same use and enjoyment of my prperty as my immediate neighbors.

8. Do you think a rebuttable presumption, as identified in City Code Section 11-5-5(E), should apply to your property, yes or no? For example, do you have an existing non-conforming structure that you wish to rebuild in the same location? If yes, show the original footprint of the building. Provide documentation that proves the existence of the prior nonconformity. Document that the nonconformity can be in compliance with building and fire codes.

N/A

9. Provide any additional information you would like the Board to consider.

N/A

IT IS THE POLICY OF THE CITY OF HELENA'S BOARD OF ADJUSTMENT TO NOT ACT ON A PROPOSAL IF THE APPLICANT/PROPERTY OWNER OR REPRESENTATIVE IS NOT PRESENT AT THE BOARD OF ADJUSTMENTS HEARING. CITY STAFF REPRESENT THE CITY AND CANNOT ANSWER QUESTIONS ON BEHALF OF THE APPLICANT AT THE BOARD OF ADJUSTMENT HEARINGS.

I HEREBY CERTIFY THE ABOVE STATEMENTS AND ANY ATTACHED INFORMATION ARE TRUE AND CORRECT.

APPLICANT'S SIGNATURE: *[Handwritten Signature]* DATE: 2/10/22

PROPERTY OWNER'S SIGNATURE: _____ DATE: _____
(Property owner must sign application if different than the applicant)



City of Helena
LAND USE
Application Form

RECEIVED
DATE RECEIVED: ~~FEB 15 2022~~
FEB 15 2022
City Comm. Dev. Dept.
~~FEB 15 2022~~
RECEIVED

Please provide all of the information requested in the Application Instructions.
AN INCOMPLETE APPLICATION MAY DELAY REVIEW OF YOUR REQUEST.

1. APPLICANT:

Name: Derf L. Johnson

Address: 419 8th Ave.
Helena, MT 59601

Primary Phone: 406-581-4634

Secondary Phone: _____

Email address: derfjohnson@gmail.com

Authorized Representative _____
(The representative is authorized to represent the property owner and to receive all correspondence)
2. PROPERTY OWNER (if different from applicant):

Name: _____

Address: _____

Primary Phone: _____

Secondary Phone: _____

Email address: _____
3. LEGAL DESCRIPTION (submit a deed and recent copy of the plat to verify description):

Subdivision/Blocks/Lots and COS number: west Fifty four feet of lots 10, 11, and 12, and the west fifteen feet of lot thirteen in Block 50
Section, Township, and Range: See Attached Deed
4. ADDRESS OF PROPERTY: 419 8th Ave.
5. CURRENT ZONING: R-3
6. GEOCODE: 05-1888-30-3-11-11-0000

Please indicate the type of land use/land use change you are requesting and submit this form with your application:

- Pre-Zone Annexation
- Conditional Use Permit Variance from Zoning Regulations Zone Change
- Major Subdivision Preliminary Plat Minor Subdivision Preliminary Plat Final Plat Amended Plat

IT IS THE POLICY OF THE CITY COMMISSION NOT TO ACT ON A PROPOSAL IF THE APPLICANT/APPLICANT'S REPRESENTATIVE IS NOT PRESENT AT THE COMMISSION MEETING. City Planning Staff represents the City; staff cannot answer questions for the applicant.

