



**Minutes
Board of Adjustment Meeting
November 7, 2023 - 5:30 PM
Virtual Zoom Platform and City-County Building 330**

Members Present: Chair Tracy Egeline, Vice-Chair Tim Tholt, Commissioner Andy Shirtliff, Michael Newhouse, Bryan Topp, Carissa Beckwith (Alternate)

Members Absent: None

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

Call to Order and Roll Call

(0:03:07) Chair Egeline called the meeting to order, led the recitation of the Pledge of Allegiance, and then roll was taken. A quorum was established.

Approval of Minutes

(0:04:25) The minutes for the October 3, 2023 meeting was approved.

Public Hearing Items

(0:05:46) Staff read the three standards of Section 11-5-5 and the seven standards that may be considered.

Item 1 – 807 2nd St.

Staff Presentation and Questions for Staff

(0:08:48) Mr. Holland, provided a presentation which included photographs of the subject property, a vicinity map, and site plan. Staff summarized the staff report. Four comments in support had been received. Chair Egeline recused herself for this item.

(0:13:14) Vice-Chair Tholt opened questions from the Board, and Mr. Topp asked about the current use of the structure to be removed. Mr. Holland replied that it was a studio and garage. Ms. Beckwith asked if the variance applies to just the area impacted by the building permit or the entire side setback. Mr. Holland stated that it applies to the entire side and that is part of the reason to condition it to a building permit within one year so that construction under the variance is limited.

Applicant Presentation and Questions for the Applicant

(0:15:09) Tyler Warren gave a brief description of his history of purchasing the site and his vision for use of the building. He mentioned his interactions with the neighbors and highlighted the support he has received from the immediately surrounding properties.

Board Discussion

(0:17:57) Vice-chair Tholt opened Board discussion. Mr. Newhouse state his support of the project. Mr. Topp stated his support, but had concerns that it should not be considered a garage, as it is more like a second residence. Mr. Topp was not concerned about it being a second residence, but wanted clarity. Shirtliff stated his support, and appreciated the efforts that the applicant went through to gather support from the neighbors. Ms. Beckwith also stated her appreciation at the outreach and stated she would be in favor of supporting the variance. Vice-chair Tholt stated that he though this was in line with the intentions of the City and the State's goals to increase housing stock though ADUs and second dwellings.

Motion 1

(0:30:11) Mr. Newhouse moved to approve A variance from Section 11-4-2 to decrease the minimum setback for a side lot line from 8' to 0', for a property with a legal description of The west 10 feet of Lot 8 and all of Lots 9 and 10 in Block 567 of the Easterly Addition to the City of Helena, Lewis and Clark County, Montana (Ref: Book 215 Deeds, page 193) and All of Lot 7 and the easterly 32 feet of Lot 8 in Block 567 of the Easterly Addition to the City of Helena, Lewis and Clark County, Montana as shown on the Certificate of Survey filed under Doc. No. 3052910, with the condition that a building permit be obtained within one year. Mr. Newhouse seconded. A roll call vote was called, and the motion passed unanimously (5:0).

Item 2 – 201 State St.

Staff Presentation and Questions for Staff

(0:23:19) 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. Chair Egeline asked about the current distance from Warren St. and if it was about 5'. Mr. Holland confirmed that it was. Chair Egeline also asked about the location of the addition relative to a window visible in the pictures. Mr. Holland stated that he thought the window was being reused as entrance to the addition and the applicant stated that the window will be moved.

Applicant Presentation and Questions for the Applicant

(0:28:42) Will Garvin, the property owner, spoke to the Board about his history with the property and his vision for the addition. Mr. Garvin spoke about the drainage at the site, how it has impacted the original stone rubble foundation, and how this addition will stabilize the existing structure to preserve the building. Commissioner Shirtliff asked if the house will be owner occupied or a rental, to which Mr. Garvin stated it is a rental. Chair Egeline asked how much of the sunroom addition would be lost if the setback was followed. Mr. Garvin stated that by removing the additional 6 feet to meet the setback there would not be a suitable location for a door from the existing



building to the addition. Chair Egeline also asked about the existing foundation and the plan for reinforcement with the new addition. Mr. Garvin explained the previous methods he had used on a different addition involving vertical steel and poured concrete that was integrated into the rubble foundation.

