



**Minutes
Board of Adjustment Meeting
June 6, 2023 - 5:30 PM
Virtual Zoom Platform and City-County Building 330**

Members Present: Chair Tracy Egeline, Vice-Chair Tim Tholt, Byron Stahly, Burt Federman, Commissioner Andy Shirtliff, Michael Newhouse

City Staff Present: Michael Alvarez – Planner II, Kyle Holland – Planner II, April Sparks – Administrative Assistant

Call to Order and Roll Call

(0:04:46) Chair Egeline called the meeting to order at shortly after 5:30 PM. The Pledge of Allegiance was recited, roll call was taken, and a quorum was established (5 members). Staff and applicant introductions were made.

Public Hearing Items

(0:08:14) Staff read the three standards of Section 11-5-5 and the seven standards that may be considered.

Item 1

Staff Presentation and Questions for Staff

(0:11:38) Kyle Holland, City of Helena Planner II, provided a presentation which included photographs of the subject property, a vicinity map, and site plan. Staff summarized the staff report. 4 comments against the proposed sign had been received.

(0:15:47) Mr. Federman asks to see an image from the application packet that shows the sign above the interstate. Mr. Holland brought that image to the screen.

(0:16:38) Vice-chair Tholt requests clarification on what the previously approved variances were for the property. Mr. Holland clarifies that the variance is only for the height of one sign, and that the other previously tabled request for a second sign height variance is no longer being requested due to the Board not approving the second sign when it was presented.

(0:18:11) Vice-chair Tholt asks if the sign being discussed is the north or south sign. Mr. Holland states that they are looking at the sign referred to as the south sign.

(0:18:21) Mr. Stahly asks for clarification that this is the only free standing sign identified on the site plan.

(0:18:46) Commissioner Shirtliff asks city staff what the standard height of a gas station sign is within city limits. Mr. Holland answers that it is 34 feet in the B-2 zoning districts.

Applicant Presentation and Questions for the Applicant

(0:19:58) The representative for Maverick, Rich Piggott, comes forth and states he does not have a presentation, and clarifies they are looking for an 11 foot extension on the single sign. Mr. Piggott continues that this is to maintain the height of 34 feet above the elevation of the interstate adjacent.

(0:21:00) Chair Egeline asks for clarification about the size of the sign, and if it is 6 feet as in the presentation materials.

(0:21:32) Mr. Federman asks the applicant is it true that the highway will give you a sign that says fuel stop. Mr. Piggott states that it is not something that they have applied for and they are not sure if it is specific to the off ramp, but that they will make every effort to acquire a sign like that. Mr. Federman asks if this would preclude the idea of having the sign stick up another 11 feet. Mr. Piggott states that their research shows the pylon sign is far more beneficial than the little highway template and give greater time for anticipation when exiting the highway.

(0:22:30) Mr. Federman asks the applicant if they agree that the pylon sign takes away from the scenery and that it is a nice highway. Mr. Piggott states that he does not feel like the 11 feet will make much difference for what is gained and that it is not that onerous to the residents behind the station. Mr. Federman clarifies that he is referring to the scenic view while on the highway and that there can be fuel signs that are less impactful visually. Mr. Piggott states that they can have a 34' sign which would be visible above the horizon, but the extra 11 feet would be beneficial to them due to the topography of the site.

(0:24:03) Mr. Stahly asks how the 45 foot height was determined and both him and Mr. Piggott remembered that the intent was to base the additional height off the difference in elevation to the interstate, and that the intent was for the sign to be 34 feet above the interstate. Mr. Stahly asks for staff to clarify the height of the interstate. Mr. Holland asks if he is looking for the absolute elevation or the relative difference in elevation. Mr. Holland brings up the portion of the meeting materials that show the elevation of the overpass and the base of the sign. Vice-chair Tholt clarifies to Mr. Stahly that the elevations given in the application materials refer to the elevation of the overpass and not the elevation of the interstate.

(0:26:24) Mr. Stahly asks the applicant if the finished floor elevation of the building is still to be at 4161 feet. Mr. Piggott confirms that it is still that to his understanding.