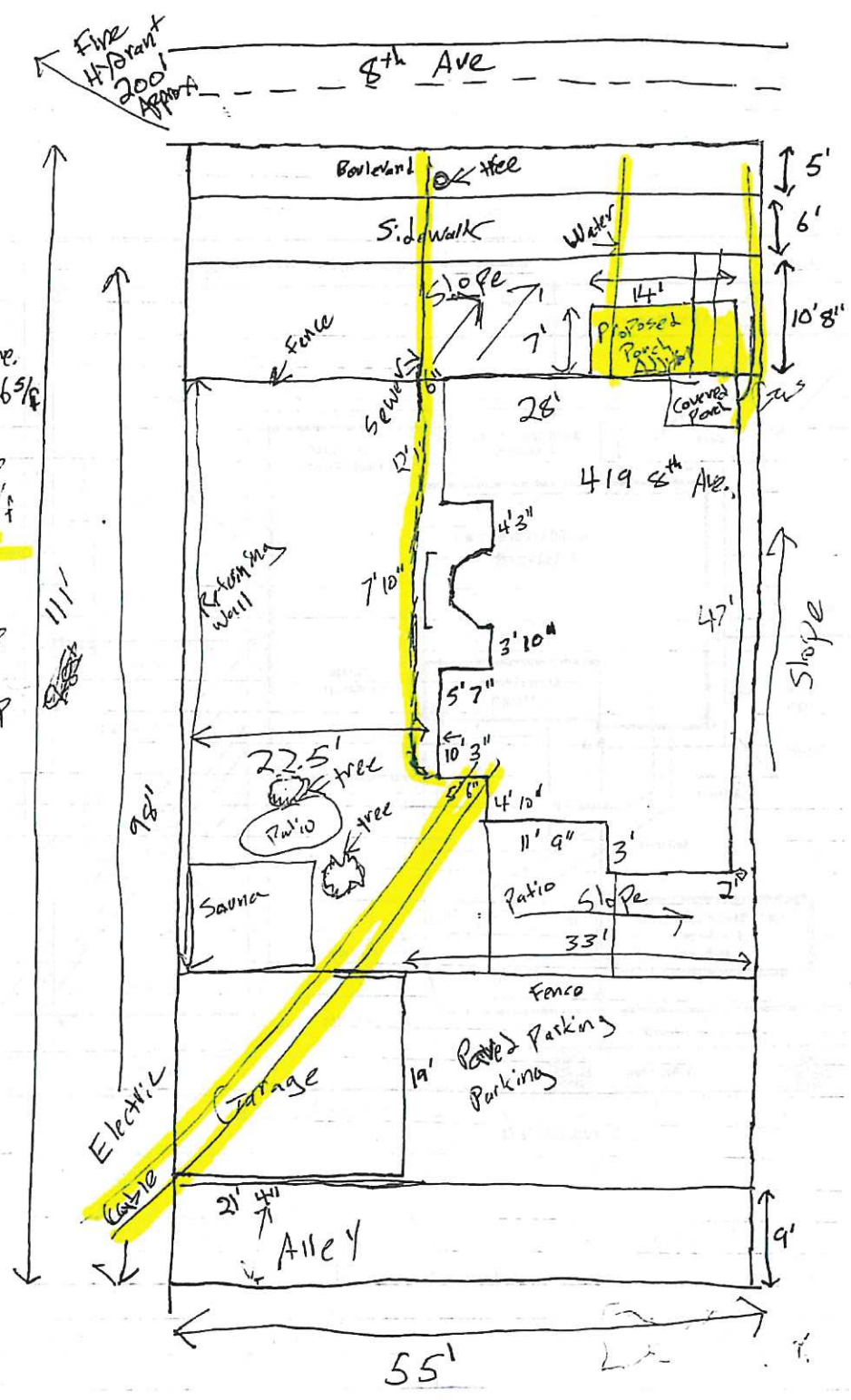
The taxes and assessments on the applicant's property, which is the subject of the proposed action, must be paid or payment of said taxes and assessments must be made a condition of final approval of said action by the city commission, with the taxes and assessments to be paid within fourteen (14) days after final passage. In the event the taxes and assessments are not paid, the proposal will be brought back before the city commission at the next regularly scheduled meeting for reconsideration.

I HEREBY CERTIFY AND ACKNOWLEDGE THE ABOVE STATEMENTS AND ANY ATTACHED INFORMATION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

