

**Minutes**  
**Board of Adjustment Meeting**  
**April 5, 2022, 5:30 p.m.**  
**Virtual Zoom Platform**

**Board Members Present:**

Byron Stahly, Chair  
Burton Federman, Vice-Chair  
Commissioner Feaver  
Tracy Egeline

**Staff Present:**

Michael Alvarez, Planner II  
Lucy Morrell-Gengler, Senior Planner

**Board Members Absent:**

Camie Smith

**Members of the Public Present:**

Derf Johnson, 419 8<sup>th</sup> Ave  
Andres Halladay

**Call to Order:**

**(0:00:17)** Chair Stahly called the meeting to order shortly after 5:30. Roll call was taken, and a quorum was established (4 Board members)

**Approval of Minutes:**

**(0:02:47)** The minutes of the Board of Adjustment meeting of February 1, 2022, were approved as submitted.

**Public Hearing #1:**

**(0:04:24)** Staff read the three standards of Section 11-5-5 and the seven standards that may be considered.

**Staff Presentation:**

**(0:07:30)** Staff provided a presentation which included photographs of the subject property, a vicinity map, and site plan. Staff summarized the staff report. As of Tuesday, April 5, 2022, two public comments have been received regarding the proposed variance. Both comments were in support.

**Questions asked of Staff:**

**(0:09:43)** Ms. Egeline asked Mr. Alvarez or the applicant what the width is of the current covered porch, and if it overlaps with the window. Derf Johnson, the applicant, stated the current porch's width is about 5 feet and follows the 10' setback. Mr. Johnson stated his proposal would extend the front porch out and around the front of the home to the piece of red trim on the right-hand side of the photograph of the subject property. Regarding exact dimensions, Mr. Johnson stated he intends to work with the building division on what is appropriate and will be required.

**(0:11:10)** Chair Stahly asked Mr. Alvarez how staff arrived at the variance for 3' based off the dimensions shown in the site plan. Mr. Alvarez stated that his understanding that the 14' width would be East to west and the 7' towards the sidewalk allows for a gap of 3'8". The variance of 3' is being asked for with a bit of a cushion. The front of the house is 10' 8" from the property line, and the proposed porch would extend 7' from the front of

the house. The 8" difference allows for wiggle room once the construction process begins.

**(0:13:07)** Ms. Egeline asked where the stairs will be located. Mr. Johnson stated that they will likely be on the north end of the porch and that he does not think they will be abutting the sidewalk. Mr. Alvarez stated that the city does not require the stairs to be located out of the setback, just the porch.

**(0:14:22)** Vice-Chair Federman made a statement about the site plan drawing and the fence which in the drawing comes out to the sidewalk. Mr. Johnson explained that north is at the top of the drawing, and that Vice-Chair Federman is correct that the fence does extend to the sidewalk, and that it is his understanding that the setback does not apply to the fence. Mr. Alvarez confirmed that fences can extend to the property line.

**(0:15:34)** Vice-Chair Federman asked Mr. Alvarez why the city does not ask for a lot plan so that the board can see the lot lines. Mr. Alvarez stated that it is because this process is quite a bit before the building process, he is looking to see that information is reasonably represented, and that people are not required to hire engineers or architectural professionals, and it depends on the scale of the project and a measure of equity involved with that we're asking for applicants. Vice-Chair Federman stated he was asking because sidewalks don't constitute a lot line. Mr. Alvarez stated that the inside edge of the sidewalk in this instance is extremely close to the lot line and the sidewalk is the right of way. Chair Stahly noted that in older parts of town that it's consistent for the right of way to be along the lot line.

#### **Applicant Presentation:**

**(18:52)** Mr. Johnson stated that he appreciates the questions and that he is running into the issues that the measurements are difficult as it is an older area. The home was built in 1880, and he had previously investigated hiring a surveyor to determine the property lines and was quoted \$5000 due to being in the older area of town. This project is well within all the points Mr. Alvarez hit upon, as it will not be problematic for public safety and will allow Mr. Johnson to enjoy his home. In looking at the neighboring properties, the homes are closer than 10' to the sidewalk, and the proposal fits with the character of the neighborhood.

#### **Questions asked of Applicant:**

**(21:47)** Ms. Egeline asked the applicant what materials he plans on using. Mr. Johnson stated he assumes it will be wood above grade and is aware of a water and gas line he will need to consider in the construction phase.

#### **Public Comment:**

**(0:23:28)** Mr. Andres Halladay stated he is a neighbor to Mr. Johnson, and that they have no problem with the applicant's proposal and outlined the non-conforming properties in the neighborhood.

#### **Board Discussion:**

**(0:26:24)** Commissioner Feaver stated that he is familiar with the neighborhood and that the applicant's porch will fit the neighborhood and improve the house from conforming to non-conforming to fit the character of the neighborhood, and he is ready to move to approve the variance.

**(0:27:26)** Chair Stahly stated that he has no problem with any criteria that the board must find and will support the variance. Ms. Egeline also stated her support.

**Motion for Variance #1:**

**(0:28:32)** Commissioner Feaver motioned to approve 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 with the following condition: a building permit must be obtained within one (1) year.

Vice-Chair Federman seconded the motion. The motion passed unanimously (4:0).

**Old Business:**

**(0:30:15)** Chair Stahly stated that he is wondering if anyone may be interested in the position of Chair and would like to entertain a conversation about that idea. Vice-Chair Federman stated that he is okay with the current situation. Chair Stahly asked if a staff member could confirm that appointments of the current Board. Mr. Alvarez stated that staff will look into the appointments. Ms. Morrell-Gengler stated that typically the City Clerk keeps track of board appointments, but staff can check and let the board know. Mr. Alvarez stated that there was a discussion not long before Ms. Haugen retired, and Commissioner Feaver came onto the board. Ms. Egeline stated she is happy contributing as an architect but is not in any way wanting to take on a leadership role. Commissioner Feaver stated he is happy with the current state of the board and is unaware if it is appropriate for him to be Chair of the board as a city commissioner. Chair Stahly stated he is comfortable with remaining Chair, but at the end of this year it would be advisable to appoint a new chair and vice-chair.

**(0:36:20)** Vice-Chair Federman stated he had asked before about passing on information to other boards or commissions for changes when they find something is wrong with a statute. Chair Stahly stated he recalled several instances where zoning did not seem to make sense and Ms. Haugen had stated that it was on the staff list at things to look into proposing changes. Vice-Chair Federman asked about the existence of a planning board. Mr. Alvarez stated there is a joint City-County Planning Board in addition to the Zoning Commission. Chair Federman stated that he felt that the board should direct their suggestions for changes to staff. Ms. Morrell-Gengler stated that it is appropriate to direct comments to staff for changes, as they bring those proposals forward for zoning ordinance amendments and laid out the process.

**Public Comment:**

**(0:41:10)** There were no public comments.

**Next Meeting:**

**(0:41:32)** The next regularly scheduled meeting is May 3, 2022. There will be at least two, and possibly three applications to come before the board.

**Adjournment:**

**(0:44:37)** With no further business before the Board, the meeting adjourned at approximately 6:15 PM.