Public Comment/Board Discussion

(0:27:44) Dana Bridget Williams, a homeowner at 1055 Napa Dr., speaks to her opposition of the gas station in general, and then to her specific concerns in relation to the proposed sign. Ms. Williams states that 45 feet is too tall. That the pictures shown

earlier are from the site itself and do not capture that Colonial Drive slopes down as it goes north and that due to this slope this sign is going to be really high and impact their view and the enjoyment of their properties. Mrs. Williams continues that this a quiet neighborhood with houses and professional businesses and that this will be intrusive to their property and transform the exit from the "South Helena" exit to the "Maverick" exit and they will cease to be the Nob Hill neighborhood. Mrs. Williams further continues that the application did not show what the impacts of this sign will be at night. She states that Nob Hill is considered a gem in the Helena area for watching the night sky, to the extent that one of the neighbors has built a professional telescope, and the that the light pollution from the sign is of concern to her. She believes that work will get around the community about the gas station and that the sign is ultimately not necessary with highways signs and navigation apps.

(0:29:33) Bryan Lobar, a homeowner at 1055 Napa Dr., spoke in opposition to the sign. Mr. Lobar stated his concern about the obstruction of the view and the concern that the sign will block the view towards the elkhorns. Mr. Lobar acknowledges that there are commercial activities around the area but they are offices that work during the day. This is going to have a large red glowing sign which will affect them through light pollution. When they are on their deck, Nob Hill blocks most of the city glow and see the aurora when it is active. The super high sign screams "truck stop" and is not in keeping with the character of the neighborhood. Mr. Lobar believes that the gas station will be highly visible from the north and can be seen from the south with highway signs. He believes that if the goal was to make the businesses more visible than the highway speed should be lowered to 65 miles per hour, per Montana law. Mr. Lobar again states his opposition and his concern that it will lower property values in the area.

(0:36:26) Tom Kerr, a resident at 1085 Napa Dr., spoke in opposition to the proposed sign. Mr. Kerr states that the City of Helena has gone a long way towards improving light pollution in the area by replacing the light poles in the neighborhood, and that now they are considering putting up a sign that will produce much more light pollution than the streetlights produced. Mr. Kerr states his approve of the project and the creation of new jobs, but that the light pollution is too big a concern to overlook. He also encourages the city to reconsider the 34 foot height throughout the city.

(0:38:11) Darcy Weidman, resident at 985 Mendocino Dr., stated her opposition to the proposal. Ms. Weidman stated that her back yard faces the Maverick site, she has a balcony overlooking the area, and enjoys her morning coffee looking at the mountains. She states her disappointment in the addition of the Maverick business to the area, citing that the neighborhood is very quiet with many retirees who have no interest in loud noises in the evening and are there to enjoy the scenery around them. Ms. Weidman states that the addition of a red glow in the sky is unnecessary and that as a tax paying citizen they would appreciate the board shooting down this proposal.

(0:39:53) Mary Ann Dunwell attempted to give public comment online, but there was technical difficulties and she was going to type her comments in to the chat.