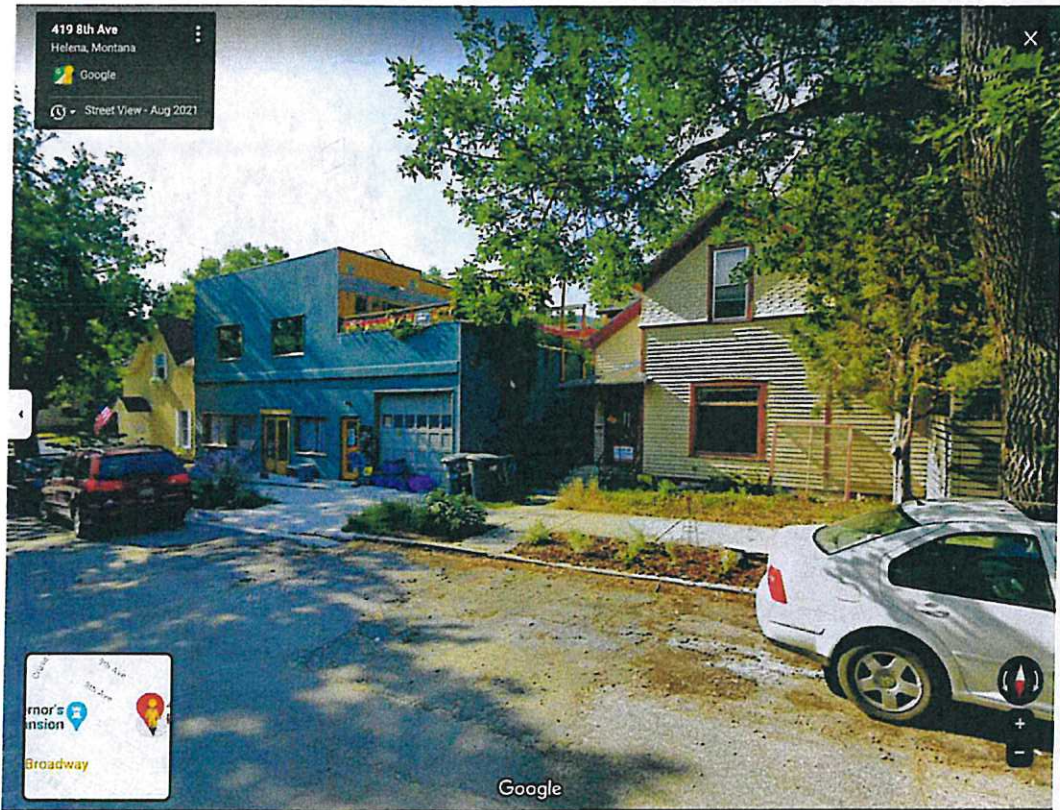
SIGNED:  Date: 2/10/22
Applicant

Property Owner: _____ Date: _____
(If different from applicant)

- A: 419 8th Ave.
- B: lot 5,076 5/8
- C: see map
- D: see map
- E: 1,497 5/4
- F: see map
- G: N/A
- H: see map
- I: see map
- S: see map
- K: N/A
- L: N/A



