



**Minutes
Board of Adjustment Meeting
October 3, 2023 - 5:30 PM
Virtual Zoom Platform and City-County Building 330**

Members Present: Vice-Chair Tim Tholt, Commissioner Andy Shirtliff, Michael Newhouse, Bryan Topp

Members Absent: Chair Tracy Egeline

City Staff Present: Kyle Holland – Planner II, April Sparks – Administrative Assistant, Aimee Hawkaluk – Assistant City Attorney

Call to Order and Roll Call

(0:15:25) Vice-Chair Tholt called the meeting to order, led the recitation of the Pledge of Allegiance, and then roll was taken. Chair Egeline was noted as absent, but a quorum was established. Vice-Chair Tholt stated that all members were required to vote in the affirmative for a motion to pass.

Approval of Minutes

(0:17:59) The minutes for the August 22 and September 5, 2023 meetings were approved.

Public Hearing Items

(0:19:07) 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

(0:21:53) Mr. Holland, provided a presentation which included photographs of the subject property, a vicinity map, and site plan. Staff summarized the staff report. No Comment had been received.

(0:26:07) Vice-Chair Tholt opened questions from the Board, and asked about conditions on the variance that was previously granted. Mr. Holland replied that it was the standard recommended condition.

Applicant Presentation and Questions for the Applicant

(0:27:01) David Boggs gave a brief description of the site and what was previously approved but stated that a combination of issues prevented them from starting their project with the last variance.



Board Discussion

(0:28:17) Vice-chair Tholt opened Board discussion. Mr. Newhouse state his support of the project. Commissioner Shirliff also state his support. Mr. Topp stated his support absent any safety concerns from Transportation. Vice-Chair Tholt also stated his support.

Motion 1

(0:30:11) Mr. Newhouse moved to a variance from section 11-4-2 to decrease the minimum front lot line set back from 10 feet to 0 feet for a property with legal description of lots seven and eight and block four of the Helena Townsite Lewis and Clark County. Mr. Topp seconded. A roll call vote was called, and the motion passed unanimously (4:0).

Motion 2

(0:31:34) Commissioner Shirliff moved to approve a variance from section 11-4-2B3 to decrease the minimum vehicular entrance of the garage from 20 feet to four inches for property with a legal description of Lot 7 and eight and block four of the Helena Townsite Lewis and Clark County. Mr. Topp seconded. A roll call vote was called, and the motion passed unanimously (4:0).

(0:32:45) Vice-Chair Tholt realized the recommended condition had not been added to the motions and asked what should be done. Ms. Hawkaluk stated that new motions adding the language of the condition could be made. Vice-Chair Tholt asked for new motions to be made.

Motion 3

(0:35:17) Mr. Newhouse moved to a variance from section 11-4-2 to decrease the minimum front lot line set back from 10 feet to 0 feet for a property with legal description of lots seven and eight and block four of the Helena Townsite Lewis and Clark County with the condition that a building permit is obtained within one year. Commissioner Shirliff seconded. A roll call vote was called, and the motion passed unanimously (4:0).

Motion 4

(0:36:12) Commissioner Shirliff moved to approve a variance from section 11-4-2B3 to decrease the minimum vehicular entrance of the garage from 20 feet to 4 inches for property with a legal description of Lot 7 and eight and block four of the Helena Townsite Lewis and Clark County with the condition that a building permit is obtained within one year. Mr. Topp seconded. A roll call vote was called, and the motion passed unanimously (4:0).

Item 2

Staff Presentation and Questions for Staff

(0:37:08) Mr. Holland, 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. There were no questions from the Board.

Applicant Presentation and Questions for the Applicant

(0:41:28) Janet Ellis, 703 Breckenridge, spoke to the Board and noted the improvements in the new design and that they have a contractor who has promised to build next summer.

(0:42:30) Vice-Chair Tholt called for public comment and there was none.

Board Discussion

(0:42:46) Commissioner Shirliff stated that the applicant had answered his question regarding the slope and drainage issue with her statement. Vice-Chair Tholt stated his opinion that the variance is appropriate and there is a good case for rebuttable presumption. Mr. Topp agreed that the request was appropriate.