- (0:34:44) Vice-Chair Tholt called for public comment. Jeanine Stark, the current tenant of the property, stated he joy at helping Mr. Garvin with the project and how she has met all of her neighbors while working on the excavation. She continued that having the sunroom to start her garden and rest is something she looks forward to.

Board Discussion

- (0:36:23) Vice-chair Tholt stated that this is one of the tougher areas of town and that he can appreciate what Mr. Garvin is trying to do. Vice-chair Tholt added that he does not think it is changing the character of the neighborhood and is within the existing setback of the house. Mr. Topp added that it still gives room for a sidewalk between the curb and the structure and matches the rest of the building well. Chair Egeline stated that she agrees with Vice-chair Tholt's comments.

Motion 1

- (0:38:24) Mr. Topp moved to approve a variance from Section 11-4-2 to decrease the minimum setback for a front lot line from 10' to 4', for a property with a legal description of Lots 4, 5, 6, 7, and 8 in Block 17 of the Original Townsite to the City of Helena, Lewis & Clark County, Montana. 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 (5:0).

Item 3 – 519 1st St.

Staff Presentation and Questions for Staff

- (0:39:30) 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. Vice-chair Tholt asked for clarification on what a gift track is. Mr. Holland stated it is a way of dividing the property for a family transfer.

Applicant Presentation and Questions for the Applicant

- (0:43:57) Mike Newhouse, representative for the applicant, stated that Montana State Law allows for a single family of single gift to an immediate family member of land. The goal of this is to create a new track which they will not be building on within the next few years as there are significant grading issues on the property that need to be addressed to meet International Fire Code for grade and hydrant access. Mr. Newhouse adds that after the tract is created the applicant will be saving up to run a new fire main up 1st St. Creating this track is just the first step of many in the future plans of the applicant. Mr. Topp asked for clarification about why the east side cannot be used for access, and if the grades are limiting the locations of access. Mr.

Newhouse states that is the case and the area on the east has steeper grades and significant rock outcroppings. Commissioner Shirliff asks what the benefit is to the creating a gift tract. Mr. Newhouse replied that it is a legal way to avoid subdivision, and that with a subdivision they would have to do the additional infrastructure work up front instead of over time.

(0:48:08) Chair Egeline asked for public comment; there was none.

Board Discussion

(0:48:42) Vice-chair Tholt stated that he feels the 7' request fits the neighborhood, and that including the 20' drive access makes it better. Mr. Topp states that the 20' access width of the new lot mitigates the issues of the lessened setback. Commissioner Shirliff stated he is in favor of it and thanked the applicant for making the property and road safer for first responders. Ms. Beckwith seconded that idea and stated that knowing this improves fire department access she would be in favor of it.

Motion 1

(0:51:03) Vice-chair Tholt moved to approve variance from Section 11-4-2 to decrease the minimum setback for a side lot line from 8' to 7' for a property with a legal description of S31, T10 N, R03 W, C.O.S. 516083, Acres 5.229, Tract A-2 in Hawkeye Lode MS 314, with the condition an amended plat be filed within one year. Commissioner Shirliff seconded. A roll call vote was taken, and the motion passed unanimously (5:0).

Item 4 – 733 E Broadway St.

Staff Presentation and Questions for Staff

(0:52:20) 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 comments had been received.

(0:56:00) Chair Egeline asked if the new garage will be exactly the same size as the existing. Mr. Holland stated that when he met with the applicants they had stated they were working with companies that made premanufactured garages to get one the is the same footprint, but that is not a common size. Chair Egeline asked if access will remain the same, Mr. Holland stated yes.

(0:57:02) Vice-chair Tholt asked for more clarification about if the garage is moving, because right now the garage is encroaching so to have a 0' setback would be moving the garage by 2'. Mr. Holland stated that the request is for 0' not to continue the encroachment. Mr. Topp asked about the note from transportation regarding the eaves, and Mr. Holland stated that is reviewed at the time of the building permit. Mr. Newhouse asked if the applicant has an encroachment permit or if any of the adjacent garages have variances or encroachment permits. Mr. Holland states that he



does know of the applicant investigating an encroachment permit and did not research the adjacent properties.