419 8th Ave. looking to the south east



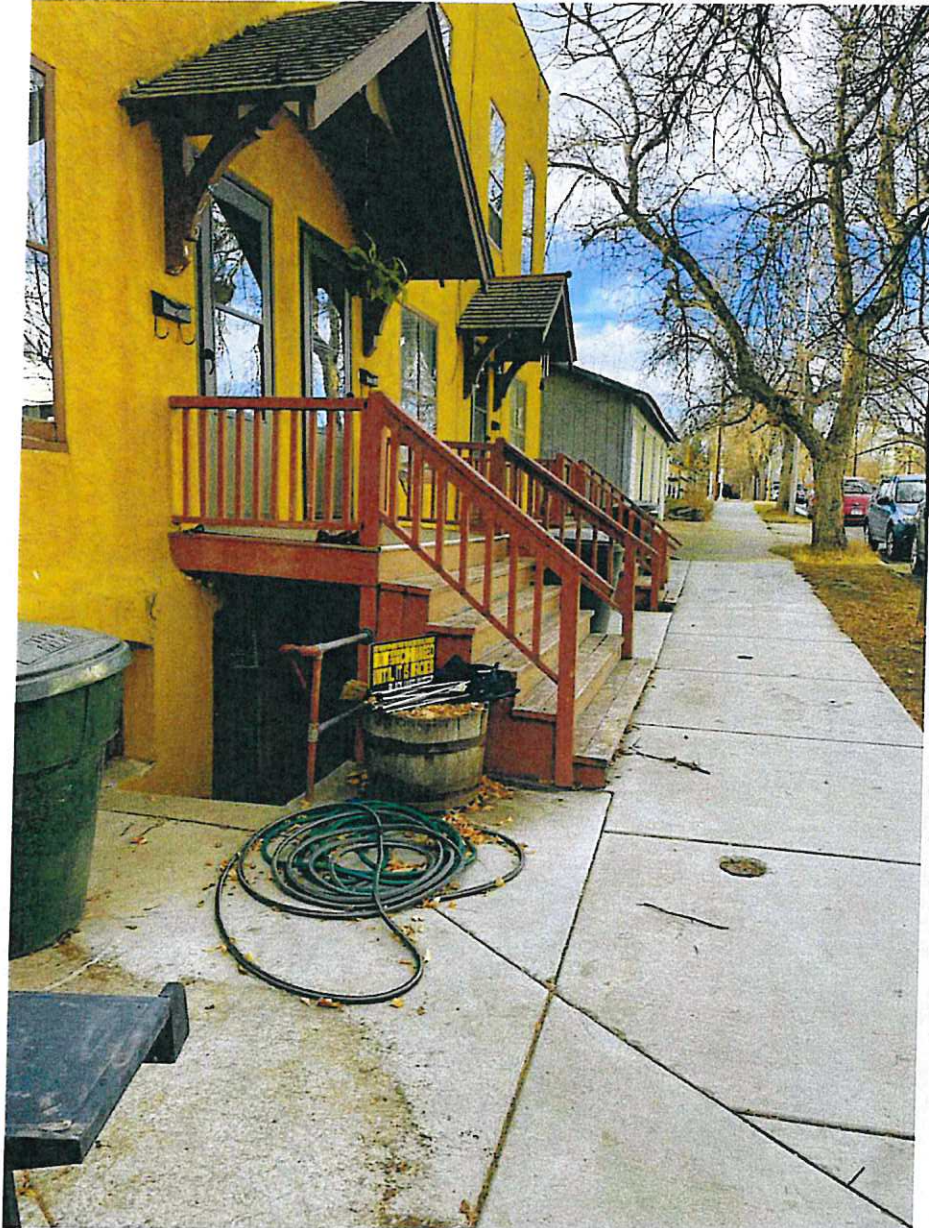
427 8th Ave.

The porch (excluding the steps) is approximately 4 feet from the sidewalk



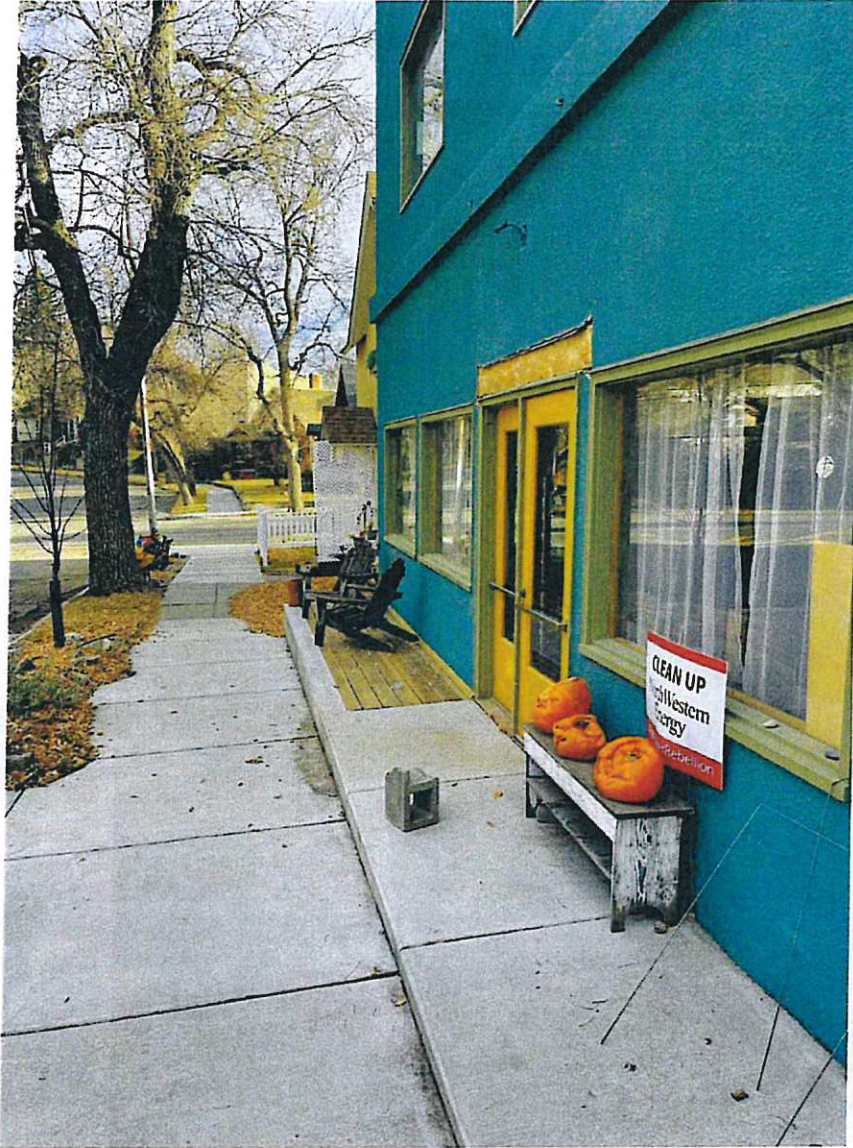
415 8th Ave.