Motion 1

(0:44:04) Mr. Topp moved to approve a variance from Section 11-4-2 to decrease the minimum side lot line setback from 8' to 0', for a property with the legal description of The West 27 feet of Lot 7 and all of Lot 8 in Block "K" of the AMENDED MAP of the BLAKE ADDITION to the City of Helena, Lewis and Clark County, Montana. (Deed reference Book 193 of Deeds, Page 424) with the condition that a building permit is obtained within one year. Commissioner Shirliff seconded the motion. A roll call vote was taken, and the motion passed unanimously (4:0).

Motion 2

(0:45:19) Mr. Newhouse moved to approve a variance from Section 11-4-2 to decrease the minimum rear lot line setback from 10' to 0', for a property with the legal description of The West 27 feet of Lot 7 and all of Lot 8 in Block "K" of the AMENDED MAP of the BLAKE ADDITION to the City of Helena, Lewis and Clark County, Montana. (Deed reference Book 193 of Deeds, Page 424) with the condition that a building permit is obtained within one year. Commissioner Shirliff seconded the motion. A roll call vote was taken, and the motion passed unanimously (4:0).

Item 3

Staff Presentation and Questions for Staff

- (0:46:31) Mr. Holland, provided a presentation which included photographs of the subject property, a vicinity map, and site plan. Staff summarized the staff report. One comment in support had been received and was provided to the Board.
- (0:51:11) Mr. Topp asked about the zoning of an adjacent parcel. Mr. Holland explained the parcel is owned by the applicant, the residence on that parcel was also removed, and it will be part of the larger re-zoning request. Mr. Topp also asked about the nature of the lighting on this sign. Mr. Holland answered there are separate light regulations with which the sign will need to comply. Mr. Newhouse asked if the recommended condition to the variance is for a sign or building permit. Mr. Holland stated that it could be either.

Applicant Presentation and Questions for the Applicant

- (0:53:57) Brett Charles of SMA Architecture and Design, representative for the applicant Carroll College, reiterated that they are working through the rezoning process, having just completed the traffic impact study, and that this now needs to be sent to the city. He also stated it was his understanding that they had the foundation permit but had no further comments.
- (0:55:28) Vice-Chair Tholt asked for public comment; there was none.

Board Discussion

- (0:55:44) Mr. Newhouse stated his opinion that the new sign is a good fit and with the zone change it will not be an issue. Mr. Topp stated his concerns will be covered with the sign permit process. Commissioner Shirliff expressed his thoughts that the concerns about the sign are being answered and will make a nice addition to the parcel. Vice-Chair Tholt voiced his agreement and asked for the sign permit to be the condition for the motions.

Motion 1

- (0:57:42) Mr. Topp moved to approve variance from Section 11-23-10 to allow a freestanding sign with an area of 40 sf in an R-2 district, for the property with the legal description of Lot 1A in Block 1 of the Amended Capital Hill Addition to the City of Helena, Lewis and Clark County, Montana, as shown on the Amended Plat filed under Doc. No. 3300772, with the condition a sign permit is obtained within one year. Mr. Newhouse seconded. A roll call vote was taken, and the motion passed unanimously (4:0).

Motion 2

- (0:58:48) Mr. Newhouse moved to approve a variance from Section 11-23-10 to allow a freestanding sign with a height of 7' in an R-2 district, for the property with the legal description of Lot 1A in Block 1 of the Amended Capital Hill Addition to the City of Helena, Lewis and Clark County, Montana, as shown on the Amended Plat filed under Doc. No. 3300772 with the condition a sign permit is obtained within one year.



Commissioner Shirtliff seconded. A roll call vote was taken, and the motion passed unanimously (4:0).

Motion 3

(0:59:50) Commissioner Shirtliff moved to approve a variance from Section 11-23-10 to allow an illuminated sign in an R-2 district, for the property with the legal description of Lot 1A in Block 1 of the Amended Capital Hill Addition to the City of Helena, Lewis and Clark County, Montana, as shown on the Amended Plat filed under Doc. No. 3300772 with the condition a sign permit is obtained within one year. Mr. Topp seconded. A roll call vote was taken, and the motion passed unanimously (4:0).