Applicant Presentation and Questions for the Applicant

- (0:59:10) Brandy Reis, the owner of the property, spoke about the survey that they had done at the time of purchase, and the struggles to find the property lines due to encroachments of several structures throughout the block. Mrs. Reis continued by explaining the current condition of the garage and the inspectors recommendation that it not be used.
- (1:01:54) Vice-chair Tholt explained that if they approved the 0' setback it would be moving the garage 2' more into the applicants yard, and wanted to be clear for the applicant about what moving the garage and potential issues with the eves encroaching would entail. He continued that this is not the board to issue an encroachment permit. Mr. Newhouse asks if they could like to pull the application at this moment and explore an encroachment permit with the city, and the applicant confirmed this. Mr. Alvarez adds that it can be conditioned upon receiving that encroachment agreement.

Public Comment

- (1:06:26) There was no public comment.

Board Discussion

- (1:06:26) There was no board discussion as a motion to table was made.

Motion 1

- (1:07:21) Mr. Newhouse moved to table a variance from Section 11-4-2 to decrease the minimum setback for a side lot line from 8' to 4' for a property with a legal description of Lot 2 of Block N of the AMENDED MAP OF THE BLAKE ADDITION of the City of Helena, Lewis and Clark County, Montana. Vice-Chair Tholt seconded. A roll call vote was taken, and the motion passed unanimously (5:0).

Motion 2

- (1:08:12) Commissioner Shirliff moved to table a variance from Section 11-4-2 to decrease the minimum setback for a lot line that abuts a dedicated public right of way that provides only a secondary means of access to property and is not intended for general travel from 5' to 0' for a property with a legal description of Lot 2 of Block N of the AMENDED MAP OF THE BLAKE ADDITION of the City of Helena, Lewis and Clark County, Montana. Mr. Topp seconded. A roll call vote was taken, and the motion passed unanimously (5:0).
- (1:09:12) Mr. Holland asks the board for a moment to discuss the previous motions with the applicant before presenting the next item.

Item 5 – 2517 Airport Rd.

Staff Presentation and Questions for Staff

- (1:11:19) Chair Egeline states for the record that she is married to the principal architect of this item, but that she is not receiving any monetary value from this item so she will vote and make comment.
- (1:11:44) 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.
- (1:17:22) Mr. Topp asks about the parking configuration at the site, as the applicant is changing the parking from angled to 90 degree. Mr. Holland states that the change in parking is the result of the best efforts of the applicant to comply with parking regulations and site constraints, but there is not enough space to reach the parking minimum. Chair Egeline asks if the FAA approval is a condition of the variance. Mr. Holland states that it is part of the building permit review.

Applicant Presentation and Questions for the Applicant

- (1:19:30) Jason Egeline, architect with CWG, states that these height and parking variances will not impact the peaceful use of the neighboring properties, that adjacent properties are zoned for 75' in height, and the largest impact will be some increased shading in parking areas. Mr. Egeline continues that this is the only warehouse the State has for this function and that it has not been significant expanded since 1976 and no longer meets the needs of the Department of Revenue. Mr. Egeline added that to comply with the height requirements they would have to remove one level of the racking system which would reduce capacity by about 40,000 bottles.
- (1:23:20) Mr. Egeline transitions to talking about the parking variance. He states that most of the area of the addition is dedicated to an automated system, so additional staff will be very limited. The parking that exists exceeds the needs of the current staff.
- (1:25:40) Commissioner Shirtliff asks about the height of the existing building, to which Mr. Egeline replies it is about 32'. Mr. Topp asked about if they explored rezoning. Mr. Egeline stated that with the time constraints and limited amount over the maximum they did not.
- (1:26:53) Chair Egeline asked for public comment; there was none.