- (0:42:31)** Larry O'Donnell, a resident at 965 Mendocino Dr, stated his opposition to the proposed sign. Mr. O'Donnell states that the Maverick gas station is visible out of his living room window, and that the extension requested will place the sign close to the elevation of the street lights on the overpass. He believes that a red glow at that height will set a precedence of to go big and to go high. He does not think that Helena needs it and as a property owner does not want to look at it. Mr. O'Donnell agrees with the other ideas presented of highway signs and lowering the speed limit to achieve the goals. Mr. O'Donnell also stated his concern over the additional light pollution and that he will no longer be able to enjoy the neighborhood as he has.
- (0:46:25)** Angie Colon Maria, a resident at 1060 Sonoma Dr, voices her opposition to the sign. She states that they have a quiet neighborhood and that the current businesses do not disrupt the traffic or noise level and certainly do not have large, tall signs that ruin their view. This new sign would be higher than other signs and buildings in the area, that a 15 pump truck stop is already going to significantly change the neighborhood and decrease home values, and that every additional foot that is allowed for the sign will further decrease the values of their homes. Ms. Maria also voices her concerns about the light pollution.
- (0:47:25)** Kali Wicks, a resident of Sonoma Drive, states her opposition to the sign variance. Ms. Wicks believes that this sign will set a precedent and is not needed in the area.
- (0:47:54)** Mary Ann Dunwell, a state senator representing the area, states her opposition to the requested variance. Ms. Dunwell states that she believes that Maverick's argument of safety for I-15 traffic is a weak argument due to the traffic challenge of the small roundabout. Ms. Dunwell also questions the location of the sign in the ditch, and wonders where does the board stop with others that would request similar variances.
- (0:49:17)** Vice-chair Tholt states for everyone in attendance that the sign code is currently being rewritten and if anyone would like to make public comment staff is looking for input.
- (0:50:55)** Chair Egeline asks the applicant if the sign is always on. Mr. Piggott states that it is will be always on, that it is not the brightest sign it can be, and that he does not think it is dimmable. Chair Egeline asks if there is any room for negotiation in how long the sign is illuminated or if it can be tied to only being lit for so long after sunset. Mr. Piggott states it is something he would have to look into, and that we will take all these comments back to the company because they want to be a good neighbor.
- (0:53:26)** Additional public comment comes in from Lindy Coonen, owner of Coonen Dental, in opposition of the sign. She states that the businesses in the area are closed at 5, their patients will loose their view, and that they chose the location because of the quaint area and wanted to integrate into the quiet, respectful neighborhood. Mrs. Coonen states that she would hate to see the intersection look like Boulder, MT with its obnoxious glowing lighting up the neighborhood at all hours.
- (0:54:15)** Mr. Federman asks about the nature of the proposed sign, specifically if it will be fixed signage or if there is the capability for it to be blinking, flashing, or scrolling text. Mr. Holland states that the only changeable copy on the sign is the area for the fuel price.

- (0:54:57)** Mr. Federman that unfortunately or fortunately, this project is allowed on that lot so we have to put up with it. Mr. Federman says he calls it the highway graffiti, "where you have these colored signs sticking up in the horizon or whatever for no reason at all." He states this is against the whole thing because it does have an impact on the neighborhood and the least they can do is keep it at the lower height. He states he will vote no.
- (0:56:07)** Mr. Stahly states his background as a retired engineer and that he worked with elevation grades. He says looking at the site plan they had two locations selected for signs and picked the one that is further from the residences and that there is some "method to the madness." He continues that he has done the math looking at the site plan and that if they move it to the other location and set it at the height allowed by right it will be higher than the sign they are asking for and which is preferred, a higher sign closer or a lower sign further away. Mr. Stahly states that for this reason he is inclined to approve the sign.
- (0:58:42)** Vice-chair Tholt states that he is in favor because without that they can move the sign where ever they want and if they approve it the board can set constraints on the height.
- (0:59:38)** Commissioner Shirliff talked about the discussion that the board had regarding the chef store on Sanders Ave. and how this can start a trend of larger and larger signs that get higher and higher. Commissioner Shirliff asks if the location is going to be leveled out with Colonial Drive or if it will stay in the little dip. Mr. Stahly says that is a good question and that is why he put a baseline on what the finished floor elevation is and that the building is about 9 feet below Colonial Drive. Mr. Holland adds that as a condition of approval you could set a maximum elevation of the top of the sign relative to the elevation of the interstate, Colonial Drive, the finish floor of the property, or however they would like to define the height. Mr. Stahly stated he appreciates that comment because if there was a motion made he was going to make the motion with the height not in reference to the pole but to a maximum sign height elevation based on the datum of the site plan.
- (1:02:43)** Chair Egeline states that she agrees with Mr. Stahly and that if they do not approve it then they can move it close to the neighborhood. She continues that she was thinking that they could approve less height and that it could still be seen from the road.
- (1:03:37)** Mr. Federman states that it may be a better idea to move the sign to the other end of the property because everyone seems to be focusing on the area where the sign is proposed and it would be a better idea to leave that area undisturbed. Chair Egeline states that she is not sure she agrees with that as there is a whole neighborhood and it will be in somebody's horizon. Mr. Federman clarifies that it is his argument that it is the scenic portion of the road that is being light with the sign that high and that the sign is highway pollution.
- (1:06:01)** Chair Egeline stats that she is for a yes on this but that there is the possibility the height can come down some and does not need to be the full 45' but she is unsure of what the maximum height should be. Vice-chair Tholt requested to see the original variance request for the south sign and that the original application requested 37' for

this sign. Chair Egeline proposes that they allow 39'. Mr. Stahly states his opinion of that he does not know what good that height limitation would do and that if they put that language in the sign will go to the other corner and they will not be asking for a variance. Chair Egeline states that they have asked for 45' so there's a limit on the height. Vice-chair Tholt states that what he thinks Mr. Stahly is talking about is that is they do not put it in the southern ditch and northern space it will actually be higher than what they are proposing in the southern location. Commissioner Shirliff asks what if they approve and then the applicant moves it anyway. Chair Egeline says that is out of the board's decision making. Vice-chair Tholt says they can put constraints on location and height if they approve the 45' height.