Item 4

Staff Presentation and Questions for Staff

- (1:00:53)** Mr. Holland, provided a presentation which included photographs of the subject property, a vicinity map, and site plan. Staff summarized the staff report. One comment in opposition had been received but was retracted just before the meeting started with no further comment due to the installation of rain gutters on the shed.
- (1:04:52)** Mr. Newhouse asked what the staff recommendation for the variance condition as this building falls under the parameters of being smaller than required for a building permit. Mr. Holland pointed to comments from Kim Mack, Chief Building Official for guidance.

Applicant Presentation and Questions for the Applicant

- (1:06:44)** Larry Goll, representative for the applicant Christ Church, gave background on the installation of the shed by Tough Sheds and that they had placed it in the setback and rather than move it applied for a variance. Mr. Goll further stated that they had installed the gutters to drain water from the south side of the roof to the center of the church lawn, which appeased the neighbor in opposition.
- (1:07:38)** Mr. Topp asked when the shed was placed. Mr. Goll indicated it was about a month ago. Vice-Chair Tholt asked for public comment; there was none.

Board Discussion

- (1:08:31)** Mr. Newhouse stated he had driven by the site earlier in the day and noticed the rain gutters, and the variance request has his support. Mr. Topp stated his concern for health and safety, as it seems to present a safety issue being that close to the lot line. Vice-Chair Tholt agreed that is something to consider, but that there are multiple ways for the applicant to address those safety concerns, but it is not the place of the Board to address that, and the building department can help address those. Mr. Topp also asked what the hardship and brought up what factors he felt would be involved in evaluating that.

(1:11:32) Mr. Newhouse asked the applicant if Tough Sheds had to do any excavation when the shed was installed. Mr. Goll stated that there was excavation done by both the church and Tough Sheds and that more landscaping would need to be done if the shed were to be moved, but that if one were to look down the property line that all the sheds in the neighborhood are next to the fence. Vice-Chair Tholt asked Mr. Goll how this variance application came about. Mr. Coll confirmed that it was from a neighbor complaining, but that the complaint had been resolved with the addition of the rain gutters. Mr. Topp asked what type of foundation the shed was one. Mr. Goll stated that it is on skids.

(1:13:41) Commissioner Shirliff continued Board discussion by stating that the applicant should have the same right as his neighbors, and that is what pops out for him, along with the church's addition of gutters to be a good neighbor. Mr. Topp stated that the shed not being attached to a foundation swayed his decision towards approving the request.

Motion 1

(0:25:41) Mr. Newhouse moved to approve a variance from Section 11-4-2 to decrease the minimum side lot line setback from 6' to 3', for a property with the legal description of the East 65 feet of Lots 5 and 6, Block C of the Tietjen Addition to the City of Helena, Lewis and Clark County, Montana with no further conditions. Vice-Chair Tholt seconded. A roll call vote was taken, and the motion passed unanimously (4:0).

Motion 2

(1:16:11) Commissioner Shirliff moved to approve a variance from Section 11-4-2 to decrease the minimum side lot line setback from 6' to 4', for a property with the legal description of the East 65 feet of Lots 5 and 6, Block C of the Tietjen Addition to the City of Helena, Lewis and Clark County, Montana with no further conditions. Mr. Topp seconded. A roll call vote was taken, and the motion passed unanimously (4:0).

Old Business

(1:17:23) There was no old business.

New Business

(1:17:23) There was no new business.

Public Comment

(1:17:37) It was noted there were no members of the public in the room or online.

Member Communications



(1:17:57) Ms. Sparks made note that the next meeting is scheduled for Tuesday, November 7, 2023. Logistical issues for two of the items being represented by members of the Board were discussed and the importance of all members being in attendance was stressed.

Adjournment

(1:18:44) Mr. Topp moved to adjourn. Mr. Newhouse seconded. Motion passed unanimously on a voice vote (4:0).