The porch (excluding the steps) is approximately four feet from the sidewalk.

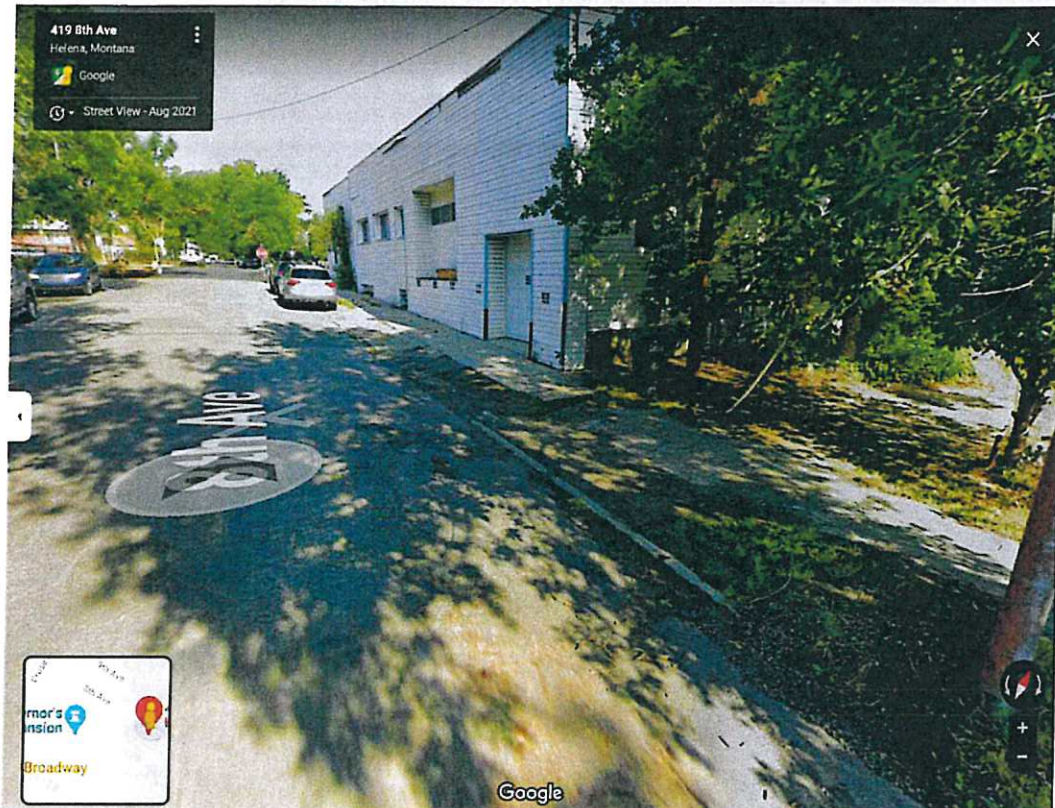


423 8th Ave.