(1:12:17) Mr. Stahly expands upon his thoughts on how to limit the height of the sign and how the specifics of this sign location can be used to not establish a precedent. This sign location is 13 to 15 feet below the surrounding terrain. That this is not to give a higher sign as it will still be a bit lower than a 34' sign on flat ground. Vice-chair Tholt states that instead of tying the sign to 45' feet it should be tied to an elevation of 4196'.

(1:14:07) Mr. Holland requests that as the board vote to approve or deny this variance that the board members will state their reason for the vote.

(1:15:09) Mr. Stahly makes a motion to approve a variance from section 11-23-10 to increase the allowable height of a freestanding sign from 34 feet to a height of approximately 45 feet but that will be determined by the maximum sign elevation of 4196 according to the elevation datum shown on the site plan for the southeast freestanding sign as shown on the site plan and location identified on the site plan for a property with a legal description of lots two and three of block one on COS #3100615 of the Nob Hill Subdivision, City of Helena, Lewis and Clark County, Montana, with the condition that a building permit be granted within one year. Vice-chair Tholt seconds the motion.

(1:16:51) Commissioner Shirliff asks for clarification on how the number of 4196 was determined. Mr. Stahly explains that the site plan shows a ground elevation of 4151' at the sign location and by using 4196' that limits the height to 45' at that location and less if the move the sign around.

(1:17:57) Chair Egeline states that she is going to vote yes because she would rather have a sign that is further from the houses and shorter.

(1:18:25) Mr. Federman states he is going to vote no as it is going to impact the general welfare and peacefulness of property to the homeowners. The light will be there no matter what, but we will not ruin our horizons and try to make the best of it.

(1:19:02) Commissioner Shirliff states he is going to vote no as it is in statue for 34' and that is the height restriction they can put anywhere on their property and that he worries about the horizon, the land owners, and the property owners.

(1:19:58) Chair Egeline calls for a roll call vote. Chair Egeline, Vice-chair Tholt, and Mr. Stahly vote yea. Commissioner Shirliff and Mr. Federman vote nay. The motion fails 3 to 2.

Item 1

Staff Presentation and Questions for Staff

- (1:21:33) Mr. Holland provided a presentation which included photographs of the subject property, a vicinity map, and site plan. Staff summarized the staff report.
- (1:25:33) Chair Egeline asks how far the pole that can be seen in the pictures is from the front of the current garage. Mr. Holland states that based on the site plan the pole is at 25' from the front. Mr. Federman asks if the applicant is present and what is going to happen to the pole. The applicant, Travis Trettin, states the plan would be to run the power to the garage and then trench the power to the house.

Applicant Presentation and Questions for the Applicant

- (1:27:26) Chair Egeline asks about the neighboring window that will be encroached upon by the new garage and if it is a bedroom. Mr. Trettin state that it is the kitchen window they are talking about and the bedroom window faces the alley. There is further discussion clarifying which windows are bedrooms, living rooms, and kitchen.
- (1:29:48) Vice-chair Tholt asks if they are going to go higher with the garage as well. Mr. Trettin states that he would like to, and would like to have 10' for the garage with 10' above. Vice-chair Tholt asks if it will be used as an accessory dwelling. Mr. Trettin states yes if it is acceptable, but that he is not sure he can fund that and does not know if it would be feasible to run another water and sewer line.
- (1:31:24) Chair Egeline asks about the intention of the additional 20' in length. Mr. Trettin states that is if for storage and that they currently have a shed that does not hold everything for their family and they would like to be able to consolidate and organize. He states the current garage needs to be redone regardless and this would help organize the property better. Chair Egeline asks about the proposed heights, and the applicant states 10' and then 8' if allowed for the second story. Mr. Trettin continues that he is intending a 5:12 pitch roof and that the overall height will work out about 25'.
- (1:33:25) Mr. Stahly states that he does not have a problem with the 3 foot setback that is where the current garage is. He questions the applicant about the other setback of 8' being reduced to 5' and why the garage cannot be 42' instead of the proposed 45'. Mr. Trettin states that it is to maximize his space. Mr. Federman asks where the hardship comes in. Mr. Trettin says there is not a hardship on that variance. Mr. Federman states that it is the whole point and if you cannot show a hardship, you do not get the variance. Mr. Federman also asks if there is going to be sewer and water, to which the applicant responds yes if it is acceptable. Michael Alvarez, City of Helena Planner, states that they are allowed another residence by right, that soon it will be required to be allowed by state law, and that as a matter of public policy we are trying to encourage that kind of construction on both the state and local level. Mr. Federman asks where are they going to get parking and all the other things that go along with