Board Discussion

- (1:27:19) Commissioner Shirtliff states that with how supply chains are now and the difficulties that causes for small businesses, adding this capacity will help those owners maintain stocks. Mr. Topp states his main concern was with the reduction of parking and with the automated system to concerns are no longer an issue. Ms.; Beckwith states she was also concerned about the parking, but knowing that they do

not use all of the current parking answers her questions. Mr. Newhouse says his comments are in line with the other board members.

Motion 1

(1:29:11) Commissioner Shirtliff moved to approve a variance from Section 11-4-2 to increase the maximum building height from 60' to 67' for a property with a legal description of S28, T10 N, R03 W, C.O.S. 291462, TR IN NW4NW4, with the condition an amended plat be filed within one year. Mr. Newhouse seconded. A roll call vote was taken, and the motion passed unanimously (5:0).

Motion 2

(1:29:11) Mr. Newhouse moved to approve a variance from Section 11-22-3 to reduce the required number of parking spaces from 70 to 58 for a property with a legal description of S28, T10 N, R03 W, C.O.S. 291462, TR IN NW4NW4, with the condition an amended plat be filed within one year. Mr. Topp seconded. A roll call vote was taken, and the motion passed unanimously (5:0).

Item 6 – 2755 Colonial, 2775 Colonial, 2660 Shodair

Staff Presentation and Questions for Staff

(1:37:01) 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.

(1:46:51) Commissioner Shirtliff asks about sign locations next to stop signs, and if there is concern about visibility. Mr. Holland states that all signs will have to meet the sight triangle requirements as part of the application process. Chair Egeline asked if the poles shown in the pictures represent the height of the signs. Mr. Holland states he does not know the exact height of those poles, but that they were installed to provide the frame work for the signs and will be very close the final height.

Applicant Presentation and Questions for the Applicant

(1:48:17) Josh Mullaney, representative for the Dick Anderson Construction, stated that it is a sizable campus with multiple access points. He adds that portions of Shodair drive are private and fenced off from the public. These additional signs will keep the emergency access lanes clear and help eliminate delays. He states that they have repainted all no parking zones to improve the visibility at these intersections and they are meeting the visibility triangles mandated by the city.

(1:53:39) Chair Egeline asked for public comment; there was none.

Board Discussion

(1:54:07) Mr. Newhouse states he does not see any issue with these variances given the size of the campus and the challenges of not having direct access throughout the campus. Mr. Topp stated that he does not have any concerns with the proposal as it is necessary for safety and navigation. Commissioner Shirtliff says that they are not only common sense, but absolutely convenient for navigation. Ms. Beckwith states that she appreciates the commentary around the sight triangles and is in favor.

Motion 1

(1:55:21) Mr. Topp moved to approve a variance from Section 11-23-10 to allow a second freestanding sign for the principal building at 2775 Colonial Drive in a B-2 zoning district for a property with the legal description of Lot 3D-1A-1 of the Helena Mall Subdivision, located in Section 33, Township 10 North, Range 3 West, PMM, Lewis & Clark County, Montana, as shown on the Amended Plat filled under document number 3247572, with the condition a sign permit be obtained within one year. Commissioner Shirtliff seconded. A roll call vote was taken, and the motion passed unanimously (5:0).

Motion 2

(1:56:23) Commissioner Shirtliff moved to approve a variance from Section 11-23-2 to allow a monument sign taller than 6' at 2775 Colonial Drive in a B-2 zoning district for a property with the legal description of Lot 3D-1A-1 of the Helena Mall Subdivision, located in Section 33, Township 10 North, Range 3 West, PMM, Lewis & Clark County, Montana, as shown on the Amended Plat filled under document number 3247572, with the condition a sign permit be obtained within one year. Mr. Topp seconded. A roll call vote was taken, and the motion passed unanimously (5:0).

Motion 3

(1:57:18) Mr. Newhouse moved to approve a variance from Section 11-23-10 to allow a second freestanding sign for the principal building at 2620 Shodair Drive in a B-2 zoning district for a property with the legal description of Lot 3D-1A-1 of the Helena Mall Subdivision, located in Section 33, Township 10 North, Range 3 West, PMM, Lewis & Clark County, Montana, as shown on the Amended Plat filled under document number 3247572, with the condition a sign permit be obtained within one year. Mr. Topp seconded. A roll call vote was taken, and the motion passed unanimously (5:0).