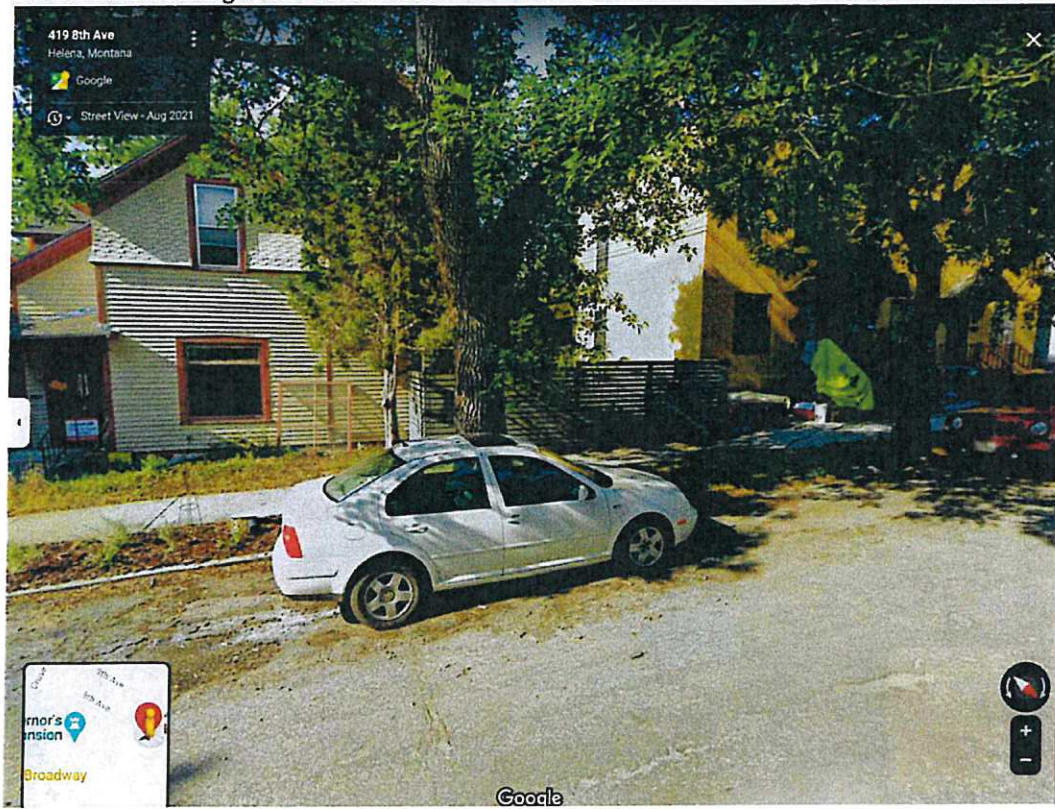
The porch does not have a setback, and the building is within four feet.



The 8th Ave. side of the building on 401 North Rodney St., which does not have any setback.

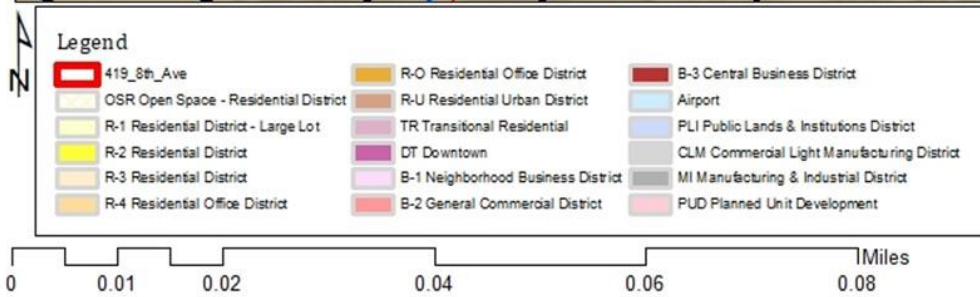


419 8th Ave. Looking to the south west





Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



110639
First Montana Land Title Company
P. O. Box 251
Helena, MT 59624

3343464 B: M56 P: 557 DEED
09/23/2019 04:10 PM Pages: 1 of 1 Fees: 7.00
Paulette DeHart Clerk & Recorder, Lewis & Clark MT

DEED OF CONVEYANCE

This instrument is executed the 18th day of September, 2019, by the undersigned in the capacity of the duly appointed, qualified, and acting personal representative of The Estate of Allan Harry Starke AKA Allan H Starke, deceased.