residential. Mr. Alvarez states that there is a parking requirement that would need to be met. Mr. Tritten states that it would not be an apartment. Its use as a dwelling unit would be mainly for if family visits, but he is not sure it is feasible to do that at this time.

(1:36:51) Mr. Federman states that everyone is in agreement that it is not a hardship to maintain the 8' setback. Mr. Stahly asks is what the use was advertised as and did the application specifically say storage as use factors in and they have had situations where the end use was not as advertised and the public had no idea of the change. That there is a difference between expecting a garage and having a 2 story building constructed next door instead.

(1:39:13) Chair Egeline asks if he has spoken to his neighbors. Mr. Trettin says he has spoken to one who was in support. He states he has no way to be in touch with the owners of the neighboring condos.

Public Comment/Board Discussion

(1:40:24) Chair Egeline calls for public comment. There is no public comment.

(1:41:13) Chair Egeline opens for board discussion.

(1:41:24) Vice-chair Tholt states that it is his understanding that use is not in the boards purview, just the variance for the setbacks. The existing garage has the 3' setback so he is inclined to maintain that. He states he is not inclined to reduce the side setback from 8' to 5' as he does not think there is a hardship there as he believes Mr. Federman was going to state.

(1:42:20) Chair Egeline asks for the site plan to be brought back to the screen. He states that she is conflicted on this. She has no problem with the garage, but when it goes the entire length of the property it will impose on the neighbor. She states that they could keep the precedent for 25 feet and then step the building footprint in. Chair Egeline also believes that there is not a hardship to reduce the setback from 8' to 5'.

(1:44:07) Mr. Federman asks is this plan meets the coverage requirements. Mr. Holland states that it works out to 35% coverage with 40% being the maximum. Mr. Federman says he agrees with maintaining the existing 3' setback but does not agree with the 8' to 5' setback change. Mr. Federman continues that he does not agree with the side setback so the two things need to be voted on separately.

(1:45:58) Mr. Alvarez asks the board of clarification on if they had an issue with the 45' length or the location. Mr. Alvarez states that he only asks because as the garage faces an alley, the applicant does not need to maintain 20' to the garage door. The applicant can move the garage to comply with the 8 foot setback, maintain the 45' garage, and have a 17' driveway. Mr. Alvarez continues that the 20' setback is the standard off the street and that the standard off an alley is only 5'

(1:46:42) Chair Egeline asks if the other board members have had thoughts of how this garage could devalue the neighboring condos. Mr. Stahly says that many years ago he learned not to speculate on whether something would devalue property.

Motion #1

(1:47:42) Vice-chair Tholt makes a motion to deny a variance from section 11-4-2 to decrease the minimum side lot line setback from 8 feet to 5 feet for a property with a legal description of the East ½ of Lots 11 and 12 in Block 27 of the Grand Avenue Addition, Lewis and Clark County, Montana. Chair Egeline states that she does not think it meets the requirements of a hardship and to vote. The motion to deny the variance passes 5-0.

Motion #2

(1:49:37) Vice chair Tholt makes a motion to approve a variance from Section 11-4-2 to decrease the minimum rear lot line setback from 10' to 3', for a property with a legal description of the East ½ of Lots 11 and 12 in Block 27 of the Grand Avenue Addition, Lewis and Clark County, Montana. Mr. Stahly adds the condition that a building permit must be applied for in one year. Mr. Federman seconds the motion and the condition.