Motion 4

(1:58:20) Ms. Beckwith moved to approve a variance from Section 11-23-2 to allow a monument sign taller than 6' at 2620 Shodair Drive in a B-2 zoning district for a property with the legal description of Lot 3D-1A-1 of the Helena Mall Subdivision, located in Section 33, Township 10 North, Range 3 West, PMM, Lewis & Clark County, Montana, as shown on the Amended Plat filled under document number 3247572,



with the condition a sign permit be obtained within one year. Mr. Newhouse seconded. A roll call vote was taken, and the motion passed unanimously (5:0).

Motion 5

(1:59:20) Commissioner Shirliff moved to approve a variance from Section 11-23-10 to allow a second freestanding sign for the principal building at 2755 Colonial Drive in a B-2 zoning district for a property with the legal description of Lot 3D-1A-1 of the Helena Mall Subdivision, located in Section 33, Township 10 North, Range 3 West, PMM, Lewis & Clark County, Montana, as shown on the Amended Plat filled under document number 3247572, with the condition a sign permit be obtained within one year. Mr. Newhouse seconded. A roll call vote was taken, and the motion passed unanimously (5:0).

Item 5 – 3196 Colonial Drive.

Staff Presentation and Questions for Staff

(2:00:23) Mr. Holland, provided a presentation which included photographs of the subject property, a vicinity map, and site plan. Staff summarized the staff report. One public comment against the proposed variance had been received.

(2:05:34) Chair Egeline asked for clarification about the current landscaping and what plantings were being referenced by certain notes on the plan. Mr. Holland brought the plans to the screen for better clarity. Mr. Topp asked about the other sites in the area that did not meet the code and if they were an enforcement issue or were issued variances. Mr. Holland stated that was before he joined the City and did not want to speculate. Mr. Newhouse asked about when the landscape requirements were put in place. Mr. Holland stated he believed 2013.

Applicant Presentation and Questions for the Applicant

(2:08:55) Rich Piggott, representative for the applicant, stated the requests for removal of the trees along the front of the building and how they believed a strict adherence would create unnecessary safety issues due to limits in visibility and security. Mr. Newhouse asked about camera systems. Mr. Piggott stated that while they do have cameras in place that monitored in the back office, visibility from staff is always preferred. Mr. Topp asked why only these two trees were being removed. Mr. Piggott stated that while they would like to remove all the trees immediately adjacent, these two were the most important for the business operations.

(2:11:02) Vice-chair Tholt asked the applicant if they would have any issue relocating the trees somewhere else on the property. Mr. Piggott stated that they would not have any issues with that as long as he could work with their Landscape Architect to pick more appropriate trees for the permitter locations.

(2:11:48) Chair Egeline asked for public comment; there was none.

Board Discussion

(2:12:42) Vice-chair Tholt stated that there are good reasons for the 35' requirement such as heat islands, but that he would be open to the relocation of the trees elsewhere on the property. Mr. Newhouse stated that he agreed with Vice-chair Tholt and that they could change the type of tree as long as they maintained the same number of trees. Commissioner Shirliff agreed with the other board members about moving the trees. Mr. Topp continued his agreement that moving the trees would appease him.

Motion 1

(2:14:38) Vice-chair Tholt moved to approve a variance from Section 11-24-4 to allow a deviation from parking lot landscaping requirements for a property with a legal description a legal description of Lots 2 and 3 of Block 1 on COS #3100615 of the Nob Hill Subdivision, City of Helena, Lewis and Clark County, Montana, with the condition that the two removed trees are placed elsewhere on the lot. Commissioner Shirliff seconded. A roll call vote was taken, and the motion passed unanimously (5:0).

Public Comment

(2:16:01) It was noted there were no members of the public in the room or online.

Member Communications

(2:16:37) Ms. Sparks made note that the next meeting is scheduled for Tuesday, December 5, 2023.

Adjournment

(2:17:38) Commissioner Shirliff moved to adjourn. Mr. Newhouse seconded. Motion passed unanimously on a voice vote (5:0).