Proceedings for the administration of the estate are filed as Cause No. DP2019-128 in the Montana First Judicial District Court, County of Lewis and Clark, at Helena, Montana, and the undersigned, as personal representative has sold to the party hereafter named the property of said estate as hereafter described, pursuant to authority as provided by law.

NOW THEREFORE, for the purpose of completing said sale by and from said estate, the undersigned hereby sells, assigns, transfers and conveys all of the right, title and interest of said estate unto: Derf Johnson, in and to the real property situated in Lewis and Clark County, Montana, and particularly as follows:

West fifty-four (54) feet of Lots Ten (10), Eleven (11) and Twelve (12) and the West fifty-four (54) feet of the North fifteen (15) feet of Lot Thirteen (13) in Block 50 of the Original Townsite to the City of Helena, Lewis and Clark County, Montana.
(Deed Reference Book 226 of Deeds, Page 136)

To have and to hold the same unto the said grantee and the heirs and assigns of the grantee, forever.

IN WITNESS WHEREOF, the undersigned executes and acknowledges this instrument as of the date above stated.

The Estate of Allan Harry Starke AKA Allan H Starke, deceased

BY: Edward Eugene Starke
Edward Eugene Starke, Personal Representative

State of Montana
County of Lewis & Clark

On this 23rd day of Sept, 2019, before me, the undersigned, a Notary Public for the State of MONTANA, personally appeared Edward Eugene Starke, Personal Representative of The Estate of Allan Harry Starke AKA Allan H Starke, deceased, proved to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same as such personal representative.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day of the year first above written.



Renam Spangler
NOTARY PUBLIC

Michael Alvarez

From: Nancy Perry <perryrna1@verizon.net>
Sent: Sunday, March 27, 2022 9:16 AM
To: Michael Alvarez
Subject: Request for variance for 419 8th

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Mr. Alvarez,

I am a member of Helena Citizens' Council and this property is in my district. I have no problem with the request to build a porch on the front of 419 8th. Normally, I believe those codes were put there for a reason and people should obey them. However, this house was built long before the code was enacted and I think it only right to allow the family to have a front porch on their property. Thank you.

Nancy Perry
perryrna1@verizon.net

City of Helena
Community Development Department - Board of Adjustment
301 S Park Ave
Helena, MT 59601

Dear Members of the Board of Adjustment,

I'm writing in support of the application by Derf L. Johnson for a variance that would reduce the setback of the front line of his property (419 8th Ave.) from ten feet to three feet. As a neighbor sharing a property line with Mr. Johnson directly to the east, I believe that this request is reasonable, measured, and would conform with the character of the street and the greater neighborhood. Allowing for this variance would permit the construction of a deck and porch on the front of Mr. Johnson's property, which would be in-line with setbacks for the other homes on 400 block of 8th Avenue and allow for his property to enjoy the same setback as other properties on this block.

I do not believe that the variance would create any risk to the public health, safety, or welfare. Nor do I believe that the variance would reduce or impair the peaceful use of existing property adjacent to, or within the same district. In fact, I believe that the variance request is modest in scope (7 feet) and will allow for the front setback to be in line with other homes on the block as well as fully conform with other properties in the neighborhood. Finally, I believe that setback requirements are an essential and important part of our zoning. However, in this circumstance, the strict compliance with the setback requirement would entirely prevent the construction of a new porch on the front of Mr. Johnson's property.

I believe that this variance is well-planned, reasonable in scope, and will fit within the neighborhood's character. I respectfully request your approval.

Thank you for your consideration.

Sincerely,

Hannah Fisher
423 8th Ave.
Helena, MT 59601