(1:50:41) Commissioner Shirliff asks for clarification if there would be room for the garage if it was moved to the setback. Mr. Holland states that there is not enough room for a garage of the existing size to fit between the 10' setback and the house.

(1:51:22) Chair Egeline puts the motion up to a vote. The motion carries and the variance is approved 5-0.

Minutes

(1:52:47) Mr. Federman makes a motion to adopt the May 2nd, 2023 minutes, Mr. Stahly seconds the motion. The motion passes 5-0.

New Business

(1:53:33) Mr. Alvarez gives an update on the sign code changes. He asks for comments from the Board about heights, areas, and other sign related conditions that are covered by the Board of adjustments as there has not been much discussion with the Zoning Commission on those specifics. Mr. Alvarez states that the big issues currently being covered are formatting and marking sure the regulations are written in a content neutral way, with regards to the recent Supreme Court decisions. Mr. Alvarez asks for comment from the Board as the video of this meeting will be given to the Zoning Commission as public comment. He asks Commissioner Shirliff to not participate in the conversation as the Zoning Commission makes a recommendation to the City Commission.

(1:55:44) Vice-chair Tholt says he really liked tying wall signage to a percentage of the façade, but that the 30% seemed really high. Mr. Alvarez stated that this is the percentage in



the code but is almost always eclipsed by the 200 square foot maximum. Vice-chair Tholt asks if there will be a hard cap moving forward. Mr. Alvarez says that it will not remain 30% but will be a scaling cap so that the sign remains in proportion.

- (1:58:09)** Vice-chair Tholt asks about the portion that references types of signs being considered by the Board of Adjustment for variances. He states that it is his understanding that it is not currently a power of the Board of Adjustment. Mr. Alvarez states that it should be deleted.
- (2:01:54)** Mr. Federman states that under prohibited signs there was nothing about scrolling or video messages other than size. Mr. Alvarez states that he tried to break out sign type and sign face as different so that there can be a face type of electronic message boards. This would allow for separating type, as in if they were allowing a pole sign it would not mean that they were allowing an internally illuminated cabinet or an electronic message board. Mr. Federman asks if there is anything written in regards to time of change. Mr. Alvarez states that it is the same as the current code, 8 seconds.
- (2:03:48)** Mr. Federman asks about the section that states that after 10 years billboards will be non-compliant. Mr. Alvarez states that this was part of a previous ordinance that went before City Commission and had been revised by the prior City Attorney, Thomas Jordan, but was not approved by the commission. Mr. Federman states that he is going to get a fight from the sign companies on this. Vice-chair Tholt adds that this would have a tough, tough, tough time from a property rights standpoint. Mr. Alvarez states that it is outside the normal way the City of Helena treats property and that the City would try to generally avoid sunset provisions. Vice-chair Tholt adds that a lot of property owners have money invested in these types of signs and it would be putting the City in a precarious spot. Mr. Federman adds that they can be judged as non-conforming and they can't be changed.
- (2:06:41)** Chair Egeline asks if there are conditions like in setbacks where if there are commercial zoned properties against residential zoned properties there are different setbacks than when it is commercial properties abutting other commercial zoned properties. Mr. Alvarez says that suggestion will be noted and mentions that the Zoning Commission has requested that City staff look into sign districts that can be specific neighborhoods or areas.
- (2:08:22)** Mr. Stahly says he is thinking about facades and how common variance requests for size of freestanding and façade signs is. He states he is thinking about the US Chef building and do they need to be able to put signs on every side of the building, and how much signage is too much. Mr. Alvarez says this can help form background information for the Zoning Commission in defining entryway corridors and areas where there might be more restrictions on freestanding signs to get the building to address the street more.

Adjournment



(2:11:12) Chair Egeline asks if there is any public comment. She then asks if anyone would like to make a motion to adjourn.

(2:11:30) Vice-chair Tholt makes a motion to adjourn and asks if there will be a July meeting. Mr. Holland states that they did not receive any applications by the deadline. Mrs. Sparks states that there will not be a meeting in July due to this but there will be a meeting in August. Mr. Stahly seconds the motion to adjourn. The motion passes 5-0.