



**Minutes
Board of Adjustment Meeting
August 22, 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: Kyle Holland – Planner II, April Sparks – Administrative Assistant

Call to Order and Roll Call

(0:09:18) 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.

Minutes

(0:10:37) Chair Egeline asks if there are any changes or comments on the minutes for the June meeting. There are no comments and Mr. Federman makes a motion to approve, with Mr. Stahly seconding. The minutes are approved 5-0.

Public Hearing Items

(0:11:19) 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

(0:14:47) 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. No public comment had been received.

(0:19:18) Commissioner Shirtliff asks if this property is zoned for this type of business. Mr. Holland states that home occupation businesses are allowed in all zoning districts.

(0:19:47) Mr. Federman asks if the City received any floor plan of the garage showing the equipment. Mr. Holland responds that no floor plan or equipment plan was received.

(0:20:09) Chair Egeline asks for clarification on if the garage is being extended or if it is being rebuilt. Mr. Holland replies that it is just an extension. Chair Egeline continues by asking if the garage doors or the curb cut will change. Mr. Holland replies that they will not.

Applicant Presentation and Questions for the Applicant

- (0:21:09)** Bryan Johnson, applicant, describes the current use of the garage. Mr. Johnson states that he has a small fabrication business, doing welding, powder coating, and has a plasma table. That with having two cars it is not big enough and is unsafe moving around the equipment.
- (0:21:48)** Chair Egeline asks if there are any questions for the applicant. Mr. Federman asks if there is any reason that the applicant does not want to build the addition parallel to the existing garage in the yard. Mr. Johnson states that the spot to he was proposing using is mostly just wasted space at this time. Mr. Federman clarifies the direction he is starting for the addition being parallel to the existing into the yard. Mr. Johnson states that they have a small backyard as it is, and he would like to maintain that while using the wasted space.
- (0:24:19)** Vice-chair Tholt asks if there will be an additional garage door in this addition. Mr. Johnson states that there will not be an additional garage door, but there will most likely be a man door to the alley. Vice-chair Tholt states their concern is with cars parking over the sidewalk with additional garage doors.
- (0:25:30)** Mr. Stahly states that these non-conforming garages on small lots are common in Helena and that it does not impact public safety. Mr. Stahly continues that this is a larger than normal garage and is being used as a fabrication shop which is not commonly prevalent in the neighborhood. He states that he does not see that hardship portion of this application. Mr. Stahly adds that the applicant stated that he does not want to take up more yard, but that it is certainly an option and would not need the variance. Mr. Federman adds that he could take his cars out of the garage and use that portion as well.
- (0:27:25)** Chair Egeline states that most of the garages down the alley meet the 1-foot setback and this would just be allowing the same thing. She adds that from a roof line and architecture side she can see that extending the roofline will be the easiest and they are not dealing with the runoff and other issues and that this is the simplest and cleanest way to do an addition. Mr. Federman adds that they are not here just to approve things because it looks better. He states that there is plenty of garage there, it is a 3 car, and most are one or two car, and why cant he take the car out of the garage and use that space, and that he does not see that it is a hardship other than an inconvenience.
- (0:29:16)** Mr. Stahly says there is already a nonconforming garage and structure on the property, and while they can evaluate other nonconforming uses in the neighborhood, he is focusing on the three criteria that the board has to get through legally. He continues that he wants to make sure that there is a hardship before he makes his vote. Mr. Johnson adds to his previous statements to describe some of the equipment he uses and how it cannot be moved easily once it is set. He says currently that he does have to move his cars out of the garage to get to all the equipment along the walls. Mr. Federman states that is a hardship for him.
- (0:30:47)** Commissioner Shirliff states that he has the same line of thinking as the Chair in that going north makes the most sense in terms of the architecture of the building and that



there is more than just the hardship. He continues that they need to evaluate the project with regards to the rights commonly enjoyed by the other properties similarly situated, along with the nonconforming garages across and down the alley. He continues that forcing the applicant to move his business is another hardship and expense.

(0:31:59) Mr. Stahly states that he does not let the other nonconformities be the ultimate judgement. He was glad to hear the hardship noted by the applicant. Mr. Stahly adds that the board needs to be painfully aware that every time they approve or deny something they set precedents.

(0:33:10) Mr. Federman states that the applicant did express a hardship and since the applicant is allowed a home business it does interfere with his work. He asks the applicant if it is their only business. Mr. Johnson states that hopefully one day it is, but not currently.

(0:35:20) Vice-chair Tholt says that he is struggling with this one. He says it is a lot of garage for the area, but he can see the hardship. Mr. Federman asks the board if they all have problems with it. Vice-chair Tholt says he thinks they vote and see where it lands.

Motion 1

(0:36:46) Chair Egeline calls for a vote and Vice-chair Tholt makes a motion to approve on the first variance, Commissioner Shirliff seconds. The motion fails 3-2 with Mr. Federman and Mr. Stahly opposed.

Motion 2

(0:38:35) Vice-chair Tholt makes a motion to deny the second variance. Mr. Federman adds that if they deny this he cannot put any addition on to the building, even parallel, as it is a nonconforming structure. Mr. Holland brings the photos back up to give clarification as to the variance request, and states that if this is approved the applicant would be able to extend the building until he hits the setback along the alley. Mr. Federman adds that if they don't allow this the applicant will have to come back before the board to do any addition. Mr. Federman continued to clarify his reasoning to allow the second variance to make the existing structure a conforming building and allow the applicant to expand into his yard.

(0:45:00) Vice-chair Tholt withdraws his motion to deny the second variance. Mr. Federman makes a motion to approve the second variance, and states that the building permit condition is not needed as this is just to make a conforming structure. The motion is seconded by Mr. Stahly.

(0:46:37) Commissioner Shirliff asks for clarification on the that the initial motion was withdrawn and a new motion was made. He requests to see the site plan and asks Mr. Holland for clarification as to what portion of the site is being impacted by this variance.



(0:48:03) With no further discussion, Chair Egeline calls for a vote. The motion passes 5-0.

New Business

(0:49:35) Mr. Stahly says he saw an email from City Planner Alvarez regarding updates that he had done to the proposed sign code and that he had requested comments. He said he had provided some feedback and will study it more and give more comments and that this is important to take time and look at. Chair Egeline said she looked at it that day and would send comments. Ms. Sparks adds that if they need anything additional from Mr. Alvarez to email him directly and he should be able to provide answers. Ms. Sparks requests that they be sent directly to Mr. Alvarez or herself to avoid accidentally creating a quorum in the emails.

Adjournment

(0:53:42) Vice-chair Tholt make a motion to adjourn. It passes 5-0.